



Protection of Movable Cultural Heritage Act 1986

Act No. 11 of 1986 as amended

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An Act

to protect Australia's heritage of movable cultural objects,
to support the protection by foreign countries of their heritage
of movable cultural objects, and for related purposes

Part I—Preliminary

1 Short title [see Note 1]

This Act may be cited as the *Protection of Movable Cultural Heritage Act 1986*.

2 Commencement [see Note 1]

This Act shall come into operation on a day to be fixed by Proclamation.

3 Interpretation

(1) In this Act, unless the contrary intention appears:

aircraft means a machine or apparatus that can derive support in the atmosphere from the reactions of the air or from buoyancy.

appoint includes re-appoint.

Australia includes the external Territories other than Norfolk Island.

Australian protected object means a Class A object or a Class B object.

certificate means a certificate in force under section 12.

Chairperson means the Chairperson of the Committee.

Class A object means an object included in the class of Class A objects in the Control List.

Class B object means an object included in the class of Class B objects in the Control List.

coastal sea, in relation to Australia, means:

(a) the territorial sea of Australia; and

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(b) the sea on the landward side of the territorial sea of Australia.

Committee means the National Cultural Heritage Committee established under section 15.

condition, in relation to a permit, means a condition to which the permit is subject.

continental shelf has the same meaning as in the *Seas and Submerged Lands Act 1973*.

Control List means the National Cultural Heritage Control List in force under section 8.

expert examiner means a person whose name is in the register kept under section 22.

export means export from Australia.

import means import into Australia.

inland waters of Australia includes all waters on the landward side of the coastal sea of Australia.

inspector means a person who is an inspector by virtue of section 28.

member means a member of the Committee.

National Cultural Heritage Account means the Account established by section 25.

permit means a permit in force under section 11.

principal collecting institution means:

- (a) a public art gallery; or
- (b) a public museum; or
- (c) a public library; or
- (d) public archives;

established under a law of the Commonwealth, a State or a Territory.

protected object means an Australian protected object or a protected object of a foreign country.

protected object of a foreign country means an object forming part of the movable cultural heritage of a foreign country.

structure includes a platform fixed to the seabed or otherwise operating in the sea.

territorial sea, in relation to Australia, has the same meaning as it has for the purposes of the *Seas and Submerged Lands Act 1973*.

vessel means anything capable of carrying persons or goods through or on water, and includes an air-cushion vehicle or similar craft.

(2) A power conferred on a person by this Act may be exercised in the discretion of the person.

(3) A reference in this Act to an offence against a particular provision of this Act, or against this Act, includes a reference to an offence against:

(a) section 6 of the *Crimes Act 1914*; or

(b) an ancillary offence (within the meaning of the *Criminal Code*);

being an offence that relates to an offence against that provision of this Act, or against this Act, as the case may be.

(3A) A reference in this Act to an **offence against this Act** includes a reference to an offence against section 148.1, 148.2, 147.1 or 149.1 of the *Criminal Code* that relates to this Act.

(4) For the purposes of the application of this Act in relation to a body corporate, but without prejudice to the liability of any person other than the body corporate:

(a) a statement made, or document furnished, by a person acting on behalf of the body corporate shall be deemed to be made or furnished by the body corporate; and

(b) the knowledge of any person employed by, or concerned in the management of, the body corporate shall be deemed to be knowledge of the body corporate.

(5) A reference in this Act to the movable cultural heritage, in relation to a foreign country, is a reference to objects that are of importance to that country, or to a particular part of that country, for:

(a) ethnological, archaeological, historical, literary, artistic, scientific or technological reasons; or

(b) any other prescribed reasons.

(6) The provisions of this Act relating to the exportation or importation of an object apply notwithstanding that the object may have been brought into Australia

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from a country for the purpose of transportation to another country or as part of the stores or equipment of a vessel or aircraft.

4 Act to bind Crown [see Note 2]

This Act binds the Crown in right of the Commonwealth, of each of the States, of the Northern Territory and of Norfolk Island.

5 Application

This Act applies both within and outside Australia.

6 Extension to Territories

This Act extends to every external Territory other than Norfolk Island.

6A Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Part II—Control of Exports and Imports

Division 1—Exports

7 Movable cultural heritage of Australia

(1) A reference in section 8 to the movable cultural heritage of Australia is a reference to objects that are of importance to Australia, or to a particular part of Australia, for ethnological, archaeological, historical, literary, artistic, scientific or technological reasons, being objects falling within one or more of the following categories:

(a) objects recovered from:

(i) the soil or inland waters of Australia;

(ii) the coastal sea of Australia or the waters above the continental shelf of Australia; or

(iii) the seabed or subsoil beneath the sea or waters referred to in subparagraph (ii);

(b) objects relating to members of the Aboriginal race of Australia and descendants of the indigenous inhabitants of the Torres Strait Islands;

(c) objects of ethnographic art or ethnography;

(d) military objects;

(e) objects of decorative art;

(f) objects of fine art;

(g) objects of scientific or technological interest;

(h) books, records, documents or photographs, graphic, film or television material or sound recordings;

(j) any other prescribed categories.

(2) The generality of paragraph (1)(j) is not limited by any of the other paragraphs of subsection (1).

8 National Cultural Heritage Control List

(1) Subject to subsection (2), the regulations shall prescribe a list, to be known as the National Cultural Heritage Control List, of categories of objects that constitute the movable cultural heritage of Australia and are to be subject to export control.

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(2) The Control List shall divide such objects into 2 classes, namely:

(a) Class A objects, being objects that are not to be exported otherwise than in accordance with a certificate; and

(b) Class B objects, being objects that are not to be exported otherwise than in accordance with a permit or certificate.

(3) Subsection (2) does not prevent the division of Class A objects and Class B objects into sub-classes and other divisions or categories.

(4) Nothing in this section shall be taken to limit the application of subsection 33 (3A) of the *Acts Interpretation Act 1901*.

9 Unlawful exports

(1) Where a person exports an Australian protected object otherwise than in accordance with a permit or certificate, the object is forfeited.

(2) Where a person attempts to export an Australian protected object otherwise than in accordance with a permit or certificate, the object is liable to forfeiture.

(3) A person is guilty of an offence if:

(a) the person exports, or attempts to export, an object; and

(b) the object is an Australian protected object; and

(c) the person's conduct referred to in paragraph (a) is otherwise than in accordance with a permit or certificate.

(3A) A person is guilty of an offence if:

(a) a permit or certificate relates to an Australian protected object; and

(b) the person engages in conduct; and

(c) the conduct contravenes a condition of the permit or certificate.

(3B) A person who is convicted of an offence against subsection (3) or (3A) is punishable by:

(a) if the person is an individual—a fine not exceeding 1,000 penalty units or imprisonment for a period not exceeding 5 years, or both; or

(b) if the person is a body corporate—a fine not exceeding 2,000 penalty units.

Note: See subsection 46(4) for penalties that may be imposed by a court of summary jurisdiction.

(4) For the purposes of this section, an object shall be taken to be exported at the time when:

(a) the object has been placed on board a ship or aircraft at a particular place in Australia with the intention that it be taken out of Australia by that ship or aircraft and the departure of the ship or aircraft from that place has commenced; or

(b) the object has been delivered as a postal article into the control of the Australian Postal Corporation at a particular place in Australia with the intention that it be sent out of Australia by post and the movement of the postal article from that place has commenced.

(5) Without limiting the meaning of references in this section to a person attempting to export an object, a person shall be taken to attempt to export an object if the person conveys, or has possession of, the object with intent to export it or knowing that it is intended to be exported.

(6) For the purposes of this section, a person who exports or attempts to export an Australian protected object shall be taken to export, or attempt to export, the object otherwise than in accordance with a permit or certificate unless, before exporting or attempting to export the object, the person produces a permit or certificate authorising the export:

(a) where the export is not from an external Territory to an officer of Customs; or

(b) where the export is from an external Territory—to an inspector performing duties in relation to the export of Australian protected objects.

(7) In this section:

engage in conduct means:

(a) do an act; or

(b) omit to perform an act.

10 Grant of permits in respect of particular objects

(1) A person may apply to the Minister for a permit to export a Class B object.

(2) An application shall be made in writing in the prescribed form, or, if no form is prescribed, the form approved by the Minister.

(3) On receipt of an application, the Minister shall refer it to the Committee and the Committee shall refer it to one or more expert examiners.

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(4) The expert examiner or examiners shall submit to the Committee a written report on the application, and the Committee shall forward the report to the Minister together with the written recommendations (if any) made by the Committee.

(5) The Minister shall consider the report and recommendations (if any) and:

(a) grant a permit to export the Class B object concerned, subject to such conditions (if any) as the Minister specifies; or

(b) refuse to grant a permit.

(6) In considering the application, an expert examiner, the Committee and the Minister:

(a) shall have regard, among other things, to the reasons referred to in subsection 7(1) that are relevant to the object to which the application relates; and

(b) if satisfied that the object is of such importance to Australia, or a part of Australia, for those reasons, that its loss to Australia would significantly diminish the cultural heritage of Australia—shall not recommend the grant of a permit, or grant a permit, as the case may be, to export the object permanently.

(7) If the Minister refuses to grant the permit, the Minister shall, within the prescribed period after the decision is made, cause to be served on the applicant notice in writing of the refusal, setting out the reasons for the refusal.

10A Grant of general permits for certain institutions

(1) A principal collecting institution may apply to the Minister for a permit to export a Class B object that is accessioned into the collection for which the institution is responsible.

(2) If a principal collecting institution is not a body corporate, the person responsible for the institution's operations may make an application under subsection (1).

(3) An application is to be made in writing in the prescribed form, or, if no form is prescribed, the form approved by the Minister.

(4) On receipt of an application, the Minister must refer it to the Committee.

(5) The Committee must submit to the Minister a written report on the application.

(6) The Minister must consider the report and:

- (a) grant to the applicant a permit to export any Class B object that is accessioned into the collection for which the institution is responsible; or
- (b) refuse to grant a permit.

(7) A permit is subject to:

- (a) a condition that an exportation of a Class B object is not in accordance with the permit unless it is exported on loan for the purposes of research, public exhibition or a similar purpose; and
- (b) such other conditions (if any) as the Minister specifies in the permit.

(8) If the Minister refuses to grant a permit, the Minister must, within the prescribed period after the decision is made, cause to be served on the applicant written notice of the refusal, setting out the reasons for the refusal.

11 Permits

(1) A permit granted under section 10 or 10A shall be in writing in the prescribed form, or if no form is prescribed, the form approved by the Minister.

(2) A permit granted under section 10 or 10A comes into force on the date on which it is granted and remains in force for an indefinite period or for a period specified in the permit.

12 Certificates of exemption

(1) Where a person intends to import an Australian protected object:

- (a) for temporary purposes; or
- (b) in circumstances in which the person may wish subsequently to export the object;

the person may apply to the Minister for a certificate authorising the exportation of the object.

(2) An application shall be made in writing in the prescribed form or, if no form is prescribed, the form approved by the Minister.

(3) On receipt of an application, the Minister shall:

- (a) grant a certificate, subject to such conditions (if any) as the Minister specifies; or

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(b) refuse to grant a certificate.

(4) A certificate shall be in writing in the prescribed form or, if no form is prescribed, the form approved by the Minister.

(5) A certificate comes into force on the date on which it is granted and remains in force for the period specified in the certificate.

(6) If the Minister refuses to grant a certificate, the Minister shall, within the prescribed period after the decision is made, cause to be served on the applicant notice in writing of the refusal, setting out the reasons for the refusal.

13 Variation etc. of conditions and period of permit or certificate

(1) At any time while a permit or certificate is in force, the Minister may, by notice in writing served on the holder of the permit or certificate:

- (a) impose a condition to which the permit or certificate is to be subject;
- (b) vary or revoke a condition of the permit or certificate;
- (c) vary the period of effect of the permit or certificate; or
- (d) revoke the permit or certificate.

(2) A notice under subsection (1) takes effect when it is served on the holder of the permit or certificate or on such later date (if any) as is specified in the notice.

(3) The Minister shall not exercise a power under subsection (1) in relation to a permit or certificate except upon an application by the holder of the permit or certificate made in writing in the prescribed form, or, if no form is prescribed, the form approved by the Minister.

13A Address for service of notices

(1) A person applying for a permit under section 10 or 10A or a certificate under section 12 must specify, as the person's address for the purposes of this Part, an address in Australia.

(2) A person who has specified an address, under subsection (1) or through a previous application of this subsection, may, at any time, give to the Minister a written notice specifying, as the person's address for the purposes of this Part, an address in Australia that is different from the address last specified.

(3) The last address specified by a person under this section is taken to be the person's place of residence or business for the purpose of serving notices on the person under this Part.

Division 2—Imports

14 Unlawful imports

(1) Where:

- (a) a protected object of a foreign country has been exported from that country;
- (b) the export was prohibited by a law of that country relating to cultural property; and
- (c) the object is imported;

the object is liable to forfeiture.

(2) Where a person imports an object, knowing that:

- (a) the object is a protected object of a foreign country that has been exported from that country; and
- (b) the export was prohibited by a law of that country relating to cultural property;

the person is guilty of an offence punishable, on conviction, by:

- (a) if the person is a natural person—a fine not exceeding \$100,000 or imprisonment for a period not exceeding 5 years, or both; or
- (b) if the person is a body corporate—a fine not exceeding \$200,000.

(3) This section does not apply in relation to the importation of an object if:

- (a) the importation takes place under an agreement between:
 - (i) the Commonwealth, a State, a Territory, a principal collecting institution or an exhibition co-ordinator; and
 - (ii) any other person or body (including a government); and
- (b) the agreement provides for the object to be loaned, for a period not exceeding 2 years, to the Commonwealth, State, Territory, principal collecting institution or exhibition co-ordinator, as the case may be, for the purpose of its public exhibition within Australia.

(4) In subsection (3):

exhibition co-ordinator means a body that arranges for the conducting in Australia of public exhibitions of objects from collections outside Australia, and that achieves this by, from time to time:

(a) entering into an agreement with a person or body (including a government) for the importation of such objects on loan; and

(b) entering into an agreement with the Commonwealth, a State or a Territory under which the Commonwealth, State or Territory agrees to compensate the person or body referred to in paragraph (a) for any loss of or damage to the objects arising from, or connected with, the carrying out of the agreement referred to in that paragraph or the public exhibition of the objects in Australia.

Part III—Administration

15 National Cultural Heritage Committee

There shall be a committee, to be known as the National Cultural Heritage Committee.

16 Functions of Committee

The functions of the Committee are:

- (a) to furnish advice to the Minister, either of its own motion or on request made to it by the Minister:
 - (i) in relation to the operation of this Act;
 - (ii) in relation to objects that should be included in, or removed from, the Control List;
 - (iii) in relation to the classification and re-classification of objects so included; and
 - (iv) in relation to the operation of the National Cultural Heritage Account;
- (b) to furnish advice to the Minister pursuant to subsections 10(4) and 10A(5);
- (c) to establish and maintain the register referred to in section 22; and
- (d) to consult and co-operate with appropriate authorities of the Commonwealth, of the States and of the Territories, and with other organisations, associations and persons, on matters related to its functions.

17 Constitution of Committee

- (1) The Committee shall consist of:
 - (a) 4 persons, each of whom represents a different collecting institution;
 - (b) a member of The Australian Vice-Chancellors' Committee;
 - (c) a nominee of the Minister for Aboriginal Affairs; and
 - (d) 4 persons having experience relevant to the cultural heritage of Australia.
- (1A) The member referred to in paragraph (1)(c) must be:
 - (a) a person of the Aboriginal race of Australia; or
 - (b) a descendant of an indigenous inhabitant of the Torres Strait Islands.

- (2) A member of the Committee:
- (a) shall be appointed by the Minister;
 - (b) holds office on a part-time basis;
 - (c) holds office for such period, not exceeding 4 years, as is specified in the instrument of appointment; and
 - (d) is eligible for re-appointment.
- (3) The Minister shall designate, in writing, one of the members to be the Chairperson.
- (4) The Chairperson may be referred to as the Chairman or the Chairwoman.
- (5) The exercise of a power or the performance of a function by the Committee is not invalidated by reason only that:
- (a) there is a vacancy for a period of not more than 3 months in an office of a member referred to in paragraph (1)(b) or (c); or
 - (b) the number of members referred to in paragraph (1)(a) or (d) falls below 4 for a period of not more than 3 months.
- (6) For the purposes of this section, a person shall be taken to represent a collecting institution if the person holds a senior position in connection with the collecting functions of that institution.
- (7) In this section, ***collecting institution*** means:
- (a) a public art gallery;
 - (b) a public museum;
 - (c) a public library; or
 - (d) public archives.

18 Removal and resignation

- (1) The Minister may terminate the appointment of a member for misbehaviour or physical or mental incapacity.
- (2) The Minister may terminate the appointment of a member referred to in paragraph 17(1)(c) on the request of the Minister for Aboriginal Affairs.
- (3) If a member fails, without reasonable excuse, to comply with section 20, the Minister shall terminate the appointment of the member.

(4) A member may resign the office of member by writing signed by the member and delivered to the Minister.

19 Remuneration and allowances

(1) A member shall be paid such remuneration as is determined by the Remuneration Tribunal.

(2) A member shall be paid such allowances as are prescribed.

(3) Subsections (1) and (2) have effect subject to the *Remuneration Tribunal Act 1973*.

20 Disclosure of interests

(1) A member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Committee shall, as soon as possible after the relevant facts have come to the knowledge of the member, disclose the nature of the interest at a meeting of the Committee.

(2) A disclosure under subsection (1) shall be recorded in the minutes of the meeting of the Committee and the member shall not, unless the Minister or the Committee otherwise determines:

(a) be present during any deliberation of the Committee with respect to that matter; or

(b) take part in any decision of the Committee with respect to that matter.

(3) For the purpose of the making of a determination by the Committee under subsection (2) in relation to a member who has made a disclosure under subsection (1), a member who has a direct or indirect pecuniary interest in the matter to which the disclosure relates shall not:

(a) be present during any deliberation of the Committee for the purpose of making the determination; or

(b) take part in the making by the Committee of the determination.

21 Meetings

(1) Meetings of the Committee shall be held at such times and places as the Committee from time to time determines.

- (2) The Chairperson may at any time convene a meeting.
- (3) At a meeting, 5 members constitute a quorum.
- (4) Subject to subsection (5), the Chairperson shall preside at all meetings.
- (5) If the Chairperson is absent from a meeting, the members present shall elect one of their number to preside at the meeting.
- (6) Questions arising at a meeting shall be determined by a majority of the members present and voting.
- (7) The member presiding at a meeting has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

21A Conduct of meetings

- (1) The Committee may regulate the conduct of proceedings at its meetings as it considers appropriate.
- (2) Without limiting subsection (1), the Committee may permit members to participate in, and form part of the quorum at, a particular meeting, or at all meetings, of the Committee by any of the following methods of communication:
 - (a) telephone;
 - (b) closed-circuit television;
 - (c) any other method of communication determined by the Committee.
- (3) A member who is permitted to participate in a meeting under subsection (2) is regarded as being present at that meeting.

21B Certain resolutions may be made without meetings

- (1) If all the members of the Committee (other than any member to whom subsection (3) applies) sign a document containing a statement that they support a recommendation or report made, in the terms set out in the document, in relation to an application made under section 10 or 10A, a recommendation or report in those terms is taken to have been adopted by a duly constituted meeting of the Committee held on the day the document was signed, or if the members sign the document on different days, on the last of those days.

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(2) For the purposes of subsection (1), 2 or more separate documents containing statements in identical terms, each of which is signed by one or more members, are together taken to constitute one document containing a statement in those terms signed by those members on the respective days on which they signed the separate documents.

(3) A member must not sign a document containing a statement in favour of the recommendation or report if it is in respect of a matter in which the member would, for the purposes of section 20, be taken to have a direct or indirect pecuniary interest.

(4) This section does not apply to a document that less than 5 members of the Committee are eligible to sign.

22 Register of expert examiners

(1) The Committee shall, in accordance with the regulations, maintain a register of the names of persons determined by the Committee to be expert examiners for the purposes of this Act.

(2) In subsection (1), *person* includes:

- (a) a body or association of persons, whether incorporated or not; and
- (b) a person resident or domiciled outside Australia.

23 Expert examiners

It is the function of an expert examiner to give advice to the Committee on a matter referred by the Committee.

24 Delegation

(1) The Minister may, either generally or as otherwise provided by the instrument of delegation, by instrument in writing, delegate to:

(a) the person holding or performing the duties of the office of Secretary to the Department; or

(b) an SES employee, or acting SES employee, in the Department;

all or any of the Minister's powers under this Act, other than this power of delegation or a power conferred by section 17 or 18, subsection 28(3), (4) or (5) or section 38 or 47.

(2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Minister.

(3) A delegation under this section does not prevent the exercise of a power by the Minister.

Part IV—National Cultural Heritage Account

25 Establishment of National Cultural Heritage Account

- (1) There is hereby established the National Cultural Heritage Account.
- (2) The Account is a Special Account for the purposes of the *Financial Management and Accountability Act 1997*.

25A Credits to Account

- (1) There may be credited to the National Cultural Heritage Account any money appropriated by the Parliament for an outcome of the Department.
- (2) There must be credited to the National Cultural Heritage Account:
 - (a) amounts equal to all money received from a State or Territory, or from an authority of a State or Territory, for the purposes of the Account; and
 - (b) amounts equal to all money received, whether by way of gift, bequest or otherwise, for the purposes of the Account; and
 - (c) if amounts are debited from the Account for the purpose of investment—amounts equal to the interest generated by the investment.

25B Purpose of Account

Amounts standing to the credit of the National Cultural Heritage Account may be expended for the purpose of facilitating the acquisition of Australian protected objects for display or safe-keeping.

26 Taxation

The income and transactions of the National Cultural Heritage Account are not subject to taxation under any law of the Commonwealth or of a State or Territory.

Part V—Enforcement of Act

27 Interpretation

(1) In this Part (except sections 35, 36, 37 and 38), *forfeited* includes liable to forfeiture.

(2) Where, at a particular time, an object is delivered by a Customs officer to an inspector under section 203A of the *Customs Act 1901* or voluntarily surrendered to an inspector by the owner or person having possession, custody or control of the object, the object shall, for the purposes of this Part, be taken to be seized under this Act by the inspector at that time.

28 Inspectors

(1) The Minister may, by instrument in writing, appoint a person as an inspector.

(2) By force of this subsection:

- (a) a member or special member of the Australian Federal Police; and
- (b) a member of a police force of a State or Territory; is an inspector.

(3) The Minister may make an arrangement with a Minister of a State for and in relation to the exercise of powers, and the performance of duties, of inspectors under this Act by officers of the State.

(4) An arrangement may contain such incidental or supplementary provisions as the Minister and the Minister of the State think necessary.

(5) The Minister may arrange with the Minister of a State with whom an arrangement is in force for the variation or revocation of the arrangement.

(6) An arrangement, or the variation or revocation of an arrangement, shall be in writing and a copy of each instrument by which an arrangement has been made, varied or revoked shall be published in the *Gazette*.

29 Identity cards

(1) The Minister may cause to be issued to an inspector, other than a member of a police force, an identity card in a form approved by the Minister by instrument in writing.

(2) A person who ceases to be an inspector shall forthwith return his or her identity card to the Minister.

(3) A person who contravenes subsection (2) is guilty of an offence punishable on conviction by a fine not exceeding \$100.

(4) Subsection (3) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

30 Search warrants

(1) Where an information on oath is laid before a Magistrate alleging that there are reasonable grounds for suspecting that there may be, at that time or within the next following 24 hours, upon any land or upon or in any premises, structure, vessel, aircraft or vehicle, a thing or things of a particular kind that is or are forfeited or connected with a particular offence against this Act, and the information sets out those grounds, the Magistrate may issue a search warrant authorising an inspector named in the warrant, with such assistance as he or she thinks necessary and if necessary by force:

(a) to enter upon the land or upon or into the premises, structure, vessel, aircraft or vehicle;

(b) to search the land, premises, structure, vessel, aircraft or vehicle for things of that kind; and

(c) to seize any thing of that kind found there that he or she believes on reasonable grounds to be forfeited or connected with that offence.

(2) A Magistrate shall not issue a warrant under subsection (1) unless:

(a) the informant or some other person has given to the Magistrate, either orally or by affidavit, such further information (if any) as the Magistrate requires concerning the grounds on which the issue of the warrant is being sought; and

(b) the Magistrate is satisfied that there are reasonable grounds for issuing the warrant.

(3) There shall be stated in a warrant issued under this section:

(a) a statement of the purpose for which the warrant is issued, which shall include a reference to the nature of the forfeited thing or things, or the offence, in relation to which the entry and search are authorised;

(b) whether entry is authorised to be made at any time of the day or night or during specified hours of the day or night;

(c) a description of the kind of things authorised to be seized; and

(d) a date, not being later than one month after the date of issue of the warrant, upon which the warrant ceases to have effect.

(4) If, in the course of searching, in accordance with a warrant issued under this section, for things that are forfeited or connected with a particular offence, being things of a kind specified in the warrant, an inspector finds any thing that he or she believes on reasonable grounds to be forfeited or connected with the offence, although not of a kind specified in the warrant, or to be connected with another offence against this Act, and he or she believes on reasonable grounds that there is a compelling need for the immediate seizure of the thing in order to prevent its exportation, importation, concealment, loss or destruction, or its use in committing, continuing or repeating the offence or in committing the other offence, the inspector may seize that thing.

(5) For the purposes of this section, a thing is connected with a particular offence if it is:

(a) a thing in respect of which the offence was committed;

(b) a thing that will afford evidence of the offence; or

(c) a thing that was used, or is intended to be used, for the purpose of the offence.

(6) A reference in this section to an offence includes a reference to an offence that there are reasonable grounds for believing has been, or will be, committed.

31 Search warrants granted by telephone

(1) Where, by reason of circumstances of urgency, an inspector considers it necessary to do so, the inspector may make application for a search warrant to a Magistrate, by telephone, in accordance with this section.

(2) Before so making application, an inspector shall prepare an information of a kind referred to in subsection 30(1) that sets out the grounds on which the issue

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of the warrant is being sought, but may, if it is necessary to do so, make the application before the information has been sworn.

- (3) Where a Magistrate is, upon application made under subsection (1), satisfied:
- (a) after having considered the terms of the information prepared in accordance with subsection (1); and
 - (b) after having received such further information (if any) as the Magistrate requires concerning the grounds on which the issue of the warrant is being sought;

that there are reasonable grounds for issuing the warrant, the Magistrate shall complete and sign such a search warrant as the Magistrate would issue under section 30 if the application had been made to the Magistrate in accordance with that section.

- (4) Where a Magistrate signs a warrant under subsection (3):
- (a) the Magistrate shall inform the inspector of the terms of the warrant and the date on which and the time at which it was signed, and record on the warrant the reasons for granting the warrant; and
 - (b) the inspector shall complete a form of warrant in the terms furnished by the Magistrate and write on it the name of the Magistrate and the date on which and the time at which the warrant was signed.

(5) Where an inspector completes a form of warrant in accordance with subsection (4), the inspector shall, not later than the day next following the date of expiry of the warrant, forward to the Magistrate who signed the warrant the form of warrant completed by the inspector and the information duly sworn in connection with the warrant.

(6) Upon receipt of the documents referred to in subsection (5), the Magistrate shall attach to them the warrant signed by the Magistrate and deal with the documents in the manner in which the Magistrate would have dealt with the information if the application for the warrant had been made in accordance with section 30.

(7) A form of warrant duly completed by an inspector in accordance with subsection (4) is, if it is in accordance with the terms of the warrant signed by the Magistrate, authority for any search, entry or seizure that the warrant so signed authorises.

(8) Where it is material, in any proceedings, for a court to be satisfied that a search, entry or seizure was authorised in accordance with this section, and the warrant signed by a Magistrate in accordance with this section authorising the search, entry or seizure is not produced in evidence, the court shall assume, unless the contrary is proved, that the search, entry or seizure was not authorised by such a warrant.

32 Searches in emergencies

(1) An inspector may:

(a) search a person, or the clothing that is being worn by, and property in the immediate control of, a person, suspected by the inspector to be carrying any thing that is forfeited or connected with an offence against this Act; or

(b) enter upon any land, or upon or into any premises, structure, vessel, aircraft or vehicle, on or in which the inspector believes on reasonable grounds that any thing forfeited or connected with an offence against this Act is situated;

and may seize any such thing found in the course of that search, or upon the land or in the premises, structure, vessel, aircraft or vehicle, as the case may be, if:

(c) the inspector believes on reasonable grounds that it is necessary to do so in order to prevent the exportation or importation of that thing or the concealment, loss or destruction of any thing forfeited or connected with an offence against this Act; and

(d) the search or entry is made in circumstances of such seriousness and urgency as to require and justify immediate search or entry without the authority or an order of a court or of a warrant issued under this Act.

(2) An inspector may stop a person, vessel, aircraft or vehicle for the purposes of subsection (1).

(3) Subsections 30(5) and (6) apply in relation to this section as they apply in relation to section 30.

33 Powers of arrest

(1) An inspector may, without warrant, arrest any person if the inspector believes on reasonable grounds:

(a) that the person is committing or has committed an offence against this Act; and

(b) that proceedings against the person by summons would not be effective.

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(2) Where a person is arrested under subsection (1), an inspector shall forthwith bring the person, or cause the person to be brought, before a Magistrate or other proper authority to be dealt with in accordance with law.

(3) Without limiting the generality of the meaning of any expression in subsection (1), where:

(a) an inspector requests a person whom the inspector finds committing, or whom the inspector believes on reasonable grounds to have committed, an offence against this Act, being a person whose full name or usual place of residence are unknown to the inspector, to state his or her full name or usual place of residence, as the case may be; and

(b) the person:

(i) refuses or fails to comply with the request; or

(ii) whether or not in compliance, or purported compliance, with the request, states as his or her full name or usual place of residence a name or a place, as the case may be, that the inspector believes on reasonable grounds to be false or misleading in a material particular;

the inspector shall be taken, for the purposes of paragraph (1)(b), to have reasonable grounds for believing that proceedings against the person by summons in respect of the offence will not be effective.

(4) Nothing in this section prevents the arrest of a person in accordance with any other law.

34 Seizure of protected objects

An inspector may seize a protected object that the inspector believes on reasonable grounds to be forfeited.

35 Power of retention

(1) A thing seized under this Act may be retained:

(a) in the case of a protected object seized on the grounds that it is forfeited by virtue of subsection 9(1)—until a court orders the return of the object or the object is disposed of under section 38;

(b) in the case of any other protected object—until a court orders the return of the object or the object is forfeited; or

(c) in the case of any other thing—until the end of the period of 60 days after the seizure or, if proceedings involving the thing are instituted within that period,

until those proceedings (including any appeal to a court in relation to those proceedings) are terminated.

(2) The Minister may, by instrument in writing, authorise any thing seized under this Act (other than a protected object that is forfeited) to be released to the owner, or the person who had the possession, custody or control of the thing immediately before it was seized, and thereupon sections 36 and 37 do not apply, or cease to apply, as the case requires, in relation to the thing.

36 Notice of seizure

(1) In this section, **appropriate person** means the Minister or a person designated by the Minister in writing for the purposes of this section.

(2) Subject to this section, as soon as practicable after a protected object has been seized by an inspector under this Act, the inspector shall serve on the owner, or the person who had the possession, custody or control of the object immediately before it was seized, a notice in writing:

(a) identifying the object and the date of the seizure;

(b) setting out the reasons for the seizure;

(c) setting out the terms of the provisions of subsection 37(1); and

(d) where subsection (5) applies—setting out the terms of the provisions of that subsection and specifying, and setting out the address of, an appropriate person and stating that any notice under that subsection is to be given to that person.

(3) An inspector is not required to serve a notice under subsection (2) if, after making such inquiries as the inspector thinks appropriate, the inspector does not have sufficient information to do so.

(4) Where:

(a) a notice under subsection (2) has not been served in respect of an object seized by an inspector under this Act; and

(b) within 30 days after the day on which the object was seized, a person who claims to be a person entitled to be served with such a notice gives an appropriate person sufficient information, in writing, to enable the notice to be served;

the appropriate person shall forthwith convey that information to the inspector.

(5) Where a protected object has been seized on the grounds that it is liable to forfeiture by virtue of subsection 9(2) or 14(1) and a notice under subsection (2)

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is served in respect of the object, the object is forfeited unless, within 30 days after the service of the notice, the owner, or the person who had possession, custody or control of the object immediately before it was seized:

- (a) gives notice, in writing, to the appropriate person specified in the notice under subsection (2) claiming the object; or
- (b) brings an action for recovery of the object.

(6) Where, at the end of the period of 30 days after the day on which a protected object was seized under this Act:

- (a) a notice has not been served in respect of the object under subsection (2); and
- (b) a person claiming to be a person entitled to be served with such a notice has not given an appropriate person sufficient information to enable the notice to be served;

the object is forfeited.

(7) Where notice is given under subsection (5) to the appropriate person, the appropriate person shall serve on the person who gave the notice a notice, in writing, setting out the terms of the provisions of subsection (8).

(8) Where:

- (a) a notice is given to a person under subsection (7) in relation to an object; and
- (b) the person does not, within 4 months after the service of the notice, bring an action for recovery of the object;

the object is forfeited.

37 Court proceedings

(1) Where:

- (a) a protected object has been seized under this Act; and
- (b) the object is not forfeited by section 36 or by or under this section;

the owner, or the person who had the possession, custody or control of the object immediately before it was seized, may bring an action against the Commonwealth in a court of competent jurisdiction for the recovery of the object on the ground that the object is not forfeited or liable to be forfeited.

(2) Where:

(a) a protected object has been seized on the grounds that it is liable to forfeiture by virtue of subsection 9(2) or 14(1);

(b) a person brings an action for recovery of the object; and

(c) the person discontinues the action;

the object is forfeited.

(3) Where an action is brought for recovery of a protected object, the court shall determine, on a balance of probabilities, whether:

(a) the object is forfeited by virtue of subsection 9(1); or

(b) the object is liable to forfeiture by virtue of subsection 9(2) or 14(1);

and the court:

(c) where paragraph (a) applies—shall reject the claim for recovery;

(d) where paragraph (b) applies—shall order that the object is forfeited; or

(e) in any other case—may order the return of the object.

(4) Where a person is convicted of attempting to export a protected object in contravention of subsection 9(3) or of an offence against subsection 14(2) in relation to a protected object, the court shall order that the object is forfeited.

38 Result of forfeiture

Where a protected object is forfeited by or under this Act:

(a) all title and interest in the object is vested in the Commonwealth without further proceedings;

(b) the object shall be dealt with and disposed of in accordance with the directions of the Minister; and

(c) any costs incurred by the Commonwealth in transporting or disposing of the object are a debt due to the Commonwealth by the person who was the owner of the object immediately before it was forfeited and may be recovered by the Commonwealth in a court of competent jurisdiction.

39 Production of permit

(1) An inspector may require any person whom the inspector suspects on reasonable grounds of intending to export, of exporting, or of having exported, an Australian protected object to produce a permit or certificate authorising the export or to produce evidence of the existence and contents of such a permit or certificate.

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(2) A person who fails to comply with a requirement made under subsection (1) is guilty of an offence punishable on conviction by a fine not exceeding \$1,000.

(3) Subsection (2) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

(4) Subsection (2) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

40 Proof of authority

An inspector (other than a member of a police force who is in uniform) is not entitled to exercise any powers under section 32, 33, 34, 39 or 43 in relation to a person unless:

(a) if the inspector is a member of a police force—the inspector produces, for inspection by the person, written evidence of the fact that the inspector is a member of that police force; or

(b) in any other case—the inspector produces his or her identity card for inspection by the person.

41 Foreign country to request return of objects

(1) A power conferred by this Part shall not be exercised by an inspector in relation to a protected object of a foreign country unless the inspector believes on reasonable grounds that the Commonwealth has received from the Government of the country a request for the return of the object.

(2) Proceedings for a contravention of section 14 in relation to a protected object of a foreign country shall not be instituted unless the Commonwealth has received from the Government of the country a request for the return of the object.

(3) In any proceedings, the mere production of a document purporting to be signed by the Secretary to the Department and stating that the Commonwealth has received a request from the Government of a specified foreign country for the return of a specified protected object is *prima facie* evidence of the facts stated.

43 Assistance of inspectors

An inspector exercising or proposing to exercise powers pursuant to this Part in relation to property, being any premises, structure, vessel, aircraft or vehicle, may require the owner or person in charge of the property to provide reasonable assistance to the inspector in the exercise of those powers in relation to the property, and the person shall comply with the request.

Penalty: \$2,000 or imprisonment for 12 months, or both.

46 Indictable offences

- (1) An offence against subsection 9(3), 9(3A) or 14(2) is an indictable offence.
- (2) An offence against section 43 is punishable on summary conviction.
- (3) Notwithstanding that an offence referred to in subsection (1) is an indictable offence, a court of summary jurisdiction may hear and determine proceedings in respect of the offence if the court is satisfied that it is proper to do so and the defendant and the prosecutor consent.
- (4) If, in accordance with subsection (3), a court of summary jurisdiction convicts a person of an offence referred to in subsection (1), the penalty that the court may impose is:
 - (a) if the person is an individual—a fine not exceeding 50 penalty units or imprisonment for a period not exceeding 2 years, or both; or
 - (b) if the person is a body corporate—a fine not exceeding 200 penalty units.

Part VI—Miscellaneous

47 Annual report

(1) The Minister shall, as soon as practicable after 30 June in each year, cause to be prepared a report on the working of this Act during the year that ended on that 30 June.

(2) The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the Minister receives it.

48 Administrative Appeals Tribunal

(1) Application may be made to the Administrative Appeals Tribunal for review of:

- (a) a decision by the Minister to refuse to grant a permit or certificate;
- (b) a decision by the Minister to impose a condition under paragraph 10(5)(a), 10A(7)(b) or 12(3)(a); or
- (c) a decision by the Minister under subsection 11(2), 12(5) or 13(1).

(2) Where a person is notified of a decision referred to in subsection (1), the Minister shall cause to be served on the person a notice stating that, subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for review of the decision.

(3) A failure to comply with subsection (2) in relation to a decision does not affect the validity of the decision.

49 Regulations

The Governor-General may make regulations, not inconsistent with this Act, prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Notes to the *Protection of Movable Cultural Heritage Act 1986*

Note 1

The *Protection of Movable Cultural Heritage Act 1986* as shown in this compilation comprises Act No. 11, 1986 amended as indicated in the Tables below.

For all relevant information pertaining to application, saving or transitional provisions see Table A.

The *Protection of Movable Cultural Heritage Act 1986* was modified by the A.C.T. Self-Government (Consequential Provisions) Regulations (as amended) see Table B.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Protection of Movable Cultural Heritage Act 1986</i>	11, 1986	13 May 1986	1 July 1987 (see <i>Gazette</i> 1987, No. S138)	
<i>Postal Services Amendment Act 1988</i>	126, 1988	14 Dec 1988	Ss. 4, 5, 9-11, 21(2) and 22(1): 1 Jan 1989 (see <i>Gazette</i> 1988, No. S402) Ss. 12, 21(3) and 22(2): 30 June 1989 (see <i>Gazette</i> 1989, No. S216) Remainder: Royal Assent	—
<i>Arts, Environment, Tourism and Territories Legislation Amendment Act 1990</i>	88, 1990	20 Nov 1990	Part 7 (ss. 14-23): Royal Assent (a)	—
<i>Arts, Sport, Environment, Tourism and Territories Legislation Amendment Act (No. 2) 1991</i>	179, 1991	25 Nov 1991	25 Nov 1991	—
<i>Arts, Sport, Environment and Territories Legislation Amendment Act 1992</i>	21, 1992	10 Apr 1992	8 May 1992	—
<i>Statute Law Revision Act 1996</i>	43, 1996	25 Oct 1996	Schedule 4 (item 123): Royal Assent (b)	—

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Protection of Movable Cultural Heritage Amendment Act 1999</i>	101, 1999	16 July 1999	16 July 1999	Sch. 1 (item 9)
<i>Public Employment (Consequential and Transitional) Amendment Act 1999</i>	146, 1999	11 Nov 1999	Schedule 1 (item 752): 5 Dec 1999 (see <i>Gazette</i> 1999, No. S584) (c)	—
<i>Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000</i>	137, 2000	24 Nov 2000	Ss. 1-3, Schedule 1 (items 1, 4, 6, 7, 9-11, 32): Royal Assent Remainder: 24 May 2001	Sch. 2 (items 418, 419)
<i>Communications and the Arts Legislation Amendment (Application of Criminal Code) Act 2001</i>	5, 2001	20 Mar 2001	S. 4 and Schedule 1 (items 40-49): (d)	S. 4

- (a) The *Protection of Movable Cultural Heritage Act 1986* was amended by Part 7 (sections 14-23) only of the *Arts, Environment, Tourism and Territories Legislation Amendment Act 1990*, subsection 2(1) of which provides as follows:
- (1) Parts 1, 4, 5, 6, 7 and 8 commence on the day on which this Act receives the Royal Assent.
- (b) The *Protection of Movable Cultural Heritage Act 1986* was amended by Schedule 4 (item 123) only of the *Statute Law Revision Act 1996*, subsection 2(1) of which provides as follows:
- (1) Subject to subsections (2) and (3), this Act commences on the day on which it receives the Royal Assent.
- (c) The *Protection of Movable Cultural Heritage Act 1986* was amended by Schedule 1 (item 752) only of the *Public Employment (Consequential and Transitional) Amendment Act 1999*, subsections 2(1) and (2) of which provide as follows:
- (1) In this Act, **commencing time** means the time when the *Public Service Act 1999* commences.
 - (2) Subject to this section, this Act commences at the commencing time.
- (e) The *Protection of Movable Cultural Heritage Act 1986* was amended by Schedule 1 (items 40-49) only of the *Communications and the Arts Legislation Amendment (Application of Criminal Code) Act 2001*, subsection 2(1)(a) of which provides as follows:
- (1) Subject to this section, this Act commences at the latest of the following times:
 - (a) immediately after the commencement of item 15 of Schedule 1 to the *Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000*;Item 15 commenced on 24 May 2001.

Table of Amendments**Table of Amendments**

ad. = added or inserted substituted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 3	am. No. 88, 1990; No. 101, 1999; No. 137, 2000; No. 5, 2001
S. 6A	ad. No. 5, 2001
S. 9	am. No. 126, 1988; No. 5, 2001
S. 10	am. No. 88, 1990
S. 10A	ad. No. 88, 1990
S. 11	am. No. 88, 1990
S. 13A	ad. No. 88, 1990
S. 14	am. No. 88, 1990
S. 16	am. No. 88, 1990; No. 101, 1999
S. 17	am. No. 88, 1990
S. 19	am. No. 43, 1996
S. 21A	ad. No. 179, 1991
S. 21B	ad. No. 21, 1992
S. 24	am. No. 146, 1999
Heading to Part IV	rs. No. 101, 1999
S. 25	rs. No. 101, 1999
Ss. 25A, 25B.....	ad. No. 101, 1999
S. 26	am. No. 101, 1999
S. 29	am. No. 5, 2001
S. 39	am. No. 5, 2001
S. 42	rep. No. 5, 2001
Ss. 44, 45	rep. No. 137, 2000
S. 46	am. No. 137, 2000; No. 5, 2001
S. 47	am. No. 101, 1999
S. 48	am. No. 88, 1990

Table A: Application, saving or transitional provisions

Table A: Application, saving or transitional provisions

Protection of Movable Cultural Heritage Amendment Act 1999 (No. 101, 1999)

Schedule 1

9 Application of items 7 and 8

Whether this Act commences on 1 July 1999 or on a later date, the amendments of the *Protection of Movable Cultural Heritage Act 1986* made by items 7 and 8 apply in relation to the financial year commencing on 1 July 1999 and each subsequent financial year.

Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000 (No. 137, 2000)

Schedule 2

418 Transitional—pre-commencement offences

- (1) Despite the amendment or repeal of a provision by this Schedule, that provision continues to apply, after the commencement of this item, in relation to:
- (a) an offence committed before the commencement of this item; or
 - (b) proceedings for an offence alleged to have been committed before the commencement of this item; or
 - (c) any matter connected with, or arising out of, such proceedings;
- as if the amendment or repeal had not been made.
- (2) Subitem (1) does not limit the operation of section 8 of the *Acts Interpretation Act 1901*.

419 Transitional—pre-commencement notices

If:

Table A: Application, saving or transitional provisions

- (a) a provision in force immediately before the commencement of this item required that a notice set out the effect of one or more other provisions; and
 - (b) any or all of those other provisions are repealed by this Schedule; and
 - (c) the first-mentioned provision is amended by this Schedule;
- the amendment of the first-mentioned provision by this Schedule does not affect the validity of such a notice that was given before the commencement of this item.

Communications and the Arts Legislation Amendment (Application of Criminal Code) Act 2001 (No. 5, 2001)

4 Application of amendments

- (1) Each amendment made by this Act applies to acts and omissions that take place after the amendment commences.
- (2) For the purposes of this section, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the day on which a particular amendment commences, the act or omission is alleged to have taken place before the amendment commences.

Table B: Modifications

Table B: Modifications

A.C.T. Self-Government (Consequential Provisions) Regulations

Section 4—The *Protection of Movable Cultural Heritage Act 1986* was modified by regulation 2 and Schedule 1 of the A.C.T. Self-Government (Consequential Provisions) Regulations as amended. The modification of Schedule 1 is set out below and is not incorporated in this compilation.

Section 4:

After “States,” insert “of the Australian Capital Territory,”.