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Protection of
Cultural Property in
the Event of Armed Conflict

**Four-year cycle
2017-2020**

**Questionnaire
National report on the implementation of the 1954 Hague
Convention and its two (1954 and 1999) Protocols**

GENERAL INFORMATION

1. Region: **ASPAC**

State Party:
Australia

2. Submission of previous national reports

2.1. 2013-2016 cycle

Yes

No

3. Actors involved in the preparation of the national report

3.1. Government institutions responsible for the protection of cultural property

3.2. National Commission for UNESCO

3.3. Military expert

3.4. Independent experts

If other actors have been involved, please indicate them

Blue Shield Australia

4. National Focal Point

According to paragraph 120 of the Guidelines for the Implementation of the Second Protocol: *"Unless a Party requests otherwise, the presumed focal point would be its Permanent Delegation to UNESCO."* If you do not consider the Permanent Delegation as a focal point, you are invited to provide the Secretariat with the name and address of a national focal point who will receive all official documents and correspondence related to the national periodic reporting.

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I. The Hague Convention of 1954

1. Article 3 - Safeguarding of cultural property

This Article provides for the obligation of the High Contracting Parties to adopt relevant peacetime safeguarding measures against the foreseeable effects of an armed conflict.

- *Has your State undertaken such measures?*

YES: NO:

You can complete your answer below, taking into account the guidelines in the model report.

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 107 places listed by the Australian Government on the National Heritage List, which was established in 2004, and 20 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.

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. DISACT continues to meet regularly and has provided collaborative assistance to the cultural and heritage institutions in Canberra natural disasters such as the 2018 Australian National

University Chifley Library Flood event, the Smoke Impact caused by the 2019/20 Bushfires and the significant Canberra Hailstorm of January 2020.

Blue Shield Australia (BSA), a national committee established in 2005 with the approval and support of the Blue Shield International, is another organisation that contributes to increasing awareness of the importance of safeguarding of Australia's cultural property. It works to provide information and training materials for cultural and heritage institutions in the areas of prevention, preparation and recovery from emergency situations and natural disasters that could affect Australia's cultural heritage. <https://blueshieldaustralia.org.au/>

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.

The BSA committee comprises representatives from the following Australian peak industry organisations:

- ICA: the International Council on Archives, represented in Australia by the Australian Society of Archivists
- ICOM: the International Council of Museums, represented in Australia by ICOM Australia
- ICOMOS: International Council on Monuments and Sites, represented in Australia by Australia ICOMOS
- IFLA: the International Federation of Library Associations and Institutions, represented in Australia by the Australian Library and Information Association
- Other national Associations have also joined Blue Shield Australia including:
- AICCM: The Australian Institute for the Conservation of Cultural Heritage
- AMaGA: Australian Museums and Galleries Association
- FAHS: Federation of Australian History Societies

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. In 2020 BSA moved its annual national advocacy campaign, from the May Day campaign, which was an initiative of the Society of American Archivists, to a focus on the United Nations Disaster Risk Reduction International Day of Disaster Risk Reduction held each October. This aligns well to be the start of the Australian Disaster Season.

Blue Shield Australia provided a submission to the 2018 Australian Government Inquiry into the United Nations Sustainable Development Goals. In 2018 BSA held a Symposium with 200 delegates in Canberra at the National Library of Australia focussed on the impact of Climate Change and Cultural Heritage in Australia and the Pacific.

During 2018 there were two Cultural Property Protection Expert Group Roundtable meetings held in Canberra. Representatives attended from Blue Shield Australia, Blue Shield International, the Departments of Defence; Home Affairs; Department of Foreign Affairs and Trade; Communications and the Arts; and Environment and Energy; peak bodies and international observers from the United Kingdom, Japan and Pacific regions. Discussions centred around enhancing discourse within relevant institutions and government departments on Cultural Property Protection, and moving towards the support of the Australian government in the adoption of the Protocols of the Hague Convention for Protection of Cultural Property in Armed Conflict. Additional objectives included the development of a practical and realistic plan to support for the adoption, and to align

Australia's legal framework for cultural property protection with best practice, and to contribute to the strengthening the international legal framework. Unfortunately, no further action or progress regarding ratification of the protocols has been made since these meetings.

In 2019 and 2020 Blue Shield Australia provided co-ordination of communications regarding the widespread and significant impacts of the bushfires across Australia on heritage and cultural property. In March 2020, Blue Shield Australia conducted a survey with Australian GLAM (Galleries, Libraries, Archives, Museums) institutions to assess the impact of the 2019-2020 extreme fire and storm events. The survey report is available on the BSA website and summarises the responses and gives an insight into the impact on cultural heritage institutions from these disaster events. BSA also provided a submission to the 2020 Royal Commission into National Natural Disaster Arrangements.

Following the catastrophic bushfires of 2019-2020, Commonwealth Government representatives met with members of BSA founding organisation Australia ICOMOS and its Risk Preparedness Working Party, as well as Aboriginal communities, regarding the recovery of Australia's World and National heritage properties. State governments also met with Australia ICOMOS and Aboriginal representatives in regard to the emergency response and recovery of places of state and local cultural heritage significance.

In 2020 Blue Shield Australia provided a submission to the Parliamentary Inquiry into the destruction of 46000 year old caves at the Juukan Gorge in the Pilbara region of Western Australia.

Disaster risk management planning for heritage places has been identified as a gap in heritage management. As disaster risk management planning for heritage places has not been perceived as a high priority in Australia, methodologies for identifying, evaluating and managing risks to heritage places are only now being developed. Further training of heritage professionals and emergency management personnel is still required.

Increasingly, various levels of government and the higher education sector are focusing research on climate related disaster and impacts on cultural heritage. Research and case studies are fundamental to understanding risk in order to develop preparedness and response plans.

BSA aims to facilitate and encourage information exchange on a range of disaster preparedness and recovery activities to establish and strengthen cooperative cultural heritage protection. Ratification of the Second Protocol by Australia would undoubtedly reinforce this work and BSA will strongly support the Australian Government moving forward with ratification in the future.

Disaster and emergency risk management, preparedness and recovery plans and policies are 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.

Most 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 was 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. DISACT continues to meet regularly and has provided collaborative assistance to the cultural and heritage institutions in Canberra natural disasters such as the 2018 Australian National University Chifley Library flood event, the smoke impact caused by the 2019-20 bushfires and the Canberra hailstorm of January 2020.

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. Since its inception in 1994, this long running program has provided approximately \$7.6 million in funding to over 1,500 collection management projects across Australia. Community Heritage Grants have supported organisations to conduct significance and preservation needs assessments; to implement conservation treatment, environmental control, re-housing of collection items in archival storage and reformatting of material through microfilming or digitising; and to conduct disaster preparedness and response workshops and collection management training programs.

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 National Library also provides the Australian National Bibliographic Database (ANBD), which records the location of over 56 million items held by Australian libraries. Many of the resources described in the ANBD are rare and unique. The National 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 preserved, digitised and microfilmed.

The National Library operates the discovery service [Trove](#), which provides access to the collections of libraries and other cultural institutions around Australia. It is a collaboration between the [National Library, Australia's State and Territory libraries](#), university libraries and hundreds of cultural and research institutions around Australia, working together to create a legacy of Australia's knowledge for now and into the future.

The National Library supports other initiatives and groups committed to safeguarding cultural property including Blue Shield Australia and the Australian Memory of the World Register that honours documentary heritage of significance for Australia and the world and advocates for its preservation.

The Australian National Maritime Museum was established in 1990 as a national institution and is located in Sydney. The Museum's statutory functions encompass the development, preservation and maintenance of the National Maritime Collection, including objects and vessels and maritime historical material of national significance. The ANMM also maintains the Australian Register of Historic Vessels (the Register) in association with a private organisation, Sydney Heritage Fleet. The Register is an online repository for vessels with a particular significance to Australia's maritime history. Over 600 historic vessels are featured, with background information on designers, builders and owners of each vessel. Representation on the Register is a recognition of a vessel's particular significance to Australia's maritime history.

The Maritime Museums of Australia Project Support Scheme (MMAPSS) offers funding to regional museums and organisations to help preserve or display objects of national and historical maritime significance. MMAPSS is funded by the Australian Government and the Australian National Maritime Museum (ANMM) which administers the Scheme. MMAPSS has funded over 480 projects since 1995, and through the program the ANMM has provided in-kind support to regional organisations and offered 67 internships to support staff or volunteers to learn specific museological skills and make valuable professional connections.

2. Article 6 - Use of the distinctive emblem for the marking of cultural property

The 1954 Hague Convention creates a distinctive emblem for the exclusive marking of cultural property, with a view to ensure its recognition, particularly in the event of armed conflict. The marking of cultural property is one of the preparatory measures that can be undertaken in time of peace.

- *Has your State **marked cultural property** by using the distinctive emblem of the Convention?*

YES: NO:

As discussed in our previous report, 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.

3. Article 7 - Military measures

This Article provides for the obligations of the High Contracting Parties with regard to the introduction in their regulations or instructions for the use of their armed forces of provisions to ensure compliance with the Convention, as well as to plan or establish within their armed forces, services or specialist personnel whose purpose will be to secure respect for cultural property and to co-operate with the civilian authorities responsible for safeguarding such property. These are obligations to be implemented in time of peace.

- *Has your State introduced provisions in the **regulations and instructions for your armed forces** to ensure compliance with the Convention?*

YES: NO:

As discussed in our previous report, the Convention and its requirements are widely disseminated to Defence personnel through a variety of policies and doctrines. The Defence Force Discipline Act 1982 (Cth) (DFDA) creates sanctions that implement relevant obligations in the Convention. The DFDA is applicable to military members and creates disciplinary offences that are enforced through the military discipline system. Further, the Defence Logistics Manual, Part 2, Volume 8, Chapter 8 specifically advises that no religious or cultural material is to be taken as a war trophy or as an historical artefact.

- *Has your State established **services** or designated specialist personnel *within your armed forces* to ensure respect for cultural property?*

YES: NO:

While the ADF does not maintain separate services with the specific task of securing respect for cultural property, the intent of this requirement is met through other tasks and obligations that are assigned to existing services such as intelligence, legal, logistics and military police personnel.

Respect for cultural property is a requirement of the Law of Armed Conflict (LOAC). ADF members are regularly and routinely trained on LOAC. Legal advisers are also readily available, including in operational environments, to advise on the applicability of LOAC in specific circumstances.

4. Article 25 - Dissemination of the Convention

Regulations relating to the protection of cultural property in time of armed conflict must be included into the programmes of military and, if possible, civilian training. The objective is to ensure that the principles of the Convention are known by the whole population, especially the armed forces and personnel engaged in the protection of cultural property.

- *Has your State **disseminated the provisions of the Convention** within the armed forces as well as among target groups and the general public?*

YES: NO:

As discussed in our previous report, 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, Health Support to Operations.
- Australian Defence Doctrine Publication (ADDP) 06.4, Law of Armed Conflict.
- Australian Defence Force Publication (ADFP) 3.1., Joint Fire Support Procedures.
- Australian Defence Force Publication (ADFP) 3.14, Targeting Procedures.
- Australian Air Publication 1003, Operations Law for RAAF Commanders.

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.

As the ADF considers the protection of cultural property an important component of LOAC, these dissemination activities are regularly reviewed and remain a key aspect of the overall education and training process.

Within this framework, what awareness-raising activities have you organized, and what awareness-raising activities do you plan to organize in the future? Please indicate the target groups for each activity.

Where appropriate opportunities arise, the Australian Government works with non-government entities, including the Australian Red Cross and academics to raise awareness of the protection of cultural property during times of armed conflict. For example, in February 2018, the Department of Defence co-sponsored the 'Heritage Under Fire' symposium which brought together leading heritage scholars, practitioners, defence personnel, non-government entities, political scientists, policy makers and archaeologists to focus on the theme of Cultural Property Protection in Conflict.¹ The Department of Defence also had a speaker from Defence Legal present at the 'Protecting Cultural Property in Armed Conflict' conference at the University of Adelaide in December 2016.

Furthermore, the Australian Red Cross is particularly active in disseminating information on the protections afforded to cultural property under international law.²

5. Article 26(1) - Official translations

This Article requires that the High Contracting Parties communicate to one another, through the Director-General of the United Nations Educational, Scientific and Cultural Organization, the official translations of the present Convention and of the Regulations for its execution:

Please submit a copy / copies of such translation(s), in electronic format, if possible, to the Secretariat"

Please annex an *electronic copy of your translation(s) to this report*:

6. Article 28 - Sanctions

This Article provides for the obligations 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, regardless of their nationality, who commit or order a breach of the Convention.

- ***Has your State introduced in your domestic legislation all necessary steps to prosecute and impose penal or disciplinary sanctions against a conduct contrary to the obligations set out in the Convention?***

¹ Deakin University, 'Heritage Under Fire' (February 8, 2018) [Heritage Under Fire | Deakin](#) (accessed April 4 2021)

² See for example, Gutman, Tara, Introduction to the International Humanitarian Law Framework for Protecting Cultural Property in Armed Conflict: Australian Red Cross' Perspective (December 8, 2016). RUMLAE Research Paper No. 17-07, Available at SSRN: <https://ssrn.com/abstract=2959088>

YES: NO:

You can complete your answer below, taking into account the guidelines in the model report.

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. 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 protected object³. Protected objects include buildings 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*, against a protected object, provided that object is not in used in support of the military effort and is not located in the proximity of military objectives. Protected objects include 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.

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

³ It is noted that when a protected object is issued in such a way that it loses its civilian characters it may qualify as a military objective and therefore be liable to attack.

II. Resolution II of the 1954 Conference

- *Has your State established a **National Advisory Committee** in accordance with the wish expressed by the Intergovernmental Conference (1954) in [Resolution II](#)?*

YES: NO:

You can complete your answer below, taking into account the guidelines in the model report.

- *In the event that you have established a National Advisory Committee, has it been incorporated into a national commission for the implementation of international humanitarian law?*

YES: NO:

III. 1954 (First) Protocol

[To be completed only by the High Contracting Parties to the 1954 Protocol]

The main purpose of the 1954 Protocol is the protection of cultural property in **or stemming from** occupied territory.

- *Has your State undertaken **measures to implement** these international obligations, including the adoption of relevant legislation?*

YES: NO:

You can complete your answer below, taking into account the guidelines in the model report.

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 imported into Australia. The government of a foreign country may submit a formal request for the return of such foreign cultural property under the Protection of Movable Cultural Heritage Act 1986.

IV. The 1999 Second Protocol

[To be filled in only by the Parties to the 1999 Second Protocol]

The 1999 Second Protocol supplements the 1954 Hague Convention in many respects. In case the information has already been presented in the context of questions relating to the 1954 Hague Convention, you can directly refer to it.

1. Article 5 - Safeguarding of cultural property

Article 5 of the Second Protocol supplements Article 3 of the Hague Convention by providing concrete examples of preparatory measures to be undertaken in time of peace, such as the preparation of inventories of cultural property or the designation of competent authorities responsible for the safeguarding of cultural property.

- *Has your State undertaken such measures?*

YES: NO:

Australia is not a party to the 1999 (Second) Protocol.

2. Article 9 - Protection of cultural property in occupied territory

Article 9 of the Second Protocol complements Article 5 of the 1954 Hague Convention by imposing specific obligations on the occupying power. Paragraph 119 of the Guidelines for the Implementation of the 1999 Second Protocol requires Parties that are occupying powers to provide information in their national reports on how the provisions relating to the protection of cultural property in occupied territory are being respected.

- *Do you ensure compliance with the provisions relating to the **protection of cultural property in the context of military occupation?***

YES: NO: Not applicable:

Article 9 of the Second Protocol complements Article 5 of the 1954 Hague Convention by imposing specific obligations on the occupying power. Paragraph 119 of the Guidelines for the Implementation of the 1999 Second Protocol requires Parties that are occupying powers to provide information in their national reports on how the provisions relating to the protection of cultural property in occupied territory are being respected.

3. Article 10 - Enhanced protection

The 1999 Second Protocol establishes an enhanced protection regime. Enhanced protection is granted by the Committee for the Protection of Cultural Property in the Event of Armed Conflict (composed of 12 Parties).

- *Do you **intend to request the granting** of enhanced protection for cultural property within the next four years or, if appropriate, to submit a **national tentative list** under Article 11 (1) of the 1999 Second Protocol?*

YES: NO:

You can complete your answer below, taking into account the guidelines in the model report.

MONITORING OF CULTURAL PROPERTY UNDER ENHANCED PROTECTION

[If some cultural property in your State benefits from enhanced protection, please also fill in this part of the questionnaire].

The benefit of enhanced protection implies the continued fulfilment of the conditions provided for in Article 10 of the 1999 Second Protocol.

- *Is a **specific mechanism for monitoring cultural property under enhanced protection** in place? For example, are the measures undertaken to ensure the highest level of protection periodically reviewed to ensure their full adequacy in all circumstances?*

YES: NO:

You can complete your answer below, taking into account the guidelines in the model report.

Pursuant to paragraph 94 of the Guidelines, a distinctive emblem is created for the exclusive marking of cultural property under enhanced protection.

- *Has your State **marked with the distinctive emblem** cultural property under enhanced protection?*

YES: NO:

You can complete your answer below, taking into account the guidelines in the model report.

4. Article 15 - Serious violations of the 1999 Second Protocol

“Article 15 obliges Parties to **establish as criminal** offences in their domestic law offences constituting serious breaches of the Second Protocol, **and to make such offences punishable by** appropriate penalties”.

- *Has your State **implemented this obligation**? If yes, what measures have been undertaken?*

YES: NO:

You can complete your answer below, taking into account the guidelines in the model report.

5. Article 16 - Jurisdiction

Pursuant to Article 16 of the Second Protocol, the Parties shall take the necessary legislative measures to establish their jurisdiction over offences set forth in Article 15 of the 1999 Second Protocol in certain cases.

- *Has your State **implemented this obligation**? If yes, what measures have been undertaken **to grant jurisdiction to your courts** over serious offences under the 1999 Second Protocol?*

YES: NO:

You can complete your answer below, taking into account the guidelines in the model report.

6. Article 21 - Measures regarding other violations

The 1999 Second Protocol obliges Parties to adopt legislative, administrative or disciplinary measures as may be necessary to **suppress certain other violations of the Second Protocol**:

a. any use of cultural property in violation of the 1954 Hague Convention or the 1999 Second Protocol;

b. any illicit export, other removal or transfer of ownership of cultural property from occupied territory in violation of the 1954 Hague Convention or the 1999 Second Protocol.

- *Has your State implemented such measures?*

YES: NO:

You can complete your answer below, taking into account the guidelines in the model report.

7. Article 30 - Dissemination

Article 30 of the Second Protocol complements Articles 7 and 25 of the 1954 Hague Convention. In this regard, Article 30 it asks the Parties, to endeavour by appropriate means, and in particular by educational and information programmes, to strengthen appreciation and respect for cultural property by their entire population, to ensure the dissemination of the 1999 Second Protocol, and to incorporate in their military regulations' guidelines and instructions for the protection of cultural property.

- *Has your State disseminated the provisions of the Convention and the Second Protocol within the armed forces as well as to target groups and the general public?*

YES: NO:

You can complete your answer below, taking into account the guidelines in the model report.

8. Article 33 – Assistance of UNESCO

Pursuant to paragraph 151 of the Guidelines for the Implementation of the 1999 Second Protocol, the Parties having activities at bilateral or multilateral level are invited to inform the Committee, in their periodic reports, of their activities in order to share their experiences or good practices.

- *Has your State shared, in particular through the Secretariat of UNESCO, your experiences and good practices in implementation of the 1954 Hague Convention and / or its Protocols?*

YES: NO:

You can complete your answer below, taking into account the guidelines in the model report.

9. Article 37 - Official translation of the 1999 Second Protocol to the 1954 Hague Convention

Pursuant to Article 37 of the Second Protocol, the Parties shall translate the 1999 Second Protocol into their official language(s) of their countries and shall communicate these official translations to the Director-General.

Please submit a copy / copies of such translation(s), in electronic format, if possible, to the Secretariat.

Please annex an *electronic copy of your translation(s) to this report* .

V. Other questions relating to the 1954 Hague Convention and its two Protocols

1. Ratification of / accession to other international treaties having provisions of the protection of cultural property

- Can you indicate the other international instruments to which your State is a party?

International instruments	Ratification/Accession
1970 UNESCO Convention on the means on Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property	Ratification
1972 UNESCO Convention on the Protection of the World, Cultural and Natural Heritage	Ratification
2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage	.....
2003 UNESCO Convention for the Safeguarding of Intangible Cultural Heritage	.....
2005 UNESCO Convention for the Protection and Promotion of Diversity of Cultural Expressions	Accession
Additional Protocol (I) to the Geneva Conventions, 1977	Ratification
Additional Protocol (II) to the Geneva Conventions, 1977	Ratification
Additional Protocol (III) to the Geneva Conventions, 2005	Ratification

2. National practice relating to the implementation of the Hague Convention and its two Protocols

The Secretariat would be grateful if you could annex a copy of the following documents in French and/or English:

- Relevant **civil and military administrative regulations**:

PDF Document Website

- **National laws** relating to the protection of cultural property, as well as criminal provisions adopted in the context of the implementation of Article 28 of the Hague Convention and Articles 15, 16 and 21 of the Second Protocol, and case law relating to the protection of cultural property.

PDF Document Website

- Documents relating to awareness-raising activities (seminar programme, brochures, etc.), as well as any other document (legislative, judicial or administrative) relevant to the dissemination of the 1954 Hague Convention and its 1999 Second Protocol.

PDF Document

Website

3. Effectiveness of cooperation mechanisms at the national level

- The implementation of the Hague Convention and its two Protocols requires cooperation at the national level between the various authorities (civil, military, etc.). Can you assess the degree of cooperation, at the national level, in your State?

There is no cooperation between the different authorities

There is limited cooperation between the different authorities

There is cooperation between the various authorities, but there are still improvements to be made

There is a perfectly functional cooperation between the different authorities

Other (specify)

VI. Self-assessment forms

In order to reflect in the synthesis document of the national reports the status of implementation of the 1954 Hague Convention and its 1999 Second Protocol in key areas, please fill in the two tables below.

1. Assessment of the degree of implementation

[To do this, please use the following rating scale]

1. Not at all implemented;
2. Partially implemented and the process is at standstill;
3. Partially implemented, the process following its course; and
4. Fully implemented.

Implementation of the safeguarding obligation through the adoption of preparatory measures	.....
Military training on regulations for the protection of cultural property	.....
Use of the distinctive emblem to mark cultural property	.....
Implementation of the obligation to disseminate, through the implementation of awareness-raising activities for target audiences	.....
Adoption of relevant criminal legislation	.....
<i>For Parties with cultural property under enhanced protection only.</i>	.....
Establishment of a monitoring system for cultural property under enhanced protection at the national level	

2. Assessment of the difficulties encountered

[To do this, please use the following rating scale]

1. Difficulties are encountered, but there are no plans to seek technical assistance from the UNESCO Secretariat;
2. Difficulties are encountered, nevertheless, it is planned to make use of the technical assistance of the UNESCO Secretariat;
3. Difficulties were encountered, but thanks to the technical assistance of the Secretariat they could be resolved;
4. Difficulties were encountered at first, but they turned into challenges that were overcome; and
5. No difficulties were encountered.

Implementation of the safeguarding obligation through the adoption of preparatory measures	.....
Military training on regulations for the protection of cultural property	.....
Use of the distinctive emblem to mark cultural property	.....
Implementation of the obligation to disseminate, through the implementation of awareness-raising activities for target audiences	.....
Adoption of relevant criminal legislation	.....
<i>For Parties with cultural property under enhanced protection only.</i>	.....
Establishment of a monitoring system for cultural property under enhanced protection at the national level	

VII. Enhanced protection mechanism – Opinion survey

Pursuant to Chapter 3 of the 1999 Second Protocol, enhanced protection is granted by the Committee for the Protection of Cultural Property in the Event of Armed Conflict if three criteria are cumulatively met:

- ✓ Cultural property is of the greatest importance to humanity;
- ✓ Cultural property is protected by adequate domestic, legal and administrative measures recognising its exceptional cultural and historical value and ensuring the highest level of protection; and
- ✓ Cultural property must not be used for military purposes or to shield military sites. And the Party which has control over the cultural property has to make a declaration confirming that it will not be used for military purposes or to shield military sites.

As these conditions are set out in an international treaty, their interpretation cannot be made independently of State practice, which is of fundamental importance under international treaty law. Therefore, this national report is an opportunity for the national authorities of the Parties to express their views on the conditions under which enhanced protection is granted.

For each of the conditions set out in Article 10 of the Second Protocol, please answer the following questions, taking into consideration the relevant paragraphs of the Guidelines for the Implementation of the Second Protocol.

- Article 10, paragraph (a) - "The greatest importance for humanity"

Please list the main factors to be undertaken into consideration in determining whether a cultural property is of the greatest importance for humanity?

- Article 10, paragraph (b) - "The highest level of protection"

Please mention the national authorities to be consulted in determining the choice of measures to be adopted to ensure the highest level of protection for a cultural property for which enhanced protection is requested. What measures can ensure the highest level of protection?

- Article 10, paragraph (c) - "Not-used for military purposes"

Please mention the national authorities to be consulted in order to take the decision not to use the proposed cultural property for granting enhanced protection for military purposes or to shield military sites?

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
Underwater Cultural Heritage Act 2018
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 Act 2011
Northern Territory Aboriginal Sacred Sites Act 1989
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 2017
Aboriginal Heritage Act 2006

Western Australia

Maritime Archaeology Act 1973
Aboriginal Heritage Act 1972
Heritage Act 2018

ATTACHMENT B

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.

ATTACHMENT C

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 \$220 (subsection 4AA(1) of the *Crimes Act 1914*).

Australian National Maritime Museum Regulations 2018

Paragraph 23(1) and (2) of the Regulations provides that it is an offence for a person who is on or in any controlled Museum premises, to touch or interfere with Museum material or engage in conduct that damages Museum material. Museum material includes, amongst other things, material forming part of the national maritime collection, other 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. Subsections 23(1) and (2) set the penalty for breach of the offence at 5 penalty units each.

National Gallery Regulations 2018

Section 19 sets out offences relating to conduct in a Gallery building or on Gallery land. These include provisions that it is an offence for a person to touch, interfere with or engage in conduct that damages Gallery material, or attach any article to, write upon or engage in conduct that damages a Gallery building or any wall, fence, fixture, fitting, plant or garden that is on Gallery land. Section 24 requires that a person deposit a 'prohibited article', as soon as practicable, at the place in the Gallery building designated for the purpose. Prohibited articles include, amongst other things, any implement that could be used to damage or conceal Gallery material. The penalty for breach of each provisions under Sections 19 and 24 is 5 penalty units.

National Library Regulations 2018

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

- Subsection 14(1)(c) provides that an authorised officer may direct a person (the *first person*) or a group of persons to leave Library property if there are reasonable grounds for believing that the first person or group intends to commit, is committing, or has committed, an offence against this instrument, or has engaged in conduct that destroys, alters or erases a computer program on a computer, computer system or part of a computer system that is owned by a or under the control of the Library.
- Section 16 provides that an authorised officer may direct a person who is carrying what appears to be an unauthorised article on or in Library property to submit the article for inspection or to leave it in an area designated for prohibited articles.
- Section 24 sets penalties that apply to the removal, alteration or handling of library material in a way that causes, or is likely to cause damage.
- Section 25 provides that it is an offence for a person to interfere with or engage in conduct that damages a building, fixture, fitting, wall, fence, plant or garden or in Library property.
- Section 26 provides that it is an offence for a person to bring into, or have in possession on Library property a projectile or an inflammable or explosive article or substance.

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

National Museum of Australia Regulations 2019

Section 22 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. Subsections 22(1) and (2) provide 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 5 penalty units.

National Portrait Gallery of Australia Regulation 2013

Part 6 sets out the offences in relation to interference with, or damage of Gallery material or defacing of property. Section 17 relates to the interference with Gallery material on Gallery land or in a Gallery building. Gallery material includes, amongst other things, material that forms part of the national collection and other material that is owned by the Gallery or under its control. The penalty for breach of the offence is 10 penalty units.