

**Department of Natural Resources, Environment, Heritage and the Arts
(NRETAS), Northern Territory Government**

Response to issues and questions raised in the Review of the *Historic Shipwrecks Act* Discussion Paper (2009)

Key issues discussed:

1. Jurisdiction of the Act (questions 1-2)

Recent legal advice has determined that the Commonwealth's *Historic Shipwrecks Act* has jurisdiction in Darwin Harbour, and other harbours in the Northern Territory, because the Northern Territory is not a State. This has considerable implications for the management of a busy harbour such as Darwin Harbour, and the Northern Territory Government will investigate this issue further. In the mean time this legal advice will be upheld.

2. Scope of the Act (questions 3-6)

The automatic protection of wrecks that reach an age threshold provides protection through declaration of a class of wrecks that have an intrinsic value. The current review of the Northern Territory heritage legislation involves considering different classes of wrecks for automatic protection, including a class based on age. Considering the rich World War Two cultural resource of the Northern Territory, a more appropriate age criterion may be 50 years rather than 75.

Regarding the range of sites that should be covered under the Commonwealth Act, under the Northern Territory's *Heritage Conservation Act* there are not restrictions on the types of sites that can be protected by declaration. To date there are both submerged shipwrecks and plane wrecks protected under this Act. The premise is that it is not whether a type of site may or may not be significant, but whether a specific site meets an agreed benchmark of significance.

In keeping with the premise above the ability of the Minister to declare sites younger than 75 years, as with the Northern Territory case of the *Florence D*, should remain. Suitable criteria should be developed for this decision making, drawing on suggestive sources such as the Burra Charter. The threshold of significance should not be outstanding national significance but a threshold aimed at the declaration and protection of sites of State level significance.

3. Register of historic shipwrecks and historic shipwreck relics, reporting and awards (questions 7-9)

The provision allowing monetary rewards for the reporting of shipwrecks is not practised in the Northern Territory. In the case of the *Florence D* shipwreck a public acknowledgement by the NT Heritage Minister and plaques of appreciation provided a suitable 'reward'.

4. Management of historic shipwrecks (questions 10-16)

In relation to public access, the Northern Territory Government's strategy has been a policy of 'open access' to declared wrecks unless particular circumstances require a level of control. The underlying purpose of a protected zone is protection for a site that otherwise may be interfered with. Whether one is invoked should remain at the discretion of the Minister who can weigh up the particular circumstances.

There is a tier system approach in the Northern Territory which provides for different levels of restricted access. One level of access is that used on *A65-115*, the *C-47* wreck, which permits unregulated diving and fishing but prohibits anchoring, visitors using a mooring provided. A more restrictive level of access is that on the *Booya* which permits diving, though regulated, prohibits anchoring with visitors using a mooring and also prohibits fishing. Therefore a tier system allowing varying kinds of access to Commonwealth protected zones, with only the final level excluding any access without a permit would provide more management options.

It would seem advantageous for the size of a protected zone to be at the discretion of the Minister without legislated maximum limits, to allow for the complex nature of archaeological sites and the need for sufficient buffer zones.

5. Management of historic shipwreck relics (questions 17-21)

In regard to isolated artefacts, heritage management practice in the Northern Territory functions under the premise that isolated archaeological artefacts may be significant and worthy of protection through declaration. The *NT Heritage Conservation Act* facilitates the assessment of places or objects against criteria, as opposed to being judged on whether they are isolated artefacts or associated with sites.

In terms of the storage and management of raised artefacts an ideal scenario is for excavated relics to be stored with organisations which have the capacity to enter into a Memorandum of Understanding with the Department and can meet guidelines relating to conservation, preservation, display and publication. This should be covered in supportive documentation rather than the Act itself.

6. Compliance and enforcement (questions 22-25)

In the review of the Northern Territory's *Heritage Conservation Act* it has been argued that the use of penalty units rather than actual amounts is more appropriate as it allows for adjustment over time.

In regard to broadening the variety of enforcement mechanisms it may be worth considering infringement notices for more minor offences, and reserve court proceedings for greater offences. This for example would allow the NT Water Police to function more effectively on the ground as inspectors under the Act.

Another compliance strategy used in the Northern Territory was to make permits to access the *Booya* shipwreck conditional to the behaviour of parties on other declared wrecks. If a party is found to contravene the Act in regard to another declared wreck their permit to the *Booya* would be forfeited. If a large number of Commonwealth declared historic wrecks were managed through access permits this condition would be a powerful deterrent.

A provision for the seizure and forfeiture of vessels and equipment used in illegal activities exists under the NT *Heritage Conservation Act* and is a powerful deterrent.

7. UNESCO convention and its Annex

The Northern Territory Government has yet to come to a position as to whether Australia should ratify the UNESCO Convention.