

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

Purpose of the Act

The *Protection of Movable Cultural Heritage Act 1986* regulates the export of cultural heritage objects from Australia. The purpose of the Act is to protect, for the benefit of the nation, objects which if exported would significantly diminish Australia's cultural heritage. The Act includes provisions that also allow Australia to respond to an official request by a foreign government to return objects that have been illegally exported from their country of origin.

The Act defines certain heritage objects as 'Australian protected objects' and implements a system of export control. Some Australian protected objects of Aboriginal, military and historical significance cannot be granted a permit for export. Other Australian protected objects may be exported, provided a permit or certificate has been obtained. Permits are granted by the responsible Minister, on the advice of the National Cultural Heritage Committee and Expert Examiners. Heritage objects located overseas may also be defined as Australian protected objects under the Act, and a Certificate of Exemption may be issued for such an Australian protected object to enter Australia and return overseas without restriction.

National Cultural Heritage Control List

The National Cultural Heritage Control List sets out the categories of objects classed as Australian protected objects and the criteria defining each of these categories. These criteria include historical association, cultural significance to Australia, representation in an Australian public collection, age, and financial thresholds.

The Control List includes Class A objects and Class B objects.

Class A objects can only be exported where they have previously been imported under a Certificate of Exemption, and 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
- the objects comprising the suit of armour worn by Ned Kelly at the event known as the siege of Glenrowan in 1880.

Class B objects which 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.

Review of the Protection of Movable Cultural Heritage Act 1986, regulations and administration

The National Cultural Heritage Committee commenced a review of the Act and its administration, and considered a range of possible amendments. As part of that process, the Australian Government Solicitor provided legal advice on a number of issues, and consultation with a range of stakeholders commenced.

Liaison with the Australian Federal Police and the Australian Customs Service

The Department continued to work closely with the Australian Federal Police and the Australian Customs Service to ensure the enforcement of, and compliance with, the Act. A number of inquiries were undertaken in respect of objects being imported and exported.

Illegal trade in cultural material and overseas requests for return of material illegally exported from the country of origin

Imports: During the year the Department continued to receive inquiries from within Australia and overseas regarding possible illegal imports. 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 Australian Government for return to the requesting government. The Department is involved in negotiations with a number of foreign governments on these cases.

As a result of a request from the Embassy of the People's Republic of China for their return, a number of illegally exported Chinese fossils, including dinosaur eggs, were seized. On 21 June 2004, 32 fossils were returned to the Ambassador of the People's Republic of China. On 11 June 2004, a major seizure of Chinese fossils liable to forfeiture occurred at a property near Mandurah, Western Australia.

Other investigations are ongoing.

Exports: The exporter of two consignments of heritage machinery (a Marshall Road locomotive and a Fowler stump puller) was convicted in April 2004.

In July 2003, the Australian Federal Police seized a number of items of cricket memorabilia that were Australian protected objects and were exported in contravention of the Act, by an auction house for sale in London. The Minister returned the objects to their respective owners, as they had not been responsible for the export by the auction house.

National Cultural Heritage Account

The National Cultural Heritage Account was established under Section 25 of the *Protection of Movable Cultural Heritage Amendment Act 1999* and in accordance with the regulatory requirements of the Commonwealth *Financial Management and Accountability Act 1997*. The purpose of the account is to facilitate the acquisition of Australian protected objects for display or safekeeping.

A total of \$91 000 was allocated at Additional Estimates to the account during the 2003–04 financial year and the account will be maintained at a level of \$500 000 through annual top-ups as necessary.

Three applications for account funding were considered during the 2003–04 financial year:

- \$32 000 was approved by the Minister for the Australian Sugar Industry Museum at Innisfail in north Queensland to acquire a 1911 Marshall 'Colonial' twin cylinder oil tractor;
- \$33 750 was approved by the Minister for the State Library of South Australia to assist in the acquisition of an 1836 Deed of Settlement; and

- \$25 000 was approved by the Minister for Museum Victoria to assist in the acquisition of the racing saddle used on Phar Lap by the jockey Billy Elliott.

Export permit applications

A total of 7566 objects were assessed under 185 applications (including requests for letters of clearance) during 2003–04. See Table 3 for a statistical summary of all applications processed in 2003–04. As in previous years, a range of material was included in the applications (see Table 4).

There were 35 applications covering 36 objects under consideration as 1 July 2003 and 19 applications covering 42 objects still under active consideration at 30 June 2004.

Permits for permanent export (including conditional permits)

Twenty-seven permits (including two conditional permits) were issued to export permanently 51 cultural heritage objects. In general, the exporters were seeking to either sell the objects on the international market or to exchange the objects with overseas collectors (see Table 4).

Permits for temporary export

Five permits were issued to allow the temporary export of 22 Australian protected objects for exhibition or assessment purposes (see Table 5).

The objects were:

- five philatelic exhibits;
- samples of Pilbara greenstone containing microbial fossils;
- the Jungiila-Bulajina Diamond (rough) – 104.73 carats;
- two railings and two iron hinges, approximately 170 years-old, from Myall Creek; and
- one Australian Aboriginal artwork.

Letters of Clearance

A total of 108 Letters of Clearance were issued covering a total of 7404 objects. Of the total, 85 letters covering 144 objects resulted from applications for export permits where the objects were found not to meet the Control List criteria and the Act did not apply to them. In addition, 23 letters covering 7260 objects were issued as a result of discussions with prospective applicants prior to the lodgement of a

formal application, where it became evident that the objects would not meet the control list criteria.

Applicants may obtain a preliminary assessment of certain natural science objects. Expert examiners have indicated that the vast majority of these applications relate to material that is of little or no scientific or cultural significance, or to material that is adequately represented in public collections by objects of equivalent quality. In such cases, a Letter of Clearance allowing its export is issued by the expert examiner.

In cases where the object is assessed as being of high scientific or cultural significance and it is not adequately represented in public collections, it is subject to the full assessment process, including consideration by the National Cultural Heritage Committee.

Applications withdrawn

Thirteen applications received were withdrawn in the year under review.

Certificates of Exemption

Twelve Certificates of Exemption covering 25 objects were issued during the year see Table 6. 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. Objects returned for sale provide opportunities for Australian residents to purchase and return these objects to the Australian domain. A certificate provides owners with security that their objects can be re-exported on completion of the exhibition or if sale to a resident of Australia is unsuccessful.

As an example, during 2003–04 Certificates of Exemption were issued for:

- Aboriginal artefacts;
- artworks; and
- objects of historical significance, including a manuscript, log book, letter, two Noble Prize citations and Sir Donald Bradman's 1948 cricket cap.

Refusal of export permits

Table 1 shows four objects were refused an export permit during 2003–04.

Table 1: Decisions to refuse export permits

Object	Date of decision
<p>A fossil – <i>Phyllolepis</i> – Devonian, Merringowry, New South Wales, undescribed.</p> <p>The fossil phyllolepid fish is an undescribed species, which may represent more than one species. Scientific description of Phyllolepids from Merriganowry is currently being undertaken by the Australian Museum in Sydney.</p>	5 February 2004
<p>The Lieutenant George Gosse GCs RANVR, Medal Group.</p> <p>This is the highest award for bravery after the Victoria Cross, and only three George Crosses are owned by public collections in Australia. The George Cross has special significance to the Royal Australian Navy as it is the highest valour award yet bestowed on a member of the service. This George Cross was awarded to Lieutenant Gosse for action taken by him in mine clearance work in the face of extreme personal danger.</p>	23 April 2004
<p>The 1912 International Titan Tractor, serial number 2535.</p> <p>The tractor is an extremely rare and significant example of the first decade of mechanised farming in Australia and the introduction of American agricultural technology. It is an excellent working representative example of the earliest tractors used in broad acre ploughing and road haulage, that did not suffer the same drawbacks as, and which marked the evolution from, the earlier steam traction engines.</p> <p>There no other examples of this type of tractor in any Australian public collection.</p>	31 May 2004
<p>An Australian Aboriginal Painting – <i>Djulpan, The Constellation of Orion and the Pleiades</i>, – c1958 by Mungarrawuy unupingu.</p> <p>The work is of great cultural, historic and aesthetic significance. It is an exceptional painting by an outstanding artist and keeper of ceremonial knowledge who is pivotal to the development of art in Arnhem Land. The importance of this work which is in superb condition and has impeccable provenance, is increased by its scale, complexity of subject matter and its depiction of two stories in one work.</p>	5 May 2004

National Cultural Heritage Committee

The Act provides for the Minister to appoint the National Cultural Heritage Committee (see Table 2 for a list of members during 2003–04). The committee is responsible for advising the Minister on permit applications and on the administration of the Act, including the National Cultural Heritage Control List, the Register of Expert Examiners, and the National Cultural Heritage Account.

Table 2: Members of the National Cultural Heritage Committee

Dr Philip Jones, Senior Curator, Department of Anthropology, South Australian Museum, from 26 October 1995 (Chair).
Professor Kenneth McNamara, Senior Curator, Invertebrate Paleontology, Western Australian Museum, (from 26 October 1995).
Mr Simon Molesworth AM QC, Barrister-at-Law, Victoria, (from 29 January 1996).
Professor Di erbury AO, Vice-Chancellor, Macquarie University, Sydney, (from 12 October 2000).
Ms Deborah Tranter, Deputy Director, Cobb & Co Museum, Queensland (from 24 April 2000).
Ms Jennifer Sanders, Associate Director, Powerhouse Museum, Sydney (from 4 May 2000).
Ms Kylie Winkworth, Museum and Heritage Consultant, New South Wales, (from 12 August 2002).
Ms Avril Quail, Associate Curator, Indigenous Australian Art, Queensland Art Gallery (from 1 October 2002).
Mr Bill Bleathman, Director, Tasmanian Museum and Art Gallery (from 25 February 2003).
Dr Susan Marsden, Historian, South Australia, (from 23 April 2004).
The appointment of Ms Carol Henry, Chief Executive Officer, Art Exhibitions Australia, New South Wales (until 14 February 2004).

Committee meetings were held in Canberra on 6 and 7 November 2003 and 13 and 14 May 2004, with considerable time being devoted to the review of the Act and Regulations. Committee telephone conferences were also held on 13 November 2003, 12 December 2003, 23 February 2004, 17 March 2004, and 31 March 2004 to consider contentious applications and issues under the Act. Further, a considerable volume of committee business was conducted out of session, including the consideration of export applications and formulating recommendations and advice to the Minister.

Committee related expenditure for the 2003–04 financial year, including travel for attendance at meetings and sitting fees, was \$46 555.

Register of Expert Examiners

The Register of Expert Examiners was maintained by the National Cultural Heritage Committee in accordance with Section 22 of the Act. The committee continually seeks to invite individuals with appropriate expertise to join the register to ensure that it is balanced, comprehensive and representative.

The committee wishes to express its sincere gratitude to the expert examiners, who do not receive remuneration, for giving the benefit of their wide experience and practical support throughout the year. Their specialised knowledge and advice in preparing reports for consideration by the committee and the Minister are vital in the protection of Australia's significant movable cultural heritage, as is the specialist advice they provide to the Australian Customs Service and the Australian Federal Police.

The United Nations Educational, Scientific and Cultural Organisation Convention

There are 104 parties to the Convention on the *Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970)*. The Protection of *Movable Cultural Heritage Act 1986* was passed as the necessary implementing legislation prior to Australia's accession to the convention, which occurred on 30 January 1990.

Table 3: Summary of export applications and assessments 2003–04

A: Summary of export applications 2003–04

	Objects	Applications
Number of applications brought forward as at 1 July 2003	36	35
Number of applications received during 2003–04	270	127
Total number of active applications 2003–04	306	162
Total number of applications finalised during 2003–04	264	143
Number of applications carried over as at 30 June 2004	42	19

B: Outcomes of applications finalised during 2003–04^(a)

	Objects	Outcomes
Permanent export permits issued	51	27 ^(b)
Temporary export permits issued	22	5
Letters of clearance issued	144	85
Certificates of exemption issued	25	12
Permits refused	4	4
Withdrawn	18	13
Total number of outcomes during 2003–04	264	146

^(a) An application may have more than one outcome. For example, an application covering three objects may result in one object being an Australian Protected Object thereby requiring an export permit, and the remaining two objects being non-Australian Protected Objects, which result in a Letter of Clearance also being issued.

^(b) Including two Conditional Export Permits issued (covering two objects).

C: Letters of Clearance – non application 2003–04^(c)

	Objects	Letters
Total additional Letters of Clearance issued	7260	23

^(c) Additional Letters of Clearance issued during 2003–04 that resulted from assessments of objects without lodgement of a formal application.

D: Total assessments actioned during 2003–04^(d)

	Objects	Assessments
Total assessments actioned	7560	185

^(d) Sum of the total number of active applications plus the non-application assessments that resulted in a Letter of Clearance.

E: Variations to permits/certificates of exemption processed during 2003–04

	Objects	Variations
Total variations processed	18	2

Table 4: Permanent permits issued in 2003–04

Permanent permits – description	Finalised
Oil Painting: <i>Portrait of Madge Currie</i> , 1911 by Rupert Bunny	7 July 2003
1935 Chevrolet Utility Motor Vehicle	14 July 2003
1946 Chevrolet Stylemaster Utility & parts	15 July 2003
1939 Chevrolet Standard Coupe	15 July 2003
WWI German Field Gun	21 July 2003
c1917 Gun Sight from an 18LB gun	21 July 2003
1934 Dodge Utility	8 December 2003
Aboriginal Painting: <i>Wind Mimihs</i> , 1971 by irawala	27 January 2004
Aboriginal Painting: <i>Frog and Turtle</i> , 1971 by irawala	27 January 2004
Aboriginal Painting: <i>Coral</i> , 1962 by Ali Miller Mungatopi	27 January 2004
Aboriginal Painting: <i>Pukumani Design</i> , c1960 by Mickey Geranium Waralapinni	27 January 2004
Aboriginal Painting: <i>Sacred Body Designs</i> , c1972 by irawala	27 January 2004
Aboriginal Painting: <i>A Creation Time Ceremony</i> , c1972 by Mungurrawuy unipingu	27 January 2004
Aboriginal Painting: <i>Three Mimih Spirits</i> , c1958 by irawala	27 January 2004
1931 Comper Swift Aircraft	11 February 2004
Sabre Jet Fighter Aircraft A94 – 956	12 February 2004
Sabre Jet Fighter Aircraft A94 – 942	12 February 2004
23 opalised fossils from Lightning Ridge	9 March 2004
1957 Wimbledon Mixed Doubles Trophy	17 March 2004
Aboriginal Painting: <i>Untitled</i> , 1973 by Shorty Lungkarda Tjungurrayi	17 March 2004
Brachina Meteorite – 0.89g fragment	24 March 2004
Sample of Mt Padbury meteorite	5 May 2004
Sample of Bencubbin meteorite	5 May 2004
Sample of Miles meteorite	5 May 2004
c1950 Kelly Lewis 25/30HP 2-stroke diesel engine	5 May 2004
Donald Campbell's gold coloured racing helmet	4 June 2004
Papunya Board: <i>Untitled</i> , c1972 by Shorty Lungkata Tjunjurrayi	7 June 2004
2 Slabs of quartzite containing fossil fish: Species <i>Bothriolepis yeungae</i> and <i>Remigolepis walkeri</i>	30 June 2004

Table 5: Temporary permits issued in 2003–04

Temporary permits – description	Finalised
Philatelic Exhibit: <i>Queensland – The Famous Chalons</i>	23 September 2003
Philatelic Exhibit: <i>Privileged Mail of Australia 1830s – 1920s</i>	23 September 2003
Philatelic Exhibit: <i>The George V Definitive Issues of Australia</i>	23 September 2003
Philatelic Exhibit: <i>The Kangaroo Issues and Related Essays of Australia</i>	23 September 2003
Philatelic Exhibit: <i>Tasmania – The Queen Victoria Heads</i>	23 September 2003
Samples of Pilbara greenstone containing microbial fossils	5 December 2003
Jungiila-Bulajina Diamond (rough), 104.73ct, found Merlin Diamond Mine, NT	6 May 2004
2 Railings approx 170 years-old, ex Myall Creek	19 May 2004
2 Iron hinges, approx 170 years old, ex Myall Creek	19 May 2004
Bark Painting: <i>Wanjina</i> , c1970 by Charlie Numbulmoore	4 June 2004
North Queensland Rainforest Shield decorated with totemic design	4 June 2004
Papunya Board: <i>Emu Men at Kalipinypa</i> , 1973 by Johnny Warangkula Tjupurrula	4 June 2004
Papunya Board: <i>Untitled</i> , 1972 by Shorty Lungkarda Tjungurrayi	4 June 2004
Bark Painting: <i>Mimih Mourning</i> , 1958 by irawala	4 June 2004
Ink on paper: <i>One Tribe Defeated by the Other</i> , 1890s by Tommy McRae	4 June 2004
Ink on paper: <i>Another Fight</i> , c1890s by Tommy McRae	4 June 2004
Ink on paper: <i>A Fight</i> , c1890s by Tommy McRae	4 June-2004
Ink on paper: <i>Before the Fight – A War Dance</i> , c1890s by Tommy McRae	4 June 2004
Watercolour and pencil on paper: <i>Untitled (Ceremony)</i> , 1895 by William Barak	4 June 2004
Carved and engraved figure: <i>Jijigarrgaly, Spirit Being of Lake Disappointment</i> , 1959 by Pankalyirri (carver) and Nyankapiti (engraver)	4 June 2004

Table 6: Certificates of Exemption issued in 2003–04

Certificates of exemption – description	Finalised
Aboriginal Painting: <i>Yuutjutiyungu</i> , 1979 by Clifford Possum Tjapaltjarri	21 July 2003
Oil Painting: <i>Belle-île-Le Père Polyte (Polyte pêcheur)</i> , c1908–1918 by John-Peter Russell	21 July 2003
Painting: <i>Two Men Fighting</i> , 1978 by Clifford Possum Tjapaltjarri	21 July 2003
Aboriginal Carving: of a Snake, 1975 by Clifford Possum Tjapaltjarri	21 July 2003
Aboriginal Painting: <i>Mt Denison Country</i> , 1978 by Clifford Possum Tjapaltjarri	21 July 2003
Sir Donald Bradman's 1948 cricket cap	25 July 2003
W H Bragg Nobel Prize citation 1915	07 November 2003
W L Bragg Nobel Prize citation 1915	07 November 2003
Illuminated Manuscript 50 th Anniversary W L Bragg Noble Prize	07 November 2003
Bark Ceremonial Piece of the Murray & Loddon Tribes from Victoria	22 January 2004
Bark etching (Murray & Loddon Tribes) from Victoria	22 January 2004
Bark etching (Murray & Loddon Tribes) from Victoria	22 January 2004
Oil painting of ship by Captain Hogan.	11 February 2004
Manuscript of site plans for Adelaide with letter signed by Col William Light, 1836	11 February 2004
Manuscript – Charts showing tracks	11 February 2004
Views in South Seas (Hawaii), c1784 by John Clevely	11 February 2004
Log of Convict Transport <i>Marquis Cornwallis</i> , 1795–96, by Captain Hogan	11 February 2004
Autograph Letter signed William Bligh, 1806	11 February 2004
Views in South Seas (Moorea), c1784 by John Clevely	11 February 2004
Views in South Seas (Huaweine), c1784 by John Clevely	11 February 2004
Views in South Seas (Tahiti), c1784 by John Clevely	11 February 2004
Manuscript – Charts showing tracks	11 February 2004
Papunya Board: <i>Untitled</i> , c1972 by Old Walter Tjampitjinpa	29 March 2004
Papunya Board: <i>Untitled (The Trial)</i> , c1972 by Charlie Tararu Tjungurrayi	07 June 2004
Oil Painting: <i>Portrait of Sir George Jackson, Second Secretary to the Admiralty</i> , c1780 by Nathaniel Dance RA	18 June 2004