

# ABORIGINAL CULTURAL HERITAGE LAWS IN WA

Last updated in December 2024

*Aboriginal Heritage Act 1972*

*Aboriginal Heritage Regulations 1974*

## What is Aboriginal heritage?

In Western Australia, Aboriginal **sites** and **objects** are protected under the *Aboriginal Heritage Act 1972 (the Act)* and the *Aboriginal Heritage Regulations 1974*.

### Examples of Aboriginal sites

- ceremonial sites
- birthing places
- burial sites
- historical places
- scarred trees

### Examples of Aboriginal objects

- stone tools
- fish traps
- rock art
- artefacts

## How is Aboriginal heritage protected?

It is an offence under the Act to:

- excavate, destroy, damage, conceal or alter any Aboriginal site;
- alter, damage, remove, destroy, conceal or possess without permission any Aboriginal object.

A person has a **defence** if they can prove they did not know **and** could not reasonably be expected to have known the site or object was Aboriginal heritage.

A person is also allowed to harm Aboriginal heritage if they have one of the following approvals from the **Minister for Aboriginal Affairs**:

- **Section 18 consent** - authorises impacts and harm to Aboriginal sites
- **Section 16 authorisation** - authorises excavation of Aboriginal sites (generally for research)
- **Regulation 7 approval** - authorises bringing plant and equipment to an Aboriginal site
- **Regulation 10 consent** - authorises minor activities and impacts on Aboriginal sites

Applications are considered by the **Aboriginal Cultural Heritage Committee**, which makes a recommendation to the Minister. The Minister then decides whether to grant the application, with or without conditions.

If the holder of a section 18 consent becomes aware of new information about Aboriginal sites, they must notify the Minister within **21 days**. The Minister will then decide whether to amend, revoke or confirm the consent.

1800 626 239

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# What can I do if Aboriginal heritage is under threat?

## 1. Request that an Aboriginal object be declared as Aboriginal cultural material

The Aboriginal Cultural Heritage Committee can recommend to the Minister that an Aboriginal object or class of objects should be declared as Aboriginal cultural material. This offers a higher level of protection to Aboriginal objects under the Act.

You can contact the Aboriginal Cultural Heritage Committee at:

✉ [achcommittee@dplh.wa.gov.au](mailto:achcommittee@dplh.wa.gov.au)

## 2. Request that an Aboriginal site be declared as a protected area

The Aboriginal Cultural Heritage Committee can recommend to the Minister that an Aboriginal site is of outstanding importance and should be declared a protected area. This offers the highest level of protection to Aboriginal heritage under the Act.

You can contact the Aboriginal Cultural Heritage Committee at:

✉ [achcommittee@dplh.wa.gov.au](mailto:achcommittee@dplh.wa.gov.au)

## 3. Have your say on section 18 consent applications

Any person applying for a section 18 consent is **encouraged** to consult with Aboriginal people about the cultural significance of Aboriginal sites and objects within the application area. The **Aboriginal Heritage Act 1972 Guidelines** provide guidance about whether landowners are required to apply for a section 18 consent.

Visit the **Consultation policy for section 18 applications** for more information on expectations for consultation

## 3. Apply to review a section 18 consent

A Native Title party can apply to the State Administrative Tribunal (**SAT**) for review of a decision to grant a section 18 consent to harm an Aboriginal site. An application for review to the SAT **must** be made within **28 days** after the Minister publishes notice of the decision to grant a section 18 consent.

Visit the **Aboriginal Cultural Heritage Committee website** to access recommendations of the Committee and decisions of the Minister.

## 4. Apply to the Federal Government for a Declaration

If you have run out of options under WA laws, you can apply for a declaration to protect Aboriginal heritage under the *Aboriginal and Torres Strait Islander Heritage Protection Act*. Visit EDO's factsheet on **First Nations Cultural Heritage and Federal Law** for more information.

To apply for a declaration:

☎ 1800 751 242  
✉ [atsihpa@dceew.gov.au](mailto:atsihpa@dceew.gov.au)

You can call the Environmental Defenders Office on **1800 626 239** for free legal advice.

☎ 1800 626 239

✉ [first.nations.program@edo.org.au](mailto:first.nations.program@edo.org.au)

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