

16 March 2022

Committee Secretary
Joint Standing Committee on Treaties
PO Box 6021
Parliament House
Canberra ACT 2600

Submission: 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage

This submission strongly supports the ratification of the 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage by Australia for the following reasons:

1. Supporting the *Underwater Cultural Heritage Act 2018 (Cth)* as a contemporary, internationally consistent national standard.

The *Underwater Cultural Heritage Act 2018 (Cth)* reflects contemporary best practice and regulation of underwater cultural heritage in Australian waters; from the territorial sea to the limits of Australia's continental shelf jurisdiction, and beyond that into the Area. This domestic legislative regime that operates beyond Australia's territorial sovereignty is best served through an internationally agreed regime. While the 1982 UN Convention on the Law of the Sea provides the framework for such agreement, the 2001 Convention on the Protection of the Underwater Cultural Heritage provides the necessary details. With little amendment, the *Underwater Cultural Heritage Act 2018 (Cth)* will serve to implement Australia's international obligations on ratification and the Convention coming into force for Australia

2. The 2001 Convention on the Protection of the Underwater Cultural Heritage is consistent with the 1982 UN Convention on the Law of the Sea and Australia's international obligations as a party to the latter

Articles 149 and 303 of the 1982 UN Convention on the Law of the Sea impose an international duty on Australia to protect underwater cultural heritage while articles 303(4) and 311 provide for the adoption of the 2001 Convention on the Protection of the Underwater Cultural Heritage in a manner that allows for consistency between the two conventions. As between States party to the 2001 Convention on the Protection of the Underwater Cultural Heritage, article 3 ensures that it is applied consistently with the 1982 UN Convention on the Law of the Sea. In ratifying the 2001 Convention on the Protection of the Underwater Cultural Heritage, Australia will give effect to its obligations in what is often referred to as the Constitution of the Oceans – the 1982 UN Convention on the Law of the Sea (see Vincent Cogliati-Bantz and Craig Forrest, 'Consistent: The Convention on the Protection of the Underwater Cultural Heritage and the United Nations Convention on the Law of the Sea (2013) 2(3) *Cambridge International and Comparative Law Journal* 1-26).

3. International and Regional Engagement

Ratification will enable Australia to participate in the growing number of States engaged in discussion, policy development, training and education concerning underwater cultural heritage in and through the meetings of States Parties and in the Scientific and Technical Advisory Body. This will also enable and engage Australia's educational capacity in maritime archaeology, regulation and law. This is especially so regionally where Australia can play a leading role in the protection of underwater cultural heritage in the oceans that are vital to Australia's future in cooperation with other nations who share these oceans and its underwater cultural heritage.

4. Enable protection for Australian underwater cultural heritage situated beyond Australia's jurisdiction

While international law recognises, in some but not all respects, continued ownership and sovereignty of Australian sovereign vessels, especially warships, the ability to enforce this on the international stage is difficult, as reflected in the concerns over the illegal salvage of *HMAS Perth*. The 2001 Convention on the Protection of the Underwater Cultural Heritage is consistent with this existing international law but offers a codified normative regime that would facilitate international cooperation to protect Australia's sovereign shipwrecks and sunken aircraft, especially when sensitivities arise with respect to these as maritime war graves.

In concluding, it is worth recognising three Australians who played a prominent role in the development of the Convention. Professor Patrick O'Keefe chaired the International Law Association's Cultural Heritage Committee that produced the first draft of what became the 2001 Convention. Graeme Henderson chaired the ICOMOS International Committee on the Underwater Cultural Heritage that drafted the Charter that was to become the Annex to the Convention, and Professor Lyndel Prott who was the Director of the Standards Section at UNESCO when the 2001 Convention was being negotiated and adopted. But for the efforts of these three Australians, the Convention is not likely to have been adopted in the way that it has.

During negotiations, the Australian delegation was an active participant, both formally and informally, supported the draft Convention, and voted in favour of its adoption. It is unfortunate that more than two decades later, Australia is not yet a party to this Convention.

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