A key feature of *Aboriginal Cultural Heritage Act 2021* (the Act) is that it recognises that Aboriginal cultural heritage (ACH) is living, and that Aboriginal people are the custodians of their cultural heritage. The Act places Aboriginal people at the heart of decision-making about their cultural heritage by the inclusion of the following provisions:

- mandating engagement, notification, consultation and negotiation with Aboriginal people;
- returning Ancestral remains to their rightful custodians;
- Government agencies returning secret and sacred objects to their custodians; and
- Aboriginal people determining what ACH is to be protected without the need for a government assessment process.

Aboriginal people, their knowledge and experience of their cultural heritage will determine decisions about how land is used under the Act. The Act defines knowledge holders and also includes provisions where knowledge holders need to be notified and consulted.

**What is being Co-designed?**

The purpose of this co-design process is to develop *Knowledge Holder Guidelines* for the identification of knowledge holders as required under section 294 of the Act.

The knowledge holder guidelines are concerned with the steps required for a proponent and the ACH Council to identify knowledge holders rather than determine who is or is not a knowledge holder.

**About this Fact Sheet**

This Fact Sheet includes information relevant to the co-design process for *Knowledge Holder 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 3 of this fact sheet.
Who is a knowledge holder under the Act?
Knowledge holder is defined in Section 11 of the Act as:

(a) in relation to an area, means an Aboriginal person who —
   (i) in accordance with Aboriginal tradition, holds particular knowledge about
       the Aboriginal cultural heritage of the area; and
   (ii) has traditional rights, interests and responsibilities in respect of Aboriginal
       places located in, or Aboriginal objects or Aboriginal ancestral remains
       located in or reasonably believed to have originated from, the area;

and

(b) in relation to Aboriginal cultural heritage, means an Aboriginal person who —
   i. in accordance with Aboriginal tradition, holds particular knowledge about
      the Aboriginal cultural heritage; and
   ii. has traditional rights, interests and responsibilities in respect of the
       Aboriginal cultural heritage;

Who will be required to use the Knowledge Holder Guidelines?
The Knowledge Holder Guidelines are intended to assist proponents of activities and the ACH Council.

Under the Act proponents are obliged to notify and consult Aboriginal parties with regard to proposed tier 2 and tier 3 activities (Fact Sheet 1) respectively. Where a Local Aboriginal Cultural Heritage Services (LACHS) has been appointed, the proponent is required to notify or consult the LACHS. Where a LACHS has not been appointed, the proponent will need to notify or consult the native title party as well as knowledge holders.

Under the Act, the ACH Council may appoint a LACHS over a prescribed area. One of the key roles of an appointed LACHS will be to ensure that the right Aboriginal people are engaged and consulted where required by the Act.

The ACH Council is required to directly notify knowledge holders even where there is an established LACHS in instances where it:

- is considering applications for the declaration of protected areas; and
- forms the view that Aboriginal cultural heritage may be of State significance [s175].

In circumstances where there is not a LACHS and for those matters requiring the ACH Council to notify knowledge holders, the Act requires Knowledge Holder Guidelines to be established to assist with the identification and notification of knowledge holders.
Considerations

Below are some of the matters that should be considered when co-designing the Knowledge Holder Guidelines:

- The Knowledge Holder Guidelines are not concerned with determining which Aboriginal people may be knowledge holders but rather determining a process that outlines reasonable steps to identify those knowledge holders.

- Failure to properly identify and notify or consult with knowledge holders may result in certain approvals and decisions made under the Act being invalid.

- Adhering to the Knowledge Holder Guidelines reduces the risk of decisions being invalid.

- A proponent may request the assistance of the CEO of the Department of Planning, Lands and Heritage to assist in identifying persons (including knowledge holders where required) that the proponent is required to notify or consult [s108].

Co-design questions

1. What reasonable steps should be undertaken by a proponent / ACH Council to identify a knowledge holder for ACH or an area?

2. What are the responsibilities / expectations of persons required to engage knowledge holders once they have been identified?

3. What are the responsibilities of knowledge holders, including to ensure that:
   (i) Their status as a knowledge holder is known by others, in particular the State Government (via the Department of Planning, Lands and Heritage)?
   (ii) They can be contacted to ensure they can be consulted when required?
Appendix 1. Sections of the Act relevant to knowledge holder guidelines

Section 11  knowledge holder —

(a) in relation to an area, means an Aboriginal person who —

(i) in accordance with Aboriginal tradition, holds particular knowledge about the Aboriginal cultural heritage of the area; and

(ii) has traditional rights, interests and responsibilities in respect of Aboriginal places located in, or Aboriginal objects or Aboriginal ancestral remains located in or reasonably believed to have originated from, the area; and

(b) in relation to Aboriginal cultural heritage, means an Aboriginal person who —

(i) in accordance with Aboriginal tradition, holds particular knowledge about the Aboriginal cultural heritage; and

(ii) has traditional rights, interests and responsibilities in respect of the Aboriginal cultural heritage;

knowledge holder guidelines has the meaning given in section 294(c);

Section 72  Application for area to be declared as protected area

(1) An application for an area to be declared as a protected area may be made by a knowledge holder for the area.

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

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

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

(c) describe —

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

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

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

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

(f) be accompanied by the other documents or information, if any, prescribed for the purposes of this paragraph

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

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

<table>
<thead>
<tr>
<th>Section 75</th>
<th>ACH Council must notify certain persons about application</th>
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<tbody>
<tr>
<td>(1) The ACH Council must give written notice of an application under section 72(1) to the following persons —</td>
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<tr>
<td>(a) each local ACH service for the application area or a part of the application area;</td>
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<td>(b) each native title party for the application area or a part of the application area;</td>
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<td>(c) each knowledge holder for the application area or a part of the application area.</td>
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<td>(2) In subsection (1)(c) —</td>
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<td>each knowledge holder, in relation to an application area or a part of an application area, means each person who is identified as a knowledge holder for the application area or a part of the application area, after reasonable steps have been taken to do so in accordance with the knowledge holder guidelines.</td>
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<td>(3) The notice must give —</td>
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<td>(a) details of the application area; and</td>
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<tr>
<td>(b) details about the Aboriginal cultural heritage to which the application relates to the extent that the details do not disclose culturally sensitive information; and</td>
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<tr>
<td>(c) an opportunity to make submissions to the ACH Council within the prescribed period about whether the application area, or a part of the application area, should be declared as a protected area.</td>
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<tr>
<th>Section 77</th>
<th>Giving public notice of intention to seek that area be declared as protected area</th>
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<tbody>
<tr>
<td>(1) If, on an application under section 72(1) for an area to be declared as a protected area, the ACH Council forms a preliminary view that an area should be declared as a protected area, the Council must —</td>
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<td>(a) give public notice as described in subsection (3); and</td>
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<td>(b) notify the following persons that the public notice has been given —</td>
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<tr>
<td>(i) each local ACH service for the area or a part of the area;</td>
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<td>(ii) each native title party for the area or a part of the area;</td>
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<tr>
<td>(iii) each knowledge holder for the area or a part of the area;</td>
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<td>(iv) each landholder of land within the area;</td>
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<td>(v) each public authority that the Council considers has an interest in the area or a part of the area;</td>
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<tr>
<td>(vi) any other person the Council considers has an interest in the area or a part of the area.</td>
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<tr>
<td>(2) In subsection (1)(b)(iii) —</td>
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<tr>
<td>each knowledge holder, in relation to an area or a part of an area, means each person who is identified as a knowledge holder for the area or a part of the area, after reasonable steps have been taken to do so in accordance with the knowledge holder guidelines.</td>
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<tr>
<td>(3) The public notice must include the following —</td>
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<td>(a) details of the area that the ACH Council has formed the preliminary view should be declared as a protected area;</td>
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### Section 107
**Persons to be notified or persons to be consulted about activities or proposed activities**

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

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

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

(2) In subsection (1)(b)(ii) —
   *each knowledge holder*, in relation to an area or a part of an area, means each person who is identified as a knowledge holder for the area or a part of the area, after reasonable steps have been taken to do so in accordance with the knowledge holder guidelines.

### Section 108
**Assistance to identify persons to be notified or persons to be consulted**

(1) A proponent may request the assistance of the CEO to identify the persons to be notified or the persons to be consulted about an activity that a proponent is carrying out, or a proposed activity that the proponent intends to carry out, in an area.

(2) In response to a request under subsection (1), the CEO must provide the proponent with reasonable assistance to identify the persons.

### Section 175
**Notice must be given if ACH Council forms view that Aboriginal cultural heritage may be of State significance**

(1) In this section —
   *application* means —
   (a) an application under section 147(1) for the approval of an ACH management plan; or
   (b) an application under section 157(1) for the authorisation of an ACH management plan; or
   (c) an application under section 169 for the approval of an amendment to an approved or authorised ACH management plan; or
   (d) an application under section 170 for the authorisation of an amendment to an approved or authorised ACH management plan.

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

(3) The notice must include the following —
   (a) details of the Aboriginal cultural heritage to which the notice relates;
(b) details of the area in which the Aboriginal cultural heritage is located (the *notice area*);
(c) provision of an opportunity for a person to submit to the ACH Council, within the prescribed period, a statement about the person’s views on whether the Aboriginal cultural heritage should be recognised as being of State significance for the purposes of this Act.

(4) The ACH Council must notify the following persons that public notice has been given under subsection (2) —
(a) each local ACH service for the notice area or a part of the notice area;
(b) each native title party for the notice area or a part of the notice area;
(c) each knowledge holder for the notice area or a part of the notice area;
(d) each landholder of land within the notice area;
(e) each public authority that the Council considers has an interest in the notice area or a part of the notice area;
(f) any other person the Council considers has an interest in the notice area or a part of the notice area.

(5) In subsection (4)(c) —
*each knowledge holder*, in relation to a notice area or a part of a notice area, means each person who is identified as a knowledge holder for the notice area or a part of the notice area, after reasonable steps have been taken to do so in accordance with the knowledge holder guidelines.

### Section 187

**ACH Council must give notice before making recommendation about prohibition order**

(1) Before making a recommendation under section 185(1) or 186(1)(b), the ACH Council must —
   (a) give written notice in accordance with subsection (2) that the Council is considering whether or not to recommend that a prohibition order be given in relation to —
      (i) the activity specified in the notice; and
      (ii) the Aboriginal cultural heritage specified in the notice;
   and
   (b) following the period for submissions referred to in subsection (2)(c), consider any submissions made to the Council in response to the notice.

(2) The notice under subsection (1)(a) must be given to the persons referred to in subsection (3) and provide —
   (a) information relevant to the decision of the ACH Council whether or not to recommend that a prohibition order be given; and
   (b) details about —
      (i) the Aboriginal cultural heritage being harmed or at imminent risk of harm, to the extent that the details do not disclose culturally sensitive information; and
      (ii) the activity to which the proposed prohibition order is to relate; and
      (iii) the proposed duration of the prohibition order; and

and
(b) an opportunity to make submissions to the Council within the prescribed period about whether or not the Council should recommend that a prohibition order be given.

(3) The notice under subsection (1)(a) must be given to the following persons —
   (a) any person who, in the opinion of the ACH Council, has control over the activity specified in the notice;
   (b) each local ACH service for the area or a part of the area where the activity is being carried out or is likely to be carried out;
   (c) if there is not a local ACH service for the area or a part of the area where the activity is being carried out or is likely to be carried out —
      (i) each native title party for the area or the part of the area; and
      (ii) each knowledge holder for the area or the part of the area;
   (d) if there is not a local ACH service, a native title party or a knowledge holder for the area or a part of the area — each native title representative body for the area or the part of the area.

(4) In subsection (3)(c)(ii) —
   each knowledge holder, in relation to an area or a part of an area, means each person who is identified as a knowledge holder for the area or a part of the area, after reasonable steps have been taken to do so in accordance with the knowledge holder guidelines.

Section 192  Notice by Minister before extension of duration of prohibition order

(1) The notice under section 191(3)(a) must be given to the persons referred to in subsection (2) and provide —
   (a) details of the proposal to extend the duration of the prohibition order, including the proposed extension period; and
   (b) details about the contents of the prohibition order, excluding any details that disclose culturally sensitive information; and
   (c) details about the directions specified in the prohibition order; and
   (d) an opportunity to make submissions to the Minister within the prescribed period about whether the duration of the prohibition order should be extended as proposed.

(2) The notice must be given to the following persons —
   (a) the person who was given the prohibition order;
   (b) any other person who, in the opinion of the Minister, has control over an activity the subject of a direction specified in the prohibition order;
   (c) the persons referred to in section 187(3)(b) to (d).

Section 272  Evidence of certain matters if stated in certificate —

(4) Production of a certificate purporting to be signed by an authorised person and stating any of the matters listed in the Table is, without proof of the authorised person’s signature, evidence of the facts stated in the certificate.