

The Maritime Archaeology Act 1973 (WA) Review

Summary of Consultation Results and Key Findings

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Executive Summary

Consultation on proposed amendments to the *Maritime Archaeology Act 1973* (MA Act):

Between 3 April and 31 August 2023, the WA Museum engaged in a public consultation campaign to inform stakeholders of proposed amendments to the MA Act, inviting feedback, responding to queries, and collating input to inform proposed amendments to the MA Act.

Amendments to the MA Act are proposed to strengthen the protection of important Underwater Cultural Heritage (UCH) in Western Australia and meet Australia’s commitment to ratify the UNESCO Convention, as per the 2010 Commonwealth, States and Territories *Australian Underwater Cultural Heritage Intergovernmental Agreement*.

Communication to inform stakeholders included existing WA Museum and Maritime Heritage networks, targeted emails and letters, social and electronic media, regional radio interviews, and a dedicated consultation webpage.

Respondents were provided with options to respond, including:

- written submission (email or post),
- attendance at one of four government or public information sessions, including a webinar,
- completing an online survey, and
- the option to request to meet with the Maritime Archaeology Review Project Team.

Consultation Findings:

All proposed amendments were supported, with most requests for further information centred on clarifying details. Consultation identified the need for continuing discussion with other regulatory agencies to formulate ongoing cooperative relationships to manage compliance and enforcement activities, and align, wherever possible, systems, processes, and registers to avoid duplication and undue process.

Consultation Data:

	Total Number
Participants informed and invited to respond	271*
Participants actively engaged (attended a facilitated session, responded via email or letter, requested and attended a meeting, and attended a committee meeting)	107*
Unique webpage views over the official consultation period (3 April – 19 May)	689

* This is an approximate number due to participants who were not able to be identified. Participants who attended multiple meetings were counted once only.

Background

The *Maritime Archaeology Act 1973* (WA) (MA Act) protects the wrecks and relics of historic ships, defined as those lost prior to 1900, and maritime archaeological sites associated with a historic ship in WA State waters. It protects both underwater cultural heritage (UCH) sites and terrestrial maritime archaeological sites (MAS) associated with historic ships, such as shipwreck survivor camps.

The MA Act has become outdated and has been overtaken by subsequent developments in the protection of UCH nationally, with the *Commonwealth Underwater Cultural Heritage Act 2018* (UCH Act), which replaced the *Historic Shipwrecks Act 1976* (Cth) on 1 July 2019, and also with the 2001 UNESCO *Convention on the Protection of the Underwater Cultural Heritage* (the Convention) to which Australia is a signatory.

The MA Act is currently misaligned with the UCH Act and the Convention. Under the current MA Act, important UCH is at risk, such as sunken aircraft, vehicles and objects, or maritime archaeology sites over 75 years old, as they are not covered by the existing MA Act. Additionally, proposed MA Act updates will remove jurisdiction discrepancies and align with best practice compliance and enforcement practices.

In 2010, the Commonwealth, States and Territories signed the *Australian Underwater Cultural Heritage Intergovernmental Agreement*, with all parties agreeing to amend their legislation to make it compatible with Commonwealth legislation, to allow Australia to proceed towards ratification of the Convention.

In March 2023, the Joint Standing Committees on Treaties recommended that Australia ratify the Convention, which now allows for legislative and administrative amendments to the UCH Act to be progressed to move Australia towards ratification of the Convention.

The Commonwealth is currently in the process of submitting an 'Amendment Bill for an Act' to implement the Convention as an object of the UCH Act and create model legislation to assist the Australian States and Northern Territory in aligning their legislation with the Convention requirements. Once the amended UCH Act comes into force, Western Australia, other States and the Northern Territory will be required to make legislative amendments in 'reasonable time' to ensure compliance with the Convention.

Updating the MA Act will ensure Western Australia meets its commitments to amend legislation in line with Commonwealth legislation and will provide for the protection of important UCH not covered in the current MA Act and that may be excluded by the Commonwealth legislation.

Consultation Objectives

The key objectives of the consultation were to educate and inform government agencies, non-government and community organisations and the public about the proposed changes to the MA Act and to provide various forums for discussion and response. This was to ensure that any issues or impacts that may potentially result from the changes were raised, identified, discussed with stakeholders and interested parties and taken into account.

Consultation Approach

A feedback and public comment process aimed at organisations and individuals with a specific interest in Maritime Archaeology legislation, shipwrecks, underwater cultural heritage, and maritime archaeological sites. A combination of targeted and open approaches was employed to communicate the key proposed changes, inviting feedback to and participation in the consultation targeting:

- government bodies,
- non-governmental entities,
- community organisations focused on maritime heritage, archaeology, tourism, water recreation, heritage preservation, and historical matters,
- scuba, technical, and commercial divers,
- port authorities or agencies,
- local and regional councils,
- Aboriginal and Torres Strait Islander community organisations or councils,
- Federal and State Ministers from relevant constituencies,
- associations focused on historical, heritage, and maritime archaeology volunteering.

The approaches taken to inform interested stakeholders included:

- Leveraging existing WA Museum and Maritime Heritage networks, including the Maritime Archaeology Advisory Committee.
- Employing email, various social media platforms, electronic media, and regional radio interviews by the Media and Communications team.
- Establishing a dedicated consultation webpage on the WA Museum's website. This page contained links to fact sheets, frequently asked questions, relevant legislation and international conventions, an online survey and details of facilitated sessions, including the ability to register.
- Using conventional methods of disseminating targeted and formal letters and fact sheets through email distribution lists.

Respondents were provided with several options to have their say, including:

- by written submission (email or post),
- attendance at one of four government or public information sessions, including a webinar,

- completing an online survey,
- requesting to meet with the Maritime Archaeology Review Project Team (MA Project Team).

Consultation included conducting face-to-face meetings before and after the official consultation period with government agencies, especially those with an interest in the proposed legislative changes due to overlapping regulatory frameworks, jurisdictions and responsibilities.

Many government agencies have provided invaluable information and expertise in regulatory management, compliance, enforcement, and education to inform drafting instructions and advice regarding the operating aspects of managing legislation.

Consultation Period

The original consultation period spanned from Monday 3 April to Friday 19 May 2023. The MA Project Team maintained flexibility on the consultation dates to maximize opportunities for interested parties to participate in the consultation process. There were late submissions, and the team identified additional groups and individuals to reach out to for their comments.

Communication was extended to 35 Aboriginal and Torres Strait Islander interest groups, local government advisory groups, and government regulatory business units.

The consultation period was extended to the end of August 2023 to accommodate additional time for both formal and informal submissions, as well as responses from special interest groups.

Consultation continues with government agencies with whom the WA Museum is seeking cooperation for administering the amended MA Act and address regulatory overlaps or statutes.

Consultation webpage MA Review information and promotion of consultation methods

The consultation webpage was embedded on the WA Museum website and posted on social media platforms, including the Museum's LinkedIn, Facebook and Instagram accounts. The consultation page provided information about the background and history of the MA Act and details about the proposed significant changes through links to:

- fact sheets for government agencies and non-government organisations, community associations and individuals
- relevant legislation and international conventions
- frequently asked questions

The Minister released a media statement on 3 April 2023 to promote the consultation and the review.

See [Appendix II](#) and [III](#) for links to the dedicated webpage.

Face-to-face meetings, government agency and public information sessions

The WA Museum provided updates about the proposed changes through government agency and public information meeting sessions held at:

- WA Maritime Museum, Fremantle – One of the public information sessions was a live-streamed webinar enabling regional or online stakeholders to participate.
- WA Museum Boola Bardip, Perth – Government agency information session, participants attended in-person and online.
- Museum of Geraldton – Public information session and government agency information session.

These sessions were promoted through the webpage and social, print, and electronic media.

Consultation Samples and Methods

Total of respondents invited and method of participation	Number
Letters and fact sheets distributed to government, non-government, community and volunteer organisations and individuals with an interest in maritime archaeology	170
Emails to Aboriginal and Torres Strait Islander organisations	39
Online capturing survey tool – individual responses	7
Online capturing survey tool – government agency responses	3
Online capturing survey tool – non-government agency responses	3
Government agency information sessions (Perth and Geraldton) – responses	9
Public information sessions (Fremantle and Geraldton) including live-stream webinar to all regions – webinar participation or present at the venue	17
Email and written submissions from federal, state, and local government *	13
Email and written submission from non-government agencies	10
Total participants invited or responded	271

* Repeat correspondence counted once only. Separate departments within larger agencies counted separately.

Letters and Fact Sheets

Electronically distributed letters and fact sheets were sent to government agency stakeholders as follows:

1. Commonwealth, state and local government agencies, federal and state ministers
2. The Embassy of the Kingdom of Netherlands
3. Consulate General of the Republic of Indonesia
4. British Consulate General Perth
5. The Honorary French Consul Perth

6. WALGA and Local Government Professionals

Electronically distributed letters and fact sheets were sent to non-government organisations, including archaeology, Aboriginal and Torres Strait Islander native title groups, land councils and committees, agencies, cultural associations, maritime archaeology, heritage, tourism, fishing, recreational, historical, maritime engineering, heritage community, volunteer, and advocacy associations.

Letters and fact sheets sent to:

- 116 government agency stakeholders
- 97 non-government organisations

Web-based Landing Page

A dedicated landing page for the consultation is available via a link from the WA Museum home page under. This page is accessed through the tab 'Get Involved' and is under the heading 'Have your say'. The direct link can be accessed [here](#).

The landing page included a summary of the purpose of the review, links to the online capturing tool, information fact sheets (government and non-government) and associated links about relevant Commonwealth and State legislation. The landing page also provided information about public and government information sessions and further consultation options.

- This webpage received 689 unique views and 1,009 total page views over the official consultation period.

Information Sessions

Public information session and live-stream webinar – WA Maritime Museum – 11 May 2023

The MA Project Team delivered a PowerPoint presentation and live-stream webinar on the significant changes to the MA Act. A question, comment, and discussion session occurred after the presentation. No contentious issues were raised during this interactive forum. The MA Project Team addressed additional inquiries and clarifications submitted by email following the webinar.

- There were 17 participants, including 4 in-person participants and 13 who joined via the webinar.

Government agency information session – Museum of Geraldton – 15 May 2023

The MA Project Team presented a PowerPoint presentation on the significant changes to the MA Act, followed by a forum for questions, comments and discussion. Representatives from the

Batavia Coast Marine Institute (TAFE) and the Department of Primary Industries and Regional Development attended the session.

Proponents questioned the significance of the 75-year rolling date – WA Museum staff responded that this was consistent with the UCH Act and helped protect those wrecks post-1900 that were younger and required protection.

All proponents stated the importance of overlapping protections and inter-agency cooperation with respect to the issuing of permits and management of site disturbance.

Public Information session – Museum of Geraldton – 15 May 2023

Two representatives from the local government (City of Greater Geraldton) attended the session. The discussion and questions revolved around defining high or low underwater marks, fines and penalty units, custodianship of artefacts and communication related to artefact registration. An observation was made about the relatively large collections of artefacts held by some historical and heritage associations.

- 5 in-person participants attended the Geraldton sessions.

Government agency information session – WA Museum Boola Bardip – 18 May 2023

The MA Project Team presented a PowerPoint presentation on the significant changes to the MA Act, followed by a session for questions, comments, and discussion.

Participants from the following government agencies attended:

- Department of Biodiversity, Conservation and Attractions (DBCA)
- Pilbara Ports Authority
- City of Cockburn
- Department of Water Environment and Regulation
- National Indigenous Australians Agency

Questions and discussion included current vesting provisions for MAS on land where there might be development applications or other activities and what amendments in this area could be expected. Participants were informed that the proposed changes would seek to declare reserves or memorial parks. Local government participants emphasised the importance for the WA Museum to work with other heritage agencies in developing regulations that clearly outline the requirements for planning and development applications. DBCA participants noted that the *Conservation and Land Management Act 1984* (CALM Act) did not allow for the protection of non-Indigenous heritage sites.

- 14 participants attended, 8 in-person and an additional 6 online participants.

Presentations to Advisory Committees

The Western Australian Maritime Archaeology Advisory Committee – 1 May 2023

The WA Maritime Archaeology Advisory Committee members were invited to a presentation about the proposed changes as a collective and followed up individually via email and letters. The feedback received expressed support for the proposed changes and provided advice with respect to certain provisions, consultation, and overlaps with other heritage or jurisdictional bodies.

Western Australian Museum Aboriginal Advisory Committee – 18 August 2023

Presentation and information on specific areas or interests in relation to Aboriginal Cultural Heritage was provided to the WA Museum Aboriginal Advisory Committee. One committee member queried whether the public could access the sites after becoming protected under proposed changes to the MA Act.

Consultation via the capturing survey tool

The consultation capturing tool was embedded within the online dedicated MA Act review consultation page with links to the survey. Individuals, some of the government agencies and other organisations responded to the survey.

All respondents supported the updating of the MA Act, including the 75-year rolling date. Support for permits was noted under the proviso that permits do not confer exclusivity of access, such as fish-related activity.

Summary of active stakeholders between April 2023 – August 2023

Engagement Type	Number of participants
Survey capturing tool	11
Letters and emails	14
Participated at Facilitated Sessions (in person and online)	32
Presented to at Committee meeting	18
Attended face to face meetings	32
Total active stakeholders (indicative)	107 *

Additional engagement

Dedicated webpage over the official consultation period	689 unique views and 1009 total page views
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* Some participants may not have been included as attended an on-line meeting with another participant. The total should therefore be taken as indicative.

Consultation Findings

Written Submissions letters and email

Written submissions were received from government agencies, embassies, consuls and non-government organisations. The submissions included requests for briefings, answers to questions and full endorsement and support for the proposed changes.

The responses from individuals, government agencies and local government broadly supported the proposed changes. All the responders agreed that the MA Act required updating and that the proposed 75-year rolling date protections were necessary. Qualifications for this broad support referred to the need for WA Museum to ensure that the proposed changes are adequately promoted, publicised and understood by the public.

The Heritage Council, the Department of Transport and the Commonwealth Government all provided support for an amended Act, with recommendations for integrated and complementary systems and processes with their registers, systems or regulations.

The Department of Primary Industries and Regional Development and the Department of Biodiversity, Conservation and Attractions raised concerns about potential jurisdictional overlap. This overlap refers to situations where the identified maritime heritage sites fall within national park boundaries or other protected areas and where there may be 'fish aggregating devices' in use or where pearling or commercial fishing activity occurs. While broadly supportive of most of the proposed changes, both departments requested future consultation about the sites still commercially in use.

The Department of Transport raised a potential issue with delegating functions to other agencies, which is that they often can't supply the resources to undertake complex and time-consuming investigations. The recommendation was that the WA Museum consider delegation of compliance activities but resource the investigations.

A recurrent area of interest was the matter of the protection of submerged paleo-landscapes that are not covered by the UCH Act and whether the amended MA Act would cover these landscapes.

One respondent raised concerns that persons who possess objects may be punished and recommended that a reward system be included in legislation.

There was one member of the public who did not believe that updating the legislation would do enough to protect important UCH and that any changes should include provisions for rewards and payment for artefacts already in possession of the public and salvage operators.

Meetings with Project Team

A number of meetings were held both in person and via Microsoft Teams.

Consultation with government agencies, where there may be overlapping legislative or regulatory frameworks as an outcome of proposed amendments, sought to identify opportunities for inter-agency working groups, agreements, and a greater understanding of systems and processes to inform legislative and operational changes that the WA Museum may require. There was an emphasis on ensuring the operational systems that manage regulatory processes are aligned and integrated with other government systems already in place. This will ensure that the public or other users can effectively navigate the permit conditions, particularly where there is overlapping jurisdiction.

The WA Museum held meetings with agencies with regulatory responsibilities and authority to gain insight and advice to inform drafting instructions, operational and resource planning and budgeting. These included the State Solicitor's Office, WA Police, the Department of Primary Industries and Regional Development, the Department of Transport, the Department of Planning, Lands and Heritage, the Department of Biodiversity, Conservation and Attractions, the Better Regulation Unit, and the Department of Local Government, Sport and Cultural Industries. The MA Project Team also sought advice from colleagues tasked with managing UCH in the Commonwealth Government and State agencies in Victoria, Queensland, New South Wales, South Australia, and the Northern Territory.

Key recommendations from consultation meetings included:

- Consideration of regulatory officers already 'in the field', the powers they currently have, their workloads, and how the proposed authorisation of powers under the MA Act will align with, overlap, or support the current powers of relevant officers.
- Formalising current informal collaborative working arrangements with other agencies through working groups, memorandums of understanding, or agreements under an amended MA Act to clarify responsibilities and working arrangements.
- That the WA Museum considers appropriate preparation and planning for information relating to training, knowledge, and compliance requirements for the public and for other regulatory bodies who operate in areas with either or both overlapping jurisdictions and who will be authorised with powers under an amended MA Act.
- That the WA Museum develop an education and promotion strategy for the public, government agencies, non-government agencies, and historical and heritage associations about the proposed register of artefacts, particularly as many artefacts are currently privately held.
- Establish through inter-agency cooperation, a process for proponents who are considering planning and development applications. This will be in situations where there are potentially MAS sites with dual vesting, e.g. MA Act with CALM Act or Heritage

Act. Develop procedures that will include steps to identify MAS, disturbance of sites, process permits, and manage the requirements of enforcing regulatory aspects of the Act.

- Ensure that registers of sites and objects are developed to current government standards, using geographic information system (GIS) coordinates, with the ability to link with, overlay, or intersect with those already in place such as PlanWA, LandInfo WA, and Australian Ocean Data Network.

Submissions – Online Survey

The proposed amendments below were posed to all interested stakeholders through the online survey tool, requesting comment on the proposed change.

Proposed Amendment 1

Existing

The existing Maritime Archaeology Act cannot protect underwater cultural heritage, including historic shipwrecks, which occurred later than 1900, and does not align with the Underwater Cultural Heritage Act (2018) (which protects sites and associated materials over 75 years old) or the 2001 United Nations Convention for the protection of underwater cultural heritage (UNESCO Convention) (which protects sites and associated materials over 100 years old) or maritime heritage legislation in other States.

Updated

An updated Maritime Archaeology Act will have blanket provision for a 75-year rolling date to align with the Commonwealth Underwater Cultural Heritage Act and the 2001 UNESCO Convention and other State and Territory jurisdictions for further consistency with the UCH Act, the updated Maritime Archaeology Act will include the possibility to declare maritime archaeological sites historic if ‘younger’ than 75 years old, based on assessment of significance criteria.

Summary of Responses:

All respondents supported the proposed amendments.

Proposed Amendment 2

Please comment on the change below (up to 350 words)

Western Australia has many historic underwater or semi-submerged maritime infrastructure sites that should be properly recognised as important maritime archaeological sites. Under the present legislation these sites cannot be protected unless they can be shown to have an association with an historic ship.

Existing

The existing Maritime Archaeology Act offers inconsistent protection to jetties and maritime infrastructure sites.

Updated

An updated Maritime Archaeology Act will automatically protect archaeological remains of maritime infrastructure that have been abandoned for over 75 years, as well as have provision for a special declaration to make it possible to declare maritime archaeological sites historic if 'younger' than 75 years old, based on an assessment of significance criteria.

Summary of Responses:

All respondents supported the updating of the Act, with the following comments:

- There needs to be clear requirements if there is an emergency or incident on a site where it has been declared of historical significance.
- Avoid duplication for jetties that may be listed under the Heritage Act.

Proposed Amendment 3

Existing

The existing Maritime Archaeology Act does not protect submerged aircraft and other sunken vehicles and objects, and therefore does not align with the Commonwealth Underwater Cultural Heritage Act or the 2001 UNESCO Convention.

Updated

An updated Maritime Archaeology Act will automatically protect sunken aircraft and other sunken vehicles and objects over 75 years old to align with the Commonwealth Underwater Cultural Heritage Act and 2001 UNESCO Convention.

Summary of Responses:

- All the respondents supported this amendment.
- It was noted that a vessel, aircraft or article that receives protection under the amended MA Act could also receive some form of protection under the CALM Act when it is located in a marine reserve.
- It was noted that terrestrial zones that are protected under the CALM Act would receive a second layer of protection with the MA Act, particularly where there is a gap between the low-water mark and high-water mark.
- Respondents supported changing the current vesting land provision in the MA Act to protected zones or management orders.

Proposed Amendment 4

Existing

The existing Maritime Archaeology Act does not protect maritime resource industry sites (e.g. pearling, whaling) with known high archaeological values.

Updated

An updated Maritime Archaeology Act will enable historic maritime resource industry sites older than 75 years old to be protected as maritime archaeological sites, subject to a

declaration being made to the effect based on their heritage significance. When it is applied, the updated Act can protect both the above and below high-water components of a site.

Summary of Responses:

- All the respondents supported the change.
- Objects such as fish aggregating devices that have been deliberately sunk to enhance recreational fishing need to be excluded from protection.
- The MA Act can potentially protect the sites that may also fall under protection of the CALM Act if they are located within a nature or marine reserve area.
- The MA Act does not have jurisdiction over commercial pearling sites.
- There were questions and clarifications around infrastructure that are over 75 years old and whether they would become protected if they are still in use.

Proposed Amendment 5

Please comment on the change below (up to 350 words)

The WA Museum considers that the dollar-based penalties currently contained in the Maritime Archaeology Act are insufficient and obsolete.

Existing

The existing Maritime Archaeology Act penalties are outdated and do not reflect developments in the UCH Act or other States Acts.

Updated

An updated Maritime Archaeology Act enable fines and civil penalties to reflect current infringement penalties using penalty units as occurs with the WA Heritage Act (2018) and facilitates the issuing of infringement notices. This would also prevent the need to amend the Maritime Archaeology Act every time penalties are increased, and the Maritime Archaeology Act would then be consistent with State legislation and practice.

Summary of Responses:

Support for a consistency with between the UCH Act and MA Act and 'to have consistency' was the most common response. Other comments included:

- The current penalties are insufficient.
- Endorse the approach, which will create efficiencies.
- Ensure that there is consistency across other heritage Acts.
- Support of penalty units.

Proposed Amendment 6

Please comment on the change below (up to 350 words)

The Underwater Cultural Heritage Act allows a person to apply to the Minister for a permit authorising them to engage in specified conduct relating to specified protected underwater cultural heritage, a specified protected zone and/or specified foreign underwater cultural heritage.

Existing

The existing Maritime Archaeology Act does not allow for the issuing of permits, with conditions, to disturb sites.

Updated

An updated Maritime Archaeology Act will align with the Underwater Cultural heritage Act and allow for the issuing of permits by the Delegate to disturb maritime archaeological sites, inclusive of underwater cultural heritage, according to approved conditions being met.

Summary of Responses

- There was overall support for issuing permits.
- There was broad support for a permit system, including for development activity, similar to the UCH Act.
- It was recommended that the permit system align and integrate with the Underwater Cultural Heritage Act and other heritage Acts around Australia.
- It was suggested that the permit system does not confer exclusivity of access.
- Permits will assist with site management and conservation.

Proposed Amendment 7

Existing

The existing Maritime Archaeology Act is not compatible with the Commonwealth Underwater Cultural Heritage Act, recent legislation in other State and Territory jurisdictions, or 2001 UNESCO Convention.

Updated

An updated Maritime Archaeology Act will ensure compatibility with the Underwater Cultural Heritage Act, relevant State and Territory legislation, and enable Australian ratification of the 2001 UNESCO Convention.

Summary of Responses

- All respondents expressed support for aligning with applicable legislation and international conventions except for one respondent, who does not support the Commonwealth Act or the 2001 UNESCO Convention.
- Support for compatibility with other jurisdictions is essential and makes sense.
- Support for ratification of the 2001 UNESCO Convention is a great step forward.

Proposed Amendment 8

Please comment on the change below (up to 350 words)

The WA Museum does not desire to automatically assume the property in, and right to possession of, ships and sites through the current Maritime Archaeology Act vesting process. Instead, the WA Museum would like the Minister to have the power to declare that the property in, and right to possession of, specified articles of maritime archaeological sites be

vested in the WA Museum in the right of the Crown.

Existing

The existing Maritime Archaeology Act vests maritime archaeological sites in the WA Museum, which is not compliant with current practice in relation to the creation of interests in State land.

Updated

An updated Maritime Archaeology Act will ensure vesting provisions, in relation to land-based sites, are removed and replaced with options of lodging a memorial or creating a reserve.

Summary of Responses

- Most respondents supported compliance with current practices in relation to the creation of interested parties in state lands.
- It was noted that there is currently, and will potentially continue, an overlap where an area of State Land or waters has been vested under different legislation.
- Agencies that identified overlapping regulatory frameworks around vested land or where there are declared reserves wished to participate in further discussions to identify how cooperation and coordination in these cases could occur.
- If the current or future vested lands are given or delegated to other agencies, it was suggested that the WA Museum has the right to reprimand improper care and for the WA Museum to provide appropriate training on site management.

Proposed Amendment 9

Existing

The existing Maritime Archaeology Act is unclear about the extent of waters (State Coastal, Commonwealth, Australian and inland waters) it applies to.

Updated

An updated Maritime Archaeology Act will align with modern/current definitions of State Coastal, Commonwealth, Australian and inland waters. It will clearly define its scope to the relevant State waters to align with the Commonwealth Underwater Cultural Heritage Act and remove any confusion over jurisdictional discrepancies where there may be a lack of clarity over Commonwealth/ State jurisdiction.

Summary of Responses:

All respondents supported clarification of geographical and jurisdictional boundaries.

Proposed Amendment 10

Existing

The existing Maritime Archaeology Act does not currently require registration of maritime archaeological sites and artefacts from sites that will be protected by the proposed 75 year rolling date, or if younger, by ministerial declaration.

Updated

An updated Maritime Archaeology Act will align with the Underwater Cultural Heritage Act and the 2001 UNESCO Convention through the establishment of a Register of maritime archaeological sites protected by the 75-year rolling date, or if younger, by Ministerial declaration. A revised Maritime Archaeology Act will allow persons who would have been entitled to ownership of, or any interest in, maritime archaeological sites (if not previously declared as vested in the WA Museum) to be allowed to continue to enjoy custodial rights in relation to the artefact. This will be subject to registration of the material during a specified period following the new legislation's introduction, as prescribed by Ministerial regulation. A register with statutory backing would be a transparent database of all things vested under and protected by the Act and would assist the WA Museum and the public in identifying and administering maritime archaeological sites. The register will be an extension of the current Shipwrecks Register. A register of maritime archaeological sites and artefacts would also help clarify the distinction between the scope of coverage of the Maritime Archaeology Act and the Underwater Cultural Heritage Act. Personal contact details will be collected but will not be publicly available and will be secured in a separate, confidential register.

Summary of Responses

- Respondents support a register to overcome misinformation.
- Some concern over sites with private ownership could exclude others from accessing or conduction activity on that site.
- There were concerns about how a register to identify and protect sites would intersect with the management of artefacts and objects.
- There were concerns about how a register would intersect with other government-approved registers.

Additional Comments by Respondents

- Will the MA Act include broader protection of underwater cultural heritage, including submerged landscapes that have Aboriginal cultural heritage significance, moving from a focus on maritime archaeology?
- How will the Museum regulate and enforce new provisions to the MA Act to ensure the public complies with amendments?
- The City of Greater Geraldton is significantly vested in the proposed changes and the means with which these may update the management and future protection of maritime heritage sites, particularly with regard to the Abrolhos Islands.
- For the WA Museum to acknowledge the role of expert volunteers and advocational specialists who assist with management of maritime heritage covered by the MA Act.

Next Steps

Consultation findings have been considered and are informing drafting instructions provided to the State Solicitors Office (SSO) to enable the legislation to support the regulation, enforcement and protection of UCH and MAS in Western Australia.

Consultation will continue with other regulatory and heritage agencies where there is jurisdictional or regulatory overlap. This will include further and ongoing work to define collaborative working practices, identify cross agency operational efficiencies and inform operational processes, community education material, and systems that will be required due to the amended MA Act.

Appendices

Appendix I – Stakeholder Respondent list

The table below contains details of the submissions from organisations and individuals. Some submissions have occurred through ongoing discussion or consultation with the MA Project Team, including at committee or advisory committee meetings.

Organisation Type	Name	Method/s	Key themes of correspondence
Federal Government	Department of Climate Change, Energy, the Environment and Water (DCCEEW)	Email submissions and meetings	<ul style="list-style-type: none">• Gaps in the MA Act and areas that require alignment with the <i>Underwater Cultural Heritage Act 2018</i> (UCH Act) and the 2001 UNESCO Convention.• Amendments to the UCH Act and timing of the amendment bill to the UCH Act and the impact on Western Australia and the MA Act.• Regulatory management and requirements for compliance and enforcement.• Advisory role.• Ongoing correspondence.
State Government	Department of Planning, Lands & Heritage (DPLH)	Email submissions and meetings	<ul style="list-style-type: none">• Areas of jurisdiction overlap – <i>Heritage Act 2018</i> and <i>Aboriginal Cultural Heritage Act 1972</i>.• How to cooperate in replanning developments, training inspectors, permits, process for disturbance of sites.• Collaboration and communication between agencies will be required.
State Government	WA Police	Email submission and meeting	<ul style="list-style-type: none">• Input and advice provided on approach to compliance and enforcement.

State Government	Heritage Council of WA (HCWA)	Written submission, meeting and presentation at a Committee meeting	<ul style="list-style-type: none"> • Supportive of consistency and streamlining between State based maritime legislation to Commonwealth legislation, and the Convention. • Requested further consultation where there could be areas of overlap with the <i>Heritage Act 2018</i> and potential duplication for: <ul style="list-style-type: none"> ○ maritime resource sites ○ jetties ○ permit system ○ penalties • Recommended that the MA site register either or both include and overlay with the State Register.
State Government	Department of Biodiversity, Conservation and Attractions (DBCA)	Email submissions, meetings and attended the facilitated sessions	<ul style="list-style-type: none"> • Broadly supportive. • Continuing discussions on areas of jurisdictional overlap and where there may be additional obligations on DBCA as a manager of the protected sites. • Resourcing for regulatory and penalties management. • How to manage 'dual vesting' of land and or sites where DBCA administers statutes. • Cooperation and consultation for sharing of knowledge and information.
State Government	Department of Primary Industries and Regional Development (DPIRD)	Survey tool, meetings and email submissions	<ul style="list-style-type: none"> • Supportive of updates. • Queried fish aggregation devices and whether these would fall under a revised MA Act. • Provided advice on compliance and enforcement provision in the Act similar to Fish Resources management Act
State Government	Department of Transport (DoT)	Email submissions, meetings and attended as committee member of the WA Museum Maritime Archaeology Advisory Committee	<ul style="list-style-type: none"> • Provided advice on managing enforcement and compliance where there is reliance on other agencies to regulate on our behalf. • Provided policy advice and recommendations on resourcing requirements for implementing a legal framework to manage regulation, and provision of knowledge.
State Government	Westport (DoT subproject)	Written submission and email submission	<ul style="list-style-type: none"> • Supportive with no specific feedback.

Local Government	City of Cockburn	Email submission and attended a facilitated session	<ul style="list-style-type: none"> • Supportive of the change. • Requested for clarification about high and low water marks and management of MAS avoid duplication.
Local Government	City of Wanneroo	Email submission	<ul style="list-style-type: none"> • Expressed interest in sending a submission, however, it was not received.
Non-government	Recfishwest	Email submissions	<ul style="list-style-type: none"> • Supportive of the change. • The clarification about the artificial reefs in Commonwealth waters is being sought by them from DCCEEW.
Non-government	Southern Ports	Email submission and attended the webinar	<ul style="list-style-type: none"> • Supportive of the change. • Requested clarification on jetties and infrastructure that are not abandoned and older than 75 years.
Non-government	Pilbara Ports	Email submission	<ul style="list-style-type: none"> • Supportive of the change. • Requested clarification about jetties and infrastructure that are not abandoned after 75 years.
Non-government	Australasian Institute for Maritime Archaeology	Email submission	<ul style="list-style-type: none"> • Supportive of amendments, in particular to align with the Convention and UCH Act to aid ratification. • Recommended for training to be provided to authorised officers from other agencies on how to conduct heritage assessments and management plans as well as to identify any gaps in protection of underwater sites identified with Aboriginal heritage. • Offered support for heritage legislation advice.
International Cultural Centre	Dutch Australia Cultural Centre	Email submission	<ul style="list-style-type: none"> • Supportive of proposed changes, highlighting the great cultural significance of maritime archaeology sites to both the Dutch and Australian communities.
Foreign Embassy	Kingdom of the Netherlands	Written submission	<p>Recommendation that revisions be clear about how sites still in use will be treated; clearer about the issuing of permits, including whether a 'disturber pays' system will be put in place.</p> <ul style="list-style-type: none"> • Do not recommend that ownership claims be included for submerged aircraft.
Committee	WA Museum Maritime Archaeology	Committee meeting session	<ul style="list-style-type: none"> • Supportive of the MA Act, ongoing assistance with consultation provided.

	Advisory Committee		
Committee	WA Museum Aboriginal Advisory Committee	Committee meeting session	<ul style="list-style-type: none"> • Noted the changes. • A question was raised whether protection of sites in Geraldton would restrict public access.
Non-Government	Maritime Archaeology consultant	Written submission	<ul style="list-style-type: none"> • Supportive of the change. • Requested to include important submerged Aboriginal paleo-landscapes.
Public	Salvage operator	Email submission	<ul style="list-style-type: none"> • Wished to see important underwater cultural heritage under 75 years protected. • Was keen to include incentives and rewards. • Provided various suggestions for WA Maritime and Albany Museums unrelated to the MA Act review.
Public	Member of Public	Written Submission	<ul style="list-style-type: none"> • Supportive of aligning to the Commonwealth and 2001 UNESCO Convention. • Noted that there are gaps in the protection of Aboriginal cultural heritage of a maritime archaeological figure.

Appendix II – Fact Sheets: Government and Non-Government

Please see the link: visit.museum.wa.gov.au/maritime-archaeology-act-review

Appendix III – Frequently Asked Questions

Please see the link: visit.museum.wa.gov.au/maritime-archaeology-act-review