

Jurisdiction

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In coastal waters. Historic shipwrecks. Protection of. Implementation of Australia/Netherlands Agreement. Historic Shipwrecks Act.

The Historic Shipwrecks Act 1976³³ entered into operation on 15 December 1976. The purpose and main provisions of the Act were outlined by the Attorney-General, Mr Ellicott, in his second reading speech on the related Bill in the House of Representatives on 7 December 1976. He said in part:³⁴

The Bill will provide machinery to protect the large number of historic shipwrecks and relics on the continental shelf of Australia. It also provides controls for the recovery of such wrecks and relics and for their disposition. In particular, the Bill makes provision for the protection of the old Dutch shipwrecks and relics covered by the 1972 Agreement between the Australian and Netherlands Governments.³⁵ Under this Agreement the Commonwealth has accepted responsibilities in relation to the Dutch East India Company vessels that were wrecked on or off the coast of Western Australia. There is at present no specific Commonwealth legislation on historic shipwrecks, although some control is possible under the Navigation Act.³⁶ Western Australia does have legislation, but the validity of this legislation has been contested before the High Court. The decision which may resolve the matter is awaited.³⁷ The Government believes that the Commonwealth has the necessary constitutional powers to legislate in this area and considers that it should introduce appropriate Commonwealth legislation into the Parliament during the current sittings. Should the relevant High Court judgment be handed down in the meantime, the Bill will be reviewed in the light of that judgment . . .

I turn now to the main provisions of the Bill. Under the Bill, the Minister for Administrative Services is authorised to declare as historic shipwrecks or historic articles the remains of ships or items from them that are of historic significance. These then become subject to the protective provisions of the Bill. Under these provisions persons finding or having possession of such items are required to notify the Minister. The Minister is then empowered to give directions as to how the items are to be dealt with, and he may also issue permits for the exploration or recovery of shipwrecks and relics subject to such conditions as are considered appropriate. The area

33. No 190 of 1976 (Cth).

34. HR Deb 1976, vol 102, 3384-5.

35. Aust TS 1972 No 17.

36. 1912 (Cth).

37. *Robinson v The Western Australian Museum* (1977) 16 ALR 623; see also O'Keefe 'Australian protection of historic shipwrecks', (1978) 6 Aust YB IL 119.

surrounding a declared wreck or article may be declared a protected zone and this will permit controls to be applied to any activity that may occur in the area.

Jurisdiction

Application of foreign laws. Production of documents in foreign courts. Prevention of Foreign Proceedings (Prohibition of Certain Evidence) Act 1976.

The Foreign Proceedings (Prohibition of Certain Evidence) Act 1976³⁸ came into operation on 19 November 1976. The purpose and immediate need for the Act were explained by the Attorney-General, Mr Ellicott, in his second reading speech on the related Bill, delivered on 18 November 1976 in the House of Representatives. He said, in part:³⁹

Its purpose is to enable the Government to make orders in situations in which they appear to be needed to ensure that documents in this country are not able to be produced to courts or tribunals in other countries. There are provisions to directly prevent this from being done and there are other provisions to prohibit persons in this country from taking any action which might lead indirectly to that result.

The immediate need for this Bill has risen out of certain legal proceedings that are being taken in the United States of America under the anti-trust legislation of that country. The operation of the Bill, however, is not confined to matters arising out of those proceedings. The United States proceedings relate to arrangements alleged to have been made for the marketing of uranium in 1972. There are, in fact, several proceedings pending in relation to those arrangements. Claims are being made that the United States anti-trust laws have an operation outside the United States to an extent which is beyond what is generally conceded in international law and beyond what other countries are presently prepared to concede in relation to the pending proceedings . . .

In all of these proceedings, claims are being made that the anti-trust and related laws of the United States have an extremely wide operation outside the United States. Our own Trade Practices Act does, of course, apply extra-territorially where relevant conduct is engaged in by bodies corporate incorporated or carrying on business within Australia or by Australian citizens or persons ordinarily resident within Australia. But the claims that are being made for extra-territorial operation of the United States laws go further than this. They go so far as to assert that persons who are not United States nationals or residents or persons carrying on business in the United States are subject to those laws by reason only of some economic effect of their conduct . . .

38. No 121 of 1976 (Cth). For amendments to this Act see Foreign Proceedings (Prohibition of Certain Evidence) Amendment Act 1976 (No 202 of 1976) and the second reading speech on the related Bill by Mr Ellicott in HR Deb 1976, vol 102, 3384.

39. HR Deb 1976, vol 102, 2909-10.

The provisions of the Bill are directed at the protection of documents that are located in this country and with the conduct, in certain circumstances, of persons who are Australian citizens or residents. The legislation will not operate in all circumstances but will depend upon orders being given by the Attorney-General. Clause 4 of the Bill sets out the circumstances in which the Attorney-General may act. In short, the Attorney-General will need to be satisfied that documents are being required by a foreign court or tribunal in breach of the principles of international law or comity or that the making of an order is necessary for the purpose of protecting the national interest. The Bill is not confined to documents or evidence relating to uranium, but the legislation will be available to be used whenever the need for it may arise in other contexts. It will be available also in relation to countries other than the United States. Orders may be made in respect of classes of persons and classes of documents.