

GUIDELINE 6 Section 22 and 36 of the *Aboriginal Heritage Act 1988*

Access to and Excavation of land
by authorised and Aboriginal persons



**Government
of South Australia**

Department of the
Premier and Cabinet

Sections 22 and 36 of the Act relate to the powers of the Minister to allow access to land including private land.

Section 22 provides the ability to investigate a situation where there is a possibility or probability of a site, object or remains existing in a given area, but there is insufficient factual evidence to support the report. The Minister can authorise a person to access the land to search for the site, object or remains and to excavate the land.


As with all authorisations given, or determinations made by the Minister under the Act, section 13 consultation processes must be followed beforehand. This means that the Minister must take all reasonable steps to consult with the Committee, Aboriginal people and organisation(s) with a particular interest in the matter.

Applications to excavate the land are dealt with separately in Guideline 3.

Section 22 of the *Aboriginal Heritage Act 1988*

22. (1) *Where the Minister has reason to believe that any Aboriginal site, object or remains have been or may be found on or under any land (including private land), the Minister may authorise a person:*
- (a) to enter the land; and*
 - (b) to search for the site, object or remains; and*
 - (c) to excavate the land.*
- (2) Before entering any land pursuant to an authorisation under this section, the authorised person must give reasonable notice in writing to the owner and occupier (if any) of the land identifying the land affected.*
- (3) Where any Aboriginal object or remains, or any object or remains that may be an Aboriginal object or Aboriginal remains, is or are found on the land, the Minister, if satisfied that it is necessary to do so for the protection or preservation of the object or remains, may take possession of the object or remains.*
- (4) The Minister must make good any damage done to land by a person acting in pursuance of this section.*
- (5) A person must not, without reasonable excuse, hinder or obstruct a person acting pursuant to an authorisation under this section.*

Penalty: \$2,000 or imprisonment for 3 months.



Section 36 provides a means for Aboriginal people to gain access to Aboriginal sites, objects, or remains on private land, by obtaining an authorisation from the Minister. Before giving an authorisation, the Minister is required to give the owner and occupier of the land the opportunity to comment on the application. When an authorisation is granted, the Minister must notify the owner and occupier of the land of the conditions of the authorisation

As with all authorisations given, or determinations made by the Minister under the Act, section 13 consultation processes must be followed beforehand. This means that the Minister must take all reasonable steps to consult with the Committee, Aboriginal people and organisation(s) with a particular interest in the matter.

Applications for authorisation should be made to the Aboriginal Heritage Branch, in writing.

Section 36 of the *Aboriginal Heritage Act 1988*

36. (1) *The Minister may authorise an Aboriginal person or group of Aboriginal persons to enter any land (including private land) for the purpose of gaining access to an Aboriginal site, object or remains.*
- (2) *Before giving an authorisation under this section, the Minister must allow the owner and occupier (if any) of the land a reasonable opportunity to make representations on the question of whether the authorisation should be given and if so, subject to what conditions.*
- (3) *Where the Minister gives an authorisation under this section, the Minister must as soon as practicable notify the owner and occupier (if any) of the land of the conditions of the authorisation.*
- (4) *A person must not, without reasonable excuse, hinder or obstruct a person acting pursuant to an authorisation under this section.*

Penalty: \$2,000 or imprisonment for 3 months.

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: Historic Site in northern South Australia [Supplied by Aboriginal Heritage Branch (DPC-AARD)]

Strip: Woven bag - made from vegetable fibre and human hair, northeast of South Australia. [Supplied by SA Museum PCslide005]

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.