

Australia's Maritime Heritage

A submission from the
Australian National Maritime Museum
July 2009



AUSTRALIAN
NATIONAL MARITIME
MUSEUM

BACKGROUND

On 4 June 2009 the Minister for the Environment, Heritage and the Arts announced a review of the *Historic Shipwrecks Act 1976* (the Act) and consideration of the requirements arising from the UNESCO 2001 *Convention for the Protection of the Underwater Cultural Heritage* discussion paper.

The review is primarily concerned with the operation of the Act and the extent to which its intent is being achieved. The review will also look at how human remains found in shipwrecks are treated and whether the Act should be extended to cover other underwater archaeological sites and relics. The review will also look at legislative mechanisms that could enable Australia to ratify the UNESCO 2001 Convention for the Protection of the Underwater Cultural Heritage.

While the process of considering ratification is separate to that of reviewing the Act, both issues are closely related. This review will consider if the Act should be amended having regard to both the Underwater Cultural Heritage Convention and international best practice.

THE *HISTORIC SHIPWRECKS ACT* (1976) REVIEW AND THE ANMM

In ANMM's first maritime archaeology policy document (1991) a number of functions in the *Australian National Maritime Museum Act* (1990) were identified as being relevant to the *Historic Shipwrecks Act* (1976) and subsequently the Convention for the Protection of the Underwater Cultural Heritage. These functions are

- 6 (c) to develop, preserve and maintain the National Maritime Collection
- 6 (e) to conduct, arrange for and assist research into matters relating to Australian maritime history
- 7 (1) (c) to recover, or arrange for or assist in the recovery of maritime historical material from the Australian marine environment and from other areas
- 7 (1) (w) to act on behalf of the Commonwealth or an authority of the Commonwealth in the administration of a trust relating to maritime historical material or related matters

As outlined in the Maritime Archaeology Policy (1991), these functions are relevant to an archaeological program at ANMM because

- a) the National Maritime Collection contains material from maritime archaeological sites including declared historic shipwrecks;
- b) under the provisions of the Commonwealth *Historic Shipwrecks Act* (1976) the Minister can direct that relics from declared historic shipwrecks be placed in the custody of the Museum. An example is the Australian Netherlands Committee on Old Dutch Shipwrecks (ANCODS) material.
- c) Australian maritime history incorporates the recovery of material from the marine environment.
- d) maritime historical material is defined as meaning material in any form (including maritime archaeological material) relevant to Australian maritime history.

Our policies, procedures and practice are in line with Museums Australia code of Ethics and international archaeological best practice.

We welcome a more uniform approach towards the protection of underwater cultural heritage and are supportive of the fact that previously unprotected material, like submerged land sites and aircraft may now be recognised.

POTENTIAL IMPACT OF LEGISLATIVE CHANGES ON THE ANMM

After reviewing the discussion paper, *Australia's Maritime Heritage*, on the review of the *Historic Shipwrecks Act* (1976) and the UNESCO 2001 *Convention for the Protection of The Underwater Cultural Heritage* – the following observations reflect ANMM's contribution to the review as well as highlighting a few areas of potential concern.

PRINCIPLE OF IN SITU PRESERVATION

With regard to the possible implications of Australia ratifying the convention, Rule 1 of the Annex states:

The protection of underwater cultural heritage through in situ preservation shall be considered as the first option.

While page 24 of the *Historic Shipwrecks Review* states that: *The principle of in situ preservation does not prevent the excavation of sites*, and, notwithstanding Rules 2, 4 and 9 of the Annex, the Convention clearly promotes Cultural Resource Management over Archaeology.

Australia has a very strong record in the field of maritime archaeology and archaeological investigation of underwater sites. This has contributed to a greater understanding of our maritime heritage. The ethical and conservation principles currently applied to archaeological projects in Australia are of the highest standard and permits to excavate are issued subject to an appropriate project design. While the application of greater uniformity in the issuing of permits to undertake archaeological work could be beneficial, the value of archaeological investigation should not be devalued in any way.

NATIONAL SHIPWRECKS DATABASE

It is timely to create an on-line National Shipwrecks Database which will include artefacts. This database should distinguish between material recovered according to best maritime archaeological practice and that recovered in an unscientific manner.

RESPONSIBILITIES

Currently States and Territories undertake some delegated legislative responsibilities on behalf of the Commonwealth. Overall they have shown great professionalism in this responsibility. However, if Australia was to sign the UNESCO treaty it is slightly unclear what role the State and Territory delegates would have. Is it practical for an international treaty to be administered under some continuing form of the existing system? What role would State delegates have? If the status quo is to continue, State and Territory delegates may not have the funding to support extended responsibilities: legal, cultural and geographic.

In regard to representation at the national and international level, ANMM has the potential to play an active and constructive role.

RESPONSE TO ISSUES RAISED IN THE DISCUSSION PAPER

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, a new Act should continue to apply from the low water mark and continue to the outer limits of 200nm (EEZ) or to the edge of the continental shelf limits in all Australian territorial waters. This is consistent with Article 10 in the UNESCO Convention on the Protection of the Underwater Cultural Heritage.

- 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, the current delegation system works well and the National Historic Shipwreck Program gives a national and consistent approach to managing Underwater Cultural Heritage while providing for local state knowledge and contact points.

As the current levels of funding for the Historic Shipwrecks Program have not changed in real terms for many years, any amendments or changes to the current Act should include some form of agreement or Memorandum of Understanding (MOU) between the States and the National Historic Shipwrecks Program: ones that allow for consistent funding for the employment of State and Territories staff managing the National Shipwreck program.

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 date should continue. Seventy-five years is an appropriate and well recognised time-frame that is understood by the diving and general community.

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 current Act should be updated and amended to include other types of Underwater Cultural Heritage as per the definitions and scope of the UNESCO Convention. These items could include aircraft, submerged archaeological sites, human remains, bottles, dumped cargo, flotsam, jetsam, lost anchors and cannon, pre contact indigenous material etc.

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 the Minister should have the ability to declare sites younger than 75 years to be protected.

The new Act should consider developing sets of criteria similar to those incorporated into the EPBC Act –

- i. the place has significant heritage value because of the place's importance in the course, or pattern, of Australia's natural or cultural history
- ii. the place has significant heritage value because of the place's possession of uncommon, rare or endangered aspects of Australia's natural or cultural history
- iii. the place has significant heritage value because of the place's potential to yield information that will contribute to an understanding of Australia's natural or cultural history
- iv. the place has significant heritage value because of the place's importance in demonstrating the principal characteristics of:
 - v. a class of Australia's natural or cultural places; or
 - vi. a class of Australia's natural or cultural environments;
- vii. the place has significant heritage value because of the place's importance in exhibiting particular aesthetic characteristics valued by a community or cultural group

- viii. the place has significant heritage value because of the place's importance in demonstrating a high degree of creative or technical achievement at a particular period
- ix. the place has significant heritage value because of the place's strong or special association with a particular community or cultural group for social, cultural or spiritual reasons
- x. the place has significant heritage value because of the place's special association with the life or works of a person, or group of persons, of importance in Australia's natural or cultural history
- xi. the place has significant heritage value because of the place's importance as part of Indigenous tradition.

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 - As human remains are not specifically mentioned in the current Act this would remove some confusion over their protection and management. They could be explicitly included in the definitions of site(s), along with such things as archaeological and environmental context of UCH sites. See article 2.9 UNESCO Convention 2001.

At the same time guidelines on the conservation, interpretation, curation and display of human remains should be developed so that such remains are treated in an ethical and proper manner.

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, a Register should be maintained and it may well be a newly launched Australian National Shipwreck Database.

However, as mentioned above, the Database should distinguish between material recovered through best practice archaeological method and the remainder recovered with variable information and through amateur or unprofessional methods. The Database should be in two parts - one section dealing with 'artefacts' with correct

archaeological information the other a loose grouping of 'relics' possibly associated with a wreck.

All the relic provisions under the current *Historic Shipwreck Act* (1976) should be examined as part of the current review. The current Act is very unclear in terms of actual ownership of recovered relics, particularly those relics in private hands.

- 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?*

Shipwreck discovery and reporting of any finds should be as streamlined as possible and in an accessible, on-line format. At the same time the data base or registration system should be designed to capture enough information for the site's location to be verified. Finders should also be encouraged to participate in any survey or assessment of the site – especially if they have shown care and diligence in best practice.

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

Yes, while there should be provision for non-monetary awards in the new Act, the Minister should also retain provision for the issuing of financial rewards. One of the most common complaints in the sports diving industry is that recreational divers do not get reward or recognition for the reporting of a new wreck. A token payment plus plaque will go a long way in improving the Act's reputation. See the recent discussions of *DiveOz*.

Non-monetary awards may include framed certificates, public forms of acknowledgement (e.g. presentation, exhibition captions etc).

MANAGEMENT OF HISTORIC SHIPWRECKS

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

Yes, open public access to most shipwrecks should be continued under the new Act. However visitors to sites should be encouraged to report on the current condition of the site via online feedback forms.

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

Yes, current permit requirements are suitable. However visitors to sites should be encouraged to report on the current condition of the site via online feedback forms.

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

Permit guidelines should be incorporated into the provisions of the new Act – similar to State Heritage Legislation. Minimum qualifications or experience should be listed for project leaders.

Permits should be required for all survey/archaeological work. Even non disturbance permits should be peer reviewed by a panel or department before approval is given. Permits should encourage the standards and guidelines laid down by the Convention and should state minimum reporting conditions, peer review of final report and depositing of fieldwork archives etc.

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 site requires a protected zone?*

Yes, protected zones should be retained for the protection of fragile or other sensitive sites. Criteria for protected zones should be contingent upon vulnerability and significance of the site. The new public access guidelines could look at these criteria.

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?*

Protected zones should continue but they should be reassessed every three to five years. The size of zones should be varied to allow for the protection of larger relics and or debris fields.

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, historic shipwrecks and Underwater Cultural Heritage generally should be integrated into planning mechanisms, through environmental assessment processes.

Also, there is currently no process for the management of sunken Commonwealth military craft. DEWHA should work with the Department of Defence to create a policy and guidelines to ensure that heritage issues are considered by the military and heritage community, when dealing with historic sunken ships and aircraft, including World War II sites.

There should also be some form of agreement or MOU (similar to ANCODs) with other nations, which establishes guidelines for dealing with other nations' military material in Australian waters, particularly when those sites contain human remains.

The new Act should also provide advice and legal provisions regarding development, minimum standards for survey work, mitigation requirements, buffer zones and requirements if relics or human remains are encountered etc.

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

Dive tourism that promotes public access and enjoyment of Underwater Cultural Heritage is desirable and of social and economic benefit. However, it should be carried out in such a way as to limit the potential impact of divers and their boats on underwater sites. Guidelines for anchoring on sites, encouraging 'live' boating, development of mooring facilities on popular sites, discouraging divers with 'poor' buoyancy control from visiting sensitive or fragile sites should all be looked at and appropriate guidelines developed.

Educational programs such as the AIMA/NAS training course are useful in educating people including dive instructors. Local maritime archaeological associations should be encouraged in those States which don't have active associations.

MANAGEMENT OF HISTORIC SHIPWRECK 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?*

A problem exists with all shipwreck 'relics' being considered as sources of archaeological information. In reality, relics without context are almost valueless. Whilst there is a need to register relics (to control the market) and there is a legal requirement to report and record them – only those 'relics' from archaeological excavations and held in permanent custodianship are of 'true and demonstrable' archaeological value.

If the Act is expanded to cover all underwater archaeological and cultural heritage material – the 'relics' register will become very large, very quickly. The provision of such a clause in the new Act will also require an amnesty for the non shipwreck material to be registered.

Sale of shipwreck relics should be prohibited as per UNESCO convention, but limited transfer of 'relics' should be allowed – to cover the transfer of material recovered (and declared) prior to 1995 (last amnesty).

Export of shipwreck material overseas (as per UNESCO) should be prohibited.

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

Yes as per UNESCO Convention 1. a) i)

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

Yes this would be useful, subject to consultation and advice from the archaeological, conservation and heritage management community.

- 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 all trade should be banned in historic shipwreck relics as per the UNESCO Convention Article 2. 6) and 7). And Annex Rule 2.

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

Yes this would be useful and should have been a condition of the required 'permit' in the first place.

However such prescriptive detail may be limiting and date very quickly. Perhaps this would be better stated in Regulations or Guidelines that can be more easily updated than in the Act. There may be issues with regard to funding if the Commonwealth prescribes this but does not or is unable to provide funding to conserve and curate objects on an ongoing basis.

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, they appear to be sufficient, but the Commonwealth should have more say in the training of inspectors under the Act.

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?*

The offence and penalty provisions seem to be adequate but they should be indexed or regularly updated to ensure that fines and sentences are on par with similar Acts. The development of Penalty Infringement Notices (PINS) would be useful for some offences and would assist inspectors in their work.

The Review could also look at allowing civil penalties such as community work orders etc, remediation costs (conservation, curatorial costs associated with looking after a confiscated relic, etc) for some offences under the new Act.

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?

See above discussion on PINS. There are currently some discrepancies in the *Historic Shipwrecks Act* which could be amended to provide better protection. For example the onus of proof could be on a person with a 'relic', rather than an Inspector, to provide evidence that the relic did NOT come from an historic shipwreck site. *The Victorian Heritage Act* is a good model for future drafting.

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?*

Yes these provisions appear to be adequate subject to feedback from Delegates and Inspectors.

AUSTRALIAN AND NETHERLANDS COMMITTEE FOR OLD DUTCH SHIPWRECKS (ANCODS)

ANCODS is a landmark agreement regarding the management of shipwrecks. However several areas of ANCODS remain in dispute. Currently the Western Australian Government would like to re-amalgamate the ANCODS collection. The rationale for partial splitting of the collection in 1972 still stands. It allowed for the study of the collection in various institutions; to safeguard the collection in case of accident; disaster etc; and to provide the three signatories of the agreement with sample collections for display and interpretation.

The ANCODS collection should continue to be exhibited in as many places as possible to allow the maximum amount of exposure.

The ANCODS Committee should represent the four main partners (The West Australian Maritime Museum, ANMM, DEWHA, and The Netherlands). Representatives from each of these major stakeholders should meet regularly to oversee the development of an 'e/listing' of relics, and to work towards the development of online exhibitions and research publications etc.

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?*

The ANMM would support a proposal that prevents Australian nationals and companies from participating in illegal activities 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, in terms of this the UNESCO Convention on the Protection of the Underwater Cultural Heritage 2001 is international best practice.

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

Yes, the Museum should support the Australian Government ratifying the UNESCO Convention 2001.

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

The Convention should be supported and Australia should agree to ratify it. However the option of 'in situ' preservation should not be seen as a way to minimise costs and responsibilities. More and more evidence indicates that 'in situ' conservation does not work on recent iron or steel wrecks in relatively shallow water – and excavation and salvage archaeology may still be the only option.

The Convention 'Rules' applying to 'Flagged vessels' will impact on Australia's management of HMS *Pandora*, *Sirius*, *Porpoise*, etc, USS *Perry*, Japanese submarines and ANCODS. The new Act should include guidelines regarding the development of MOUs concerning 'flagged' vessels in Australian waters.

The Convention Rules specify 'competent national authorities'. ANMM should be represented in any such Authority and in all matters relating to Australia's maritime heritage.

The Annex to the Rules should reflect Australian practice. It should stipulate who watches the archaeologists; who should stipulate a review process as well as who should stipulate the archival documentation of excavation and survey, etc.

Rule 4 of the Convention should be modified to enable taking timber, sediment, fastening and other samples for vessel identification, site analysis, corrosion studies etc.

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