

SOUTH AUSTRALIA

**HISTORIC SHIPWRECKS ACT, 1981**

*This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at **15 August 1991**.*

*It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.*

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# **HISTORIC SHIPWRECKS ACT, 1981**

being

Historic Shipwrecks Act, 1981, No. 76 of 1981  
[Assented to 19 November 1981]<sup>1</sup>

as amended by

Historic Shipwrecks Act Amendment Act, 1983, No. 81 of 1983 [Assented to 24 November 1983]

*Note: Asterisks indicate repeal or deletion of text. For further explanation see Appendix.*

<sup>1</sup> Came into operation 3 December 1981: *Gaz.* 3 December 1981, p. 2206.

**An Act relating to the protection of certain shipwrecks and relics of historic significance.**

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

PART I

PRELIMINARY

**Short title**

1. This Act may be cited as the *Historic Shipwrecks Act, 1981*.

**Commencement**

2. This Act shall come into operation on a day to be fixed by proclamation.

**Interpretation**

3. (1) In this Act, unless the contrary intention appears—

"the Commonwealth Act" means the *Historic Shipwrecks Act 1976* of the Commonwealth:

"historic relic" means—

(a) an article to which a notice in force under section 5(2) applies;

(b) an article to which a notice in force under section 6(2) applies:

"historic shipwreck" means—

(a) the remains of a ship to which a notice in force under section 5(1) applies;

or

(b) an article or articles to which a notice in force under section 6(1) applies:

"inspector" means a person appointed as an inspector under section 21 or a member of the Police Force:

"protected zone" means a protected zone constituted under and by virtue of section 7:

"Register" means the Register of Historic Shipwrecks kept under section 12:

\* \* \* \* \*

"ship" includes any vessel used in navigation by water:

"territorial waters of the State" means—

(a) waters within the limits of the State;

or

3.

(b) waters adjacent to the State being waters to which the Commonwealth Act does not apply.

(2) A reference in this Act to the remains of a ship, or to an article or articles being situated in, or having been removed from, any waters includes a reference to the remains of a ship or to an article or articles—

(a) being situated in or forming part of, or having been removed from, as the case may be, the surface or subsoil of land submerged by those waters;

or

(b) being situated on or forming part of, or having been removed from, as the case may be, a reef in those waters.

(3) A thing shall not be taken not to be an article for the purposes of this Act by reason that it is attached to the remains of a ship, to a reef or, to the subsoil of submerged land.

(4) A reference in this Act to an article associated with a ship shall be construed as a reference to an article that appears to have formed part of, to have been installed or carried on, or to have been constructed or used by a person associated with, a ship.

**Act to bind Crown**

4. This Act binds the Crown.

PART II

PROTECTION OF HISTORIC SHIPWRECKS AND RELICS

**Certain shipwrecks and relics may be declared to be historic**

5. (1) Where the Minister is of the opinion that the remains of a ship that are situated in territorial waters of the State are of historic significance, he may, by notice published in the *Gazette*, declare those remains to be a historic shipwreck.

(2) Where the Minister is of the opinion that a particular article that was, or particular articles that were, associated with a ship, or all articles that were associated with a particular ship, being an article that is, or articles that are, situated in territorial waters of the State, is or are of historic significance, he may, by notice published in the *Gazette*, declare the article or articles to be a historic relic or historic relics.

(3) The Minister may make a declaration under subsection (1) or (2) in relation to any part of the remains of a ship that has, or in relation to any article or articles that has or have, been removed from territorial waters of the State in like manner as he may make a declaration under that subsection in relation to the remains of a ship, or in relation to an article or articles, situated in those waters.

(4) Where—

(a) a declaration has been made under this section in relation to the remains of a ship or an article that were or was situated in any waters;

and

(b) after the making of the declaration any part of those remains or that article is removed from those waters,

the declaration continues to apply, subject to any amendment or revocation of the declaration, in relation to that part of those remains or in relation to that article notwithstanding its removal from those waters.

**Provisional declaration that shipwrecks and relics are historic**

6. (1) Where it appears to the Minister that an article or articles appearing to be the remains of a ship that is or are situated in territorial waters of the State may be of historic significance, he may, by notice published in the *Gazette*, provisionally declare the article or articles to be a historic shipwreck.

(2) Where it appears to the Minister that a particular article that is, or particular articles that are, situated in territorial waters of the State—

(a) may have been associated with a ship;

and

5.

(b) may be of historic significance,

he may, by notice published in the *Gazette*, provisionally declare the article or articles to be a historic relic or historic relics.

(3) The Minister may make a declaration under subsection (1) or (2) in relation to any article that has, or articles that have, been removed from territorial waters of the State in like manner as he may make a declaration under that subsection in relation to an article or articles situated in those waters.

(4) Where—

(a) a declaration has been made under this section in relation to an article that was situated in any waters;

and

(b) after the making of the declaration that article is removed from those waters,

the declaration continues to apply in relation to that article notwithstanding its removal from those waters.

(5) A notice under this section remains in force, unless sooner revoked, until the expiration of twelve months from the date of publication of the notice in the *Gazette*, but the revocation or expiration of a notice under this section does not prevent the publication in the *Gazette* of a further notice under this section in relation to an article or articles to which the revoked or expired notice applied.

### **Protected zones**

7. (1) The Minister may, by notice published in the *Gazette*, declare an area (not exceeding 100 hectares) consisting of water or partly of water and partly of land within which a historic shipwreck is, or a historic relic is or historic relics are, situated to be a protected zone.

(2) Where a notice declaring an area to be a protected zone is in force under subsection (1), the protected zone shall be taken to include the airspace above that area and, to the extent to which that area consists of the surface of water, to include the waters beneath that area and the surface and subsoil of the land submerged by those waters.

(3) Where a notice under section 5 or 6 in relation to the remains of a ship or in relation to an article or articles is revoked or otherwise ceases to be in force, any notice under this section in relation to the remains or in relation to the article or articles ceases to be in force but this subsection does not prevent the publication in the *Gazette* of a further notice under this section in relation to the remains or in relation to the article or articles if a further notice is published in the *Gazette* under section 5 or 6 in relation to the remains or in relation to the article or articles.

### **Further publication of notices**

8. Where a notice under section 5, 6 or 7 is published in the *Gazette*, the Minister may cause a copy of the notice to be published in such newspapers, periodicals or other publications as he thinks appropriate.

**Notice of location of historic shipwrecks and relics**

**9.** (1) Where—

(a) a person has possession, custody or control of an article;

and

(b) a notice applying in respect of the article is published in the *Gazette* under section 5 or 6,

the person shall, within thirty days after the date of publication of the notice in the *Gazette*, give the prescribed notice to the Minister in relation to the article.

Penalty: One thousand dollars.

(2) Where an article in respect of which a notice published in the *Gazette* under section 5 or 6 applies comes into the possession, custody or control of a person, the person shall, within thirty days after the day on which the article comes into his possession, custody or control, give the prescribed notice to the Minister in relation to the article.

Penalty: One thousand dollars.

(3) It is a defence to a prosecution of a person for an offence against subsection (1) or (2) in relation to an article in respect of which a notice was published in the *Gazette* under section 5 or 6 if the person proves that he did not know, and had no reasonable grounds for believing, that the article was an article to which the notice related.

(4) For the purposes of this section, the prescribed notice in relation to an article means a notice in writing describing the article and stating where the article is situated.

**Power of Minister to ascertain location of historic shipwrecks and relics**

**10.** (1) Where it appears to the Minister 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, or is or may be a part of, a historic shipwreck or is or may be a historic relic,

the Minister may, by notice in writing to the person, require the person, within the time specified in the notice—

(c) to inform the Minister whether the person has, or has had, possession, custody or control of the article;

(d) 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



7.

(e) 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.

(2) A person to whom a notice is given by the Minister under subsection (1) shall not—

(a) refuse or fail to comply with the notice to the extent that the person is capable of complying with it;

or

(b) in purported compliance with the notice, knowingly furnish information that is false or misleading.

Penalty: One thousand dollars.

(3) A person is not excused from furnishing information in pursuance of this section on the ground that the information may tend to incriminate the person but the information furnished is not admissible in evidence against the person except in proceedings for an offence against this section.

**Power of Minister to give directions in relation to custody of historic shipwrecks and relics**

**11.** (1) Where a person has possession, custody or control of an article, being, or being a part of, a historic shipwreck or being a historic relic, the Minister may, for the purpose of—

(a) the preservation of the article;

or

(b) the exhibition of, or the provision of access to, the article,

by notice in writing, require the person to take such action in relation to the article as is specified in the notice.

(2) The action that a person may be required to take in relation to an article by a notice under subsection (1) includes but is not limited to—

(a) keeping the article in a particular manner or place;

(b) removing the article to a particular place within a particular time;

(c) doing a particular act in relation to the article within a particular time, being an act designed to assist in the preservation of the article;

and

(d) delivering the article into the custody of a particular person within a particular time.

(3) Where the Minister gives a notice to a person under subsection (1) requiring the person to take action in relation to an article other than action referred to in subsection (2)(d), he shall in the notice inform the person that the person may, in lieu of taking that action, deliver the article within a specified time into the custody of a person specified in the notice.

8.

(4) A person to whom a notice is given by the Minister under subsection (1) shall comply with the notice.

Penalty: Two thousand dollars or imprisonment for two years, or both.

(5) A civil action does not lie against a person in respect of any action taken by him in pursuance of a notice given to him by the Minister under subsection (1).

(6) A person to whom a notice is given under subsection (1) may, within one month after the date of the notice, apply to a District Court for review of the notice.

(7) Upon a review under subsection (6), the District Court may vary or annul the notice.

(8) A person to whom a notice is given under subsection (1) may recover, as a debt due to him from the Crown, reasonable costs incurred by him in carrying out the requirements of the notice.

### **Register of Historic Shipwrecks**

**12.** (1) The Minister shall cause to be kept a register to be known as the Register of Historic Shipwrecks.

(2) The Minister shall cause to be entered in the Register particulars of notices in force under section 5, 6 or 7.

(3) A person may inspect the Register and, on payment of the prescribed fee, is entitled to be furnished with a copy of, or of any part of, the Register.

### **Prohibition of certain action in relation to historic shipwrecks and relics**

**13.** (1) Except in accordance with a permit, a person shall not—

(a) damage or destroy a historic shipwreck or a historic relic;

(b) interfere with a historic shipwreck or a historic relic;

(c) dispose of a historic shipwreck or a historic relic;

or

(d) remove a historic shipwreck or a historic relic from the territorial waters of the State.

(2) A reference in subsection (1) to the removal of a historic shipwreck or a historic relic from the territorial waters of the State includes a reference to the removal of a historic shipwreck or a historic relic from the surface or subsoil of land submerged by those waters or from a reef in those waters.

(3) A person who contravenes this section is guilty of an offence and is punishable, on conviction, by a fine not exceeding five thousand dollars, or imprisonment for a period not exceeding five years or both.

(4) In this section, "historic shipwreck" includes a part of a historic shipwreck.

**Regulations may prohibit certain activities in protected zone**

**14.** (1) The regulations may make provision—

- (a) for and in relation to prohibiting or restricting—
  - (i) the bringing into a protected zone of equipment constructed or adapted for the purpose of diving, salvage or recovery operations, or of any explosives, instruments or tools the use of which would be likely to damage or interfere with a historic shipwreck or a historic relic situated within that protected zone;
  - (ii) the use within a protected zone of any such equipment, explosives, instruments or tools;
  - (iii) causing a ship carrying any such equipment, explosives, instruments or tools to enter, or remain within, a protected zone;
  - (iv) trawling, or diving or other underwater activity, within a protected zone;
- or
- (v) the mooring or use of ships within a protected zone;

and

- (b) prescribing penalties, not exceeding a fine of one thousand dollars, or imprisonment for one year, or both, for any contravention of a provision of any regulations made for the purposes of paragraph (a).

(2) The provision that may be made by regulations made for the purposes of this section for or in relation to restricting the doing of an act includes a provision prohibiting the doing of that act except in accordance with a permit.

(3) Regulations made for the purposes of subsection (1)(a) may be of general application or may make different provision in relation to different protected zones.

(4) In this section, "ship" includes a hovercraft and any similar craft.

**Permits for exploration or recovery of shipwrecks and relics**

**15.** (1) The Minister may, in his discretion, upon application by a person, grant a permit to that person authorizing that person and any other persons named or described in the permit to do an act or thing specified in the permit the doing of which would otherwise be prohibited by section 13 or by regulations made for the purposes of section 14.

(2) The Minister may, when granting a permit or at any time while a permit is in force, impose conditions in respect of the permit and may at any time revoke or vary any conditions so imposed.

(3) The conditions that may be imposed under subsection (2) in respect of a permit authorizing the doing of an act or thing include but are not limited to—

- (a) a condition requiring the act or thing to be done in a specified manner;

10.

- (b) a condition requiring the act or thing to be done only in accordance with the directions of a person named or described in the permit as a person empowered to give such directions;

and

- (c) a condition requiring any articles obtained by the doing of an act that is authorized by the permit to be done to be held in such custody or dealt with in such manner as is specified in the permit or as is specified in directions given by a person named or described in the permit as a person empowered to give such directions.

(4) A condition imposed in respect of a permit (other than a condition contained in a permit) or a revocation or variation of a condition so imposed takes effect when notice of the condition or of the revocation or variation is served on the person to whom the permit was granted.

(5) A person shall not contravene a condition imposed in respect of a permit that has been granted to him or is otherwise applicable to him.

Penalty: Two thousand dollars or imprisonment for two years, or both.

(6) The Minister may, at any time, by notice in writing to the person to whom a permit has been granted—

- (a) revoke the permit;
- (b) suspend the permit;

or

- (c) cancel the suspension of the permit.

(7) A suspension of a permit may be of indefinite duration or for a specified period.

### **Defences**

**16.** It is a defence to a prosecution of a person for an offence against section 13, for an offence against a regulation made for the purposes of section 14, or for an offence against section 15(5), if the act that constituted the offence was done for the purpose of—

- (a) saving human life;
- (b) securing the safety of a ship (including a hovercraft or any similar craft) where the ship was endangered by stress of weather or by navigational hazards;

or

- (c) dealing with an emergency involving a serious threat to the environment,

or was done with any other reasonable excuse.

**Discovery of shipwrecks and relics to be notified**

17. (1) A person who finds, in a fixed position in territorial waters of the State, the remains of a ship or of a part of a ship, or an article associated with a ship, shall, as soon as practicable, give to the Minister a notice setting out a description of the remains or of the article and a description of the place where the remains are, or the article is, situated, being a description of that place that is sufficient to enable the remains or article to be located.

Penalty: One thousand dollars.

(2) It is a defence to a prosecution of a person for an offence against subsection (1) if the person proves, or proves that he had reasonable grounds for believing, that a notice setting out a description of the place where the remains are or the article is situated, being a description that is sufficient to enable the remains or article to be located, was given to the Minister by another person before it was practicable for the firstmentioned person to give such a notice.

(3) A person shall not in a notice purporting to be given to the Minister under subsection (1) make a statement that to his knowledge is false or misleading in a material particular.

Penalty: One thousand dollars.

**Rewards**

18. (1) The Minister may—

(a) pay a reward not exceeding the prescribed amount to the person who first notifies the Minister in accordance with section 17 of the location of any remains or article—

(i) a description of the location of which, being a description sufficient to enable the remains or article to be located, had not previously been published in Australia;

and

(ii) in respect of which a declaration has, since the notification was made, been made under section 5;

(b) offer and pay a reward not exceeding the prescribed amount to the person who first furnishes to the Minister a description of the location of a historic shipwreck, or of a historic relic or historic relics, specified in the offer, being a description sufficient to enable the historic shipwreck or historic relic or historic relics to be located;

and

(c) pay a reward not exceeding the prescribed amount to any person who furnishes information leading to the conviction of a person for an offence against this Act.

(2) Payments under subsection (1) shall be made out of moneys appropriated by the Parliament for the purpose.

PART III

MISCELLANEOUS

**Arrangements for Commonwealth authorities to perform functions in relation to historic shipwrecks and relics**

**19.** The Governor may make arrangements with the Governor-General of the Commonwealth for the performance of functions by a competent authority of the Commonwealth in relation to the protection, recovery, preservation and exhibition of historic shipwrecks and historic relics.

**Power of Minister to vest property in historic shipwrecks and relics in the Crown**

**20.** (1) Where the Minister is of the opinion that it is necessary to do so in order to protect the public interest, he may, by notice published in the *Gazette*, declare any historic shipwreck or historic relic to be vested in the Crown.

(2) Upon the publication of a notice under subsection (1), the ownership of the historic shipwreck or historic relic vests in the Crown free of any other interest.

(3) No notice may be published under subsection (1) in respect of a historic shipwreck or historic relic lawfully in the possession of a person at the commencement of this Act.

(4) A person who would, but for the publication of a notice under this section, have been entitled to a historic shipwreck or historic relic, or to any interest in a historic shipwreck or historic relic, may, within six months of the publication of the notice, claim compensation for his loss by action against the Crown in the Land and Valuation Court.

(5) Upon a claim under subsection (4), the Land and Valuation Court may award such compensation against the Crown as it considers just.

**Appointment of inspectors**

**21.** (1) The Minister may, by writing signed by him, appoint a person to be an inspector for the purposes of this Act.

(2) The Minister shall cause to be issued to each inspector appointed under subsection (1) an identity card in accordance with the prescribed form containing a photograph of the inspector.

(3) A person who ceases to be an inspector appointed under subsection (1) shall forthwith return his identity card to the Minister.

Penalty: One hundred dollars.

**Powers of inspectors**

**22.** (1) Where an inspector has reasonable grounds for believing that it is necessary to do so for the purpose of ascertaining whether an offence against this Act has been or is being committed or that by doing so evidence in relation to the commission of such an offence may be obtained, the inspector may, with or without persons and equipment to assist him—

(a) go on board a ship;

(b) require a person in charge of a ship to take steps to facilitate boarding;

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(c) open, or require a person to open, any cargo holds, compartments or containers on any ship boarded in accordance with paragraph (a) and inspect the contents of any such cargo holds, compartments or containers;

(d) require any person found in or on any ship boarded in accordance with paragraph (a) to produce any permit in force under this Act that is in his possession;

and

(e) require a person to answer questions.

(2) Where an inspector has reason to believe that a person has failed to comply with a notice given to the person under section 11(1), the inspector may make application to a Justice of the Peace for a warrant authorizing the inspector, with or without persons and equipment to assist him, for the purpose of ascertaining whether the person has failed to comply with the notice—

(a) to enter any specified land or premises;

and

(b) to search any land or premises so entered and to break open any cupboard, drawer, desk, box, package or other receptacle, whether a fixture or not, on the land or in the premises.

(3) If, on an application under subsection (2), the Justice of the Peace is satisfied by information on oath or affirmation that the issue of the warrant is reasonably required for the purposes of that subsection, the Justice of the Peace may grant a warrant accordingly.

(4) A warrant under subsection (3) shall specify a date after which the warrant ceases to have effect.

(5) A person shall not—

(a) without reasonable excuse, fail to comply with a requirement made of him by an inspector in the exercise of a power under this section;

or

(b) in answer to a question that he is required to answer under this section, make a statement that is false or misleading in a material particular.

Penalty: One thousand dollars.

(6) It is a reasonable excuse for a person to fail to answer a question that he is required to answer under this section that the answer to the question may tend to incriminate him.

(7) A person who—

(a) without reasonable excuse, hinders or obstructs an inspector in the exercise of a power under this section;

or

(b) assaults or threatens an inspector exercising a power under this section,

is guilty of an offence and is punishable, on conviction, by a fine not exceeding two thousand dollars, or imprisonment for a period not exceeding two years, or both.

(8) In this section, "ship" includes a hovercraft and any similar craft.

### **Arrest without warrant**

**23.** (1) An inspector may, without warrant, arrest a person if the inspector reasonably believes—

(a) that the person has committed an offence against section 13 or against regulations made for the purposes of section 14;

and

(b) that proceedings against the person by summons would not be effective.

(2) Where an inspector (other than a member of a police force who is in uniform) arrests a person under subsection (1), the inspector shall—

(a) in the case of an inspector who is a member of a police force—produce, for inspection by the person arrested, written evidence of the fact that the inspector is a member of a police force;

or

(b) in any other case—produce his identity card for inspection by the person arrested.

(3) Where a person is arrested under subsection (1), an inspector shall forthwith bring the person, or cause him to be brought, before a Justice of the Peace or other proper authority to be dealt with in accordance with law.

(4) Nothing in this section prevents the arrest of a person in accordance with any other law.

### **Seizure and forfeiture**

**24.** (1) An inspector may seize any ship, equipment or article that he reasonably believes to have been used or otherwise involved in the commission of an offence against this Act and may retain the ship, equipment or article until the expiration of a period of 60 days after the seizure or, if a prosecution for an offence against this Act in the commission of which the ship, equipment or article may have been used or otherwise involved is instituted within that period, until the prosecution is terminated.

(2) The Minister may authorize any ship, equipment or article seized under subsection (1) to be released to its owner, or to the person from whose possession it was seized, either unconditionally or on such conditions as the Minister thinks fit, including conditions as to the giving of security for payment of its value if it is forfeited.



(3) Where a court convicts a person of an offence against this Act, the court may order the forfeiture to the Crown of any ship, equipment or article used or otherwise involved in the commission of the offence.

(4) Any ship, equipment or article forfeited under this section may be sold or otherwise dealt with as the Minister thinks fit.

(5) A reference in this section to an article involved in the commission of an offence includes a reference to any historic shipwreck, or part of a historic shipwreck or any historic relic, to which the offence relates.

(6) In this section, "ship" includes a hovercraft and any similar craft.

### **Prosecution of offences**

**25.** (1) Subject to subsection (2), proceedings for an offence against this Act shall be disposed of summarily.

(2) An offence against this Act that is punishable by imprisonment is a minor indictable offence and proceedings in respect of such an offence shall be disposed of accordingly.

### **Certificate by Minister to be evidence**

**26.** (1) In any proceedings for an offence against this Act, a certificate by the Minister stating that a place specified in the certificate is a place—

(a) in territorial waters of the State;

or

(b) in a specified protected zone,

is proof, in the absence of proof to the contrary, of the matters stated in the certificate.

(2) An apparently genuine document purporting to be a certificate of the Minister under this section shall, in the absence of proof that it is not such a certificate, be accepted as such in any proceedings for an offence against this Act.

### **Delegation**

**27.** (1) The Minister may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate to a person any of his powers under this Act.

(2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Minister.

(3) A delegation under this section does not prevent the exercise of a power by the Minister.

### **Notices**

**28.** (1) Without prejudice to any other method of service permitted by law, a notice to a person by the Minister under this Act may be served on the person by being sent by post to the person at the address of the person last known by the Minister.

(2) A notice to the Minister under this Act may be given as prescribed.

16.

(3) A notice by the Minister that has been published in the *Gazette* in pursuance of this Act may be amended or revoked by the Minister by a further notice published in the *Gazette*.

**Regulations**

**29.** The Governor may make such regulations as are contemplated by this Act, or as are necessary or expedient for the purposes of this Act.

**APPENDIX**

Legislative History

Section 3(1):	definition of "protected zone" substituted by 81, 1983, s. 2(a) definition of "sea" repealed by 81, 1983, s. 2(b)
Section 3(2):	amended by 81, 1983, s. 2(c)
Section 3(3):	amended by 81, 1983, s. 2(d)
Section 7(1):	amended by 81, 1983, s. 3(a)
Section 7(2):	amended by 81, 1983, s. 3(b)
Section 13(2):	amended by 81, 1983, s. 4