



# *Aboriginal Cultural Heritage Act 2021*

## **LOCAL ACH SERVICE (FEES) GUIDELINES**





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## 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 set out the requirements for the fee structure for the fees a LACHS is able to charge for services it provides in connection with its functions.

## 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 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, a LACHS is able to charge a fee for services [s. 34 of the Act] it provides in connection with its functions carried out in relation to the area of its designation [s. 49], including activities relating to an ACH Management Plan (Plan).

The fees a LACHS is able to charge must be in accordance with a fee structure that has been endorsed by the Aboriginal Cultural Heritage Council (Council) when the Council designates the LACHS. Once endorsed, the fee structure will be publicly available, affording proponents certainty and clarity in relation to fees, including 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 [s. 36]. The functions of a LACHS are set out in section 48 of the Act (Appendix A).

Section 49 of the Act provides that a LACHS is able to charge a fee for services it provides in connection with the exercise of its functions carried out in relation to the area of its designation. A LACHS can only charge fees in accordance with the LACHS fee structure as approved by the Council or any variation of the fee structure later approved by the Council.

**The LACHS fee structure must comply with these guidelines.**

## 4. Scope

These guidelines set out a maximum rate of fees and related principles that must be provided for in a LACHS fee structure.

If provided for in its fee structure, a LACHS may also charge fees for the cost of services it provides in connection with its LACHS functions, carried out in relation to the area of its designation, by written agreement with the fee payer.



As such, a LACHS fee structure:

- a) may provide that reasonable fees be charged by way of written agreement for the cost of services a LACHS provides in connection with its LACHS functions carried out in relation to the area of its designation with the fee payer; and
- b) must provide the option of charging fees for services the LACHS provides in connection with its LACHS functions carried out in relation to the area of its designation, in accordance with the maximum rate of fees and other principles set out in these guidelines.

#### 4.1 LACHS officers

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

- LACHS Heritage Officer (LHO); and
- LACHS Senior Heritage Officer (LSHO).

The fees that may be charged by a LHO and LSHO must be set out in the LACHS fee structure, and must be within the fee rates established by these guidelines.

A LACHS fee structure may also provide for the charging of fees for other positions within the LACHS that contribute to the provision of services in connection with its functions, particularly decision-making roles, undertaken by a LACHS, principally (where applicable) the Chief Executive Officer or Chief Operating Officer. If so, the LACHS fee structure must provide that other persons carrying out functions should be designated in the LACHS fee structure as equivalent to performing functions at either the LHO role level or the LSHO role level. This excludes administrative staff, the cost of whom is incorporated as part of the administrative fee of 15% of the total fee (see below).

The LACHS fee structure must provide that fees for the activities carried out in providing the services, as set out below, should be charged at LHO rates if they are carried out by a person designated at LHO level. Where a person designated at LSHO level carries out an LHO activity, then the LHO rate applies, unless the activity is also a LSHO activity. Appendix 1 provides a description in relation to each LHO and LSHO activity.

A LACHS fee structure may provide that where a LACHS officer has not been appointed, a LACHS is able to employ the services of an external provider to undertake the activities listed below and charge at the equivalent rate.

#### 4.2 Senior Aboriginal consultant and Aboriginal consultant

The Act recognises that Aboriginal people have a living relationship with, and are the primary custodians of, ACH and, as far as practicable, should be involved in the management of activities that may harm ACH [s. 9].

Aboriginal people have different roles and responsibilities within their communities. In recognition of these different roles and responsibilities, a LACHS fee structure can provide for two separate fee rates for services provided by:

- Senior Aboriginal consultant – an Aboriginal person who is recognised within their community as being senior and as having higher levels of knowledge, expertise, skills and authority in relation to ACH;



- Aboriginal consultant – an Aboriginal person who is recognised within their community as having knowledge, expertise, skills and authority in relation to ACH, but does not have as high levels of such knowledge, expertise, skills and authority as a senior Aboriginal consultant.

Senior Aboriginal consultants and Aboriginal consultants may be employed as officers of the LACHS, or may provide services to the LACHS for a fee.

The cost of services provided by senior Aboriginal consultants and Aboriginal consultants must be set out in the LACHS fee structure, and must be within the fee rates established by these guidelines.

### 4.3 Expert service providers

A LACHS fee structure can provide for reasonable fees for services in connection with a LACHS function that include the cost of LACHS obtaining services from expert service providers (ESP) in connection with any of the LACHS functions and include, but are not limited to:

- heritage professionals;
- legal professionals;
- negotiation specialists;
- engineering and land use professionals; and
- any other service providers providing expert advice that is necessary for a LACHS to undertake its functions and to provide the relevant service to the fee payer.

The cost of ESP services that may be passed on in fees by a LACHS must be set out in the LACHS fee structure, and must not exceed the fee rates established by these guidelines.

### 4.4 Services in very remote areas

The Australian Statistical Geography Standard Remoteness Structure divides Australia in to five classes of remoteness on the basis of relative access to services. It uses the Accessibility/Remoteness Index of Australia (ARIA+), which is based on the distance of geographic locations to the nearest service centres.

LACHS providing services in very remote areas can provide in its fee structure that it may charge proponents up to an additional 20% on those items listed in Table A – Service provider rates.

### 4.5 Exceptional circumstances

A proponent may require services to be undertaken urgently due to exceptional circumstances.

Exceptional circumstances are those that are outside the proponent's control and cannot be reasonably foreseen by the proponent or guarded against and/or the circumstances that require an urgent response. Such circumstances may include events outside human control, natural disasters, or to prevent a potential situation which may result in imminent danger to, human life of health or livestock.

The LACHS fee structure can provide that, in such circumstances, a LACHS can charge proponents up to an additional 20% on those items listed in Table A – Service provider rates.

Proponents and the LACHS are encouraged to seek to agree whether exceptional circumstances exist for any particular activity being undertaken.



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

A LACHS can only charge fees in accordance with its fee structure as approved by the Council. A LACHS fee structure can provide that fees be charged for the services it provides to the fee payer in carrying out its statutory functions. In particular, a LACHS fee structure must provide for fees for the following services provided to the fee payer and the fee structure for these services must comply with this schedule.

### Consultation, advice and engagement services

Services that may reasonably be charged for by:

#### *LHO level activity*

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Act as a primary contact

Engage expert service providers

Facilitate engagement with Aboriginal consultants and senior Aboriginal consultants

Facilitate engagement with knowledge holders

Participate and assist in the coordination of ACH Investigations<sup>1</sup>

Provide advice of known ACH Review and respond to requests for advice and Part 6 applications

#### *LSHO level activity*

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Make decisions Lead and coordinate ACH Investigations

Lead and coordinate consultations and engagement

Provide advice

Review information and lead discussions

#### *Senior Aboriginal consultant activity*

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Assess potential impact to ACH values

Participate in and provide advice in relation to ACH Investigations

Provide advice on preferred method of ACH Investigation

Provide advice to avoid and/or minimise harm to ACH

Provide information about the characteristics of ACH

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<sup>1</sup> Refer to ACH Investigations Guidelines



*Aboriginal consultant activity*

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Participate in ACH Investigations Provide advice about ACH  
Undertake ACH monitoring work and site audits

*ESP activity*

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Attend meetings  
Facilitate engagement with Aboriginal consultants and senior Aboriginal consultants  
Facilitate engagement with knowledge holders  
Prepare and review technical information  
Prepare technical reports (including ACH survey reports)  
Provide expert advice regarding any proposed works Provide expertise and/or technical advice  
Provide expertise and undertake ACH Investigations

**Services relating to the making of Plans for tier 2 and tier 3 activities [Part 6, Division 6]**

Services that may reasonably be charged for by:

*LHO level*

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Act as a primary contact Engage expert service providers  
Facilitate advice to Aboriginal consultants and senior Aboriginal consultants  
Facilitate and review reports in relation to the development of Plans  
Facilitate engagement with Aboriginal consultants and negotiations with senior Aboriginal consultants  
Facilitate engagement and negotiation with knowledge holders  
Prepare reports  
Provide advice of known ACH  
Review and respond to requests for advice and notices of intention to carry out a tier 3 activity

*LSHO level*

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Lead and coordinate consultation and engagement  
Lead and coordinate the negotiation process for Plans  
Lead and coordinate the development of Plans  
Make decisions  
Review information and lead discussions



*Senior Aboriginal consultant*

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- Assess potential impact to the ACH values
- Participate in and provide advice in relation to ACH Investigations
- Provide advice on preferred method of ACH Investigation
- Participate in the negotiation process for Plans
- Provide advice to avoid and/or minimise harm to ACH
- Provide information about the characteristics of ACH

*Aboriginal consultant*

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- Participate in ACH Investigations
- Undertake ACH monitoring work and site audits

*ESP*

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- Attend meetings
- Facilitate engagement and negotiation with senior Aboriginal consultants
- Prepare and review technical information
- Prepare technical reports (including ACH survey reports)
- Provide expert advice regarding any proposed works
- Provide expertise and/or technical advice
- Provide expertise and undertake ACH Investigations

**Services relating to the making of submissions in response to a notice of intention to carry out a tier 2 activity [s. 113] or an application for a permit to be extended [s. 122]**

In relation to making a submission in response to a notice of intention to carry out a tier 2 activity, the maximum fee that may be charged for these services is \$500 in total.

*LHO Level*

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- Review and draft submissions in response to a notice of intention to carry out a tier 2 activity
- Review reports for the purposes of considering a notice of intention to carry out a tier 2 activity

*LSHO Level*

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- Review and draft submissions in response to a notice of intention to carry out a tier 2 activity





## Services relating to on-ground identification, maintenance, conservation, preservation or management of ACH

Services that may reasonably be charged for by:

### *LHO*

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Act as primary contact

Facilitate engagement with Aboriginal consultants and negotiation with senior Aboriginal consultants

Facilitate engagement and negotiation with knowledge holders

Participate in or assist in coordination of ACH Investigations

Prepare reports Review and respond to requests for advice Support Aboriginal consultants

Support expert service providers

### *LSHO*

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Lead and coordinate ACH Investigations

Lead and coordinate consultations and engagement

Make decisions

Provide advice

Review information and lead discussions

### *Senior Aboriginal consultant*

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Assess potential impact to the ACH values

Participate in and provide advice in relation to ACH Investigations

Provide advice on preferred method for the management of ACH

Provide advice to avoid and/or minimise harm to ACH

Provide information about the characteristics of ACH

### *Aboriginal consultant*

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Participate in ACH Investigations

Undertake ACH monitoring work and site audits



Facilitate engagement with Aboriginal consultants and negotiation with senior Aboriginal consultants

Facilitate engagement and negotiation with knowledge holders

Prepare ACH survey reports

Provide expertise and undertake ACH Investigations

Provide expertise and/or technical advice

## 6. Schedule of fees

The hourly rates set out in Table A provide the scope for the rates to be set out in the LACHS fee structure that a LACHS may charge for the services provided by LACHS officers, senior Aboriginal consultants, Aboriginal consultants or any ESP providing services to the LACHS, in providing its functions under section 48. A LACHS fee structure should provide that LACHS officers will be charged at either the LSO or LSHO level, depending on their role. Table B sets out rates payable for travel costs and other incidentals associated with a LACHS performing its function.

The range is provided to reflect that rates may vary depending on the specific skills and experience of the service provider and the nature of the work being undertaken. The lower end of the bandwidth is regarded as a minimum rate, the higher end is the maximum allowable rate, unless otherwise specified, such as in exceptional circumstances and remote uplift.

**A LACHS fee structure must contain the principle that any fee charged must be reasonable, that the overall fee to be charged for each service will not be unreasonable and the overall fee will be reduced where the actual number of hours spent on an activity forming part of the fee are, in all the circumstances, unreasonable. Any invoice shall contain a schedule itemising the breakdown of the fees charged.**

### 6.1. Other matters

1. For items which are charged at the daily rate, a LACHS fee structure must provide that this rate is for 8 hours per day. Any time in excess of this period can be charged at the hourly rate.
2. Costs (for example accommodation, meals or travel costs) may be included in a fee structure.
3. A LACHS fee structure may provide for an administration fee of up to 15% to be charged in relation to fees and costs, as they are necessarily or reasonably incurred.
4. A LACHS fee structure may provide that the LACHS may agree payment timeframes with proponents or otherwise charge fees in accordance with its normal business practice.
5. A LACHS fee structure must declare that a fee must not be charged twice for the same individual activity carried out by, or for, the LACHS.
6. A LACHS cannot charge a fee for services that it provides to the Department or the Council [s. 49].
7. A LACHS may request the Council to approve a variation of the fee structure that is reasonable and complies with these fee guidelines [s. 50].
8. A LACHS fee structure may provide that the fees contained in it will increase on an annual basis in line with the Consumer Price Index (Australia).



**Table A – Service provider rates**

SERVICE PROVIDER	RATE	
	Hourly	Daily
LHO	\$80 - \$120*	\$600 - \$900*
LSHO	\$120 - \$160*	\$900 - \$1200*
Chief Operating Officer	\$160 - \$240*	\$1200 - \$1800*
Chief Executive Officer	\$240 - \$280*	\$1800 - \$2100*
Aboriginal Consultant	\$80 - \$120*	\$600 - \$900*
Senior Aboriginal Consultant	\$120 - \$160*	\$900 - \$1200*
Heritage Professionals	Rates as per professional standards	
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	Up to \$300	Up to \$2250
Administration fee	15%	
*Very Remote uplift is applicable		

**Table B – Additional costs**

Item	Rate
<b>Field Expenses</b>	
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.
<b>Travel Expenses</b>	
Vehicle fuel and/or mileage (per km)	As per tax schedule for location plus GST
Hire vehicle	Commercial rates plus fuel plus GST
Airfares	At cost plus GST
Taxi travel (to and from Airport or meetings)	At cost plus GST
Printing of Reports and Maps	At cost plus GST



## 7. Related documents

The following documents relate to these guidelines:

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

## 8. Acronyms and definitions

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
Permit	Aboriginal cultural heritage permit
Plan	Aboriginal cultural heritage management plan
Survey	Aboriginal cultural heritage survey



## Appendix A

*Section 48 of the Act sets out the functions of a LACHS.*

- (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 LACHS must use its best endeavours to provide the functions set out in subsection (1) in a timely manner.