



# 0 Recognised Aboriginal Representative Bodies

## Introduction

The *Aboriginal Heritage Act 1988* (the Act) allows for the appointment of Recognised Aboriginal Representative Bodies (RARBs) to manage the effects of exploration, mining, development and other activities on Aboriginal heritage across South Australia.

A RARB is organisation that can enter into a Local Heritage Agreement (under the Act) with proponents to manage the effects of project works on Aboriginal sites, objects or remains within a project area. A RARB may negotiate a Local Heritage Agreement with a proponent when either an application for authorisation to damage, disturb or interfere with Aboriginal heritage<sup>1</sup>, or an application to excavate for the purpose of uncovering of an Aboriginal site, object or remains<sup>2</sup> is lodged under the Act.

A land use proponent whose activity may damage, disturb or interfere with Aboriginal sites, objects or remains or a person proposing to undertake archaeological research who seeks to excavate land to uncover any Aboriginal site, object or remains and who has made an application to the Minister for Aboriginal Affairs and Reconciliation (the Minister) to be authorised to undertake these activities, 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.

A Local Heritage Agreement is submitted to the Minister who may approve the agreement, 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. 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 remains on the condition that the proponent complies with the agreement. Local Heritage Agreements do not displace agreements reached by Registered Native Title bodies under Native Title or other acts. However, agreements made by a Registered Native Title Body Corporate can be lodged for approval under the *Aboriginal Heritage Act 1988*.

To be appointed as a RARB for an area, an Aboriginal site, object or remains, a corporate body must be able to demonstrate to the State Aboriginal Heritage Committee that it is able to ascertain and represent the views and knowledge of the traditional owners of the relevant area. A RARB may be appointed by the State Aboriginal Heritage Committee (the Committee) for:

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

## RARBs established under the Act

Anangu Pitjantjatjara Yankunytjatjara (APY) is established under the Act as the RARB for the APY Lands as defined by the *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981*.

Maralinga Tjarutja (MT) is established under the Act as the RARB for the MT Lands as defined by the *Maralinga Tjarutja Land Rights Act 1984*.

<sup>1</sup> Cf section 23 *Aboriginal Heritage Act 1988*

<sup>2</sup> Cf section 21 *Aboriginal Heritage Act 1988*

A Registered Native Title Body Corporate (RNTBC) is taken to be the RARB for the area of the relevant Native Title determination under the *Native Title Act 1993*, subject to the approval of the State Aboriginal Heritage Committee.

### **Registered Native Title Body Corporates**

Registered Native Title Body Corporates (RNTBCs) represent traditional owners who have established their connection to country under rigorous legal processes. Under the Act, these organisations are taken to be the RARB in respect of the native title determination area, including areas where native title has been extinguished or suppressed. However, the appointment must be approved by the Committee before the organisation can exercise its functions as a RARB.

Prior to the Committee approving the appointment of an RNTBC as a RARB, the Committee will write to the RNTBC and seek confirmation of details including contact details and the boundary of the area over which the corporation is taken to be the RARB. The RNTBC may elect not to be the RARB for the area or part of the area, or for particular sites within the area, and notify the Committee of this decision.

The Committee's intended decision to approve the appointment of the RNTBC will be published on the DSD-AAR website and in a local newspaper and other interested parties may comment on the Committee's intended decision for up to 60 days before the decision is made. At the end of the 60 days, the Committee will consider any material or comments submitted and the RNTBC will be notified in writing of the decision. The Committee's decision will also be published on the DSD-AAR website and an appointment will be entered on the Register of Recognised Aboriginal Representative Bodies.

### **Other Aboriginal organisations**

In areas outside of the APY and MT Lands and where a RNTBC has not been approved for appointment as the RARB any Aboriginal body can apply to be the RARB. This includes:

- The relative native title claimants (or specified members) for an area
- An Aboriginal party (or specified members) in respect to an area subject to an indigenous land use agreement

### **Applications**

An application should be made using the RARB application form and include:

- Name of body corporate as the applicant
- Address of the body corporate
- The name of each director
- Preferred contact name and address for all correspondence
- Evidence of incorporation
- Evidence that the decision to apply to be a RARB has been passed as a legal decision by the members of the body corporate
- A description of the boundary of the area that is the subject of the application
- If the application is for specified Aboriginal sites, objects or remains, a description of the Aboriginal sites, objects or Aboriginal remains and their locations
- Material to support the claim that the applicant is able to ascertain and represent the views of the traditional owners. This type of evidence may include:
  - A copy of any native title claim for all or part of the land related to the application (if applicable)

- A copy of any indigenous land use agreement (if applicable)
- Land and resource arrangements with Government
- Grants of land
- Details of traditional or familial links to the area, site, object or remains
- A description of how these links are recognised by the traditional owners of the area and by other Aboriginal groups
- Evidence of being the primary Aboriginal party in cultural heritage management plans and agreements in the area
- Any other relevant evidence.

An applicant must be a body corporate that has perpetual succession and a common seal and can sue and be sued in its corporate name.

### **Multiple Applications**

If the Committee receives more than one application for appointment as a RARB in respect of a particular area, or a particular Aboriginal site, object or remains, the Committee should give priority to the applicant that the available evidence suggests has the strongest affiliations with, and responsibility for, the area, site, object or remains in accordance with Aboriginal tradition. The Committee may ask applicants to submit further information to assist the Committee in making decisions in relation to multiple applications.

### **Mediation**

The Committee may, if it considers appropriate to do so, attempt to resolve any dispute relating to multiple applications by mediation between parties. Where the Committee seeks mediation between parties, the Committee may appoint a suitable person accredited under the National Mediator Accreditation Scheme (NMAS) who has experience in mediating between Aboriginal communities. Mediation should be conducted under the NMAS Practice Standards, which is a process that uses the skills of an accredited mediator to assist the participants to make their own decisions in relation to disputes, conflicts or differences among them.

Mediation should be limited to a reasonable attempt to reach a resolution on the issue of the RARB application and should conclude within a reasonable timeframe and cost.

The outcomes of mediation should be reported to the Committee.

### **Joint Applications**

Individuals or organisations may submit a joint application to be the RARB for a specified area, site, object or remains. A joint application would need to be from a single body corporate that includes membership of all the interested parties. The applicant would need to provide evidence that the organisation can ascertain and represent the knowledge and views of the traditional owners from all the groups relevant to the area, site, object or remains.

### **Approval of Appointments**

Approval for appointment as a RARB is given by the Committee. Prior to approving the appointment of a RNTBC as a RARB, the Committee will notify the RNTBC of its intention to approve their appointment. All other appointments will be considered by the Committee on application.

The Committee's considerations will be published on the DSD-AAR website and a notice published in a relevant local newspaper at least 60 days before a decision on an approval is made. Applicants will be notified in writing of the Committee's decision and all appointments will be recorded on the Register of Recognised Aboriginal Representative Bodies.

### **Register of Recognised Aboriginal Representative Bodies**

Information available to the public from the Register of RARBs includes the corporation's name and number, date of registration, area of appointment and name and address of the contact person. The Register may also show links to key public documents, such as the corporation's rule book, held by the office of the Registrar of Indigenous Corporations.

Any site information submitted with an application will remain held or be put into the central archive and remain confidential and subject to section 10 and section 35 of the *Aboriginal Heritage Act 1988*.

### **Responsibilities of a RARB**

Once appointed, a RARB must conduct itself in a manner consistent with its obligations under the Act in that it must maintain its capacity to ascertain and represent the views and knowledge of the traditional owners for the area, site, object or remains that is the subject of their appointment.

It is expected that where a RARB enters into negotiation for a local heritage agreement, it negotiates in good faith. Should the negotiation fail, the RARB should notify the Minister in writing of the failed negotiation as part of any subsequent consultation processes under section 13 of the Act and provide an indication of the points upon which the negotiation failed. There is no obligation for a RARB to enter into negotiation for a local heritage agreement.

In accordance with regulation 4 of the *Aboriginal Heritage Regulations 2016*, a RARB must notify the Committee within three months of any changes to:

- (a) The name and address of the body corporate constituting the RARB
- (b) The name of each person who is a director or member of the body corporate constituting the RARB
- (c) The address and contact details of the principal place of business of the RARB
- (d) Subject to section 10 of the Act, the description of the area, Aboriginal site, object or remains in respect of which the RARB is determined or appointed
- (e) If appointed under section 19(B), the relevant native title claim or indigenous land use agreement (as the case requires).

### **Revocation and suspension of a RARB**

Under the Act, APY and MT are established as the RARB for their respective lands and there is no provision for these bodies to elect not to be appointed the RARB.

RNTBCs may elect not to be appointed as the RARB for their native title area. If an RNTBC elects not to be appointed, they must notify the Committee in a manner and form determined by the Committee. If this occurs, the area for which the RNTBC elects not to be a RARB will be taken to have been revoked and any other Aboriginal corporation may apply to become the RARB for that area.

RARBs may request that the Committee revokes or suspends their appointment as a RARB. For example, a RARB may request a suspension for a temporary period due to sorry business

or other community issues. In another example, a RARB may request revocation of appointment as a RARB for part of their area to allow specific traditional owners who have cultural authority and responsibility for specific sites to apply to be the RARB for the area including those sites.

Appointment of a RARB may be revoked or suspended by the Committee if:

- The RARB is no longer able to ascertain and represent the views and knowledge of the traditional owners of the relevant area, site, object or remains
- The RARB has failed or refused, or is likely to fail or refuse, to perform a function under the Act
- The RARB has acted in a manner that is, in the Committee's opinion, at variance with the objects of the Act.

The Minister may revoke or suspend the appointment of a RARB for any reason he or she deems appropriate.

Notice will be given in writing of the decision to revoke or suspend appointment as a RARB for a particular area and any decisions related to reappointment. Where the appointment of a RARB has been revoked, the status of that area of South Australia will be noted on the Register of RARBs as vacant.

### **Further Information**

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