What is being Co-designed?
The purpose of this co-design process is to develop the LACHS Fees Guidelines as required under section 294 of the Act.

About this Fact Sheet
This Fact Sheet includes information relevant to the co-design process for the LACHS Fees Guidelines 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 4 of this fact sheet.
What is the LACHS Fees Guidelines?
Once appointed by the new ACH Council [s36], a LACHS will be able to charge fees for services [s34] to proponents to recoup costs associated with undertaking relevant functions as set out in the Act [s48]. The fees a LACHS is able to charge will need to be in accordance with a schedule that is endorsed by the ACH Council. A fee schedule that is endorsed by the ACH Council needs to comply with the LACHS Fees Guidelines.

Who will need to adhere to the LACHS Fees Guidelines?
LACHS will only be able to charge fees as endorsed by the ACH Council. Proponents will need to pay for services charged by the LACHS that are in accordance with the ACH Council endorsed fee schedule. A LACHS will be able to seek to recover unpaid fees through a court process [s49 (4)].

Benefits of appointing LACHS
- Supports Aboriginal empowerment, self-determination and Aboriginal economic participation;
- Provides Aboriginal people with a statutory role in managing and protecting their ACH;
- Devolves decision making on ACH matters which are currently undertaken by State Government to local Aboriginal community;
- Encourages and supports agreement making between Aboriginal people and proponents;
- Aligns and complements governance structures and agreements under State negotiated Native Title agreements and the Native Title Act 1993;
- Single point of contact providing certainty for proponents;
- Certainty around the right people to consult will increase efficiencies in the heritage approvals process and facilitate development; and
- Widely supported by industry and Aboriginal stakeholders.
Functions of LACHS
Under section 22 (d) the ACH Council may designate persons as LACHS for different areas of the State. The functions of a LACHS are set out in the Act:

Section 48 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 person designated as the local ACH service for that 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) native title parties and knowledge holders for the area, or a part of the area;
(b) to make, or to facilitate the making of, ACH management plans in respect of 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 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 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 those activities so as to avoid, or minimise, 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;
(h) to report to the Council about matters related to the provision of local ACH service functions as required by the regulations;
(i) to undertake, either directly or indirectly, any 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, if any, prescribed for the purposes of this paragraph.

(2) A person designated as a local ACH service must use its best endeavours to provide the functions set out in subsection (1) in a timely manner.
Considerations
Below are some of the matters that should be considered when co-designing the LACHS Fees Guidelines:

- The fee schedule will need to address a range of considerations. As for any organisation or individual providing a service, it will be up to individual LACHS to determine the application of an approved fee schedule to the activities it undertakes in accordance with its functions.
- The aim of the guidelines is to define what fees are reasonable and for what activities.
- The fee for service must cover those functions of the LACHS that relate to engagement with proponents.
- LACHS will be parties to agreed ACH management plans and will also be able to facilitate ACH management plans between other Aboriginal bodies and proponents.
- In appointing a LACHS, the ACH Council must approve a fee structure for LACHS that is in accordance with the LACHS Fees Guidelines.
- LACHS will be required to have specific skills to be able to perform functions relating to its engagement with proponents, such as provide advice, facilitate ACH investigations and negotiate ACH management plans.
- In some instances, where it doesn’t have the skills internally, a LACHS may need to engage specialists/consultants such as engineers, urban planners, lawyers or GIS specialists.

Co-design questions
To assist the co-design of the LACHS Fees Guidelines, your views are being sought on the following questions.

1. What types of services should LACHS be able to charge a fee?
2. Should there be different fee structures for different scenarios e.g. different types/sizes of developments and/or impacts to ACH, should there be different fee structures for different types of proponents?
3. What factors should be considered when determining if fees are reasonable?
4. How should geographic differences be factored into the LACHS Fees guidelines?
### Appendix 1. Sections of the Act relevant to Local Aboriginal cultural heritage services fees guidelines

<table>
<thead>
<tr>
<th>Section 34</th>
<th>Purpose of local ACH service</th>
</tr>
</thead>
<tbody>
<tr>
<td>A person designated as a local ACH service for an area of the State —</td>
<td></td>
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<tr>
<td>(a) must, as far as practicable, provide local ACH service functions for that area; and</td>
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<td>(b) may charge a fee for services that it provides in connection with the provision of local ACH service functions in accordance with Subdivision 3.</td>
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<table>
<thead>
<tr>
<th>Section 35</th>
<th>Nature of Local ACH service</th>
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<tbody>
<tr>
<td>(a) A person designated as a local ACH service is not an organisation for the purposes of the Public Sector Management Act 1994.</td>
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<td>(b) The Public Sector Management Act 1994 does not apply to, or in relation to, the designation of a person as a local ACH service and a local ACH service is not subject to that Act.</td>
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<tr>
<td>(c) A person designated as a local ACH service is not an agent of the State and does not have the status, immunities and privileges of the State.</td>
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<table>
<thead>
<tr>
<th>Section 36</th>
<th>ACH Council must designate local ACH service</th>
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<tbody>
<tr>
<td>(1) The ACH Council must, as far as practicable, designate persons as local ACH services for different areas of the State.</td>
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<tr>
<td>(2) A person may be designated by the ACH Council as a local ACH service for more than 1 area.</td>
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<td>(3) The ACH Council can designate only 1 local ACH service for an area.</td>
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<thead>
<tr>
<th>Section 37</th>
<th>Designation of local ACH service</th>
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<tbody>
<tr>
<td>(1) The ACH Council may designate a person as the local Aboriginal cultural heritage service for an area if —</td>
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<tr>
<td>(a) the person —</td>
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<tr>
<td>(i) has applied under section 38 to be designated as the local ACH service for the area; and</td>
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<tr>
<td>(ii) meets the requirements set out in section 39; and</td>
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<td>(b) the Council determines that the person has priority for designation for the area as set out in section 40(1).</td>
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<tr>
<td>(2) If the ACH Council decides not to designate a person who has applied under section 38 to be designated as the local ACH service for an area, the Council must advise the Minister in writing of the decision and the reasons for the decision.</td>
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<tr>
<th>Section 38</th>
<th>Application to be designated as local ACH service</th>
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<tr>
<td>A person described in section 40(1) may apply, in the approved form, to the ACH Council to be designated as the local ACH service for an area.</td>
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</table>
### Section 48

**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 person designated as the local ACH service for that 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. native title parties and knowledge holders for the area, or a part of the area;

   b. to make, or to facilitate the making of, ACH management plans in respect of 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 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 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 Council about proposals for activities to be carried out in the area and the management of those activities so as to avoid, or minimise, 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;

   h. to report to the Council about matters related to the provision of local ACH service functions as required by the regulations

   i. to undertake, either directly or indirectly, any 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;

   f. other functions, if any, prescribed for the purposes of this paragraph.

2. A person designated as a local ACH service must use its best endeavours to provide the functions set out in subsection (1) in a timely manner.

### Section 49

**Fee for services provided by local ACH service**

1. Subject to subsection (3), a person designated as a local ACH service may charge a fee for services that it provides in connection with any local ACH service functions that it provides in relation to the area for which it is designated.

2. A fee charged must be in accordance with —

   a. the fee structure that the person designated as a local ACH service had in place at the time it was designated; or
(b) if a variation of the fee structure is later approved by the ACH Council under section 50(2) — the fee structure as varied

(3) However, a person 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 any local ACH service functions.

(4) If a fee for services charged by a person 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.

<table>
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<tr>
<th>Section 140</th>
<th>Consultation carried out under related agreement</th>
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<tbody>
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<td></td>
<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 142</th>
<th>Notice about proposed ACH management plan to each interested Aboriginal party</th>
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<tbody>
<tr>
<td></td>
<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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<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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<td>(a) use its best endeavours to reach agreement with each interested Aboriginal party about the terms of an ACH management plan; and</td>
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<td>(b) enter into an ACH management plan.</td>
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<td>(3) Notice under subsection (1) cannot be given until after the proponent has satisfied the requirements set out —</td>
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<td>(a) in section 139, in relation to consultation about the proposed activity; and</td>
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<td>(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.</td>
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<tr>
<th>Section 146</th>
<th>Informed consent</th>
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<td></td>
<td>(1) For the purposes of this Subdivision, the consent of an interested Aboriginal party for an ACH management plan cannot be informed consent unless —</td>
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<td>(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</td>
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<td>(b) the consent is given voluntarily and without coercion, intimidation or manipulation.</td>
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<td>(2) In subsection (1)(a) — information, about an activity, includes a clear explanation about —</td>
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<td>(a) what the activity will involve, including —</td>
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<td>(i) the method the proponent intends to use to carry out the activity (the preferred method); and</td>
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<td>(ii) if applicable, each other feasible method available to the proponent to carry out the activity (a feasible alternative method);</td>
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<td>and</td>
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</table>
(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; and

(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.

Note for this subsection:

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)(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.

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 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;  
and  
(g) be accompanied by the other documents or information, if any, prescribed for the purposes of this paragraph.

**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 274

Onus of proving certain matters
In any 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>
<thead>
<tr>
<th>Item</th>
<th>Matter</th>
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<tbody>
<tr>
<td>1.</td>
<td>That a person has undertaken consultation in accordance with the consultation guidelines</td>
</tr>
<tr>
<td>2.</td>
<td>That a person has undertaken a due diligence assessment in accordance with the ACH Management Code</td>
</tr>
<tr>
<td>3.</td>
<td>That conduct was engaged in with reasonable excuse</td>
</tr>
</tbody>
</table>

Section 294

Guidelines
Guidelines may be made under this Subdivision about the following —
(a) the undertaking of a due diligence assessment for a proposed activity (the ACH Management Code);
(b) the carrying out of consultation for the purposes of this Act (the consultation guidelines);
(c) the identification of persons who are knowledge holders for an area (the knowledge holder guidelines);
(d) 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);
(e) the factors to be considered in determining whether Aboriginal cultural heritage is of outstanding significance for the purposes of this Act (the protected area order guidelines);
(f) the factors to be considered in determining under section 176(1)(b) whether Aboriginal cultural heritage is of State significance for the purposes of this Act (the State significance guidelines).