Information on the *Aboriginal Heritage Act 1988* for Natural Resource Managers

**Department of State Development**
**Aboriginal Affairs and Reconciliation**

The Aboriginal Heritage Team of the Department of State Development Aboriginal Affairs and Reconciliation (DSD AAR) administers the *Aboriginal Heritage Act 1988* (the Act) on behalf of the Minister for Aboriginal Affairs and Reconciliation.

The aim of the Team is to improve the administration of the Act and to ensure understanding of and compliance with the Act. We also aim to promote and maintain standards for site recording, survey and conservation to ensure quality and consistency in the preservation of Aboriginal heritage in South Australia.

The following information may be of interest to landowners, land managers and NRM officers and was designed to give a general understanding of some of the issues that need to be taken into account when planning land care projects. More detailed guidelines on these topics are available on request.

**THE ABORIGINAL HERITAGE ACT 1988**

**Definitions under the Aboriginal Heritage Act 1988 (section 3)**

**The Act defines an Aboriginal site as:**
‘An area of land that is of significance to Aboriginal tradition or Aboriginal archaeology, anthropology or history.’

Any land, developed or undeveloped, can contain Aboriginal sites relating to traditions, living patterns and the use of environmental resources such as water, animal and vegetable foods and stone, spiritual beliefs and ceremonial activities and historic events.

To assist with cultural heritage management, Aboriginal sites are recorded under eight general categories, as summarised below:

- **Archaeological,** cultural (anthropological), **historic,** quarry, (stone, ochre) **painting and engraving,** stone arrangements (fish traps, ceremonial stone arrangements and hunting hides), **burial** and **scar trees.**

**The Act defines an Aboriginal object as:**
‘An object of significance to Aboriginal tradition or Aboriginal archaeology, anthropology or history’

These objects include items made of stone, shell and wood that may be found at some of the sites mentioned above, and items that are not made for sale, such as stone and wooden implements,
ceremonial goods and dress. These objects may be held by either public institutions or be in private possession.

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

The Act defines Aboriginal tradition as
Traditions, observances, customs or beliefs of the people who inhabited Australia before European colonisation and includes traditions, observances, customs and beliefs that have evolved or developed from that tradition since European colonisation.

UNDERSTANDING THE ABORIGINAL HERITAGE ACT 1988

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

Maintaining compliance 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, following the correct procedures and allowing enough time to address heritage issues in your project can all assist in maintaining compliance.

The following sections carry responsibilities for all persons in South Australia

Section 12
A person who proposes an action, which may breach the Act, can seek a determination from the Minister whether sites or objects exist in their project area and are considered as significant as Aboriginal sites or objects under the Act. If sites or objects are determined to be sites or objects as defined by section 3 of the Act then they become registered and the provisions of the Act then apply.

When do I need to consider applying for a section 12 determination under the Aboriginal Heritage Act 1988?
If a person proposes to take action in relation to a particular area that is, is part of, or includes an Aboriginal site, or if an Aboriginal object is located in the area, the person may apply to the Minister for Aboriginal Affairs and Reconciliation to determine the significance of the site under section 12 of the Act. This requires the Minister to give advice on any Aboriginal sites or objects in the area.

Through this process, the Aboriginal Heritage Team is responsible for undertaking consultation with the Aboriginal community under section 13 of the Act.
To ensure compliance with the Act, this approach may be advisable for large projects. However, for small projects, a cultural heritage survey may be sufficient.

**Section 20**
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 to 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.

A person must not, without the authority of the Minister—
(a) damage, disturb or interfere with any Aboriginal site; or
(b) damage any Aboriginal object; or
(c) where any Aboriginal object or remains are found—
(i) disturb or interfere with the object or remains; or
(ii) remove the object or remains.
Penalty: (a) in the case of a body corporate_$50 000;
(b) in any other case_$10 000 or imprisonment for 6 months.

Please note that a breach of section 23 may include such actions as:

- picking up, collecting or removing objects, artefacts or remains from an Aboriginal site
- displacing objects, artefacts or remains
- damaging or defacing the components of a site
- disturbing the spatial arrangement of artefacts on or in a site in any way, eg by excavating the site, driving a vehicle over a site, or by dumping rubbish or other objects onto the site.
- authorizing the disturbance of a site outside of the section 23 process
- chalking or defacing rock art

**Section 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**
Places 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 from the Minister takes place under the Act.
Section 36
Requires landowners to allow an Aboriginal person or group duly authorised by the Minister to enter your property in order to gain access to Aboriginal sites, objects or remains.

Section 37 b Aboriginal heritage agreements
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. An Aboriginal heritage agreement may contain any provision for the protection or preservation of Aboriginal sites, objects or remains.

and 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.

FINDING OUT WHETHER THERE ARE ANY SITES ON YOUR PROPERTY

The first step in complying with the Act is to discover whether there are sites, objects or remains in your area of interest.

Under Section 9 of the Act, The Aboriginal Heritage Team maintains a Central Archive, which includes the Register of Aboriginal Sites and Objects. The Central Archive contains over 8800 site recordings, 1800 cultural heritage reports and other published material. Site information is also held electronically on the Heritage Sites Database. Some of the material held is confidential, however material can be accessed providing the correct protocols are followed.

Information which can readily be accessed includes information such as the number and nature of sites on a property.

Any developed or undeveloped land can contain Aboriginal sites relating to traditions, living patterns and the use of environmental resources such as water, animal and vegetable foods, and stone by Aboriginal people, or their spiritual beliefs and ceremonial activities. These may be prominent or easily disregarded features in the landscape. Historical sites may have very little material evidence left, but are still known in the oral history of Aboriginal people.

Sensitive Areas

Certain landforms which are more likely be Aboriginal sites or to contain archaeological evidence of Aboriginal occupation. These include:

- Claypans, lakes, rivers and estuaries (stone artefact scatters, shell middens, rock art, stone arrangements, campsites or ovens)
- Rocky outcrops (quarries, rock art, rock holes, stone arrangements, ceremonial/religious sites, stone artefact scatters)
• Dunes, sand hills and sand bodies, especially in the vicinity of water sources, wells, springs, water holes

• Craters and sinkholes

• Areas within 200m of Coast and waterways

• Areas within 100m of the banks of all other creeks, rivers, watercourses, lakes, waterholes, rock holes, wells and springs, especially in arid areas

• Unusual land features can be likely to have mythological significance

• Bush or forested areas (stone artefact scatters, campsites or ovens)

• Areas of natural vegetation or intact ground surface such as parks, open space and road verges

• Place names are a visible 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”), may have significance to Aboriginal people

It is a requirement under section 20 of the Aboriginal Heritage Act 1988 that the discovery of sites is reported to the Aboriginal Heritage Team.

The Aboriginal Heritage Team requires that sites be recorded to a particular standard to comply with the requirements of the Act. To record sites to the standard required you should use a site card. Copies of site cards and a guide to filling them in are available on request

WHAT TO DO IF YOU THINK YOU HAVE FOUND A SITE

Anyone discovering an Aboriginal site should take care not to disturb it. You must stop any activities you may be conducting in that location that are impacting on the site and contact the Aboriginal Heritage Team for advice.

The values of a site can be diminished if parts of it are removed or disturbed. Disturbing sites of special significance may cause offence to Aboriginal people. Skeletal material should be left completely undisturbed. If there are sites on your property then care should be taken to avoid causing damage to them. It is an offence to damage a site of significance

Take note that sites can be damaged even through low impact land management activities such as revegetation.

To avoid damaging sites:

Find out if there are sites on your property
You can apply to the Aboriginal Heritage Team to find out if there are any sites on your property. Your application should include a map of the area or grid references and can be emailed to: dsdaarheritagesites1@sa.gov.au. You will be advised whether there are sites in the area and which areas to avoid.

Talk to your local Aboriginal heritage organisation
The Aboriginal Heritage Team can provide you with contact details for your local Aboriginal heritage organisation who may assist you with advice as to whether there are Aboriginal sites of significance in your area.

To facilitate any site inspections you should seek an agreement with the organisation as to the numbers of people that will attend on site and the timing and duration of the work prior to any field work taking place.

Heritage work paid for through government agencies must be undertaken in compliance with the Aboriginal Heritage Guidelines issued by the Attorney Generals Department.

**WHAT TO DO IF YOU THINK YOU HAVE FOUND A BURIAL SITE**

**Do not disturb the remains.** It is an offence, under the Act, to interfere with Aboriginal remains without approval from the Minister. Even if bones have already been disturbed, the closer they are left to their original location the better. Use local sand, dirt or small branches to cover the site if you think it needs protection.

**Do not notify or discuss with any media representative.** It is not appropriate to show footage of an Aboriginal burial or draw attention to its location. If it becomes a crime scene, media coverage may distress victims’ families and/or local residents.

**Notify the police…**

- Tell them bones have been uncovered (a requirement of the *Coroners Act 2003*).
- SAPOL will attend the scene for assessment and ensure it is secured, then bring the Coroner’s Office in (Forensic Science South Australia – Forensic SA) to assess the site, either in person or via photographs.
- If it is not a traditional Aboriginal burial, local CIB and Major Crime will be notified.
- If remains are of a traditional Aboriginal person a report will be sent to the Coroner and the Department of State Development Aboriginal Affairs and Reconciliation (DSD-AAR). This process may take several days.

**Advise the local Aboriginal heritage organisation**

- the local Aboriginal heritage organisation will be advised and must be involved in all decision-making
- depending on the extent of the site an archaeological assessment of the site may be required from a suitably qualified archaeologist.

**Record the site**

The site will need to be recorded and this information provided to DSD-AAR and the local Aboriginal heritage organisation.

**Develop a conservation plan**

The burial site should have a conservation plan developed so that an agreed conservation process can be documented and retained as a permanent record.
SITE RECORDING

Recording sites increases the documented body of cultural heritage knowledge for an area, leading to better understanding for managers of the cultural heritage landscape and the conservation requirements for regions.

Site recording can assist in protecting sites under threat of damage through the development of conservation plans and implementation of site protection works.

Sites must be recorded if organisations wish to apply for grant funding to protect those sites.

Site recording ensures cultural knowledge can be documented and preserved for the future.

Sites recorded to an accepted standard can be entered on to the DSD AAR central archive and nominated for registration.

Should sites be damaged, either deliberately or otherwise, having the site properly recorded at the time of discovery or survey makes it is easier to provide evidence of the location, size and content of the site, should an investigation be required.

In areas where the landscape is subject to change, eg sandy areas, recording sites helps identify where sites are even when they have been covered over.

The Aboriginal Heritage Team requires new information be submitted to us on site cards. Site cards which have been correctly filled out can be entered onto the Central Archive pending registration.

Copies of site cards and site recording guidelines can be obtained from the Aboriginal Heritage Team on request.

Site cards
Each type of site card has a specific site card. Each site is recorded on two site cards: an ‘A’ sheet and a ‘B’ sheet. The ‘A’ card is the same for all sites. This contains the locational and administrative information on the site. The ‘B’ card is different for each type of site. The ‘B’ card contains the information on the site itself.

Site cards can be filled out by anyone. The information needed relates to the location of the site, site condition, and type of site. Some of the information required on the ‘A’ and ‘B’ cards can be filled out by ticking boxes.

The most important thing to remember when filling in site cards is good mapping. Without good locational information it may not be possible to relocate the site. Good mapping ensures that if the site is threatened by development accurate information can be given about how to avoid impacting upon the site.

Equipment needed for site recording
- Topographic maps
- Camera and a scale (can be a ruler)
- Tape measures
- GPS (if possible)
- Site cards or site reporting form
- Compass
To record a site a series of measurements is required; where the site is, how you get there, what kind of site it is and how big it is. This goes on the ‘A’ site card.

To make a map, firstly establish the distance of the site from a particular point, usually a road or track junction or other prominent physical feature. This should be a permanent feature, not something like a dead tree. Measure how far the site is this particular point. This can be done with the odometer on a car for long distances if the distance is in a straight line. Set the odometer and record the distance at each point of your journey, for example, at each track junction, gate, etc.

This map is an example of the measurements you will need.

You need to survey the area to determine how many sites are present, i.e. is it one large site or a lot of smaller sites? This will give you the size of the area you want to record. You will need to measure the size of the site, the length and the width, and make some comment on the number of artefacts present per square metre.

The locational information, the mapping and the grid reference are very important and must be as accurate as you can make them.

To complete the recording you will also need to record some information about the local environment and the condition of the site.

When taking photos ensure that you have photos showing the following:

- Details of the site,
- The extent of the site
- The location of the site in the local environment
- Any recognisable landmarks, to enable relocation of the site in the future.

The following naming guidelines are recommended for use when applying a name to sites. If the site has an Aboriginal name, the Aboriginal name has priority and should be recorded as the SITE NAME, with the English name for the site (if possible) recorded as the OTHER
NAME. This approach should be undertaken only through consultation with, and permission from, the relevant Aboriginal community.

**SITE CONSERVATION PLANNING**

Landscapes contain a variety of natural and cultural values and the associations may be of Aboriginal or non-Aboriginal origin, or shared between Aboriginal and non-Aboriginal communities. The same principles of conservation apply in the management of Aboriginal and non-Aboriginal cultural heritage.

**Conservation is all the processes and actions of looking after a site or object so as to retain its cultural significance, including protection, maintenance and monitoring of the site or object.**

The basic concept for a conservation plan is laid out in the *Australia ICOMOS Burra Charter* 1999. The Burra Charter is a nationally accepted code of conduct defining the principles, processes and practices accepted as a standard for working in conservation in Australia, and can be applied to any place with heritage values.

The Burra Charter is not legislation; it is a professional code of conduct followed by cultural heritage practitioners to achieve consistent measurable results.

The process of developing a conservation plan should make use of all the disciplines and experience that can contribute to the study and safeguarding of a place. This process includes consultation with Aboriginal stakeholders concerning the significance of the site or object and recommendations for management.

**A conservation plan is a document outlining the significance of a site or object and how it is to be managed. The objective of a conservation plan is to identify, direct and achieve long-term conservation management outcomes for Aboriginal sites and objects.**

A conservation plan contains the following:

- Description of the site or object and its setting;
- Assessment of condition;
- Assessment of significance;
- Identification of the relevant stakeholders; and
- Conservation actions and implementation.

The conservation plan should clearly define the works required to achieve site protection and give recommendations for maintenance, monitoring and review. Monitoring is important as it allows for review of the effectiveness of conservation programs. This review is a fundamental element of conservation practice.

Implementing a conservation plan requires a systematic approach including setting a timetable and budget, allocating resources, consulting stakeholders and monitoring results.

By developing a conservation plan, ideas for site conservation are presented in a written format that is easy to understand, providing future site managers with a record of conservation practices at that site.
Conservation measures can incorporate site avoidance, visitor management and the use of buffer zones. Physical works may include the installation of fencing, directional signage and interpretive signage; walk trails and vehicle barriers, re-vegetation and stabilisation. Under the Burra Charter any conservation works applied to a site should be appropriate and in the case of infrastructure, reversible.

When considering signage, certain issues need to be considered, such as whether it is best to draw attention to the site. Interpretive signage informing people why the site is important can be effective in protecting sites.

An Aboriginal site requires a conservation plan when:

- It has high conservation value
- It has high cultural significance
- It is being actively managed
- The impact of an activity e.g. public access or use on the site adversely affects its condition
- A change of use of a site or object is proposed
- It is a complex site with multiple heritage values
- Works are proposed may indirectly impact on the site

A conservation plan is a negotiated agreement between The Aboriginal Heritage Team, the landowner, the local Aboriginal community and any other relevant stakeholders.
CONSERVATION PLAN PROFORMA

Name of Site: (supplied by the Aboriginal Heritage Branch)
Site Number: (supplied by the Aboriginal Heritage Branch)

Register of the National Estate Site Number (if applicable):
Site Recorded By:
Date Recorded:

Status: (Register of Aboriginal Sites and Objects or central archive)

Site Type:
Location of the Site:

People with traditional affiliations:
Address:
Informants:
Address:
Land Owner:
Address:
Other Stakeholders (lessees etc):
Address:

Description of the Site:

Background Information on the Site:

Condition of the site:

Significance of the Site under the Aboriginal Heritage Act 1988:
Aboriginal Archaeology ☐ Aboriginal Anthropology ☐
Aboriginal Tradition ☐ Aboriginal History ☐
Statement of significance (why is this place important?)

Conservation Strategy: (what is your plan)
Conservation Plan: (how will you achieve your plan)

Maintenance, Monitoring and Review:

Date(s) and results of condition inspection(s):

Conservation plan prepared by:

References:
CULTURAL HERITAGE SURVEYS

What is an Aboriginal cultural heritage survey?
A cultural heritage survey is a process undertaken to verify whether sites, objects or remains significant to Aboriginal tradition or to Aboriginal archaeology, anthropology, or history located in the project area have been identified and will be protected.

The aim of this survey is to locate Aboriginal sites, objects and remains in the project area by field survey and study of archival sources. This will enable the cultural heritage practitioner to identify the limits of available data, and gaps in existing knowledge and evaluate the potential of the landscape to contain sites.

The survey will present all the information in text and on maps, interpret the results, assess the significance of any sites and objects in the project area and advise on conservation of significant sites and objects.

The recommendations in the cultural heritage survey report should include a detailed outline of the client’s responsibilities under the Act.

At what stage of the project do we need to do a survey?
To avoid lengthy delays, Aboriginal heritage issues should be addressed early in the planning stages of the project. A cultural heritage survey report will provide recommendations for site avoidance and conservation strategies for any sites, objects or remains located during the survey.

Who does the cultural heritage survey?
Suitably qualified cultural heritage practitioners (archaeologists and/or anthropologists), in consultation with Aboriginal people.

CONTACT DETAILS

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