



STATEMENT OF REGULATORY INTENT

ABORIGINAL CULTURAL HERITAGE ACT 2021

Purpose of this statement

This Statement of Regulatory Intent sets out the guiding principles to the Department of Planning, Lands and Heritage's (**the Department**) approach to compliance and enforcement for the first 12 months of new regulatory obligations under the *Aboriginal Cultural Heritage Act 2021* (**the Act**), starting on 1 July 2023.

The Act was passed in December 2021 and underwent an extensive co-design process, to help inform the regulations and statutory guidelines that support the Act.

The Department recognises that while understanding of the Act continues to grow, people with obligations under the Act are still transitioning to its requirements, including the regulations, guidelines and ACHKnowledge ICT system that support compliance.

This statement is issued in good faith as an assurance about the enforcement approach to be taken in relation to new regulatory obligations.

Duration of this statement

This statement is dated 1 July 2023 and is effective for twelve months — that is, until 30 June 2024, unless extended or otherwise varied in the interim.

Legislation and subsidiary legislation creating new regulatory obligations

The new regulatory obligations on persons that this statement addresses are found in the following laws and guidelines, which are all in operation as at 1 July 2023:

- Aboriginal Cultural Heritage Act 2021
- Aboriginal Cultural Heritage Regulations 2022
- Aboriginal Cultural Heritage (Cost Recovery) Regulations 2023
- Guidelines outlined in section 294 of the Act:
 - Aboriginal Cultural Heritage Management Code
 - Consultation Guidelines
 - Knowledge Holder Guidelines
 - Local Aboriginal Cultural Heritage Service (Fees) Guidelines
 - Aboriginal Cultural Heritage Protected Area Order Guidelines
 - Aboriginal Cultural Heritage State Significance Guidelines
- Other Guidelines – published on the Department's website
 - Aboriginal Cultural Heritage Investigations Guidelines
 - Aboriginal Cultural Heritage Survey Report Guidelines

Some of the key changes introduced by these laws and guidelines include:

- Management Code for undertaking a due diligence assessment
- Tiered system categorising activities according to potential level of harm
- Corresponding authorisation process for each of the tiers



- Provision for exempt activities
- Direct engagement with aboriginal people in respect of managing any risk of harm to Aboriginal cultural heritage
- Free, prior and informed consent in any agreement making process.

However, the need to seek approval for activities that may harm Aboriginal cultural heritage has not changed. This already existed under the *Aboriginal Heritage Act 1972* (**the 1972 Act**) and other Aboriginal heritage laws.

The Department's Regulatory Intent: An Educative Approach to Assist Compliance

The Department's primary approach to compliance for new requirements will be an educative one, which will assist with the understanding of and compliance with the new regulatory framework.

The Department will generally take an educative and supportive approach to technical breaches arising from new obligations or where transitional arrangements apply, provided that those persons have made or are making genuine attempt to comply with legislative requirements.

Offences of harming Aboriginal cultural heritage will be investigated and, if substantiated, prosecuted.

Review

The Department will continue to monitor the implementation of the Act and its regulatory framework and engage with industry and other stakeholders. This Statement of Intent may be amended at any time to support the implementation of the Act as required.

More information

More information about these reforms and the cultural heritage protection is available on the Department website at wa.gov.au/ach-act.

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