

**Response To :**

*The 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 Discussion Paper June 2009*

**Response From:**

*The Sydney Project*  
[www.sydneyproject.com](http://www.sydneyproject.com)

**Date:**

16<sup>th</sup> July 2009

**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?**

Extend the jurisdiction to protect wrecks, relics, wharfs, navel defence structures, fish traps and other artefacts of maritime heritage which lie within reach or region of the high tide mark. Increase the jurisdiction to protect that which lies in bays, harbours, inlets, etc; which is currently only covered at the discretion of the states.

**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?**

Not yet – address the issues before handing out more responsibility for the Act in its current form. The long term view should aim for more cohesion between State and Commonwealth, but it's too soon – raise the standards, ratify the convention, and then look at distribution of powers.

**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?**

Varied. The arbitrary limit of 75 years was a good benchmark to start in the original Act, though now needs to be reviewed to keep up with developments and discoveries since. It is now known that there are many wreck and relics of that age – is it really feasible to protect them all, or should a case-by-case review be introduced to warrant protection on significance? There are also wrecks younger than 75 years which have since required special protection requests anyhow (eg, midget Sub), so the need to review the blanket age-limit is already clear.

In contrast to the current 75-year limit, the UK model consists of the English Heritage office setting up an Advisory Committee on Historic Wreck Sites (ACHWS), with the objective;

*“...to advise Government on the suitability of wreck sites to be designated for protection on the grounds of historical, archaeological, or artistic interest in accordance with the terms of the Protection of Wrecks Act 1973..... membership is drawn from across a wide range of interests involved in underwater archaeology: maritime history; archaeology; recreational diving; museums (including naval); conservation; marine law; inshore oceanography...”*

Reference: <http://www.english-heritage.org.uk/server/show/nav.1282>

This collaborative initiative between divers, researchers, museums, etc; is the way forward in the protection and promotion of Australia’s underwater cultural heritage, and should set the standard for future Australian guidelines.

This model would allow a variety of interested parties to determine what constitutes a historic wreck, and which of the known wrecks in those categories warrants protection. This case-by-case approach would ensure that wrecks requiring protection (regardless of age) would be suitably assessed for it.

**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?**

Extend the scope to cover all traces of human heritage – aircraft, wharfs, collapsed coastal structures, cargo, etc.

**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?**

Yes, on a case-by-case basis, special permission to provide protection should be retained. Review and revision of the existing Australia ICOMOS Burra Charter should be consulted. This 1998 publication set out criteria on assessing terrestrial based cultural heritage for their;

*“...aesthetic, historic, scientific, social or spiritual value for past, present or future generations...”*

Reference: <http://www.nsw.nationaltrust.org.au/burracharter.html>

In addition to response to Q3, this could be reasonably adapted as a baseline for the underwater environment. Eg, the scientific significance of a wreck might be a rare application of maritime technology; the historic significance could be the earliest known evidence of merchant vessel modified for war; etc, etc.

These categories (or similar) could be used to ‘score’ the significance of each wreck, which would then provide a detailed assessment on features, form the basis of any detailed study, provide information for the Shipwreck Database, and act as an audit of known wrecks. This sort of criteria for protection would assess wrecks on their own condition, merit and significance – rather than being limited to a generic age or time interval.

**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?**

Human remains should be protected from theft, but such sites should not necessarily be closed to divers. Identification of the wreck may well lead to identification of descendants/family, and while the likelihood of individual remains being identified is slim, the wishes of relative and family must be considered in any recovery plans.

#### **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?**

Yes, this should remain central – state control would result in duplication of effort and information. The Shipwreck Database is a wonderful tool, but does require much more detail and development.

**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?**

Enough information should be provided to make a valid contribution to the Shipwreck Database, but also acknowledge the finder(s) to encourage people actually reporting it in the first place.

**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?**

Include a field for ‘finders’ in the Shipwreck database, work with them to publish a report, encourage media coverage. If there are valuables discovered on a shipwreck, then a set percentage should go to the discoverer. If the site is found historically significant, this should not prevent diver access, unless there is safety issues (explosives etc).

#### **Management of Historic Shipwrecks**

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

Continue open access to all sites, only restricting access to those deemed too fragile/dangerous/important for which a permit system should apply. This open access should be continued with greater emphasis on the ‘Respect the Wreck’ movement, promoting the importance of not disturbing sites, protected or not, unless qualified and authorised to do so.

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

No, there is still confusion on how this works, and who decides on an application. This means some people do not apply and pirate sites, which otherwise need monitoring for illegal activity. This needs to be clear and more accessible for private clubs, and individuals to apply.

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

The Act should state required level of qualifications rather than specifics of conducting excavations – many sites are different and it would be unfeasible to address all circumstances. It should also assert the vast difference between diving on a wreck for recreation (& leaving it as found), compared to the scientific aims of endorsed archaeological excavation.

There should be a basic report template or ‘minimum standards guide’, as reporting on findings and the publication of knowledge is a key element to awareness of, and promotion for, protection of underwater cultural heritage.

**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, for all historical and those deemed significant should come under permit system, regardless of the age. This system will replace the 75 years limit.

**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?**

Defined on a case-by-case basis, particularly if overlapping or effecting marine conservation reserves or economic zones.

**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?**

The Act should be nation wide, one system for all State and Territories.

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

- Promotion of AIMA/NAS Maritime Archaeology courses to charter operators
- Open discussions with PADI/SDI/etc to include highlighting the importance of protecting wrecks, and wreck ‘etiquette’ on their courses

- Availability of brief/single page flyers for operators with summary information to save them wading through pages of legislation
- Promotion of wreck identification/protection among fishing community
- Further development of 'Wreck Trails' with memorial plaques or dive sites guides (like South Australia's 'Adelaide's Underwater Heritage Trail')

### **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?**

Part of any required permit/report should include a section for any relic looking like it would require salvage. In the interests of preventing the further loss or damage to relics from unqualified or amateur 'salvage', authorities should be alerted of intention, so proper preservation and conservation equipment/techniques/personnel etc can be involved.

**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?**

In the interests of ensuring the integrity of the site, isolated artefacts should initially be protected until such time as an endorsed archaeological study has taken place. After which, protection of site should be reviewed.

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

The Act should state broad principals, but still allow for the variability of respective states conditions to be considered. Conservation and curation can be expensive and time consuming, so a Commonwealth Act would need to be sensitive to State level limitations/budgets/capabilities.

**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?**

Sale, particularly to international buyers, should be seriously controlled. The scope of eBay for example, has already highlighted the loss, and further potential loss, of Australian maritime cultural heritage. Any trade (whether previous or not), should also include the update of a register of owners and location to control and monitor the movement of artefacts.

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

State law already covers that it will store what is found in it's waters, though the Commonwealth Act should retain enough power to decide any conflicts between states, or claim sovereignty over anything considered to be in the ' national interest' rather than state.

### 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?**

Current provisions are poor and wrecks particularly in remote areas are difficult to police. If a permit system is in place, then there is more visibility to who is accessing what wrecks, and if need be inspectors can be onsite monitoring activity, insuring wrecks are not disturbed.

**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?**

No, because it's hard to enforce these laws in the first place. See response to Q.24.

**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?**

If a crime has been committed (& as not all wrecks are protected, this would need to be quite clear about what constitutes a 'crime'), any monetary fine should be updated to modern equivalents; eg, the normal and existing fines enforced when desecrating a terrestrial protected site. Also, more creative methods of penalty and deterrent should also be employed;

- Community service – in a Maritime Museum or Archaeology Department
- Education – completion of AIMA/NAS training course, or refresher, at own expense
- Return of relic to protected site it was stolen from
- Public apology to community for breaking a law in their environment
- 'Name & Shame' to dive community for contributing to the destruction of dive sites

**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?**

Time for an amnesty for the return of illegally pilfered relics??

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**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?

Yes. The destruction of underwater cultural heritage is a tragedy regardless of whose coast it takes place off. Promotion of UNESCO Convention and the more countries signing up, the better.

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

Yes. We should be learning from, and exchanging information with, international parties to keep improving on this best practice as techniques and technologies further develop.

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

Yes. As a country key to the inception of the original idea, it is embarrassing that we have not yet ratified what we were so strong in initially promoting.

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

Yes. And long overdue.