

Aboriginal Heritage

The management of Aboriginal heritage in Western Australia is governed by the Aboriginal Heritage Act 1972 (AHA 1972). The AHA 1972 recognises that there is a general community interest in maintaining and protecting places of Aboriginal heritage as part of the cultural heritage of the State.

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The definition of a site under section 5 of the AHA 1972 broadly applies to places that are:

- of importance and significance where persons of Aboriginal descent have left traditional objects;
- sacred, ritual and ceremonial sites of importance and special significance to persons of Aboriginal descent;
- historical, anthropological or archeological significance to the cultural heritage of the State; or
- related to, places where objects are stored.

Section 6 of the AHA 1972 applies to objects that, for any purpose, are connected with the traditional cultural life of Aboriginal people, past or present.

Aboriginal sites as defined in the AHA 1972 are located throughout Western Australia and on every different type of land tenure, e.g. crown land (reserves pastoral leases, agricultural leases) and freehold land. The nature and diversity of Aboriginal sites means that they may not always be readily recognisable.

Under section 11A, the Minister for Indigenous Affairs is responsible for the administration of the AHA 1972. The day-to-day administration of the AHA 1972 is the responsibility of the Department of Indigenous Affairs.

Section 17 of the AHA 1972 makes it an offence to excavate, destroy or damage conceal or otherwise alter an Aboriginal site unless authorised to do so by the Registrar of Sites under Section 16, or the Minister for Indigenous Affairs under Section 18. Subject to Section 18, Section 16 allows the Registrar to issue a permit to enable disturbance of a site by an archeologist either conducting independent research or who may be appointed to monitor ground-disturbing works.

Where a land-user (e.g. petroleum interest) proposes a development that may impact on any Aboriginal site, they must seek the consent of the Minister for Indigenous Affairs under Section 18. Under Section 18, the application is lodged with the Department of Indigenous Affairs and then submitted for consideration by the Aboriginal Cultural Materials Committee (ACMC). The ACMC is an appointed body that provides advice to the Minister for Indigenous Affairs on any question referred to the ACMC, and matters related to objects and purposes of the AHA 1972.

In considering a Section 18 application, the ACMC inquires into the extent and adequacy of consultation with affected Aboriginal people. In practice, the ACMC endeavours to ensure that all Aboriginal people with an interest or who assert an interest in the land in question have been notified of the proposed use and have had an opportunity to comment on it. The ACMC relies on its own research and evidence presented in heritage reports accompanying the Section 18 application to establish that adequate consultation has occurred.

Upon receipt of the recommendation from the ACMC, the Minister may grant or decline consent, or may grant subject to conditions. In considering whether to give consent, the Minister is required to take into account the interests of the general community.

Section 38 of the AHA 1972 provides that there is to be a register kept recording all protected areas, Aboriginal cultural material and all places (sites) and objects to which the AHA 1972 applies. The Register of reported sites is maintained by the Department of Indigenous Affairs.

Information that is not culturally sensitive is available to the public. The AHA 1972 protects Aboriginal sites whether or not they have been previously reported or recorded. Although the Register contains information related to reported sites, there are many sites that have not been reported to the Registrar, but have been recorded in heritage survey reports held by companies.

Anyone planning to develop land in a way that might disturb an Aboriginal site should be aware of their legal obligations. They must make a reasonable effort to find out if any sites exist in the development area. Such an investigation during early project planning will help to avoid possible time consuming and costly delays later.

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