

Implementation Group

Aboriginal Heritage Legislation

25 August 2023

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Aboriginal Heritage Legislation Amendment and Repeal Bill 2023

- The Aboriginal Heritage Legislation Amendment and Repeal Bill 2023 (Bill) is currently before the Parliament and drafting of regulations to support the Bill is now well advanced.
- An overview of the likely content of those regulations is set out in these slides.
- This includes:
 - Timeframes for every step of the section 18 process;
 - Committee procedures;
 - Transitional regulations;
 - Fees.
- New policy will support the amended 1972 Act, including:
 - Processes for new information; and
 - Guidance to support Section 18 applications.
- **This content of this presentation is for engagement purposes and is subject to change.**

New regulations



Committee recommendations:

- An initial period of 70 days for the Aboriginal Cultural Heritage Committee (Committee) to make a recommendation to the Minister.
- An extension of up to 30 days where further time is required for the Committee to make a considered recommendation to the Minister.
- A requirement for further information to be provided to the Committee within 14 days.



Minister's decisions:

- A requirement for the Minister to make a decision 28 days, or such longer time as is practicable after receiving the Committee's recommendation.
- A requirement for the Minister to be notified within 14 days if the landowner becomes aware of new information about an Aboriginal site.
- A requirement for the Minister to make a decision regarding new information within 28 days, or such longer time as is practicable after it is received.



Application for review to the State Administrative Tribunal (SAT):

- 28 days within which to exercise a right of review to the SAT.
- The timeframe within which the SAT must make a decision is currently subject to consultation with the President of SAT.



Premier's call-in power to the SAT:

- 14-28 days for the Premier to direct the SAT to refer a matter to him for determination.
- 28 days to provide submissions to the Premier – or such longer period as approved by the Premier.
- The timeframe within which the SAT must make recommendations to the Premier is currently subject to consultation with the President of SAT.

TIMEFRAMES

New regulations



PRESCRIBED ABORIGINAL ORGS

In areas where native title has not been determined or has been surrendered or extinguished, the regulations enable the **prescribing of specific Aboriginal organisations**.

DPLH will consult with the relevant Aboriginal organisations.



COMMITTEE PROCEDURES

Proposed new section 30 of the Act, and subject to the regulations, the **Committee may determine its own procedures**.

Regulations in this regard are likely to be **closely modelled on Part 2 of the Aboriginal Cultural Heritage Regulations**, subject to any necessary changes.



TRANSITIONAL REGULATIONS

Transitional regulations will address a range of matters including, for example:

1. Ensuring that any designated LACHS can, after repeal day, recover fees for services that they provided before repeal day;
2. Defining *custodian* to assist the Committee with any Aboriginal ancestral remains, or secret or sacred objects, held by the ACH Council immediately before repeal day;
3. Ensuring that specified things done under the 2021 Act in relation to protected area orders, that do not need to be transitioned, cease to have effect.

New policy to support the amended 1972 Act



NEW INFORMATION GUIDANCE

An owner will be required to **notify the Minister** if they become aware of any **'new information'** about Aboriginal cultural heritage on land which is the subject of Section 18 consent.

This will likely be through an **online portal**. The intent is to capture information relevant to the heritage significance of the land only. There will be no further prescription in regulations.

The reporting of new information to the Minister will provide the opportunity for the Minister to **revisit their consent decision**.

Timelines will be explicit.



CONSULTATION TO SUPPORT SECTION 18

Consultation with traditional owners will remain essential for proponents in developing their section 18 applications. **Policy** will provide a guide for both proponents and traditional owners to support this.

The policy will include sections on:

1. Legislative context
2. Consultation guiding principles
3. When consultation should occur and purpose of consultation
4. Consultation standards
5. Consultation framework
6. Evidence of consultation

Fee structure

Key components

- 1 **Flat fee per s16 or s18 application**
< \$250, payable by all proponents
- 2 **Variable fee per number of sites and places involved in the application**
Nominated amount per site/place, with exemptions for:
 - Small businesses
 - Not-for-profits
 - Aboriginal corporations
- 3 **Fees will be reviewed after set period**
Review clause will be included in Regulations
- 4 **Power to waive or reduce fees**
To be exercised by the CEO at their discretion
Will include a power to extend payment timeframes

GOVERNMENT ABORIGINAL CULTURAL HERITAGE SURVEY PROGRAM

AIMS

To undertake heritage surveys of unsurveyed, high priority areas of the State, with the consent of landowners.
A program and prioritisation framework will be designed and developed collaboratively with Traditional Owners and Aboriginal cultural heritage groups.
The capability building program will complement the survey program.

INTENT AND SCOPE

- A 10-year Government program staffed and managed by DPLH.
- Identifying the location of Aboriginal sites and heritage places so that they may be recorded, protected, avoided, or preparations may be made to lodge applications to use the land where such places are located.
- Revisiting Aboriginal sites and known heritage places to accurately and precisely remap their boundaries.
- Identifying locations where it can be confirmed that Aboriginal heritage sites do not exist.

ELIGIBILITY

The Survey program will only be available to

- native title parties;
- land users (individuals, small business or not-for-profit organisations); and
- Government-initiated Strategic Surveys.

Surveys required for the purposes of mining, extractive industries and commercial and industrial subdivisions are the responsibility of industry and will not be funded.

ASSUMPTIONS, DEPENDENCIES AND RISK

Assumptions

- All information gathered under a survey will be made available to DPLH.
- Culturally sensitive information will continue to be managed in accordance with DPLH policies.

Dependencies and Risks

- Appropriate access to Traditional Owners, Aboriginal participants, and heritage professionals.
- In the case where the survey request is from a native title party, the relevant landowner providing access to the land for the purpose of the survey.

IMPLEMENTATION CONSIDERATIONS

- DPLH will build a suitably skilled team of all supporting staff needed to assist Traditional Owners with the survey (anthropologists, archeologists etc.).
- Noting skill shortages in WA, there may be a need to develop a graduate or training program to upskill staff or inject more skilled professionals into the industry.
- Contractors may be required in early years of the program while a suitably skilled team is built by DPLH.
- A mix of survey methods may be undertaken, including avoidance surveys and more detailed surveys that allow for assessment under Section 5.
- Case by case assessment and decision by Government as to which of the two methods are to be used.

NEXT STEPS

1. Develop a survey prioritisation framework and a rolling annual program to review and prioritise proactive surveys.
2. Establish criteria for selection and prioritising reactive surveys, in response to applicants.
3. Develop best practice guidance and process for engaging Aboriginal people in survey design and implementation.

ABORIGINAL HERITAGE CAPACITY BUILDING PROGRAM

AIMS

Work in partnership with Aboriginal organisations to build governance and leadership capacity to:

1. respond to heritage engagement, consultation and service delivery needs of government and industry;
2. support training and cultural heritage education opportunities, particularly for young people.

INTENT AND SCOPE

The Funding Program is designed to ensure:

- Protection and preservation of Aboriginal cultural heritage
- Resourcing capacity and economic growth
- Statutory compliance with the *Aboriginal Heritage Act 1972*.

Funding can be used to:

- Build capacity and capability to provide heritage services; and
- Bolster expertise and skills development in the protection and preservation of Aboriginal cultural heritage.

ELIGIBILITY

For the 2023/24 period, eligibility will include:

- Readiness Grant recipients (36)
- Established LACHS (3)
- Native Title parties as defined under the *Aboriginal Heritage Act 1972*.

From 2024/25, eligibility will include:

- Native Title parties as defined under the *Aboriginal Heritage Act 1972*.
- Prescribed Aboriginal Organisations.

PROGRAM STREAMS

| Stream | Activities |
|--|---|
| Aboriginal Cultural Heritage Services (recurrent) | <ul style="list-style-type: none"> • Service delivery under the Act (s.16 and s.18 processes, identification of ACH relevant to current s.18 consents) • Service model development and resourcing, including capability to proactively identify ACH. • Management of ACH including advisory services, Traditional Owner liaison, government/industry liaison. • Appointment of staff to deliver heritage services and provide continuity of service delivery. |
| Heritage Capacity Building Funding Stream (time limited) | <ul style="list-style-type: none"> • Business planning and grant administration support for Native Title groups with limited revenue. • Equipment, software, and human resources development including training, leadership, good practice models. |

NEXT STEPS AND IMPLEMENTATION CONSIDERATIONS

| Action | Lead | Mechanism |
|--|----------|---|
| Consultation with traditional owners on the intent, scope, and key features of the funding stream | Minister | Targeted and Aboriginal Cultural Heritage Council |
| Consultation with industry stakeholders on the intent, scope, and key features of the funding stream | Minister | Targeted |
| Delivery of Readiness Grants and LACHS funds | DPLH | Existing DPLH process |
| 2023/24 application process established based on feedback from stakeholders. | DPLH | Procurement process |