

Guidelines:

issued by the Minister for Environment, Parks and Heritage
under section 21A of the *Aboriginal Heritage Act 1975*



These guidelines are issued under section 21A(1) of the *Aboriginal Heritage Act 1975* (the Act). Section 21A(1) of the Act reads: “The Minister must issue guidelines specifying the actions to be undertaken by a person for the purpose of establishing a defence in accordance with section 21.”

Section 21(1) specifies the relevant defence as follows: “It is a defence to a prosecution for an offence under section 9 or 14 if, in relation to the section of the Act which the defendant is alleged to have contravened, it is proved ... that, in so far as is practicable ... the defendant complied with the guidelines”.

Preliminary Note: general obligations applying to all persons under the *Aboriginal Heritage Act 1975*

All persons remain subject to the general obligations that have existed since the *Aboriginal Relics Act 1975* came into force in 1976 – that is:

- (a) under section 10(3) of the Act they are to report findings of relics.¹ Information on how to report findings may be found at <http://www.aboriginalheritage.tas.gov.au> or by calling Aboriginal Heritage Tasmania on **1300 487 045**;
- (b) they must not harm relics through acts including “destroy, damage, deface, conceal or otherwise interfere with” relics, and the other acts outlined in section 14(1) of the Act;
- (c) under section 9(1) they must not harm relics (and / or what are defined as “protected objects”) in protected sites; these sites are limited in number and extent. There is some basic information on them in section 4 below.

These Guidelines are therefore to be understood as applying in conjunction with the provisions of section 9(1), section 10(3) and section 14(1).

Compliance with the Guidelines – proponents of significant projects (resource industries, land developers, major infrastructure, etc)

Explanation

This section applies to people and businesses (“proponents”) that undertake activities with significant potential to have an impact on relics through large-scale disturbance of the ground. These proponents include, but are not limited to, those that:

- operate mines and quarries or undertake mineral exploration;
- harvest forest products or establish new plantations;
- carry out large scale construction projects, including dams;
- develop previously undeveloped land for residential, tourism or industrial uses (including marine farming);

¹ “Relics” remains the term used in the *Aboriginal Heritage Act 1975*; it is defined in section 2 of the Act.

- build and maintain roads, railways and other civil engineering projects;
- construct and maintain the infrastructure for utilities such as telecommunications, electricity, gas, water and sewerage, including the management of water levels in impoundments; and
- construct or maintain any other linear infrastructure and associated facilities.

The nature of the activities undertaken by these proponents, including the necessity to plan and document all works, makes it appropriate to characterise the approach they should take to Aboriginal heritage as the exercise of due diligence.

There are a number of relevant industry or sector-specific resources and documents to guide such proponents' approach to due diligence in relation to Aboriginal heritage. Some of them have been formally "adopted" under these Guidelines (see section 5 below).

The first step in exercising due diligence is to check whether a proposed activity is covered by any of the adopted documents. If so, in so far as is practicable, the proponent should ensure that their actions are in accordance with the adopted document(s).

All of them incorporate appropriate advice about the steps to take, including by making early contact with the administrator, Aboriginal Heritage Tasmania, to establish and obtain whatever information is available about any relics that may be affected by a proposal.

If there is no adopted industry or sector-specific document relevant to a proponent's activities, the proponent should refer to the current edition of the "Aboriginal Heritage Standards and Procedures" produced by Aboriginal Heritage Tasmania. That document is also adopted under these Guidelines.

Reference should be made to the "Aboriginal Heritage Standards and Procedures" in all cases where surveys need to be undertaken.

Summary advice:

1. Identify whether a proposed activity is appropriately covered by a document that has been adopted by these Guidelines (see section 5 below).
2. If so, follow the procedures laid down in the adopted document.
3. If not, refer to the "Aboriginal Heritage Standards and Procedures" published by Aboriginal Heritage Tasmania and comply with its prescriptions or advice.
4. In all cases, contact Aboriginal Heritage Tasmania as early as practicable, once the area of land likely to be impacted has been identified.
5. In any case where an on ground Aboriginal heritage assessment is necessary, ensure that the process is undertaken in accordance with the "Aboriginal Heritage Standards and Procedures".
6. If at any time you believe that a relic has been found, report that finding to Aboriginal Heritage Tasmania on **1300 487 045** and act in accordance with the advice provided.

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Compliance with the Guidelines – farmers

Explanation

A farmer who is doing no more than carrying out on their farm a primary industry activity for which no authorisation is required under any other Act, and who has no reason to believe that this activity might impact relics, is not required to take special steps under these Guidelines. However, like any other person in Tasmania, a farmer is subject to the general obligations outlined in the Preliminary Note above (ie to report new findings of relics and not to harm relics).

For the purposes of these Guidelines, the terms “farm” and “primary industry activity” have the same meaning as in section 3 of the *Primary Industry Activities Protection Act 1995*. One aspect of “primary industry”, as defined in the *Primary Industry Activities Protection Act 1995*, is “planting trees, establishing forests or growing or harvesting timber”. Such activities on a farm may be regulated under the *Forest Practices Act 1985* and covered by the relevant adopted document(s) for the forest industry, as explained in section 1 and listed in section 5 of these Guidelines.

A farmer who is:

- (a) required to apply for authorisation, under any other Act, for a new activity on their farm that will disturb the ground; or
- (b) planning to undertake any other new activity that they reasonably believe might impact relics –

should first make a preliminary inquiry to Aboriginal Heritage Tasmania online or by phone (see point 2 below). Any such query will lead to the provision of advice, including what to do in the event of unanticipated discoveries, and the farmer should then have regard to that advice.

Summary advice:

1. If only normal farming activities are being undertaken and there is no reason to believe that these activities might impact relics, no specific actions are required under these Guidelines.
2. If it is necessary to apply for authorisation, under any other Act, for a new activity on a farm that will disturb the ground, first make a preliminary inquiry on whether or not further advice is required from Aboriginal Heritage Tasmania in relation to the land to be impacted. This inquiry can be made through “Before You Dig Australia”™ <https://www.1100.com.au>, by calling Aboriginal Heritage Tasmania on **1300 487 045**, or by conducting a search through the Aboriginal Heritage Property Search <http://www.aboriginalheritage.tas.gov.au/propertysearch>.
3. If planning to undertake any other new activity that it is reasonably believed might impact relics, first obtain preliminary information as outlined in point 2 above.
4. When in receipt of the advice obtained under point 2 or 3 above, act accordingly, including in relation to unanticipated discoveries.
5. If at any time you believe that a relic has been found, report that finding to Aboriginal Heritage Tasmania on **1300 487 045** and act in accordance with the advice provided.

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Compliance with the Guidelines – householders and private citizens

Explanation

A person who is doing no more than carrying out on private land activities for which no authorisation is required under any other Act, and who has no reason to believe that this activity might impact relics, is not required to take special steps under these Guidelines. However, every person in Tasmania is subject to the general obligations outlined in the Preliminary Note above (i.e. to report new findings of relics and not to harm relics).

A person who is:

(a) required to apply for authorisation, under any other Act, for a new activity that will disturb the ground; or

(b) planning to undertake any other new activity that they reasonably believe might impact relics – should first make a preliminary inquiry to Aboriginal Heritage Tasmania online or by phone (see point 2 below). Any such query will lead to the provision of advice, including what to do in the event of unanticipated discoveries, and the person should then have regard to that advice.

Recreational activities on public land, including public land in any form of reserve, may also impact relics. Anyone entering public land should, as far as practicable, always seek out signage or other available explanations (including online) of how to act appropriately on that land, and should specifically seek to understand what actions are prohibited. All persons should ensure they then act in accordance with the information provided.

Summary advice:

1. If only normal domestic or recreational activities are being undertaken on private land, and there is no reason to believe that this activity might impact relics, no specific actions are required under these Guidelines.
2. If it is necessary to apply for authorisation, under any other Act, for a new activity that will disturb the ground, first obtain preliminary information on whether or not further advice is required from Aboriginal Heritage Tasmania in relation to the land to be impacted. This can be obtained through “Before You Dig Australia”™ <https://www.1100.com.au>, by calling Aboriginal Heritage Tasmania on **1300 487 045**, or by conducting a search through the Aboriginal Heritage Property Search <http://www.aboriginalheritage.tas.gov.au/propertysearch>.
3. If planning to undertake any other new activity that it is reasonably believed might impact relics, first obtain preliminary information as outlined in point 2 above.
4. When in receipt of the advice obtained under point 2 or 3 above, act accordingly, including in relation to unanticipated discoveries.
5. If entering public land (including reserves), seek out signage or other information in relation to how to act on that land, and particularly what actions may be prohibited. Always act in accordance with this signage or other information.
6. If at any time you believe that a relic has been found, report that finding to Aboriginal Heritage Tasmania on **1300 487 045** and act in accordance with the advice provided.

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Compliance with the Guidelines – persons entering “protected sites” declared under section 7 of the *Aboriginal Heritage Act 1975*

Explanation

The guidelines apply to offences under section 9. These offences relate specifically to protected sites declared under section 7 of the Act.

Only three small areas of Tasmania have been declared protected sites under the Act, the most recent being in 1986. All were previously reserved under parks and reserves legislation and two still are. Summary details are:

- West Point Aboriginal Site (Statutory Rule 1979, No. 217): this area of 557 ha is situated at the northern end of the Arthur-Pieman Conservation Area, on the coast near Marrawah; it is reserved under the *Nature Conservation Act 2002* as the West Point State Reserve, managed by the Parks and Wildlife Service. The place name is now *nungu* / West Point.
- Sundown Point Aboriginal Site (Statutory Rule 1979, No. 235): this area of 149 ha is some 15-20 kilometres south of West Point; it is reserved under the *Nature Conservation Act 2002* as the Sundown Point State Reserve, managed by the Parks and Wildlife Service. The place name is now *laraturunawn* / Sundown Point.
- Maxwell River Protected Archaeological Site (Statutory Rule 1986, No. 6): this is Aboriginal land that was returned in 1995 under the *Aboriginal Lands Act 1995*. Title is held by the Aboriginal Land Council of Tasmania. The land is in a remote area, entirely surrounded by the Franklin-Gordon National Park, part of the Tasmanian Wilderness World Heritage Area.

Recreational activities in these protected sites carry a high risk of impacting relics (although in practice Maxwell River is far less accessible than the first two). Anyone entering one of these areas should, as far as practicable, always seek out signage or other available explanations (including online) of how to act appropriately in the protected area, and should specifically seek to understand what actions are prohibited. All persons should ensure they then act in accordance with the information provided. More generally, their status as protected sites means that people in these areas should be mindful of the need to respect the wishes and sensitivities of Aboriginal people in regard to appropriate actions in the protected site.

Summary advice:

1. If entering any land that is a protected site under the Act, seek out signage or other information in relation to how to act in the protected site, and particularly what actions may be prohibited. Always act in accordance with this signage or other information.
2. In acknowledgment of the reasons behind the declaration of these areas as protected sites under the Act, respect the wishes and sensitivities of Aboriginal people in regard to appropriate actions in the protected site.

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Documents adopted under section 21A(3)(b) of the Act

Under section 21A(3)(b) of the *Aboriginal Heritage Act 1975* the Guidelines “may adopt, either wholly or in part and with or without modification, either specifically or by reference, any standards, rules, codes, guidelines or other documents (whether published or issued before or after the commencement of this section)”.

Under section 21A(4) if any such document is adopted, adoption will extend to any amendment of that document.

The following documents are adopted as provided in the Act. Adoption has the effect that persons who act in accordance with these adopted documents are taken (to the relevant extent) to be acting in accordance with these Guidelines:

“Aboriginal Heritage Tasmania Standards and Procedures”

<http://www.aboriginalheritage.tas.gov.au>

Aboriginal Heritage Tasmania

“Procedures for managing Aboriginal cultural heritage when preparing forest practices plans”

<http://www.fpa.tas.gov.au>

Forest Practices Authority

“Mineral Exploration Code of Practice”

<http://www.mrt.tas.gov.au>

Mineral Resources Tasmania



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