

## National report on the implementation of the 1954 Hague Convention Australia

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### Article 3 - Safeguarding of cultural property

*This Article provides for the obligation of the High Contracting Parties to adopt the relevant peacetime safeguarding measures against the foreseeable effects of an armed conflict. Please inform the Secretariat of such measures either already undertaken or contemplated.*

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The Australian (Commonwealth) Government and governments of Australian States and Territories share domestic responsibility for the protection of cultural heritage. This cooperation is established under intergovernmental arrangements, including the:

- *Intergovernmental Agreement on the Environment 1992;*
- *Council of Australian Governments Heads of Agreement on Commonwealth State Roles and Responsibilities for the Environment 1997;*
- *National Heritage Protocol Statement of Roles and Responsibilities 2004;* and the
- *Australian World Heritage Intergovernmental Agreement 2009.*

Australian management of immovable cultural heritage property is based on the development of heritage place registers and inventories of Indigenous heritage places. The Australian Government, and every Australian State and Territory jurisdiction, has an expert heritage advisory body that considers whether cultural heritage places should be included on heritage registers on the basis of significance criteria. The criteria used are similar across jurisdictions. Listed places are protected by law. All jurisdictions also keep records of Indigenous heritage places found in Australia, and these places (and some types of Indigenous heritage place that are not yet listed) are subject to protective laws. There are also around 90 places listed by the Australian Government on the National Heritage List, which was established in 2004, and 17 Australian World Heritage List properties inscribed since 1981. There are some 14,000 places in State and Territory historic heritage lists and over 147,000 places identified in local government heritage lists. The Australian National Shipwrecks Database is a comprehensive record of Australian historic shipwrecks that includes over 6,500 vessels.

The above lists and related legislative provisions enable the identification of a broad range of cultural heritage places in Australia that can be included in disaster risk planning and management. Disaster risk management in identified key areas, such as fire and flood, is well developed in Australia, primarily as a shared task of Commonwealth, State and Territory governments. Australia's five-yearly national *State of the Environment Report* enables changing risk patterns for our cultural heritage assets to be assessed and addressed.

Disaster and emergency risk management, preparedness and recovery plans and policies are also in place in a number of Australia's national collecting institutions. These plans include strategies to protect buildings and the collections they house against potential threats, particularly the threat of natural disaster. Measures to safeguard cultural property at particular institutions include:

- sound archival packaging and storage facilities;
- collection inventories/databases and the storage of copies offsite;
- digitisation programs;
- business continuity strategies;
- early warning detection and suppression building systems;

- checks on building structure and fabric;
- staff committees to develop, recommend and amend policies and procedures for the protection and removal of material; and
- trained conservation staff who advise on safe handling, storage, removal or evacuation if required.

Some institutions train staff in planning, preparation and prevention activities and have established relationships with building and emergency authorities, external specialist service providers or industry-based organisations that can assist with emergencies, disasters and recovery.

The majority of Australia's national collecting institutions are based in Canberra and are supported in their work by a local disaster response network, Disaster ACT (DISACT). DISACT is an Australian Government initiative established by cultural and scientific collecting institutions in Canberra to improve disaster preparedness and to provide local mutual assistance in the event of emergencies affecting public collections.

Blue Shield Australia (BSA), a national committee established in 2005 with the approval and support of the International Committee of the Blue Shield, is another organisation that contributes to the safeguarding of Australia's cultural property. It works to prevent, prepare for and respond to emergency situations in case of armed conflict or natural disasters that could affect Australia's cultural heritage.

BSA is a federation of four non-governmental organisations which represent professionals active in the fields of archives, libraries, monuments and sites, and museums. It aims to raise awareness of the value of Australian cultural heritage and the need for its protection against threats of all kinds, with an emphasis on natural disasters since these are more prevalent in the region. BSA acts as a communications conduit for Australia's cultural sector to enable the exchange of information, guidelines and advice about emergency management and disaster-related topics. Its activities include an annual national campaign, the MayDay campaign, which is an initiative of the Society of American Archivists that has provided a device for the BSA's promotion of disaster preparedness for collecting institutions in Australia. As part of its 2010 campaign, BSA co-hosted a symposium with DISACT on 'disaster proofing heritage collections'.

The Australian Government supports the preservation of, and access to locally held, nationally significant cultural heritage collections across Australia through the Community Heritage Grants Program. Administered and managed by the National Library of Australia, the program provides grant funding to community organisations for preservation projects and preservation and collection management training through community-based workshops. First time funding recipients are also invited to attend an intensive 3-day preservation workshop. Community Heritage Grants have supported over 700 projects to implement conservation treatment, environmental control and preservation, significance and preservation needs assessments, disaster preparedness and response workshops, collection management training programs and the re-housing of collection items in archival storage and the reformatting of material through microfilming or digitising.

In addition, the National Library manages a number of initiatives that contribute to the safeguarding of material from its own collection and that of other libraries across Australia. It maintains a Register of Nationally Significant Material for its own collection, which guides the allocation of priorities for a range of preservation actions

(including disaster preparedness and response), and it manages and stores national collections of both digital and microform preservation copy masters. The Library also provides the Australian National Bibliographic Database (ANBD), which records the location of over 42 million items held by most libraries in Australia. Many of the resources described in the ANBD are rare and unique. The Library leads the Australian Newspaper Plan on behalf of the National and State Libraries peak body—this program aims to ensure all Australian newspaper titles are microfilmed and that all print and microfilmed titles are recorded on the ANBD—and it manages a national newspaper digitisation program for major out-of-copyright titles.

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#### **Article 7 – Military measures**

*This Article provides for the obligations of the High Contracting Parties to introduce into their military regulations or instructions such provisions as may ensure observance of the Convention. The High Contracting Parties also undertake thereby to establish, within their armed forces, services whose purpose will be to secure respect for cultural property. Please inform the Secretariat whether such services exist in your country.*

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In Australia, the Convention and its requirements are widely disseminated to Defence personnel through a variety of policies, doctrines and other publications. In relation to instructions provided to Defence personnel, Defence Instruction (General) Operations 32-1 on the *Appropriation and import of Defence related materiel during Australian Defence Force operations* specifically refers to the Convention and advises that no religious or cultural material is to be taken as a war trophy or as an historical artefact.

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#### **Chapter V – The distinctive emblem**

*Does your country mark cultural property with the distinctive emblem of the Convention? If not, for what reasons?*

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Australia has not marked cultural heritage places or its national collecting institutions with the emblem but would examine the use of the emblem where practicable to mark and safeguard property in situations of armed conflict. While the emblem may readily be applied to built cultural heritage places and institutions, there would be practical difficulties in deploying the emblem to effectively protect some types of immovable cultural heritage in Australia, including very large landscapes and widely distributed sites of significance to Indigenous people. Further consideration would need to be given to the criteria for establishing, and the means of identifying and marking cultural property of the greatest importance to the cultural heritage of every people, particularly movable cultural property, noting the complexity of ensuring that protocols relating to Indigenous objects of secret sacred significance are respected.

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#### **Article 25 – Dissemination of the Convention**

*Knowledge of the laws of armed conflict is of capital importance for civilian and military personnel required to apply them. Please inform the Secretariat about the manner in which the provisions of the Convention and the Regulations for its execution are being disseminated in your country within the military.*

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In Australia, information on the requirements of the Convention is disseminated within the military through training courses on international humanitarian law and through a variety of publications including:

- Australian Defence Doctrine Publication (ADDP) 1.2, Operational Health Support.
- Australian Defence Doctrine Publication (ADDP) 06.4, Law of Armed Conflict.
- Australian Defence Force Publication (ADFP) 3.1.1, Joint Fire Support Procedures.
- Australian Defence Force Publication (ADFP) 3.14.2, Targeting Procedures.
- Australian Defence Force Publication (ADFP) 10, Communications.
- ABR (Australian Book of Reference) 5179 Manual of International Law.
- Australian Air Publication 1003, Operations Law for RAAF Commanders.
- 1<sup>st</sup> Division Operating Instructions.

Specific training on the Convention is provided to legal officers. As part of the competency based training, legal officers are required to be able to explain the emblem established by the Convention.

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## Article 28 – Sanctions

*This Article provides for the obligation of the High Contracting Parties to take, within the framework of their ordinary criminal jurisdiction, all necessary steps to prosecute and impose penal or disciplinary sanctions upon those persons, of whatever nationality, who commit or order to be committed a breach of the Convention. Please inform the Secretariat how this provision has been taken into account in your penal code. We also request that you provide the Secretariat with a copy of the relevant provision(s) in English or French, if possible.*

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Australian Commonwealth, State and Territory legislation contains a wide range of offences directed at the protection of cultural heritage, including historic and Indigenous places and objects. A list of relevant legislation is provided at **Attachment A**. Australian Commonwealth legislation is available online (in English) at <http://www.comlaw.gov.au/>. This website also provides links to State and Territory legislation websites.

Under section 268.80 of the *Criminal Code* (Cth) (the Criminal Code), Australia is able to prosecute any person who directs an attack *during a non-international armed conflict* against a non-military objective, including against a building dedicated to religion, education, art, science or charitable purposes, or against a historic monument. This offence carries a maximum penalty of 20 years imprisonment.

Under section 268.101 of the Criminal Code, Australia is also able to prosecute any person who directs an attack *during an international armed conflict*, the object of which is not in support of the military effort or in the proximity of military objectives, against clearly recognised historical monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples and have been given protection by special arrangement (for example, within the framework of a competent international organisation). This offence carries a maximum penalty of 20 years imprisonment.

The *Crimes Act 1914* (Cth) (the Crimes Act) criminalises the intentional destruction or damaging of Commonwealth property (section 29). This offence, which carries a maximum penalty of 10 years imprisonment, applies to all property belonging to the Commonwealth or to Commonwealth authorities, including property held within the National Museum of Australia, National Archives of Australia, the National Gallery of Australia, the National Library of Australia, the Australian National Maritime Museum and the National Film and Sound Archive.

The relevant provisions of the Criminal Code and the Crimes Act are included at **Attachment B**.

Australia has a range of offences relating to damage to cultural heritage in Commonwealth laws establishing national collecting institutions. A list of penalties attaching to these offences is included at **Attachment C**.

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### **1954 (First) Protocol**

*The Protocol provides for the obligation of the High Contracting Parties to prevent the exportation of cultural property from a territory occupied by it and requires the return of such property to the territory of the State from which it was removed. Please inform the Secretariat whether the provisions of the 1954 Protocol have been applied by your country.*

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Australia is not a party to the 1954 (First) Protocol. However, it does have in place legislation protecting Australia's movable cultural heritage which provides for the return of cultural property illegally exported from the country of origin and illegally imported into Australia. The government of a foreign country may submit a formal request for the seizure, forfeiture and return of such foreign cultural property under the *Protection of Movable Cultural Heritage Act 1986*.

As part of its review of this legislation in 2009, the Australian Government Department of the Environment, Water, Heritage and the Arts undertook further consideration of whether Australia should become a party to the 1954 (First) and 1999 (Second) Protocols to the Convention. At the time of writing, no decision had been made as to whether to pursue this matter.

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**Resolution II of the 1954 Hague Conference**

*Please inform the Secretariat whether there is a national advisory committee in your country in accordance with the hope expressed by the Conference in Resolution II. If so, please provide the Secretariat with relevant background information.*

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A national advisory committee has not been established in Australia.

**Commonwealth, State and Territory cultural heritage legislation**

**Commonwealth legislation**

*Aboriginal and Torres Strait Islander Heritage Protection Act 1984*  
*Archives Act 1983*  
*Australian Heritage Council Act 2003*  
*Criminal Code*  
*Crimes Act 1914*  
*Environment Protection and Biodiversity Conservation Act 1999*  
*Historic Shipwrecks Act 1976*  
*Protection of Movable Cultural Heritage Act 1986*

*\*\* See also regulations set out in Attachment C \*\**

**State and Territory legislation**

**Australian Capital Territory**

*Heritage Act 2004*

**New South Wales**

*Heritage Act 1977*  
*Historic Houses Act 1980*  
*National Parks and Wildlife Act 1974*

**Northern Territory**

*Heritage Conservation Act 2000*  
*Northern Territory Aboriginal Sacred Sites Act 2006*  
*Meteorites Act 2000*

**Queensland**

*Queensland Heritage Act 1992*  
*Aboriginal Cultural Heritage Act 2003*  
*Torres Strait Islander Cultural Heritage Act 2003*

**South Australia**

*Aboriginal Heritage Act 1988*  
*Heritage Places Act 1993*  
*Historic Shipwrecks Act 1981*

**Tasmania**

*Historic Cultural Heritage Act 1995*  
*Aboriginal Relics Act 1975*  
*Meteorites Act 1973*

**Victoria**

*Heritage Act 1995*  
*Aboriginal Heritage Act 2006*

**Western Australia**

*The Maritime Archaeology Act 1973*  
*Aboriginal Heritage Act 1972*  
*Heritage of Western Australia Act 1990*

## Offences under the Criminal Code and the Crimes Act

### Extract from the *Criminal Code*

#### **268.80 War crime—attacking protected objects**

A person (the *perpetrator*) commits an offence if:

- (a) the perpetrator directs an attack; and
- (b) the object of the attack is any one or more of the following that are not military objectives:
  - (i) buildings dedicated to religion, education, art, science or charitable purposes;
  - (ii) historic monuments;
  - (iii) hospitals or places where the sick and wounded are collected; and
- (c) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 20 years.

#### **268.101 War crime—attacking protected objects**

A person (the *perpetrator*) commits an offence if:

- (a) the perpetrator directs an attack; and
- (b) the object of the attack is any one or more of the following that are not used in support of the military effort and are not located in the immediate proximity of military objectives:
  - (i) clearly recognised historic monuments;
  - (ii) works of art;
  - (iii) places of worship; and
- (c) the monuments, works of art and places of worship constitute the cultural or spiritual heritage of peoples and have been given special protection by special arrangement (for example, within the framework of a competent international organisation); and
- (d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 20 years.

### Extract from the *Crimes Act 1914*

#### **29 Destroying or damaging Commonwealth property**

- (1) Any person who intentionally destroys or damages any property, whether real or personal, belonging to the Commonwealth or to any public authority under the Commonwealth, shall be guilty of an offence.

Penalty: Imprisonment for 10 years.

- (2) For the purposes of an offence against subsection (1), absolute liability\* applies to the physical element of circumstance of the offence, that the property is property belonging to the Commonwealth or to any public authority under the Commonwealth.

\* The effect of the imposition of absolute liability is that the prosecution does not need to prove that the defendant knew that the property was Commonwealth property or was reckless as to that fact, and that the defendant cannot claim the defence of mistake of fact.



## Sanctions under Commonwealth legislation establishing Australia's national collecting institutions

### ***Archives Act 1983***

Section 24 of the Act prohibits the disposal, destruction, damage, alteration or transfer of Commonwealth records unless required by law or with the permission or agreement of the National Archives of Australia. A penalty of 20 penalty units is specified for a breach of this provision. The current value of a penalty unit is \$110 (subsection 4AA(1) of the *Crimes Act 1914*).

### ***Australian National Maritime Museum Regulations 1991***

Paragraph 5(1)(a) of the Regulations provides that it is an offence for a person who does not have the consent of the Director, or a person authorised by the Director, to engage in unauthorised conduct that interferes with or causes damage to Museum material. Museum material includes, amongst other things, material forming part of the national maritime collection, other historical material owned by, or under control of the museum and any structure, equipment or material kept by the Museum for purposes relating to exhibition and display. Subregulation 5(1) sets the penalty for breach of the offence at 5 penalty units.

### ***National Gallery Regulations 1982***

Regulation 7 sets out offences relating to conduct in a Gallery building or on Gallery land. These include provisions that a person must not touch, interfere with or engage in conduct that damages a work of art, or attach any article to, write upon or engage in conduct that defaces a Gallery building or any wall or fence on Gallery land. Regulation 7 also requires that a person deposit a 'prescribed article' at the place in the Gallery building designated by the Council for the purpose. Prescribed articles include, amongst other things, any article that is capable of being used to damage a work of art. The penalty for breach of the provisions under Regulation 7 is 5 penalty units.

### ***National Library Regulations 1994***

The following regulations refer to offences and penalties relating to the misuse or mishandling of items held in the Library's collection:

- Regulation 4 provides that a 'prescribed article', including an implement that can be used to damage library material, must be left at an area set aside for the purpose.
- Regulation 6 provides that a person must not bring into, or possess in a Library building a projectile, weapon or inflammable or explosive article or substance.
- Regulation 10 provides that it is an offence for a person to interfere with or engage in conduct that damages, destroys or defaces exhibits, plant, structures or objects.
- Regulations 11 and 12 provides that the Director-General or an authorised person may direct a person, other than a member of staff, to leave Library property if there are reasonable grounds for believing that the person is committing, or has committed an offence against the Regulations, and to exclude that person for a reasonable period from re-entering the property.
- Regulation 21 sets penalties that apply to the removal, alteration or handling of library material in a way that causes, or is likely to cause damage.

The penalty set by each regulation listed above is 5 penalty units.

***National Museum of Australia Regulations 2000***

Regulation 14 sets out the offences in relation to interference with, or damage to Museum material. Museum material includes, amongst other things, material that forms part of the national historical collection and other material owned by or under the control of the Museum. Subregulation 14(1) provides that it is an offence for a person to intentionally interfere with, or engage in conduct that causes damage to Museum material. The penalty for breach of the offence is 2 penalty units.