

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

This is a Submission from TDI/SDI Australia

<http://www.tdisdi.com.au>

TDI/SDI Australia is the largest Technical Diving and 3rd largest Entry Level (Sport) Diving Certification Agency in Australia.

TDI/SDI Australia was formed in 1995 and has in excess of 250 Professional Dive Industry Members & Facilities in every State and Territory in Australia. It represents its members in the DIAA (Dive Industry Association of Australia) and other national dive industry groups (eg. Standards Australia subcommittee CS83 – Recreational Diving) and in separate state bodies (eg. DIVA – Dive Industry of Victoria Association). Through these organisations TDI/SDI Australia is able to communicate with the majority of the others stakeholders within the Australian Recreational Diving Industry.

TDI/SDI Australia has certified in excess of 20,000 certified divers in Australia, many active in wreck diving. We communicate directly with the divers via our web site and on-line systems and newsletters.

We believe the Historic Shipwreck Act 1976 is in need for reform and a group of concerned individuals, industry stakeholders, maritime archaeologists and relevant departmental regulatory bodies should be called to form a representative Committee to review the process and submit a final recommendation to the Minister.

For Further information please contact

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 mark as several shipwrecks are high and dry on headlands and beaches above the low tide mark and would give 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.

Interested State bodies should be able to apply to the Commonwealth for Shipwreck protection under the Act however the Commonwealth should then call for submissions from interested parties prior to consideration of any protection being granted.

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. The objective of the Act should be to protect true historic shipwrecks (e.g. Cooks Cannons, WA's Dutch Shipwrecks, Convict vessels such as the "Three Bees" and the Japanese Min Sub) however not 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 75 year definition but are quite clearly identified as being of Historical significance
2. Current unprotected shipwrecks such as the *S S Birchgrove Park* (wrecked of Palm Beach NSW in 1956) will 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.

The major perceived flaw in the present legislation is that a 75th year anniversary doesn't make an item on the bottom for 74 years suddenly any more historically significant. 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, at the time, a common maritime accident with little or no historical or cultural significance. This mechanism should allow for input from the community as well as the maritime archaeologists 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).

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 revised Act should include a mechanism with a way of differentiating/distinguishing between truly special historically significant wrecks and what was, at the time, a common maritime accident with little or no historical or cultural significance. This mechanism should allow for input from the community as well as the maritime archaeologists 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) should also be considered.

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?
Where human remains are found such a site should be declared a grave and protected. This however should not exclude diving but rather the site be classed as a "Reserve" and ban be placed on interfering with the remains. Where deemed appropriate by any relatives the remains may be removed and buried elsewhere.

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 Commonwealth Receiver of Wrecks should be appointed to compile and maintain a list of Shipwrecks and artefacts recovered as is the case in the UK.

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?
No, the current reporting regimen is not sufficient. The finding of Shipwrecks should be reported to the Commonwealth Receiver of Wrecks who calls for submissions on the status of the wreck and any artefact removed until the wreck is protected should be reported to the Receiver.

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?

No, there should be no need for a financial reward, however some official recognition should be made either as a plaque or certificate.

Additionally, as in the UK, if there are any items of value then the person who reported the wreck should get 25% of any recovered & sold value.

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. Only those declared significant should require permits

Q.11 Do the current permit requirements of the Act meet best practice? if not, what should be required?
(n/a)

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

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?

Yes. Only actually historic significant shipwrecks should be those within protected zones. This should be determined by a representative committee that calls for submissions and makes the recommendation to the Minister.

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?

Determined by site.

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?
(n/a)

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

Where a site is protected a permit should be required with both the operator and divers liable for any breach.

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?

Yes.

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?

Allow trade but not of any protected wreck.

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

No

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?

(n/a)

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?

(n/a)

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?

(n/a)

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?

(n/a)

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? Agree with this convention.

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

The Act should allow for the protection of some wrecks along these lines however only where shown to be significant.

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

As long as such ratification does not propose a wholesale ban on shipwreck access

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

(n/a)