



### ***Introduction***

This is a submission from the SCUBA Divers Federation of Victoria (SDFV) in relation to June 2009 Discussion Paper released by the Department of Environment, Water, Heritage and the Arts entitled '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*'.

### ***About us and our interest***

The SDFV is an affiliation of non-commercial recreational SCUBA diving clubs and associations throughout Victoria. We are a volunteer organisation and we have been providing peak-body representation of the interests and community values of recreational divers since 1964.

Recreational SCUBA diving and shipwrecks go hand-in-hand, and Victoria has a large number of shipwrecks and a rich maritime heritage. The SDFV has a long and proud history in promoting the value of shipwreck protection. We had been a member of the Historic Shipwreck Advisory Committee (HSAC) since establishment under the Victorian *Historic Shipwrecks Act 1981*, and then the *Heritage Act 1995*, and we now have representation on Heritage Victoria's Maritime Heritage Advisory Committee, which recently replaced the HSAC. Our Sunken Assets® public seminars about shipwrecks, maritime archaeology and history provide links and opportunities to share our underwater heritage with the wider (non-diving) community.

We are reasonably well-versed in many of the heritage and archaeological protection issues, as they relate to shipwrecks and maritime artifacts. The *Historic Shipwrecks Act 1976* is important for shipwreck and relic protection, and we are keen to see that the review process and considerations in relation to the UNESO Convention retain or strengthen existing provisions.

### ***Our approach to the Discussion Paper***

We have taken the information in the Discussion Paper at face value, and responded on the basis of our understanding of the issue(s), as presented. Due to time constraints, we have limited our considerations to the context of the key-issue questions, although we appreciate the intention of the Discussion Paper was not to limit comment.

Please refer to our specific responses against the 29 key-issue questions in *Table 1*, overleaf.

### ***Our Summary Position***

- Commonwealth legislation for shipwreck and maritime relics protection is necessary.
- Existing provisions in relation to the key protection objectives of the act should be retained or strengthened rather than relaxed.
- Australia should ratify the Underwater Cultural Heritage Convention,
- Where necessary, the Act should be amended to comply with the UNESO Convention and international best practice.
- Where the Act already provides for requirements which exceed the minimum requirements of the UNESC Convention, the current provisions should not be reduced, relaxed or diluted on the basis of alignment with the Convention requirements.



Table 1. SDFV responses to the Discussion Paper key-issue questions.

		SDFV position	Additional comment
Q1	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 (assuming maximum distance, see comment)	We find the question unclear in relation to the diagram. For instance, in the case where the outer limit of the continental shelf is less than 200nm from the low water mark, does the Act would then apply to the Exclusive Economic Zone?
Q2	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	It is assumed as implied that the delegation does not allow a drop in performance obligations or responsibilities.
Q3	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?	The 75 years old protection level should remain	The current 75 years old protection level exceeds the minimum requirement of the UNESCO Convention, has served the community well in protecting shipwrecks, and should not be relaxed (just to align with the convention).
Q4	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?	The Act should be amended to enable wider protection	The Act should be expanded to be more inclusive of other underwater heritage sites and relics, and to be at least in line with the requirements of the Underwater Cultural Heritage Convention.  The Act should be enabling, rather than too prescriptive with respect to included items, so as not to exclude the inclusion of a source of heritage material not yet envisaged.
Q5	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?	The current provision should remain.  Criteria, such as significance, or other best practice criteria should be used.	Criteria might change over time (and best practice), so the Act should not specify the detail of the criteria to be used. But the Act should require the decision to be made within current contemporary best practice context, and the decision criteria made public at the time for any given event.

*Submission on the Review of the Historic Shipwrecks Act*



Q6	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	We understand that there are archaeological protocols for the proper treatment of human remains. The Act should prescribe mandatory standards in this respect. Sites subject to public access with human remains not re-interred should be treated with the same protection as are terrestrial burial and grave sites.
Q7	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 (for a central register).	We understand that the National Shipwreck Database will meet this need, but we have no direct knowledge of adequacy.
Q8	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	As far as we are concerned.
Q9	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?	Should not be explicit	Presumably, the monetary reward is to encourage reporting, rather than as a form of compensation. Alternative means of recognition should be allowed, but in any event, the Act should only provide for the granting of a reward, rather than prescribing a reward.
Q10	Should the Act continue to allow open access to most shipwrecks? If not, what should be required?	Yes	
Q11	Do the current permit requirements of the Act meet best practice? If not, what should be required?	Unable to comment	We have no information on best practice. The Discussion Paper is silent on the utility and efficacy of the current permit system, and is also silent in relation to the use of permit conditions to extend protection objectives. In general, we support a permit system with the provision to attach permit conditions which may be varied as circumstances dictate.
Q12	Should the Act explicitly state how archaeological surveys and excavations should be conducted and reported on?	Unsure	To be consistent with the UNESCO Convention, archaeological activity should be conducted within a standardised management framework. The Act, as a minimum should specify this requirement, and specify the generic 'rules' and guidelines as regulatory and regulated components. Explicitly detailing the 'how-to-do' seems inappropriate and

*Submission on the Review of the Historic Shipwrecks Act*



			unproductive, since the methodologies may change over time. The Act should specify performance (outcome) requirements which are aligned with best practice.
Q13	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  Determination should be on basis of assessed risk to heritage values without protected zone.	We strongly advocate for a clear policy for the basis of determination of heritage value of a site value, using best practice criteria such as significance, etc.
Q14	Should there be a maximum limit on the size of the protected zones or should the needs of the site define the area?	Yes. The current limit appears adequate.	Can there be adjacent protected zones to effectively increase the maximum area in the very rare cases of very large sites?
Q15	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, they should be integrated into planning regimes	We have no in-depth knowledge of the issues, but suggest from a community perspective a simple requirement for a formal risk assessment, with various triggers for different levels of management response and risk mitigation should the works risk a known site, or find a new site.
Q16	What approach should be taken towards dive tourism to ensure that it does not adversely impact on underwater archaeological sites?		Clear policy enunciating expectations. Community education. Site specific Codes of Practice, as needed.
Q17	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?	Unsure of best model	The Discussion Paper indicates that trade in relics is not prohibited under the current Act, and this weakens protection objectives. We support legislative improvements to stop loop-holes of illegal trade. If trade of relics is contrary to best practice, we endorse prohibition on all trade, perhaps with a grace period to avoid any retrospective traps.
Q18	Should isolated archaeological artefacts found in the sea (such as Cook's cannon and anchor from the HMB <i>Endeavour</i> and the recent discovery of a pistol from HSK <i>Kormoran</i> ) whether associated with a known shipwreck site or not, be	Yes	Subject to abuse, otherwise, allowing the "I found it elsewhere" excuse. Surely it is the heritage value that is being protected.

*Submission on the Review of the Historic Shipwrecks Act*



	protected?		
Q19	Should the Act state principles guiding how historic shipwreck relics should be conserved and curated?	Yes	For consistency of outcome, at least.
Q20	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, ban on all future trade	Concessions to a complete ban will only encourage generation of loop-holes.
Q21	Should the Act prescribe where underwater relics that have been excavated should be stored and who should manage them?	Yes	
Q22	Are the current provisions for appointing inspectors under the Act and Regulations sufficient? If not, what additional requirements would be appropriate?	Yes	
Q23	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?	Unsure	<p>The Discussion Paper is silent on the efficacy of the regulation, particularly in relation to deterrent value, and is silent on the problems with compliance.</p> <p>The fact of the age of the existing penalty provisions implies room for review and updating. We endorse the PU practice, and the adoption of a suite of measures to allow more 'fit-for-purpose' application.</p>
Q24	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?	Unable to comment	As a community group we see value in promoting cross-agency authorisations to improve enforcement efficiencies, but this probably can be achieved administratively without the need to be prescribed in the Act.

*Submission on the Review of the Historic Shipwrecks Act*



Q25	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, they appear adequate.	We have no knowledge as to the inadequacy of these measures.
Q26	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, we support such a proposed prohibition.	
Q27	Should the Act be amended to comply with international best practice for protection of underwater archaeological sites and artifacts?	Yes	
Q28	Should Australia ratify the Underwater Cultural Heritage Convention and the Annex which defines the Rules of the Convention?	Yes	
Q29	Are these Rules appropriate for conservation of Australia's underwater heritage?	Yes	We have not been exposed to any information, opinion or point of view as to why the Rules would not be appropriate for Australia.

End of Submission  
 SDFV Executive  
 15 July 2009