

REPLACEMENT EXPLANATORY STATEMENT

Issued by authority of the Minister for the Environment

Historic Shipwrecks Regulations 2018

The *Historic Shipwrecks Act 1976* (the Act) establishes a scheme to protect the remains of historic shipwrecks and their associated relic located in Australian waters adjacent to the coast of Australian states and territories and extending to the limits of Australia's continental shelf.

Section 32 of the Act provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Act.

The purpose of the *Historic Shipwrecks Regulations 2018* (the Regulations) is to remake the *Historic Shipwrecks Regulations 1978* (the 1978 Regulations), which are due to sunset on 1 October 2018.

The remaking of the 1978 Regulations is proposed to maintain the current regulatory arrangement until the commencement of the new scheme provided for in the *Underwater Cultural Heritage Act 2018* (the Underwater Cultural Heritage Act), which received the Royal Assent on 24 August 2018. The Act is due to commence on a day to be fixed by Proclamation within the next 12 months, or at the end of the 12-month period at the latest. It is anticipated the Underwater Cultural Heritage Act will commence at the start of the 2019-20 financial year.

On its commencement, the Underwater Cultural Heritage Act will provide a new framework for protection of underwater cultural heritage, replacing the current protection for historic shipwrecks and their associated relics under the Act. The Underwater Cultural Heritage Act retains the general principles of the Act and creates a regulatory system for all types of underwater cultural heritage that meets international best practice, establishes a fairer penalty regime and reduces the burden on the regulated community.

No major amendments have been made in the proposed Regulations due to their short term nature and because the 1978 Regulations mirror wording and penalties in the Act that must continue to be enforced until repealed on the commencement of the Underwater Cultural Heritage Act. The only significant changes to the 1978 Regulations are:

- a reduction in the penalty unit amount under section 8; and
- changes to the format of inspector identity cards under section 10.

A review of the Act and the Regulations was conducted in 2009. Public consultation was included as part of the review. The review received submissions from the general public, non-government organisations, collecting institutions (museums, etc.) and Commonwealth, state and territory government departments. A review website was established and a discussion paper was publicly available. Received submissions were posted on the web and can be accessed at: <http://environment.gov.au/heritage/historic-shipwrecks/review-act-1976>

The submissions received were supportive of changes to modernise and improve the Act and the Regulations.

As the Regulations are made under primary legislation that is scheduled to be repealed and the regulatory landscape has not significantly changed since the review was conducted in 2009, further public consultation for the 1978 Regulations was not undertaken.

The Office of Best Practice Regulation (OBPR) was consulted concerning any necessity to prepare a Regulatory Impact Statement (RIS) for the Regulations (OBPR reference ID 24000). OBPR advised that the impacts of the Regulations are minor or machinery in nature and no RIS or self-assessment is required.

Details of the Regulations are set out in the Attachment.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commence the day after it is registered on the Federal Register of Legislation.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Historic Shipwrecks Regulations 2018

The Regulations are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The purpose of the *Historic Shipwrecks Regulations 2018* (the Regulations) is to remake the *Historic Shipwrecks Regulations 1978*, which are due to sunset on 1 October 2018. The Regulations:

- prescribe fee amounts for obtaining copies of the register of historic shipwrecks;
- prohibit certain activities in protected zones declared under the *Historic Shipwrecks Act 1976* (the Act);
- prescribe the maximum amount for rewards given under the Act; and
- specify the format of shipwreck inspector identity cards.

No charges or fees imposed under the Act and prescribed by the Regulations have been increased or decreased in the remade Regulations.

Human rights implications

The Regulations do not engage with any of the applicable rights or freedoms.

Conclusion

The Regulations are compatible with human rights as they do not raise any human rights issues.

The Hon Melissa Price MP, Minister for the Environment

Details of the *Historic Shipwrecks Regulations 2018*

Part 1 - Preliminary

Section 1 – Name

1. This section provides that the name of this instrument is the *Historic Shipwrecks Regulations 2018* (the Regulations).

Section 2 – Commencement

2. This section provides that the Regulations commence on the day after the instrument is registered.

Section 3 – Authority

3. This section provides that the Regulations are made under the *Historic Shipwrecks Act 1976* (the Act).

Section 4 – Schedule 1

4. This section refers the reader to Schedule 1 which prescribes the form of identity cards for the purposes of subsection 22(2) of the Act.

Section 5 – Schedule 2

5. This section provides that each instrument that is specified in Schedule 2 to the Regulations is amended or repealed as set out in the applicable terms in that Schedule, and any other item in that Schedule has effect according to its terms.

Section 6 – Definitions

6. This section defines key terms used in the Regulations and in the Act.
7. This section provides that 'the Act' means the *Historic Shipwrecks Act 1976*.
8. This section defines the term 'ship'.

Section 7 – Prescribed fee for copy of the Register

9. This section prescribes the fee amount for obtaining copies of the register of historic shipwrecks for the purposes of subsection 12(3) of the Act.
10. This section is now redundant as the register has been publicly available online through the Australian National Shipwrecks Database since 2002 and can be freely downloaded from <https://dmzapp17p.ris.environment.gov.au/shipwreck/public/wreck/search.do>.

Section 8 – Prohibition of certain activities in protected zones

11. This section specifies the actions that are prohibited within a protected zone, except in accordance with a permit granted under subsection 15(1) of the Act.
12. The penalty for a contravention of subsection 8(1) is 4 penalty units. This aligns the maximum penalty for an offence under this section with paragraph 14(1)(b) of the Act, which provides that the fine prescribed in the Regulations must not exceed \$1000.

13. At the time the 1978 Regulations were made, the penalty units regime did not exist. The penalty units regime was introduced in 1992. At that time, a penalty unit was prescribed at \$110 under the *Crimes Act 1914*. The equivalent provision to subsection 8(1) in the 1978 Regulations provided for 10 penalty units.
14. Section 4AA of the *Crimes Act 1914* now provides that the amount of a penalty unit is \$210. Due to the mathematical imprecision of the value of a penalty unit, the amount of penalty units has been reduced to 4 penalty units so that the maximum penalty able to be imposed by the new subsection 8(1) does not exceed \$1000 as required by paragraph 14(1)(b) of the Act. The maximum penalty that can now be imposed is \$840.
15. The penalty option of one year's imprisonment in subsection 4(1) of the 1978 Regulations has been retained in the Regulations as it is still appropriate to the higher level of offences that may be committed against section 8 of the Regulations. A period of imprisonment will also be available for similar offences under the *Underwater Cultural Heritage Act 2018*.

Section 9 – Prescribed amount for rewards

16. This section prescribes the maximum amount of reward payment that may be granted under section 18 of the Act, to persons who report the discovery of ship remains under section 17 of the Act.

Section 10 – Identity card

17. This section specifies how shipwreck inspector identity cards issued under subsection 22(2) of the Act are to be formatted and recorded.
18. The requirement for identity cards to be 'substantially in accordance' with the form in the schedule in the 1978 Regulations has been removed as section 25C of the *Acts Interpretation Act 1901* provides that substantial compliance with a form is sufficient.
19. Subsection 10(2) provides that the Minister must keep a record of each identity card issued and the number of the card so issued. Subsection 10(2) is an administrative detail that relies on section 32 of the Act as proper recordkeeping is an ancillary task necessary for the proper administration of the issue of identity cards in relation to the Minister's power to appoint a person to be an inspector for the purposes of section 23 the Act.
20. The details of all inspector identity cards issued are recorded in the Australian National Shipwrecks Database along with the details of inspectors' appointments under the Act.

Schedule 1 – Form of identity cards

21. For subsection 10(1) of the Regulations, Schedule 1 specifies the form that identity cards must take when the Minister issues an identity card under subsection 22(2) of the Act.
22. A minor amendment has been made to the specified form to remove the reference to the Minister of Home Affairs, who is no longer the responsible minister.

Schedule 2 – Repeals

23. Schedule 2 provides for the repeal of the *Historic Shipwrecks Regulations 1978*.