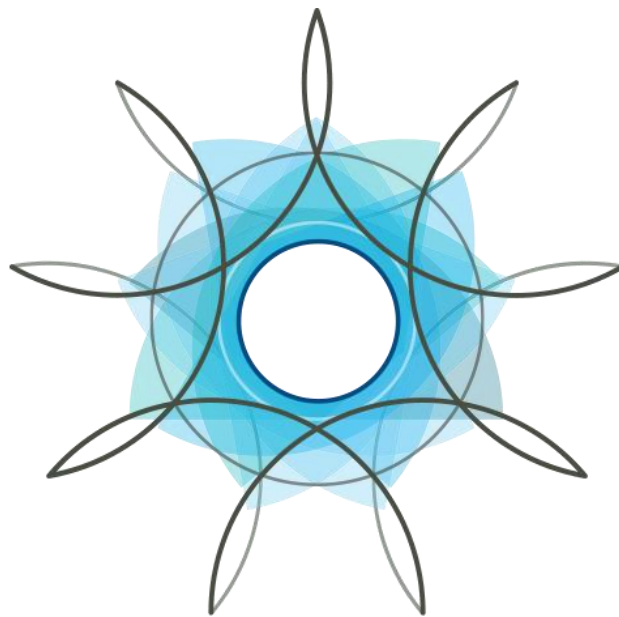


# Underwater Cultural Heritage Compliance Strategy

Department of Agriculture Water and the Environment.



AUSTRALIAN  
UNDERWATER CULTURAL HERITAGE  
PROGRAM

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# Introduction

Individual shipwrecks and other underwater cultural heritage sites are each unique and their cultural values cannot be recovered once they are damaged or destroyed. This valuable and irreplaceable cultural resource belongs to all Australians and is protected for their current enjoyment and education as well as providing a cultural inheritance to future generations.

The *Underwater Cultural Heritage Act 2018* (UCH Act) protects the integrity of Australia's underwater cultural heritage sites in-situ and individual artefacts associated with those sites. This includes our unique historic shipwrecks, sunken aircraft and military vessels and associated human remains, both in Australian waters and in waters outside Australian jurisdiction.

The protection of underwater cultural heritage sites includes the natural environment that immediately surrounds them and the archaeological context, such as the positions of artefacts located within the site. This is why the UCH Act protects underwater cultural heritage sites against all direct or indirect adverse impacts, which includes unpermitted artefact recovery.

The UCH Act came into effect on 1 July 2019 and its predecessor, the *Historic Shipwrecks Act 1976* (the HS Act) was repealed. The UCH Act protects over 8000 maritime sites and over 500,000 artefacts, many of which are in public possession and can be traded lawfully. The scope and modernisation of the UCH Act aligns with international best practice and the requirements of the UNESCO 2001 *Convention on the Protection of the Underwater Cultural Heritage* (the UCH Convention).

This Compliance Strategy sets out the key elements of the Department of Agriculture, Water and the Environment's (the department) approach to achieving compliance objectives under the UCH Act. Further detail is provided in the operational guidelines which have been developed to inform the day-to-day operation of the Australian Underwater Cultural Heritage Program (the AUCH Program).

## 1.1 Why are these sites at risk of non-compliance?

Australia's approximately 8000 protected underwater cultural heritage sites are dispersed around our 25,760 km coastline, from near the shore to 200 nautical miles out from the coastline. Most sites are in remote areas and this presents significant challenges for the delivery of effective compliance activities. Of the total resource, approximately 5000 sites have shared heritage values with other countries and this association is reflected in Australia's Treaties, agreements, exchanges of letters or Memoranda of Understanding with those countries.

Underwater cultural heritage sites, particularly shipwrecks, are made up of many thousands of small associated artefacts from the cargo, the possessions of crew and passengers. These artefacts, when looted, become collectable and or tradable commodities, individually worth from tens to hundreds of thousands of dollars per item. Most shipwreck sites are also the final resting place for people. Our management response and international responsibilities vary based on the shared heritage and cultural values associated with human remains. Many of the artefacts removed from sites prior to their declaration as protected and which were subsequently notified to the Minister, have been permitted to remain in the possession, custody or control of private

individuals or institutions. The movements and custodianship of these notified artefacts is monitored and controlled under the UCH Act so that the artefacts are preserved.

Operating on the water and protecting underwater cultural heritage has own complexities and requires a bespoke response. The remote and disbursed locations and underwater environment, where protected sites and objects are located, increases the chances of a breach not being detected or evidence being lost due to the time between a breach occurring and it being detected before the investigation commences. The risk of non-compliance is further increased by the ability of people engaged in non-compliant activities to influence others to join in non-compliant activity if the appropriate enforcement consequences are not applied in a timely manner. Additionally, the regulated community is emboldened by a lack of consistency and rigour in monitoring on the water and on shore. The lack of compliance monitoring enables illegal activities to go undetected. Delays in compliance responses enable the non-compliant activities to continue even after being identified.

As such, the method of protecting UCH sites from the risk of non-compliance is necessarily bespoke and must include significant on-water compliance monitoring, with our State and Northern Territory co-regulators, and face-to-face engagement with the regulated community, in addition to online messaging and dissemination of information.

## **1.2 What does non-compliance look like?**

Some examples of activities that are in breach of the UCH Act include:

- Damage, disturbance and looting of underwater cultural heritage sites;
- un-authorized entry or activities in protected zones;
- breaches of permit conditions;
- illegal possession of underwater cultural heritage artefacts;
- export or attempted export of underwater cultural heritage;
- transfer or sale of underwater cultural heritage artefacts without a permit; and
- advertising underwater cultural heritage artefacts for sale without a permit.

## **1.3 Compliance objectives**

The department's objectives for compliance in relation to the UCH Act include:

- Australia's underwater cultural heritage is identified, protected and conserved in a way that is consistent, efficient and proportionate to risk;
- public awareness, understanding, appreciation and the appropriate use of Australia's underwater cultural heritage is promoted and enhanced to prevent and detect non-compliance; and
- national and international stakeholders have confidence in the protection of Australia's underwater cultural heritage and the cooperative implementation of maritime heritage responsibilities.

# **Compliance approach**

This strategy outlines the department's approach to aspects of regulatory activities under the UCH Act. The department uses this document in conjunction with its overarching Compliance

Policy which outlines the range of tools the department applies to improve compliance with the laws it administers. The department's approach includes helping the public to understand how to comply with their obligations, educating those who want to do the right thing, and an overall approach to deter, detect and respond to non-compliance to ensure ongoing regulatory integrity.

## **1.4 Identifying and assessing compliance risks**

The department identifies and assesses compliance risks to inform the most appropriate responses and calculate where focussed efforts are required. In relation to the UCH Act, there are three separate but related major risks:

- 1) Damage, disturbance and looting of offshore underwater heritage sites.
- 2) Damage, disturbance and looting of inter-tidal and shore-based underwater heritage sites.
- 3) Illicit trade of protected artefacts includes:
  - i) artefacts that have been recovered without permit;
  - ii) possession of un-permitted artefacts not notified to the Minister;
  - iii) artefacts that were advertised for sale without disclosing a permit number;
  - iv) the transfer of possession of an un-notified artefact; and
  - v) the import or export of artefacts without permit.

Factors associated with the risk of disturbance and looting to heritage sites vary across Australia and occur across a wide range of locations. The sources of risks include:

- remoteness or visibility (opportunity to act without surveillance);
- proximity (close to shore, on shore or easily accessed by boat);
- the intrinsic and extrinsic value of the material culture to be looted (precious gems and metals as well as the collectability of the artefacts, with a potential profit from sale);
- depth (located in shallow waters or within depths accessible only by trained divers with specific equipment); and
- a combination of any or all the above.

## **1.5 Education and raising awareness of the regulated community**

The department recognises that engagement, education and outreach are vital to ensuring the regulated community is equipped with the knowledge to meet their obligations and avoid inadvertent non-compliance. This is a preventive approach and is always preferred to any remediation action after non-compliance has already occurred. Non-compliance resulting in destruction to underwater cultural heritage sites and permanent loss of associated artefacts cannot be remedied along with the loss of the archaeological context of artefacts within the site deposit and the associated potential to better understand our history. To support prevention of non-compliance, we:

- develop guidance and guidelines to provide clarity on compliance expectations;
- publish further information resources such as factsheets, booklets, brochures and online resources;

- deliver a proactive and positive on-water compliance message through Inspectors communicating respectfully to the boating and diving public and local communities;
- utilise the Department's and state and territory agencies' websites and social media pages to inform and engage the public;
- collaborate with the Australasian Institute of Maritime Archaeology and other Non Government Organisations to communicate the objectives of the AUCH Program to the public through avocational maritime archaeology training, publications, lectures and conferences;
- invite local communities to participate in documenting and monitoring of protected underwater cultural heritage sites and the surrounding environment; and
- incorporate appropriate feedback from stakeholders to enhance our systems and processes.

Awareness raising also occurs through the Australasian Underwater Cultural Heritage Database (AUCHD) which is a register of known protected underwater cultural heritage. In the AUCHD members of the public can do all statutory processes related to the UCH Act.

## **1.6 Issuing permits with conditions to regulate some activities**

Actions approved under the UCH Act require a permit. All permits are issued with relevant conditions for the proposed activity. All conditions are reviewed by the department's General Counsel Branch. Permitted actions include entering a protected zone; disturbance of a site; possession of protected underwater cultural heritage; transfer of a protected artefact by sale or trade; and import or export of protected underwater cultural heritage.

## **1.7 Monitoring**

The monitoring of protected underwater cultural sites is undertaken through a combination of an informed public (including dive charter tourism operators), observation and reporting by UCH Practitioners, UCH Act Inspectors (Authorised Officers) or other regulatory network partners, and formal surveillance taskings undertaken by Maritime Border Command. The department receives reports from the public and marine businesses about suspicious or non-compliant activity and from divers concerning site disturbance of underwater sites. Maritime Border Command provides real time reports from coast watch aircraft and vessels from the Royal Australian Navy and the Australian Border Force.

Monitoring of online sales of protected underwater cultural heritage artefacts is also undertaken, including working with major e-commerce platforms, such as eBay, on the detection of illegal or stolen protected underwater cultural heritage artefacts. The Department also works with the Australian Border Force concerning the exportation and importation of underwater cultural heritage artefacts that have permits issued under the UCH Act or are being imported or exported illegally.

## **1.8 Enforcement**

The UCH Act provides for a suite of regulatory powers that can be applied appropriately, flexibly and fairly to protect and preserve Australia's underwater cultural heritage. For example, the UCH Act:

- triggers parts of the Regulatory Powers (Standard Provisions) Act 2014 (Regulatory Powers Act) including monitoring and investigation powers and enforcement provisions such as civil penalties, infringement notices, enforceable undertakings and injunctions.
- utilises elements of the Maritime Powers Act 2013 (Maritime Powers Act) through agreement with the Department of Home Affairs to undertake actions in the marine environment such as the pursuit, interdiction, search and seizure of vessels at sea.
- interacts with the Customs Act 1901 (Customs Act) concerning control, monitoring and seizure of underwater cultural heritage artefacts that are subject to the export and importation provisions of the UCH Act.

# Implementation and delivery

## 1.9 Roles and responsibilities:

### 1.9.1 Departmental Officers

The UCH Act is administered from within the Cultural Heritage Section, where the technical expertise to lead the protection of underwater cultural heritage is based. All reports of non-compliance are initially reviewed by suitably qualified departmental officers in the Cultural Heritage Section with knowledge of the UCH Act and the AUCH Program's objectives. For reported breaches of sites, the departmental officers may recommend no further action, administrative action, or further investigation. For reported breaches, the Cultural Heritage Section departmental officers will lead in most compliance matters, including the recovery of the protected artefacts, only referring major or complex breaches (serious non-compliance) to the Environment Compliance Branch.

Serious non-compliance is defined as behaviour, action or omission that results in breach of permit condition, damage, disturbance, removal, lack of notification or unpermitted trade of protected underwater cultural heritage. Serious non-compliance also involves one or more of the following:

- wilful or knowing misconduct;
- damage or loss of protected heritage through negligence;
- repeated actions of non-compliance;
- damage to underwater cultural heritage sites covered by Treaty and or agreement;
- damage to the reputation of the department or the Minister; and
- threatens the objectives of the AUCH Program.

The Cultural Heritage Section will capture all allegations and outcomes of actions taken and provide regular updates to the Environment Compliance Branch to identify trends and relating factors leading to non-compliance. All serious non-compliance matters reported to the department will be discussed with the Environment Compliance Branch to determine the appropriate resourcing, roles in the investigation and any competing priorities.

### 1.9.2 Authorised Officers

Through its long-standing collaboration with the States and Northern Territory, the AUCH Program has access to state-based compliance officers who work daily on the water in their



substantive roles. Once authorised under the UCH Act, the State and Northern Territory officers can deliver activities to support compliance with the UCH Act. This arrangement enables the department's prompt response to reported and suspected breaches and non-compliance. In Commonwealth waters the department works primarily with Parks Australia officers to deliver a similar on water compliance role.

State-based authorised officers in each jurisdiction provide the department with capacity to investigate reported incidents efficiently and economically. The authorised officers providing education and awareness have restricted powers under the UCH Act and provide proactive compliance monitoring, intelligence and reporting around Australia. They deliver regular engagements with divers, fisherman, tourism operators and local communities, and share information regarding the objectives of the AUCH Program, specific site information and the rules in place to protect the underwater cultural heritage. While these officers do not lead investigations, they are able to promptly collect evidence of suspected breaches at a local level and their presence and activity limits opportunity for non-compliance.

The Cultural Heritage Section will work with the Compliance Strategy and Risk Section on augmenting arrangements with other relevant enforcement agencies to enable state-based officers to conduct compliance and enforcement activities in the relevant jurisdictions. The other enforcement agencies include Parks Australia, the Great Barrier Reef Marine Park Authority and Maritime Border Command. These arrangements will enable partner agencies to deliver agreed compliance services from within their areas of operation and expertise, such as aerial surveillance and vessel monitoring, import or export controls and further support the coordination of compliance effort and sharing of information.

## Responding to non-compliance

Reported incidents involving protected underwater cultural heritage are subject to an initial desktop assessment by a suitably qualified departmental officer located in the Cultural Heritage Section. This assessment will consider the incident against an Incident Severity Matrix to determine a rating based on motivation and impact.

The department also uses an intelligence-led risk-based approach that considers the behaviours and motivations of the regulated community. Figure 1 provides an overview of our compliance approach considering the motivations and behaviours of the regulated community. The department prioritises actions aimed at stopping and preventing adverse impacts to protected underwater cultural heritage. Figure 2 is a table of offences and penalties under the UCH Act. The value of a penalty unit is prescribed by the *Crimes Act 1914* and is currently \$222 for offences committed on or after 1 July 2020.

**Figure 1: Non-compliance response continuum**

<b>Motivation</b>	<b>Type of Behaviour</b>	<b>Department's Response</b>
"Committed to doing the right thing"	Voluntary compliance <ul style="list-style-type: none"> <li>• Informed self- assessment.</li> <li>• Management is compliance oriented.</li> </ul>	Help and support <ul style="list-style-type: none"> <li>• Make ongoing compliance easy (e.g., through releasing guidelines).</li> <li>• Use proactive outreach to better understand capabilities to comply.</li> </ul>
"Trying to do the right thing, but not succeeding"	Accidental non-compliance <ul style="list-style-type: none"> <li>• Not yet compliant.</li> <li>• Attempting compliance (e.g. developing internal control systems always to ensure compliance).</li> <li>• Impact is low.</li> <li>• Non-systemic.</li> </ul>	Inform and advise <ul style="list-style-type: none"> <li>• Provide targeted guidance to the regulated community.</li> <li>• Provide feedback on adequacy of systems to ensure compliance.</li> </ul>
"Do not want to comply, but will if made to comply"	Opportunistic non-compliance <ul style="list-style-type: none"> <li>• Resistance to compliance.</li> <li>• Lack of indication of intention to comply (e.g. no indication of systems in place to ensure compliance).</li> <li>• Habitual lapses into non-compliance.</li> </ul>	Correct the behaviour <ul style="list-style-type: none"> <li>• Respond to detected non-compliance according to the severity (e.g. accepting enforceable undertakings and infringement notices).</li> <li>• Publish information on enforcement activities.</li> </ul>
"Decision to be non-compliant"	Intentional non-compliance <ul style="list-style-type: none"> <li>• Deliberate non-compliance.</li> <li>• Criminal intent or fraud.</li> <li>• Other illegal activity.</li> </ul>	Enforce <ul style="list-style-type: none"> <li>• Revoke or suspend permits, initiate investigations, pursue civil action or refer any relevant cases for criminal prosecution.</li> <li>• Seizure of protected underwater cultural heritage.</li> <li>• Publish information on enforcement activities.</li> </ul>

**Figure 2: Table of offences and penalties under the UCH Act.**

<b>UCH Act Section</b>	<b>Criminal offence</b>	<b>Strict liability</b>	<b>Civil penalty</b>
<b>Section 27</b> - Failure to notify Minister of transfer of permit	Imprisonment for 2 years or 120 penalty units, or both.	60 penalty units	120 penalty units
<b>Section 28</b> - Breach of permit condition	Imprisonment for 2 years, or 120 penalty units, or both.	60 penalty units	120 penalty units
<b>Section 29</b> - Prohibited conduct within protected zone without a permit	Imprisonment for 5 years or 300 penalty units, or both.	60 penalty units	300 penalty units
<b>Section 30</b> - Conduct with an adverse impact on protected UCH without a permit	Imprisonment for 5 years or 300 penalty units, or both.	60 penalty units	800 penalty units
<b>Section 31</b> - Possession of protected UCH without a permit	Imprisonment for 5 years or 300 penalty units, or both.	60 penalty units	300 penalty units
<b>Section 32</b> - Supply and offers to supply protected UCH without a permit	Imprisonment for 2 years, or 120 penalty units, or both.	60 penalty units	120 penalty units
<b>Section 33</b> - Advertising to sell UCH without including permit number	Imprisonment for 2 years, or 120 penalty units, or both.	60 penalty units	120 penalty units
<b>Section 34</b> - Importing protected UCH without a permit	Imprisonment for 2 years, or 120 penalty units, or both.	60 penalty units	120 penalty units
<b>Section 35</b> - Exporting UCH without a permit	Imprisonment for 5 years or 300 penalty units, or both.	60 penalty units	300 penalty units
<b>Section 36</b> - Importing UCH of a foreign country without a permit	Imprisonment for 2 years, or 120 penalty units, or both.	60 penalty units	120 penalty units

<b>Section 37</b> - Failing to produce a permit	120 penalty units	60 penalty units	120 penalty units
<b>Section 38</b> - Failure to respond to notice from Minister	120 penalty units	60 penalty units	120 penalty units
<b>Section 39</b> - Failure to comply with Ministerial direction	120 penalty units	60 penalty units	120 penalty units
<b>Section 40</b> - Failure to advise Minister of discovery of UCH	120 penalty units	None	120 penalty units