

HISTORIC SHIPWRECKS ACT 1976

No. 190 of 1976

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SCHEDULE 1

**Agreement Between the Netherlands and Australia
Concerning Old Dutch Shipwrecks**

SCHEDULE 2

Dutch Shipwrecks off the Coast of Western Australia

HISTORIC SHIPWRECKS ACT 1976

No. 190 of 1976

An Act relating to the Protection of Certain Shipwrecks and Relics of Historic Significance.

WHEREAS, by an Agreement between the Netherlands and Australia Concerning Old Dutch Shipwrecks that was signed on 6 November 1972 (being the agreement a copy of the text of which is set out in Schedule 1 to this Act), the Netherlands, as successor to the property and assets of the Dutch “Vereenigde Oostindische Compagnie”, transferred to Australia all its right, title and interest in and to wrecked vessels of the Dutch “Vereenigde Oostindische Compagnie” lying on or off the coast of the State of Western Australia and in and to any articles thereof and Australia accepted that right, title and interest:

AND WHEREAS it is desirable that Australia should protect those wrecked vessels and articles, and the remains of, and any articles associated with, other ships of historic significance, being remains or articles that are situated in, or have been removed from, Australian waters or waters above the continental shelf of Australia:

BE IT THEREFORE ENACTED by the Queen, and the Senate and House of Representatives of the Commonwealth of Australia, as follows:—

PART I—PRELIMINARY

1. This Act may be cited as the *Historic Shipwrecks Act 1976*. Short title.

2. This Act shall come into operation on the day on which it receives the Royal Assent but shall not apply in relation to waters (including waters above the continental shelf) adjacent to the coast of a State until a Proclamation has been made declaring that this Act applies in relation to waters adjacent to the coast of that State. Commencement.

3. (1) In this Act, unless the contrary intention appears— Interpretation.

“Australia” includes the external Territories;

“Australia-Netherlands Agreement” means the Agreement between the Netherlands and Australia Concerning Old Dutch Shipwrecks that was signed on 6 November 1972, being the agreement a copy of the text of which is set out in Schedule 1;

“Australian waters” means the territorial sea of Australia and waters of the sea (not being waters within the limits of a State) on the landward side of the territorial sea of Australia;

“continental shelf” has the same meaning as in the *Seas and Submerged Lands Act 1973*;

“Dutch relic” means an article mentioned in Article 1 or 2 of the Australia-Netherlands Agreement;

“Dutch shipwreck” means—

- (a) a wrecked vessel mentioned in Schedule 2; or
- (b) any other wrecked vessel mentioned in Article 1 of the Australia-Netherlands Agreement (including any such vessel that is no longer lying on or off the coast of the State of Western Australia as mentioned in that Article);

“historic relic” means—

- (a) an article in respect of which a notice in force under sub-section 5 (2) (including that sub-section as having effect by virtue of sub-section 5 (3)) is applicable;
- (b) a Dutch relic; or
- (c) an article in respect of which a notice in force under sub-section 6 (2) (including that sub-section as having effect by virtue of sub-section 6 (3)) is applicable;

“historic shipwreck” means—

- (a) the remains of a ship in respect of which a notice in force under sub-section 5 (1) (including that sub-section as having effect by virtue of sub-section 5 (3)) is applicable;
- (b) a Dutch shipwreck; or
- (c) an article or articles in respect of which a notice in force under sub-section 6 (1) (including that sub-section as having effect by virtue of sub-section 6 (3)) is applicable;

“inspector” means a person appointed as an inspector under section 22 or a member of the Commonwealth Police Force or of the Police Force of a State or Territory;

“offence against this Act” includes—

- (a) an offence against the regulations;
- (b) an offence against this Act that is deemed to have been committed by virtue of section 5 of the *Crimes Act 1914*; and
- (c) an offence against section 7 or 7A of the *Crimes Act 1914* in relation to this Act;

“protected zone” means an area in respect of which a notice is in force under sub-section 7 (1) and any area by which the first-mentioned area is extended by a notice that is in force under sub-section 7 (2) and includes the airspace above such an area and any waters, sea-bed and subsoil included in such an area by virtue of sub-section 7 (3);

“Register” means the Register of Historic Shipwrecks kept under section 12;

“relevant agreement” means an agreement entered into between Australia and another country or countries in relation to the remains of a ship or ships or in relation to articles associated with a ship or ships, being remains or articles declared in the agreement to be of historic significance;

“sea” includes any waters within the ebb and flow of the tide;

“ship” includes any vessel used in navigation by water.

(2) A reference in this Act to the remains of a ship, or to an article or articles, being situated in, or having been removed from, any waters includes a reference to the remains of a ship or to an article or articles—

- (a) being situated in or forming part of, or having been removed from, as the case may be, the sea-bed, or the subsoil of the sea-bed, beneath those waters; or
- (b) being situated on or forming part of, or having been removed from, as the case may be, a reef in those waters.

(3) A thing shall not be taken not to be an article for the purposes of this Act by reason that it is attached to the remains of a ship, to a reef or, to the subsoil of, the sea-bed.

(4) A reference in this Act to an article associated with a ship shall be construed as a reference to an article that appears to have formed part of, to have been installed or carried on, or to have been constructed or used by a person associated with, a ship.

4. This Act binds the Crown in right of the Commonwealth and of each State. Act to bind Crown.

PART II—PROTECTION OF HISTORIC SHIPWRECKS AND RELICS

5. (1) Where the Minister is of the opinion that the remains of a ship that are situated in Australian waters or in waters above the continental shelf of Australia are of historic significance, he may, by notice published in the *Gazette*, declare those remains to be a historic shipwreck. Certain shipwrecks and relics may be declared to be historic.

(2) Where the Minister is of the opinion that a particular article that was, or particular articles that were, associated with a ship, or all articles that were associated with a particular ship, being an article that is, or articles that are, situated in Australian waters or in waters above the continental shelf of Australia, is or are of historic significance, he may, by notice published in the *Gazette*, declare the article or articles to be a historic relic or historic relics.

(3) The Minister may make a declaration under sub-section (1) or (2) in relation to any part of the remains of a ship that has, or in relation

to any article or articles that has or have, been removed from Australian waters or from waters above the continental shelf of Australia in like manner as he may make a declaration under that sub-section in relation to the remains of a ship, or in relation to an article or articles, situated in those waters.

(4) Where—

- (a) a declaration has been made under this section in relation to the remains of a ship or an article that were or was situated in any waters; and
- (b) after the making of the declaration any part of those remains or that article is removed from those waters,

the declaration continues to apply, subject to any amendment or revocation of the declaration, in relation to that part of those remains or in relation to that article notwithstanding its removal from those waters.

Provisional
declaration
that
shipwrecks
and relics are
historic.

6. (1) Where it appears to the Minister that an article or articles appearing to be the remains of a ship that is or are situated in Australian waters or in waters above the continental shelf of Australia may be of historic significance, he may, by notice published in the *Gazette*, provisionally declare the article or articles to be a historic shipwreck.

(2) Where it appears to the Minister that a particular article that is, or particular articles that are, situated in Australian waters or in waters above the continental shelf of Australia—

- (a) may have been associated with a ship; and
- (b) may be of historic significance,

he may, by notice published in the *Gazette*, provisionally declare the article or articles to be a historic relic or historic relics.

(3) The Minister may make a declaration under sub-section (1) or (2) in relation to any article that has, or articles that have, been removed from Australian waters or from waters above the continental shelf of Australia in like manner as he may make a declaration under that sub-section in relation to an article or articles situated in those waters.

(4) Where—

- (a) a declaration has been made under this section in relation to an article that was situated in any waters; and
- (b) after the making of the declaration that article is removed from those waters,

the declaration continues to apply in relation to that article notwithstanding its removal from those waters.

(5) A notice under this section remains in force, unless sooner revoked, until the expiration of 12 months from the date of publication of the notice in the *Gazette*, but the revocation or expiration of a notice under this section does not prevent the publication in the *Gazette* of a

further notice under this section in relation to an article or articles to which the revoked or expired notice applied.

7. (1) The Minister may, by notice published in the *Gazette*, declare an area (not exceeding 100 hectares) consisting of sea or partly of sea and partly of land (not including sea or land within the limits of a State) within which a historic shipwreck is, or a historic relic is or historic relics are, situated to be a protected zone.

Protected zones.

(2) Where the Minister is of the opinion that it is necessary to do so for the purposes of protecting a historic shipwreck, a historic relic or historic relics, he may, by notice published in the *Gazette*, extend an area comprising a protected zone under sub-section (1) to include a further area consisting of sea or partly of sea and partly of land (being sea or land within the limits of a State) but so that the total area does not exceed 100 hectares and, where an area is so extended to include a further area, the protected zone includes that further area.

(3) Where a notice declaring an area to be, or to be included in, a protected zone is in force under sub-section (1) or (2), the protected zone shall be taken to include the airspace above that area and, to the extent to which that area consists of the surface of any sea, to include the waters beneath that area, the sea-bed beneath those waters and the sub-soil of that sea-bed.

(4) Where a notice under section 5 or 6 in relation to the remains of a ship or in relation to an article or articles is revoked or otherwise ceases to be in force, any notice under this section in relation to the remains or in relation to the article or articles ceases to be in force but this sub-section does not prevent the publication in the *Gazette* of a further notice under this section in relation to the remains or in relation to the article or articles if a further notice is published in the *Gazette* under section 5 or 6 in relation to the remains or in relation to the article or articles.

8. Where a notice under section 5, 6 or 7 is published in the *Gazette*, the Minister may cause a copy of the notice to be published in such newspapers, periodicals or other publications as he thinks appropriate.

Further publication of notices.

9. (1) Where—

- (a) a person has possession, custody or control of an article; and
- (b) a notice applying in respect of the article is published in the *Gazette* under section 5 or 6,

Notice of location of historic shipwrecks and relics.

the person shall, within 30 days after the date of publication of the notice in the *Gazette*, give the prescribed notice to the Minister in relation to the article.

(2) Where an article in respect of which a notice published in the *Gazette* under section 5 or 6 applies comes into the possession, custody or control of a person, the person shall, within 30 days after the day on

which the article comes into his possession, custody or control, give the prescribed notice to the Minister in relation to the article.

(3) Where, at the commencement of this Act, a person has possession, custody or control of an article that is, or is a part of, a Dutch shipwreck or is a Dutch relic, the person shall, within 30 days after the commencement of this Act, give the prescribed notice to the Minister in relation to the article.

(4) Where, after the commencement of this Act, an article that is, or is part of, a Dutch shipwreck or is a Dutch relic comes into the possession, custody or control of a person, the person shall, within 30 days after the day on which the article comes into his possession, custody or control, give the prescribed notice to the Minister in relation to the article.

(5) It is a defence to a prosecution of a person for an offence against a provision of this section in relation to an article if the person proves—

- (a) in the case of an offence against sub-section (1) or (2) in relation to an article in respect of which a notice was published in the *Gazette* under section 5 or 6—that the person did not know, and had no reasonable grounds for believing, that the article was an article to which the notice related; or
- (b) in the case of an offence against sub-section (3) or (4)—that the person did not know, and had no reasonable grounds for believing, that the article was a Dutch relic or a part of a Dutch shipwreck.

(6) For the purposes of this section, the prescribed notice in relation to an article means a notice in writing describing the article and stating where the article is situated.

Penalty: \$1,000.

Power of
Minister to
ascertain
location of
historic
shipwrecks
and relics.

10. (1) Where it appears to the Minister that—

- (a) a person may have, or may have had, possession, custody or control of an article; and
- (b) the article is or may be, or is or may be a part of, a historic shipwreck or is or may be a historic relic,

the Minister may, by notice in writing to the person, require the person, within the time specified in the notice—

- (c) to inform the Minister whether the person has, or has had, possession, custody or control of the article;
- (d) if the person has ceased to have possession, custody or control of the article, to give the Minister particulars of the circumstances in which the person ceased to have possession, custody or control of the article; and
- (e) if the person has transferred possession, custody or control of the article to another person, to give the Minister the name and

address of the person to whom possession, custody or control of the article was transferred.

(2) A person to whom a notice is given by the Minister under sub-section (1) shall not—

- (a) refuse or fail to comply with the notice to the extent that the person is capable of complying with it; or
- (b) in purported compliance with the notice, knowingly furnish information that is false or misleading.

Penalty: \$1,000.

(3) A person is not excused from furnishing information in pursuance of this section on the ground that the information may tend to incriminate the person but evidence of the furnishing of the information is not admissible in evidence against the person except in proceedings for an offence against this section.

11. (1) Where a person has possession, custody or control of an article, being, or being a part of, a historic shipwreck or being a historic relic, the Minister may, for the purpose of—

- (a) the preservation of the article; or
- (b) the exhibition of, or the provision of access to, the article,

by notice in writing, require the person to take such action in relation to the article as is specified in the notice.

(2) The action that a person may be required to take in relation to an article by a notice under sub-section (1) includes but is not limited to—

- (a) keeping the article in a particular manner or place;
- (b) removing the article to a particular place within a particular time;
- (c) doing a particular act in relation to the article within a particular time, being an act designed to assist in the preservation of the article; and
- (d) delivering the article into the custody of a particular person within a particular time.

(3) Where the Minister gives a notice to a person under sub-section (1) requiring the person to take action in relation to an article other than action referred to in paragraph (2) (d), he shall in the notice inform the person that the person may, in lieu of taking that action, deliver the article within a specified time into the custody of a person specified in the notice.

(4) A person to whom a notice is given by the Minister under sub-section (1) shall comply with the notice.

Penalty: \$2,000 or imprisonment for 2 years, or both.

Power of Minister to give directions in relation to custody, &c., of historic shipwrecks and relics.

(5) A civil action does not lie against a person in respect of any action taken by him in pursuance of a notice given to him by the Minister under sub-section (1).

Register of
Historic
Shipwrecks.

12. (1) The Minister shall cause to be kept a register to be known as the Register of Historic Shipwrecks.

(2) The Minister shall cause to be entered in the Register particulars of notices in force under section 5, 6 or 7 and particulars of known Dutch shipwrecks and Dutch relics.

(3) A person may inspect the Register and, on payment of the prescribed fee, is entitled to be furnished with a copy of, or of any part of, the Register.

Prohibition
of certain
action in
relation to
historic
shipwrecks
and relics.

13. (1) Except in accordance with a permit, a person shall not—

- (a) damage or destroy a historic shipwreck or a historic relic;
- (b) interfere with a historic shipwreck or a historic relic;
- (c) dispose of a historic shipwreck or a historic relic; or
- (d) remove a historic shipwreck or a historic relic from Australia, from Australian waters or from waters above the continental shelf of Australia.

(2) A reference in sub-section (1) to the removal of a historic shipwreck or a historic relic from Australian waters or from waters above the continental shelf of Australia includes a reference to the removal of a historic shipwreck or a historic relic from the sea-bed, or from the sub-soil of the sea-bed, beneath those waters or from a reef in those waters.

(3) A person who contravenes this section is guilty of an offence and is punishable, on conviction, by a fine not exceeding \$5,000, or imprisonment for a period not exceeding 5 years, or both.

(4) In this section, “historic shipwreck” includes a part of a historic shipwreck.

Regulations
may prohibit
certain
activities in
protected
zone.

14. (1) The regulations may make provision—

- (a) for and in relation to prohibiting or restricting—
 - (i) the bringing into a protected zone of equipment constructed or adapted for the purpose of diving, salvage or recovery operations, or of any explosives, instruments or tools the use of which would be likely to damage or interfere with a historic shipwreck or a historic relic situated within that protected zone;
 - (ii) the use within a protected zone of any such equipment, explosives, instruments or tools;
 - (iii) causing a ship carrying any such equipment, explosives, instruments or tools to enter, or remain within, a protected zone;

- (iv) trawling, or diving or other underwater activity, within a protected zone; or
- (v) the mooring or use of ships within a protected zone; and
- (b) prescribing penalties, not exceeding a fine of \$1,000 or imprisonment for 1 year, or both, for any contravention of a provision of any regulations made for the purposes of paragraph (a).

(2) The provision that may be made by regulations made for the purposes of this section for or in relation to restricting the doing of an act includes a provision prohibiting the doing of that act except in accordance with a permit.

(3) Regulations made for the purposes of paragraph (1) (a) may be of general application or may make different provision in relation to different protected zones.

(4) In this section, “ship” includes a hovercraft and any similar craft.

15. (1) The Minister may, in his discretion, upon application by a person, grant a permit to that person authorizing that person and any other persons named or described in the permit to do an act or thing specified in the permit the doing of which would otherwise be prohibited by section 13 or by regulations made for the purposes of section 14.

Permits for exploration or recovery of shipwrecks and relics.

(2) The Minister may, when granting a permit or at any time while a permit is in force, impose conditions in respect of the permit and may at any time revoke or vary any conditions so imposed.

(3) The conditions that may be imposed under sub-section (2) in respect of a permit authorizing the doing of an act or thing include but are not limited to—

- (a) a condition requiring the act or thing to be done in a specified manner;
- (b) a condition requiring the act or thing to be done only in accordance with the directions of a person named or described in the permit as a person empowered to give such directions; and
- (c) a condition requiring any articles obtained by the doing of an act that is authorized by the permit to be done to be held in such custody or dealt with in such manner as is specified in the permit or as is specified in directions given by a person named or described in the permit as a person empowered to give such directions.

(4) A condition imposed in respect of a permit (other than a condition contained in a permit) or a revocation or variation of a condition so imposed takes effect when notice of the condition or of the revocation or variation is served on the person to whom the permit was granted.

(5) A person shall not contravene a condition imposed in respect of a permit that has been granted to him or is otherwise applicable to him.

Penalty: \$2,000 or imprisonment for 2 years, or both.

(6) The Minister may, at any time, by notice in writing to the person to whom a permit has been granted—

- (a) revoke the permit;
- (b) suspend the permit; or
- (c) cancel the suspension of the permit.

(7) A suspension of a permit may be of indefinite duration or for a specified period.

Defences.

16. It is a defence to a prosecution of a person for an offence against section 13, for an offence against a regulation made for the purposes of section 14, or for an offence against sub-section 15 (5), if the act that constituted the offence was done for the purpose of—

- (a) saving human life;
- (b) securing the safety of a ship (including a hovercraft or any similar craft) where the ship was endangered by stress of weather or by navigational hazards; or
- (c) dealing with an emergency involving a serious threat to the environment.

Discovery of shipwrecks and relics to be notified.

17. (1) A person who finds, in a fixed position in Australian waters or waters above the continental shelf of Australia, the remains of a ship or of a part of a ship, or an article associated with a ship, shall, as soon as practicable, give to the Minister a notice setting out a description of the remains or of the article and a description of the place where the remains are, or the article is, situated, being a description of that place that is sufficient to enable the remains or article to be located.

(2) It is a defence to a prosecution of a person for an offence against sub-section (1) if the person proves, or proves that he had reasonable grounds for believing, that a notice setting out a description of the place where the remains are or the article is situated, being a description that is sufficient to enable the remains or article to be located, was given to the Minister by another person before it was practicable for the first-mentioned person to give such a notice.

(3) A person shall not in a notice purporting to be given to the minister under sub-section (1) make a statement that to his knowledge is false or misleading in a material particular.

Penalty: \$1,000.

Rewards.

18. (1) The Minister may—

- (a) pay a reward not exceeding the prescribed amount to the person who first notifies the Minister in accordance with section 17 of the location of any remains or article—

- (i) a description of the location of which, being a description sufficient to enable the remains or article to be located, had not previously been published in Australia; and
 - (ii) in respect of which a declaration has, since the notification was made, been made under section 5 or which is a Dutch shipwreck or a Dutch relic;
- (b) offer and pay a reward not exceeding the prescribed amount to the person who first furnishes to the Minister a description of the location of a historic shipwreck, or of a historic relic or historic relics, specified in the offer, being a description sufficient to enable the historic shipwreck or historic relic or historic relics to be located; and
- (c) pay a reward not exceeding the prescribed amount to any person who furnishes information leading to the conviction of a person for an offence against this Act.
- (2) Payments under sub-section (1) shall be made out of moneys appropriated by the Parliament for the purpose.

PART III—MISCELLANEOUS

19. (1) The Governor-General may make arrangements with the Governor of a State for the performance of functions by a competent authority of the State in relation to the protection, recovery, preservation and exhibition of historic shipwrecks and historic relics.

Arrange-
ments for
State
authorities to
perform
functions in
relation to
historic
shipwrecks
and relics.

(2) Without prejudice to sub-section (1), the Governor-General may make arrangements with the Governor of Western Australia for the performance by The Western Australian Museum of functions in relation to the protection, recovery, preservation and exhibition of Dutch shipwrecks and Dutch relics.

20. (1) Where the Minister is of the opinion that it is necessary to do so for the purpose of carrying out or giving effect to the Australia-Netherlands Agreement, he may, by notice published in the *Gazette*, declare the ownership of a specified Dutch shipwreck to be vested in a specified authority of the Commonwealth and, upon the publication of the notice, that authority becomes, by force of this sub-section, the owner of that Dutch shipwreck free of any charges or other encumbrances.

Declaration
as to owner-
ship of
remains of
ships or
relics.

(2) Where the Minister is of the opinion that it is necessary to do so for the purpose of carrying out or giving effect to the Australia-Netherlands Agreement, he may, by notice published in the *Gazette*, declare the ownership of a specified Dutch relic to be vested in a specified authority of the Commonwealth, in the State of Western Australia, in a specified authority of that State or in the Government of the Kingdom of the Netherlands and, upon the publication of the notice, the authority of the Commonwealth, the State of Western Australia, the authority of that

State or the Government of the Kingdom of the Netherlands, as the case may be, becomes, by force of this sub-section, the owner of that Dutch relic free of any charges or other encumbrances.

(3) Where the Minister is of the opinion that it is necessary to do so for the purpose of carrying out or giving effect to this Act or any relevant agreement other than the Australia-Netherlands Agreement, he may, by notice published in the *Gazette*, declare the ownership of the remains of a specified ship, or of a specified article that was associated with a ship, or of all articles that were associated with a specified ship, to be vested in the Commonwealth, in a specified State, in a specified authority of the Commonwealth or of a State, in the Government of a specified country other than Australia or in any other specified person and, upon the publication of the notice, the Commonwealth, the State, the authority, the Government, or the other person, as the case may be, becomes, by force of this sub-section, the owner of those remains or of that article or those articles, free of any charges or other encumbrances.

(4) The publication of a notice under this section in relation to a Dutch shipwreck, the remains of a ship not being a Dutch shipwreck, a Dutch relic or any other article does not affect the application of any other provision of this Act to or in relation to that Dutch shipwreck, the remains of that ship, that Dutch relic or that other article, as the case may be.

(5) Nothing in this section affects any power of the Commonwealth otherwise than under this Act to dispose of or otherwise deal with any remains of a ship, or any articles, that are the property of the Commonwealth.

Compensation.

21. (1) If the operation of this Act or the doing of any act by the Minister in pursuance of this Act results in the acquisition of property from a person, being an acquisition of property within the meaning of paragraph 51 (xxxi) of the Constitution, the Commonwealth is liable to pay to that person such compensation as is determined by agreement between the Commonwealth and that person or, in the absence of agreement, by action brought by that person against the Commonwealth in the High Court or the Supreme Court of a State or Territory.

(2) In determining the compensation payable to a person by the Commonwealth under this section in respect of the acquisition of property from the person, the Court shall have regard to any amount of compensation paid or payable to the person, in respect of the acquisition, by a person other than the Commonwealth.

(3) The High Court and the Supreme Courts of the States have jurisdiction, and the Supreme Courts of the Territories have jurisdiction to the extent that the Constitution permits, to hear and determine actions brought in those courts under this section.

22. (1) The Minister may, by writing signed by him, appoint a person to be an inspector for the purposes of this Act. Appointment of inspectors.

(2) The Minister shall cause to be issued to each inspector appointed under sub-section (1) an identity card in accordance with the prescribed form containing a photograph of the inspector.

(3) A person who ceases to be an inspector appointed under sub-section (1) shall forthwith return his identity card to the Minister.

Penalty for a contravention of this sub-section: \$100.

23. (1) Where an inspector has reasonable grounds for believing that it is necessary to do so for the purpose of ascertaining whether an offence against this Act has been or is being committed or that by doing so evidence in relation to the commission of such an offence may be obtained, the inspector may, with or without persons and equipment to assist him— Powers of inspectors.

- (a) go on board a ship;
- (b) require a person in charge of a ship to take steps to facilitate boarding;
- (c) open, or require a person to open, any cargo holds, compartments or containers on any ship boarded in accordance with paragraph (a) and inspect the contents of any such cargo holds, compartments or containers;
- (d) require any person found in or on any ship boarded in accordance with paragraph (a) to produce any permit in force under this Act that is in his possession; and
- (e) require a person to answer questions.

(2) Where an inspector has reason to believe that a person has failed to comply with a notice given to the person under sub-section 11 (1), the inspector may make application to a Justice of the Peace for a warrant authorizing the inspector, with or without persons and equipment to assist him, for the purpose of ascertaining whether the person has failed to comply with the notice—

- (a) to enter any specified land or premises; and
- (b) to search any land or premises so entered and to break open any cupboard, drawer, desk, box, package or other receptacle, whether a fixture of not, on the land or in the premises.

(3) If, on an application under sub-section (2), the Justice of the Peace is satisfied by information on oath or affirmation that the issue of the warrant is reasonably required for the purposes of that sub-section, the Justice of the Peace may grant a warrant accordingly.

(4) A warrant under sub-section (3) shall specify a date after which the warrant ceases to have effect.

(5) A person shall not—

- (a) without reasonable excuse, fail to comply with a requirement made of him by an inspector in the exercise of a power under this section; or
- (b) in answer to a question that he is required to answer under this section, make a statement that is false or misleading in a material particular.

Penalty: \$1,000.

(6) It is a reasonable excuse for a person to fail to answer a question that he is required to answer under this section that the answer to the question may tend to incriminate him.

(7) A person who—

- (a) without reasonable excuse, hinders or obstructs an inspector in the exercise of a power under this section; or
- (b) assaults or threatens an inspector exercising a power under this section,

is guilty of an offence and is punishable, on conviction, by a fine not exceeding \$2,000, or imprisonment for a period not exceeding 2 years, or both.

(8) In this section, “ship” includes a hovercraft and any similar craft.

Arrest
without
warrant.

24. (1) An inspector may, without warrant, arrest a person if the inspector reasonably believes—

- (a) that the person has committed an offence against section 13 or against regulations made for the purposes of section 14; and
- (b) that proceedings against the person by summons would not be effective.

(2) Where an inspector (other than a member of a police force who is in uniform) arrests a person under sub-section (1), the inspector shall—

- (a) in the case of an inspector who is a member of a police force—produce, for inspection by the person arrested, written evidence of the fact that the inspector is a member of a police force; or
- (b) in any other case—produce his identity card for inspection by the person arrested.

(3) Where a person is arrested under sub-section (1), an inspector shall forthwith bring the person, or cause him to be brought, before a Justice of the Peace or other proper authority to be dealt with in accordance with law.

(4) Nothing in this section prevents the arrest of a person in accordance with any other law.

25. (1) An inspector may seize any ship, equipment or article that he reasonably believes to have been used or otherwise involved in the commission of an offence against this Act and may retain the ship, equipment or article until the expiration of a period of 60 days after the seizure or, if a prosecution for an offence against this Act in the commission of which the ship, equipment or article may have been used or otherwise involved is instituted within that period, until the prosecution is terminated. Seizure and forfeiture.

(2) The Minister may authorize any ship, equipment or article seized under sub-section (1) to be released to its owner, or to the person from whose possession it was seized, either unconditionally or on such conditions as the Minister thinks fit, including conditions as to the giving of security for payment of its value if it is forfeited.

(3) Where a court convicts a person of an offence against this Act, the court may order the forfeiture to the Commonwealth of any ship, equipment or article used or otherwise involved in the commission of the offence.

(4) Any ship, equipment or article forfeited under this section may be sold or otherwise dealt with as the Minister thinks fit.

(5) A reference in this section to an article involved in the commission of an offence includes a reference to any historic shipwreck, or part of a historic shipwreck, or any historic relic, to which the offence relates.

(6) In the section, "ship" includes a hovercraft and any similar craft.

26. (1) Subject to this section an offence against this Act may be prosecuted summarily or upon indictment but nothing in this section renders a person liable to be punished more than once for the same offence. Prosecution of offences.

(2) Where the law of a State or Territory makes provision for a person who pleads guilty to a charge in proceedings for his commitment for trial on indictment to be committed to a higher court and dealt with otherwise than on indictment, a person charged in that State or Territory with an offence against this Act may be dealt with in accordance with that law.

(3) Where a person is charged with an offence against this Act in proceedings for his commitment for trial on indictment, a court of summary jurisdiction may, with the consent of the defendant and of the prosecutor and if the court is satisfied that it is proper to do so, determine the charge summarily.

(4) A person shall not be sentenced by a court of summary jurisdiction for an offence against this Act to a fine exceeding \$1,000 or imprisonment for a period exceeding 1 year.

Jurisdiction
of courts.

27. (1) A provision of the *Judiciary Act* 1903 by which a court of a State is invested with jurisdiction with respect to offences against the laws of the Commonwealth has effect, in relation to offences against this Act not committed within any State, as if that jurisdiction were so invested without limitation as to locality.

(2) The trial on indictment of an offence against this Act not committed within a State may be held by a court of competent jurisdiction at any place where the court may sit.

Operation of
Act.

28. Subject to the obligations of Australia under international law, including obligations under any agreement between Australia and another country or countries, this Act extends, according to its tenor, to foreigners and to foreign ships (including foreign hovercraft and any similar foreign craft).

Certificate
by Minister
to be
evidence.

29. In any proceedings for an offence against this Act, a certificate by the Minister stating that a place specified in the certificate is a place—

- (a) in Australian waters;
- (b) in Australian waters or waters above the continental shelf of Australia; or
- (c) in a specified protected zone,

is *prima facie* evidence of the matters stated in the certificate.

Delegation.

30. (1) The Minister may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate to a person any of his powers under this Act, other than this power of delegation.

(2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Minister.

(3) A delegation under this section does not prevent the exercise of a power by the Minister.

Notices.

31. (1) Without prejudice to any other method of service permitted by law, a notice to a person by the Minister under this Act may be served on the person by being sent by post to the person at the address of the person last known to the Minister.

(2) A notice to the Minister under this Act may be given as prescribed.

(3) A notice by the Minister that has been published in the *Gazette* in pursuance of this Act may be amended or revoked by the Minister by a further notice published in the *Gazette*.

32. The Governor-General may make regulations, not inconsistent Regulations. with this Act, prescribing all matters required or permitted by this Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to this Act or carrying out or giving effect to the Australia-Netherlands Agreement or any other relevant agreement.

SCHEDULES

SCHEDULE 1

Section 3

AGREEMENT BETWEEN THE NETHERLANDS AND AUSTRALIA CONCERNING OLD DUTCH SHIPWRECKS

THE UNDERSIGNED:

1. MR WIM BLOKZIJL, resident of The Hague, Head of the Inspection Division of the State Property Directorate of the Ministry of Finance, acting on behalf of the State of the Netherlands, hereinafter referred to as "the Netherlands".

2. DR LLOYD DOUGLAS THOMSON, M.V.O., Australian Ambassador to the Netherlands, acting on behalf of the Government of the Commonwealth of Australia, hereinafter referred to as "Australia":

HAVING REGARD TO THE FACT:

A. That vessels that belonged to the Dutch "VEREENIGDE OOSTINDISCHE COMPAGNIE" known as the V.O.C., hereinafter referred to as "the V.O.C.", were wrecked on or off the coast of Western Australia;

B. That the Netherlands, by virtue of article 247 of the 1798 Constitution of the Batavian Republic, is the present legal successor to the V.O.C. :

AGREE AS FOLLOWS:

Article 1: The Netherlands, as successor to the property and assets of the V.O.C., transfers all its right, title and interest in and to wrecked vessels of the V.O.C. lying on or off the coast of the State of Western Australia and in and to any articles thereof to Australia which shall accept such right, title and interest.

Article 2: For the purpose of this Agreement, the expression "articles" means any part of vessels as referred to in article 1, that have become or have been detached or removed therefrom, as well as the fittings, goods and other property, wherever situated, that were installed or carried on those vessels.

Article 3: Australia shall make no claim on the Netherlands for reimbursement of any costs incurred in searching for any of the vessels referred to in article 1 of this Agreement or in recovering any articles from those vessels.

Article 4: Australia recognises that the Netherlands has a continuing interest, particularly for historical and other cultural purposes, in articles recovered from any of the vessels referred to in article 1 of this Agreement.

Accordingly Australia shall set up a Committee to determine the disposition and subsequent ownership of the recovered articles between the Netherlands, Australia and the State of Western Australia.

Article 5: The Committee referred to in article 4 of this Agreement shall be set up within 90 days after the entry into force of the Agreement and shall comprise two persons nominated by the Netherlands and two persons nominated by Australia. These persons shall have the scientific and cultural expertise appropriate for the discharge of their functions.

SCHEDULES—continued

Article 6: The Committee shall determine the disposition of the recovered articles in accordance with the principles which have been agreed upon by Australia and the Netherlands and are set out in the Arrangement signed by Australia and the Netherlands and attached to this document.

Article 7: Expenditure incurred by the Committee in the performance of its work shall be shared between the two Parties represented on the Committee, the share to be borne by the Netherlands being one third and that by Australia two thirds provided that—

- (I) each Party shall bear the costs of travel by the Committee members nominated by it,
- (II) the costs of communications by a Party to the Committee shall be borne by the despatching Party, and
- (III) the expenses of transportation of articles distributed in accordance with determinations of the Committee shall be borne by the recipients of the articles.

Article 8: If the members of the Committee referred to in article 4 of this Agreement cannot come to an agreement on the disposition of particular articles, Australia and the Netherlands shall appoint an independent consultant to report on the matter in issue and the report shall be referred to the Committee for re-consideration of the matter. The cost of the report shall be shared between the two Parties represented on the Committee, the share to be borne by the Netherlands being one third and that by Australia two thirds.

Article 9: If, on considering the consultant's report on a matter, the members of the Committee cannot come to an agreement on the disposition of the recovered articles, the matter will be referred to the Government of the Kingdom of the Netherlands and the Government of the Commonwealth of Australia, which will settle the matter by negotiation.

Article 10: This Agreement shall enter into force on the date of the signatures of both Parties.

DONE at The Hague this sixth day of November in the year One thousand nine hundred and seventy-two in two originals in the English language.

**ARRANGEMENT SETTING OUT THE GUIDING PRINCIPLES FOR THE
COMMITTEE TO DETERMINE THE DISPOSITION OF MATERIAL FROM
THE SHIPWRECKS OF DUTCH EAST INDIA COMPANY VESSELS OFF THE
COAST OF WESTERN AUSTRALIA**

THE COMMITTEE

Responsibility The Committee's responsibility will embrace all material recovered from the wrecks—whether recovered before or after the coming into operation of the Western Australian Museum Act in December 1964 which contains provisions for vesting in the Museum title to the wrecks of the Batavia, the Gilt Dragon, the Zuytdorp and Zeewyk.

Conduct of Business The Committee is small enough to meet if occasion demands but most of its work could be done by correspondence.

General Principles

Representative collections The cost of recovery (including treatment) is likely to exceed by far the intrinsic or antiquarian sale-value of material recovered. The Government of Western Australia is spending considerable sums on this work (\$92,000 in the last financial year) and estimates that the total cost will be \$2,000,000 or more. Although a division would not be warranted by consideration of cash value alone, the historic, educational, scientific and international considerations are such as to make the deposition of representative collections in the museums of the Netherlands and Australia most desirable. The remainder of the material would be held in the Western Australian Museum.

Considerations governing the partition of archaeological collections In modern archaeological practice sites are no longer regarded merely as a source of important individual items, but rather as a body of material whose collective value far outweighs the importance of the individual pieces and in which the relationship of the individual objects within the sample are a major part of its historical value. Accordingly, the sharing of material from an archaeological site is best regarded as the accommodation in several localities of a corporate entity rather than its division into parts.

If the decision is made that the contents of an archaeological site are to be apportioned between two or more institutions, the first principle to be observed is that the total assemblage should be capable of reassembly to allow further statistical and scholarly analysis. It follows, therefore, that unnecessary splitting of a sample of closely similar objects capable of statistical

SCHEDULES—continued

treatment should be avoided and, where samples are accommodated in more than one institution, those institutions should contract not to disperse them further and, moreover, to agree to allow samples to be brought together for analysis and study as required. The second principle is that where unique or rare objects, themselves, form a meaningful assemblage within the whole, this assemblage should not be split or, if split, perfect replicas be made to complete the assemblage. As in the case of the division of statistical samples an agreement should be made between the recipients to reconstitute the original assemblage if it is required for scholarly research.

The contents of the ancient shipwrecks of the Dutch East India Company include abundant statistical samples such as coin, bricks, objects of pottery, elephant tusks, and so on. There are also many articles which are less abundant but which are duplicated many times over. Many of these are ship fittings such as cannon, anchors, cannon balls, etc. There are also other articles which are relatively rare, or even unique, in the deposits (e.g. articles possessed by crew members, or passengers, such as barber's instruments, navigational instruments, ornaments, etc.). Most articles are fragmentary and in need of immediate chemical conservation and stabilization in the laboratory as soon as they are recovered. This treatment cannot await distribution.

Treatment of material recovered

Operating Principles

The Committee will operate by reviewing proposals for distribution made, from time to time, by the Director of the Western Australian Museum; it could decide that the proposed samples be increased or decreased in content in the light of the total material collected and other factors.

Code of Operation

In its deliberations the Committee will have, as its general aim, the purpose of ensuring that representative series of statistical samples and sufficient examples of the rarer objects will be deposited in the museums of the Netherlands and Australia to convey the variety and contents of each wreck to both the public and to scholars while, at the same time, ensuring that major projects of scholarly research will not be impeded by overfragmentation of the collection. Dispersal in this way, among separate repositories will also help to ensure the permanent safety of representative material in the event of the destruction of any one repository.

General aims

Most material so far recovered from the vessels are samples capable of statistical treatment.

Statistical samples

A representative collection of the contents of each statistical sample should be made available to a museum of the Netherlands Government and a museum of the Commonwealth Government. Thus, in the case of coin, for example, both the Netherlands and Commonwealth Governments would receive as complete a series as possible representing the mintings and values contained within each of the wrecks. These will provide their museums with ample material of this class of objects for display purposes and sufficient to enable a scholar to make the initial qualitative studies which would possibly lead him to a more detailed statistical treatment of the bulk sample retained in the Western Australian Museum.

In order to ensure that both the Netherlands and Commonwealth Governments acquire, in due course, representative collections of the less common and even unique objects, the following procedure will be adopted. Since the relationships of such objects to the whole sample cannot be known until excavation is complete, the distribution of specimens of this nature cannot be considered during the continuing process of recovery. However, at reasonable intervals (of say two or three years) it should be possible to assemble a representative sample with fair certainty that all duplicates of any rare object present in a particular excavation should have been recovered and their nature taken into consideration during the deliberations of the Committee.

Less common or rare objects

THE HAGUE,

6th November, 1972

SCHEDULES—continued

SCHEDULE 2

Section 3

DUTCH SHIPWRECKS OFF THE COAST OF WESTERN AUSTRALIA

Name by which Vessel was known	Approximate location
"Batavia"	Beacon Island, Wallabi Group, Houtmans Abrolhos
"Vergulde Draeck" or "Gilt Dragon"	Ledge Point
"Zuytdorp"	40 miles north of the mouth of the Murchison River
"Zeewyk"	Gun Island, Pelsart Group, Houtmans Abrolhos

NOTE

1. Act No. 190, 1976; assented to 15 December 1976.