

OVERVIEW

The Aboriginal Heritage Act 1988





Overview

Aboriginal heritage and culture is important to all Aboriginal people and communities. Respect for and recognition of Aboriginal heritage is important for Aboriginal self-determination and community confidence, and for the achievement of reconciliation and pride in our collective past.

The *Aboriginal Heritage Act 1988* (the Act) is the legislation designed to protect Aboriginal heritage. Under this legislation, all Aboriginal sites, objects and remains in South Australia that are of significance to Aboriginal tradition, archaeology, anthropology and/or history are protected.

The Aboriginal Heritage Branch, a branch of the Aboriginal Affairs and Reconciliation Division (AARD) of the Department of the Premier and Cabinet, administers the Act on behalf of the Minister for Aboriginal Affairs and Reconciliation.

The Aboriginal Heritage Branch has produced these Guidelines as a reference for individuals and organisations who propose to undertake activities that may impact on Aboriginal sites, objects, remains or traditions protected by the Act.

These Guidelines will help people to understand and comply with the Act. Through these Guidelines, the Aboriginal Heritage Branch aims to promote and maintain standards for site recording, survey and conservation and ensure quality and consistency in the management and conservation of Aboriginal heritage in South Australia.

The Guidelines will be useful for developers, either private, State or Local Government, land owners and land managers, natural resource managers, cultural heritage practitioners and Aboriginal heritage organisations.




What is the *Aboriginal Heritage Act*?

The Act covers all areas of South Australia, providing protection for Aboriginal remains and Aboriginal sites and objects of significance to Aboriginal archaeology, anthropology, history and tradition.

As part of its legislative responsibility, the Aboriginal Heritage Branch maintains the Central Archive, which includes the Register of Aboriginal Sites and Objects. The Central Archive contains over 6600 site recordings, 1200 cultural heritage reports and other published material. The Register is not a comprehensive record of all Aboriginal sites and objects in South Australia, and it should be noted that sites or objects may exist in your area of interest but not be recorded in the Central Archive.

For ease of access the site information is held electronically on the Heritage Sites Database. Some of the material held is confidential; however non-confidential material can be accessed providing the correct protocols are followed.



How are Aboriginal sites, objects and remains defined under the *Aboriginal Heritage Act*?

SITES

The Act defines an Aboriginal site as:

‘An area of land that is of significance to Aboriginal tradition or Aboriginal archaeology, anthropology or history.’

OBJECTS

The Act defines an Aboriginal object as:

‘An object of significance to Aboriginal tradition or Aboriginal archaeology, anthropology or history.’

REMAINS

The Act defines Aboriginal remains as:

‘The whole or part of skeletal remains of an Aboriginal person but does not include remains that have been buried in accordance with the law of the State.’

Certain landforms are more likely to contain evidence of Aboriginal occupation. If your area of interest is within such areas then you are more likely to have some impact on Aboriginal sites, objects or remains.

These areas include the following:

- claypans, lakes, rivers and estuaries;
- areas within 2km of coasts and major waterways;
- areas within 100m of the banks of all other creeks, rivers, watercourses, lakes, waterholes, rock holes, wells and springs, especially in arid areas;
- rocky outcrops;
- dunes, sand hills and sand deposits, especially in the vicinity of water sources, wells, springs, waterholes;
- craters and sinkholes;
- unusual land features;
- areas of bush, forested areas, natural vegetation or intact ground surface such as parklands, reserves, open space and road verges;
- place names are a direct link of the association of a society with the land. Places bearing Aboriginal names, or place names that are English translations of Aboriginal names or reflections of Aboriginal interaction with the landscape (including words such as “Black” or “Spear”), are very likely to have significance to Aboriginal people.



Which sections of the Act might apply to me?

The sections of the Act that carry responsibilities for all persons in South Australia are:

SECTION 12 provides for a person who proposes an action, which may breach the Act, to seek a determination from the Minister as to whether sites or objects are significant as Aboriginal sites or objects.

SECTION 20 requires that the owner or occupier of land, or an employee or agent of an owner or occupier, must report the discovery of Aboriginal sites, objects and remains to the Minister for Aboriginal Affairs and Reconciliation as soon as practicable, and follow any directions given by the Minister for the protection or preservation of the site, object or remains.

SECTION 21 states that it is an offence for any person to excavate land for the purpose of uncovering Aboriginal sites without authority from the Minister.

SECTION 22 requires landowners to allow persons authorised by the Minister to enter the land, search for sites, objects or remains and excavate the land following the receipt of reasonable notice in writing.

SECTION 23 makes it an offence for any person to damage, disturb or interfere with Aboriginal sites or objects without authorisation from the Minister. To comply with the Act, sites, objects and remains located during activities such as surveys, development or exploration must, wherever possible, be subject to avoidance strategies unless appropriate authorisation is obtained under section 23.

SECTIONS 24 AND 25 requires the public to respect any prohibitions or restrictions placed by the Minister or by an inspector appointed by the Minister in relation to a site, object or remains.

SECTIONS 28 AND 29 place controls on the care, sale and movement of Aboriginal objects as defined in public and private collections. It is an offence to sell, dispose of, or remove an Aboriginal object from the State without the authority of the Minister.

SECTION 35 makes it an offence to divulge information contrary to Aboriginal tradition unless consultation and authorisation takes place under the Act.

SECTION 36 requires landowners to allow an Aboriginal person or group duly authorised by the Minister to enter property in order to gain access to Aboriginal sites, objects or remains.

SECTION 37A-D allows for the Minister to enter into an Aboriginal heritage agreement with the owner of land on which any Aboriginal site, object or remains is situated.

SECTION 38 states that a person must not damage or interfere with a sign erected pursuant to this Act.

Before giving authorisation or making a determination, the Minister is obliged to consult with traditional owners and other Aboriginal people and organisations with an interest, and with the Aboriginal Heritage Committee.



How can I comply with the Act?

Breaches of the Act mean that the requirements of the Act in relation to the protection and preservation of Aboriginal sites, objects or remains have not been followed.

Being familiar with your responsibilities under the Act, following the correct procedures and allowing enough time to address Aboriginal heritage issues in your project can assist in maintaining compliance.

It is important that Aboriginal heritage issues are addressed early in the initial project planning, incorporating government and community timeframes, and allowing time for the mandatory consultation to be completed.



The Guidelines

A series of Guidelines on the following topics are available to assist you to understand the Act and your responsibilities. These Guidelines can be downloaded from the Aboriginal Affairs and Reconciliation Division (AARD) web site or emailed/mailed to you on request.

- GUIDELINE 1** Sections 12, 13 and 23, Site determination; consultation; site damage, disturbance or interference
- GUIDELINE 2** Section 20, Discovery of sites, objects or remains
- GUIDELINE 3** Section 21, Excavating sites, objects or remains
- GUIDELINE 4** Sections 28, 29 and 31, Care of, control of, sale of and other dealings with objects
- GUIDELINE 5** Section 35, Divulging information contrary to Aboriginal tradition
- GUIDELINE 6** Section 22, Access to and Excavation of land by authorised and Aboriginal persons
- GUIDELINE 7** Section 24, Directions by the Minister restricting access to Aboriginal sites, objects or remains
- GUIDELINE 8** Sections 37A-D, Aboriginal heritage agreements
- GUIDELINE 9** Identifying and recording Aboriginal sites, objects and remains
- GUIDELINE 10** Aboriginal site protection and conservation planning

Who do I contact for further advice?

For assistance or further information regarding these Guidelines please contact:

The Aboriginal Heritage Branch
Aboriginal Affairs and Reconciliation Division
Department of the Premier and Cabinet
PO Box 2343
ADELAIDE SA 5001
Phone 08 8226 8900
Facsimile 08 8226 8999

Cover: Lyndhurst ochre quarry - a site of significance for the Adnyamathanha and Arabunna people. Ochre was traded for some distance to other Aboriginal groups in the Lake Eyre region. [Supplied by Aboriginal Heritage Branch (DPC-AARD)]
Cover strip: Pituri bag - a vegetable fibre and woollen bag from northeast SA, filled with the narcotic pituri. [Supplied by SA Museum]
Page 1: Toa - decorated with Mura-mura (Dreaming) designs, collected from northeast South Australia. [Supplied by SA Museum A6075]
Page 2: Scar tree - showing a typical shield or dish scar in the Murraylands [Supplied by Aboriginal Heritage Branch (DPC-AARD)]
Page 3: Coastal shell midden, South Australia [Supplied by Aboriginal Heritage Branch (DPC-AARD)]
Page 4: Woven bag - made from vegetable fibre and human hair, northeast of South Australia. [Supplied by SA Museum PCslide005]
Page 5: Flakes from a quartz quarry [Supplied by Aboriginal Heritage Branch (DPC-AARD)]
Page 6: Rock shelter, northeast South Australia [Supplied by Aboriginal Heritage Branch (DPC-AARD)]

Disclaimer: This document is a guide only and should not be relied upon to ensure compliance with the *Aboriginal Heritage Act 1988*. Persons proposing to undertake activities that may damage, disturb or interfere with Aboriginal sites, objects or remains should seek specific advice.