

Master Specification

Part PC-H1

Aboriginal Heritage and Native Title

September 2024



Government of South Australia
Department for Infrastructure
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PC-H1 Aboriginal Heritage and Native Title

1 General

- a) This Master Specification Part sets out the minimum Aboriginal heritage and Native Title requirements, including:
 - i) the Contractor's obligations, as set out in section 2;
 - ii) the Aboriginal heritage risk management payment requirements, as set out in section 3;
 - iii) the Aboriginal heritage requirements, as set out in section 4;
 - iv) the Aboriginal heritage monitoring during construction requirements, as set out in section 5;
 - v) the discovery of sites, objects or remains requirements, as set out in section 6;
 - vi) the Native Title requirements, as set out in section 7;
 - vii) the reburial requirements, as set out in section 8; and
 - viii) the Hold Point and Witness Point requirements, as set out in section 9.
- b) The Contractor's Activities must comply with all Reference Documents, including:
 - i) Department Environment and Heritage Technical Manual (EHTM), including all attachments and supporting documentation (available from: <https://dit.sa.gov.au/standards/manuals>); and
 - ii) South Australian Government's Guidelines for Aboriginal Heritage Risk Management Payments (available upon request).
- c) The Contractor's Activities must be undertaken in accordance with all Laws (including applicable legislation and documents), including:
 - i) *Aboriginal and Torres Strait Island Protection Act 1984 (Cth)*;
 - ii) *Aboriginal Heritage Act 1988 (SA)*;
 - iii) *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*;
 - iv) *Native Title Act 1993 (Cth)*; and
 - v) *Native Title (South Australia) Act 1994 (SA)*.
- d) For the purposes of this Master Specification Part:
 - i) Attorney-General's Department - Aboriginal Affairs and Reconciliation is referred to as "AGD-AAR";
 - ii) South Australian Government's Guidelines for Aboriginal Heritage Risk Management Payments is referred to as the "Guidelines";
 - iii) "ILUA" means Indigenous Land Use Agreement; and
 - iv) "NNTT" means National Native Title Tribunal.

2 Contractor's obligations

- a) The Contractor's Activities and advice must be undertaken to maximise the achievement of the following objectives:
 - i) avoid damage, disturbance or interference to Aboriginal archaeological / anthropological sites, objects or remains; and

- ii) avoid Works or Temporary Works that impact areas where Native Title has been determined to exist, or co-exist, unless otherwise authorised by the Principal.
- b) Where the Contractor proposes an approach that does not conform to the requirements of this Master Specification Part:
 - i) for projects with an alliance form of contract, the Contractor must propose a Variation or Design Departure (as applicable) in accordance with the Contract Documents; and
 - ii) for all other contracts, the Contractor must submit a request to the Principal detailing the alternative approach, which will constitute a **Hold Point**. The alternative approach must not be implemented until the Hold Point has been released.
- c) The Contractor, unless otherwise advised by the Principal, is responsible for obtaining all Approvals (including permits and authorisations) required for the Works and Temporary Works. An exception is when the Principal is guided to seek advice from the Crown Solicitor's Office (CSO) under Native Title (as per section 7).
- d) The Contractor must administer payments for Aboriginal heritage services consistent with the guidelines.

3 Aboriginal heritage risk management payments

- a) The Contractor must comply with the requirements of the guidelines, which specifies the Contractor's rates of payment to others for meeting attendance, monitoring, surveys, disbursements, and heritage associated tasks.
- b) The Contractor must not agree to any terms and conditions, or make any payments (whether direct or indirect), in relation to the engagement of Aboriginal organisation(s) or Traditional Owners for heritage services that are inconsistent with the guidelines.
- c) The Contractor is responsible for:
 - i) liaising with the Aboriginal group(s) or representatives in relation to heritage matters. The Principal may assist with these negotiations where appropriate;
 - ii) providing all necessary support to Aboriginal group(s) or representatives to undertake the services required including travel to and from location, safety inductions and provision of relevant equipment/PPE (if not otherwise provided);
 - iii) organising and administering payments to the Aboriginal group(s) or representatives in accordance with the rates approved by the Attorney-General and the Principal;
 - iv) maintaining adequate records of payments, disbursement, receipts, attendance, individual timesheets, and invoices. Signed timesheets may be requested at completion of work or any time when required by the Principal;
 - v) providing a written report of survey / monitoring results, with recommendations for the effective management of the area for the duration of Project; and
 - vi) providing quarterly financial reporting to the Principal (including notification to DIT.TSPDPlanningandTechnicalServices@sa.gov.au):
 - A. at the timeframes nominated in Table PC-H1 3-1; and
 - B. in accordance with the Department's template provided,detailing the financial information related to the commission of Aboriginal heritage services as described in the guidelines.

Table PC-H1 3-1 Reporting dates

Financial quarters	Reporting due date
1 Jan - 31 Mar	8 April
1 April - 30 June	8 July
1 July - 30 Sept	8 October
1 Oct - 31 Dec	8 January

4 Aboriginal heritage

4.1 General

- a) The Contractor must engage a suitably qualified archaeologist / heritage specialist, and where required a suitably qualified anthropologist, to undertake all activities required by this Master Specification Part.
- b) Subject to section 4.1c), the specialist required in section 4.1a) must be prequalified with the Department for provision of these services.
- c) Where the specialist required in section 4.1a) cannot be prequalified, the Contractor must submit a request to the Principal which contains details of the specialist proposed and evidence demonstrating proof of expertise and qualifications, which will constitute a **Hold Point**. The suitably qualified archaeologist / heritage specialist / anthropologist must not be engaged until the Hold Point has been released.

4.2 Desktop assessment

4.2.1 General

- a) The Contractor must undertake a desktop assessment that includes:
 - i) the Project location;
 - ii) current and previous land use;
 - iii) soil profile and nearby waterways;
 - iv) past heritage surveys and reports (if any). If no previous heritage surveys or reports are available for the Project footprint, this must be noted by the Contractor in the risk assessment;
 - v) an Aboriginal heritage, Native Title, and related land use assessment(s) undertaken in accordance with sections 4.2.2 and 4.2.3;
 - vi) outcomes of a search of the Register of Aboriginal Sites and Objects (including a copy of the search output);
 - vii) a review of all previous assessments, surveys and reports (if any) sourced through its own research or provided by the Principal; and
 - viii) a comprehensive heritage risk assessment in accordance with section 4.2.4.
- b) Submission of the desktop assessment, required in section 4.2.1a), including the Contractor's proposal to undertake further work as required by section 4.2.4c), will constitute a **Hold Point**. Further work under section 4 will be subject to the approval of the Principal as part of the Hold Point release, and must not commence until this Hold Point has been released.
- c) All maps provided must be highly legible, easily interpreted and produced to a minimum standard as follows:
 - i) include a legend identifying the symbols used to represent features on the map;
 - ii) provide a minimum of at least 3 readily identifiable features as reference points (such as road names, named waterways or other prominent features);

- iii) include a scale shown by a graphic bar or as a unit of measurement (such as 1:200);
- iv) include a prominent arrow indicating which direction is north;
- v) include a description of what the map represents;
- vi) ensure mapping utilises industry standard mapping programs and GIS technology; and
- vii) results mapping must clearly identify areas as:
 - A. cleared for use;
 - B. cleared with conditions; or
 - C. not cleared for use,and the Department recommends that areas are depicted in green, orange and red respectively for this purpose.

4.2.2 Aboriginal heritage assessment

- a) The Contractor must ensure the Aboriginal heritage and related land use assessment(s), necessary for the execution of the Works or Temporary Works, are undertaken (where relevant).
- b) The Contractor must ensure that the search area for the Aboriginal heritage and related land use assessments includes the entire Project footprint for the Works and Temporary Works. This includes all land parcels (wholly or partially, for use temporarily or permanently) to enable Project construction (such as laydown areas, site compound locations and site access tracks) and delivery.
- c) The Aboriginal heritage and related land use assessments required by the Department EHTM must (where relevant):
 - i) be undertaken by personnel appropriately qualified in matters related to Aboriginal heritage, Native Title, and related land use;
 - ii) include a map of the area searched and the results of a check of the Register of Aboriginal Sites and Objects maintained by AGD-AAR (available from; <https://taawika.sa.gov.au/>); and
 - iii) identify the relevant Aboriginal groups/organisations/Traditional Owners that may have an interest in the specific area, as specified by AGD-AAR.
- d) The AGD-AAR results, including associated site tables and site cards must be provided to the Principal. These will be kept in a secure and confidential register of information by the Principal.

4.2.3 Native Title assessment

- a) The Contractor must undertake a preliminary assessment and identify the Native Title status of all land that may be impacted within the Project footprint.
- b) The Contractor must ensure that the search area for Native Title includes the entire Project footprint for the Works and Temporary Works. This includes all land parcels (wholly or partially, for use temporarily or permanently) to enable Project construction (such as laydown areas, site compound locations and site access tracks) and delivery.
- c) Areas within the Project footprint where the National Native Title Tribunal indicates that Native Title exists or co-exists over specific parcels of land must be clearly identified (refer to the "Determined Outcomes" layer available from <http://www.nntt.gov.au/>).
- d) As a minimum, the assessment required by section 4.2.3a) must determine the following:
 - i) if the land is subject to a Native Title claim;
 - ii) if the land is subject to a Federal Court Native Title determination;

- iii) should section 4.2.3d)i) or 4.2.3d)ii) apply, the Contractor must identify the relevant Registered Native Title Body Corporates (RNTBC) and legal representatives;
 - iv) if the land is subject to an ILUA, whether the Principal (i.e. Government of SA) is a party to that relevant ILUA, and (if known) whether there are any parameters within the ILUA that may apply to the Project; and
 - v) provide mapping to indicate the Native Title (i.e. determined outcomes - exists, co-exists, extinguished, otherwise) of the project footprint. This must include adjacent land parcels with Native Title implications and identify these as a high-level constraint.
- e) The Contractor must provide the Principal with all necessary information regarding the land (e.g. plans, Project details, parcel identifiers, etc.) to enable the Principal to seek Crown advice and confirm the Contractor's preliminary findings regarding Native Title.

4.2.4 Aboriginal heritage risk assessment

- a) The Aboriginal heritage risk assessment must include a qualitative risk analysis for the Works and Temporary Works and an evaluation of the risk of damaging, disturbing, and interfering with both known and previously unknown Aboriginal sites, objects or remains.
- b) The Aboriginal heritage risk assessment may include a high-level constraints map for the Project footprint depicting:
 - i) the approximate location of AGD-AAR sites;
 - ii) areas where the National Native Title Tribunal (NNTT) has found that Native Title exists or co-exists over specific parcels of land (refer to the "Determined Outcomes" layer available from <http://www.nntt.gov.au/>); and
 - iii) where the level of risk varies across the Project footprint, this must be clearly indicated on the map and justified.
- c) The Aboriginal heritage risk assessment must include advice on the requirement for any Approvals (including permits and authorisations) required for the work, and based on the risk, and make reasoned and justified recommendations for heritage management strategies or practices based on the assessment of risk.
- d) The "advice" required in section 4.2.4c) may include:
 - i) recommendations for engagement with Aboriginal organisations or Traditional Owners;
 - ii) application of protective measures to avoid/minimise potential impacts;
 - iii) application of education/awareness strategies to avoid/minimise potential impacts;
 - iv) reference to the relevant Discovery Procedure during works;
 - v) undertaking surveys;
 - vi) preparation of a Cultural Heritage Management Plan (CHMP);
 - vii) applications for authorisations under the *Aboriginal Heritage Act 1988* (SA);
 - viii) development of a Heritage Agreement; and
 - ix) any other measures considered reasonable to avoid damage, disturbance and interference to Aboriginal sites, objects or remains.
- e) Where the Contractor proposes an alternative risk assessment approach that does not conform to the requirements of this Master Specification Part, the Contractor must submit a request in accordance with section 2b).

4.3 Aboriginal heritage survey(s)

- a) Aboriginal heritage surveys must be undertaken in accordance with Best Industry Practice (e.g. Burke, Morrison, and Smith. 2017. *The Archaeologists Field Handbook* 2nd Ed.), and where applicable, the requirements of relevant ILUA(s).

- b) Aboriginal heritage surveys must assess the heritage values of a given area (and any specifics included in a relevant ILUA) and involve the appropriate Aboriginal organisations, representatives, or Traditional Owners for the area.
- c) Sites identified must be mapped and recorded to AGD-AAR standards.
- d) Where it is necessary to consult with Aboriginal organisation(s) or Traditional Owners, the Contractor is responsible for engagement and payment for consultation and must follow the process outlined in section 3.
- e) The Aboriginal heritage survey must assess the impact of the proposed Works or Temporary Works on any known or identified Aboriginal sites, objects or remains, as defined under the *Aboriginal Heritage Act 1988 (SA)*.
- f) The Aboriginal heritage survey must also assess the risk of encountering or damaging, disturbing, and interfering with any previously unknown Aboriginal sites, objects or remains, as defined under the *Aboriginal Heritage Act 1988 (SA)*.

4.4 Aboriginal Heritage Survey Report

- a) At the conclusion of the heritage survey, the Contractor must prepare and submit an Aboriginal Heritage Survey Report. The Aboriginal Heritage Survey Report can be provided as a standalone report or as an amendment to a previous desktop assessment.
- b) The Aboriginal Heritage Survey Report required in section 4.4a) must:
 - i) detail the methodology utilised for the Aboriginal heritage survey;
 - ii) detail the coverage of the survey area, and the effectiveness of the survey; and
 - iii) meet industry standards and be valid in its accuracy and recommendations for at least 5 years.
- c) In relation to mapping information and shape files:
 - i) they must be submitted with the Aboriginal Heritage Survey Report clearly indicating areas that are referenced in the report;
 - ii) areas must be identified as “cleared for use”, “not cleared for use” or “cleared with conditions” (i.e. requires monitoring); and
 - iii) where possible, the Contractor must map alternatives that allow for the avoidance of heritage values (i.e. realignment of roads, access tracks).
- d) A suggested report structure is provided in the Department EHTM.
- e) The Aboriginal Heritage Survey Report must include:
 - i) advice on the requirement for any consultation, Approvals (including permits, and authorisations) required for further work;
 - ii) recommendations on the need for further engagement with Aboriginal organisation(s) or Traditional Owners; and
 - iii) recommendations that will enable delivery of the Project (such as heritage inspections and localised monitoring). For significant long term infrastructure projects where heritage values are present, a valid recommendation may include the preparation of a CHMP.
- f) The Contractor must submit a draft version of the Aboriginal Heritage Survey Report, which will constitute a **Witness Point**. The Contractor must not submit an updated version of the Aboriginal Heritage Survey Report until the Contractor has proceeded past the Witness Point.
- g) The Contractor must submit an updated version of the Aboriginal Heritage Survey Report which addresses all comments received from the draft submission, which will constitute a **Hold Point**. The Contractor must not carry out further activities contemplated by the report until the Hold Point has been released.

- h) Any payments to Aboriginal representatives/groups for participation in the heritage survey must be in accordance with the requirements of the guidelines.

4.5 Authorisations under the *Aboriginal Heritage Act 1988 (SA)*

- a) The Contractor must obtain any authorisations required under the *Aboriginal Heritage Act 1988 (SA)*.
- b) The Contractor must prepare the applications and all associated documentation to obtain the authorisations required in section 4.5a).
- c) Submission of the draft applications required in section 4.5b), and associated documentation will constitute a **Hold Point**. The Contractor must not submit the application and associated documentation to the relevant authority until this Hold Point has been released.
- d) The Contractor, unless advised by the Principal, is responsible for managing the application and authorisation process including the lodgement of the applications and associated documentation to the relevant authority to seek authorisations. This includes undertaking any other additional work/tasks required to seek the authorisations, including liaising with, and providing support and assistance to, the relevant government agency; and attendance and presentation at consultation meetings. The Principal may assist where required.
- e) The Contractor must provide a copy of any authorisation, and amendments, to the Principal within 5 Business Days of receipt.
- f) The Contractor must comply with all requirements / conditions of authorisations granted under the *Aboriginal Heritage Act 1988 (SA)*.

4.6 Cultural Heritage Management Plan

- a) The Contractor, unless advised by the Principal, must develop a Cultural Heritage Management Plan (CHMP) that includes:
 - i) an introduction and intention of the plan;
 - ii) the Contractor's roles and responsibilities (including contact details);
 - iii) monitoring guidelines (including engagement protocol and requirements regarding role, qualifications, PPE, insurances, etc.);
 - iv) clear management measures to apply in case of discoveries of Aboriginal sites, objects and remains if identified (discovery protocols);
 - v) clear instructions around protective measures to be applied either temporarily or permanently to manage both known sites, and new discoveries, including who is responsible for applying the measures; and
 - vi) recommendations for the management, storage, and repatriation of Aboriginal sites, objects and remains (including analysis / testing).
- b) The Contractor, unless otherwise advised by the Principal, must consult with relevant Aboriginal groups regarding the CHMP and obtaining their endorsement, where required.
- c) Any payments to Aboriginal representatives/groups must be in accordance with the requirements of the guidelines.
- d) Mapping information and shape files must be submitted with the CHMP clearly indicating areas that are referenced in the report as cleared for Works or Temporary Works, requiring monitoring, or areas that are not cleared or have changed location following preparation of the CHMP.
- e) For contracts where PC-PM1 "Project Management and Reporting" is not included, submission of the draft and endorsed CHMP (including associated mapping) will constitute a **Hold Point**.

5 Aboriginal heritage monitoring during construction

- a) Unless otherwise specified in an authorisation under the *Aboriginal Heritage Act 1988* (SA), the Contractor must ensure that all personnel are made aware of their obligations under the *Aboriginal Heritage Act 1988* (SA).
- b) The Contractor, unless advised by the Principal, must engage the nominated Aboriginal representatives from the relevant Aboriginal organisations to monitor activities in areas identified as having high potential or risk, or as otherwise agreed in a CHMP for the Works and Temporary Works or as stipulated in any authorisation. Aboriginal representatives must be engaged in accordance with section 3. The Principal may assist with negotiations where appropriate.
- c) Any payments to Aboriginal representatives/groups must be in accordance with the requirements of the guidelines.
- d) The Contractor must ensure:
 - i) the appropriate number of Aboriginal heritage monitors, as outlined in the guidelines, has been requested for all ground disturbing works within the identified monitoring areas;
 - ii) that if ground disturbance is occurring in multiple areas along the alignment, the maximum distance 2 monitors can be shared between ground disturbance points is to be no more than 500 m; and
 - iii) Aboriginal representatives understand their obligations under the *Work, Health and Safety Act 2012* (SA), and provide copies of applicable construction industry cards (i.e. white card) or undertake necessary training prior to commencing monitoring works on site.

6 Discovery of sites, objects or remains

- a) If, at any time, an Aboriginal site, object or remains is uncovered, the Contractor must refer to the Discovery Procedure set out in Appendix 1: Discovery Procedure, Department EHTM Attachment 2A - Aboriginal Sites, Objects and Ancestral Remains Discovery Procedure, and comply with the following:
 - i) immediately stop works and isolate / bunt off the site providing a 10 m perimeter to ensure that no disturbance occurs within the isolated area; and
 - ii) follow the conditions, requirements and processes of a granted authorisation(s), CHMP(s), the Discovery Procedure set out in Appendix 1: Discovery Procedure and the Department EHTM Attachment 2A - Aboriginal Sites, Objects and Ancestral Remains Discovery Procedure (as applicable).
- b) The Contractor must notify the Principal within 24 hours following the discovery or of any suspected or actual Aboriginal sites, objects or remains.
- c) The Contractor must provide any services / items for the management of any identified Aboriginal sites, objects or remains.
- d) The Contractor is responsible for ensuring the area is appropriately recorded by a heritage specialist for the purposes of reporting the site to AGD-AAR, as specified by section 20 of the *Aboriginal Heritage Act 1988* (SA). A copy of the documentation and shape files of the location must be provided to the Principal within 10 Business Days following the discovery / potential discovery.
- e) The Contractor must undertake any assessments and obtain any Approvals (including permits and authorisations) required to continue with the Works or Temporary Works.
- f) The Contractor must undertake negotiations, in good faith, and implement requirements / recommendations on the management of any identified Aboriginal sites, objects or remains

with relevant Aboriginal organisations or Traditional Owners and the Principal. The Principal may assist with the negotiations where required.

- g) Any payments to Aboriginal representatives/groups must be in accordance with the requirements of the guidelines.
- h) The Contractor must ensure compliance with the requirements of the *Aboriginal Heritage Act 1988 (SA)* and not recommence the relevant Works or Temporary Works in the affected area until any authorisations have been obtained, conditions have been implemented, and clearance has been provided by the Principal.
- i) Where not required by Law, the Contractor must meet any reasonable requirements of Aboriginal organisations / Traditional Owners in relation to the heritage impact.

7 Native Title

- a) If required, the Principal will undertake the notification process under the *Native Title Act 1993 (Cth)*.
- b) Following submission of the information required by section 4.2.3, a **Hold Point** will apply. The Contractor must allow at least 3 months for clarification and notification activities to occur. No Works or Temporary Works are to occur on parcels of land where Native Title is affected until this Hold Point has been released, unless approved by the Principal.

8 Reburial

- a) Upon approval of the Principal, the Contractor must engage Aboriginal representatives from the relevant Aboriginal organisation(s) to reinter Aboriginal ancestral remains.
- b) Upon approval of the Principal, the Contractor must:
 - i) obtain any authorisations required under the *Aboriginal Heritage Act 1988 (SA)* or the *Burials and Cremations Act 2013 (SA)*.
 - ii) liaise with and provide support and assistance to the relevant government agency; and
 - iii) attend and present at consultation meetings.
- c) The Principal may assist with the activities required in sections 8a) and 8b) where required.
- d) The Contractor must engage a suitably qualified archaeologists to archaeologically record the reburial site for the purpose of reporting to AGD-AAR, as specified by section 20 of the *Aboriginal Heritage Act 1988 (SA)*. A copy of the documentation and shape files of the location must be provided to the Principal within 2 weeks of recording the area.
- e) Any payments to Aboriginal representatives/groups must be in accordance with the requirements of the guidelines.

9 Hold Points and Witness Points

- a) Table PC-H1 9-1 details the review period or notification period, and type (documentation or construction quality) for each Hold Point referred to in this Master Specification Part.
- b) Table PC-H1 9-2 details the review period or notification period, and type (documentation or construction quality) for each Witness Point referred to in this Master Specification Part.

Table PC-H1 9-1 Hold Points

Section reference	Hold Point	Documentation or construction quality	Review period or notification period
2b)ii)	Proposal of an approach not conforming to this Master Specification Part	Documentation	10 Business Days review
4.1c)	Request to use a non-prequalified specialist	Documentation	10 Business Days review
4.2.1b)	Desktop assessment	Documentation	10 Business Days review
4.4g)	Aboriginal Heritage Survey Report	Documentation	10 Business Days review
4.5c)	Draft Approval documentation under the <i>Aboriginal Heritage Act 1988 (SA)</i>	Documentation	20 Business Days review
4.6e)	Submission of the draft and endorsed CHMP and associated mapping	Documentation	20 Business Days review
7b)	Provision of documentation for Native Title clarification	Documentation	3 months review

Table PC-H1 9-2 Witness Points

Section reference	Witness Point	Documentation or construction quality	Review period or notification period
4.4f)	Draft Aboriginal Heritage Survey Report	Documentation	10 Business Days review

10 Appendix 1: Discovery Procedure

Figure 10-1 Discovery Procedure Flow Chart without Section 23 Authorisation under the AH Act

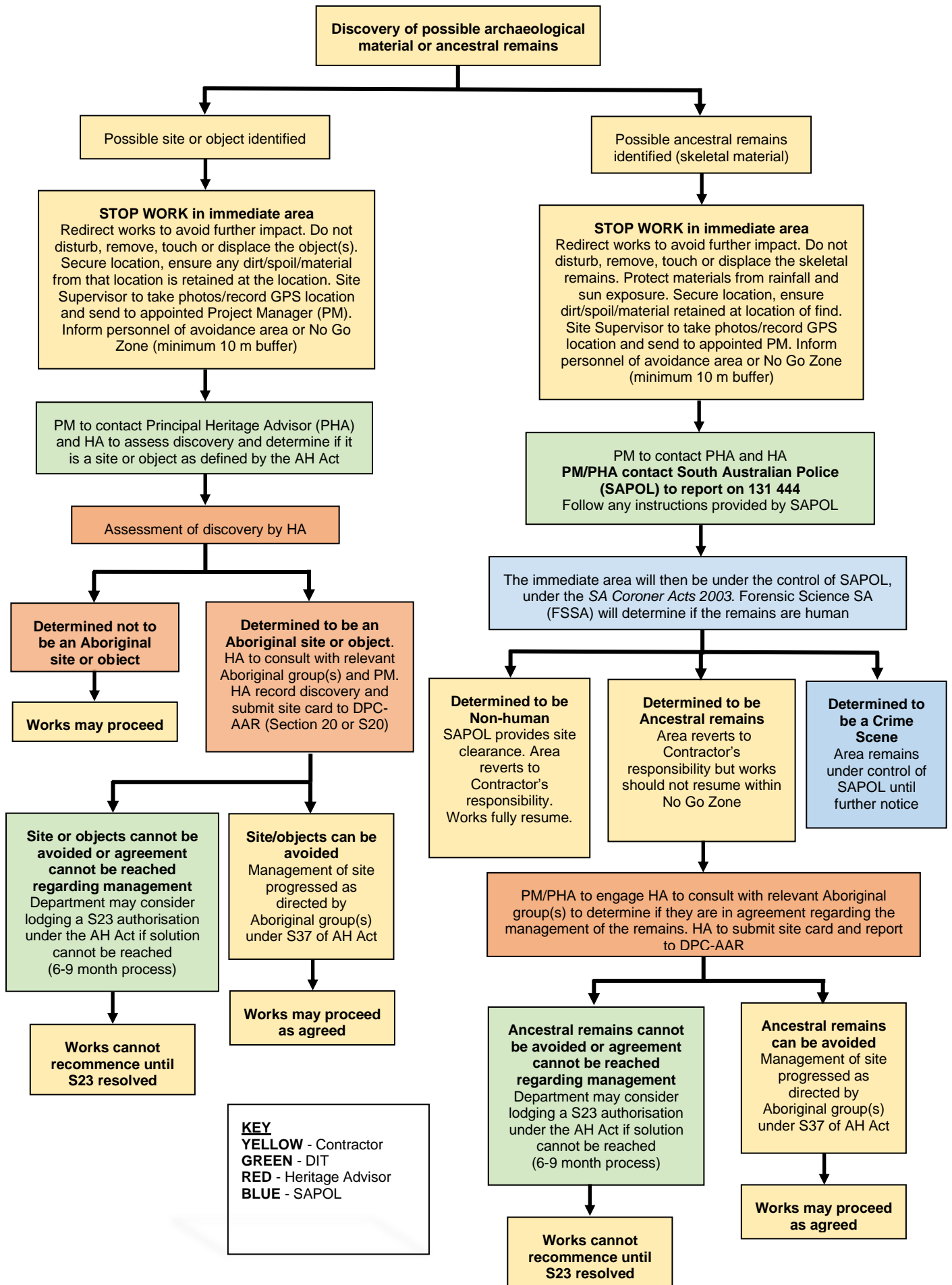


Figure 10-2 Discovery Procedure Flow Chart with Section 23 Authorisation under the AH Act

