

The National Cultural Heritage Committee: Australia's PMCH Act Protecting Movable Cultural Heritage

Patrick Greene

The National Cultural Heritage Committee is appointed by the Minister for the Arts under the *Protection of Movable Cultural Heritage Act 1986* (the PMCH Act). It comprises 10 members, representing collecting institutions and universities, as well as Indigenous and cultural heritage communities. The Committee's role is to advise the Minister for the Arts on the operation of the PMCH Act.

Domestically, the Act protects Australia's movable cultural heritage and, internationally, it assists other countries to regain their cultural property if it has been exported illegally.

In an international context, the PMCH Act gives effect to Australia's commitments under the 1970 *UNESCO Convention on the Means of Prohibiting the Illicit Import, Export and Transfer of Ownership of Cultural Property* – known generally as 'the 1970 UNESCO Convention' for convenience.

This article provides a brief overview of what the Act does for the museums sector, and illustrates what colleagues can do to assist our stewardship of the Act, and the international obligations it entails.

My overview covers three key themes:

- (i) On the domestic side, the export or retention of Australian protected objects.
- (ii) On the international side, the return of illegally exported cultural heritage items to their countries of origin.
- (iii) Finally, I will map the intersections between the museums sector and the PMCH Scheme, including how all colleagues, as museum professionals, can assist.

What is the PMCH Act and how is it administered in Australia?

The Act came into operation in Australia in 1986, with the key aims of protecting national and international movable cultural heritage. It is administered by the Office for the Arts.

1. Domestically, the PMCH Act relates to the export or retention of Australian protected objects (APOs)

When it comes to Australian protected objects, or APOs, the PMCH Act deals with three different types of requests for import or export:

Permanent/Temporary export permits – Class B APOs require an export permit, which may be granted on a temporary or permanent basis. An example is the block of 24 two-pound-value stamps given a permanent export permit recently (illⁿ 6).

Certificates of Exemption – These allow APOs that are currently overseas to be imported into Australia for the purpose of exhibition or sale, with the security that they can subsequently be re-exported. An example is Phar Lap's skeleton (illⁿ 5), lent in recent years to Museum Victoria by Te Papa



ABOVE: Patrick Greene

LEFT: Old Tutuma Tjapangati, *One Man's Dreaming*, 1971 (Pintupi artist and member of early Papunya movement; acrylic paints on board). Permit refused under Part 5 of the National Cultural Heritage Control List.

Tongarewa | Museum of New Zealand – which of course wanted it returned after exhibition in Australia.

General permits – These allow collecting institutions (art galleries, museums, libraries, archives) to export Class B objects that have been accessioned into their collections, for research and exhibition purposes, without requiring individual export permits.

Sometimes, items exported illegally (i.e. without a permit) are brought back to Australia – for example, the 'King of the West' gold nugget (illⁿ 7), illegally taken out of the country in 1997 and later scheduled for sale by Sotheby's in New York, was successfully regained for Australia after negotiations and eventual purchase by a mining company.

Examples of items refused an export permit have included a 1921 Fowler steam traction engine, and a 1971 early Papunya Movement painting by Pintupi Western Desert artist, Old Tutuma Tjapangati – both illustrated (illⁿs 8 & 2).

Class A APOs include the following Indigenous categories:

- Sacred and secret ritual objects;
- Bark coffins used as traditional burial objects;
- Human remains;
- Rock art;
- Dendroglyphs.

Objects categorised above will never be given a permit for export. Nor will:

- Victoria Crosses awarded to Australian recipients, or
- Ned Kelly's armour.

An application for a temporary or permanent export permit involves three steps:

- (i) The application is referred to an Expert Examiner for assessment;
- (ii) The assessment is reviewed by the National Cultural Heritage Committee, which then makes a recommendation to the Minister;
- (iii) The Minister makes the final decision as to whether an export permit will be granted.

Museum professionals play a pivotal role in this process. Those registered as expert examiners provide the initial reports on the significance, provenance and authenticity of all types of Australian and international heritage objects, including archaeological artefacts, weapons, fossils, art, steam engines, stamps, medals and cars.

The expert examiners' reports are then considered by the NCH Committee which, in turn, makes recommendations to the Minister for the Arts in relation to the import and export of cultural heritage objects. The scheme could not function without the research and advice provided by expert examiners.

2. The National Cultural Heritage Account

In my time on the National Cultural Heritage Committee, I have had the privilege of recommending to the Minister various sums of funding for collecting institutions to purchase APOs that have been refused an export permit, or which would be refused a permit should they come onto the market.

Such funding is provided through the National Cultural Heritage Account, which provides a maximum of \$500,000 each year for its stated purposes. The Account is open to a range of cultural organisations, including:

- museums
 - art galleries
 - libraries, archives
 - historic buildings, national trusts and local history museums and galleries
 - Aboriginal or Torres Strait Islander keeping places.
- Applications are open year-round and, in practice, assistance is provided on a matched-funding basis to larger organisations, and on a case-by-case basis to smaller organisations.

The NCH Account has assisted with the purchase of many nationally significant objects in recent years, enabling these to be conserved and displayed for all Australians in perpetuity. Following are some recent examples – as illustrated:

- a Holden 'No. 1 Prototype' motorcar, acquired by the National Museum of Australia, 2004 (illⁿ 14);
- Phar Lap's Tonic Book, acquired by Museum Victoria, 2013 (illⁿ 16);
- an 1840s Wokali, a rare Kauria bark shield, acquired by the South Australian Museum (illⁿ 20 & 21);
- the Rainbow Virgin Opal, acquired by the South Australian Museum, 2013 (illⁿ 18);
- a rare and highly significant Malcolm Moore

diesel-hydraulic locomotive, built in Melbourne in 1956, specifically for operation on the sugar cane railways of Queensland; acquired with NCH Account assistance by the Alexandra Timber Tramway and Museum, in Victoria, 2011;

- two rare opalised crinoids from Coober Pedy opal fields, acquired by the South Australian Museum, 2012 (illⁿ 24);
- a Rönisch Concert Grand Piano, made in Dresden (c.1880), acquired by ANU's School of Music, 2006;
- a 1911 Clayton and Shuttleworth Steam Traction Engine, acquired by the NSW Millthorpe and District Historical Society, 2005 (illⁿ 8);
- the Pascoe Ichthyosaur fossil, acquired by the South Australian Museum, 2006 (illⁿ 19).

3. Internationally, the PMCH Act relates to the return of illegally exported objects to their country of origin

For example, concerning illicit trafficking and looting of cultural and natural heritage:

- Trafficking in cultural heritage is the fourth most common form of illicit trafficking;
- It is widespread and globally worth \$2-6 billion per year;
- It is often not discovered until the stolen objects appear on the market;
- The Internet is the fastest growing market for illicit trafficking; Natural history specimens – for example, fossils – are at risk;
- Where there is armed conflict, looting is reaching epidemic proportions – such as in Syria.

Satellite images showing an archaeological site in Apamea, Syria, captured by Google Earth in July 2011, compared with a later image of April 2012, demonstrate the devastating scale of looting that occurred, within just an eight-month period.

Through the PMCH Act, the Office for the Arts has taken charge of a number of successful seizures and repatriations of objects illegally exported from their country of origin – most recently from New Zealand, Argentina, China, Egypt and Peru.

One of the most outstanding international heritage returns achieved in recent years was to China in September 2005, when more than 10,000 illegally imported fossils, successfully seized by Australian Customs, were formally restituted by Arts Minister Peter Garrett in a handover ceremony at the Chinese Embassy in Canberra. Among a selection of the most remarkable objects returned was a *Keichosaurus* (a small marine reptile) some 230-million years old.

The process for assisting foreign countries to retrieve cultural and natural heritage items is as follows:

- (i) The Office for the Arts receives a formal request from a foreign government;
- (ii) Objects are seized and the Office for the Arts has 60 days to authenticate the objects and to prove that they were illegally exported from their country of origin;

(continued on page 22)

National law and related international obligations for the protection of cultural heritage



1.



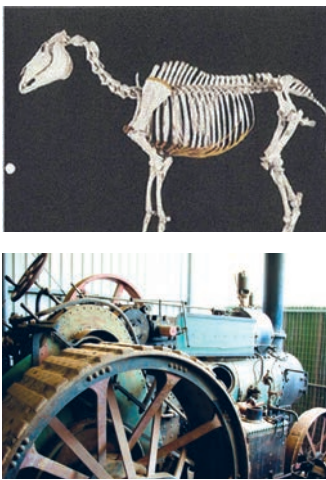
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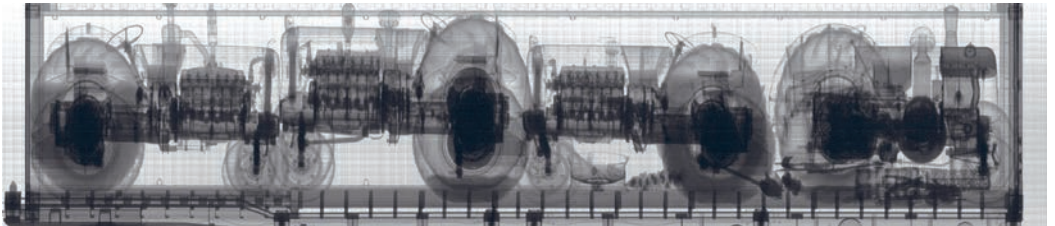
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7.



10.



11.

Protection of Movable Cultural Heritage Act 1986 (the PMCH Act)

The Act's key aims: of protecting national and international movable cultural heritage.

The Scheme involves:

- Export of Australian heritage objects
- National Cultural Heritage Account
- International Compliance & Enforcement
- Minister's appointment of the NCH Committee
- Expert Examiners appointed by the NCH Committee

1. Illegal import and returns

Asmat Skull seized in Australia and returned to country of origin (Papua province of Indonesia).

2. Export Permit Refused

Old Tutuma Tjapangati, One Man's Dreaming, 1971 (Pintubi artist and member of early Papunya movement; acrylic paints on board). Permit refused under Part 5 of the National Cultural Heritage Control List.

3. Excavated heritage illegally imported

Cambodian Bangles with human remains, seized under PMCH Act and returned to country of origin (Cambodia)

4. Australian Customs seizures

Fossil skull Hyena Adrocutta seized by Australian Customs officer, later returned to China.

5. Certificate of Exemption Granted

Phar Lap's skeleton (owned by Te Papa, New Zealand).
• Museum Victoria authorised to import (from Te Papa Tongarewa/Museum of New Zealand) and subsequently re-export the described

object. Purpose: Temporary exhibition from September 2010 to February 2011, Melbourne Museum/Museum Victoria.

6. Permanent Export Permit Granted

- Block of 24 Two Pound Black and Rose Kangaroo and Map stamps from the Stuart Hardy Collection;
- Australian protected object under Part 8 of the National Cultural Heritage Control List;
- Permanent export would not significantly diminish the cultural heritage of Australia.

7. Illegal export of Australian Heritage Objects

- 'King of the West', 25kg, exported in 1997 (valued A\$500 – \$1million).
- This remarkable gold nugget, scheduled for sale through Sotheby's New York, was discovered to have been illegally exported from Australia;
- It was returned to Australia after negotiations;
- Return aided through purchase by a mining company.

8. Export Permit Refused

1921 Fowler traction engine – refused permit under the Act.

9. & 10. Illegal export prevented

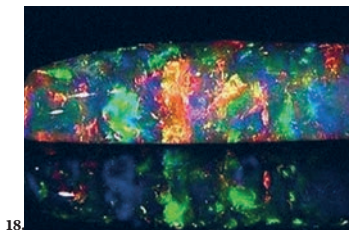
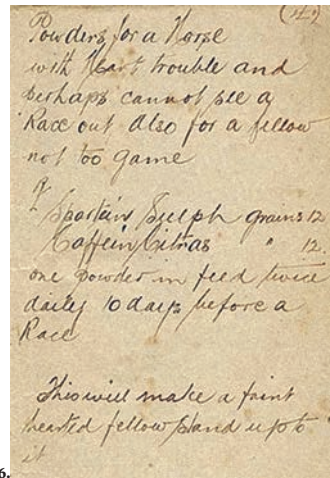
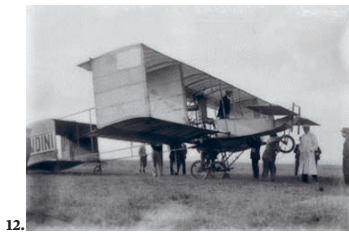
1908 Marshall steam road locomotive (AUD\$50-100,000), 1911 Brown and Field Marshall Machinery.

- Export and attempted export of 2 heritage machines prevented.
- Offender pleaded guilty, was prosecuted and convicted.
- Offender received a \$1,000 fine.

The 2 engines were gifted, by the Minister, to a regional community organisation preserving Australian machine history and heritage.

11. Illegal export prevented

Brown and Field Marshall Machinery in containers: identified by Australian Customs X-ray equipment.



The National Cultural Heritage Account

The NCH Account is open to Australian cultural organisations, including:

- museums,
- art galleries,
- libraries, archives,
- historic buildings, national trusts and local history museums and galleries,
- Aboriginal or Torres Strait Islander keeping place for sacred/secret material.

Funds available:

- \$500,000 per year
- Applications open all year

12. & 13. Acquired by National Library of Australia

Fairfax Media Photographic Collection – 12,000 glass plate negatives acquired by National Library of Australia 2012-13; Left: Houdini, 1911; Right: Javanese opium smokers.

14. Acquired by National Museum of Australia

Holden 'No. 1 Prototype', acquired by National Museum of Australia 2004, with NCH Account assistance.

15. & 16. Acquired by Museum Victoria

Phar Lap's Tonic Book, purchased by Museum Victoria with assistance from the NCH Account, 2008.

17. Acquired by Port Macquarie Historical Society

A sundial by Raphael Clint, c.1837, purchased by Port Macquarie Historical Society, NSW, with assistance from the NCH Account in 2011.

18. Acquired by South Australian Museum

Rainbow Virgin Opal, acquired by the South Australian Museum for permanent display in 2013, through NCH Account.

19. Acquired by South Australian Museum with NCH Account federal assistance (2006)

The Pascoe Ichthyosaur fossil, purchased by the South Australian Museum with assistance from the National Cultural Heritage Account, 2006; image of displayed fossil courtesy of SAM, Adelaide.

20. & 21. Acquired by South Australian Museum

A rare Wokali: An 1840s bark shield from the Adelaide Plains is now displayed in the South Australian Museum, with assistance provided under NCH Account.

22. Acquired by State Library of Western Australia

Mary Anne Friend Journal (c.1829), watercolour depicting the Western Australian coast; photograph provided by the State Library of Western Australia.

23. Acquired by State Library of Western Australia

Mary Anne Friend Journal (c.1829), watercolour depicting WA Swan River colony scene; photograph provided by the State Library of Western Australia.

24. Acquired by South Australian Museum

One of two rare opalised crinoids from the opal fields at Coober Pedy, acquired by South Australian Museum, 2012

National law and related international obligations for the protection of cultural heritage

- (iii) If found to be illegally exported, the Minister signs the Instrument of Direction;
- (iv) The object is then prepared for return to its country of origin.

4. Compliance and enforcement

Compliance and enforcement can be difficult, because of the complex problems associated with accurately identifying and assessing significance of the heritage objects the Scheme regulates. The Office for the Arts meanwhile works closely with Australian Customs to ensure that Customs Officers at Australia's borders have sufficient information to identify and flag items that may be of concern, and report these for further investigation under the PMCH Act.

Some examples of illicit trade in cultural and natural property are the following – as illustrated:

- seized Brown and Field Marshall Machinery, as captured in a shipping container by Australian Customs X-ray equipment (illⁿ 11);
- a Marshall steam road locomotive, prevented from illegal export (illⁿs 9 & 10);
- a Hyena *Adrocutta* fossil skull, seized and returned to China (illⁿ 4);
- an Asmat human skull, returned to Papua province of Indonesia (illⁿ 1);
- excavated Cambodian bangles with human skeletal remains, illegally imported and returned to Cambodia (illⁿ 3); and
- fossilised dinosaur eggs, returned to China.

5. Intersections between the museums sector and the PMCH Act: The Role of Expert Examiners

As indicated earlier, museum professionals play a pivotal role in ensuring that both the domestic and international aspects of the PMCH Act are implemented effectively.

While the intersections with the museums sector are located across all parts of the PMCH scheme, the core role for museum professionals registered as expert examiners is to provide reports on the significance, provenance, and authenticity of a broad range of Australian and international heritage objects.

These reports underpin recommendations made by the National Cultural Heritage Committee and the final decisions of the Minister for the Arts in relation to the export of cultural heritage objects.

However, expert examiners are also playing an increasingly important role in alerting the Government to *potential exports* for which an export application has not been submitted.

For example, the Office for the Arts was recently alerted by an expert examiner that a Queensland auction of vintage steam and farm machinery had been advertised globally, and some items were likely to be purchased by overseas buyers.

Following this notification, the Office provided information to the auction house to ensure that potential overseas buyers were aware of Australian

legislation, including the requirement for export permits in some cases.

If colleagues are aware of something similar happening in their area of expertise: please let the team at the Office for the Arts know, so that they can take appropriate protective action.

Expert examiners have also assisted in measures undertaken to combat the international trade in illicit cultural material. In these instances, they have acted as expert witnesses, examining cultural materials and confirming an object's authenticity and provenance.

There is a need for expert examiners providing advice in all nine parts of the National Cultural Heritage Control List, and I encourage all colleagues with relevant experience to register with the federal Office for the Arts so that expert contributions can be expanded and protection enhanced. There is currently a particular need for examiners with expertise in Part 5: Objects of Fine or Decorative Art; and Part 4: Objects of Applied Science or Technology.

Finally, it is a pleasure to highlight some more recent acquisitions financially supported by the National Cultural Heritage Account. For example:

- the Fairfax Media Photographic Collection of 12,000 glass plate negatives acquired by the National Library of Australia in 2012–13 (illⁿs 12 & 13);
- a sundial (c.1837) by Raphael Clint, purchased by Port Macquarie Historical Society, NSW, in 2011 (illⁿ 17); and
- the Mary Anne Friend Journal (c.1829), acquired by the State Library of Western Australia with NCH Account assistance in 2012 (illⁿ 22 & 23).

The importance of the NCH Account's assistance in securing acquisitions of (sometimes endangered) cultural heritage items under the PMCH Act, and operations of the National Cultural Heritage Committee, is particularly demonstrated in the last example provided. For the estimated date of the Mary Anne Friend journal aligns with the date of the Swan River Colony's founding – in 1829.

This highlights the outstanding importance of the visual and documentary records the journal provides for interpreting the history of Western Australia, and it is fitting that this historic journal now belongs to the collection of the State Library in WA, for enduring public access in future.

Such acquisitions continue to secure important items for the public domain, enhancing the collections of institutions at both capital city and regional community levels in the safeguard and communication of cultural heritage on behalf of all Australians. ■

Dr J Patrick Greene OBE is CEO, Museum Victoria, and Chair of the National Cultural Heritage Committee, while also Chair of CAMD (Council of Australasian Museum Directors).