



Government
of South Australia

Department of the
Premier and Cabinet

Recognised Aboriginal Representative Bodies Guideline 1

www.dpc.sa.gov.au/guidance



Introduction

The Aboriginal Heritage Act 1988 (Heritage Act) protects heritage in South Australia, including from the impacts of excavation, damage, disturbance or interference. It was recently changed to recognise Aboriginal people as primary decision makers about their own heritage. Aboriginal heritage includes Aboriginal ancestral remains, sites and objects (heritage).

Before, if a land use proponent (eg a miner, researcher or government department) wanted to do something that might impact heritage, 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 encourages proponents to first talk about their plans directly with Traditional Owners. It does this by creating Recognised Aboriginal Representative Bodies (RARBs). RARBs are Aboriginal bodies empowered to speak for Traditional Owners and to make decisions and agreements about their heritage. RARBs can either speak for the Traditional Owners of the heritage within a broad specified area or can just speak for specific sites, objects or remains.

Forming a RARB is voluntary - Traditional Owners have no obligation to do so. Where a RARB is formed, it has no obligation to negotiate with proponents if it does not want to. Where a RARB decides to consider a proponent's request, all parties must negotiate in good faith. This essentially means communicating with honesty and sincerity and working genuinely towards mutually acceptable outcomes, whether an agreement is eventually reached or not.

Where there is no RARB or a RARB does not wish to discuss a proposal, a proponent may still apply directly to the Minister to get permission to impact heritage. The Minister will then conduct a consultation with the Traditional Owners as was the case before the introduction of RARBs.

Role of RARBs

The main role of a RARB is to consult with and represent the views of the Traditional Owners of heritage that is under threat of impact. A RARB must know and make known the views of all relevant Traditional Owners, not just those that are part of the RARB or that live close by to the heritage.

RARBs can make formal agreements, called local heritage agreements, allowing proponents to impact the heritage the RARB represents. A proponent can take the actions agreed in an approved local heritage agreement without being prosecuted for them under the Heritage Act. Importantly, acts or omissions taken by proponents outside or beyond the terms of an approved local heritage agreement and which adversely impact heritage remain liable to prosecution.

To make a local heritage agreement, RARBs must first advise and consult with all relevant Traditional Owners. If agreement to the proposed actions is reached, the RARB and the proponent may put their agreement in writing and give it to the Minister for review. If the Minister thinks the agreement properly deals with heritage – which will include showing Traditional Owner support after proper consultation with the right people – the Minister can approve it.

In addition to consulting with Traditional Owners and making agreements, RARBs must advise the Minister if asked, and do any other tasks given to them under the Heritage Act or other legislation over time.

Who can be a RARB?

A RARB can be any person or group that knows and represent the views of South Australian Traditional Owners. Certain groups are pre-qualified, meaning they are either automatically RARBs or presumed to be one subject to final approval from the State Aboriginal Heritage Committee (Committee).

Anangu Pitjantjatjara Yankunytjatjara and Maralinga Tjarutja

Uniquely in South Australia, the Anangu Pitjantjatjara Yankunytjatjara (APY) and the Maralinga Tjarutja (MT) are Traditional Owner bodies set up under legislation other than the *Native Title Act 1993* (Cth). Under the Heritage Act, the APY and MT are automatically appointed as RARBs for their own lands.

Being such large areas, the APY and MT Lands hold heritage from communities that do not always live there. Where a proposal might affect heritage on the APY and MT Lands, the APY and MT RARBs must be sure to consult with and represent the views of all relevant Traditional Owners, not only those on their RARBs or those that live on the APY or MT Lands.

Registered Native Title Body Corporates

A Registered Native Title Body Corporate (RNTBC¹) is taken to be the RARB for its determined native title lands. This includes areas within those lands where native title has been suppressed or extinguished. RNTBCs must first still be approved by the Committee before they are appointed as RARBs.

Native Title Claimants

The Committee may appoint any person or body claiming native title as a RARB for the area they are claiming. The Committee may appoint one, some or all the people making the native title claim as the RARB, depending on the circumstances.

ILUA Parties

The Committee may appoint any Aboriginal person or party to an Indigenous Land Use Agreement (ILUA²) as the RARB for the area to which the ILUA applies. The Committee may appoint one, some or all the Aboriginal ILUA parties as the RARB, depending on the circumstances.

Other Parties

If the above categories of people or groups do not have priority to become the RARB for specific heritage, the Committee may appoint any body corporate applicant capable of knowing and representing the views of Traditional Owners about that heritage as its RARB.

1. As defined under the Native Title Act 1993.
2. As defined under the Native Title Act 1993.

Applying to become a RARB

For people or groups other than the APY or MT, you must apply to the Committee to become a RARB. Application forms are available from the AAR website.

There is one form for those with determined native title and another form for all other applicants, that is, native title claimants, ILUA parties and others. These forms set out the minimum information the Committee is likely to need to properly make its decision.

Multiple Applications

If there are multiple applications to be the RARB for the same heritage or area, the Committee must give preference to the applicant with the strongest affiliations with and responsibility for that heritage.

The Committee will consider all the evidence that it has available to it, noting that it is applicants' responsibility to provide this information.

The Committee can try to resolve responsibility for any disputed heritage by using a mediation process run by an independent third party.

Joint Applications

For people or groups other than the APY or the MT, it is possible to apply together with other people or groups to become a joint RARB. This will generally mean forming a new body made up of members of all groups.

Joint RARBs may be useful for heritage such as songlines, where several groups across a large area have responsibility for related heritage.

Similarly, if there is a dispute as to who is best to speak for certain heritage, forming a RARB combining all applicants can allow for all relevant Traditional Owners to be consulted about, and to speak for the heritage.

People or groups can be members of more than one RARB. For example, a RNTBC may be the RARB for its native title lands except for certain heritage on it. It may then form a separate RARB with other people or groups to look after the heritage not covered by its primary RARB.

If you are considering applying for a joint RARB, the Committee recommends speaking with AAR before making an application.

Approval of Appointments

When considering a RARB application, the Committee is primarily looking to confirm that the applicant knows, and can tell others about, the knowledge and views of Traditional Owners of specific heritage. The Committee wants to see that potential RARBs will work in a fair and open way, in accordance with the Heritage Act and for the benefit of all Traditional Owners, and not just those sitting on the RARB or those living close by to the heritage. Depending upon its location and responsibilities, each RARB may go about its role slightly differently.

This is appropriate and to be expected. Even so, the Committee will generally look for answers to the following types of questions to be convinced that a RARB will perform its role properly:

- How will the RARB let Traditional Owners know that it has received a proposal that might affect their heritage?
- How will the RARB give those Traditional Owners an opportunity to understand and comment on proposals? What timeframes are proposed? What assistance will be available to them to help them comment? How will the RARB advise Traditional Owners of any decisions it makes?
- How and when will the RARB conduct surveys of heritage? How will people be selected to participate? An open process giving all relevant Traditional Owners an opportunity to take part in surveys will generally be preferable.
- What protocols will apply when a proponent discovers heritage?

RARBs have significant responsibilities. It is therefore expected that applicants make comprehensive, well-considered applications, endorsed by Traditional Owners wherever possible. Ideally applications will include written policies and procedures setting out how the RARB proposes to operate. Applicants should be willing to create, review and amend such documents where requested by the Committee.

Applying to become a RARB

Revocation and suspension of a RARB

Being a RARB is voluntary. If a RARB decides it no longer wants to perform the role, it may write to the Committee and ask that its appointment be revoked.

The Committee can also revoke or suspend a RARB (other than APY, MT or a RNTBC) on its own motion if the RARB fails to carry out its role in accordance with the Heritage Act. Generally, this will be because the RARB fails to properly consult with, or represent the knowledge and views of Traditional Owners.

After consulting with the Committee, the Minister can also revoke any RARB appointment (other than APY or MT) for any reason he or she thinks fit.

If the Minister or Committee is considering revocation, the RARB will be given notice, the reasons why and an opportunity to comment before a final decision is made. After revocation of a RARB, the Minister may later reappoint the revoked person or group, appoint other people or groups or direct the Committee as to how it should make future appointments for the relevant heritage.

Revocation of a RARB by either the Minister or the Committee does not affect any right, interest, duty, obligation or liability imposed, created or incurred by the RARB prior to its revocation.

RARB Register

The names of RARBs, their Public Officer's contact details and a description of the heritage they look after are all recorded on a RARB Register. The RARB Register is generally open to the public so that people can find out who speaks for what heritage around the state. The Committee may still impose conditions on the inspection of a particular entry if it thinks that is appropriate or required.

The RARB Register is not a complete list of Aboriginal heritage in South Australia and does not include any secret or confidential information.



Further Information

**Department of the Premier and Cabinet
Aboriginal Affairs and Reconciliation**

GPO Box 2343, Adelaide SA 5001

Telephone: (08) 8226 8900

Email: DPC.AARHeritage@sa.gov.au

Website: www.dpc.sa.gov.au/guidance