

Flying Minute: WALGA Submission Aboriginal Cultural Heritage Act 2021 Co-design Process, Phase Two

By Alina Hobson, Policy Officer, Resilient Communities

That the submission to the Department of Planning Lands and Heritage relating to the Aboriginal Cultural Heritage Act 2021 Co-design process, phase two be endorsed.

RESOLUTION 217.FM/2022

CARRIED

Executive Summary

- The *Aboriginal Cultural Heritage Act 2021* (ACH Act) received Royal Assent on 22 December 2021 and is expected to commence in 2023.
- The Department of Planning, Lands and Heritage (DPLH) recently undertook Phase One of the co-design process to develop the regulations, statutory guidelines and operational policies that will support the ACH Act.
- WALGA's Phase One submission made 25 recommendations, particularly relating to the proposed activity categories, the need for ongoing sector consultation, and the need to balance the protection of Aboriginal cultural heritage against the requirements for Local Governments to undertake necessary infrastructure and maintenance works in the interests of local communities.
- A suite of draft documents have been released for consideration in Phase Two of the co-design process, running from 18 July to 19 August.
- The draft submission was endorsed for provision to State Council by the People and Place Policy Team on Wednesday, 10 August.

Attachment

- WALGA submission: Aboriginal Cultural Heritage Act 2021

Policy Implications

This submission aligns with WALGA's existing Advocacy Positions and previous submissions:

3.1.3 Aboriginal Heritage Act 1972 and South West Native Title Settlement

The Association acknowledges Noongar people as the traditional owners of the South West Region. Local Government is supportive of conserving and protecting the State's Aboriginal heritage.

(Resolution 68.5/2019 – July 2019)

3.1.2 Reconciliation

The Association supports the efforts of the Local Government sector to recognise and respect Aboriginal cultural practices and places of meaning, through the development of Reconciliation Action Plans.

(Resolution 118.5/2012 – September 2012)

It should be noted that an updated WALGA Advocacy Position on Aboriginal cultural heritage is under development.

Previous WALGA submissions:

- *Aboriginal Heritage Act 1972 - 2018 Review Submission* endorsed by State Council in July 2018;
- AHA Review Consultation Phase Two, submission endorsed by State Council in July 2019;
- WALGA's 2020 response to survey during Phase 3 consultation based on previous submissions and member feedback (including the Aboriginal Heritage Reference Group);



- *Aboriginal Cultural Heritage Act 2021 – Co-design Phase One Submission* endorsed by State council in May 2022.

Background

The ACH Act received Royal Assent on 22 December 2021 and is expected to commence in 2023. The legislation replaces the *Aboriginal Heritage Act 1972*, providing a contemporary framework for the recognition, protection, conservation and preservation of Aboriginal cultural heritage.

Through a three stage co-design process, DPLH is currently developing the regulations, statutory guidelines and operational policies that will support the ACH Act. Phase One of the codesign process ran from 26 April to 27 May 2022. Informed by Phase One, a suite of draft documents have been released for consideration during Phase Two, running from 19 July to 19 August. WALGA provided a submission in response to Phase One and is developing a submission in response to Phase Two.

Comment

WALGA's Phase One submission made 25 recommendations, relating to the proposed activity categories, the need for ongoing sector consultation, and the need to balance the protection of Aboriginal cultural heritage against the requirements for Local Government to undertake necessary infrastructure and maintenance works in the interest of local communities.

Several of WALGA's recommendations from Phase One have been incorporated into the draft documents, and they are much improved compared to the Phase One drafts. In particular, the activity categories and the various guidelines are better developed and more detailed. Therefore the Phase Two submission has a narrower focus.

WALGA's Phase Two submission was informed via the following engagement activities (noting that the short timeframe prevented more thorough engagement with members):

- Facilitation of WALGA's Aboriginal Cultural Heritage Reference Group on 19 July;
- Direct communications with various Local Governments via phone and emails;
- A WALGA facilitated webinar delivered in partnership with DPLH on 3 August and attended by approximately 30 Local Governments;
- WALGA participated in the co-design workshop facilitated by DPLH on 4 August;
- WALGA and Local Government participated in a meeting with DPLH, the Department of Fire and Emergency Services (DFES) and the City of Wanneroo, Shire of Dundas and Shire of Ashburton to discuss emergency management intersect on 8 August; and
- Written feedback on the draft submission from Aboriginal Cultural Heritage Reference Group members and Local Government attendees at the 3 August Webinar.

Feedback obtained through the consultation process primarily related to the need for further refinement of some activity categories, particularly with respect to fire break notices and other emergency related activities, road works and infrastructure maintenance and replacement works, concerns around the impact of ACH timeframes on expenditure of grant moneys, and the need for fees to vary depending on the status of proponents (not for profit vs for profit/annual revenue). It is recommended that all works undertaken to comply with Local Government Section 33 Fire Break notices are categorised as exempt in the Activity table.

The Director General of DPLH has been invited to attend the September Strategic Forum to provide an update on the ACH Act.

The draft submission was endorsed for provision to State Council by the People and Place Policy Team Wednesday, 10 August.

FLYING MINUTE OUTCOME

Poll created: 11/08/2022 at 09:30

Poll closed: 18/08/2022 at 09:00

Total invited to survey: 24

Total finished survey: 19

Endorse the Recommendation: 14

Endorse the Recommendation subject to comment below: 4

Do not endorse: 1

First Name	Last Name	Completed Date
Carol	Adams OAM	16/08/2022 8:17
Phillip	Blight	18/08/2022 8:37
Laurene	Bonza	18/08/2022 6:46
Ruth	Butterfield	17/08/2022 23:52
Carl	Celedin	15/08/2022 12:27
Cheryl	Cowell	Not completed
Frank	Cvitan	Not completed
John	Daw	15/08/2022 15:11
Tony	Dean	11/08/2022 11:28
Catherine	Ehrhardt	16/08/2022 7:45
Russ	Fishwick	17/08/2022 16:23
Moira	Girando JP	11/08/2022 10:03
Logan	Howlett JP	11/08/2022 11:46
Mark	Irwin	Not completed
Paul	Kelly	15/08/2022 19:40
Peter	Long	12/08/2022 14:05
Chris	Mitchell JP	17/08/2022 21:35
Chris	Pavlovich	Not completed
Les	Price	16/08/2022 9:20
Michelle	Rich	18/08/2022 9:56
Helen	Sadler	11/08/2022 16:19
Ken	Seymour	Not completed
Stephen	Strange	12/08/2022 10:57
Doug	Thompson	11/08/2022 10:31

Responses

(14) Endorse the Recommendation: Moira Girando (on: 11/08/2022 10:03), Doug Thompson (on: 11/08/2022 10:31), Tony Dean (on: 11/08/2022 11:28), Helen Sadler (on: 11/08/2022 16:19), Catherine Ehrhardt (on: 16/08/2022 7:45), Stephen Strange (on: 12/08/2022 10:57), Peter Long (on: 12/08/2022 14:05), Carl Celedin (on: 15/08/2022 12:27), Paul Kelly (on: 15/08/2022 19:40), Carol Adams OAM (on: 16/08/2022 8:17), Les Price (on: 16/08/2022 9:20), Russ Fishwick JP (on: 17/08/2022 16:23), Chris Mitchell JP (on: 17/08/2022 21:35), Michelle Rich (on: 18/08/2022 9:56)

(4) Endorse the Recommendation subject to comment below: Logan Howlett JP (on: 11/08/2022 11:46), John Daw (on: 15/08/2022 15:11), Laurene Bonza (on: 18/08/2022 6:46), Phillip Blight (on: 18/08/2022 8:37)

(1) Do not endorse: Ruth Butterfield (on: 17/08/2022 23:52)

Comments

Mayor Logan Howlett JP on 11/08/2022 11:46

- *Recommendation 8 'WALGA' repeated twice on first and second line.*
- *Recommendation 8 - Point 3 change 'authority' to 'authorities'*
- *Recommendation 14 change 'meaning' to 'meaningful'*
- *Page 24 Table under Tier 2 Heading change 'culvers' to 'culverts' also change in previous table above*

Cr John Daw on 15/08/2022 15:11

Herewith comments attributed to Cr Brooke O'Donnell (an indigenous person) from WALGA East Metropolitan Zone on this matter as follows:

- *Recommendation 5: Any upgrades on existing infrastructure should be for the Local Government to prove due diligence and truth telling has been provided, or relevant consultation that is agreed to by the respective Traditional Owners. For example, we have people who have built properties and conducted works over burial grounds. This requires extreme sensitives to provide redress, and ensure correct protocol is followed. If we allow maintenance to be done without any approvals this would impact Aboriginal history and contravene truth telling of councils.*
- *Recommendation 7: Freehold properties should NOT be exempt. For example, some properties have waterways (Aboriginal heritage sites) in their backyard. People must have caveats lodged for the need to ensure maintenance with no removal or destruction of waterways where Aboriginal heritage occurs.*
- *Recommendation 14: As the role of Local Government is to engage with their community, why should the Dept. of Lands and Heritage support engagement? If Local Governments have reconciliation action plans and awareness culturally there should be no issue either contacting the relevant Aboriginal corporations to conduct meaningful engagement.*
- *Recommendation 25: Councils already conduct engagement and approvals and make respective payment to Traditional Owners in consultation. If we are wanting works to be done it should be paid by relevant Local Government.*
- *Recommendation 27: If this new Aboriginal Cultural Heritage Act and its regulations and guidelines are delivered correctly it should only need updates in 'good' time, not a specified time like 5 years.*
- *General Comment: There appears to be significant request to be supported through the delivery of what should already be work and skills performed by Local Government and I have to ask why? If Aboriginal Heritage needs support by a Local Government perhaps Local Governments should be recruiting Aboriginal Heritage officers who can also support works in community engagement. It should not be the responsibility of State Government to provide this knowledge and advice. Councils employ staff in planning, engineering and all things related to Local Government. Use this opportunity to seek out culturally qualified people in your community and/or employ Aboriginal people and teams who are skilled. If Local Governments do not have sufficient work, then consider how to share and access staff in job share roles (across Local Governments) just as we do for any other role.*

Cr Catherine Ehrhardt on 16/08/2022 7:45

Comments from East Zone member Cr Brooke O'Donnell: [quote]

- *Recommendation 7: I do not agree freehold properties should be exempt - example some properties have waterways (Aboriginal heritage sites) in their backyard. People must have caveats lodged for the need to ensure maintenance / no removal / destruction of waterways or Aboriginal heritage occurs.*
- *Recommendation 5: upgrades and existing infrastructure should be for the council to prove due diligence and truth telling has been provided, or relevant consultation that is agreed*



to by the respective Traditional Owners. E.g. We have people who have built properties and works / stations over burial grounds. This requires extreme sensitivities to provide redress, and ensure correct protocol is followed. If we allow maintenance to be done without any approvals this would impact Aboriginal history and contravene truth telling of councils.

- Recommendation 14: disagree – the role of Local Government is to engage with their community – why should lands and heritage support engagement? If Local Governments have reconciliation action plans and awareness culturally there should be no issue either contacting the relevant Aboriginal corporations to conduct “meaningful” engagement.
- Recommendation 25: why does funding need to support the heritage system? We already conduct engagement and approvals and respective payment to Traditional Owners in consultation. If we are wanting works to be done it should be paid by relevant Local Government.
- Recommendation 27: I don’t believe this needs to be reviewed after 5 years, after all we have had a Heritage Act for 60 years? If this is delivered correctly it should only need respective updates in time. There appears to be significant request to be supported through the delivery of what should already be work and skills performed by Local Government and I have to ask why? If Aboriginal Heritage needs support by a Local Government perhaps Local Governments should be recruiting Aboriginal Heritage officers who can also support works in community engagement or respective spaces of skillsets. I don’t believe it should be the responsibility of State Government to provide this knowledge and advice. We employ staff in planning, engineering and all things related to Local Government. Use this opportunity to seek out people in your community to employ Aboriginal people and teams who are skilled. If you do not have sufficient work consider how you share and access staff in job share roles just as we do for any other role.

President Cr Laurene Bonza on 18/08/2022 6:46

GVROV/Goldfields Zone Comments – Shire of Esperance

- *Shire of Esperance (SoE) Manager Parks and Environment, Dylan Gleave, participated in the last WALGA workshop on this matter but noted they have left the SoE off the list and request it be noted. Most things and points raised by the SoE in the workshop seem to be covered in the paper. Dylan Gleave also attended the last session ran by DPLH in Esperance and he has continued to liaise and consult with ETNTAC as the PBC and traditional owner group for a large proportion of the SoE LG area. It is hoped that in the SoE circumstances that ETNTAC and Ngadju as the PBC’s as native title groups for our region would be adequately resourced and supported by DPLH to be the LACH’s for the SoE LG area. This would allow existing relationships and work arrangements and agreements/protocols to continue or evolve to meet requirements under the new act with LGA’s and representative traditional owners and groups such as ETNTAC. To do this DPLH need to consult with these groups.*
- *Few comments and take away comments and notes SoE took away from the last co-design session with DPLH that was attended:*
 - *The LACHs need to be adequately supported and resourced by DPLH ahead of the change over to the new act due to the need to have established management frameworks, governance and support in place before the commencement of requirements related to the new act so that relationships can be built with stakeholders such as LGAs and with traditional owners and knowledge holders. To do this DPLH has to be consulting with PBC’s and traditional owners in advance and resourcing and setting up the LACHs in advance in the short term to at least meet at a minimum standard of service provision associated with the requirements of the new act. The process is set up to fail at a local scale if this is not in place from the commencement of the new act.*



- *The current due diligence guidelines by DPLH used in the previous framework seem to have a greater level of detail and guidance relating to activity types, consultation, land use and level of disturbance than the guidelines associated with the new act that we were looking at in the co-design workshop. Assessment based on type of activity, activity in the landscape and then risk to cultural heritage. Focus seems now on just type of activity as a standalone rather than activity, land use, type of landscape and risk management to cultural heritage.*
- *There potentially needs to be specific resources or guidance for LGAs and LACHs relating to the new act. This may require DPLH to resource specific LGA focus liaison staff or liaison staff in LACHS. Example guidance of types of activities associated with general maintenance activities in established footprints or disturbed areas, development and/or capital projects in new footprints and disturbances and activities undertaken for broader community benefit associated with infrastructure management and repairs or under emergency management.*
- *Can frameworks and joint procedures, frameworks and agreements such as the heritage agreements LGAs such as the one we are working on meet requirements associated with the new act with established relationships LGAs such as ours have with PBC's that may become the LACHs. If these standard LGA agreements could help meet requirements with the act this would help with assisting LGAs, traditional owners and LACHs with meeting act requirements and LGAs delivering maintenance and general works programs and managing cultural heritage. There would still be aspects of projects of a larger scale or capital works in new footprints that would require individual permits, management plans and consultation but most standard LGA operations could be covered to meet the requirements of the act through heritage agreements and collaborative arrangements at a local scale with LGAs, LACHs and traditional owners.*

President Cr Phillip Blight on 18/08/2022 8:37

Great work done by Alina Hobson on this. Whilst I note the input by Cr O'Donnell I don't support her thoughts. Most of this submission has previously been accepted by State Council and would require due process to change that.

Secretariat Comment

In response to Mayor Logan Howlett JP:

Spelling and grammatical errors in Recommendations 8, 14 and the table in Appendix 2 have been corrected.

In response to Cr John Daw and Cr Catherine Ehrhardt:

These comments in relation to specific recommendations within the submission are appreciated and provide the opportunity for further consideration and reflection.

- Recommendation 5: This recommendation is to ensure that Local Governments can undertake regular works to maintain, upgrade and replace existing infrastructure in already disturbed areas, such as repair and maintenance of existing buildings, without the need to undertake further due diligence when this ought to have occurred when the infrastructure was initially developed, and there is minimal risk of damaging Aboriginal cultural heritage. Local Governments have raised concerns around the need to be able to undertake routine maintenance in a timely and efficient way with minimal additional resourcing implications. A similar recommendation was endorsed by State Council in the Phase One submission.
- Recommendation 7: This Recommendation was endorsed by State Council in the Phase One submission. The ACH Act provides all freehold property under 1100 square metres are exempt.
- Recommendation 14: DPLH has developed draft Consultation Guidelines that set a standard for proponents where consultation is required. Local Government has provided feedback that the draft document does not provide sufficient guidance around how to conduct meaningful engagement and the tools required to document discussions. Many Local Governments find it challenging to determine the right Aboriginal people to engage with and how to undertake best practice engagement and seek support from relevant agencies to do this better.
- Recommendation 25: Where new or expanded legislative obligations create a cost and resourcing impost on Local Governments, WALGA advocates as a matter of course for increased resourcing to support the sector to comply with those additional legislative requirements. The State Government has been progressing an agenda of legislative reform across a number of areas. To ensure that the full benefits of these reforms are realised, it is necessary for the State Government to allocate appropriate funding for the implementation of these changes, including support for transition and any recurrent functions that arise out of the reform program. With the additional requirements the ACH Act sets out to protect Aboriginal heritage, it is anticipated that there will be a significant volume of ACH management Plan and Permit applications which will require LACHS and the Aboriginal Heritage Council to be adequately resourced. Concerns have been raised by both proponents and Aboriginal corporations (potential LACHS) around the resourcing requirements to comply with the new system. Financial resourcing is required to ensure LACHS and the ACH Council are well equipped to deliver on expectations and that Local Governments, particularly smaller regional Local Governments, have the resourcing and capacity to comply with the ACH Act.
- Recommendation 27: The ACH Act provides a modern framework for the recognition, protection, conservation and preservation of Aboriginal cultural heritage while recognising the fundamental importance of Aboriginal cultural heritage to Aboriginal people. Many of the standards set out within the guidelines are new and it is therefore important to review the Act and the supporting materials following its commencement to ensure it is meeting its intent and is fit for purpose.



During the ACH co-design process WALGA is aware of at least two Local Governments who have allocated specific resources to Aboriginal heritage. The ACH Act sets new standards for protecting Aboriginal heritage, standards that many Local Government need support in interpreting and applying. Western Australian Local Governments vary significantly in size, population, employed staff (10-1000) and revenue, yet are required to deliver the meet the same legislative standard and same outcomes. It is important to ensure that all Local Governments are equipped to comply with the ACH Act.

In response to President Cr Laurene Bonza:

The submission has been amended to acknowledge the Shire of Esperance's participation in WALGA's online workshop on Wednesday 3 August.

- Recommendation 25 addresses concerns around the resourcing of the system including LACHS, ACH Council and Local Governments. Concerns regarding adequate resourcing to ensure parties are supported to deliver on the ACH Act have been raised continuously by Local Governments throughout workshops and in the submissions to Phase One and Two. WALGA's 2023-24 State Budget Submission includes a section relating to 'Delivering a Modern Legislative Framework' which acknowledges that the State Government has been progressing an agenda of legislative reform across a number of areas. To ensure that the full benefits of these reforms are realized, it is necessary for the State Government to allocate appropriate funding for the implementation of these changes, including support for transition and any recurrent functions that arise out of the reform program. Implementation of the ACH Act is identified in the submission as a key legislative reform priority requiring ongoing State Government funding.

The Shire of Esperance's comment summary is appreciated and noted. Recommendations 9, 11, 12, 14, 17 and 25 address the majority of these comments.

In response to President Cr Phillip Blight:

Comment noted.



Aboriginal Cultural Heritage Act 2021

Phase Two Submission

August 2022

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1.0 Executive Summary and Recommendations

1.1 Summary of Recommendations

Recommendation 1

Update the Draft Activity Categories to make it clear that a Permit is required for a Tier 2 activity and a Management Plan for a Tier 3 activity only where the activity is likely to or will impact Aboriginal cultural heritage.

Recommendation 2

The roadworks categories at Appendix 2 of this submission be incorporated into the Activity Categories.

Recommendation 3

Further refinement of the activity categories regarding some specific maintenance and repair activities, including erosion control activities at stormwater outlets/ jetties/ roads, maintenance of existing jetty's/boat ramps, and maintenance of existing buildings.

Removing sand that has been deposited over a road in a floodway should be exempt.

Recommendation 4

Further clarification is needed to determine whether the process outlined in the Draft DDA Flowchart takes precedence or the defined activity approval requirements in the Draft Activity Categories table in order to avoid confusion.

Recommendation 5

Infrastructure maintenance and works to upgrade or replace existing infrastructure (such as repair and maintenance of buildings) should be exempt.

Recommendation 6

Further definition and guidance be provided as to what constitutes a 'developed' area. For example are natural reserves that include BBQ's and benches classified as developed areas? Activities in developed reserves such as planting and maintenance of existing infrastructure should be exempt activities.

Recommendation 7

The activity categories must clearly address the ongoing concerns around the application of the ACH Act to residential, freehold properties that are larger than 1100 square metres and located in cities and towns.

All activities on freehold properties in cities and towns should be exempt.

Recommendation 8

- The emergency activities should be amended as described in Appendix 3 'WALGA Proposed Activity categories for Emergency Activities (Tracked to show amendments to proposed Phase 2 Categories).'
- All activities undertaken during emergency *response* to the 28 prescribed hazards under the *Emergency Management Act* on Crown or private land should be exempt.
- All bushfire *response* / fire suppression activities on Crown or *private land*, and conducted by Local Government, public authorities, private landholders, critical asset managers and public utility providers, should be exempt.
- All activities related to preparation for and recovery from emergencies, including bushfire mitigation activities including land preparation, slashing, chemical treatments, mulching and burning, undertaken by Local Government, should be Tier 1 (due diligence required only).
- The Mitigation Activity Fund (MAF) grants program guidelines should be amended to allow Local Governments to apply for the cost of undertaking relevant due diligence and any Aboriginal heritage surveys that are considered necessary/appropriate;
- All activities undertaken by a private landowner, Local Government Authority or contractor in order to comply with a Local Government firebreak notice under section 33 of the *Bush Fires Act 1954*, or other hazard reduction notice, including land preparation, slashing, chemical treatments, clearing/ trimming of vegetation, mulching and burning should be exempt.
- All activity undertaken in an emergency situation for the purpose of preventing, or minimising, loss of life, prejudice to the safety, or harm to the health, of people, should be exempt, including but not limited to:
 - flood alleviation works;
 - clearing debris and trees from roads; and
 - road repairs or deviations to provide access.

Recommendation 9

The ACH Management Code does not provide as much advice and guidance as the current Due Diligence Guidelines, and requires the development of additional guiding content.

Recommendation 10

The term 'level of existing ground disturbance' to be further defined.

Recommendation 11

The ACH Management Code should take into consideration the existing Aboriginal engagement structures utilised by Local Governments and provide guidance as to how this can facilitate acceptable due diligence engagement activities.

Recommendation 12

DPLH develop a guiding due diligence document that Local Governments can refer to when receiving public enquiries.

Recommendation 13

DPLH develop advice and guidance materials for the general community and small scale property developers that Local Governments can share and distribute, as well as an appropriate Advice Note that Local Government can include on development and subdivision approvals.

Recommendation 14

Provide further guidance to support proponents undertake meaningful engagement.

Recommendation 15

Consideration to be given to how to acknowledge existing engagement structures and mechanisms with a guideline developed to assist Proponents to engage successfully with both existing engagement structures and LACHS.

Recommendation 16

Consideration be given to developing different ACH Management Plan templates, taking into account variations in the size of the area to be impacted, the complexity and purpose of the proposed activities and the resources of the Proponent.

Recommendation 17

Consideration should be given to developing an ACH Management template specifically for Local Government.

Recommendation 18

Develop a flowchart outlining a clear process and time it would take from beginning to end.

Recommendation 19

The Prescribed Timeframes should refer to 'Business Days' (not working days).

Recommendation 20

The LACHS Fee Guidelines to clearly state that fees can only be charged for work undertaken to develop and negotiate a Management Plan (not for work relating to a Permit).

Recommendation 21

Different LACHS fee structures to be developed for different size/ type of proponent (adopting a similar fee structure and regulation approach to the Planning and Development Regulations).

Recommendation 22

The LACHS Fees Guidelines should make provision for regular reviews of fees.

Recommendation 23

Clarification be provided on the interrelationship between Local Government service delivery requirements and State significance areas.

Recommendation 24

A flowchart be developed to guide Proponents through the process of considering the various documents when undertaking a due diligence process.

Recommendation 25

The State Government provide sufficient funding to support the efficient establishment and ongoing functioning of the new Aboriginal heritage system, in particular with respect to the ACH Council, LACHS and Local Governments.

Recommendation 26

An online, interactive Aboriginal heritage assessment tool, linked to the Aboriginal Heritage Directory be developed to assist proponents understand the potential for activities to impact heritage and the approval requirements.

Recommendation 27

The *Aboriginal Cultural Heritage Act* and Regulations should be reviewed after 5 years.

2.0 Introduction

The Western Australian Local Government Association (WALGA) is the united voice of Local Government in Western Australia. The Association is an independent, membership-based organisation representing and supporting the work and interests of 139 Local Governments in Western Australia, comprising 1,222 Elected Members and approximately 22,600 Local Government employees, as well as over 2 million constituents of Local Governments in Western Australia.

Western Australian Local Governments vary greatly in:

- size, ranging from less than 1.5 to over 370,000 square kilometres,
- population, just over 100 to more than 220,000 people,
- the number of staff employed, from less than 10 to over 1000,
- in revenue received, which in 2019-20 ranged from just over \$2 million to just over \$225 million.

This submission provides feedback on the Phase Two Co-Design process that the Department of Planning, Lands and Heritage (DPLH) is undertaking to develop materials and guidelines to support the implementation of the *Aboriginal Cultural Heritage Act 2021* (ACH Act).

WALGA supports the conservation and protection of Aboriginal cultural heritage in Western Australia and the modernisation of Western Australia's Aboriginal cultural heritage legislation.

As land managers and land use planning decision-makers, Local Government plays an important role in many activities that have the potential to impact Aboriginal cultural heritage.

Local Government also acknowledges the role of Aboriginal people as community members, residents, ratepayers, and Elected Members in local communities.

Local Governments have powers, and obligations, to provide local services and facilities, and make local laws based on State Government legislation. The principal Act from which Local Governments gain their power is the *Local Government Act 1995* which provides for a system of elected Local Governments across the State. This legislation provides for the functions, elections, administration and financial management of Local Government.

Local Governments also derive powers from other Acts, including the *Planning and Development Act 2005*, which gives Local Governments the power to prepare local planning schemes and ensure orderly development. Other important statutes include the *Bush Fires Act 1954*, the *Cemeteries Act 1986*, and the *Environmental Protection Act 1986*.

Local Governments have both legislative and executive functions. The executive functions of Local Government include the administration of local laws and the provision of services and facilities. A Local Government can provide any service or facility that is necessary or convenient for the good governance of the people in its district or for the performance of any other function under the *Local Government Act*. Before commencing provision of a service or facility, a Local Government must satisfy itself that the service or facility integrates with State or Commonwealth services, does not inappropriately duplicate any State, Commonwealth or private service, and is managed efficiently and effectively.

2.1 Sector Consultation

WALGA facilitates an Aboriginal Heritage Reference Group of Local Government staff with experience and knowledge of Aboriginal heritage to provide sector input into submissions and other WALGA activities.

WALGA and DPLH delivered an online co-design workshop for the sector on Wednesday, 8 August 2022 attended by representatives from 38 primarily regional and outer-metropolitan Local Governments. WALGA staff also attended a workshop facilitated by DPLH on 4 August.

Feedback on the draft submission was received from WALGA's People and Place Policy Team.

This submission was endorsed by WALGA State Council on 18 August 2022.

3.0 Background

3.1 Relevant WALGA Advocacy Positions

3.1.3 Aboriginal Heritage Act 1972 and South West Native Title Settlement

The Association acknowledges Noongar people as the traditional owners of the South West Region. Local Government is supportive of conserving and protecting the State's Aboriginal heritage.'

(State Council Resolution July 2019 – 68.5/2019)

3.1.2 Reconciliation

The Association supports the efforts of the Local Government sector to recognise and respect Aboriginal cultural practices and places of meaning, through the development of Reconciliation Action Plans.

(State Council Resolution September 2012 – 118.5/2012)

3.2 Previous Submissions

WALGA has provided submissions in relation to each phase of the review of the *Aboriginal Heritage Act 1972* and the development of the ACH Act:

- **2018 Phase One:** [Aboriginal Heritage Act 1972 - 2018 Review Submission](#) endorsed by State Council in July 2018.
- **2019 Phase Two:** [Submission – AHA Review Consultation Phase Two](#), endorsed by State Council in July 2019.
- **2020 Phase Three:** in 2020 a [Survey response](#) was lodged based on previous submissions and internal advice. The short consultation timeframe did not enable detailed consultation with the sector however feedback received from members (including the Aboriginal Heritage Reference Group) was incorporated into WALGA's response.
- **2021 Identification of Activities Consultation:** WALGA and DPLH co-facilitated ten place based online workshops with Local Governments to identify activities regularly undertaken by Local Government, and provided to DPLH (attached as Appendix 2):
 - A Draft Composite Local Government Activity List
 - Consultation Report
 - Draft Activity Lists from City of Kalamunda, Town of Port Hedland and Shire of Augusta-Margaret River.
- **2022 Co-Design Phase One:** [Submission – ACHA co-design Phase One](#), endorsed by State Council on 26 May 2022.

4.0 Response to Draft Documents

4.1 Draft Activity Categories

There appears to be a level of misunderstanding among stakeholders about the requirements for applications for Permits and Management Plans. It is apparent that there is a low level of understanding that a Proponent is only required to apply for a Permit or Management Plan if the activity is likely to impact Aboriginal cultural heritage. If a due diligence process is undertaken and it is determined that a Tier 2 or Tier 3 activity **will not** impact Aboriginal cultural heritage, the activity can proceed without a Permit or Management Plan. The Draft Activity Categories are contributing to this confusion because they state in the header row of the table that a Permit is required for a Tier 2 activity and a Management Plan is required for a Tier 3 activity. It is recommended that the Draft Activity Categories are updated to make this clear.

The overarching concern for the Local Government sector in relation to the new ACHA is the potential for delays and additional administrative burden in relation to the conduct of

infrastructure works, particularly maintenance and repair of existing infrastructure which is a significant part of Local Governments' day to day activities.

The Phase Two Draft Activity Category Table is a significant improvement on the Phase One version, with consideration given to many everyday works that Local Governments' undertake. Further refinement is required regarding the description of some specific maintenance and repair activities, for example erosion control activities, maintenance of existing jetty's/boat ramps, maintenance of existing buildings and various types of routine roadworks.

The roadworks category requires further definition and explanation. A suggested roadworks category is attached to this submission at Appendix 2.

The term 'developed area' is problematic because Local Governments are responsible for maintaining areas of mixed land condition, such as natural foreshore and coastal areas that include both developed park/ recreation facilities such as benches and BBQ's.

It is unclear where 'conservation activities' sit within the activity table. Are conservation activities such as planting and maintaining these reserves considered as a Tier 1 activity? Further definition as to what constitutes a 'developed' area is required.

The emergency activities require further description and refinement. A workshop was held on 8 August with DPLH, the Department of Fire and Emergency Services (DFES) and WALGA/ Local Government to discuss this matter. It is submitted that:

- The emergency activities should be amended as described in Annexure 2 'WALGA WALGA Proposed Activity categories for Emergency Activities (Tracked to show amendments to proposed Phase 2 Categories).
- All activities undertaken during emergency *response* to the 28 prescribed hazards under the *Emergency Management Act* on Crown or private land should be exempt.
- All bushfire *response* / fire suppression activities on Crown or *private land*, and conducted by Local Government, public authority, private landholders, critical asset managers and public utility providers, should be exempt.
- All activities related to preparation for and recovery from emergencies, including bushfire mitigation activities including land preparation, slashing, chemical treatments, mulching and burning, undertaken by Local Government, should be Tier 1 (due diligence required only).
- The Mitigation Activity Fund (MAF) grants program guidelines should be amended to allow Local Governments to apply for the cost of undertaking relevant due diligence and any Aboriginal heritage surveys that are considered necessary/ appropriate;
- All activities undertaken by a private landowner, Local Government Authority or contractor in order to comply with a Local Government firebreak notice under section 33 of the *Bush Fires Act 1954*, or other hazard reduction notice, including land preparation, slashing, chemical treatments, clearing/ trimming of vegetation, mulching and burning should be exempt.
- All activity undertaken in an emergency situation for the purpose of preventing, or minimising, loss of life, prejudice to the safety, or harm to the health, of people, should be exempt, including but not limited to:
 - flood alleviation works
 - clearing debris and trees from roads
 - road repairs or deviations to provide access.

Under the *Bush Fires Act 1954* Local Governments are required to issue an annual section 33 Firebreak Notice requiring land occupiers to clear and maintain a firebreak to assist with the prevention, control and extinguishment of bush fires or to prevent the spread or extension of a bush fire to any adjoining land. The City of Wanneroo alone issues 85,000 section 33 Notices annually. With 139 Local Governments across the State, millions of section 33 Notices are issued to private landowners every year.

The current Activity Table categorises activities undertaken in compliance with section 33 Firebreak Notices as Tier 1, which would place an obligation on private landowners to undertake due diligence to determine if Aboriginal heritage is present. Widening of firebreaks is currently categorised as Tier 2, which requires private landowners to undertake due diligence and potentially apply for a Permit. This categorisation raises a number of issues:

- Who will be responsible for educating private landowners about this obligation?
- What if a private landowner uses this requirement as an excuse for non-compliance with a Fire Break Notice?
- What if a private landowner applies for a Permit and due to the timeframe required, the window for undertaking the mitigation activity has passed before the activity is conducted?

If a Local Government increased the size of firebreaks within their district from 3 metres to 5 metres, due to seasonal climate impacts, this would require every landholder so issued to undertake the due diligence process for a Tier 2 activity (due diligence followed by potential permit application).

Potentially, Local Governments (and/or DPLH) could receive thousands of enquiries annually from landowners seeking advice and information about how to undertake due diligence and whether there is Aboriginal cultural heritage on their property. This situation would be overwhelming for Local Governments and could decrease compliance with section 33 Notices/ hazard reduction notices.

Therefore it is submitted that it is essential that compliance with all activities undertaken by a private landowner, Local Government Authority or contractor in order to comply with a Local Government firebreak notice under section 33 of the *Bush Fires Act 1954*, or other hazard reduction notice, including land preparation, slashing, chemical treatments, clearing/ trimming of vegetation, mulching and burning should be exempt.

Recommendation 1

Update the Draft Activity Categories to make it clear that a Permit is required for a Tier 2 activity and a Management Plan for a Tier 3 activity only where the activity is likely to or will impact Aboriginal cultural heritage.

Recommendation 2

The roadworks categories at Appendix 2 of this submission be incorporated into the Activity Categories.

Recommendation 3

Further refinement of the activity categories regarding some specific maintenance and repair activities, including erosion control activities at stormwater outlets/ jetties/ roads, maintenance of existing jetty's/boat ramps, and maintenance of existing buildings. Removing sand that has been deposited over a road in a floodway should be exempt.

Recommendation 4

Further clarification is needed to determine whether the process outlined in the Draft DDA Flowchart takes precedence or the defined activity approval requirements in the Draft Activity Categories table in order to avoid confusion.

Recommendation 5

Infrastructure maintenance and works to upgrade or replace existing infrastructure (such as repair and maintenance of buildings) should be exempt.

Recommendation 6

Further definition and guidance be provided as to what constitutes a 'developed' area. For example are natural reserves that include BBQ's and benches classified as developed areas? Activities in developed reserves such as planting and maintenance of existing infrastructure should be exempt activities.

Recommendation 7

The activity categories need to clearly address the ongoing concerns around the application of the ACH Act to residential, freehold properties that are larger than 1100 square metres and located in cities and towns. All activities on freehold properties in cities and towns should be exempt.

Recommendation 8

- The emergency activities should be amended as described in Appendix 3 'WALGA Proposed Activity categories for Emergency Activities' (Tracked to show amendments to proposed Phase 2 Categories).
- All activities undertaken during emergency *response* to the 28 prescribed hazards under the *Emergency Management Act* on Crown or private land should be exempt.
- All bushfire *response* / fire suppression activities on Crown or *private land*, and conducted by Local Government, public authorities, private landholders, critical asset managers and public utility providers, should be exempt.
- All activities related to preparation for and recovery from emergencies, including bushfire mitigation activities including land preparation, slashing, chemical treatments, mulching and burning, undertaken by Local Government, should be Tier 1 (due diligence required only).
- The Mitigation Activity Fund (MAF) grants program guidelines should be amended to allow Local Governments to apply for the cost of undertaking relevant due diligence and any Aboriginal heritage surveys that are considered necessary/ appropriate;
- All activities undertaken by a private landowner, Local Government Authority or contractor in order to comply with a Local Government firebreak notice under section 33 of the *Bush Fires Act 1954*, or other hazard reduction notice, including land preparation, slashing, chemical treatments, clearing/ trimming of vegetation, mulching and burning should be exempt.
- All activity undertaken in an emergency situation for the purpose of preventing, or minimising, loss of life, prejudice to the safety, or harm to the health, of people, should be exempt, including but not limited to:
 - flood alleviation works;
 - clearing debris and trees from roads; and
 - road repairs or deviations to provide access.
- Activities related to emergencies including but not limited to Local Government Firebreak Notice/ fuel reduction within Bushfires Act 1954 and burning for hazard reduction, non-emergency situations should be categorised as exempt.
- Activities related to emergencies including but not limited to widening access tracks/ firebreaks for asset protection outside the treated/ disturbed area should be categorised as Tier 1.

4.2 ACH Management Code and Draft Due Diligence Assessment Flowchart

The draft ACH Management Code provides helpful context and background to assist understanding of the due diligence processes required in order to determine whether activities may impact Aboriginal cultural heritage. WALGA's Phase One recommendation that DPLH develop a comprehensive, clear and easy to understand guide has been adopted through the development of the Draft DDA Flowchart. However the ACH Management Code does not provide as much advice and guidance as the current Due Diligence Guidelines, and requires the development of additional guiding content.

Local Governments manage a variety of land tenures (including nature reserves, residential areas and sporting reserves), with the levels of existing ground disturbance varying significantly. It would be helpful if further guidance was provided on what 'existing ground disturbance' means and whether this varies depending on land use.

Many Local Governments already have existing Aboriginal engagement frameworks and methods such as through Aboriginal Advisory groups and Reconciliation Action Plan Working Groups. These frameworks provide the opportunity for Local Governments to develop strong, ongoing relationships with local Aboriginal communities and facilitate early and regular engagement. One concern for some Local Governments is that the process of engaging through Local Aboriginal Cultural Heritage Services (LACHS) requires a duplication of engagement, or that strong local relationships will be detrimentally impacted by the need to engage with LACHS which will be more bureaucratic.

Local Governments are often asked for advice and guidance by land developers, residents and ratepayers about their obligations under various legislative regimes, and in particular with respect to compliance matters. Local Governments are supportive of sharing knowledge and information with their communities, while balancing their own resourcing constraints and operational requirements. It is recommended that DPLH develop advice and guidance materials directed at the general community and small scale property developers that Local Governments can share and distribute, as well as an appropriate Advice Note that Local Government can include on development and subdivision approvals.

Section 2.5 relates to 'Protected Areas'. This term should be defined in the Management Code to prevent confusion.

Recommendation 9

The ACH Management Code does not provide as much advice and guidance as the current Due Diligence Guidelines, and requires the development of additional guiding content.

Recommendation 10

The term 'level of existing ground disturbance' to be further defined.

Recommendation 11

The ACH Management Code should take into consideration the existing Aboriginal engagement structures utilised by Local Governments and provide guidance as to how this can facilitate acceptable due diligence engagement activities.

Recommendation 12

Consider the development of a guiding due diligence document Local Governments can reference when receiving public enquiries.

Recommendation 13

DPLH develop advice and guidance materials directed at the general community and small scale property developers that Local Governments can share and distribute, as well as an appropriate Advice Note that Local Government can include on development and subdivision approvals.

4.3 Draft Consultation Guidelines

Overall the Draft Consultation Guidelines provide a clear and simple guide to what constitutes meaningful attempts to consult and the other factors to consider when consulting with Aboriginal parties.

WALGA's Phase One recommendation regarding the consultation guidelines was that the extent of consultation should be scalable depending on the size of area, type of activity, resources of the Proponent and type and nature of Aboriginal cultural heritage.

The Consultation Guidelines seem to focus on best practice approaches when attempting to consult with Aboriginal parties. However, there is a lack of guidance around how to conduct meaningful engagement and the tools required to document discussions. It is acknowledged that this is difficult information to convey. Case studies and examples are helpful.

Recommendation 14

Provide further guidance to support proponents undertake meaningful engagement'.

4.4 Draft Knowledge Holder Guidelines

Many Local Governments have existing engagement frameworks they utilise in order to consult with their Aboriginal communities. This can include established Aboriginal Advisory groups made up of local Aboriginal community members who are Knowledge Holders for the area. Concerns have been raised that advice and decisions of existing Aboriginal parties within these Advisory Groups may be in conflict with the established LACHS. Considerations needs to be made to acknowledge these existing structures with a guideline developed to support such dispute resolution.

Recommendation 15

Consideration to be given to how to acknowledge existing engagement structures and mechanisms with a guideline developed to assist Proponents to engage successfully with both existing engagement structures and LACHS.

4.5 Draft ACH Management Plan Overview

The Draft ACH Management Plan provides a comprehensive overview of the standard level of information required when developing a ACH Management Plan. The document is easy to understand with the inclusion of supporting information.

Works carried out by Local Governments cannot be compared to works carried out for mining purposes, as the extent, size and location are significantly different. As identified in WALGA's

Recommendation 16

Consideration be given to developing different ACH Management Plan templates taking into account variations in the size of the area to be impacted, the complexity and purpose of the proposed activities and the resources of the Proponent.

Recommendation 17

Consideration should be given to developing an ACH Management template specifically for Local Government.

Phase One Co-design submission, consideration should be given to developing different ACH Management Plan templates to account for variations in the size of the area to be impacted, the complexity and purpose of the proposed activities and the resources of the Proponent. Consideration could be given to developing a template specifically for Local Government.

4.6 Prescribed Timeframes

WALGA's Phase One submission noted the difficulty in fully understanding the overall timeframe required from beginning to end for Permits and Management Plans. It is recommended that a flow chart be developed to demonstrate the process and timeframes .

Also raised in WALGA's Phase One submission, Local Governments have prescribed financial processes that see them all undertaking annual budgeting activities at the same time each year. Local Governments will potentially be submitting applications for ACH Permits and ACH Management Plans at the same time for their annual budgeting purposes, increasing the resource pressure on LACHS and the ACH Council.

Local Governments rely heavily on grant funding for infrastructure projects and these timeframes may cause issues with respect to making timely grant funding applications as well as expenditure of funds within grant funding timeframes. Most grants have to be acquitted in the year of award and road works are often seasonally constrained requiring dry weather for bituminous applications. Lengthy approval time frames may cause project delivery to be unachievable resulting in loss of funding.

The Prescribed Timeframes should refer to 'Business Days' (not working days).

Recommendation 18

Develop a flowchart that outlines a clear process and the time it would take from beginning to end.

Recommendation 19

The Prescribed Timeframes should refer to 'Business Days' (not working days).

4.7 Draft LACHS Fees Guidelines

The LACHS Fee Guidelines need to clearly state that fees can only be charged for work undertaken to develop and negotiate a Management Plan (not for work relating to a Permit).

The Draft LACHS Fee for Service Guidelines provides clarity around the fee structure they are required to comply with. However, without any indication of what the fees will be no clarity is provided around the financial implications for Proponents. In addition, further description is required around the type of services LACHS can charge for. For example, would seeking over the phone advice to validate due diligences processes be a chargeable service?

As identified in WALGA's Phase One submission, Local Governments provide facilities and services for the benefit of local communities. Local Governments operate on a not -for -profit basis, obtaining revenue from rates, Commonwealth Financial Assistance grants, borrowings and fees and charges.

LACHS fees need to cover the costs of LACHS undertaking the functions set out in the legislation, while at the same time being affordable for different Proponents and recognising that different landholders conduct activities for profit or not-for-profit. It is recommended that differential fees be developed for different size/ type of proponent and that fees and charges be regulated such as those within planning legislation.

The LACHS Fees Guidelines should make provision for regular reviews of fees.

Recommendation 20

The LACHS Fee Guidelines to clearly state that fees can only be charged for work undertaken to develop and negotiate a Management Plan (not for work relating to a Permit).

Recommendation 21

Different LACHS fee structures to be developed for different size/ type of proponent (adopting a similar fee structure and regulation approach to the Planning and Development Regulations).

Recommendation 22

The LACHS Fees Guidelines should make provision for regular reviews of fees.

4.8 State Significance Guidelines

It is acknowledged that the Draft State Significant Guidelines identify Local Governments as a stakeholder to ensure they are notified when Aboriginal cultural heritage is believed to have State significance. However, the sector requires clear guidance about its role and responsibilities with respect to the provision of municipal and other services in areas of State significance. Assuming areas of State significance are most likely to be located away from cities and towns, the most likely intersect will be in relation to Local Government road maintenance obligations.

Recommendation 23

Clarification be provided on the interrelationship between Local Government service delivery requirements and State significance areas.

4.9 Defining Substantially Commenced

WALGA's Phase One submission recommended the term 'substantially commenced' be defined in a similar way to the definition in existing planning and environment legislation. The definition within the draft document is in line with this recommendation.

5.0 General Submissions

The interrelationship between the different documents remains unclear. Is there a need for a defined flow? For example, in what order should Proponents consider the documents, such as the Draft Activity Categories Table and the Draft DDA Flowchart?

Recommendation 24

A flowchart be developed to guide Proponents through the process of considering the various documents when undertaking a due diligence process.

Recommendation 25

The State Government provide sufficient funding to support the efficient establishment and ongoing functioning of the new Aboriginal heritage system, in particular with respect to the ACH Council, LACHS and Local Governments.

Recommendation 26

An online, interactive Aboriginal heritage assessment tool, linked to the Aboriginal Heritage Directory be developed to assist proponents understand the potential for activities to impact heritage and the approval requirements.

Recommendation 27

'The *Aboriginal Cultural Heritage Act* and Regulations should be reviewed after 5 years.

6.0 Conclusion

WALGA would like to thank DPLH for their continued investment to further understand Local Government operations and for taking into consideration WALGA's Phase One recommendations.

WALGA looks forward to continuing to work with DPLH, on behalf of Local Governments, to ensure the ACH Act meets its intent to deliver an improved system for Aboriginal heritage protection in Western Australia.

Appendix 1: WALGA Engagement

Aboriginal Heritage Reference Group Members

City of Rockingham	Shire of Augusta-Margaret River
City of Albany	City of Wanneroo
Town of Claremont	Town of Port Hedland
City of Canning	Shire of Broome
City of Vincent	City of Perth
Shire of Denmark	City of Cockburn
Shire of Lake Grace	Town of Mosman Park
Shire of Mount Magnet	City of Karratha

Participants at online co-design workshops, 3 August 2022

City of Kalamunda	City of Belmont
Shire of Lake Grace	Shire of Chittering
Town of Claremont	Shire of Denmark
Shire of York	Shire of Waroona
Shire of Yalgoo	City of Mandurah
City of Melville	Shire of Ashburton
City of Vincent	City of Canning
City of Karatha	Shire of Cue
City of Albany	City of Wanneroo
Shire of Mundaring	City of Subiaco
City of Gosnells	Shire of Esperance

Written Comments

Shire of Augusta	City of Wanneroo
Shire of Murchison	Shire of Yalgoo

Other Communications

- WALGA InfoPage to all Local Government CEOs
- Discussion at People and Place Policy Team meeting
- LG News Items (various dates)
- Presentation at Zone and State Council Meetings

Appendix 2: ACH Activity Categories: Roadworks WALGA Submission

Proposed road works designations for *Aboriginal Cultural Heritage Act 2021*

Definitions Proposed Designations for Road Works

4. Legislative Context

Section 100 of the Act defines the following activity categories:

exempt activity means any of the following activities —

- (a) construction, renovation or demolition of a building occupied, or intended for occupation, as a place of residence, or a building ancillary to such a building, on a lot as defined in the *Planning and Development Act 2005* section 4(1) that is less than 1 100 m²;
- (b) development of a prescribed type carried out in accordance with the *Planning and Development Act 2005*;
- (c) travel on an existing road or track;
- (d) the taking of photographs for a recreational purpose;
- (e) recreational activities carried out on or in public waters or in a public place;
- (f) burning carried out —
 - (i) for fire prevention or control purposes or other fire management works on Crown land; and
 - (ii) by a public authority;
- (g) clearing of a kind set out in the *Environmental Protection Act 1986* Schedule 6 item 10, 10A, 11 or 12;
- (h) other activities, if any, prescribed for the purposes of this paragraph;

tier 1 activity means an activity involving no, or a minimal level of, ground disturbance that is prescribed for the purpose of this definition;

tier 2 activity means an activity involving a low level of ground disturbance that is prescribed for the purpose of this definition;



tier 3 activity means an activity involving a moderate to high level of ground disturbance that is prescribed for the purpose of this definition.

110. Authority to carry out tier 1 activity that may harm Aboriginal cultural heritage

- (a) the activity is a tier 1 activity; and
- (b) the area where the activity is carried out does not include any area that is part of a protected area; and
- (c) a due diligence assessment is undertaken in relation to the carrying out of the activity; and
- (d) the person takes all reasonable steps possible to avoid, or minimise, the risk of harm being caused to Aboriginal cultural heritage by the activity.

111. Authority to carry out tier 2 activity that may harm Aboriginal cultural heritage

- (a) the activity is a tier 2 activity; and
- (b) the area where the activity is carried out does not include any area that is part of a protected area; and
- (c) a due diligence assessment is undertaken in relation to the carrying out of the activity; and
- (d) the person carries out the activity in accordance with —
 - (i) an ACH permit; or
 - (ii) an approved or authorised ACH management plan.

112. Authority to carry out tier 3 activity that may harm Aboriginal cultural heritage

- (a) the activity is a tier 3 activity; and
- (b) the area where the activity is carried out does not include any area that is part of a protected area; and
- (c) a due diligence assessment is undertaken in relation to the carrying out of the activity; and
- (d) the person carries out the activity in accordance with an approved or authorised ACH management plan.

Exempt No approval, may impact ACH	Tier 1 – Minimal Ground Disturbance No approval, Due Diligence required	Tier 2 – Low Level Ground Disturbance ACH Permit required	Tier 3 – Moderate to High Ground Disturbance ACH Management Plan required
Walking, land surveying geotechnical investigation where no ground disturbance	Planned maintenance and renewal activities including; resealing, asphalt and granular overlays and inlays, gravel road resheeting and grading, shoulder maintenance, kerb and drainage repairs	Upgrading and improvement works where previously undisturbed land is impacted including road widening, new or upgraded drainage works, installation of pipes and culverts	Construction of new roads, tracks, pathways and parking areas, retaining walls and associated infrastructure over previously undisturbed land.
Use of existing roads, tracks or water courses	Rehabilitation and reconstruction activities including reconstructing an existing road within the same formation, replacing or recycling of layer works, rehabilitation of side drains, culverts,	Repairing bridge abutments, piers and batter protection that will cause a disturbance to the waterway.	New or replacement bridges
Routine maintenance e.g. repairing potholes and edge breaks, replacing or repairing damaged infrastructure including guardrails, fences, bollards, clearing blocked drains, pipes, culverts and floodways.	Planned bridge maintenance including replacing guardrails and balustrades, repairing existing components, clearing debris around abutments, piers and other structures	Geotechnical investigation on undisturbed land requiring the excavation of test pits or probing	New toilet facilities and associated leach drains/tanks over undisturbed land.
Routine bridge maintenance including, tightening bolts, repairing cracks, cutting vegetation, insect spraying, repairing damage to existing components	Construction activities within existing formation or over previously disturbed ground including road widening, shoulder sealing, vehicle crossings, drainage upgrades, laying pipes and culverts, new kerbs, erecting signs, guardrails, streetlights and		New drainage facilities and basins over undisturbed land.

	traffic control devices, retaining walls		
Emergency works required for safety reasons including flood alleviation works, clearing debris, road repairs or deviations to provide access.	Temporary structures and devices over existing formations or disturbed land including traffic control devices, detours and bypasses.		
	Disaster relief work which is not an emergency including clearing debris and providing temporary access while road repairs are undertaken.		
	Extraction of gravel from existing pits.		
	Pruning and clearing vegetation, mowing verges, tree planting		
	Maintenance and reconstruction of pathways and trails		
	Maintaining or replacing existing drainage (including reshaping of drains & maintenance of existing basins, sediment and erosion control measures)		
	Reconstruction or significant maintenance of existing parking areas		
	Geotechnical investigation with minimal ground disturbance.		

Appendix 3: ACH Activity Categories: Emergencies, WALGA Submission

Proposed Activity categories for Emergency Activities

Exempt No approval, may impact ACH	Tier 1 – Minimal Ground Disturbance No approval, Due Diligence required	Tier 2 – Low Level Ground Disturbance ACH Permit <u>may be</u> required	Tier 3 – Moderate to High Ground Disturbance ACH Management Plan <u>may be</u> required
<p>Activities related to emergency response <u>Activities related to the 28 prescribed hazards including but not limited to:</u></p> <ul style="list-style-type: none"> • Activities undertaken in response to any life-threatening emergency as defined by the Emergency Management Act and Emergency Management Regulations 2006 including urgent recovery activities • Clearing of any type set out in the Environmental Protection Act 1986 Schedule 6 item 10, 10A, 11 or 12 • Preventing imminent danger to human life or health or irreversible damage to a significant portion of the environment as described under Environmental 	<p>Activities related to <u>preparation for or recovery from</u> emergencies with minimal ground disturbance. This could include but is not limited to:</p> <ul style="list-style-type: none"> • <u>Bushfire mitigation activities including land preparation, slashing, chemical spraying, mulching and burning.</u> Burning for hazard reduction <u>in</u> non-emergency <u>response</u> situations • <u>Maintenance of existing fire access tracks, roads and trails</u> • <u>Vegetation control via mechanical slashing and mulching</u> • Local Government firebreak notice/ fuel reduction within Bush Fires Act 1954 	<p>Activities related to emergencies with low ground disturbance. This could include but is not limited to:</p> <ul style="list-style-type: none"> • Widening <u>fire</u> access tracks, <u>roads and trails/ firebreaks</u>—for asset protection outside the existing treated/ disturbed area <u>(other than in compliance with section 33 firebreak notice/ other Local Government hazard reduction notice)</u> 	<p>Activities related to emergencies with moderate to high ground disturbance. This could include but is not limited to:</p> <ul style="list-style-type: none"> • No examples listed

<p>Protection (Clearing of Native Vegetation) Regulations 2004</p> <ul style="list-style-type: none"> • <u>Section 100(f) of the ACH Act exemption for Burning carried out during emergency response –</u> <ul style="list-style-type: none"> (i) For fire prevention or control purposes or other fire management works on Crown land; and (ii) By a public authority • <u>Burning carried out during emergency response –</u> <ul style="list-style-type: none"> (iii) <u>For fire prevention or control purposes or other fire management works on any other land by a public authority</u> • Burning <u>Fire suppression activities</u> carried out during emergency response by a <u>private landholder, public authority, Local Government authority, critical asset managers and public utility providers in section 100(f) when undertaking burning for</u> 	<ul style="list-style-type: none"> • Replacement of infrastructure after natural disaster 		
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<p><u>the purpose of fire mitigation or suppression activities</u></p> <ul style="list-style-type: none"> • <u>Activities undertaken by a private landowner, Local Government Authority or contractor in order to comply with a Local Government firebreak notice under section 33 of the <i>Bush Fires Act 1954</i>, or other hazard reduction notice, including land preparation, slashing, chemical treatments, clearing/ trimming of vegetation, mulching and burning.</u> • <u>An activity undertaken in an emergency situation for the purpose of preventing, or minimising, loss of life, prejudice to the safety, or harm to the health, of people, including but not limited to:</u> <ul style="list-style-type: none"> ○ <u>flood alleviation works</u> ○ <u>clearing debris and trees from roads</u> ○ <u>road repairs or deviations to provide access</u> 			
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