

Aboriginal Sites, Objects and Ancestral Remains Discovery Procedure

EMTH Attachment 2A

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Abbreviations /Glossary

Term/Acronym	Definition
AH ACT	<i>Aboriginal Heritage Act 1988</i>
Contract Documentation	Contract Scope and Technical Requirements; Functional and Operational Requirements; Contract or Project Scope
Contractors	Contractor engaged by the Department to undertake the planning, design or construction of a project (including maintenance projects)
Details	Photos and GPS location coordinates
DPC-AAR	Department of Premier and Cabinet - Aboriginal Affairs and Reconciliation
DIT or the Department	Department for Infrastructure and Transport
EHTM	Environment and Heritage Technical Manual
FSSA	SA Attorney General's Department, Forensic Science SA
HA	Heritage Advisor – Qualified archaeologist and/or anthropologist
PHA	The Department's Principal Heritage Advisor
PM	The Department's Project Manager
S20	AH Act Section 20 – Reporting requirements for the discovery of Aboriginal sites, objects or ancestral remains
S23	AH Act Section 23 - the authorisation that permits proponents to 'damage, disturb or interfere with Aboriginal sites, objects and ancestral remains'
S37	AH Act Section 37- Enables Aboriginal people to continue to manage heritage in accordance with Aboriginal tradition
SAPOL	South Australian Police – contact on 13344
Supervisor	Site Supervisor

1 Introduction

This document forms the Department for Infrastructure and Transport's (the Department) Aboriginal Heritage Sites, Objects, and Remains Discovery Procedure. The procedures detailed in this document are based on the Department of Premier and Cabinet - Aboriginal Affairs and Reconciliation (DPC-AAR) discovery procedures, with modifications to address works generally undertaken by the Department and its contractors.

This document is to be utilised as a reference to inform all Department staff members and the Department's contractors of the relevant discovery procedures to be employed should an Aboriginal heritage discovery be made during project works.

This Guideline forms Attachment 2A of the Environment and Heritage Technical Manual (EHTM). This guideline should be read in conjunction with Master Specification PC-H1 – Aboriginal Heritage and Native Title.

2 Performance outcomes

To meet the performance requirements under this section, unless specified otherwise in the Contract Documentation, the following shall be achieved:

- In terms of managing a potential discovery of Aboriginal sites, objects or ancestral remains, **works must cease immediately** and compliance with the requirements of the *Aboriginal Heritage Act 1988* (AH Act) is mandatory;
- **Works must not recommence** in the affected area until clearance has been provided by a suitably qualified archaeologist/anthropologist or any relevant permissions, approvals, permits and/or authorisations to continue the works are obtained;
- Where Aboriginal heritage sites, objects or ancestral remains are confirmed during works, the nature of the discovery is addressed by a specific pathway within the discovery procedure. The procedure is to be followed to its conclusion;
- The discovery procedure may include engaging a suitably qualified archaeologist/anthropologist to undertake assessments, undertaking discussions with the relevant Aboriginal group(s), and in some cases, obtaining any relevant permissions, approvals, permits and/or authorisations to continue the works; and
- Where not required by the legislation, the Contractor shall meet any reasonable and justifiable heritage management requirements specified by the relevant Aboriginal group(s) to effectively manage the heritage values present within the area.

3 Discovery Procedure Flowcharts

The relevant legislation with regard to the management of Aboriginal sites, objects and ancestral remains is the *Aboriginal Heritage Act 1988* (AH Act). Under Section 23 of the AH Act, it is an offense to '*damage, disturb or interfere*' with any Aboriginal sites, object or ancestral remains. Significant fines and imprisonment apply to a proponent who does so without the prior authorisation (Section 23 Authorisation or S23) of the Minister of Aboriginal Affairs and Reconciliation.

Section 37 (S37) of the AH Act preserves the right of Aboriginal people to do anything in relation to Aboriginal sites, objects or remains in accordance with Aboriginal tradition, without the need to seek approval under Section 23.

Two discovery procedure flow charts follow, the appropriate one should be adopted based on the presence, or otherwise, of a Section 23 Authorisation under the AH Act. These procedures are as follows:

- Figure 1 - Discovery Procedure Flow Chart without Section 23 Authorisation under the AH Act
- Figure 2 - Discovery Procedure Flow Chart with Section 23 Authorisation under the AH Act

Note: in accordance with guidance provided by DPC-AAR, it is recommended that prior to beginning works, proponents undertaking ground disturbing works in high risk areas negotiate, with the relevant Aboriginal group(s) and a Heritage Advisor (HA), a management plan of agreement for managing the discovery of any Aboriginal sites, objects and/or ancestral remains.

Figure 1 - Discovery Procedure Flow Chart without Section 23 Authorisation under the AH Act

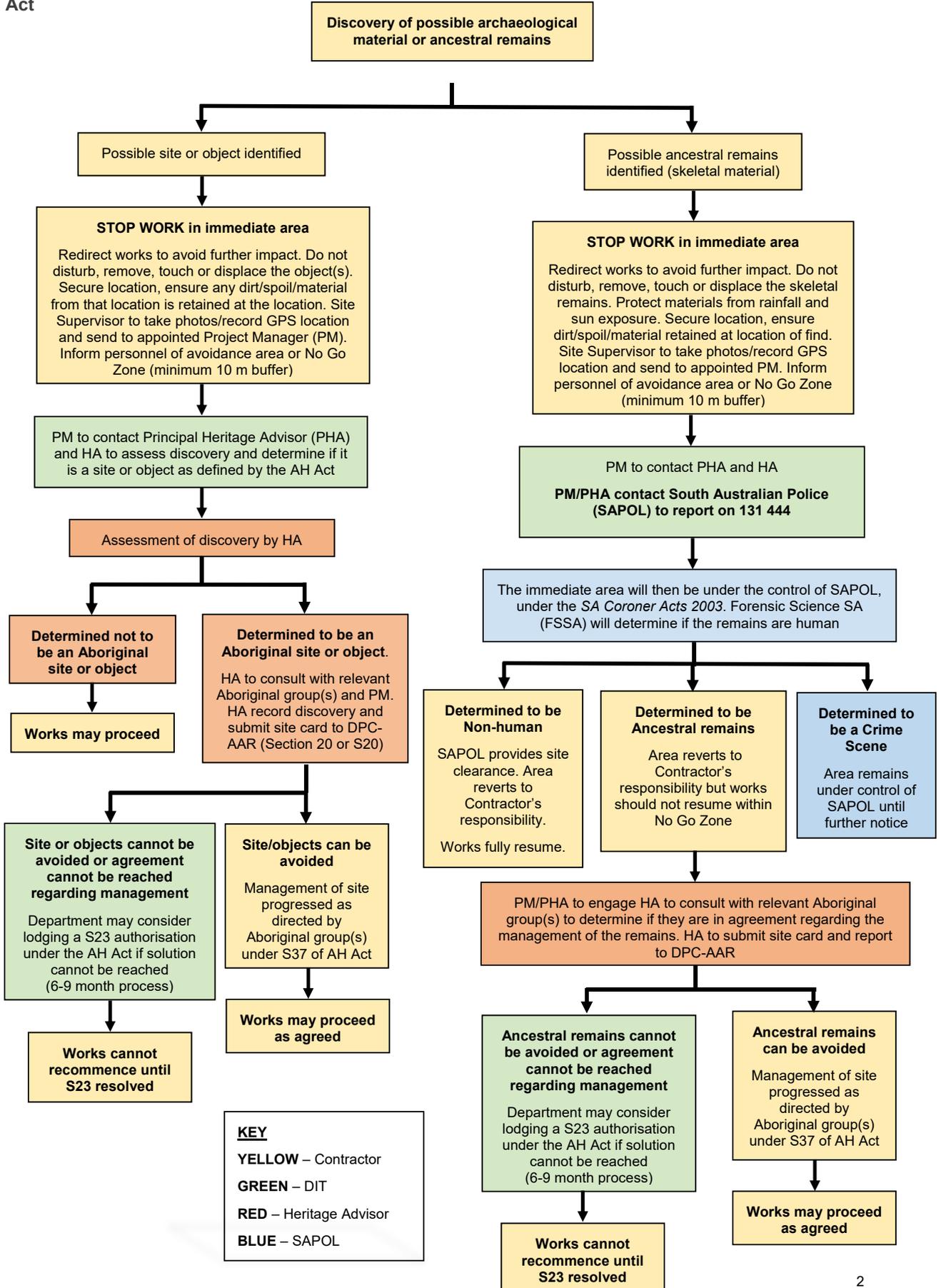
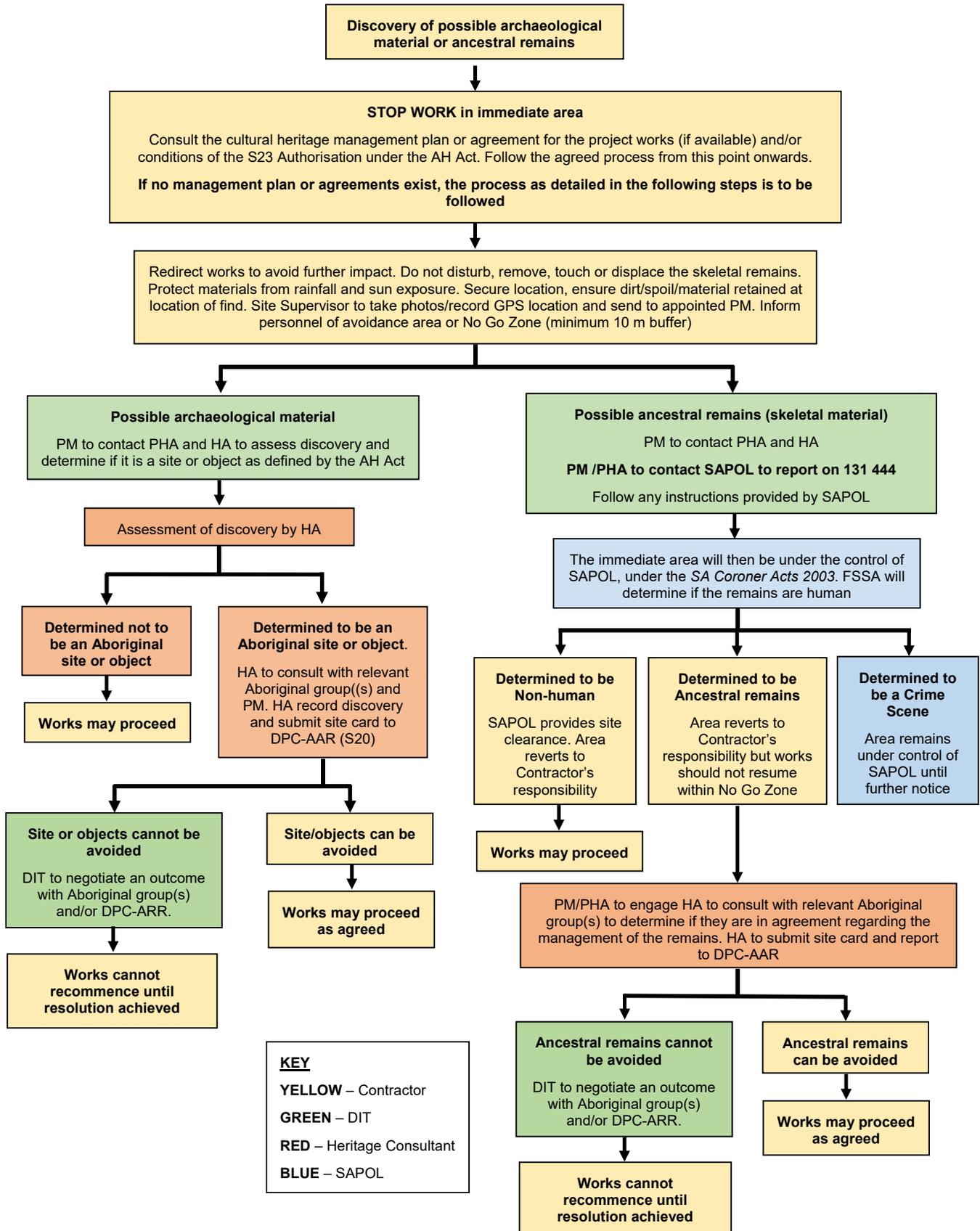


Figure 2 - Discovery Procedure Flow Chart with Section 23 Authorisation under the AH Act



4 Managing the Discovery and Treatment of Skeletal Remains

4.1 Stop Work and Notification

If skeletal remains are exposed during project works, the following describes the process the Site Supervisor (Supervisor), Heritage Advisor (HA) and Principal Heritage Advisor (PHA) shall undertake in detail.

If suspected human remains have been discovered:

- The Supervisor shall contact the SA Police (SAPOL) and the PM/PHA of the discovery, its location and site access details. SAPOL has the authority to enter the project site and the Contractor shall assist them where required. The Supervisor shall arrange an escort if required.
- The Supervisor should then advise the PM and PHA of the discovery.
- The Supervisor will arrange for the discovery area to be bunted off promptly. Where there is available space, a minimum 10 m exclusion zone should be provided.
- The Supervisor will ensure any spoil, dirt, and related materials from the vicinity of the discovery site cease immediately and are secured for inspection. If possible, trucks containing material from the discovery site should be returned to the discovery site.
- If excavated material from the discovery location was transported and deposited to additional sites, these locations must be secured immediately with consideration made to bunting off the material. This applies until the nature and extent of the discovery is fully understood and the material is cleared for use by the HA.
- Effort must be made to limit unnecessary workers/members of the public from congregating at the discovery site, through the establishment of a No Go Zone, or similar.
- Under no circumstances should any project team members converse with the media unless the Department's approval has been provided.

Once SAPOL are on site, their directions/requirements must be followed. SAPOL will take over the management and control the area until the remains have been examined. Forensic Science SA (FSSA) will determine whether the remains are animal or human.

If the remains are human, FSSA will determine whether the remains are modern (potentially indicating a crime scene) or Aboriginal ancestral remains. If remains are determined not to be a crime scene, control of the site will be returned to the Contractor to manage.

If the discovery is identified to be Aboriginal ancestral remains the PHA, HA and PM will coordinate and liaise with the Aboriginal group(s) regarding the management of the discovery (see Section 4.2). The HA will notify DPC-AAR of the discovery as required by Section 20 of the AH Act.

The HA via the PM will advise the Contractor when works can resume in the discovery area.

4.2 Negotiations on the Treatment of Aboriginal Remains

The PHA/HA will coordinate discussions with the Aboriginal group(s), the Contractor and DPC-AAR to ensure the necessary procedures, agreements and approvals are obtained regarding the treatment of the ancestral remains.

This may involve meetings with all parties to address the following:

- discuss culturally appropriate management strategies for the ancestral remains (retain in situ, recovery, excavation, conservation and/or reburial);
- discuss how construction activities adjacent the site are to be managed;
- discuss the involvement and coordination of Aboriginal representatives (if applicable, the engagement of monitors);
- determine appropriate locations/facilities for temporary storage of objects/ancestral remains; and

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- discuss the coordination of any ceremonies or sorry time (if required).

The time required for these negotiations and discussions can vary depending on the nature and scale of the site, the location and condition of the discovery, the wishes of the Aboriginal group(s) involved and flexibility of the specific infrastructure project at that time.