



Government
of South Australia
Department of
State Development

Division A2 Agreements **Guideline 2**

www.statedevelopment.sa.gov.au/AHA



Introduction



The *Aboriginal Heritage Act 1988* (Heritage Act) protects heritage in South Australia, including from the impacts of excavation, damage, disturbance or interference. Aboriginal heritage includes Aboriginal ancestral remains, sites and objects (heritage).

The Heritage Act was recently changed to recognise Aboriginal people as primary decision makers about their own heritage. This includes the Act now giving status to agreements Aboriginal people make about their heritage.

Aboriginal people make agreements about their heritage all the time. This includes agreements made under legislation. These agreements can allow for heritage to be excavated, damaged, destroyed or interfered with.

Before, even with such an agreement, the Heritage Act required the Minister for Aboriginal Affairs and Reconciliation (Minister) to run a formal consultation process to consider the idea with Traditional Owners and others.

Now, the Heritage Act allows the Minister to approve some agreements made under Acts other than the Heritage Act, streamlining the process for authorising impacts to heritage where the relevant Traditional Owners have already agreed to it.

What is a Division A2 Agreement?

A Division A2 agreement is an agreement with provisions about heritage impacts made by an Aboriginal group (usually the Registered Native Title Body Corporate) under an Act other than the Heritage Act, which has been approved by the Minister. It is called a Division A2 Agreement simply because the new powers to recognise such agreements sit in Division A2 of the Heritage Act.

Division A2 of the Heritage Act allows recognition of the following types of agreements:

- *Native Title Act 1993 (Cth)* agreements – this includes Indigenous Land Use Agreements (ILUAs) and other Native Title Act agreements¹
- *Mining Act 1971 (SA)* native title mining agreements
- *Opal Mining Act 1995 (SA)* native title mining agreements
- *Land Acquisition Act 1969 (SA)* native title rights agreements.

Further agreements and legislation may be recognised under Division A2 over time.

DSD-AAR can help you to work out whether an agreement you have signed is approvable under Division A2 of the Heritage Act.

Approval of Division A2 Agreements

To be given status under the Heritage Act, Division A2 agreements must first be approved by the Minister. The Minister may only approve an agreement if satisfied that it satisfactorily deals with both known and unknown heritage in the area to which the agreement relates.

You may submit an agreement for consideration under Division A2 by providing a copy of it with the approval request form found on the DSD-AAR website. The Minister may also approve agreements by his or her own motion. Approvals may be conditional.

Before approving a Division A2 agreement, the Minister must consult with the State Aboriginal Heritage Committee (Committee), and may consult with others to become satisfied that the agreement adequately deals with heritage.

Once approved, the Minister may vary, revoke or suspend an approval of a Division A2 agreement for any reason he or she deems fit. Before doing so, the Minister must consult with the Committee and may consult with others as well.

If the Minister is considering revoking approval of your Division A2 agreement, he or she will advise you of this, give you a chance to respond and will consider your submissions before making a final decision.

What is the effect of a Division A2 agreement?

Section 21 of the Heritage Act restricts excavations of heritage while section 23 restricts damage, disturbance or interference of heritage. Breaching those provisions can result in fines up to \$50,000 and six months' imprisonment.

If a land use proponent (eg a miner, researcher or a government department) has an approved Division A2 agreement that allows for the excavation, damage, disturbance or interference with heritage, sections 21 and 23 do not apply to the agreed actions.

Unlike the procedures usually required by those sections, if there is an approved Division A2 agreement, proponents do not have to apply to the Minister for an authorisation, the Minister does not have to undertake a consultation process and the proponent will not be prosecuted for actions taken in accordance with the approved agreement.

Importantly, exemptions from sections 21 and 23 only apply to acts or omissions done in accordance with an approved Division A2 agreement. A party to a Division A2 agreement that makes an act or omission outside of the terms of that agreement remains fully liable to prosecution under sections 21 and 23 of the Heritage Act.

1. That is, 'right to negotiate' agreements allowed under Part 2 Division 3 Subdivision P of the NTA.

Register of Agreements

The Minister keeps a register of Division A2 agreements. This register also contains copies of local heritage agreements made directly under the Heritage Act. This is known as the Register of Agreements.

This Register of Agreements is not available to the public. Agreements on it may only ever be inspected with the agreement of all parties to it and in accordance with any additional requirements of the Committee.

Further Information

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