

Client Update – New Heritage Laws

November 2023

As of **15 November 2023**, Western Australia will repeal the *Aboriginal Cultural Heritage Act 2021 (WA) (2021 Act)*. The state will revert to an amended *Aboriginal Heritage Act 1972 (WA) (1972 Act)* as the key document governing Aboriginal heritage.

What are the key changes from the old 1972 Act and the soon to commence 1972 Act?

- Section 18 approvals can now be overturned (revoked) with ‘new information’
- Proponents have a *positive obligation* to report ‘new information’
- Native Title Parties can now appeal section 18 decisions to the State Administrative Tribunal
- The Premier can ‘call-in’ (decide) section 18 matters of State or regional importance
- Section 18 approvals can now be transferred
- The old ACHMC will be replaced by the Aboriginal Cultural Heritage Committee

What does this mean for our company’s heritage processes?

With the repeal of the 2021 Act, all the processes required of proponents under the Act will cease: Due Diligence Assessments, Tiered Activities, Survey Report Guidelines and ACH Investigation Guidelines. The 1972 Act only requires that proponents not damage sites (unless they could not be reasonably expected to have known). Good practice and likely your contractual obligations, means that you should still conduct surveys and liaise with the appropriate native title party over your planned activities. Agreement Hub can always help navigate this.

What does this mean for approvals moving forward?

Replacing the ACH Permits and ACH Management Plans will be the previous section 16 (excavation of sites) and section 18 (consent to impact a site) approval pathways. These approval pathways will now have an additional cost - \$250 plus \$5,096 per identified site.

What if I have an ACH Permit or ACH Management Plan?

Any ACH Permit or ACH Management Plan granted under the previous 2021 Act will automatically become a section 18 consent. Any submitted applications will not transfer from the ‘ACHKnowledge’ system unless they have already been paid. In which case, they will appear under submitted applications. No draft application will be carried over.

What does it mean for my existing section 18 consent?

There is now a positive obligation on proponents to report any new information to the Minister which emerged after 1 July 2023. This obligation is new to the 1972 Act and be aware that there is no significance test for what counts as new information.

What should I do next?

- Do not expect native title groups to fully reverse the expectations established in the 2021 Act. Expect consultation on heritage matters to only deepen, even without a legislative requirement to do so.
- Manage your social licence. The repeal has removed the more onerous processes of the 2021 Act; however, we still live in a post-Juukin Gorge world - where getting heritage right matters.
- If you have an existing section 18 consent or are seeking a section 18 consent, ensure you have processes set up to handle the ‘new information’ obligation.

As always, we here at Agreement Hub are willing to assist you and your team navigate these changes in any way we can. Please let us know if you have any questions or require specific assistance.