

# ABORIGINAL HERITAGE LEGISLATION AMENDMENT AND REPEAL BILL 2023

## EXPLANATORY MEMORANDUM

The *Aboriginal Heritage Legislation Amendment and Repeal Bill 2023* (**the Bill**) provides for an Act to repeal the *Aboriginal Cultural Heritage Act 2021* (WA) and regulations made under that Act, and to amend the *Aboriginal Heritage Act 1972* (WA).

Please note the following acronyms are used within this Explanatory Memorandum:

- **1972 Act** means the *Aboriginal Heritage Act 1972* (WA).
- **1974 Regulations** means the *Aboriginal Heritage Regulations 1974* (WA).
- **2021 Act** means the *Aboriginal Cultural Heritage Act 2021* (WA).
- **Department** means the Department assisting the Minister in the administration of the 1972 Act.
- **SAT** means the State Administrative Tribunal.

### PART 1 PRELIMINARY

#### Clause 1 Short title

The Act will be called the *Aboriginal Heritage Legislation Amendment and Repeal Act 2023*.

#### Clause 2 Commencement

This clause provides for the commencement of the Bill, with:

- Part 1 coming into operation on the day on which the Act receives the Royal Assent;
- Part 3 (other than Division 2) coming into operation on the following day;
- section 26 coming into operation on the later of the date on which section 3 of the Act comes into operation or the date on which section 82 of the *Land and Public Works Legislation Amendment Act 2023* comes into operation; and
- the rest of the Act coming into operation on a day fixed by proclamation (and different days may be fixed for different provisions).

### PART 2 REPEAL OF ABORIGINAL CULTURAL HERITAGE ACT 2021 AND REGULATIONS MADE UNDER THAT ACT

#### Clause 3 Repeals

This clause provides for the repeal of the 2021 Act, the *Aboriginal Cultural Heritage Regulations 2022* and the *Aboriginal Cultural Heritage (Cost Recovery) Regulations 2023*.

## **PART 3 ABORIGINAL HERITAGE ACT 1972 AMENDED**

### **Division 1 Provisions coming into operation on day after assent day**

#### **Clause 4 Act amended**

This clause provides that Part 3 Division 1 of the Bill amends the 1972 Act.

#### **Clause 5 Section 4A amended**

This clause provides that section 4A of the 1972 Act is to be amended such that section 4A is subject to section 4C, which is inserted by clause 7 of this Bill.

#### **Clause 6 Section 4B amended**

This clause provides that section 4B of the 1972 Act is to be amended such that section 4B is subject to section 4C, which is inserted by clause 7 of this Bill.

#### **Clause 7 Section 4C inserted**

This clause inserts a new section 4C into the 1972 Act, which provides that sections 4A and 4B (which limited the application of the 1972 Act upon the commencement of the 2021 Act) do not apply to the transitional provisions in Part 9, transitional regulations made for the purposes of section 71(2) or any other provision of Part 9.

#### **Clause 8 Part 9 inserted**

This clause inserts Part 9 into the 1972 Act, which inserts transitional provisions into the 1972 Act as follows:

- proposed section 69 (*Terms used*) inserts definitions of "2021 Act", "2023 amendment Act" and "transitional regulations";
- proposed section 70 (*Application of Interpretation Act 1984*) provides that the *Interpretation Act 1984* applies in relation to a repeal or amendment under this Bill subject to Part 9 and transitional regulations; and
- proposed section 71 (*Transitional regulations*) provides that transitional regulations may make any provision that is necessary or convenient for dealing with transitional matters and may make any provision that is necessary or convenient in consequence of the enactment of this Bill and/or a repeal or amendment made under this Bill.

### **Division 2 Provisions coming into operation on day fixed by proclamation**

#### **Clause 9 Act amended**

This clause provides that Part 3 Division 2 of the Bill amends the 1972 Act.

#### **Clause 10 Long title replaced**

This clause replaces the long title to the 1972 Act.

#### **Clause 11 Section 4 amended**

This clause deletes the definitions of "Committee", "Director" and "transition day", and inserts a new definition of "Committee" to reflect its change of name.

#### **Clause 12 Sections 4A to 4C deleted**

This clause deletes sections 4A and 4B (which were inserted pursuant to the 2021 Act to provide for the limited application of the 1972 Act upon the commencement of the 2021 Act) and deletes section 4C (which is inserted under clause 7 of this Bill).

#### **Clause 13 Section 17 amended**

This clause deletes the words “the consent of the Minister under section 18” and insert “under a consent given under section 18(3)(a)”. This amendment provides a clearer link to a consent granted by the Minister under section 18(3)(a), the relevant provision of the 1972 Act.

#### **Clause 14 Section 18 amended**

Section 18 has been amended as follows.

- Before section 18(1), subsection (1AA) is inserted to include definitions of:
  - “approved determination of native title”, “claim area”, “determination area”, “ILUA”, “National Native Title Register”, “native title”, “Native Title Act”, “native title rights and interests”, “new information about an Aboriginal site” “regional corporation”, “registered native title body corporate”, “registered native title claim”, “registered native title claimant”, and “Register of Native Title Claims”.
  - “native title party” in relation to land, which includes a regional corporation if the land is the subject of a settlement ILUA, a registered native title body corporate in relation to land that is not the subject of a settlement ILUA and is within the external boundary of the determination area of an approved determination of native title, a registered native title claimant in relation to land that is not the subject of a settlement ILUA and is within the external boundary of the claim area of a registered native title claim, or a prescribed person or classes of persons.
  - “settlement ILUA”, with specific reference to the South West ILUAs, the Yamatji Nation ILUA and other prescribed ILUAs.
- Section 18(2) is amended to delete the words “shall, as soon as it is reasonably able” and insert the word “must”, to provide certainty that regulations can prescribe timelines for the Committee to make a recommendation to the Minister under section 18(2).
- New section 18(3A) is inserted which requires the Minister's decision under section 18(3) or (6A) to be published on a website maintained by, or on behalf of, the Department.
- Section 18(5) is amended by including a reference to “a native title party in relation to land”, as well as a reference to a decision of the Minister under subsection (6A), with the effect that a native title party in relation to land who is aggrieved by a decision of the Minister under subsections (3) or (6A) may apply to SAT for a review of the decision.
- New section 18(5A) is inserted which provides that a contract or agreement which prohibits a native title party (or a member of a native title party) from making applications, commencing or being heard in judicial proceedings, or being heard

or making submissions, in relation to matters arising under section 18 has no effect.

- Sections 18(6) and (6A) are deleted and replaced with:
  - New section 18(6) provides for conditions on consents given before, on or after 23 December 2021 in the following way:
    - New section 18(6)(a) provides that where a consent was given in relation to a notice given to the former Committee before 23 December 2021, an owner of the land the subject of the consent must notify the Minister if the owner becomes aware on or after 1 July 2023 of any new information about an Aboriginal site (as that term is defined) on the land the subject of the consent;
    - New section 18(6)(b) provides that where a consent was given in relation to a notice that was given to the former Committee on or after 23 December 2021 but before 1 July 2023 (i.e. during the transitional period between the 1972 Act and the 2021 Act), an owner of the land the subject of the consent must notify the Minister if the owner becomes aware on or after 23 December 2021 of any new information about an Aboriginal site on the land the subject of the consent; and
    - New section 18(6)(c) provides that in all other circumstances not covered by the terms of paragraphs (a) or (b), an owner of the land the subject of the consent must notify the Minister if the owner becomes aware, on or after the day on which the consent is given, of any new information about an Aboriginal site on the land the subject of the consent.
  - New section 18(6A), which provides that if the Minister becomes aware of new information about an Aboriginal site (other than because of a notification under new section 18(6)) in relation to a consent, the Minister *may*, having regard to the general interest of the community, amend the consent by amending the conditions of the consent or change the specification of the land to which the consent relates; revoke the consent; revoke and replace the consent; or confirm the consent.
  - New section 18(6B), which provides that if the Minister becomes aware of new information about an Aboriginal site because of a notification in accordance with a condition imposed on the consent by section 18(6), the Minister *must*, having regard to the general interest of the community, either amend the consent by amending the conditions of the consent or change the specification of the land to which the consent relates; revoke the consent; revoke and replace the consent; or confirm the consent.
  - New section 18(6C), which provides that should the Minister propose to exercise a power under subsection (6A), the Minister may suspend the consent, whether wholly or in part. This new section also provides that a suspension of this kind cannot extend beyond when the exercise of the power under subsection (6A) has taken effect.

- New section 18(6D), which provides that a consent granted under section (6A)(c) (i.e. to revoke an existing consent and grant a new consent) is taken to have been granted under section 18(3)(a) and that these consents are subject to the statutory condition under new section 18(6)(c).
- Section 18(8) is amended to delete the reference to consent being given “to a person” and link back to consent being given under section 18(3)(a).
- New sections 18(9) and (10) are inserted. Subsection (9) provides that the regulations may provide for procedural matters for the purposes of section 18, and timeframes for doing things and performing functions under section 18, including in relation to the jurisdiction of SAT. Subsection (10) excludes section 92 of the *State Administrative Tribunal Act 2004* which allows SAT to extend timeframes even if those timeframes are imposed under that Act or the enabling Act or otherwise waive compliance with procedural matters.

#### **Clause 15 Sections 18A and 18B inserted**

This clause inserts new sections 18A and 18B into the 1972 Act, which respectively authorise the Minister to call in an application to SAT for a review of a decision of the Minister under section 18(3) or (6A) and provide for the transfer of section 18 consents on a change of ownership of land the subject of such a consent.

New section 18A provides that:

- If an application for review is made to SAT, the Premier may determine the application if the Premier considers it raises issues of such State or regional importance that it would be appropriate for the application to be determined by the Premier.
- The Premier may either direct the President of the SAT to refer the application to the Premier for determination, or direct SAT to hear the application and refer it with recommendations to the Premier for determination. However, the Premier cannot give a direction more than 14 days (or any longer period prescribed by the regulations) after the application is made to SAT, or after a final determination has been made.
- If the Premier gives a direction, the Premier:
  - must give a copy of the direction to each party to the application and the owner of the land the subject of the application (if the owner is not a party), and must cause a copy to be laid before each House of Parliament; and
  - may give a copy of the direction to any native title party in relation to the land that is not a party to the application.
- The Premier may suspend the Minister's decision under section 18(3) or (6A), in which case it is taken not to have been made. However, any suspension cannot extend beyond when the exercise of the power under subsection (9) has taken effect.

- If the Premier directs the President of SAT to refer the application to the Premier for determination, the owner of, and each native title party in relation to, the land may make written submissions to the Premier.
- In determining the application, the Premier must take those submissions into account, must have regard to the general interest of the community and may take into account any other matter the Premier considers relevant.
- In determining the application:
  - if the Minister's decision the subject of the review application was to grant, amend or confirm a consent, the Premier must do one of the following: confirm the decision; amend the consent by amending the conditions to which it is subject (including imposing new conditions), or change the specification of the land to which it relates; revoke the consent; or revoke the consent and grant a new consent;
  - otherwise, the Premier must do one of the following: confirm the decision; give a consent; or reverse the decision.
- The Premier must give written reasons for the determination to each party to the application and the owner of the land (if the owner is not a party) and cause a copy to be laid before each House of Parliament.
- The Premier may give written reasons for the determination to any native title party in relation to the land that is not a party to the application.
- If the Premier's determination is to revoke the consent and give a new consent, or give a consent, that consent has effect as if granted under section 18(3)(a) but section 18(5) (which provides a right of review to SAT) does not apply to the Premier's decision, and is subject to the condition in new section 18(6)(c).
- Regulations may be made for the purposes of new section 18A.

The clause largely reflects sections 246 and 247 of the *Planning and Development Act 2005* (WA).

New section 18B deals with changes in ownership of land the subject of a section 18 consent and provides:

- If there is a change in ownership of land the subject of a section 18 consent, an owner of the land must give notice to the Minister within a period prescribed in regulations. A penalty of \$1,000 applies.
- If, on receipt of a notice, the Minister is satisfied that the consent, or a condition to which the consent is subject, does not have its intended effect because of the change in ownership, the Minister may amend the consent accordingly.
- The Minister must, as soon as practicable after making a decision to amend a consent, give written notice to the person who notified the Minister of the change in ownership, and publish notice of that decision on a website maintained by or on behalf of the Department.

- If there is a change in ownership of land the subject of a consent under section 18(3)(a), the Minister may revoke the consent on written application by an owner of the land.
- Regulations may be made to provide for and in relation to notice requirements, including persons to be given notice, information that must be included in a notice, and the period within which notices must be given.

#### **Clause 16 Part V heading replaced**

This clause replaces the heading to Part V so as to delete the reference to the Aboriginal Cultural Material Committee and replace it with a reference to the Aboriginal Cultural Heritage Committee.

#### **Clause 17 Sections 28 to 36 replaced**

This clause deletes sections 28 to 36 of the 1972 Act and inserts new sections 28 to 32, so that the Aboriginal Cultural Material Committee (ACMC) is abolished and essentially replaced with the Aboriginal Cultural Heritage Council (ACH Council) which was established under the 2021 Act, which will be renamed as the Aboriginal Cultural Heritage Committee, as follows:

- proposed section 28 (*Aboriginal Cultural Heritage Committee established*) establishes the Aboriginal Cultural Heritage Committee as an agent of the State, that has the status, immunities and privileges of the State;
- proposed section 29 (*Composition of Committee*) provides for the composition of the Aboriginal Cultural Heritage Committee;
- proposed section 30 (*Procedures*) provides that the Aboriginal Cultural Heritage Committee can establish its own procedures (subject to regulations made under proposed section 32);
- proposed section 31 (*Remuneration of members of Committee or subcommittee*) provides for the remuneration of members of the Aboriginal Cultural Heritage Committee or a subcommittee; and
- proposed section 32 (*Regulations about Committee*) provides that regulations may be made about the Committee, including as to the appointment and removal of Aboriginal Cultural Heritage Committee and subcommittee members, the establishment of subcommittees, conflicts of interest and meeting procedures.

#### **Clause 18 Section 55 amended**

This clause amends section 55 of the 1972 Act to delete the words “the giving of”. Section 55 of the 1972 Act provides that breaching the conditions of a consent is an offence. The deletion of the words “the giving of” clarifies that the offence is a breach of any condition to which the consent was made subject.

#### **Clause 19 Section 58 amended**

This clause deletes and replaces the Table of offences contained in section 58 of the 1972 Act. The offences in the Table are those to which section 39 of *The Criminal Code*, which provides for the criminal liability of officers of a body corporate, applies. New

section 18B(2) – failure to notify the Minister of a change in ownership of land the subject of a section 18 consent – has been included in the Table.

**Clause 20 Section 67A inserted**

This clause inserts a new section 67A (*Fees regulations*) which provides that regulations may prescribe, or provide for the determination of, fees payable in relation to the performance of functions under the 1972 Act.

**Clause 21 Section 68 amended**

This clause amends section 68 of the 1972 Act to provide certainty that regulations can prescribe offences, and penalties for those offences of up to \$20,000.

**Clause 22 Section 69 amended**

This clause inserts new definitions of "ACH Council" (which was established under the 2021 Act) and "repeal day" into section 69 (which is to be inserted into the 1972 Act pursuant to clause 8 of this Bill). The term "repeal day" means the day on which clause 3 of this Bill comes into operation.

**Clause 23 Sections 72 to 87 inserted**

This clause inserts new sections 72 to 87 into the 1972 Act as follows.

- New section 72 (*Abolition of bodies and appointment of members of Committee*) provides for the abolition of the ACHC (established under section 28 of the 1972 Act as in force before the commencement of this Bill) and the ACH Council (established under the 2021 Act) and any subcommittees. Further, the current members of the ACH Council are taken to have been appointed as members of the new Aboriginal Cultural Heritage Committee by clause 16 of this Bill.
- New section 73 (*Protected area orders*) provides that:
  - a protected area order (being (a) an order made under section 82(1) of the 2021 Act that is not an order under section 316(1) of the 2021 Act in effect immediately before repeal day as if it were an order made under section 82(1) of the 2021 Act; or (b) a historical protected area order made under section 315(1) of the 2021 Act) continues in effect as if it was an order made under section 19(4) of the 1972 Act and the area declared by the protected area order is a protected area for the purposes of the 1972 Act and the protected area order may be varied or revoked under section 25 of the 1972 Act;
  - the protected area order continues in force under this section even if all or part of the area declared as a protected area could not be declared to be, or be included in, a protected area under section 19(4) of the 1972 Act (which allows an Aboriginal site to be declared a protected area);
  - if any conditions were stated in the protected area order under the 2021 Act, those conditions cease to have effect at the beginning of repeal day;
  - section 21 of the 1972 Act (which confers a right to object to a declaration) does not apply to an area that is a protected area under this section;
  - for the purposes of section 22(1) of the 1972 Act, the exclusive right to the occupation and use of a place that is a protected area under this section



vests in the Minister on behalf of the Crown at the beginning of repeal day;

- no person is entitled to be paid compensation under section 22(2) of the 1972 Act in relation to an area that is a protected area under this section; and
  - all spent protected area orders (being orders that under section 316(1) of the 2021 Act are in effect immediately before repeal day as if they were orders made under section 82(1) of the 2021 Act other than historical protected area orders) are repealed.
- New section 74 (*Previous consents under s 18*) provides that a consent that was in force and effect under section 18 before 1 July 2023 is in force and effect under section 18 after repeal day. The effect of new section 74 is not to be regarded as a decision of the Minister for the purposes of section 18(5) and therefore there is no right of review to SAT. New section 74 does not apply to transition expired consents, historical AH Act section 18 consents, and purported section 18 consents. A consent to which section 74 applies is subject to the condition in section 18(6)(a) or (b) (i.e. the condition to notify the Minister of new information about an Aboriginal site) depending upon when the notice to which the consent relates was given to the former Committee.
- New section 75 (*Previous other authorisations, approvals and consents*) provides that an authorisation under section 16(2) of the 1972 Act (for the excavation of an authorised site) an approval under regulation 7 of the 1974 Regulations (to bring plant etc. onto land) and a consent under regulation 10 of the 1974 Regulations (to conduct certain activities on land), that was in force and effect, or was given, before repeal day is in force and effect under that provision after the repeal day.
- New section 76 (*ACH permits*) provides that, on and after repeal day:
  - an ACH permit (as defined in the 2021 Act) that was granted before repeal day (whether or not taking effect before repeal day) is a consent under section 18(3)(a) of the 1972 Act and is accordingly subject to section 18. The consent is subject to the condition in section 18(6)(c) (i.e. the condition to notify the Minister of new information about an Aboriginal site) and for the purposes of that condition, the day on which consent is given is the day on which the ACH permit is granted. However, the transition of ACH permits is not to be regarded as a decision of the Minister for the purposes of section 18(5) and therefore there is no right of review to SAT; and
  - applications for ACH permits made before repeal day are taken to be a notice to the Aboriginal Cultural Heritage Committee under section 18(2) of the 1972 Act and are to be dealt with accordingly (unless the ACH Council has already refused to consider or grant, or has granted, the application before repeal day). If a consent is given under section 18(3)(a) in relation to such a notice, the consent is subject to the condition in section 18(6)(c).
- New section 77 (*ACH management plans*) provides that, on and after repeal day:

- An approval or authorisation of an ACH management plan (as defined in the 2021 Act) that was given before the repeal day (whether or not taking effect before the repeal day) is a consent under section 18(3)(a) of the 1972 Act and are accordingly subject to section 18. The consent is subject to the condition in section 18(6)(c) and for the purposes of that condition, the day on which the consent is given is the day on which the approval or authorisation is given. The transition of an approval or authorisation of an ACH management plan is not to be regarded as a decision of the Minister for the purposes of section 18(5) and therefore there is no right of review to SAT; and
  - Applications for the approval or authorisation of an ACH management plan made before repeal day are taken to be a notice to the Aboriginal Cultural Heritage Committee under section 18(2) of the 1972 Act and are to be dealt with accordingly (unless the ACH Council or the Minister (as applicable) has already refused to consider, approve or authorise, or has approved or authorised, the application before repeal day). If a consent is given under section 18(3)(a) in relation to such a notice, the consent is subject to the condition in section 18(6)(c).
- New section 78 (*Marandoo Act area*) provides that, on and after repeal day, the owner of the area of land described in the Marandoo Reduced Area dataset (as defined and which is the same dataset as in the *Marandoo Reduced Area Order 2023* dated 24 May 2023) is taken to have been given a consent under section 18(3)(a) of the 1972 Act to use that land for the specified purpose (which relates to the exploration, mining, processing and transporting of iron ore and related infrastructure). This consent is subject to the condition set out in section 18(6)(a) and otherwise subject to section 18, such that the new information notification condition applies to new information about an Aboriginal site that the owner of the specified land became aware of on or after 1 July 2023. The Marandoo Reduced Area dataset must be publicly available on a website maintained by the Department. The effect of new section 78 is not a decision of the Minister for the purposes of section 18(5) and therefore there is no right of review to SAT.
- New section 79 (*Completion of certain things commenced*) provides that, on and after repeal day:
  - anything commenced by the ACH Council before repeal day may be continued by the Aboriginal Cultural Heritage Committee (provided it is within the functions of the Committee); and
  - the Minister in relation to the 2021 Act continues in existence for dealing with and finalising proceedings commenced against the ACH Council or the Minister before that day and has the powers to do anything necessary or convenient for that purpose.
- New section 80 (*Orders etc. under 2021 Act cease to have effect*) provides that various orders, designations, appointments, entry warrants and guidelines cease to have effect at the beginning of repeal day.
- New section 81 (*Information and documents on ACH Directory*) provides that all the information and documents that were transferred from the register under the 1972 Act to the ACH Directory under section 331 of the 2021 Act must be

transferred back to the register under section 38 of the 1972 Act (which has continued in existence).

- New section 82 (*Aboriginal ancestral remains*) provides that if Aboriginal ancestral remains (as defined in the 2021 Act) were transferred into the custody of the ACH Council under the 2021 Act before, and are still in its custody immediately before, repeal day, then the Aboriginal ancestral remains must be transferred into the custody of the Aboriginal Cultural Heritage Committee and the Committee may deal with the Aboriginal ancestral remains in accordance with section 60(a) to (c) of the 2021 Act (that is, to return, hold or deal with the Aboriginal ancestral remains in an appropriate manner) despite the repeal of the 2021 Act.
- New section 83 (*Secret or sacred objects*) provides that if a secret or sacred object (as defined in the 2021 Act) were transferred into the custody of the ACH Council under the 2021 Act before, and are still in its custody immediately before, repeal day, then the object must be transferred into the custody of the Aboriginal Cultural Heritage Committee and the Committee may deal with the object in accordance with section 66(a) to (c) of the 2021 Act (that is, to return, hold or deal with the object in an appropriate manner) despite the repeal of the 2021 Act.
- New section 84 (*Offences*) provides that:
  - any proceedings for an offence committed under the 2021 Act, or regulations made under that Act, before repeal day may be continued, or commenced, by the chief executive officer (**CEO**) of the Department (or a person authorised by them) on or after repeal day as if the 2021 Act had not been repealed, and a person may be punished for the offence accordingly;
  - certain sections of the 2021 Act continue to apply to proceedings that are continued or commenced on or after repeal day;
  - section 258(2) of the 2021 Act does not apply, but if the seized thing is an Aboriginal object (regardless of whether it is a secret or sacred object) the court's powers are limited to forfeiting the object to the State and that the object be transferred to the custody of the Committee and, if transferred, the Committee must deal with the object in the manner set out in section 66 of the 2021 Act (that is, to return, hold or deal with the object in an appropriate manner) despite the repeal of the 2021 Act; and
  - section 84 applies despite section 11 of *The Criminal Code* (which provides for the effect of changes in law).
- New section 85 (*Dealing with seized things*) provides that section 241 of the 2021 Act (which provides that where an inspector seizes a thing, and in the opinion of the inspector the thing is likely to deteriorate if no action is taken to deal with it, the inspector can deal with the seized thing in accordance with the instructions of the CEO of the Department) continues to apply to a seized thing that was seized before repeal day as if the 2021 Act had not been repealed, subject to the following:
  - the functions of the inspector under section 241(1), and the CEO under section 241(2), of the 2021 Act are functions of any authorised officer of the Department and the CEO of the Department respectively;

- section 241(3) of the 2021 Act does not apply, but if the seized thing is an Aboriginal object (regardless of whether it is a secret or sacred object) the CEO's powers are limited to directing that the object be transferred to the Committee to deal with in the manner set out in section 66 of the 2021 Act (that is, to return, hold or deal with the object in an appropriate manner) despite the repeal of the 2021 Act; and
- the reference to the Aboriginal Cultural Heritage Account is to be read as a reference to the Consolidated Account.
- New section 86 (*Application of Criminal and Found Property Disposal Act 2006*) provides that:
  - section 259(1) of the 2021 Act (which applies the *Criminal and Found Property Disposal Act 2006* (WA) to any seized thing (unless the thing is dealt with under section 241 of the 2021 Act) and anything forfeited to the State under section 258 of the 2021 Act (other than an Aboriginal object)) continues to apply to a seized thing that was seized before the repeal day, and a thing forfeited under section 258 of the 2021 Act before or as continuing after repeal day, as if the 2021 Act had not been repealed; and
  - the Department, when assisting the Minister in the administration of the 1972 Act, is a prescribed agency for the purposes of the *Criminal and Found Property Disposal Act 2006* (WA).
- New section 87 (*Closure of accounts*) provides that on repeal day, any money standing to the credit of the "ACH Account" or the "ACH Compensation Fund" (as those terms are defined) under the 2021 Act must be credited to the Consolidated Account and then closed. Any amounts which are payable, but have not been paid, into those accounts before repeal day must be paid to the CEO of the Department and credited to the Consolidated Account.

#### **PART 4 OTHER WRITTEN LAWS AMENDED**

This Part provides amendments to eleven other Acts, which are consequential upon the repeal of the 2021 Act.

##### **Clause 24 *Conservation and Land Management Act 1984* amended**

This clause amends the *Conservation and Land Management Act 1984* (WA) (**CALM Act**) by replacing the references to the 2021 Act with a reference to the 1972 Act in sections 3 and 4(5)(a) of the CALM Act. The clause also deletes section 59(3)(c) and inserts a new paragraph (c) to provide an updated description of when a proposed management plan must be submitted to the Minister for Indigenous Affairs, being if the land includes an Aboriginal site as defined in the 1972 Act. Section 59(3A) is also deleted.

##### **Clause 25 *Constitution Acts Amendment Act 1899* amended**

This clause deletes the reference to the Aboriginal Cultural Heritage Council in the *Constitution Acts Amendment Act 1899* (WA) Schedule V Part 3 to instead refer to the Aboriginal Cultural Heritage Committee established under the 1972 Act (as amended). Schedule V Part 3 lists the bodies, where if person is a member of such body, the membership is vacated upon that person being declared a member of the Legislative Assembly or Legislative Council of Western Australia.

**Clause 26    *Control of Vehicles (Off-road Areas) Act 1978 amended***

This clause amends the *Control of Vehicles (Off-road Areas) Act 1978 (WA) (CoV Act)* to replace the reference to an inspector under the 2021 Act in section 38(2)(e) of the CoV Act, with an honorary warden under the 1972 Act. Section 38 of that Act describes whom the Minister with responsibility for the 1972 Act may appoint as an authorised person under the CoV Act.

**Clause 27    *Coroners Act 1996 amended***

This clause amends the *Coroners Act 1996 (WA)* by deleting section 19B (inserted pursuant to the 2021 Act), which introduced a requirement upon the coroner to notify the ACH Council, if in the course of investigating a death, the coroner believed the body is or is likely to be Aboriginal ancestral remains.

**Clause 28    *Environmental Protection Act 1986 amended***

This clause amends the *Environmental Protection Act 1986 (WA)* by substituting a reference to the 2021 Act with a reference to the 1972 Act.

**Clause 29    *Heritage Act 2018 amended***

This clause amends the *Heritage Act 2018 (WA)* by replacing sections 9(b), 10(a) and 12(2)(b) of that Act with provisions that are consistent with the 1972 Act to ensure consistent use of terms with the 1972 Act and to replace the references to the 2021 Act.

**Clause 30    *Land Administration Act 1997 amended***

This clause amends the *Land Administration Act 1997 (WA)* by replacing a reference to the 2021 Act with a reference to the 1972 Act.

**Clause 31    *Planning and Development Act 2005 amended***

This clause amends the *Planning and Development Act 2005 (WA)* by deleting example 1 in section 277(6) which referred to an ACH permit or an approved or authorised ACH management plan under Part 6 of the 2021 Act, and replacing this with a reference to a section 18 consent pursuant to the 1972 Act.

**Clause 32    *Railway (Tilley to Karara) Act 2010 amended***

This clause inserts section 6 of the *Railway (Tilley to Karara) Act 2010 (WA)* (which was deleted pursuant to the 2021 Act), which deems the contractor engaged for the construction of the railway to be the owner of the land for the purposes of the 1972 Act.

**Clause 33    *Sentencing Act 1995 amended***

This clause amends the *Sentencing Act 1995 (WA)* by deleting the 2021 Act from the items listed in Schedule 1 (which provides a list of Acts under which fines are not credited to the Consolidated Account).

**Clause 34    *State Records Act 2000 amended***

This clause amends the *State Records Act 2000 (WA)* by replacing section 76(1)(a) and (b) with a State record that contains information about Aboriginal cultural material or an Aboriginal site (as defined in the 1972 Act) and broadens paragraph (b) to any other matter related to the heritage of Aboriginal Australians.