



Aboriginal Cultural Heritage Act 2021

ACTIVITY TIERS AND TABLE

Consultation Draft

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1. Purpose

A key function of the *Aboriginal Cultural Heritage Act 2021* (Act) is to manage activities that may harm Aboriginal cultural heritage (ACH). The Act categorises activities that may harm ACH into tiers, and provides a corresponding authorisation process for each of the tiers, as outlined in Table 1.

Proponents are required to seek an authorisation if there is a risk of harm being caused to ACH by their proposed activity. To assist proponents to determine whether there is a risk of harm, the Act provides for due diligence assessment (DDA) to be conducted in accordance with the ACH Management Code (Code).

2. Overview

Activity tiers reflect different levels of ground disturbance that are caused by specified activities. The activity tiers will be set out in the *Aboriginal Cultural Heritage Regulations 2022* (Regulations). For the purposes of a DDA, a proponent is required to determine the tier of their activity by referring to the Activity Tables¹.

Where there is a risk of harm to ACH from a proposed activity, *a proponent is required to follow the authorisation pathway corresponding to the relevant activity tier*. The DDA process applies to all activities having regard to their level of ground disturbance. If a specific activity is not listed, a proponent should contact the Department of Planning, Lands and Heritage for advice.

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 to ACH 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

¹ The Activity Tiers table will be available on the Department of Planning, Lands and Heritage's website when the Regulations are in effect.

In order to assist proponents undertaking a DDA, the Code will contain step by step flow charts. Proponents undertaking a DDA will need to be aware that:

- A proposed activity, irrespective of whether it is an exempt, tier 1, tier 2 or tier 3 activity, **is not permitted** to be carried out in a Protected Area unless the Protected Area has conditions or regulations exist permitting that activity.
- Activities that are 'like for like' or less, as defined in the Code, are 'exempt'.
- All activities that are not in a Protected Area and that are not exempt should be assessed in the order of priority as follows:
 - row groupings 1 – 9 in the Activity Table;
 - Activity Table – activities not otherwise specified.
- The row grouping headings are for information purposes only and to assist proponents locate and identify their activity. They should not be read to limit, narrow or otherwise define the activities in the rows under the heading. For example, "Maintenance using handheld mechanical equipment" is listed under 4.2 Agriculture and natural resource management activities with low level of ground disturbance (Tier 2), however this activity also applies as a Tier 2 activity to any other proponent that wants to undertake grounds maintenance with handheld mechanical equipment. Proponents should search for their activity in all industries/categorisations
- When assessing the applicable tier for an activity, the assessment should start with Tier 3 before moving to Tier 2 and then to Tier 1 and be subject to the relevant authorisation. This means that where an activity is a Tier 3 activity, related activities (e.g. that form part of a broader project) should be incorporated as part of the authorisation required for the highest level activity.

3. Acronyms and Terms used

ACH	Aboriginal cultural heritage
Act	<i>Aboriginal Cultural Heritage Act 2021</i>
Code	ACH Management Code
DDA	Due Diligence Assessment
Permit	ACH Permit
Plan	ACH Management Plan
Regulations	<i>Aboriginal Cultural Heritage Regulations 2023</i>



4. Activity Table – Exempt, Tier 1, Tier 2 & Tier 3

Exempt Activity	Tier 1 Activity No, or a minimal, level of ground disturbance Due diligence assessment required	Tier 2 Activity Low level of ground disturbance Due diligence assessment required, ACH permit or management plan required if activity may harm ACH	Tier 3 Activity Moderate to high level of ground disturbance Due diligence assessment required, ACH management plan required if activity may harm ACH
1.0 Emergency activities that are exempt	1.1 Emergency activities with no, or a minimal, level of ground disturbance	1.2 Emergency activities with a low level of ground disturbance	1.3 Emergency activities with a moderate to high level of ground disturbance
<ul style="list-style-type: none"> • All activities undertaken during emergency response to prescribed hazards under the <i>Emergency Management Act 2005</i> on Crown or private land that relate to emergency activities for prevention of imminent danger to human life or health or livestock • Any response to any emergency as defined by the <i>Emergency Management Act 2005</i> and <i>Emergency Management Regulations 2006</i> for urgent recovery activities and prevention of loss of life and livestock • Access to water and fire suppression activities carried out during an emergency response for the prevention or imminent danger to human life or health or livestock • An activity undertaken in an emergency situation for the purpose of preventing, or minimising, loss of life, prejudice to the safety, or harm to the health, of people • An activity undertaken in an emergency situation for the purpose of preventing, or minimising irreversible damage to a significant portion of the environment. • Burning carried out — <ul style="list-style-type: none"> ○ for fire prevention or control purposes or other fire management works on Crown land; and ○ by a public authority [s 100 Exempt activity (f)] • Clearing of a kind set out in the <i>Environmental Protection Act 1986</i> Schedule 6 item 10, 10A, 11 or 12 [s 100 Exempt activity (g)] 	<ul style="list-style-type: none"> • Hazard reduction in non-emergency response situations • Maintenance of existing fire breaks, fire access tracks and roads • Recovery activity which is not an emergency but is necessary to restore essential services • Clearing of a kind set out in Environmental Protection (Clearing of Native Vegetation) Regulations 2004, Regulation 5, Item 2 • Compliance with a Local Government firebreak notice under section 33 of the <i>Bush Fires Act 1954</i>, or other hazard reduction notice 		



2.0 Activities specifically impacting inland and coastal waterways and waterbodies (including claypans and salt lakes) that are exempt	2.1 Activities specifically impacting inland and coastal waterways and waterbodies (including claypans and salt lakes) with no, or a minimal, level of ground disturbance	2.2 Activities specifically impacting inland and coastal waterways and waterbodies (including claypans and salt lakes) with a low level ground disturbance	2.3 Activities specifically impacting inland and coastal waterways and waterbodies (including claypans and salt lakes) with a moderate to high level of ground disturbance
<ul style="list-style-type: none"> Recreational activities carried out on or in public waters or in a public place [s 100 Exempt activity (e)] 	<ul style="list-style-type: none"> Monitoring and sampling in the water column, immediately below the water column or of water directly using handheld equipment or that utilises existing footings Maintenance of existing waterway and waterbody structures including pipes and drainage Maintenance of waterways and waterbodies (including coastlines) to rectify artificial impacts to natural material accretion and erosion Water abstraction with no ground disturbance Replanting vegetation using handheld equipment Wreck and litter removal with no additional ground disturbance to the banks of the waterway or waterbody Discharge of comparable quality water into existing waterways and waterbodies Placement of pipeline or cable on the surface without anchoring into the seabed Removal of sea flora that does not require sea bed disturbance 	<ul style="list-style-type: none"> Monitoring and sampling in the water column, immediately below the water column or of water directly that requires handheld mechanical equipment or that requires new footings Planting vegetation or removing invasive or weed vegetation using handheld mechanical equipment Activities for stabilisation of waterways and waterbodies using handheld mechanical equipment: <ul style="list-style-type: none"> matting installation brushing surface preparation for application of materials Installation of structures to re-enable the movement of fauna within waterways or waterbodies 	<ul style="list-style-type: none"> Construction, installation and / or expansion of: <ul style="list-style-type: none"> Jetties, wharves, boat ramps, groynes, breakwaters, beach reshaping Land reclamation Walls, reinforcement structures, erosion control structures Dams, weirs Diversions Bridges, abutments, pylons, pilings Outfalls and outlet structures Channels, culverts, drainage, soaks, Gross pollutant traps, infiltration and bio retention structures Trench irrigation Installation of permanent structures in to, on or anchored to the sea bed Drilling or boring with non-handheld mechanical equipment that disturbs waterbodies or waterways Establishment of aquaculture and mariculture pens and supporting infrastructure Dredging (excluding maintenance dredging) whether deepening and / or widening Underwater blasting

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3.0 Infrastructure and land development activities that are exempt	3.1 Infrastructure and land development activities with no, or minimal, level of ground disturbance	3.2 Infrastructure and land development activities with a low level of ground disturbance	3.3 Infrastructure and land development activities with moderate to high ground disturbance
<ul style="list-style-type: none"> • Construction, renovation or demolition of a building occupied, or intended for occupation, as a place of residence, or a building ancillary 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 m² [s 100 Exempt activity (a)] • Development of a prescribed type carried out in accordance with the <i>Planning and Development Act 2005</i> [s 100 Exempt activity (b)] • Burials of Aboriginal people that are approved under Section 12 of the <i>Cemeteries Act 1986</i> • Burials in accordance with Section 11 of the <i>Cemeteries Act 1986</i> 	<ul style="list-style-type: none"> • Installation of structures inclusive of signs, solar panels, bollards, kerbing or barriers by hand or with handheld augers to previously disturbed depth • Laying temporary structures and devices on existing formations and / or disturbed land 	<ul style="list-style-type: none"> • Burials of non-Aboriginal people that are approved under Section 12 of the <i>Cemeteries Act 1986</i> • Installation of structures inclusive of signs, solar panels, or barriers in a previously disturbed area deeper than previously disturbed depth • Installation of structures on undisturbed land, whether permanent or temporary, that do not require foundations 	<ul style="list-style-type: none"> • Land development and associated infrastructure activities including: <ul style="list-style-type: none"> ○ Broad acre land clearing ○ Building construction, including outbuildings, unless exempt ○ Preparatory work for development including subdivision works, clearing and installation of services ○ Building carparks, recreational parks, sports ground and associated amenities ○ Villages, village and/or town centres, commercial precincts • Building new or expanding transport infrastructure include airports, bus ports, maritime ports and railway infrastructure • Installation of new services and associated infrastructure for: <ul style="list-style-type: none"> ○ Power generation and distribution ○ Water storage and treatment, inclusive of desalination ○ Sewage and effluent ○ Telecommunications ○ Gas • Construction of industrial facilities and their ancillary infrastructure • Activities associated with the construction, extension or widening of: <ul style="list-style-type: none"> ○ Roads and roadway infrastructure, including private roads ○ Laydown areas ○ Bridges ○ Tunnels ○ Walkways, cycleways and tracks • Building or expanding waste and recycling facilities • Establishing or expanding campgrounds • Development or extension of a cemetery declared under section 4(1) of the <i>Cemeteries Act 1986</i>.



4.0 Agriculture and natural resource management activities that are exempt	4.1 Agriculture and natural resource management activities with no, or a minimal. Level of ground disturbance	4.2 Agriculture and natural resource management activities with low level of ground disturbance	4.3 Agriculture and natural resource management activities with moderate to high level of ground disturbance.
	<ul style="list-style-type: none"> • Feral and pest fauna and weed control using handheld equipment, including use of chemicals • Destocking • Installation of temporary fences • Vegetation control via mechanical slashing, mulching or spraying • Pre-mop-up around trees with hand held equipment • Reconnaissance and patrol in light vehicles, but not to the extent that repetitive access and use creates a permanent track 	<ul style="list-style-type: none"> • Feral and pest fauna and weed control using non-handheld mechanical equipment • Agricultural activities using handheld mechanical equipment including: <ul style="list-style-type: none"> ○ delving and scalping in existing areas ○ construction of new stock watering points ○ construction of animal yards ○ ripping ○ maintenance of existing stock watering points, within natural or enhanced natural water sources, including bores, dams, windmills, troughs, piping, solar arrays, and tanks ○ installation of field or stock fences • Maintenance using handheld mechanical equipment • Burning for conservation land management purposes 	<ul style="list-style-type: none"> • Establishing a new farm or pastoral station • Diversification of land use that is not like for like or less • Activities using mechanical equipment, including: <ul style="list-style-type: none"> ○ clearing of land ○ construction of new watering point and water infrastructure ○ delving and scalping in new areas ○ contour cultivation ○ terrace farming ○ scarifying ○ ripping ○ installation of new yards • Establishing new forestry plantations • Conducting forestry activities in areas not currently subject to forestry activities

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5.0 Field mapping, monitoring, investigations and surveys that are exempt	5.1 Field mapping, monitoring, investigations and surveys with no, or a minimal, level of ground disturbance	5.2 Field mapping, monitoring, investigations, and surveys with a low level of ground disturbance	5.3 Field mapping, monitoring, investigations, and surveys with a moderate to high level of ground disturbance
	<ul style="list-style-type: none"> • Survey, mapping, monitoring, measurement and investigations using handheld mechanical equipment or that utilises existing footings • Monitoring and sampling completed with aircraft (including drones) • Drilling and test pitting up to 50 centimetres in depth on and using existing roads or track • Marking out in accordance with the <i>Mining Act 1978</i> and the <i>Mining Regulations 1981</i> • Low intensity exploration activities and geophysical surveying including: <ul style="list-style-type: none"> ○ geological mapping ○ gravity surveys ○ fossicking ○ sampling and coring using handheld equipment ○ magnetic geophysical survey ○ radiometric geophysical survey ○ electromagnetic (EM) surveys ○ passive seismic surveys ○ gyroscopic ○ ground based electrical surveys ○ portable parts per billion (ppb) analysis ○ electrical resistivity surveys ○ ground penetrating radar ○ induced polarization (IP) surveys ○ Sub bottom profiling ○ Sled Kart Instrument for Magnetic Prospectively Imaging (SKIMPI) Surveys • Stockpile sampling where samples are collected from above the natural ground level within previously disturbed footprint • Soil and drainage sampling using handheld equipment only 	<ul style="list-style-type: none"> • Survey, mapping, monitoring, measurement and investigations requiring: <ul style="list-style-type: none"> ○ digging of pits; or ○ temporary burial of survey equipment • Installation of monitoring stations that do not require excavation for footings • Exploration activities with low ground disturbance activities including: <ul style="list-style-type: none"> ○ magnetic borehole survey ○ seismic surveys ○ induced polarised surveys • Air drilling • Sampling with removal of material up to and including 20 kilograms including: <ul style="list-style-type: none"> ○ soil sampling ○ rock chip sampling ○ stream sediment sampling ○ channel sampling 	<ul style="list-style-type: none"> • Installation of monitoring stations that require new footings including: <ul style="list-style-type: none"> ○ weather and meteorological ○ satellite dishes ○ sea level monitors ○ air quality sensors ○ aquifer monitors ○ environmental monitoring stations ○ observatories • Clearing for drill pads and access tracks • All other drilling, including: <ul style="list-style-type: none"> ○ rotary mud drilling ○ diamond drilling ○ percussion drilling • Costeaning • Seismic surveys requiring clearing of new tracks • Removing more than 20 kilograms of material



6.0 Heritage research activities that are exempt	6.1 Heritage research activities with no, or a minimal, level of ground disturbance	6.2 Heritage research activities with low ground disturbance.	6.3 Heritage research activities with moderate to high ground disturbance.
	<ul style="list-style-type: none"> • Heritage pedestrian surveys, including: <ul style="list-style-type: none"> ○ Site recording and assessment without removal of ACH ○ Monitoring and auditing • Digital capture of petroglyphs, artefacts and rock art 	<ul style="list-style-type: none"> • Excavation of ACH using handheld equipment • Sampling using handheld equipment for archaeological purposes, including: <ul style="list-style-type: none"> ○ Radiocarbon dating, ○ Optically stimulated luminescence (OSL) ○ Dosimetry ○ Extraction of scarred element parts from scarred trees ○ Probing ○ Test-pitting with the surface area up to and including 0.25 metres square ○ Open area excavation with the surface area up to and including 0.25 metres square ○ Surface and sub-surface sampling and removal of material up to and including 20 kilograms ○ Mechanical sieving ○ Taking samples of ACH including ochre, pigments, charcoal, wood, shell, soil for scientific analysis or removal to another location for archaeological purposes • Repatriation of ACH to its original or agreed to location 	<ul style="list-style-type: none"> • Removal and / or relocations of Aboriginal objects • Excavation using mechanical equipment • Surface and sub-surface sampling and removal of material greater than 20 kilograms • Rock chipping of known ACH • Making moulds of rock art • All other heritage and archaeological survey and sample activities that exceed Tier 2

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7.0 Mining activities which are exempt	7.1 Mining activities with no, or minimal, level of ground disturbance	7.2 Mining activities with low level of ground disturbance	7.3 Mining activities with moderate to high level of ground disturbance
	<ul style="list-style-type: none"> Mineral exploration using handheld equipment Metal detecting Scrape and detect activities using handheld equipment Extraction of basic raw materials from existing pits Backfilling mine voids using previously excavated material sourced from the area Stockpiling on existing disturbance 	<ul style="list-style-type: none"> Backfilling mine voids using imported material Bulk leach extractable gold (BLEG) using handheld mechanical equipment Reopening underground workings 	<ul style="list-style-type: none"> Establishment of a new or expansion of an existing mine including <ul style="list-style-type: none"> Pits Portals Adits Shafts Processing plants Dumps Tailings dams Stockpiles Scrape and detect using non-handheld mechanical equipment
8.0 Rehabilitation and remediation activities that are exempt	8.1 Rehabilitation and remediation with no, or minimal, level of ground disturbance	8.2 Rehabilitation and remediation with low level of ground disturbance	8.3 Rehabilitation and remediation with moderate to high level of ground disturbance
	<ul style="list-style-type: none"> Preliminary contaminated site investigation, using handheld equipment Removal of surface asbestos containing materials (ACM) Removal of surface waste and litter without excavation Revegetation in disturbed areas, including fencing vegetation, using handheld equipment Removal of redundant plant and equipment within existing disturbance area Removal of stockpiles including consumption of topsoil stockpiles Rehabilitation of drill holes including casing, sealing and capping Re-establishing vegetation areas (within existing footprint) Planting new vegetation by handheld equipment 	<ul style="list-style-type: none"> Detailed contaminated site investigation Removal of surface asbestos containing material (ACM) that require excavation Removal of surface waste and litter requiring excavation Revegetation in disturbed areas, including fencing vegetation, using mechanical equipment Excavation and removal of stockpiles of contaminated or waste material buried below natural ground level Remediation of areas up to and including 100 square metres or up to and including 3 metres in depth 	<ul style="list-style-type: none"> Rehabilitation activities that require new ground disturbance associated with landform re-contouring, reshaping or for sourcing additional materials Construction of containment cells, bioremediation pads or excavations, screening and replacement of contaminated materials or installation of groundwater remediation systems Erosion control activities around existing roads, infrastructure that require excavation below prior surface level Establishing a riparian zone, waterway or waterbody as part of rehabilitation or remediation activities Remediation of areas greater than 100 square metres or greater than 3 metres in depth



9.0 Other exempt activities	9.1 Other activities with no, or minimal, level of ground disturbance	9.2 Other activities with low level of ground disturbance	9.3 Other activities with moderate to high level of ground disturbance
<ul style="list-style-type: none"> • Travel on an existing road or track [s 100 Exempt activity (c)] • The taking of photographs for a recreational purpose [s 100 Exempt activity (d)] • A temporary camp limited to use of swags, tents, camper trailers and caravans for accommodation • General maintenance and lifestyle activities associated with a dwelling and/or activity conducted on completely modified landforms including: <ul style="list-style-type: none"> ○ Gardening ○ Fixing fences • Aerial transportation that does not require clearing at landing site • Maintenance of existing infrastructure with no new or additional ground disturbance * • Undertaking a like for like activity or less ** 	<ul style="list-style-type: none"> • Driving vehicles, not on existing roads or tracks, in a manner that does not result in new tracks • Drone usage 	<ul style="list-style-type: none"> • Organised tours and leisure activities not exclusively on existing roads or tracks that through repetition may result in new tracks including: <ul style="list-style-type: none"> ○ Four wheel driving ○ Mountain biking ○ Horse riding ○ Self-guided tours ○ Tourism 	<ul style="list-style-type: none"> • Blasting • Clearing of land for tracks • New bore construction

Definitions:

***New and additional ground disturbance** - Any disturbance that is not consistent with the existing extent of surface or subsurface disturbance at the time the activity is proposed to take place. This will include disturbing the adjacent ground that is previously undisturbed, or disturbing subsurface ground at a depth where cultural material may exist.

**** 'Like for like' or less** - Like for Like activities are proposed ground disturbance activities that will result in development that, in essence, is the same or lesser type, kind or form in the context of:

- I. scale;
- II. structure;
- III. profile; and
- IV. extent;

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If an activity is **not listed** in the above table, refer to the table below.

Activity Table – activities not otherwise specified

Tier 1 Activities with no, or minimal, level of ground disturbance not otherwise specified	Tier 2 Activities with a low level of ground disturbance not otherwise specified	Tier 3 Activities with a moderate to high level of ground disturbance not otherwise specified
<ul style="list-style-type: none"> No or minimal level of ground disturbance with handheld equipment Removal of material up to and including 4 kilograms Ground excavation with a surface area smaller than 0.04 metres square Ground excavation with a depth up to and including 0.5 metres 	<ul style="list-style-type: none"> Low level ground disturbance with non-handheld mechanical equipment Removal of material up to and including 20 kilograms Ground excavation with the surface area up to and including 0.25 metres square Ground excavation with a depth up to and including 1 metre Clearing up to and including 100 square metres 	<ul style="list-style-type: none"> Moderate to high level ground disturbance with non-handheld mechanical equipment Removal of material greater than 20 kilograms Ground excavation with the surface area greater than 0.25 metres square Ground excavation with a depth greater than 1 metre Clearing greater than 100 square metres

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