



Aboriginal Cultural Heritage Act 2021

KNOWLEDGE HOLDER GUIDELINES





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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 guidelines are about the identification of persons who are knowledge holders for an area [s. 294(c)]. The guidelines set out the steps for identifying each person who is a knowledge holder for an area so that the ACH Council (Council) or a proponent can notify and/or consult as required under the Act.

These guidelines are not about determining who does or does not have the right to be a knowledge holder but rather outlining the reasonable steps that are to be followed to identify who the knowledge holders are that are required to be notified or consulted under the Act.

For proponents undertaking a due diligence assessment, these guidelines only apply where a local ACH service (LACHS) has not been appointed.

2. Legislative Context

The Act defines a knowledge holder [s. 11] **in relation to an area** as an Aboriginal person who —

- (i) in accordance with Aboriginal tradition, holds particular knowledge about the ACH of the area; and
- (ii) has traditional rights, interests and responsibilities in respect of Aboriginal places located in, or Aboriginal objects or Aboriginal ancestral remains located in or reasonably believed to have originated from, the area.

Where the information is available, the Directory must contain prescribed information about knowledge holders for a particular area and/or particular ACH [s. 213]. The Council must ensure that the Directory is as accurate and up to date as practicable.

3. Scope

The Act sets out the persons to be notified or the persons to be consulted about a tier 2 or tier 3 activity that a proponent is carrying out, or a proposed activity that the proponent intends to carry out, in an area [s. 107]. Where there is a LACHS for an area or part of an area of an activity, a proponent is only required to notify or consult with the LACHS.

If there is no LACHS for the area or part of the area, a proponent is required to notify or consult 'each knowledge holder', which is defined as each person who is identified as a knowledge holder for the area or part of the area, *'after reasonable steps have been taken to do so in accordance with the knowledge holder guidelines'*.

These guidelines set out the reasonable steps that must be taken, to identify each knowledge holder for the area or part of the area.

The guidelines also apply to the Council when it is required to notify knowledge holders:

- where it receives an application for an area to be declared a protected area [s. 75(1)(c)];
- where it forms the preliminary view that an area should be declared a protected area [s. 77(1)(b)(iii)];
- where it forms the view that ACH may be of State significance [s. 175(4)(c)]; and
- prior to making a recommendation about a prohibition order [s. 187(3)(c)(ii)].



4. Steps to identify Knowledge Holders

4.1 Step 1: Search the Directory and contact the appropriate parties

In order to identify the knowledge holders that are to be notified or consulted, the proponent and Council must first:

1. search the Directory to determine if there is a knowledge holder listed for the area; and
2. seek the advice of each native title party or, where there is no native title party, the native title representative body (NTRB), for the area; and
3. seek the advice of the LACHS for the area (Council only).

Definitions of 'native title party' and 'NTRB' are set out in Part 6 of these Guidelines.

1. *Search the Directory*

The Directory will identify the knowledge holder(s) for an area where that information is available.

The Directory may hold ACH records for an area to assist in identifying knowledge holders. It is recommended that a proponent or the Council review any such reports or files. When considering reports or files to identify knowledge holders, it should be noted that knowledge holders may not always have been identified or consulted as this was not a requirement under the *Aboriginal Heritage Act 1972*.

2. *Contacting the native title party and/or NTRB*

Each native title party for the area must be contacted for advice as to who the knowledge holder(s) is (are) for the area. If there is no native title party for the area, advice must be sought from the NTRB.

Where a response has not been received within a week of the request, a further request should be made. If a response is not received within a week of the further request, a proponent may move to Step 2.

Some knowledge holders may not be members of the native title party or be represented by the NTRB, therefore, after completing Step 1, a proponent must contact the Department of Planning, Lands and Heritage (Department).

When contacting the native title party or NTRB, the proponent must:

- advise that the request relates to identifying knowledge holders for the purpose of the Act;
- advise of the purpose of the request including the area to which the request relates; and
- provide contact details.

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

3. *Contacting the LACHS – only applicable to the Council*

In circumstances where a LACHS is established, the Council is also required to contact the LACHS for advice on which Aboriginal persons may be knowledge holders.

When contacting (as relevant) a LACHS, native title party or NTRB, the Council will need to:

- advise that the request relates to identifying knowledge holders for the purpose of the Act;
- advise of the purpose of the request including the area to which the request relates; and
- provide contact details.



4.2 Step 2: Seek advice from the Department

After completing Step 1, a proponent or the Council must contact the Department for advice as to the identity and contact details of knowledge holders for the relevant area.

When contacting the Department, the proponent and/or the Council must:

- (a) provide the names of any knowledge holders identified in Step 1; and
- (b) give details of the relevant area over which knowledge holders are sought; and
- (c) seek confirmation from the Department as to whether the information provided includes, in the opinion of the Department, the identity and contact details of **all** knowledge holders for area.

If the Department confirms that it has provided, in its opinion, the identity and contact details of all knowledge holders for the area, then Step 3 is not required.

4.3 Step 3: Public notice

If after completing Step 2, the Department confirms it cannot provide, in its opinion, the identity and contact details, of **all** knowledge holders for the area, the proponent or Council is required to give public notice to be published on a website maintained by, or on behalf of, the Council requesting other knowledge holders for that area to provide their contact details to the proponent or Council.

The public notice must give:

- (a) the name of the proponent and how the proponent or the Council can be contacted; and
- (b) details of the relevant area over which knowledge holders are sought; and
- (c) the opportunity for any knowledge holders for that area to provide their contact details, within a period of 2 weeks.

The proponent must contact the Department to arrange publication of the public notice.

The proponent is required to provide the identity and contact details of any knowledge holders identified in Step 3 to the Department.

4.4 Knowledge holders to be notified or consulted under the Act

A proponent or Council is only required to notify or consult with each knowledge holder who has been identified after completing Step 1, Step 2, and Step 3 (if required), and whose contact details are known to the proponent or the Council.

5. Related documents

These guidelines relate to the following documents:

- Consultation Guidelines
- Protected Area Order Guidelines
- State Significance Guidelines
- ACH Management Code
- ACH Management Plan Form and Guiding Notes



6. Acronyms and definitions

ACH	<p>Aboriginal cultural heritage</p> <p>(a) means the tangible and intangible elements that are important to the Aboriginal people of the State, and are recognised through social, spiritual, historical, scientific or aesthetic values, as part of Aboriginal tradition; and</p> <p>(b) includes the following —</p> <ul style="list-style-type: none"> (i) an area (an Aboriginal place) in which tangible elements of Aboriginal cultural heritage are present; (ii) an object (an Aboriginal object) that is a tangible element of Aboriginal cultural heritage; (iii) a group of areas (a cultural landscape) interconnected through tangible or intangible elements of Aboriginal cultural heritage; (iv) the bodily remains of a deceased Aboriginal person (Aboriginal ancestral remains), other than remains that are buried in a cemetery where non-Aboriginal persons are also buried or remains that have been dealt with or are to be dealt with under a law of the State relating to the burial of the bodies of deceased persons.
Act	<i>Aboriginal Cultural Heritage Act 2021</i>
Council	Aboriginal Cultural Heritage Council
Directory	Aboriginal Cultural Heritage Directory
ILUA	Means an indigenous land use agreement registered on the Register of Indigenous Land Use Agreements established and maintained under Part 8A of the <i>Native Title Act 1993</i>
LACHS	Local Aboriginal cultural heritage service
Native title party	<p>In relation to an area, means —</p> <ul style="list-style-type: none"> (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 — <ul style="list-style-type: none"> (i) under an 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.
NTRB	<p>Native title representative body means —</p> <ul style="list-style-type: none"> (a) a body that is recognised as a representative body under the Native Title Act section 203AD; or (b) a person or body funded under the Native Title Act section 203FE to perform all, or specified, functions of a body referred to in paragraph (a).
Regional corporation	Has the meaning given in section 40 of the Act
Registered native title body corporate/ claimant	Has the meaning given in section 253 of the <i>Native Title Act 1993</i> .

