



Department of Planning and Community Development

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Dear [REDACTED]

Review of the Commonwealth *Historic Shipwrecks Act 1976* and consideration of the requirements arising from the UNESCO Convention for the Protection of Underwater Cultural Heritage.

Thank you for the opportunity to provide a response the discussion paper "Review of the Historic Shipwrecks Act 1976 and consideration of the requirements arising from the UNESCO 2001 Convention for the Protection of the Underwater Cultural Heritage". I provide the following response as the Federal Minister's Victorian delegate under the *Historic Shipwrecks Act 1976*. The comments provided below do not necessarily represent those of the Victorian Government, the Department of Planning and Community Development or the Heritage Council of Victoria. I note that Daryl Jackson AO has written to you on this matter as the Chair of the Heritage Council of Victoria.

Jurisdiction

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?

A.1 Yes

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?

A.2 Yes

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?

A.3 *The level of protection should continue.*

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?

- A.4 *The Act should be extended to provide protection for other underwater historical archaeological sites and relics, particularly sunken aircraft and other submerged archaeological sites. Consideration should be given to avoid overlap or conflict with existing State legislation designed to protect the same class of sites. Consideration should also be given to expanding the scope of the Act to include relics lying on the surface of the seabed. Many underwater archaeological sites are in unstable sediments subject to periodic erosion events. Relics dislodged as a result should have equal protection to those still in-situ. This would eliminate the "drift-dive excuse" used by looters who claim that objects actually removed from archaeological sites were found loose on the seabed while drift diving. (See comment at Q. 18)*
- 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?*
- A.5 *The provision for the Minister to make specific declarations of sites less than 75 years old should remain. Criteria for these declarations should be on current standards of best practice. The Heritage Council of Victoria's assessment criteria (<http://www.heritage.vic.gov.au/Registration/Criteria-for-assessment.aspx>) would provide an excellent starting point. An additional clause, allowing the minister to protect a site as he or she sees fit would allow for the protection of sites which do not strictly meet the assessment criteria but which for some other, unforeseen, reason require protection.*
- 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?*
- A.6 *Human remains within archaeological sites should be specifically protected. Human remains can be seen as part of the archaeological assemblage of a site. In most cases human remains are treated with respect by archaeologists, however without specific protection, there is a possibility that human remains can be dealt with inappropriately. This is especially likely in shipwreck sites where the wreck occurred within living memory and where relatives of individuals who lost their lives in the wreck are likely to be affected. Examples in Victoria are the wrecks of the Goorangai and Coramba. Protection of human remains could be achieved by the prescription of obligatory standards for the excavation, handling, storage and re-interment of human remains. The Act should make a separate offence of deliberate, unauthorised disturbance, damage or destruction of human remains within underwater archaeological sites.*

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?*
- A.7 *Yes. The national shipwreck database should meet this need when it is completed.*
- 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?*

A.8 *No. Shipwreck discoveries should be reported as soon as practical and within 7 days.*

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?

A.9 *No. The provision of monetary rewards reinforces the two common misconceptions about shipwrecks:*

- 1. that shipwreck finders should be reimbursed for time and expense incurred in locating wreck sites;*
- 2. that finders should be compensated when legislation prohibits them from taking ownership of wrecks or relics they have located.*

Management of Historic Shipwrecks.

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

A.10 *The Act should continue to allow open access to most shipwrecks.*

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

A.11 *The current permit requirements appear to be adequate. No comment on whether or not they meet best practice however the ability to apply conditions to permits give great flexibility in achieving the protection of historic shipwrecks.*

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

A.12 *Yes. This could be achieved by an annex to the legislation which could be updated regularly to ensure that best practice is observed. Best practice should be in line with the UNESCO convention and/or the Burra Charter.*

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?

A.13 *Yes. Heritage Victoria is currently completing an access policy for use in determining protected zone requirements and access.*

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?

A.14 *The needs of the site should guide the size of protected zones, however consideration must be given to avoiding adverse affects on the needs of other waterway users and managers: port authorities for example. Victoria's experience is that the current maximum size for protected zones is adequate.*

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?

A.15 *Yes. Shipwrecks and other maritime heritage sites should be integrated into planning schemes. This could be achieved by implementing similar trigger*

mechanisms as those for the EPBC Act. And where possible mirroring the mechanisms currently in use to ensure that other types of heritage sites are integrated (where appropriate) into Planning Schemes.

- Q.16 What approach should be taken towards dive tourism to ensure that it does not adversely impact on underwater archaeological sites?
- A.16 *The development of a public access policy in consultation with tourist operators and with consideration given to local management conditions and the needs of specific sites.*

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.17 *Yes, but not adequately. This provision of the legislation should be strengthened to better regulate the trade in historic shipwreck relics. Consideration should be given to prohibiting, (without a permit), buying, offering to buy, agreeing to buy, or offering or agreeing to barter or exchange any historic shipwreck or relic. Importing and exporting historic shipwrecks or relics should also be controlled by permit.*
- 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?
- A.18 *Yes. Protecting this type of site will limit the "drift dive excuse" where individuals who steal objects from historic shipwrecks can avoid prosecution by claiming that the stolen object was found on the sea floor not associated with a shipwreck or maritime heritage site.*
- Q.19 Should the Act state principles guiding how historic shipwreck relics should be conserved and curated?
- A.19 *Yes. This could be achieved by an annex to the legislation which could be updated regularly to ensure that best practice is observed. Best practice should be in line with the UNESCO convention and/or the Burra Charter.*
- 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?
- A.20 *Yes to the ban on all future trade in historic shipwreck relics. Allowing trade in previously traded, provenanced objects would ultimately open up a loop hole in a ban on trading relics. Experience shows that allowing any trade in objects resulted in the generation of faked provenances for objects which in turn leads to continued theft from sites.*
- Q.21 Should the Act prescribe where underwater relics that have been excavated should be stored and who should manage them?

A.21 *Yes, although the power of the Minister to give directions in relation to the disposition of relics would suffice to regulate the location, and method of storage and management of artefact storage would suffice.*

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?

A.22 *Yes*

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?

A.23 *Penalties for companies are outdated. In their present form they provide no deterrent. Penalties should be framed in terms of penalty units in line with other legislation.*

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?

A.24 *Infringement notices could be introduced for certain offences relating to protected zones as per the example set in the Heritage Act 1995 (Vic). Could the Act mandate support from other enforcement agencies? Eg police, fisheries, park rangers, customs etc?*

Victorian Heritage Act has additional provisions which could be mirrored.

Remove the excuse of 'ignorance of the fact that a site is a historic shipwreck' as a defence from all parts of the legislation. This provision was included when the legislation was first drafted because there was a general lack of community awareness of the importance of heritage and historic shipwrecks. It can be argued that community attitudes to heritage have changed substantially in the intervening 33 years and that ignorance is no longer an excuse for deliberate damage to or theft from heritage sites of any kind.

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?

A.25 *The seizure period for relics and items associated with an alleged offence should be extended to allow sufficient time for the case to be processed in court.*

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?

A.26 Yes.

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

A.27 Yes

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

A.28 Yes


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

A.29 Yes

I look forward to discussing these issues further at the Delegates meeting on 13 August 2009.

 if you wish to discuss any of these matters further.

Yours Sincerely


Jim Gardner
Acting Executive Director
HERITAGE VICTORIA