



Aboriginal Cultural Heritage Act 2021

KNOWLEDGE HOLDER GUIDELINES

Consultation Draft





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1. Purpose

The *Aboriginal Cultural Heritage Act 2021* (Act) recognises that some Aboriginal people hold knowledge and responsibilities for certain areas or specific Aboriginal cultural heritage (ACH). These knowledge holders have rights under the Act. The Act sets out where knowledge holders must be notified or consulted about specific activities that may impact ACH.

These guidelines set out the steps for establishing contact with knowledge holders for specific ACH or area(s) so that the ACH Council (Council) or a proponent can notify and consult with knowledge holders as required under the Act.

For proponents, these guidelines only apply in circumstances where a local ACH service (LACHS) has not been appointed.

These guidelines do not determine whether an Aboriginal person is in fact a knowledge holder. The Act defines a knowledge holder as an Aboriginal person who in accordance with Aboriginal tradition holds particular knowledge about the relevant ACH and has traditional rights, interests and responsibilities for an area and/or for ACH.

2. Overview

2.1 Rights and responsibilities of knowledge holders

The Act recognises the cultural responsibilities of Aboriginal people within their communities, particularly of knowledge holders. Knowledge holders have traditional knowledge as well as traditional rights, interests and responsibilities for an area and/or ACH. This means that knowledge holders are required to perform roles under the Act where a LACHS has not been appointed, and also for applications for Protected Areas.

The ACH Directory (Directory) must contain, where possible, prescribed information about knowledge holders for a particular area and particular ACH. Aboriginal people who are knowledge holders are encouraged to submit to the Directory ACH forms for ACH that they are knowledge holders for, so that they can be identified on the Directory.

2.2 Engagement with knowledge holders

Proponents must either notify (for tier 2 activities) or consult (for tier 3 activities) specified Aboriginal parties. If a LACHS has not been appointed, a proponent must notify or consult both the native title party and knowledge holders.

If a proponent fails to properly notify/consult knowledge holders, the Council may withhold its approval.

3. Scope

These guidelines set out the steps for identifying who is a knowledge holder for an area or ACH [s294] where a proponent is unsure as to who the knowledge holders are.



3.1 Summary of circumstances when notification and consultation with knowledge holders is required

A proponent must engage directly with knowledge holders where:

- the proponent intends to lodge an application seeking an ACH Permit (Permit) for a tier 2 activity in an area where a LACHS has not been appointed
- the proponent intends to lodge an application for an ACH Management Plan (Plan) for a tier 2 or tier 3 activity in an area where a LACHS has not been appointed.

The Council is required to notify knowledge holders where it:

- needs to verify information that was submitted by a proponent regarding the notification and/or consultation regarding the application for a Permit or Plan
- is considering applications for the declaration of Protected Areas
- forms the view that ACH may be of State significance.

3.2 Circumstances where more than 5 knowledge holders may exist

ACH located within Western Australia is a rich and diverse entity and circumstances relating to Aboriginal peoples' relationship with ACH will vary for each specific ACH. There will therefore be circumstances where there will be multiple knowledge holders as defined by the Act.

With regard to the steps identified in Section 4 below, should the circumstance arise where a proponent believes there may be more than five knowledge holders for specific ACH or an area, the proponent is able to give notice of matters to be notified or consulted by electronically publishing a copy of the notice relating to the matter to be notified or consulted [s283(1)(f)].

In such circumstances each notice is to be published on the Department's ACHknowledge system. Publication of such a notice is not to occur until steps 4.1 to 4.3 below have been completed.

4. Steps to Identify Knowledge Holders

4.1 Step 1: Directory/Native Title party

In order to identify the appropriate knowledge holders to contact, the proponent should:

- (i) search the Directory to determine if there is a knowledge holder for the area; and
- (ii) contact each native title party or native title representative body (NTRB).

Search the Directory

Where the information is available, the Directory will identify the knowledge holder(s) for a given area and ACH. The Directory may also identify relevant ACH reports and ACH files that can also be reviewed. When considering heritage survey reports, caution should be exercised as, historically, knowledge holders have not always been identified or consulted as this was not a requirement under the *Aboriginal Heritage Act 1972*.

Contacting the native title party and/or NTRB

Each native title party for the area should be contacted for advice as to who the knowledge holder(s) are for particular ACH or area. If there is no native title party for the area, the NTRB should be contacted. In circumstances in which a LACHS has not been appointed the Act requires that each



knowledge holder be notified or consulted, it is important to be aware therefore that knowledge holders may not be a member of the native title party or be represented by the NTRB.

A native title party is described in section 100 of the Act as:

- (a) a registered native title body corporate for the area; or
 - (b) a registered native title claimant for the area; or
 - (c) a person who was a registered native title body corporate for the area or a registered native title claimant for the area but —
 - (i) under an Individual Land Use Agreement (ILUA), has surrendered their native title rights and interests in respect of the area; or
 - (ii) whose native title rights and interests in respect of the area have been compulsorily acquired or otherwise been extinguished;
- or
- (d) if the area is the subject of a settlement ILUA — a regional corporation in relation to that area;

Details of where native title parties are located throughout the State are available on the Directory.

4.2 Step 2: Local Aboriginal Groups

If a search of the Directory and contact with the relevant native title group(s) is unsuccessful at identifying any or all of the relevant knowledge holders, advice should be sought from local Aboriginal groups.

Groups with information about potential knowledge holders will include local Aboriginal corporations, cultural councils or circles of Elders. A proponent may choose to have regard to the Consultation Guidelines which provide guidance for consultation with Aboriginal people in relation to tier 3 activities and other contact with Aboriginal people.

4.3 Step 3: Seek advice from the Department

Where a proponent has not been successful in identifying knowledge holders or doubt exists as to whether there may be additional knowledge holders, the Department should be contacted for assistance [s108].

5. Related Documents

The following documents support these Guidelines:

- Consultation Guidelines
- Protected Area Order Guidelines
- State Significance Guidelines
- ACH Management Code
- ACH Management Plan Template and Guiding Documents



6. Terms used

ACH	Aboriginal cultural heritage
Act	<i>Aboriginal Cultural Heritage Act 2021</i>
Council	Aboriginal Cultural Heritage Council
Department	Department of Planning, Lands and Heritage
Directory	Aboriginal Cultural Heritage Directory
ILUA	Individual Land Use Agreement
LACHS	Local Aboriginal cultural heritage services
NTRB	Native title representative body
Permit	ACH Permit
Plan	ACH Management Plan

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