Introduced by Revd the Hon F J Nile, MLC First print

New South Wales

Aboriginal Cultural Heritage (Culture is Identity) Bill 2022

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

This Bill is co-sponsored by Mr J R Field, MLC, Mr A H Greenwich, MP, the Hon Emma Hurst, MLC, Revd the Hon F J Nile, MLC, the Hon Mark Pearson, MLC and Mr G M Piper, MP.

Overview of Bill

The object of this Bill is to provide a modern framework for the recognition, protection, conservation and preservation of Aboriginal cultural heritage and recognise the fundamental importance of Aboriginal cultural heritage to Aboriginal people.

Outline of provisions

Part 1 Preliminary

Part 1 sets out the name, also called the short title, of the proposed Act and provides for the commencement of the proposed Act on 1 July 2023. The proposed Part also sets out the objects of the proposed Act, and provides that Parliament recognises the *United Nations Declaration on the Rights of Indigenous Peoples*, and the application of those rights to Aboriginal persons by the proposed Act. The proposed Part provides for defined terms, which are set out in the Dictionary, and also sets out the definition of ***Aboriginal cultural heritage***, and related terms.

The proposed Act binds the Crown, and sets out the way the proposed Act interacts with the Native Title Act 1993 of the Commonwealth, the *Coroners Act 2009* and the *Environmental Planning and Assessment Act 1979*.

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

Part 2 establishes the Aboriginal Cultural Heritage Council (the ***ACH Council***) and provides for the designation of local Aboriginal cultural heritage services (***ACH services***). The proposed Part also sets out the functions, powers of these bodies and related matters. The ACH Council functions include providing oversight of the Aboriginal cultural heritage system, promoting public awareness of Aboriginal cultural heritage, developing guidance materials in the recognition, protection, conservation, preservation and management of Aboriginal cultural heritage, making decisions in relation to protected areas, Aboriginal cultural heritage permits (***ACH permits***) and Aboriginal cultural heritage management plans (***ACH management plans***).

Local ACH services are given functions in relation to engaging and negotiating with persons intending to carry out activities in the area and native title parties and knowledge holders for the area. The functions also include facilitating or making ACH management plans for the area, providing advice to persons about whether Aboriginal cultural heritage is located in the area, providing information to the ACH Council about Aboriginal cultural heritage in the area and reporting on other matters relating to Aboriginal cultural heritage.

Part 3 Rights and duties in relation to Aboriginal cultural heritage

Part 3 provides for rights and duties of various persons in relation to Aboriginal cultural heritage and deals with the management of Aboriginal ancestral remains and secret or sacred objects. The proposed Part also establishes a duty for a person to report Aboriginal cultural heritage to the ACH Council and recognises the rights of Aboriginal persons to use Aboriginal cultural heritage for a commercial benefit.

Part 4 Protected areas

Part 4 deals with providing special protection to an area of land where Aboriginal cultural heritage of outstanding significance for the purposes of the proposed Act is located, by declaring an area a protected area. An ACH permit or ACH management plan application cannot be made in relation to a protected area.

Part 5 Offences about harming Aboriginal cultural heritage

Part 5 provides for the key offences of harming Aboriginal cultural heritage. The proposed Part defines the concepts of ***serious harm*** and ***material harm*** for the purpose of distinguishing the impact of harm to Aboriginal cultural heritage and sets out a number of defences in relation to the offences.

Part 6 Managing activities that may harm Aboriginal cultural heritage

Part 6 provides for how to manage activities that may harm Aboriginal cultural heritage. A tiered approach is adopted, which takes into account the level of likely impact to Aboriginal cultural heritage. The requirements to be satisfied in relation to an activity likely to harm Aboriginal cultural heritage in a particular tier are set out.

The proposed Part also establishes the process for the grant of an ACH permit and requirements for the approval or authorisation of an ACH management plan. ACH permits and ACH management plans may be required for certain tiers of activities to allow an activity to be carried out.

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Part 7 Stop activity orders, prohibition orders and remediation orders

Part 7 provides for the giving of stop activity, prohibition and remediation orders by the ACH Council. Stop activity orders and prohibition orders can be used to prevent or cease an activity that may harm Aboriginal cultural heritage where the activity is not authorised or there is new information about Aboriginal cultural heritage. Stop activity orders will be limited to 60 days during which time the ACH Council will be required to consider the matter and decide whether a prohibition order is required. The ACH Council will be required to provide the opportunity for submissions to the person undertaking the activity as well as relevant Aboriginal people.

Remediation orders may be issued to allow for remediation work to be undertaken to restore impacted Aboriginal cultural heritage.

Part 8 Aboriginal cultural heritage protection agreements

Part 8 enables the ACH Council to endorse Aboriginal cultural heritage protection agreements (***ACH protection agreements***) which are voluntary agreements with Aboriginal parties that focus on proactive actions to recognise, protect, conserve, preserve and manage Aboriginal cultural heritage in an area. An ACH protection agreement cannot permit harm to Aboriginal cultural heritage in the area.

Part 9 Aboriginal Cultural Heritage Directory and Register of Aboriginal Owners

Part 9 provides for the establishment, maintenance, use and access to the Aboriginal Cultural Heritage Directory (the ***ACH Directory***). The ACH Directory will list information and documents about Aboriginal cultural heritage, including protected areas, the local ACH service for an area, a native title party for an area, knowledge holders for an area, and other agreements, permits, plans, determinations and orders under the proposed Act. The ACH Directory will also include information about characteristics of Aboriginal cultural heritage in the state, and the location of the heritage.

The proposed Part also provides for access to the ACH Directory for particular persons and purposes in addition to the establishment of the Register of Aboriginal Owners.

Part 10 Compliance

Part 10 provides for the investigation and prevention of offences and for related matters under the proposed Act.

Part 11 Legal proceedings

Part 11 sets out provisions applicable to legal proceedings for the prosecution of offences, the relationship of certain persons to the commission of offences, and matters relating to evidence.

Part 12 Miscellaneous

Part 12 provides for financial matters, decisions subject to administrative review by the Civil and Administrative Tribunal, matters relating to the administration of the proposed Act, regulations and guidelines that may be made under the proposed Act and for the review of the proposed Act.

Schedule 1 Establishment, constitution and procedures of ACH Council

Schedule 1 sets out the process for the appointment of the ACH Council, the constitution of the ACH Council and the procedures for the ACH Council.

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Schedule 2 Savings, transitional and other provisions

Schedule 2 contains savings, transitional and other provisions consequent on the enactment of the proposed Act.

Schedule 3 Dictionary

Schedule 3 contains a Dictionary of defined terms used in the proposed Act.

Schedule 4 Amendment of Acts

Schedule 4 amends the Acts specified in the proposed Schedule.

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New South Wales

Aboriginal Cultural Heritage (Culture is Identity) Bill 2022

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New South Wales

Aboriginal Cultural Heritage (Culture is Identity) Bill 2022

No , 2022

A Bill for

An Act to recognise, protect, conserve and preserve Aboriginal cultural heritage, and for related purposes.

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The Legislature of New South Wales enacts—

Part 1 Preliminary

1 Name of Act

This Act is the *Aboriginal Cultural Heritage (Culture is Identity) Act 2022*.

2 Commencement

This Act commences on 1 July 2023.

3 Objects of Act

The objects of this Act are as follows—

(a) to recognise, protect, conserve and preserve Aboriginal cultural heritage,

(b) to recognise—

(i) the fundamental importance to Aboriginal people of Aboriginal cultural heritage and the central role of Aboriginal cultural heritage in Aboriginal communities past, present and future, and

(ii) that Aboriginal people have custodianship over Aboriginal cultural heritage, and

(iii) the importance of Aboriginal cultural heritage to Aboriginal people and the wider New South Wales community, and

(iv) the living, historical and traditional nature of Aboriginal cultural heritage,

(c) to promote—

(i) the management of Aboriginal cultural heritage as an integral part of land and natural resource management, and

(ii) access for future generations to Aboriginal cultural heritage,

(d) to establish effective processes for—

(i) conserving and managing Aboriginal cultural heritage, and

(ii) regulating activities that may cause harm to Aboriginal cultural heritage,

(e) to manage activities that may harm Aboriginal cultural heritage in a way that provides—

(i) clarity, confidence and certainty, and

(ii) beneficial outcomes for Aboriginal people and Aboriginal owners,

(f) to work in partnership with Aboriginal people with appropriate cultural authority,

(g) to promote an appreciation of Aboriginal cultural heritage.

4 Recognition of United Nations Declaration on the Rights of Indigenous Peoples

Parliament recognises the rights of Indigenous peoples as set out in the *United Nations Declaration on the Rights of Indigenous Peoples* and the application of those rights to Aboriginal persons by this Act.

Note— Article 31 of the *United Nations Declaration on the Rights of Indigenous Peoples* provides that Indigenous peoples, as a specific form of exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, including culture, religion, education, information, media, health, housing, employment, social welfare, economic activities, land and resources management, environment and entry by non-members, as well as ways and means for financing these autonomous functions.

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5 Definitions

The Dictionary in Schedule 3 defines words used in this Act.

Note— The *Interpretation Act 1987* contains definitions and other provisions that affect the interpretation and application of this Act.

6 Meaning of "Aboriginal cultural heritage" and related terms

In this Act—

Aboriginal cultural heritage—

(a) means the tangible and intangible elements that are important to the Aboriginal people of the State, and are recognised through social, spiritual and historical values, as recognised by Aboriginal people, and

(b) includes the following—

(i) an area (an ***Aboriginal place***) in which tangible elements of Aboriginal cultural heritage are present, including a place where Aboriginal ancestral remains are buried,

(ii) an object (an ***Aboriginal object***) that is a tangible element of Aboriginal cultural heritage,

(iii) a group of areas (a ***cultural landscape***) interconnected through tangible or intangible elements of Aboriginal cultural heritage, including lands, plants, animals, water and sky,

(iv) the bodily remains of a deceased Aboriginal person (***Aboriginal ancestral remains***), other than remains that are buried in a cemetery where non-Aboriginal persons are also buried or remains that have been dealt with or are to be dealt with under a law of the State relating to the burial of the bodies of deceased persons.

7 Act to bind Crown

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

8 Act does not apply to certain objects

This Act does not apply to or in relation to an object that—

(a) is part of a collection made and preserved by the Australian Museum Trust, or

(b) was made for the purpose of sale, unless the object is, or has been, a secret or sacred object.

9 Native title rights and interests

(1) This Act is not intended to affect native title rights and interests other than in accordance with the Native Title Act.

(2) This Act must be interpreted in a way that does not prejudice native title rights and interests to the extent that those rights and interests are recognised and protected by the Native Title Act.

(3) In this section—

affect has the meaning given in the Native Title Act, section 227.

10 Coroners Act 2009 not affected

Subject to section 40, nothing in this Act affects the operation of the *Coroners Act 2009*.

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11 Planning legislation

(1) Development for which consent has been granted or for which consent is not required under the *Environmental Planning and Assessment Act 1979*, including development declared to be State significant development or State significant infrastructure, must not be carried out unless it is carried out in accordance with the requirements of this Act.

(2) A development application or planning proposal must not be lodged with a consent authority for development which would require an ACH permit or an approved or authorised ACH management plan unless—

(a) the ACH permit has been granted, or

(b) the ACH management plan has been approved or authorised.

(3) In this section—

consent authority has the same meaning as in the *Environmental Planning and Assessment Act 1979*.

development has the same meaning as in the *Environmental Planning and Assessment Act 1979*.

development application has the same meaning as in the *Environmental Planning and Assessment Act 1979*.

planning proposal has the same meaning as in the *Environmental Planning and Assessment Act 1979*, section 3.33.

State significant development has the same meaning as in the *Environmental Planning and Assessment Act 1979*.

State significant infrastructure has the same meaning as in the *Environmental Planning and Assessment Act 1979*.

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

Division 1 Interpretation

12 Definitions

In this Part—

CATSI Act means the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* of the Commonwealth.

CATSI Act corporation means a corporation registered under the CATSI Act.

committee means a committee of the ACH Council established under section 19(1).

Corporations Act corporation means a corporation that—

(a) is registered under the *Corporations Act 2001* of the Commonwealth, and

(b) satisfies the Indigeneity requirement under the CATSI Act, section 29-5.

Division 2 Aboriginal Cultural Heritage Council

Subdivision 1 Constitution of ACH Council

13 Constitution of ACH Council

(1) The Aboriginal Cultural Heritage Council is constituted by this Act.

(2) The ACH Council is a body corporate.

(3) The ACH Council is not subject to the direction or control of the Minister.

14 Composition and procedures of ACH Council

Schedule 1 sets out the following—

(a) the process for the appointment of the first ACH Council,

(b) the constitution of the ACH Council,

(c) the procedures for the ACH Council.

Subdivision 2 Functions and powers

15 Functions of ACH Council

(1) The ACH Council has the following functions—

(a) promoting public awareness, understanding and appreciation of Aboriginal cultural heritage in the State,

(b) promoting the role of Aboriginal people in—

(i) the recognition, protection, conservation and preservation of Aboriginal cultural heritage, and

(ii) the management of activities that may harm Aboriginal cultural heritage, and

(iii) the administration of this Act,

(c) proactively assisting in the recognition, protection, conservation, preservation and management of Aboriginal cultural heritage, including, if relevant, by developing guidance materials,

(d) functions under Division 3, Subdivision 2 in relation to the designation of persons as local ACH services for different areas of the State,

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(e) providing advice, and taking appropriate action, under Part 3 in relation to Aboriginal ancestral remains and secret or sacred objects,

(f) making decisions under—

(i) Part 4 in relation to protected areas, and

(ii) Part 6 in relation to ACH permits and ACH management plans, and

(iii) Part 7 in relation to stop work orders, prohibition orders and remediation orders, and

(iv) Part 10 in relation to compliance,

(g) making decisions relating to the endorsement of ACH protection agreements under Part 8,

(h) establishing and maintaining the ACH Directory and the Register of Aboriginal Owners under Part 9,

(i) working in partnership with Aboriginal Land Councils to promote public awareness of Aboriginal cultural heritage,

(j) providing advice to—

(i) the Minister as described in subsection (2), and

(ii) the Minister administering the *Environmental Planning and Assessment Act 1979* about matters which may affect the protection, preservation, conservation or management of Aboriginal cultural heritage,

(k) other functions conferred on the ACH Council under this Act,

(l) other functions prescribed for the purposes of this subsection.

(2) The ACH Council may provide advice to the Minister—

(a) generally in relation to the recognition, protection, conservation, preservation and management of Aboriginal cultural heritage, and

(b) on another matter relating to the exercise of the powers of the Minister under this Act.

(3) The functions set out in subsection (1) are subject to rights under the Native Title Act.

16 Powers of ACH Council

The ACH Council has all the powers it needs to perform its functions.

17 Delegation by ACH Council

(1) The ACH Council may delegate a power or duty of the ACH Council under another provision of this Act, other than a power or duty under a relevant provision, to 1 or more of the following—

(a) a member,

(b) a member of staff of the ACH Council,

(c) a committee,

(d) an Aboriginal Land Council.

(2) A delegation must be in writing and executed by the ACH Council.

(3) A person to whom, or a committee to which, a power or duty is delegated under this section cannot delegate that power or duty.

(4) In this section—

relevant provision means—

(a) Division 3, Subdivision 2 of this Part, and

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(b) Parts 4 and 6.

Subdivision 3 Staff and assistance

18 Staff

(1) The ACH Council must determine—

(a) a staff organisation structure that it considers appropriate to enable the ACH Council to exercise its functions, and

(b) the resources to be allocated towards the employment of staff.

(2) The organisational structure may be redetermined by the ACH Council from time to time.

(3) The ACH Council may engage consultants to provide expert advice.

Subdivision 4 Other matters

19 Committees

(1) The ACH Council may—

(a) establish committees to assist it in performing its functions, and

(b) discharge, alter or reconstitute a committee, and

(c) give directions to a committee on the following matters—

(i) the functions to be performed by the committee,

(ii) the committee's procedures,

(iii) reporting by the committee on the performance of its functions.

(2) A committee must comply with a direction of the ACH Council, including a direction relating to standards of transparency and accountability.

(3) A committee may determine its own procedures but the procedures must be consistent with directions of the ACH Council and the terms of a delegation under which the committee is acting.

(4) A committee must—

(a) keep minutes of its meetings to a standard approved by the ACH Council, and

(b) provide the ACH Council with a copy of the minutes of each meeting.

20 Impersonating member of ACH Council

A person must not falsely represent, by words or conduct, that the person is a member of the ACH Council.

Maximum penalty—200 penalty units.

Division 3 Local Aboriginal cultural heritage services

Subdivision 1 Purpose and nature of local ACH services

21 Purpose of local ACH service

An entity designated as a local ACH service for an area of the State—

(a) must, as far as practicable, provide local ACH service functions for the area, including—

(i) the management of sites, places or materials in relation to Aboriginal cultural heritage,

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(ii) appropriate protection of sites, places or materials relating to Aboriginal cultural heritage,

(iii) the maintenance of sites, places and materials relating to Aboriginal cultural heritage, to reduce damage or degradation of Aboriginal cultural heritage, and

(b) work with persons, entities and government sector agencies with a legislative function, power or duty, including under Commonwealth legislation, in relation to the maintenance and protection of Aboriginal culture and heritage,

(c) may charge a fee for services it provides in connection with the provision of local ACH service functions in accordance with Subdivision 3.

Subdivision 2 Designation as local ACH service

22 ACH Council must designate local ACH service

(1) The ACH Council must, as far as practicable, designate an entity as a local ACH service for different areas of the State.

(2) A local ACH service must not be designated to an individual.

(3) An entity may be designated by the ACH Council as a local ACH service for more than 1 area.

(4) The ACH Council can designate only 1 local ACH service for an area.

23 Designation of local ACH service

(1) The ACH Council may determine the entity to be designated as the local ACH service for an area subject to the Commonwealth law, cultural rights and legal rights of interested Aboriginal parties to Aboriginal cultural heritage on or of the land.

(2) In this section—

Aboriginal owners has the same meaning as in the *Aboriginal Land Rights Act 1983*.

interested Aboriginal parties include the following—

(a) Aboriginal owners of the land,

(b) a Local Aboriginal Land Council,

(c) a registered native title body corporate for the area or part of the area.

24 ACH Council must give public notice of designation

(1) The ACH Council must give public notice of the designation of an entity as the local ACH service for an area.

(2) The notice must include the following—

(a) a description of the area for which the entity is designated as the local ACH service sufficient to identify the entity,

(b) the name of the entity,

(c) details of how the entity may be contacted,

(d) other information prescribed for the purposes of this subsection.

25 Duration of designation as local ACH service for area

(1) The designation of an entity as the local ACH service for an area—

(a) takes effect on the day on which the ACH Council gives public notice under section 24(1) or on a later day specified in the notice, and

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(b) has effect, other than during a period when the designation is suspended under section 26(2)(a), until whichever of the following occurs first—

(i) if the person is a CATSI Act corporation—the person is deregistered under the CATSI Act,

(ii) if the person is a Corporations Act corporation—the person is deregistered under the *Corporations Act 2001* of the Commonwealth,

(iii) the designation is cancelled under section 26(1) or (2)(b).

(2) The designation of an entity as the local ACH service for an area is not affected by the amendment of the area under section 27 and the entity is taken to be designated as the local ACH service for the area as amended.

26 Suspension or cancellation of designation as local ACH service for area or part of area

(1) The ACH Council may, on the written request of an entity who is designated as the local ACH service for an area, cancel the designation in relation to the area or a part of the area.

(2) The ACH Council may, by written notice given to an entity who is designated as the local ACH service for an area, take either of the following actions—

(a) suspend the designation in relation to the area or a part of the area for a specified period,

(b) cancel the designation in relation to the area or a part of the area.

(3) A notice given under subsection (2)—

(a) must set out the grounds on which the action is taken, and

(b) takes effect on the day on which the notice is given or on a later day specified in the notice.

(4) Before taking action under subsection (2), the ACH Council must give the entity designated as the local ACH service for the area—

(a) written notice of—

(i) the action the ACH Council proposes to take, and

(ii) the grounds on which the ACH Council proposes to take the action, and

(b) a reasonable opportunity to be heard on the matter.

(5) If the designation of an entity as the local ACH service for an area or a part of an area is suspended, the designation is of no effect during the period of the suspension.

(6) If the ACH Council suspends or cancels the designation of an entity as the local ACH service for an area or a part of an area under this section the ACH Council must give public notice of the suspension or cancellation.

27 Change to area for local ACH service

(1) The ACH Council may amend the area for which an entity is designated as the local ACH service.

(2) An amendment of the area may be—

(a) made at the request of the entity designated as the local ACH service, or

(b) initiated by the ACH Council.

(3) If the proposed amendment is initiated by the ACH Council, the ACH Council must give the local ACH service—

(a) written notice of—

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(i) the ACH Council's intention to amend the area for which the local ACH service is designated, and

(ii) the reasons for the proposed amendment, and

(b) a reasonable opportunity to be heard on the matter.

(4) The ACH Council may amend the area for which an entity is designated as the local ACH service only if the ACH Council is satisfied that there is no other entity designated as a local ACH service for a part of the amended area.

(5) If the ACH Council amends the area for which an entity is designated as the local ACH service, the ACH Council must give public notice of the amended area.

28 Change to local ACH service

(1) The ACH Council may, on the ACH Council's own initiative or at the request of the local ACH service for an area, amend 1 or more of the following referred to in the public notice of the designation given under section 24(1)—

(a) the name of the entity,

(b) any other details or information described in section 24(2)(c) or (d).

(2) If the ACH Council amends details or information under subsection (1), the ACH Council must give public notice of the amended details or information.

Subdivision 3 Local ACH service functions and related provisions

29 Local ACH service functions

(1) Local ACH service functions that are, as far as practicable, to be provided in relation to an area by the local ACH service for an area are as follows—

(a) for the purpose of the management of activities that may harm Aboriginal cultural heritage located in the area under Part 6—to engage and negotiate, as is appropriate, with—

(i) proponents carrying out, or intending to carry out, activities in the area, and

(ii) knowledge holders for the area or a part of the area,

(b) to make, or to facilitate the making of, ACH management plans for the area,

(c) to provide advice to proponents carrying out, or intending to carry out, activities in the area about whether Aboriginal cultural heritage is located in the area and the characteristics of any Aboriginal cultural heritage located in the area,

(d) to provide information to the ACH Council about Aboriginal cultural heritage located in the area to assist the ACH Council to perform its functions under this Act, and to improve the accuracy of the ACH Directory,

(e) to make submissions and provide information to the ACH Council about proposals for activities to be carried out in the area and the management of the activities to avoid the risk of harm being caused to Aboriginal cultural heritage by the activities,

(f) to engage, as appropriate, with other local ACH services, native title parties and knowledge holders about Aboriginal cultural heritage that extends beyond the geographic boundaries of the area,

(g) to undertake, either directly or indirectly, on-ground identification, maintenance, conservation and preservation of Aboriginal cultural heritage located in the area,

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(h) to report to the ACH Council about matters related to the provision of local ACH service functions required by the regulations,

(i) to undertake, either directly or indirectly, an activity in relation to protecting, preserving, conserving or managing Aboriginal cultural heritage, agreed under an approved or authorised ACH management plan to be a function of the person designated as the local ACH service for the purposes of this paragraph,

(j) other functions prescribed for the purposes of this subsection.

(2) A local ACH service must, as far as practicable, provide the functions set out in subsection (1) in a timely way.

(3) If an entity designated as a local ACH service has a statutory function under another Act or law, despite the other Act or law, the local ACH service must exercise the functions under this Act in a way that prioritises the preservation of Aboriginal Cultural Heritage above other functions under the other law.

30 Fee for services provided by local ACH service

(1) An entity designated as a local ACH service may charge a fee for services that it provides in connection with a local ACH service function for the area for which it is designated.

(2) However, the entity designated as a local ACH service cannot charge a fee for services that it provides to the Department or the ACH Council in connection with a local ACH service function.

(3) A fee charged must be in accordance with—

(a) the fee structure that the entity designated as a local ACH service had in place at the time the entity was designated, or

(b) if a variation of the fee structure is later approved by the ACH Council under section 32(2)—the fee structure as varied.

(4) If a fee for services charged by an entity designated as a local ACH service under subsection (1) is not paid, the person may recover the fee as a debt due in a court of competent jurisdiction.

31 Annual reports

(1) Each local ACH service must in each year, as soon as practicable after 30 June, but on or before 1 November, forward to the ACH Council a report of its operations for the 12 months ending on 30 June in that year.

(2) The report of the operations of a local ACH service must be prepared in accordance with an applicable policy of the ACH Council.

32 Variation of fee structure for services provided by local ACH service

(1) An entity designated as a local ACH service may request the ACH Council to approve a variation of the fee structure for services that it provides for the provision of a local ACH service functions.

(2) In response to a request under subsection (1), the ACH Council may approve the variation of the fee structure if the ACH Council is satisfied that the fee structure, if varied—

(a) is reasonable, and

(b) complies with the local ACH service (fees) guidelines.

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Part 3 Rights and duties in relation to Aboriginal cultural heritage

Division 1 Preliminary

33 Definitions

In this Part—

custodian—

(a) in relation to Aboriginal ancestral remains—see section 36(1)(a), or

(b) in relation to a secret or sacred object—see section 44(1)(a).

organisation means a person other than the following—

(a) an individual,

(b) the Australian Museum Trust.

34 Exemption

Divisions 2–4 do not apply to the following entities holding Aboriginal cultural heritage on behalf of an Aboriginal community—

(a) an Aboriginal Land Council, or

(b) an Aboriginal organisation controlled by the Aboriginal community for an area.

35 No compensation under this Part

A person is not entitled to compensation for loss resulting from the operation of this Part.

Division 2 Aboriginal ancestral remains

36 Rights of Aboriginal people in relation to Aboriginal ancestral remains

An Aboriginal person, group or community for an area in which Aboriginal ancestral remains are located, or are reasonably believed to have originated from, is—

(a) a ***custodian*** of the ancestral remains, and

(b) entitled to possession and control of the ancestral remains.

37 ACH Council must be notified about Aboriginal ancestral remains

(1) An organisation or individual in possession of Aboriginal ancestral remains must, within the prescribed period, give written notice to the ACH Council—

(a) stating that the organisation or individual is in possession of the ancestral remains, and

(b) describing the ancestral remains, and

(c) containing other information in the organisation or individual's possession about the ancestral remains, including information about how the organisation or individual came to be in possession of the ancestral remains.

Maximum penalty—200 penalty units.

(2) However, subsection (1) does not apply to—

(a) an Aboriginal person acting in accordance with the person's traditional rights, interests and responsibilities in relation to the Aboriginal ancestral remains, or

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(b) an organisation or individual acting at the written request of an Aboriginal person described in paragraph (a), or

(c) an organisation that, or individual who, reasonably believes the ACH Council is already aware that the organisation or individual is in possession of the Aboriginal ancestral remains.

38 Duty of organisations to return Aboriginal ancestral remains

(1) An organisation that is in possession of Aboriginal ancestral remains and has given notice under section 37(1) must, within the prescribed period—

(a) identify a custodian of the ancestral remains, and

(b) either—

(i) return the ancestral remains to a custodian of the ancestral remains, or

(ii) at the request of a custodian of the ancestral remains, agree to continue to hold the ancestral remains on behalf of the custodians until a custodian requests otherwise.

Maximum penalty—400 penalty units.

(2) An organisation must seek the advice of the ACH Council to ensure compliance with subsection (1).

(3) It is a defence to a charge of an offence under subsection (1) to prove that the organisation—

(a) could not, after taking reasonable steps, identify a custodian of Aboriginal ancestral remains that are in the organisation's possession, and

(b) has transferred the ancestral remains into the custody of the ACH Council.

(4) An organisation must give written notice to the ACH Council within the prescribed period after the organisation, in accordance with subsection (1)(b), has either—

(a) returned Aboriginal ancestral remains to a custodian of the ancestral remains, or

(b) been requested by a custodian of Aboriginal ancestral remains to continue to hold the ancestral remains on behalf of the custodians of the ancestral remains until a custodian of the ancestral remains requests otherwise.

Maximum penalty—200 penalty units.

39 Duty of individuals to transfer Aboriginal ancestral remains to custody of ACH Council

(1) An individual who is in possession of Aboriginal ancestral remains and has given notice under section 37(1) must, within the prescribed period, take reasonable steps to transfer the ancestral remains into the custody of the ACH Council.

Maximum penalty—400 penalty units.

(2) An individual must seek the advice of the ACH Council to ensure compliance with subsection (1).

40 Transfer of Aboriginal ancestral remains by coroner

A coroner who has notified the ACH Council under the *Coroners Act 2009*, section 89A that a body is, or is likely to be, Aboriginal ancestral remains must, as soon as practicable, transfer the ancestral remains which are the subject of the notice into the custody of the ACH Council.

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41 Aboriginal ancestral remains transferred to custody of ACH Council

The ACH Council may arrange for Aboriginal ancestral remains transferred into its custody under this Act to, as appropriate in relation to particular ancestral remains—

(a) be returned to a custodian of the ancestral remains, or

(b) at the request of a custodian of the ancestral remains—be held by the ACH Council or by an Aboriginal War Memorial Museum, including for safekeeping, on behalf of the custodians of the ancestral remains, or

(c) if the ACH Council cannot identify a custodian of the ancestral remains—be dealt with in a way that the ACH Council considers appropriate.

42 Aboriginal ancestral remains must not be disturbed or removed

(1) A person must not—

(a) disturb or remove Aboriginal ancestral remains from an area, or

(b) sell, exchange or otherwise dispose of Aboriginal ancestral remains, or

(c) remove Aboriginal ancestral remains from the State, or

(d) cause or permit Aboriginal ancestral remains to be removed from the State, or

(e) conceal Aboriginal ancestral remains.

Maximum penalty—400 penalty units.

(2) However, subsection (1) does not apply to Aboriginal ancestral remains being dealt with—

(a) by an Aboriginal person acting in accordance with the person's traditional rights, interests and responsibilities in relation to the ancestral remains, or

(b) in accordance with this Part.

(3) It is a defence to a charge of an offence under subsection (1)(a) to prove that—

(a) the person charged—

(i) was carrying out an activity that was authorised under Part 6, Division 4, or

(ii) was performing a function under this Act or another Act or law, or

(iii) was lawfully on the land where the Aboriginal ancestral remains were present and did not reasonably suspect that ancestral remains were present on the land or that the person's actions would disturb or remove Aboriginal ancestral remains present on the land, and

(b) the person ceased carrying out the activity, performing the function or taking the action that caused the disturbance or removal of the Aboriginal ancestral remains as soon as practicable after the person became aware of the presence of the Aboriginal ancestral remains.

Division 3 Secret or sacred objects

43 Definition

In this Division—

prescribed public authority means a public authority other than the following—

(a) the Australian Museum Trust, or

(b) a university provided statutory recognition in the State.

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44 Rights of Aboriginal people in relation to secret or sacred

(1) An Aboriginal person, group or community with a cultural connection to a secret or sacred object is—

(a) a ***custodian*** of a secret or sacred object, and

(b) a rightful owner of, and entitled to possession and control of, a secret or sacred object—

(i) if the object is in the possession of a prescribed public authority immediately before the commencement of this section—on the commencement of this section, or

(ii) otherwise—when the object comes into the possession of a prescribed public authority on or after the commencement of this section.

(2) Subsection (1) applies to a secret or sacred object regardless of who may have owned, or had possession or control of, the object—

(a) before the commencement of this section, or

(b) before the object came into the possession of a prescribed public authority.

45 ACH Council must be notified about secret or sacred objects

(1) A person, other than the Australian Museum Trust, that is in possession of a secret or sacred object must, within the prescribed period, give written notice to the ACH Council—

(a) stating that the person is in possession of the object, and

(b) describing the object, and

(c) containing any other information in the person's possession about the object, including information about how the person came to be in possession of the object.

Maximum penalty—100 penalty units.

(2) However, subsection (1) does not apply to—

(a) an Aboriginal person acting in accordance with the person's traditional rights, interests and responsibilities in relation to the secret or sacred object, or

(b) a person acting at the written request of an Aboriginal person described in paragraph (a), or

(c) a person who reasonably believes that the ACH Council is already aware the person is in possession of the secret or sacred object.

46 Duty of prescribed public authorities to return secret or sacred objects

(1) A prescribed public authority that is in possession of a secret or sacred object and has given notice under section 45(1) must, within the prescribed period—

(a) identify a custodian of the object, and

(b) either—

(i) return the object to a custodian of the object, or

(ii) at the request of a custodian of the object, agree to continue to hold the object on behalf of the custodian of the object until the custodian of the object otherwise requests.

Maximum penalty—400 penalty units.

(2) A prescribed public authority must seek the advice of the ACH Council to ensure compliance with subsection (1).

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(3) It is a defence to a charge of an offence under subsection (1) to prove that the prescribed public authority—

(a) could not, after taking reasonable steps, identify a custodian of a secret or sacred object in the prescribed public authority's possession, and

(b) has transferred the object into the custody of the ACH Council.

(4) A prescribed public authority must give written notice to the ACH Council within the prescribed period after the authority, in accordance with subsection (1)(b), has—

(a) returned a secret or sacred object to a custodian of the object, or

(b) been requested by a custodian of the object to continue to hold the object on behalf of the custodian of the object until the custodian of the object otherwise requests.

Maximum penalty—200 penalty units.

47 Secret or sacred objects transferred to custody of ACH Council

The ACH Council may arrange for a secret or sacred object transferred into the ACH Council's custody under this Act to, as appropriate in relation to the particular object—

(a) be returned to a custodian of the object, or

(b) at the request of a custodian of the object—be held by the ACH Council in safekeeping on behalf of the custodian of the object, or

(c) if the ACH Council cannot identify a custodian of the object—be dealt with in a way the ACH Council considers appropriate.

48 Secret or sacred objects must not be sold or removed from the State

(1) A person must not—

(a) sell, exchange or otherwise dispose of a secret or sacred object, or

(b) remove a secret or sacred object from the State, or

(c) cause or permit a secret or sacred object to be removed from the State, or

(d) conceal a secret or sacred object.

Maximum penalty—400 penalty units.

(2) However, subsection (1) does not apply to a secret or sacred object being dealt with—

(a) by an Aboriginal person in accordance with the person's traditional rights, interests and responsibilities in relation to the object, or

(b) in accordance with this Part.

Division 4 Duty to report Aboriginal cultural heritage to ACH Council

49 Reporting Aboriginal cultural heritage

(1) A person who knows, or becomes aware, of the existence of 1 or more of the following must, within the prescribed period, report it to the ACH Council—

(a) an Aboriginal place,

(b) an Aboriginal object,

(c) Aboriginal ancestral remains.

Maximum penalty—200 penalty units.

(2) However, subsection (1) does not apply to—

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(a) an Aboriginal person, or

(b) a person who reasonably believes the ACH Council is already aware of the existence of—

(i) the Aboriginal place, or

(ii) the Aboriginal object, or

(iii) the Aboriginal ancestral remains.

(3) A report under subsection (1) may be written or given orally.

(4) The ACH Council may arrange for Aboriginal ancestral remains or a secret or sacred object reported under subsection (1), not under the possession and control of a custodian of the ancestral remains or object, to be transferred into the custody of the ACH Council.

Division 5 Other rights

50 Rights of all Aboriginal persons to use Aboriginal cultural heritage for commercial purposes

(1) The object of this section is to ensure that an Aboriginal person who holds cultural knowledge of Aboriginal cultural heritage may use and commercially benefit from the heritage, whether or not the person is—

(a) a local ACH service, or

(b) an Aboriginal owner, or

(c) another Aboriginal entity or person identified as having particular rights, functions and duties under this Act.

(2) An Aboriginal person who holds cultural knowledge of Aboriginal cultural heritage may use and commercially benefit from the cultural knowledge of the Aboriginal cultural heritage.

(3) To avoid doubt, subsection (1) extends to cultural knowledge of Aboriginal cultural heritage that is intangible Aboriginal cultural heritage.

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Part 4 Protected areas

Division 1 Preliminary

51 Definitions

In this Part—

application means an application means under section 54(1).

application area means the area to which an application relates.

outstanding significance, in relation to Aboriginal cultural heritage, means—

(a) the Aboriginal cultural heritage is of outstanding significance to an Aboriginal group or community, and

(b) the significance is recognised through social, spiritual and historical values, as recognised by Aboriginal people.

52 Purpose of protected area declaration

The purpose of declaring an area a protected area is—

(a) to recognise that Aboriginal cultural heritage of outstanding significance for the purposes of this Act is located in the area, and

(b) to provide for the area special protection from activities that may harm the Aboriginal cultural heritage.

53 Protected area declaration guidelines must be considered

In determining under this Part whether Aboriginal cultural heritage is of outstanding significance for the purposes of this Act, the factors set out in the protected area declaration guidelines must be considered.

Division 2 Application for area to be declared as protected area

54 Application for area to be declared as protected area

(1) An application for an area to be declared a protected area may be made by an Aboriginal group or community for the area.

(2) An application under subsection (1) must—

(a) be made to the ACH Council in the approved form, and

(b) describe the application area, which can comprise several areas that are not contiguous, and

(c) describe—

(i) the characteristics of the Aboriginal cultural heritage in the application area, and

(ii) the outstanding significance of the Aboriginal cultural heritage to the applicant, or to a group or community of which the applicant is a member, and

(d) if the application area includes an area to which an ACH permit relates—be accompanied by evidence of the agreement of the holder of the permit, as referred to in subsection (3), and

(e) if the application area includes an area to which an approved or authorised ACH management plan relates—be accompanied by evidence of the agreement of the parties to the plan, as referred to in subsection (4), and

(f) be accompanied by the other documents or information prescribed for the purposes of this subsection.

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(3) The application area must not include an area to which an ACH permit relates unless the holder of the permit agrees to the amendment of the area to which the permit relates to exclude the area that is included in the application area.

(4) The application area must not include an area to which an approved or authorised ACH management plan relates unless the parties to the plan agree to the amendment of the area to which the plan relates to exclude the area that is included in the application area.

55 Further information in support of application

(1) The ACH Council may make a written request to the applicant to do any of the following—

(a) provide the ACH Council with further information relevant to the application that the ACH Council requires to assess the application,

(b) verify the further information by statutory declaration.

(2) The ACH Council must specify the period within which the request must be complied with.

56 ACH Council may refuse to consider some applications

The ACH Council may refuse to consider, or refuse to consider further, an application if—

(a) the application is not made in accordance with this Act, or

(b) the applicant has not complied with a request under section 55, or

(c) the ACH Council is of the opinion that the application is substantially the same as an application that—

(i) was made within the previous 2 years, and

(ii) was refused.

57 ACH Council must notify certain persons about application

(1) The ACH Council must give written notice of an application to the following persons—

(a) each local ACH service for the application area or a part of the application area,

(b) each native title party for the application area or a part of the application area,

(c) each knowledge holder for the application area or a part of the application area.

(2) The notice must give—

(a) details of the application area, and

(b) details about the Aboriginal cultural heritage to which the application relates to the extent that the details do not disclose culturally sensitive information, and

(c) a person an opportunity to make submissions to the ACH Council within the prescribed period about whether the application area, or a part of the application area, should be declared as a protected area, and

(d) for a local ACH service for the application area or a part of the application area—an opportunity to make a recommendation about whether the application area, or a part of the application area, should be declared as a protected area.

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58 Preliminary assessment by ACH Council

(1) At the end of the prescribed period for submissions referred to in a notice for an application, the ACH Council must, within the prescribed period—

(a) consider the application, and any further information provided in response to a request under section 55(1), and

(b) consider submissions made to the ACH Council in response to the notice, and

(c) consider a recommendation made to the ACH Council by the local ACH service in response to the notice, and

(d) consider the characteristics and significance of the Aboriginal cultural heritage to the group or community in relation to the Aboriginal cultural heritage, and

(e) form a preliminary view about whether or not the application area, or a part of the application area, should be declared as a protected area.

(2) The ACH Council may form a preliminary view that the application area, or a part of the application area, should be declared as a protected area only if the ACH Council is satisfied that Aboriginal cultural heritage of outstanding significance for the purposes of this Act is located in the area.

59 Giving public notice of intention to seek that area be declared as protected area

(1) If, on an application for an area to be declared as a protected area, the ACH Council forms a preliminary view that an area should be declared as a protected area, the ACH Council must—

(a) give public notice as described in subsection (2), and

(b) notify the following persons that the public notice has been given—

(i) each local ACH service for the area or a part of the area,

(ii) each native title party for the area or a part of the area,

(iii) the Local Aboriginal Land Council for the area,

(iv) each knowledge holder for the area or a part of the area,

(v) each landholder of land within the area,

(vi) each public authority that the ACH Council considers has an interest in the area or a part of the area,

(vii) any other person the ACH Council considers has an interest in the area or a part of the area.

(2) The public notice must include—

(a) details of the area that the ACH Council has formed the preliminary view should be declared as a protected area, and

(b) provision of an opportunity to make submissions to the ACH Council within the prescribed period about the preliminary view of the ACH Council that the area should be declared as a protected area, and

(c) for a local ACH service for the area or a part of the area—an opportunity to make a recommendation about whether the area, or a part of the area, should be declared as a protected area.

Division 3 Decision of ACH Council

60 Decision of ACH Council

(1) At the end of the period for making submissions referred to in the public notice given under section 59(1)(a), the ACH Council must, within the prescribed period—

(a) consider—

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(i) the matters set out in section 58(1)(a), (b) and (c) and the preliminary view formed, or taken to be formed, by the ACH Council, and

(ii) submissions made to the ACH Council in response to the public notice, and

(iii) a recommendation by a local ACH service about whether the application area, or a part of the application area, should be declared as a protected area, and

(b) make a decision that—

(i) the application area, or a part of the application area, be declared as a protected area, or

(ii) no part of the application area be declared as a protected area.

(2) If the ACH Council decides that an area be declared as a protected area, the ACH Council may also decide to make the order declaring the area as a protected area subject to conditions relating to the following—

(a) the management of the area,

(b) access to the area,

(c) the other matters prescribed for this subsection.

(3) The ACH Council may make a decision under subsection (1)(b)(i) for an area only if satisfied—

(a) that Aboriginal cultural heritage of outstanding significance for the purposes of this Act is located in the area, and

(b) that the area needs to be provided with special protection from activities that may harm that Aboriginal cultural heritage, and

(c) if the area overlaps with an area to which an ACH permit or approved or authorised ACH management plan relates—that there are measures in place to ensure that the permit or plan is amended to exclude, from the area to which the permit or plan relates, an area that is part of the area to be declared as a protected area, and

(d) of other matters prescribed for the purposes of this subsection.

61 Directions and recommendations

(1) If the ACH Council makes a decision that an area should be declared as a protected area, before a protected area declaration comes into effect for the area—

(a) an ACH permit may be amended under section 99(1) to exclude from the area to which the permit relates an area that is part of the area to be declared as a protected area, as agreed by the permit holder under section 54(3), and

(b) a relevant approved or authorised ACH management plan—

(i) may be amended to exclude from the area to which the plan relates, an area that is part of the area to be declared as a protected area, as agreed by the parties to the plan under section 54(4), and

(ii) may be approved under section 134(3) as amended.

(2) If the ACH Council decides that an area should be declared as a protected area, the ACH Council must publish, on the ACH Council's website, a declaration that the area is to be a protected area.

62 Decision not to declare area as protected area

(1) If the ACH Council makes a decision that no part of an application area should be declared as a protected area, the ACH Council must ensure that public notice of the decision is given within 14 days after the decision is made.

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(2) The notice must contain—
(a) a description of the decision, and
(b) short particulars of the reasons for the decision.

Division 4 Declaration of protected area

63 Protected area declaration

(1) The declaration of a protected area may be for several areas that are not contiguous.

(2) The declaration must—
(a) provide a name for the protected area, and
(b) describe the boundaries of the protected area in a way sufficient to identify it, and
(c) state that Aboriginal cultural heritage of outstanding significance for the purposes of this Act is located in the protected area, and
(d) state the conditions to which the declaration of the area, or areas, as a protected area is subject.

(3) A protected area declaration comes into effect—
(a) on the day on which it is published on the ACH Council's website, or
(b) on a later day specified in the declaration.

64 Amending and repealing orders

(1) An application for the amendment or repeal of a protected area declaration may be made by—
(a) an Aboriginal group or community for the protected area, or
(b) a person who wants to carry out an activity in the protected area.

(2) Other than as set out in this section, this Part applies, with all necessary modifications, in relation to—
(a) an application for the amendment or repeal of a protected area declaration, and
(b) the making of an order amending or repealing that order.

(3) An application for the amendment of a protected area declaration may provide for—
(a) a change to the name of the protected area, or
(b) a change to the description of the boundaries of the protected area, or
(c) the removal of a condition to which the order is subject, or
(d) the imposition of a new condition to which the order is to be made subject, or a change to a condition to which the order is subject, relating to the following—
(i) the management of the area,
(ii) access to the area,
(iii) the other matters prescribed for this subsection.

(4) If the amendment of a protected area declaration is to provide only for a change to the name of the protected area then—
(a) sections 57–62 do not apply in relation to—
(i) the application for the amendment, or
(ii) the making of the amending order, and
(b) before amending the protected area declaration, the ACH Council must—

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(i) give to the persons described in section 57(1)(b) written notice of the proposed change to the name of the protected area that provides a reasonable opportunity to make submissions to the ACH Council about the proposed change to the name of the protected area, and

(ii) consider any submissions made in response to the notice.

65 Corrections

The ACH Council may amend a protected area declaration to correct in the declaration—

(a) a clerical mistake or unintentional error or omission, or

(b) a figure that has been miscalculated, or

(c) a misdescription of an area, activity, Aboriginal cultural heritage or other thing.

Division 5 Contravention of conditions on protected area declarations

66 Contravention of conditions on protected area declaration

(1) A person must not contravene a condition to which a protected area declaration is subject.

Maximum penalty—400 penalty units.

(2) It is a defence to a charge of an offence under subsection (1) to prove that the person charged did not know, and could not by the exercise of reasonable diligence have known, of the condition to which the charge relates.

(3) A person may be charged with an offence under this section and an offence under Part 5, arising from the same circumstances.

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Part 5 Offences about harming Aboriginal cultural heritage

Division 1 Preliminary

67 Meaning of "harm" to Aboriginal cultural heritage

(1) To ***harm*** Aboriginal cultural heritage includes the following—

(a) to destroy or damage the Aboriginal cultural heritage,

(b) to move the Aboriginal cultural heritage,

(c) to lose the Aboriginal cultural heritage,

(d) an act that desecrates the Aboriginal cultural heritage.

(2) However, an act carried out in relation to Aboriginal cultural heritage by an Aboriginal person acting in accordance with the person's traditional rights, interests and responsibilities in relation to the Aboriginal cultural heritage cannot harm the Aboriginal cultural heritage.

68 Meaning of "serious harm" and "material harm" to Aboriginal cultural heritage

(1) Harm to Aboriginal cultural heritage is ***serious*** if the harm is—

(a) irreversible, of a high impact or on a wide scale, or

(b) to Aboriginal cultural heritage located in a protected area.

(2) Harm to Aboriginal cultural heritage is ***material*** if the harm is neither trivial nor negligible.

Division 2 Offences

69 Serious harm to Aboriginal cultural heritage

(1) A person commits an offence if—

(a) the person harms Aboriginal cultural heritage, and

(b) the harm is serious.

Maximum penalty—

(a) for an individual—

(i) imprisonment for 5 years or 18,000 penalty units, or both, and

(ii) 1,000 penalty units each day or part of a day the offence continues,

(b) for a body corporate—

(i) 180,000 penalty units, and

(ii) 10,000 penalty units each day or part of a day the offence continues.

(2) If the court, on a prosecution of a person for an offence against subsection (1), is not satisfied that the offence is proven but is satisfied that the person has committed an offence against section 70(1), 71(1) or 72, having the same or a lesser maximum penalty, the court may—

(a) acquit the person of the offence with which the person is charged, and

(b) find the person guilty of the other offence, and the person is liable to be punished accordingly.

70 Serious harm to Aboriginal cultural heritage, including by accident

(1) A person commits an offence if—

(a) the person harms Aboriginal cultural heritage, and

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(b) the harm is serious.

Maximum penalty—

(a) for an individual—

(i) 10,000 penalty units, and

(ii) 500 penalty units for each day or part of a day the offence continues, or

(b) for a body corporate—

(i) 100,000 penalty units, and

(ii) 5,000 penalty units for each day or part of a day the offence continues.

(2) Despite another Act or law, it is immaterial for the purposes of subsection (1) that an event occurred by accident.

(3) If the court, on a prosecution of a person for an offence against subsection (1), is not satisfied that the offence is proven but is satisfied that the person has committed an offence against section 71(1) or 72, having the same or a lesser maximum penalty, the court may—

(a) acquit the person of the offence with which the person is charged, and

(b) find the person guilty of the other offence, and the person is liable to be punished accordingly.

71 Material harm to Aboriginal cultural heritage

(1) A person commits an offence if—

(a) the person harms Aboriginal cultural heritage, and

(b) the harm is material.

Maximum penalty—

(a) for an individual—

(i) 2,000 penalty units, and

(ii) 1,000 penalty units for each day or part of a day the offence continues, or

(b) for a body corporate—

(i) 20,000 penalty units, and

(ii) 10,000 penalty units for each day or part of a day the offence continues.

(2) If the court, on a prosecution of a person for an offence against subsection (1), is not satisfied that the offence is proven but is satisfied that the person has committed an offence against section 72, having the same or a lesser maximum penalty, the court may—

(a) acquit the person of the offence with which the person is charged, and

(b) find the person guilty of the other offence, and the person is liable to be punished accordingly.

72 Harm to Aboriginal cultural heritage

A person commits an offence if the person harms Aboriginal cultural heritage.

Maximum penalty—

(a) for an individual—

(i) 500 penalty units, and

(ii) 30 penalty units for each day or part of a day the offence continues, or

(b) for a body corporate—

(i) 5,000 penalty units, and

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(ii) 300 penalty units for each day or part of a day the offence continues.

Division 3 Other offence

73 Offence to use registered Aboriginal intangible heritage for commercial purposes

A person must not knowingly or recklessly use intangible Aboriginal cultural heritage for commercial purposes without the consent of the ACH Council, unless the person holds cultural knowledge for that intangible Aboriginal cultural heritage.

Maximum penalty—

(a) for an individual—50 penalty units, or

(b) for a body corporate—5,000 penalty units.

Division 4 Defences

74 Defence of authority under Part 6, Division 4 or 5

It is a defence for an offence under Division 2 to prove that the carrying out of the activity that harmed the Aboriginal cultural heritage was authorised under Part 6, Division 4 or 5.

75 Defences that apply in relation to protected areas

It is a defence to an offence under section 69(1) or 70(1) in relation to Aboriginal cultural heritage located in a protected area to prove that the act that harmed the Aboriginal cultural heritage was carried out in accordance with the protected area declaration for the protected area.

76 Other defences

It is a defence for an offence under Division 2 to prove that the activity that harmed the Aboriginal cultural heritage was carried out—

(a) by a person in accordance with a remediation order, or

(b) by a person in accordance with the *Coroners Act 2009* in the course of determining whether human remains are Aboriginal ancestral remains, or

(c) by a person in an emergency situation to prevent or minimise loss of life, prejudice to the safety, or harm to the health, of people.

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Part 6 Managing activities that may harm Aboriginal cultural heritage

Division 1 Preliminary

77 Definitions

In this Part—

Aboriginal party, in relation to an approved or authorised ACH management plan, means each interested Aboriginal party that has agreed to be a party to the plan.

ACH impact statement, in relation to a proposed activity that is intended to be carried out in an area, means a statement, prepared in accordance with the regulations, about the impact of the proposed activity on Aboriginal cultural heritage in the area.

ACH management plan—see section 102.

ACH permit means an Aboriginal cultural heritage permit granted under section 89(1)(c)(i).

consult means to consult in accordance with section 78 and the consultation guidelines.

informed consent—see section 114.

interested Aboriginal party—see section 104(1).

parties, to an approved or authorised ACH management plan, means—

(a) each Aboriginal party to the plan, and

(b) the proponent identified in the plan under section 102(2)(a)(i).

persons to be consulted, in relation to an activity or a proposed activity, means the persons to be consulted in accordance with section 80(1).

persons to be notified, in relation to an activity or a proposed activity, means the persons to be notified in accordance with section 80(1).

proponent means a person who—

(a) intends to carry out an activity that may harm Aboriginal cultural heritage, or

(b) carries out an activity authorised under Division 4.

proposed activity means an activity that a proponent intends to carry out.

related agreement, for an area, means an agreement that—

(a) contains provisions about—

(i) the management of Aboriginal cultural heritage in the area, and

(ii) the carrying out of an activity in the area in relation to which authorisation under Division 4 is required, and

(b) is between a proponent for an activity being, or a proposed activity intended to be, carried out in the area and—

(i) if there is an approved or authorised ACH management plan for the area—a person who is an Aboriginal party to the plan, or

(ii) if there is, or were to be, an ACH management plan for the area—a person who is, or would be, an interested Aboriginal party for the plan, or

(iii) otherwise—1 or more of the persons to be notified or the persons to be consulted about those activities, or proposed activities.

Example— An agreement mentioned in the Native Title Act, section 31(1)(b) may be a related agreement.

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State significance, in relation to Aboriginal cultural heritage, means that the Aboriginal cultural heritage is of exceptional importance to the cultural identity of the State.

tier 1 activity means an activity involving no, or a low level of ground disturbance.

tier 2 activity means an activity involving a moderate to high level of ground disturbance.

78 Consultation about proposed activities

For this Part, the consultation that occurs in relation to a proposed activity will depend on the circumstances of the activity but should include the following—

(a) the proponent making a genuine attempt to contact and consult, in a timely way, each person to be consulted,

(b) the proponent providing sufficient information about the proposed activity to each person to be consulted to enable each person to understand the proponent's reasoning and intention,

(c) each person to be consulted having an opportunity to clearly state the person's position on the proposed activity and explain that position,

(d) the proponent and each person to be consulted disclosing relevant and necessary information about the person's position as reasonably requested,

(e) the proponent taking reasonable steps to follow up with a person to be consulted if there is no response to the initial contact or a reasonable request for further information.

79 Proponent must seek confirmation about proposed activity

(1) A proponent who intends to carry out an activity in an area must ask the ACH Council to provide a letter of advice to confirm whether the proposed activity is—

(a) a tier 1 activity, or

(b) a tier 2 activity.

(2) The request must—

(a) be in writing, and

(b) contain details of—

(i) the proposed activity, and

(ii) the area where the proposed activity is intended to be carried out.

(3) Before making the request, the proponent must have regard to the ACH Directory.

(4) On receipt of a request under subsection (1), the ACH Council must provide the proponent with the letter of advice.

(5) If the ACH Council is satisfied the proposed activity can be confirmed as one of the following, the letter of advice must include that the proposed activity can be confirmed as—

(a) a tier 1 activity, or

(b) a tier 2 activity.

(6) If the proposed activity is confirmed as a tier 1 activity or a tier 2 activity, the letter of advice must direct the person apply for an ACH permit or an ACH management plan, as the ACH Council considers appropriate for the proposed activity.

(7) A letter of advice provided under subsection (4) may be used in evidence in proceedings for an offence under Part 5, Division 2 in relation to the carrying out of the activity described in the letter.

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Division 2 Persons to be notified or persons to be consulted about activities or proposed activities

80 Persons to be notified or persons to be consulted about activities or proposed activities

The persons to be notified or the persons to be consulted about an activity that a proponent is carrying out, or a proposed activity that the proponent intends to carry out, in an area are—

(a) each local ACH service for the area or a part of the area, and

(b) each Local Aboriginal Land Council for the area, and

(c) local Aboriginal people who are likely to be affected by the proposed activities, and

(d) if there is not a local ACH service for the area or a part of the area—

(i) each native title party for the area or the part of the area, and

(ii) each knowledge holder for the area or the part of the area, and

(e) if there is not a local ACH service, a native title party or a knowledge holder for the area or a part of the area—each native title representative body for the area or the part of the area.

81 Assistance to identify persons to be notified or persons to be consulted

(1) A proponent may request the assistance of the ACH Council to identify the persons to be notified or the persons to be consulted—

(a) about an activity that a proponent is carrying out in an area, or

(b) about a proposed activity that the proponent intends to carry out, in an area.

(2) In response to a request under subsection (1), the ACH Council must—

(a) provide the proponent with reasonable assistance to identify the persons, and

(b) provide the proponent with the details of the relevant Local Aboriginal Land Council for the area.

Division 3 Authority to carry out activity that may harm Aboriginal cultural heritage

82 Authority to carry out tier 1 activity or tier 2 activity that may harm Aboriginal cultural heritage

A person is authorised to carry out an activity that may harm Aboriginal cultural heritage if—

(a) the activity is a tier 1 activity or a tier 2 activity, and

(b) the area where the activity is carried out does not include an area that is part of a protected area, and

(c) the person carries out the activity in accordance with—

(i) an ACH permit, or

(ii) an approved or authorised ACH management plan.

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Division 4 ACH permits

Subdivision 1 Notice of intention to carry out tier 1 activity or tier 2 activity

83 Notice of intention to carry out tier 1 activity or tier 2 activity

A proponent who intends to carry out a tier 1 activity or a tier 2 activity in an area that may harm Aboriginal cultural heritage must give to each of the persons to be notified about the activity—

(a) written notice providing details of—

(i) the proposed activity, and

(ii) the area where the proponent intends to carry out the activity, and

(b) an opportunity to submit to the proponent, within the prescribed period, a statement about the person's views about the risk of harm being caused to Aboriginal cultural heritage located in the area by the proposed activity.

84 Notification carried out under related agreement

Notification carried out in an area in accordance with a related agreement may be used to satisfy the notice requirements in section 83 in relation to the area to the extent that the notification complies with the requirements set out in that section.

Subdivision 2 Grant of ACH permit

85 Application for ACH permit

(1) At the end of the period for submissions referred to in section 83(b), a proponent who intends to carry out a tier 1 activity or a tier 2 activity in an area may, if directed by the ACH Council in relation to the activity under section 79(6), apply for an Aboriginal cultural heritage permit (an ***ACH permit***) to carry out the activity.

(2) An application for an ACH permit must—

(a) be made to the ACH Council in the approved form, and

(b) contain details of the proposed activity and the area to which the permit is intended to relate, and

(c) identify—

(i) the Aboriginal cultural heritage located in the area to which the permit is intended to relate, and

(ii) the characteristics of that Aboriginal cultural heritage of which the proponent is aware, and

(d) identify—

(i) whether there is a risk of harm being caused to Aboriginal cultural heritage by the proposed activity, and

(ii) if a risk of harm has been identified—the risk of harm and the Aboriginal cultural heritage that is at risk of harm, and

(e) include details of the notice given under section 83(a), including details of the persons who were notified, and

(f) set out how the proposed activity will be managed to avoid, or minimise, the risk of harm being caused to Aboriginal cultural heritage by the activity, including a clear explanation of the steps that will be taken to avoid, or minimise, the risk, and

(g) include any submissions made to the proponent under section 83(b), and

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(h) be accompanied by the documents or information prescribed for this subsection.

86 Further information in support of application

(1) The ACH Council may make a written request to an applicant for an ACH permit to—

(a) provide the ACH Council with further information relevant to the application that the ACH Council requires to assess the application, and

(b) verify the further information by statutory declaration.

(2) A request under subsection (1) must specify the period within which the request is to be complied with.

87 ACH Council may refuse to consider some applications

The ACH Council may refuse to consider, or refuse to consider further, an application for an ACH permit if—

(a) the application is not made in accordance with this Act, or

(b) the applicant has not complied with a request under section 86.

88 ACH Council to give notice of application

(1) On receipt of an application under section 85(1), the ACH Council must give written notice of the application, with the application attached, to each of the persons to be notified about the activity to which the application relates.

(2) The notice must provide that a person given the notice may submit to the ACH Council, within the specified period, a statement about the person's views on the proposal set out in the application.

89 Decision of ACH Council on application for ACH permit

(1) The ACH Council must—

(a) assess each application for an ACH permit in accordance with section 90(1), and

(b) have regard to—

(i) submissions made to the proponent under section 83(b), and

(ii) further information provided in response to a request under section 86(1), and

(iii) submissions made to the ACH Council under section 88(2), and

(c) make a decision—

(i) if it is satisfied as to the matters set out in section 90(1)—to grant an ACH permit, or

(ii) otherwise—to refuse to grant an ACH permit.

(2) A decision on an application must be made by the ACH Council within the prescribed period.

(3) The prescribed period for making a decision on an application does not include a period commencing on the day on which a request is made under section 86(1) in relation to the application and ending on the day on which the first of the following occurs—

(a) the request is complied with,

(b) the period for complying with the request expires.

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(4) The ACH Council must give written notice of the ACH Council's decision to—
(a) the applicant for the ACH permit, and
(b) each of the persons to be notified about the activity to which the application relates.

90 Grant of ACH permit

(1) The ACH Council may grant an ACH permit if satisfied—
(a) the proposed activity is a tier 1 activity or a tier 2 activity, and
(b) the area where the applicant intends to carry out the activity does not include an area that is part of a protected area, and
(c) each of the persons to be notified about the proposed activity under section 83(a) has been notified, and
(d) the applicant will take all reasonable steps possible to avoid, or minimise, the risk of harm being caused to Aboriginal cultural heritage by the activity, and
(e) the proposed activity is not inconsistent with the objects of this Act, and
(f) the person has otherwise complied with the requirements of this Part, and
(g) the likely impact on Aboriginal cultural heritage will be minimal.

(2) The ACH Council must refuse to grant an ACH permit if the ACH Council is not satisfied of the matters referred to in subsection (1).

(3) An ACH permit must be in an approved form and include details of the following—
(a) the person to whom the permit is granted,
(b) the activity to which the permit relates,
(c) the area to which the permit relates,
(d) when the permit comes into effect,
(e) the conditions to which the permit is subject,
(f) the other matters prescribed for this subsection.

91 Duration of ACH permit

An ACH permit—
(a) comes into effect—
(i) when it is granted, or
(ii) on a later day specified in the permit, and
(b) has effect until the expiry of the period of 4 years after the day on which the permit comes into effect unless the permit is—
(i) extended under section 96(1)(c)(i), or
(ii) cancelled earlier under section 100(1)(b).

Subdivision 3 Extension of ACH permit

92 Application for extension of ACH permit

(1) The holder of an ACH permit may apply to the ACH Council for the term of the permit to be extended.

(2) The application cannot be made later than 90 days before the ACH permit is due to expire.

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(3) Before making the application, the permit holder must give to each of the persons to be notified about the activity to which the permit relates—

(a) written notice including details of the proposed extension, and

(b) an opportunity to submit to the permit holder, within the prescribed period, a statement about the person's views on the proposed extension.

(4) The application must—

(a) be made to the ACH Council in the approved form, and

(b) include details of the notice given under subsection (3)(a), including details of the persons who were notified, and

(c) include submissions made to the permit holder under subsection (3)(b).

93 Further information in support of application

(1) The ACH Council may make a written request to an applicant for the extension of an ACH permit to—

(a) provide the ACH Council with further information relevant to the application that the ACH Council requires to assess the application, and

(b) verify the further information by statutory declaration.

(2) A request under subsection (1) must specify the period within which the request is to be complied with.

94 ACH Council may refuse to consider some applications

The ACH Council may refuse to consider, or consider further, an application for the extension of an ACH permit if—

(a) the application is not made in accordance with this Act, or

(b) the applicant has not complied with a request under section 93(1).

95 ACH Council to give notice of application for extension of ACH permit

(1) On receipt of an application under section 92(1), the ACH Council must give written notice of the application, with the application attached, to each of the persons to be notified about the activity to which the application relates.

(2) The notice must provide that a person given the notice may submit to the ACH Council, within the prescribed period, a statement about the person's views on the proposal set out in the application.

96 Decision on application for extension of ACH permit

(1) The ACH Council must—

(a) assess each application for an extension of an ACH permit in accordance with section 90(1) as if the application for the extension of the permit were an application for the grant of the permit, and

(b) have regard to—

(i) submissions made to the permit holder under section 92(3)(b), and

(ii) further information provided in response to a request under section 93(1), and

(iii) submissions made to the ACH Council under section 95(2), and

(c) make a decision—

(i) if it is satisfied of the matters set out in section 90(1)—to extend the ACH permit, or

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(ii) otherwise—to refuse to extend the ACH permit.

(2) A decision on the application must be made by the ACH Council within the prescribed period.

(3) The prescribed period for making a decision on an application does not include a period commencing on the day on which a request is made under section 93(1) in relation to the application and ending on the day on which the first of the following occurs—

(a) the request is complied with,

(b) the period for complying with the request expires.

(4) The ACH Council must give written notice of the ACH Council's decision to—

(a) the applicant for the extension of the ACH permit, and

(b) each of the persons to be notified about the activity to which the application relates.

(5) An ACH permit that is extended under this section is of effect until the expiry of the period of 2 years after the day on which the permit is extended unless the permit is—

(a) cancelled earlier under section 100(1)(b), or

(b) further extended under this section.

Subdivision 4 Other matters

97 ACH Council must be notified of transfer of ACH permit

(1) If the holder of an ACH permit transfers the permit to another person, the permit holder and the person to whom the permit is transferred must, within the prescribed period, give written notice of the transfer to the ACH Council.

Maximum penalty—200 penalty units.

(2) On receipt of a notice under subsection (1), the ACH Council must give written notice about the identity of the person to whom the permit is transferred to each of the persons to be notified about the activity to which the permit relates.

98 Conditions

(1) It is a condition of an ACH permit that—

(a) the permit holder must notify the ACH Council if the permit holder becomes aware, while the permit is of effect, of new information about Aboriginal cultural heritage in the area to which the permit relates, and

(b) the permit holder must comply with the reporting requirements specified in the permit, and

(c) a Part 7 order given in relation to an activity to which the permit relates must be complied with.

(2) An ACH permit may be granted or extended subject to other conditions that the ACH Council considers appropriate to ensure that the activity to which the permit relates is managed to avoid, or minimise, the risk of harm being caused to Aboriginal cultural heritage by the activity in the area to which the permit relates.

(3) If the ACH Council becomes aware of new information about Aboriginal cultural heritage in the area to which a permit relates due to being notified by the permit holder or otherwise, the ACH Council may, by written notice given to the permit holder, impose or amend a condition on the permit as the ACH Council considers appropriate to ensure that the activity to which the permit relates is managed to avoid,

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or minimise, the risk of harm being caused to Aboriginal cultural heritage by the activity in the area.

(4) A notice given under subsection (3) takes effect on the day specified in the notice.

(5) The day specified in a notice given under subsection (3) cannot be before the permit holder has had a reasonable opportunity to—

(a) make submissions to the ACH Council in relation to the condition or the amended condition, and

(b) take action necessary to comply with the condition or amended condition.

(6) The ACH Council may, by written notice given to the holder of an ACH permit, revoke a condition, other than a condition referred to in subsection (1), that is imposed on the permit.

(7) The ACH Council may exercise a power under subsection (6)—

(a) on the ACH Council's own initiative, or

(b) on receipt of an application by the permit holder.

(8) The ACH Council must, within the prescribed period, give written notice to each of the persons to be notified about the activity to which the permit relates of the ACH Council's decision to—

(a) impose or amend a condition on a permit under subsection (3), or

(b) revoke a condition imposed on a permit under subsection (6).

99 Amendment of ACH permit area

(1) The ACH Council may amend the area to which an ACH permit relates to exclude from that area an area that is part of the area to be declared as a protected area under Part 4, Division 4.

(2) The ACH Council must give written notice of the amendment of the area to which an ACH permit relates under subsection (1) to—

(a) the holder of the ACH permit, and

(b) each of the persons to be notified about the activity to which the permit relates.

100 Suspension or cancellation of ACH permit

(1) The ACH Council may, by written notice given to the holder of an ACH permit, take either of the following actions—

(a) suspend the permit for a specified period,

(b) cancel the permit.

(2) The notice may be given only if—

(a) the ACH Council is no longer satisfied about the matters set out in section 90(1), or

(b) the ACH permit holder carries out an activity in the area to which the permit relates that—

(i) may harm Aboriginal cultural heritage, and

(ii) is not authorised under the permit, or

(c) the permit holder breaches a condition imposed on the permit.

(3) The notice—

(a) must set out the grounds on which the action is taken, and

(b) takes effect on the day specified in the notice.

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(4) Before taking action under subsection (1), the ACH Council must give the permit holder—

(a) written notice of—

(i) the action that the ACH Council proposes to take, and

(ii) the grounds on which it proposes to take that action, and

(b) a reasonable opportunity to be heard on the matter.

(5) If an ACH permit is suspended, it is of no effect during the period of the suspension.

(6) The ACH Council must give written notice to each of the persons to whom notice was given in relation to the grant of the permit under section 89(4) of the ACH Council's decision to take action under subsection (1).

101 Contravention of conditions on ACH permit

(1) A person who holds an ACH permit must not contravene a condition to which the permit is subject.

Maximum penalty—400 penalty units.

(2) A person may be charged with an offence under this section and an offence under Part 5, arising from the same circumstances.

Division 5 ACH management plans

Subdivision 1 Preliminary

102 ACH management plan

(1) An Aboriginal cultural heritage management plan (an ***ACH management plan***) is a plan for the management of an activity that may harm Aboriginal cultural heritage.

(2) An ACH management plan must—

(a) identify—

(i) the proponent for the activity to which the plan relates, and

(ii) each Aboriginal party, if any, to the plan, and

(iii) the area to which the plan relates, which must not include an area that is part of a protected area, and

(iv) the activity to which the plan relates, and

(v) the Aboriginal cultural heritage located in the area to which the plan relates, and

(vi) the characteristics of the Aboriginal cultural heritage of which the proponent is aware, and

(b) include an ACH impact statement in relation to the proposed activity, and

(c) set out the processes to be followed if, while approval or authorisation of the plan has effect, a party to the plan becomes aware of new information about Aboriginal cultural heritage in the area to which the plan relates, and

(d) set out how the proposed activity will be managed to avoid, or minimise, the risk of harm being caused to Aboriginal cultural heritage by the activity where possible, including a clear explanation of the steps, if any, that will be taken to avoid, or minimise, the risk, and

(e) set out the extent to which harm to Aboriginal cultural heritage is authorised, and

(f) set out conditions that must be complied with before, during and after the proposed activity is carried out, and

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(g) specify the period for which the plan is to have effect, and

(h) include or set out the other matters prescribed for this subsection.

Note— There may not be an Aboriginal party to an ACH management plan to identify under paragraph (a)(ii) in relation to the area to which the plan relates, or a part of that area. This may be because an interested Aboriginal party for an ACH management plan has not agreed to be an Aboriginal party to the plan.

(3) An ACH management plan must not include details of commercial arrangements between a proponent and an Aboriginal party.

103 When ACH management plan required

(1) An approved or authorised ACH management plan is required before the commencement of a tier 1 activity or tier 2 activity that may harm Aboriginal cultural heritage, if directed by the ACH Council in relation to the activity under section 79(6).

(2) An ACH management plan that has been authorised under section 128(1)(b)(i) is required before the commencement of a tier 1 activity or tier 2 activity—

(a) that may harm Aboriginal cultural heritage determined under section 141(1)(b)(i) to be of State significance for the purposes of this Act, or

(b) if the proponent and each interested Aboriginal party for the plan do not agree about the terms of an ACH management plan.

104 Meaning of "interested Aboriginal party" for ACH management plan

(1) Each of the following persons is an ***interested Aboriginal party*** for an ACH management plan relating to the carrying out of a proposed activity in an area—

(a) each person designated as a local ACH service for the area or part of the area,

(b) the Local Aboriginal Land Council for the area,

(c) each native title party for the area or part of the area,

(d) each native title representative body for the area or part of the area.

(2) An interested Aboriginal party for an ACH management plan relating to the carrying out of a proposed activity in an area may agree to be an Aboriginal party to the plan.

105 Assistance to identify each interested Aboriginal party

(1) A proponent may request the assistance of the ACH Council to identify each person who is an interested Aboriginal party for an ACH management plan.

(2) In response to a request under subsection (1), the ACH Council must provide the proponent with reasonable assistance to identify each person who is an interested Aboriginal party for the plan.

106 Provisions in related agreement

A provision that is included in a related agreement for an area may be incorporated into, and form part of, an ACH management plan to the extent that the provision relates to a matter specified in section 102(2) in relation to the area to which the plan relates.

107 Obligation to consult on ACH management plan

(1) A proponent who intends to carry out an activity under an ACH management plan must consult with each of the following persons about the proposed activity—

(a) each local ACH service for the area or a part of the area,

(b) a Local Aboriginal Land Council for the area,

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(c) if there is not a local ACH service for the area or a part of the area—
(i) each native title party for the area or the part of the area, and
(ii) each knowledge holder for the area or the part of the area,

(d) if there is not a local ACH service, a native title party or a knowledge holder for the area or a part of the area—each native title representative body for the area or the part of the area.

(2) Consultation must be carried out within a reasonable time and in accordance with the consultation guidelines.

108 Consultation carried out under related agreement

Consultation carried out in accordance with a related agreement for an area may be used to satisfy the requirements set out in section 107 in relation to the area to which the ACH management plan relates to the extent the consultation complies with the requirements in that section.

109 Proponent must take steps to identify and understand characteristics of Aboriginal cultural heritage in area

A proponent who intends to carry out an activity under an ACH management plan must take reasonable steps to identify, and obtain an understanding of the characteristics of, the Aboriginal cultural heritage located in the area to which the plan relates.

110 Notice about proposed ACH management plan to each interested Aboriginal party

(1) A proponent who intends to carry out an activity in an area under an ACH management plan must give written notice about the plan to—
(a) each interested Aboriginal party, and
(b) the ACH Council.

(2) Notice under subsection (1) must state the proponent's intention to—
(a) use the proponent's best endeavours to reach agreement with each interested Aboriginal party about the terms of an ACH management plan, and
(b) enter into an ACH management plan.

(3) Notice under subsection (1) cannot be given until after the proponent has satisfied the requirements set out in—
(a) section 107, in relation to consultation about the proposed activity, and
(b) section 109, in relation to identifying, and obtaining an understanding of the characteristics of, the Aboriginal cultural heritage located in the area to which the plan is to relate.

111 Reaching agreement about ACH management plan

(1) The proponent and each interested Aboriginal party must use their best endeavours to reach agreement about the terms of an ACH management plan.

(2) The period for reaching agreement is—
(a) the prescribed period commencing on the day that is 30 days after the day on which the proponent gives written notice under section 110(1), or
(b) a longer period—
(i) agreed by the proponent and each interested Aboriginal party, or
(ii) imposed by the ACH Council, by written notice given to the proponent and each interested Aboriginal party.

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112 Application for approval of ACH management plan if agreement reached

An application for the approval of an ACH management plan may be made under Subdivision 2 if the proponent and each interested Aboriginal party agree on the plan.

113 Application for authorisation of ACH management if agreement not reached

An application for the authorisation of an ACH management plan may be made under Subdivision 3 if the proponent and each interested Aboriginal party do not agree on a plan within the period specified under section 111(2).

Subdivision 2 Approval of ACH management plan

114 Informed consent

(1) For the purposes of this Subdivision, the consent of an interested Aboriginal party for an ACH management plan cannot be ***informed consent*** unless—

(a) the proponent has given to the interested Aboriginal party full and proper disclosure of information about the activity the proponent intends to carry out under the plan, and

(b) the consent is given voluntarily and without coercion, intimidation or manipulation.

(2) In this section—

information, about an activity, includes—

(a) a clear explanation about what the activity will involve, including—

(i) the method the proponent intends to use to carry out the activity (the ***preferred method***), and

(ii) if applicable, each other feasible method available to the proponent to carry out the activity (a ***feasible alternative method***), and

(b) in relation to the preferred method, and each feasible alternative method, a clear explanation of—

(i) the risk of reasonably foreseeable harm to Aboriginal cultural heritage by the activity using that method, and

(ii) the nature of the harm to Aboriginal cultural heritage that is risked by the carrying out of the activity using that method, and

(c) in relation to the preferred method—a clear explanation of how the activity will be managed to avoid, or minimise, the risk of harm to Aboriginal cultural heritage by the activity using that method, including a clear explanation of the steps, if any, that will be taken to avoid or minimise the risk.

115 Application for approval of ACH management plan

(1) A proponent may apply to the ACH Council for approval of an ACH management plan that relates to the carrying out of an activity in an area if—

(a) the proponent and each interested Aboriginal party for the plan has agreed to the terms of the plan, and

(b) the proponent was directed to apply for an ACH management plan under section 79(6).

(2) An application for the approval of an ACH management plan must—

(a) be made to the ACH Council in the approved form, and

(b) include the plan agreed to by the proponent and each interested Aboriginal party for the plan, and

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(c) include evidence that each interested Aboriginal party for the plan has given informed consent to the plan, and

(d) include a summary of the information, about the activity that the proponent intends to carry out under the plan, disclosed to each interested Aboriginal party for the plan in accordance with section 114(1)(a), and

(e) include details of the consultation about the carrying out of the activity that has been conducted with each of the persons to be consulted, and

(f) include responses, if any, to the proposal to carry out the activity that were provided to the proponent by a person who was consulted, and

(g) be accompanied by the other documents and information prescribed for this subsection.

Note— If the ACH Council makes a determination under section 141(1)(b)(i) that Aboriginal cultural heritage is of State significance for the purposes of this Act, section 142(1)(a) provides that an application for the approval of the ACH management plan must be considered as if it were an application under section 123(1) for the authorisation of the plan.

116 Further information in support of application

(1) The ACH Council may make a written request to an applicant for approval of an ACH management plan or an interested Aboriginal party for the plan to—

(a) provide the ACH Council with further information relevant to the application that the ACH Council requires to assess the application, and

(b) verify the further information by statutory declaration.

(2) A request under subsection (1) must specify the prescribed period within which the request must be complied with.

117 ACH Council may refuse to consider some applications

The ACH Council may refuse to consider, or consider further, an application for the approval of an ACH management plan if—

(a) the application is not made in accordance with this Act, or

(b) the applicant does not comply with a request under section 116.

118 Decision of ACH Council

(1) The ACH Council must—

(a) assess each application under section 115(1), including further information provided in response to a request under section 116(1), and

(b) make a decision to—

(i) approve the ACH management plan to which the application relates, or

(ii) refuse to approve the ACH management plan to which the application relates.

(2) The ACH Council must ensure written notice of a decision on an application is given to the parties to the ACH management plan within 14 days after the decision is made under subsection (1)(b).

(3) The notice must contain the following—

(a) a description of the decision,

(b) short particulars of the reasons for the decision.

(4) Without limiting what the notice may contain, the notice may specify the day the approval of the ACH management plan takes effect.

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119 Approval of ACH management plan

The ACH Council may approve an ACH management plan only if satisfied—

(a) the activity to which the plan relates is an activity that may harm Aboriginal cultural heritage located in the area to which the plan relates, and

(b) the area to which the plan relates does not include an area that is part of a protected area, and

(c) the Aboriginal cultural heritage is not of State significance and does not need to be dealt with under Subdivision 5, and

(d) there has been consultation with each person to be consulted about the activity, and

(e) each interested Aboriginal party for the plan has given informed consent to the plan, and

(f) in relation to the other matters prescribed for this section.

120 Duration of ACH management plan approval

The approval of an ACH management plan under section 118(1)(b)(i)—

(a) takes effect on the day of the approval or on a later day specified in the notice given under section 118(4) of the decision to approve the plan, and

(b) is of effect, other than during a period when the approval is suspended under section 122(1)(a), until whichever of the following occurs first—

(i) the approval of the plan is cancelled under section 122(1)(b),

(ii) the plan expires in accordance with its terms,

(iii) the activities to which the plan relates are completed.

121 Conditions

It is a condition of an approval of an ACH management plan that—

(a) a party to the plan must notify the ACH Council if the party becomes aware, while the approval of the plan has effect, of new information about Aboriginal cultural heritage in the area to which the plan relates, and

(b) the proponent must comply with the reporting requirements specified in the plan, and

(c) a Part 7 order given in relation to an activity to which the plan relates must be complied with.

122 Suspension or cancellation of ACH management plan approval

(1) The ACH Council may, by written notice given to the parties to an ACH management plan approved under section 118(1)(b)(i), take either of the following actions—

(a) suspend the approval for a specified period,

(b) cancel the approval.

(2) A notice under subsection (1) may be given only if—

(a) the ACH Council is not satisfied that the matters set out in section 119 still apply, or

(b) the proponent carries out an activity in the area to which the ACH management plan relates that—

(i) may harm Aboriginal cultural heritage, and

(ii) is not in accordance with the plan, or

(c) the proponent contravenes a condition to which the approval is subject.

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(3) A notice given under subsection (1)—
(a) must set out the grounds on which the action is taken, and
(b) takes effect on the day specified in the notice.

(4) Before taking action under subsection (1), the ACH Council must give the parties to the ACH management plan—
(a) written notice of—
(i) the action the ACH Council proposes to take, and
(ii) the grounds on which the ACH Council proposes to take the action, and
(b) a reasonable opportunity to be heard on the matter.

(5) If approval of an ACH management plan is suspended, it is of no effect during the period of the suspension.

Subdivision 3 Authorisation of ACH management plan

123 Application for authorisation of ACH management plan

(1) A proponent may apply to the ACH Council for the authorisation of an ACH management plan if—
(a) the proponent intends to carry out an activity that may harm Aboriginal cultural heritage, and
(b) the period specified under section 111(2) for reaching agreement on a plan for the management of the proposed activity has ended, and
(c) the proponent has not been able to reach agreement with each interested Aboriginal party about the terms of a plan, and
(d) the proponent was directed to apply for an ACH management plan under section 79(6).

(2) An application for the authorisation of an ACH management plan must—
(a) be made to the ACH Council in the approved form, and
(b) include the plan proposed by the proponent, and
(c) identify each interested Aboriginal party for the plan, and
(d) include details of the consultation about the carrying out of the activity that has been conducted with each of the persons to be consulted, and
(e) include responses to the proposal to carry out the activity that were provided to the proponent by a person who was consulted, and
(f) include details of the negotiation that has been carried out under section 111(1) between the proponent and each interested Aboriginal party, including—
(i) a summary of the issues that are in dispute between the proponent and each interested Aboriginal party, and
(ii) evidence that the proponent used their best endeavours to reach agreement about the terms of a plan, and
(g) be accompanied by the other documents or information prescribed for this subsection.

124 Further information in support of application

(1) The ACH Council may make a written request to the applicant for authorisation of an ACH management plan or an interested Aboriginal party for the plan to—
(a) provide the ACH Council with further information relevant to the application that the ACH Council requires to assess the application, and

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(b) verify the further information by statutory declaration.

(2) A request under subsection (1) must specify the prescribed period within which the request must be complied with.

125 ACH Council may refuse to consider some applications

The ACH Council may refuse to consider, or consider further, an application if—

(a) the application is not made in accordance with this Act, or

(b) the applicant has not complied with a request under section 124.

126 Assistance to reach agreement on ACH management plan

(1) If an application for the authorisation of an ACH management plan to carry out an activity is made under section 123(1), the ACH Council may—

(a) assist the applicant and each interested Aboriginal party (the ***proposed parties***) to reach agreement about the terms of an ACH management plan in relation to the activity, and

(b) for that purpose, act as a mediator.

(2) The ACH Council must give written notice to the proposed parties of an offer under subsection (1) to assist them to reach agreement about the terms of an ACH management plan.

(3) The period during which an offer by the ACH Council to assist the proposed parties to reach agreement under subsection (1) can be utilised by the proposed parties ends on the day specified by the ACH Council in written notice given to the proposed parties.

(4) In assisting the proposed parties to reach agreement the ACH Council may—

(a) request the applicant to submit an amended ACH management plan, or

(b) request an interested Aboriginal party to submit an ACH management plan, or

(c) propose an ACH management plan for the consideration of the proposed parties.

(5) If the ACH Council is acting as a mediator under subsection (1)(b), it must not use or disclose information to which it has had access only because it provided assistance under subsection (1) other than—

(a) for the purposes of—

(i) providing that assistance, or

(ii) establishing whether an interested Aboriginal party has given informed consent to an ACH management plan, or

(b) with the prior written consent of the person who provided the ACH Council with the information.

(6) For the purposes of this section, the ACH Council may appoint another person (a ***mediator***) to perform the functions of the ACH Council under this section in relation to assisting the proposed parties to reach agreement and acting as a mediator.

127 ACH Council may approve ACH management plan if agreement reached

(1) If, during consideration of an application for the authorisation of an ACH management plan under section 123(1), the applicant and each interested Aboriginal party advise the ACH Council that they have reached agreement on the terms of the plan, the ACH Council may consider the application as an application made under section 115(1) for approval of the agreed plan.

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(2) However, this section does not apply if the ACH Council has made a determination under section 141(1)(b)(i) that Aboriginal cultural heritage located in the area to which the ACH management plan relates is of State significance for the purposes of this Act.

128 Decision of ACH Council for authorisation of ACH management plan

(1) The ACH Council must—

(a) assess each application for the authorisation of an ACH management plan in accordance with the matters set out in section 129(1), and

(b) either—

(i) authorise the ACH management plan, or

(ii) refuse to authorise an ACH management plan for the activity to which the application relates.

(2) The ACH Council must give written notice of the decision to—

(a) the applicant, and

(b) each interested Aboriginal party for the ACH management plan, and

(c) each of the persons to be consulted about the activity to which the application relates.

(3) The notice must contain the following—

(a) a description of the decision,

(b) short particulars of the reasons for the decision.

129 Requirements for ACH management plan

(1) The ACH Council may decide under section 128(1)(b)(i) that an ACH management plan be authorised in relation to an activity only if the ACH Council is satisfied—

(a) the activity is an activity that may harm Aboriginal cultural heritage located in the area to which the plan relates, and

(b) the area to which the plan relates does not include an area that is part of a protected area, and

(c) there has been consultation with each person to be consulted about the activity, and

(d) the plan provides for the activity to be managed to avoid, or minimise, the risk of harm being caused to Aboriginal cultural heritage by the activity, and

(e) the proposed activity is not inconsistent with the objects of this Act, and

(f) the person has otherwise complied with the requirements of this Part, and

(g) the likely impact on Aboriginal cultural heritage will be minimal.

(2) The ACH Council may decide to authorise an ACH management plan that is 1 or more of the following—

(a) the ACH management plan included with the application under section 123(1),

(b) if section 142(1)(a) applies—the ACH management plan included with the application under section 123(1),

(c) an ACH management plan submitted or proposed under section 126(4),

(d) another ACH management plan prepared by the ACH Council.

130 Scope of authorised ACH management plan

(1) An ACH management plan authorised by the ACH Council—

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(a) may be authorised in relation to all, or a part, of the area to which the application relates, and

(b) may be in relation to all, or some, of the activities to which the application relates, and

(c) must specify the period for which the authorisation is to have effect.

131 Duration of ACH management plan authorisation

The authorisation of an ACH management plan—

(a) takes effect on—

(i) the day the plan is authorised, or

(ii) a later day specified in the authorisation, and

(b) has effect until whichever of the following occurs first—

(i) the authorisation of the plan is cancelled under section 133(1)(b),

(ii) the period for which the authorisation of the plan is to have effect expires,

(iii) the activities to which the plan relates are completed.

132 Conditions

(1) It is a condition of an authorisation of an ACH management plan that—

(a) a party to the plan must notify the ACH Council if the party becomes aware, while the authorisation of the plan has effect, of new information about Aboriginal cultural heritage in the area to which the plan relates, and

(b) the proponent must comply with the reporting requirements specified in the plan, and

(c) a Part 7 order given in relation to an activity to which the plan relates must be complied with.

(2) The authorisation of an ACH management plan may be made subject to any other conditions the ACH Council considers appropriate to ensure the activity to which the plan relates is managed to avoid, or minimise, the risk of harm to Aboriginal cultural heritage by the activity in the area to which the plan relates.

(3) If the ACH Council becomes aware of new information about Aboriginal cultural heritage in the area to which an authorised ACH management plan relates, the ACH Council may, by written notice given to the parties to the plan, impose or amend a condition on the authorisation of the plan considered appropriate to ensure that the activity to which the plan relates is managed to avoid, or minimise, the risk of harm being caused to Aboriginal cultural heritage by the activity in the area to which the plan relates.

(4) A notice given under subsection (3) takes effect on the day specified in the notice.

(5) The day specified in a notice given under subsection (3) cannot be before the parties to the ACH management plan have a reasonable opportunity to—

(a) make submissions to the ACH Council in relation to the condition or amended condition, and

(b) take action necessary to comply with the condition or amended condition.

(6) The ACH Council may, by written notice given to the parties to an ACH management plan, revoke a condition, other than a condition referred to in subsection (1), that is imposed on the authorisation of the plan.

(7) The ACH Council may exercise a power under subsection (6)—

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(a) on the ACH Council's own initiative, or

(b) on receipt of an application by a party to the ACH management plan.

133 Suspension or cancellation of authorisation of ACH management plan

(1) The ACH Council may, by written notice given to the parties to an authorised ACH management plan, take either of the following actions—

(a) suspend the authorisation of the plan for a specified period,

(b) cancel the authorisation of the plan.

(2) A notice under subsection (1) may be given only if—

(a) the ACH Council is no longer satisfied of the matters set out in section 129(1), or

(b) the proponent carries out an activity in the area to which the ACH management plan relates that—

(i) may harm Aboriginal cultural heritage, and

(ii) is not in accordance with the plan, or

(c) the proponent contravenes a condition to which the authorisation is subject.

(3) A notice given under subsection (1)—

(a) must set out the grounds on which the action is taken, and

(b) takes effect on the day specified in the notice.

(4) Before taking action under subsection (1), the ACH Council must give the parties to the ACH management plan—

(a) written notice of the action that the ACH Council proposes to take and the grounds on which the ACH Council proposes to take that action, and

(b) a reasonable opportunity to be heard on the matter.

(5) If the authorisation of an ACH management plan is suspended, it has no effect during the period of the suspension.

Subdivision 4 Other provisions about ACH management plans

134 Approval of amended ACH management plan

(1) Unless section 135 applies, the ACH Council may, on the application of a party to an approved or authorised ACH management plan, approve, or refuse to approve, an amendment to the plan agreed to by the parties to the plan.

(2) Subdivision 2 applies in relation to the approval of an amendment to an approved or authorised ACH management plan as if the amendment were a new ACH management plan except that—

(a) the application for the approval of the amendment to the plan does not need to contain the matters referred to in section 115(2)(e) or (f), and

(b) the ACH Council does not need to be satisfied as to the matter set out in section 119(d) in relation to the amendment to the plan.

(3) The ACH Council may approve an amendment to an approved or authorised ACH management plan to exclude from the area to which the plan relates an area that is part of the area to be declared as a protected area under Part 4, Division 4.

Note— If the ACH Council makes a determination under section 141(1)(b)(i) that Aboriginal cultural heritage is of State significance for the purposes of this Act, section 142(1)(a) provides that an application for the approval of the ACH management plan must be considered as if it were an application under section 123(1) for the authorisation of the plan.

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135 Authorisation of amended ACH management plan

(1) This section applies if—

(a) a party to an approved or authorised ACH management plan wants to amend the plan, and

(b) either—

(i) the parties do not agree on amendments to the plan, or

(ii) there is not an Aboriginal party to the plan, or

(iii) Aboriginal cultural heritage located in the area to which the plan relates has been determined under section 141(1)(b)(i) to be of State significance for the purposes of this Act.

(2) If this section applies, a party to the approved or authorised ACH management plan may apply under section 123(1) for an amendment to the plan to be authorised by the ACH Council as if the amendment were a new ACH management plan.

(3) If there is an Aboriginal party to an approved or authorised ACH management plan to which an amendment is sought, sections 110 and 111 and Subdivision 3 apply in relation to the authorisation of the amendment to the plan as if the amendment were a new ACH management plan except that—

(a) the application for the authorisation of the amendment does not need to contain the matters referred to in section 123(2)(d) or (e), and

(b) the ACH Council does not need to be satisfied as to the matter set out in section 129(1)(c).

(4) If there is not an Aboriginal party to an approved or authorised ACH management plan to which an amendment is sought, Subdivision 3 applies in relation to the authorisation of the amendment to the plan as if the amendment were a new ACH management plan except that—

(a) the application for the authorisation of the amendment does not need to contain the matters referred to in section 123(2)(d), (e) or (f), and

(b) the ACH Council does not need to be satisfied of the matter set out in section 129(1)(c).

136 Change to identity of parties to ACH management plan

(1) If a person identified under section 102(2)(a)(ii) as an Aboriginal party to an approved or authorised ACH management plan is no longer an interested Aboriginal party for the plan—

(a) the person is no longer an Aboriginal party to the plan, and

(b) the person must, within the prescribed period, give written notice that they are no longer an interested Aboriginal party for the plan to the ACH Council, and

(c) the ACH Council may—

(i) nominate an interested Aboriginal party for the plan to be an Aboriginal party to the plan, or

(ii) take measures to ensure obligations undertaken by the Aboriginal party under the plan are discharged.

Examples— Situations in which an Aboriginal party to a plan is no longer an interested Aboriginal party may include—

- the designation of a local ACH service being cancelled or suspended under section 26, or
- a CATSI Act corporation or a Corporations Act corporation being deregistered under the relevant Commonwealth Act.

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(2) A nomination must be made by written notice given by the ACH Council to the nominated person or persons.

(3) A nominated person or persons become an Aboriginal party to the approved or authorised ACH management plan on accepting the nomination.

(4) If the person identified under section 102(2)(a)(i) as the proponent (the ***former proponent***) in an approved or authorised ACH management plan is not the current proponent for the activity to which the plan relates, the former proponent and the current proponent must, within the prescribed period, give written notice of the change in the identity of the proponent to—

(a) each Aboriginal party to the plan, and

(b) the ACH Council.

Maximum penalty—200 penalty units.

(5) The current proponent becomes the person to be identified under section 102(2)(a)(i) as the proponent in an approved or authorised ACH management plan on the receipt by the ACH Council of the notice.

137 Approved or authorised ACH management plan continues to have effect despite change to identity of party

An approved or authorised ACH management plan continues to have effect in accordance with its terms in relation to the activity to which the plan relates despite—

(a) a person identified as an Aboriginal party to the plan no longer being an Aboriginal party to the plan, or

(b) an amendment made to the plan to change the identity of a party to the plan that is in accordance with—

(i) a nomination accepted under section 136(3), or

(ii) a notice received under section 136(5).

138 Contravention of conditions on approved or authorised ACH management plan

A party to an approved or authorised ACH management plan must not contravene a condition to which the approval or authorisation of the plan is subject.

Maximum penalty—2,000 penalty units.

Subdivision 5 Aboriginal cultural heritage of State significance

139 State significance guidelines must be considered

In determining under this Subdivision whether Aboriginal cultural heritage is of State significance for the purposes of this Act, the factors set out in the State significance guidelines must be considered.

140 Notice must be given if ACH Council forms view that Aboriginal cultural heritage may be of State significance

(1) If, in considering an application, the ACH Council forms the view that Aboriginal cultural heritage located in the area to which the application or the approved or authorised ACH management plan relates may be of State significance for the purposes of this Act, the ACH Council must give public notice that the ACH Council is considering making a determination that the Aboriginal cultural heritage is of State significance for the purposes of this Act.

(2) The notice must include the following—

(a) details of the Aboriginal cultural heritage to which the notice relates,

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(b) details of the area in which the Aboriginal cultural heritage is located (the ***notice area***),

(c) provision of an opportunity for a person to submit to the ACH Council, within the prescribed period, a statement about the person's views on whether the Aboriginal cultural heritage should be recognised as being of State significance for the purposes of this Act.

(3) The ACH Council must notify the following persons that public notice has been given under subsection (1)—

(a) each local ACH service for the notice area or a part of the notice area,

(b) each native title party for the notice area or a part of the notice area,

(c) each knowledge holder for the notice area or a part of the notice area,

(d) each landholder of land within the notice area,

(e) each public authority that the ACH Council considers has an interest in the notice area or a part of the notice area,

(f) any other person the ACH Council considers has an interest in the notice area or a part of the notice area.

(4) In this section—

application means—

(a) an application under section 115(1) for the approval of an ACH management plan, or

(b) an application under section 123(1) for the authorisation of an ACH management plan, or

(c) an application under section 134 for the approval of an amendment to an approved or authorised ACH management plan, or

(d) an application under section 135 for the authorisation of an amendment to an approved or authorised ACH management plan.

141 Determination about Aboriginal cultural heritage of State significance

(1) The ACH Council must, within the prescribed period beginning at the end of the period for submissions included in a public notice given under section 140(1)—

(a) consider submissions in relation to the Aboriginal cultural heritage made to the ACH Council in response to the notice, and

(b) make a determination that the Aboriginal cultural heritage—

(i) is of State significance for the purposes of this Act, or

(ii) is not of State significance for the purposes of this Act.

(2) The ACH Council may make a determination under subsection (1)(b)(i) only if the ACH Council is satisfied, after taking into consideration the factors set out in the State significance guidelines, that the Aboriginal cultural heritage is of State significance for the purposes of this Act.

142 Continuation of applications

(1) If the ACH Council makes a determination under section 141(1)(b)(i) that Aboriginal cultural heritage is of State significance for the purposes of this Act—

(a) an application for the approval of an ACH management plan that relates to an area in which the Aboriginal cultural heritage is located must be considered as if it were an application under section 123(1) for the authorisation of the plan, and

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(b) an application for the authorisation of an ACH management plan that relates to an area in which the Aboriginal cultural heritage is located must continue to be considered as an application under section 123(1) for the authorisation of the plan, and

(c) an application for the approval of an amendment to an approved or authorised ACH management plan that relates to an area in which the Aboriginal cultural heritage is located must be considered as if it were an application under section 135 for the authorisation of the amendment to the plan, and

(d) an application for the authorisation of an amendment to an approved or authorised ACH management plan that relates to an area in which the Aboriginal cultural heritage is located must continue to be considered as an application under section 135 for the authorisation of the amendment to the plan.

(2) If the ACH Council makes a determination under section 141(1)(b)(ii) that Aboriginal cultural heritage is not of State significance for the purposes of this Act—

(a) an application for the approval of an ACH management plan that relates to an area in which the Aboriginal cultural heritage is located must continue to be considered as an application under section 115(1) for the approval of the plan, and

(b) an application for the authorisation of an ACH management plan that relates to an area in which the Aboriginal cultural heritage is located must continue to be considered as an application under section 123(1) for the authorisation of the plan, and

(c) an application for the approval of an amendment to an approved or authorised ACH management plan that relates to an area in which the Aboriginal cultural heritage is located must continue to be considered as an application under section 134 for the approval of the amendment, and

(d) an application for the authorisation of an amendment to an approved or authorised ACH management plan that relates to an area in which the Aboriginal cultural heritage is located must continue to be considered as an application under section 135 for the authorisation of the amendment to the plan.

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Part 7 Stop activity orders, prohibition orders and remediation orders

Division 1 Preliminary

143 Definitions

In this Part—

new information about Aboriginal cultural heritage—

(a) in relation to an area to which an ACH permit relates, means information not identified in the application for the grant of the permit under section 85(2)(c) about—

(i) Aboriginal cultural heritage located in the area, or

(ii) the characteristics of Aboriginal cultural heritage located in the area, and

(b) in relation to an area to which an approved or authorised ACH management plan relates, means information not identified in the plan under section 102(2)(b), including in the ACH impact statement included in the plan under section 102(2)(c), about—

(i) Aboriginal cultural heritage located in the area, or

(ii) the characteristics of Aboriginal cultural heritage located in the area.

remediate, in relation to Aboriginal cultural heritage, means to carry out work to—

(a) control, abate or mitigate harm to the Aboriginal cultural heritage, or

(b) maintain, remediate or restore Aboriginal cultural heritage that has been harmed.

144 Application of Part

This Part applies to the following Aboriginal cultural heritage—

(a) an Aboriginal place,

(b) an Aboriginal object,

(c) Aboriginal ancestral remains,

(d) Aboriginal cultural heritage located in a protected area.

Division 2 Stop activity orders

145 Stop activity order may be given by ACH Council in certain circumstances

(1) The ACH Council may, in the circumstances set out in subsection (3), give a stop activity order to a person if the ACH Council is of the opinion that Aboriginal cultural heritage is being harmed or there is an imminent risk of harm to Aboriginal cultural heritage.

(2) For subsection (1), Aboriginal cultural heritage is being harmed or there is an imminent risk of harm to Aboriginal cultural heritage if an activity—

(a) is being carried out and the activity is harming the Aboriginal cultural heritage, or

(b) is being carried out and the activity involves an imminent risk of harm to the Aboriginal cultural heritage, or

(c) will be carried out imminently and the activity will involve a risk of harm to the Aboriginal cultural heritage.

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(3) A stop activity order can only be given—

(a) if the harm or imminent risk of harm is caused by—

(i) the carrying out of a tier 1 activity or a tier 2 activity that is not authorised under Part 6, Division 4, or

(ii) the carrying out of an activity in a protected area, or

(b) if—

(i) the harm or imminent risk of harm is caused by the carrying out of an activity in accordance with an ACH permit or an approved or authorised ACH management plan, and

(ii) there is new information about Aboriginal cultural heritage in the area where the activity is being carried out.

(4) A stop activity order must be given to a person who, in the opinion of the ACH Council, has control over the activity, including—

(a) the landholder or occupier of the land where the activity is being, or will be, carried out, or

(b) the proponent for the activity, or

(c) another person who, in the opinion of the ACH Council, has control over the activity.

(5) A stop activity order expires on the day that is 60 days after the day on which the order is given to a person under this section, unless the order is—

(a) extended under section 147(1), or

(b) cancelled earlier under section 166(1)(b).

(6) Immediately after a stop activity order is given, the ACH Council must consider whether Aboriginal cultural heritage the subject of the order requires continued protection under a prohibition order.

(7) The ACH Council must ensure that public notice is given of a stop activity order as soon as practicable after the order is given.

146 Contents of stop activity order

A stop activity order must—

(a) briefly state—

(i) that the ACH Council is satisfied grounds for giving the order exist, and

(ii) the basis for that opinion, and

(b) briefly describe the Aboriginal cultural heritage the subject of the order, and

(c) specify directions on measures that must be taken to protect Aboriginal cultural heritage the subject of the order from harm, or the imminent risk of harm, including the following—

(i) that the carrying out of a specified activity must stop immediately,

(ii) that the carrying out of a specified activity is prohibited,

(iii) that the carrying out of a specified activity in a specified way or for a specified period is prohibited, and

(d) specify that the person given the order must ensure the directions are complied with, and briefly describe the consequences of failing to comply with the directions, and

(e) briefly describe how, after the process set out in section 152 has been followed, a prohibition order may be given, and

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(f) specify the day, being 60 days after the day on which the order is given, on which the order will expire, unless the order is—

(i) extended under section 147(1), or

(ii) cancelled earlier under section 166(1)(b).

147 Extension of duration of stop activity order

(1) Before a stop activity order expires, the ACH Council may extend the duration of the order by written notice given to the person given the order.

(2) The decision of the ACH Council to extend the duration of a stop activity order must be made on the grounds that the ACH Council requires further time to consider whether Aboriginal cultural heritage the subject of the order requires continued protection under a prohibition order.

(3) The ACH Council must ensure that public notice is given of the extension of the duration of the stop activity order as soon as practicable after notice is given extending the duration of the order.

(4) The ACH Council may extend the duration of a stop activity order under subsection (1)—

(a) on only one occasion, and

(b) for—

(i) a period of 60 days beginning immediately after the order would otherwise expire in accordance with its terms, or

(ii) a shorter period specified in writing by the ACH Council.

148 Compliance with stop activity order

(1) A person who is given a stop activity order must comply with the directions specified in the order.

Maximum penalty—

(a) 5,000 penalty units, and

(b) 250 penalty units for each day or part of a day the offence continues.

(2) A person who is given a stop activity order must, as soon as reasonably practicable after complying with the directions specified in the order, notify the ACH Council in writing of that compliance.

Maximum penalty—200 penalty units.

Division 3 Prohibition orders

149 Prohibition orders

The ACH Council—

(a) may give a prohibition order to a person, and

(b) must, while a stop activity order is of effect, decide whether or not a prohibition order should be given.

150 ACH Council may give prohibition orders in certain circumstances

(1) The ACH Council may, in the circumstances set out in subsection (3), give a prohibition order to a person if the ACH Council is of the opinion that—

(a) Aboriginal cultural heritage is being harmed or there is an imminent risk of harm to Aboriginal cultural heritage, and

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(b) special measures need to be taken to prohibit an activity in order to protect the Aboriginal cultural heritage from harm.

(2) For subsection (1)(a), Aboriginal cultural heritage is being harmed or there is an imminent risk of harm to Aboriginal cultural heritage if an activity—

(a) is being carried out and the activity is harming the Aboriginal cultural heritage, or

(b) is being carried out and the activity involves an imminent risk of harm to the Aboriginal cultural heritage, or

(c) will be carried out imminently and the activity will involve a risk of harm to the Aboriginal cultural heritage.

(3) A prohibition order can only be given—

(a) if the harm or imminent risk of harm is caused by—

(i) the carrying out of a tier 1 activity or a tier 2 activity that is not authorised under Part 6, Division 4, or

(ii) the carrying out of an activity in a protected area, or

(b) if—

(i) the harm or imminent risk of harm is caused by the carrying out of an activity in accordance with an ACH permit or an approved or authorised ACH management plan, and

(ii) there is new information about Aboriginal cultural heritage in the area where the activity is being carried out.

151 ACH Council must give notice about prohibition order

(1) Before giving a prohibition order under section 150(1), the ACH Council must—

(a) give written notice in accordance with subsection (2) that the ACH Council is considering whether or not to give a prohibition order in relation to—

(i) the activity specified in the notice, and

(ii) the Aboriginal cultural heritage specified in the notice, and

(b) following the period for submissions referred to in subsection (2)(c), consider submissions made to the ACH Council in response to the notice.

(2) The notice must be given to the persons referred to in subsection (3) and provide—

(a) information relevant to the decision of the ACH Council about whether or not to give a prohibition order, and

(b) details about—

(i) the Aboriginal cultural heritage being harmed or at imminent risk of harm, to the extent that the details do not disclose culturally sensitive information, and

(ii) the activity to which the proposed prohibition order relates, and

(iii) the proposed duration of the prohibition order, and

(c) an opportunity to make submissions to the ACH Council within the prescribed period about whether or not the ACH Council should give a prohibition order.

(3) The notice under subsection (1)(a) must be given to the following persons—

(a) a person who, in the opinion of the ACH Council, has control over the activity specified in the notice,

(b) each local ACH service for the area or a part of the area where the activity is being carried out or is likely to be carried out,

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(c) if there is not a local ACH service for the area or a part of the area where the activity is being carried out or is likely to be carried out—
  (i) each native title party for the area or the part of the area, and
  (ii) each knowledge holder for the area or the part of the area,

(d) if there is not a local ACH service, a native title party or a knowledge holder for the area or a part of the area—each native title representative body for the area or the part of the area.

152 Person given prohibition order

(1) A prohibition order must be given to a person who, in the opinion of the ACH Council, has control over the activity, which may be—
  (a) the landholder or occupier of the land where the activity is being, or will be, carried out, or
  (b) the proponent for the activity, or
  (c) another person who, in the opinion of the ACH Council, has control over the activity.

(2) The ACH Council must ensure public notice is given of the giving of a prohibition order as soon as practicable after the order is given.

(3) The ACH Council must ensure notice is given of a decision not to give a prohibition order to the persons who were given notice under section 151(3).

153 Contents of prohibition order

A prohibition order must—
(a) briefly state—
  (i) that the ACH Council is satisfied grounds exist for the giving of the order, and
  (ii) the basis for that opinion, and
(b) briefly describe the Aboriginal cultural heritage the subject of the order, and
(c) specify directions on measures that must be taken to protect Aboriginal cultural heritage the subject of the order from harm, or the risk of harm, including the following—
  (i) that the carrying out of a specified activity must stop immediately,
  (ii) that the carrying out of a specified activity is prohibited,
  (iii) that the carrying out of a specified activity in a specified way or for a specified period is prohibited, and
(d) specify that the person given the order must ensure the directions are complied with, and briefly describe the consequences of failing to comply with the directions, and
(e) specify—
  (i) that the order is of unlimited duration, unless cancelled, or
  (ii) the day on which the order will expire, unless—
    (A) cancelled earlier under section 166(1)(a), or
    (B) extended under section 155(1).

154 Compliance with prohibition order

(1) A person who is given a prohibition order must comply with the directions specified in the order.

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Maximum penalty—

(a) 5,000 penalty units, and

(b) 250 penalty units for each day or part of a day the offence continues.

(2) A person who is given a prohibition order must, as soon as reasonably practicable after complying with the directions specified in the order, notify the ACH Council in writing of that compliance.

Maximum penalty—200 penalty units.

155 Extension of duration of prohibition order

(1) Before a prohibition order expires, the ACH Council may extend the duration of the order by written notice given to the person given the order.

(2) The decision of the ACH Council under subsection (1) must be made on the grounds that the ACH Council is satisfied the grounds on which the prohibition order was given still exist.

(3) Before making a decision under subsection (1), the ACH Council must—

(a) give written notice, in accordance with section 156(1), of the proposal to extend the duration of the prohibition order, and

(b) at the end of the period for submissions referred to in section 156(1)(d), consider submissions made to the ACH Council in response to the notice.

(4) The ACH Council must ensure public notice is given of the extension of the duration of the prohibition order as soon as practicable after the duration of the order is extended.

156 Notice by ACH Council before extension of duration of prohibition order

(1) The notice under section 155(3)(a) must be given to the persons referred to in subsection (2) and provide—

(a) details of the proposal to extend the duration of the prohibition order, including the proposed extension period, and

(b) details about the contents of the prohibition order, excluding details that disclose culturally sensitive information, and

(c) details about the directions specified in the prohibition order, and

(d) an opportunity to make submissions to the ACH Council within the prescribed period about whether the duration of the prohibition order should be extended as proposed.

(2) The notice must be given to the following persons—

(a) the person who was given the prohibition order,

(b) another person who, in the opinion of the ACH Council, has control over an activity the subject of a direction specified in the prohibition order,

(c) the persons referred to in section 151(3)(b)–(d).

Division 4 Remediation orders

157 ACH Council may give remediation order

(1) The ACH Council may give a remediation order to a person described in subsection (2) if the ACH Council is of the opinion that Aboriginal cultural heritage has been harmed in contravention of this Act.

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(2) The remediation order must be given to a person who, in the opinion of the ACH Council—

(a) had control over the activity that harmed the Aboriginal cultural heritage, or

(b) is a landholder or occupier of the land where the activity that harmed the Aboriginal cultural heritage was carried out.

(3) The ACH Council must ensure public notice is given of the giving of a remediation order as soon as practicable after the order is given.

158 Contents of remediation order

A remediation order must—

(a) briefly state—

(i) that the ACH Council is satisfied that grounds for giving the order exist, and

(ii) the basis for that opinion, and

(b) briefly describe the Aboriginal cultural heritage the subject of the order, and

(c) specify directions on measures that must be taken to remediate the harm to the Aboriginal cultural heritage and a period within which a measure must be carried out, and

(d) specify that the person given the order must ensure the directions are complied with, and briefly describe the consequences of failing to comply with the directions.

159 Compliance with remediation order

(1) A person who is given a remediation order must comply with the directions specified in the order.

Maximum penalty—

(a) 5,000 penalty units, and

(b) 250 penalty units for each day or part of a day the offence continues.

(2) A person who is given a remediation order must, as soon as reasonably practicable after complying with the directions specified in the order, notify the ACH Council in writing of that compliance.

Maximum penalty—200 penalty units.

160 Other persons may carry out remediation if order contravened

(1) If a person given a remediation order contravenes the order, the ACH Council may authorise another person to carry out some or all of the directions specified in the order.

(2) The ACH Council may, in a court of competent jurisdiction, recover the cost of the remediation referred to in subsection (1) as a debt due from the person to whom the remediation order was given.

161 Entry to carry out remediation

(1) A person required or authorised to carry out remediation under a remediation order may enter land if necessary for the purpose of carrying out the remediation.

(2) However, nothing in this Division authorises a person to enter a part of premises used for residential purposes except with the consent of the occupier of the premises.

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162 Recovery by person given remediation order

A person who complied with a remediation order that the person was given, but who is not the person who had control over the activity that harmed the Aboriginal cultural heritage the subject of the remediation order, may, in a court of competent jurisdiction, recover the cost of complying with the order as a debt due from the person who had control over the activity that harmed the Aboriginal cultural heritage.

Division 5 Other provisions about orders under this Part

163 General matters about orders under this Part

An order under this Part, and the amendment, extension or cancellation of an order under this Part—

(a) must be given in writing, and

(b) may be given whether or not—

(i) a person has been proceeded against or convicted of an offence under this Act, or

(ii) the person to whom the order is given has been notified about the proposal to make the order.

164 Directions in orders under this Part

A direction specified in an order under this Part may do 1 or more of the following—

(a) state that it is subject to conditions specified in the order,

(b) state that it is subject to the discretion of a person specified in the order,

(c) refer to—

(i) prescribed requirements, or

(ii) standards, or

(iii) a code of practice,

(d) offer the person to whom it is given a choice of ways in which to comply with the order.

165 Duration of orders under this Part

An order under this Part—

(a) takes effect when a person is given the order, and

(b) is of effect until whichever of the following occurs first —

(i) the order expires in accordance with its terms or the terms of a notice given under section 147(1) or 155(1),

(ii) the order is cancelled under section 166(1).

166 Amendment or cancellation of certain orders under this Part

(1) The ACH Council may, by written notice given to a person given an order under this Part—

(a) if the order is a prohibition order—amend or cancel the order, or

(b) if the order is a stop activity order or a remediation order—cancel the order.

(2) Before making a decision under subsection (1)(a) to amend or cancel a prohibition order, the ACH Council must—

(a) give written notice in accordance with section 167 of the proposal to amend or cancel the prohibition order, and

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(b) at the end of the period for submissions referred to in section 167(c), consider any submissions made to the ACH Council in response to the notice.

(3) The ACH Council must give written notice of a decision under subsection (1) to amend or cancel a prohibition order to the persons referred to in section 151(3)(b)–(d) as soon as practicable after the decision is made.

167 Notification by ACH Council before amending or cancelling prohibition order

A notice given under section 166(2)(a) must be given to the persons referred to in section 156(2) and provide—

(a) details of the proposal to amend or cancel the prohibition order, and

(b) details about the contents of the prohibition order, excluding details that disclose culturally sensitive information, and

(c) an opportunity to make submissions to the ACH Council within the prescribed period about whether the prohibition order should be amended or cancelled as proposed.

168 Display of order under this Part

(1) A person who is given an order under this Part must, as soon as practicable, display a copy of the order in a prominent place at or near the area where an activity the subject of a direction specified in the order is, or was, being carried out.

Maximum penalty—

(a) 200 penalty units, and

(b) 10 penalty units for each day or part of a day the offence continues.

(2) A person must not intentionally remove, destroy, damage or deface the order displayed under subsection (1) while the order is of effect.

Maximum penalty—200 penalty units.

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Part 8 Aboriginal cultural heritage protection agreements

169 ACH protection agreement

(1) An Aboriginal cultural heritage protection agreement (an ***ACH protection agreement***) is an agreement that—

(a) deals with 1 or more of the matters described in subsection (3), and

(b) does not deal with an activity for which an ACH permit or an ACH management plan is required under this Act, and

(c) is not a related agreement.

(2) The parties to an ACH protection agreement must include at least 1 Aboriginal person, group or community.

(3) Without limiting the matters that may be dealt with by an ACH protection agreement, an agreement may deal with the following—

(a) the recognition, protection, conservation, preservation or management of Aboriginal cultural heritage in relation to an area,

(b) the protection, maintenance or use of an Aboriginal place,

(c) the protection, maintenance or use of a cultural landscape, or a part of a cultural landscape,

(d) the protection, maintenance or use of Aboriginal objects,

(e) rights of access to, or rights to use, Aboriginal places or Aboriginal objects by Aboriginal people,

(f) the restoration and preservation of Aboriginal places, cultural landscapes and Aboriginal objects,

(g) any other matter prescribed for the purposes of this paragraph.

170 Endorsement of ACH protection agreement

(1) A party to an ACH protection agreement may submit the agreement to the ACH Council for endorsement.

(2) An ACH protection agreement submitted to the ACH Council for endorsement must—

(a) be made in the approved form, and

(b) be accompanied by the other documents and information prescribed for the purposes of this paragraph.

171 Further information in support of submission

(1) The ACH Council may make a written request to a person who has submitted an ACH protection agreement for endorsement to—

(a) provide the ACH Council with further information relevant to the submission that the ACH Council requires to assess the submission, and

(b) verify the further information by statutory declaration.

(2) A request under subsection (1) must specify the prescribed period within which the request must be complied with.

172 ACH Council may refuse to consider some submissions

The ACH Council may refuse to consider, or consider further, a submission for the endorsement of an ACH protection agreement if—

(a) the submission is not made in accordance with this Act, or

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(b) the person who submitted the agreement for endorsement has not complied with a request under section 171.

173 Decision of ACH Council

(1) The ACH Council must assess each submission for the endorsement of an ACH protection agreement under section 170(1) and make a decision to—

(a) endorse the agreement, or

(b) refuse to endorse the agreement.

(2) The decision must be made by the ACH Council within the prescribed period.

(3) The prescribed period for making a decision on a submission does not include a period commencing on the day on which a request is made under section 171(1) in relation to the submission and ending on the day on which the first of the following occurs—

(a) the request is complied with,

(b) the prescribed period for complying with the request expires.

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Part 9 Aboriginal Cultural Heritage Directory and Register of Aboriginal Owners

Division 1 ACH Directory

174 ACH Directory

(1) The ACH Council must establish and maintain a directory called the Aboriginal Cultural Heritage Directory.

(2) The ACH Directory must be established and maintained in the way decided by the ACH Council as appropriate for achieving the purposes set out in section 175.

175 Purposes of ACH Directory

The purposes of establishing and maintaining the ACH Directory are as follows—

(a) to assemble, organise and maintain the information and documents about Aboriginal cultural heritage described in section 176,

(b) for information and documents in the Directory to be accessible, in accordance with Division 2, as a research and planning tool to assist—

(i) Aboriginal people, groups and communities, and other people, in their consideration of Aboriginal cultural heritage, and

(ii) persons proposing to carry out activities that may harm Aboriginal cultural heritage, and

(iii) in the administration of this Act.

176 Information and documents on ACH Directory

(1) The ACH Directory must contain the prescribed information about the following—

(a) a protected area,

(b) a local ACH service for an area,

(c) a native title party for an area,

(d) the knowledge holders for the following—

(i) a particular area,

(ii) particular Aboriginal cultural heritage,

(e) an ACH protection agreement endorsed under Part 8,

(f) an ACH permit,

(g) an ACH management plan approved under section 118(1)(b)(i),

(h) an ACH management plan authorised under section 128(1)(b)(i),

(i) a determination under section 141(1)(b)(i) that Aboriginal cultural heritage is of State significance for the purposes of this Act,

(j) a Part 7 order.

(2) The ACH Directory must also contain—

(a) information about Aboriginal cultural heritage of the State, including, where relevant—

(i) a description of the characteristics of the Aboriginal cultural heritage, and

(ii) a description of the location of the Aboriginal cultural heritage, and

(iii) for an Aboriginal object—a description of where the object is reasonably believed to have originated from, and

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(iv) for intangible Aboriginal cultural heritage—recordings, including photographs, films, audio, video, digital and other recordings relating to the Aboriginal cultural heritage, and

(b) other information and documents, including historical information and documents, relevant to Aboriginal cultural heritage that—

(i) are prescribed for the purposes of this paragraph, or

(ii) the ACH Council considers appropriate to include in the Directory.

(3) Information and documents may be placed on the ACH Directory, in accordance with the regulations—

(a) on the initiative of the ACH Council, or

(b) at the request of a local ACH service or another person.

177 Accuracy of ACH Directory

(1) The ACH Council must ensure the ACH Directory is as accurate and up-to-date as practicable, and may, as the ACH Council considers necessary, do the following—

(a) modify the Directory,

(b) add to the Directory,

(c) correct the Directory.

(2) However, information or a document can only be removed from the ACH Directory in accordance with section 178.

(3) The placing of information or a document on the ACH Directory, or its removal from the Directory, is not conclusive as to whether the information is up-to-date, comprehensive or otherwise accurate.

178 Removing information and documents from ACH Directory

(1) The ACH Council may remove information or a document from the ACH Directory if the ACH Council is satisfied the information or document—

(a) has been placed on the Directory in error, or

(b) is factually incorrect.

(2) Before removing information or a document about Aboriginal cultural heritage from the ACH Directory, other than under subsection (1), the ACH Council must, to the extent that it is reasonably practicable, consult—

(a) a knowledge holder for the Aboriginal cultural heritage to which the information or document relates, or

(b) if it is not possible to identify or consult with a knowledge holder for the Aboriginal cultural heritage—

(i) each local ACH service for the area or a part of the area to which the Aboriginal cultural heritage relates, or

(ii) if there is not a local ACH service for the area or a part of the area to which the Aboriginal cultural heritage relates — each native title party for the area or the part of the area, or

(iii) if there is not a local ACH service or native title party for the area or a part of the area to which the Aboriginal cultural heritage relates — each native title representative body for the area or the part of the area.

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Division 2 Access to ACH Directory

179 Access to ACH Directory

(1) The ACH Council must ensure the information and documents on the ACH Directory are made available only—

(a) as set out in this Division, or

(b) in the circumstances, to the persons, and to the extent, that the ACH Council considers appropriate.

(2) However, information that is, or documents that contain, culturally sensitive information about Aboriginal cultural heritage must not be made available to a person unless a knowledge holder for the Aboriginal cultural heritage has explicitly consented to the disclosure of the information to the person.

180 Access for Aboriginal people

The ACH Council must ensure the information and documents on the ACH Directory are available to an Aboriginal person, group or community in relation to—

(a) the Aboriginal cultural heritage to which the information or documents relate, or

(b) Aboriginal places located in, or Aboriginal objects located in or reasonably believed to have originated from, the area to which the information or documents relate.

181 Access to information about protected areas and management of activities

The ACH Council must ensure the information and documents on the ACH Directory are available to the general public to the extent necessary to enable the following to be ascertained—

(a) whether or not a particular area includes an area that is part of a protected area,

(b) the conditions to which a protected area declaration, declaring a particular area as a protected area, is subject,

(c) the Aboriginal cultural heritage that has been determined by the ACH Council under section 141(1)(b)(i) to be of State significance for the purposes of this Act,

(d) whether or not a particular area is the subject of—

(i) an ACH permit, or

(ii) an approved or authorised ACH management plan,

(e) a local ACH service for an area,

(f) a native title party for an area,

(g) if a particular area is the subject of an ACH permit—the contact details of the holder of the permit,

(h) if a particular area is the subject of an approved or authorised ACH management plan—the contact details of the parties to the plan,

(i) whether or not a particular area is the subject of a Part 7 order.

182 Access for proponents of activities

(1) The ACH Council must ensure the information and documents on the ACH Directory are available to a proponent who intends to carry out an activity that may harm Aboriginal cultural heritage, to the extent—

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(a) the information and documents relate to the proposed activity or the Aboriginal cultural heritage at risk of harm, and

(b) the ACH Council considers a proponent requires the information and documents to enable them to comply with the requirements of this Act.

(2) However, information or documents prescribed as excluded from the operation of this section cannot be made available to a proponent under this section.

(3) Information or documents identified as containing culturally sensitive information about Aboriginal cultural heritage must not be made available to a proponent under this section.

183 Access for research

(1) The ACH Council must ensure the information and documents on the ACH Directory are available to a person carrying out research on, or that relates to, Aboriginal cultural heritage to the extent that, in the ACH Council's opinion—

(a) the information and documents on the Directory relate to the research being carried out by the person, and

(b) it is appropriate to make the information and documents available for the research.

(2) Information or documents identified as containing culturally sensitive information about Aboriginal cultural heritage must not be made available to a person under this section.

Division 3 Register of Aboriginal Owners

184 Definition

In this Division—

Court means the Land and Environment Court.

185 Register of Aboriginal Owners

(1) The ACH Council must establish and keep a Register of Aboriginal Owners.

(2) The Register is to be kept in a form prescribed by the ACH Council.

186 Contents of Register of Aboriginal Owners

(1) The ACH Council must use the ACH Council's best endeavours to enter in the Register of Aboriginal Owners—

(a) the name of every Aboriginal person who has a cultural association with land in the State, and

(b) the location of the land with which the Aboriginal person has a cultural association, and

(c) the nature of the cultural association the Aboriginal person has with the land.

(2) The name of an Aboriginal person must not be entered in the Register unless the Aboriginal person—

(a) is directly descended from the original Aboriginal inhabitants of the cultural area in which the land is situated, and

(b) has a cultural association with the land that derives from the traditions, observances, customs, beliefs or history of the original Aboriginal inhabitants of the land, and

(c) has consented to the entry of the person's name in the Register.

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(3) The ACH Council is to give priority to the entry in the Register of the names of Aboriginal persons who have a cultural association with—

(a) lands listed in the *National Parks and Wildlife Act 1974*, Schedule 14, and

(b) lands to which the *Aboriginal Land Rights Act 1983*, section 36A applies.

Note— The *National Parks and Wildlife Act 1974*, Schedule 14 lists lands of cultural significance to Aboriginal persons that are reserved or dedicated under that Act.

The *Aboriginal Land Rights Act 1983*, section 36A applies to lands that are the subject of a claim by one or more Aboriginal Land Councils under section 36 of that Act and that the Crown Lands Minister is satisfied would be claimable lands except for the fact that the lands are needed, or likely to be needed, for the essential public purpose of nature conservation.

187 Requests for entry of names in Register

(1) An Aboriginal person may make a written request to the ACH Council to enter the name of an Aboriginal person in the Register of Aboriginal Owners.

(2) A request must specify the land with which the Aboriginal person nominated for inclusion in the Register has a cultural association and the cultural area in which the land is situated.

(3) A request must not be made without the written consent of the Aboriginal person nominated for inclusion in the Register.

188 Requests for opening of parts of Register of Aboriginal Owners

(1) The Minister administering the *National Parks and Wildlife Act 1974* may request the ACH Council to open a part of the Register of Aboriginal Owners for the purpose of entering the names of Aboriginal persons who have a cultural association with lands that the Minister administering the *National Parks and Wildlife Act 1974* has recommended to the Governor be listed in the *National Parks and Wildlife Act 1974*, Schedule 14.

(2) The ACH Council must comply with a request made by a Minister under this section.

(3) An Aboriginal person or an Aboriginal Land Council may also request the ACH Council to open a part of the Register for the purpose of entering the names of Aboriginal persons who have a cultural association with a particular area of land specified in the request.

189 Rectification of Register

(1) An Aboriginal person or group of Aboriginal persons who consider that his, her or their names have been wrongly entered on or omitted from the Register of Aboriginal Owners may request the ACH Council rectify the register.

(2) An Aboriginal person or group of Aboriginal persons who has or have made a request under subsection (1) may appeal to the Court if the ACH Council fails or refuses to rectify the Register in the way requested within 6 months after the making of the request.

(3) On the hearing of an appeal under this section, the Court may—

(a) order the ACH Council to rectify the Register, or

(b) decline to order that the Register be rectified, or

(c) make another order the Court appears appropriate.

(4) An appeal is to be made within the time and in the way provided by the rules of the Court.

(5) The ACH Council has the right to appear and be heard by the Court in the appeal proceedings.

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(6) In deciding an appeal, the Court—

(a) has the functions and discretions of the ACH Council under this Part, and

(b) is not bound by the rules of evidence and may inform itself on a matter in a way the Court considers to be just.

(7) A decision of the Court on an appeal is final and is to be given effect to as if it were the decision of the ACH Council.

(8) The Court may award costs in an appeal under this section in exceptional circumstances only.

190 Reference by ACH Council to Land and Environment Court

(1) The ACH Council may refer to the Court, for decision by the Court—

(a) a request for the entry of the name of an Aboriginal person in the Register of Aboriginal Owners, or

(b) a request for the omission of the name of an Aboriginal person from the Register, or

(c) any other question arising under this Division relating to the keeping of the Register by the ACH Council.

(2) The Chief Judge of the Court is to determine whether or not the Court should deal with the request or question.

(3) The Court may—

(a) hear and determine the request or question, or

(b) refer the request or question back to the ACH Council, with the directions or recommendations the Court considers appropriate.

(4) The Court may hear and determine a part of a question and refer the remainder back to the ACH Council.

(5) The ACH Council must give effect to a determination of the Court under this section.

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Part 10 Compliance

Division 1 Preliminary

191 Definitions

In this Part—

dwelling means a place, or a part of a place, that is ordinarily used for human habitation, whether or not it is from time to time uninhabited.

entry warrant means an entry warrant issued under Division 4.

identity card means a card given to an inspector or an Aboriginal inspector under section 196.

inspection purposes means the purposes referred to in section 199.

inspector means a person specified in section 194.

photograph includes to make a digital image or a video recording.

reasonably suspects—see section 192.

thing relevant to an offence—see section 193.

192 Reasonably suspects

For this Part, a person ***reasonably suspects*** something at a given time if—

(a) the person personally has grounds at the time for suspecting the thing, and

(b) the grounds, even if they are subsequently found to be false or non-existent, when judged objectively, are reasonable.

193 Thing relevant to an offence

(1) For this Part, a thing is a ***thing relevant to an offence*** if it is reasonably suspected that—

(a) the thing has been, is being, or is intended to be used for the purpose of committing an offence under this Act, or

(b) the thing has been obtained by the commission of an offence under this Act, or

(c) an offence under this Act has been, is being, or may be committed in relation to the thing, or

(d) the thing is or may afford—

(i) evidence relevant to proving the commission of an offence under this Act or who has committed an offence under this Act, or

(ii) evidence that tends to rebut an alibi.

(2) For this Part, a thing relevant to an offence may be—

(a) material or non-material, or

(b) animate, other than human, or inanimate.

Division 2 Inspectors

194 Inspectors

(1) The following persons are inspectors for the purposes of this Act—

(a) a person of a prescribed class appointed by the ACH Council,

(b) a person appointed by the ACH Council,

(c) a police officer.

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(2) A person appointed as an inspector holds office for a term specified by the ACH Council in the instrument of appointment.

(3) The ACH Council may, by written notice given to an inspector—

(a) amend the term of the inspector's appointment, or

(b) revoke the appointment.

195 Aboriginal inspectors

(1) The ACH Council may, by written notice, appoint an Aboriginal person to be an Aboriginal inspector for an area of the State.

(2) Before appointing an Aboriginal inspector for a specified area for which a local ACH service is designated, the ACH Council must—

(a) give to the local ACH service for the area, or a part of the area, for which the Aboriginal inspector is to be appointed—

(i) written notice of the proposed appointment, and

(ii) a reasonable opportunity to make submissions to the ACH Council about the proposed appointment, and

(b) take into account a submission received in making a decision about the proposed appointment.

(3) An Aboriginal inspector has, in relation to the area for which the Aboriginal inspector is appointed, the powers conferred under this Act on an inspector that are specified in the appointment, and to that extent is taken to be an inspector.

(4) A person appointed as an inspector holds office for a term specified by the ACH Council in the instrument of appointment.

(5) The ACH Council may, by written notice given to an inspector—

(a) amend the term of the inspector's appointment, or

(b) revoke the appointment.

196 Identity cards

(1) The ACH Council must ensure an identity card is given to a person appointed as an inspector by the ACH Council.

(2) An identity card must—

(a) identify the person as an inspector or an Aboriginal inspector, and

(b) if the person is an Aboriginal inspector—specify the area of the State for which the person is appointed and the powers conferred on the person, and

(c) include a recent photograph of the person.

(3) A person who, without reasonable excuse, fails to return their identity card to the ACH Council on ceasing to be an inspector or an Aboriginal inspector commits an offence.

Maximum penalty—100 penalty units.

(4) A person given an identity card under subsection (1) must carry the identity card when exercising powers or performing functions as an inspector unless it is impracticable.

197 Production or display of identity card

(1) An inspector or an Aboriginal inspector may exercise a power conferred on the person as an inspector in relation to another person only if the inspector or Aboriginal inspector—

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(a) first produces the identity card for the other person's inspection, or

(b) has the identity card displayed so that it is clearly visible to the other person.

(2) Subsection (1) only applies if the inspector or Aboriginal inspector is in the physical presence of the person in relation to whom the power is to be exercised.

(3) However, if it is not practicable to comply with subsection (1) before exercising the power, the inspector or Aboriginal inspector may exercise the power and then produce the identity card for inspection by the other person at the first reasonable opportunity.

198 Impersonating an inspector or an Aboriginal inspector

A person must not falsely represent that the person is an inspector or an Aboriginal inspector.

Maximum penalty—12 months imprisonment or 200 penalty units, or both.

Division 3 Inspection and related powers

199 Purposes for which inspection may be carried out

An inspector may carry out an inspection for any of the following purposes—

(a) to ascertain whether this Act or an instrument has been or is being contravened,

(b) to inspect records that are kept under or for this Act or that are relevant to determining whether this Act or an instrument has been or is being contravened,

(c) any other purpose prescribed for this section.

200 Power to enter places

(1) For inspection purposes an inspector may do any of the following—

(a) subject to section 201, at any time enter a place that is not a dwelling,

(b) at any time enter a dwelling with the informed consent of an occupier of the dwelling,

(c) enter a place in accordance with an entry warrant.

(2) For the purposes of subsection (1)(b), an occupier gives informed consent if the occupier consents after being informed by the inspector—

(a) of the powers the inspector wants to exercise in carrying out the inspection in relation to the dwelling, and

(b) of the reasons why the inspector wants to exercise the powers, and

(c) that the occupier may refuse to consent to the inspector entering the dwelling.

(3) A power to enter premises conferred by this Act authorises entry by foot, vehicle, vessel or aircraft or by another means.

(4) When exercising a power of entry under this Division, an inspector may be accompanied by assistants the inspector considers necessary.

(5) An assistant may accompany an inspector and take all reasonable steps to assist the authorised officer in the exercise of the inspector's functions.

201 Entering Aboriginal places

(1) Before entering a place under section 200, an inspector must take all reasonable steps to determine—

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(a) whether the place is an Aboriginal place, and

(b) if the place is an Aboriginal place—whether, in accordance with Aboriginal tradition, there are restrictions on entry to the place.

(2) If the inspector determines the place is an Aboriginal place and, in accordance with Aboriginal tradition, there are restrictions on entry to the place, the inspector can only enter the place if—

(a) the inspector is permitted to enter the place in accordance with Aboriginal tradition, or

(b) the inspector is accompanied by a person who is permitted to enter the place in accordance with Aboriginal tradition.

(3) However, an inspector may enter a place without complying with subsection (2) if the inspector considers on reasonable grounds that the entry is necessary to prevent harm to Aboriginal cultural heritage.

202 Power to enter includes power to enter some other places

(1) This section applies if under section 200 an inspector may enter a place.

(2) If the place is 1 of 2 or more premises in a single building, then, in order to enter the place, the inspector may enter, but not inspect, a part of the building that the occupiers of the place use exclusively but in common with each other.

203 Power to stop and enter vehicles, and ancillary powers

(1) For inspection purposes an inspector may at any time stop and enter a vehicle other than a mobile home.

(2) The inspector may use any means reasonably necessary in the circumstances to stop a vehicle.

(3) Subsection (2) does not authorise the use of means that are likely to cause death or grievous bodily harm to a person, whether or not the person is in the vehicle.

(4) An inspector who stops a vehicle may—

(a) detain the vehicle for a reasonable period, and

(b) move the vehicle to another place suitable for carrying out an inspection.

(5) In this section—

mobile home means a vehicle that is—

(a) ordinarily used for human habitation, and

(b) permanently or semi-permanently stationary in a single location

204 Other powers related to inspection

For inspection purposes an inspector may do any of the following—

(a) take onto or into, and use on or in, a place or vehicle, equipment or facilities that are reasonably necessary in order to carry out the inspection,

(b) make reasonable use of equipment, facilities or services on or in a place or vehicle in order to carry out an inspection and for that purpose operate the equipment or facilities,

(c) remain on or in a place or vehicle for as long as is reasonably necessary to carry out the inspection,

(d) inspect and open a package, compartment, cupboard or container, and inspect its contents,

(e) inspect an enclosure or similar structure on or in a place or vehicle,

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(f) photograph or otherwise make a record of a place or vehicle and a thing in or on the place or vehicle,

(g) take samples or specimens of, or from, water or soil,

(h) apply an identifier to an object,

(i) survey and mark out land for a purpose relevant to carrying out the inspection,

(j) label a thing.

205 Obtaining records

(1) For inspection purposes an inspector may do any of the following—

(a) direct a person who has the custody or control of a relevant record to give the inspector the record or a copy of the record,

(b) direct a person who has the custody or control of a record, or of a computer or other thing on which a relevant record is or may be stored to make or print a copy of the record or to operate the computer or thing,

(c) operate a computer or other thing on which a relevant record is or may be stored,

(d) direct a person who is or appears to be in control of a record that the inspector reasonably suspects is a relevant record to give the inspector a translation, code, password or other information necessary to gain access to or interpret and understand the record,

(e) take extracts from, make copies of, download, print or photograph a record the inspector reasonably suspects is a relevant record,

(f) take reasonable measures to secure or protect a relevant record, or computer or other thing on which a relevant record is or may be stored, against damage or unauthorised removal or interference.

(2) If an inspector is given a relevant record, the inspector must, if practicable, allow a person who is otherwise entitled to possession of the record to have reasonable access to it.

(3) In this section—

relevant record means an instrument, publication or other record containing information relevant to compliance with this Act.

206 Directions

For inspection purposes an inspector may do any of the following—

(a) direct an occupier of a place or vehicle, or a person who is or appears to be in possession or control of a thing, to give to the inspector, orally or in writing—

(i) information in the person's possession or control about the name and address of the owner of the place, vehicle or thing, and

(ii) other information in the person's possession or control relevant to an inspection,

(b) direct an occupier of a place or vehicle to answer questions,

(c) direct an occupier of a place or vehicle to open or unlock a thing in or on the place or vehicle to which the inspector requires access,

(d) direct an occupier of a place to give the inspector a plan, or access to a plan, of the place,

(e) direct an occupier of a place or vehicle, or a person who is or appears to be in possession or control of a thing, to give the inspector the assistance the

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inspector reasonably requires to perform the inspector's functions in relation to the place, vehicle or thing,

(f) direct an occupier of a vehicle to move the vehicle to a place specified by the inspector for inspection of the vehicle,

(g) direct a person who is or appears to be in control of a consignment of goods to move the consignment to a place specified by the inspector for inspection of the consignment,

(h) direct a person who is or appears to be in control of an object to do anything reasonably necessary to identify the object,

(i) direct a person who is or appears to be in control of goods, or a vehicle, package or container to label the goods, vehicle, package or container,

(j) direct a person who is or appears to be in control of an object to keep possession of the object until further directed by the inspector,

(k) direct a person who is or appears to be in control of an object to leave the object at a place specified by the inspector until further directed by the inspector.

207 Seizure of thing relevant to an offence

(1) This section does not authorise the seizure of Aboriginal ancestral remains.

(2) If an inspector, when exercising a power under this Division, finds a thing relevant to an offence under this Act, the inspector may, subject to subsection (3), seize the thing.

(3) The inspector may seize a thing under subsection (2) only if the inspector reasonably suspects 1 or more of the following—

(a) the thing has been unlawfully obtained,

(b) possession of the thing at that time and place by the person in possession of it is unlawful,

(c) it is necessary to seize the thing for any of the following purposes—

(i) to prevent it from being concealed, damaged, destroyed, interfered with or lost,

(ii) to preserve its evidentiary value,

(iii) to prevent it from being used in the commission of another offence under this Act.

(4) If an inspector seizes a thing under subsection (2), the inspector must—

(a) issue a receipt for the thing in the form approved by the Secretary, and

(b) either—

(i) if the occupier of the place or vehicle is present—give the receipt to the occupier, or

(ii) otherwise—leave the receipt at the place or in or on the vehicle in an envelope addressed to the occupier of the place or vehicle, or otherwise give notice of the receipt.

(5) However, if it is not practicable to comply with subsection (4)(b)(i), the person may seize the thing and at the first reasonable opportunity leave, or otherwise give notice of, the receipt in accordance with subsection (4)(b)(ii).

208 Security of seized things

(1) If, under section 207(2) an inspector seizes a thing, the inspector must take reasonable steps to ensure that the thing is kept in a secure manner.

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(2) A person must not move, tamper or otherwise interfere with a seized thing without the approval of an inspector.

Maximum penalty for subsection (2)—200 penalty units.

209 Dealing with seized things

(1) If, under section 207(2) an inspector seizes a thing, and in the opinion of the inspector, the thing is likely to deteriorate if no action is taken to deal with it, the inspector may deal with the thing in accordance with the directions of the Secretary.

(2) Subsection (1) does not apply if the seized thing is an Aboriginal object except to the extent that it allows the object to be transferred to the ACH Council to be dealt with under section 47, whether or not the object is a secret or sacred object.

(3) If a seized thing is sold under subsection (1), the proceeds of the sale, after the deduction of expenses incidental to the sale, are to be paid to the person entitled to possession of the thing before it was seized.

(4) In this section—

deal with includes to preserve, treat, sell, give away, use and destroy.

210 Dealing with Aboriginal ancestral remains

If an inspector, when exercising a power under this Division, finds human remains that the inspector reasonably considers may be Aboriginal ancestral remains, the inspector must—

(a) take reasonable steps to ensure the remains are kept in a secure way, and

(b) as soon as practicable, transfer the human remains into the custody of the ACH Council to be dealt with under section 41.

211 Forensic examination

(1) If an inspector takes a sample or specimen under section 204(g) the inspector may do a forensic examination, or arrange for a forensic examination to be done, of the sample or specimen.

(2) If an inspector, when exercising a power under this Division, finds a thing that may be seized under section 207(2), then whether or not the inspector seizes the thing, the inspector may do a forensic examination, or arrange for a forensic examination to be done, of the thing.

(3) If it is reasonably necessary in order to do a forensic examination, the sample, specimen or thing may, unless the thing is an Aboriginal object, be dismantled, damaged or destroyed.

(4) The power in subsection (3) cannot be exercised in relation to a thing that may contain information that is privileged, until—

(a) a decision has been made that the information is not privileged, or

(b) an order has been made to enable the power to be exercised.

(5) In this section—

forensic examination, of a sample, specimen or other thing, means the following—

(a) to examine or operate it,

(b) to photograph, measure or otherwise make a record of it,

(c) to take an impression of it,

(d) to take samples of or from it,

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(e) to do tests on it, or on a sample taken under paragraph (d), for forensic purposes.

Division 4 Entry warrants

212 Search warrants

(1) An inspector under this Act may apply to an authorised officer for the issue of a search warrant if the authorised officer believes on reasonable grounds that—

(a) a requirement imposed under this Act or the regulations is being or has been contravened, or

(b) to inspect records kept under or for the purposes of this Act or that are relevant to determining whether this Act or an instrument has been or is being contravened,

(c) another purpose prescribed for the purposes of this paragraph.

(2) An authorised officer to whom an application is made may, if satisfied there are reasonable grounds, issue a search warrant authorising an inspector named in the warrant—

(a) to enter the premises, and

(b) to exercise a function of an authorised officer under this Part.

(3) An inspector may apply for an entry warrant for premises or a vehicle even if, under Division 3, an inspector may enter the place or vehicle without an entry warrant.

(4) The *Law Enforcement (Powers and Responsibilities) Act 2002*, Part 5, Division 4 applies to a search warrant issued under this section.

(5) Without limiting the generality of the *Law Enforcement (Powers and Responsibilities) Act 2002*, section 71 a police officer—

(a) may accompany an inspector executing a search warrant issued under this section, and

(b) may take all reasonable steps to assist the inspector in the exercise of the inspector's functions under this section.

(6) In this section—

authorised officer has the same meaning as in the *Law Enforcement (Powers and Responsibilities) Act 2002*.

Division 5 Other provisions

213 Direction may be written or given orally

(1) A direction under this Part may be given by an inspector orally or in writing.

(2) A direction that is given orally must be confirmed in writing within 5 business days after it is given, unless within that period it is complied with or cancelled.

(3) Failure to comply with subsection (2) does not invalidate the direction.

214 Time and place for compliance with direction

An inspector may specify the date and time when, and place where, a direction given under this Part must be complied with.

215 Contravention of directions

A person must not, without reasonable excuse, contravene a direction given to the person by an inspector under this Part.

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Maximum penalty—200 penalty units.

216 Exercise of power may be recorded

Despite another Act or law, an inspector may record the exercise of a power under this Act, including by making an audiovisual recording.

217 Assistance to exercise powers

(1) An inspector exercising a power under this Act may authorise as many other persons to assist in exercising the power as are reasonably necessary in the circumstances.

(2) A person who, under subsection (1), is authorised by an inspector to assist in exercising a power must obey a lawful and reasonable direction given to the person by the inspector when assisting in exercising the power.

(3) A person who assists in exercising a power under this Act, having been authorised under subsection (1) by an inspector to do so, is taken to be performing a function under this Act.

(4) The protection from liability given to a person under subsection (3) does not extend to anything done or omitted to be done by the person in contravention of a lawful and reasonable direction referred to in subsection (2).

218 Obstruction of inspector

A person must not obstruct an inspector, or a person assisting an inspector, in the exercise or attempted exercise of a power under this Act.

Maximum penalty—400 penalty units.

219 Self-incrimination not an excuse

(1) An individual is not excused from complying with a direction under this Part to provide information or answer a question, or to produce a record or thing, on the ground that the information, answer, record or thing might incriminate the individual or make the individual liable to a penalty.

(2) However, information or an answer provided, or document or thing produced, by an individual in compliance with a direction under this Part is not admissible as evidence in proceedings against the individual other than proceedings for perjury or an offence relating to giving false or misleading information.

220 Orders for forfeiture or disposal of seized things

(1) Subject to subsection (2), a court that convicts a person of an offence under this Act may make an order for the forfeiture to the State, or the destruction or disposal, of a seized thing if the court is satisfied that the thing was the subject of, used in, or otherwise involved in, the commission of the offence.

(2) Subsection (1) does not apply to a seized thing that is an Aboriginal object except to the extent that it allows the object to be forfeited to the State and transferred to the ACH Council to be dealt with under section 47, whether or not the object is a secret or sacred object.

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Part 11 Legal proceedings

Division 1 General provisions

221 Who may commence proceedings

(1) A prosecution of an offence under this Act, or proceedings for another matter arising under this Act, may be commenced by the ACH Council.

(2) Subsection (1) does not limit the ability of a person who has authority at law to commence or conduct the prosecution of an offence under this Act.

222 Court may order costs and expenses

(1) A court that hears proceedings for an offence under this Act has power to make the orders that it thinks fit in relation to the costs and expenses of, and incidental to, the examination, seizure, detention, storage, analysis, destruction or other disposition of anything the subject of those proceedings.

(2) Subsection (1) does not affect—

(a) any other power of a court to award costs, or

(b) the *Criminal Procedure Act 1986*, section 307.

Division 2 Criminal liability of body corporate officers, employees and others

223 Definition

In this Division—

officer, in relation to a body corporate, has the meaning given in the *Corporations Act 2001* of the Commonwealth for a corporation.

224 Liability of officers for offence by body corporate

(1) This section applies to an offence under a provision of this Act listed in the Table.

Table

s 37(1)	s 38(1) and (4)	s 42(1)
s 45(1)	s 48(1)	s 49(1)
s 66(1)	s 69(1)	s 70(1)
s 71(1)	s 72	s 97(1)
s 101	s136(4)	s 138
s 148(1) and (2)	s 154(1) and (2)	s 215
s 218	s 255(2)	

(2) If a body corporate is guilty of an offence to which this section applies, an officer of the body corporate is also guilty of the offence if the officer failed to take all reasonable steps to prevent the commission of the offence by the body corporate.

(3) In determining whether things done or omitted to be done by the officer constitute reasonable steps, a court must have regard to—

(a) what the officer knew, or ought to have known, about the commission of the offence by the body corporate, and

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(b) whether the officer was in a position to influence the conduct of the body corporate in relation to the commission of the offence, and

(c) other relevant matters.

225 Further provisions relating to liability of officers of body corporate

(1) Section 224 does not affect the liability of a body corporate for an offence under this Act or a criminal offence under another Act or law.

(2) An officer of a body corporate may be charged with, and convicted of, an offence under a provision of this Act in accordance with section 224 whether or not the body corporate has been proceeded against or convicted under that provision.

(3) If an officer of a body corporate, who is charged with an offence under this Act in accordance with section 224, claims the body corporate would have a defence if it were charged with the offence—

(a) the onus of proving the defence is on the officer, and

(b) the standard of proof required is the standard that would apply to the body corporate in relation to the defence.

(4) Subsection (3) does not limit another defence available to the officer.

226 Liability of partners

(1) If an ACH permit is granted to a partner in relation to the activities of a partnership, each partner in the partnership has the same rights and duties as the holder of the permit, whether or not the partner is named in the permit.

(2) If an ACH management plan is approved under section 118(1)(b)(i) or authorised under section 128(1)(b)(i) in relation to the activities of a proponent that is in a partnership, each partner in the partnership has the same rights and duties as a party to the plan, whether or not the partner is named in the plan.

227 Liability of principals for offence by agent

(1) If a person (the ***agent***) acting, otherwise than as an employee, for or on behalf of another person (the ***principal***) contravenes a provision of this Act, the principal is taken to have contravened the same provision.

(2) For the purposes of this section, an agent and principal relationship exists—

(a) if a person (the ***agent***) carries out, manages or controls an activity the subject of an authorisation under Part 6, Division 4 for or on behalf of the proponent for the activity (the ***principal***), and

(b) whether the agent is acting directly for the principal or acting indirectly through another person, or persons, including a contractor, subcontractor or consultant.

(3) In proceedings against a principal for such a contravention, it is a defence to prove the principal took all reasonable steps to prevent the commission of the offence by the agent.

(4) In determining whether things done or omitted to be done by the principal constituted reasonable steps, a court must have regard to—

(a) what the principal knew, or ought to have known, about the risk of the contravention occurring, and

(b) whether the principal could have prevented the contravention, and

(c) other relevant matters.

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(5) A principal may be proceeded against and convicted under a provision of this Act in accordance with this section whether or not the agent has been proceeded against or convicted under that provision.

228 Liability of employer for offences by employee

(1) If an employee of another person (the ***employer***) contravenes a provision of this Act while acting as an employee, the employer is taken to have contravened the same provision, whether or not the employee contravened the provision—

(a) without the employer's authority, or

(b) contrary to the employer's orders or instructions.

(2) In proceedings against an employer for such a contravention, it is a defence to prove that the employer took all reasonable steps to prevent the commission of the offence by the employee.

(3) In determining whether things done or omitted to be done by the employer constituted reasonable steps, a court must have regard to—

(a) what the employer knew, or ought to have known, about the risk of the contravention occurring, and

(b) whether the employer could have prevented the contravention, and

(c) any other relevant matter.

(4) An employer may be proceeded against and convicted under a provision of this Act in accordance with this section whether or not the employee has been proceeded against or convicted under that provision.

229 Liability of employees and agents

It is not a defence to a charge of an offence under this Act that the accused person was, at the time of the commission of the offence, an employee or agent of another person.

Division 3 Evidentiary provisions

230 Application of Division

(1) This Division applies for the purposes of proceedings for an offence under this Act.

(2) A provision of this Division that provides for a matter to be taken to be proved applies only in the absence of evidence to the contrary.

(3) This Division is in addition to, and does not affect the operation of, the *Evidence Act 1995*.

231 Certain matters taken to be proved if alleged in prosecution notice or indictment

An allegation in a court attendance notice or indictment of a matter listed in the Table is taken to be proved.

Table

Item	Matter
1	That the person who commenced the proceeding is authorised to do so
2	That specified land is land of a specified description **Example** Crown land
3	That on a specified day or during a specified period a specified person was the landholder of specified land

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Item	Matter
4	That a document purporting to have been signed or executed, as relevant, by the Minister, the Secretary, an inspector, an Aboriginal inspector or the ACH Council was signed, or executed, as relevant, by a person who at the specified time was the Minister, the Secretary, an inspector, an Aboriginal inspector or a person authorised to sign or execute the document on behalf of the ACH Council, as the case requires

232 Evidence of certain matters if stated in certificate

(1) Production of a certificate purporting to be signed by a member and stating 1 or more of the matters listed in the Table is, without proof of the member's signature, taken to be evidence of the facts stated in the certificate.

Table

Item	Matter
1	That on a specified day or during a specified period a person was or was not— (a) the holder of an ACH permit, or (b) a party to an approved or authorised ACH management plan, or (c) a person given a Part 7 order
2	That on a specified day or during a specified period a specified instrument was or was not of effect
3	That on a specified day or during a specified period a specified instrument was or was not subject to a specified condition
4	That on a specified day or during a specified period a Part 7 order contained or did not contain a specified direction
5	That on a specified day or during a specified period a specified person was or was not authorised to carry out a specified activity under a specified instrument
6	That on a specified day or during a specified period a specified person was or was not designated as a local ACH service for a specified area
7	That on a specified day or during a specified period a person was or was not a native title party for a specified area
8	That on a specified day or during a specified period a body was or was not a native title representative body for a specified area
9	That on a specified day or during a specified period a person was or was not an inspector, an Aboriginal inspector or a person authorised to assist an inspector or an Aboriginal inspector
10	That on a specified day or during a specified period a specified area did or did not include an area that was part of a protected area
11	That on a specified day or during a specified period specified Aboriginal cultural heritage was determined under section 141(1)(b) to be or not to be of State significance for the purposes of this Act
12	That on a specified day or during a specified period a person held or did not hold a specified office

(2) Subsection (1) only applies if—

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(a) at least 28 days before the hearing at which the certificate is proposed to be produced, written notice was given to the accused of the prosecutor's intention to produce the certificate, and

(b) the accused has not, within 14 days after receipt of the notice, delivered to the prosecutor a notice requiring that the evidence of the Secretary or the authorised person be given in person.

(3) The court before which proceedings are held may, in addition to making any other order as to costs, make any order it thinks fit as to the expenses and remuneration to be paid for the services of the ACH Council.

233 Evidence in relation to documents

(1) A document certified by the Secretary to be a true copy of an instrument as at a specified date—

(a) is taken to be proved to be a copy of the original document as at that date, and

(b) is admissible in the same way, and has the same evidentiary value, as the original.

(2) A document certified by a member to be a true copy of the ACH Directory, or part of the Directory, as at a specified date is taken to be proof of the contents of the Directory, or that part of the Directory, as at that date.

(3) A document certified by a member to be a true copy of specified guidelines as at a specified date or during a specified period is taken to be proof of the contents of the guidelines as at that date or during that period.

(4) A document purporting to have been signed by a delegate of the Minister, the ACH Council or the Secretary is taken to have been signed by a person who at the time was such a delegate and was authorised to sign it.

(5) A copy of a document or record obtained by an inspector or an Aboriginal inspector exercising a power under Part 10, Division 3 is admissible in evidence if it is certified by the inspector or the Aboriginal inspector, as is relevant, as having been obtained in the exercise of that power.

234 Onus of proving certain matters

In proceedings for an offence under this Act, the onus of proving a matter listed in the Table lies with the person asserting the matter.

Table

Item	Matter
1	That a person has undertaken consultation in accordance with the consultation guidelines
2	That conduct was engaged in with reasonable excuse

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Part 12 Miscellaneous

Division 1 Financial matters

235 Account and Fund for Aboriginal cultural heritage matters and other matters

Parliament recommends the State provide financial assistance to fund the following—

(a) the costs of the administration and enforcement of the Act,

(b) remuneration for members of the ACH Council, or of a committee, other than members employed in the public service,

(c) funding for persons designated as a local ACH service for the purpose of enabling the person to provide local ACH service functions,

(d) the recognition, protection, conservation, preservation and management of Aboriginal cultural heritage, including, if relevant, by developing guidance materials,

(e) the costs associated with the repatriation of Aboriginal ancestral remains, including investigation into the appropriate custodian of the ancestral remains,

(f) an Aboriginal War Memorial Museum, including for the purpose of holding or safekeeping Aboriginal ancestral remains,

(g) the payment of compensation to an Aboriginal person, group or community with legislated rights, interests and responsibilities in relation to Aboriginal cultural heritage to which harm has been caused as a direct or indirect consequence of the commission of an offence under Part 5, Division 1,

(h) an Aboriginal Cultural Heritage Compensation Fund.

Division 2 Administrative review

236 Administrative review by NCAT

(1) The Table sets out—

(a) decisions made under this Act that are reviewable in accordance with this Part (***reviewable decision***), and

(b) who is eligible to apply for a review of a reviewable decision (the ***affected person***).

Table

Item	Reviewable decision	Affected person
1	A decision of the ACH Council not to declare an area as a protected area	A person required to be given notice under section 59(1)(b)
2	A decision of the ACH Council to authorise or approve an ACH management plan under section 118(1)(b)(i) or 128(1)(b)(i)	A person required to be consulted under section 107
3	A decision of the ACH Council under section 122(1) to cancel or suspend the approval of an ACH management plan	A party to the ACH management plan
4	A decision of the ACH Council under section 145(1) to give a stop activity order	The person who was given the stop activity order

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Item	Reviewable decision	Affected person
5	A decision of the ACH Council under section 150(1) to give a prohibition order	The person who was given the prohibition order
6	A decision of the ACH Council under section 155(1) to extend the term of a prohibition order	The person who was given the prohibition order
7	A decision of the ACH Council under section 157(1) to give a remediation order	The person who was given the remediation order
8	A decision by the ACH Council under section 166(1)(a) to amend or cancel a prohibition order	The person who was given the prohibition order A person referred to in section 151(3)(b)–(d)

(2) An affected person may apply to the Civil and Administrative Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of a reviewable decision.

(3) The application must be made within 28 days after the day on which notice of the reviewable decision is given.

(4) In determining the application, the Civil and Administrative Tribunal must take into account a matter that was required to be taken into account in making the reviewable decision.

(5) The regulations may prescribe other reviewable decisions, and the persons who are affected persons in relation to those decisions.

Division 3 Giving notice

237 Public notice

If public notice of a matter or document is required to be given under this Act, notice of the matter or document must—

(a) be published on a website maintained by, or on behalf of, the ACH Council, and

(b) if the regulations provide—be published in accordance with the regulations.

238 Giving notice generally

(1) If notice of a document is required or permitted to be given under this Act to a person, the notice may be given by—

(a) giving it to the person personally, or

(b) leaving it at the person's usual, or last known, place of residence or business, or

(c) sending it by prepaid post, including document exchange, addressed to the person—

(i) to the address provided by the person for the giving or service of notice, or

(ii) if no address is provided as referred to in subparagraph (i)—to the last known address of the person, or

(d) emailing it to an email address or faxing it to a fax number—

(i) provided by the person for the giving or service of notice, or

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(ii) if no email address or fax number is provided as referred to in subparagraph (i)—to the email address or fax number appearing on recent correspondence addressed by or on behalf of the person to the person or entity giving the notice, or otherwise notified to the person or entity giving the notice, or published by the person to whom the notice is to be given, or

(e) communicating it in some other agreed way with the person, or

(f) another way prescribed, including by electronic means or by publishing a copy of the notice, in accordance with the regulations.

(2) The use of a particular method for giving notice to a particular person does not prevent the use of a different method for giving notice to the same person.

(3) Notice required to be given to a partnership is taken to have been given to all members of the partnership if it is given to a member of the partnership in accordance with subsection (1).

(4) Failure to properly give notice to 1 person does not affect whether or not notice was properly given to another person.

(5) This section is in addition to the *Interpretation Act 1987*, section 76 and the *Electronic Transactions Act 2000*.

239 Giving notice to landholder or occupier of land

(1) If notice of a document is required or authorised to be given under this Act to a person because the person is a landholder or an occupier of land, the notice may be addressed to the person by the description of "the landholder" or "the occupier" of the relevant land, describing the relevant land, without further name or description.

(2) If there are 2 or more landholders or occupiers, notice is sufficiently given to all of them if it is given to 1 of them, and is addressed to that 1 with the addition of the words "and another" or "and others".

(3) If notice of a document is to be given to a person because the person is a landholder, the notice may be given to the person by addressing the document to the landholder and giving it in accordance with section 238 to the occupier of the land.

(4) If notice of a document is to be given to a person because the person is a landholder or occupier of land, the notice may be given to the person by addressing the document to the person and affixing it to a conspicuous part of the land.

(5) Subsections (3) and (4) only apply if it is not practicable to give the notice in a way provided for in section 238 and this Act does not otherwise state how the notice is to be given.

240 Giving certain notices

(1) If notice of a document is required or permitted to be given under this Act to a landholder, an occupier of land or a knowledge holder for an area and it is not practicable to give the notice in accordance with section 238, the notice may be given by publishing a copy of the document in the prescribed way.

(2) Notice given in accordance with subsection (1)—

(a) may be directed to—

(i) landholders or occupiers of land, or

(ii) knowledge holders for an area, and

(b) is taken to be given to—

(i) all of the landholders and occupiers of the land specified in the notice, or

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(ii) all of the knowledge holders for the area specified in the notice.

241 Defects in notice

Notice of a document is not ineffective, nor is it to be regarded as having been not properly given, only because of an error, description or irregularity in the document or the way it is addressed that is not likely to mislead or does not in fact mislead.

Division 4 Regulations

242 Regulations

(1) The Governor may make regulations, not inconsistent with this Act, for or about any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting subsection (1), the regulations may provide for, prohibit, control, impose requirements in relation to, or otherwise regulate the following—

(a) compensation referred to in this Act, including the following—

(i) a mechanism for the calculation of compensation,

(ii) protective measures that may be put in place to ensure that compensation payable under this Act is fair and appropriate,

(iii) matters a court or tribunal must have regard to in considering an appeal about compensation,

(b) fees payable under this Act or the regulations,

(c) the waiver, reduction, postponement or refund by the Secretary of fees payable or paid under this Act or the regulations,

(d) the way applications under this Act are to be made,

(e) the verification of information or documentation, including a requirement for a statutory declaration to be made about a matter,

(f) the procedure to be followed by inspectors and Aboriginal inspectors in exercising their powers and performing their functions under Part 10,

(g) the preparation of ACH impact statements,

(h) publishing requirements for the giving of public notice of a matter or document,

(i) in relation to the giving of notice of documents required or permitted to be given under this Act—

(i) the time at which the notice is taken to have been given, and

(ii) if notice is given by electronic means—the means of satisfying a requirement under this Act in relation to a document in writing, for example, a requirement that the original of a document be given or that a document be signed.

(3) The regulations may provide that a contravention of a regulation is an offence and provide for a penalty for an offence not exceeding 200 penalty units.

Division 5 Guidelines

243 Guidelines

Guidelines may be made under this Division about the following—

(a) the carrying out of consultation for the purposes of this Act (the ***consultation guidelines***),

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(b) the identification of persons who are knowledge holders for an area (the ***knowledge holder guidelines***),

(c) the fee structure for the fees to be charged for services provided in connection with the provision of local ACH service functions (the ***local ACH service (fees) guidelines***),

(d) the factors to be considered in determining whether Aboriginal cultural heritage is of outstanding significance for the purposes of this Act (the ***protected area declaration guidelines***),

(e) the factors to be considered in determining under section 141(1)(b) whether Aboriginal cultural heritage is of State significance for the purposes of this Act (the ***State significance guidelines***).

244 Preparation of guidelines

The ACH Council may prepare proposed guidelines.

245 Consultation on proposed guidelines

(1) The ACH Council must give public notice of proposed guidelines that the ACH Council has prepared.

(2) The notice must include the following—

(a) a brief description of the contents of the proposed guidelines,

(b) details of where and how a copy of the proposed guidelines can be obtained or viewed,

(c) an opportunity to make submissions to the ACH Council within 60 days after the notice is given about a provision in the proposed guidelines.

(3) The ACH Council must inform the following persons that public notice about proposed guidelines has been given under subsection (1)—

(a) each local ACH service for an area in the State,

(b) each native title party for an area in the State,

(c) each native title representative body in the State,

(d) the New South Wales Aboriginal Land Council,

(e) each Local Aboriginal Land Council,

(f) Aboriginal owners,

(g) a public authority that the ACH Council considers may have an interest in the proposed guidelines,

(h) a peak industry body that the ACH Council considers may have an interest in the proposed guidelines,

(i) any other person the ACH Council considers has an interest in the guidelines.

(4) The ACH Council—

(a) must consider any submissions made in response to the notice given under subsection (1), and

(b) may modify the proposed guidelines as it thinks fit.

246 Provisions about guidelines

(1) The ACH Council must ensure a copy of guidelines are published on the ACH Council's website.

(2) Guidelines take effect—

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(a) on the day the guidelines are published, or

(b) on a later day specified in the guidelines.

247 Amending or repealing guidelines

(1) The ACH Council may amend guidelines.

(2) Sections 245–246 apply, with the modifications necessary, to and in relation to an amendment as if the amendment were guidelines.

(3) Guidelines may be repealed by—

(a) subsequent guidelines, or

(b) an instrument of repeal—

(i) made by the ACH Council, and

(ii) published on the ACH Council's website.

Division 6 Policies and procedures

248 Policies and procedures by ACH Council

(1) The ACH Council may make policies and procedures for local ACH services.

(2) The ACH Council must consult with the Aboriginal community before making the policies and procedures.

(3) Without limiting subsection (1), the ACH Council may make policies and procedures about the following—

(a) matters related to the provision of local ACH service functions,

(b) the appropriate use of money derived from fees for services provided by a local ACH service,

(c) accountability, reporting and consultation by local ACH services,

(d) financial matters, including the keeping, inspection and auditing of financial records.

Division 7 General

249 Personal liability

(1) A protected person is not personally subject to any liability for anything done—

(a) in good faith, and

(b) for the purpose of exercising a function under this Act.

(2) The liability instead attaches to the Crown.

(3) In this section—

done includes omitted to be done.

liability means civil liability and includes action, claim or demand.

protected person means—

(a) a member, or

(b) a local ACH service, or

(c) a person acting under the direction of the ACH Council or a local ACH service.

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250 No circumventing or contracting out

(1) A term of a contract or other agreement that purports to do, or has the effect of doing, 1 or more of the following is of no effect—

(a) exclude, limit or modify the operation of this Act,

(b) exclude, limit or modify a duty owed under this Act,

(c) transfer to another person a duty owed under this Act.

Note— The transfer of an ACH permit by the holder of the permit to another person referred to in section 97, or a change to a party to an approved or authorised ACH management plan referred to in section 136, is not the transfer to another person of a duty owed under this Act as described in subsection (1)(c).

(2) A purported waiver, limitation or modification of a right, remedy or benefit conferred on a person under this Act is of no effect.

251 Delegation by Minister

(1) The Minister may delegate the exercise of a function of the Minister under this Act, other than this power of delegation, to the ACH Council.

(2) A person or body to whom or which a power or duty is delegated under this section cannot delegate the power or duty.

252 Delegation by Secretary

(1) The Secretary may delegate the exercise of a function of the Secretary under this Act, other than this power of delegation, to a person employed or engaged in the Department.

(2) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.

(3) This section does not limit the ability of the Secretary to perform a function through an officer or agent.

253 ACH Council and local ACH services not statutory bodies representing the Crown

The ACH Council and local ACH services are not, for the purposes of a law, a statutory body representing the Crown.

254 ACH Council and local ACH services taken to be public authorities for certain purposes

(1) The ACH Council and each local ACH service is taken to be a public authority for the purposes of the *Ombudsman Act 1974*, the *Independent Commission Against Corruption Act 1988* and the *Government Information (Public Access) Act 2009* (***GIPA Act***).

(2) However, the GIPA Act does not apply to information, documents or other records under this Act, whether or not on the ACH Directory, to the extent that the GIPA Act would otherwise enable or require the disclosure of culturally sensitive information.

255 Confidentiality

(1) A person must not, directly or indirectly, record, disclose or make use of information obtained by reason of a function that the person has, or had, in the administration of this Act except—

(a) for the purpose of, or in connection with, performing a function under this Act, or

(b) as required or allowed under this Act or another written law, or

(c) for the purposes of legal proceedings arising under this Act, or

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(d) with the written consent of the person to whom the information relates, or

(e) in other circumstances prescribed for the purposes of this subsection.

Maximum penalty—200 penalty units.

(2) Information relating to trade processes or financial information, or culturally sensitive information, that has been disclosed under subsection (1) for a particular purpose must not be used for another purpose by—

(a) the person to whom the information is disclosed, or

(b) another person who gains access to the information, whether properly or improperly and whether directly or indirectly, as a result of that disclosure.

Maximum penalty—200 penalty units.

(3) Subsection (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 a person to whom it relates, or

(b) information already in the public domain.

256 Approved forms

The ACH Council may approve forms for use under this Act.

257 Review of Act

(1) The Minister must review the operation and effectiveness of this Act, and prepare a report based on the review as soon as practicable—

(a) after the period of 5 years from the date of commencement of this Act, and

(b) after that, at intervals of not more than 5 years.

(2) The Minister must cause each report to be laid before each House of Parliament as soon as practicable after it is prepared, but not later than 12 months after the requirement to carry out the review arose.

258 Amendment of other Acts

Schedule 4 amends the Acts and instrument set out in the Schedule.

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Schedule 1 Establishment, constitution and procedures of ACH Council

section 14

Part 1 General

1 Definitions

In this Schedule—

appointed member means a person who is appointed by the Minister as a member of the ACH Council.

Chairperson means a Chairperson of the ACH Council.

Part 2 Appointment and constitution of ACH Council

2 Appointment of first ACH Council

(1) The following bodies may by notice, nominate potential members (***nominees***) for appointment to the ACH Council—

(a) New South Wales Aboriginal Land Council,

(b) a holder of native title rights under the Native Title Act.

(2) The nominees must be Aboriginal persons.

(3) The Minister must, within 30 days of receiving a notice under subsection (1), appoint between 6 and 11 of the nominees to ensure that the ACH Council has the knowledge, skills and experience considered appropriate to enable the members to effectively perform the functions of the ACH Council under this Act.

(4) The Minister must ensure that an equal number of nominees are appointed to the ACH Council from or representing—

(a) Aboriginal Land Councils, and

(b) native title holders, and

(c) Aboriginal owners.

(5) The Minister must, as far as practicable, ensure the gender composition of the ACH Council is balanced.

3 Joint Chairpersons

At the first meeting of the ACH Council the members must appoint as joint Chairpersons—

(a) 1 of the members who has traditional rights, interests and responsibilities in relation to women's business, and

(b) 1 of the members who has traditional rights, interests and responsibilities in relation to men's business.

4 Terms of office of members

An appointed member holds office for a period of at least 5 years specified in the member's instrument of appointment and is eligible for reappointment.

5 Vacancy in office of member

The office of an appointed member becomes vacant if the member—

(a) dies, or

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(b) completes a term of office and is not reappointed, or

(c) resigns the office by instrument in writing, or

(d) becomes a mentally incapacitated person, or

(e) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence punishable by imprisonment for 12 months or more.

6 Filling of vacancy in office of appointed member

If the office of an appointed member becomes vacant, the ACH Council must arrange for the conduct of an election, with the successful candidate to fill the vacancy.

7 Chairperson

A Chairperson vacates office as Chairperson if the Chairperson—

(a) resigns the office by instrument in writing, or

(b) ceases to be a member of the ACH Council.

8 Effect of certain other Acts

(1) The provisions of the *Government Sector Employment Act 2013* relating to the employment of Public Service employees do not apply to an appointed member.

(2) If under an Act provision is made—

(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or

(b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding the office and also the office of an appointed member, or from accepting and retaining remuneration payable to the person under this Act as a member.

Part 3 Procedure

9 General procedure

The procedure for the calling of meetings of the ACH Council and for the conduct of business at the meetings must be determined by the ACH Council.

10 Quorum

The quorum for a meeting of the ACH Council is a majority of the ACH Council's members for the time being.

11 Voting

A decision supported by a majority of the votes cast at a meeting of the ACH Council at which a quorum is present is the decision of the ACH Council.

12 Transaction of business outside meetings or by telephone etc

(1) The ACH Council may, if it thinks fit, transact its business by the circulation of papers among all the members of the ACH Council for the time being, and a resolution in writing approved in writing by a majority of the members is taken to be a decision of the ACH Council made at a meeting of the ACH Council.

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(2) The ACH Council may, if it thinks fit, transact its business at a meeting at which members, or some members, participate by telephone or other electronic means, but only if a member who speaks on a matter before the meeting can be heard by the other members.

(3) A Chairperson and each other member have the same voting rights as they have at an ordinary meeting of the ACH Council for—

(a) the approval of a resolution under subsection (1), or

(b) a meeting held in accordance with subsection (2).

(4) A resolution approved under subsection (1) must be recorded in the minutes of the meetings of the ACH Council.

(5) Papers may be circulated among the members for subsection (1) by electronic means.

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Schedule 2 Savings, transitional and other provisions

Part 1 General

1 Regulations

(1) The regulations may contain provisions of a savings or transitional nature consequent on the commencement of—

(a) a provision of this Act, or

(b) a provision amending this Act.

(2) A savings or transitional provision consequent on the commencement of a provision must not be made more than 2 years after that commencement.

(3) A savings or transitional provision made consequent on the commencement of a provision is repealed 2 years after that commencement.

(4) A savings or transitional provision made consequent on the commencement of a provision may take effect before that commencement but not before—

(a) for a provision of this Act, the date of assent to this Act, or

(b) for a provision amending this Act, the date of assent to the amending Act.

(5) A savings or transitional provision taking effect before its publication on the NSW legislation website does not—

(a) affect the rights of a person existing before that publication in a way prejudicial to the person, or

(b) impose liabilities on a person for anything done or omitted to be done before that publication.

(6) In this section—

person does not include the State or an authority of the State.

Part 2 Provisions consequent on enactment of this Act

2 Definition

In this Part—

commencement means the commencement of this Act.

3 Former Aboriginal places under National Parks and Wildlife Act 1974

From commencement, a place that was, immediately before commencement, an Aboriginal place under the *National Parks and Wildlife Act 1974*, section 84, is taken to be an Aboriginal place for this Act.

4 Consultation agreements

From commencement, for a lease under the *National Parks and Wildlife Act 1974* entered into with Aboriginal owners under that Act that is in force, the Aboriginal owners are taken to be the local ACH service in relation to the land to which the lease applies on commencement, subject to section 23 of this Act.

5 Transfer of Register of Aboriginal Owners from Aboriginal Land Rights Act 1983

The Register of Aboriginal Owners established and kept under the *Aboriginal Land Rights Act 1983*, section 170 before its repeal by this Act is taken to have been established under this Act, section 185.

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Schedule 3 Dictionary

section 5

Aboriginal ancestral remains—see section 6, definition of ***Aboriginal cultural heritage***, paragraph (b)(iv).

Aboriginal cultural heritage—see section 6.

Aboriginal inspector means a person appointed under section 195(1).

Aboriginal Land Council has the same meaning as in the *Aboriginal Land Rights Act 1983*.

Aboriginal object—see section 6, definition of ***Aboriginal cultural heritage***, paragraph (b)(ii).

Aboriginal party, for Part 6—see section 77.

Aboriginal person means a person who—

(a) is a member of the Aboriginal race of Australia, and

(b) identifies as an Aboriginal person, and

(c) is accepted by the Aboriginal community as an Aboriginal person.

Aboriginal place—see section 6, definition of ***Aboriginal cultural heritage***, paragraph (b)(i).

Aboriginal tradition—

(a) means the living, historical and traditional observances, practices, customs, beliefs, values, knowledge and skills of the Aboriginal people of the State generally, or of a particular group or community of Aboriginal people of the State, and

(b) includes the observances, practices, customs, beliefs, values, knowledge and skills relating to particular persons, areas, objects or relationships.

ACH Council means the Aboriginal Cultural Heritage Council constituted under section 13(1).

ACH Directory means the Aboriginal Cultural Heritage Directory established and maintained under section 174(1).

ACH impact statement, for Part 6—see section 77.

ACH management plan—see section 102.

ACH permit, for Part 6—see section 77.

ACH protection agreement—see section 169(1).

application, for Part 4—see section 51.

application area, for Part 4—see section 51.

appointed member, for Schedule 1—see Schedule 1, section 1.

approved form means a form approved under section 256.

approved or authorised ACH management plan means an ACH management plan—

(a) approved under section 118(1)(b)(i), or

(b) authorised under section 128(1)(b)(i).

area means an area of land.

Australian Museum Trust means the Australian Museum Trust constituted under the *Australian Museum Trust Act 1975*.

CATSI Act, for Part 2—see section 12.

CATSI Act corporation, for Part 2—see section 12.

Chairperson, for Schedule 1—see Schedule 1, section 1.

committee, for Part 2—see section 12.

consult, for Part 6—see section 77.

consultation guidelines—see section 243(a).

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Corporations Act corporation, for Part 2—see section 12.

Court, for Part 9, Division 3—see section 184.

Crown land has the same meaning as in the *Crown Land Management Act 2016*.

cultural landscape—see section 6, definition of ***Aboriginal cultural heritage***, paragraph (b)(iii).

culturally sensitive information means information that, in accordance with Aboriginal tradition, is information that is not to be shared with people who are not the knowledge holders for the Aboriginal cultural heritage to which the information relates.

custodian, for Part 3—see section 33.

Department means the Department of Premier and Cabinet.

dwelling, for Part 10—see section 191.

each knowledge holder, in relation to an area or a part of an area, means each person who is identified as a knowledge holder for the area or a part of the area, after reasonable steps have been taken to identify the knowledge holders for the area in accordance with the knowledge holder guidelines.

electronic means includes—

(a) an electronic database or document management system, and

(b) another means by which a document can be accessed electronically.

entity includes a person and an unincorporated body.

entry warrant, for Part 10—see section 191.

function includes a power, authority or duty, and ***exercise*** a function includes perform a duty.

guidelines means guidelines made under Part 12, Division 5.

harm, in relation to Aboriginal cultural heritage—see section 67.

identity card, for Part 10—see section 191.

ILUA means an indigenous land use agreement registered on the Register of Indigenous Land Use Agreements established and maintained under the Native Title Act, Part 8A.

informed consent, for Part 6—see section 77.

inspection purposes, for Part 10—see section 191.

inspector—see section 191.

instrument means the following—

(a) an ACH permit,

(b) an approved or authorised ACH management plan,

(c) a protected area declaration,

(d) a Part 7 order.

intangible Aboriginal cultural heritage means practices, representations, expressions, beliefs, knowledge or skills comprising Aboriginal cultural heritage, including intellectual creation or innovation of Aboriginal people based on or derived from Aboriginal cultural heritage, but does not include—

(a) Aboriginal objects, or

(b) Aboriginal ancestral remains, or

(c) any other tangible materials comprising Aboriginal cultural heritage.

interested Aboriginal party, for Part 6—see section 77.

knowledge holder—

(a) in relation to an area, means an Aboriginal person who—

(i) in accordance with Aboriginal tradition, holds particular knowledge about the Aboriginal cultural heritage of the area, and

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(ii) has traditional rights, interests and responsibilities in relation to Aboriginal places located in, or Aboriginal objects or Aboriginal ancestral remains located in or reasonably believed to have originated from, the area, and

(b) in relation to Aboriginal cultural heritage, means an Aboriginal person who—

(i) in accordance with Aboriginal tradition, holds particular knowledge about the Aboriginal cultural heritage, and

(ii) has traditional rights, interests and responsibilities in relation to the Aboriginal cultural heritage.

knowledge holder guidelines—see section 243(b).

land means—

(a) all land within the limits of the State, and

(b) coastal waters of the State, within the meaning of the *Interpretation Act 1987*, Part 10.

landholder means a person who is the owner of land or who, whether by reason of ownership or otherwise, is in lawful occupation or possession, or has lawful management or control, of land.

Local Aboriginal Land Council has the same meaning as in Aboriginal Land Rights Act 1983.

local ACH service, for an area, means the entity designated under section 23 as the local Aboriginal cultural heritage service to provide local Aboriginal cultural heritage service functions for the area under Part 2, Division 3.

local ACH service (fees) guidelines—see section 243(c).

local ACH service functions, in relation to a local ACH service, means the functions set out in section 29.

material, in relation to harm to Aboriginal cultural heritage—see section 68(2).

member means a member of the ACH Council.

Minister means the Minister responsible for administering the *Aboriginal Land Rights Act 1983*.

Native Title Act means the *Native Title Act 1993* of the Commonwealth.

native title party, in relation to an area, means—

(a) a registered native title body corporate for the area, or

(b) a registered native title claimant for the area, or

(c) a person who was a registered native title body corporate for the area or a registered native title claimant for the area but—

(i) under an ILUA, has surrendered their native title rights and interests in relation to the area, or

(ii) whose native title rights and interests in relation to the area have been compulsorily acquired or otherwise been extinguished, or

(d) if there is a registered ILUA under the Native Title Act for the area—the Aboriginal community that is a party to the ILUA.

native title representative body means—

(a) a body recognised as a representative body under the Native Title Act, section 203AD, or

(b) a person or body funded under the Native Title Act, section 203FE to perform all, or specified, functions of a body referred to in paragraph (a).

native title rights and interests has the same meaning as in the Native Title Act, section 223.

new information about Aboriginal cultural heritage, for Part 7—see section 143.

New South Wales Aboriginal Land Council has the same meaning as in the *Aboriginal Land Rights Act 1983*.

occupier—

(a) in relation to land, means a person who is, or is entitled to be, in occupation or control of the land, whether or not the person is a landholder of the land, and

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(b) in relation to a place, means a person who has, or appears to have, control or management of the place, and

(c) in relation to a vehicle, means a person who is, or appears to be, in charge of the vehicle.

officer, for Part 11, Division 2—see section 223.

organisation, for Part 3—see section 33.

outstanding significance, for Part 4—see section 51.

Part 7 order means—

(a) a stop activity order, or

(b) a prohibition order, or

(c) a remediation order.

parties, for Part 6—see section 77.

persons to be consulted, for Part 6—see section 77.

persons to be notified, for Part 6—see section 77.

photograph, for Part 10—see section 191.

prescribed means prescribed by the regulations.

prescribed public authority, for Part 3, Division 3—see section 43.

prohibition order means an order given under Part 7, Division 3.

proponent, for Part 6—see section 77.

proposed activity, for Part 6—see section 77.

protected area means an area declared as a protected area by declaration under section 63(1).

protected area declaration means a declaration made under Part 4, Division 4.

protected area declaration guidelines—see section 243(d).

public notice means a notice published under section 237.

reasonably suspects, for Part 10—see section 191.

Register of Aboriginal Owners means the Register of Aboriginal Owners established under Part 9, Division 3.

registered native title body corporate has the same meaning as in the Native Title Act.

registered native title claimant has the same meaning as in the Native Title Act.

related agreement—see section 77.

remediate, for Part 7—see section 143.

remediation order means an order given under Part 7, Division 4.

secret or sacred object means an Aboriginal object that is secret or sacred to an Aboriginal person, group or community in accordance with Aboriginal tradition.

Secretary means the Secretary of the Department.

serious, in relation to harm to Aboriginal cultural heritage—see section 68(1).

specified, in relation to an instrument or another document, means specified in the instrument or document, as is relevant.

State significance—see section 77.

State significance guidelines—see section 243(e).

stop activity order means an order given under Part 7, Division 2.

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thing relevant to an offence, for Part 10—see section 191.

tier 1 activity—see section 77.

tier 2 activity—see section 77.

traditional rights, interests and responsibilities, in relation to an Aboriginal person, group or community, means the rights, interests and responsibilities that the person, group or community has in accordance with Aboriginal tradition.

under includes the following—

(a) by,

(b) for the purposes of,

(c) in accordance with,

(d) within the meaning of.

vehicle has the same meaning ***motor vehicle*** has in the *Road Transport Act 2013*.

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Schedule 4 Amendment of Acts and another instrument

section 258

4.1 Aboriginal Land Rights Act 1983 No 42

[1] Section 4 Definitions

Omit the definition of ***Register of Aboriginal Owners*** from section 4(1). Insert instead—

> ***Register of Aboriginal Owners*** means the Register of Aboriginal Owners established under the *Aboriginal Cultural Heritage (Culture is Identity) Act 2022*, Part 9, Division 3.

[2] Section 52 Functions of Local Aboriginal Land Councils

Omit ", subject to any other law" from section 52(4)(a).

Insert instead "in accordance with the *Aboriginal Cultural Heritage (Culture is Identity) Act 2022*".

[3] Section 165 Functions of Registrar

Omit "and the Register of Aboriginal Owners" from section 165(b).

[4] Part 9, Division 3 Register of Aboriginal Owners

Omit the Division.

4.2 Coroners Act 2009 No 41

Section 89A

Insert after section 89—

89A Investigations and Aboriginal ancestral remains

(1) If a coroner investigating a death believes the body is, or is likely to be, Aboriginal ancestral remains, the coroner must notify the ACH Council.

(2) In this section—

Aboriginal ancestral remains has the same meaning as in the *Aboriginal Cultural Heritage (Culture is Identity) Act 2022*.

ACH Council has the same meaning as in the *Aboriginal Cultural Heritage (Culture is Identity) Act 2022*.

4.3 Heritage Act 1977 No 136

Section 4B

Insert after section 4A—

4B Interaction with Aboriginal Cultural Heritage (Culture is Identity) Act 2022

If a matter to which this Act applies relates to Aboriginal cultural heritage, within the meaning of the *Aboriginal Cultural Heritage (Culture is Identity) Act 2022*, the Aboriginal Cultural Heritage (Culture is Identity) Act 2022 prevails to the extent of any inconsistency.

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4.4 Law Enforcement (Powers and Responsibilities) Act 2002 No 103

Schedule 2 Search warrants under other Acts

Insert in alphabetical order in the Schedule—

Aboriginal Cultural Heritage (Culture is Identity) Act 2022, section 212

4.5 National Parks and Wildlife Act 1974 No 80

[1] Section 5 Definitions

Omit section 5(1), definitions of ***Aboriginal heritage impact permit***, ***Aboriginal object***, ***Aboriginal place*** and ***Aboriginal remains***.

[2] Section 5(1), definition "Aboriginal owners", note

Omit "Division 3 of Part 9 of that Act". Insert instead "the *Aboriginal Cultural Heritage (Culture is Identity) Act 2022*, Part 9, Division 3".

[3] Section 8 Miscellaneous functions of Secretary

Omit section 8(4)–(5).

[4] Section 8(6)

Omit "Aboriginal places,".

[5] Section 12 Powers and functions of Service

Omit section 12(d).

[6] Part 3, Division 3 Aboriginal Cultural Heritage Advisory Committee

Omit the Division.

[7] Part 6 Aboriginal objects and Aboriginal places

Omit the Part.

[8] Section 91L Directions for remedial work relating to harm to Aboriginal objects and places

Omit the section.

[9] Section 91M Persons to whom directions may be given

Omit "or 91L" from section 91M(a).

[10] Section 91N Other ancillary actions that may be directed to be carried out

Omit section 91N(g), (l) and (m).

[11] Section 91O Other person may carry out remediation work if failure to comply with direction

Omit "or 91L" from section 91O(1).

[12] Section 145 Acquisition of land for reservation or other purposes

Omit "or of preserving, protecting and preventing damage to Aboriginal objects or Aboriginal places".

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[13] Section 151G Reference of certain proposed leases and licences for advice

Omit section 151G(2)

[14] Section 151G(4)

Omit “, the Aboriginal Cultural Heritage Advisory Committee”.

[15] Section 154 Regulations

Omit “, advisory committees or the Aboriginal Cultural Heritage Advisory Committee” wherever occurring.

Insert instead “or advisory committees”.

[16] Section 154(k)

Omit the paragraph.

[17] Section 161 Restriction on release of certain information

Omit section 161(1). Insert instead—

(1) The Secretary may, by notice in writing, advise the Minister that the Secretary is of the opinion that specified documents in the possession of the Service relating to the location of threatened species, populations or ecological communities should be withheld in the public interest.

[18] Section 161(3)

Omit the subsection.

[19] Section 175B Liability of directors etc for offences by corporation—offences attracting executive liability

Omit section 175B(1)(a)–(f).

[20] Section 188F Public register

Omit section 188F(2)(a)–(f).

[21] Schedule 9 The Aboriginal Cultural Heritage Advisory Committee

Omit the Schedule.

4.6 National Parks and Wildlife Regulation 2019

Part 5 Aboriginal land, objects and places and exemptions for Aboriginal people

Omit the Part.

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