

Department of Planning and Environment

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# Aboriginal Cultural Heritage Advisory Committee – Terms of Reference

July 2023





# Acknowledgement of Country

The Department of Planning and Environment acknowledges that it stands on Aboriginal land. We acknowledge the Traditional Custodians of the land, and we show our respect for Elders past, present and emerging through thoughtful and collaborative approaches to our work, seeking to demonstrate our ongoing commitment to providing places in which Aboriginal people are included socially, culturally and economically.

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Aboriginal Cultural Heritage Advisory Committee – Terms of Reference

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# Terms of Reference

The Aboriginal Cultural Heritage Advisory Committee (ACHAC) Terms of Reference set out the purpose, membership, responsibilities, authority, and operations of the Committee which is supported by the NSW Government department responsible for heritage.

This Terms of Reference is consistent with the *NSW Government Boards and Committee Guidelines* (NSW Department of Premier and Cabinet, 2015) and *Classification and Remuneration Framework for NSW Government Boards and Committees* (Public Service Commission, 2019), and complements the ACHAC functions as set out in the *National Parks and Wildlife Act 1974*.

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## Purpose of the Aboriginal Cultural Heritage Advisory Committee

ACHAC was established in 2006 to advise the Minister for Environment and Heritage (the Minister) and the Secretary on matters relating to identification, assessment, and management of Aboriginal cultural heritage (ACH) in NSW.

In undertaking this role, its primary focus is the protection, appreciation and respect for ACH and the promotion of its value to the NSW Government and the broader public.

ACHAC is also well placed, when aligned with strategic priorities and subject to capacity, to provide guidance to NSW Government agencies, local government, the heritage industry, other stakeholders in the regulatory process, and also to the general public as community education.

In legislation and by government and public expectation, ACHAC is the Government's advocate for the protection of the State's ACH.

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## Establishment

ACHAC is established under section 27 of the *National Parks and Wildlife Act 1974*.

## Responsibilities

ACHAC's advisory function is prescribed by section 28 of the *National Parks and Wildlife Act 1974*:

The Aboriginal Cultural Heritage Advisory Committee is to advise the Minister and the Secretary on any matter relating to the identification, assessment and management of Aboriginal cultural heritage, including providing strategic advice on the plan of management and the heritage impact permit process, whether or not the matter has been referred to the Committee by the Minister or the Secretary.

In undertaking this function ACHAC is focused on advocating for the protection of ACH. This may include the provision of advice in areas such as:

- Regulatory processes for the effective management of ACH under current legislation and legislative reforms, including processes for ACH identification, assessment and management
- Strategic direction of Heritage NSW operational programs such as the ACH Conservation Program and Aboriginal Place Program, plans of management and delivery of grants and funding programs for ACH
- Advice to the Heritage Council of NSW (or its delegates) on matters relating to ACH, including items with primary or shared ACH values for listing on the State Heritage Register under the *Heritage Act 1977*
- Policies and research relating to ACH, the management of Country in NSW and the culturally appropriate management of data and cultural heritage information
- Programs to increase Aboriginal participation in the management of Country in NSW and effectively communicate with communities to support self determination

The responsibilities of the Committee may be revised or expanded in consultation with, or as requested by, the Minister and/or the Secretary or the Department from time to time as strategic priorities evolve.

## Authority

ACHAC is a Committee subject to the direction of the Minister. The remit of the Committee is advisory in nature only.

## Provide advice to the Minister

The Committee is to provide advice to the Minister and the Secretary and may provide this advice via feedback and/or recommendations. Advice made by ACHAC may be conveyed to the Minister or the Secretary via meeting with, or correspondence provided by, the Presiding member, via regular meeting resolutions/summaries, and/or attached to briefs prepared by Heritage NSW.

The Committee may also provide advice to Heritage NSW via the methods outlined above, or more directly through its regular meetings.

At the Committee's discretion, ACHAC may also provide guidance to other NSW State Government agencies, Aboriginal Communities and the broader NSW public via feedback, educational initiatives, and/or recommendations.

## The Presiding member

Schedule 9 of the Act provides for a Presiding member, elected by the members present at the meeting to chair the meeting.

The Presiding member does not have additional specific powers under the Act. The Presiding member (or their nominated alternate member) may be called by a Parliamentary Committee to give evidence at a Parliamentary Inquiry.

For administrative continuity it is the preference of the Committee that the position of Presiding member will be continually held for a period of 2 years. This may be administratively facilitated via a standing resolution to reaffirm the election of the same Presiding member at each meeting.

## ACHAC working groups

Subject to strategic focus and available funding, ACHAC may work with Heritage NSW to establish working groups to assist it with the exercise of any of its responsibilities. Membership of working groups can include a minimum of 3 and maximum of 5 existing members.

Working groups established by the Committee must abide by these terms of reference in addition to their own specific terms of reference that set out their functions and operations.

## Role of Heritage NSW

Heritage NSW works collaboratively with ACHAC to support it to fulfil its statutory role in line with the available resources.

Heritage NSW administers key functions under the *National Parks and Wildlife Act 1974* and the *Heritage Act 1977*.

Heritage NSW is responsible for administering procedures relating to regulation of heritage under both Acts, the proposal and declaration of Aboriginal Places, the nomination and listing of items on the State Heritage Register, the administration of the heritage grants program and the delivery of operational programs such as the Heritage NSW Conservation Works Program.

Heritage NSW performs secretariat functions for ACHAC's meetings and administrative matters. Where strategic priorities align, and subject to available resources, Heritage NSW may agree to undertake policy or project work to support the Committee to undertake its role.

Heritage NSW funds the operation of the Committee.

## Compliance obligations of the Committee

The NSW Public Service Commission (PSC) sets the standards for the operation and requirements of all government established Boards and Committees in NSW.

ACHAC members are bound by the compliance obligations of *the Board and Committee Code of Conduct* and the Conduct of Members as outlined in the *NSW Government Board and Committee Guidelines*.

Members must comply with the *Code of Ethics and Conduct for NSW Government Sector Employees* issued by the NSW Public Service Commissioner, as well as the supplementary *DPE Code of Ethics and Conduct*.

All new committee members are provided with information on their obligations through the induction process managed by Heritage NSW. In consultation with Heritage NSW, from time to time, the Committee may develop formal operational policies that members must comply with.

The following instruments give rise to obligations with which the Committee must comply:

- *National Parks and Wildlife Act 1974*

Establishes the Committee as an advisory body. The Act defines the legislative framework for the administration of ACH in NSW.

- Heritage Act 1977

The Act defines the legislative framework for the administration of environmental heritage in NSW.

- Government Information (Public Access) Act 2009

The GIPA Act establishes a proactive approach to ensuring more open access for members of the public to government information in NSW.

- Independent Commission Against Corruption Act 1988

This Act establishes the ICAC with special powers to investigate, expose and prevent corruption involving or affecting public authorities and public officials.

- Anti-Discrimination Act 1977

The Anti-Discrimination Act applies to government agencies. The Act prohibits discrimination and vilification on prescribed grounds such as on the basis of sex, race or disability.

## NSW Government policies

ACHAC has adopted the following NSW Government policies to apply in addition to its own Committee-specific policies:

- Code of Ethics and Conduct for NSW government sector employees (NSW Public Service Commission)
- Code of Ethics and Conduct (Department of Planning and Environment)
- Identifying and managing conflicts of interest in the public sector (ICAC)
- Fraud and Corruption Control Policy (Department of Planning and Environment)
- M2013-06 NSW Government Boards and Committee Guidelines (NSW Premier and Cabinet)
- M2006-08 Maintaining Confidentiality of Cabinet Documents and Other Cabinet Conventions (NSW Premier and Cabinet)
- Public Interest Disclosures Policy (Department of Planning and Environment)
- NSW Cyber Security Policy (NSW Government)
- Acceptable Use Policy (Department of Planning and Environment)
- Media Policy (Department of Planning and Environment)
- Social Media Policy and Guidelines (NSW Government)
- Social Media Policy (Department of Planning and Environment)
- Travel policy (Department of Planning and Environment)
- Travel and Expenses Guideline for ACHAC, HC and Committees (Heritage NSW)

## ACHAC policies:

- ACHAC Code of Conduct
- ACHAC Strategic Plan
- ACHAC Cultural Protocols

Further guidelines and policies may be developed by ACHAC or on its behalf, subject to strategic priorities and available resources.

## Compliance activities

The following activities and actions will be undertaken to ensure compliance obligations are met:

- new members will be informed of their obligations and provided with all relevant policies on commencement of their term of appointment
- members will be informed when a new policy that they must comply with comes into force or an existing policy that effects them is amended
- members will abide by the code of conduct, including by disclosing conflicts of interest as soon as they arise
- the Secretariat is to maintain a register of conflicts of interest.

To provide reasonable assurance to the Department, the Secretary, and the Minister that compliance obligations are met, the Committee will provide yearly reports, signed by the Presiding member, attesting to the compliance of the Committee with its compliance obligations.

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## Operation of the Committee

Schedule 9 of the *National Parks and Wildlife Act 1974* sets out operating procedures for ACHAC, including:

- composition
- appointment
- terms of office
- removal from office
- vacation of office
- filling casual vacancy
- alternate members
- Presiding member
- quorum
- procedure
- fees

The relevant provisions are attached at Tab 1.

## Membership

Membership composition of ACHAC is set out in Schedule 9 of the *National Parks and Wildlife Act 1974*.

ACHAC is to consist of 14 members. Thirteen of the members are appointed by the Minister (appointed members). The other member is ex-officio, being the Secretary of the Department of Planning and Environment (or his or her delegate) and is non-voting.

## **Role of the Presiding member and role of members**

### **The Presiding member is responsible for:**

- setting the ACHAC meeting agenda, in consultation with Committee members and Heritage NSW and in line with the Committee's strategic priorities
- ensuring new members understand the terms of their appointment and the business of ACHAC
- facilitating the conduct of meetings to ensure they are inclusive of all members, in a way that encourages frank and open discussion
- facilitating the conduct of meetings to follow cultural protocols and ensure the cultural safety of all members, while supporting members to feel culturally enabled to speak on a range of matters beyond personal links to Country or local community
- leading the continuous development of ACHAC and its members, including via facilitation of mentorship, training and support
- ensuring meetings and discussions remain efficient, relevant, and constructive to ACHAC business
- leading ACHAC in the development, review, and monitoring of its Strategic Plan
- ensuring the Committee performs its function in accordance with legislation, legal obligations and relevant government and Committee policies
- liaising with the relevant ministers and Executive
- liaising with media on behalf of ACHAC, following endorsement of the Executive Director Heritage NSW, and in accordance with DPE media policy and procedures
- responding to correspondence on behalf of ACHAC
- reporting back to the Committee on any ACHAC business engagement the Presiding member has with government and non-government stakeholders

### **The role of members is to:**

- contribute to discussion on a broad range of cultural heritage management issues across the state of NSW in the capacity as experts on ACH, not limited to their area of cultural connection or local communities
- provide insights, where appropriate, in a culturally authorised capacity or in representation of respective Country or local communities as per cultural protocols
- conduct themselves according to cultural protocols and support the cultural safety of all members
- support the purposes of ACHAC and act in the interest of the Committee
- assist the Committee to meet its statutory functions and broader terms of reference

- contribute to the continuous development of ACHAC and its members including participation in mentorship, training, and support
- review written material provided in advance of meetings, attend meetings and participate in the decision-making processes of the Committee
- undertake consultation or research to support and promote discussion of particular agenda items, where appropriate
- respond to out-of-session correspondence and general business, including via email
- abide by the Code of Conduct, policies and procedures of the Committee

## Cultural protocols

ACHAC members will work to balance individual cultural obligations and accountabilities with the compliance requirements set out by government to ensure the cultural safety of all members and the integrity of ACHAC's function. Awareness of the various 'hats' worn by members and strategies to manage any real or potential individual conflicts is critical. The ACHAC Cultural Protocols Policy will be formalised to guide the culturally appropriate management of issues such as Aboriginal cultural identity and connection to Country, Elders and cultural seniority, sensitive information management, Women's and Men's business, Kinship and familial relationships, Sorry business, intergenerational trauma, lateral violence, etc.

This will provide a framework to build awareness of, to maximise benefits of, and strategies to manage the balancing of potential conflicts of the multiple voices/accountabilities/hats of any given member on a given issue.

Protocols will include guidance about the wording of resolutions to frame the authority or capacity in which advice/recommendation/information has been prepared in a given context.

## Appointment

### Term of appointment

Members are appointed as part-time members for terms of up to 3 years and can be reappointed. Terms of individual members may be staggered to support the Committee's continuity and knowledge exchange.

Once appointed, members will be provided appropriate documentation as part of onboarding and induction. Each member must acknowledge in writing their acceptance of these documents and declare any conflicts of interest before commencing as a Committee member.

### Vacations/Removal

Provisions for vacations and removal of members and filling vacancies are set out in Schedule 9 of the *National Parks and Wildlife Act 1974*.

The Minister may, for any cause which to the Minister seems sufficient, remove from office any member of ACHAC. Reasons for removal of a member may include, but are not limited to, a conflict of interest that cannot be managed, breach of code of conduct, irreconcilable differences between

members, no longer meeting membership criteria, or three meeting absences without excusal by the Presiding member.

## Alternates

Provisions for appointing or alternates are set out in Schedule 9 of the *National Parks and Wildlife Act 1974*.

## Quorum

Provisions for a quorum of 7 members to transact any business of the Committee are set out in Schedule 9 of the *National Parks and Wildlife Act 1974*.

In situations where the quorum of 7 members is affected by the abstention of voting by certain members for reasons of cultural protocol (e.g., a matter involving gendered sensitivities), a majority vote of remaining members will be accepted and documented.

## Meeting arrangements

### Secretariat

All records, including the agenda, minutes and any reports or recommendations, will be prepared and kept by Heritage NSW.

The Heritage NSW Secretariat team will coordinate with the Executive Director, Heritage NSW and Presiding member to draft and prepare the agenda for each Committee meeting.

The Secretariat must also coordinate with the Presiding member to ensure that the minutes of the meeting are promptly finalised, signed by the Presiding member and distributed to members for confirmation as soon as is practicable after each meeting.

The minutes of the previous meeting should also be tabled at the next Committee meeting for approval.

Committee engagement with Heritage NSW outside of meetings should occur via the Executive Director, relevant Branch Directors or the Secretariat. Members should engage with Heritage NSW via the Presiding member.

The Secretariat team acts as a central point of contact for ACHAC and is responsible for:

- providing governance, business and administrative support
- managing meetings, including out of session meetings, agendas, distributing meeting papers, conflict of interest declarations, meeting minutes and actions
- managing correspondence
- managing calendar, events, site visits, including meeting venues and logistics
- managing advertising, appointment and re-appointment processes, induction, and onboarding of new members
- assisting members in delivering strategic and business priorities
- establishing and maintaining records management systems
- managing accommodation and travel requirements for members

- managing members' sitting fees and reimbursement of expenses
- coordination with cluster and partner agencies.

### **Meeting frequency**

ACHAC meets every second month of the year (six meetings annually) and may, subject to Executive Director approval, hold one regional meeting per year. Ordinary meetings are otherwise held in the Sydney metropolitan region, with optional attendance via telecommunication.

### **Additional meetings, sub-committee meetings and site visits**

Additional meetings may be held, subject to Executive Director approval, for consideration of urgent matters, strategic business planning workshops, site visits, etc.

### **Committee resolutions made out-of-session**

ACHAC may, for urgent issues, consider a matter out-of-session by the circulation of papers among all the members. The resolution is to be approved in writing by a majority of members. Email is an acceptable form of written response. Other correspondence received out-of-session may be responded to by the Presiding member, with support from Heritage NSW, without requiring approval from members.

Matters decided by the Committee out-of-session must be noted by the Committee at the next formal meeting and be recorded in the minutes of that meeting.

### **Publication of decisions**

The confirmed minutes of ACHAC meetings are not made publicly available due to cultural sensitivities.

Resolutions or meeting summaries may be published on the Heritage NSW website, sent to the Minister, or provided externally per individual request on a case-by-case basis.

As the Department provides secretariat support, it holds documents of the Committee. Those documents may be subject to an information access application under the *Government Information (Public Access) Act 2009* (GIPA Act). If there is an information access application relating to the Committee, the Department's GIPA Unit will liaise with the Committee about the appropriate response.

Business of the Committee conducted via email or text message is also subject to an information access application under the GIPA Act.

Please note that the Department is the decision maker in relation to GIPA applications made to it for documents it holds even though those documents relate to the work of the Committee.

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## **Conduct of members**

ACHAC will abide by the *ACHAC Code of Conduct 2023*, which is established consistent with the DPE Board and Committee Code of Conduct and the Conduct of Members as outlined in the NSW

Government Board and Committee Guidelines. Members must read and sign the code of conduct on commencement of their appointment to the Committee.

## Conflicts of interest

Conflicts of interest must be disclosed and dealt with by the Committee in a transparent way and in accordance with standing Departmental policy, as set out in the *ACHAC Code of Conduct 2023*.

Conflicts of interests that cannot be effectively mitigated may lead to a member being removed from membership to the ACHAC.

## Communication with the media and third parties

Views that are publicly expressed by a member may be perceived or construed by the broader community as a view of the Committee or of the Department.

Committee members must not make media comment on matters that could pertain to the business of the Committee. Requests from the media should be referred to the Presiding member for their consideration and response.

General correspondence and enquiries are to be sent through the Secretariat. Any correspondence or documentation prepared or supported by Heritage NSW on ACHAC's behalf must be approved by the Executive Director.

Submissions and correspondence to the Committee must be addressed to the Presiding member.

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## Remuneration and allowances

### Remuneration

Remuneration of ACHAC members is in accordance with the *Classification and Remuneration Framework for NSW Government Boards and Committees* (Public Service Commission, 2019).

### Out of pocket expenses

Committee members may be reimbursed for legitimate and reasonable expenses incurred while carrying out their duties, such as travel, accommodation, and meals as per the *ACHAC, Heritage Council and Committees Travel Guidelines*. Reimbursement of expenses and corresponding rates are determined by the whole-of-government *Travel and Transport Policy 2021*.

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## Review

### Periodic reporting on performance

ACHAC shall perform an evaluation of its performance and self-evaluate annually its level of effectiveness against its Strategic Plan and Terms of Reference. The evaluation framework will be prepared by Heritage NSW and endorsed by members. The report should identify:

- how the Committee is delivering on its objectives including a summary of key activities undertaken during the period
- outcomes achieved and key results for the period
- meetings held during the period and attendance
- current membership and any changes that have occurred during the period
- risk management strategies
- results of any reviews undertaken
- current membership and functions of any sub-committees
- ratification of the terms of reference and any subsequent amendments.

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## Review of Terms of Reference

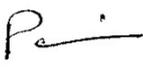
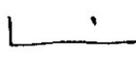
With Heritage NSW, the Committee will review the Terms of Reference every three years to ensure it remains consistent with the Committee's operation and responsibilities.

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## Agreement

These terms of reference are agreed by the Aboriginal Cultural Heritage Advisory Committee as at [Date] and remain in force until otherwise amended, replaced or voided.

Presiding members: Patricia Laurie and Steven Meredith

Signature:  



Date: 25 October 2023

### Attachments:

#### Tab 1: Schedule 9 to the National Parks and Wildlife Act 1974

## Tab 1: Schedule 9 of the National Parks and Wildlife Act 1974

# Schedule 9 The Aboriginal Cultural Heritage Advisory Committee

(Section 27 (2))

### 1 Composition

- (1) The Aboriginal Cultural Heritage Advisory Committee is to consist of—
  - (a) 13 members appointed by the Minister in accordance with this clause, and
  - (b) an ex-officio member, being the Secretary (or his or her delegate).

(1A) The ex-officio member is a non-voting member of the Committee.
- (2) The appointed members of the Committee are to consist of—
  - (a) one member nominated by the New South Wales Aboriginal Land Council, and
  - (b) one member nominated by the Heritage Council of New South Wales, and
  - (c) one member nominated by the NTSCORP Limited (ACN 098 971 209), and
  - (d) 10 other members appointed from the following—
    - (i) nominees of Aboriginal elders groups,
    - (ii) native title holders within the meaning of the *Native Title Act 1993* of the Commonwealth and registered native title claimants,
    - (iii) Aboriginal owners listed on the register under the *Aboriginal Land Rights Act 1983*.
- (3) The members of the Committee are to be persons who—
  - (a) are involved in cultural heritage matters in their local communities, and
  - (b) have an understanding of cultural heritage management issues.
- (4) The Minister is to ensure that—
  - (a) as far as is reasonably practicable, there is gender balance in the membership of the Committee, and
  - (b) as far as is reasonably practicable, the members of the Committee come from a range of cultural areas across New South Wales, and
  - (c) all the appointed members of the Committee are Aboriginal persons.
- (5) The Minister is to cause an advertisement inviting written nominations of persons for appointment to the Committee to be published in a newspaper circulating throughout New South Wales and in a newspaper widely read in Aboriginal communities in New South Wales.
- (6) The advertisement must specify the following—
  - (a) the number of members to be appointed to the Committee pursuant to nomination,
  - (b) the particular capacity or capacities (being a capacity specified in subclause (2) or (3)) that a member will be required to have,
  - (c) the closing date for nominations (being a date not earlier than 28 days after the date of the advertisement),
  - (d) the address to which nominations are to be sent.
- (7) The advertisement must also state that a nomination will not be accepted unless the nominee's written consent to the nomination is forwarded with the nomination.
- (8) The Minister is not to appoint a person as a member of the Committee unless—
  - (a) the person was duly nominated under this clause, and
  - (b) nominations have closed, and

(c) the Minister has considered all nominations duly received.

## **2 Term of office**

A member shall, subject to this Schedule, hold office for a period of 3 years or such lesser period as may be specified in the member's instrument of appointment, and is eligible for reappointment as a member.

## **3 Removal from office**

The Minister may for any cause which to the Minister seems sufficient remove from office any member of the Aboriginal Cultural Heritage Advisory Committee.

## **4 Vacation of office**

A member of the Aboriginal Cultural Heritage Advisory Committee shall be deemed to have vacated the member's office if the member –

- (a) dies,
- (b) resigns the member's office by writing under the member's hand addressed to the Minister,
- (c) becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the *Mental Health Act 1958* or a person under detention under Part 7 of that Act,
- (d) ceases to hold the qualification by virtue of which the member was appointed, or
- (e) is removed from office by the Minister.

## **5 Filling casual vacancy**

On the occurrence of a vacancy in the office of a member of the Aboriginal Cultural Heritage Advisory Committee, otherwise than by the expiration of the term for which the member was appointed, the Minister may appoint a person to hold that office for the balance of the predecessor's term of office, being a person qualified under clause 1 in the same manner (if any) of that predecessor.

## **6 Alternate members**

- (1) The Minister may at any time appoint, as an alternate member to act during the absence or illness of a member of the Aboriginal Cultural Heritage Advisory Committee, a person qualified under clause 1 in the same manner (if any) as the person for whom he or she is the alternate member.
- (2) An alternate member shall have and may exercise, while acting as a member of the Aboriginal Cultural Heritage Advisory Committee, the powers, authorities, duties and functions, as such a member, of the person for whom he or she is the alternate member.

## **6A Presiding member**

At a meeting of the Aboriginal Cultural Heritage Advisory Committee, a member elected by the members present at the meeting to chair the meeting is to preside at the meeting.

## **7 Quorum**

- (1) Seven members shall form a quorum at any meeting of the Aboriginal Cultural Heritage Advisory Committee and any duly convened meeting at which a quorum is present shall be competent to transact any business of the Committee.
- (2) Questions arising at a meeting of the Aboriginal Cultural Heritage Advisory Committee shall be determined by a majority of votes of the members present and voting.

## **8 Procedure**

The procedure for the calling of meetings of the Aboriginal Cultural Heritage Advisory Committee and for the conduct of business at those meetings shall, subject to the Schedule and any regulations made in relation thereto, be as determined by the Aboriginal Cultural Heritage Advisory Committee.

## **9 Fees**

A member of the Aboriginal Cultural Heritage Advisory Committee shall be entitled to receive such fees and travelling or other expenses (if any) as the Minister may determine in respect of the member.

## **10 (Repealed)**