



Underwater Cultural Heritage (Consequential and Transitional Provisions) Act 2018

No. 86, 2018

**An Act to deal with consequential and transitional
matters arising from the enactment of the
Underwater Cultural Heritage Act 2018, and for
related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

Contents

1	Short title.....	2
2	Commencement.....	2
3	Schedules.....	2
Schedule 1—Repeals and amendments		3
Part 1—Repeal of the Historic Shipwrecks Act 1976		3
<i>Historic Shipwrecks Act 1976</i>		3
Part 2—Consequential amendments		4
<i>Australian Heritage Council Act 2003</i>		4
<i>Navigation Act 2012</i>		4
<i>Protection of the Sea (Powers of Intervention) Act 1981</i>		4
<i>Sea Installations Act 1987</i>		4
Schedule 2—Transitional provisions		6



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matters arising from the enactment of the
Underwater Cultural Heritage Act 2018, and for
related purposes**

[Assented to 24 August 2018]

The Parliament of Australia enacts:

No. 86, 2018

*Underwater Cultural Heritage (Consequential and Transitional
Provisions) Act 2018*

1

1 Short title

This Act is the *Underwater Cultural Heritage (Consequential and Transitional Provisions) Act 2018*.

2 Commencement

- (1) Each provision of this Act 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. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	24 August 2018
2. Schedules 1 and 2	At the same time as section 3 of the <i>Underwater Cultural Heritage Act 2018</i> commences. However, the provisions do not commence at all if that section does not commence.	1 July 2019

Note: This table relates only to the provisions of this Act as originally enacted.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

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

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Repeals and amendments

Part 1—Repeal of the Historic Shipwrecks Act 1976

Historic Shipwrecks Act 1976

1 The whole of the Act

Repeal the Act.

Part 2—Consequential amendments

Australian Heritage Council Act 2003

2 Subparagraph 5(d)(v)

Omit “historic shipwrecks”, substitute “underwater cultural heritage”.

Navigation Act 2012

3 Subsection 14(1) (definition of *historic wreck*)

Repeal the definition, substitute:

historic wreck means:

- (a) remains or articles covered by paragraph 16(1)(a) or (b) of the *Underwater Cultural Heritage Act 2018*; or
- (b) remains or articles covered by a declaration made in relation to item 1 or 2 of the table in subsection 17(5) of that Act; or
- (c) remains or articles covered by a provisional declaration made in relation to item 1 or 2 of the table in subsection 19(5) of that Act.

Protection of the Sea (Powers of Intervention) Act 1981

4 Subsection 5(2)

Repeal the subsection, substitute:

- (2) Nothing in the *Underwater Cultural Heritage Act 2018* affects the operation of this Act.

Sea Installations Act 1987

5 Subsection 4(1) (definition of *excluded wreck*)

Repeal the definition.

6 Subsection 4(1)

Insert:

excluded wreckage means:

- (a) remains or articles covered by subsection 16(1) of the *Underwater Cultural Heritage Act 2018*; or
- (b) remains or articles covered by a declaration made under subsection 17(1), 18(1) or 19(1) of that Act; or
- (c) a wreck described in paragraph 238(1)(b) of the *Navigation Act 2012*.

7 Subsection 4(1) (paragraph (h) of the definition of sea installation)

Omit “an excluded wreck”, substitute “excluded wreckage”.

Schedule 2—Transitional provisions

1 Definitions

- (1) In this Schedule:
- commencement day* means the day on which the new Act commences.
- new Act* means the *Underwater Cultural Heritage Act 2018*.
- old Act* means the *Historic Shipwrecks Act 1976*, as in force immediately before the commencement day.
- (2) Expressions used in this Schedule that are defined for the purposes of the new Act, and used in relation to the new Act, have the same meaning as in the new Act.
- (3) Expressions used in this Schedule that are defined for the purposes of the old Act, and used in relation to the old Act, have the same meaning as in the old Act.

2 Section 4A declarations in relation to shipwrecks

- (1) This item applies in relation to the remains of ships that were covered by a declaration under subsection 4A(1) or (2) of the old Act immediately before the commencement day.
- (2) To avoid doubt, the remains are covered by paragraph 16(1)(a) of the new Act.

3 Section 4A declarations in relation to relics

- (1) This item applies in relation to articles that were covered by a declaration under subsection 4A(6) or (7) of the old Act immediately before the commencement day.
- (2) To avoid doubt, the articles are covered by paragraph 16(1)(b) of the new Act.

4 Transition of section 5 declarations in relation to shipwrecks and relics

- (1) This item applies in relation to a declaration that was in force under section 5 of the old Act immediately before the commencement day in relation to:
 - (a) the remains of a ship; or
 - (b) a particular article.
- (2) The declaration is taken, on and after the commencement day, to be a declaration in relation to the remains or the article (as the case may be) made under subsection 17(1) of the new Act.

5 Transition of provisional declarations in relation to shipwrecks and relics

- (1) This item applies in relation to a declaration that was in force in relation to an article under section 6 of the old Act immediately before the commencement day.
- (2) The declaration is taken, on and after the commencement day, to be a declaration in relation to the article made under subsection 19(1) of the new Act.

6 Transition of notices about possession etc. of articles

- (1) This item applies if, before the commencement day, a person had given the prescribed notice in relation to an article under section 9 of the old Act.
- (2) The Minister is taken to have granted a permit to the person under section 23 of the new Act in relation to the article.
- (3) For the purposes of subsection 23(5) of the new Act, the following things are taken to be specified in the permit:
 - (a) the article referred to in subitem (1);
 - (b) that the permit applies to the person;
 - (c) the conduct authorised is the possession, custody and control of the article;
 - (d) that the permit comes into force on the commencement day and remains in force indefinitely, unless:

- (i) the permit is varied under section 25 of the new Act to specify an expiry date; or
- (ii) the permit is suspended or revoked under section 26 of the new Act;
- (e) that the permit includes a condition that it is non-transferable;
- (f) if, immediately before the commencement day:
 - (i) particulars of the article were included in the Register of Historic Shipwrecks; and
 - (ii) a unique identifier was allocated to the article in the Register;that the permit number is the unique identifier.

7 Notices about location of articles

Transitioning notices given before commencement

- (1) Subitem (2) applies if:
 - (a) a notice had been given to a person under subsection 10(1) of the old Act before the commencement day; and
 - (b) the notice had not been complied with before that day.
- (2) The notice is taken to have been given, on the day it was given, to the person under subsection 38(2) of the new Act.
- (3) If the period for compliance specified in the notice is less than 21 days after the notice was given to the person, the notice is taken to specify that it must be complied with within 21 days, starting on the day the notice was given to the person.

Notice may be given under new Act regardless of when possession etc. began

- (4) The Minister may give a notice to a person in relation to an article under section 38 of the new Act whether the person obtained, or is reasonably believed to have obtained, possession, custody or control of the article before, on or after the commencement day.

8 Directions about custody etc. of articles

Transitioning notices given before commencement

- (1) Subitem (2) applies if a notice had been given to a person under subsection 11(1) of the old Act before the commencement day requiring a person to take action in relation to an article.
- (2) On and after that day, the notice has effect in relation to the article as if it had been given by the Minister under subsection 39(1) of the new Act.

Notice may be given under new Act regardless of when possession etc. began

- (3) The Minister may give a direction to a person in relation to an article of protected underwater cultural heritage under section 39 of the new Act whether the person obtained possession, custody or control of the article before, on or after the commencement day.

9 Pending applications for permits are taken to have been refused

If an application for a permit under section 15 of the old Act was pending immediately before the commencement day, the application is taken, on the commencement day, to have been refused by the Minister.

10 Transition of permits for exploration or recovery of articles

- (1) This item applies to a permit (the *old permit*) that was in force under section 15 of the old Act immediately before the commencement day.
- (2) The old permit is taken, on and after the commencement day, to be a permit (the *new permit*) granted under section 23 of the new Act.
- (3) The conduct authorised by the old permit is taken to be the conduct authorised by the new permit.
- (4) If the old permit was granted subject to one or more conditions, the conditions have effect as if they were imposed by the Minister on the new permit under paragraph 24(1)(b) of the new Act.

- (5) The new permit ceases to be in force on the day the old permit would have ceased to be in force, unless the new permit is earlier revoked under section 26 of the new Act.

11 Continuation of register

- (1) The register that was:
- (a) kept under section 12 of the old Act; and
 - (b) known before the commencement day as the Register of Historic Shipwrecks;
- continues in existence under section 48 of the new Act.
- (2) The Minister may make any changes to the register that the Minister considers appropriate because of the operation of subitem (1).

12 Evidentiary certificates

Despite the repeal of section 29 of the old Act, that section continues to apply, in relation to a certificate given before the commencement day, as if that repeal had not happened.

*[Minister's second reading speech made in—
House of Representatives on 28 March 2018
Senate on 27 June 2018]*

(77/18)
