

MARITIME ARCHAEOLOGY.

No. 66 of 1973.

AN ACT to make provision for the preservation on behalf of the community of the remains of ships lost before the year nineteen hundred, and of relics associated therewith, and for other purposes incidental thereto.

[Assented to 28th November, 1973.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the *Maritime Archaeology Act, 1973*. Short title.

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

Interpreta-
tion.

3. In this Act unless the contrary intention appears—

“Board” means The Western Australian Museum Board constituted under the Museum Act, 1959-1964;

“Director” means the person appointed Director of the Museum under the Museum Act, 1969;

“historic ship” means any ship that before the year nineteen hundred was lost, wrecked or abandoned, or was stranded, on or off the coast of Western Australia;

“Museum” means the body corporate constituted under the Museum Act, 1969, and known as “The Western Australian Museum”;

“protected zone” means an area declared to be a protected zone under section 9;

“relic” means any thing of historic interest that appears to have formed part of, or to have been carried by or derived from or associated with any historic ship, or to have been constructed or used by any person associated with any such ship, and any thing to which the provisions of subsection (3) of section 6 apply;

“section” means section of this Act;

“ship” includes the remains of a ship, or any part of a ship;

“site” means a maritime archaeological site;

“Trustees” means the Trustees of the Museum appointed pursuant to the Museum Act, 1969, and includes any person lawfully exercising the powers or performing the duties of the Trustees.

4. (1) For the purposes of this Act—

Maritime
archaeo-
logical
sites.

- (a) any area in which the remains of a ship, which in the opinion of the Director may have been a historic ship, are known to be located;
- (b) any area in which any relic is known to be located, or where in the opinion of the Director unrecovered relics associated with a ship which may have been a historic ship are likely to be located; and
- (c) any structure, campsite, fortification or other location of historic interest that, in the opinion of the Director, is associated with, and was occupied or used by, persons presumed to have been in a historic ship,

shall be a maritime archaeological site.

(2) A maritime archaeological site may be situated below low water mark, on or between the tide marks, or on land, or partly in one place and partly in another.

5. (1) Where the Director is of the opinion that any site is not of national or local historical interest or of scientific, archaeological, educational or other special national or local interest, he shall advise the Trustees accordingly and the Trustees may recommend to the Minister that the provisions of this Act should no longer apply to that site.

Act may not
apply to
specified
sites or
objects.

(2) If the Minister approves of a recommendation made under subsection (1) of this section, he may, by notice in the *Gazette*, declare that this Act no longer applies to that site.

(3) Where the Minister declares that this Act no longer applies to any maritime archaeological site the provisions of this Act shall no longer apply to

any object taken, derived or recovered from, or associated with that site or the ship the remains of which were comprised in that site.

Vesting.

6. (1) The property in and right to possession of all historic ships and maritime archaeological sites is vested in the Museum on behalf of the Crown.

(2) Subject to section 21, and unless the object in question—

(a) is an object taken or recovered from a ship mentioned in the First Schedule to this Act in relation to which due notice was given to the Director under the provisions of section 20C of the Museum Act, 1959-1964, or of section 42 of the Museum Act, 1969, and in respect of the disposal of which the written permission of the Trustees has been given; or

(b) is an object taken or recovered before the eighteenth day of December, nineteen hundred and sixty-four from a ship mentioned in the Second Schedule to this Act,

and was immediately prior to the coming into operation of this Act in the lawful possession of a person, the property in and right to possession of all relics derived from or associated with a historic ship is vested in the Museum on behalf of the Crown.

(3) Subject to section 21, the property in and right to possession of any object which, in the opinion of the Director, was abandoned in the State before the year nineteen hundred and derives from or was associated with any ship, whether or not a historic ship within the meaning of this Act, and which was not, immediately prior to the coming into operation of this Act, in the lawful possession of a person, is vested in the Museum on behalf of the Crown.

(4) Where the Trustees are satisfied that relics were recovered from a historic ship before the eighteenth day of December, Nineteen hundred and sixty-four, and particulars of that historic ship do not appear in the Second Schedule to this Act, the Governor, on the recommendation of the Trustees, may by Order in Council, notice of which shall be published in the *Gazette*, add the particulars of that historic ship to the Second Schedule and thereupon that schedule as thereby amended shall be deemed to have been so enacted in this Act.

7. (1) Compensation is not payable to any person by reason that the property in and the right to possession of any site, relic, or thing is vested in the Museum on behalf of the Crown by the operation of this Act.

Compensation and prior vesting.

(2) It is hereby declared that the property in and the right to possession of any ship or relic by operation of this Act vested in the Museum on behalf of the Crown shall be taken to have been so vested for all purposes at all material times—

- (a) in the Board, in relation to the period from the date of the coming into operation of the Museum Act Amendment Act, 1964, to the date of the coming into operation of section 42 of the Museum Act, 1969; and
- (b) in the Museum, in relation to the period from the date of the coming into operation of section 42 of the Museum Act, 1969, to the date of the coming into operation of this Act.

8. (1) A person who—

Offences.

- (a) without the consent of the Trustees, in any way alters, removes, destroys, damages, or in any way deals with, or assumes the possession, custody or control of, any maritime archaeological site, ship, relic or thing vested in the Museum on behalf of the Crown pursuant to this Act; or

- (b) having the consent of the Trustees to do any of the things mentioned in paragraph (a) of this subsection, is in breach of any condition to which the giving of the consent was subject; or
- (c) impedes or hinders, or endeavours in any way to impede or hinder, any member of the staff or employee of the Museum or any person acting with the authority of the Trustees who is inspecting, recovering or otherwise dealing with any such site, ship, relic, or thing,

commits an offence.

Penalty: Two thousand dollars or imprisonment for twelve months or both the fine and imprisonment.

(2) In any proceedings for an offence against subsection (1) of this section the fact that no notice in writing to the Director in relation to that object has been given under the provisions of—

(a) section 20C of the Museum Act, 1959-1964;
or

(b) section 42 of the Museum Act, 1969,

and that the Trustees' authority in writing permitting the object to be sold, destroyed or otherwise disposed of has not been given is deemed to be proved in the absence of proof to the contrary.

Protected
zones.

9. (1) For the purpose of preventing the plunder, damage or disturbance of maritime archaeological sites, and of the ships, relics or things vested in the Museum on behalf of the Crown, the Governor may, by an instrument published in the *Gazette*, declare that an area is a maritime archaeological site and that a specified area surrounding that site is a protected zone, and that zone may be declared to include the waters lying above and the land or the bed of the sea below it.

(2) A declaration made under subsection (1) of this section shall be laid before each House of Parliament within the six sitting days of such House next following the date of publication and the provisions of section thirty-six of the Interpretation Act, 1918, shall thereupon apply to that declaration as if it had been a regulation so laid.

(3) Where the site is or extends below low water mark the boundaries of that site shall be specified and the boundaries of the protected zone below low water mark in relation to that site shall not extend beyond five hundred metres from the perimeter of that site.

(4) The declaration of a protected zone shall specify the boundaries of that zone in sufficient detail to enable them to be established but it shall not be necessary that the boundaries are surveyed or demarcated, and notwithstanding that the boundaries are not demarcated a person may be convicted of an offence against this Act in relation to a protected zone where the court is satisfied that the location of that zone could have been established by a reasonable person by reference to land marks, leading marks, a buoy or other position marker specified in the declaration, but it shall be a defence to show that the location could not have been so established.

(5) The Governor may make regulations prohibiting, or imposing conditions or restrictions upon—

(a) the bringing into, or the use within, a protected zone of equipment constructed or adapted for any purpose of diving, salvage or recovery operations, or any explosives, instruments or tools likely adversely to affect a site, and the entry into, or the remaining within, a protected zone of any vessel carrying any such equipment or other such thing;

(b) diving or other underwater activity; and

- (c) the mooring of vessels, or the use of those waters by vessels otherwise than for the purpose of innocent passage, recreation, or commercial fishing of a kind not likely adversely to affect a site,

in relation to protected zones generally or in relation to any zone specified in the regulations.

(6) A person who contravenes any provision of a regulation made pursuant to subsection (5) of this section commits an offence against this Act, and where a vessel enters or remains within a protected zone in contravention of any such regulation the person in command or in charge of the vessel and, where he can be shown to have caused or permitted the contravention, the owner or charterer of the vessel are each guilty of an offence against this Act.

Penalty: One thousand dollars or imprisonment for six months or both the fine and imprisonment.

Evidence.

10. (1) At the hearing of any proceedings with respect to any area or thing to which this Act applies the production of a certificate purporting to be signed by the Director, or by a member of the staff of the Museum to whom the power of the Director has been delegated by notice in the *Gazette* either for the general purposes of this Act or in relation to a particular matter, that he is satisfied—

- (a) that a locality or thing is of historic interest;
- (b) that an area constitutes a maritime archaeological site;
- (c) that a ship was, or appears likely to have been, in the waters adjacent to the coast of Western Australia before the year nineteen hundred; or

- (d) that a relic or thing appears to have been associated with a ship, or to have been abandoned, constructed or used by persons associated with a ship therein specified,

is sufficient evidence of the matters relevant to those proceedings stated in the certificate, without proof of the signature of the person appearing to have signed the certificate or that he is the Director or a person so authorized by the Director, if—

- (e) notice of intention to adduce evidence by certificate is given not less than three days before the day of the trial or hearing, and that notice is served and the service proved in the same manner as notices to admit and produce may be served and proved in civil proceedings;
- (f) objection is not taken before or at the trial or hearing; and
- (g) the Director, and any person purporting to have signed the certificate as a delegate under the authority of the Director, have not been required to attend to give evidence in person,

unless the court otherwise orders, or evidence to the contrary is adduced.

(2) In any proceedings under this Act the onus of proof that the provisions of this Act do not apply to any ship, relic or other thing lies upon the defendant.

(3) Where in a complaint of an offence against this Act there is an averment that an act or omission occurred within a protected zone, courts and persons acting judicially shall, on the act or omission being proved, presume in absence of proof to the contrary that it occurred within the protected zone as averred.

Seizure.

11. (1) When, on the arrest of a person on a charge of an offence under section 8 or section 9,—

- (a) the property in respect of which the offence is alleged to be committed; or
- (b) any vessel, vehicle, equipment, or other thing alleged to have been used in the commission of the offence,

is found in his possession or under his control the person arresting him may seize such property or thing and take the same forthwith before a Justice to be dealt with according to law.

(2) Where any property or thing is brought before a Justice under the provisions of this section he shall dispose of it as though it had been a thing seized or taken under the provisions of The Criminal Code.

Forfeiture.

12. (1) A court convicting a person of an offence against section 8 or section 9 may, in addition to imposing a penalty, order the forfeiture to the Crown of any vessel, vehicle, or other specified equipment or thing, used in the commission of the offence, and any order so made has effect according to its tenor.

(2) The court may, before making an order under this section, require notice to be given to, and hear, such persons as the court thinks fit.

(3) Goods in respect of which an order is made under this section shall be dealt with as the Attorney General directs and, pending his direction, may be detained in such custody as the court directs.

Court may order payment of value.

13. A court convicting a person of an offence against this Act may, in addition to imposing a penalty, order the person to pay to the Trustees the full amount of the antiquarian value of the property damaged, mutilated, destroyed or removed, as the case may be, and the amount so ordered to be paid may be recovered as if it were part of the penalty

imposed, notwithstanding that the total of the penalty and that amount exceeds the maximum penalty that may be imposed.

14. The Trustees may offer and pay a reward to any person who gives information to them or any member of the staff of the Museum of the commission of an offence against this Act that leads to the conviction of a person of the offence.

Reward for information as to offences.

15. In any complaint preferred by the Trustees against a person under this Act, and in any proceedings instituted in relation to any property vested in the Museum or under the care and control of the Trustees, it is sufficient to state generally that the property in respect of which the proceedings are instituted is the property of the Museum.

Proceedings by Trustees.

16. (1) The provisions of any other law relating to the limitation of actions notwithstanding, in any proceedings for an offence against this Act a complaint may be made at any time within a period of twelve months from the time when the matter of complaint arose, but, unless the Justice before whom the complaint is made on being satisfied on oath that having regard to the circumstances of the case it was not practicable to make the complaint at an earlier date, gives or renews a certificate to that effect, no complaint shall be made after the expiration of that period.

Extension of time for prosecutions.

(2) Where a certificate is given or renewed in accordance with the provisions of subsection (1) of this section, that certificate authorizes the making of a complaint within a period of one month after the date of that certificate.

17. (1) A person who finds a ship that was, or appears likely to have been, lost before the year nineteen hundred and fails to give notice of the finding to the Director in writing as soon as practicable after the finding commits an offence.

New finds.

Penalty: Five hundred dollars.

(2) A person who finds, takes or recovers any relic and fails to give notice that he has done so to the Director in writing as soon as practicable thereafter commits an offence.

Penalty: One hundred dollars.

(3) It is a defence to a prosecution for an offence under this section to show that the accused knew, or had reasonable cause to believe, that due notice had been given to the Director by some other person and had been acknowledged by the Director.

Rewards as
to ships
and relics
found.

18. (1) Subject to the approval of the Minister and to the provisions of section 20, the Trustees have power to reward the person who first notifies the Director of the position of a ship that was, or appears likely to have been, lost before the year nineteen hundred, or of any relic, the position of which was not previously known to the Trustees.

(2) A person wishing to make a claim for a reward payable under subsection (1) of this section should, where practicable, mark the position by leaving there a buoy or other identifiable thing that may be recovered by the Trustees, in order to verify that the position notified to the Director is the same as that investigated by the Trustees pursuant to that notification, and the Trustees may refuse the claim of any person who does not satisfy them that the position which he claims to have established has been verified.

(3) In order to substantiate a claim as the person reporting the position of a ship or relic for the purposes of this section the notice given to the Director should—

- (a) state the time and date of the finding;
- (b) contain a description of the ship or relic and of any distinguishing features sufficiently detailed to ensure so far as is practicable that it may subsequently be positively identified as being that to which the notice of the finding relates;

- (c) give particulars of any buoy or other thing by which the claimant has marked the position;
- (d) give as accurate a description as is practicable of the position;
- (e) set out the particulars of the finder and the circumstances in which the find was made, including particulars of any other persons present or who rendered assistance.

(4) Where a person is in doubt as to whether any ship that he has found was lost before the year nineteen hundred or that any object is a relic, he may, by notice in writing, refer the question for decision to the Director whose decision is conclusive.

(5) Where a person makes a claim for a reward under this section the Trustees shall, within twelve months thereafter—

- (a) notify him that a reward or an interim payment on account of a reward will be paid; or
- (b) notify him that it has not been possible within that time to evaluate the finding and that the Minister has directed that the Trustees may defer their decision for a further specified period; or
- (c) notify him that his claim is not admitted, or that no reward will be payable.

(6) Where a person is aggrieved by the decision of the Trustees, or where no notification has been received by him within the period or further period specified in or in accordance with subsection (5) of this section he may make application to a Judge in chambers for an order requiring the Trustees to pay him such amount as is just.

(7) Before making any order pursuant to this section the Judge shall afford the Minister and the Trustees an opportunity to be heard as to the information in their possession regarding that ship or relic, the actual or probable costs of recovery and preservation, the market value of the metal content of any relic, the course of conduct of the claimant in relation to the ship or relic, any payment made to the claimant pursuant to subsection (2) of section 20, the steps which should be taken in the interest of maritime archaeology, and the time factors that are envisaged, and may hear and take into consideration any objection or submission made in relation thereto.

(8) Subject to subsection (10) of this section, unless the Minister otherwise directs the aggregate of the moneys paid to any person by way of reward or rewards in relation to any one ship or the relics associated therewith shall not exceed five thousand dollars.

(9) Where a Judge is satisfied that a claimant is entitled to a reward under this section and that no other circumstances make it undesirable he may, subject to subsection (8) of this section, award to the claimant such amount as he thinks just, and on the making of any such order the Trustees shall give effect thereto according to its tenor.

(10) Notwithstanding the limitation referred to in subsection (8) of this section, where the Judge is satisfied that, regard being had to the matters referred to in subsection (7) of this section, the value of the metal content of any relics is such that the limitation should not be imposed the Judge may—

- (a) in relation to those relics, order that the claimant be paid an amount not exceeding one-half of the market value of the metal content of those relics; and

- (b) order that any such payment in respect of metal content shall not be taken into account, or shall be taken into account only to a specified extent, in calculating the amount payable for the purposes of the limitation.

(11) The Judge may make such order in relation to the costs and expenses of and incidental to the matter as he thinks fit.

19. (1) A person who makes a statement that to his knowledge is false or misleading in any material particular in relation to a claim made or notice given pursuant to this Act in respect of the alleged finding of a ship or relic commits an offence.

Offences as
to alleged
finds.

(2) A person who, not being the finder, wilfully moves, removes, defaces, alters or otherwise interferes with a buoy or other evidence of the finding placed or erected at or over a ship or relic pursuant to this Act commits an offence.

Penalty: Two hundred dollars or imprisonment for three months or both the fine and imprisonment.

20. (1) The property in or right to possession of any ship, relic or other thing of historical interest vested in the Museum on behalf of the Crown shall not be disposed of except in accordance with section 21 and a contract or agreement which purports to do so is void.

Trustees'
powers.

(2) Subject to subsection (1) of this section, the Trustees may—

- (a) pay to a person, who at their request delivers to them any relic or thing of historical interest, the expenses properly incurred by him in recovering and obtaining possession of it;

- (b) enter into an agreement for the recovery or partial recovery of any ship, relic, or thing of historical interest and expend such amount in that regard as is properly payable, based on a rate determined by the Trustees prior to the work of recovery being commenced;
- (c) take such steps as may be necessary or desirable to recover, preserve or display any ship, relic or thing vested in the Museum; and
- (d) promote or supervise activities aimed at the discovery, recovery, preservation, study and display of ships, relics and things to which this Act applies,

and any such payment, agreement or activity may be made subject to such prior conditions or requirements as the Trustees think fit.

Power of disposal.

21. When the Trustees are satisfied that any relic has been preserved and has been examined and recorded they may make a recommendation to the Governor that the relic should be disposed of to—

- (a) the Commonwealth, or any State or Territory of the Commonwealth, the body known as The National Trust of Australia (W.A.), or the body known as the Royal Western Australian Historical Society Incorporated;
- (b) a person or body having historic associations with that relic; or
- (c) the finder, or a person who recovered or assisted in the recovery of, the relic,

and if the Governor so directs the Trustees shall give effect to the recommendation.

22. (1) Where a person has in his custody or under his control an object in relation to which a notice was given by the Director, in accordance with the provisions of section 20C of the Museum Act, 1959-1964, or of section 42 of the Museum Act, 1969, that the object in the opinion of the Director was likely to be of national or local historical interest or of scientific, archaeological, educational or other special national or local interest, that person shall, if required by the Trustees, produce the object to them at such reasonable time as is specified by them for inspection and possession by them for the purposes of subsection (2) of this section.

Certain
property to
be made
available to
Trustees.

(2) Where, after inspecting any object produced pursuant to subsection (1) of this section, the Director is of the opinion that it is of national or local historical interest or of scientific, archaeological, educational or other special national or local interest, the Trustees may continue in possession of the object for a period of thirty days or for such longer period as the person producing it and the Trustees may agree upon, for the purpose of photographing, copying, or otherwise obtaining a record of, the object and investigating the extent of any such interest that the object may have.

(3) At the expiration of the period mentioned in subsection (2) of this section, the Trustees shall, unless they and the person producing it otherwise agree, return the object to him.

23. The Governor may make such regulations, whether general or to meet a particular case, as are in his opinion required or permitted by this Act for ensuring that the maritime archaeological sites and the ships, relics and things to which this Act applies, and the immediate environment necessary for their continued preservation, are protected from damage, disturbance or adverse influence.

Regulations.

S.6.

FIRST SCHEDULE.

| Name of Ship | Year of loss. | Approximate location. |
|------------------------|---------------|--|
| Known as the— | | |
| "Tryal" | 1622 | Tryal Rocks, Monte Bello Islands. |
| "Batavia" .. | 1629 | Beacon Island, Wallabi Group, Houtmans Abrolhos. |
| "Vergulde Draeck" | 1656 | Ledge Point. |
| "Zuytdorp" | 1712 | Forty miles north of the mouth of the Murchison River. |
| "Zeewyk" | 1727 | Gun Island, Pelsart Group, Houtmans Abrolhos. |

S.6.

SECOND SCHEDULE.

Other ships from which relics are believed to have been recovered prior to 18th December, 1964.

| Name of Ship | Year of loss. | Approximate location |
|---|---------------|--|
| Known as the— | | |
| "Elizabeth" | 1839 | South of Cottesloe Beach. |
| "Lancier" | 1839 | Stragglers Rocks. |
| "Cervantes" | 1844 | Thirsty Point. |
| "Eglinton" | 1852 | Eglinton Rocks. |
| "Zedora" (formerly believed to be Lancier) | 1875 | South of Hügel Passage. |
| "Georgette" | 1876 | South of Margaret River. |
| "Lady Elizabeth" | 1878 | North of Dyer's Island. |
| "James Service" .. | 1878 | Murray Reef. |
| "Ben Ledi" | 1879 | Pelsart Island. |
| "Macedon" | 1883 | Transit Reef, Rottnest. |
| "Mira Flores" | 1886 | Narrowneck, Rottnest. |
| "Janet" | 1887 | Transit Reef, Rottnest. |
| "Denton Holme" .. | 1890 | Transit Reef, Rottnest. |
| "Raven" | 1891 | South of Dyer's Island. |
| "Ulidia" | 1893 | North of Stragglers Rocks. |
| "Omeo" | 1894 | Owen Anchorage. |
| "Sepia" | 1898 | Challenger Passage near Carnac Island. |
| "City of York" | 1899 | City of York Bay, Rottnest. |
| "Carlisle Castle" .. | 1899 | Coventry Reef. |
| "Dato" | 1900 | Careening Bay, Garden Island. |
| Unidentified | — | Boxer Island. |