

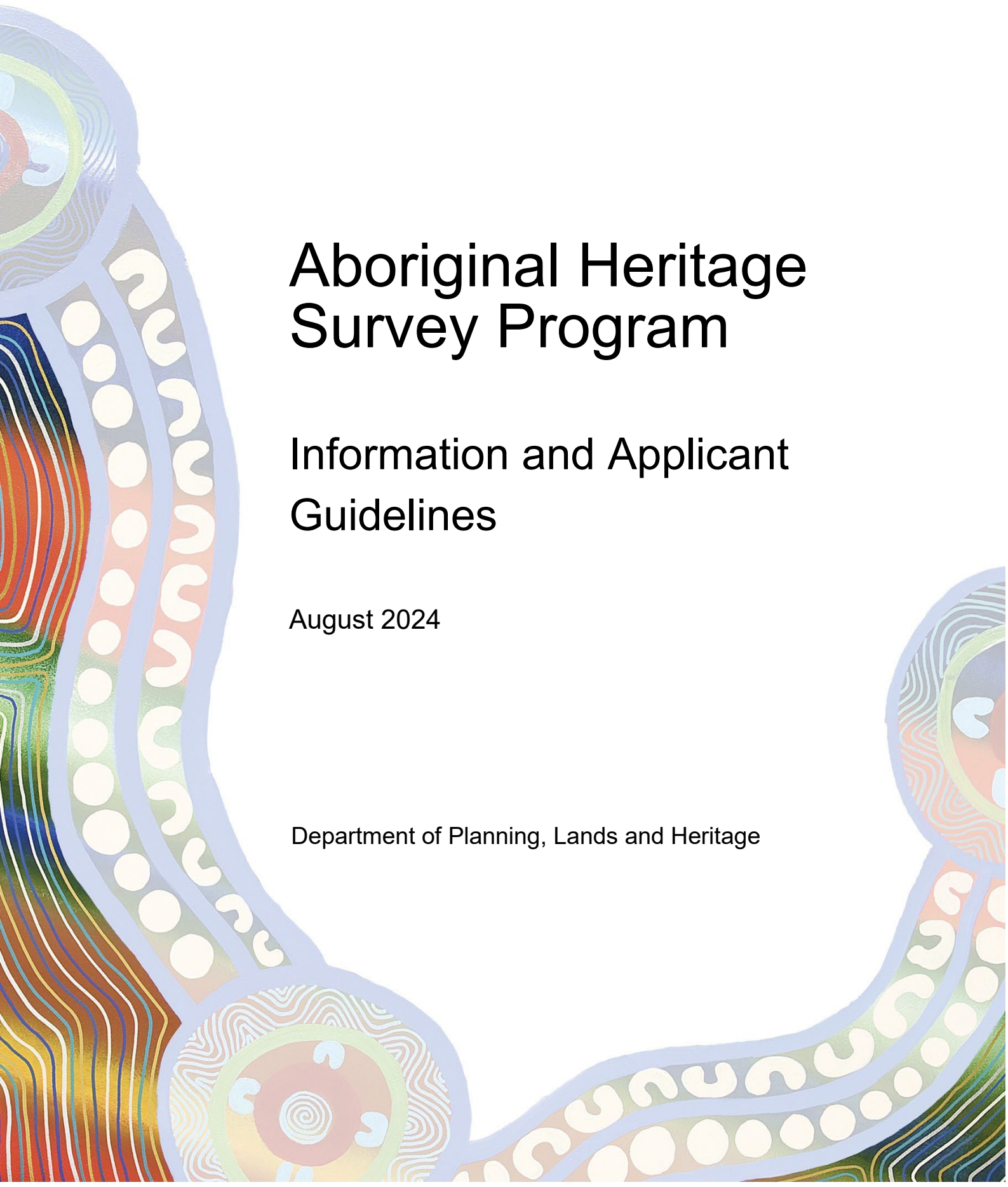


Aboriginal Heritage Survey Program

Information and Applicant Guidelines

August 2024

Department of Planning, Lands and Heritage



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Acronyms and definitions

Aboriginal heritage	Means Aboriginal sites and Aboriginal heritage places
Aboriginal site	Defined in section 5 of the AHA
ACHIS	Aboriginal Cultural Heritage Inquiry System ACHIS (www.wa.gov.au)
ACHknowledge	Department of Planning, Lands and Heritage Aboriginal heritage portal ACHknowledge portal (www.wa.gov.au)
AHA	<i>Aboriginal Heritage Act 1972</i>
AHSP	Aboriginal Heritage Survey Program
Department	Department of Planning, Lands and Heritage
FOI Act	<i>Freedom of Information Act 1992</i>
Native title party	As defined in section 18(1AA) of the AHA
Register	Register of Places and Objects as defined in section 38 of the AHA
Report	Aboriginal heritage survey report
Section 16	<p>Section 16 relates to the excavation of, and removal of things from, Aboriginal sites. Authorisations are granted by the Registrar of Aboriginal Sites, on the advice of the Aboriginal Cultural Heritage Committee, to enter an Aboriginal site and excavate, examine or remove anything on or under the site in a manner and subject to conditions as the Aboriginal Cultural Heritage Committee, may advise.</p> <p>Section 16 authorisations are most commonly used for research purposes including by both universities and the resource sector in conjunction with Aboriginal groups.</p>
Section 18	Where a landowner determines that an Aboriginal site is likely to be harmed by an intended land use, it is the landowner's responsibility to obtain consent from the Minister of Aboriginal Affairs under section 18 of the AHA. The landowner must give notice – known as a section 18 notice – to the ACHC which will make a recommendation to the Minister of Aboriginal Affairs as to whether consent should be granted and any conditions of consent.
Survey	Aboriginal heritage survey



Aboriginal Heritage Survey Program – Information and Applicant Guidelines

1. About the Aboriginal Heritage Survey Program

Aboriginal culture is the oldest living culture in the world, holding significant social, spiritual, historical, scientific and aesthetic value for Aboriginal people as well as the wider community.

To assist with the recognition, management, protection and preservation of Aboriginal sites in Western Australia, the State Government has committed to a 10-year Aboriginal heritage survey program (AHSP) across the State.

The benefits of surveying an area for Aboriginal heritage include:

- better protection of Aboriginal heritage;
- allowing land users to plan their activities to avoid harm to Aboriginal sites;
- provide clarity as to whether future, more detailed, Aboriginal heritage surveys of the area need to be undertaken; and
- improving the accuracy of the Register of Places and Objects (Register).

2. Purpose

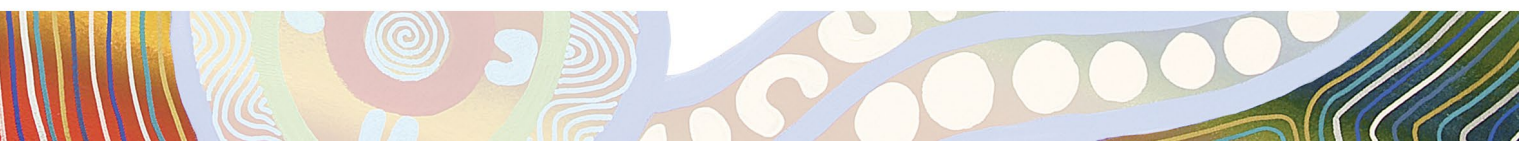
2.1. What is the purpose of the Aboriginal Heritage Survey Program?

The purpose of the AHSP is to:

1. Survey areas to:
 - record Aboriginal heritage for inclusion on the Aboriginal Cultural Heritage Inquiry System (ACHIS) and Register.
 - ensure Aboriginal heritage information can be accessed easily and relied on as part of statutory approvals under the *Aboriginal Heritage Act 1972* (AHA) to use land where Aboriginal sites are located.
2. Accurately remap boundaries of Aboriginal sites and known Aboriginal heritage places where required (such as where former mapping technology did not allow for accuracy).
3. Confirm locations where Aboriginal heritage has not been identified meaning activities can be undertaken without the need for approval under the AHA.

The Aboriginal Heritage Survey Program will not:

- undertake consultation on behalf of proponents seeking a consent under section 18 of the AHA to impact Aboriginal sites (as outlined in the Consultation Policy for section 18 applications); or
- involve excavations that require a section 16 permit.



2.2. Aboriginal heritage survey work programs

The AHSP consists of two work programs available for application:

Program	Title	Purpose
Program 1	Standard Aboriginal heritage surveys	To identify and record Aboriginal heritage
Program 2	Improving the Register of Places and Objects	To revisit existing Aboriginal sites or heritage places to address any legacy issues such as mapping inaccuracy

Two types of Aboriginal heritage surveys will be undertaken to achieve the purposes:

1. **Site identification surveys** are used to record the characteristics and location of any Aboriginal heritage in a survey area.

The information collected will define the boundary and include the importance and significance of Aboriginal heritage so that the Aboriginal Cultural Heritage Committee can make an assessment under section 5 of the AHA and can be used for a section 18 notice or section 16 permit application.

2. **Site avoidance surveys** are used to record the location of any Aboriginal heritage in a survey area.

The information collected will define the boundary and nature of the Aboriginal heritage but will not provide information on the characteristics, including the importance and significance, of the recorded Aboriginal heritage.

Site avoidance surveys can be used for activities that have a degree of flexibility in terms of specific location to avoid any recorded Aboriginal heritage.

Reliance will be able to be placed on the information to understand where Aboriginal heritage is located to allow land users to plan their activities to avoid harming heritage.

2.3. What is included in the Aboriginal Heritage Survey Program

Surveys will be managed by the Department of Planning, Lands and Heritage (Department) in consultation with landowners, native title parties, heritage professionals and any other relevant parties with an interest in the land. Surveys will be conducted by qualified heritage professionals and will result in an Aboriginal heritage survey report (report).

The report will include as relevant:

- (i) the survey area (including shapefile uploaded to ACHIS);
- (ii) the recorded Aboriginal heritage, its condition, and any other contextual or supporting information regarding its importance and significance (where appropriate);
- (iii) Aboriginal people who participated in the survey;
- (iv) the native title party for the survey area at the time of the survey;
- (v) an explanation of the survey method; and



(vi) a description of any limitations¹ of the survey.

All reports will be made publicly available by the Department in accordance with Departmental policy including not releasing culturally sensitive information (see section 2.4). The native title party for the survey area will be required to have the opportunity to review survey reports for the area where the survey was undertaken prior to finalising the report.

Reports are not for the purpose of, and will not include:

- an impact assessment related to proposed activities; or
- guidance on minimising impact by proposed activities to Aboriginal heritage.

Reports and information about Aboriginal heritage cannot be used for informing matters outside of State legislation.

2.4. Culturally sensitive information

Aboriginal people are not required to disclose culturally sensitive information or otherwise act contrary to Aboriginal customary law or tradition.

The *Freedom of Information Act 1992* (FOI Act) recognises certain information, particularly that which qualifies as confidential, is exempt from release. Other exemptions may similarly apply, and mechanisms are available under that FOI Act, to permit a third party to object to disclosure or be joined as a party to an application before the Information Commissioner.

3. Eligibility for the AHSP

Survey areas must be located within the State of Western Australia. Australian territories such as Christmas Island and Cocos (Keeling) Islands are **not** eligible.

3.1. Who is eligible to apply for an Aboriginal heritage survey?

Applicants from the following groups or organisations are eligible:

- native title parties, as defined under the AHA;
- an Aboriginal person who wishes to record Aboriginal heritage;
- individuals (landowners or individuals with consent from landowners – see Appendix 1);
- a small business as defined in the *Small Business Development Corporation Act 1983* section 3(1);
- not-for-profit organisations registered with the Australian Charities and Not-for-profits Commission; and
- local government.

¹ Limitations of a survey refers to the ability to identify all Aboriginal heritage within the survey area which is often due to poor ground visibility due to heavy vegetation.



Subject to the below, applicants who do not fall into the above categories may be considered on a case-by-case basis and should contact the Department.

The following groups are **not** eligible to apply for the AHSP:

- Any business that meets two or more of the criteria below as at the end of the previous financial year:
 - (i) consolidated revenue for the financial year of the business and any entities it controls is \$50 million or more;
 - (ii) value of the consolidated gross assets of the business and any entities it controls is \$25 million or more; and
 - (iii) the business and any entities it controls have 100 or more employees.
- Any previous recipient of funding or rebate under the AHSP or any other grant, rebate or program to undertake a survey for a similar purpose for the same location.
- Federal and State Government agencies.

3.2. How to apply for an Aboriginal heritage survey?

Applicants must complete and lodge a survey application form online through ACHknowledge. Any supporting documentation can be provided as an attachment.

Applicants will receive an automated confirmation of receipt. The Department will contact applicants after the application has been subject to an initial review.

3.3. What information will I need to provide in my application?

Applicants will need to provide the following information:

- the work program (see 2.2 above);
- details of the area to be surveyed, this may include lot number, plan, certificate of title volume, certificate of title folio or tenement number;
- a shapefile in GDA94 of the area to be surveyed (where available); and
- a landowner consent form² (if you are not the landowner, see Appendix 1).

The Department is available to assist in seeking landowner(s) consent. If this is required, please contact the Department.

² A landowner may refuse to consent to a survey on their land. If this is the case, the Department will not undertake an Aboriginal heritage survey.



3.4. Can I apply for an Aboriginal heritage survey if there has been a previous heritage survey conducted on the site?

Yes. If a survey has been conducted over the area (including under the AHSP), an application may still be eligible if the previous survey report is not consistent with the AHSP Survey Standards or is required for a different purpose. Applicants may contact the Department for advice.

4. Application review and next steps

4.1. How will my application be assessed?

The Department will assess applications by:

- verifying and assessing the application and supporting documentation;
- requesting any further information from the applicant as required; and
- reviewing any existing reports held by the Department to determine if a new survey is required.

If approved, the Department will organise a survey in consultation and agreement with the landowner and native title party, and with a selected heritage professional.

The assessment of applications will be based on the information contained in the submitted application form and any supporting documents. The Department will also take into consideration previous requests by the applicant, geographical distribution of funded/requested surveys, the capacity of relevant parties (including the availability of the native title party, Aboriginal survey participants, landowners and heritage professionals), along with other factors such as location accessibility and value for money, to ensure equity across the State.

Surveys will be subject to a range of factors including the availability of native title parties, Aboriginal survey participants, heritage professionals, cultural obligations, location, and time of year and as a consequence cannot be guaranteed to be undertaken within a specific timeframe. Prospective applicants should consider their personal circumstances and requirements when considering whether to apply. The Department will be available to assist in providing guidance as to potential timeframes.

4.2. When can I expect to hear back on the status of my application?

The timeline for each application may differ. The Department will contact applicants as soon as possible after receiving an application. As part of its initial verification and assessment, the Department will make an initial assessment as to a tentative timeframe for a survey to be carried out.

4.3. Where can I go if I have further questions?

For assistance, please contact the Department via the ACHknowledge portal.



Appendix 1

Aboriginal Heritage Survey Program – Land Access Policy

The Department of Planning, Lands and Heritage (Department) will only undertake a survey with the consent of all landowners, including leaseholders.

The Department requires permission from both the **landowner** and, where relevant, any lessee to access the land for the purpose of undertaking an Aboriginal heritage survey (see appendices 2 and 3).

In the case of leased Crown land, the Department only requires permission from the lessee. Permission from the Minister for Lands is not required.

Where there is more than one landowner or lessee, consent is required from all co-landowners and/or co-lessees.

The Department will notify all **interest holders** before undertaking a survey.

Landowner

For the purposes of the Aboriginal heritage survey program, **landowner** refers to owners of freehold land and lessees of both Crown land and freehold land.

Being a landowner generally entitles the owner to absolute possession. This means that the landowner can generally exclude anyone and everyone from having access to their land.

Where the land is the subject of a **lease**, the lessee holds the land subject to the terms of the lease. Usually, the lease provides for exclusive possession of the property, subject to the landlord (lessor) and its agents having the right to enter the property for certain purposes.

Access by third parties to a leased property is usually governed by the terms of the lease and, where access is allowed, it is usually with the prior written consent of the lessee.

This applies similarly where the land is Crown land and the lessor is the Minister for Lands on behalf of the State.

Interest holder

An interest holder refers to anyone who holds an interest in land but is not a landowner, such as the holder of a mining tenement including but not limited to exploration and prospecting licences.

In addition to requiring the permission of landowners, the Department will notify any other interest holders in the land before conducting an Aboriginal heritage survey. This is to ensure that the Aboriginal heritage survey does not impact an interest holders' activities.

Holders of such interests do not have exclusive possession of land and accordingly do not have the right to exclude others from access to the land by virtue only of their interest.



Appendix 2

ABORIGINAL HERITAGE SURVEY LANDOWNER CONSENT FORM

_____ [Insert name of owner*]

[*Where landowner is a corporate entity, insert:

Name of landowner (ABN _____), duly authorised by _____ (insert name of individual), (insert name of individual), hereby consents to allowing access for the purpose of an Aboriginal heritage survey to be conducted on behalf of the State (the **Survey**) on [insert description of land].

Signed:

[insert as many as required if multiple landholders]

For companies: Use this execution clause where the document is not to be executed under Common Seal of the company and there is only one director.

EXECUTED by _____ PTY LTD (ACN) in accordance with Section 127(1) of the Corporations Act 2001 by authority of the Directors:

Signature Sole Director/Sole Secretary*

Print full name of signatory

* Delete if not applicable

Use this execution clause where the document is to be executed under Common Seal and there is more than one director.

THE COMMON SEAL of **PTY LTD (ACN)**)
was hereunto affixed in accordance with)
Section 127(2) of the *Corporations Act 2001*)
in the presence of:

Signature Director

*Signature Director/Secretary**

Print full name of Director

*Print full name of Director/Secretary**

* Delete if not applicable



Use this execution clause where the document is to be executed under Common Seal and there is only one director.

THE COMMON SEAL of **PTY LTD** (ACN))
was hereunto affixed in accordance with)
Section 127(2) of the *Corporations Act 2001*)
in the presence of:

Signature Director

Print full name of Director

* Delete if not applicable



Appendix 3

ABORIGINAL HERITAGE SURVEY LESSEE CONSENT FORM

_____ [Insert name of lessee*]

[*Where lessee is a corporate entity, insert:

Name of lessee (ABN _____), duly authorised by _____ (insert name of individual),
duly authorised in terms of a resolution dated _____.

hereby consents to allowing access for the purpose of an Aboriginal heritage survey to be
conducted on behalf of the State (the **Survey**).

Signed:

[insert as many as required if multiple landholders]

*For companies: Use this execution clause where the document is not to be executed under
Common Seal of the company and there is only one director.*

EXECUTED by _____ PTY LTD (ACN) in accordance with Section 127(1) of the Corporations
Act 2001 by authority of the Directors:

Signature Sole Director/Sole Secretary*

Print full name of signatory

* Delete if not applicable

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