

Submission
Review of the Historic Shipwrecks Act 1976

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Jurisdiction of the Act

Q. 1 *Should the Act continue to apply to all waters from the low water mark extending to the outer limit of the continental shelf? If not, what waters should the Act apply to?*

Yes but only if the Commonwealth government is prepared to adequately fund the administration and enforcement of the legislation otherwise the responsibility for some of these waters may as well devolve to the States such as control of coastal waters (out to 3 nm). Legislation is only as good as the administration system(s) established to deal with the public education and enforcement issues that arise from the legislation. Legislation can only be effective if it is adequately enforced and properly administered and these activities require considerably more resources and staff than are currently devoted to the operation and administration of this Act.

Q. 2 *Should the Act allow the Minister to continue to delegate some powers to State and Territory officials as is currently the case? If not, what other models could be used to administer the Act effectively?*

Yes but the Commonwealth should give consideration to alternative models to support the administration of the Act in Australia. One such model would be the establishment of either a centralised or a devolved (shared) pool of high technology equipment such as the **IMOS** (Integrated Marine Observing System) program has (see <http://imos.org.au/>). This equipment (such as magnetometers, side scan sonar, swath bathymetry, ROV, AUV, manned submersibles and vessels) would then be made available to universities, museums and government agencies to conduct survey, monitoring and fieldwork on underwater cultural heritage sites.

Scope of the Act

Q. 3. *The Act protects by declaration all shipwrecks that are at least 75 years old and their associated articles, and articles (associated with a ship) that entered waters at least 75 years ago. Should this protection continue or be varied?*

This protection should be continued but it should be extended to cover all underwater cultural heritage in line with the UNESCO Underwater Cultural Heritage Convention 2001.

Q. 4 Should the Act continue to protect only shipwrecks and associated relics or should its protection include other underwater historical archaeological sites and relics such as sunken aircraft in line with the requirements of the Underwater Cultural Heritage Convention?

No the Act should not just protect shipwrecks it should be extended to cover all underwater cultural heritage in line with the UNESCO Underwater Cultural Heritage Convention 2001.

Q. 5 Should, as is currently the case, the Minister be able to declare underwater sites of historical significance if they are less than the prescribed date e.g. HMAS Sydney II? If so what criteria, if any should be used in making decisions or declarations?

Yes. Criteria should be based on existing criteria for the assessment of significance already in use in Australia like the Burra Charter (see <http://www.icomos.org/australia/burra.html>) and the criteria for National Heritage listing (see <http://www.environment.gov.au/heritage/about/national/criteria.html>)

Q. 6 Should human remains be specifically protected to ensure the dignity of the remains and recognition and preservation of their resting place, and if so how should this protection be provided?

Yes. This could, and should, form part of the revised legislation but such provisions must be effectively monitored and administered which means it has to be funded to provide the resources and staff necessary to conduct regular monitoring of sensitive sites using either scientific diving techniques or high technology equipment (see Q. 2).

Register of Historic Shipwrecks and Historic Shipwreck relics

Q. 7 Should there be a central national register of shipwrecks and shipwreck relics? If so, does the current Australian National Shipwreck Database meet this need?

Yes. There should be a national register. **No** the current Database does not fully meet this need as it does not provide details including photographs of shipwreck relics this is a significant deficiency and it should be rectified.

Q. 8 Are the current reporting requirements for the discovery of shipwrecks and relics sufficient? If not, what information should be reported and how should it be reported?

Yes there is actually no need to change the legislation in this area but there is a desperate need to adequately enforce the existing legislation through a fully effective Historic Shipwrecks Inspectors program that includes regular training and effective administration. This requires additional staffing and increased resources to make the national program work in each and **every** State and Territory instead of just in some.

Q. 9. Should the capacity to provide monetary rewards for reporting shipwreck continue to be provided for in the Act? If not, how could those reporting the discovery of shipwrecks be acknowledged?

No. This provision is outdated and should be removed. Some states have been provided alternatives to monetary rewards for many years in the form of plaques, certificates or replicas and this is the approach that should be taken under the Commonwealth legislation.

Management of Historic Shipwrecks

Q. 10. Should the Act continue to allow open access to most shipwrecks? If not, what should be required?

Yes. There would appear to be no reason to change this provision and any attempt to significantly increase the restrictions on access to most historic shipwrecks would be counter-productive resulting in less public support for the legislation.

Q. 11. Do the current permit requirements of the Act meet best practice? If not, what should be required?

No. The permit requirements are essentially OK but they are a bit out of date and should be brought into line with the UNESCO Underwater Cultural Heritage Convention 2001.

Q. 12. Should the Act explicitly state how archaeological surveys and excavations be conducted and reported on?

No. The problem with including this level of detail in legislation is that best practice in archaeological work continues to evolve and in a relatively short time this would change making it necessary to change the legislation. Legislation should only have a general statement that archaeological survey and excavation should conform to best practice and it should be in line with the UNESCO Underwater Cultural Heritage Convention 2001. The details should be included in a clear statement of guidelines (such as a code of practice and standards of archaeological research) issued by the Commonwealth Department responsible on a regular (at least every five years) and ongoing basis. Again doing this once is a waste of time as it has to be updated on a regular basis which requires both staff and resources.

Q. 13. Should the Act continue to provide for protected zones (that have the effect of restricting site access) to be declared? If protected zones are to be declared, what criteria should determine if a shipwreck requires a protected zone?

Yes. The existing criteria appear to work pretty well.

Q. 14. *Should there be a maximum limit on the size of the protected zones or should the needs of the site define the area?*

No. The needs of the site should largely determine the size of the protected zone within the constraints of not unreasonably interfering with navigation and other activities.

Q. 15. *Currently, historic shipwrecks are not integrated into the planning regimes of the Commonwealth, States and Territories. Should they be, and what would be the preferred mechanism?*

Yes. This is vital and should be a high priority. Shipwrecks and underwater cultural heritage should be integrated into the existing planning regimes in each state (which are frequently different) and so no single mechanism is going to work.

Q. 16. *What approach should be taken towards dive tourism to ensure that it does not adversely impact on underwater archaeological sites?*

An effective wreck inspection and monitoring program together with a properly organised and administered historic shipwrecks inspectors program have clearly demonstrated that it is possible to regularly interact with dive operators and to reduce or eliminate any adverse impacts from dive tourism. Again this requires staff and resources so any approach needs to be adequately resourced.

Management of Historic Shipwrecks Relics

Q. 17. *Does the current permit system assist in the protection of historic shipwreck relics? If not, what would be a preferred model to manage and conserve Australia's historic shipwreck relics?*

No comment

Q. 18. *Should isolated archaeological artefacts found in the sea such as Cook's cannon and anchor from HMB Endeavour and the recent discovery of a pistol from HSK Kormoran) Whether associated with a known shipwreck or not, be protected?*

Yes. Before 1976, there was no effective national, or state, legislation or administrative organisations in Australia that would allow for direct government control of, or even involvement in, any investigation of significant archaeological heritage material such as the six *Endeavour* cannon. The Australian Federal Government should recognise that the *Endeavour* material is of great significance due to its association with Australian exploration. The fact that three cannon are now located outside Australia should provide a lesson which should never be repeated. The Academy of Natural Sciences in Philadelphia, USA has one cannon which is on display on the second floor outside the library. The Te Papa/National Museum of New Zealand in

Wellington, New Zealand has a second cannon and the National Maritime Museum in Greenwich has the third.

Q. 19. Should the Act state principles guiding how historic relics should be conserved and curated?

Yes but only in general terms and detailed guidelines should be published as a code of practice that is regularly updated (see Q. 12).

Q. 20. Should Australia ban all future trade in historic shipwreck relics or continue to allow trade in relics with proven provenance that have previously been traded?

Yes trade in relics should be banned

Q. 21. Should the Act prescribe where underwater relics that have been excavated should be stored and who should manage them?

Yes but only in general terms and detailed guidelines should be published as a code of practice that is regularly updated (see Q. 12).

Compliance and Enforcement

Q. 22. Are the current provisions for appointing inspectors under the Act and Regulations sufficient? If not, what additional requirements would be appropriate?

Yes but as is so often the case the problem does not lie with the legislation but with the administrative mechanisms put in place to put the legislation into force. The existing provisions must be effectively monitored and administered which means it has to be funded to provide the resources and staff necessary to train and maintain contact with the inspectors.

Q. 23. Are the offence and penalty provisions appropriately framed to encourage compliance with the Act? Do they provide a satisfactory level of deterrence to provide for the adequate protection of matters covered in the Act? Are there other measures that should be incorporated into this Act to support the objectives of the Act?

Yes but again the problem does not lie with the legislation but with the administrative mechanisms which are, and have been, desperately underfunded for decades.

Q. 24. Does the Act contain a sufficient, comprehensive and appropriate range of enforcement mechanisms? Are those mechanisms capable of deterring and responding to contraventions of the Act? Are there any other measures which would assist to ensure compliance with the Act?

Yes probably the most effective enforcement provisions would be and is the threat and reality of vessel and equipment confiscation. It may be possible to strengthen these provisions.

Q. 25 *Are the seizure and forfeiture provisions within the Act adequate? Can they be improved to provide a better level of protection and repatriation of items illegally taken from historic shipwrecks? if so, in what way can they be strengthened?*

No comment

UNESCO 2001 Convention for the Protection of the Underwater Cultural Heritage

Q. 26 *if Australia decided to ratify the Underwater Cultural Heritage Convention, the Act would need to be amended to prohibit Australian nationals, Australian companies and Australian vessels from participating in illegal excavations or salvage in another country. Would you support such a proposal? if not, what other mechanisms would you support to ensure that other countries' underwater cultural heritage is protected?*

Yes. Australia should be prepared to act on this in the same way that Australia has extended jurisdiction to cover Australian citizens undertaking illegal activities such as child prostitution in other countries.

Q. 27. *Should the Act be amended to comply with international best practice for protection of underwater archaeological sites and artefacts?*

Yes. But again this should be in general terms and the details should be spelled out in regular, updated sets of guidelines (see Q. 12).

Q. 28. *Should Australia ratify the Underwater Cultural Heritage Convention and the Annex which defines the Rules of the Convention?*

Yes. As quickly as possible Australia should ratify the Convention and take a leading role in the Asia-Pacific region in encouraging other nations to ratify the Convention.

Q. 29. *Are these Rules appropriate for conservation of Australia's underwater heritage?*

Yes. The Rules are appropriate and should be adopted as soon as possible.