

MOVABLE HERITAGE



Operation of the *Protection of Movable Cultural Heritage Act 1986*

The *Protection of Movable Cultural Heritage Act 1986* (PMCH Act) commenced operation on 1 July 1987, to give effect to the 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*.

The PMCH Act protects Australia's heritage of movable cultural objects and supports the protection by foreign countries of their heritage of movable cultural objects.

This annual report is prepared in accordance with section 47 of the PMCH Act and covers the operation of the Act from 1 July 2008 to 30 June 2009.

Purpose of the Act

The PMCH Act regulates the export of cultural heritage objects from Australia. It protects objects which, if exported, would significantly diminish Australia's cultural heritage.

The PMCH Act includes provisions that allow Australia to respond to an official request by a foreign government, to return objects that have been illegally exported in contravention of that country's cultural heritage laws.

The Protection of Movable Cultural Heritage Regulations 1987, set out the National Cultural Heritage Control List of objects covered by the legislation, which currently includes:

- Indigenous art and artefacts
- works of fine or decorative art
- scientific and archaeological artefacts
- fossils, meteorites and minerals
- agricultural and industrial heritage
- books, stamps and medals, and
- historic materials.

If an object meets the criteria for the National Cultural Heritage Control List, it is considered an Australian protected object and therefore requires a permit before export. Some Australian protected objects of Aboriginal and Torres Strait Islander heritage, military heritage and historical significance, may not be granted a permit to export. Other objects may be exported provided a permit or certificate has been obtained. Heritage objects located overseas may also be defined as Australian protected objects, and a certificate of exemption may be issued for such an object to enter Australia and return overseas without restriction.

Permits are granted by the Minister for the Environment, Heritage and the Arts, on the advice of the National Cultural Heritage Committee and expert examiners.

National Cultural Heritage Control List

The National Cultural Heritage Control List sets out the categories of objects classed as Australian protected objects. The criteria (which define the categories) include: historical association; cultural significance to Australia; representation in an Australian public collection; age and financial thresholds. The control list includes Class A and Class B objects.

Class A objects are significant Australian heritage objects that cannot normally be exported from Australia. They include:

- some of the most significant items of Aboriginal and Torres Strait Islander heritage: bark and log coffins, human remains, rock art, dendroglyphs (carved burial and initiation trees), and sacred and secret ritual objects
- Victoria Crosses awarded to Australian recipients, and
- objects comprising the suit of armour worn by Ned Kelly, at the event known as the siege of Glenrowan in 1880.

If a Class A object is not in Australia and a person wishes to temporarily import it, the minister may grant a certificate authorising its subsequent export.

Class B objects that may be exported subject to a permit, include:

- archaeological objects
- objects of Aboriginal and Torres Strait Islander heritage, not covered under Class A
- natural science objects
- objects of applied science or technology
- objects of fine or decorative art
- objects of documentary heritage
- numismatic objects and medals, not covered under Class A
- philatelic objects, and
- objects of historical significance, not covered under Class A.

National Cultural Heritage Account

The National Cultural Heritage Account is established by section 25 of the PMCH Act and is a Special Account for the purposes of the *Financial Management and Accountability Act 1997*. Its purpose is to facilitate the acquisition of Australian protected objects for display or safekeeping.

Funding of \$500,000 was allocated in 2008–09, to maintain the National Cultural Heritage Account.

This year, the following Australian cultural organisations have received funding from the Account, the:

- Australian National Maritime Museum, to acquire the Charlotte Medal
- Art Gallery of South Australia, to acquire the painting: Adelaide Hunt Club Cup 1870, and
- Powerhouse Museum, to acquire the Bruno Benini Photography Archive.



The *Charlotte Medal*, 1788, by Thomas Barrett. Two photos—one is a front view and one a back view of the medal. Photos: Andrew Frolows, 2008, courtesy Australian National Maritime Museum

Monitoring and Evaluation

Review of the Act's Regulations and administration

A review of the PMCH Act and its Regulations, commenced in January 2009. The objectives of the review include: an examination of the operation of the legislation; the extent to which the objectives of the legislation have been achieved; the appropriateness of the current arrangements and categories under the National Cultural Heritage Control List; the operation of the National Cultural Heritage Account and the effectiveness of the current permit system.

The review commenced with the release of a Discussion Paper and a public consultation phase. Submissions on the Act's effectiveness and ways to improve its administration were invited from stakeholders.

The review is due for completion in the latter half of 2009.

Committees

National Cultural Heritage Committee

The National Cultural Heritage Committee is appointed under the PMCH Act to advise the minister on the operation of the Act, the National Cultural Heritage Control List, and the National Cultural Heritage Account. Members serve terms of up to four years and are eligible for reappointment.

The Committee held two face-to-face meetings (4 December 2008 and 18 June 2009) and three teleconferences (15 September 2008, 24 October 2008 and 4 May 2009) to consider applications for export permits and for funding from the National Cultural Heritage Account. Committee business was also conducted out of session, including the consideration of export applications and funding applications, and advice to the minister on the significance of collections under the Act.

Register of Expert Examiners

The Register of Expert Examiners was maintained by the Committee in accordance with section 22 of the PMCH Act. The National Cultural Heritage Committee regularly invites individuals with appropriate expertise to be included on the register to broaden the expert advice available to the Committee.

The expert examiners give the benefit of their wide experience and practical support throughout the year. Their specialist knowledge and advice, in preparing reports for consideration by the Committee and the minister, are vital in protecting Australia's significant movable cultural heritage; as is the specialist advice they provide to the Australian Customs and Border Protection Service and the Australian Federal Police.

Table 1: Membership of the National Cultural Heritage Committee in 2008–09

<i>Member</i>	<i>Date/term of appointment</i>
Chair: Mr Craddock Morton, Director, National Museum of Australia	Appointed 9 March 2006 for 4 years
Professor Daryl Le Grew, Vice Chancellor, University of Tasmania	Appointed 27 March 2006 for 4 years
Mr Simon Molesworth AM QC, barrister-at-law, Victoria	Re-appointed 25 May 2006 for 4 years
Ms Kylie Winkworth, museum and heritage consultant, NSW	Re-appointed 31 July 2006 for 4 years
Ms Avril Quail, Principal Project Officer, Queensland Indigenous Arts Marketing and Export Agency	Re-appointed 31 July 2006 for 4 years
Ms Anne-Marie Schwirtlich, CEO and State Librarian, State Library of Victoria	Appointed 9 May 2007 for 4 years
Mr Christopher Menz, Director Art Gallery of South Australia	Appointed 30 September 2007 for 4 years
Ms Deborah Tranter, Deputy Director, Cobb and Co Museum, Queensland	Appointed 12 July 2004 for 4 years
Ms Jennifer Sanders, Associate Director, Powerhouse Museum, Sydney	Re-appointed 12 July 2004 for 4 years
Dr Suzanne Miller, Director South Australian Museum	Appointed 22 July 2008 for 3 years, till 30 September 2011
Dr Ian Galloway, CEO Queensland Museum	Appointed 16 September 2008 for 3 years till 30 September 2011
Mr Phillip Gordon, Collections Coordinator Anthropology, Australian Museum	Appointed 16 September 2008 for 3 years till 30 September 2011

Compliance

Enforcement

The department continued to work closely with the Australian Federal Police and the Australian Customs and Border Protection Service, to ensure the enforcement of, and compliance with, the PMCH Act. The department responded to 45 enquiries on a diverse range of objects being exported and imported, including heritage machinery, fossils and antiquities.

Objects illegally exported from another country in contravention of the cultural heritage laws of that country, and imported into Australia, may be subject to seizure and forfeiture to the Commonwealth, for return to the requesting government. The department continued to work with Interpol to ensure the enforcement of, and compliance, with the Act. The department received three Interpol alerts and submitted three information reports.

During 2008–09, the department initiated a review on the compliance and enforcement provisions of the Act. The department consulted widely and accepted public submissions on the provisions. Recommendations are currently being drafted to advise the minister.

Reporting

Export permit applications

A total of 116 export permit applications were finalised, which included the assessment of 3287 objects (including 70 for letters of clearance). A summary of export applications processed in 2008–09, is at Appendix 1. The objects that were issued permanent and temporary export permits and certificates of exemption, are described at Appendix 2.

Permits for permanent export

Eleven permits were issued, to permanently export 12 Australian protected objects.

Permits for temporary export

Ten permits were issued to allow the temporary export of 13 Australian protected objects, for exhibition or assessment.

Letters of clearance

Letters of clearance may be issued for objects that have been assessed by expert examiners as not being Australian protected objects, and therefore do not require an export permit under the

PMCH Act. The letters are usually issued by the department to assist with the clearance of these objects through Customs.

A total of 70 letters of clearance were issued covering 3198 objects.

Refusal of export permits

Four objects were refused an export permit.

Applications withdrawn

Five applications were withdrawn.

Certificates of exemption

Certificates of exemption allow Australian protected objects that are currently overseas, to be imported into Australia and subsequently re-exported. Owners of Australian protected objects located overseas, are encouraged to repatriate them to Australia for display or sale. Objects imported for exhibition allow the Australian public access to elements of their cultural heritage that would otherwise be unavailable.

Sixteen certificates of exemption, covering 55 objects, were issued.

Appendix 1: Summary of export applications and assessments in 2008–09		
<i>Export applications</i>	<i>Number of applications</i>	<i>Number of objects</i>
Applications received during 2008–09	134	3249
Applications finalised during 2008–09	116	3287
Applications carried over as at 30 June 2009	26	27
<i>Outcomes of applications finalised</i>	<i>Number of outcomes</i>	<i>Number of objects</i>
Permanent export permits issued	11	12
Temporary export permits issued	10	13
Conditional permits issued	Nil	Nil
Letters of clearance issued	70	3198
Certificates of exemption issued	16	55
Permits refused	4	4
Applications withdrawn	5	5
Total outcomes	116	3287



Appendix 2: Permits issued in 2008–09

<i>Permanent export permits – description</i>	<i>Finalised</i>
1924 Aveling & Porter Steam Roller	24/07/2008
Painting c1947 Unknown (Aboriginal) Artist	22/09/2008
Tractor, HANOMAG c1938	25/09/2008
Paintings, 'L'entre d'une Fjord, Brittany' and 'La Mer a la Spezia' by J P Russell	01/12/2008
Painting 'Kelly in Bush' by Sidney Nolan	02/01/2009
1942 Chevrolet Military Truck	10/02/2009
1902-1904 Garrett Steam Traction Engine	05/03/2009
Aboriginal Shield, 19th century	05/03/2009
Deutz 3 Cylinder Water Cooled Tractor	17/04/2009
Painting 'Riverbank' 1964 by Sidney Nolan	17/04/2009
Avance Tractor Wreck	17/04/2009
<i>Temporary export permits – description</i>	<i>Finalised</i>
Philatelic Exhibit – the Postal History of New South Wales 1810-1849	16/10/2009
Philatelic Collection - Australian Air Mails 1914-1934	30/10/2008
Philatelic Collection - the Stamp Booklets of Australia 1904-1934	30/10/2008
Motor Vehicle Bolwell Mark VII	30/10/2008
Elfin Racing Car	14/11/2008
Dress worn by Judith Anderson, 1952	09/02/2009
1941 Ford Utility	10/02/2009
Three Historic Philatelic Collections	04/05/2009
Klemm L25 d2 Aeroplane	07/05/2009
Comper Swift Aeroplane	07/05/2009
<i>Certificates of exemption – description</i>	<i>Finalised</i>
Aboriginal Art Objects	04/07/2008
Painting 'Water Dreaming' 1972 Old Walter Tjampitjinpa	14/07/2008
Painting 'Wild Orange Dreaming' 1971 by Kaapa Tjampitjinpa	14/07/2009
Drawings and Paintings by Papunya Artists, 1971, Painting 'Bush Tucker Dreaming 1971 by Timmy Payungka Tjapangati, Drawings Untitled by Uta Uta Tjangala 1971, Drawings Untitled by Anatjari No.111 Tjakamarra.	18/07/2008
Painting, Rainmaker Bird Ceremony 1972 by Tim Leura Tjapaltjarri	14/08/2008
Painting, 'Aboriginal Artist' 1986 by Robert Campbell Jnr	13/10/2008

Appendix 2: Permits issued in 2008–09

Painting, 'Father/Son/Grandfather' c1978 by Tim Leura Tjapaltjarri	13/10/2008
Drawing of Ben-nel-long by Port Jackson Painter, 1790 to 1797	20/10/2008
Aboriginal Bowls and Queensland Shield	20/10/2008
Bark Painting, c1960s	19/12/2008
NSW Postal History to 1850	18/02/2009
Painting by Albert Namatjira, c1957	18/02/2009
Clifford Possum Tjapaltjarri Painting	05/05/2009
Tim Leura Tjapaltjarri Painting	05/05/2009
Charlie Tararu Tjungurrayi Painting	15/05/2009
Painting Dr Forster & Mr Forster by Jean Francois Rigaud, c1780	28/05/2009

International Achievements

In March 2009, the department signed a memorandum of understanding with its counterpart administration in the Republic of Korea, the Cultural Heritage Administration. This non-binding agreement provides a framework for bilateral cultural cooperation between the two departments, including: possible opportunities for exhibitions; personnel exchanges; and information sharing on laws, policies and procedures that protect Australian and Korean cultural objects and intangible cultural heritage.

Freedom of Information

One Freedom of Information request was finalised in 2008–09. No new requests were received.

Administrative Appeals Tribunal

Section 48 of the PMCH Act provides that certain decisions of the minister may be reviewed by the Administrative Appeals Tribunal (AAT).

During 2008–09, no decisions were reviewed by the AAT and one application for review was received.

Additional information

Further information on the PMCH Act is available at www.arts.gov.au/movable_heritage