

ROYAL AUSTRALIAN NAVY

OFFICE OF THE CHIEF OF NAVY



RI-4-C006, RUSSELL OFFICES, CANBERRA, ACT 2600

CN LEGAL/OUT/2009/016

[REDACTED]

The Secretariat
Review of the Historic Shipwrecks Act
Department of the Environment, Water, Heritage and the Arts
GPO Box 787
CANBERRA ACT 2601

[REDACTED]

Thank you for the opportunity to comment upon the Review of the *Historic Shipwrecks Act* 1976 (the Review). Underwater cultural heritage is of significant interest to the Royal Australian Navy (Navy). The Navy supports the aim of the Review, namely, strengthening the protection of underwater cultural heritage.

There are some matters which the Review raises upon which Navy would like to make specific comment. These are as follows:

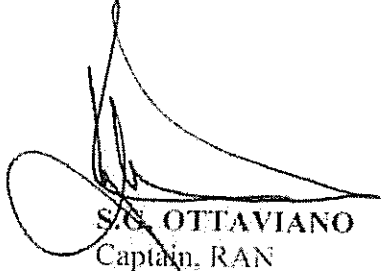
- (a) With respect to Question 4 of the Review, Navy supports extending the application of the *Historic Shipwrecks Act* 1976 (the Act) to protection of other relics such as sunken aircraft. Aircraft in particular have a significant place in Australia's maritime heritage and are equally worthy of protection.
- (b) With respect to Question 5 of the Review, if there are to be criteria for Ministerial declarations for sites that do not meet the prescribed age, Navy would prefer to see the criteria take into account the significance of the site to Australia's naval or military heritage.
- (c) With respect to Question 6 of the Review, Navy would strongly support additional protection for human remains which form part of Australia's underwater cultural heritage, whether related to ship or aircraft wrecks or not. With respect to human remains relating to time of war in particular, Navy's view is that they should be treated and protected as war graves.

- (d) With respect to Question 18 of the Review, Navy supports extending the protection of the Act to isolated artefacts found in the sea, whether associated with a shipwreck or not.
- (e) With respect to Questions 24 and 25 of the Review, Navy considers that on water enforcement of the Act would very likely to fall to Navy or Customs personnel. The current powers provided for this are quite limited in comparison with those provided for in the *Customs Act 1901*. The Review should also take into account that the Attorney-General's Department has produced a recommendation that on water law enforcement powers be consolidated into a single Act. Accordingly, any enforcement powers in respect of underwater cultural heritage should be incorporated into that Act.
- (f) With respect to ratification of the *Underwater Cultural Heritage Convention*, Navy would like Australia to make a declaration upon ratification. It should note Articles 2(8) and 10 (7) and state that Australia continues to assert sovereign immunity in respect of all Australian warships, naval auxiliaries and military aircraft which have become underwater cultural heritage (and not previously been captured by an enemy) wherever they may be found in the world.

I note that these comments have not been approved by the Chief of the Defence Force, the Secretary of the Department of Defence or the Chief of Navy. As such they are subject to their approval and comment.

I would be glad to have my staff discuss these issues further with you. My point of contact is

[REDACTED]



S.G. OTTAVIANO
Captain, RAN
Chief of Staff to Chief of Navy

31 July 2009