

## **Western Australia Aboriginal Cultural Heritage Act 2021**

On 1 July 2023, WA Parliament enacted additional legislation for the protection of Aboriginal Cultural Heritage through the introduction of a new Act (2021) which has replaced the Marandoo Act 1992 and some remaining functions of the Heritage Act 1972. The new Act is significantly different than the previous Acts in that:

- There will be no assessment of Aboriginal people's cultural heritage by a government committee.
- Proponents are required to undertake due diligence prior to undertaking activities.
- Approvals process requires engagement with Aboriginal people.
- Acknowledges and provides roles for native title holders, knowledge holders and traditional custodians.
- Ability for Aboriginal organisations to be appointed as a Local Aboriginal Cultural Heritage Services (LACHS).
- Substantially increased penalties for breaches.
- New suite of protection mechanisms such as Stop Activity and Prohibition Orders.

Some of these functions are going to affect drilling contractors and how they go about planning for a new job. In many instances the necessary permits, plans, and approvals will already have been applied for by the exploration or mining company (client) as part of overall operations. This could also be the case for a waterwell drilling contractor whereby the landowner has completed a Due Diligence Assessment (DDA) and gained any necessary approvals.

The following will explain the process further of what needs to be done if the client has not completed a DDA.

The new Act segregates activities that disturb the land into tiers, and each tier has different levels of authorisation requirements that need to be addressed before starting work. Refer to the official government's 18-page document [Activity Tiers](#) for the full explanation. Extracted from the document are the below points relevant to drilling:

### **1. Subdivision 2 – General Tier 1 activities**

- a. (25) Drilling, carried out as part of bore construction, in a way that does not involve any of the following:
  - i. Disturbing more than 10m<sup>2</sup> of ground in total.
  - ii. Disturbing more than 1m<sup>2</sup> of contiguous (adjacent) ground.

### **2. Subdivision 3 - General Tier 2 activities**

- a. (41) Air core drilling
- b. (42) Drilling, carried out as part of bore construction, in a way that does not involve any of the following:
  - i. Disturbing more than 200m<sup>2</sup> of ground in total.
  - ii. Disturbing more than 10m<sup>2</sup> of contiguous (adjacent) ground.

### 3. Subdivision 4 - General Tier 3 activities

- a. (50) Drilling, other than as part of an activity described by another item in Division 1 to 8. Examples for this item:
  - i. Rotary mud drilling
  - ii. Diamond drilling
  - iii. Percussion drilling
  - iv. Drilling, carried out as part of bore construction that involves disturbing more than 200m<sup>2</sup> of ground in total or more than 10m<sup>2</sup> of contiguous ground.

There are no exempt activities prescribed for drilling.

Activity Tier	If no risk of harm to ACH	Authorisation requirements if risk of harm to ACH
Exempt Activity	Able to proceed as planned provided it is not in a Protected Area	Activity authorised to proceed as planned.  To be consistent with the Objects and Principles of the Act, it is recommended that proponents should undertake the activity to avoid or minimise harm wherever possible
Tier 1 Activity		Activity is authorised to proceed as planned provided it is not in a Protected Area and as long as a DDA is undertaken, and the proponent takes all reasonable steps possible to avoid or minimise the risk of harm being caused to ACH.
Tier 2 Activity		Activity will require the issue of a Permit
Tier 3 Activity		Activity will require an approved or authorised Plan.

*Table 1 - Authorisation process for Exempt Activities and the three Activity Tiers*

All drilling operations will therefore need to be preceded by a Due Diligence Assessment (DDA). This is explained clearly and in detail using flowcharts in the government's 35-page document [Aboriginal Cultural Heritage Management Code](#). The DDA needs to begin with a search in the directory on the Department of Planning, Land and Heritage website to see if there has been any previous surveying or assessments done on the site where the drilling is proposed to take place. We have also included the Department's [Quick Reference Guide](#) to assist with this process.

The outcome of the search in the directory could result in:

1. That prior surveys have confirmed that there are no Aboriginal Cultural Heritage (ACH) findings, which would therefore mean that operations are free to take place, or;
2. There have been no previous surveys which would mean the need to take the next steps and either apply for a permit if it is a Tier 2 activity or submit an Aboriginal Cultural Management Plan (ACHMP) if it is a Tier 3 activity.

Association of Mining and Exploration (AMEC) has produced a useful guide for the preparation and development of an [ACHMP](#). The AMEC website is also a great source for further information relevant to exploration and mining companies.

For existing drilling programs that have already been approved (i.e., before 1/07/2023) they should be able to continue without any major interruption. Again, in most cases this will be the responsibility of the drilling contractor's client to confirm, and it may require them to review the directory for any existing ACH findings.

ADIA understands that the process seems complicated and could result in delays to jobs starting, but it is something that is affecting several industries simultaneously. The government is stating the next 12 months is an education process and that they are providing the necessary resources to assist the implementation. They will be seeking feedback along the way, and it is most likely that there will need to be some reassessment.

If we can assist you further, please contact us at: [info@adia.com.au](mailto:info@adia.com.au)