

GUIDELINE 8 Section 37A-D of the *Aboriginal Heritage Act 1988*

Aboriginal Heritage Agreements



**Government
of South Australia**

Department of the
Premier and Cabinet



This section particularly applies to landowners or lessees in consultation with the Aboriginal Heritage Branch.

Section 37A of the Act provides for Aboriginal heritage agreements to be entered into between the Minister and the landowner (or lessee) of land on which any Aboriginal site, object or remains is situated. The Minister must give traditional owners of an Aboriginal site or object on the land (or their representative) an opportunity to become parties to the agreement.

The agreement attaches to the land and is recorded on the land title and will consequently be binding on both the current and future owners and / or occupiers of the land.

An Aboriginal heritage agreement may contain any provision for the protection or preservation of Aboriginal sites, objects or remains.

An Aboriginal heritage agreement may, for example:

- Place certain conditions on the use of the land to which it applies;
- Require specified work to be carried out in accordance with established standards to the subject area;
- Provide for the management of the land or any Aboriginal site, object or remains in accordance with a particular management plan or in accordance with management plans to be agreed from time to time between the Minister and the owner;
- Provide for financial, technical or other professional advice or assistance to the owner of the land with respect to the maintenance or conservation of the land or the protection or preservation of any Aboriginal site, object or remains;
- Provide for remission of rates or taxes in respect of the land.

An Aboriginal heritage agreement may not provide for the remission of rates payable to a council unless the council is a party to the agreement.

Where a proposed development is likely to impact on an area containing Aboriginal sites, objects or remains, or where there is a need to protect farming land containing Aboriginal sites, an Aboriginal heritage agreement may be an appropriate option to protect and preserve the area. This will ensure that all parties work together to identify their responsibilities for preservation and protection.



Section 37 of the *Aboriginal Heritage Act 1988*

- 37A. (1) *The Minister may enter into an Aboriginal heritage agreement with the owner of land on which any Aboriginal site, object or remains is situated.*
- (2) *An Aboriginal heritage agreement attaches to the land and is binding on the current owner of the land whether or not that owner was the person with whom the agreement was made.*
- (3) *The Minister may, by agreement with the owner of the land to which an Aboriginal heritage agreement applies, vary or terminate the agreement.*
- (4) *An Aboriginal heritage agreement is, to the extent specified in the agreement, binding on the occupier of the land.*
- (5) *Before entering into, varying or terminating an Aboriginal heritage agreement the Minister must take all reasonable steps to consult with:*
- (a) the Committee; and*
 - (b) any Aboriginal organisation that, in the opinion of the Minister, has a particular interest in the matter; and*
 - (c) any -*
 - (i) traditional owners; and*
 - (ii) other Aboriginal persons, who, in the opinion of the Minister, have a particular interest in the matter.*
- (6) *Before entering into an Aboriginal heritage agreement the Minister must take all reasonable steps to give any traditional owners of an Aboriginal site or object on the land (or a representative of those traditional owners) an opportunity to become parties to the agreement.*
- (a) provide for remission of rates or taxes in respect of the land.*



Effect of Aboriginal heritage agreement

- 37B. (1) *An Aboriginal heritage agreement may contain any provision for the protection or preservation of Aboriginal sites, objects or remains.*
- (2) *An Aboriginal heritage agreement may, for example:*
- (a) restrict the use of land to which it applies;*
 - (b) require specified work or work of a specified kind to be carried out in accordance with specified standards on the land;*
 - (c) restrict the nature of work that may be carried out on the land;*
 - (d) provide for the management of the land or any Aboriginal site, object or remains in accordance with a particular management plan or in accordance with management plans to be agreed from time to time between the Minister and the owner;*
 - (e) provide for financial, technical or other professional advice or assistance to the owner of the land with respect to the maintenance or conservation of the land or the protection or preservation of any Aboriginal site, object or remains;*
 - (f) provide for remission of rates or taxes in respect of the land.*
- (3) *An Aboriginal heritage agreement may not provide for the remission of rates payable to a council unless the council is a party to the agreement.*
- (4) *Any money required by the Minister to meet his or her obligations under an Aboriginal heritage agreement entered into under this section must be paid to the Minister from the Fund.*



Registration of Aboriginal heritage agreements

37C. *When the Minister enters into an Aboriginal heritage agreement, or an agreement varying or terminating an Aboriginal heritage agreement, the Registrar-General must, on application by the Minister or another party to the agreement, note the agreement against the relevant instrument of title or, in the case of land not under the provisions of the Real Property Act 1886, against the land.*

Enforcement of Aboriginal heritage agreements

37D.(1) *If:*

- (a) a party to an Aboriginal heritage agreement fails to comply with it; or*
 - (b) there is reason to apprehend that a party to an Aboriginal heritage agreement may fail to comply with it, any other party to the agreement may apply to the District Court for an order under this section.*
- (2) On such an application, the Court may make such orders as are necessary to secure compliance with the agreement, or to remedy the default, and to deal with any related or incidental matters.*

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
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Cover: Coastal shell midden, South Australia [Supplied by Aboriginal Heritage Branch (DPC-AARD)]

Strip: Wood engraving from the front of a Lower Murray River shield [Supplied by SA Museum A2296]

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.