



Cultural Heritage Legislation (Indigenous and non-Indigenous) Guidelines

Contents

Purpose.....	2
Summary of Australian cultural heritage legislation.....	2
Federal - <i>Environment Protection and Biodiversity Conservation Act 1999</i>	4
Federal - <i>Historic Shipwrecks Act 1976</i>	6
Queensland – <i>Aboriginal Cultural Heritage Act 2003 and Torres Strait Islander Cultural Heritage Act 2003</i>	8
Queensland – <i>Queensland Heritage Act 1992</i>	10
Northern Territory – <i>Heritage Act 2011</i>	11
Northern Territory – <i>Aboriginal Sacred Sites Act 1989</i>	12
Western Australia – <i>Aboriginal Heritage Act 1972</i>	13
Western Australia – <i>Heritage of Western Australia Act 1990</i>	15
South Australia – <i>Aboriginal Heritage Act 1988</i>	16
South Australia – <i>Heritage Places Act 1993</i>	17
New South Wales – <i>National Parks and Wildlife Act 1974</i>	19
New South Wales – <i>Heritage Act 1977</i>	20
Victoria – <i>Aboriginal Heritage Act 2006</i>	21
Victoria – <i>Heritage Act 2017</i>	23
Tasmania – <i>Aboriginal Heritage Act 1975</i>	25
Tasmania – <i>Historic Cultural Heritage Act 1995</i>	27
Australian Capital Territory – <i>Heritage Act 2004</i>	29
Change history.....	30

Purpose

This guide supports the [Land Access and Cultural Heritage Policy](#)¹ and [Procedures](#)² by providing an overview of Australia's federal, state and territory cultural heritage legislation as it relates to Geoscience Australia's fieldwork activities. It covers both Indigenous and non-Indigenous cultural heritage, and what field workers must do in regards to protecting cultural heritage in each jurisdiction. It does not cover local council laws and regulations. For information about local council laws and regulations contact the relevant local council.

Only the most relevant and primary offences in regards to causing environmental harm are reflected here. Other related yet secondary offences are omitted, such as not complying with permits, notices, directions or orders. For more information on these offences, refer to the relevant legislation, permit, notice, direction or order. You must comply with these requirements.

In most cases, the legislation has been abbreviated or paraphrased for ease of reading and consistency. Please refer directly to the legislation if you require the precise wording.

Summary of Australian cultural heritage legislation

The following dot points are a summary of Australian cultural heritage legislation. Please refer to the detailed information in the sections below for the specific details regarding the jurisdiction you will be working in.

- 'Cultural heritage' has different meanings across jurisdictions. Refer to the relevant legislation for each jurisdiction's specific definition. Generally, it can be defined as:
 - 'The total ways of living built up by a group of human beings, which is passed from one generation to the next'³; and
 - 'The legacy of physical artefacts and intangible attributes of a group or society that are inherited from past generations, maintained in the present and bestowed for the benefit of future generations'⁴.
- Importantly, cultural heritage includes both tangible and intangible attributes, and may not be formally recognised or registered. Examples of cultural heritage include but are not limited to:
 - buildings, such as residential, commercial, industrial, religious and civic buildings
 - infrastructure, such as mines, roads, ports and railways
 - landscapes and parcels of land, such as geological and other natural features, suburbs and towns, parks, caves, stands of trees, gardens and vegetation
 - archaeological and historical features or objects, such as evidence of habitation or land use (including ceremonial sites, grinding grooves, artefact scatters, art sites, scarred trees or shell middens), tools, ruins, remains, shipwrecks, burial grounds and sacred sites

¹ D2018-32673

² D2018-96607

³ <http://www.australia.gov.au/about-australia/australian-story/austn-indigenous-cultural-heritage>

⁴ <http://www.unesco.org/new/en/cairo/culture/tangible-cultural-heritage/>

- intangible phenomena, such as customs and language.
- All states and territories prohibit harm or damage to cultural heritage, although they differ in defining what activities may constitute harm or damage.
- As most non-Indigenous heritage places are private property, you usually require the owner's permission to access the place, as well as permits/approvals in regards to heritage protection.
- Similarly, you may require permission from Indigenous land owners to enter Indigenous land, as well as any relevant permits/approvals in regards to Indigenous cultural heritage or sacred sites.
- A majority of states and territories place the onus on individuals to not harm or damage cultural heritage by exercising due diligence and risk management when undertaking an activity that may impact cultural heritage. This may include developing a management plan in regards to the activity. Some states and territories require individuals to apply for a permit to enter cultural heritage sites, while others can provide optional authorisations that provide indemnity against prosecution.
- In some states and territories, some offences may be defensible if:
 - you exercised due diligence, which may include following the jurisdiction's procedures and guidelines, developing and following a cultural heritage management plan and/or followed the conditions of a permit or authorisation; or
 - you caused the harm or damage to prevent harm to life or property in an emergency situation.
- Most jurisdictions do not legislate a requirement to report damage of cultural heritage. However, as representatives of the Australian Government, and to reduce any further harm, damage, legal liability or offence you should report any damage of cultural heritage to the relevant authority (usually the jurisdiction's heritage council or department) as soon as is practicable.
- If you discover any actual or suspected cultural heritage sites or items, including aboriginal human remains, most jurisdictions require you to stop work around the site/item immediately and report the discovery.

Federal - *Environment Protection and Biodiversity Conservation Act 1999*⁵

WHAT MUST YOU DO OR NOT DO?

§ 12(1) – You must not take an action that has, will have or is likely to have a significant impact on the world heritage values of a declared [World Heritage Property](#)⁶ (a property included in the World Heritage List or declared to be a World Heritage Property by the Minister). This is a civil offence.

§ 15A – You must not take an action that results, will result or is likely to result in a significant impact on the world heritage values of a declared [World Heritage Property](#)⁷. This is a criminal offence.

§ 15B – You must not take an action that results, will result or is likely to result in a significant impact on the National Heritage values, including indigenous heritage values, of a National Heritage place.

The [Department of the Environment and Energy](#)⁸ defines ‘significant impact’ as:

an impact which is important, notable, or of consequence, having regard to its context or intensity. Whether or not an action is likely to have a significant impact depends upon the sensitivity, value, and quality of the environment which is impacted, and upon the intensity, duration, magnitude and geographic extent of the impacts. You should consider all of these factors when determining whether an action is likely to have a significant impact on the environment.

WHEN IS A PERMIT/APPROVAL REQUIRED?

You require [an approval](#)⁹ from the Minister for the Environment and Energy for proposed actions that could have a significant impact on any of the nine matters of national environmental significance, which includes national heritage places (some national heritage places are also World Heritage Properties).

The Department of Environment and Energy have a tool to generate a report that will help determine whether matters of national environmental significance or other matters protected by the *Environment Protection and Biodiversity Conservation Act 1999* are likely to occur in your area of interest. See [Protected Matters Search Tool](#)¹⁰

If you are unsure whether or not your proposed action will breach the EPBC Act, [contact the Department of Environment and Energy](#)¹¹.

WHAT IS A DEFENCE?

§§ 12(2) and 15A(4) – §§ 12(1) and 15(A) do not apply to an action if:

- you are acting under [an approval](#)¹²
- the action relates to an exception listed in Part 4, which includes:
 - [bilateral agreements with a State or Territory](#)¹³

⁵ <https://www.legislation.gov.au/Series/C2004A00485>

⁶ <http://www.environment.gov.au/heritage/places/world-heritage-list>

⁷ <http://www.environment.gov.au/heritage/places/world-heritage-list>

⁸ <http://www.environment.gov.au/epbc/about/glossary#significant>

⁹ <http://www.environment.gov.au/protection/environment-assessments/assessment-and-approval-process>

¹⁰ <https://www.environment.gov.au/epbc/protected-matters-search-tool>

¹¹ <http://www.environment.gov.au/protection/environment-assessments/assessment-and-approval-process>

¹² <http://www.environment.gov.au/protection/environment-assessments/assessment-and-approval-process>

- declarations by the Minister
- conservation agreements
- forestry operations in certain regions.

WHAT TO DO IF THERE IS AN INCIDENT CAUSING, OR THREATENING TO CAUSE, HARM

If there is a suspected or actual breach of the Act, [contact the Department of Environment and Energy](#)¹⁴ as soon as is practicable.

MORE INFORMATION

[Department of the Environment and Energy – EPBC Act](#)¹⁵

[World Heritage Property list](#)¹⁶

[Environment assessment and approval process](#)¹⁷

[Report a breach of the EPBC Act](#)¹⁸

¹³ <http://www.environment.gov.au/epbc/one-stop-shop>

¹⁴ <http://www.environment.gov.au/epbc/compliance-and-enforcement/report-a-breach>

¹⁵ <http://www.environment.gov.au/epbc>

¹⁶ <http://www.environment.gov.au/heritage/places/world-heritage-list>

¹⁷ <http://www.environment.gov.au/protection/environment-assessments/assessment-and-approval-process>

¹⁸ <http://www.environment.gov.au/epbc/compliance-and-enforcement/report-a-breach>

Federal - *Historic Shipwrecks Act 1976*¹⁹

WHAT MUST YOU DO OR NOT DO?

§13(1) – You must not engage in conduct (do an act or omit to perform an act) that:

- destroys or causes damage to a historic shipwreck or historic relic
- causes interference with a historic shipwreck or historic relic
- causes the disposal of a historic shipwreck or historic relic
- causes a historic shipwreck or historic relic to be removed from Australia (including State waters), from Australian waters or from waters above the continental shelf of Australia.

Historic Shipwrecks Regulations 1978 – Regulation 4 prohibits the following activities in [protected zones](#)²⁰:

- bringing in equipment constructed or adapted for diving, salvage or recovery operations, or any explosives, instruments or tools the use of which would be likely to cause damage to, or interference with, a historic shipwreck or a historic relic situated within that protected zone
- using any such equipment, explosives, instruments or tools
- causing a ship carrying any such equipment, explosives, instruments or tools to enter, or remain within, a protected zone
- trawling, diving or engaging in any other underwater activity
- moor or use ships.

WHEN IS A PERMIT/APPROVAL REQUIRED?

§13(1A) – You may [apply for a permit](#)²¹ to engage in conduct otherwise prohibited under §13(1) or the Regulations.

WHAT IS A DEFENCE?

§16 – It is a defence if the act that constituted the offence was done with any reasonable excuse or for the purpose of:

- saving life
- securing the safety of a ship (including a hovercraft or any similar craft) where the ship was endangered by stress of weather or by navigational hazards
- dealing with an emergency involving a serious threat to the environment.

WHAT TO DO IF THERE IS AN INCIDENT CAUSING, OR THREATENING TO CAUSE, HARM

The Act does not legislate a requirement to report damage of cultural heritage. However, as representatives of the Australian Government, and to reduce any further harm, damage, legal liability or offence you should report any damage of a historic shipwreck to the [notify the Department of the Environment and Energy](#)²² as soon as possible.

¹⁹ <https://www.legislation.gov.au/Details/C2016C01026>

²⁰ <http://www.environment.gov.au/heritage/historic-shipwrecks/protected-zones>

²¹ <http://www.environment.gov.au/heritage/historic-shipwrecks/permits>

²² <http://www.environment.gov.au/heritage/historic-shipwrecks/permits>

§17 – If you find the remains or part of a ship, or an article associated with a ship, you must [notify the Department of the Environment and Energy](#)²³, as soon as possible but no later than after one week, and to give them information about what has been found and its location.

MORE INFORMATION

[Historic Shipwrecks Act 1976 webpage](#)²⁴

[Historic shipwreck protected zones](#)²⁵

[Australian National Shipwreck Database](#)²⁶

²³ <http://www.environment.gov.au/heritage/historic-shipwrecks/permits>

²⁴ <http://www.environment.gov.au/heritage/historic-shipwrecks/laws>

²⁵ <http://www.environment.gov.au/heritage/historic-shipwrecks/protected-zones>

²⁶ <http://www.environment.gov.au/heritage/historic-shipwrecks/australian-national-shipwreck-database>

Queensland – *Aboriginal Cultural Heritage Act 2003*²⁷ and *Torres Strait Islander Cultural Heritage Act 2003*²⁸

WHAT MUST YOU DO OR NOT DO?

§§ 23-26 of both Acts – You must not:

- harm Aboriginal or Torres Strait Islander cultural heritage, including by excavation, relocation and taking away
- unlawfully possess Aboriginal or Torres Strait Islander cultural heritage.

WHEN IS A PERMIT/APPROVAL REQUIRED?

§ 23(1) of both Acts – The onus is on you to take all reasonable and practicable precautions to ensure your activity does not harm Aboriginal or Torres Strait Islander heritage.

WHAT IS A DEFENCE?

§§ 23(3), 24(2), 25(2), 26(2) of both Acts – It is a defence if you:

- can demonstrate you took due diligence in exercising your duty of care, including the extent of consultation with Aboriginal or Torres Strait Islander parties, whether a survey was carried out, whether the register was searched and the nature and extent of past uses in the area
- acted under or according to an approved cultural heritage management plan, cultural heritage [Duty of Care Guidelines](#)²⁹, native title agreement, other agreement with an Aboriginal or Torres Strait Islander party, or the Native Title Protection Conditions
- committed the harm or possession as the result of doing an act that is necessary because of an emergency.

WHAT TO DO IF THERE IS AN INCIDENT CAUSING, OR THREATENING TO CAUSE, HARM

The Act does not legislate a requirement to report damage of cultural heritage. However, as representatives of the Australian Government, and to reduce any further harm, damage, legal liability or offence you should report any damage of cultural heritage to the [Cultural Heritage Unit](#)³⁰ as soon as is practicable.

If you discover a possible Aboriginal or Torres Strait Islander site or object, you must report it to the relevant Aboriginal or Torres Strait Islander party (the native title party for the area), or the [Cultural Heritage Unit](#)³¹ if the Aboriginal or Torres Strait Islander party is unknown.

MORE INFORMATION

[Cultural heritage management plans webpage](#)³²

[Factsheet - Cultural heritage duty of care](#)³³

²⁷ <https://www.legislation.qld.gov.au/view/html/inforce/current/act-2003-079>

²⁸ <https://www.legislation.qld.gov.au/view/html/inforce/current/act-2003-080>

²⁹ <https://www.datsip.qld.gov.au/resources/datsima/people-communities/cultural-heritage/duty-of-care-guidelines.pdf>

³⁰ cultural.heritage@datsip.qld.gov.au

³¹ <mailto:cultural.heritage@datsip.qld.gov.au>

³² <https://www.datsip.qld.gov.au/people-communities/aboriginal-torres-strait-islander-cultural-heritage/cultural-heritage-management-plans>

³³ <https://www.datsip.qld.gov.au/resources/datsima/people-communities/cultural-heritage/cultural-heritage-duty-care.pdf>

Duty of Care Guidelines³⁴

Cultural Heritage Management Plan Guidelines³⁵

Cultural heritage database and register³⁶

³⁴ <https://www.datsip.qld.gov.au/resources/datsima/people-communities/cultural-heritage/duty-of-care-guidelines.pdf>

³⁵ <https://www.datsip.qld.gov.au/resources/datsima/people-communities/cultural-heritage/chmp-guidelines.pdf>

³⁶ <https://www.datsip.qld.gov.au/people-communities/aboriginal-torres-strait-islander-cultural-heritage/cultural-heritage-database-register>

Queensland – *Queensland Heritage Act 1992*³⁷

WHAT MUST YOU DO OR NOT DO?

§ 90 – You must not interfere with an archaeological or underwater cultural heritage artefact you discover.

§ 104 – You must not enter, interfere with, damage, destroy or excavate a protected area³⁸ unless you are acting under a permit or have a reasonable excuse (which includes acting under a heritage agreement or an exemption certificate).

WHEN IS A PERMIT/APPROVAL REQUIRED?

§ 104 – You may [apply for a permit](#)³⁹ to enter a protected area.

WHAT IS A DEFENCE?

§ 104 – It is a defence if you are acting under a permit or have a reasonable excuse (which includes acting under a heritage agreement or an exemption certificate)

WHAT TO DO IF THERE IS AN INCIDENT CAUSING, OR THREATENING TO CAUSE, HARM

The Act does not legislate a requirement to report damage of cultural heritage. However, as representatives of the Australian Government, and to reduce any further harm, damage, legal liability or offence you should report any damage of cultural heritage to the Department of Environment and Heritage Protection's [Heritage Branch](#)⁴⁰ as soon as is practicable.

§ 89 – If you discover a thing you know or ought to reasonably know is an archaeological artefact or underwater cultural heritage artefact that is an important source of information about an aspect of Queensland's history, you must:

- notify the Department of Environment and Science⁴¹ by email Archaeology@des.qld.gov.au or phone 13 74 68 and provide details about the find and
- submit a [Notification of a discovery](#)⁴² form.

MORE INFORMATION

[Queensland Heritage Register](#)⁴³

Application form – [Permit to enter a Protected Area](#)⁴⁴

Notification form – [Notification of a discovery](#)⁴⁵

³⁷ <https://www.legislation.qld.gov.au/view/html/inforce/current/act-1992-009>

³⁸ To find the location of protected areas, use the 'advanced search' function of the [Queensland Heritage Register](#) (<https://www.qld.gov.au/environment/land/heritage/register>) and select 'protected area' from the 'Classification' drop down list

³⁹ <https://www.qld.gov.au/environment/assets/documents/land/heritage/ap-ch-enter-prot-area.doc>

⁴⁰ Archaeology@des.qld.gov.au

⁴¹ At the time of writing, the former Department of Environment and Heritage Protection is merging to form the new Department of Environment and Science. Therefore, some information may still refer to the Department of Environment and Heritage Protection's name and email addresses

⁴² <https://www.qld.gov.au/environment/assets/documents/land/heritage/ap-ch-form-notifying-discovery-artefact.pdf>

⁴³ <https://www.qld.gov.au/environment/land/heritage/register>

⁴⁴ <https://www.qld.gov.au/environment/assets/documents/land/heritage/ap-ch-enter-prot-area.doc>

⁴⁵ <https://www.qld.gov.au/environment/assets/documents/land/heritage/ap-ch-form-notifying-discovery-artefact.pdf>

Northern Territory – *Heritage Act 2011*⁴⁶

WHAT MUST YOU DO OR NOT DO?

You must not:

- §§ 111(1-2) – engage in conduct that results in damage to a heritage place or object (including Aboriginal or Macassan archaeological places)
- § 112 – remove a part of a heritage place.

WHEN IS A PERMIT/APPROVAL REQUIRED?

§ 72 – You require a [work approval](#)⁴⁷ to carry out work on a heritage place or object.

However, you may get permission from the Heritage Branch for small-scale disturbance without the need for a formal application such as for the relocation of isolated stone artefacts. See [Indigenous heritage information](#)⁴⁸ for more information.

WHAT IS A DEFENCE?

§ 111(5-6) and § 112(5-6) – It is not an offence if you:

- engaged in conduct in accordance with a heritage agreement, work approval, work authorised under the heritage declaration or repair order, or carry out exempt work
- establish a reasonable excuse.

WHAT TO DO IF THERE IS AN INCIDENT CAUSING, OR THREATENING TO CAUSE, HARM

The Act does not legislate a requirement to report damage of cultural heritage. However, as representatives of the Australian Government, and to reduce any further harm, damage, legal liability or offence you should report any damage of cultural heritage to the [NT Heritage Council](#)⁴⁹ as soon as is practicable.

§ 114 – If you discover a Aboriginal or Macassan archaeological place or object, you must report it in writing to the CEO of the [NT Heritage Council](#)⁵⁰ as soon as practicable (within 7 days).

MORE INFORMATION

[Application to Carry Out Work on Heritage Place or Object](#)⁵¹

[Indigenous heritage information](#)⁵²

⁴⁶ <https://legislation.nt.gov.au/en/Bills/Heritage-Bill-2011?format=assented>

⁴⁷ https://nt.gov.au/__data/assets/pdf_file/0009/200115/application-to-carry-out-work-on-a-heritage-place-or-object.pdf

⁴⁸ <https://nt.gov.au/leisure/arts-culture-heritage/indigenous-heritage-information>

⁴⁹ <https://dte.nt.gov.au/contacts>

⁵⁰ <https://dte.nt.gov.au/contacts>

⁵¹ https://nt.gov.au/__data/assets/pdf_file/0009/200115/application-to-carry-out-work-on-a-heritage-place-or-object.pdfhttps://nt.gov.au/__data/assets/pdf_file/0009/200115/application-to-carry-out-work-on-a-heritage-place-or-object.pdf

⁵² <https://nt.gov.au/leisure/arts-culture-heritage/indigenous-heritage-information>

Northern Territory – *Aboriginal Sacred Sites Act 1989*⁵³

WHAT MUST YOU DO OR NOT DO?

§§ 33-35 – You must not:

- enter onto and remain on a sacred site
- work on or use a sacred site
- desecrate a sacred site.

WHEN IS A PERMIT/APPROVAL REQUIRED?

§ 19B – A permit/approval is not required, but you can apply for an [Authority Certificate](#)⁵⁴ from the [Aboriginal Areas Protection Authority](#)⁵⁵ (AAPA) to carry out work on land covered by the Act. An Authority Certificate sets out the conditions carrying out works on an area of land and/or sea. The AAPA consults with custodians to determine if there is a substantive risk of damage or interference, and may condition approved work and locations in the Authority Certificate.

An Authority Certificate provides certainty as to where sites are located and what can and cannot be done in and around them. A certificate also provides indemnity against prosecution, provided you adhere to the conditions of the Certificate. You can also [request information](#)⁵⁶ about sacred sites.

WHAT IS A DEFENCE?

§ 36 – It is a defence if the sacred site:

- is not on Aboriginal land, and you had no reasonable grounds for suspecting that sacred site was a sacred site
- is on Aboriginal land, and you:
 - took reasonable steps to ascertain the location and extent of sacred sites on that part of Aboriginal land, and your presence on the land would not have been unlawful if the land had not been a sacred site; or
 - acted in accordance with the conditions of an Authority Certificate.

WHAT TO DO IF THERE IS AN INCIDENT CAUSING, OR THREATENING TO CAUSE, HARM

If a sacred site has been damaged or is under threat of being damaged, notify AAPA as soon as possible via email enquiries.aapa@nt.gov.au or by phone (08) 8999 4365 or (08) 8951 5023.

MORE INFORMATION

[Aboriginal Areas Protection Authority](#)⁵⁷

[Authority Certificates information](#)⁵⁸

[Authority Certificates application form](#)⁵⁹

⁵³ <https://legislation.nt.gov.au/Legislation/NORTHERN-TERRITORY-ABORIGINAL-SACRED-SITES-ACT>

⁵⁴ <http://www.aapant.org.au/our-services/authority-certificates>

⁵⁵ <http://www.aapant.org.au/>

⁵⁶ <http://www.aapant.org.au/our-services/request-information-0>

⁵⁷ <http://www.aapant.org.au/our-services/authority-certificates>

⁵⁸ <http://www.aapant.org.au/our-services/authority-certificates>

⁵⁹ <https://www.aapant.org.au/node/271/attachment>

Western Australia – *Aboriginal Heritage Act 1972*⁶¹

WHAT MUST YOU DO OR NOT DO?

§ 17 – You must not:

- excavate, destroy, damage, conceal or in any other way alter an Aboriginal site
- alter, damage, remove, destroy, conceal or deal with in a manner not sanctioned by relevant custom, or assume the possession, custody or control of, any object on or under an Aboriginal site.

Under Regulation 10 of the *Aboriginal Heritage Regulations 1974*⁶² you must not undertake some regulated activities on Protected Areas and Aboriginal Sites without consent. Activities relevant to us include:

- digging a hole or disturbing ground, stone, soil, sand, rock, gravel or any other natural object
- operating a vehicle
- camping or erecting shelters.

WHEN IS A PERMIT/APPROVAL REQUIRED?

§ 16 – You require a [Section 16 authorisation](#)⁶³ – granted by the Registrar of Aboriginal Sites, on the advice of the Aboriginal Cultural Material Committee – to enter an Aboriginal Site and excavate, examine or remove anything on or under the site, in a manner and subject to conditions as the Committee may advise. The Aboriginal Cultural Material Committee decides whether there is an Aboriginal site on the land, evaluates the importance and significance of any such site, and submits the notice to the Minister together with its recommendation as to whether or not the Minister should consent to the proposed use of the land.

§ 18 – Where land users conclude that impact to a site is unavoidable, you require the consent of the Minister through a [Section 18 Ministerial authorisation](#)⁶⁴ to impact the site, which involves giving notice to the Aboriginal Cultural Material Committee (ACMC) along with information as to the intended use of the land and sites on the land.

You require consent from the Registrar of Aboriginal Sites to undertake any of the activities under Regulation 10 of the *Aboriginal Heritage Regulations 1974*⁶⁵. To apply for consent, email the [Department of Planning, Lands and Heritage](#)⁶⁶.

WHAT IS A DEFENCE?

§ 62 – It is a defence if you did not know and could not reasonably be expected to have known that the relevant place or object was a place or object to which the Act applies.

⁶⁰ <http://www.aapant.org.au/our-services/request-information-0>

⁶¹ https://www.legislation.wa.gov.au/legislation/statutes.nsf/main_mrtitle_3_homepage.html

⁶² https://www.slp.wa.gov.au/legislation/statutes.nsf/main_mrtitle_1105_homepage.html

⁶³ <https://www.daa.wa.gov.au/heritage/land-use/section-16/>

⁶⁴ <https://www.daa.wa.gov.au/heritage/land-use/section-18/>

⁶⁵ https://www.slp.wa.gov.au/legislation/statutes.nsf/main_mrtitle_1105_homepage.html

⁶⁶ heritageenquiries@daa.wa.gov.au

See the [Aboriginal Heritage Due Diligence Guidelines](#)⁶⁷ for information on how you can demonstrate due diligence in taking reasonable steps to establish whether or not your proposed activity on a specified area may damage or destroy an Aboriginal site.

WHAT TO DO IF THERE IS AN INCIDENT CAUSING, OR THREATENING TO CAUSE, HARM

If you damage a possible Aboriginal site or object, you must report it using the [Complaint Registration Form](#)⁶⁸.

§ 15 – If you discover a possible Aboriginal site or object, you must report it using the [Heritage Information Submission Form](#)⁶⁹.

MORE INFORMATION

[Department of Planning, Lands and Heritage webpage](#)⁷⁰

[Aboriginal Heritage Due Diligence Guidelines](#)^{71,67}

[Section 16 information](#)⁷²

[Section 16 Authority Application Form](#)⁷³

[Section 18 information](#)⁷⁴

[Section 18 Notice Form](#)⁷⁵

[Regulation 10 of the *Aboriginal Heritage Regulations 1974*](#)⁷⁶

[Aboriginal Heritage Inquiry System](#)⁷⁷ (map of Aboriginal heritage in WA)

⁶⁷ <https://www.daa.wa.gov.au/globalassets/pdf-files/ddg>

⁶⁸ https://feedback.daa.wa.gov.au/complaintsManager_Internet/Add_New_Contact_NORMAL.aspx

⁶⁹ <https://forms.business.gov.au/smartforms/wa-daa-hcb/heritage-information-submission/>

⁷⁰ <https://www.daa.wa.gov.au/heritage/land-use/>

⁷¹ <https://www.daa.wa.gov.au/globalassets/pdf-files/ddg>

⁷² <https://www.daa.wa.gov.au/heritage/land-use/section-16/>

⁷³ <https://forms.business.gov.au/smartforms/wa-daa-hcb/section-16-authority-application/>

⁷⁴ <https://www.daa.wa.gov.au/heritage/land-use/section-18/>

⁷⁵ <https://forms.business.gov.au/smartforms/wa-daa-hcb/section-18-notice/>

⁷⁶ <https://www.daa.wa.gov.au/heritage/land-use/regulation-10/>

⁷⁷ <https://maps.daa.wa.gov.au/ahis/>

WHAT MUST YOU DO OR NOT DO?

§ 79(1) – You must not damage or despoil a place or thing in that place that is in the Heritage Register, or remove any thing from that place.

§ 29(13) – In regards to land or a building subject to a Heritage Agreement, you must not:

- use the land or building in a way that is restricted by the Heritage Agreement
- undertake any activity that adversely affects the cultural heritage characteristics of the place, or any other activity specified in the Heritage Agreement
- construct or erect buildings or structures or execute other works above or below ground within the area of land in a way that is prohibited, restricted, or not permitted by the Heritage Agreement.

§ 61 – You must not contravene any Conservation Order that applies to a place. Conservation Orders are displayed at each place.

WHEN IS A PERMIT/APPROVAL REQUIRED?

§ 79(2) – You may apply to the WA Heritage Council for a permit to do anything that might otherwise contravene § 79(1) but would not contravene any applicable Conservation Order.

§ 64(1) – For a place effected by a Conservation Order, you may apply to the WA Heritage Council for a permit from the Minister to carry out works which may involve disturbance of vegetation or land, or alteration of any building (including construction, renovation, alteration, extension or demolition).

For information about applying for a permit, contact the [WA Heritage Council](#)⁷⁹.

WHAT IS A DEFENCE?

There are no defences listed in the Act, besides acting in accordance with a permit.

WHAT TO DO IF THERE IS AN INCIDENT CAUSING, OR THREATENING TO CAUSE, HARM

The Act does not legislate a requirement to report damage of cultural heritage. However, as representatives of the Australian Government, and to reduce any further harm, damage, legal liability or offence you should report any damage of cultural heritage to the [WA Heritage Council](#)⁸⁰ as soon as is practicable.

MORE INFORMATION

[WA Heritage Council](#)⁸¹

[inHerit](#)⁸² – Online portal for information about heritage places and listings in Western Australia

⁷⁸ https://www.legislation.wa.gov.au/legislation/statutes.nsf/main_mrtitle_418_homepage.html

⁷⁹ <http://www.stateheritage.wa.gov.au/contact-us>

⁸⁰ <http://www.stateheritage.wa.gov.au/contact-us>

⁸¹ <http://www.stateheritage.wa.gov.au/>

⁸² <http://inherit.stateheritage.wa.gov.au/public>

South Australia – *Aboriginal Heritage Act 1988*⁸³

WHAT MUST YOU DO OR NOT DO?

§ 23 – You must not:

- damage, disturb or interfere with an Aboriginal site
- damage any Aboriginal object
- where any Aboriginal object or remains are found, disturb or interfere with the object or remains, or remove the object or remains.

WHEN IS A PERMIT/APPROVAL REQUIRED?

The onus is on you to manage the risk of a possible breach of the Act. This is done by identifying, analysing and assessing the site and proposed activities, followed by applying controls to avoid, minimise or eliminate the probability of damage to, disturbance of or interference with an Aboriginal object, Aboriginal site or remains. See the [Aboriginal Heritage Fact Sheet – Risk Management](#)⁸⁴ for more information.

WHAT IS A DEFENCE?

There are no defences listed in the Act.

WHAT TO DO IF THERE IS AN INCIDENT CAUSING, OR THREATENING TO CAUSE, HARM

The Act does not legislate a requirement to report damage of cultural heritage. However, as representatives of the Australian Government, and to reduce any further harm, damage, legal liability or offence you should report any damage of cultural heritage to the Department of State Development, Aboriginal Affairs and Reconciliation by phone (08) 8226 8900 as soon as is practicable.

If you discover an Aboriginal site or object, you must stop any work that may impact the site or object. Leave everything in place and contact the Department of State Development, Aboriginal Affairs and Reconciliation by phone (08) 8226 8900.

MORE INFORMATION

[Department of State Development Guidance webpage](#)⁸⁵

[Aboriginal Heritage Fact Sheet – Risk Management](#)⁸⁶

[Central Archive and Register of Aboriginal Sites and Objects](#)⁸⁷ (search via email)

[Accessing information from the Central Archive and Register of Aboriginal Sites and Objects](#)⁸⁸

[Aboriginal Heritage Fact Sheet – How to apply under Section 23 of the *Aboriginal Heritage Act 1988*](#)⁸⁹

[Application under section 23 of the *Aboriginal Heritage Act 1988* form](#)⁹⁰

⁸³ <https://www.legislation.sa.gov.au/LZ/C/A/ABORIGINAL%20HERITAGE%20ACT%201988.aspx>

⁸⁴ https://statedevelopment.sa.gov.au/upload/aard/heritage/10_Risk%20Management.pdf?t=1507605354249

⁸⁵ <https://statedevelopment.sa.gov.au/aboriginal-affairs/aboriginal-affairs-and-reconciliation/aboriginal-heritage/guidance>

⁸⁶ [https://statedevelopment.sa.gov.au/upload/aard/heritage/10_Risk Management.pdf?t=1507605354249](https://statedevelopment.sa.gov.au/upload/aard/heritage/10_Risk%20Management.pdf?t=1507605354249)

⁸⁷ dsdaarheritagesites1@sa.gov.au

⁸⁸ <https://statedevelopment.sa.gov.au/upload/aard/heritage/search-central-archive.pdf?t=1507764957235>

⁸⁹ https://statedevelopment.sa.gov.au/upload/aard/heritage/9_How%20to%20apply%20under%20section%2023%20of%20the%20Act.pdf?t=1507605354249

South Australia – *Heritage Places Act 1993*⁹¹

WHAT MUST YOU DO OR NOT DO?

§ 25-26 – You must not:

- excavate or disturb a State Heritage Place designated as a place of geological, palaeontological, speleological or archaeological significance
- remove, damage, destroy or dispose geological, palaeontological, speleological or archaeological specimens from such a place.

§ 27 – You must not excavate or disturb any land (that is not designated as a place of archaeological significance) while knowing or having reasonable cause to suspect that the excavation or disturbance will or is likely to result in an archaeological artefact of heritage significance being discovered, exposed, moved, damaged or destroyed.

§ 35 – A party to a heritage agreement (and subsequently any other land user) must not breach a heritage agreement in relation to several matters, including:

- use of the land the heritage agreement relates to
- the nature of work that may be carried out on the land.

§ 36(1-2) – You must not damage, destroy or reduce the heritage significant of a State Heritage Place.

§ 36(3) – You must take reasonable care of a State Heritage Place.

WHEN IS A PERMIT/APPROVAL REQUIRED?

§§ 25-27 – You require a permit to undertake any of the restricted activities under § 25⁹², § 26⁹³ or § 27⁹⁴.

WHAT IS A DEFENCE?

§ 36(4) – It is a defence for a charge against § 36(3) if you can prove you did not know, and could not reasonably be expected to know, that the place was a State Heritage Place.

WHAT TO DO IF THERE IS AN INCIDENT CAUSING, OR THREATENING TO CAUSE, HARM

The Act does not legislate a requirement to report damage of cultural heritage. However, as representatives of the Australian Government, and to reduce any further harm, damage, legal liability or offence you should report any damage of cultural heritage to the SA Heritage Council by email DEWNRheritage@sa.gov.au or phone (08) 8226 2127 as soon as is practicable.

§ 27(2) – if you believe you may have discovered or located an archaeological artefact of heritage significance, you must:

- cease to excavate or disturb the place where the relevant object has been discovered

⁹⁰ https://statedevelopment.sa.gov.au/upload/aard/heritage/9_Section%2023%20application%20form.pdf?t=1507605354249

⁹¹ <https://www.legislation.sa.gov.au/LZ/C/A/HERITAGE%20PLACES%20ACT%201993.aspx>

⁹² <https://www.environment.sa.gov.au/files/sharedassets/public/heritage/heritage-permit-25-places-of-geological-palaeontological-speleological-significance-form.doc>

⁹³ <https://www.environment.sa.gov.au/files/sharedassets/public/heritage/heritage-permit-26-places-of-archaeological-significance-form.doc>

⁹⁴ <https://www.environment.sa.gov.au/files/sharedassets/public/heritage/heritage-permit-27-protection-of-archaeological-artefacts-form.doc>

- notify the SA Heritage Council by email DEWNRheritage@sa.gov.au or phone (08) 8226 2127
- take no further action in relation to the recovering of the relevant object without a permit or other authorisation from the SA Heritage Council
- if required by the SA Heritage Council, surrender the relevant object.

MORE INFORMATION

[SA Heritage Places Database Search](#)⁹⁵

[Permits](#)⁹⁶

[SA Department of Environment, Water and Natural Resources – Heritage](#)⁹⁷

⁹⁵ <http://maps.sa.gov.au/heritagesearch/HeritageSearchLocation.aspx>

⁹⁶ <https://www.environment.sa.gov.au/our-places/heritage/sa-heritage-council/permits>

⁹⁷ <http://www.environment.sa.gov.au/our-places/heritage>

New South Wales – *National Parks and Wildlife Act 1974*⁹⁸

WHAT MUST YOU DO OR NOT DO?

§ 86 – You must not harm (destroy, deface or damage) or desecrate an Aboriginal object or an Aboriginal place, or move such an object from the land on which it has been situated.

WHEN IS A PERMIT/APPROVAL REQUIRED?

The onus is on you to undertake due diligence and determine that Aboriginal objects are not present or are unlikely to be present and an activity will not harm those objects. See [Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW](#)⁹⁹ for more information.

§ 90A – You can apply for an [Aboriginal Heritage Impact Permit](#)¹⁰⁰ (AHIP) to do something that may unavoidably cause harm to an Aboriginal object or Aboriginal place.

WHAT IS A DEFENCE?

§ 87 – It is a defence against prosecution if you:

- exercised due diligence to determine whether the act or omission constituting the alleged offence would harm an Aboriginal object and reasonably determined that no Aboriginal object would be harmed. This may include complying with the regulations or a code of practice adopted or prescribed by the regulations
- held and acted according to the conditions of an AHIP.

§ 87 – It is not an offence against § 86 if the act was reasonably necessary in order to avoid an actual or imminent threat to life or property.

WHAT TO DO IF THERE IS AN INCIDENT CAUSING, OR THREATENING TO CAUSE, HARM

The Act does not legislate a requirement to report damage of cultural heritage. However, as representatives of the Australian Government, and to reduce any further harm, damage, legal liability or offence you should report any damage of cultural heritage to the Office of Environment and Heritage by email info@environment.nsw.gov.au or phone (02) 9995 5000 as soon as is practicable.

If you find an Aboriginal object or site, report it to the [Aboriginal Heritage Information Management System Registrar](#)¹⁰¹.

MORE INFORMATION

[Aboriginal cultural heritage conservation webpage](#)¹⁰²

[Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW](#)¹⁰³

[Information on Aboriginal Heritage Impact Permits](#)¹⁰⁴

[Applying for an Aboriginal Heritage Impact Permit: Guide for applicants](#)¹⁰⁵

⁹⁸ <https://www.legislation.nsw.gov.au/#/view/act/1974/80>

⁹⁹ <http://www.environment.nsw.gov.au/resources/cultureheritage/ddcop/10798ddcop.pdf>

¹⁰⁰ <http://www.environment.nsw.gov.au/licences/Section87Section90.htm>

¹⁰¹ <http://www.environment.nsw.gov.au/contact/AHIMSRegistrar.htm>

¹⁰² <http://www.environment.nsw.gov.au/conservation/aboriginalculture.htm>

¹⁰³ <http://www.environment.nsw.gov.au/resources/cultureheritage/ddcop/10798ddcop.pdf>

¹⁰⁴ <http://www.environment.nsw.gov.au/licences/Section87Section90.htm>

New South Wales – *Heritage Act 1977*¹⁰⁶

WHAT MUST YOU DO OR NOT DO?

§ 137 – You must not carry out any work with respect to a building, work, relic or place subject to an order, other than work specified in the order.

§ 139 – You must not disturb or excavate any land in a way that will or is likely to result in a relic being discovered, exposed, moved, damaged or destroyed.

§ 51 – You must not move, damage or destroy any historic shipwreck.

WHEN IS A PERMIT/APPROVAL REQUIRED?

§ 139 – You require an [excavation permit](#)¹⁰⁷ to disturb or excavate land in contravention of § 139.

If the works are only minor in nature, and will have minimal impact on the heritage significance of the place, they may be exempted from the requirement to submit a Section 60 permit application. See the [Exemption notification form](#)¹⁰⁸ for more information about exempt works.

§ 51 – You require a historic shipwrecks permit to move, damage or destroy any historic shipwreck.

WHAT IS A DEFENCE?

There are no defences listed in the Act against offences in § 137 and § 139.

It is a defence against an offence against § 51 if the act was done for the purpose of:

- saving human life
- securing the safety of a ship
- dealing with an emergency involving a serious threat to the environment.

WHAT TO DO IF THERE IS AN INCIDENT CAUSING, OR THREATENING TO CAUSE, HARM

The Act does not legislate a requirement to report damage of cultural heritage. However, as representatives of the Australian Government, and to reduce any further harm, damage, legal liability or offence you should report any damage of cultural heritage to the Office of Environment and Heritage by email info@environment.nsw.gov.au or phone (02) 9995 5000 as soon as is practicable.

§ 146 – If you believe you have discovered or located a relic, you must notify the NSW Heritage Council by email info@environment.nsw.gov.au or phone (02) 9995 5000.

MORE INFORMATION

[New South Wales Office of Environment and Heritage](#)¹⁰⁹

[Search State Heritage Inventory](#)¹¹⁰

[Heritage permits](#)¹¹¹

¹⁰⁵ <http://www.environment.nsw.gov.au/licences/applyforahip.htm>

¹⁰⁶ <https://www.legislation.nsw.gov.au/#/view/act/1977/136>

¹⁰⁷ <http://www.environment.nsw.gov.au/Heritage/publications/permitapps.htm>

¹⁰⁸ <http://www.environment.nsw.gov.au/resources/heritagebranch/heritage/formexemptionnotifications57.pdf>

¹⁰⁹ <http://www.environment.nsw.gov.au/topics/heritage>

¹¹⁰ <http://www.environment.nsw.gov.au/heritageapp/heritagesearch.aspx>

WHAT MUST YOU DO OR NOT DO?

§ 27-28 – You must not harm (injure, damage, deface, desecrate or destroy) Aboriginal heritage or do an act that is likely to harm Aboriginal heritage.

WHEN IS A PERMIT/APPROVAL REQUIRED?

§ 25 – If an Aboriginal place or object is located on the surface of land, the owner or occupier of the land or a person entitled to use the land may use the land in ways that do not contravene § 27-28.

§ 29 – You require a Cultural Heritage Management Plan (CHMP) when undertaking an activity in an area of cultural heritage sensitivity AND all or part of the activity is a ‘high impact’ activity, as defined by the *Aboriginal Heritage Regulations 2007*¹¹³. Use the *Aboriginal Heritage Planning Tool*¹¹⁴ to see if your proposed activity classifies as a high impact activity. Common activities that may be high impact include:

- exploration, mining or extractive activities requiring an Earth Resource Authorisation
- building a walking track or road longer than 100 m
- constructing a carpark or place of assembly (such as a work camp).

A CHMP identifies any cultural heritage that may be present in a project area and the measures that will be implemented to manage impacts of project activities on any such cultural heritage.

§ 36 – If you are carrying out an activity that doesn’t require a CHMP but will, or is likely to, harm Aboriginal cultural heritage, you require a *cultural heritage permit*¹¹⁵.

WHAT IS A DEFENCE?

§ 29 – It is a defence if:

- you act in accordance with a CHMP
- you act in accordance with Aboriginal tradition as it relates to the Aboriginal cultural heritage
- you act under an cultural heritage permit
- the harm is the result of doing an act that is necessary because of an emergency.

WHAT TO DO IF THERE IS AN INCIDENT CAUSING, OR THREATENING TO CAUSE, HARM

The Act does not legislate a requirement to report damage of cultural heritage. However, as representatives of the Australian Government, and to reduce any further harm, damage, legal liability or offence you should report any damage of cultural heritage to *Aboriginal Victoria*¹¹⁶ as soon as is practicable.

¹¹¹ <http://www.environment.nsw.gov.au/Heritage/publications/permitapps.htm>

¹¹² http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/PubLawToday.nsf/e84a08860d8fa942ca25761700261a63/52085cd6d560e6ebca25796e0079e5e8!OpenDocument&Highlight=0,Act

¹¹³ [http://www.legislation.vic.gov.au/domino/Web_Notes/LDMS/LTObject_Store/ltobjst10.nsf/DDE300B846EED9C7CA257616000A3571/B7389A02EE90A87CCA25823300171BA4/\\$FILE/07-41sra014%20authorised.pdf](http://www.legislation.vic.gov.au/domino/Web_Notes/LDMS/LTObject_Store/ltobjst10.nsf/DDE300B846EED9C7CA257616000A3571/B7389A02EE90A87CCA25823300171BA4/$FILE/07-41sra014%20authorised.pdf)

¹¹⁴ <http://www.aav.nrms.net.au/aavQuestion1.aspx>

¹¹⁵ <http://www.vic.gov.au/aboriginalvictoria/heritage/planning-and-heritage-management-processes/cultural-heritage-permit-process.html>

¹¹⁶ <http://www.vic.gov.au/aboriginalvictoria/heritage/protection-of-aboriginal-places-and-objects/report-and-protect-a-possible-aboriginal-place-or-object.html>

§ 17 and § 24 – If you discover any Aboriginal human remains, cultural heritage place or object on any public or private land, report it to [Aboriginal Victoria](#)¹¹⁷ .

MORE INFORMATION

[Cultural Heritage Management Plans webpage](#)¹¹⁸

[Cultural Heritage Permit Process webpage](#)¹¹⁹

[Aboriginal Heritage Planning Tool](#)¹²⁰

[Areas of Cultural Sensitivity Map](#)¹²¹

¹¹⁷ <http://www.vic.gov.au/aboriginalvictoria/heritage/protection-of-aboriginal-places-and-objects/report-and-protect-a-possible-aboriginal-place-or-object.html>

¹¹⁸ <http://www.vic.gov.au/aboriginalvictoria/heritage/planning-and-heritage-management-processes/cultural-heritage-management-plans.html>

¹¹⁹ <http://www.vic.gov.au/aboriginalvictoria/heritage/planning-and-heritage-management-processes/cultural-heritage-permit-process.html>

¹²⁰ <http://www.aav.nrms.net.au/aavQuestion1.aspx>

¹²¹ <https://applications.vic.gov.au/apps/achris/public/publicMap>

WHAT MUST YOU DO OR NOT DO?

§ 74 – You must not take, destroy, damage, remove, disturb, otherwise interfere with or dispose of any registered shipwreck, historic shipwreck, registered shipwreck artefact or historic shipwreck artefact.

§ 76 – You must not possess on or near a registered shipwreck, historic shipwreck, registered shipwreck artefact or historic shipwreck artefact, any explosives, instruments or other equipment that could be used to damage or interfere with the shipwreck or artefact.

§ 87-89 – You must not remove, relocate, demolish, damage, despoil, develop, alter or excavate a place or object included in the [Heritage Register](#)¹²³.

§ 123 – You must not deface, damage, interfere with or carry out an act likely to endanger:

- a site recorded in the [Heritage Inventory](#)¹²⁴ (note: the Heritage Inventory is not the Heritage Register)
- an archaeological site which is not recorded in the Heritage Inventory.

WHEN IS A PERMIT/APPROVAL REQUIRED?

§ 77 – You require a [permit](#)¹²⁵ to do anything that would otherwise be prohibited under § 74 or § 76.

§ 87-89 – You require a [permit](#)¹²⁶ to do anything that would otherwise be prohibited under § 87-89.

§ 123 – You require a [consent](#)¹²⁷ to do anything that would otherwise be prohibited under § 123. Consents are only issued to qualified historical archaeologists.

WHAT IS A DEFENCE?

It is a defence against an offence under § 74 and § 76 if the act was done for the purpose of:

- saving human life
- securing the safety of a ship where the ship was endangered by stress of weather or by navigational hazards
- dealing with an emergency involving a serious threat to the environment.

§ 87-89 – It is a defence against an offence under § 87-89 if you acted in accordance with a permit.

§ 123 – It is a defence against an offence under § 123 if you acted in accordance with a consent.

WHAT TO DO IF THERE IS AN INCIDENT CAUSING, OR THREATENING TO CAUSE, HARM

The Act does not legislate a requirement to report damage of cultural heritage. However, as representatives of the Australian Government, and to reduce any further harm, damage, legal liability or offence you should report any damage of cultural heritage to Heritage Victoria by email heritage.victoria@delwp.vic.gov.au or phone (03) 9938 6894 as soon as is practicable.

¹²²

http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/PubStatbook.nsf/f932b66241ecf1b7ca256e92000e23be/3297d78c7620b8ddca2580e4000b8857!OpenDocument

¹²³ <https://www.heritage.vic.gov.au/about-heritage-in-victoria/victorian-heritage-database>

¹²⁴ <https://www.heritage.vic.gov.au/archaeology-and-shipwrecks/archaeology-and-heritage-inventory>

¹²⁵ <https://www.heritage.vic.gov.au/permits/apply-for-a-permit>

¹²⁶ <https://www.heritage.vic.gov.au/permits/apply-for-a-permit>

¹²⁷ <https://www.heritage.vic.gov.au/archaeology-and-shipwrecks/archaeology-forms-and-guidelines>

§ 80 – If you find a shipwreck or shipwreck artefact you must notify to Heritage Victoria by email heritage.victoria@delwp.vic.gov.au or phone (03) 9938 6894 within 7 days.

MORE INFORMATION

[Heritage Victoria](#)¹²⁸ (administrative agency)

[Heritage Council Victoria](#)¹²⁹ (independent advisory body)

[Victorian Heritage Database](#)¹³⁰

[Heritage Inventory](#)¹³¹

[Apply for a permit](#)¹³²

[Archaeology forms and guidelines](#)¹³³

¹²⁸ <https://www.heritage.vic.gov.au/>

¹²⁹ <http://heritagecouncil.vic.gov.au/>

¹³⁰ <https://www.heritage.vic.gov.au/about-heritage-in-victoria/victorian-heritage-database>

¹³¹ <https://www.heritage.vic.gov.au/archaeology-and-shipwrecks/archaeology-and-heritage-inventory>

¹³² <https://www.heritage.vic.gov.au/permits/apply-for-a-permit>

¹³³ <https://www.heritage.vic.gov.au/archaeology-and-shipwrecks/archaeology-forms-and-guidelines>

Tasmania – *Aboriginal Heritage Act 1975*¹³⁴

WHAT MUST YOU DO OR NOT DO?

§ 9 – You must not:

- destroy, damage, disfigure, conceal, uncover, expose, excavate or otherwise interfere with a protected object
- carry out an act likely to endanger a protected object.

§ 14 – You must not destroy, damage, deface, conceal, or otherwise interfere with a relic, which includes removing it from the place where it is found or abandoned.

WHEN IS A PERMIT/APPROVAL REQUIRED?

The onus is on you to exercise due diligence to not cause an offence. Check the sector-specific resources and guides (in section 5 of the [Aboriginal Heritage Guidelines](#)¹³⁵) or, in the absence of any such material, refer to the current edition of the [Aboriginal Heritage Standards and Procedures](#)¹³⁶.

Use the [Aboriginal Heritage Property Search website](#)¹³⁷ to search for registered Aboriginal relics. If the search indicates there may be registered Aboriginal relics or a risk of impacting Aboriginal relics complete and submit an [Aboriginal Heritage Desktop Review Form](#)¹³⁸, and follow the approvals process as instructed by Aboriginal Heritage Tasmania. See the [Aboriginal Heritage Standards and Procedures](#)¹³⁹ for the full process.

If entering one of the three [Indigenous Protected Areas](#)¹⁴⁰, seek out and act in accordance with the signage or other information.

WHAT IS A DEFENCE?

§ 20 – It is a defence if the alleged offence was due to carrying out work that is a necessary and proportionate response to an actual or impending emergency that threatens human life or property or threatens to injure any person.

§ 21 – It is a defence to a prosecution for an offence under § 9 and § 14 if you prove that you complied with the [Aboriginal Heritage Guidelines](#)¹³⁵, in so far as is practicable.

WHAT TO DO IF THERE IS AN INCIDENT CAUSING, OR THREATENING TO CAUSE, HARM

The Act does not legislate a requirement to report damage of cultural heritage. However, as representatives of the Australian Government, and to reduce any further harm, damage, legal liability or offence you should report any damage of cultural heritage to Aboriginal Heritage Tasmania by email aboriginal@heritage.tas.gov.au or phone 1300 487 045 as soon as is practicable.

If you find an actual or potential Aboriginal relic or site, follow the [Unanticipated Discovery Plan](#)¹⁴¹. This includes immediately stopping work in the area and [reporting it](#)¹⁴² as soon as practicable.

¹³⁴ <https://www.legislation.tas.gov.au/view/html/inforce/current/act-1975-081>

¹³⁵ [http://www.aboriginalheritage.tas.gov.au/Documents/Aboriginal Heritage Guidelines.pdf](http://www.aboriginalheritage.tas.gov.au/Documents/Aboriginal%20Heritage%20Guidelines.pdf)

¹³⁶ [http://www.aboriginalheritage.tas.gov.au/Documents/Aboriginal Heritage Standards and Procedures.pdf](http://www.aboriginalheritage.tas.gov.au/Documents/Aboriginal%20Heritage%20Standards%20and%20Procedures.pdf)

¹³⁷ <https://www.aboriginalheritage.tas.gov.au/propertysearch/>

¹³⁸ [http://www.aboriginalheritage.tas.gov.au/Documents/Aboriginal Heritage Desktop Review.pdf](http://www.aboriginalheritage.tas.gov.au/Documents/Aboriginal%20Heritage%20Desktop%20Review.pdf)

¹³⁹ [http://www.aboriginalheritage.tas.gov.au/Documents/Aboriginal Heritage Standards and Procedures.pdf](http://www.aboriginalheritage.tas.gov.au/Documents/Aboriginal%20Heritage%20Standards%20and%20Procedures.pdf)

¹⁴⁰ <https://www.environment.gov.au/indigenous/ipa/declared/tas.html>

MORE INFORMATION

[Aboriginal Heritage Guidelines](#)¹⁴³

[Aboriginal Heritage Standards and Procedures](#)¹⁴⁴

[Aboriginal Heritage Property Search website](#)¹⁴⁵

[Aboriginal Heritage Desktop Review Form](#)¹⁴⁶

[Mineral Exploration Code of Practice](#)¹⁴⁷

¹⁴¹ <http://www.aboriginalheritage.tas.gov.au/Documents/UDP.pdf>

¹⁴² <http://www.aboriginalheritage.tas.gov.au/Documents/AH%20Site%20Reporting%20form%20SAVEABLE.pdf>

¹⁴³ [http://www.aboriginalheritage.tas.gov.au/Documents/Aboriginal Heritage Guidelines.pdf](http://www.aboriginalheritage.tas.gov.au/Documents/Aboriginal%20Heritage%20Guidelines.pdf)

¹⁴⁴ [http://www.aboriginalheritage.tas.gov.au/Documents/Aboriginal Heritage Standards and Procedures.pdf](http://www.aboriginalheritage.tas.gov.au/Documents/Aboriginal%20Heritage%20Standards%20and%20Procedures.pdf)

¹⁴⁵ <https://www.aboriginalheritage.tas.gov.au/propertysearch/>

¹⁴⁶ [http://www.aboriginalheritage.tas.gov.au/Documents/Aboriginal Heritage Desktop Review.pdf](http://www.aboriginalheritage.tas.gov.au/Documents/Aboriginal%20Heritage%20Desktop%20Review.pdf)

¹⁴⁷ <http://www.mrt.tas.gov.au/portal/exploration-code-of-practice?inheritRedirect=true>

Tasmania – *Historic Cultural Heritage Act 1995*¹⁴⁸

WHAT MUST YOU DO OR NOT DO?

§ 30 – You must not carry out any works within a heritage area which may affect the historic cultural heritage significance of that area.

§ 35 – You must not carry out any heritage works.

§ 66 – You must not undertake any activity which is likely to result in the physical disturbance or change to the fabric or condition of a shipwreck.

§ 69 – You must not enter a protected zone around a shipwreck.

Note: ‘Works’ includes any:

- development
- physical intervention, excavation or action which may result in a change to the nature or appearance of the fabric of a place
- change to the natural or existing condition or topography of land
- removal of vegetation or topsoil.

WHEN IS A PERMIT/APPROVAL REQUIRED?

§ 31 – You may receive a Ministerial exemption from § 30.

§ 42(1) – You may receive an [exemption](#)¹⁴⁹ to carry out works under § 35.

§ 66 – You may receive approval to undertake an activity under § 66.

§ 69 – You may receive approval to enter a protected zone around a shipwreck under § 69.

[Contact Heritage Tasmania](#)¹⁵⁰ for more information about exemption, permits and approvals.

WHAT IS A DEFENCE?

§ 35 – It is a defence if the works were carried out in response to an emergency.

WHAT TO DO IF THERE IS AN INCIDENT CAUSING, OR THREATENING TO CAUSE, HARM

The Act does not legislate a requirement to report damage of cultural heritage. However, as representatives of the Australian Government, and to reduce any further harm, damage, legal liability or offence you should report any damage of cultural heritage to Heritage Tasmania by email aboriginal@heritage.tas.gov.au or phone 1300 850 332 as soon as is practicable.

MORE INFORMATION

[Heritage Tasmania](#)¹⁵¹

[Search the Tasmanian Heritage Register](#)¹⁵²

¹⁴⁸ <https://www.legislation.tas.gov.au/view/html/inforce/current/act-1995-117>

¹⁴⁹ [http://heritage.tas.gov.au/Documents/\(6a\) ExemptionCertificateApplicationForm \(2016\).pdf](http://heritage.tas.gov.au/Documents/(6a) ExemptionCertificateApplicationForm (2016).pdf)

¹⁵⁰ <http://heritage.tas.gov.au/contact-us>

¹⁵¹ <http://heritage.tas.gov.au/>

¹⁵² <http://heritage.tas.gov.au/heritage-listed-places/search-the-register>

Works Guidelines¹⁵³

Exemption Certificate Application¹⁵⁴

¹⁵³ <http://heritage.tas.gov.au/works-and-development/works-guidelines>

¹⁵⁴ [http://heritage.tas.gov.au/Documents/\(6a\) ExemptionCertificateApplicationForm \(2016\).pdf](http://heritage.tas.gov.au/Documents/(6a) ExemptionCertificateApplicationForm (2016).pdf)

Australian Capital Territory – *Heritage Act 2004*¹⁵⁵

WHAT MUST YOU DO OR NOT DO?

§ 74 – You must not engage in conduct that diminishes the heritage significance of a registered place or object (not including Aboriginal places or objects).

§ 75 – You must not engage in conduct that causes damage, disturbs or destroys to an Aboriginal place or object.

WHEN IS A PERMIT/APPROVAL REQUIRED?

§ 61E – You may apply for permission to carry out **excavation work**¹⁵⁶ at or near a heritage site (a registered place or object, or an Aboriginal place or Aboriginal object).

§ 61G – You may apply for **approval of a plan**¹⁵⁷ (a ‘statement of heritage effect’) that involves undertaking an activity that is likely to diminish the heritage significance of a place or object, or damage, disturb or destroy an Aboriginal place or object.

WHAT IS A DEFENCE?

There is a reduced penalty against § 74 and § 75 offences if the conduct was not reckless or negligent.

§ 74 and § 75 do not apply if you engage in conduct in accordance with a heritage guideline, heritage direction, heritage agreement, conservation management plan, or developmental approval.

WHAT TO DO IF THERE IS AN INCIDENT CAUSING, OR THREATENING TO CAUSE, HARM

The Act does not legislate a requirement to report damage of cultural heritage. However, as representatives of the Australian Government, and to reduce any further harm, damage, legal liability or offence you should report any damage of cultural heritage to the ACT Heritage Council by email heritage@act.gov.au or phone (02) 6207 1923 as soon as is practicable.

§ 51 – If you discover an unregistered Aboriginal place and/or object (or suspect it to be so), you must report it to the ACT Heritage Council by email heritage@act.gov.au within five working days after the day of discovery.

MORE INFORMATION

[ACT Heritage](#)¹⁵⁸

[How is Aboriginal Heritage Protected in the ACT?](#)¹⁵⁹

[ACT Heritage Register](#)¹⁶⁰

[Heritage Forms](#)¹⁶¹

¹⁵⁵ <http://www.legislation.act.gov.au/a/2004-57/>

¹⁵⁶ <http://www.legislation.act.gov.au/af/2014-109/default.asp>

¹⁵⁷ <http://www.legislation.act.gov.au/af/2014-108/default.asp>

¹⁵⁸ <https://www.environment.act.gov.au/heritage>

¹⁵⁹ https://www.environment.act.gov.au/__data/assets/pdf_file/0003/1062255/Heritage-Factsheets-How-is-aboriginal-Heritage-protected-in-the-ACT.pdf

¹⁶⁰ https://www.environment.act.gov.au/heritage/heritage_register

¹⁶¹ https://www.environment.act.gov.au/heritage/publications-and-resources/forms_and_fees

Change history

Version	Date	Change
1.0	17 August 2018	Original version