



## Review of the Historic shipwrecks act 1976 Discussion Paper - June 2009 Response

Preference

This is a Submission from South Pacific Diving Club a Dive (SPDC)

<http://www.southpacificdivers.com/wetrag.html>

South Pacific Diving Club is based in Sydney with a long history commencing in 1962 of both wreck diving and actively looking for undiscovered shipwrecks with many commonly dived wrecks in the Sydney and New South Wales region being discovered by club members this includes

- In the 60's it was involved with the salvage of the anchor and cannon off the *Dunbar*
- In 1976 John Verren, Dave Bailey and club member Martin Kandilas find the S S *Royal Shepherd*
- In 1976 the S S *Undola* was found by Bill Marden and Peter Goulden
- In 1977 Rick Latimer finds the S S *Cattherthun* (location given to him by fishermen). Rick and Peter Harper also find the S S *Annie M Miller* in the same year
- In the 1978 the finding of the S S *Kelloe* by John Sumner
- In June 1987 the Discovery of the S S *Woniara* by Max Gleeson & John Riley
- 1st Club in NSW to purchase a magnetometer (approximately 10 years ago)

We believe the Act is in need for reform and a group of concerned individuals and groups should be formed to help navigate through the process and that all stakeholders should be heard rather than just a select group of academics as has been the previous approach

For Further information please contact

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### 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?

Consideration should be given if the Act should apply to lands adjacent to and above the high tide level as several shipwrecks are high and dry on headlands and beaches above the low tide mark (noted that these may be covered in the past by other state based legislation but it gives some consistency Australia wide on the wreck sites, whether submerged or exposed or buried)

**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?



We do not believe that the Commonwealth should abdicate its powers to states as anecdotally there seems to be a significant difference how several of the states (and their associated regulatory bodies) approach the various stakeholders and issues.

Victoria seems to have taken a belief in "more education" and "close working involvement" with the general diving community to help preserve shipwrecks and associated finds. NSW is known for taking a more stand back, less open involvement with the diving community. The common belief in NSW is that the NSW Department of Planning & Heritage have succeeded in attempting to limit access, of the general diving community, to help preserve shipwrecks. Anecdotally the Department of Heritage is commonly believed to limit knowledge of recent shipwreck discoveries to prevent divers from visiting sites and hence lower the chances of materials being removed. This has harboured in NSW a very strong distrust of the NSW Department of Planning with finds often going unreported for extended periods

### 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?

It is strongly believed that this is the most significant flaw in the legislation amongst the diving community. There are many varied opinions although almost all would say that the current legislation is failing to achieve its objectives.

Firstly it must be said that we do very strongly believe in the requirement of some form of Act with many instances of true historic shipwrecks (e.g. Cooks Cannons, WA's Dutch Shipwrecks, Convict vessels such as the "Three Bees" and the Japanese Min Sub). Although as the Act currently stands it is quite flawed where all vessels once they reach the age of 75 years underwater become of Significant "Historical" or "Cultural" significance.

Instances where these flaws are shown and can be demonstrated includes where the Act has not worked

1. Vessels such as the Japanese Min Sub, *HMAS Sydney*, and *HMAS Voyager* are all outside this definition but may be argued to be of Historical significance
2. Current unprotected shipwrecks such as the *S S Birchgrove Park* (wrecked of Palm Beach NSW in 1956) etc change from one day being of "no significance" to the next as of being of "Historical Significance" upon the 75th anniversary of their sinking. Yet their basic historical context has not changed.
3. There is no real differentiation in the legislation from something that may be considered of great historical context (such as *HMS Sirius* or *Hive*) to a small registered working coal punt or lighter that has capsized and sunk.
4. The damage caused to both the *Fame* (Sydney Harbour in 1991) and the *S S Advance* where the *Fame* was "picked up" by a dredge during the construction of the Sydney Harbour



Tunnel (no action taken on this obvious breach of the Act) Also with the *SS Advance* where one of the coal super carriers laying in anchor dropped its ground tackle on the wreck causing considerable damage to the site. A photo exists showing the coal ship *SHIN SANYO MARU* sitting above this wreck site with one anchor pulled, showing signs of both fish traps used in the area of the wreck and remnants of the wreck dangling from it) Yet again no action was taken.

5. The number of items that have been removed from shipwrecks with examples such as what happened with the discovery of the *Myola*, the removal of the signal cannon from the *Fame* and a large number of other items of a number of shipwrecks.

Regulations must be reasonable to the common person – because if too autocratic & extreme, they will just be ignored. For example, in Greece, the legislation had a blanket ban on diving in general, to protect wreck history. The result was that a lot of people within the local community ultimately ignored the rules. Archaeologists were behind the blanket ban effectively ruining the potential enjoyment tourism and have really antagonized and alienated divers.

A major perceived flaw in the present legislation is that a 75<sup>th</sup> year anniversary doesn't make an item on the bottom for 74 years suddenly any more historically significant. Another close analogy is that every car accident along a highway does not make the car or truck involved remarkable, nor would it 75 years later

There is a need to follow the example from the UK here where a truly select number of vessels are put aside for special attention rather than the one shoe fits all as per the current Australian approach. In the waters off the UK, there are literally tens of thousands of shipwrecks. The majority are in no way considered historically significant and accordingly nor should they be.

The revised Act should include a mechanism with a way of differentiating/distinguishing between truly special historically significant wrecks and what was a glorified car accident from the time before the motor vehicle. Additionally the Act should include a mechanism for input from the community as to which wrecks actually are significant. A further opportunity to periodically review the status of existing wrecks or new found wrecks .(e.g. Every 5 years Decisions) The current arrangements should not be left solely to the existing "government bureaucrats or academics "in the decision making process but include a wider cross section including the diving community.

Issues that many divers see how the Act can seem somewhat hypocritical are as follows

1. There is no weight given by comparison of the historical and cultural significance of the still afloat *John Oxley, James Craig, Lady Hopetoun or Waratah* to a decaying, deteriorating and disintegrate piles of rust on the bottom of the ocean
2. The Act is about acknowledging that the 'historical shipwrecks' are basically being protected from theft to retain and preserve while in fact shipwrecks are rapidly decaying, deteriorating piles of rust on the bottom of the ocean.



3. The vast majority of vessels in Australian waters are young in comparison to world standards (Europe) with little real significance (would the NSW wreck "Historically Declared" S S *Duckenfield* be considered of significance in a European context, I would doubt it) The legislation has a feeling of being misaligned with a great amount of effort is being put into protecting all vessels (a real shotgun approach) rather than any rating or selective approach and little thought that all of the wrecks are actively being disintegrated while all the time Mother Nature seems to be doing a pretty quick job of destroying the wrecks
4. With 1665 wreck events occurring in NSW before 1934 (75 years ago) of the total of 1936 wreck events are all of these vessels truly of historical or cultural significance or is just bureaucracy gone wrong a random example of a relatively unremarkable vessel would be a coal vessel from Newcastle such as

*The timber ketch "Active" was lost at the entrance to Newcastle's Hunter River on 18 February 1852 in unknown circumstances. The vessel was built at the Paterson River in 1850 by Daniel Baillie with a tonnage of 40ton gross and 14.9 metres in length. Coal merchants Alexander and James Brown of Maitland owned the ketch which was registered in Sydney.*

Of these 1936 NSW wreck events only some 20-40 are truly historic or have cultural significance. How many people in Australia would know of the wreck of the *Active*? This wreck under the current Act is protected and thus associated with being significant while in reality this was a relatively insignificant common vessel with little or no historical significance.

5. No protection is given to similar based technology (i.e. "land based") from which much of the argument for preserving shipwrecks is based, it is well known fact that several surviving operating examples of similar based technology have been destroyed by bulldozers (an example of such is clearly the old "National Foods" factory at Taree (2002) with similar operating boilers and steam motors (1892 vintage)) Additionally the steam powered similar motors to many of these vessels can be seen still in operation at the NSW Sunshine Sugar Mill at Condong (19 Century boilers and steam motors)
6. The irony in order to sink a ship for a diving wreck site
  - You have to endure a mountain of paperwork,
  - Convince the authorities that it's not littering and
  - Remove everything that may be considered an environmental hazard

While in 75 years it shall become of historic significance. But if you find a shipwreck, and try to remove anything from it, you're treated as a vandal

7. Objects found on wrecks when a diver finds something unwittingly the current choices are,



- a. To rebury it, and let it rot (many cannot see the historical value in this),
  - b. Leave it exposed for someone else to potentially remove it (a relatively likely outcome),
  - c. Leave the item to the elements to either sink back into the sand, destroyed by rocks and seas or to be washed off by currents
  - d. Retrieve it and declare it and be potentially up for fines
  - e. Retrieve it and place it on a mantelpiece where no one else will see it.
8. Divers understand that one day many of the relics found on wrecks and the wrecks themselves will eventually disappear as they rust away and the seabed buries the items what then? Many of the wrecks and relics also aren't photographed for posterity in a consistent over time program. There's going to be nothing left of them for our great grandchildren to read about...and there's a very tiny portion of what there is out there that has ever been recorded.....and it won't mean anything to them. Seeing, is reliving the past the current enforcement of the legislation through the various state departments have no formal way to encourage the diving community (the people who are actually going out and seeing these wrecks) to record and pass the images on to the departments. This is one of the easiest ways to engage the diving community and a cheap way to document the wrecks and the departments are failing this basic starting point.

Currently quite anecdotally in certain segments of the dive community it is commonly known that shipwrecks are not reported (or if reported some considerable time after discovery. Reference is drawn to current Northern Sydney Wreck discovered approximately 6 months ago)

The Act and how it is then enforced and communicated with the various stakeholders needs to be upgraded and made more progressive, dare I say it like the British govt as this model seems to work quite well in other parts of the world and more importantly, what is happening in Australia is NOT working.

In the UK you are permitted to bring up items from shipwrecks, but they must be declared to the appropriate authority. You are free to put it on you wall and mantelpiece BUT if an item is required for research or to go on display or do a road show or something then you must surrender the item for the show / display after which time you get it back - display has full credit to the finder.

In this scenario artefacts ARE on display for all and sundry to see and enjoy this is seen as a viable solution in Australia. The UK solution for marine history I suspect is much better documented than here in Australia due to our Neanderthal laws. The current laws promote leaving good history on the sea floor to rot or be lost under sand or pounded to pieces on the rocks. Who sees it? - No one - or VERY few at the most - what a waste.

The various historical departments should run more artefacts or preservation courses and offer advice on marine archaeology and recovery BUT / AND allow people to bring history to see the light



of day again. The recovery of many artefacts has not been documented and subsequently been lost as the owner died or because finders simply did not know how to document or preserve the finds not for lack of wanting to or interest in the subject. The Planners of the Act need to accept and recognise that items are being removed and it needs to be accepted and worked with as a harm mitigation strategy and corroboration rather than enforcement solution.

In the current situation the managers of the Act are blind to the "relics" that are being recovered and which then remain underground due to fear of penalty. A register of recovered relics would account for these items if the fear of legal action could be removed

The Heritage dept would be amazed at what is actually "out there" that they know nothing about. Change the law and "they" will be the ones that benefit.

Currently the Act and all too often the rules and strictures are used to protect shipwreck is being used to protect items which doesn't deserve protection. Examples: include the classic Sydney Shipwreck the "60 milers" which sank in numbers off the Sydney coastline did not warrant protection. Ships such as the *Duckenfield* and the *Myola* were common in the relatively recent past, their construction plans are easily accessed and samples of their cargo can be picked off the side of the road most places around Wollongong or Newcastle. What's to protect?

The law by its shot gun approach (all wrecks over 75 years old) is perceived by many as irrelevant and simply acts as a crutch for bureaucrats/politicians who are unable to solve technical problems, such as preserving and documenting which wrecks.

The resources of the various government departments and museums are limited, and the currently available resources are smaller than what is required to salvage the total mass of wrecks still remaining. There is a fleet of private individuals who salvage wrecks that represents a significant pool of resources.

By combining the resources of the museums with those of private individuals, a co-ordinated salvaging effort can be affected immediately using all currently available resources right now, without relying on extra resources that may or may not be forthcoming in the future.

The knowledge on how to preserve wreckage and information at a site can be copied from the museums to the private salvagers. Essentially this becomes a project in distributed maritime archaeology.

Once preserved, the physical matter from the wreckage will probably be sizable, so a distributed storage approach may be applicable. Basically each private salvager takes care of a portion of the salvage in their own little mini museum where people can arrange to see the artefacts. If this is inconvenient, then the artefacts can be rotated between private storage and public display at a museum.

This solution presupposes that the people involved in the project are civil, honest and have a sense of community. No carrot or stick in the form of rewards or fines is necessary or useful (if you have to



bribe or threaten people to go along with a solution, then it is a poor solution). The alternative of doing nothing and leaving the system as it is, will in all probability result in only a portion of the wreckage being salvaged, while the rest is lost to decay and looting.

**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?

As powered flight by the Wright Brothers occurred in 1903 we would be considering the period between then and 1934 (75 years ago). This would seem a reasonable extension although again I would direct to the response to Question 3 where many of these planes in NSW were lost during the WWII period and so outside the legislation but again what is their true Historical Significance. With most if not all of the planes lost off NSW having flying examples around today of intact specimens in museums. Thus decisions on their significance or relevance of the wrecked and submerged aircraft should be assessed rather than again an arbitrary time line directive.

**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?

The Act should be revised to remove the proscriptive time interval and reflect that the article (plane or ship) and be of genuine historical significance

The revised Act should include a mechanism (with input from the community & the opportunity to periodically review e.g. Every 5 years) as a way of differentiating/distinguishing between "truly special" "historically significant" wrecks and what was a glorified car accident from the time before the motor vehicle. Decisions can't be left to only government bureaucrats or academics either but should include a wider cross section including the diving community.

**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?

### **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?

**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?

One has to wonder how many people have found a wreck and not reported it or having found a wreck site not identified it as a site that is actually significant.

Currently a person comes along, does all the research, spends the hours searching for a wreck and finally discovers a wreck. They are then forced by current legislation to divulge the information to comply with the act.

Many divers believe that the actual scope of the Act is all about a select number of Archaeologists and their need "to publish" to justify their positions and to control all knowledge associated with wrecks that are disguised under the banner of 'heritage' in most cases.



**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?

We think there should be a reward for the finders however, as the UK has, otherwise you are just encouraging bad behaviour and non-reporting of, possibly, historically important finds.

But the major item is who discovered a shipwreck?

1. The Fisherman who snagged his net?
2. The diver that went down on the fisherman's marks?
3. The First person who reported it although it had been dived for many years and not reported?

Are all shipwrecks equally discovered? There are several other ways wrecks may be discovered

1. The above circumstance or
2. The person who stumbled upon something after a storm exposed something on a beach or
3. A person who researched it and spent many hours/days/weeks or years searching for it

Remuneration would be nice although how much and the differing ways wrecks are discovered leads to several issues in equality and the quantum of remuneration that should be paid.

The quantum should also have a factor involved for historical significance and the difficulty in finding the wreck.

Currently there are more reasons not to report a new wreck.

Something else is needed to address is reasons to/not to report new wrecks. There is a common belief within many of the dive community not disclose the locations of wrecks as there is a possibility of diver exclusion after reporting due to red tape this is a disincentive in reporting as in the tightly controlled Lady Darling (until recently all non commercial vessels basically banned) and the total exclusion to the Japanese Mini Submarine.

It's a shame that we don't have a law similar to the UK. Over there if some finds buried treasure (or artefacts etc) they get a reward of about 25% of its value. That way at least they know people are willing to hand in what they find - unlike our law. It would seem very unlikely that another significant "Dutch treasure" wreck would be reported if found

### **Management of Historic Shipwrecks**

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

Absolutely yes. Again a Law or Act must be seen not to be just closing off access or as heavy regulation in a large open ocean this approach will not work. People will still dive shipwrecks but outside of any heavily regulated system that is put in place.



Currently in the NSW area permits are being used as a defacto way of closing of access the shipwreck without any consultation or address

Extract from the original Bega Access Conservation Plan

*Access has been controlled through permits to dive charter boats operating out of Tathra or Merimbula.*

*Any alteration to this arrangement needs to consider potential impacts on the site. A permit system open to all applicants would place the site under severe risk. It would not be possible to differentiate the relative merit of the many dive clubs and individual divers with dive boats or charter boat operators from other areas.*

*Effectively, anyone who requested a permit would be granted access. Most importantly, it would remove the management role of the current charter operators from Tathra or Merimbula.*

The way the permit system in the past in NSW has been used is to allow a select few who meet the arbitrary decisions of the Dept of Planning and to infer that all divers are performing illegal acts (guilty till proved innocent)

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

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

**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?

Again only actually historic significant shipwrecks should be those within protected zones it is clear that at present with restricted access the assessment that all vessels 75 years old is wrong or poorly managed.

**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?

**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?

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

Review of the UK model should be undertaken

**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?

There just cause for historically significant Jetsam to be protected.



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

Yes remove the current variability from state to state and make it accountable

**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?

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

### **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?

**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 Act in itself is incorrect removing a 75 year old brass valve from a shipwreck that the valve is still in manufactured today (e.g. John Valves from the *Annie M Miller*) should not attract such a heavy fine. By declaring all wrecks special (historical) it removes the values from those that truly are. A cooperative, rather than enforcement approach, is much more likely to work. Prosecutions shall almost be impossible unless directly caught in the act (by chance by the water police exiting the water at the dive site??) Once removed an item is easily claimed to be from other sources making proof of removal exceeding difficult to prove beyond benefit of the doubt.

Collaboration and education is the only approach to thousands of divers with hundreds of boats in thousands of locations over long periods with few inspectors who are doing other activities as their major work

In the main if fewer actual significant sites were declared then resources could be realistically directed to those sites.

**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?

Refer above wrong response to the issue

**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?

### **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?



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- Q.27** Should the Act be amended to comply with international best practice for protection of underwater archaeological sites and artefacts?
- Q.28** Should Australia ratify the Underwater Cultural Heritage Convention and the Annex which defines the Rules of the Convention?
- Q.29** Are these Rules appropriate for conservation of Australia's underwater heritage?