



Aboriginal Cultural Heritage Act 2021

PROTECTED AREA ORDER GUIDELINES

Consultation Draft





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1. Purpose

The *Aboriginal Cultural Heritage Act 2021* (Act) recognises that some Aboriginal cultural heritage (ACH) is of outstanding significance and requires a declaration as a Protected Area. The purpose of declaring a Protected Area is to provide for special protection from activities that may harm ACH.

These guidelines set out the factors that will need to be considered when determining whether ACH is of outstanding significance for the purposes of the Act.

2. Scope

These guidelines assist knowledge holders to provide evidence in support of an application for ACH of outstanding significance to be declared a Protected Area by setting out the factors that will be considered by the ACH Council (Council) in forming a view that a Protected Area should be declared.

3. Protected area requirements

3.1. Protected Area orders

A Protected Area order may be declared in relation to ACH that is of outstanding significance to a knowledge holder or knowledge holders, and which is recognised as such through its social, spiritual, historical, scientific or aesthetic values as part of Aboriginal tradition.

A Protected Area order offers the highest protection under the Act. It ensures that harm as defined in the Act cannot occur to ACH of outstanding significance. Once ACH is declared a Protected Area, no activities, including access, are permitted to be undertaken, nor submission of any ACH Permit (Permit) or ACH Management Plan (Plan) application to undertake activities within the Protected Area. An order will be able to specify conditions relating to access to and management of the area.

Two important considerations for a Protected Area order application are:

1. When providing supporting information for an application, the ACH that is the subject of the application may be of a secret or confidential nature. **The Act does not require knowledge holders to disclose any culturally sensitive information.** The Council will take into consideration the information presented and available to it when considering the application.
2. A Protected Area order without gazetted conditions or regulations restricts all activities, including those that are classified as exempt activities under the Act. The Act allows for the application of conditions and regulations to an order. Recommended conditions for a Protected Area order application will need to be considered and determined on a case-by-case basis.

3.2. Applying for a Protected Area

An application for a Protected Area **can only be made by a knowledge holder** and will need to provide evidence as to why the proposed protected area is of outstanding significance, having consideration to the factors set out below.

The application for a Protected Area will be considered by the Council.



An application for a Protected Area will need to include:

1. Information clearly outlining the proposed Protected Area location and geographical boundary.
2. A detailed outline of the characteristics of the ACH, using the factors below as a guide.
3. A detailed statement of the outstanding significance of the ACH to the knowledge holder or to a group or community, the members of which are knowledge holders for the ACH.
4. If the area, or part of the area, is within an existing Plan or Permit, a statement of agreement to exclude the application of the Plan or Permit from that area.
5. Any proposed conditions the applicant wishes to see included in a Protected Area order.
6. Any supporting evidence and information outlined below.

3.3. Establishing conditions

If a decision is made to declare the area as a Protected Area, no-one can access and undertake activities within the area other than:

1. an Aboriginal person undertaking their traditional rights and responsibilities, and/or
2. where the conditions of the Protected Area or regulations otherwise allow.

In submitting a Protected Area application, the applicant can recommend conditions for inclusion within a Protected Area order. A condition may permit specified activities to occur within a Protected Area that relate to the access and management of that area.

4. Considering ACH is of outstanding significance

4.1. Considerations for outstanding significance

A knowledge holder should address the following factors when preparing an application for a Protected Area order, in terms of the ACH demonstrating **outstanding significance** to either the knowledge holder or to a group or community, the members of which are knowledge holders for the ACH.

4.2. Factors

Community health

Some ACH is so central to the wellbeing of Aboriginal people that harm to the ACH has the potential to cause harm, whether physical, emotional or spiritual, to individuals or the community and so must be protected. The ongoing health of the community as a whole may be affected by impact to ACH. This is particularly the case where there is an obligation in accordance with Aboriginal tradition to prevent harm to the ACH.

Sacred

Aboriginal sacred tradition includes, but is not limited to, Dreaming places, ceremonial grounds and other places and objects associated with sacred cultural practices. **The Act does not require knowledge holders to disclose any sacred information.**



Educational potential

Aboriginal culture and tradition is the oldest continuous culture in the world. Each generation is responsible for maintaining and passing that culture and tradition to future generations. This may include education of traditional cultural practices in both sacred and non-sacred spaces (that can be used to appreciate the narrative of the ACH). It could potentially include more widespread education to bring better outcomes in awareness, understanding and appreciation of the ACH.

Contemporary usage

Contemporary cultural values can continue to apply through cultural protocols. Aboriginal kinship systems, customs and traditions still thrive and contribute to Aboriginal people, families and communities remaining strong and resilient through ongoing cultural practices and traditions relating to the ACH in question.

Enhancing knowledge

The potential to meaningfully further the understanding of use of Country and Aboriginal ways of life, including cultural practices. This may include the potential to generate research outcomes that benefit Aboriginal people and their knowledge within a cultural perspective. Where this potential is greatest, and where it is considered most necessary by Aboriginal people, is in its importance for the continuity of Aboriginal knowledge.

Uniqueness or rarity of ACH within its context

A place or an object may be rare, unique or uniquely represented for a particular area.

Protection into the future

Where development has severely degraded the area or the broader landscape in which the ACH is located, the ACH may be a rare or uncommon example of how Country appeared in the pre-European contact landscape, increasing the need for it to be recognised and protected.

ACH is important for its ability to address intergenerational equity and can be critical in addressing social inequity created from impacts to ACH more broadly. Where ACH has been adversely impacted or diminished by development and the displacement of Aboriginal people, the preservation in perpetuity of certain places, objects and landscapes will ensure that knowledge can be handed down to future generations.

5. Terms used

ACH	Aboriginal cultural heritage
Act	<i>Aboriginal Cultural Heritage Act 2021</i>
Council	Aboriginal Cultural Heritage Council
Permit	ACH Permit
Plan	ACH Management Plan