



Aboriginal Cultural Heritage Act 2021

PROTECTED AREA ORDER GUIDELINES





Contents

1. Purpose	3
2. Scope.....	3
3. Protected area requirements.....	3
3.1 Protected area orders	3
3.2 Application for a protected area.....	3
4. Considering ACH is of outstanding significance.....	4
4.1 Considerations for outstanding significance	4
4.2 Factors.....	Error! Bookmark not defined.
5. Acronyms and definitions	5



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 special protection from activities that may harm ACH. It offers the highest level of protection to ACH under the Act.

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 must be considered by the ACH Council (Council) and Minister for Aboriginal Affairs (Minister) in determining whether ACH is of outstanding significance and 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 where that significance is recognised through social, spiritual, historical, scientific or aesthetic factors as part of Aboriginal tradition.

The purpose of a protected area order is to recognise that ACH of outstanding significance is located in the area and to provide special protection from activities that may harm that ACH. Once a protected area is declared, activities that may harm ACH cannot be authorised under Part 6 of the Act to be carried out within the area. This includes activities classified as exempt under the Act. Applications cannot be made for ACH permits or ACH management plans to undertake activities within a protected area.

Activities that may harm ACH can only be undertaken in accordance with conditions on the relevant protected area order or in accordance with the *Aboriginal Cultural Heritage Regulations 2022* (Regulations), with the exception of Aboriginal people undertaking their traditional rights and responsibilities.

3.2 Application for a protected area

An application for a protected area **can only be made by a knowledge holder for the area** of the application who will need to provide evidence as to why the area is of outstanding significance. This evidence should consider the factors outlined at section 4.2.

Knowledge holders are not required to disclose any culturally sensitive information when making an application.

The application must meet the requirements set out in the Act including a description of:

- (i) the application area, which can comprise several areas that are not contiguous;
- (ii) the characteristics of the ACH; and
- (iii) the outstanding significance of the ACH to the applicant or to a group or community of which the applicant is a member.

The Act provides a set of requirements if the application area includes an area to which a Permit or Plan relates.



4. Considering ACH is of outstanding significance

4.1 Considerations for outstanding significance

A knowledge holder should address at **least one of the following factors** in demonstrating that the ACH is of **outstanding significance** to either the knowledge holder or to a group or community, the members of which are knowledge holders for the ACH, acknowledging that in many instances there will be an intersection between different factors. The Council and Minister must consider these factors in determining whether ACH is of outstanding significance and in forming a view whether an area should be declared a protected area.

4.2 Factors

Community health

Where harm to the ACH has the potential to cause physical, emotional or spiritual harm to an individual, group or a community, particularly where there is a cultural obligation in accordance with Aboriginal tradition to prevent harm to the ACH.

This value recognises that ACH, in accordance with Aboriginal tradition, can be central to the wellbeing of Aboriginal people and communities and that harm to ACH can result in harm to Aboriginal people themselves.

Sacred

Aboriginal sacred tradition includes, but is not limited to, Dreaming places, ceremonial grounds and other places, objects and cultural landscapes associated with sacred traditional customs and practices.

The Act does not require knowledge holders to disclose any sacred information, however, a knowledge holder may wish to provide details that provide a broad description, or context, of why a place is sacred or information about a sacred tradition or cultural practice without providing culturally sensitive information.

Educational potential

Specific ACH is used by Aboriginal communities for elders to pass on knowledge and educate younger members of the community in relation to both sacred and non-sacred traditional customs, practices and skills that are central to the cultural traditions of that community.

This may include education to ensure awareness and understanding of the ACH itself and how to ensure it is protected and preserved.

This factor recognises that Aboriginal culture and tradition is the oldest continuous culture in the world and that each generation is responsible for maintaining and passing that culture and tradition to the next generations. It recognises the importance of intergenerational equity through traditional customs, practices and skills being able to be handed down to future generations, particularly in the context of the displacement of Aboriginal people and impacts to ACH since European settlement and associated contribution to social inequity.

Contemporary usage

The ACH is central, or of fundamental importance, to the kinship systems or traditional customs, practices and skills of an Aboriginal family, group or community that continues to be practised.



Aboriginal kinship systems, customs and traditions still thrive and contribute to Aboriginal people, families and communities remaining strong and resilient by maintaining ongoing cultural practices and traditions related to the specific ACH.

Enhancing knowledge

The potential to meaningfully and significantly further understanding and knowledge of past use of Country and traditional customs, practices and skills.

This may include the potential to generate research outcomes that contribute to the continuity of culture and tradition that benefits or is important to Aboriginal people and/or the wider Western Australian community.

Uniqueness or rarity of ACH

A place or an object may be rare in, or unique to, a particular area. This may include rarity or uniqueness in the context of how Country appeared in the pre-European contact landscape.

While uniqueness or rarity will need to be considered in the context of the ACH in question, the broader context including the geographic area for which the place or object is rare or unique will also be taken into consideration.

5. 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



Knowledge holder	(a) in relation to an area, means 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; and (b) in relation to ACH, means an Aboriginal person who — (i) in accordance with Aboriginal tradition, holds particular knowledge about the ACH; and (ii) has traditional rights, interests and responsibilities in respect of the
Permit	ACH permit
Plan	ACH management plan
Regulations	<i>Aboriginal Cultural Heritage Regulations 2022</i>