

Report on the application of the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property

AUSTRALIA

I. Information on the implementation of the UNESCO Convention of 1970

1. Ratification of the Convention

Australia acceded to the Convention on 30 January 1990 following the enactment of the Protection of Moveable Cultural heritage Act 1986 (PMCH Act) which gave the Convention force in Australian law.

2. Implementation in the national legal system and in the organization of services

(a) References of the principal national regulations adopted in order to implement the 1970 Convention.

The PMCH Act classifies Australian protected objects and regulates the export and import of these significant objects of Australia's moveable heritage.

(b) Definition of "cultural property" used by the national laws

Under the PMCH Act, the term "protected object" describes cultural property that is governed by the Act, stating that it is "an Australian protected object or a protected object of a foreign country"; the definition conforms to that given in the Convention of 1970. Australian protected objects are defined as those which are "of importance to Australia, or to a particular part of Australia, for ethnological, archaeological, historical, literary, artistic, scientific or technological reasons.

The PMCH Act and Regulations establish the National Cultural Heritage Control List which is used to describe the categories of Australian protected objects. These then fall into certain export provisions detailed in the Act. These fall into two categories:

- Class A, consisting of objects that cannot be exported; and
- Class B protected objects for which a permit to export must be sought.

Particular emphasis is placed on the protection of Australian Aboriginal and Torres Strait Islander cultural heritage.

If the Commonwealth Minister for the Arts is satisfied that an Australian protected object is of such importance that its export would significantly diminish the cultural heritage of Australia, its export can be prohibited. Breaches of the Act can result in fines, imprisonment and the forfeiture of protected objects.

The Constitution does not prevent the owning and selling of cultural property within Australia.

The Act also provides for the return of cultural property of other nations illegally exported to Australia in accordance with Article 7(b)(1) of the Convention.

(c) Specialized units

Compliance and enforcement of the PCMH Act is managed by the Office for the Arts, in the Department of the Prime Minister and Cabinet.

(d) Administrative coordination

The Office for the Arts works closely with the Australian Federal Police (AFP), the Australian Customs and Border Protection Service (ACBPS) and state police forces. The creation of networks allows enforcement offices to exchange information and identify best practice.

3. Inventories and identification

(a) Inventories

Australian Commonwealth, State and Territory public collecting institutions keep inventories of their significant objects. The question of creating a national inventory recording the distributed national collection was posed in the public discussion paper of the 2009 Review of the PCMH Act; the majority of feedback regarded this type of inventory as unwarranted.

(b) Definition of “cultural property” and “national treasures”

In Australia Class A objects are roughly equivalent to “national treasures”. The list of Class A objects is not exhaustive and objects may be added to it as they are determined under the Act to be of such significance. There is no nomination process for movable cultural heritage to be inscribed on any national lists, apart from Australia’s UNESCO Memory of the World Register.

(c) Reference to the Object ID standard

New certificates have been introduced which incorporate some elements of the Object ID standard. The use of Object ID is at the discretion of the collecting institutions.

(d) Systems to combat theft and to train staff

Australian museums, galleries, libraries, and archives are self-monitoring in their efforts to combat theft and illicit trade.

4. Archaeological excavations

(a) Basic principles of the regulations on archaeological excavations and on the monitoring of excavations in force

Australian federal, state, and territory laws establish criminal offences for damaging Indigenous and registered historic places (including shipwrecks).

There are government agencies that are active in administering site registers and heritage protection legislation.

The Australian National Shipwrecks Database hosts relational fields for shipwreck relics to enable better control of their transfer, possession and custody. Australia is party to the 2004 Convention on the Protection of the Underwater Cultural Heritage but has yet to implement legislation to enforce its principles.

The representative body for archaeologists is the Australian Association of Consulting Archaeologists (AACAI). This body maintains a code of ethics similar to the ICOM code of ethics for museums and it is expected that all members fully comply with these principles.

(b) Illegal excavations

The *Environment Protection and Biodiversity Conservation Act 1999* (the EPBC Act) regulates actions taken within boundaries of Australia’s World Heritage and National Heritage sites in the following domain:

- Permanent removal, destruction damage or substantial disturbance of archaeological deposits or artefacts in a World Heritage property;
- Permanent diminishment of the cultural value of World Heritage property for a community or group to which its value relates;
- Removal, damage, or substantial disturbance of cultural artefacts, or ceremonial objects, in a World Heritage property.

Any planned actions that have the potential to have a significant impact on these heritage sites must be submitted to the Australian Government for assessment and approval.

5. Monitoring of the export and import of cultural property

(c) Main rules for monitoring the export and import of cultural property

Part II, Division 1 of the PMCH Act applies to the export of objects. Persons wishing to export a protected object must apply for a permit. Decisions on the issuance of permits are made by the Minister for the Arts. He must refuse the permit if it is decided that the export of an object would severely diminish Australia's cultural heritage. Substantial penalties apply if an object is exported, or an attempt is made to export it, in the absence of a permit.

The same Division also establishes a system of Certificates of Exemption whereby Australian protected objects outside Australia can be brought into the country and re-exported. Owners of overseas Australian cultural objects are encouraged to repatriate them for display or sale. Such a certificate provides the owner with security that Australian protected objects can be re-exported on completion of the exhibition, or if a sale is unsuccessful.

A standard condition has been included which requires exporters to notify the department when an object has been exported.

(d) Rules provided for the restitution of illicitly imported cultural property

Part II, Division 2 of the Act sets up a regime under which the protected objects of another country can be seized by Australia and returned to that country. It also establishes penalties for knowingly importing a protected object of another country.

Part V of the Act allows for the enforcement of the legislation through the appointment of Inspectors, who have large powers of search, seizure and arrest.

Furthermore, the Act provides for illicitly imported cultural property to be returned to its country of origin, if a request is made by the foreign government.

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

(a) Description of the cultural goods market in the country (financial volume of the market, number and turnover of auction houses including via the Internet).

There is significant activity online through auction houses. Australia's main auction houses hold several auctions per year of significant cultural property and the majority of applications for export come from these auction houses or sellers acting on behalf of new owners.

(b) Rules governing trade in cultural goods, measures in place for such trade (maintenance of a police register), in particular through the Internet (reference to the basic measures proposed by UNESCO, INTERPOL and ICOM)

There are rules governing the trade of cultural property within Australia, which apply to all traders with respect to fair trade practices or state legislation prohibiting the sale of human remains and secret and sacred Indigenous objects. Intervention can be made if an item is for sale which contravenes the Act such as an object which illicitly trafficked or imported illegally.

(c) Existing Measures to control the acquisition of cultural property

The Act contains some provisions which control the acquisition of property that has been illegally exported from its country of origin.

(d) Existing legal system concerning ownership of cultural property:

*Applicability of the principle of inalienability applied to cultural items in national collections *

The principle of inalienability does not apply to cultural items in national collections in Australia. Regarding items found in heritage sites, the principle is not broadly applied but policies on their ownership vary between state, territory, traditional and Commonwealth land.

Status of yet unfound cultural objects, of cultural items found by chance and archaeological artefacts found during legal or illegal excavations

The EPBC Act is the central piece of environmental legislation. It provides a legal framework to protect and manage nationally and internationally important flora, fauna, ecological communities and heritage places. The EPBC Act contains both civil and criminal penalties for actions that have an impact on the values of a National or World Heritage Place. Australian federal, state, and territory laws establish criminal offences for damaging Indigenous and registered heritage places and shipwrecks, including by unauthorised excavations.

(e) Special rules on the transfer of title deeds in respect of cultural property

In the process of acquisition, collecting institutions adhering to the UNESCO and ICOM codes of ethics may have policies requiring full provenance and surety that the title to the item is clear. The PCMH Act does not control the transfer of ownership of cultural items within Australia, since the Commonwealth does not have the power to do so under the Constitution.

7. Bilateral agreements

(a) Bilateral agreements concluded with other countries on the import, export and return of cultural property

Australia has Memorandums of Understanding with the Cultural Heritage Administration, Republic of Korea and with China's State Administration of Cultural Heritage on cultural heritage cooperation, including the protection of cultural property.

(b) Conditions settled by the importing country with regard to the admissibility of requests for restitution from a country of origin

Under the PCMH Act, provision is made for illicitly imported cultural property to be returned to its country of origin, if a request is made by the foreign government. The Australian Government has sought to make this process more efficient by receiving standing requests from some countries regarding the seizure and return of vulnerable categories of their moveable cultural property. Countries from which standing requests have been received include Argentina, China, Egypt, and Cambodia. In the past 12 months action has been taken to seize, recover and return objects suspected of being illicitly appropriated and illegally imported into Australia. These have been undertaken in cooperation with police and public collecting institution curators. Representatives of the source countries have also provided assistance in identification.

(c) Administrative aid or any other type of cooperation with neighbouring countries, particularly in respect of police and customs services?

The AFP provides training and equipment to law enforcement to enhance their response to a variety of crime types. It is a matter for those agencies to prioritise responses by crime type.

II. Code of ethics, awareness raising and education

1. Ethical standards

(a) Application of the UNESCO International Code of Ethics for Dealers in Cultural Property and the ICOM for museums

The ICOM Code of Ethics is known and well-regarded within the collecting sector in Australia. Museums Australia, the representative body for museums in Australia, is partnered with ICOM and has a code of ethics which states its support for the efforts of ICOM to control and eliminate international trafficking in cultural property.

The Australian Antique and Art Dealers Association (AAADA) consists of 130 members and 76 associated service providers. The AAADA regards its own Code of Practice as comparable to the UNESCO Code. Potential members must pass an awareness test and the code is reiterated in the organisation's newsletter. The AAADA has advised that it is unaware of any breaches of the UNESCO Code, even though it is not mandatory.

2. Awareness raising and education

(b) Dissemination of the "One hundred missing objects" series and the ICOM Red Lists

ICOM Australia maintains its own website with links to ICOM International's missing object and Red List pages, which receives approximately 420 visits each month. ICOM Australia has about 360 individual members and 25 institutional members, all of whom are expected to uphold the ICOM Code of Ethics as a requirement for membership.

(c) Description of activities carried out to raise the awareness of the authorities and educate the public, children in particular, regarding the serious damage that can be caused by illegal excavations, theft of cultural property and illegal export.
How far can UNESCO contribute to these activities?

The Cultural Property Section of the Australian Government's Office for the Arts has worked with the Australian Customs and Border Protection Service (ACBPS) to develop an information brochure and posters for passenger ports in Australia. Information and training sessions of the ACBPS and the AFP on the issue of illicit trade and trafficking have been held regularly throughout the past two years.

III. Cooperation with other international and regional agencies

Police

(a) State of national cooperation with INTERPOL. Specialized police services to whom the heritage officials can call on for enquiries, legal proceedings and punitive measures

Areas such as the Cultural Property Section are aware of cooperation available through INTERPOL. Within state and territory police jurisdictions, however, awareness of using INTERPOL is not high. It is expected to increase as a result of AFP International's education and awareness

campaign. The AFP has officers within INTERPOL and EUROPOL and currently operates its own International Network which comprises over 85 liaison officers deployed in 39 offices in 30 countries.

(b) Check on the INTERPOL database on stolen objects when a cultural object is stolen. Transmission of information on the persons implicated in the theft of cultural property

If Australian law enforcement is investigating the theft of a cultural object and submits a request to INTERPOL Canberra, then the database can be checked and/or international inquiries made. This is dependent on local awareness of such an option and there have been only a few instances in which the Cultural Property Section has made inquiries on such a basis.

(c) Specific training program for members of police services

In 2009 the Cultural Property Section constructed a short information session to build knowledge capacity across government departments.

(d) Punishment of fraud and theft related to cultural property via criminal law provisions. Specialized judges in this field

Criminal law provisions vary between states, however fraud related to cultural property can be investigated by the Australian Competition and Consumer Commission (ACCC), State and Territory consumer protection agencies, with the involvement of Australian Securities and Investments Commission on relevant matters under the Australian Consumer Law.

(e) Cooperation with the United Nations Office on Drugs and Crime (UNODC)

The AFP has one member attached to the Bangkok office of the UNODC. The AFP cooperates regularly with the UNODC, although in the area of cultural property this has been quite limited.

Customs

(f) Status of cooperation with the World Customs Organization. Specialized customs services which could assist heritage officials in preventing the illicit export of cultural property

The ACBPS maintains a close connection with the WCO. Australian services that can assist prevent the illicit export of cultural property include information sharing with international and domestic agencies and the use of profiles to control the movement of specific goods or the activities of individuals or companies.

(g) Specific training program for members of the customs administration

Some training of ACBPS staff has been conducted by the Cultural Property Section. Cultural property issues are included as a component of the general customs officer training course and an officer initiated online training course. Training has focused on highlighting cultural heritage issues, cultural heritage legislation and ways to improve information exchange.

(h) Reference to the UNESCO-WCO Model Export Certificate for Cultural Objects

After consideration by the Cultural Property Section and the ACBPS the level of detail required in the UNESCO-WCO model was not appropriate for use in Australia, although elements of the model have been incorporated into revised Australian certificates.

The revised forms contain key elements for object identification and permit verification. The original copy of the form will be printed on tamper-evident paper. To improve auditing, a standard condition has been included which requires exporters to notify the department when the object has been exported, and in the case of temporary exports, the date of return. ACBPS were concerned with the model export certificates' use of wet-stamp and signature as the majority of ACPBS processes are electronic.

IV. Other legislative, legal and administrative measures taken by the State

1. Accession to the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects

To date Australian has not ratified the 1995 UNIDROIT Convention. The recent review of the PCMH Act recommended for further consideration of Australia's possible ratification of the 1995 UNIDROIT Convention. Conducting consultations on this matter is one of the medium-term goals to come out of the review.

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

The Australian Government closely follows the work of the Committee. Australia is an observer to the Committee and Australian diplomatic staff attended the Paris meeting from 21-23 October 2010. Reports of this meeting were distributed to the Cultural Property Section in the Office for the Arts in Canberra.