Aboriginal Cultural Heritage Act 2021

CO-DESIGN FACT SHEETS

Fact Sheet 6 – Prescribed periods for ACH Permits and ACH management plans

The purpose of the Aboriginal Cultural Heritage Act 2021 (the Act) is to recognise the fundamental importance to Aboriginal people of Aboriginal cultural heritage (ACH) and the central role of ACH in Aboriginal communities past, present and future; that Aboriginal people have custodianship over ACH; as well as the value of ACH to Aboriginal people and the wider Western Australian community.

Where a proposed activity may harm ACH, Part 6 of the Act establishes processes that outline the responsibilities for proponents as well as the roles for the ACH Council and Aboriginal people for the management of the activities. In order to create certainty for all parties, Part 6 requires that certain processes are required to be undertaken in accordance with prescribed timeframes that will be included in the regulations once they are finalised.

What is being Co-designed?
The purpose of this co-design process is to establish prescribed timeframes associated with ACH Permits and ACH management plans. Once finalised the prescribed timeframes will be included in the regulations and will need to be adhered to by the ACH Council, proponents and Aboriginal parties.

About this Fact Sheet
This Fact Sheet includes information relevant to the co-design process for prescribed timeframes associated with ACH Permits and ACH management plans. It 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.

The Fact Sheet also includes draft timeframes listed as a table in the co-design questions section. The draft timeframes do not purport to represent what the final timeframes will look like but have been included to facilitate discussion.

A set of questions to assist with the co-design process are found on page 5 of this fact sheet.
Who will the prescribed timeframes affect?
Prescribed timeframes will affect proponents and the ACH Council as they will be bound by the timeframes in the regulations. They will also affect persons to be notified with ACH Permit applications and interested Aboriginal parties with regard to applications for ACH management plan applications.

Persons to be notified is defined in the Act [s107] as being:
- Each Local Aboriginal Cultural Heritage Service (LACHS) that has been appointed for an area.
- Where a LACHS has not been appointed, each native title party for the area as well as each knowledge holder for the area.
- Where a LACHS has not been appointed, and there is neither a native title party nor knowledge holder for the area, then the native title representative body.

Interested Aboriginal party is defined in the Act [s135] as:
- Each LACHS that has been appointed for an area.
- Where a LACHS has not been appointed, each native title party for the area.
- Where a LACHS has not been appointed, and there is no native title party either, the native title representative body.

Context for timeframes being prescribed:
Although requirements for notification and consultation differ for tier 2 (requiring an ACH Council approved permit) and tier 3 activities (requiring an approved or authorised ACH Management Plan), Aboriginal people, as custodians of ACH, need to understand the activities that are proposed to be undertaken within ACH along with their potential impacts.

Likewise, proponents need to understand how their activities are likely to harm ACH and need to be open to discussions on how to conduct those activities in order to avoid or minimise harm to ACH where possible.

Tier 2 activities that may harm ACH can only proceed through the grant of an ACH Permit by the ACH Council.

Tier 3 activities that may harm ACH can only proceed with an approved or authorised management plan. A proponent and each interested Aboriginal party must use their best endeavours to reach agreement on an ACH management plan, within a specified period.

In order to provide certainty of process and facilitate well informed decision making, the Act provides for regulations to prescribe timeframes for the notification of permit applications, negotiating of ACH management plans and the making of decisions and recommendations by the ACH Council.
What prescribed timeframes are subject of co-design?

a) With regard to ACH Permit applications
   - Period for persons to be notified to respond to proponent’s notice for a new ACH Permits and extension to an existing ACH Permit.
   - Period for persons to be notified to respond to the ACH Council’s notice of receipt of an application for an ACH Permit and application for an extension of an existing ACH Permit.
   - Period for Council to make a decision as to whether or not to grant an ACH Permit or to extend an existing ACH Permit.

b) With regard to ACH Management Plans
   - Period for interested Aboriginal parties and proponents to reach agreement on the terms of an ACH management plan.
   - Period for the ACH Council to make a decision as to whether or not approve an ACH management plan that has been agreed by a proponent and the Aboriginal party.
   - Period for ACH Council to make a recommendation to the Minister about an ACH management plan where there has been no agreement between the proponent and the interested Aboriginal party.

c) With regard to Aboriginal Cultural heritage that may be of State significance during the consideration by the ACH Council of an ACH management plan
   - Period to respond to notice from the ACH Council regarding its preliminary view that Aboriginal cultural heritage is of State significance.
   - Period for ACH Council to make a determination as to whether Aboriginal cultural heritage is of State significance.

In order to respect and navigate the purposes of the Act and navigate these processes, guidelines for consultation, knowledge holders, activity categories, outstanding and State significance and an ACH Management Code are being co-designed to create solutions with empathy, respect and safe participation in a culturally sensitive manner. To support these guidelines, suitable time frames for notifying the appropriate people to provide comments and the time for the ACH Council to make decisions are the subject of this co-design.
Considerations
Below are some of the matters that should be considered when co-designing the prescribed timeframes associated with ACH Permits and ACH management plans:

- By prescribing timeframes in the regulations, the Act provides certainty of process to all stakeholders.

- A proponent and each interested Aboriginal party must use their best endeavours to reach agreement about the terms of an ACH Management Plan. The timeframes for this reaching this agreement are to be considered here.

- In developing the prescribed time frames consideration should be given to the following:
  - Aboriginal people will need sufficient time to consider a proposal and provide their views.
  - The ACH Council will need sufficient time to be able to make well informed recommendations and decisions.
  - Proponents of activities would like sufficient time to satisfy other external requirements and possible time constraints.

- Prescribed periods should consider any relevant cultural needs and protocols.

- If a proponent and interested Aboriginal party are not able to reach agreement the ACH Council may provide assistance to both parties to reach agreement.

- If the ACH Council does not make a decision or determination 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.

- 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. This is in accordance with Section 119(4)-(6) [for ACH Permits], 126(4)-(6) [for ACH Permit extensions], 162(5)-(7) [for recommendations about non-agreed plans] as well as 176(3)-(5) [for determinations on ACH of State significance].

- Applications to extend a permit are subject to the same process as an application.
Co-design Questions
To assist the co-design for prescribed timeframes associated with ACH Permits and ACH Management Plans, your views are being sought on the following questions.

<table>
<thead>
<tr>
<th>Prescribed Period</th>
<th>Section</th>
<th>Suggested Timeframe</th>
<th>Your Suggested Timeframes</th>
<th>Comments on why these timeframes were selected</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ACH Permits</strong></td>
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<tr>
<td>Period for persons to be notified to respond to proponent's notice for a new ACH Permits and extension to an existing ACH Permit.</td>
<td>113(b), 122(3)(b)</td>
<td>15 working days</td>
<td>15 working days</td>
<td></td>
</tr>
<tr>
<td>Period for persons to be notified to respond to the ACH Council's notice of receipt of an application for an ACH Permit and application for an extension of an existing ACH Permit.</td>
<td>118(2), 125(2)</td>
<td>15 working days</td>
<td>15 working days</td>
<td></td>
</tr>
<tr>
<td>Period for Council to make a decision as to whether or not to grant an ACH Permit or to extend an existing ACH Permit.</td>
<td>119(2), 126(2)</td>
<td>20 working days from the date of receipt of ACH Permit application</td>
<td>20 working days</td>
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<tr>
<td><strong>ACH Management Plans</strong></td>
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<tr>
<td>Period for interested Aboriginal parties and proponents to reach agreement on the terms of an ACH Management Plan.</td>
<td>143 (2)</td>
<td>80 working days</td>
<td>80 working days</td>
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<tr>
<td>Period for the ACH Council to make a decision as to whether or not approve an ACH management Plan that has been agreed by a proponent and the Aboriginal party.</td>
<td>150(2)</td>
<td>20 working days</td>
<td>20 working days</td>
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<tr>
<td>Period for Council to make a recommendation to the Minister about an ACH Management Plan where there has been no agreement between the proponent and the interested Aboriginal party.</td>
<td>162(2)</td>
<td>120 working days</td>
<td>120 working days</td>
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<tr>
<td>Period to respond to notice from the ACH Council regarding its preliminary view that Aboriginal cultural heritage is of state significance</td>
<td>175(3)(c)</td>
<td>20 working days</td>
<td>20 working days</td>
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<tr>
<td>Period for ACH Council to make a determination as to whether Aboriginal cultural heritage is of State significance</td>
<td>176(2)</td>
<td>20 working days</td>
<td>20 working days</td>
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</tr>
</tbody>
</table>
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Appendix 1. Context for prescribed periods within the Act, Part 6 - Managing activities that may harm Aboriginal cultural heritage

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>107</td>
<td>Persons to be notified or persons to be consulted about activities or proposed activities</td>
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<tr>
<td></td>
<td>(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 —</td>
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<tr>
<td></td>
<td>(a) each local ACH service for the area or a part of the area;</td>
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<td></td>
<td>(b) if there is not a local ACH service for the area or a part of the area —</td>
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<tr>
<td></td>
<td>(i) each native title party for the area or the part of the area; and</td>
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<td></td>
<td>(ii) each knowledge holder for the area or the part of the area;</td>
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<tr>
<td></td>
<td>(2) In subsection (1)(b)(ii) —</td>
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<td></td>
<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>
</tr>
<tr>
<td>113</td>
<td>Notice of intention to carry out tier 2 activity</td>
</tr>
<tr>
<td></td>
<td>A proponent who intends to carry out a tier 2 activity in an area that may harm Aboriginal cultural heritage must give to each of the persons to be notified about the activity —</td>
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<tr>
<td></td>
<td>(a) written notice providing details of —</td>
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<td>(i) the proposed activity; and</td>
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<td></td>
<td>(ii) the area where the proponent intends to carry out the activity; and</td>
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<td></td>
<td>(b) an opportunity to submit to the proponent, within the prescribed period, a statement about the person’s views about the risk of harm being caused to Aboriginal cultural heritage located in the area by the proposed activity.</td>
</tr>
<tr>
<td>118</td>
<td>ACH Council to give notice of application</td>
</tr>
<tr>
<td></td>
<td>(1) On receipt of an application under section 115(1), the ACH Council must give written notice of the application, with the application attached, to each of the persons to be notified about the activity to which the application relates.</td>
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<td></td>
<td>(2) The notice must provide that a person given the notice may submit to the ACH Council, within the prescribed period, a statement about the person’s views on the proposal set out in the application.</td>
</tr>
<tr>
<td>119</td>
<td>Decision of ACH Council on application for ACH permit</td>
</tr>
<tr>
<td></td>
<td>(1) The ACH Council must —</td>
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<tr>
<td></td>
<td>(a) assess each application for an ACH permit in accordance with section 120(1); and</td>
</tr>
</tbody>
</table>
(b) have regard to —
   (i) any submissions made to the proponent under section 113(b); and
   (ii) any further information provided in response to a request under section 116(1); and
   (iii) any submissions made to the Council under section 118(2);
   and

(c) make a decision —
   (i) if it is satisfied as to the matters set out in section 120(1) — to grant an ACH permit; or
   (ii) otherwise, to refuse to grant an ACH permit.

(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 any period commencing on the day on which a request is made under section 116(1) in respect of the application and ending on the day on which the first of the following occurs —
   (a) the request is complied with;
   (b) the period for complying with the request expires.

(4) If the ACH Council does not make a decision on an application 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 decide the application in accordance with this Subdivision.

(7) The ACH Council must give written notice of the Council’s decision to —
   (a) the applicant for the ACH permit; and
   (b) each of the persons to be notified about the activity to which the application relates.

### Section 122

**Application for extension of ACH permit**

(1) The holder of an ACH permit may apply to the ACH Council for the term of the permit to be extended.

(2) An application cannot be made under subsection (1) later than 90 days before the ACH permit is due to expire.

(3) Before making an application under subsection (1), the permit holder must give to each of the persons to be notified about the activity to which the permit relates —
   (a) written notice including details of the proposed extension; and
   (b) an opportunity to submit to the permit holder, within the prescribed period, a statement about the person’s views on the proposed extension.
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(4) The application must —
   (a) be made to the ACH Council in the approved form; and
   (b) include details of the notice given under subsection (3)(a), including details of the persons who were notified; and
   (c) include any submissions made to the permit holder under subsection (3)(b).

Section 125  
ACH Council to give notice of application for extension of ACH permit

(1) On receipt of an application under section 122(1), the ACH Council must give written notice of the application, with the application attached, to each of the persons to be notified about the activity to which the application relates.
(2) The notice must provide that a person given the notice may submit to the ACH Council, within the prescribed period, a statement about the person’s views on the proposal set out in the application.

Section 126  
Decision on application for extension of ACH permit

(1) The ACH Council must —
   (a) assess each application for an extension of an ACH permit in accordance with section 120(1) as if the application for the extension of the permit were an application for the grant of the permit; and
   (b) have regard to —
      (i) any submissions made to the permit holder under section 122(3)(b); and
      (ii) any further information provided in response to a request under section 123(1); and
      (iii) any submissions made to the Council under section 125(2); and
   (c) make a decision —
      (i) if it is satisfied as to the matters set out in section 120(1) — to extend the ACH permit; or
      (ii) otherwise, to refuse to extend the ACH permit.
(2) A decision on the 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 any period commencing on the day on which a request is made under section 123(1) in respect of the application and ending on the day on which the first of the following occurs —
   (a) the request is complied with;
   (b) the period for complying with the request expires.
(4) If the ACH Council does not make a decision on an application 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 given by the Minister within the period specified, the Minister may stand in the place of the Council and decide the application in accordance with this Subdivision.

(7) The ACH Council must give written notice of the Council’s decision to —
   (a) the applicant for the extension of the ACH permit; and
   (b) each of the persons to be notified about the activity to which the application relates.

(8) An ACH permit that is extended under this section is of effect until the expiry of the period of 2 years after the day on which the permit is extended unless the permit is —
   (a) earlier cancelled under section 130(1)(b); or
   (b) further extended under this section.

<table>
<thead>
<tr>
<th>Section 128 Conditions</th>
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<tbody>
<tr>
<td>(1) It is a condition of an ACH permit that —</td>
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<tr>
<td>(a) the permit holder must notify the ACH Council if the permit holder becomes aware, while the permit is of effect, of any new information about Aboriginal cultural heritage in the area to which the permit relates; and</td>
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<tr>
<td>(b) the permit holder must comply with the reporting requirements, if any, specified in the permit; and</td>
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<tr>
<td>(c) a Part 7 order given in relation to an activity to which the permit relates must be complied with.</td>
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<tr>
<td>(2) An ACH permit may be granted or extended subject to any other conditions that the ACH Council considers appropriate to ensure that the activity to which the permit relates is managed so as to avoid, or minimise, the risk of harm being caused to Aboriginal cultural heritage by the activity in the area to which the permit relates.</td>
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<tr>
<td>(3) If the ACH Council becomes aware of new information about Aboriginal cultural heritage in the area to which a permit relates (due to being notified by the permit holder or otherwise), the Council may, by written notice given to the permit holder, impose or amend a condition on the permit as the Council considers appropriate to ensure that the activity to which the permit relates is managed so as to avoid, or minimise, the risk of harm being caused to Aboriginal cultural heritage by the activity in the area.</td>
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<tr>
<td>(4) A notice given under subsection (3) takes effect on the day specified in the notice.</td>
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<tr>
<td>(5) The day specified in a notice given under subsection (3) cannot be before the permit holder has had a reasonable opportunity to —</td>
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<tr>
<td>(a) make submissions to the ACH Council in relation to the condition or the amended condition; and</td>
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<tr>
<td>(b) take any action necessary to comply with the condition or amended condition.</td>
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<tr>
<td>(6) The ACH Council may, at any time, by written notice given to the holder of an ACH permit, revoke a condition, other than a condition referred to in subsection (1), that is imposed on the permit.</td>
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<table>
<thead>
<tr>
<th>Section 131</th>
<th>Objection to decision of ACH Council</th>
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<tbody>
<tr>
<td>(1) The applicant for an ACH permit may, within the prescribed period, object in writing to the Minister if the ACH Council refuses to grant the permit under section 119(1)(c)(ii).</td>
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<tr>
<td>(2) The holder of an ACH permit may, within the prescribed period, object in writing to the Minister if the ACH Council —</td>
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<tr>
<td>(a) refuses to extend the permit under section 126(1)(c)(ii); or</td>
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<td>(b) grants or extends the permit subject to conditions under section 128(2); or</td>
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<tr>
<td>(c) imposes or amends a condition on the permit under section 128(3); or</td>
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<td>(d) revokes a condition on the permit under section 128(6); or</td>
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<tr>
<td>(e) suspends or cancels the permit under section 130(1).</td>
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<tr>
<td>(3) On receipt of an objection under this section, the Minister must give a written direction to the ACH Council to provide to the Minister —</td>
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<tr>
<td>(a) the information that was provided to the Council at the time when the decision to which the objection relates was made; and</td>
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<tr>
<td>(b) the reasons of the Council for the decision, and any other information that, in the opinion of the Council, is relevant to the decision.</td>
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<tr>
<td>(4) A person who objects under this section must, within the prescribed period, give notice of the objection to each of the persons to be notified about the activity to which the application, or permit, relates, as the case requires.</td>
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<tr>
<td>(5) The Minister may make a written request to a person who objects under this section to do any of the following —</td>
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<tr>
<td>(a) provide the Minister with any further information relevant to the objection that the Minister requires to assess the objection;</td>
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<tr>
<td>(b) verify any further information by statutory declaration.</td>
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<tr>
<td>(6) Having considered the information provided by the ACH Council under subsection (3) and any further information provided in response to a request under subsection (5) the Minister must —</td>
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<tr>
<td>(a) confirm the decision made by the ACH Council; or</td>
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<td>(b) make another decision.</td>
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<tr>
<td>(7) The decision of the Minister under subsection (6) must be made on the grounds of —</td>
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<tr>
<td>(a) whether or not the Minister is satisfied as to the matters set out in section 120(1); and</td>
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<tr>
<td>(b) what is in the interests of the State.</td>
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</tbody>
</table>
(8) The Minister must ensure that written notice of the decision is given within 14 days after the decision is made under subsection (6) to —
   (a) the person making the objection; and
   (b) each of the persons to be notified about the activity to which the application or the ACH permit relates.

(9) The notice must contain the following —
   (a) a description of the decision;
   (b) short particulars of the reasons for the decision.

Section 132
Notice of decision must be given

(1) The ACH Council must give to a person who has a right under section 131(1) or (2) to object to the Minister about a decision written notice in accordance with this section.

(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 131(1), to the Minister about the decision within the period specified in the notice.

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 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
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Section 150

<table>
<thead>
<tr>
<th>Decision of ACH Council</th>
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<tbody>
<tr>
<td>(1) The ACH Council must —</td>
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<tr>
<td>(a) assess each application under section 147(1), including any further information provided in response to a request under section 148(1); and</td>
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<tr>
<td>(b) make a decision to —</td>
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<tr>
<td>(i) approve the ACH management plan to which the application relates; or</td>
</tr>
<tr>
<td>(ii) refuse to approve the ACH management plan to which the application relates.</td>
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<tr>
<td>(2) A decision on an application must be made by the ACH Council within the prescribed period.</td>
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<tr>
<td>(3) The prescribed period for making a decision on an application does not include —</td>
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<tr>
<td>(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 —</td>
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<tr>
<td>(i) the request is complied with;</td>
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<tr>
<td>(ii) the prescribed period for complying with the 28 request expires;</td>
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<tr>
<td>or</td>
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<tr>
<td>(b) any period —</td>
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<tr>
<td>(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</td>
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<tr>
<td>(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.</td>
</tr>
</tbody>
</table>

Note for this subsection: 11

For paragraph (b), if the ACH Council makes a determination under 12 section 176(1)(b)(i) that the Aboriginal cultural heritage is of State significance for the purposes of this Act, section 177(1)(a) provides 14 that an application for the approval of the ACH management plan must 15 be considered as if it were an application under section 157(1) for the 16 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.
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(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 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
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<table>
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<th>Section 175</th>
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<td>Notice must be given if ACH Council forms view that Aboriginal cultural heritage may be of State significance</td>
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(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;
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(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 176

**Determination about Aboriginal cultural heritage of State significance**

(1) The ACH Council must, within the prescribed period beginning at the end of the period for submissions included in a public notice given under section 175(3)(c) —

(a) consider any submissions in relation to the Aboriginal cultural heritage made to the Council in response to the notice; and

(b) make a determination that the Aboriginal cultural heritage —

(i) is of State significance for the purposes of this Act; or

(ii) is not of State significance for the purposes of this Act.

(2) The ACH Council may make a determination under subsection (1)(b)(i) only if the Council is satisfied, after taking into consideration the factors set out in the State significance guidelines, that the Aboriginal cultural heritage is of State significance for the purposes of this Act.

(3) If the ACH Council does not make a determination under subsection (1)(b) within the prescribed period, the person that made the application referred to in section 175(2) in relation to the area where the Aboriginal cultural heritage is located may make a written request to the Minister to direct the Council to do anything that the Minister considers necessary to expedite the matter.

(4) A direction given by the Minister in response to a request under subsection (3) must —

(a) be in writing; and

(b) specify the period within which the direction must be complied with.

(5) If the ACH Council does not comply with a direction given by the Minister, the Minister may stand in the place of the Council and make a determination under subsection (1)(b) in accordance with this Subdivision.