The key principle of the Aboriginal Cultural Heritage Act 2021 (the Act) is the recognition of the special interest and central role of Aboriginal people in the protection of Aboriginal Cultural Heritage (ACH) and management of activities that may harm ACH.

Under the Act, tier 3 activities that may harm ACH require an approved or authorised Aboriginal Cultural Heritage management plan (ACH management plan) before they can be undertaken.

What is being Co-designed?
The purpose of this co-design process is to develop an ACH management plan template that meets the requirements under the Act. All ACH management plans submitted to the ACH Council will need to be in accordance with the ACH management plan template.

About this Fact Sheet
This Fact Sheet includes information relevant to the co-design process for the Aboriginal Cultural Heritage management plan template and is designed to include information that will provide relevant context and information relating to the requirements under the Act. Appendix 1 to this document provides all the relevant sections of the Act.

A set of questions to assist with the co-design process are found on page 7 of this fact sheet.
What is an ACH management plan?
Part 6, Division 6 of the Act sets out the process and requirements for ACH management plans. An ACH management plan is a plan for the management of an activity that may harm ACH [s137(1)(a)].

When is an ACH management plan needed?
An approved or authorised ACH management plan is required before the commencement of a tier 3 activity that may harm ACH [s134(1)]. Tier 3 activities are activities involving a moderate to high level of ground disturbance that have the potential to cause harm to ACH.

ACH management plans may also be submitted for tier 2 activities; however, this is not a requirement under the ACH Act. Activity Categories, which will detail whether an activity is either a tier 1, tier 2 or tier 3, are also the subject of the co-design process (see Activity Categories Fact Sheet 1).

The ACH management plan process replaces the Aboriginal Heritage Act 1972 section 18 process that has been used by proponents seeking consent from the Minister to use land containing Aboriginal heritage sites. The process under the new Act mandates consultation with Aboriginal people and gives Aboriginal people the authority to negotiate how activities that may harm ACH should be managed.

Who develops an ACH management plan?
The proponent and each interested Aboriginal party must use best endeavours to reach agreement on an ACH management plan within a period to be specified in regulations [s143].

An interested Aboriginal party is defined under section 135(1) of the Act as:
- the Local Aboriginal Cultural Heritage Service (LACHS), where one exists
- where there is no LACHS, the native title party for the area
- otherwise, the native title representative body for the area.
Fact Sheet 5 - ACH Management Plan Template

What needs to be in an ACH management plan?
Section 137 of the Act specifies what an ACH management plan is to include:

(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 any area that is part of a protected area); and
      (iv) the activity to which the plan relates; and
   (b) identify —
      (i) the Aboriginal cultural heritage located in the area to which the plan relates, as assessed in undertaking a due diligence assessment in relation to the carrying out of the proposed activity, or of which the proponent is otherwise aware in the area; and
      (ii) the characteristics of that Aboriginal cultural heritage of which the proponent is aware;
   and
   (c) include an ACH impact statement in respect of the proposed activity; and
   (d) set out the processes to be followed if, while approval or authorisation of the plan is in effect, a party to the plan becomes aware of new information about Aboriginal cultural heritage in the area to which the plan relates; and
   (e) set out how the proposed activity will be managed, where possible, to avoid, or minimise, the risk of harm being caused to Aboriginal cultural heritage by the activity, including a clear explanation of the steps, if any, that will be taken to avoid, or minimise, that risk; and
   (f) set out the extent to which harm to Aboriginal cultural heritage is authorised; and
   (g) set out any conditions that must be complied with before, during and after the proposed activity is carried out; and
   (h) specify the period for which the plan is to have effect; and
   (i) include or set out the other matters, if any, prescribed for the purposes of this paragraph.
What needs to be in an application for an authorised ACH management plan?
The Act specifies requirements that an ACH management plan will need to demonstrate before it can be submitted to the ACH Council.

Under Part 6, Division 6, Subdivision 3 of the Act, if the proponent and each interested Aboriginal party cannot agree on an ACH management plan, a proponent may apply to the ACH Council for authorisation by the Minister. Under s157 of the Act, an application for authorisation of an ACH management plans 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;
(e) include any 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 143(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, if any, prescribed for the purposes of this paragraph.

What is the process for developing an ACH management plan?

- Proponent undertakes due diligence assessment and confirmation that the activity is tier 3 (or tier 2) activity that may harm ACH.
- Proponent consults with the interested Aboriginal party, or parties.
- Proponent undertakes ACH investigations to identify and obtain understanding of ACH characteristics.
- Proponent gives written notice to each interested Aboriginal party and ACH Council about its intention to reach agreement and enter into ACH management plan.
- Reaching agreement / negotiation of the terms of the ACH management plan between the proponent and the Aboriginal party.
What is the process for approval or authorisation of an ACH management plan?
The proponent and each interested Aboriginal party must use their best endeavours to reach agreement about the terms of an ACH management plan within a period to be specified in the regulations [s143(2)]. Once agreement is reached, an application for the approval of an ACH management plan may be made to the ACH Council [s144]. Consent provided by the interested Aboriginal party must be informed consent [s147].

If parties are unable to agree within the specified period, an application for the authorisation of a proposed ACH management plan may be made to the ACH Council. On receipt of an application, the ACH Council will work with the parties to seek to resolve any issues and to help them reach agreement. If agreement is reached during this time, then the ACH management plan will move into the process for approval by the ACH Council [s161].

If agreement still cannot be reached, the ACH Council will make a recommendation to the Minister on whether an ACH management plan should be authorised and, if so, what ACH management plan. This may include the original or an amended ACH management plan submitted by the proponent, an ACH management plan proposed by the Aboriginal party or the ACH Council’s own ACH management plan [refer to sections 160, 162, 163 and 164].

The Minister must consider the application, recommendation of the ACH Council, and any further information provided in response to a request by the Minister and make a decision whether to authorise the ACH management plan included in the recommendation, authorise another ACH management plan or refuse to authorise any ACH management plans [s165].

The Minister’s decision on an ACH management plan is final and not able to be appealed by any party. As such, all parties are strongly encouraged to reach an agreement prior to making an application for the authorisation of the ACH management plan by the Minister.

Considerations
Below are some of the matters that should be considered for the ACH management plan template:

- An approved (by the ACH Council) or authorised (by the Minister) ACH Management Plan is required before the undertaking of a tier 3 activity which may harm ACH.
- The guidelines should be read in conjunction with the ACH Management Code and knowledge holder and consultation guidelines.
- Prior to entering into negotiations for an ACH management plan with an interested Aboriginal party, a proponent must first:
  - consult with each of the persons to be consulted about the proposed activity [s139]; and
  - identify and obtain an understanding of the characteristics of ACH in area [s141].
- The template will set out minimum standards for the development of an ACH management plan. The size and complexity of an ACH management plan is likely to be impacted by the scale of a project and the amount of information required to be provided by the proponent to the Aboriginal party, including
the proponent’s preferred method and alternative methods for undertaking the activity [s146(2)(a)(i)]. The number of investigations and/or consultations may also be influenced by the scale, particularly geographical area, of the proposed activity. Beyond the minimum standards, it will ultimately be up to the parties to determine the level of information required e.g. project plans, engineering plans.

- The Aboriginal parties will need to provide informed consent, requiring full and proper disclosure by the proponent about the activity [s146], to an agreed ACH management plan and the proponent will need to provide evidence of this consent [s147(2)(c)].
- An ACH management plan should contain the results of the due diligence assessment (undertaken in accordance with the ACH Management Code), impact statement, how the proposed activity will be managed to avoid or minimise the risk of harm, the harm that is authorised, any conditions, and the time period of the ACH management plan. The ACH management plan must not include details of any commercial arrangements between the parties [s137(3)].
- The ACH Council will determine the ACH management plan’s approved form [s147(2)(a)].
- An ACH management plan should be used by the parties to facilitate a meaningful ongoing partnership about the management of ACH.
- The Act sets out principles relating to the management of activities that may harm ACH [s10] and which should be considered in relation to the ACH management plan template, in particular, how to recognise, acknowledge, capture, prioritise, and/or respond to the range of values of the ACH.
Co-design questions
To assist the co-design process for the ACH management plan template, your views are being sought in relation to the following questions:

1. **What needs to be considered and included when developing the ACH impact statement?**

2. **In addition to the items set out in section 137(2), listed on page 2 of this document as well as Appendix 1, is there anything else that could usefully be included in the ACH management plan template?**

3. **Should there be more than one ACH management plan template to account for variations in size/complexity of propose activities or just one template that accommodates the different levels of information required for proposed activities?**

4. **If there is more than one ACH management plan template, how should these variations be accommodated and should additional information be required?**

5. **If only the level of information should change, how would you suggest determining what information is sufficient to take into account the size/complexity of the proposed activity?**
## Appendix 1. Sections of the Act relevant to ACH management plan template

<table>
<thead>
<tr>
<th>Section 10</th>
<th>Principles relating to management of activities that may harm Aboriginal cultural heritage</th>
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<tbody>
<tr>
<td></td>
<td>The principles relating to the management of activities that may harm Aboriginal cultural heritage are as follows —</td>
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<td>(a) it should be recognised that —</td>
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<td>(i) places, objects and landscapes have a range of different values for different individuals, groups or communities, and those values may change for an individual, group or community over time; and</td>
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<td>(ii) those values includes social, spiritual, historical, scientific, economic and aesthetic values;</td>
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<td></td>
<td>(b) the range of different values for places, objects and landscapes held by different individuals, groups or communities, at particular times and over time, should be recognised and respected;</td>
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<td>(c) places and objects exist within landscapes and should be considered in that context;</td>
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<td>(d) as far as practicable, in order to utilise land for the optimum benefit of the people of Western Australia, the values held by Aboriginal people in relation to Aboriginal cultural heritage should be prioritised when managing activities that may harm Aboriginal cultural heritage.</td>
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<tr>
<th>Section 22</th>
<th>Functions of ACH Council</th>
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<td></td>
<td>(1) The ACH Council has the following functions —</td>
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<td>(a) promoting public awareness, understanding and appreciation of Aboriginal cultural heritage in the State;</td>
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<td>(b) promoting the role of Aboriginal people in —</td>
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<td></td>
<td>(i) the recognition, protection, conservation and preservation of Aboriginal cultural heritage; and</td>
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<td></td>
<td>(ii) the management of activities that may harm Aboriginal cultural heritage; and</td>
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<td>(iii) the administration of this Act;</td>
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<td>(c) proactively assisting in the recognition, protection, conservation, preservation and management of Aboriginal cultural heritage, including, if relevant, by developing guidance materials;</td>
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<td></td>
<td>(d) functions under Division 3 Subdivision 2 in relation to the designation of persons as local ACH services for different areas of the State;</td>
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</table>
(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 Part 6 in relation to ACH permits and ACH management plans;

(g) making recommendations relating to prohibition orders and remediation orders under Part 7;

(h) making decisions relating to the endorsement of ACH protection agreements under Part 8;

(i) establishing and maintaining the ACH Directory under Part 9;

(j) providing advice to the Minister as described in subsection (2);

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

(l) other functions, if any, prescribed for the purposes of this paragraph.

(2) The ACH Council must provide advice to the Minister, at the Minister’s request or on its own initiative —

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

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

### Terms used

**ACH impact statement**, in respect of 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;

**tier 1 activity** means an activity involving no, or a minimal level of, ground disturbance that is prescribed for the purpose of this definition;

**tier 2 activity** means an activity involving a low level of ground disturbance that is prescribed for the purpose of this definition;

**tier 3 activity** means an activity involving a moderate to high level of ground disturbance that is prescribed for the purpose of this definition.

### When ACH management plan required

(1) An approved or authorised ACH management plan is required before the commencement of a tier 3 activity that may harm Aboriginal cultural heritage.

(2) An ACH management plan that has been authorised under section 165(1)(b)(i) is required before the commencement of a tier 3 activity —

(a) that may harm Aboriginal cultural heritage determined under section 176(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.

(3) An approved or authorised ACH management plan may also be in relation to a tier 2 activity.
### Section 135

**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 that relates to the carrying out of a proposed activity in an area:

- (a) each person designated as a local ACH service for the area or a part of the area;
- (b) if there is not a person designated as 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; or
  - (ii) if there is not a native title party for the area or the part of the area — each native title representative body for the area or the part of the area.

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

### Section 137

**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 any area that is part of a protected area); and
  - (iv) the activity to which the plan relates;

  and

- (b) identify —
  - (i) the Aboriginal cultural heritage located in the area to which the plan relates, as assessed in undertaking a due diligence assessment in relation to the carrying out of the proposed activity, or of which the proponent is otherwise aware in the area; and
  - (ii) the characteristics of that Aboriginal cultural heritage of which the proponent is aware;

  and

- (c) include an ACH impact statement in respect of the proposed activity; and

- (d) set out the processes to be followed if, while approval or authorisation of the plan is of effect, a party to the plan becomes aware of new information about Aboriginal cultural heritage in the area to which the plan relates; and
(e) set out how the proposed activity will be managed, where possible, to avoid, or minimise, the risk of harm being caused to Aboriginal cultural heritage by the activity, including a clear explanation of the steps, if any, that will be taken to avoid, or minimise, that risk; and

(f) set out the extent to which harm to Aboriginal cultural heritage is authorised; and

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

(h) specify the period for which the plan is to have effect; and

(i) include or set out the other matters, if any, prescribed for the purposes of this paragraph.

Note for this subsection:

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 any details of commercial arrangements between a proponent and an Aboriginal party.

<table>
<thead>
<tr>
<th>Section 139</th>
<th>Obligation to consult on ACH management plan</th>
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<tbody>
<tr>
<td>(1) A proponent who intends to carry out an activity under an ACH management plan must consult with each of the persons to be consulted about the proposed activity.</td>
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<td>(2) Consultation must be carried out within a reasonable time and in accordance with the consultation guidelines.</td>
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<tr>
<th>Section 140</th>
<th>Consultation carried out under related agreement</th>
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<tr>
<td>Consultation carried out in accordance with a related agreement for an area may be used to satisfy the requirements set out in section 139 in relation to the area to which the ACH management plan relates to the extent that the consultation complies with the requirements in that section.</td>
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<tr>
<th>Section 141</th>
<th>Proponent must take steps to identify and understand characteristics of Aboriginal cultural heritage in area</th>
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<tbody>
<tr>
<td>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 is to relate.</td>
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<tr>
<th>Section 142</th>
<th>Notice about proposed ACH management plan to each interested Aboriginal party</th>
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<tr>
<td>(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 —</td>
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<td>(a) each interested Aboriginal party; and</td>
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<tr>
<td>(b) the ACH Council.</td>
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<td>(2) Notice under subsection (1) must state the proponent’s intention to —</td>
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(a) use its 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 —

(a) in section 139, in relation to consultation about the proposed activity; and

(b) in section 141, 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.

Section 143  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 5 days after the day on which the proponent gives written notice under section 142(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.

Section 144  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.

Section 145  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 143(2).

Section 146  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 that the proponent intends to carry out under the plan; and

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

(2) In subsection (1)(a) —

information, about an activity, includes a clear explanation about —

(a) 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 available to the proponent —

(i) a clear explanation of the risk of reasonably foreseeable harm being caused 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 being caused 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 that risk.

Section 147 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 the proponent and each interested Aboriginal party for the plan has agreed the terms of the plan.

(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

(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, that was disclosed to each interested Aboriginal party for the plan in accordance with section 146(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;

(f) include any responses 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, if any, prescribed for the purposes of this paragraph.

Section 148 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 do any of the following —
(a) provide the Council with any further information relevant to the application that the Council requires to assess the application;
(b) verify any further information by statutory declaration.

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

### Section 149  
**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 148.

### Section 150  
**Decision of ACH Council**

(1) The ACH Council must —

(a) assess each application under section 147(1), including any further information provided in response to a request under section 148(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) 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) any period commencing on the day on which a request is made under section 148(1) in respect of the application and ending on the day on which the first of the following occurs —

(i) the request is complied with;

(ii) the prescribed period for complying with the request expires;

or

(b) any period —

(i) commencing on the day on which public notice is given under section 175(2) in respect of the Aboriginal cultural heritage that may be harmed by the activity to which the plan relates; and

(ii) ending on the day on which the ACH Council makes a determination under section 176(1)(b)(ii) that the Aboriginal cultural heritage is not of State significance for the purposes of this Act.

Note for this subsection:

For paragraph (b), if the ACH Council makes a determination under section 176(1)(b)(ii) that the Aboriginal cultural heritage is of State significance for the purposes of this Act, section 177(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 157(1) for the authorisation of the plan.

(4) If the ACH Council does not make a decision within the prescribed period, the applicant may make a written request to the Minister to direct the Council to do anything that the Minister considers necessary to expedite the matter.

(5) A direction given by the Minister in response to a request under subsection (4) must —

(a) be in writing; and
(b) specify the period within which the direction must be complied with.

(6) If the ACH Council does not comply with a direction made by the Minister, the Minister may stand in the place of the Council and make a decision on the application in accordance with this Subdivision.

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

(8) The notice must contain the following —

(a) a description of the decision;
(b) short particulars of the reasons for the decision.

### Section 151 Approval of ACH management plan

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

(a) that 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) that the area to which the plan relates does not include any area that is part of a protected area; and

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

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

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

(f) in relation to the other matters, if any, prescribed for the purposes of this paragraph.

### Section 153 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 is of effect, of any new information about Aboriginal cultural heritage in the area to which the plan relates; and
(b) the proponent must comply with the reporting requirements, if any, 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.

Section 156  Notice of decision must be given

(1) The ACH Council must give to a person written notice of a 28 decision of the Council if the person has a right under section 155(1) to object to the Minister about the decision.

(2) The notice must be given within 14 days after the decision is made.

(3) The notice must contain the following —

(a) a description of the decision;

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

(c) a statement that the person has a right to object, within the prescribed period under section 155(1), to the Minister about the decision.

Section 157  Application for authorisation of ACH management plan

(1) A proponent may apply to the ACH Council for the authorisation of an ACH management plan by the Minister if —

(a) the proponent intends to carry out an activity that may harm Aboriginal cultural heritage; and

(b) the period specified under section 143(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.

(2) An application for the authorisation of an ACH management plan by the Minister 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 any 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 143(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;
### Section 160 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 157(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 respect of 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 the offer by the ACH Council to assist the proposed parties to reach agreement about the terms of an ACH management plan can be utilised by the proposed parties ends on the day specified by the 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 Council with the information.

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

7. Section 305 applies to a mediator in respect of the mediator’s performance or purported performance of a function described in subsection (6).

### Section 161 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 157(1), the applicant and each interested Aboriginal party advise the ACH Council that they have reached agreement on the terms of the plan, the Council may consider the application as an application made under section 147(1) for approval of the agreed plan.
Section 162  Recommendation of ACH Council

(1) The ACH Council must —
   (a) assess each application for the authorisation of an ACH management plan in accordance with section 163(1); and
   (b) make a recommendation that the Minister —
       (i) authorise the ACH management plan included with the recommendation; or
       (ii) refuse to authorise an ACH management plan for the activity to which the application relates.

(2) A recommendation to the Minister under subsection (1)(b) must be made by the ACH Council within the prescribed period.

(3) The ACH Council must give written notice of the Council’s recommendation to the Minister under subsection (1)(b) to the applicant and to each interested Aboriginal party for the ACH management plan.

(4) The prescribed period for making a recommendation on an application does not include —
   (a) any period commencing on the day on which a request is made in respect of the application under section 158(1) and ending on the day on which the first of the following occurs —
       (i) the request is complied with;
       (ii) the prescribed period for complying with the request expires;
   or
   (b) any period —
       (i) commencing on the day on which the ACH Council gives notice to the parties under section 160(2); and
       (ii) ending on the day specified in the notice given to the parties by the ACH Council under section 160(3);
   or
   (c) any period —
       (i) commencing on the day on which public notice is given under section 175(2) in respect of the Aboriginal cultural heritage that may be harmed by the activity to which the plan relates; and
       (ii) ending on the day on which the ACH Council makes a determination under section 176(1)(b) about whether the Aboriginal cultural heritage is of State significance for the purposes of this Act.

(5) If the ACH Council does not make a recommendation to the Minister within the prescribed period, the applicant may make a written request to the Minister to direct the Council to do anything that the Minister considers necessary to expedite the matter.

(6) A direction given by the Minister in response to a request under subsection (5) must —
   (a) be in writing; and
(b) specify the period within which the direction must be complied with.

(7) If the ACH Council does not comply with a direction made by the Minister, the Minister may make a decision on the application under section 165(1)(b), and may request further information under section 164, without having received a recommendation from the Council.

### Section 163  Recommendation of ACH management plan

1. The ACH Council may recommend to the Minister under section 162(1)(b)(i) that an ACH management plan be authorised in respect of an activity only if the Council is satisfied —
   
   - (a) that the activity is an activity that may harm Aboriginal cultural heritage located in the area to which the plan relates; and
   - (b) that the area to which the plan relates does not include any area that is part of a protected area; and
   - (c) that there has been consultation with each person to be consulted about the activity; and
   - (d) that 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) in relation to the other matters, if any, prescribed for the purposes of this paragraph.

2. The ACH Council may recommend under section 162(1)(b)(i) that the Minister authorise an ACH management plan that is any of the following —
   
   - (a) the ACH management plan included with the application under section 157(1);
   - (b) if section 177(1)(a) applies — the ACH management plan included with the application under section 147(1);
   - (c) an ACH management plan submitted or proposed under section 160(4);
   - (d) another ACH management plan prepared by the Council.

### Section 164  Minister may request further information

If the ACH Council makes a recommendation to the Minister under section 162(1)(b) in respect of an application for the authorisation of an ACH management plan, the Minister may make a written request to the Council or any other person to provide the Minister with any further information the Minister requires to assist in making a decision under section 165(1)(b).

### Section 169  Approval of amended ACH management plan

1. Unless section 170 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 147(2)(e) or (f); and
(b) the ACH Council does not need to be satisfied as to the matter set out in section 151(d) in relation to the amendment to the plan.

(3) The ACH Council must, at the written direction of the Minister under section 81(3)(b), approve an amendment to an approved or authorised ACH management plan to exclude from the area to which the plan relates any area that is part of the area to be declared as a protected area under Part 4 Division 5.

Note for this section:
If the ACH Council makes a determination under section 176(1)(b)(i) that Aboriginal cultural heritage is of State significance for the purposes of this Act, section 177(1)(c) provides that an application for the approval of an amendment to an approved or authorised ACH management plan must be considered as if it were an application under section 170 for the authorisation of the amendment to the plan.

### Section 170  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 176(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 157(1) for an amendment to the plan to be authorised by the Minister 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 142 and 143 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 157(2)(d) or (e); and

(b) the ACH Council and the Minister do not need to be satisfied as to the matter set out in section 163(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 157(2)(d),(e) or (f); and

(b) the ACH Council and the Minister do not need to be satisfied as to the matter set out in section 163(1)(c).

### Section 171  Change to identity of parties to ACH management plan

(1) If a person identified under section 137(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 that any obligations undertaken by the Aboriginal party under the plan are discharged.

Example for this subsection:

Situations in which an Aboriginal party to a plan is no longer an interested Aboriginal party may include —
(a) the designation of a local ACH service being cancelled or suspended under section 43; or
(b) a CATSI Act corporation or a Corporations Act corporation being deregistered under the relevant Commonwealth Act.

(2) A nomination under subsection (1)(c)(i) is made by written notice given by the ACH Council to the person, or persons, nominated.

(3) A person nominated under subsection (1)(c)(i) becomes an Aboriginal party to the approved or authorised ACH management plan on accepting the nomination.

(4) If the person identified under section 137(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.

Penalty for this subsection: a fine of $10 000.

(5) The current proponent becomes the person to be identified under section 137(2)(a)(i) as the proponent in an approved or authorised ACH management plan on the receipt by the ACH Council of notice under subsection (4).

Section 172  **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 under section 137(2)(a)(ii) as an Aboriginal party to the plan no longer being an Aboriginal party to the plan under section 171(1)(a); or
(b) any 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 171(3); or
   (ii) a notice received under section 171(5).

Section 173  **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.

Penalty: a fine of $100 000.