



# REPORT FROM AUSTRALIA – 2015

## On the implementation of the UNESCO *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970*.

### I. Information on the Implementation of the UNESCO Convention of 1970 (with reference to its provisions)

#### 1. Ratification of the Convention

- In Australia, national and international cultural property is protected through the *Protection of Movable Cultural Heritage Act 1986* (Cth) (PMCH Act) which gives effect to the UNESCO *Convention on the Means of Prohibiting the Illicit Import, Export and Transfer of Cultural Property 1970* (1970 Convention).
- Australia acceded to the 1970 Convention on 30 October 1989.

#### 2. Implementation in the national legal system and in the organisation of services.

- The *Protection of Movable Cultural Heritage Act 1986* (Cth) (PMCH Act) can be found at <https://www.comlaw.gov.au/Details/C2014C00597> and the *Protection of Movable Cultural Heritage Act Regulations 1987* (Cth) (PMCH Act Regulations) can be found at <https://www.comlaw.gov.au/Details/F2004C00105>.
- Under Section 7 of the PMCH Act, Australian cultural property is defined as *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.*



- Under Section 5 of the PMCH Act, international cultural property is defined as *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.*
- The Minister for the Arts administers the PMCH Act through the Cultural Property Section, Collections and Cultural Heritage Branch within the Ministry for the Arts, Australian Government Attorney-General's Department.
- The Ministry for the Arts works closely with other government agencies, including the Department of Immigration and Border Protection, the Australian Federal Police, the International Criminal Policing Organisation (INTERPOL) at the National Central Bureau of Australia and the Department of Foreign Affairs and Trade to seize illegal exports and imports of cultural objects.
  - Working meetings are held regularly between these agencies.
- The Australian Federal Police facilitate the exchange of information in relation to cultural property primarily through INTERPOL channels on behalf of Australian agencies, including state and territory police and border agencies.
- In December 2014, the Australian Government announced a [Review of the PMCH Act](#). An independent reviewer has been appointed, and is due to report to the Australian Government by 30 September 2015. The terms of reference for the review are broad, and consider, amongst other things, how Australia can best fulfil its international obligations.
  - Consideration is being given to all relevant international conventions, and in addition international models and practices will be considered in providing guidance and benchmarking.

### 3. Inventories and Identification

- Cultural material is protected in Australia under the PMCH Act through the National Heritage Control List, contained within the PMCH Regulations. This list establishes criteria for Australian Protected Objects, separating them into Class A objects which may not be exported and Class B objects which may only be exported with a permit.
- The Class A classification is not intended to be exhaustive, and objects may be added to it as they are determined under the PMCH Act to be of such significance that their loss would diminish the national heritage. In addition, objects which have been denied export are listed by the Ministry in a prohibited exports register.
- The degree of precision of the term 'cultural property' at the Australian national level is addressed above at Question 2, and the definition conforms with that of 'cultural property' as proposed by the 1970 Convention, specifically defining it as "an Australian protected object or a protected object of a foreign country".
- The Review of the PMCH Act is considering the most appropriate ways to define and classify cultural material which should be regulated by the Act.



- In Australia the protection of heritage also falls within the jurisdiction of state and territory governments. Many jurisdictions in Australia hold registers of significant objects, and places, of historic, natural and Indigenous value.
- Australia notes the recommendation that Object-ID be used as the standard for documenting movable cultural heritage held by collecting institutions, and that use of the Object-ID would facilitate rapid transmission of basic information which would be of great assistance for identifying and tracking objects.
  - While not mandated in Australia, the majority (if not all) of Australian public collecting institutions maintain extensive collections databases, which include all the required information of the Object ID tool. Many institutions would hold information which exceeds these basic requirements.
- Australia's museums, galleries, libraries and archives are self-monitoring in their efforts to combat theft and illicit trade.

#### 4. Archaeological Excavations

- Australia recognises the relationship between prevention of illicit trafficking in movable cultural property and protection of archaeological places. Australian federal, state and territory laws establish criminal offences for damaging, including by unauthorised excavations, Indigenous and registered historic and natural heritage places. There are government agencies at the federal, state and territory level that are active in administering site registers and heritage protection legislation.
- The [Environment Protection and Biodiversity Conservation Act 1999](#) (Cth), which is administered by the Department of the Environment, regulates actions taken within the boundaries of Australia's World Heritage and National Heritage sites which may have a significant impact by regulating:
  - permanent removal, destruction, damage or substantial disturbance of archaeological deposits or artefacts in a World Heritage property;
  - permanent diminishment of the cultural value of a World Heritage property for a community or group to which its values relate; and
  - removal, damage or substantial disturbance of cultural artefacts, or ceremonial objects in a World Heritage property.
- Historic shipwrecks and associated relics are protected by the [Historic Shipwrecks Act 1976](#) (Cth). The Department of the Environment administers the Act.
  - The Act aims to ensure that historic shipwrecks are protected for their heritage value and maintained for recreational, scientific and educational purposes.
  - Australia does not have a significant underwater cultural heritage looting problem.
  - The Australian Government is considering introducing protection for underwater cultural heritage relics being imported into Australia without the appropriate permits for recovery and or export. Seized items would be returned to an official representative of the country of origin in accordance with the *UNESCO Convention for the Protection of Underwater Cultural Heritage 2001*.



## 5. Monitoring of the export and import of cultural property

- The export of Australia's significant cultural property is regulated under the PMCH Act. It is not intended to restrict normal and legitimate trade in cultural property and does not affect an individual's right to own or sell material within Australia.
  - The PMCH Act implements a system of export permits for certain cultural property defined as 'Australian protected objects'.
- Australian protected objects, as set out in the National Cultural Heritage Control List, form part of the movable cultural heritage of Australia.
  - This list establishes criteria for Australian protected objects, separating them into Class A objects which may not be exported and Class B objects which may only be exported with a permit.
- The PMCH Act provides a legal framework for the return of cultural property. The cultural property must be a protected object of the foreign country, have been illegally exported in contravention of a law of that country, and a request must be made for return.
- The Australian Government works closely with the embassies of other countries to return cultural material illicitly imported into Australia.
- Australia has returned a number of culturally significant objects to their country of origin, including:
  - 2,000 year old burial mantle to Peru (1989/1990)
  - 33 Greek Antiquities to Greece (July 2000)
  - 71,939 pieces of Chinese porcelain from the Tek Sing shipwreck to Indonesia (August 2001)
  - Fossils, including dinosaur eggs to China (2004)
  - 7 Egyptian antiquities to the Arab Republic of Egypt (July 2005)
  - 10,000 Chinese Fossils to China (September 2005)
  - 1 decorated Asmat skull to Indonesia (December 2006)
  - 16 Incised Dayak skulls to Malaysia (May 2007)
  - 130kg Argentine fossils to Argentina (August 2007)
  - 750kg of fossils to China (January 2008)
  - Ptolemy's Cosmographica map sheet to Spain (February 2008)
  - A Maori feeding funnel to New Zealand (2009)
  - 154 Stoneware artefacts to the Philippines (May 2010)
  - Artefacts with human remains to Cambodia (March 2011)
  - 122 Egyptian artefacts to the Arab Republic of Egypt (September 2011)
  - Textile remnants, woven and pottery dolls and gold foil artefacts to Peru (September 2011)
  - Two miniature Jordanian pots to the Hashemite Kingdom of Jordan (September 2011)
  - A bronze Shiva Nataraja (from Tamil Nadu) and an antique stone idol of Ardhanariswara to India (September 2014)
  - A stone statue of the Goddess Guanyin to China (March 2015)
  - 14 antiquities to the Arab Republic of Egypt (April 2015)
  - An ammonite fossil to Algeria (due to be returned in 2015)
- Over the last five years there have been seven handbacks to six different countries, comprising the return of 180 objects.



- There are penalties in the PMCH Act, including fines and imprisonment, for persons who are aware that the objects they are importing into Australia have been illegally exported from their country of origin.
- The Australian Government is not aware of any national studies on the scope of illicit activity with respect to cultural property in Australia, though this has been of interest to academia and some in industry over the last few years.

#### Case study for the return of Egyptian antiquities, April 2015

In 2013 the Ministry for the Arts received a request from INTERPOL Canberra on behalf of INTERPOL Cairo. The request noted that Egyptian antiquities had been offered for sale by a private dealer and the Government of the Arab Republic of Egypt requested that all steps be taken to stop the sale and seize the objects.

After receiving a formal request for the return of the objects from the Egyptian Government, Ministry for the Arts staff and members of the Australian Federal Police seized the requested objects from an antique shop and private home in Sydney under the *Protection of Movable Cultural Heritage Act 1986*. The objects were returned to the Egyptian Embassy in a ceremony on 8 April 2015.

#### **6. System for trade-in, acquisition, ownership and transfer of cultural property**

- It is not possible to estimate the overall size of Australia's cultural goods market as comprehensive data is not gathered in relation to sales through commercial galleries nor via the internet.
- In relation to the sale of art, the most recent commercial gallery data from the Australian Bureau of Statistics dates back to 2000 when there were 483 commercial art gallery businesses operating in Australia with combined income of \$132 million.
- Comprehensive data on auction house sales is gathered by the [Australian Art Sales Digest](#) and this shows that, over the last 25 years, the value of sales by Australia's major art auction houses (approximately 20 in total) has grown from \$40 million in 1988 to nearly \$106 million 2014.
- Research shows that Australian fine art auction house turnover is 0.005 per cent of Australia's gross domestic product ([Art Facts](#)).
- Australia (through the Ministry for the Arts) works closely with state and territory government and the private sector (such as auction houses and special interest groups) to raise awareness of the law and on a case by case basis regarding the import and export of cultural material, and ensuring correct procedures are followed.
- Australia notes that Auction Houses and Dealers operate according to their sector code of ethics. The Australian Antique and Art Dealers Association has its own [Code of Practice](#). The Auctioneers and Valuers Association of Australia also has a [Code of Ethics](#).
- Under the [Resale Royalty Right for Visual Artists Act 2009](#) (Cth), art market professionals, such as auction houses, commercial galleries, agents and art dealers are required to report the commercial resale of visual artwork when sold for AUS \$1,000



and above (including Goods and Services Tax), to the appointed resale royalty scheme collecting society.

- The principle of inalienability does not apply to cultural items in national collections in Australia. National collecting institutions have individual de-accessioning policies, and have the ability to gift or transfer ownership of items in their collection within the framework of their institutional policies or their enabling legislation. Regarding items found in heritage sites, the principle of inalienability is also not applied broadly, but policies on their ownership vary between state, territory and Commonwealth land.
- In relation to due diligence requirements and rules governing the search of provenance, in October 2014, the Australian Government released the [Australian Best Practice Guide to Collecting Cultural Material](#). Based on internationally recognised sector code of ethics, the guide supports Australia's public collecting institutions to undertake acquisitions and loans in a manner that meets international best practice in regards to due diligence and provenance research.

## 7. Bilateral Agreements

- The PMCH Act does not restrict seizure action only to the cultural property of States which are party to the Convention. Under the PMCH Act a request for the return of a foreign protected object will be considered from any foreign country.
- Australia currently has Memorandums of Understanding encompassing the protection of movable cultural heritage with the Republic of Korea, the Republic of Indonesia and the People's Republic of China.
- Australia has received Standing Requests from the Governments of Argentina, China, Egypt, Vietnam and Cambodia. These standing requests identify objects considered to be protected under their cultural heritage laws.
- In order for the Australian Government to return an illegally exported object to its country of origin, the requesting government must specify that:
  - the object is protected under the country's law,
  - it has been exported from its country of origin,
  - there is a law of that country that prohibits the export of that object,
  - the law relates to cultural property, and
  - the object has been imported into Australia.

## II. Code of Ethics, awareness raising and education

### Ethical Standards

- In October 2014, the Australian Government released the [Australian Best Practice Guide to Collecting Cultural Material](#). Based on internationally recognised sector code of ethics, the guide supports Australia's public collecting institutions to undertake acquisitions and loans in a manner that meets international best practice in regards to due diligence and provenance research.
- The Guide also sets out legal and ethical standards by clearly defining the requirements of Australian legislation, including those that give effect to international obligations, such as the 1970 Convention.



- The Guide sets the benchmark in Australia for collecting institutions when developing or renewing their policies and procedures for considering an acquisition or loan.
- The Guide has been very well received by the sector and is demonstrably supporting Australian institutions in ensuring high standards are maintained in the safeguarding of Australian and international cultural property.
- The ICOM Code of Ethics for Museums is well regarded in the collecting sector in Australia. Museums Australia, the representative body for museums in Australia, is partnered with ICOM Australia, and has a code of ethics which states its support for the efforts of ICOM to control and eliminate international trafficking in stolen or illegally exported cultural property.
- The ICOM Australia website includes links to recently promulgated policies from ICOM including:
  - [ICOM Code of Ethics for Natural History Museums](#)
  - [ICOM's International Observatory on Illicit Traffic in Cultural Goods](#)
- In April 2014 a Joint Statement was issued by Australia's major museum and gallery organisations to reconfirm their commitment to the carrying out of rigorous due diligence in respect of provenance in relation to the acquisition of items for Australian collections. These organisations are the Council of Australasian Museum Directors, Council of Australian Art Museum Directors, ICOM Australia and Museums Australia:
  - The four peak organisations urged all member museums and galleries to exercise the utmost care possible in researching acquisitions and to ensure that ethical standards, as well as legal compliance with national or international laws and conventions, takes centre-place in their work of creating collections for the nation's benefit.
  - The four organisations also urged all state and territory and national museums and galleries in Australia to have acquisition policies, frameworks and ethical standards in place to guide them in building their collections ethically. They noted that since the 1970 UNESCO Convention prohibiting illicit trafficking of cultural material, attention to the provenance research and required due diligence surrounding proposed acquisitions to collections has been steadily rising here and overseas.
- The policies and standards developed in response have been codified by the ICOM Code of Ethics for Museums (most recently revised in 2004) and the Museums Australia Code of Ethics (1994). They are in turn underpinned by individual acquisition policies and standards authorised by each museum and gallery governing body. These policies reflect both internationally agreed ethical standards and the need for legal compliance with national and international laws, conventions and treaties.
  - In acquiring objects today, museums and galleries have the opportunity to assess their acquisitions within such frameworks, acknowledged standards and stated purposes for developing a collection. These standards and self-imposed controls by museums and galleries in developing their collections have been strengthened over the last few decades with particular care given to due diligence in determining the origin and ownership trail for items.
- The Australian Government (through the Ministry for the Arts) works closely with the private sector (such as auction houses and special interest groups) to raise awareness



of the law and on a case by case basis regarding the import and export of cultural material, and ensuring correct procedures are followed.

### **Awareness raising and education**

- Australia promotes general respect for cultural material and diversity, through a broad range of programs at the federal and state government level, including funding for the preservation and assessment of material significant to particular communities and traditions.
- ICOM Australia maintains its own website with links to ICOM International's missing object and Red List pages.
- The Australian Government [Ministry for the Arts website](#) provides information for the general public concerning the PMCH Act, the Review of the PMCH Act, and the Best Practice Guidelines.
- The Ministry for the Arts has also worked previously with the Department of Immigration and Border Protection to develop an information brochure and posters for passenger ports in Australia.
- There is a high level of knowledge of the PMCH Act within special interest groups, such as vintage car and steam engine enthusiasts, leading to a high level of information sharing between these groups and government agencies. At the art market level, auction houses are very proactive in dealing with the Ministry for the Arts in order to meet their obligations under the Act.
- The Ministry for the Arts also conducted national consultations as part of the Review of the PMCH Act. These consultation sessions are raising awareness of the PMCH Act and issues regarding cultural material more broadly.
- The *Australian Best Practice Guide to Collecting Cultural Material* also sets out legal and ethical standards by clearly defining the requirements of Australian legislation, including those that give effect to international obligations, such as the 1970 Convention.
- The Ministry for the Arts provides input into the Australian Federal Police (AFP) internal training manuals with regards to cultural property issues and the Department of Immigration and Border Protection training courses.
  - This training has focused on highlighting cultural heritage issues, cultural heritage legislation and ways to improve information exchange between agencies.

### **III. Cooperation with international and regional agencies**

#### **Police**

- The Attorney-General's Department, in conjunction with the Department of Foreign Affairs and Trade, leads Australia's engagement with the United Nations on transnational crime matters, including through criminal justice forums such as the UN Crime Congress, the Commission on Crime Prevention and Criminal Justice, and the UN Convention against Transnational Organised Crime.



- As the Australian National Central Bureau (NCB), the AFP facilitates all enquiries to and from law enforcement, regulatory and government bodies in Australia through INTERPOL channels.
- The AFP may receive referrals from the Ministry for the Arts and other government bodies following the identification and seizure of items at the border.
- The AFP directs its resources to the matters of highest priority, evaluated in accordance with organisational directives, resources and competing priorities. AFP investigative experience and competencies allows for officers to be allocated to relevant crime types on an as needs basis without the necessity for setting up specialized units.
- The AFP does not have plans to set up a specialised unit for art crime investigations.
- Whilst there is no specific training program there is information relevant to this crime type readily available to the AFP, and members familiar with the subject matter are available for investigators to consult with on specific matters. Members also attend various seminars and conferences on matters relating to the prevention of the illicit import, export and transfer of ownership of cultural property.
- The AFP facilitates dissemination of information and requests on stolen works of art and cultural heritage through INTERPOL to and from relevant agencies and supports the use of, and access to, the INTERPOL Stolen Works of Art (WOA) database for relevant agencies and industry users. Australia searches and records data on the WOA however does not maintain a database of stolen objects.
- Within Australia, reports of thefts of cultural property may be made through INTERPOL channels when there is a suspicion or knowledge that the item has or may be exported.
- There are penalties in the PMCH Act, including fines and imprisonment, for persons aware that the objects they are importing into Australia have been illegally exported from their country of origin.

## **Customs**

- The export of Australia's significant cultural property is regulated under the PMCH Act. It is not intended to restrict normal and legitimate trade in cultural property and does not affect an individual's right to own or sell material within Australia.
  - The PMCH Act implements a system of export permits for certain cultural property defined as 'Australian protected objects'.
- The Department of Immigration and Border Protection assists the Ministry for the Arts in identifying cultural heritage goods at the border. Australian authorities may interact with the World Customs Organisation or other international bodies, including INTERPOL, for cultural heritage matters if required.
- Australian Border Force Officers undergo comprehensive training specific to the roles they undertake at the border. Cultural heritage matters are covered in the prohibited import and export curriculum.
- The current Review of the PMCH Act is also considering ways to better align and integrate the systems between departments.



#### IV. Emergency Situations and heritage at risk

##### (a) Strategies in place for emergency situations for heritage in the case of natural disaster or conflict.

- Emergency Management Australia (EMA) is a division within the Australian Government Attorney-General's Department, which supports the coordination of Australia's responses to emergencies, disasters and security incident within its all-hazards mandate. EMA develops and maintains a range of operational national disaster response plans, which provide a framework for the provision of Australian Government assistance domestically and internationally. EMA also manages Australian Government disaster assistance payments to aid the recovery of individuals and communities affected by major disasters.
- As Australian states and territories have primary responsibility for the protection of life and property, states and territories have responsibility for developing and maintaining relevant national disaster management policies and strategies, including items of cultural significance during crisis situations.
- The [Environment Protection and Biodiversity Conservation Act 1999](#) (Cth), administered by the Department of Environment, underpins Australia's environmental and heritage protection. The Act provides for the protection of the environment, especially matters of national environmental significance, which includes places of national heritage and Australia's heritage properties located overseas.
- [Be Prepared](#) is Australia's primary resource for disaster planning in a cultural heritage context. Its practical guidelines have been produced to coordinate a national approach to caring for, and promoting access to Australia's heritage collections. These guidelines enable the museum sector to write useful Disaster Preparedness Plans.
  - The majority (if not all) of Australian public collecting institutions have a disaster planning policy.
  - Public collecting institutions also incorporate disaster planning into their risk management policies.
- The [National Strategy for Disaster Resilience](#), endorsed by the Council of Australian Governments in 2011, also provides a national framework for empowering communities to protect themselves, their assets, livelihoods and their cultural heritage during crisis situations.

##### (b) Measures undertaken to implement UNSC Resolution 2199 for the protection of Iraqi and Syrian cultural heritage?

- Australia is currently drafting Regulations to implement paragraph 17 of Resolution 2199 (2015) concerning Syrian cultural heritage.
- These Regulations will prohibit the sale or transfer of Syrian cultural heritage, will require the Australian Government to be notified if someone possesses such items and require the items to be handed over to the Australian Government for their eventual return to Syria.
  - Conduct by both individuals and entities will be covered.



- Australia is also amending the *Charter of the United Nations (Sanctions-Iraq) Regulations 2008* to align with the re-affirmation of the obligation to protect Iraqi cultural heritage set out in Resolution 2911.
- It is anticipated that both these Regulations will come into effect during the latter half of 2015.
- They will have effect despite any contrary Australian state or territory law.

## V. **Other legislative, legal and administrative measures taken by the State**

### 1. **Accession to the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects and other related legislation**

- The Australian Government review of the PMCH Act will consider, amongst other things, how Australia's international obligations are best fulfilled.
  - As part of this process all relevant Conventions and practices which provide benchmarks or guidance will be considered. This includes consideration of the provisions included in the 1995 UNIDROIT Convention.
- The Australian Government has established the [Protection of Cultural Objects on Loan Scheme](#), underpinned by the [Protection of Cultural Objects on Loan Act 2013](#) (Cth) and [Protection of Cultural Objects on Loan Regulations 2014](#) (Cth) to protect cultural objects on temporary loan from overseas lenders for public display in Australia. The scheme opened for applications on 27 February 2015.
  - The scheme includes requirements that promote international best practice in collecting and borrowing cultural material by requiring those collecting institutions wishing to participate in the scheme to demonstrate that they possess the necessary expertise, capacity and resources to meet the high standards expected by the scheme. This includes procedures to identify the provenance of objects and ensuring that due diligence is undertaken on objects proposed for loan.
  - The requirements of the Protection of Cultural Objects on Loan Scheme will ensure Australia continues to meet its international legal and ethical obligations in the safeguarding of cultural property and assist in the combatting of the international illicit trade in cultural property.

### 2. **Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation**

- Australia is aware of and closely follows the work of the Intergovernmental Committee, particularly in relation to the case of the Parthenon Marbles, and recognises that this is a matter for the UK and Greek governments to resolve, with the assistance of UNESCO.

### 3. **UNESCO Database of National Cultural Heritage Laws**

- Australia notes the UNESCO Database of National Cultural Heritage Laws is a very valuable resource. The Ministry for the Arts frequently accesses this database in administering the *Protection of Movable Cultural Heritage Act 1986* (Cth).
  - The Ministry for the Arts has recently used the database to access laws from a number of countries, including India, China, Algeria, Morocco, Turkey and Egypt.



**Australian Government**  
**Attorney-General's Department**  
Ministry for the Arts

**Ministry**  
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- Australian legislation is included in this Database.
- At the conclusion of the PMCH Act Review process, Australia will provide updated legislation, if any.



## ANNEX II REPORT FROM AUSTRALIA

### Measures or Actions taken at the national level, in conformity with the recommendations contained in the “Report on the Evaluation by Internal Oversight Service of UNESCO’s Standard-setting Work of the Culture Sector”, April 2014.

#### Recommendation 1

Provide targeted support, through awareness raising and capacity building activities, to regions where ratification rates are low (State Parties/Subsidiary Committee/Secretariat)

- In Australia, national and international cultural property is protected through the *Protection of Movable Cultural Heritage Act 1986* (Cth) (PMCH Act) which gives effect to the *UNESCO Convention on the Means of Prohibiting the Illicit Import, Export and Transfer of Cultural Property 1970* (1970 Convention).
- The PMCH Act provides a legal framework for the return of cultural property to a foreign country. The cultural property must be a protected object of the foreign country, have been illegally exported in contravention of a law of that country, and a request must be made for return.
- The PMCH Act does not restrict seizure action only to the cultural property of States which are party to the Convention. Under the PMCH Act a request for the return of a foreign protected object will be considered from any foreign country.
- The Australian Government assists in raising awareness of the 1970 Convention by returning protected objects to countries which have not yet ratified the Convention. Protected objects returned to such countries include:
  - 1 decorated Asmat skull to Indonesia (December 2006),
  - 16 Incised Dayak skulls to Malaysia (May 2007), and
  - 154 Stoneware artefacts to the Philippines (May 2010).

#### Recommendation 2

Review existing national legislation to ensure it complies with all obligations that States Parties have under the 1970 Convention. Issues to be looked at include, but are not limited to, the definition of cultural property for the purpose of the 1970 Convention, classification and inventorying of cultural property, regulations for the trade of cultural property (including those relating to dealers and online sales), export and import controls, and procedures for facilitating restitutions claims. (State Parties)

- In December 2014, the Australian Government announced a [Review of the Protection of Movable Cultural Heritage Act 1986](#) (PMCH Act). An independent reviewer has been appointed, and is due to report to the Australian Government by 30 September 2015. The terms of reference for the review are broad, and consider, amongst other things, how Australia can best fulfil its international obligations.
- The Review of the PMCH Act is considering:



- the most appropriate ways to define and classify Australian cultural material which should be regulated by the Act;
- ways to better align and integrate the systems between Australian Government departments, including the regulation of trade of cultural property, export and import controls and procedures to facilitate restitutions claims ;
- all relevant international conventions, and in addition international models and practices, which provide benchmarks or guidance; and
- how Australia's international obligations regarding the protection of foreign cultural material are best fulfilled.

### **Recommendation 3**

Identify Crucial Issues (such as the ones mentioned in the previous Recommendation and throughout the report) and facilitate a dialogue among States Parties and with concerned partners in order to collectively take the implementation of these issues forward. (Subsidiary Committee)

### **Recommendation 4**

Assign responsibility for coordinating the various stakeholders involved in the implementation of the Convention to one specific service/unit. (State Parties)

- The Minister for the Arts administers the PMCH Act through the Cultural Property Section, Collections and Cultural Heritage Branch within the Ministry for the Arts, Australian Government Attorney-General's Department.
- The Ministry for the Arts works closely with other government agencies, including the Department of Immigration and Border Protection, the Australian Federal Police, the International Criminal Policing Organisation (INTERPOL) at the National Central Bureau of Australia and the Department of Foreign Affairs and Trade to seize illegal exports and imports of cultural objects.
  - Working meetings are held regularly between these agencies.

### **Recommendation 5**

Consider establishing a specialised police unit to deal specifically with crime against cultural property (including looting and illicit traffic), and provide it with the necessary resources. (State Parties)

- The Australian Federal Police (AFP), through the Australian National Central Bureau (NCB), facilitates dissemination of information and requests on stolen works of art and cultural heritage to relevant government agencies and to and from law enforcement, through INTERPOL channels.
- The AFP may receive referrals from the Ministry for the Arts and other government agencies following the identification and seizure of items at the border.
- The AFP directs its resources to the matters of highest priority, evaluated in accordance with organisational directives, resources and competing priorities. AFP investigative experience and competencies allows for officers to be allocated to relevant crime types on an as needs basis without the necessity for setting up specialised units.
- The AFP does not have plans to set up a specialised unit for art crime investigations.



- Whilst there is no specific training program there is information relevant to this crime type readily available to the AFP, and members familiar with the subject matter are available for investigators to consult with on specific matters. Members also attend various seminars and conferences on matters relating to the prevention of the illicit import, export and transfer of ownership of cultural property.

### **Recommendation 6**

Establish an up-to-date and accurate national inventory system for cultural property with a minimum of information recorded in line with the Object ID Standard. (State Parties)

- Australia does not have a national inventory system for cultural property.
- Cultural material is protected in Australia under the PMCH Act through the National Heritage Control List, contained within the PMCH Regulations. This list establishes criteria for Australian Protected Objects, separating them into Class A objects which may not be exported and Class B objects which may only be exported with a permit.
  - The Class A classification is not intended to be exhaustive, and objects may be added to it as they are determined under the PMCH Act to be of such significance that their loss would diminish the national heritage. In addition, objects which have been denied export under the PMCH Act are listed by the Ministry in a prohibited exports register.
- In Australia the protection of heritage also falls within the jurisdiction of state and territory governments. Many jurisdictions in Australia hold registers of significant objects, and places, of historic, natural and Indigenous value.
- While not mandated in Australia, the majority (if not all) of Australian public collecting institutions maintain extensive collections databases, which include all the required information of the Object ID tool. Many institutions would hold information which exceeds these basic requirements.

### **Recommendation 7**

Link national databases of stolen objects with the INTERPOL database (State Parties).

- The AFP facilitates dissemination of information and requests on stolen works of art and cultural heritage through INTERPOL to and from relevant agencies and supports the use of, and access to, the INTERPOL Stolen Works of Art (WOA) database for relevant agencies and industry users. Australia searches and records data on the WOA however does not maintain a database of stolen objects.

### **Recommendation 8**

Institutionalise trainings on cultural property crime for policy and customs, for example, by incorporating it into their basic training programmes. (State Parties)

- The Ministry for the Arts provides input into the Australian Federal Police (AFP) internal training manuals with regards to cultural property issues and the Department of Immigration and Border Protection training courses.
  - This training has focused on highlighting cultural heritage issues, cultural heritage legislation and ways to improve information exchange between agencies.
- Whilst there is no specific training program in AFP, there is information relevant to this crime type readily available to staff, and members familiar with the subject matter



are available for investigators to consult with on specific matters. Members also attend various seminars and conferences on matters relating to the prevention of the illicit import, export and transfer of ownership of cultural property.

- Australian Border Force Officers undergo comprehensive training specific to the roles they undertake at the border. Cultural heritage matters are covered in the prohibited import and export curriculum.

### **Recommendation 9**

Strengthen relationships with actors in the art market to encourage stronger cooperation, greater adherence to rules, regulations and codes of ethics, and improved self-regulation. (State Parties)

- Australia (through the Ministry for the Arts) works closely with state and territory government and the private sector (such as auction houses and special interest groups) to raise awareness of the law and on a case by case basis regarding the import and export of cultural material, and ensuring correct procedures are followed.
- Australia notes that Auction Houses and Dealers operate according to their sector code of ethics. The Australian Antique and Art Dealers Association has its own [Code of Practice](#). The Auctioneers and Valuers Association of Australia also has a [Code of Ethics](#).
- In October 2014, the Australian Government released the [Australian Best Practice Guide to Collecting Cultural Material](#). Based on internationally recognised sector codes of ethics, the guide supports Australia's public collecting institutions to undertake acquisitions and loans in a manner that meets international best practice in regards to due diligence and provenance research.
- The Guide also sets out legal and ethical standards by clearly defining the requirements of Australian legislation, including those that give effect to international obligations, such as the 1970 Convention.
  - The Guide sets the benchmark in Australia for collecting institutions when developing or renewing their policies and procedures for considering an acquisition or loan.
- The Guide is ensuring high standards are maintained in the safeguarding of Australian and international cultural property.

### **Recommendation 10**

Follow a more comprehensive approach to awareness-raising at the national level based on a systemic identification of the target audience, of the most appropriate mechanisms to be used and of clear objectives to be achieved. Responsibilities of all involved actors also need to be clearly defined. (State Parties)

- Australia promotes general respect for cultural material and diversity, through a broad range of programs at the federal and state government level, including funding for the preservation and assessment of material significant to particular communities and traditions.
- The Australian Government [Ministry for the Arts website](#) provides information for the general public concerning the PMCH Act, the Review of the PMCH Act, and the Best Practice Guidelines.



- The Ministry for the Arts has also worked previously with the Department of Immigration and Border Protection to develop an information brochure and posters for passenger ports in Australia.
- There is a high level of knowledge of the PMCH Act within special interest groups, such as vintage car and steam engine enthusiasts, leading to a high level of information sharing between these groups and government agencies. At the art market level, auction houses are very proactive in dealing with the Ministry for the Arts in order to meet their obligations under the Act.
- The Ministry for the Arts also conducted national consultations as part of the Review of the PMCH Act. These consultation sessions are raising awareness of the PMCH Act and issues regarding cultural material more broadly.
- The *Australian Best Practice Guide to Collecting Cultural Material* also sets out legal and ethical standards by clearly defining the requirements of Australian legislation, including those that give effect to international obligations, such as the 1970 Convention.

### **Recommendation 11**

Facilitate international cooperation by clarifying procedures for return/restitution on the national level and by designating focal points that can be contacted by other State Parties. (State Parties/Subsidiary Committee)

- The Cultural Property Section, Collections and Cultural Heritage Branch within the Ministry for the Arts, Australian Government Attorney-General's Department, is the key focal point for dealing with other State Parties.
- The Ministry for the Arts works closely with other government agencies, including the Department of Immigration and Border Protection, the Australian Federal Police, the International Criminal Policing Organisation (INTERPOL) at the National Central Bureau of Australia and the Department of Foreign Affairs and Trade to seize illegal exports and imports of cultural objects.
  - Working meetings are held regularly between these agencies.
  - Cases are regularly referred to the Ministry for the Arts from these Australian Government agencies.
- The PMCH Act provides a legal framework for the return of cultural property. The cultural property must be a protected object of the foreign country, have been illegally exported in contravention of a law of that country, and a request must be made for return.
- The Australian Government works closely with the embassies of other countries to return cultural material illicitly imported into Australia.
- Australia has returned a number of culturally significant objects to their country of origin, including:
  - 2,000 year old burial mantle to Peru (1989/1990)
  - 33 Greek Antiquities to Greece (July 2000)
  - 71,939 pieces of Chinese porcelain from the Tek Sing shipwreck to Indonesia (August 2001)
  - Fossils, including dinosaur eggs to China (2004)



- 7 Egyptian antiquities to the Arab Republic of Egypt (July 2005)
  - 10,000 Chinese Fossils to China (September 2005)
  - 1 decorated Asmat skull to Indonesia (December 2006)
  - 16 Incised Dayak skulls to Malaysia (May 2007)
  - 130kg Argentine fossils to Argentina (August 2007)
  - 750kg of fossils to China (January 2008)
  - Ptolemy's Cosmographica map sheet to Spain (February 2008)
  - A Maori feeding funnel to New Zealand (2009)
  - 154 Stoneware artefacts to the Philippines (May 2010)
  - Artefacts with human remains to Cambodia (March 2011)
  - 122 Egyptian artefacts to the Arab Republic of Egypt (September 2011)
  - Textile remnants, woven and pottery dolls and gold foil artefacts to Peru (September 2011)
  - Two miniature Jordanian pots to the Hashemite Kingdom of Jordan (September 2011)
  - A bronze Shiva Nataraja (from Tamil Nadu) and an antique stone idol of Ardhanariswara to India (September 2014)
  - A stone statue of the Goddess Guanyin to China (March 2015)
  - 14 antiquities to the Arab Republic of Egypt (April 2015)
- Over the last five years there have been seven handbacks to six different countries, comprising the return of 180 objects.

### **Recommendation 12**

Strengthen the dialogue about illegally excavated archaeological objects to build consensus on how they can be protected through international cooperation. (State Parties/Subsidiary Committee)

- Australia recognises the relationship between prevention of illicit trafficking in movable cultural property and protection of archaeological places. Australian federal, state and territory laws establish criminal offences for damaging, including by unauthorised excavations, Indigenous and registered historic and natural heritage places. There are government agencies at the federal, state and territory level that are active in administering site registers and heritage protection legislation.
- Under the PMCH Act, Australia is able to return illegally excavated archaeological objects to the requesting country, including 14 objects to Egypt in 2014, providing the conditions for seizure are met.

### **Recommendation 13**

Revisit and define the role of the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its restitution in Case of Illicit Appropriation and initiate coordination with the Subsidiary Committee. (ICPRCP)

### **Recommendation 14**

Develop a comprehensive capacity-building strategy that foresees a long term engagement with SPs, enhanced follow-up, and the use of a variety of different capacity-building modalities. (Secretariat)

### **Recommendation 15**

Focus capacity-building activities on those regions that have low ratification rates and/or capacity constraints and implementation challenges. (Secretariat)



### **Recommendation 16**

Continue to expand the National Cultural Heritage Law Database by increasing the coverage of legislation and the availability of translations. (Secretariat/State Parties)

- Australian legislation is included in this Database.
- At the conclusion of the PMCH Act Review process, Australia will provide updated legislation, if any.
- The Ministry for the Arts frequently accesses this database in administering the PMCH Act. Most recently the Ministry for the Arts used the database to access laws from countries including India, China, Algeria, Morocco, Turkey and Egypt.

### **Recommendation 17**

Prioritise the use of awareness raising tools (videos, websites, events) in light of their specific quality and effectiveness. (Secretariat)

### **Recommendation 18**

Further improve the Convention website in order to increase its user friendliness, and introduce more frequent alerts about issues related to the 1970 Convention in order to direct visitors of the UNESCO's general website to the Convention website. (Secretariat/Sector for External Relations and Public Information)

### **Recommendation 19**

Better integrate Global Priority Africa into planning and programs in support of the 1970 Convention. (Secretariat)

### **Recommendation 20**

Given the human and financial resource constraints of the Secretariat, provide clear direction about what areas of work should be prioritised over others. (State Parties)

- The Australian Government is committed to the protection of cultural property of states at risk and considers it a key priority for UNESCO to respond to emergency situations. Australia welcomes UNESCO's efforts to draw attention to this topic globally, particularly the current situation in the Middle East.
- Australia is committed to implementing its international obligations on the protection of cultural property and notes the low rate of ratification of the 1970 Convention in the Pacific region and South-East Asia. Australia would welcome efforts by UNESCO to build capacity within this region.

### **Recommendation 21**

Strengthen the Secretariat with the level of expertise, stability and resources required to respond to the ever increasing demand for its services. (State Parties)

- As agreed at the Third Meeting of States Parties to the 1970 UNESCO Convention in May 2015, Australia supports the establishment of a fund, based on voluntary contributions from Member States, to assist the Secretariat with the implementation of activities under the 1970 Convention.



**Recommendation 22**

Continue the dialogue with partners to clarify roles and to enhance complementarity of the work. (Subsidiary Committee/Secretariat)

**Recommendation 23**

Identify ways of continuously engaging with representatives of the art market to enhance implementation of the Convention and develop a road-map, with a view of creating a shared understanding of the issues at stake and a commitment to enhance collaboration. (Subsidiary Committee/Secretariat)

**Recommendation 24**

Familiarise State Parties, especially in those regions that only make limited use of it, with the 1970 Convention website as a tool for information sharing and knowledge management. (Secretariat)

**Recommendation 25**

Strengthen the engagement with research institutions, experts and partners with a view of reinforcing UNESCO's role as a broker for knowledge related to the 1970 Convention. (Subsidiary Committee/Secretariat)

**Recommendation 26**

Develop an overall results framework for the Convention, linked to a Convention Theory of Change (or another type of intervention logic) and including clear objectives, time-frames, indicators and benchmarks. (Subsidiary Committee/Secretariat)

**Recommendation 27**

Improve Periodic reporting by revisiting the reporting format and introducing an online system for submission and analysis of periodic Reports (benefitting from other Conventions do already have in use). (Subsidiary Committee/Secretariat)

**Recommendation 28**

Request State Parties to all submit their Periodic Reports every four years (next round in 2015) in order to provide the Secretariat with required information on the national and regional implementation of the Convention (State Parties/Subsidiary Committee/Secretariat)

- Australia submits its Periodic Report every four years as requested.