

# Charter

## 1. Definitions

In this Terms of Reference:

“**Act**” means the *Aboriginal Affairs Planning Authority Act 1972*.

“**Chairman**” in this Charter means the Co-Chairs of the Aboriginal Advisory Council.

“**Committee**” means the Aboriginal Affairs Co-ordinating Committee.

“**Council**” means the Aboriginal Advisory Council.

“**Department**” means the Western Australian Department of the Premier and Cabinet.

“**member**” means a member of the Council under section 18(2).

“**Minister**” means the Minister for Aboriginal Affairs to whom administration of the *Aboriginal Affairs Planning Authority Act 1972* is committed.

“**person of Aboriginal descent**” means any person living in Western Australia, wholly or partly descended from the original inhabitants of Australia, who claims to be Aboriginal and who is accepted as such in the community in which they live.

## 2. Preamble

This Charter sets out the role, responsibilities, structure and processes for the Aboriginal Advisory Council (the Council). Under section 18(4) of the Act, the Council is able to determine its own procedures.

The Charter has been developed by members of the Council in partnership with the Department of the Premier and Cabinet (DPC), representing the Western Australian State Government, to define and guide their work as equal partners in the pursuit of Aboriginal equality, wellbeing and recognition.

As such, the State Government acknowledges Aboriginal people as the first custodians of the lands and seas of Western Australia, and pays tribute to past and present Aboriginal Elders, and respect to Aboriginal communities of today.

By negotiating the terms of engagement outlined in the Charter, the Council and DPC recognise the right of Aboriginal people to have a voice, participate in, and co-lead government decision-making in matters which affect them through representatives chosen by their communities.

The Council membership is made up of Aboriginal Western Australian leaders reflecting a diversity of regional, gender, age and institutional backgrounds, to advance the formal partnership between Aboriginal communities and the Government of Western Australia.

They will lead the way in decision-making and dialogue regarding issues affecting the recognition and rights, leadership and vision, expertise, well-being and integrity of Aboriginal communities.

## 3. Roles and Responsibilities

- (a) In carrying out its role and responsibilities and engagement with Aboriginal communities, the Government of Western Australia and others, the Council will be guided by the following values and principles:
  - (i) Recognition – respect the prior and continuous occupation of Aboriginal people, their ongoing role as custodians of the lands and seas of Western Australia, and the uniqueness of their culture.

- (ii) Culture, country and heritage – respect the diversity of culture, language, country and history of its members and Aboriginal communities across Western Australia.
  - (iii) Aboriginal-controlled and led – recognise Aboriginal people as key decision makers in issues that affect their rights, prosperity and wellbeing.
  - (iv) Integrity – demonstrate honesty, fairness and transparency, and expect the same from its partners.
  - (v) Accountability – make and keep agreements internally, be accountable to Aboriginal communities, and hold our partners, including service providers and policymakers, to account.
  - (vi) Positive outcomes – commitment to taking action that achieves outcomes and solutions, which advance the rights and wellbeing of Aboriginal people.
  - (vii) Knowledge-based – driven by Aboriginal expertise including lived experience, traditional law and culture, and scientific evidence and best practices.
  - (viii) Collaboration – work collaboratively with partners and peers, including other relevant coordination and governance mechanisms.
  - (ix) Place-based – represent and engage with Aboriginal communities across Western Australia.
- (b) The role of the Council is to approve the purpose, values, and strategic direction of the Council and includes:
- (i) co-designing a community engagement framework – that is consistent with WA Aboriginal cultural governance systems and practices – for developing an enduring partnership mechanism, developed and constituted by Aboriginal people;
  - (ii) providing stewardship and direction to the Government of Australia, and the Government of Western Australia, regarding the Closing the Gap Refresh including its objectives, work plan, and the development of future outcomes, indicators and targets; and
  - (iii) undertaking dialogue between Aboriginal communities and the State Government regarding Aboriginal recognition, Aboriginal and non-Aboriginal reconciliation, and future settlement/s regarding Aboriginal interests in Western Australia.

#### 4. Ethical Standards and Duties

- (a) **Code of Conduct** – Each member shall abide by the terms of the Council's Code of Conduct and is expected to uphold the ethical standards and corporate behaviour described in the Code.
- (b) **Duties** – The Council will operate in a manner reflecting the values of the Council and in accordance with the Act and all other applicable laws and regulations.
- (c) **Conflicts of interest** – Each member has a fiduciary and statutory duty not to place themselves in a position which gives rise to, or is perceived to give rise to, a real or substantial possibility of conflict, whether it be a conflict of interest or conflict of duties.

In accordance with the Council's Conflicts of Interest Policy, each member is required:

- (a) to ensure that the Council is notified (whether by formal standing notice or notification to the Chairman, immediately on becoming aware) of any such conflicts of interest; and
- (b) if any matter is or likely to be brought before the Council which could give rise to such a conflict of interest, then the member:
  - (i) shall disclose this to the Council;

- (ii) shall continue to receive Council papers or other information which relates to the matter which is the subject of the conflict of interest, unless the Chairman determines that he or she shall not receive any or all of those documents;
- (iii) shall withdraw from any part of a Council meeting for the duration of any discussion; and
- (iv) not vote on the matter, unless a majority of directors who do not have an interest in the matter resolve that the disclosed interest should not disqualify the member.

## **5. The Role of the Department of the Premier and Cabinet**

The Department of the Premier and Cabinet's (DPC) Aboriginal Policy and Coordination Unit is to provide a Secretariat to the Council, managed by DPC's Director Aboriginal Policy and Coordination Unit.

The key responsibilities of the Director, with support from the Secretariat, are to:

- (a) manage and administer the day-to-day operations of the Council and its sub-committees in accordance with the purpose, values, strategy, and work plans approved by the Council;
- (b) ensure compliance with relevant government and legislative requirements; and
- (c) ensure the Council is fully informed on key issues relating to the business of the Council and its sub-committees.

## **6. Composition, Size and Structure of the Board**

The Minister<sup>1</sup> is responsible for determining an appropriate mix of skills, knowledge, experience, expertise and diversity on the Council, to ensure Aboriginal people have a voice, participate in, and co-lead government decision-making in matters which affect them through representatives chosen by their communities.

## **7. Appointment and Responsibilities of Chairman**

- (a) Under the Act the Council is to appoint a Chairman in accordance with section 18(3).
- (b) The responsibilities of the Chairman include:
  - (i) promoting constructive and effective relations between the Council, the Aboriginal community and all levels of government;
  - (ii) facilitating the effective contribution of all members; and
  - (iii) leading the Council.
- (c) The Chairman is to ensure the efficient organisation and conduct of the Council's function.

## **8. Term of Office**

- (a) A member holds office for such term as determined by the Minister and specified in the member's instrument of appointment.
- (b) A member who ceases to hold office, unless otherwise disqualified, is eligible for reappointment, but cannot hold office for more than three consecutive years.
- (c) A member may at any time resign from office by written notice given to the Minister.

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<sup>1</sup> Under the current State Government, the Minister refers to the Minister for Aboriginal Affairs

## 9. Vacancies

The office of a member becomes vacant if he or she –

- (a) dies; or
- (b) resigns the office by written notice given to the Minister; or
- (c) is, according to the *Interpretation Act 1984* section 13D, a bankrupt or a person whose affairs are under insolvency laws; or
- (d) is convicted of an offence under the Act; or
- (e) is convicted of an offence under a written law, or a law of the Commonwealth, another State or a Territory, the maximum penalty for which is or includes imprisonment.

## 10. Leave of absence

- (a) The Chairman may, by written notice to a member, grant the member leave to be absent for no more than two consecutive meetings.
- (b) In the case of the Chairman, the Minister may, by written notice, grant the Chairman leave to be absent for no more than two consecutive meetings.

## 11. Remuneration and allowances

Section 18(6) of the Act provides that members of the Council are entitled to be paid such remuneration and travelling and other allowances as determined by the Minister, on the recommendation of the Public Sector Commission.

## 12. Validity of proceedings

- (a) A vacancy among the membership shall not invalidate the proceedings of any meeting.
- (b) All acts done at any meeting shall, notwithstanding it is afterwards discovered that there was some defect in the appointment or qualification of a person purporting to be a member, be as valid as if that defect had not existed.

## 13. Council meetings

- (a) In relation to section 7, and the requirement for the Chairman to be chosen at the first meeting of the Council, the Secretariat will convene the first meeting, with subsequent meetings to be held at times and places determined by the Council.
- (b) The Council is to meet at least four times per year.
- (c) A special meeting of the Council may be convened by the Chairman at any time, subject to there being a quorum for such meeting.
- (d) A yearly calendar of Council meeting dates will be prepared by the Secretariat for endorsement by the members.

## 14. Quorum

- (a) Where a member is unable to attend a meeting, they should notify the Chairman as soon as possible prior to the meeting.
- (b) To constitute a meeting, there must be not less than one-half of the members present.

## 15. Presiding member

- (a) The Chairman is to preside at a meeting of the Council.
- (b) If the Chairman is absent from a meeting of the Council, the Chairman for that meeting is to be chosen by and from amongst the remaining members of the Council.

## 16. Procedure at meetings

The Council is to determine its own meeting procedures to the extent that they are not fixed by the Act. The procedures for the Council are as follows:

### (a) Holding meetings remotely

The presence of a person at a meeting of the Council need not be by attendance in person, but may be by that person and each other person at the meeting being simultaneously in contact by telephone or other means of instantaneous communication.

### (b) Voting

- (i) Each member, including the member presiding, has a deliberative vote only and, subject to the requirement that a quorum is present, all questions shall be decided by a majority.
- (ii) Where a majority cannot be reached, the dissenting member/s may request their views be recorded in the minutes and those views will also be presented to the Minister by the Chairman.

### (c) Resolution without meeting

A resolution in writing signed, or otherwise assented to in writing, by each member has the same effect as if it had been passed at a meeting of the Council.

### (d) Minutes to be kept

- (i) Minutes of each meeting are to provide evidence of the Council's decisions and actions, including the delegation of tasks arising from Council meetings.
- (ii) A record of the proceedings of every meeting shall be kept in such manner as the Minister may direct or approve, and shall be certified as correct by the member presiding at that or the next succeeding meeting.
- (iii) The draft minutes of the previous meeting will be presented in the next meeting agenda papers for ratification by the Council.
- (iv) A separate action sheet will be provided to all members within one week after the Council meeting, as far as is practicable.
- (v) A Communique from each meeting, approved by the Chairman, will be made publicly available on DPC's website, which outlines the high-level discussion and any decisions made by the Council.

## 17. Conflicts of Interest

- (a) A member who has a material pecuniary interest in a matter being considered or about to be considered by the Council must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Council.
- (b) Where an actual or perceived conflict of interest is declared, the declaration will be recorded in the minutes of that meeting and entered in the Council's Conflicts of Interest Register.
- (c) Where the Chairman determines that a member has an undisclosed interest in any matter before the meeting for consideration, that member may take part in the consideration or discussion, but shall not vote.

- (d) Members are required to represent the interests of their constituents and should refrain from raising issues of a personal nature at meetings. Such issues can be raised through the usual government and/or departmental channels.

### **18. Sub Committees**

- (a) By way of a majority decision, the Council may establish sub-committees from time to time to assist it in the performance of its functions.
- (b) The Council will establish a specific charter, with clear terms of reference, for each sub-committee it establishes.
- (c) A sub-committee must include at least one member of the Council, who is to be the Chairpersons for that sub-committee.
- (d) Significant issues are to be reported to the Council for discussion and decision to ensure the decision making responsibilities of the full Council are not compromised by the activities of any sub-committee.
- (e) The Council, not the sub-committee, is accountable for all decisions.

### **19. Confidentiality**

It is important for Council members to feel free to contribute honestly and openly, and there is a level of trust between the members.

- (a) All electronic and written documents are provided to Council members with the expectation that members will distribute these documents responsibly and only for obtaining feedback from the groups they represent.
- (b) No views, documents or information presented during, or outside of, Council meetings are to be made available to the media without the explicit agreement of the Chairman.

### **20. Code of Conduct**

Members appointed to the Council are to act in accordance with its Code of Conduct which is based on, and is consistent with, the Public Sector Commissioner's Instruction No. 7 – Code of Ethics and Commissioner's Instruction No. 8 – Codes of conduct and integrity training.

### **21. Communication Protocol**

- (a) Public comment includes comment made in circumstances where it is reasonable to expect that the comment may reach the wider community. This may include comments made on the internet, in speeches, on the radio, or in the press.
- (b) Members will not be required to, and are not authorised to, make public comments concerning the Council or the Department. This is the role of the Minister or the Director General.
- (c) Members who receive requests or queries from the media are to advise the Chairman of the request who will then discuss the request with the Minister and/or the Director General before any decision is made as to making a public comment and by whom.

## 22. Review of Terms of Reference and Charter

The terms of reference and the Charter for the Council will be reviewed:

- (a) with a change of membership of more than 50% of the members; or
- (b) as agreed by a majority of the members; or
- (c) at least every three years.

## 23. Induction of Members

The Secretariat is responsible for preparing an induction program for new members. This is intended to provide them with information and an understanding of their role as a member of the Council to most effectively add value to the Council.

## 24. Secretariat Support

Secretariat support will be provided to the Council Chairman and members by the Department:

- (a) The secretariat will comprise one or both of the following:
  - (i) a senior level Liaison Officer – to provide advice on policy and governance matters to the Council; and
  - (ii) an Executive Officer to manage the administrative tasks associated with Council meetings.
- (b) The Executive Officer will:
  - (i) advise members of the meeting date by way of a meeting request;
  - (ii) call for agenda items and settle the agenda in consultation with the Chairpersons;
  - (iii) prepare and distribute the agenda and supporting papers for each meeting;
  - (iv) take minutes of each meeting; and
  - (v) coordinate any follow up action as determined in that meeting.

## 25. Queries

Any queries in relation to the Council should be directed to the Chairman or the Secretariat in the first instance.

