



THE UNIVERSITY
of ADELAIDE

Legal Compliance Education and Awareness

CRICOS PROVIDER 00123M

Aboriginal Heritage Act 1988

(South Australian)

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seek LIGHT

What does the Aboriginal Heritage Act do?

- ***Provides protection for:***
 - Aboriginal places
 - Aboriginal remains
 - objects and sites of significance to Aboriginal archaeology, anthropology, history & tradition
- ***Provides for the preservation of the Aboriginal heritage by:***
 - restricting land use or activities that may be undertaken in an area
 - creating Aboriginal Heritage Agreements between the state & the land owner
 - providing for central & local archives relating to Aboriginal heritage sites, objects & remains

How does the Act apply to the University?

- The University undertakes anthropological projects which involve interaction with Aboriginal people, sites, objects & remains, including;
- Native Title & land claims negotiations; &
- Heritage consultancies (conducting research on histories & cultures of Aboriginal communities)
- By publishing reports for such work, the University inadvertently creates “Aboriginal Records” which must be preserved under the Aboriginal Heritage Act

How does the Act apply to the University? (cont)

- Some University course work & research projects require physical interaction with Aboriginal sites, objects & remains, including those in the following fields;
 - *Anthropology*
 - *Geology*
 - *Linguistics*
 - *Medical Sciences*
- Some staff & students travel through Aboriginal land (including protected Maralinga land) whilst on field trips
- All campuses of the University of Adelaide are situated on traditional Kaurna land
 - There is the potential for the University (as a land owner) to be affected by an Aboriginal Heritage Agreement in the future

What does the Act apply to?

- Persons (ie: staff or students) intending to visit Aboriginal land
- Persons developing project that will require ground disturbance, for example;
 - *large or small developments*
 - *natural resource management activities*
 - *excavation*
 - *mineral exploration*
- Persons proposing to disturb, damage or interfere with a known Aboriginal site, object or remain
- Persons wanting to determine the significance of an object suspected as being of Aboriginal significance

Protection of Aboriginal objects & records

- The Act seeks to protect ***Aboriginal objects*** & ***Aboriginal records***
- ***Aboriginal object*** means an object declared by regulation as being:
 - of significance to Aboriginal archaeology, anthropology or history; or
 - of significance according to Aboriginal tradition
- ***Aboriginal record*** means a record of information that must, in accordance with Aboriginal tradition, be kept secret from a person or group of persons
- A person in possession of an Aboriginal object or record, or one suspected to be of Aboriginal heritage, may be required to surrender it to the Minister for;
 - determination of whether the object or record is of Aboriginal heritage
 - examination for the purposes of making an entry in the central or local archives
 - consideration of acquisition by the Minister of the object or record
 - research purposes

Protection of Aboriginal objects & records (cont.)

- An object or record surrendered;
 - may be retained for a period not exceeding 3 months; &
 - must be returned in the condition in which it was surrendered
- Where the owner of an Aboriginal object is found guilty of an offence under the Act, the court may order that the object be forfeited
- *It is an offence:*
 - *To fail to protect an Aboriginal object that is in your ownership or possession as part of a public or private collection*
 - *To sell or disposal of an Aboriginal object without authorisation*
 - *To remove an Aboriginal object from the State without approval*

Protection of Aboriginal remains

- The Act seeks to protect ***Aboriginal remains***
- ***Aboriginal remains*** means an area of land declared by regulation as being the whole or part of skeletal remains of an Aboriginal person
 - Aboriginal remains do not include remains that have been buried in accordance with the law of the State (as opposed to Aboriginal tradition)
- Some areas & landforms (listed on the following page) are more likely to contain evidence of Aboriginal occupation & as a result, are more likely to have some impact on Aboriginal sites, objects or remains

Area & landforms that are more likely to contain evidence of Aboriginal occupation

- claypans, lakes, rivers & estuaries
- areas within 2km of coasts & major waterways
- areas within 100m of the banks of all other creeks, rivers, watercourses, lakes, waterholes, rock holes, wells & springs, especially in arid areas
- rocky outcrops
- dunes, sand hills & sand deposits, especially in the vicinity of water sources, wells, springs & waterholes
- craters & sinkholes
- unusual land features
- areas of bush, forested areas, natural vegetation or intact ground surface
- places bearing Aboriginal names, or place names that are English translations of Aboriginal names or reflections of Aboriginal interaction with the landscape

Protection of Aboriginal Sites

- The Act seeks to protect **Aboriginal sites**
- **Aboriginal site** means an area of land declared by regulation as being:
 - of significance according to Aboriginal tradition; or
 - of significance to Aboriginal archaeology, anthropology or history
- The presence of an Aboriginal site places restrictions on what can be done to the land
- Anyone who wants to use land for research, development or any other cause, must investigate whether there is an Aboriginal heritage site on the land
- *It is an offence:*
 - *To damage, disturb or interfere with any Aboriginal site, object or remains without authorisation*
 - *To divulge the location of a new Aboriginal site to anyone, other than the Minister*

Commonwealth protection for Aboriginal items & sites

- The [Aboriginal & Torres Strait Islander Heritage Protection Act 1984 \(Cth\)](#) provides an additional layer of protection for South Australian indigenous heritage
- In an Aboriginal item or site of significance under the State Act was not protected, relevant Aboriginal people could seek protection under the Federal Act
 - The Federal Act can only be evoked if the State Act has failed to protect an Aboriginal item or site
- The Commonwealth Minister who is responsible for administering the ATSIHP Act can make declarations to protect areas & objects from specific threats of injury or desecration
- Declarations can stop activities & override other approvals, but cannot order people to carry out activities such as conservation or repairs to damaged areas

Registering Aboriginal sites, objects & remains

- The State Aboriginal Heritage Branch maintains a Central Archive, which includes a Register of Aboriginal sites, objects & remains
- Archives include the location & detailed descriptions of reported sites & objects (currently about 8,000)
- The Minister will 'determine' whether a site or object is an Aboriginal site or object in consultation with;
 - the Aboriginal Heritage Committee
 - traditional land owners
 - appointed Aboriginal Heritage inspectors; &
 - other Aboriginal persons who have an interest in the matter

Aboriginal Heritage Agreements

- The Minister may enter into an Aboriginal Heritage Agreement with the owner of land on which any Aboriginal site, object or remains is situated
- The Agreement will usually contain provisions for the protection or preservation of Aboriginal sites, objects or remains
- The Agreement attaches to the land & is binding on the current owner of the land, whether or not that owner was the person with whom the Agreement was made
- All reasonable steps must be taken to give traditional owners of an Aboriginal site or object on the land (or their representative) an opportunity to become parties to the Agreement

What does an Aboriginal Heritage Agreement do?

An Aboriginal Heritage Agreement may do any one of the following;

- Restrict the use of land to which it applies
- Require specified work to be carried out in accordance with specified standards on the land
- Restrict the nature of work that may be carried out on the land
- Provide for the management of the land or any Aboriginal site, object or remains in accordance with a particular management plan
- Provide for financial, technical or other professional advice or assistance to the owner of the land for maintenance, protection or preservation purposes
- Provide for remission of land rates or taxes

What can happen if I don't comply?

Individual Consequences:

- Fines of up to \$10 000 or imprisonment for 6 months;
 - For unauthorised removal of any Aboriginal heritage object or remains; or
 - For failure to report the discovery of an Aboriginal site or an Aboriginal object or remains
- A breach of the Act may be considered misconduct actionable under the University's Enterprise Agreement
- Where a staff member acting in the course of his or her employment commits certain offences under the Act, the University is also guilty of an offence & is liable to the same penalty

What can happen if I don't comply? (cont)

University Consequences:

- Negative publicity
 - Damage to the University's reputation
 - Funding, research agreements & opportunities may be compromised
 - Attraction & retention of staff & students may be compromised
- Fines of up to \$50,000;
 - For failing to protect an Aboriginal object that is in your ownership or possession as part of a public or private collection; or
 - For unauthorised damage, disturb or interfere with any Aboriginal site, object or remains

University obligations under the Act:

Staff who are planning projects that may require ground disturbance

- Be familiar with your responsibilities under the Act
 - Seek clarification from Dr Deane Fergie, Senior Lecturer (Anthropology) if you are unsure
 - deane.fergie@adelaide.edu.au
 - 8313 5733
- Address Aboriginal heritage issues early in the initial project planning

If you are planning to visit indigenous land:

- Following the correct authorisation procedures & obtain any necessary permits
- Consult with relevant communities (aboriginal or other) where necessary
 - Incorporate government & community timeframes
 - Allow sufficient time for the consultation to be completed
- Be aware that certain areas & landforms are more likely to contain evidence of Aboriginal occupation & as a result, are more likely to have some impact on Aboriginal sites, objects or remains

University obligations under the Act:

Discovery of Aboriginal sites, objects or remains

- In the event that an Aboriginal site, object or remains is discovered, immediately report it to the Minister
 - Failure to do so results in fines of up to \$50,000 or 6 months imprisonment
- If an Aboriginal burial site is found, the discovery of human remains must be reported to the Police (in compliance with the Coroners Act 2003) & to the Aboriginal Heritage Branch
 - the burial should not be disturbed
 - any work or other activities in the vicinity that may disturb the ground surface or otherwise affect the Aboriginal sites, objects or remains must be stopped
- Seek authorisation of the Minister if you wish to sell, dispose of, or take an Aboriginal object or remain interstate

Additional Resources

- Deane Fergie
Director, Australian Native Title Studies
Senior Lecturer, Anthropology
deane.fergie@adelaide.edu.au
 - 8313 7197
- [Aboriginal Heritage Act 1988](#)
- [Aboriginal Heritage Act Review](#)
- [Aboriginal & Torres Strait Islander Heritage Protection Act 1984 \(Cth\)](#)
- [Maralinga Tjarutja Land Rights Act 1984 \(SA\)](#)
- Department of State Development Aboriginal Affairs and Reconciliation
 - 8226 8900
- [Aboriginal Affairs & Reconciliation Publications](#) (Department of State Development)
- [University of Adelaide Wirrtu Yarlur website](#)



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Disclaimer

The content of this material is intended only to provide a summary & general overview of the *Aboriginal Heritage Act* as it applies to the University of Adelaide.

It is not intended to be comprehensive nor does it constitute legal advice.

Please contact *Deane Fergie* or the Legal and Risk Branch if you are unsure of your compliance obligations under the Act.