



Aboriginal Cultural Heritage Act 2021

LOCAL ACH SERVICE (FEES) GUIDELINES

Consultation Draft





Contents

1. Purpose.....	3
2. Overview	3
3. Legislative context.....	4
4. Scope.....	4
5. Schedule of Services that may reasonably be provided by a LACHS	6
6. Schedule of Fees	10
7. Related Documents.....	11
8. Terms used	11

Consultation Draft



The fee for service schedule outlined below applies to ordinary circumstances where a proponent is required to engage with a Local Aboriginal cultural heritage service. It is anticipated that there will arise extraordinary circumstances that are complex, or involve a high degree of skill or urgency. Notwithstanding the rates set out in the Schedule of Fees; it is anticipated that in such circumstances a LACHS should be able to propose as part of its fee structure a fee that is greater than the one that is set out in this schedule.

Other than general feedback on the Fee for Service Guidelines, the Aboriginal Cultural Heritage Council is seeking feedback on what may constitute extraordinary circumstance, and the fee structure that may be applied in such circumstances.

1. Purpose

Local Aboriginal cultural heritage services (LACHS) perform an important role in the identification, conservation and management of Aboriginal cultural heritage (ACH) and undertake key functions under the *Aboriginal Cultural Heritage Act 2021 (Act)*.

These guidelines provide guidance as to the fees a LACHS can charge in connection with its functions, including the reasonableness of those fees.

2. Overview

LACHS are established under the Act to:

- provide Aboriginal people with a statutory role in managing and protecting local ACH;
- facilitate decision making by local Aboriginal people who are knowledge holders for the ACH;
- encourage and support agreement making between Aboriginal people and proponents;
- align with and complement governance structures and agreements under State negotiated native title agreements and the *Native Title Act 1993*;
- establish a single point of contact to provide certainty for proponents and other stakeholders as to the right people with whom to consult and negotiate, which will in turn increase efficiencies and positive outcomes in relation to ACH approvals processes and positive ACH outcomes.

In recognition of the key role that LACHS undertake, once appointed by the ACH Council (Council) [s36] a LACHS will be able to charge fees for services [s34] provided in connection with the provision of its functions [s49], including activities relating to an ACH Management Plan (Plan).

The fees a LACHS is able to charge must be in accordance with a fee schedule that has been endorsed by the Council. Once endorsed, the fee structure will be publicly available, affording proponents certainty and clarity in relation to fees associated with the development of a Plan.



3. Legislative context

Under the Act the Council may designate persons as a LACHS for different areas of the State. The functions of a LACHS are set out in section 48 of the Act:

- (a) engage and negotiate with proponents, native title parties and knowledge holders
- (b) make, or facilitate the making of, Plans
- (c) advise proponents about ACH
- (d) advise the Council about ACH and improve the accuracy of the ACH Directory
- (e) avoid, or minimise, the risk of harm to ACH by providing information to the Council about activities
- (f) engage with relevant parties about ACH that extends beyond their boundaries
- (g) undertake the identification, maintenance, conservation and preservation of ACH
- (h) report back to the Council about providing these functions
- (i) undertake any activity agreed to in a Plan to protect, preserve, conserve or manage ACH.

A LACHS must use its best endeavours to provide its functions in a timely manner.

4. Scope

A proponent has an obligation to pay the fees charged by a LACHS that are reasonable and comply with these Guidelines.

These Guidelines establish a maximum rate of fees a LACHS may charge a proponent for services it provides in connection with its LACHS functions as prescribed under the Act where no written agreement as to costs has otherwise been entered into by the parties.

The Schedule applies to fees to be charged for services undertaken by officers or employees of a LACHS as well as outsourced services such as external experts and consultants.

Services to be charged by LACHS

LACHS perform various functions under the Act requiring different levels of authority which may be reflected in the fee schedule. While each LACHS will adopt a structure and functions that best suit its individual circumstances, for the purpose of acknowledging the different levels of responsibility and authority that may be required within a LACHS, these guidelines recognise two specific LACHS roles that a LACHS may designate for which fees may be charged:

- LACHS Heritage Officer (LHO)
- LACHS Senior Heritage Officer (LSHO)

The designation of these positions does not prevent a LACHS from charging for other positions within the LACHS that contribute to the provision of its functions, particularly decision-making functions, undertaken by a LACHS. These include positions such as (where applicable) the Chief Executive Officer, Chief Operating Officer or Heritage Manager. The proposed fee structure for these positions will need to be reasonable and have regard to the fee schedule below.



Expert Service Providers

Services for which a LACHS can charge fees include those provided by expert service providers (ESP) in connection with any of the LACHS functions and include, but are not limited to:

- Elders;
- knowledge holders or other cultural authorities (Aboriginal consultants/senior Aboriginal consultants);
- heritage professionals;
- legal professionals;
- negotiation specialists;
- engineering and land use professionals; and
- any other service providers considered necessary to provide expert advice necessary for a LACHS to undertake its functions that the Council considers reasonable and are consistent with the fee rates established by these Guidelines.

Senior Aboriginal consultants are those who, in accordance with Aboriginal tradition, are recognised as having higher levels of knowledge and experience, and as such attract higher fees under the Schedule of Fees.

Other matters

The maximum number of hours allowed for the daily rate is 10 hours per day. The rates are expected to cover standard salary inclusions as set out in *Fair Work Act 2009 (Cth)* including superannuation, annual leave loading, and workers compensation insurance.

In addition to the fees allowed, disbursements (for example transport, accommodation, meals and travel costs) may be included in a LACHS fee structure, including an administration fee of 15%, as they are necessarily or reasonably incurred.

A reference to an amount of money expressed in dollars is a reference to that amount:

- (a) in Australian dollars; and
- (b) inclusive of any goods and services tax payable on the amount under the *A New Tax System (Goods and Services Tax) Act 1999*.

Fees and disbursements are not generally allowable for the following:

- (a) compensation for costs (including legal representation costs) incurred by LACHS to make an application under Part 5, Part 7 or Part 11 of the Act;
- (b) compensation for costs (including legal representation costs) incurred by LACHS in dealing with the Department;
- (c) compensation for costs incurred in the preparation of an itemised bill of costs.

A LACHS may request the Council to approve a variation of the fee structure having regard to published CPI and Average Weekly Earnings figures.



5. Schedule of Services that may reasonably be provided by a LACHS

48. (1)(a) for the purpose of the management of activities that may harm Aboriginal cultural heritage located in the area under Part 6 — to engage and negotiate, as is appropriate, with —

- (i) proponents carrying out, or intending to carry out, activities in the area; and
- (ii) native title parties and knowledge holders for the area, or a part of the area;

Services that may reasonably be charged for by:

LHO

- Acting as primary contact
- Participating in engagement with relevant parties
- Advising of known ACH
- Review requests for advice
- Response to advice

LSHO

- Leading engagement with relevant parties
- Review of information
- Decision making

ESP

- Providing expert advice on proposed activities
- Facilitating engagement with cultural authorities (unless otherwise provided by proponent)
- Knowledge holders participating in engagement and negotiation

48. (1)(b) to make, or to facilitate the making of, Plans in respect of the area

Services that may reasonably be charged for by:

LHO

- Acting as primary contact
- Advising of known ACH
- Engage expert service providers
- Review requests for advice
- Facilitating advice to cultural authorities
- Reviewing documentation
- Attending meetings
- Facilitating the development of Plans



LSHO

- Evaluating proposed works
- Lead the development of Plans
- Providing advice to cultural authorities
- Attending meetings
- Review of information
- Decision making

ESP

- Participating in development of Plans
- Attending meetings
- Providing expertise and/or technical advice

48. (1)(c) to provide advice to proponents carrying out, or intending to carry out, activities in the area about whether ACH is located in the area and the characteristics of ACH located in the area

Services that may reasonably be charged for by:

LHO

- Acting as primary contact
- Advising of known ACH
- Participating in ACH surveys (Surveys)
- Time to review requests for advice
- Response to advice

LSHO

- Leading engagement with cultural authorities
- Providing advice to cultural authorities
- Attending meetings
- Review of information
- Decision making

ESP

- Providing advice to LACHS regarding the proposed works
- Undertaking in Surveys
- Drafting reports
- Producing reports
- Providing expertise and/or technical advice



48. (1)(f) to engage, as appropriate, with other LACHS, native title parties and knowledge holders about ACH that extends beyond the geographic boundaries of the area

Services that may reasonably be charged for by:

LHO

- Acting as primary contact
- Participating in engagement with relevant parties
- Attending stakeholder meetings
- Time to review requests for advice
- Response to advice

LSHO

- Leading engagement with relevant stakeholders
- Attending meetings
- Decision making

ESP

- Providing advice to LACHS regarding the proposed works
- Participating in Surveys
- Providing reports
- Providing expertise and/or technical advice

48. (1)(g) to undertake, either directly or indirectly, on-ground identification, maintenance, conservation and preservation of ACH located in the area

Services that may reasonably be charged for by:

LHO

- Acting as primary contact
- Participating in engagement with relevant parties
- Attending stakeholder meetings
- Liaising with cultural authorities
- Participating in Surveys
- Any meetings requested by proponents to engage with cultural authorities
- Preparation of reports

LSHO

- Leading engagement with cultural authorities
- Attending meetings
- Review of information
- Decision making



ESP

- Cultural authorities to participate in Surveys
- Heritage professionals to participate in Surveys
- Heritage professionals to draft Survey reports
- Other technical expertise as required

48. (1)(i) to undertake, either directly or indirectly, any activity in relation to protecting, preserving, conserving or managing ACH, agreed under an approved or authorised Plan to be a function of the person designated as the LACHS for the purposes of this paragraph

Services that may reasonably be charged for by:

LHO

- Acting as primary contact
- Participating in Surveys
- Time to review requests for advice
- Response to advice

LSHO

- Leading Surveys
- Leading engagement with cultural authorities
- Attending meetings
- Providing expert advice to cultural authorities
- Decision making

ESP

- Participating in Surveys
- Providing Survey reports
- Providing expertise and/or technical advice
- Facilitating engagement with cultural authorities (unless otherwise provided by proponent)
- Knowledge holders participating in engagement and negotiation



6. Schedule of Fees

The hourly and daily rates set out in Table A are the maximum rates, inclusive of GST, which the Council determines shall apply to the remuneration of LACHS officers for services provided. Table B sets out rates payable for travel costs and other incidentals associated with a LACHS performing its function.

Table A

Fee Earner		Maximum allowable rates
LSHO	Hourly	\$150*
LHO	Hourly	\$100*
Aboriginal Consultants	Daily	\$600 - \$800*
Senior Aboriginal Consultants	Daily	\$900 - \$1200*
Heritage Professionals	Daily	\$1500
Legal Professionals (including in-house)		Rates as per the Legal Profession (Solicitors Costs) Determination made under section 275 of the <i>Legal Profession Act 2008</i> .
Other Expert Service Providers	Daily	Up to \$2000
Administration fee		15%

*In regional and remote areas, and above the 26th parallel, 20% should be added to fees

Table B

Item	Rate
Field Expenses	
Accommodation and meals – LSHO, LHO, Aboriginal Consultants, Senior Aboriginal Consultants, Heritage Professionals, other Expert Service providers	At cost plus GST or as per Australian Taxation Office allowances.
Travel Expenses	
Vehicle mileage (per km)	As per tax schedule for location plus GST
Hire vehicle	Commercial rates plus fuel plus GST
Travel expenses	As per tax schedule for location plus GST
Airfares	At cost plus GST
Taxi travel (to and from Airport or meetings)	At cost plus GST
Maps, report production and expendables	At cost plus GST



7. Related Documents

The following documents support these guidelines:

- ACH Management Code
- ACH Management Plan Template and Guiding Notes

8. Terms used

ACH	Aboriginal cultural heritage
Act	<i>Aboriginal Cultural Heritage Act 2021</i>
Council	Aboriginal Cultural Heritage Council
ESP	Expert service provider
LACHS	Local Aboriginal cultural heritage services
LHO	LACHS Heritage Officer
LSHO	LACHS Senior Heritage Officer
Plan	Aboriginal cultural heritage Management Plan
Survey	Aboriginal cultural heritage survey



Appendix – Legislative Context

Subdivision 3 — Local ACH service functions and related provisions

48. Local ACH service functions

- (1) Local ACH service functions that are, as far as practicable, to be provided in relation to an area by the person designated as the local ACH service for that area are as follows—
 - (a) for the purpose of the management of activities that may harm Aboriginal cultural heritage located in the area under Part 6 — to engage and negotiate, as is appropriate, with —
 - (i) proponents carrying out, or intending to carry out, activities in the area; and
 - (ii) native title parties and knowledge holders for the area, or a part of the area;
 - (b) to make, or to facilitate the making of, ACH management plans in respect of the area;
 - (c) to provide advice to proponents carrying out, or intending to carry out, activities in the area about whether Aboriginal cultural heritage is located in the area and the characteristics of Aboriginal cultural heritage located in the area;
 - (d) to provide information to the ACH Council about Aboriginal cultural heritage located in the area to assist the Council to perform its functions under this Act, and to improve the accuracy of the ACH Directory;
 - (e) to make submissions, and provide information, to the Council about proposals for activities to be carried out in the area and the management of those activities so as to avoid, or minimise, the risk of harm being caused to Aboriginal cultural heritage by the activities;
 - (f) to engage, as appropriate, with other local ACH services, native title parties and knowledge holders about Aboriginal cultural heritage that extends beyond the geographic boundaries of the area;
 - (g) to undertake, either directly or indirectly, on-ground identification, maintenance, conservation and preservation of Aboriginal cultural heritage located in the area;
 - (h) to report to the Council about matters related to the provision of local ACH service functions as required by the regulations;
 - (i) to undertake, either directly or indirectly, any activity in relation to protecting, preserving, conserving or managing Aboriginal cultural heritage, agreed under an approved or authorised ACH management plan to be a function of the person designated as the local ACH service for the purposes of this paragraph;
 - (j) other functions, if any, prescribed for the purposes of this paragraph.
- (2) A person designated as a local ACH service must use its best endeavours to provide the functions set out in subsection (1) in a timely manner.

49. Fee for services provided by local ACH service

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



- (a) the fee structure that the person designated as a local ACH service had in place at the time it was designated; or
 - (b) if a variation of the fee structure is later approved by the ACH Council under section 50(2) — the fee structure as varied.
- (3) However, a person designated as a local ACH service cannot charge a fee for services that it provides to the Department or the ACH Council in connection with any local ACH service functions.
- (4) If a fee for services charged by a person designated as a local ACH service under subsection (1) is not paid, the person may recover the fee as a debt due in a court of competent jurisdiction.

50. Variation of fee structure for services provided by local ACH service

- (1) A person designated as a local ACH service may request the ACH Council to approve a variation of the fee structure for services that it provides in connection with the provision of any local ACH service functions.
- (2) In response to a request under subsection (1), the ACH Council may approve the variation of the fee structure if the Council is satisfied that the fee structure as so varied —
 - (a) is reasonable; and
 - (b) complies with the local ACH service (fees) guidelines.