



Local Heritage Agreements

What is a local heritage agreement?

A local heritage agreement is an agreement between a land use proponent (e.g. a miner, developer or government agency) and a Registered Aboriginal Representative Body (RARB) that deals with the impact of the proponent's activities on any Aboriginal sites, object or remains (Aboriginal heritage) in the area covered by the agreement.

What is the purpose of a local heritage agreement?

A land use proponent or a qualified archaeologist who seeks to excavate land to uncover any Aboriginal heritage¹ or whose activity may damage, disturb or interfere with Aboriginal heritage² may enter into a local heritage agreement with a RARB so that impacts to Aboriginal heritage are managed in culturally appropriate ways and in agreement with the traditional owners. The agreement must be submitted to the Minister for Aboriginal Affairs and Reconciliation (the Minister) for approval, accompanied by the relevant application to the Minister for authorisation to undertake these activities.³

The Minister may, if he or she is satisfied that the agreement deals satisfactorily with any sites, objects or remains that may be located in the relevant area, approve the agreement. Once approved, the Minister must grant an authorisation to the proponent to excavate the land or to damage, disturb or interfere with any sites, objects or the remains on the condition that the proponent complies with the agreement. A proponent who undertakes such activities and damages, disturbs or interferes with Aboriginal heritage without the Minister's authorisation may be liable for criminal prosecution under the *Aboriginal Heritage Act 1988* (the Act).

A local heritage agreement is an optional arrangement for the parties

A local heritage agreement is made between a land use proponent and a RARB. When a proponent's activities require authorisation under the Act, there are two options available to them to gain the authorisation:

- Once parties have entered into a local heritage agreement about the proposed impact on Aboriginal heritage, the proponent then submits this agreement with the application to the Minister for authorisation. If the Minister approves the agreement, he or she must then grant the requested authorisation; or
- When a Local Heritage Agreement between a RARB and proponent cannot be achieved, the application for authorisation will be processed in accordance with the consultation provisions in the Act and the Minister will consult with all the relevant Aboriginal stakeholders and the State Aboriginal Heritage Committee before deciding whether or not to grant the authorisation requested.

¹ Cf section 21 *Aboriginal Heritage Act 1988*

² Cf section 23 *Aboriginal Heritage Act 1988*

³ See Information sheets: *How to apply under section 21 of the Aboriginal Heritage Act 1988* and *How to apply under section 23 of the Aboriginal Heritage Act 1988* respectively.

The maximum penalties for damaging, disturbing or interfering with Aboriginal sites, objects or remains without the authorisation of the Minister for Aboriginal Affairs and Reconciliation is \$50,000 for a body corporate and in any other case \$10,000 or six months' imprisonment.

A RARB is a person or organisation appointed under the Act that can ascertain and represent the views of the relevant traditional owners in relation to a specific area, Aboriginal site, object or remains. The RARB may elect not to enter into a local heritage agreement for any reason it deems appropriate. In this case the proponent will need to seek authorisation directly from the Minister as described above. Also, there may be Aboriginal sites, object or remains or specific areas for which no RARB has yet been appointed. In this case the proponent will need to seek authorisation directly from the Minister.

What terms and conditions must go into a local heritage agreement?

A local heritage agreement must contain the provisions, and set out the information, required by the regulations and these guidelines. An agreement may also contain any other provisions that the parties deem necessary.

Regulation 5 of the *Aboriginal Heritage Regulations 2016* sets out the following provisions and information that must be included in a local heritage agreement:

- (a) a provision setting out the area to which the agreement relates;
- (b) subject to the confidentiality of information required under the Act,⁴ a provision setting out any Aboriginal site, Aboriginal object or Aboriginal remains that are known to be in the area to which the agreement relates;
- (c) a provision setting out the proposed activities to which the agreement relates;
- (d) a provision setting out what steps are to be taken in the event of the discovery of an Aboriginal site, Aboriginal object or Aboriginal remains;⁵
- (e) a provision providing that, subject to the Act, any question arising as to the significance of a particular Aboriginal site or Aboriginal object to Aboriginal tradition, archaeology, anthropology or history is to be decided by the RARB in respect of the area, site, object or remains;
- (f) a provision limiting the costs or charges payable by all parties in relation to the agreement;
- (g) a provision setting out the processes for resolving disputes arising in relation to the agreement;
- (h) information explaining the process by which the agreement was negotiated (including information relating to any consultation undertaken during the negotiation process).

Approval of a local heritage agreement by the Minister

A local heritage agreement must be submitted to the Minister in the prescribed manner and form.⁶ The Minister may approve a local heritage agreement if he or she is satisfied that the agreement satisfactorily deals with Aboriginal sites, objects or remains known to be, or that may be, located in the area where the proposed activities are to take place.

⁴ Cf section 10 and section 35 of the *Aboriginal Heritage Act 1988*

⁵ See Information Sheet x

⁶ See xxxxx

When deciding whether or not to approve an agreement, the Minister must have regard to the matters set out in the regulations. These are:

- (a) whether the traditional owners of any area, Aboriginal site, Aboriginal object or Aboriginal remains affected by the proposed local heritage agreement were consulted, and agreed to, the agreement being entered into;
- (b) whether the terms of any payment that has been, or is to be paid, to a RARB, traditional owner or any other person in relation to the agreement is reasonable;
- (c) any relevant information (being information of which the Minister is aware) kept in the central archive or local archives.⁷

If the Minister is not satisfied with any relevant matters, he or she may send the local heritage agreement back to the parties for further negotiation and agreement.

Authorisation granted after agreement is approved

The Minister must grant an authorisation after he or she has approved an agreement. As indicated above, it is a condition of every authorisation that the person authorised complies with the terms of the local heritage agreement. If the authorised person fails to comply with the terms of the agreement, the authorisation will be voided.

Additionally, the Minister may impose other conditions on an authorisation but such conditions cannot be inconsistent with the terms of the agreement. If they are inconsistent they will be taken to be void and of no effect.

When does a local heritage agreement commence and terminate under the Act?

An approved local heritage agreement comes into effect on the date the associated authorisation is granted by the Minister unless a commencement date that falls earlier than that date is specified in the agreement, but never earlier than the agreement is approved by the Minister.

An agreement terminates on whichever of the following event occurs first:

- (a) a date specified in the agreement; or
- (b) the authorisation ceases to have effect and all requirements under the agreement have been satisfied; or
- (c) the agreement is revoked in accordance with the Act.

Variation and revocation of agreements

A local heritage agreement may, with the written agreement of all the parties to the agreement and with the approval of the Minister, be varied or revoked.

Enforcement of a local heritage agreement

If a party fails to comply with the agreement, or it appears that they may do so, any other party may apply to the District Court for any orders necessary to secure compliance with the local heritage agreement, or to remedy the default, and to deal with any related or incidental matters.

⁷ Central and local archives for the storing of heritage information have been established under the Act.

Further Information

Department of State Development - Aboriginal Affairs and Reconciliation (DSD-AAR)

GPO Box 320, Adelaide SA 5001

Telephone: (08) 8226 8900

Website: www.statedevelopment.sa.gov.au/AHA