



Agreements under Division A2 of the *Aboriginal Heritage Act 1988*

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What is a Division A2 agreement?

A Division A2 agreement is an agreement made under legislation other than the *Aboriginal Heritage Act 1988*, but that is approved by the Minister for Aboriginal Affairs and Reconciliation (the Minister) and which deals with the impact of a land use proponent's (e.g. a miner, developer or government agency) activities on Aboriginal sites, objects or remains (Aboriginal heritage) in the area covered by the agreement.

Agreements made under other legislation that currently have effect under the *Aboriginal Heritage Act 1988* (the Act) are:

- (a) an indigenous land use agreement under the *Native Title Act 1993* of the Commonwealth (NTA);
- (b) an agreement under Part 2 Division 3 Subdivision P of the NTA;
- (c) a native title mining agreement under the *Mining Act 1971* or the *Opal Mining Act 1995*; and
- (d) an agreement made under the *Land Acquisition Act 1969* relating to native title rights and made in relation to a prescribed private acquisition (within the meaning of that Act).

Further agreements may be included in Division A2 by a declaration made in the regulations.

What effect does a Division A2 agreement have under the *Aboriginal Heritage Act 1988*?

It is accepted practice for Division A2 agreements to deal with the possibility of prosecution under section 23 of the Act (for damage, disturbance or interference with Aboriginal heritage) by way of avoidance of known Aboriginal sites. Therefore, section 21 (which deals with excavations undertaken to uncover Aboriginal heritage) and section 23 do not apply in relation to activities done in accordance with the agreement, where that agreement has been approved by the Minister (see below).

This means, in effect, that a party who has made a Division A2 agreement that is subsequently approved by the Minister need not take any further measures (other than conducting their activities in accordance with the agreement) to avoid prosecution under sections 21 or 23 of the Act.

The Minister must approve a Division A2 agreement before it takes effect

The Minister may approve a Division A2 agreement on application or on his or her own motion. The approval may be conditional or unconditional. Before approving an agreement, the Minister must consult with the State Aboriginal Heritage Committee (the Committee) and may consult with others if he or she thinks fit.

The Minister may only approve an 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 to which the agreement relates.

Variation, revocation or suspension of approval

The Minister may vary, revoke or suspend an approval of a Division A2 agreement for any reason he or she deems appropriate. Before doing so, the Minister must consult with the Committee and may consult with others if he or she deems necessary.

Register of Agreements

The Minister has established a register consisting of Division A2 agreements and local heritage agreements.¹ The register contains information required by the regulations and may contain other such information as the Committee deems relevant.

The register may only be inspected in accordance with the regulations² and the Governor may only make regulations on the recommendation of the Minister given after consultation with the Committee.

Further Information

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¹ Cf Guideline *Local Heritage Agreements*

² Cf section x of the AHA Regulations and Guideline No. x