

Aboriginal heritage guidelines for resource projects in South Australia



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Cover photo. Undertaking ground access clearances for geological mapping on De Rose Hill Station. L–R: Rex Tjami, Rian Dutch (Geological Survey of South Australia), Peter de Rose and Devina Windless. (Photo 415962)

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PURPOSE

This guideline sets out the responsibilities required of mineral and energy resource companies operating in South Australia to protect Aboriginal heritage.

The *Aboriginal Heritage Act 1988* is the principal legislation that protects Aboriginal heritage in South Australia. The Act applies to all persons, including those operating under the *Mining Act 1971*, *Opal Mining Act 1995*, *Offshore Minerals Act 2000*, *Petroleum and Geothermal Energy Act 2000*, and the *Petroleum (Submerged Lands) Act 1982*.

You must always understand the legal framework relevant to your project including your legal obligations to protect Aboriginal heritage. These obligations will inform consultation regarding Aboriginal heritage surveys and clearances, Land Access Agreements, Indigenous land use agreements (ILUAs), native title mining agreements and cultural heritage management plans.

Clearly understanding your responsibilities under the Aboriginal Heritage Act helps you manage the risk of breaching the Act during your on-ground operations. While the information in this document should not be considered as legal advice, it may assist in understanding the actions required to mitigate legal, financial and other risks. It may also help foster greater stakeholder confidence as you can demonstrate that you have applied adequate risk management processes in all aspects of your operations relating to Aboriginal heritage.

*Aboriginal heritage survey in the Musgrave Ranges.
(Photo 414549)*



INTRODUCTION

The *Aboriginal Heritage Act 1988* does not have a definition for Aboriginal culture, however, an understanding of what is considered as cultural heritage is important when working with Aboriginal people. In short, cultural heritage is the endowment that each generation receives and passes on to the next. Aboriginal culture is the world's oldest living culture and Aboriginal heritage is part of the endowment that is still being passed on through Aboriginal families today.

Protecting and managing a community's cultural heritage in accordance with their expectations and with legislative and professional practice, contributes to the quality of relationships between Aboriginal groups and operators and maintains sites and traditions for future generations.

You are responsible for ensuring your activities, regardless of whether high or low environmental impact, do not damage, disturb or interfere with Aboriginal heritage sites, objects or remains.

Under the Commonwealth *Native Title Act 1993*, *Aboriginal Heritage Act* and various Aboriginal land holding Acts, you are expected to have taken reasonable steps to involve the relevant Aboriginal organisations in the project planning of your operations to assess the likely impacts on Aboriginal heritage before commencing ground-disturbing exploration or development.

Undertaking ground access clearances for geological mapping on De Rose Hill Station. L-R: Peter de Rose, Rex Tjami, David Pearson (traditional owners) and Rian Dutch (Geological Survey of South Australia). (Photo 415963)



ABORIGINAL HERITAGE IN SOUTH AUSTRALIA

Aboriginal heritage is manifested in the landscape as Aboriginal sites, objects and remains and in material culture (App. 1). It also includes connection to country, traditions, kinship, law, language, belief and history.

Aboriginal society consists of many interrelated language groups with each group having its own cultural protocols. Traditional activities such as hunting, fishing and gathering plant foods, transmission of cultural and ecological knowledge, law, language, song and dance, art, and ceremony are all still practiced today. All Aboriginal communities keep their cultural heritage alive by passing their knowledge from one generation to another.

Aboriginal people have a strong sense of responsibility for protecting cultural materials, sites and cultural landscapes, and are responsible to others in doing so. Managing

and protecting culture and heritage in line with Aboriginal people's views means recognising both the tangible and intangible aspects of culture and heritage, and the connections between them.

Aboriginal people's ongoing connection to country is complemented by archeological research with new evidence confirming that Aboriginal people have been present in South Australia for at least 45,000–49,000 years (Hamm et al. 2016) and in far northern Australia for 70,000 years (Dortch 2003). Despite this long history, only a small portion of the Aboriginal heritage sites in South Australia have been registered or recorded and few have been dated. Many significant areas of traditional land use and occupation in South Australia have never been documented but are known to the traditional owners.

Kuyani people discussing significance of their cultural landscape. (Courtesy of AAR; photo 415965)

Resource project, native title and Aboriginal heritage interaction

You are required to comply with all native title processes, and it is during these processes that Aboriginal heritage surveys or clearances are usually requested by native title groups.

In South Australia, Part 9B of the Mining Act and Part 7 of the Opal Mining Act respectively set out the native title requirements that apply with respect to mineral resource activities and opal mining. Both are approved alternative native title schemes under the Commonwealth Native Title Act. In contrast, energy resource activities under the Petroleum and Geothermal Energy Act must comply with the 'right to negotiate' provisions in the Native Title Act. A common feature is that to progress the development of resource projects on native title land there must be either a court determination, native title mining agreement or ILUA in place that authorises the activities.

There is no formal regulatory connection between native title and Aboriginal heritage,

however, in practice, the Aboriginal Heritage Act plays a large role in influencing the interactions between you and the Aboriginal community when negotiating access to land. For example, where native title mining agreements or ILUAs are negotiated for your project, it is standard practice for the native title party to require you to undertake Aboriginal heritage clearances or surveys over the land.

This guideline outlines the interactions between the Aboriginal Heritage Act and mineral and energy resources Acts. However, it is important to be aware of the requirements and obligations for accessing land under other Acts, such as the *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981*, the *Aboriginal Lands Trust Act 2013* and the *Maralinga Tjarutja Land Rights Act 1984*.

Opening of the Tjati Decline at Carrapateena and signing of an innovative partnering agreement between the Kokatha Aboriginal Corporation and OZ Minerals. Andrew Cole (left; OZ Minerals) and Chris Larkin (Kokatha) stand beside the commemoration plaque. (Photo 415106)



ABORIGINAL ENGAGEMENT IN RESOURCE PROJECTS

Aboriginal people have a right to be consulted in relation to mineral and energy resource activities, and there are various restrictions on access to Aboriginal land to protect those rights. The following groups must be consulted regarding access to, or activities on, land.



Figure 1

ABORIGINAL HERITAGE ACT

General legal provisions

The Aboriginal Heritage Act protects all Aboriginal sites, objects and remains of significance to Aboriginal archeology, anthropology, history and tradition. The Act applies to all Aboriginal sites and objects, whether they are registered, reported or unrecorded.

The administration of the Act is the responsibility of the Minister for Aboriginal Affairs and Reconciliation. In practice, these functions are delegated to Aboriginal Affairs and Reconciliation (AAR; situated in the Department of State Development), with the Minister retaining executive authority.

The main features of the Act are:

- blanket protection for all sites and objects of significance to Aboriginal archeology, anthropology, history or tradition, and protection for Aboriginal remains
- ability for the Minister to delegate certain functions and powers to a person or organisation (s. 6(1))
- provision for project proponents to seek a determination through the Minister as to whether an area or an object is of significance (s. 12)
- power for the Minister to authorise damage, disturbance or interference to sites and objects following consultation with the traditional owners, relevant Aboriginal organisations or any other interested Aboriginal person (s. 23)
- requirement for landowners or lessees to report the discovery of sites and follow directions as to their management (s. 20)
- preservation of the right for Aboriginal people to do anything in relation to Aboriginal sites, objects or remains according to tradition (s. 37A).

Under the Act it is an offence to damage, disturb or interfere with Aboriginal sites, objects or remains without authorisation from the Minister.

Where the requirements of the Act are not complied with, any person or organisation runs the risk of penalties. The maximum penalty for unauthorised damage, disturbance or interference is currently \$50,000 in the case of a company, and \$10,000 or 6-months imprisonment in any other case.

Roles and responsibilities

Under section 6(1) of the Act the Minister may delegate any of their powers or functions except the power to authorise the prosecution for an offence against the Act.

Some of the Minister's powers and functions have been delegated to native title groups across South Australia.

In these cases, this means that certain applications under the Act, such as seeking authorisation to damage, disturb, or interfere with Aboriginal heritage, can be made directly to the relevant Aboriginal organisation.

AAR can provide advice as to whether any native title groups have delegations in your area of operations.

HERITAGE INFORMATION

Searching the Central Archive

Under section 9 of the Act, the Minister must maintain a Central Archive which includes the Register of Aboriginal Sites and Objects.

The Central Archive, which is maintained on a confidential basis, contains records of registered and reported sites, objects and remains, and includes site cards, reports, articles and photographs. It also includes the Heritage Sites Database. The Central Archive is not a comprehensive listing of all the sites in the state, which is one of the reasons that further surveys are often requested.

The Department of the Premier and Cabinet provides operators with a search service of the Central Archive to confirm whether there are any registered or reported sites within their tenement or proposed area of operations. In the first instance you will only receive a yes or no answer as to whether there are sites registered or recorded in your area of interest, an indicative map and contact details for the relevant traditional owner organisation(s).

The release of specific information including the location of the site requires the permission of the traditional owner(s) in writing. You are responsible for seeking this permission.

AAR maintains a spatial layer of survey boundaries on the Heritage Sites Database. They can advise whether there are surveys in your area that can be requested to assist in project planning. You are encouraged to submit reports to AAR for recording in the Central Archive to help build knowledge of the extent of survey activity in the state.

Determining whether a site or object is of Aboriginal heritage significance (site registration process)

If there is a risk of your activity damaging, disturbing or interfering with an Aboriginal site or object, which may constitute an offence under the Act, an application can be made to the Minister in accordance with section 12 of the Act to determine whether the site or object is of significance.

The site determination (registration) process is summarised in Appendix 2.

The determination process requires you to undertake a survey of the area, to the standard set by AAR, and record all sites for potential registration. The Minister will then determine whether the area of land or object is of significance to Aboriginal archeology, anthropology, history or tradition and accordingly whether it should be registered.

During the determination process the Minister will use this information to consult with archeologists and/or anthropologists, the traditional owners, and any interested Aboriginal persons about the significance of the site to inform his or her decision.

If the Minister determines that a site or object is of significance, it will be entered in the Register of Aboriginal Sites and Objects. Once a site or object is entered in the Register it is conclusively presumed to be an Aboriginal site or object in any legal proceedings. Registered sites are also entered on the certificate of title so the landowner is made aware of their existence and responsibilities for their protection.

Discovery of Aboriginal sites, objects or remains

Landowners and resource tenement holders, including employees, contractors or agents who discover an Aboriginal site, object or remains, must report the discovery to the Minister as soon as practicable under section 20 of the Act. Reports should be made directly to AAR. Site cards are the standard form for reporting discoveries and guidelines on how to fill them out are available from AAR on request. Substantial penalties are prescribed for not reporting such a discovery.

Damaging, disturbing or interfering with Aboriginal sites, objects or remains

It is critical that any person wishing to access land for exploration or development, regardless of the potential level of impact, understands how section 23 of the Act applies to their activities.

Section 23 of the Act makes it an offence to do any of the following 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.

It is an offence to move or acquire objects or artefacts from Aboriginal sites without authorisation from the Minister.

Where it is **not possible** to avoid damaging, disturbing or interfering with Aboriginal heritage, you will be required to make an application to the Minister for authorisation to do so.

These provisions have been used in the past to authorise infrastructure projects – such as new metropolitan roads, bridges or housing developments and mine infrastructure projects – where damage to sites was unavoidable. AAR provides guidelines and an application form to help you meet the requirements to request an authorisation.

In considering an application for an authorisation, the Minister must take all reasonable steps to consult with any Aboriginal person, traditional owners and Aboriginal organisations that have a particular interest in the matter. Consultation is undertaken by AAR, on behalf of the Minister.

Applicants are normally invited to present their project activities to a meeting of interested Aboriginal people, traditional owners and Aboriginal community members. At these meetings, you should be prepared to answer questions about your methodologies and potential impacts of your project in that area. Finally, the Minister must also consult the State Aboriginal Heritage Committee.

The assessment of applications for a section 23 authorisation can be a long and complex process taking some months to complete. A high level of site documentation may be requested to inform the formal consultation process. This means you will need to plan ahead in the survey phase of the project. You will also need to demonstrate the impact was unavoidable.

For small projects or minor activities, practicing site avoidance may be a better business strategy than seeking a section 23.

Traditional owners may accept or reject recommendations made by the proponent or consultants during this process, but only the Minister has the ultimate authority to decide whether to authorise damage, disturbance or interference to a site. Conditions may be placed on these authorisations as appropriate.

Recognised Aboriginal Representative Bodies

Amendments were recently made to the Act that allow agreements with traditional owners to manage Aboriginal heritage. The establishment of Recognised Aboriginal Representative Bodies (RARBs) is a key part of the changes to the Aboriginal Heritage Act which was proclaimed on 17 October 2017. The amended Act introduces the appointment of RARBs to manage the effects of exploration, mining, development and other activities on Aboriginal heritage across South Australia.

A RARB is an incorporated body that can enter into local heritage agreements with proponents to manage impacts on Aboriginal heritage. A RARB must be able to demonstrate that it can ascertain and represent the views of the relevant traditional owners in relation to the Aboriginal heritage within the RARB's area of responsibility.

Registered native title body corporates are taken to be the RARB in respect to a native title determination area, including areas where native title has been extinguished or suppressed. However, the appointment must be approved by the State Aboriginal Heritage Committee.

RARB appointments must be approved by the State Aboriginal Heritage Committee, and may be for:

- a specified area of land
- a specified Aboriginal site or sites
- a specified Aboriginal object or objects
- specified Aboriginal remains.

A RARB may enter into local heritage agreements with land use proponents so that impacts to Aboriginal heritage are managed in culturally appropriate ways and in agreement with the traditional owners.

Alternatives to local heritage agreements

If heritage is not represented by a RARB, certain agreements with traditional owners (mostly native title agreements) setting out how the heritage may be impacted can also be approved under the Act. This is called a Division A2 agreement.

Local heritage agreements are submitted to the Minister with the relevant request for authorisation under section 21 or section 23 of the Act for approval. Approval is dependent on the agreement satisfactorily dealing with any heritage that may be located in the relevant area. Once approved, the Minister must grant the associated authorisation (Fig 2).

Vicarious liability

Under section 41 of the Act, employers and principals are vicariously liable for offences committed by their employees or agents and, in some circumstances, board members may be vicariously liable for offences committed by a body corporate.

Process of discovery of Aboriginal sites and objects where there are no agreement or authorisations under the Aboriginal Heritage Act 1988.

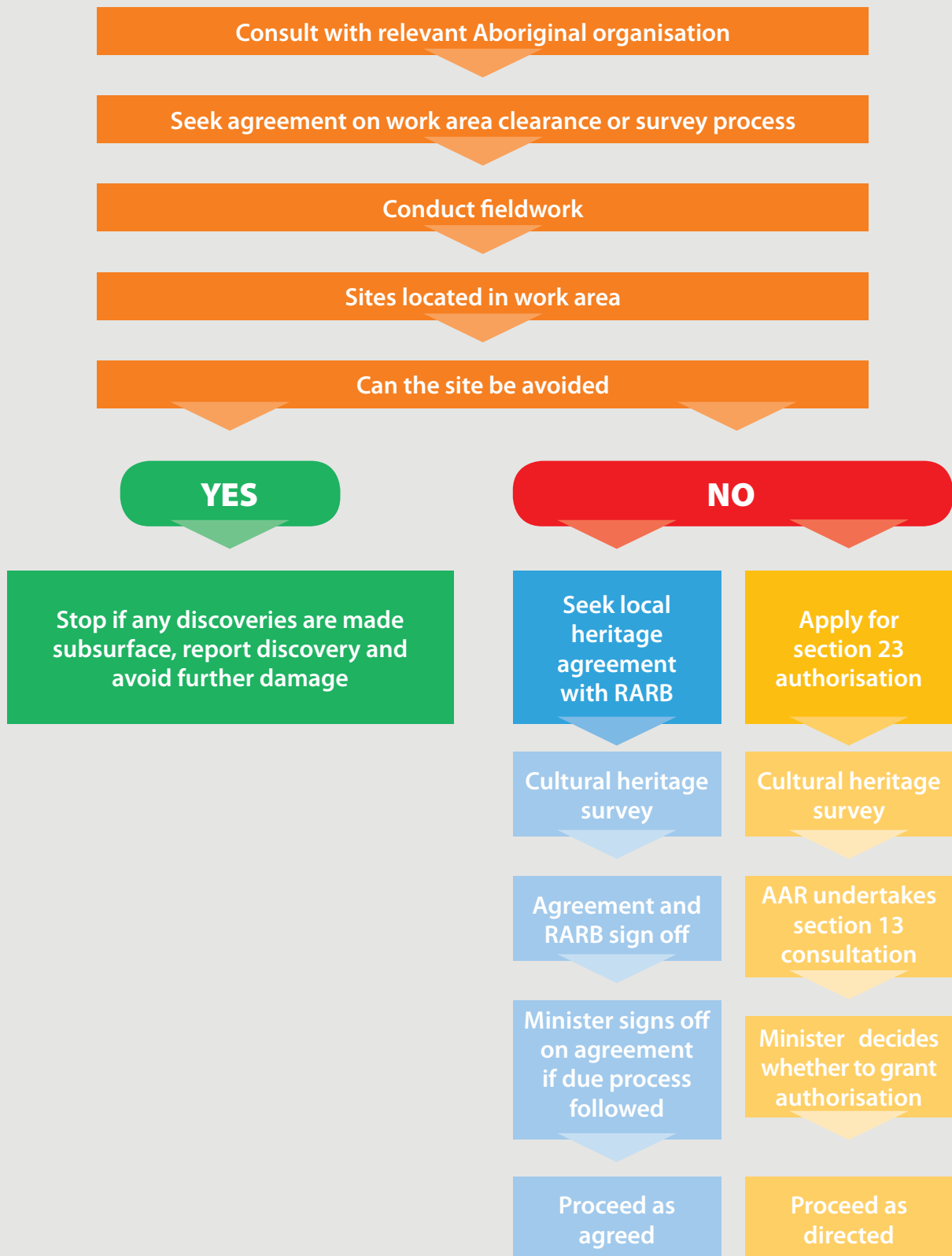


Figure 2

CULTURAL HERITAGE MANAGEMENT

Cultural heritage management is the process of consultation, research, desktop and field surveys, site recording and conservation planning that contributes to the management of Aboriginal heritage.

Good cultural heritage management practice is good risk management. It helps to build strong and trusting relationships between your company and Aboriginal communities. These relationships are critical and if formed in the early stages of a project can provide a strong foundation on which to continue long-lasting collaborative partnerships. The time and energy invested into building strong relationships is vital should a new resource discovery be made.

Aboriginal engagement intersects all stages of an operation's lifecycle, from exploration and production through to site closure, and may encompass community relations, environmental management, project planning and human resources.

Resource projects have the potential to provide significant socioeconomic opportunities to a region. They can also bring profound change by altering the way the natural and cultural values of country have traditionally been accessed and managed by Aboriginal people.

Aboriginal sites play an important role in the process of maintaining and transmitting cultural knowledge between generations. These sites can be easily damaged by ground-disturbing activities. Unexpected site disturbance can encourage negative sentiment in the affected community and the

risk of damage to Aboriginal heritage may lead to social, political and legal opposition to operations. It makes good business sense to plan for early engagement with Aboriginal communities to seek agreement on how to best proceed with your project plan in areas where there are cultural sensitivities.

Cultural heritage management plans can assist to mitigate risk to resource projects (Table 1) and contribute to economic development, social stability and environmental protection.

These plans:

- demonstrate respect and understanding for an Aboriginal community's values
- help build social licence and sustainable developments that result in benefits to all parties
- reduce project uncertainty that may arise as a result of a lack of accurate information or understanding about Aboriginal heritage issues
- reduce business risk by minimising potential exposure to project delays, legal action and compliance costs
- facilitate collaborative access to land and the acquisition of approvals, enhance negotiation of agreements, and reduce costs related to negotiations and compensation
- ensure compliance with heritage and mining legislation.

Table 1 Cultural heritage management throughout the life cycle of a resource project

Aboriginal heritage management for resource projects	EXPLORATION			PRODUCTION		
	Tenement application	Pre-exploration non-ground disturbing activity or low impact activity	Exploration, advanced exploration, feasibility	Development	Production	Closure
Understanding the legal framework	✓	✓		✓		
Due diligence	✓	✓		✓		
Consultation		✓	✓	✓	✓	✓
Cultural heritage surveys/clearances		As required	✓			
Cultural heritage management plans		As required		✓	✓	✓
Compliance and communication		✓	✓	✓	✓	✓

ABORIGINAL HERITAGE MANAGEMENT FOR RESOURCE PROJECTS

Integrating Aboriginal heritage in project assessment

The assessment and management of environmental and social risks is part of the overall process for managing resource projects. It has been demonstrated that continuous improvement of environmental and social performance can lead to better economic, financial, social and environmental outcomes.

Since removal will result in irreparable damage or destruction, most Aboriginal heritage is best protected by avoidance.

Aboriginal heritage must be integrated into a project assessment process and management system throughout the life of the project to

identify and preserve Aboriginal sites, objects and remains.

The screening phase of the risks and impacts identification process should identify the nature, extent and complexity of Aboriginal heritage in the project area. If potential adverse impacts are indicated, further analysis will be necessary to ascertain the nature and scale of these impacts and proposed mitigation measures. The breadth, depth and type of analysis should be proportionate to the project’s potential adverse impacts on Aboriginal heritage.

Where Aboriginal heritage is deemed a significant issue, leading practice risk management is advised. A focused assessment may be necessary even if a full-scale social and environmental impact assessment is not needed.



For each project the range of mitigation measures possible can vary according to the:

- nature of the site or object
- values that Aboriginal groups ascribe to the site, object or remains
- value of the site or object to the scientific and wider community
- characteristics of the operation
- outcomes of the business risk assessment process.

Aboriginal heritage risk mitigation for resource projects is summarised in Figure 3 and the procedure described in Table 2.



Figure 3

Table 2 Procedure for Aboriginal heritage risk mitigation for resource projects.

Risk mitigation	Rationale	Process
Plan, consult and conduct fieldwork	Address risk of damage to sites by planning, consulting with traditional owners and undertaking surveys or clearances as requested.	Where an operation encounters Aboriginal heritage, avoidance should be the favoured approach.
Avoid sites	Modify the project design to protect Aboriginal sites, objects and remains	
Record and conserve sites	<p>Minimise or reduce unavoidable impacts in consultation with the relevant Aboriginal group and qualified professionals:</p> <ul style="list-style-type: none"> • Implement comprehensive site recording and conservation measures that ensure and maintenance of the significance and functionality of the site or object. • Design and implement discovery plans. 	<p>Seek advice from AAR as to the application of the Aboriginal Heritage Act to these measures.</p> <p>Ensure your operational procedures incorporate these measures to manage the heritage, sites or objects according to any relevant agreements.</p>
Salvage and curate	In consultation with the relevant Aboriginal group and qualified professionals consider excavation, salvage or research and curation of sites which will be damaged or destroyed. Also consider the Aboriginal community's needs to undertake any cultural or ceremonial activities as part of the mitigation process for both tangible and intangible sites or for significant objects or remains.	
Monitor and review	Make sure the requirements of any statutory approvals, the Program for Environment Protection and Rehabilitation (PEPR) or Statement of Environmental Objectives (SEO) and the Act are complied with.	Monitor the success of any site conservation strategies, and revise as required.

Steps 1–7 outline in more detail practical advice on how to manage Aboriginal heritage through the project cycle.

Step 1: Understand the legislative and operational framework

- Aboriginal heritage legislation applies to all land, regardless of the existence of native title.
- Your tenement or claim may cover both native title land (land on which native title exists or might exist) and non-native title land.
- For petroleum exploration, a licence cannot be granted without a right to negotiate or ILUA where native title exists.

- Activities which are considered to have a low impact on the environment may still have the potential to affect Aboriginal heritage.
- Early engagement with the relevant Aboriginal group is the best way to manage the risk of inadvertent damage during on-ground operations.
- Good planning early prevents delays later on.
- It is a requirement of your Program for Environment Protection and Rehabilitation (PEPR) or Statement of Environmental Objectives (SEO) that you avoid damage to Aboriginal heritage.

Step 2: Due diligence

If you are unsure which Aboriginal group(s) should be consulted and what information is available from the Central Archive for your tenement or claim you should seek advice from AAR. Where an exploration licence has been granted, this information is provided to the operator by Mineral and Energy Resources. If there is a considerable delay between the receiving of this information and undertaking exploration, you should check whether any updated information is available.

The principal sources of information on Aboriginal heritage in South Australia are:

- native title organisations, Aboriginal land holding authorities and RARBs
- AAR Central Archive
- South Australian Museum.

See the resources section of this guideline on how to access the Central Archive.

Conducting your due diligence ensures compliance with the Act, supports positive relationships with Aboriginal groups, and facilitates project approvals to access land for exploration or development.

Step 3: Consultation

Preferences for how consultation is to take place may differ between Aboriginal groups. Make contact with the group early in project planning to establish how and when they would like to be consulted. Allow reasonable timeframes for negotiations and any meetings or field work required to inform the decision-making process.

Record the outcome of all consultation with Aboriginal groups in a statement or agreement signed by representatives of the parties involved.

This may include:

- number and location of meetings and meeting costs
- monies paid to the Aboriginal people for participating in the negotiation process
- administrative or legal fees for the negotiation process
- discussion on the exploration or production program including agreement on the manner and form for communicating with the group when you are undertaking low impact activities, or making public announcements regarding your findings
- requirements and funding for surveys
- management of information gathered during surveys.

Sharing the outcomes of consultation with relevant Aboriginal groups is important for demonstrating compliance with legislative or other requirements, transparency and inclusive engagement.

Step 4: Engagement of consultants

In consultation with the relevant traditional owners, suitably qualified professionals (archeologists, anthropologists or historians) should be engaged to carry out heritage assessment. These consultants should have specialised knowledge of the project area, Aboriginal group(s) and subject matter. The role of the consultant is to provide you with independent advice and produce a defensible and independent report. The report should be of sufficient quality and detail to withstand any professional or legal challenge.

In seeking the engagement of suitably qualified professionals, consider whether they are a member of any professional organisation such as the Australian Association of Consulting Archaeologists Inc, the Australian Archaeological Association or the Australian Anthropological Society. This ensures the consultant abides by the code of ethics set down by their representative body.

Qualifications in archeology and anthropology are not necessarily interchangeable. If the consultant is required to give advice on both archeological and anthropological matters then they should be suitably qualified to work in both disciplines.

The relationship the consultant has with the Aboriginal group you are working with is also an important consideration. Gender sensitivity may also be a consideration depending on the nature of the survey work and this should be clarified with the Aboriginal group before engaging a consultant.

Step 5: Cultural heritage surveys and work area clearances

The process followed for a work area clearance is not as comprehensive as for a cultural heritage survey. Choosing a survey model may avoid costs for additional surveys and time delays for statutory approvals over the same area at a later date.

Any land, developed or undeveloped, can contain Aboriginal sites relating to traditions, spiritual beliefs and ceremonial activities, living patterns and the use of natural resources such as water, animal and vegetable foods, timber and stone. There are many areas in the state where sites remain unrecorded and Aboriginal groups will request a cultural heritage survey or work area clearance before approving on-ground works.

These surveys or clearances are usually required as part of the negotiations for a native title mining agreement, ILUA or right to negotiate agreement. Surveys and clearances, while not described in the Act, are the standard processes used to identify whether on-ground works may impact on sites, objects or remains. They have no separate legal status other than as a contractual undertaking in the agreement.

The survey or clearance assessment should be fit for purpose, clearly describe the method used and results, provide clear professional advice for use in statutory approvals processes, and satisfy the needs of the proponent and the traditional owners for the avoidance of sites.

Surveys or clearances should be undertaken by members of the relevant Aboriginal group in cooperation with a suitably qualified archeologist or anthropologist. While some types of sites may be recognisable to suitably trained people, sites of significance to Aboriginal spirituality and tradition can only be identified by Aboriginal people with traditional knowledge of the area, and only these traditional owners can comment on what activities are appropriate at these sites.

Cultural heritage survey

A cultural heritage survey report provides all parties with certainty as to the location, nature and significance of Aboriginal heritage sites and objects in a project area. Survey is recommended for projects which are intended to have a significant impact over a fixed area and the heritage values must be clearly defined for consultation or conservation purposes.

The AAR standard for surveys gives guidance on the correct process to follow and will ensure compliance with the Act.

A comprehensive cultural heritage survey completed to the required standard can be used for applications to determine the significance of a site, excavate a site, or request authority to disturb or damage a site under the Act.

Work area clearance

A work area clearance is usually undertaken for small projects where the operation is low risk and has short timeframes. They are designed for where the precise locations of on-ground work areas has not been determined and the proposed footprint for ground disturbing activities is flexible and can be modified to avoid Aboriginal sites.

It is the responsibility of the operator to ensure that any 'clearance' does not result in damage to Aboriginal heritage. Only areas which have been proven to have no heritage significance should be considered to have been 'cleared'.

Site recording and reporting

The quality of site recording plays a significant role in the assessment of risk to Aboriginal heritage sites and objects. Good recording early prevents duplication of cost and effort at a later stage.

Survey or clearance reports must be drafted using the language in the Act to clearly state whether sites, objects or remains have been found and comment on their significance under the categories of Aboriginal archeology, anthropology, history or tradition.

Phrases such as 'cultural heritage area', 'exclusion area', 'no go zone' are not found in the Act and should only be used for describing areas which are of significance to Aboriginal people and have cultural value (e.g. old growth trees, medicinal or bush tucker plants, animal habitat), but are not covered by the provisions of the Act.

Step 6: Cultural heritage management plans

For projects which will extend to production, it is leading practice for Aboriginal sites in the area to be managed subject to a Cultural Heritage Management Plan. This will provide for the long-term protection and management of Aboriginal heritage particularly during the construction of production facilities and infrastructure, through to the decommissioning process.

The plan should follow the industry standard and be developed in consultation with the Aboriginal groups. Detail the nature, extent and significance of any Aboriginal sites, objects or remains identified in the area and specify recommendations or measures taken before, during and after project activities to manage their protection.

Good site recording helps inform the detail of the plan. The adequacy of the cultural heritage survey and recording process in providing sufficient information to develop the plan is fundamental to the planning and approvals processes and may inform reporting to meet permit, lease or licence conditions.

You may need to consider continued access to Aboriginal heritage sites in the project area for Aboriginal cultural purposes and monitoring. Continued access should be provided subject to overriding health, safety and security concerns. Where health, safety or security is a consideration, alternatives to open access should be identified through consultation. These may include different access routes, specifying dates and times when access will be provided, providing health and safety equipment and training for specified visitors, or other measures that balance access with health, safety or security measures. The agreements with

affected Aboriginal groups on access should be documented.

AAR can provide further information on managing the risk of damage, disturbance or interference with Aboriginal sites, objects or remains during project activities.

Step 7: Compliance and communication

If AAR or the Aboriginal group advises that a proposed activity may threaten an Aboriginal site and the site is not a registered site, the proponent can avoid the site or may wish to seek a determination whether the site is significant under section 12 of the Act. If disturbance or damage to the site cannot be avoided, the proponent must seek authorisation under section 23.

Even after a survey is completed, in areas where the environment is subject to change, e.g. sandy areas, areas subject to inundation or in highly stratified areas, it is possible that further archeological material or burials may be located under the ground surface.

In areas where there is likely to be a subsurface discovery it is recommended you work with the Aboriginal group and their archeologist plan for the event of a subsurface discovery before ground-disturbing works commence.

Where there is a low possibility of further discoveries, field staff including contractors should be trained in the legal obligations and processes for discovery of Aboriginal heritage as part of their induction. A basic understanding of how to look out for and identify Aboriginal sites, objects and remains and a clear understanding of discovery protocols can be effective in protecting Aboriginal heritage. In the event Aboriginal sites or objects are identified, the following actions should be taken:

- stop work immediately
- record the location and type of the site, object or remains
- notify the Aboriginal group
- report to the Department of the Premier and Cabinet as required under the PEPR or SEO
- do not collect any artefacts or attempt to remove any materials from the site – this is an offence under the Act
- do not draw the attention of unauthorised people (including media) to the site
- deviate all access tracks around the site
- if necessary, mark the site to avoid any disturbance
- remove all temporary markings when work is completed.

If **skeletal remains** of uncertain origin are located they should be left undisturbed. The actions above should be taken and additionally, subject to the *Coroners Act 2003*, the procedure is to notify the South Australia Police immediately on 131 444. The police will facilitate the formal identification of the remains as being ancestral Aboriginal remains and advise the parties accordingly.

AAR can provide further advice on what to do if you discover Aboriginal remains.

Clear communication of your operation's cultural heritage management processes to the general public and employees and contractors can have a number of benefits. These benefits include raising wider awareness of the cultural heritage of the area and enhancing your company's reputation. This broader communication needs to be undertaken with careful consideration and consultation with the affected Aboriginal group to ensure their intellectual property rights and privacy are always respected.



ASSIGNING SIGNIFICANCE

Significance can be cultural, scientific or both. Cultural significance is assigned by traditional owners. Other levels of significance can be assigned by archeologists, anthropologists or historians in consultation with traditional owners in reference to the body of knowledge about Aboriginal heritage in the region and an understanding about how the site or object has the potential to inform the history of the region or the state. Where sites are not recorded during surveys and the information is not available to increase that body of knowledge it can be difficult to properly assign significance.

Consultation with Aboriginal people and other experts through the section 12 determination process informs the Minister as to whether a site or object is of significance under the Act and should be registered. Where a site or object is purported to be of significance outside of this process, the Act still applies to the management of that site or object.

If there are differing opinions over the significance of a site, the precautionary principle applies and the site should be assumed to be of significance until further assessment can be undertaken and a determination sought, or site avoidance practiced.

Making a decision to undertake ground-disturbing works in an area where there are differing views on significance may result in a complaint under section 23 of the Act. In these cases if you do not intend to seek a determination then avoidance is the best strategy.

Heritage survey in the Mid North. (Courtesy of MAV Media Pty Ltd and Aboriginal Cultural Tours - South Australia; photo 414087)



WHAT IS DAMAGE, DISTURBANCE OR INTERFERENCE?

What constitutes damage, disturbance or interference with a site can depend on the nature of the site and its cultural and scientific values. The question of what activities can damage tangible sites such as sites of significance to Aboriginal archeology, anthropology and history is more easily addressed than the issue of damage to intangible sites such as those of significance to Aboriginal tradition.

In general terms, for sites of significance to Aboriginal archeology, anthropology or history, damage may constitute:

- displacing objects, artefacts or remains
- disturbing the spatial arrangement of artefacts on or in a site in any way (e.g. excavating the site, driving a vehicle over a site, or by dumping rubbish or other objects onto the site)
- picking up, collecting or removing objects, artefacts or remains
- chalking or defacing rock art
- damaging or defacing the components of a site so as to diminish its significance
- damage to culturally modified or significant trees.

For sites of significance to Aboriginal tradition, only traditional owners with knowledge of what the site is and who have authority to speak for the site can quantify whether an activity (regardless of whether it is has a high or low impact on the environment) will damage the site. In seeking to establish what activities may be appropriate in relation to these sites, proponents will need to have regard to the issues of cultural confidentiality and gender sensitivity. This will influence who will make the decision and how the decision will be discussed and communicated to others.

Short-term conservation in the Cooper Basin, northeastern South Australia. (Photo 044302)



MONITORING

Monitoring is not mentioned in the Aboriginal Heritage Act. It is a risk management process undertaken through agreement between the Aboriginal group and the proponent.

Monitoring can be requested where

- a proposed activity is taking place in close proximity to a site, objects or remains
- there are reasonable grounds to suspect that cultural material or burials are located subsurface that were not evident during the survey
- the group wishes to ensure that works comply with the terms of the native title mining agreement, PEPR, SEO or any other relevant approval/ agreement.

Monitoring ground disturbance in an Aboriginal heritage area. (Courtesy of MAV Media Pty Ltd and Aboriginal Cultural Tours - South Australia; photo 414089)

RESOURCES

Laws

www.legislation.sa.gov.au

South Australian Acts and Regulations are available for free download from the South Australian Legislation website.

Department of the Premier and Cabinet

www.minerals.dpc.sa.gov.au

www.petroleum.dpc.sa.gov.au

Publications are available for free download from the Minerals and Petroleum websites and SARIG, or can be obtained from Customer Services (Level 7, 101 Grenfell Street, Adelaide). Related publications are listed below.

As publications may be updated at any time, always check on our website for the latest versions.

South Australian Resources Information Gateway (SARIG)

map.sarig.sa.gov.au

SARIG provides up-to-date views of mineral, petroleum and geothermal tenements and other geoscientific data. You can search, view and download information relating to minerals and energy in South Australia including tenement details, land access, mines and mineral deposits, geological and geophysical data, publications and reports.

Regulatory principles

Regulating mineral exploration and mining in South Australia: setting the framework for best practice regulation

Earth Resources information sheets

Guidelines for proposed activities on native title land — part 9B of the Mining Act, M31

Regulatory guidelines

Guidelines: landowner rights and access arrangements in relation to mineral exploration and mining in South Australia, MG4

Liaison guidelines for landowners and petroleum and geothermal energy explorers in South Australia, PGRG005

Aboriginal Affairs and Reconciliation

Aboriginal Heritage Registers

statedevelopment.sa.gov.au/aboriginal-affairs/aboriginal-affairs-and-reconciliation/aboriginal-heritage/aboriginal-heritage-registers

Access to the **Central Archive** is by request using the **application form** on the AAR website. The signature of the relevant traditional owner and/or original informant of the site information must be included as confirmation of their permission to release the information to you.

Anangu Pitjantjatjara Yankunytjatjara

www.anangu.com.au

Maralinga Tjarutja

maralingatjarutja.com

Aboriginal Lands Trust

alt.sa.gov.au

South Australian Museum

Library, archives and Aboriginal family history unit

www.samuseum.sa.gov.au

Email: archives@samuseum.sa.gov.au

South Australian Native Title Services Ltd

www.nativetitlesa.org

South Australian Native Title Services Ltd delivers services to South Australia's traditional owners that promote and protect their native title rights and interests in land and waters. As the Native Title Service Provider for South Australia, its primary role is to serve native title claimants, ensuring it protects native title rights and interests and enhances the economic, social and cultural aspects of their lives.

Australian Anthropological Society

www.aas.asn.au

Australian Archaeological Association

www.australianarchaeologicalassociation.com.au

Australian Association of Consulting Archaeologists Inc.

www.aacai.com.au

National Native Title Tribunal

www.nntt.gov.au

National Native Title Register

www.nntt.gov.au/searchRegApps/NativeTitleRegisters/Pages/Search-National-Native-Title-Register.aspx

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www.petroleum.dpc.sa.gov.au

Department of State Development

Aboriginal Affairs and Reconciliation

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GPO Box 320, Adelaide SA 5001

Phone: +61 8 8226 8900

Email: DSDAARHeritageSites1@sa.gov.au

www.statedevelopment.sa.gov.au/aboriginal-affairs

South Australia Police

Police Assistance

Phone: 131 444

www.police.sa.gov.au

APPENDIX 1



ABORIGINAL HERITAGE SITES

Introduction

Aboriginal heritage sites are a fragile and irreplaceable resource. The protection and management of these is essential in preserving the knowledge of how Aboriginal people lived and used the resources in their country, not only for their traditions but as part of preserving and understanding the cultural history of South Australia.

Aboriginal sites are often recorded as single entities but rarely exist in isolation. Together they form a cultural landscape. All country is part of a cultural landscape, however, certain landforms are more likely to be Aboriginal sites or to contain evidence of Aboriginal occupation. These include:

- claypans, lakes, rivers and estuaries
 - rocky outcrops
 - dunes, sand hills and sand bodies, especially in the vicinity of water sources, wells, springs and waterholes
 - craters, rock shelters and sinkholes
 - areas within 200 m of coast and waterways
 - areas within 100 m of the banks of all other creeks, rivers, watercourses,
- lakes, waterholes, rockholes, wells and springs, especially in arid areas
 - unusual land features
 - large trees which may have scars left after bark has been removed
 - areas of natural vegetation or intact ground surface such as parks, open space and road verges
 - 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')
 - areas which are obviously different to the surrounding area or look out of place, such as mounds of shells near waterholes or regular arrangements of rocks.

The *Aboriginal Heritage Act 1988* describes the categories of sites which are protected, i.e. sites of significance to Aboriginal archeology, anthropology, history and tradition. These are discussed below.

Cultural landscape, Hookina Creek. (Courtesy of AAR; photo 415964)

Archeological sites

Archeological sites constitute the basic record of past human activity in the landscape. They may be found singly or in conjunction with other sites. They can reflect a single event in time or many years of occupation. In simple terms, archeological sites show where people were living and working, the resources they used, how they interacted with each other and what they traded with other groups. These sites are physical evidence of Aboriginal people's use and relationship with the land. Archeological sites are usually recognisable from the scattered pieces of stone left over from the manufacture of stone and wooden tools and for food preparation. They may also have stone or clay hearths or ovens with food remains such as shell and animal bone.

Sites where occupational material has accumulated to some depth are called deposits. These are often found in caves and rock shelters, but also in open areas subject to repeated use such as the banks of creeks, rivers, springs or waterholes. Deposits can often be

identified by the dark colour of the soil caused by the presence of charcoal and organic material. Many deposits are not evident until disturbed. Deposits are of scientific interest as they may contain material that can be dated.

Deposits principally consisting of food remains are called middens and typically consist of shell and fish remains. Shell middens can be distinguished from natural shell deposits because they consist mainly of a limited variety shell species of uniform size. Middens may also contain charcoal, animal bone, stone tools and human burials. Most middens occur along the coast and on the banks of estuaries, rivers, creeks and lakes. They may occur as large mounds, as deposits in sand dunes or as thin surface scatters exposed by erosion.

Archeological material may still exist in areas which have been subject to some ground disturbance. These are still covered under the Act unless formally determined not to be a site of significance by the Minister.

Midden site. (Photo 045197)



Quarry sites

An understanding of the various properties of rocks and minerals is part of traditional Aboriginal culture. Aboriginal people excavated materials such as ochre and other coloured earths and minerals for decorative and ceremonial purposes. Quarrying of pigments is evident from pits and tunnels.

Grindstone quarry

Stone with abrasive properties was quarried and used to make grindstones for food processing and grinding pigments. Aboriginal people had a comprehensive understanding of the physical properties of the rocks in their environment and used them for manufacturing stone tools. Good sources of flakable stone such as flint, chert, jasper, chalcedony and quartzite were sought after for cutting implements. Items such as ground stone axes, ochre and grindstones were part of vast trading networks with neighbouring and other groups. Many stories detail the creation of mineral deposits by ancestral beings and these deposits and other geological formations are of cultural significance today.

Anthropological sites

Sites of significance to Aboriginal anthropology are sites which demonstrate Aboriginal culture and behaviour and their use of the local environment. Examples are described below.

Scarred trees

Scarred trees occur where bark has been removed to make canoes, shields, dishes or shelters. Aboriginal people took the bark by cutting an outline, then levering off the piece as a single sheet, leaving regular scars of a characteristic size and shape. Canoe scars may extend over the length of the tree trunk. Their typical shape is an elongated oval with straight sides. Canoe trees are found throughout South Australia but are particularly common along the Murray River, and mostly on large river red gums (*Eucalyptus camaldulensis*). Scars produced by removal of bark for shields or dishes are commonly oval in shape and may be found on species such as box gums and coolibahs.

Aboriginal grindstone quarry.
(Photo 44230)



Aboriginal grindstone blank.
(Photo 44228)



Stone tools and flakes. (Photo 44224)





Canoe scar on a river red gum. (Photo 44219)

Stone arrangements

Stone arrangements can be large or small arrangements of stone, timber or earth used as ceremonial sites, hunting hides, food caches and fish traps or water storage.

Burial sites

Burials can be found singly or in groups and are often located in soft ground and in areas of regular occupation. Unless identified by a grave marker of stone or wood most burials will only become visible when exposed by erosion or excavation.

Aboriginal paintings and rock engravings

Painting sites are widely distributed in South Australia. They occur in caves, under overhanging rocks and on the sheltered sides of boulders.

Rock engravings occur on either vertical or horizontal surfaces in areas where suitably smooth hard wearing stone such as quartzite, siltstone or sandstone is found.



Rock engraving site. (Photo 44229)



*Rockhole and cover.
(Photo 044903)*



*Painting site. (Courtesy of SA Tourism
Commission; photo 043542)*

Historical sites

Historical sites postdate European settlement. The lifestyle of Aboriginal people has changed rapidly since European settlement. After many thousands of years of a nomadic lifestyle, many Aboriginal communities have had to change, initially living on missions, around pastoral stations and fringe camps around towns and settlements, to living in an urban environment.

Historic sites include but are not limited to massacre sites, ration depots, missions, settlements and places where conflict, conciliation and cooperation between Aboriginal people and Europeans occurred. These sites also form part of the wider history of South Australia.

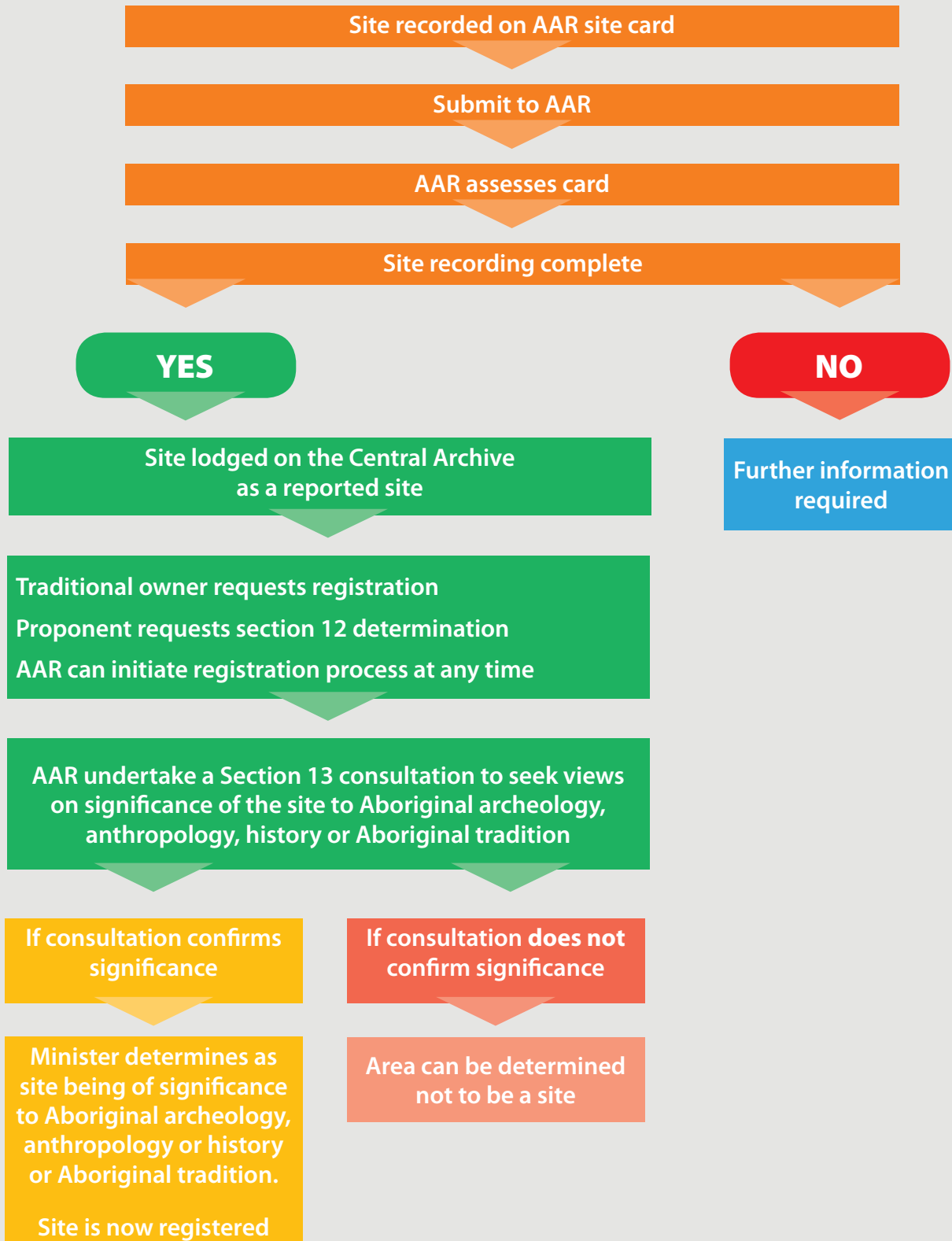
Traditional or cultural sites

Traditional sites or cultural sites are those with ceremonial and/or cultural and spiritual significance to Aboriginal people. They were previously referred to as 'sacred sites'. These sites represent a tangible manifestation of Aboriginal spiritual belief in physical form. While paintings, engravings and arrangements, burials and even occupation sites may be related to important stories and ceremonies, most cultural sites in South Australia are natural features in the landscape, ranging in size from a single tree to mountain ranges. As the stories for these sites are used to reinforce social behaviour, Aboriginal people often refer to the stories which physically link these sites in the landscape as their histories and their law.

APPENDIX 2

0

Site determination (registration) process





Traditional wurley. (Courtesy of the Department for Business, Manufacturing and Trade, SA; photo 49273)

REFERENCES

- Dortch C 2003. Rottnest Island. *West Australian* 23 June 2003.
- Hamm G, Mitchell P, Arnold LJ, Prideaux GJ, Questiaux D, Spooner NA, Levchenko VA, Foley EC, Worthy TH, Stephenson B, Coulthard V, Coulthard C, Wilton S and Johnston D 2016. Cultural innovation and megafauna interaction in the early settlement of arid Australia. *Nature* 539:280–283.

SHORTENED FORMS

- AAR Aboriginal Affairs and Reconciliation
- ILUA Indigenous Land Use Agreements
- PEPR Program for Environment Protection and Rehabilitation
- RARB Recognised Aboriginal Representative Body (Aboriginal Heritage Act)
- SEO Statement of Environmental Objectives (Petroleum and Geothermal Energy Act)

GLOSSARY

Key terms relating to Aboriginal heritage are summarised below. Legal definitions are provided in section 3 of the *Aboriginal Heritage Act 1988*.

Aboriginal site. An area of land that is of significance to Aboriginal archeology, anthropology, history or tradition.

Aboriginal object. An object that is of significance to Aboriginal archeology, anthropology, history or tradition.

Aboriginal land. Land held as freehold land by Aboriginal landholding authorities.

Aboriginal remains. The full or part skeletal remains of an Aboriginal person. It does not include remains that have been buried in accordance with the law of the state.

Aboriginal tradition. Customary practices, observances, customs or beliefs of the people who inhabited Australia before European colonisation. It includes traditions that may have evolved or developed since colonisation.

Curation. To organise and look after items on a long-term basis.

Country. In Aboriginal English, a person's land, sea, sky, river, sites, plants, animals and place of belongings, spiritually or heritage is called country.

Mining tenement. A claim, lease, licence or permit under laws of South Australia. These laws include the *Mining Act 1971*, *Opal Mining Act 1995*, *Petroleum and Geothermal Energy Act 2000*, and *Petroleum (Submerged Lands) Act 1982*.

Owner (of private land). A private owner of land that may be held in freehold, as a leasehold or licence. It includes land occupied under an agreement for sale or purchase with the government including mineral and energy resource tenements.

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