



ABORIGINAL HERITAGE LEGISLATION

FREQUENTLY ASKED QUESTIONS

What is Aboriginal heritage?

An Aboriginal site is any place to which section 5 of the *Aboriginal Heritage Act 1972* (1972 Act) applies. This could include artefacts, a place used for rituals, or burial sites.

Examples of Aboriginal heritage are rock art, ancient caves, waterways, ceremonial sites or scar trees.

Find out more [about Aboriginal heritage](#).

Why is Aboriginal heritage important?

Aboriginal culture dates back some 60,000 years and is the oldest living culture in the world.

Aboriginal heritage holds significant value to Aboriginal people for their social, spiritual, historical, scientific or aesthetic importance within Aboriginal traditions. They provide an essential link for Aboriginal people to their past, present and future.

What is the current legislation?

The 1972 Act is the current law governing the protection and management of Aboriginal heritage in Western Australia.

In late 2023 the State Government changed the laws governing the protection and management of Aboriginal heritage in Western Australia. The *Aboriginal Cultural Heritage Act 2021* has now been repealed, with an amended 1972 Act reinstated as the legislative framework.

Key amendments to the 1972 Act comprise:

- Native Title parties now have a right of review for section 18 decisions via the State Administrative Tribunal (SAT), with clear timeframes for the review process and an ability for the Premier to call-in an application to SAT for issues of 'State or regional significance' acting in the interests of all Western Australians. Previously, the right of review was available to proponents only and not to Native Title parties.
- When a section 18 consent has been given by the Minister for Aboriginal Affairs (Minister), the landowner must notify the Minister of any new information about an Aboriginal site and the Minister must reconsider the original consent – an important reform to help prevent another Juukan Gorge incident.
- Where there is a change of ownership of land that is the subject of a section 18 consent, the consent will be transferred and the new owner is required to notify the Minister.
- A new statutory Committee – the Aboriginal Cultural Heritage Committee (Committee) – takes on the role of the former Aboriginal Cultural Material Committee to make recommendations on section 18 notices to the Minister. The new Committee is skills-based with majority Aboriginal members and has male and female Aboriginal co-Chairs.



What is the Aboriginal Cultural Heritage Committee?

The Aboriginal Cultural Heritage Committee is established under the *Aboriginal Heritage Act 1972*.

The Committee meets twice a month. Its primary role is to make recommendations to the Minister in relation to section 18 notices, and to the Registrar of Aboriginal Sites in relation to section 16 applications, as well as a range of other matters.

The Committee has 11 members with majority Aboriginal representation, and an Aboriginal male and female co-Chair.

How do I know if there is Aboriginal heritage on my property?

The *Aboriginal Cultural Heritage Act 1972 Guidelines* provide advice on identifying Aboriginal heritage.

The Aboriginal Cultural Heritage Inquiry System (ACHIS) provides locations and information about known Aboriginal heritage in Western Australia.

You can search for Aboriginal heritage [here](#).

What do I do if I think I need an approval?

We strongly recommend that you discuss your situation with an Aboriginal heritage officer within the Department of Planning, Lands and Heritage (Department) to verify that the proposed activity warrants a section 18 notice prior to lodging an application in ACHknowledge.

This is because statutory timeframes begin upon lodgement of a valid application and will ensure the most efficient assessment process. You also want to check as there may not be any approval required for the proposed activity or land use.

Contact the Aboriginal heritage team at the Department.

Visit: <https://www.wa.gov.au/aboriginal-heritage>

Call: 6551 8002, and select Option 1

How much will getting an approval cost?

The *Aboriginal Heritage (Fees) Regulations 2023* set out the fees for section 18 notices and section 16 approvals.

The proposed fees for commercial and Government applications are:

- a \$250 application fee; and
- \$5,096 multiplied by the number of *proposed investigation sites* for section 16 applications and *identified sites and places* for section 18 applications.

Individuals, small business and not-for-profit organisations are to pay a \$250 application fee, with no fee per proposed investigation site or identified site or place.

Special exemption provisions apply for Aboriginal corporations who are undertaking not-for-profit activities.



Are there any exemptions for the approvals required?

There are no activities that are exempt under the Act. The Department can assist in determining whether an approval is required.

How do I know who to consult with?

A *Consultation Policy* applies for section 18 applications which sets out:

- that consultation is to be undertaken with Aboriginal people prior to submitting a notice under section 18 of the Act;
- principles and standards of consultation;
- the engagement processes and documentation to support a section 18 application; and
- that the Department, on behalf of the Committee, undertakes a procedural fairness check as part of the assessment process to provide an opportunity for the relevant Aboriginal people to have a say on the proposed land use and suggest conditions.

What is a Section 18 consent?

Where a landowner concludes that impact to an Aboriginal site is unavoidable, the Minister's consent to impact the site should be sought under section 18 of the Act by giving notice to the Committee. This is known as a section 18 notice (or application).

How do landowners start a section 18 application?

A landowner needs to give a section 18 notice to the Committee, via the Registrar of Aboriginal Sites (Registrar), using the online [ACHknowledge](#) portal.

How long is the section 18 process?

From lodgement of a complete section 18 notice, the Committee has 70 days within which it is required to make its recommendation to the Minister. There is an option for a 30-day timeframe extension and the Minister must make a decision within 28 days, or as soon as practicable, after receiving the Committee's recommendation.

Any requests for further information in relation to an application will 'stop-the-clock' on these timeframes.

What happens to approvals given under the *Aboriginal Cultural Heritage Act 2021 (2021 Act)*?

Permits or management plans that are approved or authorised under the 2021 Act automatically transition to a section 18 consent.

Some activities carried out under the 2021 Act remain valid, including activities that were considered exempt, did not require approval or where no risk of harm had been assessed, provided they have been substantially commenced prior to the repeal of that Act on 15 November 2023.

No exemptions apply to new activities.

How do I comply with the Act?

To comply with the Act a landowner should consult the *Aboriginal Heritage Act 1972 Guidelines* in the first instance. Further information may be obtained from the Department.



Is new legislation planned?

No, the Government has no intentions of drafting new Aboriginal heritage legislation. Amendments were incorporated into the restored *Aboriginal Heritage Act 1972* to ensure an improved legislative framework is in place.

What are protected areas?

The Act recognises that some Aboriginal heritage 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 Aboriginal heritage. It offers the highest level of protection to Aboriginal heritage under the Act by vesting exclusive use and occupation of the area in the Minister for Aboriginal Affairs, and by empowering the Minister to make regulations relating to use and access of protected areas. There are currently 78 protected areas across Western Australia.

How do I apply for a Government-funded survey?

The State Government has committed to a long-term plan over the next 10 years to fund and undertake Aboriginal heritage surveys. With the consent of landowners, and in consultation with Aboriginal people, surveys will be done in high priority areas.

The exact scope of the survey program will be subject to consultation with Aboriginal organisations and other stakeholders. Further details on eligibility and program rollout will be published when available.

The State Government has also committed to a capacity building program to support native title parties. This program will ensure these organisations are resourced to participate in engagement and be part of the decision-making process to protect and manage their cultural heritage. Details of this program are also currently in development.

How to report a potential offence in relation to Aboriginal sites

Protection of Aboriginal sites and objects is afforded by section 17 of the Act and Regulations 7 and 10 of the *Aboriginal Heritage Regulations 1974*. A breach of one of these provisions is an offence unless the Minister or Registrar has given an approval.

Use this link to [Report a damage to an Aboriginal site with the DPLH Investigations Unit](#).