

South Australia

Historic Shipwrecks (Miscellaneous) Amendment Act 2017

An Act to amend the *Historic Shipwrecks Act 1981*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Historic Shipwrecks (Miscellaneous) Amendment Act 2017*.

2—Commencement

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

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Historic Shipwrecks Act 1981*

4—Amendment of section 3—Interpretation

- (1) Section 3(1), definitions of *historic relic* and *historic shipwreck*—delete the definitions and substitute:

historic relic—see section 4A(2);

historic shipwreck—section 4A(1);

- (2) Section 3(1)—after the definition of *territorial waters of the State* insert:

vessel has the same meaning as in the *Harbors and Navigation Act 1993*.

5—Substitution of section 4A

Section 4A—delete section 4A and substitute:

4A—Certain shipwrecks and shipwreck relics are historic

- (1) Subject to this section, the remains of a ship are a historic shipwreck for the purposes of this Act if—
- (a) in the case of remains situated in territorial waters of the State—
 - (i) the remains have been situated in such waters for 75 years or more; or
 - (ii) a declaration under section 5 or 6 is in force in relation to the remains; or
 - (b) in the case of remains that have been removed from territorial waters of the State (whether before or after the commencement of this Act)—
 - (i) the 75th anniversary of the date on which the remains first came to rest on the seabed of such waters has passed; or

- (ii) a declaration under section 5 or 6 is in force in relation to the remains.
- (2) Subject to this section, an article associated with a ship is a historic relic for the purposes of this Act if—
 - (a) in the case of an article situated in territorial waters of the State—
 - (i) the article has been situated in such waters for 75 years or more; or
 - (ii) a declaration under section 5 or 6 is in force in relation to the article; or
 - (b) in the case of an article that has been removed from territorial waters of this State (whether before or after the commencement of this Act)—
 - (i) the 75th anniversary of the date on which the article first came to rest on the seabed of such waters has passed; or
 - (ii) a declaration under section 5 or 6 is in force in relation to the article.
- (3) The Governor may, by proclamation—
 - (a) declare that subsection (1)(a)(i) or (1)(b)(i) does not apply to the remains, or part of the remains, of a ship or class of ships; or
 - (b) declare that subsection (2)(a)(i) or (2)(b)(i) does not apply to an article or class of articles.

6—Amendment of section 5—Declaration that shipwrecks and relics are historic

Section 5—after subsection (3) insert:

- (4) This section does not apply to or in relation to—
 - (a) the remains of a ship that are a historic shipwreck by virtue of section 4A(1)(a)(i) or 4A(1)(b)(i); or
 - (b) an article that is a historic relic by virtue of section 4A(2)(a)(i) or 4A(2)(b)(i).

7—Amendment of section 6—Provisional declaration that shipwrecks and relics are historic

Section 6—after subsection (5) insert:

- (6) This section does not apply to or in relation to—
 - (a) the remains of a ship that are a historic shipwreck by virtue of section 4A(1)(a)(i) or 4A(1)(b)(i); or
 - (b) an article that is a historic relic by virtue of section 4A(2)(a)(i) or 4A(2)(b)(i).

8—Amendment of section 7—Declaration of protected zones

Section 7(3)—delete subsection (3) and substitute:

- (3) Subject to subsection (4), a notice under this section ceases to have force if the protected zone declared by the notice relates to the remains of a ship, or an article associated with a ship, that is the subject of a notice under section 5 or 6 that has been revoked or has otherwise ceased to be in force.
- (4) A notice under this section remains in force despite subsection (3) if—
 - (a) the notice relates to an area within which the remains of a ship are situated and the remains are a historic shipwreck by virtue of section 4A(1)(a)(i); or
 - (b) the notice relates to an area within which an article associated with a ship is situated and the article is a historic relic by virtue of section 4A(2)(a)(i).
- (5) Nothing in subsection (3) prevents the publication in the Gazette of a further notice under this section in relation to the remains of a ship, or in relation to an article associated with a ship, 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.

9—Amendment of section 9—Notice of location of historic shipwrecks and relics

- (1) Section 9(1), penalty provision—delete "\$1 250" and substitute:
\$10 000
- (2) Section 9(2)—delete "his or her" and substitute:
the person's
- (3) Section 9(2), penalty provision—delete "\$1 250" and substitute:
\$10 000
- (4) Section 9(3)—delete "he or she" and substitute:
the person

10—Amendment of section 10—Power of Minister to ascertain location of historic shipwrecks and relics

Section 10(2), penalty provision—delete "\$1 250" and substitute:
\$10 000

11—Amendment of section 11—Power of Minister to give directions in relation to custody of historic shipwrecks and relics

Section 11(4), penalty provision—delete "\$2 500" and substitute:
\$10 000

12—Amendment of section 12—Register of Historic Shipwrecks

Section 12(2)—delete subsection (2) and substitute:

- (2) The Minister must cause to be entered in the Register—
 - (a) particulars of all known remains and articles that are historic shipwrecks or historic relics by virtue of section 4A(1)(a)(i), (1)(b)(i), (2)(a)(i) or (2)(b)(i); and
 - (b) particulars of all remains and articles in relation to which declarations of historic shipwrecks or historic relics under section 5 or 6 are in force; and
 - (c) particulars of areas in relation to which declarations of protected zones under section 7 are in force.

13—Amendment of section 13—Prohibition of certain action in relation to historic shipwrecks and relics

Section 13(1), penalty provision—delete "\$5 000 or imprisonment for 5 years" and substitute:

\$20 000 or imprisonment for 4 years

14—Repeal of section 14

Section 14—delete the section

15—Amendment of section 15—Permits for exploration or recovery of shipwrecks and relics

- (1) Section 15(1)—delete "by regulations made for the purposes of section 14" and substitute:

the regulations
- (2) Section 15(3a)(a)(ii)—delete "his or her" and substitute:

the Minister's
- (3) Section 15(3a)(b)(ii)—delete "his or her" and substitute:

the Minister's
- (4) Section 15(5), penalty provision—delete "\$2 500" and substitute:

\$10 000

16—Amendment of section 16—Defences

Section 16—delete "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)" and substitute:

an offence against section 13 or 15(5), or an offence against the regulations,

17—Amendment of section 17—Discovery of shipwrecks and relics to be notified

- (1) Section 17(1), penalty provision—delete "\$1 250" and substitute:
\$10 000
- (2) Section 17(2)—delete "he or she" and substitute:
the person
- (3) Section 17(3), penalty provision—delete "\$1 250" and substitute:
\$10 000

18—Amendment of section 21—Appointment of inspectors

- (1) Section 21(3)—delete "his or her" and substitute:
the person's
- (2) Section 21(3), penalty provision—delete "\$125" and substitute:
\$500

19—Substitution of section 22

Section 22—delete the section and substitute:

22—Powers of inspectors

- (1) An inspector may, as reasonably required for the administration or enforcement of this Act, exercise any of the following powers:
 - (a) at any reasonable time, enter, search and inspect any premises and, if necessary, use reasonable force to break into or open any part of, or anything in or on, the premises;
 - (b) enter and inspect any vehicle, and for that purpose require a vehicle to stop, or to be presented for inspection at a place and time specified by the inspector;
 - (c) board and inspect any vessel and, if necessary—
 - (i) require a person apparently in charge of the vessel to facilitate the boarding; and
 - (ii) use reasonable force to break into or open, or require a person to open, any part of, or anything in or on, the vessel;
 - (d) give directions with respect to the stopping, securing or movement of a vehicle, vessel, equipment or other thing;
 - (e) require a person who the inspector reasonably suspects is committing, is intending to commit, or has committed, an offence against this Act to state the person's full name and usual place of residence and to produce evidence of the person's identity;

- (f) require a person who the inspector reasonably suspects has knowledge of matters in respect of which information is required for the administration or enforcement of this Act to answer questions about those matters;
 - (g) require a person to produce documents, including a written record that reproduces in an understandable form, information stored by computer or other process;
 - (h) examine, copy or take extracts from documents or records so produced or require a person to provide a copy of any such document or record;
 - (i) require a person holding a permit or other authority or required to hold a permit or other authority to produce the permit or other authority for inspection;
 - (j) take photographs, films or video or audio recordings;
 - (k) give directions required in connection with the exercise of a power conferred by any of the paragraphs above or otherwise in connection with the administration or enforcement of this Act.
- (2) An inspector may only exercise the power conferred by subsection (1)(a) in respect of residential premises on the authority of a warrant issued by a magistrate or justice.
- (3) A warrant may not be issued unless the magistrate or justice (as the case may be) is satisfied that the warrant is reasonably required in the circumstances.
- (4) An application for the issue of a warrant—
- (a) may be made either personally or by telephone; and
 - (b) must be made in accordance with any procedures prescribed by the regulations.
- (5) An inspector may in exercising powers under this section be accompanied by such assistants as are reasonably required in the circumstances.
- (6) An inspector may require an occupier of premises, or a person apparently in charge of any vehicle, vessel, equipment or other thing, to give the inspector or a person assisting the inspector such assistance as is reasonably required by the inspector for the effective exercise of the inspector's powers under this section.
- (7) A person must not—
- (a) without reasonable excuse, hinder or obstruct an inspector or other person engaged in the administration or enforcement of this Act; or
 - (b) without reasonable excuse, fail to comply with a requirement or direction of an inspector under this Act; or

- (c) fail to answer a question put by an inspector to the best of the person's knowledge, information or belief; or
- (d) produce a document or record that the person knows is false or misleading in a material particular; or
- (e) use abusive, threatening or insulting language to an inspector, or a person assisting an inspector; or
- (f) falsely represent, by words or conduct, that the person is an inspector.

Maximum penalty: \$10 000.

- (8) It is a reasonable excuse for a person to refuse or fail to answer a question or to produce, or provide a copy of, a document or information as required under this section on the ground that to do so might tend to incriminate the person or make the person liable to a penalty.

20—Amendment of section 23—Arrest without warrant

- (1) Section 23(1)(a)—delete "against regulations made for the purposes of section 14" and substitute:

the regulations

- (2) Section 23(2)(b)—delete "his or her" and substitute:

the inspector's

21—Amendment of section 24—Seizure and forfeiture

- (1) Section 24(1)—delete subsection (1) and substitute:

- (1) If an inspector has reason to suspect that any vehicle, vessel, equipment or other thing has been used in, is otherwise involved in, or affords evidence of, the commission of an offence against this Act, the inspector may seize and retain the vehicle, vessel, equipment or other thing—

- (a) until the expiry of a period of 60 days after the seizure; or
- (b) if a prosecution for an offence against this Act is commenced and the vehicle, vessel, equipment or other thing may have been used in, been otherwise involved in, or afford evidence of, the commission of the alleged offence—until the prosecution is terminated.

- (2) Section 24(2)—delete "ship, equipment or article" and substitute:

vehicle, vessel, equipment or other thing

- (3) Section 24(3)—delete "ship, equipment or article" and substitute:

vehicle, vessel, equipment or other thing

- (4) Section 24(4)—delete "ship, equipment or article" and substitute:

vehicle, vessel, equipment or other thing

- (5) Section 24(5)—delete "an article" and substitute:
a thing

- (6) Section 24(6)—delete subsection (6)

22—Amendment of section 27—Delegation

Section 27(1)—delete subsection (1) and substitute:

- (1) The Minister may delegate to any body or person (including a person for the time being holding or acting in a specified office or position)—
- (a) any of the Minister's duties, functions or powers under this Act; or
 - (b) any duties, functions or powers that are, under any other Act or statutory instrument, assigned to the Minister for the time being administering this Act.

23—Substitution of section 29

Section 29—delete the section and substitute:

29—Regulations

- (1) The Governor may make such regulations as are contemplated by, or are necessary or expedient for the purposes of, this Act.
- (2) Without limiting the generality of subsection (1), the regulations may—
- (a) prohibit or restrict any of the following:
 - (i) the bringing into a protected zone of—
 - (A) equipment constructed or adapted for the purpose of diving, salvage or recovery operations; or
 - (B) 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 such equipment, explosives, instruments or tools;
 - (iii) causing a vessel carrying such equipment, explosives, instruments or tools to enter, or remain within, a protected zone;
 - (iv) trawling, diving or any other underwater activity within a protected zone;
 - (v) the mooring or use of a vessel within a protected zone; and

- (b) prohibit the doing of an act referred to in paragraph (a) except in accordance with a permit; and
 - (c) prescribe fees for the issue of a permit under this Act; and
 - (d) prescribe penalties, not exceeding \$10 000, for offences against the regulations; and
 - (e) fix expiation fees, not exceeding \$750, for alleged offences against the regulations; and
 - (f) empower inspectors to give expiation notices for alleged offences against the regulations.
- (3) The regulations may—
- (a) be of general or limited application; and
 - (b) make different provision according to the persons, things or circumstances to which they are expressed to apply; and
 - (c) provide that any matter or thing is to be determined, dispensed with, regulated or prohibited according to the discretion of the Minister; and
 - (d) include evidentiary provisions to facilitate proof of breaches of the regulations for the purposes of proceedings for offences.