The Aboriginal Heritage Act came into operation on 1 March 1989.

Section 35 of the Act makes it an offence to divulge information relating to Aboriginal sites, objects, remains or traditions in contravention of Aboriginal tradition. The Section should not be confused with Section 10 which deals with the confidentiality of information entered in the central archive, local archives and the Register of Sites and Objects set up under the Act.

The intent of Section 35 is to validate in law the variety of traditional Aboriginal sanctions imposed upon the use of secret or restricted information. In plain terms this means that if Aboriginal tradition demands that information be kept secret then that demand applies to everyone, including non-Aboriginal people. The Section particularly makes it an offence to publish such information without the authorisation of traditional owners.

An example of the type of information covered by the Section is the traditional Arabanna account of the creation of Lake Eyre. Various versions of the mythology have appeared over the years, notably in Elkin's The Australian Aborigines in 1945. A version recently appeared in a Department of Education Aboriginal studies course booklet which was distributed to primary schools throughout the State including many with Aboriginal students. The myth contains a great deal of information, including nomenclature, which is traditionally secret and possibly “dangerous”. Most Arabanna people are aware of the restrictions of the myth even if they do not know the fine details and are careful to ensure they do not breach them. That the myth, complete with restricted nomenclature, has been provided to the schools which their children attend obviously creates a major problem...
for them and, in particular, for their children.

While the intent of the Section is to prevent problems like the one above it is not intended to close-off such information to researchers or prevent the publication of information. As with the rest of the Act the Section is designed to give Aboriginal people control of their heritage. If a writer or researcher wishes to publish this sort of information the Section makes it mandatory that they seek permission from the right Aboriginal custodians and abide by traditional rules governing the use of the information. This is not an unreasonable proposition.

With respect to information collected in the past or derived from sources for which the original custodians or informants are deceased the Act sets up a hierarchy of consultation. This hierarchy is detailed in other sections of the Act notably in Section 13. While the authority to divulge secret or restricted information rests with the Minister, he/she is required to consult firstly with the traditional owners then, if they are not identifiable, any local Aboriginal organisations or individuals with an interest in the information and, finally, if there are no identifiable local organisations or individuals, the State Aboriginal Heritage Committee. In effect this means that someone wishing to publish any traditional information will need to seek permission from whichever of these sources is appropriate. In practice it is expected that publications using traditional information will bear an acknowledgment of the traditional Aboriginal source and a note to the effect that the appropriate permission has been obtained for its publication. Researchers and publishers will also need to be aware of the distinction between informants and traditional owners. It may be that an Aboriginal informant, although traditionally entitled to pass on information, is not the custodian of that information and will not be able to authorise its use for publication.

Two definitions contained in the Act should also be noted in relation to Section 35.

The first defines Aboriginal tradition and includes "traditions, observances, customs and beliefs that have evolved or developed from tradition since European colonization." This definition greatly broadens the information covered in Section 35. The intent of the definition is to recognize the dynamic nature of Aboriginal heritage and to acknowledge that it is a living culture. The definition means, among other things, that the processes for the creation of mythologies and sites is recognized as being alive and functioning today and that new information and sites can conceivably be created by living Aboriginal people. The definition also means that old information can be modified by Aboriginal people living today so that, for instance, information or sites previously unrestricted can become traditionally secret.

The second definition relates to traditional owners and is tied in to the definition of tradition. A traditional owner is an Aboriginal person who, in "accordance with Aboriginal tradition (as defined above) has social, economic or spiritual affiliations with, and responsibilities for, the site or object". This again is a broad definition intended to give living Aboriginal people a continuity of custodianship, irrespective of their level of traditional knowledge or expertise, over sites and objects.

Put together these two definitions mean that, for instance, a person who identifies as a member of the Kaurna people of the Adelaide Plains, can legitimately claim to be a traditional owner of a site in metropolitan Adelaide which may not previously have had a known traditional significance. Archaeological sites incorporated into the culture of modern Kaurna descendants could easily fit into this category.

In summary, it can be seen that the clear intent of the Aboriginal Heritage Act is to give Aboriginal people in South Australia as much control as possible over their cultural heritage. For researchers, authors and others operating in a variety of media, including print, electronic and photographic mediums, the Act means that great care must be taken to ensure that resource material is vetted and approved by the appropriate Aboriginal people. As most researchers do this anyway the only additional burden created by the Act is the desirability of detailing and acknowledging that this process has occurred in the actual publication. Where some doubt exists the Aboriginal Heritage Branch, which has contacts with all of the Aboriginal communities and organisations in the State, can be of assistance.