



**Yamatji Marlpa**  
ABORIGINAL CORPORATION



Our Ref: GEN-033 Submissions  
Your Ref: ACHA Regulations & Guidelines Phase 2  
Office: Perth

Date: 19 August 2022

To: Aboriginal Cultural Heritage Reference Group,  
Department of Planning, Lands, and Heritage  
140 Willian Street  
PERTH, Western Australia, 6000

By email: [achimplementation@dplh.wa.gov.au](mailto:achimplementation@dplh.wa.gov.au)

Dear Reference Group,

**REF: Submission in relation to the Phase 2 consultation for the *Aboriginal Cultural Heritage Act 2021* regulations and guidelines**

Yamatji Marlpa Aboriginal Corporation (YMAC) is the Native Title Representative Body (NTRB) for what are described as the Pilbara and Geraldton regions of Western Australia. YMAC is run by an Aboriginal Board of Directors, representing several native title groups (each of whom have their own language, culture, traditions and protocols). YMAC provides a range of services, including native title claim and future act representation, heritage services, community and economic development assistance and natural resource management support.

We attach our submission in relation to the draft documents released for the Phase 2 consultations.

YMAC is happy for this submission to be published online, with my signature redacted.

Should this submission generate any questions or concerns, please contact me via Executive Assistant, Dionne Lamb, in our Perth office on 08 9268 7000 or email [dlamb@ymac.org.au](mailto:dlamb@ymac.org.au).

Yours sincerely,

*Signature supplied with submission*

Simon Hawkins  
**Chief Executive Officer**

**PERTH**

Level 8,  
12-14 The Esplanade  
Perth WA 6000

PO Box 3072  
249 Hay Street  
Perth WA 6892

T (08) 9268 7000  
F (08) 9225 4633

**GERALDTON**

171 Marine Terrace  
Geraldton WA 6530

PO Box 2119  
Geraldton WA 6531

T (08) 9965 6222  
F (08) 9964 5646

**HEDLAND**

2/29 Steel Loop  
Wedgefield WA 6721

PO Box 2252  
South Hedland  
WA 6722

T (08) 9160 3800  
F (08) 9140 1277

**BROOME**

Lot 640 Dora Street  
Broome WA 6725

Yamatji Marlpa  
Aboriginal Corporation  
is a Native Title  
Representative Body  
ICN 2001  
ABN 14 011 921 883

[ymac.org.au](http://ymac.org.au)



**Yamatji Marlpa**  
ABORIGINAL CORPORATION



# **Submissions on the Aboriginal Cultural Heritage Act 2021 – Co-design Phase 2 Regulations and Guidelines**

**19 August 2022**

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## Executive Summary

1. Yamatji Marlpa Aboriginal Corporation (YMAC) is the Native Title Representative Body (NTRB) for what are described as the Pilbara (Marlpa) and Geraldton (Yamatji) regions of Western Australia. YMAC is run by an Aboriginal Board of Directors, representing several native title groups, each of whom has their own language, culture, traditions and protocols. YMAC provides a range of services, including native title claim and future act representation, heritage services, executive office, community, economic development assistance and natural resource management support.
2. YMAC previously made detailed submissions on 27 May 2022, setting out our concerns and recommendations regarding Phase 1 of the Consultation on the *Aboriginal Cultural Heritage Act 2021* (ACH Act) Regulations and Guidelines and the principles that should guide them. This submission does not repeat those matters but sets out additional specific comments on each of the ACH Act Co-Design Phase 2 documents. These additional submissions should be read with our more detailed submissions of May 2022.
3. There is much that is good in the guidelines. Due to the shortness of time in the consultation process, this submission only addresses the key points of concern noted by YMAC. There may be other points of concern from the groups we work for – but we have not been able to consult with all these groups in the extremely limited time available.

## YMAC Submissions

### Draft Knowledge Holder Guidelines

4. On page 6, at point 5, there is a reference to Knowledge Holders being able to register themselves as such with the department. There should also be a requirement for the department to notify any Local Aboriginal Cultural Heritage Services (LACHS), native title parties or NTRBs/NTSPs for the relevant area if an application is received for someone to be registered as a Knowledge Holder. As these bodies need to be aware of Knowledge Holders and have responsibilities to include them in heritage processes, they need to know if someone is seeking to be registered for their relevant area. It is also important they are informed prior to registration, as there may be a dispute over whether someone should be registered on the Aboriginal Cultural Heritage (ACH) Directory as such a Knowledge Holder. It would be appropriate for that issue to be ascertained by the ACH before registration, due to the difficulties of removing information from the directory later.
5. On page 7, point 7(2) – it would be worthwhile repeating that the information in ACH Reports and ACH files about potential Knowledge Holders may not be accurate. Surveys may not have been carried out with the correct people.
6. On page 7, point 7(4) – it may be useful to clarify that NTRBs in the ACH Act include Native Title Service Providers.

### Draft Timeframes

7. YMAC is most concerned the time periods overall are far too short to enable LACHS to respond – and it is even worse for native title parties or Knowledge Holders who have even less infrastructure set up to respond to these notices. The timeframes for responding are only feasible if there are full-time employees engaged in responding



within such timeframes. There needs to be sufficient funding for LACHS and other bodies to enable this. In the absence of sufficient funding for LACHS and others, the timeframes must be extended substantially. This is particularly the case if proponents cannot be charged for time spent on responding to ACH permits.

8. An appropriate comparison may be the timeframes to respond to expedited procedure applications under the *Native Title Act* (Cth). For responses to ACH permit applications (and extensions of these), the timeframe is four months or about 80 working days. In relation to the right for negotiating ACH management plans, the time-period is six months or about 150 working days. These timelines are already too tight for many native title parties, as they cannot address many of them in the time provided. It would be unrealistic to expect them to be able to comply with ACH Act notices in even less time when the issues, work required and matters at stake are often similar.
9. For example: the type of information needed to respond to ACH permits is likely to require far more detail about Aboriginal Cultural Heritage and how it will be impacted – much more than a standard objection to an expedited procedure notice. It is likely to require LACHS or other Aboriginal groups to consult with people who speak for the area, obtain detailed information about it, and then develop the material into a formal response. It may also require a visit to the location. More than 20 working days will be needed to compile this information together in the necessary format. Similarly, in relation to ACH management plans, 80 working days is clearly insufficient to allow for genuine consultation and to enable LACHS or other Aboriginal groups to consult with native title holders and Knowledge Holders, obtain expert advice (as suggested in the draft consultation guidelines) and give notices of meetings to consider options.
10. The timing for reaching agreements on ACH management plans should start from when the negotiations start. It is insufficient for proponents to give notice of a proposal to enter into a management plan but then do nothing to attempt to start discussions. YMAC would recommend a “stop-the-clock” provision that can be enacted over Law/Lore time and during Sorry or other cultural business.
11. The ACH Council must be empowered to extend timeframes on request by the relevant parties, LACHS or native title parties, NTRBs or Knowledge Holders. There are many reasons for possible delays, such as bad weather, communications issues, Sorry business, Law/Lore business and similar. The parties may also be close to reaching agreements, which should be able to be encouraged by extensions of time. To prevent timeframes from operating unfairly, and to enable all parties to be fully aware of the information necessary to make decisions, such a power to extend time is crucial. We note there are provisions for extension in s143 of the ACH Act, but the timeframes prescribed for ACH permit responses and other aspects should include provision for a number of days or other additional time the ACH Council may permit. Given timeframes are to be prescribed in the regulations, the prescribed periods can simply be a number of days and any extension granted by the ACH Council.
12. The ACH Council is also given a very tight timeline to respond, especially if mediation is required in this time as well. This, too, will not be realistic unless the ACH Council meets very frequently to consider the likely large number of permits and responses.
13. We assume the timeframes prescribed all run from the date when the party receives the notice, rather than when it was sent. This should be clarified. Any presumed date of receipt should account for delivery times in remote areas.

14. In relation to ACH permit times, there is a 20-working day notice period prescribed for responses to the ACH Council's notice of receipt of an ACH permit application. However, there is also a 20-working day period from the receipt of the ACH permit for the ACH Council to make a decision. This means the deadline for the Council's decision is the same as the deadline for people to respond to the notice – an inadequate amount of time for the ACH Council to give proper consideration to objections. For the ACH Council to give a serious assessment of any responses, there should be at least 20 days from the deadline for responses, not from the receipt of the application.
15. Provision should be made for LACHS to respond verbally on ACH permits and ACH management plans. YMAC recommends the DPLH consider taking and transcribing these verbal submissions. Translators should also be an option. Many key Knowledge Holders do not speak or write English as a first language and this presents a barrier to full participation under the ACH Act.

### **Draft Consultation Guidelines**

16. For all aspects of proper consultation to occur, it will be necessary for proponents to provide funding for reasonable costs of consultation on Country. This includes travel allowances and payment for the consultation time of the relevant group (and their consultants and staff). This is particularly important where there are no LACHS and the consultation is not covered by any approved fee-for-service guidelines. However, even where there is a LACHS, it is useful there be a reminder here that fees must be paid for these consultations.
17. The consultation guidelines only start at the ACH management plan stage. This is very late in the process, often after plans have already been made about the type of works and where they occur. There should be a recommendation that consultation start as early as possible to ascertain where to best locate projects and infrastructure to avoid damage to ACH. By encouraging consultation before planning has substantially commenced, this would better support the stated objective of protecting and preserving ACH.
18. Many matters in the consultation guidelines are sensible and necessary – but they highlight the impracticability of expecting these to be carried out in the timeframes outlined. The shorter the timeframes, the less likely there can be genuine consultation and informed consent. See our comments on timeframes above.
19. Item 5(a) on page 6 – There is reference to proponents taking cultural conventions into account and how this may delay their timeframes. These should be mandated as matters that proponents *must* take into account. This is another reason why it is essential there be more sensible timeframes and why the ACH Council should be empowered in the regulations to extend times.
20. Item 5(b) on page 6 and item 5(d) on page 7 – Proponents are asked to be aware that English may not be the first language of people consulted. The guidelines should specify that, in those circumstances, proponents will need to fund translators for the group.
21. Proponents must be required to submit any supporting documentation to the LACHS in advance of any consultations, to give the LACHS time to consider matters before consultation meetings. These should be in plain English.

22. Item 5(d) on page 7 – There is likely to be a difference of views as to what alternative methods are feasible. It should be made clear in the regulations that something is not to be considered unfeasible simply because it may cost more, take more time or result in lesser profit. Otherwise, proponents could argue the only feasible options are those that maximise time and profitability, which will defeat the purpose of the requirements in s146 ACH Act. What is feasible must be determined objectively, not simply in the view of the proponent. To enable a proper understanding of all alternatives and relative feasibility, proponents must be prepared to disclose and discuss other possibilities raised. This includes any they do not believe are feasible, explanations of the relative time and costs and why, in their view, such alternatives are not feasible. Proponents should also provide reasonable funding for Aboriginal groups to obtain expert advice on the options and relative feasibilities of these to redress the imbalance of power and knowledge of such technical matters.
23. The guidelines should also provide for consultation to be ongoing. There should be a requirement for the reporting back of progress and compliance to the LACHS with the possibility for LACHS to evaluate and respond to this feedback.
24. As ACH management plans require processes to be followed if the parties become aware of new information, there needs to be guidelines to address the need for ongoing consultation requirements.
25. The process for the management of new information should be included in the guidelines, rather than left up to individual ACH management plans to ensure consistency and fairness for the LACHS.

### **Draft Fee-for-Service Guidelines**

26. On page 6, point 5.1, the guidelines are misleading when it mentions a LACHS can only charge fees for the delivery of services associated with the development and negotiation of the ACH management plan. Under s34(b) of the ACH Act, a LACHS can charge fees for service for costs associated with performing its functions which, under s48, go far beyond negotiating and developing an ACH management plan. For example: the provision of advice and assisting proponents should include all reasonable work done at the due diligence stage and in responding to ACH permit notifications. Such advice and assistance may include carrying out surveys so proponents can be advised where they may carry out activities without damaging ACH or how such damage can be minimised.
27. The fee-for-service guidelines should make it clear that fees can be required to be paid before the services are provided. Most LACHS will not be in a position to afford or take the risk of incurring costs that may not be recovered. It is essential that they can ask for fees in advance. YMAC recommends that LACHS should be able to charge a minimum of 50% of the agreed upon budget estimate, prior to the works proceeding.
28. The reference to historical fees and charges on page 7, point 5.2(2), could be problematic if these are set in stone for some time. This could, in turn, prevent market rates from increasing by not approving fee rises. Fees and market rates have risen substantially over the years and it is necessary for any schedule of fees to allow for increases in the same way.
29. In relation to page 7, point 5.2(5), there is a problem with setting fees on the basis of deliverables because the cost of providing such deliverables will vary substantially depending on the facts of each case. For instance, the size of an area surveyed,

distance, terrain, complex archaeology or ethnography will all involve different time and personnel for a similarly described deliverable. YMAC submits that a far more sensible approach to a fee schedule would be an hourly or daily rate. Short, simple work will be cheap while longer surveys and reports and more complex negotiations will cost more. If proponents need some certainty, they can reach a funding agreement with an approved budget in advance for each area. However, that should not be determined in the abstract by a generic list of deliverables and fees.

### **Draft Outstanding Significance Guidelines**

30. On page 8, just above the factors at point 6.2, the sentence “Knowledge Holders should consider and address the following factors when preparing an application for a ‘protected area order’” may give the wrong impression that every single factor needs to be addressed in an application. Only the people to whom the ACH belongs can say if, and how, an area is of outstanding significance to them. This will vary from group to group and possibly even among Knowledge Holders themselves, so therefore cannot be codified. It would be better to indicate some of the relevant factors that *could* be addressed in an application include those under point 6.2 – but make it clear these are not exhaustive, nor do they have to be satisfied in each case.
31. On page 9, there is reference to “Uniqueness of ACH within its context”. The concept of “uniqueness” is problematic, as it might result in only a representative sample – which would be most inappropriate. If this is based on outstanding significance to the Aboriginal group or Knowledge Holders (which is what has been set out), then it must be based on what is outstandingly important and significant to each of them – it cannot be based on what the State decides to choose to protect according to its own standards. For example: the water serpent is a common belief across the country, so it is not unique in that sense, but is of greatest significance to each group. It should be made clear that “uniqueness” is only one additional factor, not something that is required. Uniqueness should also be specifically described as uniqueness to each relevant group of Aboriginal parties or Knowledge Holders for that ACH.
32. A point of guidance should be added, making it clear that even if an area of ACH may have been damaged or affected in the past, it does not mean it is no longer of outstanding significance or should not be declared to be a protected area.
33. It is appropriately acknowledged that culturally sensitive information need not be provided. There is a danger that highly significant areas may be subject to many cultural restrictions on disclosure. There should be a point of guidance that, if there is a lack of detail due to cultural sensitivity, this should not be considered a factor against finding an area is of outstanding significance.
34. It should be made clear that submissions and views of affected landholders, government authorities or other third parties cannot be of relevance as to whether an area is of outstanding significance. It is a matter solely for the relevant people to whom the heritage belongs. These third parties can only address conditions and other discretionary factors.

### **Draft ACH Management Code**

35. In discussing the key factors of a Due Diligence Assessment (DDA), the primary point that needs to be made is that the foremost way of assessing whether ACH is present (and will be damaged) is by consulting with and engaging the relevant LACHS or



alternative Aboriginal parties. This should be made clear at the outset. Given the Directory is inconclusive and earlier survey reports may not have been carried out with the correct people or concerned the precise area or activities, there is no other way of ascertaining the answer to these matters.

36. This raises a point of concern with the tests on page 17, highlighting ways to confirm ACH is not present. The second column suggests one of the four dot points would lead to a reasonable view that ACH is not present. However, only the last dot point – consultation with interested Aboriginal parties or Knowledge Holders who identify that no ACH is in the area – would be sufficient to lead to a reasonable DDA.
37. On page 17, the reference in relation to ACH being physically present is said not to include buffer zones or masked boundary areas. However, buffer zones or boundary areas may, in fact, be a sphere of influence or power around a particular feature. The buffer area itself forms part of the ACH and intrusion into such a buffer area could be damaging to ACH.
38. On page 18, at point 2.4, there is undue emphasis on physical ground disturbance. ACH can be damaged by non-physical activities or effects and a failure to consider this in a DDA is inappropriate and can mislead people into committing offences. In addition, while there is a good discussion on how past disturbance does not necessarily mean new disturbance will not be damaging, it can be confusing as to what amounts to new or additional disturbance. It should be made clear that a repeat of the same type of disturbance in the same footprint is nevertheless a new or additional disturbance. In other words, any new activity could amount to damage.
39. On page 18, at point 2.5, the suggestion is that a DDA in relation to Tier 2 and Tier 3 activity will require engagement with Aboriginal parties. However, as noted above, that DDA is also required for a Tier 1 activity. Any DDA, even that required at Tier 1 level, should require engagement – otherwise it is not proper due diligence but an avoidance of facts that could easily be ascertained. Mere notification to Aboriginal parties should not be regarded as sufficient engagement for a DDA. This section gives the impression of a token effort rather than a sincere attempt to establish whether the activity will damage ACH and how such damage could be avoided.
40. At page 22 and 23, there are summaries of DDAs for different levels. All mention the need to take reasonable steps to minimise harm – note that it is not possible to work out how to minimise harm without speaking to Aboriginal parties, a requirement for all tiers of activities.

### **Draft DDA Flowchart**

41. The flowchart seems to assume compliance with the due diligence requirements. There is a danger this will be neglected or forgotten by people merely following the flowchart, so there needs to be a clear cross-reference to the due diligence requirements in the ACH Management Code.
42. Flowcharts 2 and 3 are problematic when stating the action can proceed if it is confirmed that no ACH is present. However, no guidance is given as to how this can be confirmed. This can *only* be done if the LACHS and relevant group confirm no ACH is present – and this vital step needs to be listed in the flowchart.

43. Flowcharts 2 and 3 are incorrect in saying that, if there is no new or additional ground disturbance, then the action may proceed. There is nothing in the ACH Act that specifies this. Non-ground disturbing activities can still damage ACH and ground disturbance, even if it is of the same kind that has happened before, can still cause additional damage. All Tier 2 and 3 activities that may cause damage to ACH need to be processed through the ACH permit under ACH management plan processes in Part 6 (unless the relevant LACHS or other Aboriginal groups confirm the activities will not cause any damage).

### **Draft ACH Management Plan Overview**

44. On page 8, in point 5.5, in relation to identifying ACH, there should be a warning that a desktop assessment will usually not be sufficient. Even if prior heritage surveys have occurred, advice should be sought from the LACHS and consideration given to the quality and scope of prior investigations.
45. On page 9, point 5.7, in relation to new information: the regulations and guidelines should provide minimum requirements for processes to ascertain new information, rather than leave it to the parties to reach an agreement, in circumstances where there is usually uneven bargaining power in favour of proponents. If there are minimum requirements for ongoing consultation and review, and confirmation the Aboriginal parties themselves may unilaterally report new information to the ACH Council, this would be preferable.
46. The new information process could include:
- a stop-work requirement in the area of newly identified heritage
  - LACHS to be notified immediately
  - a requirement to consult regarding the new information
  - an amendment to the ACHMP.

These should be mandated in the regulations and guidelines and works should not be able to re-commence in the area until these requirements have been met. There must also be a provision for the LACHS to withdraw its consent to an ACHMP where new information alters their agreement.

47. It should be recognised that new information could be the result of scientific analysis of heritage material. Usually, these are dates for the antiquity of use of a place. Other analysis can reveal residues revealing past uses of the place and environment. There should be some mechanism to sequester sites and/or areas within management plans that are subject to analysis until:
- the final results of the analysis are available
  - the Heritage Custodians assert the results are sufficient and no further work is required
  - an assessment can be made of those results and whether it has a bearing on the management of the cultural values.
48. It is recommended the dating process for sites of antiquity be used as a case study in the guidelines to illustrate how it might work in relation to management plans, addressing new information and the potential for plans to be amended in light of new information.
49. As outlined above, there should be a requirement built in for the reporting back of progress and compliance to the LACHS with the possibility for LACHS to evaluate and respond to this information.

50. The provision of information back to the LACHS regarding a) the implementation of the purpose of the plan and b) the resulting impact to heritage values will promote dialogue to further the management of extant heritage values, facilitate access and foster goodwill. It will also allow Heritage Custodians to gauge where the management plan has been implemented properly and where there might be cause for an investigation into a breach under the ACH.
51. Performance monitoring, review and evaluation by Heritage Custodians will provide assurance the plans are delivering effective heritage management as intended and will support decision-making in the future.
52. There should also be a requirement for a system of audits of compliance with management plans. This process should be transparent, ethical and timely and may require provision for Aboriginal inspectors and funding for them, as well as the proponent cooperating with them.
53. Overall, the structure of the plan is good but there could be more examples of impacts and avoidance.

#### **Draft Activity Categories**

54. YMAC's view has consistently been that only Aboriginal people to whom ACH belongs can determine the level of impact. We note the designation of tiers is based on physical levels of disturbance and may bear no relation to the level of adverse impacts to the sacredness or significance of the heritage to the people whose heritage it is. It is important that activity categories still recognise the potential impacts on heritage values.
55. Please find attached a chart setting out our comments on the activity categories.

#### **Draft Determining "Substantially Commenced"**

56. In relation to page 7, point 5.2, where ground disturbance as covered by a section 18 consent has not commenced: this cannot be regarded as substantial commencement of the work in the section 18, even if it is part of a larger project area. The fact a larger project has commenced does not mean the "purpose for which *the land the subject of the consent* may be used, *as specified in the consent*, has been substantially commenced" as required by s325(3) of the ACH Act. The guidelines cannot validly expand the scope of the ACH Act.
57. The guidelines should make clear that any work to be considered in substantial commencement must be work that is required as part of the project. It cannot include work that appears to have been done primarily for the purpose of extending the life of the s18 consent. The Minister should be required to consider all relevant facts about the project to decide if this is the case. LACHS, Aboriginal parties and Knowledge Holders should be notified of any application made to the Minister for an extension of time and invited to provide comments.

## Draft State significance guidelines

58. These guidelines display a very non-Indigenous concept of what amounts to State significance. ACH is only given State significance based on what is important to the dominant culture in the State. For example: the reference to historical value refers only to post-contact history. This fails to consider Aboriginal viewpoints of importance as part of what is significant to the State. Similarly, social value refers to the value to the wider WA community. The danger is the *most* important place to an Aboriginal group, under their cultural rules, might not be considered significant enough if not shared by the numerically wider community.
59. State significance should specifically include Aboriginal significance. There should be a recognition that high significance to Aboriginal people should be sufficient to give rise to State significance. This would put the State situation into a similar position to the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* which includes indigenous heritage values as part of national heritage. Failure to do so would be a backward step.
60. Further spiritual and cultural significance should clearly be recognised as specific additional components of State significance.



## YMAC Contacts

### **Simon Hawkins – Chief Executive Officer**

Phone: (08) 9268 7000

Email: [dlamb@ymac.org.au](mailto:dlamb@ymac.org.au)

### **Jane Mitchell – Communications Manager**

Phone: (08) 9268 7000 or 0427 463 796

Email: [jmitchell@ymac.org.au](mailto:jmitchell@ymac.org.au)

## General YMAC Contact Information

Please find the contact information for YMAC's offices below.

### **Perth**

Level 8, 12 The Esplanade, Perth WA 6000  
PO Box 3072, 249 Hay Street, Perth WA 6892  
**T \ (08) 9268 7000 F \ (08) 9225 4633**

### **Geraldton**

171 Marine Terrace, Geraldton, WA 6530  
PO Box 2119, Geraldton WA 6531  
**T \ (08) 9965 6222 F \ (08) 9964 5646**

### **Hedland**

8 Manganese Street, Wedgefield WA 6721  
PO Box 2252, South Hedland WA 6722  
**T \ (08) 9160 3800 F \ (08) 9140 1277**

### **Broome**

Shop 2/24 Clemenston Street, Broome WA 6725  
PO Box 2059, Broome WA 6725



<b>Exempt</b> <b>No approval, may impact ACH</b>	<b>Tier 1 – Minimal Ground Disturbance</b> <b>No approval, Due Diligence required</b>	<b>Tier 2 – Low Level Ground Disturbance</b> <b>ACH Permit required</b>	<b>Tier 3 – Moderate to High Ground Disturbance</b> <b>ACH Management Plan required</b>
<p>Activities related to emergencies</p> <ul style="list-style-type: none"> <li>Activities undertaken in response to any life-threatening emergency as defined by the <i>Emergency Management Act and Emergency Management Regulations 2006</i> including urgent recovery activities</li> <li>Clearing of any type set out in the <i>Environmental Protection Act 1986 Schedule 6 item 10, 10A, 11 or 12</i></li> <li>Preventing imminent danger to human life or health or irreversible damage to a significant portion of the environment as described under <i>Environmental Protection (Clearing of Native Vegetation) Regulations 2004</i></li> <li>burning carried out — <ul style="list-style-type: none"> <li>(i) for fire prevention or control purposes or other fire management works on Crown land; and</li> <li>(ii) by a public authority;</li> </ul> </li> <li>Burning carried out by a Local Government authority, critical asset managers and public utility providers in Section 100(f) when undertaking burning for the purpose of fire mitigation or suppression activities</li> <li>An activity undertaken in an emergency situation for the purpose of preventing, or minimizing, loss of life, prejudice to the safety, or harm to the health, of people</li> </ul>	<p>Activities related to emergencies with minimal ground disturbance. This could include but is not limited to:</p> <ul style="list-style-type: none"> <li>Burning for hazard reduction, non-emergency situations,</li> <li>Local Government firebreak notice/fuel reduction within Bush Fires Act 1954</li> <li>Replacement of infrastructure after natural disaster</li> </ul> <p><b>Comment:</b>  This was in Tier 2 in the previous version and should at very least remain in the Tier 2 category, as long as the infrastructure footprint is the same as before the disaster. If it is larger or different in anyway, it should become Tier 3. Ideally, Aboriginal expertise should be engaged wherever possible</p>	<p>Activities related to emergencies with low ground disturbance. This could include but is not limited to:</p> <ul style="list-style-type: none"> <li>Widening access tracks/firebreaks for asset protection outside the existing treated/disturbed area.</li> </ul> <p><b>Comment:</b>  All ground disturbance in previously uncleared areas, including track and firebreak widening that is not undertaken in response to any life-threatening emergency, should be a Tier 3 activity.</p> <p>Existing tracks and firebreaks have not necessarily been subject to surveys prior or after construction and there may be ACH adjacent.</p>	<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"> <li>No examples listed.</li> </ul>
	<p>Activities specifically impacting waterways with minimal ground disturbance, including but not limited to:</p> <ul style="list-style-type: none"> <li>Environmental, biological monitoring and Conducting tests for water, site contamination or other scientific or conservation purposes</li> </ul> <p><b>Comment:</b>  The level of ground disturbance needs to be narrowly defined for it to be a Tier 1 activity. If it is more ground-disturbing than walking on the area, or taking a certain amount of water, then it should be in a higher tier.</p>	<p>Activities specifically impacting waterways with low ground disturbance, including but not limited to:</p> <ul style="list-style-type: none"> <li>Jetty and boat ramp maintenance and redevelopment within area with existing Infrastructure.</li> </ul> <p><b>Comment:</b>  Maintenance of existing infrastructure is okay as a Tier 2 activity. The development of any new or larger jetty and boat infrastructure should be a Tier 3 activity.</p>	<p>Activities specifically impacting waterways with moderate to high ground disturbance, including but not limited to:</p> <ul style="list-style-type: none"> <li>Dredging of natural waterways (e.g. wetlands, rivers, foreshores) to remove sand that has been deposited over time from drainage pipes</li> <li>Erosion control activities associated with the ocean and significant waterways (includes walls, barriers, reshaping of beach areas, construction of groynes etc.)</li> <li>Dewatering of mine features and associated discharge.</li> </ul>





Exemp 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
	<p>Natural resource management activities with minimal ground disturbance. This could include</p> <ul style="list-style-type: none"> <li>• Digging pitfall traps and temporary trenches for small animals, baiting and installation of temporary fences and nest boxes –</li> </ul> <p><b>Comment:</b> There is no need to dig and place traps within the boundary of sites; any trenching should be a Tier 3 activity.</p> <ul style="list-style-type: none"> <li>• Flora and fauna surveys (without digging), treatments,</li> <li>• Dieback surveys, injections, and spraying,</li> <li>• mosquito treatments (including non-invasive trapping, treatments including fogging (adulticides and larvicides) through chemical-use and spraying</li> <li>• Vegetation sampling or measuring</li> <li>• Feral animal eradication, vermin and pest control and baiting</li> <li>• Vegetation control via mechanical slashing and mulching requiring minimal ground disturbance</li> <li>• Pre-mop-up around trees with the use of hand tools</li> </ul>	<p>Natural resource management activities with low ground disturbance. This could include</p> <ul style="list-style-type: none"> <li>• Rehabilitation activities involving ripping, scarifying, m a t t i n g , brushing seeding and planting.</li> <li>• Erosion control activities around existing roads, infrastructure, or facilities.</li> <li>• Tree removals (including land surrounding with roots) which does not include the removal of any objects as defined under the <i>Aboriginal Cultural Heritage Act 2021</i></li> </ul> <p><b>Comment:</b> Ripping, scarifying and erosion control activities are Tier 3 activities, unless there is demonstrable previous disturbance to the same depth.</p>	<p>Natural resource management activities with moderate to high ground disturbance. This could include</p> <ul style="list-style-type: none"> <li>• Erosion control activities using earth moving equipment</li> </ul>
	<p>Field m a p p i n g and surveys with minimal ground disturbance. This could include but is not limited to:</p> <ul style="list-style-type: none"> <li>• Visual survey</li> <li>• Cadastral surveys</li> <li>• Spatial measurement</li> <li>• Field Geological Mapping</li> <li>• Site walk over and surveying on foot</li> <li>• Pegging for prospecting and mining activities</li> </ul> <p><b>Comment:</b> These should be moved to Tier 2, or require a notification at minimum, as part of the required due diligence. Community members observing planes or people travelling through Country to undertake these activities will want to know what is happening on their Country. Under existing heritage agreements, proponents are generally required to advise PBCs of their planned activities, including minimal impact activities, in a work plan.</p>	<p>Field mapping and surveys with low ground disturbance. This could include but is not limited to:</p> <ul style="list-style-type: none"> <li>• Removing geological, soil and flora samples and cores up to 20kg and up to a depth of 2m from the natural surface</li> </ul> <p><b>Comment:</b> This implies that samples below 20kg in weight are to be considered minimal impact. Removing 20kg of soil and/or rock in an ACH site is a significant impact. This type of sampling should not occur within the boundary of ACH. If samples must be taken within an ACH site, this should be a Tier 3 activity managed by an ACHMP.</p>	<p>Field mapping and surveys with moderate to high ground disturbance:</p> <ul style="list-style-type: none"> <li>• No examples listed</li> </ul>



Heritage, scientific or other research activities with minimal ground disturbance. This could include but is not limited to:

- Environmental, biological monitoring and Conducting tests for water, site contamination or other scientific or conservation purposes within previously disturbed area.

**Comment:**

A narrow definition of previously disturbed ground is needed. See comments above.

- Digging pitfall traps and temporary trenches for small animals, baiting and installation of temporary fences and nest boxes

**Comment:**

There is no need to dig and place traps within the boundary of ACH sites. Any trenching should be a Tier 3 activity.

This needs to be more clearly and narrowly defined. For example, at a rock art site it should be an offence to chip a rock sample from an outcrop containing petroglyphs, as this constitutes desecration and an impact to the aesthetic and sacred values. If rock art is present, it should be Tier 3.

Heritage or other research activities with minimal ground disturbance. This could include but is not limited to:

- Materials analysis, surface and sub-surface sampling, test-pitting, small open area excavation, or salvage
- Making moulds of rock art
- Taking samples of ochre, pigments, charcoal, wood, shell etc. for scientific analysis
- Hand tools: shovels, trowels, sieves, hand-augers
- Machinery: mechanical augers, mechanical excavator (300mm to 1m bucket), mechanical sieves Light vehicles for transport - <2m<sup>2</sup> per shovel pit
- Digging pits less than 5m<sup>2</sup>

**Comment:**

These should all be Tier 3 activities. LACHS should play a role in developing any research projects. This should be covered by an ACHMP with publication of data and ownership of intellectual property clauses.

Heritage or other research activities with minimal ground disturbance. This could include but is not limited to:

- Large Scale /Open Archaeological Excavation
- Archaeological Salvage – Collection and removal of cultural objects
- Soil investigations utilising an excavator or other machinery to access below the natural ground level



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
<p>construction, renovation or demolition of a building occupied, or intended for occupation, to such a building, on a lot as defined in the <i>Planning and Development Act 2005</i> section 4(1) that is less than 1 100 m<sup>2</sup>; Development of a prescribed type carried out in accordance with the <i>Planning and Development Act 2005</i>, including:</p>	<ul style="list-style-type: none"><li>Heritage pedestrian surveys</li><li>Environmental surveys involving no removal</li><li>Geological mapping soil and drainage</li><li>sampling using handheld tools only</li></ul> <p><b>Comment:</b> Sample sizes should be limited and defined.</p> <ul style="list-style-type: none"><li>Aerial transportation for geoscientific research and heritage clearances (e.g. Helicopter deployment of staff to remote site, heritage clearance with Aboriginal groups in remote areas) that does not require any ground disturbance at landing site</li><li>Collecting loose rocks, firewood, flora, and fauna</li><li>Sampling including removing soil, rock and flora samples using hand-held methods including hand augering, rock chipping, soil sampling, stream sediment sampling does not interfere with any objects as defined by the <i>Aboriginal Cultural Heritage Act 2021</i></li></ul> <p><b>Comment:</b> Sample sizes should be limited and defined.</p> <ul style="list-style-type: none"><li>Collecting and removing samples that does not interfere with any objects as defined by the <i>Aboriginal Cultural Heritage Act 2021</i></li></ul> <p><b>Comment:</b> Sample sizes should be limited and defined.</p>		
<p>as a place of residence, or a building ancillary</p>	<p>Development with minimal ground disturbance. This could include but is not limited to:</p> <ul style="list-style-type: none"><li>Maintaining or reconstructing existing retaining walls (land and sea included)</li></ul> <p><b>Comment:</b> Sea/river walls should at least be Tier 2, as many of them historically impinge on cultural values and could be handled more sensitively.</p> <ul style="list-style-type: none"><li>Maintenance of recreation, camping and parking facilities</li><li>Landscaping, mowing, planting and other maintenance works in developed Parks and Ovals</li><li>Redevelopment of existing landfill or waste facilities</li><li>General maintenance associated with a dwelling</li></ul>	<p>Development with low ground disturbance. This could include but is not limited to:</p> <ul style="list-style-type: none"><li>Replacement or repair of lineal telecommunications infrastructure (subsurface cabling) in corridor immediately adjacent to existing infrastructure</li></ul> <p><b>Comment:</b> Only if adjacent corridor is previously disturbed</p> <ul style="list-style-type: none"><li>Repair and maintenance of buildings</li><li>Repair and maintenance of bridges, retaining walls and waterways</li><li>Maintenance of services (power, water, sewer, telecommunications)</li><li>Extensions to existing buildings and infrastructure</li><li>Installation or replacement of signs reserves using non handheld mechanical augers</li><li>Installation of new bollards, kerning or fencing</li><li>Installation of new hoses or watering systems</li></ul>	<p>Development with moderate to high ground disturbance. This could include but is not limited to:</p> <ul style="list-style-type: none"><li>Constructing new retaining walls (sea and land inclusive)</li><li>New toilet facilities and associated leach drains/tanks</li><li>Installation of new services (power, water, sewer, telecommunications)</li><li>Construction of housing sub-divisions</li><li>Broad acre land clearing</li><li>Establishment of new infrastructure easements (requiring excavation)</li><li>New buildings outbuildings (except where exempt)</li><li>New Sports grounds</li><li>Clearing of land for pastoral activities</li><li>Construction/installation of bridges and culverts</li><li>Concrete batching and screening/crushing</li></ul>





<p>Exempt</p> <p>No approval, may impact ACH</p>	<p>Tier 1 – Minimal Ground Disturbance</p> <p>No approval, Due Diligence required</p>	<p>Tier 2 – Low Level Ground Disturbance</p> <p>ACH Permit required</p>	<p>Tier 3 – Moderate to High Ground Disturbance</p> <p>ACH Management Plan required</p>
	<ul style="list-style-type: none"> <li>Cemetery services including grave-digging and maintenance within designated burial areas</li> <li>Maintenance to existing paths, walls, fences, tracks, airstrips and community utilities</li> <li>Laying of temporary water pipelines across ground</li> </ul> <p><b>Comment:</b> Temporary water pipelines can impact the surface of ACH such as artefact scatters. Unless the pipes are fixed they move, which causes damage, and fixing the pipelines should be a Tier 3 activity. We recommend that water pipes should not pass over ACH or, at a minimum, this should be a Tier 2 activity.</p> <ul style="list-style-type: none"> <li>Stockpile of construction material or temporary storage of machinery for works</li> </ul> <p><b>Comment:</b> Outside of ACH</p> <ul style="list-style-type: none"> <li>Stockpile sampling where samples are collected from above the natural ground level Erecting signage, solar panels and barriers using handheld mechanical augers</li> </ul> <p><b>Comment:</b> This should be Tier 2 at least. It involves ground disturbance and permanent structures and/or concealment and/or changes to access (was Tier 2 in previous document).</p> <ul style="list-style-type: none"> <li>Use of hand tools that do not result in ground disturbance</li> </ul>		<ul style="list-style-type: none"> <li>Installation of telecommunications tower</li> <li>Creation of suspended walkways or boardwalks</li> <li>Development of cemetery</li> </ul>
	<p>Mining activities with minimal ground disturbance. This could include but is not limited to:</p> <ul style="list-style-type: none"> <li>Clearing regrowth vegetation on mine waste material</li> <li>Sampling from already installed monitoring wells</li> <li>Revegetation in degraded areas in mined areas, including fencing areas of vegetation</li> </ul> <p><b>Comment:</b> Not within ACH. This should be moved to Tier 3.</p>	<p>Mining activities with low ground disturbance. This could include but is not limited to:</p> <ul style="list-style-type: none"> <li>Backfilling historic mine features using imported material</li> </ul> <p><b>Comment:</b> This is acceptable as long as the imported material is not sourced from within the boundary of ACH.</p>	<p>Mining activities with moderate to high ground disturbance. This could include but is not limited to:</p> <ul style="list-style-type: none"> <li>Mining exploration activities consisting of vehicle track creation and drill pads</li> <li>Mining or establishment of processing plant, plant, access roads, permanent camp and supporting infrastructure</li> <li>Water Bore Establishment</li> <li>Development of new roads, tracks, parking areas</li> </ul>



Revision Draft

		<ul style="list-style-type: none"><li>• Extensive soil investigations utilising an excavator or other machinery to access below the natural ground level</li><li>• Drilling (air core, Rotary, Percussion, Diamond, Rotary mud)</li><li>• Scrape and Detect</li><li>• Borrow pits</li><li>• Clearing of land for laydown and staging areas with or without drilling</li><li>• Large scale on-site remediation works which may include the construction of containment cells/ bioremediation pads or excavation, screening and replacement of contaminated soil or installation of in-situ/ ex-situ groundwater remediation systems</li><li>• Constructed landforms (e.g. tailings facilities, waste landforms).</li><li>• Creating new landforms or conducting rehabilitation earthworks</li></ul>
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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
	<p>Geophysical or geotechnical surveying with minimal ground disturbance, including but not limited to:</p> <ul style="list-style-type: none"> <li>• Magnetic Geophysical survey</li> <li>• Radiometric geophysical survey</li> <li>• Electromagnetic surveys</li> <li>• Passive seismic surveys</li> <li>• Ground based Electrical Surveys</li> <li>• Portable PPB Analysis</li> <li>• Ground penetrating radar</li> <li>• Geophysical surveying and survey non-invasive aerial and remote sensing and magnetic surveys</li> <li>• Geotechnical or environmental drilling (e.g. installation of monitoring wells) using existing roads or tracks</li> </ul> <p><b>Comment:</b> Existing roads and tracks have not necessarily ever been subject to heritage surveys in the past. The average road or track is less than 5m wide. Drill pads are typically at least 20m x 20m. Overall, these should be moved to Tier 2 or require a notification, at minimum. Community members will want to know what is happening on Country.</p>	<p>Geophysical or geotechnical surveying with low ground disturbance, including but not limited to:</p> <ul style="list-style-type: none"> <li>• Seismic surveys</li> <li>• Sled Kart Instrument for Magnetic Prospectivity Imaging (SKIMPI) Surveys carried out along gazetted roads, road reserves, road corridor or existing track or paths or firebreaks</li> <li>• Geotechnical testing with minimal digging required</li> <li>• Taking geological samples including soil and rock not exceeding 20kg in weight</li> <li>• Induced Polarised Surveys</li> <li>• Digging pits for the purpose of temporarily burying geoscientific equipment where pits do not exceed 2m<sup>2</sup></li> <li>• Gravity surveys</li> <li>• Resistivity surveys</li> </ul> <p><b>Comment:</b> This implies that samples below 20kg or pits below 2m<sup>2</sup> are to be considered low impact. Removing 20kg of soil and/or rock in an ACH site is a significant impact. This type of sampling should not occur with the boundary of ACH. If samples must be taken within an ACH site, this should be a Tier 3 activity managed by an ACHMP.</p>	<p>Geophysical or geotechnical surveying with moderate to high ground disturbance, including but not limited to:</p> <ul style="list-style-type: none"> <li>• Seismic Surveys requiring clearing of tracks</li> <li>• Sub bottom profiling</li> <li>• Costeans</li> <li>• Channel sampling</li> <li>• Bulk sampling</li> <li>• Vehicle mounted auger sampling</li> </ul>
<p>Other exempt activities:</p> <ul style="list-style-type: none"> <li>• Taking of photographs for a recreational purpose</li> <li>• Recreational activities carried out on or in public waters or in a public place;</li> <li>• Travel on an existing road or track</li> </ul>	<p>Other activities with minimal ground disturbance, including but not limited to:</p> <ul style="list-style-type: none"> <li>• Driving vehicles, on existing roads or Tracks.</li> </ul> <p><b>Comment:</b> Assume “not” is a misprint.</p> <ul style="list-style-type: none"> <li>• Establishing temporary camps where the establishment of the temporary camp does not require the removal of trees, shrubs and does not require any earthworks.</li> </ul> <p><b>Comment:</b> Camps, temporary or otherwise, should not be established within the boundaries of ACH. Impacts are caused by human waste and this has an impact on amenity and access. Establishing any kind of camp within an ACH place should be Tier 3 and managed by an ACHMP.</p> <ul style="list-style-type: none"> <li>• Digging or cutting with hand-held, non-mechanical tool</li> </ul> <p><b>Comment:</b> There should be limits placed on the size of samples that can be collected and that they cannot occur within ACH sites. Do handheld tools include shovels? If so, the use of shovels should be a Tier 2 activity.</p>	<p>Other activities with minimal ground disturbance, including but not limited to:</p> <ul style="list-style-type: none"> <li>• Road maintenance</li> <li>• Surface asbestos containing materials (ACM) assessments including raking of the ground surface</li> <li>• Removal of surface waste and inert rubbish</li> <li>• Removal of redundant plant and equipment within existing disturbance/ infrastructure Footprint</li> <li>• Removal of stockpiles of contaminated material where excavation below ground level is not required</li> </ul> <p><b>Comment:</b> We understand the need to be able to undertake this work rapidly, as it represents a safety issue. But we would recommend that monitors be required for ground-disturbing work of this nature.</p> <ul style="list-style-type: none"> <li>• Laydown area adjacent to existing road (sealed/unsealed) or track for aerial surveys and associated activities.</li> </ul>	<p>Other activities with minimal ground disturbance, including but not limited to:</p> <ul style="list-style-type: none"> <li>• Mechanised ground disturbance e.g. gravel extraction</li> <li>• Blasting - Use of Explosives including military training</li> <li>• Forestry activities, including mechanical harvesting, water extraction, river crossovers and replanting</li> <li>• Road construction or reconstruction (resealing, asphalt overlays, re-sheets)</li> <li>• Beach development i.e., moving sand for sand banks or ramps (including repairs)</li> </ul>





- Pastoral purposes as defined in the Land Administration Act 1997, including cultivation and grazing

**Comment:**

These could involve large areas and a major change to the landscape. They should be Tier 2 or 3, depending on the size of the development. Consideration should also be given to the impact on sacred water sources – any pastoral activity involving water sources should be Tier 2 or 3 and require consultation.

- Commercial leisure activities (for example, 4WDing, tourism)

**Comment:**

Offroad 4WD causes considerable disturbance, particularly to burials. Cleared areas should be set aside for these activities. Offroad driving should not be permitted within ACH.

- Maintenance of existing stock watering points (bores, dams, windmills, troughs, piping, solar arrays, tanks etc)

**Comment:**

Stock can cause substantial impact to pools and other natural waterways through trampling and by increasing the nutrient load. Only existing stock-watering points not within natural or enhanced natural sources should be included within Tier 1. Natural water sources should be considered within Tier 3 and be covered by an ACHMP.

**Comment:**

Where a laydown area involves new ground disturbance, this should be a Tier 3 activity requiring an ACHMP if any ACH is going to be harmed.

- Excavation of contaminated material and/or waste material buried below natural ground level
- Excavation (including quarries and dams)

**Comment:**

Excavation should be a Tier 3 activity with an ACHMP.

- Irrigation
- Construction of new stock watering points – including bores, tanks, troughs, windmills, solar arrays, small turkey's nest dam
- Construction of animal yards

**Comment:**

Bores should not be installed within ACH. This should be a Tier 3 ACHMP activity. Often these water sources are highly significant.