The UNSECO Convention on the Protection of the Underwater Cultural Heritage: Implications for the Federated States of Australia

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Introduction
This paper considers the UNESCO Convention on the Protection of Underwater Cultural Heritage (hereafter called the UNESCO Convention) and its implications on the Australian States/Territories. The paper was summarised and presented at a Seminar held by the University of Queensland on 27 September 2001.

The Australian Federal, State and Territory Governments have been implementing programs on the protection and management of underwater cultural heritage for over 25 years and the UNESCO Convention is the first specific international legislation to apply to underwater cultural heritage in international waters. The UNESCO Convention has application to sites and objects located in waters under Australia’s jurisdiction, therefore it is very appropriate to consider its implications on Australia’s domestic legislation and operations.

The term ‘States’ has an application within the UNESCO Convention, where it is referring to the countries that are members of the United Nations. To avoid confusion, States will be used in this paper to mean the States of Australia, and countries to mean the States of the United Nations. The implications of the UNESCO Convention on the States and Territories of Australia have been considered under the following headings:

• ‘Rules of engagement’ of the Convention for Australia.
• How will sites be managed by the UNESCO Convention?
• How are similar sites managed in Australia?
• What are the implications for the States and Territories of Australia?
• Conclusions.

‘Rules of engagement’ of the UNESCO Convention for Australia
The Australian Government now has well-established procedures on treaties (conventions) which are contained in an Australia and International Treaty Making Information Kit. This kit contains a 102-page booklet that explains in detail the history, issues and the current situation with regard to Australia entering into a treaty agreement.

The following have been extracted from this Information Kit http://www.austlii.edu.au/au/other/dfat/reports/infokit.html#sect6 accessed 14 August 2001:

Treaties, as the fundamental instruments of international law, are therefore an increasingly important component of international relations and of Australia’s own legal development. The Commonwealth’s use of its powers to implement treaties domestically allows Australia to function as a full and constructive member of the international community.

The key issue in determining whether to become a party to an international treaty is whether it is consistent with Australia’s national interests. At the same time, because of their crucial importance and far-reaching effects, the practice is to consult widely before taking definitive action.

Difficulties can arise if ratification relies on existing State or Territory legislation and that legislation is subsequently altered in a way that is incompatible with the relevant treaty. In such cases, consideration may be given to the Commonwealth passing legislation to bring Australia’s laws back into line with its international obligations.

It is a requirement that any treaty entering into force for Australia be able to be implemented in Australia. Thus, legislation (Federal/State/Territory) will need to be in place when the treaty enters into force for Australia, as will any changes to the practices of Departments/agencies necessary to conform to the treaty. AG’s [Attorneys General] can advise on whether existing Federal, State or Territory law conforms with the provisions of the treaty or whether new or amending legislation is needed.

A review of the Treaty making process from 1994–1996 established Principles and Procedures for Commonwealth–State–Territory Consultation on Treaties dated 1996. One of the major points of discussion and outcomes was the need for an increase in the consultation with States/Territories and interested parties.

There will be a Standing Committee on Treaties consisting of senior Commonwealth and State and Territory officers which will meet twice a year, or more often if required, to identify treaties and other international instruments of sensitivity and importance to the States and Territories and:

• decide whether there is a need for further consideration by the Treaties Council, a Ministerial Council, a separate intergovernmental body or other consultative arrangements;
• monitor and report on the implementation of particular treaties where the implementation of the treaty has strategic implications, including significant cross-portfolio interests, for States and Territories;

• ensure that appropriate information is provided to the States and Territories.

As a result of the reforms, the process for Treaties is now:

• the tabling of treaties in Parliament for at least 15 sitting days before binding action is taken;

• the preparation of a National Interest Analysis (NIA) for each treaty;

• the establishment of the Parliamentary Joint Standing Committee on Treaties (JSCOT);

• the establishment of the Treaties Council comprising the Prime Minister, Premiers and Chief Ministers; and

• the establishment on the internet of the Australian Treaties Library.

Of particular interest is the National Interest Analyses (NIA).

The purpose of an NIA is to explain why a treaty action would be in Australia’s national interest. NIAs describe the likely economic, social, cultural, environmental and legal impacts of proposed treaty action. They are tabled with their treaties for a minimum of 15 sitting days, and are available on the internet.

In 1996, the Government introduced wide-ranging reforms to the treaty-making process. The Government has now reviewed these reforms, and found that, overall, they are working well. By consulting with States and Territories, and the Joint Standing Committee on Treaties, and from the many submissions from the community, the Government has identified some areas for further improvement. These include, among other things, improving consultation between States and Territories and Commonwealth Departments and agencies. There is also scope for building on improvements already made to National Interest Analyses, and for enhancement of the Internet Australian Treaties Library. The Government remains committed to an open and transparent treaty-making process.

Timing for UNESCO Convention on the Protection of the Underwater Cultural Heritage. (From the Australia and International Treaty Making Information Kit.)

Before a treaty is ratified a full review of the laws of Australia which may conflict with a treaty needs to be undertaken. All necessary legislative amendments, at a State and Commonwealth level, should also be made before Australia enters into a treaty, that is, the Government’s official policy should be followed. The situation should not arise that a treaty is entered into shortly before an election, leaving a subsequent Parliament to decide whether or not it should be implemented.

The timing on when Australia could be bound by the Convention is uncertain. When this paper was first drafted and the Seminar was held on 27 September in Brisbane, the Convention still needed to be voted on (and obtain a 2/3 rd majority of UNESCO’s 188 member states [countries]) and adopted at the 31st session of UNESCO in October/November 2001. This has since been done.

The UNESCO Convention on the Protection of the Underwater Cultural Heritage was adopted today by the Plenary session of the 31st General Conference by 87 affirmative votes, thus becoming UNESCO’s fourth heritage Convention. Four States voted against and 15 abstained from voting (http://www.unesco.org/culture/legalprotection/water/html_eng/convention.shtml).

It now needs Australia to sign it (agree to the content); assessed by JSCOT (Joint Standing Committee on Treaties) and to be tabled in Parliament; and then to be ratified by Australia. The Convention will not come into force until three months after 20 countries have ratified it. Realistically, it would be mid 2002, at the earliest, before the UNESCO Convention (excluding any other delays) would pass through its necessary Australian and International steps and become applicable to Australia and its nationals.

Two important provisions in the Convention are worth noting at this point, there is no reservation article—a country cannot exclude certain aspects and apply others—it is all of the Convention or nothing. The only exception is that a country can exclude the Convention to apply to certain parts of its internal waters and territorial sea at the time of ratification.

How will sites be managed by the UNESCO Convention?

The final wording for the UNESCO Convention was agreed upon (by a vote of 49 for, 4 against, and 8 abstentions) at the July 2001 meeting in Paris. This was a culmination of much work over a five-year period and also which took in the views of observer countries, such as the USA, and Non Government Organisations (NGO) such as the International Council of Monuments and Sites (ICOMOS), Society for Historical Archaeology (SHA), World Underwater Federation, and the International Council of Museums (ICOM), and Salvage Companies.

A draft convention prepared by the International Law Association (ILA); the Council Of Europe’s Draft
The UNESCO Convention on the Protection of the Underwater Cultural Heritage (1985), the ICOMOS Charter on the Protection and Management of Underwater Cultural Heritage and some provisions contained in the United Nations Convention on the Law of the Sea 1982 (UNCLOS) were used as a framework for the UNESCO debate which commenced in Paris in May, 1996. There also was seen to be a need to bring underwater cultural heritage in line with other International Conventions, such as the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Material, 1970 and the UNESCO Convention of the Protection of the World Cultural and Natural Heritage, 1976.

The Director General of UNESCO stated that:

...underwater cultural heritage is already included in the Recommendations on International Principles Applicable to Archaeological Excavations 1956 which applies to the inland and territorial waters of states [countries, therefore this convention should] deal with the protection of the cultural heritage in marine areas outside national jurisdiction (UNESCO,1997).

Prott, (1997: 8) added that

...in the late 1950s we [UNESCO] expressed concern about underwater heritage and set out guidelines for archaeological excavations essentially covering activities in inland and territorial waters of states [countries]. Technological developments since then and the spread of sport diving have greatly increased the threat to underwater sites to the point where further regulation is urgently needed.

A number of projects had already been carried out on shipwreck sites throughout the world, which clearly demonstrated their archaeological value; the 17th-century Swedish Man-of-War, Vasa (Landstrøm, 1980); the 14th-century bc shipwreck known as the Ulu Burun shipwreck (Bass, et al., 1989); King Henry VII’s Mary Rose (Rule, 1982); the 17th-century Dutch East Indiaman, Batavia (Baker & Green, 1976); and the Alexandria Lighthouse (Boukhari, 1997: 16). A number of projects had also been carried out on shipwreck sites which alluded to their monetary value, such as the Geldermalsen (1752) (Sheaf & Kilburn, 1986); the 17th-century Spanish galleon, Atocha (Mathewson, 1986); and the six international companies awaiting the chance to recover the treasure from the Spanish shipwrecks off Portugal (Williams, 1997: 7–8). Added to this, the finding of the Titanic in 1985 (Ballard, 1987) located in international waters, and since then the recovery of material and the competing claims for ‘ownership’ of the site that contributed to the development of a UNESCO Convention for the protection of Underwater Cultural Heritage.

The UNESCO Convention has seen a number of changes since its inception. However, the in situ preservation of sites has remained the fundamental objective. This is an interesting point as it could be argued that, given the meaning of preservation to include ‘to protect and prevent from decay’, to do this with something located in an underwater environment, some activity is necessary. Many sites may remain stable, provided they are not interfered with (from humans or through a change in the environment). Some sites, such as the iron and steel shipwrecks from the mid 1800s are deteriorating (MacLeod, 1998) and therefore under the Convention, some activity is required to preserve in situ. Is this another loophole that those wishing to recover material will use to argue that they are preserving sites and the associated material that cannot be preserved in situ?

A summary of the main provisions of the UNESCO Convention are:

- ‘All traces of human existence’ (not just shipwrecks) that have been underwater for 100 years and are of ‘cultural, historical or archaeological character’;
- In situ preservation is the ‘first option’ for protection;
- Limit intrusive activities;
- Apply the Convention Rules to sites and material in all waters (internal, territorial, continental shelf);
- Rules include, amongst other things, the need for a project brief, guaranteed funding levels, curation of recovered material and archives, qualification and experience of archaeologists/conservators (uniformity) and not to include commercial exploitation of the material (trading, buying, selling or bartering of underwater cultural heritage);
- Not subject to the law of salvage;
- Ensure a country’s nationals comply with the Convention;
- Prohibit the use of ports in non-complying activities;
- Seize, manage and conserve material not obtained in accordance with the Convention;
- Liaise with other Countries (and interested parties) on sites and material on the continental shelf and in international waters;
- Establish a Scientific and Technical Advisory Body;
- Settle disputes through negotiation or through the International Court of Justice, or impose sanctions;
- Encourage non-intrusive public access to sites and material;
- Provide training in underwater archaeology;
- Establish competent authorities within a country to undertake the management and protect underwater cultural heritage;
- Involvement in sites of interest located in International Waters;
- Limit application of Convention in some waters (at time of ratification);
- No reservation provision.
What should be emphasised is that the UNESCO Convention will apply to a country’s sites, sites in international waters, as well as its citizens who wish to work on sites anywhere in the world. It is a possibility that a country’s nationals will acquire material from within another country that has not ratified the Convention, and ship the material to another non-signatory country to enable the sale of this material. It could be quite legal within the terms of their own domestic legislation. It is a situation that is bound to happen. It will be interesting to see what action the international community will take in this situation. It highlights the need for most countries to ratify the Convention.

I would also like to briefly highlight some of the changes that have potentially diminished the effectiveness of the Convention. They include the qualifying terms for the types of sites that are protected, being sites of an ‘cultural, historical or archaeological character’. An American observer at the Meeting of Experts in Paris in July 2001 concluded that this opened the door for the need for ‘testing’ (excavating) a site to determine its character, and therefore damage it.

Also there was an inability for the Experts to agree on the need to protect sites that are located underwater and in a country’s jurisdiction for less than 100 years. France argued that:

Our notion of heritage is changing, now the Normandy beaches are considered heritage, even ships 40 years old are heritage in some cases. arrell, 2001).

It is disappointing to see that this was not passed. Some of these sites will soon be 100 years old and therefore ‘protected’, but like those contained on the continental shelf or in international waters, they could be ‘lost’ before this occurs.

The current UNESCO Convention is therefore not ideal and it will need to be tested and amended; something that could take considerable time and leave the door open to the loss of a number of sites.

How are similar underwater sites managed in Australia?

Australia has at least 6 Federal and 16 State/Territory Acts that apply to sites and objects covered by the UNESCO Convention. (See Appendix 1 for a list of the legislation and related State agencies).

The majority of the waters around Australia’s coastline are under Federal Jurisdiction, although the States have been given the power to make legislation to apply to certain activities 3 nautical miles beyond ‘water within the limits of a State’. It’s an ‘interesting’ and complicated debate as to the delineation of the ‘waters within the limits of a State’, and therefore the starting point for the 3 nautical mile area; and also the delineation of the baselines (starting point) in which the Territorial Sea is measured. They can be one and the same, and they can also be different depending on the geography of the coastline (eg coastlines with deeply indented bays and containing islands). For the purposes of this debate, there are State and Territory as well as Federal jurisdiction that need to be considered. It is also worth noting that some Federal laws exclude the 3 nautical mile Coastal Waters in their application, for example, the Environment Protection and Biodiversity Conservation Act 1999 while the Historic Shipwrecks Act 1976 includes them.

These 6 Federal and 16 State laws have just about the same number of National, State and Territory programs which encompass their own strategies, goals, objectives and activities.

Moving on to the most active ‘Underwater Cultural Heritage’ Act and program the Historic Shipwrecks Act 1976 and the related State and Territory Acts, the major provisions of this legislation are:

- Protects the ‘remains of ships’ and ‘articles associated with ships’ (relics);
- Applies Blanket Protection: sites and ships older than 75 years;
- Protects shipwrecks younger than 75 years;
- Applies to remains of ships, and artefacts removed from waters;
- Provides for obligatory reporting of sites;
- Contains a reward provision for reporting sites;
- Protects shipwrecks significant to Papua New Guinea;
- Declares Protected Zones (up to 200 Ha) around shipwrecks;
- Establishes a Register of Shipwrecks and Relics;
- Issues permits;
- Manages and tracks all protected artefacts (relics) including those privately held;
- Can permit their sale, disposal;
- Provides for financial compensation for government acquisitions;
- Appoints Inspectors;
- Provides for search, arrest and penalties for offences.

A good description of the original purpose of the legislation, and the way in which it was meant to be implemented can be seen in the statement made by Senator Withers when he introduced the Bill in the Australian Senate in 1976 (Jeffery, 1999):

A principal purpose of the Bill is to provide for the continuance on a sound legal basis of the existing high level of co-operation between Commonwealth agencies and such State institutions as the Western Australian Museum. The Bill therefore contains provisions that will allow agreements to be entered into between the Commonwealth and the States relating to implementation and enforcement of the legislation. These include provisions enabling the Minister to delegate his powers for these and other purposes. Such agreements would enable States to continue and expand their efforts to preserve Australia’s maritime heritage.
under secure national legislation. At the same time, the Commonwealth will be able to act in the national interest, when this becomes necessary.

Each State and the Northern Territory has a government agency recognised as the authority to implement the legislation and the associated program. The Minister for Environment has delegated certain powers under the legislation to the heads of these agencies. The Commonwealth government, through the Department for Environment and Heritage provide about $350 000 toward a National Historic Shipwrecks Program while the combined States/Territory contribution to the program is estimated to be between $1–2 million. This doesn’t take in capital expenditure and assets in the States, such as the new $17 million Museum of Tropical Queensland; the Western Australian Maritime Museum’s shipwreck displays and infrastructure; the conservation laboratories and staff; and the vehicles and boats used in the program and located in most States/Territories.

The Commonwealth government has one person working on this program. The States have a combined staff of 17 professional archaeologists and technicians that work permanently on historic shipwrecks and associated activities, in addition to a number of other part time support staff and consultants. The Commonwealth’s role is primarily that of coordinating activities, providing a forum for discussing and formulating uniform policy, providing some funding; and implementing the legislation in coordination with the States. It is the States that implement the majority of the national program activities including site surveys, excavation projects, public awareness projects, site and artefact conservation, museum and site interpretation, community liaison, as well as any requirements of their State programs.

The implementation of many aspects of the UNESCO Convention will therefore fall on to the States to a large degree. It will have an effect on how they operate, including the provisions contained in the Commonwealth legislation and their own State legislation. In regard to the related State and Territory Acts some deal specifically with shipwrecks and associated relics; some protect and manage maritime archaeological sites; some are part of general heritage legislation, including indigenous and non-indigenous heritage legislation; and there are other Acts that deal primarily with the protection of non-indigenous terrestrial heritage. Given this array of legislation across Australia, they will undoubtably contain different provisions. The differences in the legislation lead to different methods of operation and different priorities.

While there are uniform national program goals and objectives for the shipwrecks program, there are differences in operations. The different State and Territory agencies include two different types of agencies: Museums and Cultural Heritage Management (CHM) agencies. They implement the program with a different emphasis on the objectives—Museums need collections for people to come and see, and therefore they need to manage collections. The CHM agencies are focussed more on site management and insitu interpretation. However, they are all influenced (differently in some cases) through their State policies, economics and politics.

It should be noted again at this point that this discussion has focussed on shipwrecks and associated artefacts. Shipwrecks are only a part of the focus for the UNESCO Convention. The other significant part of the UNESCO Convention that Australia has a limited program in, is the indigenous heritage located underwater. Legislation (in some cases in addition to shipwreck legislation) is in force to protect and manage this material, including that located underwater, at a Federal, State and Territory level. It should also be noted that quite separate and active programs to the shipwreck programs are conducted at these levels for terrestrial indigenous sites. It should therefore be a requirement for Australia, the States and Territories to review these Acts and associated programs.

What are the implications for the States and Territories of Australia?

It is worth pointing out that while the UNESCO Convention states that Australia has exclusive rights to regulate activities directed at underwater cultural heritage in its internal waters, territorial sea, and ‘may’ regulate and authorise activities in its contiguous zone, the Rules contained in the Convention will apply to all waters. As has been highlighted before, the Australian government recommends that its domestic laws and operations be consistent with the operations and legal requirements of international treaties. In regard to this UNESCO Convention this would undoubtably mean that the UNESCO Convention Rules should be implemented at the domestic level. It could also imply that similar Articles in the Convention and methods of operation should be considered for domestic legislation and methods of operation. These Articles, separate to the Rules, include amongst other things: the establishment of a Scientific and Technical Advisory Body; consultation with other nations and interested parties on sites and objects in the inland waters, territorial sea and contiguous zone; the 100 year old rolling date for ‘protected sites’; significance criteria, although questionable as to its effectiveness; and not allowing salvage laws to apply to 100 year old sites and objects.

The States and Territories should therefore review their own Acts and associated programs to ensure there are no conflicts with the UNESCO Convention. This needs to be done in association with the Federal government reviewing all the pertinent Federal legislation, and in particular the most active ‘underwater cultural heritage act’ the Historic Shipwrecks Act 1976 and its associated program. The United Nations will provide funds and agency support for the drafting of National laws to ensure implementation of treaty commitments (Corell, 2000).
If there are conflicts, there are options at the UNESCO Convention level and at the Federal/State/Territory level that could be used to highlight and possibly alleviate the conflicts.

The following options would not solve the problems, but it would place some pressure on the respective governments to resolve the root of the conflicts. One would be for the States and Territories to insist that the waters adjacent to it, be excluded from the Convention at the time of ratification (Article 29). While it is the Australian government, not the State/Territory governments, that is primarily responsible for entering into a treaty with other countries, the States could force the issue by seeking to invoke Section 2 of the Historic Shipwrecks Act 1976 (ceasing to apply the Act) to its waters.

This would not be an ideal situation for either levels of government, but it could be a strategy used by the States/Territories to resolve any intractable differences.

A better solution would be for the Australian government to commit to a full review of the Acts and operations of the Federal/State/Territories and to resolve the conflicts. There are a few issues that could develop into conflicts, which I will list shortly.

The issue is that while only the Rules of the UNESCO Convention apply to all the inland, territorial waters and contiguous zone, there needs to be conformity with all the Convention Articles and Rules, and the way underwater cultural heritage is managed domestically in Australia. There is a provision in the Convention for competent authorities to be nominated throughout the country and it is most likely that the authorities implementing the Historic Shipwrecks Program could be nominated. There is the potential for this to place considerable additional workload on these agencies, in adjusting their operations to ‘conform’ to the Convention Articles and Rules and implementing additional activities.

Some of these adjustments required could include:

- Using the existing program to ‘protect’ all underwater cultural heritage sites not just shipwrecks;
- Maritime archaeologists, are they qualified to work on underwater indigenous sites?
- Notifying and liaising with other countries about sites they have a link/interest with, or that have been discovered by Australians in other waters.

Some of the issues that could develop into conflict, not just between government agencies but from the community, include:

- The tracking, buying and selling of artefacts under a permit system—provided for under the Historic Shipwrecks Act 1976, but seen as commercial exploitation under the UNESCO Convention;
- Rewarding finders for reporting sites that are then protected, similarly provided for under the Historic Shipwrecks Act 1976, but possibly seen as commercial exploitation under Convention;
- Conserving and curating seized international material;
- Applying the Rules from the Convention to all underwater cultural heritage sites in all waters;
- Not to apply salvage laws to protected sites.

There are potentially major resource implications in some of these issues. The seizing of imported material involving the conservation and curation of it could be very taxing for the meagre resources of the present State/Territory authorities.

The issue of the tracking and selling (through a permit system) of protected shipwreck material has been allowed since 1976 and the change over to a new regime of not allowing it, will undoubtedly create some dissension within a few sections of the community.

In regard to salvage laws, recent amendments to the Navigation Act 1912 include provisions to remove and sell shipwrecks, including historic shipwrecks if this is for the purposes of saving human life; securing safe navigation; or any emergency to the environment!

A solution to the differences could be to consider the following options in reviewing the domestic Federal/State/Territory legislation and operations.

- The provision for adequate funding to apply the Articles and Rules of the Convention;
- Provision for an Advisory Committee in legislation;
- Redefining what is protected under the Historic Shipwrecks Act 1976 and/or as a focus for the current programs as to more than ‘remains of ships’;
- Liaise with other agencies responsible for relevant programs;
- Resolve any conflict with the Navigation Act 1912;
- Incorporating criteria into Acts (archaeological, etc.);
- Incorporating similar Rules into the Australian and State/Territory Acts;
- Training—Universities—ensure uniformity and appropriate qualifications for archaeologists, conservators and ‘volunteers’.

Some of these issues are taken up in the different Federal/State/Territory legislation; some are contained in departmental policy documents; and others are not to be found anywhere. This ‘random’ approach about what should be contained in legislation, and what is departmental policy is not appropriate, given the need for government to have a transparent approach as to its domestic and international methods of operation.

An example of the inconsistencies in Australia’s approach in these matters can be seen in the current meeting of Delegates under the Historic Shipwrecks Act 1976 and the maritime archaeology practitioners which could be interpreted to be filling the role of an Advisory Body. However, they only represent one voice, a
bureaucratic and a vested voice at that. There are no representatives from other stakeholders, no community voice, no conservation voice, no academic voice. In most States there are advisory bodies encompassing the many different stakeholders for the historic shipwrecks/maritime heritage/general heritage acts and programs and they are seen as providing very effective advice and support. In addition, at the Federal level, there are similar statutory bodies that advise the Federal Minister on other general heritage issues.

Conclusions
The Federal government is the only government that can bind the Federated States and Territories of Australia to an international treaty. And yet it is these States/Territories that implement many of the activities. And it is Australian’s that will have to abide and wear the consequences. There needs to be a comprehensive and transparent discussion with these stakeholders, and implementation of a consistent approach to the management of its entire underwater cultural heritage.

In August 2001, the following public announcement was made:

Federal Environment and Heritage Minister Robert Hill today announced the Commonwealth Government would look at updating its legislation and developing a new national strategy for protecting this important maritime heritage. Senator Hill said the Commonwealth’s Historic Shipwrecks Act 1976 provides protection only for shipwrecks and associated relics. Under the new plan, work would begin on developing a new nation-wide strategy for Australia’s underwater heritage that incorporates not only shipwrecks, but also the other important aspects of our maritime heritage.

The Government’s Principles and Procedures for Commonwealth–State–Territory Consultation on Treaties, 1996 recommends that all of Australia’s domestic legislation and operations should be consistent with its international obligations. It would seem obligatory that the new plan should extend to the relevant operations and legislation at the State and Territory level. As at August 2002, the review of the Historic Shipwrecks Act 1976 and the associated program has not been completed.

It was recently stated on an international scuba diving discussion list about the UNESCO Convention (SCUBALIST@LISTSERV.BROWN.EDU):

In the May/June issue of Dive Report magazine, it was stated that DEMA, [Diving Equipment and Marketing Association] PADI, and Skin Diver Magazine supported the UNESCO Convention on the preservation of Underwater Cultural Heritage and the preservation of wreck sites as opposed to working to ensure artifacts can be retrieved and kept by private parties.

We are dismayed that these organizations are taking a position that does not in any way benefit sport divers, and in fact threatens to injure the success of businesses within DEMA. As you are probably aware, but the UNESCO treaty was drawn up by an international group of bureaucratic archaeologists whose intent is to put all shipwrecks under tight government control, and drive salvors, wreck divers, and anyone else who threatens any “underwater cultural heritage” out of business.

Its basic tenets are seriously questioned by the Underwater Society of America, and Robert Marx and others in the field of marine archaeology.

We petition you to question the rationale for the aforementioned support of this treaty, since it has the potential to spawn laws which will limit the activities of salvors and wreck divers. We also ask that you spread the word within the wreck diving community suggesting that pictures of PADI C-card burnings sent directly to PADI will best express our sentiments.

What this highlights is a very selfish view from a representative (although not the only one with this view on this list) of a very small section of the community (i.e. a scuba diver within the general community). Shipwrecks need to be seen as part of everyone’s heritage, not a source of relics and treasure for a select view. Australia and the relevant State/Territory agencies need to change this view. It needs to increase, and awaken the many existing stakeholders in underwater cultural heritage. It needs to place shipwrecks within its appropriate place in the history of Australia and therefore as an integral part of the heritage of Australia, needing appropriate management. And it can’t do this by just considering the views of another select few to provide an alternate view. The UNESCO Convention has opened the door to change this now.

References


**Appendix 1**

**Federal Legislation**

- *Historic Shipwrecks Act 1976*
- *Navigation Act 1912*
- *Torres Strait Islander Heritage Protection Act 1984*
- *Australian Heritage Commission Act 1975*
- *Environment Protection and Biodiversity Conservation Act 1999*

Currently a new bill is under review to replace the Heritage Commission Act, being the *Environment and Heritage Legislation Amendment Bill (No.2) 2000* and this bill will also amend the *Environment Protection and Biodiversity Conservation Act 1999*.

- *Protection of Movable Cultural Heritage Act 1986.*

**State and Territory Legislation, related agencies and registers**

**New South Wales**

- *Heritage Act 1977*
- *National Parks and Wildlife Act 1974*
  - Heritage Council of NSW
  - National Parks and Wildlife Service
  - Environment Protection Authority
  - NSW Heritage Office
  - NSW State Heritage Inventory

**Northern Territory**

- *Heritage Conservation Act 2000*
- *Northern Territory Aboriginal Sacred Sites Act 1989*
  - Heritage Advisory Council
  - Aboriginal Areas Protection Authority
  - Museums and Art Galleries of the Northern Territory
  - Parks and Wildlife Commission of the Northern Territory
  - NT Heritage List
  - NT Shipwrecks Database

**Queensland**

- *Queensland Heritage Act 1992*
- *The Cultural Record (Landscapes Queensland and Queensland Estate) Act 1987*
  - Environment Protection Agency
  - Queensland Museum
  - Queensland Heritage Council
  - Queensland Heritage Register

**South Australia**

- *Heritage Act 1993*
- *Historic Shipwrecks Act 1981*
- *Aboriginal Heritage Act 1988*
  - Heritage South Australia
  - Parks and Wildlife
  - Aboriginal Affairs
  - South Australian Register of Aboriginal sites
  - SA State Heritage Register
  - SA Register of Historic Shipwrecks, Historic relics and protected zones

**Tasmania**

- *Historic Cultural Heritage Act 1995*
- *Historic Cultural Heritage Amendment Act 1997*
  - Tasmanian Heritage Council
  - Department of Primary Industries, Water and Environment
  - Tasmanian Heritage List

**Victoria**

- *Heritage Act 1995*
- *Archaeological and Aboriginal Relics Preservation Act 1972*
  - Heritage Victoria
  - Natural Resources and Environment
  - Aboriginal Affairs Victoria
  - Victorian Heritage List

**Western Australia**

- *Heritage of Western Australia Act 1990*
- *Aboriginal Heritage Act 1972–80*
- *Maritime Archaeology Act 1973*
  - Heritage Council of Western Australia
  - Department of Indigenous Affairs
  - WA Maritime Museum
  - Department of Conservation and Land Management
  - Department of Contract and Management Services
  - Department of Environmental Protection
  - Western Australian Register of Heritage Places
  - WA Register of Aboriginal sites
  - WA Register of Shipwrecks and Relics