One of the principles of the Aboriginal Cultural Heritage Act 2021 (the Act) is that places, objects and landscapes have a range of values for different individuals, groups and communities – including the State of Western Australia as a whole. These include social, spiritual, historical, scientific, economic and aesthetic values. 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 (ACH) should be prioritised when managing activities that may harm ACH [s10(d)].

The Act recognises the value of ACH to Aboriginal people and the wider Western Australian community by ensuring that activities that may harm ACH are appropriately managed. The Act does this in a manner that provides balanced and beneficial outcomes for Aboriginal people and the wider Western Australian community with clarity, confidence and certainty.

What is being Co-designed?
The purpose of this co-design process is to develop State Significance Guidelines that will include factors to determine whether ACH is of State significance.

About this Fact Sheet
This Fact Sheet includes information relevant to the co-design process for State Significance 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.
Why are the State Significance Guidelines important?
For ACH that is assessed under the Act as being of State significance, only the Minister for Aboriginal Affairs can make a decision that may allow harm to occur to that heritage. This applies even when a proponent and an Aboriginal party have reached agreement on an ACH Management Plan that the ACH can be harmed.

This is because the ACH Council has determined that the ACH in question is of exceptional significance to the cultural identity of the State, meaning our community as a whole, reflecting on our past and looking to our future.

The State Significance Guidelines establish the factors to be considered in determining whether ACG is of State significance.

Who determines whether Aboriginal cultural heritage is of State significance?
The ACH Council considering an ACH management plan application, may form the view that the ACH, having regard to the State Significance Guidelines, may be of State significance.

Prior to making its determination, the ACH Council is required to give public notice that it is considering making such a determination, notify certain persons [s175 (4)], and allow time for submissions. Following the review of any submissions received, the ACH Council is then required to make the decision as to whether the ACH is of State significance.

Background to State significance and ACH management plans
Part 6 of the Act outlines the ways that activities that may cause harm to ACH are managed – through the avoidance or minimisation of such risk of harm, or otherwise as authorised. In order to do this, it outlines a tiered approach – classifying activities by the degree of harm they are perceived to potentially cause. Part 6 then outlines the necessary management approach for each tier.

An approved or authorised ACH management plan is required for carrying out a tier 3 activity that may harm ACH. Generally, an ACH management plan may be approved if the proponent and any interested Aboriginal party have reached agreement on its terms. The exception to this is if the relevant ACH is determined by the ACH Council to be of State significance, in which case the ACH management plan can only be authorised by the Minister. This is the case even if the parties to the ACH management plan have agreed on the ACH management plan. This means that where the ACH is of such exceptional importance to the cultural identity of the State, it is provided special attention and intervention by Government.
How is State significance defined in the Act?
The Act defines ACH of State significance [s100] as:

State significance, in relation to Aboriginal cultural heritage, means that the Aboriginal cultural heritage is of exceptional importance to the cultural identity of the State;

Other Legislative Context
According to Section 134,

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;

In order to establish that ACH of State significance, s176. ‘Determination about ACH of State significance’ states:

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.

Appendix 1 lists all further sections of the Act that are relevant to the State Significance Guidelines.
Considerations
Below are some of the matters that should be considered when co-designing the State Significance Guidelines:

- The values set out in the Act in relation to ACH are defined by the Burra Charter which include the following summarised descriptions:
  - **Social** - how people express their connection with the ACH and the meaning it has for them through traditional, historical and/or contemporary associations and its ability to impact cultural identity.
  - **Spiritual** - the intangible values and meanings embodied in or evoked by a place which give it importance in the spiritual identity, or the traditional knowledge, art and practices of a cultural group.
  - **Historical** - the value of cultural heritage to Western Australians post contact and is often associated with buildings and other structures.
  - **Scientific** - rarity, representativeness and the extent to which it may contribute to further scientific understanding and information. Archaeological investigations are used to capture the scientific value of ACH.
  - **Aesthetic** - the sensory and perceptual experience of a place including the visual and non-visual aspects such as sounds, smells and other factors that can affect our thoughts, feelings and attitudes.

- Tier 3 activities that may cause harm to ACH deemed to be of State significance require an authorised ACH management plan.
- The ACH Council can decide to nominate any ACH, documented within an ACH management plan, for State significance.
- The State Significance Guidelines can be used to assist both those reporting ACH and the ACH Council in assessing State significance of ACH.
- This State Significance Guidelines do not outline how ACH management plans should be written, who should be consulted or any specific conditions to mitigate or manage harm to ACH of State significance.

Co-design questions
To assist the co-design of the State Significance Guidelines, your views are being sought on the following questions:

1. **How can the existing heritage conventions as defined in the Burra Charter be used to define ACH of State significance?**
2. **How can they be used to differentiate from ACH that is not of State significance?**
3. **Are there any other factors that should be considered in determining State significance?**
4. **What evidence is required to determine State significance? How should the Council take different forms of evidence into consideration?**
### Appendix 1. Sections of the Act relevant to state significance guidelines

<table>
<thead>
<tr>
<th>Section 134</th>
<th><strong>When ACH management plan required</strong></th>
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<tbody>
<tr>
<td></td>
<td>(1) An approved or authorised ACH management plan is required before the commencement of a tier 3 activity that may harm Aboriginal cultural heritage.</td>
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<td>(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 —</td>
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<td>(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</td>
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<td></td>
<td>(b) if the proponent and each interested Aboriginal party for the plan do not agree about the terms of an ACH management plan.</td>
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<td>(3) An approved or authorised ACH management plan may also be in relation to a tier 2 activity.</td>
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<tr>
<th>Section 147</th>
<th><strong>Application for approval of ACH management plan</strong></th>
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<tr>
<td></td>
<td>(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.</td>
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<td>(2) An application for the approval of an ACH management plan must —</td>
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<td>(a) be made to the ACH Council in the approved form; and</td>
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<td>(b) include the plan agreed to by the proponent and each interested Aboriginal party for the plan; and</td>
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<td>(c) include evidence that each interested Aboriginal party for the plan has given informed consent to the plan; and</td>
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<td>(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</td>
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<td>(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</td>
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<td>(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</td>
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<td>(g) be accompanied by the other documents and information, if any, prescribed for the purposes of this paragraph.</td>
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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.

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<tr>
<th>Section 150</th>
<th>Decision of ACH Council</th>
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<td>(1) The ACH Council must —</td>
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<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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<td>(b) make a decision to —</td>
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<td>(i) approve the ACH management plan to which the application relates; or</td>
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<td>(ii) refuse to approve the ACH management plan to which the application relates.</td>
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<td>(2) A decision on an application must be made by the ACH Council within the prescribed period.</td>
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<td>(3) The prescribed period for making a decision on an application does not include —</td>
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<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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<td>(i) the request is complied with;</td>
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<td>(ii) the prescribed period for complying with the request expires;</td>
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<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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<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>
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Note for this subsection:

For paragraph (b), if the ACH Council makes a determination under 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 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.

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**Part 6, Division 6 – ACH Management Plans**

**Section 161. ACH Council may approve ACH management plan if agreement reached**

Note for this section:
*This section does not apply if the ACH Council has made a determination under section 176(1)(b)(i) that Aboriginal cultural heritage located in the area to which the ACH management plan relates is of State significance for the purposes of this Act.*

**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 169. Approval of an amended ACH Management Plan**

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 174  
**State significance guidelines must be considered**

In determining under this Subdivision whether Aboriginal cultural heritage is of State significance for the purposes of this Act, the factors set out in the State significance guidelines must be considered.

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 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.

Section 177

**Continuation of applications**

(1) 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 —

(a) an application for the approval of an ACH management plan that relates to an area in which the Aboriginal cultural heritage is located must be considered as if it were an application under section 157(1) for the authorisation of the plan; and

(b) an application for the authorisation of an ACH management plan that relates to an area in which the Aboriginal cultural heritage is located must continue to be considered as an application under section 157(1) for the authorisation of the plan; and

(c) an application for the approval of an amendment to an approved or authorised ACH management plan that relates to an area in which the Aboriginal cultural heritage is located must be considered as if it were an application under section 170 for the authorisation of the amendment to the plan; and

(d) an application for the authorisation of an amendment to an approved or authorised ACH management plan that relates to an area in which the Aboriginal cultural heritage is located must continue to be considered as an application under section 170 for the authorisation of the amendment to the plan.

(2) If the ACH Council makes a determination under section 176(1)(b)(ii) that Aboriginal cultural heritage is not of State significance for the purposes of this Act —

(a) an application for the approval of an ACH management plan that relates to an area in which the Aboriginal cultural heritage is located must continue to be considered as an application under section 147(1) for the approval of the plan; and

(b) an application for the authorisation of an ACH management plan that relates to an area in which the Aboriginal cultural heritage is located must continue to be considered as an application under section 157(1) for the authorisation of the plan; and

(c) an application for the approval of an amendment to an approved or authorised ACH management plan that relates to an area in which the Aboriginal cultural heritage is located must continue to be considered as an application under section 169 for the approval of the amendment; and

(d) an application for the authorisation of an amendment to an approved or authorised ACH management plan that relates to an area in which the Aboriginal cultural heritage is located must continue to be considered as an application under section 170 for the authorisation of the amendment to the plan.

Section 213

**Information and documents on ACH Directory**
(1) The ACH Directory must contain the prescribed information about the following —
   (a) a protected area;
   (b) a local ACH service for an area;
   (c) a native title party for an area;
   (d) the knowledge holders for the following —
      (i) a particular area;
      (ii) particular Aboriginal cultural heritage;
   (e) an ACH protection agreement endorsed under Part 8;
   (f) an ACH permit;
   (g) an ACH management plan approved under section 150(1)(b)(i);
   (h) an ACH management plan authorised under section 165(1)(b)(i);
   (i) a determination under section 176(1)(b)(i) that Aboriginal cultural heritage is of State significance for the purposes of this Act;
   (j) a Part 7 order.
(2) The ACH Directory must also contain —
   (a) information about Aboriginal cultural heritage of the State, including, where relevant —
      (i) a description of the characteristics of the Aboriginal cultural heritage; and
      (ii) a description of the location of the Aboriginal cultural heritage; and
      (iii) in relation to an Aboriginal object, a description of where it is reasonably believed to have originated from; and
      (iv) particularly in relation to intangible Aboriginal cultural heritage — recordings (including photographs, films, audio, video, digital and other recordings);
   and
   (b) any other information and documents, including historical information and documents, relevant to Aboriginal cultural heritage that —
      (i) are prescribed for the purposes of this paragraph; or
      (ii) the ACH Council considers appropriate to include in the Directory.
(3) In subsection (2)(a)(iv) —
   **intangible Aboriginal cultural heritage** means the intangible elements of Aboriginal cultural heritage, including knowledge, or oral expression, of Aboriginal tradition.
(4) Information and documents may be placed on the ACH Directory, in accordance with the regulations —
   (a) on the initiative of the ACH Council; or
   (b) at the request of a local ACH service or another person.

### Section 218
**Access to information about protected areas and management of activities**

The ACH Council must ensure that the information and documents on the ACH Directory are available to the general public to the extent necessary to enable the following to be ascertained —
(a) whether or not a particular area includes any area that is part of a protected area;
(b) the conditions, if any, to which a protected area order, declaring a particular area as a protected area, is subject;
(c) the Aboriginal cultural heritage that has been determined by the ACH Council under section 176(1)(b)(i) to be of State significance for the purposes of this Act;
(d) whether or not a particular area is the subject of —
   (i) an ACH permit; or
   (ii) an approved or authorised ACH management plan;
(e) a local ACH service for an area;
(f) a native title party for an area;
(g) if a particular area is the subject of an ACH permit —the contact details of the holder of the permit;
(h) if a particular area is the subject of an approved or authorised ACH management plan — the contact details of the parties to the plan;
(i) whether or not a particular area is the subject of a Part 7 order