5
Working with the Legislation

All archaeology in Australia is governed by some form of cultural heritage regulation within three concentric regulatory frameworks: federal; state; and local government. Both federal and state levels involve various pieces of legislation that mandate how heritage sites and resources are to be protected under law. Local regulation typically takes the form of municipal planning schemes or other permit processes by town, city or shire councils that involve considering heritage places and items as components of development. These local or municipal planning schemes are still tied to State level legislative frameworks for planning development and protecting heritage sites.

The Commonwealth, or federal, level is obviously the largest scale for such decision making processes. Federal heritage legislation is closely allied to Commonwealth interests—in other words, to activities that take place on Commonwealth land, that are undertaken by Commonwealth agencies or that involve the movement of objects outside of Commonwealth controlled territory. For this reason, federal acts tend to have little direct impact on most archaeological projects. Some Commonwealth acts are not directly archaeological, but may still have a bearing on some archaeological projects. Native Title is perhaps the most important of these. In addition, all World Heritage Places in Australia, while gazetted under international law, are in practice protected by Commonwealth legislation.

Most day to day decision making about archaeological issues takes place at the state level, administered by separate government agencies in each state and territory. All state heritage legislation is broadly similar, in that it seeks to protect a similar range of places and objects from unauthorized damage. The precise definitions in each act vary widely, however, and will therefore have different implications for what is recognized to be a site or an artifact. In addition some state acts provide blanket protection for all sites, both known (i.e. those that have already been recorded and listed) and unknown sites (those that cannot be known until development or other work reveals them), while other acts will only cover known sites. This difference will obviously have repercussions for which situations will require a permit and when an archaeological investigation will be considered mandatory. How each state agency chooses to implement the practical aspects of their legislation is the other side to this coin. Some states are much stricter in

their requirements than others, choosing to regulate who can and cannot conduct archaeological work, how such work is to be reported and how artifact or archival collections are to be managed upon completion of a project. In general, each state government agency will regulate:

- What is and is not deemed to be a site.
- When you need permission to survey, excavate or otherwise work on a site and when you don't (note that in some states only some sites are protected under the legislation), usually under a formal permitting process.
- State-wide registers or lists of sites.
- What additional requirements are expected of you, such as the submission process for final reports and data, whether or not components complementary to the archaeological research are required, such as an interpretation plan for the site, and even down to the preferred format in which you should write your report and submit the data.

Sometimes other state government bodies will play a role in managing heritage sites and artifacts, although usually within a restricted purview. National Parks in South Australia, New South Wales, Tasmania and Queensland, for example, have their own legislation and systems for protecting sites on their properties. The Sydney Harbour Foreshore Authority* (in NSW) and the Port Arthur Historic Site Management Authority* (in Tasmania) are more restricted statutory bodies that govern properties under their management, although they themselves are still governed by the wider provisions of state heritage legislation. Other non-government, but state-based, bodies also play a role in protecting heritage in Australia and therefore are sometimes involved with archaeological fieldwork. The National Trust* has operated in Australia since the 1940s and is the most prominent of these. It is a community-based organization that has semi-autonomous branches in every state and territory. It maintains its own list of significant places, mainly historic but also including some natural and Indigenous places. Because it is non-statutory, the National Trust does not administer any legislation, but it does own and manage a significant number of Australian heritage properties (typically stately homes and other historically significant places), and cares for them under the auspices of the Burra Charter (see Chapter 9). The Historic Houses Trust of New South Wales* and the History Trust of South Australia* are similar non-statutory bodies that have a role in preserving and interpreting heritage sites.

Operating within the state level is the relatively small scale of local government decision making. Local city and shire councils exercise control over planning and development processes within their boundaries, although the extent to which this will incorporate heritage matters will vary from council to council. These councils are still bound by general state heritage legislation, but any protection offered to heritage sites at the local government level will usually be allied to town planning schemes and will be considered alongside other planning issues. Local government councils may maintain their own lists of locally important heritage places, both Aboriginal and European.