

## **EXPLANATORY STATEMENT**

Issued by authority of the Minister for the Environment

### *Underwater Cultural Heritage Rules 2018*

The *Underwater Cultural Heritage Act 2018* (the Act) establishes a scheme to protect Australia's underwater cultural heritage and includes measures to align the legislation with current international best practice standards for the protection and management of underwater cultural heritage.

Section 61 of the Act provides that the Minister may, by legislative instrument, make rules prescribing matters required or permitted by this Act to be prescribed, or necessary, or convenient to be prescribed for carrying out or giving effect to this Act, the Australia-Netherlands Agreement or any other relevant agreement.

The purpose of the *Underwater Cultural Heritage Rules 2018* (the Rules) is to prescribe matters that are required or permitted by the Act to be prescribed by the Rules, including:

- (a) Criteria relating to heritage significance under section 22 of the Act;
- (b) Matters the Minister must have regard to in deciding whether to grant a permit under subsection 23(4) of the Act;
- (c) Other matters that must be specified in permits under subsection 23(5) of the Act; and
- (d) Matters the Minister must have regard to in deciding whether to vary a permit under subsection 25(3) of the Act.

The Act includes the power to make rules for the purpose of charging fees in respect of any matters under the Act, however no rules in relation to the charging of fees have been included at this time.

It is practically necessary for there to be the option to incorporate material in the Rules as in force or existing from time to time. The types of documents that may be incorporated in the Rules would be authoritative conventions and international guidelines. Any changes to these documents would need to be incorporated from time to time to ensure regulated persons clearly understand their obligations under the Rules, and that the Rules are consistent with current international law or international best practice. It is intended that any external material incorporated into the Rules will be made freely available. For this reason, the Act includes a contrary intention to section 14(2) of the Legislation Act, in order for there to be sufficient flexibility to incorporate external material as in force or existing from time to time into the Rules if necessary.

The protection of underwater cultural heritage is a matter of international concern. Consequently, there are international guidelines and conventions that will need to be incorporated into the Rules. The Rules include reference to the UNESCO 2001 *Convention on the Protection of the Underwater Cultural Heritage* (the Convention). Access to the Convention is at: <http://www.unesco.org/new/en/culture/themes/underwater-cultural-heritage/2001-convention/official-text/>

The Rules have been drafted by the Office of Parliamentary Counsel in conjunction with the drafting of the Act, and in consultation with and the Attorney General's Department. The State and Northern Territory Historic Shipwreck Delegates (the Delegates), who are appointed by the Minister under section 56 of the Act, were consulted about the function and appropriateness of the rules, which are concerned with internal statutory decision making.

Under a system of collaborative administration (the Historic Shipwrecks Program), the Delegates and their staff are responsible for the management of Commonwealth underwater cultural heritage in their regions and for undertaking statutory functions that have been delegated to them under the Act. These functions include powers to grant, vary or revoke permits and their decisions will be determined through use of the rules. The Delegates have also been consulted in formulating the criteria for assessing heritage significance under the Act.

Consultation on the rule making provisions in the draft Underwater Cultural Heritage Bill (the Bill) was undertaken with Commonwealth, State and Northern Territory Government agencies during limited public exposure of the Bill. Broader consultation was undertaken with public and government stakeholders as part of the review of the *Historic Shipwrecks Act 1976* that informed drafting of the Bill.

Details of the Rules are set out in the [Attachment](#).

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

The Rules commence the later of the start of the day after it is registered on the Federal Register of Legislation, and the commencement of the Act.

## **Statement of Compatibility with Human Rights**

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

### ***Underwater Cultural Heritage Rules 2018***

The *Underwater Cultural Heritage Rules 2018* (the Rules) are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Legislative Instrument**

The purpose of the Rules is to prescribe matters that are required or permitted by the *Underwater Cultural Heritage Act 2018* (the Act) to be prescribed by the Rules, including:

- (a) Criteria relating to heritage significance under section 22 of the Act;
- (b) Matters the Minister must have regard to in deciding whether to grant a permit under subsection 23(4) of the Act;
- (c) Other matters that must be specified in permits under subsection 23(5) of the Act; and
- (d) Matters the Minister must have regard to in deciding whether to vary a permit under subsection 25(3) of the Act.

#### **Human rights implications**

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

#### **Conclusion**

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

**The Hon Melissa Price MP, Minister for the Environment**

**Details of the *Underwater Cultural Heritage Rules 2018***

**Part 1 - Preliminary**

Section 1 – Name

1. This section provides that the title of the Rules is the *Underwater Cultural Heritage Rules 2018* (the Rules).

Section 2 – Commencement

2. This section provides that the Rules commence on the later of the day after the instrument is registered, and the commencement of the *Underwater Cultural Heritage Act 2018* (the Act).

Section 3 – Authority

3. This section provides that the Rules are made under the Act.

Section 4 – Definitions

4. This section defines key terms used in the Rules.
5. The section confirms that 'the Act' means the *Underwater Cultural Heritage Act 2018*.
6. The section confirms that 'Underwater Cultural Heritage Convention' means the UNESCO 2001 *Convention on the Protection of the Underwater Cultural Heritage*.

**Part 2 - Criteria relating to heritage significance**

Section 5 – Criteria relating to heritage significance

7. This section establishes criteria that the Minister must have regard to when assessing the heritage significance of underwater cultural heritage that may be declared as protected under sections 17(1), 18(1) and 19(1) of the Act.
8. The criteria have been formulated using the principles of the *Australia ICOMOS Charter for Places of Cultural Significance, The Burra Charter, 2013* (the Burra Charter) and in consideration of other existing criteria prescribed in Commonwealth, State and Northern Territory heritage legislation. The Burra Charter can be accessed at:  
<https://australia.icomos.org/wp-content/uploads/The-Burra-Charter-2013-Adopted-31.10.2013.pdf>

**Part 3 - Permits**

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

9. This section specifies matters that the Minister must have regard to when deciding whether or not to grant a permit under section 23 of the Act.
10. Subsection (2) provides that the Minister must have regard to whether a person applying for the permit or persons who will participate in, or otherwise be involved in, the conduct proposed to be authorised by the permit, are fit and proper persons. Subsection (3) details, without limiting subsection (2), matters that the Minister must have regard to when considering whether or not a person is a fit or proper person.

11. Subsections (4) to (7) detail additional matters that the Minister must have regard to when considering whether or not to grant a permit authorising proposed conduct, when certain circumstances apply. Those matters include whether the proposed conduct:
- (i) is consistent with the objectives of the Act;
  - (ii) has regard to relevant government guidelines relating to the protection or management of Australia's underwater cultural heritage;
  - (iii) will be undertaken in a manner that is consistent with the relevant requirements of the Annex to the Underwater Cultural Heritage Convention; and
  - (iv) includes relevant consultation with stakeholders.

#### Section 7 – Matters that must be specified in permits

12. This section prescribes matters that must be specified in permits granted under section 23 of the Act.
13. The prescribed matters include the description and registration number of protected articles and any details concerning the ownership of articles.
14. This will allow for the clear identification of permitted sites or of protected articles that have been allowed to remain in public possession.
15. Ownership of most protected underwater cultural heritage is vested in the Commonwealth of Australia, however a small number of articles remain the legal property of individuals. Specifying the ownership details of protected articles will assist in cases where possession of an article is permitted to be transferred from one person to another, by informing the person receiving an article that they are either receiving legal title to the article or only a possessory right.

#### Section 8 – Varying permits

16. This section specifies matters that the Minister must have regard to when deciding, under section 25 of the Act, whether or not to vary a permit granted under section 23 of the Act.
17. The specified matters ensure that any variation to an existing permit is made with appropriate consideration of the guidance used in the original decision to grant the permit. This will help ensure that any variation to a permit takes into account the best possible outcome for the protection of the associated underwater cultural heritage and does not conflict with the original decision.