



Underwater Cultural Heritage Act 2018

No. 85, 2018

An Act to protect Australia's underwater cultural heritage, and for related purposes

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

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Underwater Cultural Heritage Act 2018

No. 85, 2018

An Act to protect Australia's underwater cultural heritage, and for related purposes

[Assented to 24 August 2018]

The Parliament of Australia enacts:

Part 1—Introduction

Division 1—Preliminary

1 Short title

This Act is the *Underwater Cultural Heritage Act 2018*.

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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. The whole of this Act	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 12 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	1 July 2019 (F2019N00029)

Note: This table relates only to the provisions of this Act as originally enacted.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 Objects of this Act

The objects of this Act are:

- (a) to provide for the identification, protection and conservation of Australia's underwater cultural heritage; and
- (b) to enable the cooperative implementation of national and international maritime heritage responsibilities; and
- (c) to promote public awareness, understanding, appreciation and appropriate use of Australia's underwater cultural heritage.

4 Simplified outline of this Act

This Act provides for the protection of Australia's underwater cultural heritage.

Different kinds of articles of underwater cultural heritage are, or can be, protected, depending on the kinds of articles, their heritage significance and their location.

For example, remains of vessels that have been in Australian waters for at least 75 years are automatically protected, as are certain articles associated with vessels and remains of vessels. Australian waters extend from the seaward limits of a State to the outer limit of Australia's continental shelf.

The remains of aircraft and certain associated articles that have been in Commonwealth waters for at least 75 years are also automatically protected. Commonwealth waters extend:

- (a) from waters 3 nautical miles seaward of the baseline of the territorial sea that are adjacent to the States and the Northern Territory; and
- (b) to the outer limit of Australia's continental shelf.

Other kinds of articles of underwater cultural heritage can be protected if the Minister is satisfied that they are of heritage significance. Such articles may be in Commonwealth waters, Australian waters or in waters beyond Australian waters, depending on the kind of article concerned.

Some articles are, or can be, protected even if they have already been removed from those waters. In all cases, if an article is removed from waters after it becomes protected, the protection continues to apply to it.

If an article of underwater cultural heritage is protected, certain conduct in relation to the article is generally prohibited without a permit. Such conduct includes the following:

- (a) anything that has or is likely to have an adverse impact on the article;

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- (b) possessing the article;
- (c) supplying, or offering to supply, the article;
- (d) importing or exporting the article.

The Minister can declare an area containing protected underwater cultural heritage to be a protected zone, if the area is in Australian waters and the declaration would be consistent with the objects of this Act. The declaration may regulate or prohibit the kinds of activities that can be undertaken in the protected zone.

The Minister has various powers to gather information on the location of articles that are, or may be, protected underwater cultural heritage, and to give directions in relation to articles, including to store them in a particular way or to deliver them to other people.

Inspectors have powers to ensure people are complying with this Act, to investigate non-compliance and to enforce this Act. Enforcement mechanisms include infringement notices, enforceable undertakings and injunctions.

The Minister maintains a register in relation to underwater cultural heritage. The register includes information relating to the location of known remains of vessels and other articles in waters, declarations that have been made and permits that have been granted, as well as other information.

5 Extension to external Territories

- (1) This Act extends to every external Territory.
- (2) The Regulatory Powers Act, as it applies in relation to this Act, extends to every external Territory.

6 This Act binds the Crown

- (1) This Act binds the Crown in each of its capacities.

- (2) However, this Act does not make the Crown liable to a pecuniary penalty or to be prosecuted for an offence.

7 Extraterritorial operation of this Act

This Act and Regulatory Powers Act generally apply within and outside Australia

- (1) Subject to this section, this Act, and the Regulatory Powers Act as it applies in relation to this Act, extend to acts, omissions, matters and things outside Australia.

Regulatory provisions apply beyond the contiguous zone only to Australian entities

- (2) To the extent that a provision of Part 3, or a provision of the Regulatory Powers Act as it applies in relation to Part 3, has effect in relation to waters or a place beyond the outer limits of the contiguous zone of Australia, that provision applies only in relation to Australian entities.

Regulatory provisions apply to all persons and vessels in Australia and the territorial sea

- (3) To the extent that a provision of Part 3 (except section 30), or a provision of the Regulatory Powers Act as it applies in relation to Part 3, has effect in relation to Australia or the territorial sea of Australia, that provision applies in relation to all persons, including foreign persons, and to all vessels, including foreign vessels.

Prohibition on damaging etc. protected underwater cultural heritage also applies to all persons and vessels up to the outer limits of contiguous zone

- (4) To the extent that section 30, or a provision of the Regulatory Powers Act as it applies in relation to that section, has effect in relation to Australia, the territorial sea of Australia or the contiguous zone of Australia, that section or provision applies in relation to all persons, including foreign persons, and to all vessels, including foreign vessels.

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This Act and the Regulatory Powers Act have effect subject to international law obligations

- (5) This Act, and the Regulatory Powers Act as it applies in relation to this Act, have effect subject to:
- (a) the obligations of Australia under international law, including obligations under any international agreement binding on Australia; and
 - (b) any law of the Commonwealth giving effect to such an agreement.

Definitions

- (6) In this section:

Australian entity means:

- (a) an Australian citizen; or
- (b) a body corporate established by or under a law of the Commonwealth, of a State or of a Territory; or
- (c) a ship that has Australian nationality under section 29 of the *Shipping Registration Act 1981*.

foreign person means a person other than an Australian entity.

foreign vessel means a vessel other than a ship that has Australian nationality under section 29 of the *Shipping Registration Act 1981*.

8 Geographical application of offences

Division 14 (Standard geographical jurisdiction) of the *Criminal Code* does not apply in relation to an offence against this Act.

Note: The extended geographical application that section 7 gives to this Act applies to the offences and civil penalty provisions of this Act.

Division 2—Definitions

9 Definitions

(1) In this Act:

adverse impact: see subsection 30(2).

approved form means a form approved under section 58.

associated with: see section 10.

Australia, when used in a geographical sense, includes the external Territories.

Australia-Netherlands Agreement means the Agreement between Australia and the Netherlands concerning Old Dutch Shipwrecks, done at The Hague on 6 November 1972.

Note: The Agreement is in Australian Treaty Series 1972 No. 18 ([1972] ATS 18) and could in 2018 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

Australian waters: see section 11.

civil penalty provision has the same meaning as in the Regulatory Powers Act.

coastal waters of a State or the Northern Territory: see section 12.

Commonwealth waters: see section 13.

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

Dutch shipwreck: see section 14.

engage in conduct means:

- (a) do an act; or
- (b) omit to perform an act.

evidential material has the same meaning as in the Regulatory Powers Act.

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foreign underwater cultural heritage means an article that has been removed from waters and, at the time the article was removed from waters, the article:

- (a) had been in waters for at least 100 years; and
- (b) was underwater cultural heritage of a foreign country.

inspector means:

- (a) a member of the Australian Federal Police; or
- (b) a person appointed under section 60.

in waters: a reference in this Act to a thing being **in waters** includes a reference to the thing:

- (a) being in, or forming part of, the seabed or the subsoil of the seabed, beneath those waters; or
- (b) being on, or forming part of, a reef in those waters.

offence against this Act includes:

- (a) an offence against section 6 of the *Crimes Act 1914* that relates to this Act; and
- (b) an ancillary offence (within the meaning of the *Criminal Code*) that relates to this Act; and
- (c) an offence against section 136.1 or 137.1 of the *Criminal Code* that relates to this Act.

offer to supply includes:

- (a) make available for supply; and
- (b) expose for supply; and
- (c) display for supply; and
- (d) advertise for supply.

permit holder means the holder of a permit granted under section 23 (including a person to whom a permit has been transferred).

prohibited conduct in a protected zone: see subsection 20(6).

protected underwater cultural heritage means:

- (a) an article covered by subsection 16(1); or

- (b) an article covered by a declaration made under subsection 17(1); or
- (c) an article covered by a declaration made under subsection 18(1); or
- (d) an article covered by a provisional declaration made under subsection 19(1).

protected zone means an area in relation to which a declaration is in force under subsection 20(1).

Regulatory Powers Act means the *Regulatory Powers (Standard Provisions) Act 2014*.

relevant agreement means an agreement entered into between Australia and one or more foreign countries in relation to the protection of underwater cultural heritage.

removed from waters: a reference in this Act to a thing being **removed from waters** includes a reference to the thing:

- (a) having been washed away from waters; or
- (b) having been removed, or washed away, from the seabed, or the subsoil of the seabed, beneath waters; or
- (c) having been removed, or washed away, from a reef in waters.

sea includes any waters within the ebb and flow of the tide.

Secretary means Secretary of the Department.

supply includes supply (including re-supply) by way of sale, exchange, gift, lease, loan, hire or hire-purchase.

this Act includes the Underwater Cultural Heritage Rules.

underwater cultural heritage: see section 15.

Underwater Cultural Heritage Rules means the rules made under section 61.

vessel means any kind of vessel used in navigation by water, however propelled or moved, including the following:

- (a) a barge, lighter or other floating craft;

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- (b) an air-cushion vehicle, or other similar craft, used wholly or primarily in navigation by water.
- (2) A thing is not to be taken to not be an article for the purposes of this Act only because it is attached to:
 - (a) the remains of a vessel; or
 - (b) the remains of an aircraft; or
 - (c) a reef; or
 - (d) the seabed; or
 - (e) the subsoil of the seabed.
- (3) A reference in this Act to:
 - (a) the remains of a vessel; or
 - (b) the remains of an aircraft; or
 - (c) an article;includes a reference to part of the remains or article.
- (4) A reference in this Act to failure to do an act or thing includes a reference to refusing or neglecting to do that act or thing.

10 Meaning of *associated with*

- (1) An article is ***associated with*** a vessel, aircraft or other vehicle if the article:
 - (a) appears to have formed part of the vessel, aircraft or other vehicle; or
 - (b) appears to have been installed or carried on the vessel, aircraft or other vehicle; or
 - (c) is remains of humans or animals that appear to have been on board the vessel, aircraft or other vehicle; or
 - (d) appears to have been constructed or used by a person associated with a vessel.
- (2) An article is ***associated with*** a vessel, aircraft or other vehicle even if the article has been wholly or substantially incorporated into another object or thing.

11 Meaning of *Australian waters*

Meaning generally

- (1) ***Australian waters*** means:
- (a) any waters on the landward side of the territorial sea of Australia that are not within the limits of a State; and
 - (b) the territorial sea of Australia; and
 - (c) the sea above the continental shelf of Australia; and
 - (d) the seabed and subsoil beneath any such sea or waters.

Extended meaning—remains of vessels partly in Australian waters and partly in State waters

- (2) If:
- (a) the remains of a vessel are in, or have been removed from, Australian waters; and
 - (b) another part (the ***relevant part***) of the vessel is in, or has been removed from, waters of the sea within the limits of a State; and
 - (c) a Minister of the State has informed the Minister, in writing, that the State consents to the making of a declaration under this subsection in relation to the relevant part;
- the Minister may, by notifiable instrument, declare that the relevant part is, for the purposes of this Act (except this section and section 20), taken to be a part that is in, or has been removed from, Australian waters.

Extended meaning—remains of vessels that have moved into State waters

- (3) If:
- (a) the remains of a vessel (other than a Dutch shipwreck) have been removed from Australian waters; and
 - (b) the remains are in waters of the sea within the limits of a State; and
 - (c) a Minister of the State has informed the Minister, in writing, that the State consents to the making of a declaration under this subsection in relation to the remains;

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the Minister may, by notifiable instrument, declare that the remains are, for the purposes of this Act (except this section and section 20), taken to be remains that are in Australian waters.

Extended meaning—Dutch shipwrecks and relics in, or removed from, State waters

- (4) If:
- (a) a Dutch shipwreck or Dutch relic is in, or has been removed from, waters of the sea within the limits of a State; and
 - (b) a Minister of the State has informed the Minister, in writing, that the State consents to the making of a declaration under this subsection in relation to the shipwreck or relic;
- the Minister may, by notifiable instrument, declare that the shipwreck or relic is, for the purposes of this Act (except this section and section 20), taken to be a shipwreck or relic that is in, or has been removed from, Australian waters.

Varying and revoking declarations

- (5) The Minister may, by notifiable instrument, with the consent of the Minister of the State, vary or revoke a declaration made under this section.

12 Meaning of *coastal waters* of a State or the Northern Territory

The *coastal waters* of a State or the Northern Territory are:

- (a) the part or parts of the territorial sea that are:
 - (i) within 3 nautical miles of the baseline of the territorial sea; and
 - (ii) adjacent to the State or the Northern Territory; and
- (b) the waters of the sea that are:
 - (i) on the landward side of the baseline of the territorial sea; and
 - (ii) adjacent to the State or the Northern Territory and not within the limits of the State or the Northern Territory; and
- (c) the seabed and subsoil beneath any such sea.

13 Meaning of *Commonwealth waters*

Meaning generally

- (1) **Commonwealth waters** means:
- (a) the territorial sea of Australia, other than coastal waters of a State or the Northern Territory; and
 - (b) the sea above the continental shelf of Australia; and
 - (c) the seabed and subsoil beneath any such sea or waters.

Extended meaning—certain articles partly in Commonwealth waters and partly in coastal waters, State waters or Northern Territory waters

- (2) If:
- (a) an article of underwater cultural heritage (other than the remains of a vessel) is in, or has been removed from, Commonwealth waters; and
 - (b) another part (the **relevant part**) of the article is in, or has been removed from, waters of the sea that are within:
 - (i) the coastal waters of a State or the Northern Territory; or
 - (ii) the limits of a State or the Northern Territory; and
 - (c) a Minister of the State or the Northern Territory has informed the Minister, in writing, that the State or the Northern Territory consents to the making of a declaration under this subsection in relation to the relevant part;

the Minister may, by notifiable instrument, declare that the relevant part is, for the purposes of this Act (except this section and section 20), taken to be a part that is in, or has been removed from, Commonwealth waters.

Extended meaning—certain articles within coastal waters of a State or the Northern Territory

- (3) If:
- (a) an article of underwater cultural heritage (other than the remains of a vessel) is in the coastal waters of a State or the Northern Territory; and

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- (b) a Minister of the State or the Northern Territory has informed the Minister, in writing, that the State or the Northern Territory consents to the making of a declaration under this subsection in relation to the article;

the Minister may, by notifiable instrument, declare that the article is, for the purposes of this Act (except this section and section 20), taken to be an article of underwater cultural heritage that is in Commonwealth waters.

Extended meaning—certain articles that have moved into State waters or Northern Territory waters

- (4) If:
- (a) an article of underwater cultural heritage (other than the remains of a vessel) has been removed from Commonwealth waters; and
 - (b) the article is in waters of the sea within the limits of a State or the Northern Territory; and
 - (c) a Minister of the State or the Northern Territory has informed the Minister, in writing, that the State or the Northern Territory consents to the making of a declaration under this subsection in relation to the article;

the Minister may, by notifiable instrument, declare that the article is, for the purposes of this Act (except this section and section 20), taken to be an article of underwater cultural heritage that is in Commonwealth waters.

Varying and revoking declarations

- (5) The Minister may, by notifiable instrument, with the consent of the Minister of the State or the Northern Territory, vary or revoke a declaration made under this section.

14 Meaning of *Dutch shipwreck*

- (1) ***Dutch shipwreck*** means:
- (a) a wrecked vessel covered by the table in subsection (2); or
 - (b) any other wrecked vessel mentioned in Article 1 of the Australia-Netherlands Agreement (whether or not lying on or

off the coast of Western Australia as mentioned in that Article).

(2) The wrecked vessels are as follows:

Dutch shipwrecks		
Item	Name by which the vessel was known	Approximate location
1	Batavia	Beacon Island, Wallabi Group, Houtman Abrolhos
2	Vergulde Draeck or Gilt Dragon	Ledge Point
3	Zuytdorp	40 miles north of the mouth of the Murchison River
4	Zeewyk	Gun Island, Pelsart Group, Houtman Abrolhos

15 Meaning of *underwater cultural heritage*

- (1) ***Underwater cultural heritage*** means any trace of human existence that:
- (a) has a cultural, historical or archaeological character; and
 - (b) is located under water.
- (2) For the purposes of subsection (1), a trace of human existence includes:
- (a) sites, structures, buildings, artefacts and human and animal remains, together with their archaeological and natural context; and
 - (b) vessels, aircraft and other vehicles or any part thereof, together with their archaeological and natural context; and
 - (c) articles associated with vessels, aircraft or other vehicles, together with their archaeological and natural context.
- (3) For the purposes of paragraph (1)(b), a trace of human existence is located under water:
- (a) whether partially or totally under water; and
 - (b) whether under water periodically or continuously.
- (4) However, the following are not ***underwater cultural heritage***:

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- (a) pipelines or cables on the seabed;
- (b) installations (other than pipelines or cables) that are:
 - (i) placed on the seabed; and
 - (ii) still in use.

Part 2—Protected underwater cultural heritage

Division 1—Underwater cultural heritage

16 Underwater cultural heritage that is automatically protected

- (1) The following articles are protected underwater cultural heritage:
 - (a) all remains of vessels that have been in Australian waters for at least 75 years;
 - (b) every article that is associated with a vessel, or the remains of a vessel, and that has been in Australian waters for at least 75 years;
 - (c) all remains of aircraft that have been in Commonwealth waters for at least 75 years;
 - (d) every article that is associated with an aircraft, or the remains of an aircraft, and that has been in Commonwealth waters for at least 75 years.
- (2) An article is covered by subsection (1) whether or not the existence or location of the article is known.
- (3) An article is covered by subsection (1) even if the article is, or has been, removed from Australian waters or Commonwealth waters (as the case may be).
- (4) The Underwater Cultural Heritage Rules may provide that subsection (1) or (3) does not cover a specified article.

17 Underwater cultural heritage that may be declared to be protected

- (1) The Minister may, by notifiable instrument, declare an article covered by the table in subsection (5) to be protected underwater cultural heritage if the Minister is satisfied that the article is of heritage significance.

Note: For matters the Minister must have regard to when deciding whether an article is of heritage significance, see section 22.

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- (2) The declaration must:
 - (a) describe the article; and
 - (b) describe the heritage significance of the article; and
 - (c) if the article has not been removed from waters at the time the declaration is made—specify the location of the article and describe its surrounding environment.
- (3) An article continues to be covered by a declaration under subsection (1) even if the article is removed from waters after the declaration is made.
- (4) The Minister may, by notifiable instrument, vary or revoke a declaration made under subsection (1).
- (5) The following table sets out the articles that may be declared under subsection (1).

Articles that may be declared		
Item	This kind of article:	If the article:
1	The remains of a vessel	Is in, or has been removed from, Australian waters
2	An article associated with a vessel, or the remains of a vessel	Is in, or has been removed from, Australia waters
3	The remains of an aircraft	Is in, or has been removed from, Commonwealth waters
4	An article associated with an aircraft, or the remains of an aircraft	Is in, or has been removed from, Commonwealth waters
5	An article of underwater cultural heritage that is not otherwise covered by an item in this table	Is in Commonwealth waters

18 Underwater cultural heritage outside Australian waters that may be declared to be protected

- (1) The Minister may, by notifiable instrument, declare an article of underwater cultural heritage to be protected underwater cultural heritage if:
 - (a) the article is outside the outer limits of Australian waters; and
-

- (b) the Minister is satisfied that the article is of heritage significance to Australia.

Note: For matters the Minister must have regard to when deciding whether underwater cultural heritage is of heritage significance, see section 22.

- (2) An article continues to be covered by a declaration made under subsection (1) even if the article is removed from waters after the declaration is made.
- (3) The Minister may, by notifiable instrument, vary or revoke a declaration made under subsection (1).

19 Underwater cultural heritage that may be provisionally declared to be protected

- (1) The Minister may, by notifiable instrument, provisionally declare an article covered by the table in subsection (5) to be protected underwater cultural heritage if the Minister is satisfied that the article may be of heritage significance.

Note: For matters the Minister must have regard to when deciding whether an article may be of heritage significance, see section 22.

- (2) An article continues to be covered by a declaration under subsection (1) even if the article is removed from waters after the declaration is made.
- (3) A declaration under subsection (1) remains in force until the earlier of:
- (a) the day the declaration is revoked under subsection (4); and
 - (b) the day 5 years after the day the declaration is made.
- (4) The Minister may, by notifiable instrument, vary or revoke a declaration made under subsection (1).
- (5) The following table sets out the articles that may be provisionally declared under subsection (1).

Articles that may be provisionally declared

Item	This kind of article:	If the article:
1	An article that appears to be the remains	Is in, or has been removed from,

Part 2 Protected underwater cultural heritage

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Articles that may be provisionally declared

Item	This kind of article:	If the article:
	of a vessel	Australian waters
2	An article that may be associated with a vessel, or the remains of a vessel	Is in, or has been removed from, Australia waters
3	An article that appears to be the remains of an aircraft	Is in, or has been removed from, Commonwealth waters
4	An article that may be associated with an aircraft, or the remains of an aircraft	Is in, or has been removed from, Commonwealth waters
5	An article that appears to be underwater cultural heritage and that is not otherwise covered by an item in this table	Is in Commonwealth waters

Division 2—Protected zones**20 Declaring a protected zone**

- (1) The Minister may, by legislative instrument, declare an area containing protected underwater cultural heritage to be a protected zone.
- (2) A declaration must not be made of an area that consists of sea or land within the limits of a State or the Northern Territory, unless protected underwater cultural heritage to which a declaration under subsection 11(2), (3) or (4) or 13(2), (3) or (4) applies is in the area.
- (3) In making a declaration under subsection (1), the Minister must have regard to the following matters:
 - (a) the need to protect underwater cultural heritage that is of particular national or international significance, is rare or is subject to an international treaty or agreement (however described);
 - (b) the need to limit access to environmentally, socially or archaeologically sensitive underwater cultural heritage;
 - (c) the need to protect underwater cultural heritage that is under threat of interference, damage, destruction or removal;
 - (d) any danger posed to the public by the underwater cultural heritage;
 - (e) the need to improve management of underwater cultural heritage and its surrounding environment which may be subject to impacts from visitation or development activity;
 - (f) the need to ensure effective monitoring of underwater cultural heritage in remote locations;
 - (g) any other matter the Minister considers relevant.
- (4) An area declared under subsection (1):
 - (a) must not be outside the outer limits of Australian waters; and
 - (b) may consist of sea, or partly of sea and partly of land; and

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- (c) may include the airspace above the area, extending to such height above the surface of the sea or land as is specified in the declaration; and
 - (d) to the extent the area consists of the surface of any sea— includes the waters beneath the area, the seabed beneath that sea and the subsoil of the seabed.
- (5) The declaration must:
- (a) specify the area covered by the declaration; and
 - (b) specify the period for which the declaration is in force; and
 - (c) provide a description of the underwater cultural heritage sought to be protected; and
 - (d) specify conduct (if any) that is prohibited (either generally or in specified circumstances) within the area covered by the declaration.
- (6) Conduct specified for the purposes of paragraph (5)(d) in relation to a protected zone is ***prohibited conduct*** in the protected zone.
- (7) Without limiting paragraph (5)(d), the declaration may prohibit (either generally or in specified circumstances) any of the following:
- (a) the entry of persons or vessels into the area;
 - (b) the movement of persons or vessels within the area;
 - (c) trawling or fishing in the area;
 - (d) conducting underwater activity within the area;
 - (e) the anchoring or mooring of vessels in the area;
 - (f) the release or deposit of objects or materials in the area.

21 Varying and revoking protected zone declaration

- (1) The Minister may, by legislative instrument, vary or revoke a declaration made under subsection 20(1).
- (2) The Minister must, by legislative instrument, revoke a declaration made under subsection 20(1) in relation to an article of underwater cultural heritage if a declaration under subsection 17(1) or 19(1) is revoked in relation to the article.

Division 3—Other matters

22 Criteria relating to heritage significance

- (1) The Underwater Cultural Heritage Rules may prescribe criteria relating to assessing whether any of the following are, or may be, of heritage significance:
 - (a) the remains of a vessel in waters;
 - (b) articles, in waters, that are associated with a vessel or the remains of a vessel;
 - (c) the remains of an aircraft in waters;
 - (d) articles, in waters, that are associated with an aircraft, or the remains of an aircraft;
 - (e) other underwater cultural heritage.
- (2) In making a declaration under subsection 17(1), 18(1) or 19(1), the Minister must have regard to any criteria in force under subsection (1) of this section.

Part 3—Regulation of protected underwater cultural heritage

Division 1—Permits relating to protected underwater cultural heritage

23 Permits relating to protected underwater cultural heritage

- (1) A person may apply to the Minister for a permit authorising the person, persons specified in the permit or persons generally to engage in specified conduct relating to one or more of the following:
 - (a) specified protected underwater cultural heritage;
 - (b) a specified protected zone;
 - (c) specified foreign underwater cultural heritage.
- (2) The application must:
 - (a) be in the approved form; and
 - (b) provide all the information, and be accompanied by any documents, required by the form.
- (3) The Minister must:
 - (a) grant the permit; or
 - (b) refuse to grant the permit.
- (4) In deciding whether to grant the permit, the Minister must have regard to the matters (if any) specified in the Underwater Cultural Heritage Rules made for the purposes of this subsection.
- (5) The permit must specify:
 - (a) the protected underwater cultural heritage, protected zone or foreign underwater cultural heritage to which the permit applies; and
 - (b) whether the permit applies to persons generally and, if not, the persons or class of persons to whom it applies; and
 - (c) the conduct authorised; and
 - (d) the period for which the permit is in force; and

- (e) the conditions (if any) imposed under paragraph 24(1)(b) to which the permit is subject; and
 - (f) the unique number of the permit; and
 - (g) any other matters prescribed by the Underwater Cultural Heritage Rules for the purposes of this paragraph.
- (6) If the Minister refuses to grant a permit, the Minister must give written notice of the refusal to the applicant, including reasons for the refusal.
- (7) If the Minister grants a permit in terms that are different from those applied for, the Minister must give the applicant written notice of the reasons for the decision.

24 Permits are subject to conditions

- (1) A permit granted under section 23 is subject to the following conditions:
- (a) the conditions set out in subsection (2);
 - (b) the conditions (if any) imposed by the Minister for the purposes of this paragraph;
 - (c) the conditions (if any) specified in the Underwater Cultural Heritage Rules for the purposes of this paragraph.
- (2) For the purposes of paragraph (1)(a), the conditions are as follows:
- (a) if a permit holder (the *transferor*) transfers a permit to another person, the transferor must notify the Minister of that fact by giving the Minister notice in the approved form within 14 days after the transfer;
 - (b) the permit holder must return the permit to the Department within 14 days of the expiration, revocation or suspension of the permit;
 - (c) if the Minister decides to vary a permit under subsection 25(1) or (2), the permit holder must return the permit as in force before the variation to the Department within 14 days after the day specified in the notice given under paragraph 25(4)(a).

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- (3) Paragraphs (2)(b) and (c) do not apply to a permit that is granted by electronic means.

25 Varying permits

- (1) The Minister may vary a permit at any time, on application or on the Minister's own initiative.
- (2) Without limiting subsection (1), the Minister may vary a permit to:
- (a) impose, vary or revoke conditions to which the permit is subject under paragraph 24(1)(b); or
 - (b) reduce or extend the period for which the permit is in force.
- (3) In deciding whether to vary the permit, the Minister must have regard to the matters (if any) specified in the Underwater Cultural Heritage Rules for the purposes of this subsection.
- (4) If the Minister decides to vary a permit under subsection (1), the Minister must:
- (a) give written notice of that fact to the permit holder; and
 - (b) give the permit as varied to the permit holder.
- (5) A variation of a permit takes effect on the day specified in the notice given under paragraph (4)(a), which must be at least 21 days after the day the notice is given to the permit holder.
- (6) If, after receiving an application under subsection (1), the Minister refuses to vary the permit, the Minister must give written notice of the refusal, including reasons for the refusal.

26 Suspending and revoking permits

- (1) The Minister may, by written notice given to a permit holder, suspend or revoke the permit if the Minister is satisfied that:
- (a) a condition of the permit has been contravened; or
 - (b) it is necessary to do so in order to conserve and protect underwater cultural heritage.
- (2) If a permit is revoked, the revocation takes effect on the day specified in the notice.

- (3) If a permit is suspended:
 - (a) the suspension takes effect on the day specified in the notice, and continues for the period specified in the notice; and
 - (b) the permit has no effect while the suspension is in effect; and
 - (c) the period for which the permit is specified to be in force continues to run during the period of suspension; and
 - (d) the suspension does not prevent the revocation of the permit.
- (4) The day specified for the purposes of subsection (2) or paragraph (3)(a) must be at least 21 days after the day the notice is given to the permit holder.

27 Transfer of permits

- (1) A permit granted under section 23 may be transferred to another person.
- (2) Subsection (1) does not apply if the permit includes a condition that it is non-transferable.
- (3) If the permit holder transfers the permit to another person (the *transferee*) under subsection (1), the transferee must notify the Minister of that fact by giving the Minister notice in the approved form within 14 days after the transfer.

Note: It is a condition of the permit that the holder of the permit also notify the Minister that the transfer has occurred (see paragraph 24(2)(a)).
- (4) A person contravenes this subsection if:
 - (a) the person is subject to a requirement under subsection (3); and
 - (b) the person fails to comply with the requirement.
- (5) A person commits an offence if the person contravenes subsection (4).

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

- (6) A person commits an offence of strict liability if the person contravenes subsection (4).

Penalty: 60 penalty units.

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- (7) A person is liable to a civil penalty if the person contravenes subsection (4).

Civil penalty: 120 penalty units.

28 Breach of conditions of permit

- (1) A person contravenes this subsection if:
- (a) the person is subject to a condition on a permit granted under section 23; and
 - (b) the person engages in conduct; and
 - (c) the person's conduct breaches the condition.

- (2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

- (3) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 60 penalty units.

- (4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 120 penalty units.

Division 2—Regulation of activities relating to protected underwater cultural heritage

29 Certain conduct within a protected zone prohibited without a permit

- (1) A person contravenes this subsection if:
- (a) the person engages in conduct; and
 - (b) the conduct takes place in a protected zone; and
 - (c) the conduct is prohibited conduct in relation to the protected zone.

- (2) Subsection (1) does not apply if the person engages in the conduct in accordance with a permit granted under section 23.

Note: A person who wishes to rely on this subsection bears an evidential burden in relation to the matters in this subsection (see subsection 13.3.(3) of the *Criminal Code* and section 96 of the Regulatory Powers Act).

- (3) Subsection (1) does not apply if the conduct was engaged in for the purpose of:
- (a) saving human life; or
 - (b) securing the safety of a vessel endangered by stress of weather or by navigational hazards; or
 - (c) dealing with an emergency involving a serious threat to the environment.

Note: A person who wishes to rely on this subsection bears an evidential burden in relation to the matters in this subsection (see subsection 13.3.(3) of the *Criminal Code* and section 96 of the Regulatory Powers Act).

- (4) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

- (5) A person commits an offence of strict liability if the person contravenes subsection (1).

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Penalty: 60 penalty units.

- (6) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 300 penalty units.

30 Conduct having an adverse impact on protected underwater cultural heritage prohibited without a permit

- (1) A person contravenes this subsection if:
- (a) the person engages in conduct; and
 - (b) the conduct has, will have or is likely to have an adverse impact on protected underwater cultural heritage.
- (2) Conduct has an **adverse impact** on protected underwater cultural heritage if the conduct:
- (a) directly or indirectly physically disturbs or otherwise damages the protected underwater cultural heritage; or
 - (b) causes the removal of the protected underwater cultural heritage from waters or from its archaeological context.
- (3) Subsection (1) does not apply if the person engages in the conduct in accordance with a permit granted under section 23.

Note: A person who wishes to rely on this subsection bears an evidential burden in relation to the matters in this subsection (see subsection 13.3.(3) of the *Criminal Code* and section 96 of the Regulatory Powers Act).

- (4) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

- (5) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 60 penalty units.

- (6) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 800 penalty units.

31 Possession etc. of protected underwater cultural heritage prohibited without a permit

- (1) A person contravenes this subsection if the person has possession, custody or control of protected underwater cultural heritage.
- (2) Subsection (1) does not apply if the person has possession, custody or control in accordance with a permit granted under section 23.

Note: A person who wishes to rely on this subsection bears an evidential burden in relation to the matters in this subsection (see subsection 13.3.(3) of the *Criminal Code* and section 96 of the *Regulatory Powers Act*).

- (3) Subsection (1) does not apply if the person is the Commonwealth, a State or a Territory, or an authority of the Commonwealth, a State or a Territory.

Note: A person who wishes to rely on this subsection bears an evidential burden in relation to the matters in this subsection (see subsection 13.3.(3) of the *Criminal Code* and section 96 of the *Regulatory Powers Act*).

- (4) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

- (5) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 60 penalty units.

- (6) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 300 penalty units.

32 Supplying, or offering to supply, protected underwater cultural heritage prohibited without a permit

- (1) A person contravenes this subsection if the person:
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Part 3 Regulation of protected underwater cultural heritage

Division 2 Regulation of activities relating to protected underwater cultural heritage

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- (a) supplies protected underwater cultural heritage; or
 - (b) offers to supply protected underwater cultural heritage.
- (2) Subsection (1) does not apply if the person supplies, or offers to supply, protected underwater cultural heritage in accordance with a permit granted under section 23.

Note: A person who wishes to rely on this subsection bears an evidential burden in relation to the matters in this subsection (see subsection 13.3.(3) of the *Criminal Code* and section 96 of the Regulatory Powers Act).

- (3) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

- (4) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 60 penalty units.

- (5) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 120 penalty units.

33 Advertisements for sale of protected underwater cultural heritage must include permit number

- (1) This section applies if:
- (a) a permit granted under section 23 is in force; and
 - (b) the permit authorises the sale of protected underwater cultural heritage.
- (2) A person contravenes this subsection if the person:
- (a) advertises the protected underwater cultural heritage for sale; and
 - (b) the unique number of the permit specified under paragraph 23(5)(f) is not included in the advertisement.
- (3) A person commits an offence if the person contravenes subsection (2).
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Penalty: Imprisonment for 2 years or 120 penalty units, or both.

- (4) A person commits an offence of strict liability if the person contravenes subsection (2).

Penalty: 60 penalty units.

- (5) A person is liable to a civil penalty if the person contravenes subsection (2).

Civil penalty: 120 penalty units.

34 Importing protected underwater cultural heritage prohibited without a permit

- (1) A person contravenes this subsection if the person:
- (a) imports an article into Australia; and
 - (b) the article is protected underwater cultural heritage.
- (2) Subsection (1) does not apply if the person imports the article in accordance with a permit granted under section 23.

Note: A person who wishes to rely on this subsection bears an evidential burden in relation to the matters in this subsection (see subsection 13.3.(3) of the *Criminal Code* and section 96 of the *Regulatory Powers Act*).

- (3) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

- (4) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 60 penalty units.

- (5) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 120 penalty units.

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35 Exporting protected underwater cultural heritage prohibited without a permit

- (1) A person contravenes this subsection if the person:
- (a) exports an article from Australia; and
 - (b) the article is protected underwater cultural heritage.
- (2) Subsection (1) does not apply if the person exports the article in accordance with a permit granted under section 23.

Note: A person who wishes to rely on this subsection bears an evidential burden in relation to the matters in this subsection (see subsection 13.3.(3) of the *Criminal Code* and section 96 of the Regulatory Powers Act).

- (3) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

- (4) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 60 penalty units.

- (5) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 300 penalty units.

36 Importing underwater cultural heritage of a foreign country prohibited without a permit

- (1) A person contravenes this subsection if the person:
- (a) imports an article into Australia; and
 - (b) the article is foreign underwater cultural heritage.
- (2) Subsection (1) does not apply if the person imports the article in accordance with a permit granted under section 23.

Note: A person who wishes to rely on this subsection bears an evidential burden in relation to the matters in this subsection (see subsection 13.3.(3) of the *Criminal Code* and section 96 of the Regulatory Powers Act).

- (3) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

- (4) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 60 penalty units.

- (5) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 120 penalty units.

37 Requirement to produce permits

- (1) This section applies if an inspector suspects on reasonable grounds that a person has possession, custody or control of protected underwater cultural heritage.

- (2) The inspector may require the person to produce a permit authorising the person to have possession, custody or control of the protected underwater cultural heritage.

- (3) A person contravenes this subsection if:
- (a) the person is subject to a requirement under subsection (2); and
 - (b) the person fails to comply with the requirement.

- (4) A person commits an offence if the person contravenes subsection (3).

Penalty: 120 penalty units.

- (5) A person commits an offence of strict liability if the person contravenes subsection (3).

Penalty: 60 penalty units.

- (6) A person is liable to a civil penalty if the person contravenes subsection (3).

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Civil penalty: 120 penalty units.

38 Minister may ascertain location of protected underwater cultural heritage

- (1) This section applies if the Minister reasonably believes 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 protected underwater cultural heritage.
- (2) The Minister may, by written notice, require the person, within the period specified in the notice:
 - (a) to inform the Minister whether the person has, or had, possession, custody or control of the article; and
 - (b) if the person has possession, custody or control of the article—to give the Minister the name and address of the person from whom possession, custody or control of the article was obtained; and
 - (c) 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
 - (d) 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.
- (3) The period specified for the purposes of subsection (2) must be at least 21 days, beginning on the day the notice is given to the person.
- (4) A person contravenes this subsection if:
 - (a) the person is subject to a requirement under subsection (2); and
 - (b) the person fails to comply with the requirement.
- (5) A person commits an offence if the person contravenes subsection (4).

Penalty: 120 penalty units.

- (6) A person commits an offence of strict liability if the person contravenes subsection (4).

Penalty: 60 penalty units.

- (7) A person is liable to a civil penalty if the person contravenes subsection (4).

Civil penalty: 120 penalty units.

- (8) A person is not excused from giving information under subsection (2) on the ground that the information might tend to incriminate the person or expose the person to a penalty.

- (9) However, in the case of an individual, none of the following:

- (a) the information given;
- (b) the giving of the information;
- (c) any information, document or thing obtained as a direct or indirect consequence of the giving of the information;

is admissible in evidence against the individual in proceedings, other than:

- (d) proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* that relates to this Act (false or misleading information or documents); or
- (e) proceedings for an offence against section 149.1 of the *Criminal Code* that relates to this Act (obstruction of Commonwealth public officials).

39 Minister may give directions about custody etc. of protected underwater cultural heritage

- (1) If a person has possession, custody or control of an article of protected underwater cultural heritage, the Minister may, by written notice, direct the person to take such action in relation to the article as is specified in the notice.
 - (2) The Minister may give a notice under subsection (1) only if the Minister is satisfied that it is reasonably necessary to do so for the purposes of any of the following:
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- (a) preserving the article;
 - (b) placing the article with a collection of articles that has been, or is to be, established;
 - (c) exhibiting, or providing access to, the article.
- (3) Without limiting subsection (1), the action that a person may be directed to take in relation to an article includes:
- (a) keeping the article in a specified manner or place; and
 - (b) removing the article to a specified place within a specified period; and
 - (c) doing a particular act in relation to the article that is designed to assist in the preservation of the article within a specified period; and
 - (d) delivering the article into the custody of a specified person within a specified period.
- (4) The notice must state that the person may, instead of taking the action specified in the notice, deliver the article within a specified period into the custody of a person specified in the notice.
- (5) A person contravenes this subsection if:
- (a) the person is given a direction under subsection (1); and
 - (b) the person fails to comply with the direction.
- (6) A person commits an offence if the person contravenes subsection (5).
- Penalty: 120 penalty units.
- (7) A person commits an offence of strict liability if the person contravenes subsection (5).
- Penalty: 60 penalty units.
- (8) A person is liable to a civil penalty if the person contravenes subsection (5).
- Civil penalty: 120 penalty units.

- (9) A civil action does not lie against a person in respect of any action taken by the person in accordance with a direction given to the person under subsection (1).

40 Discovery of certain underwater cultural heritage must be notified

- (1) This section applies if:
- (a) a person finds an article of underwater cultural heritage; and
 - (b) the article is in Australian waters; and
 - (c) the article appears to be of an archaeological character.
- (2) The person must give a written notice to the Minister, setting out:
- (a) a description of the article; and
 - (b) a description of the place where the article is situated that is sufficient to enable the article to be located;
- within 21 days after the person finds the article.
- (3) A person contravenes this subsection if:
- (a) the person is subject to a requirement under subsection (2); and
 - (b) the person fails to comply with the requirement.
- (4) Subsection (3) does not apply if a notice relating to the article has already been given under subsection (2).

Note: A person who wishes to rely on this subsection bears an evidential burden in relation to the matters in this subsection (see subsection 13.3.(3) of the *Criminal Code* and section 96 of the *Regulatory Powers Act*).

- (5) A person commits an offence if the person contravenes subsection (3).

Penalty: 120 penalty units.

- (6) A person is liable to a civil penalty if the person contravenes subsection (3).

Civil penalty: 120 penalty units.

Part 4—Compliance and enforcement

Division 1—Regulatory powers

41 Monitoring powers

- (1) A provision is subject to monitoring under Part 2 of the Regulatory Powers Act if it is:
- (a) a provision of this Act; or
 - (b) an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to this Act.

Note: Part 2 of the Regulatory Powers Act creates a framework for monitoring whether this Act has been complied with. It includes powers of entry and inspection.

- (2) Information given in compliance or purported compliance with a provision of this Act is subject to monitoring under Part 2 of the Regulatory Powers Act.

Note: Part 2 of the Regulatory Powers Act creates a framework for monitoring whether the information is correct. It includes powers of entry and inspection.

- (3) For the purposes of Part 2 of the Regulatory Powers Act as it applies in relation to this Act:

- (a) there are no related provisions; and
- (b) an inspector is an authorised applicant; and
- (c) an inspector is an authorised person; and
- (d) a magistrate is an issuing officer; and
- (e) the Secretary is the relevant chief executive; and
- (f) each of the following is a relevant court:
 - (i) the Federal Court of Australia;
 - (ii) the Federal Circuit Court of Australia;
 - (iii) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

- (4) An authorised person may be assisted by other persons in exercising powers or performing functions or duties under Part 2 of

the Regulatory Powers Act in relation to offences and civil penalty provisions of this Act.

42 Investigation powers

(1) A provision is subject to investigation under Part 3 of the Regulatory Powers Act if it is:

- (a) an offence against this Act; or
- (b) a civil penalty provision of this Act.

Note 1: **Offence against this Act** has an extended meaning (see section 9).

Note 2: Part 3 of the Regulatory Powers Act creates a framework for investigating whether a provision has been contravened. It includes powers of entry, search and seizure.

Note 3: The *Maritime Powers Act 2013* also contains enforcement powers for use in, and in relation to, maritime areas. These powers can be used to give effect to Australian laws, including this Act.

(2) For the purposes of Part 3 of the Regulatory Powers Act as it applies in relation to this Act:

- (a) there are no related provisions; and
- (b) an inspector is an authorised applicant; and
- (c) an inspector is an authorised person; and
- (d) a magistrate is an issuing officer; and
- (e) the Secretary is the relevant chief executive; and
- (f) each of the following is a relevant court:
 - (i) the Federal Court of Australia;
 - (ii) the Federal Circuit Court of Australia;
 - (iii) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

(3) An authorised person may be assisted by other persons in exercising powers or performing functions or duties under Part 3 of the Regulatory Powers Act in relation to evidential material that relates to offences against this Act or civil penalty provisions of this Act.

43 Civil penalty provisions

- (1) Each civil penalty provision of this Act is enforceable under Part 4 of the Regulatory Powers Act.

Note: Part 4 of the Regulatory Powers Act allows a civil penalty provision to be enforced by obtaining an order for a person to pay a pecuniary penalty for the contravention of the provision.

- (2) For the purposes of Part 4 of the Regulatory Powers Act as it applies in relation to this Act:
- (a) an inspector is an authorised applicant; and
 - (b) each of the following is a relevant court:
 - (i) the Federal Court of Australia;
 - (ii) the Federal Circuit Court of Australia;
 - (iii) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

44 Infringement notices

- (1) The following provisions are subject to an infringement notice under Part 5 of the Regulatory Powers Act:
- (a) an offence provision of this Act that is an offence of strict liability;
 - (b) a civil penalty provision of this Act.

Note: Part 5 of the Regulatory Powers Act creates a framework for using infringement notices in relation to provisions.

- (2) For the purposes of Part 5 of the Regulatory Powers Act as it applies in relation to this Act:
- (a) an inspector is an infringement officer; and
 - (b) the Secretary is the relevant chief executive.

45 Enforceable undertakings

- (1) The following provisions are enforceable under Part 6 of the Regulatory Powers Act:
- (a) an offence against this Act;
 - (b) a civil penalty provision of this Act.

Note: Part 6 of the Regulatory Powers Act creates a framework for accepting and enforcing undertakings relating to compliance with provisions.

- (2) For the purposes of Part 6 of the Regulatory Powers Act as it applies in relation to this Act:
- (a) an inspector is an authorised person; and
 - (b) each of the following is a relevant court:
 - (i) the Federal Court of Australia;
 - (ii) the Federal Circuit Court of Australia;
 - (iii) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

46 Injunctions

- (1) The following provisions are enforceable under Part 7 of the Regulatory Powers Act:
- (a) an offence provision of this Act;
 - (b) a civil penalty provision of this Act.

Note: Part 7 of the Regulatory Powers Act creates a framework for using injunctions to enforce provisions.

- (2) For the purposes of Part 7 of the Regulatory Powers Act as it applies in relation to this Act:
- (a) an inspector is an authorised person; and
 - (b) each of the following is a relevant court:
 - (i) the Federal Court of Australia;
 - (ii) the Federal Circuit Court of Australia;
 - (iii) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

Division 2—Forfeiture

47 Court may order forfeiture

- (1) If a person is convicted by a court of an offence against this Act, the court may order the forfeiture to the Commonwealth of any vessel, equipment or article used or otherwise involved in the commission of the offence.
- (2) If a person is found by a court to have contravened a civil penalty provision of this Act, the court may order the forfeiture to the Commonwealth of any vessel, equipment or article used or otherwise involved in the contravention of the civil penalty provision.
- (3) Any vessel, equipment or article forfeited under this section may be sold or otherwise dealt with as the Minister thinks fit.
- (4) For the purposes of this section:

article involved in the commission of an offence includes any article of underwater cultural heritage to which the offence relates.

article involved in the contravention of a civil penalty provision includes any article of underwater cultural heritage to which the contravention relates.

Part 5—Other matters

48 Register of underwater cultural heritage

- (1) The Minister must establish and maintain a register for the purposes of this Act.
- (2) The register may be established and maintained by electronic means.
- (3) The register must include particulars of:
 - (a) known articles covered by subsection 16(1); and
 - (b) declarations in force under subsection 17(1), 18(1) or 19(1); and
 - (c) permits granted under section 23; and
 - (d) any other matter prescribed by the Underwater Cultural Heritage Rules for the purposes of this paragraph.
- (4) The Underwater Cultural Heritage Rules may make provision for and in relation to the following:
 - (a) the correction of entries in the register;
 - (b) the publication of the register, in whole or in part, or of specified information entered in the register;
 - (c) any other matter relating to the administration or operation of the register.

49 Review of decisions

Applications may be made to the Administrative Appeals Tribunal for review of any of the following decisions made by the Minister:

- (a) a decision under subsection 17(1) to declare an article to be protected underwater cultural heritage;
- (b) a decision under subsection 18(1) to declare an article to be protected underwater cultural heritage;
- (c) a decision under subsection 19(1) to provisionally declare an article to be protected underwater cultural heritage;

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- (d) a decision under section 20 to declare an area to be a protected zone;
- (e) a decision under subsection 21(1) to vary or revoke a declaration;
- (f) a decision under section 23 to grant, or to refuse to grant, a permit;
- (g) a decision under section 23 to grant a permit in terms that are different from those applied for;
- (h) a decision under section 25 to vary, or to refuse to vary, a permit;
- (i) a decision under section 26 to suspend or revoke a permit.

50 Declaration of ownership of specified Dutch shipwrecks and associated articles

Declaration in relation to Dutch shipwrecks

- (1) If the Minister is satisfied that it is necessary to do so for the purpose of giving effect to the Australia-Netherlands Agreement, the Minister may, by legislative instrument, declare the ownership of a specified Dutch shipwreck to be vested in a specified authority of the Commonwealth.
- (2) If a declaration is made under subsection (1), the authority specified in the declaration becomes, by force of this subsection, the owner of the Dutch shipwreck (free of any charges or other encumbrances) at the start of the day after the day the declaration is registered on the Federal Register of Legislation.

Declaration in relation to Dutch relics

- (3) If the Minister is satisfied that it is necessary to do so for the purpose of giving effect to the Australia-Netherlands Agreement, the Minister may, by legislative instrument, declare the ownership of a specified Dutch relic to be vested in:
 - (a) a specified authority of the Commonwealth; or
 - (b) Western Australia; or
 - (c) a specified authority of Western Australia; or
 - (d) the government of the Kingdom of the Netherlands.

- (4) If a declaration is made under subsection (3), the person specified in the declaration becomes, by force of this subsection, the owner of the Dutch relic (free of any charges or other encumbrances) at the start of the day after the day the declaration is registered on the Federal Register of Legislation.

Act still applies to declared articles

- (5) The making of a declaration under this section in relation to a Dutch shipwreck or a Dutch relic does not affect the application of any other provision of this Act to, or in relation to, the article.

Commonwealth power to deal with articles not affected

- (6) Nothing in this section affects any power of the Commonwealth otherwise than under this Act to dispose of or otherwise deal with articles that are the property of the Commonwealth.

51 Declaration of ownership of other underwater cultural heritage

- (1) If the Minister is satisfied that it is necessary to do so for the purpose of giving effect to this Act or any relevant agreement (other than the Australia-Netherlands Agreement), the Minister may, by legislative instrument, declare the ownership of a specified article of underwater cultural heritage to be vested in:
- (a) the Commonwealth; or
 - (b) a specified authority of the Commonwealth; or
 - (c) a specified State or Territory; or
 - (d) a specified authority of a State or Territory; or
 - (e) the government of a foreign country; or
 - (f) any other specified person.

Note: The Commonwealth is entitled to all unclaimed wreck found in Australia (see section 228 of the *Navigation Act 2012*).

- (2) If a declaration is made under subsection (1), the person specified in the declaration becomes, by force of this subsection, the owner of the article (free of any charges or other encumbrances) at the start of the day after the day the declaration is registered on the Federal Register of Legislation.

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- (3) The making of a declaration under subsection (1) in relation to an article does not affect the application of any other provision of this Act to, or in relation to, the article.
- (4) Nothing in this section affects any power of the Commonwealth otherwise than under this Act to dispose of or otherwise deal with articles that are the property of the Commonwealth.

52 Ownership of, and sovereignty in, remains of Australian defence vessels etc.

- (1) Ownership of, and sovereignty in, the following property in waters outside the outer limits of Australian waters vests in the Commonwealth:
 - (a) the remains of the following vessels:
 - (i) a vessel belonging to or used by the Australian Defence Force;
 - (ii) a Government vessel (within the meaning of the *Navigation Act 2012*) that was used only on government non-commercial service;
 - (b) articles associated with such vessels;
 - (c) the remains of aircraft belonging to or used by the Australian Defence Force;
 - (d) articles associated with such aircraft.
- (2) Subsection (1) does not apply to the remains of a vessel if:
 - (a) the vessel was captured by, and surrendered to, a foreign country before the vessel sank; or
 - (b) the Commonwealth has expressly relinquished its rights in relation to the vessel under international law.
- (3) Subsection (1) does not apply to the remains of an aircraft if:
 - (a) the aircraft was abandoned after it sank, with the intention that the Commonwealth relinquish its rights in relation to the aircraft; or
 - (b) the Commonwealth has expressly relinquished its rights in relation to the aircraft under international law.

53 Compensation for acquisition of property

- (1) If the operation of this Act would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph), the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court of Australia or the Supreme Court of a State or Territory for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

54 Certificate by Minister to be evidence

- (1) The Minister may give a written certificate stating a place specified in the certificate is a place:
 - (a) in Australian waters; or
 - (b) in Commonwealth waters; or
 - (c) in waters within the limits of a State or the Northern Territory; or
 - (d) in coastal waters of a State or the Northern Territory; or
 - (e) in a specified protected zone.
- (2) In a proceeding for an offence against this Act or a contravention of a civil penalty provision, a certificate under subsection (1) is prima facie evidence of the matters stated in the certificate.

55 Contravening offence or civil penalty provisions

- (1) This section applies if a provision of this Act provides that a person contravening another provision of this Act (the *conduct provision*) commits an offence or is liable to a civil penalty.
- (2) For the purposes of this Act, and the Regulatory Powers Act to the extent that it relates to this Act, a reference to a contravention of an offence provision or a civil penalty provision includes a reference to a contravention of the conduct provision.

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- (3) For the purposes of applying Chapter 2 of the *Criminal Code* to the offence, the physical elements of the offence are set out in the conduct provision.

Note: Chapter 2 of the *Criminal Code* sets out general principles of criminal responsibility.

56 Delegation of Minister's powers

- (1) The Minister may, in writing, delegate any of his or her powers or functions under this Act to:
- (a) the Secretary; or
 - (b) an SES employee, or acting SES employee, in the Department; or
 - (c) any other person that the Minister considers has appropriate qualifications or expertise.
- (2) Subsection (1) does not apply in relation to the Minister's power under section 61 (power to make Underwater Cultural Heritage Rules).
- (3) The Minister must not delegate a power or function, under subsection (1), to an officer or employee of an authority of a State or of the Northern Territory without the agreement of the State or Northern Territory.
- (4) In exercising powers or performing functions under a delegation under subsection (1), the delegate must comply with any directions of the Minister.

57 Delegation of Secretary's powers

- (1) The Secretary may, in writing, delegate his or her powers and functions under this Act, or the Regulatory Powers Act as it applies in relation to this Act, to an SES employee, or an acting SES employee, in the Department.
- (2) A person exercising powers or performing functions under a delegation under subsection (1) must comply with any directions of the Secretary.

58 Approved forms

The Minister may, in writing, approve a form for the purposes of a provision of this Act.

59 Arrangements for States and the Northern Territory to carry out certain functions

- (1) The Minister may make arrangements with the appropriate Minister of a State or of the Northern Territory for carrying out by the State or the Northern Territory, on behalf of the Commonwealth, of functions under this Act.
- (2) An arrangement under this section may provide for the payment to a State or the Northern Territory of amounts in respect of the performance of functions under the arrangement.

60 Appointment of inspectors

- (1) The Secretary may, in writing, appoint an officer or employee of an authority (however described) of the Commonwealth, a State or a Territory as an inspector for the purposes of Part 3 or 4.
- (2) The Secretary must not appoint an officer or employee of an authority of a State or Territory as an inspector without the agreement of the State or Territory.
- (3) The Secretary must not appoint a person as an inspector unless the Secretary is satisfied that the person has the knowledge or experience necessary to properly exercise the powers of an inspector.
- (4) An inspector must, in exercising powers as such, comply with any directions of the Secretary.
- (5) If a direction is given in writing under subsection (4), the direction is not a legislative instrument.

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61 Underwater Cultural Heritage Rules

- (1) The Minister may, by legislative instrument, make rules (the *Underwater Cultural Heritage Rules*) prescribing matters:
 - (a) required or permitted by this Act to be prescribed by the Underwater Cultural Heritage Rules; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act, the Australia-Netherlands Agreement or any other relevant agreement.
- (2) The Underwater Cultural Heritage Rules may provide for charging fees in respect of any matters under this Act.
- (3) Without limiting subsection 33(3A) of the *Acts Interpretation Act 1901*, the Underwater Cultural Heritage Rules:
 - (a) may be of general application or may be limited as provided in the rules; and
 - (b) may make different provision in relation to different kinds of underwater cultural heritage, circumstances or any other matter.
- (4) Despite subsection 14(2) of the *Legislation Act 2003*, the Underwater Cultural Heritage Rules may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in any other instrument or other writing as in force or existing from time to time.
- (5) To avoid doubt, the Underwater Cultural Heritage Rules may not do the following:
 - (a) create an offence or civil penalty;
 - (b) provide powers of:
 - (i) arrest or detention; or
 - (ii) entry, search or seizure;
 - (c) impose a tax;
 - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
 - (e) directly amend the text of this Act.

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- (6) In this section, a reference to this Act does not include a reference to the Underwater Cultural Heritage Rules.
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*[Minister's second reading speech made in—
House of Representatives on 28 March 2018
Senate on 27 June 2018]*

(76/18)
