



Underwater Cultural Heritage Rules 2018

I, Melissa Price, Minister for the Environment, make the following rules.

Dated 18 December 2018

Melissa Price
Minister for the Environment

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Part 1—Preliminary

1 Name

This instrument is the *Underwater Cultural Heritage Rules 2018*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The later of: (a) the start of the day after this instrument is registered; and (b) the commencement of the <i>Underwater Cultural Heritage Act 2018</i> .	1 July 2019 (paragraph (b) applies)

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Underwater Cultural Heritage Act 2018*.

4 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) protected underwater cultural heritage;
- (b) protected zone.

In this instrument:

Act means the *Underwater Cultural Heritage Act 2018*.

Underwater Cultural Heritage Convention means the UNESCO Convention on the Protection of the Underwater Cultural Heritage, done at Paris on 2 November 2001, as amended from time to time.

Note: The Convention could in 2018 be viewed on the United Nations Educational, Scientific and Cultural Organisation's website (<http://www.unesco.org>).

Part 2—Criteria relating to heritage significance

5 Criteria relating to heritage significance

- (1) This section is made for the purposes of subsection 22(1) of the Act.

Note: In making a declaration under subsection 17(1), 18(1) or 19(1) of the Act, the Minister must have regard to the criteria in this section when assessing whether the Minister is satisfied that an article is of heritage significance (see subsection 22(2) of the Act).

- (2) The criteria are as follows:

- (a) the significance of the article in the course, evolution or pattern of history;
- (b) the significance of the article in relation to its potential to yield information contributing to an understanding of history, technological accomplishments or social developments;
- (c) the significance of the article in its potential to yield information about the composition and history of cultural remains and associated natural phenomena through examination of physical, chemical or biological processes;
- (d) the significance of the article in representing or contributing to technical or creative accomplishments during a particular period;
- (e) the significance of the article through its association with a community in contemporary Australia for social, cultural or spiritual reasons;
- (f) the significance of the article for its potential to contribute to public education;
- (g) the significance of the article in possessing rare, endangered or uncommon aspects of history;
- (h) the significance of the article in demonstrating the characteristics of a class of cultural articles.

Part 3—Permits

6 Matters to which the Minister must have regard when considering applications

- (1) This section is made for the purposes of subsection 23(4) of the Act.

Note: In deciding whether to grant a permit under section 23 of the Act, the Minister must have regard to the matters specified in this section (see subsection 23(4) of the Act).

- (2) The Minister must have regard to:
- (a) whether the person applying for the permit is a fit and proper person; and
 - (b) whether each person who will participate in, or otherwise be involved in, the conduct proposed to be authorised by the permit is a fit and proper person.
- (3) Without limiting paragraph (2)(a) or (b), the Minister must have regard to the following matters when considering whether a person is a fit and proper person:
- (a) whether the person has been convicted of an offence against, or ordered to pay a pecuniary penalty under, any of the following:
 - (i) the Act;
 - (ii) the repealed *Historic Shipwrecks Act 1976*;
 - (iii) the *Protection of Movable Cultural Heritage Act 1986*;
 - (iv) the *Customs Act 1901*;
 - (v) the *Criminal Code*, to the extent that it relates to an Act referred to in any of subparagraphs (i) to (iv);
 - (vi) the *Crimes Act 1914*, to the extent that it relates to an Act referred to in any of subparagraphs (i) to (iv);
 - (b) whether the person has been convicted of an offence against a law of a State or Territory that relates to underwater cultural heritage;
 - (c) whether the person has been convicted of an offence against a law of a foreign country that relates to underwater cultural heritage;
 - (d) whether the person is suspected on reasonable grounds of engaging in the supply of unlawfully obtained underwater cultural heritage.
- (4) If the conduct proposed to be authorised by the permit will have or is likely to have an adverse impact on protected underwater cultural heritage, the Minister must also have regard to the following matters:
- (a) whether the conduct is consistent with the objects of the Act;
 - (b) relevant government guidelines relating to the protection or management of Australia's underwater cultural heritage, as in force from time to time;
 - (c) whether the manner in which the conduct will be undertaken is consistent with the relevant requirements of the Annex to the Underwater Cultural Heritage Convention;
 - (d) whether appropriate consultation has been undertaken with relevant stakeholders relating to:
 - (i) shared heritage interests; and
 - (ii) issues of ownership or sovereignty; and

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- (iii) obligations under any relevant international conventions, agreements or treaties, as in force from time to time.
- (5) If the conduct proposed to be authorised by the permit will take place in a protected zone, the Minister must also have regard to the following matters:
 - (a) whether the conduct is consistent with the objects of the Act;
 - (b) whether the conduct will affect any of the matters mentioned in subsection 20(3) of the Act;
 - (c) relevant government guidelines relating to the protection or management of Australia's underwater cultural heritage, as in force from time to time;
 - (d) whether appropriate consultation has been undertaken with relevant stakeholders relating to:
 - (i) shared heritage interests; and
 - (ii) issues of ownership or sovereignty; and
 - (iii) obligations under any relevant international conventions, agreements or treaties, as in force from time to time.
- Note: Subsection 20(3) of the Act sets out the matters the Minister must have regard to when declaring an area to be a protected zone.
- (6) If the conduct proposed to be authorised by the permit relates to the import or export of protected underwater cultural heritage or foreign underwater cultural heritage, the Minister must also have regard to the following matters:
 - (a) whether the conduct is consistent with the objects of the Act;
 - (b) relevant government guidelines relating to the importation or exportation of protected underwater cultural heritage, as in force from time to time;
 - (c) whether the manner in which the conduct will be undertaken is consistent with the relevant requirements of the Annex to the Underwater Cultural Heritage Convention;
 - (d) whether appropriate consultation has been undertaken with relevant stakeholders relating to:
 - (i) shared heritage interests; and
 - (ii) issues of ownership or sovereignty; and
 - (iii) obligations under any relevant international conventions, agreements or treaties, as in force from time to time.
- (7) If the conduct proposed to be authorised by the permit is the possession, custody or control of protected underwater cultural heritage, the Minister must also have regard to the following matters:
 - (a) whether the conduct is consistent with the objects of the Act;
 - (b) relevant government guidelines relating to the possession or supply of protected underwater cultural heritage, as in force from time to time;
 - (c) whether the manner in which the conduct will be undertaken is consistent with the relevant requirements of the Annex to the Underwater Cultural Heritage Convention;
 - (d) whether appropriate consultation has been undertaken with relevant stakeholders relating to:
 - (i) shared heritage interests; and
 - (ii) issues of ownership or sovereignty; and

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- (iii) obligations under any relevant international conventions, agreements or treaties, as in force from time to time.

7 Matters that must be specified in permits

- (1) This section is made for the purposes of paragraph 23(5)(g) of the Act.

Note: A permit granted under section 23 of the Act must specify matters set out in these Rules (see paragraph 23(5)(g) of the Act).

- (2) If a permit granted under section 23 of the Act authorises the possession, custody or control of specified protected underwater cultural heritage, the permit must specify:
 - (a) any registration number allocated to the protected underwater cultural heritage for the purposes of the register established under section 48 of the Act; and
 - (b) a description of the protected underwater cultural heritage that is sufficient to allow it to be identified; and
 - (c) details of the ownership of the protected underwater cultural heritage (if known).

8 Varying permits

- (1) This section is made for the purposes of subsection 25(3) of the Act.

Note: In deciding whether to vary a permit under section 25 of the Act, the Minister must have regard to the matters specified in this section (see subsection 25(3) of the Act).

- (2) In deciding whether to vary a permit granted under section 23 of the Act, the Minister must have regard to:
 - (a) whether the conduct that would be authorised by the permit, as varied:
 - (i) would be consistent with the objects of the Act; and
 - (ii) would be consistent with the relevant requirements of the Annex to the Underwater Cultural Heritage Convention; and
 - (b) relevant government guidelines relating to the protection or management of Australia's underwater cultural heritage, as in force from time to time; and
 - (c) whether appropriate consultation has been undertaken with relevant stakeholders relating to:
 - (i) shared heritage interests; and
 - (ii) issues of ownership or sovereignty; and
 - (iii) obligations under any relevant international conventions, agreements or treaties, as in force from time to time.