



**Aboriginal Cultural  
Heritage Committee**

# ***CHARTER***

## **Document Control**

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## 1. Introduction

The purpose of this Charter is to set out the composition, authority, responsibilities and processes of the Aboriginal Cultural Heritage Committee (Committee), including its relationship with the Department of Planning, Lands and Heritage (Department) and the Minister for Aboriginal Affairs (Minister).

The provisions of this Charter are derived principally from the *Aboriginal Heritage Act 1972* (Act), *Aboriginal Heritage Regulations 1974* (Regulations) and the Good Governance Guide for Public Sector Boards and Committees published by the Public Sector Commission (PSC). Statutory provisions are indicated by reference to the relevant section of the Act or Regulations, or alternative legislation as appropriate.

## 2. Committee governance

The Committee is a statutory authority established by, and whose functions and powers are set out in, the Act [Part 5, s.28]. It is responsible to the Minister and makes recommendations to the Minister on Aboriginal cultural heritage matters as relevant under the Act.

The Committee is recognised as a board in the Public Sector [Boards and Committees Register](#) and for most of its activities would be classified as a policy, review and specialist board undertaking a policy or coordination role.

### 2.1. Committee membership

#### 2.1.1. Appointment of members

A recruitment process for appointing Committee members must begin with an expression of interest process [r.22(1)]. The nomination and appointment process is guided by [Premier's Circular 2022/02](#) [PC2022/02].

Review of nominations and recommendations to the Minister is undertaken by the Department.

Appointment to any State government board or committee is subject to Cabinet approval [PC2022/02]. All members, whether standard, casual, or alternate, are appointed via an instrument of appointment, which identifies the terms and conditions of their appointment [r.23(1)].

#### 2.1.2. Terms of office

Appointments to the Committee are for a term of up to five years [r.23(2)]. While consecutive terms may be served [r.23(3)], the preferred maximum term for an individual membership of a State government board in Western Australia is ten years [PC2022/02]. Cabinet will consider each appointment on its merits and longer terms may be approved.

A Committee member may serve an additional period of up to six months if their replacement has not been appointed [r.23(4)].

### **2.1.3. Casual vacancies**

The provisions for vacancies on the Committee and for removal from office are set under r.27 the Regulations. This includes vacancy due to inability to serve, resignation and removal by the Minister.

If a member is unable to act because of illness, absence or other cause [r.26(1)], or if a member is acting as a chairperson for a period of time [r.26(2)], the Minister may appoint another person as an alternate member to temporarily act in the member's place. This appointment does not require an expressions of interest process, although past nominations may be used by the Minister for identifying suitable temporary members.

### **2.1.4. Chairpersons**

The Committee comprises two chairpersons, appointed by the Minister, each of whom is an Aboriginal person, and one of whom has traditional rights, interests and responsibilities in respect of women's business [s.29(1)(a)(i)] and one of whom has traditional rights, interests and responsibilities in respect of men's business [s.29(1)(a)(ii)].

Both chairpersons, if present at a meeting of the Committee, must jointly preside at the meeting [r.38(1)]. If only one chairperson is present at a meeting, that chairperson must preside at the meeting [r.38(2)].

If one or both of the chairpersons are unable or unavailable to act because of illness, absence or any other cause the Committee may recommend to the Minister that a member or members of the Committee act as chairperson or chairpersons [r.27(1)]. The Minister may appoint the recommended member or members or another member or members [r.27(2)].

Where both Chairpersons are unable or unavailable to preside for all or part of a meeting, the members present may elect one or two members to preside at the meeting, or part of the meeting, as is relevant [r.38(3)].

### **2.1.5. Subcommittees**

The Committee may establish subcommittees to assist the performance of the Committee's functions [r.28(1)].

Subcommittee members are entitled to such remuneration and allowances as determined by the Minister on the recommendation of the Public Sector Commissioner [s.31]. The establishment of any subcommittee is reviewed and approved by Cabinet [PC2022/02]. The State Government's preference is for there not to be an increase in the number of Boards and Committees.

## **2.2. Roles, responsibilities and relationships**

In fulfilling its role, the Committee works with and through the Department while retaining accountability for governance of the Committee. Committee members require an understanding of the roles, responsibilities and reporting arrangements between key stakeholders.

### **2.2.1. The Minister**

The Minister is accountable to Parliament for the operation of the Committee and makes recommendations to Cabinet on the appointment of the Chairpersons and Committee members.

The administration of the Act is vested in the Minister, who is required to have regard to the recommendations of the Committee and the Registrar of Aboriginal Sites may seek input on relevant matters from the Committee.

It is the duty of the Minister to ensure, as far as practicable, that all places in Western Australia that are of traditional or current sacred, ritual or ceremonial significance to persons of Aboriginal descent should be recorded on behalf of the community, and their relative importance evaluated for the effective preservation and protection of such places.

The Minister is also responsible for other functions including:

- making decisions, with regard to recommendations made by the Committee, on notices submitted under section 18 of the Act
- making recommendations to the Governor where an Aboriginal site is of outstanding importance and should be declared a protected area.

The Minister may, in writing, delegate some of his or her powers and duties to the Department. Any such delegations are maintained in a register of Ministerial delegations.

### **2.2.2. Registrar of Aboriginal Sites**

The Chief Executive Officer of the Department shall appoint an officer of the Department to be the Registrar of Aboriginal Sites (Registrar) [s37(1)]. The Registrar is responsible for administering the day-to-day functions of the Committee [s.37(2)] and maintaining the register of Aboriginal heritage places and objects [s.38].

The Registrar is also responsible for other functions including:

- Upon the advice of the Committee, authorising entry upon and excavation of an Aboriginal site and the examination or removal of any thing on or under the site in such manner and subject to such conditions as the Committee may advise [s.16]
- Carry out, on behalf of the Minister, the functions of the Minister in relation to the protection of Aboriginal objects [s.39C].

### **2.2.3. Committee**

The Committee's responsibilities are generally provided under s.39 of the Act, which include:

- evaluate on behalf of the community the importance of places and objects alleged to be associated with Aboriginal persons
- where appropriate, to record and preserve the traditional Aboriginal lore related to such places and objects
- recommend to the Minister places and objects which, in the opinion of the Committee, are, or have been, of special significance to persons of

Aboriginal descent and should be preserved, acquired and managed by the Minister

- advise the Minister on any question referred to the Committee, and generally on any matter related to the objects and purposes of this Act
- perform the functions allocated to the Committee by this Act
- advise the Minister when requested to do so as to the apportionment and application of moneys available for the administration of this Act.

#### **2.2.4. Chairpersons**

The Chairpersons lead the Committee and maintain an understanding of the Committee's business, State Government priorities and the interests of stakeholders. The Chairpersons ensure that the Minister, Committee members and community have confidence in the Committee and its leadership.

In these roles, the Chairpersons have responsibility for:

- providing effective leadership and support for members, building group cohesion and effectiveness
- identifying and addressing gaps in the Committee's collective skills, knowledge, experience, and diversity as part of the member appointment process
- ensuring the Committee gives clear strategic direction and that this is maintained through subsequent decisions and actions
- encouraging and demonstrating high standards of conduct and performance within the Committee
- communicating with the Minister and the Department on behalf of the Committee, facilitating the flow of information between parties
- representing the views of the Committee to the general public
- participating in engagement with stakeholders, and encouraging and enabling engagement by Committee members, consistent with the stakeholder engagement strategy or relevant plan
- leading Committee meetings efficiently, encouraging members rather than directing them, enabling contribution from members, seeking consensus, and identifying and facilitating the resolution of differences where they exist
- signing and executing documents on behalf of the Committee, consistent with any instrument of authorisation or relevant policy
- ensuring that the Committee takes proper account of guidance provided by the Department

#### **2.2.5. Members**

Each Committee member must familiarise themselves with the Committee's purpose, function and responsibilities, and the expectations on them as an individual. Committee members have the status of director and have the same responsibilities for the Committee as would a company director to their corporation under the *Corporations Act 2001* (Cth) [*Statutory Corporations (Liability of Directors) Act 1996*, Part 2]

The role and responsibilities of members include:

- recognising legal and statutory obligations and acting within the authority of the role of a member

- informing themselves about the matters in front of the Committee
- exercising diligence and care, and applying relevant skills, to the Committee's actions and decisions
- acting in good faith in the best interests of the Committee, irrespective of membership of other bodies
- being active advocates for Committee decisions and objectives
- adhering to Committee, PSC and other policies relevant to their role.

#### **2.2.6. The Department of Planning Lands and Heritage**

The Department supports the Committee and the Minister, providing the Committee with any staff, facilities and other assistance reasonably required by the Committee to perform its functions. In some cases this means that the Committee's statutory functions are carried out by the Department on behalf of the Committee. This includes provision of information and notification, hosting of a website and similar administrative functions.

#### **2.2.7. Subcommittees**

The functions, membership and constitution of any subcommittees formed will be specified in their terms of reference, with any delegated powers and functions detailed in an instrument of delegation [r.28].

### **3. Key Committee functions**

#### **3.1. Strategy and policy**

It will be appropriate for the Committee to develop and maintain a strategic plan. The strategic plan will set out the Committee's vision, focus and values. The Department will work with the Committee to develop this document when appropriate.

#### **3.2. Execution of documents**

A document is duly executed by the Committee when it is signed on behalf of the Committee by two authorised Committee members or an authorised officer of the Department [r.43(1)].

Committee members or an officer of the Department may be authorised to sign documents on behalf of the Committee either generally or subject to conditions specified in an instrument of authorisation [r.43(2)].

### **4. Committee meeting processes**

#### **4.1. Meeting frequency**

The Committee meets twice per month. Meeting dates are subject to Committee approval and may vary to allow for public holidays and/or any other competing activities [r.35(1)].

Special meetings of the Committee may be convened by the Minister, a Chairperson or both Chairpersons [r.35(2)] and must be convened by a Chairperson if at least half the members give written notice of such a request [r.35(3)].

The location of the meeting will be a room of suitable size and accessibility provided by the Department, with appropriate means for allowing remote attendance and other facilities as appropriate for the Committee's use. Where access to a meeting room is

not available for any reason, the Department will make provision for remote attendance for participants.

The Committee may on occasion choose to hold meetings on-country. This will be arranged in consultation with the Department.

#### **4.2. Resolutions without a meeting**

The Committee may resolve matters outside of a meeting, which requires that assent in writing needs to be provided by a quorum of members [r.41]. Matters resolved outside of a meeting must be recorded in the minutes of the Committee's next meeting [r.41].

All members must be contacted when considering items outside of a meeting. Unless otherwise agreed or the matter is deemed urgent by the Chairpersons, at least three working days are to be allowed for consideration of a matter.

#### **4.3. Attendance**

Committee members are expected to attend all scheduled and special meetings. Attendance may be achieved by telephone or other means of instantaneous communication [r.40], with Microsoft Teams currently given as the preferred method for remote attendance.

Absence of any member from a meeting will be recorded in the minutes. If a member is unable to attend a meeting, notice should be given at the earliest opportunity to the Chairpersons prior to the meeting. An unplanned absence of which notice has been given will be recorded as an apology.

A member with a planned absence of up to two months may seek a leave of absence from the Committee, which may be granted on terms and conditions determined by the Committee [r.25(1)].

A member with a planned absence exceeding two months may, via the Chairpersons or Department, request a leave of absence from the Minister [r.25(2)].

The Minister may remove a Committee member from office if they are absent without leave from three consecutive meetings [r.24(5)(c)].

#### **4.4. Declarations of interest**

The management of conflicts of interest is set out in Division 3 of the Regulations and detailed in the Committee's Conflicts of Interest Policy, with the associated forms to be submitted by each member every meeting to identify conflicts, perception of bias or the absence of conflicts.

#### **4.5. Voting**

Decisions by resolutions of the Committee will normally be made by consensus of the voting members present as reflected in the summing up made by the Chair.

In the event of a request to reach a decision by means of a vote, each member has a deliberative vote unless excluded from voting due to a conflict of interest [r.39(1)]. In the event of a tie, each member presiding has a casting vote in addition to a

deliberative vote [r.39(3)]. If there is still a tie after casting votes the matter will be determined in the negative [r.39(4)].

The minutes will record the outcome of any vote but will not name dissenting or abstaining members unless so requested by the member(s), the Chairpersons, or a resolution of the Committee.

#### **4.6. Quorum**

A quorum is formed by five Committee members [r.37(2)].

Where a quorum of Committee members is not present during the consideration of a matter because a Committee member is disqualified from voting due to a conflict of interest, then the Minister may deal with the matter or reduce the number of Committee members required for quorum in relation to the matter [r.33(1)]. However, the Minister may not deal with any matter that relates to performance of a function of the Committee in relation to a particular person or matter; or the giving of advice, or making of a recommendation, to the Minister under the Act [r.33(2)].

#### **4.7. Agendas and minutes**

The draft agenda for each meeting is approved by the Chairpersons on the recommendation of the Department. Draft agendas outlining business to be transacted will be provided to every member at least ten calendar days prior to the date of a meeting to allow the identification of conflicts of interest. A detailed agenda will be provided to each member at least seven calendar days prior to the meeting, with items redacted where a material conflict has been identified.

The Committee is responsible for the production of accurate minutes of its proceedings [r.42]. Minutes will be taken by the Department, with officers providing a summary that includes, for each item:

- key points of discussion
- reasons for decision
- significant issues

To assist in decision-making and the production of minutes, the Committee will permit the relevant officer(s) for each item to be present in the meeting.

### **5. Committee effectiveness**

The Committee is required to maintain standards of conduct and behaviour. A number of documents exist that assist Committee members in identifying and meeting these standards.

#### **5.1. Conduct**

The Committee has adopted a Code of Conduct, which deals with the personal conduct of Committee members and should be read, understood and adhered to by all members. This incorporates information on management of conflicts of interest, controls on fraud and corruption, and statements on hospitality and gifts.

#### **5.2. Code of ethics**



The PSC establishes the code of ethics for the public sector within *Commissioner's Instruction No. 40 – [Ethical Foundations](#)*. The code of ethics applies to all public sector boards and sets minimum standards of conduct and integrity.

### **5.3. Committee evaluation**

The Committee will undertake an annual evaluation of its performance through completion of an annual survey. The evaluation methodology and the process will review how the Committee is tracking against standards within this charter and principles of good governance as defined by the PSC.

### **5.4. Remuneration**

Remuneration, travel expenses and other allowances are paid to members at rates recommended by the PSC [s.31]. While members are paid by the Department, their terms and conditions are not determined by the Department. They may, however, be asked to comply with Department policies, processes and practices independent of the Act or Committee policies.

### **5.5. Independent legal advice**

The Committee has access to legal assistance from the Department's legal officers. In consultation with the Department's Legal Services team, formal advice may also be sought from the State Solicitors Office where appropriate. All requests for legal advice should be coordinated by the Committee secretariat.

### **5.6. Committee member development**

The Committee has a commitment to the ongoing development of its members, in the pursuit of advancing the quality of its work. In order to continually improve performance, all Committee members are encouraged to undergo ongoing professional training and development in relevant fields. This will generally be the responsibility of the individual; however, members are encouraged to participate where such activity is available from Committee- or Department-led events.

All Committee members are required to complete Aboriginal and Torres Strait Islander cultural awareness training ([Commissioner's Instruction 29](#)) within three months of appointment to the Committee. The Department provides access to relevant courses and maintains a register of training completion.

### **5.7. Committee member induction**

New members will receive a full introduction to their roles on the Committee from the Chairpersons and the Department prior to their first meeting. Induction activities may continue past the first meeting, with the member expected to undertake a range of training activities and become familiar with relevant documents and legislation.

The program for induction will be assessed before each recruitment process and reviewed by the Committee to ensure that it contains relevant material and information to convey key information to new members.

### **5.8. Review of this Charter**

The Committee will review this Charter every two years to ensure it remains consistent with its objectives and responsibilities.

### 5.9. Source documents

- [Commissioner's Instruction No. 40 – Ethical Foundations](#) (PSC)
- [Governance manual for Western Australian Government Boards and Committees](#) (PSC)
- ACH Committee code of conduct
- ACH Committee conflicts of interest policy
- [Premier's Circular 2022/02](#) – State government boards and committees
- [Remuneration for Government Boards and Committees](#) (PSC)
- [Public Sector Commissioner's Instruction 29](#) - Aboriginal and Torres Strait Islander Cultural Awareness Training

### 5.10. Applicable legislation

The following items of legislation, with associated regulations, guidelines and supporting material, are relevant to the work of the Council and the role of members.

- [Aboriginal Heritage Act 1972](#)
- [Aboriginal Heritage Regulations 1974](#)
- [Auditor General Act 2006](#)
- [Corporations Act 2001](#) (Cth)
- [Corruption, Crime and Misconduct Act 2003](#)
- [Equal Opportunity Act 1984](#)
- [Fair Trading Act 2010](#)
- [Financial Management Act 2006](#)
- [Freedom of Information Act 1992](#)
- [Occupational Safety and Health Act 1984](#)
- [Parliamentary Commissioner Act 1971](#)
- [Planning and Development Act 2005](#)
- [Public Interest Disclosure Act 2003](#)
- [Public Sector Management Act 1994](#)
- [State Records Act 2000](#)
- [State Superannuation Act 2000](#)
- [Statutory Corporations \(Liability of Directors\) Act 1996](#)