

# Frequently Asked Questions: *About the World Heritage Convention and Australia's Great Barrier Reef*



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## **Disclosure Statement:**

*Ted Christie does not work for, consult to, own shares in or receive funding from any company or organisation that would benefit from this article, and has no relevant affiliations.*



## **1.0 What was the Purpose for Introducing the World Heritage Convention?**

The “*Convention Concerning the Protection of the World Cultural and Natural Heritage*” (the ‘*World Heritage Convention*’) was introduced because of global concern over the destruction of natural and cultural heritage – not only by the traditional causes of decay – but also because of changing social and economic conditions which exacerbated the potential for damage and destruction.

*The World Heritage Convention came into effect in November 1972.*

## **2.0 How Many Natural and Cultural Heritage Properties are on the World Heritage List? What is the World Heritage Listing Status for Australia?**

There are 1031 properties on the World Heritage List held by 163 “States Parties”; 2 properties have been “Delisted” and 48 are listed as “In Danger”.

Australia has 19 properties on the World Heritage List: 12 “Natural Heritage” sites, 3 “Cultural Heritage” sites and 4 “Mixed Natural and Cultural Heritage” sites.

The Great Barrier Reef World Heritage Area was the first Australian property inscribed on the World Heritage List - in 1981.

In 1981, UNESCO's World Heritage Committee concluded that the Great Barrier Reef met all the criteria for "outstanding universal value" for World Heritage Listing.

*UNESCO noted that "no other World Heritage property contains such biodiversity".*

### **3.0 What is the Difference between becoming a Signatory and Ratifying an International Convention?**

#### **Can a Country Ratify a Convention without first being a Signatory?**

International conventions (and treaties) move through a sequence of steps. Australia became a **signatory** to the World Heritage Convention - then **ratified** it in August 1974.

The initial step is for a country to enter into and to be involved in negotiations on the subject matter of the convention; and to then become a **signatory** to the convention.

*But, signature, by itself, does not result in the treaty becoming legally binding on that country.*

Countries that signed the convention, when it was open for signature, can proceed to the next step — consenting to be bound by the convention, through the process of **ratification**. In some countries, this process is called **acceptance** or **approval**.

The World Heritage Convention has now been ratified by 191 countries.

Where a country had not signed the convention during the time it was open for signature, it can only **accede** to become legally bound by the convention. **Accession** is the name for this process.

The processes of **ratification**, **acceptance**, **approval** and **accession** are specific for the political process for each country that consents to be bound. For example, for many countries the legislature (or parliament), or the head of State, will decide whether to ratify a convention.

*The benefits for a country that complies with its obligations under an international convention directed at finding a co-operative solution for a*

*global problem is to enhance its values for trustworthiness, influence and reputation on the international scene.*

#### **4.0 What is the Situation for introducing Domestic Legislation to Enforce Legal Obligations contained in the World Heritage Convention?**

Following ratification, the Federal parliament in Australia may enact legislation incorporating the international convention (or treaty) as part of an existing statute, or introduce a new statute specific for the convention/treaty.

The international convention (or treaty) then becomes part of the domestic law and so have binding effect on everyone.

The situation for **Australia** can be found in the High Court of Australia's decision in *Minister of State for Immigration and Ethnic Affairs v Teoh* (1995) 183 CLR 273: *An international convention (or treaty) which has not been incorporated into domestic law cannot operate as a direct source of individual rights and obligations in Australia, unless its provisions have been validly incorporated into law by statute.*

The ***World Heritage Properties Conservation Act*** was introduced in 1983 by the Federal Government to give legal effect to Australia's obligations under the *World Heritage Convention*.

This Act, together with a number of Commonwealth environmental statutes, was consolidated by the Federal Government in 1999 so that environmental protection could be improved under the ***Environment Protection and Biodiversity Conservation Act 1999 (Cth)***. The consolidated Act came into force in July 2000.

#### **What is the situation in other countries?**

In general, following ratification, an international convention (or treaty) may become part of that country's domestic legislation. This is an additional step that is dependent, for example, on compliance with common law principles established by the courts.

- International conventions (or treaties) only become part of the national law, in the ***United Kingdom***, following legislation enacted by parliament:

*Blackburn v Attorney-General* [1971] 1 WLR 1037.

- In the **United States**, many conventions foresee local enforcement by domestic law and have led to Federal statutes, as well as State legislation, being introduced to implement a particular treaty or convention. For example: *The International Convention on International Trade in Endangered Species in Fauna and Flora (1973)* and the Federal Statutes, the *Endangered Species Act of 1973* and the *Marine Mammal Protection Act of 1972*:  
See, **Plater, Z.J., R. Abrams and W. Goldfarb (2004), Environmental Law and Policy: Nature Law and Society (3rd Edition), West Publishing Co., St. Paul Minnesota, USA.**

### **5.0 What UN Body Administers the World Heritage List? What are some of its Decision-Making Powers?**

The World Heritage List is maintained through an international Programme administered by the *World Heritage Committee of the UN Agency, UNESCO (the United Nations Educational, Scientific and Cultural Organization)*.

**One key role** of the UNESCO World Heritage Committee is to evaluate reports on the state of conservation of World Heritage Listed properties and to ask countries to take corrective action when properties are not being properly managed.

The UNESCO World Heritage Committee’s decision-making powers include not only deciding on the places to be inscribed on the World Heritage List – but also whether a property should be placed on the “**List of World Heritage in Danger**”.

*Without immediate assistance and effort to protect the endangered property, a property placed on the “List of World Heritage in Danger” could eventually be deleted from the World Heritage List.*

### **6.0 Are there any Listed World Heritage Properties in “Danger”? What is involved in the Decision-making Process to List a Property as being in “Danger”?**

Globally, 44 World Heritage Properties are currently listed as being in “Danger”. UNESCO provides the following meaning for “danger”:

“Armed conflict and war, earthquakes and other natural disasters, pollution, poaching, uncontrolled urbanization and unchecked tourist development pose major problems to World Heritage sites.

Dangers can be ‘ascertained’, referring to specific and proven imminent threats, or ‘potential’, when a property is faced with threats which could have negative effects on its World Heritage values”:

<http://whc.unesco.org/en/158/>

The **List of World Heritage in Danger** is designed to inform the international community of conditions which threaten the characteristics which determined the inscription of a property on the World Heritage List - and to encourage corrective action and efforts.

Inscription of a site on the **List of World Heritage in Danger** requires the World Heritage Committee to consult with the State Party to restore the site's values –*for example, by preparing and applying management measures and a monitoring programme* – to facilitate its removal from the List of World Heritage in Danger as soon as possible.

During 2014, the UNESCO World Heritage Committee expressed a degree of uncertainty whether it should inscribe Australia’s Great Barrier Reef on the List of World Heritage in Danger.

*The Committee’s concerns included planned port developments in the Great Barrier Reef World Heritage Area and the Federal Government’s approval for dredging and disposal activities in the Great Barrier Reef Marine Park to enable one major port development.*

#### **What is the Current Situation for Australia’s Great Barrier Reef?**

On 1 July 2015, the final and unanimous decision of the UNESCO World Heritage Committee was that Australia’s Great Barrier Reef should not be placed on its “World Heritage in Danger” List.

*The World Heritage Committee’s decision still requires the Australian Government to complete the regular five-year review of the Reef’s ecological health by 2019; to be followed by a “most rigorous” review by 2020.*

On 21 December 2015, Australia's Environment Minister Greg Hunt approved dredging of 1.1 million cubic metres of spoil in the Great Barrier Reef World Heritage Area for the expansion of the Abbot Point coal terminal. This would make it one of the largest coal ports in the world. The spoil will then be disposed of on land.

*Federal Government approval for the controversial project has been granted with strict environmental conditions: **Approval, Abbot Point Growth Gateway Project, Queensland (EPBC 2015/7467).***

## **7.0 For What Reasons can a Listed World Heritage Property be deleted from the List?**

A World Heritage property can only be deleted from the World Heritage List if the property had deteriorated to the extent that it has lost those characteristics which determined its inscription on the World Heritage List.

The “**Operational Guidelines for the Implementation of the World Heritage Convention (2013)**” (the “*World Heritage Convention Operational Guidelines*”) sets out the circumstances that may delete a Listed World Heritage Property:

“**191** ...the [World Heritage] Committee shall decide, in consultation with the State Party concerned, whether:

- a) additional measures are required to conserve the property;
- b) ...;
- c) to consider the deletion of the property from both the List of World Heritage in Danger and the World Heritage List if ***the property has deteriorated to the extent that it has lost those characteristics which determined its inscription on the World Heritage List...*** (Emphasis added).

*It needs to be recognized that deletion from the List could mean removing part only of a World Heritage Property from the World Heritage List - if that part of the property failed to keep its “outstanding universal value” as inscribed.*

## 8.0 Have any Listed World Heritage Properties been deleted from the List?

Two World Heritage Properties have already been delisted from the World Heritage List:

- The **Arabian Onyx Sanctuary, Oman** was delisted in 2007 (*from the impacts of habitat destruction and poaching*); and
- The **Dresden Elbe Valley, Germany** was delisted in 2009 (*from the impacts of the construction of a bridge that would bisect the valley*).

## 9.0 Are there any Differences between the Management Principles for a National Park and a World Heritage Listed Property?

In many developed countries, the key objectives for the management of a national park are to protect and preserve the “*natural condition*” to the greatest possible extent.

The values that are to be protected are very broad and include ecological, environmental, scenic, archaeological and scientific values.

In general, “*natural condition*” considerations are the dominant - if not the sole - factor to be taken into account in the administrative decision-making process for permitting the uses that can be made for national park management.

On the other hand, there is more flexibility in the uses that can be undertaken for the management of a World Heritage Listed property – *subject to one proviso*:

*“The State Party and its partners must ensure that such sustainable use, or any other change, does not impact adversely on the Outstanding Universal Value of the property”*: **Operational Guidelines for the Implementation of the World Heritage Convention (2013) at para. 119.**

### **Other relevant elements of this Operational Guidelines include:**

*“World Heritage properties may support a variety of ongoing and proposed uses that are ecologically and culturally sustainable and which may contribute to the quality of life of communities concerned;*

- *For some properties, human use would not be appropriate; and*
- *Legislation, policies and strategies affecting World Heritage properties should ensure the protection of the Outstanding Universal Value, support the wider conservation of natural and cultural heritage, and promote and encourage the active participation of the communities and stakeholders concerned with the property as necessary conditions to its sustainable protection, conservation, management and presentation.”*

**Further Reading:** UNESCO World Heritage List <http://whc.unesco.org/en/list/>

**10.0 CASE STUDY: Compatibility between Para. 119, The World Heritage Convention Operational Guidelines and Australia’s Environment Protection and Biodiversity Conservation Act 1999**

The scope of the World Heritage Convention Operational Guidelines is to protect the Outstanding Universal Value of World Heritage properties; to support the wider conservation of natural and cultural heritage; and to promote and encourage active community participation - *all within the context of sustainable development.*

Understanding the **administrative** law principles on the role of the objects clause of *Australia’s Environment Protection and Biodiversity Conservation Act 1999 (Cth) [at Section 3(1)]* – as well as judicial review - is crucial for **valid decision-making by the Federal Government** under this statute.

The significance of the objects clause and its role in administrative decision-making were clearly identified in the decision of Kirby P (as he then was) in *Woollahra Municipal Council v Minister for Environment (1991) 23 NSWLR 710 at 725-726*. These include:

- (i) *That the objects clause constrains the power itself. Any exercise of the power done for a purpose other than the purpose or object of the statute results in an invalid decision due to a want of a power itself ...;*
- (ii) *That the objects clause, together with the scheme and subject matter of the statute, defines the boundaries of the statute. They dictate those factors, or considerations, for which regard should be had in order to determine whether or not a power has been exercised unreasonably or ultra vires; and*



(iii) *That all powers conferred under the statute are subject to the object or purpose of the statute as being paramount.*

Compliance with the following statutory objects - prescribed in *Australia's Environment Protection and Biodiversity Conservation Act* at Section 3(1) - has significant implications.

In particular, for valid administrative decision-making by the Federal Government to protect and conserve Australia's World Heritage Properties.

***Section 3(1): The objects of the Environment Protection and Biodiversity Conservation Act are:***

“(a) To provide for the **protection of the environment**, especially those aspects of the environment that are matters of national environmental significance [e.g. A World Heritage Listed Property]; and  
(b) To promote **ecologically sustainable development** through the conservation and ecologically sustainable use of natural resources; and  
(c) To promote the **conservation of biodiversity**; and  
(ca) To provide for the **protection and conservation of heritage**; and  
(d) To promote a **co-operative approach to the protection and management of the environment involving governments, the community, land-holders and indigenous peoples**; and  
(e) To assist in the **co-operative implementation of Australia's international environmental responsibilities**; and  
(f) To **recognise the role of indigenous people in the conservation and ecologically sustainable use of Australia's biodiversity**; and  
(g) To **promote the use of indigenous peoples' knowledge of biodiversity** with the involvement of, and in co-operation with, the owners of the knowledge”  
**(Emphasis added).**

The objects of Australia's *Environment Protection and Biodiversity Conservation Act* are both complex and diverse.

Decision-making by Government for the use of the GBRWH, that complies with the objects of this Act, will ensure Australia's World Heritage Listed Properties are managed consistently with the World Heritage Convention Operational Guidelines; and avoid future litigation.

*The protection of the Outstanding Universal Values of the Great Barrier Reef must be effectively addressed by the Australian Government in its “**Long-Term Sustainability Plan**”. The ‘boundaries’ for the Plan are set by the Environment Protection and Biodiversity Conservation Act.*

*Previous UNESCO Reports have identified the factors that have the potential to place the “outstanding universal values” of the Great Barrier Reef in danger:*

*Coastal development, including development of ports and LNG export facilities; Grounding of ships; Water quality; and Extreme weather events.*

### **About Dr Ted Christie and Environmental Dispute Resolution:**

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