



Protection of Movable Cultural Heritage Act 1986

No. 11 of 1986

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Protection of Movable Cultural Heritage Act 1986

No. 11 of 1986

An Act to protect Australia's heritage of movable cultural objects, to support the protection by foreign countries of their heritage of movable cultural objects, and for related purposes

[Assented to 13 May 1986]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Protection of Movable Cultural Heritage Act 1986*.

Commencement

2. This Act shall come into operation on a day to be fixed by Proclamation.

Interpretation

3. (1) In this Act, unless the contrary intention appears—

“aircraft” means a machine or apparatus that can derive support in the atmosphere from the reactions of the air or from buoyancy;

“appoint” includes re-appoint;

“Australia” includes the external Territories other than Norfolk Island;

“Australian protected object” means a Class A object or a Class B object;

“certificate” means a certificate in force under section 12;

“Chairperson” means the Chairperson of the Committee;

“Class A object” means an object included in the class of Class A objects in the Control List;

“Class B object” means an object included in the class of Class B objects in the Control List;

“coastal sea”, in relation to Australia, means—

(a) the territorial sea of Australia; and

(b) the sea on the landward side of the territorial sea of Australia;

“Committee” means the National Cultural Heritage Committee established under section 15;

“condition”, in relation to a permit, means a condition to which the permit is subject;

“continental shelf” has the same meaning as in the *Seas and Submerged Lands Act 1973*;

“Control List” means the National Cultural Heritage Control List in force under section 8;

“expert examiner” means a person whose name is in the register kept under section 22;

“export” means export from Australia;

“Fund” means the National Cultural Heritage Fund established by section 25;

“import” means import into Australia;

“inland waters of Australia” includes all waters on the landward side of the coastal sea of Australia;

“inspector” means a person who is an inspector by virtue of section 28;

“member” means a member of the Committee;

“permit” means a permit in force under section 11;

“protected object” means an Australian protected object or a protected object of a foreign country;

“protected object of a foreign country” means an object forming part of the movable cultural heritage of a foreign country;

“structure” includes a platform fixed to the seabed or otherwise operating in the sea;

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“territorial sea”, in relation to Australia, has the same meaning as it has for the purposes of the *Seas and Submerged Lands Act 1973*;

“vessel” means anything capable of carrying persons or goods through or on water, and includes an air-cushion vehicle or similar craft.

(2) A power conferred on a person by this Act may be exercised in the discretion of the person.

(3) A reference in this Act to an offence against a particular provision of this Act, or against this Act, includes a reference to an offence against—

(a) section 6, 7 or 7A of the *Crimes Act 1914*; or

(b) sub-section 86 (1) of that Act by virtue of paragraph (a) of that sub-section,

being an offence that relates to an offence against that provision of this Act, or against this Act, as the case may be.

(4) For the purposes of the application of this Act in relation to a body corporate, but without prejudice to the liability of any person other than the body corporate—

(a) a statement made, or document furnished, by a person acting on behalf of the body corporate shall be deemed to be made or furnished by the body corporate; and

(b) the knowledge of any person employed by, or concerned in the management of, the body corporate shall be deemed to be knowledge of the body corporate.

(5) A reference in this Act to the movable cultural heritage, in relation to a foreign country, is a reference to 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.

(6) The provisions of this Act relating to the exportation or importation of an object apply notwithstanding that the object may have been brought into Australia from a country for the purpose of transportation to another country or as part of the stores or equipment of a vessel or aircraft.

Act to bind Crown

4. This Act binds the Crown in right of the Commonwealth, of each of the States, of the Northern Territory and of Norfolk Island.

Application

5. This Act applies both within and outside Australia.

Extension to Territories

6. This Act extends to every external Territory other than Norfolk Island.

PART II—CONTROL OF EXPORTS AND IMPORTS

Division 1—Exports

Movable cultural heritage of Australia

7. (1) A reference in section 8 to the movable cultural heritage of Australia is a reference to 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 sub-paragraph (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.

(2) The generality of paragraph (1) (j) is not limited by any of the other paragraphs of sub-section (1).

National Cultural Heritage Control List

8. (1) Subject to sub-section (2), the regulations shall prescribe a list, to be known as the National Cultural Heritage Control List, of categories of objects that constitute the movable cultural heritage of Australia and are to be subject to export control.

- (2) The Control List shall divide such objects into 2 classes, namely—
- (a) Class A objects, being objects that are not to be exported otherwise than in accordance with a certificate; and
 - (b) Class B objects, being objects that are not to be exported otherwise than in accordance with a permit or certificate.

(3) Sub-section (2) does not prevent the division of Class A objects and Class B objects into sub-classes and other divisions or categories.

(4) Nothing in this section shall be taken to limit the application of sub-section 33 (3A) of the *Acts Interpretation Act 1901*.

Unlawful exports

9. (1) Where a person exports an Australian protected object otherwise than in accordance with a permit or certificate, the object is forfeited.

(2) Where a person attempts to export an Australian protected object otherwise than in accordance with a permit or certificate, the object is liable to forfeiture.

(3) A person who knowingly—

- (a) exports, or attempts to export, an Australian protected object otherwise than in accordance with a permit or certificate; or
- (b) contravenes, or attempts to contravene, a condition of a permit or certificate,

is guilty of an offence punishable, on conviction, by—

- (c) if the person is a natural person—a fine not exceeding \$100,000 or imprisonment for a period not exceeding 5 years, or both; or
- (d) if the person is a body corporate—a fine not exceeding \$200,000.

(4) For the purposes of this section, an object shall be taken to be exported at the time when—

- (a) the object has been placed on board a ship or aircraft at a particular place in Australia with the intention that it be taken out of Australia by that ship or aircraft and the departure of the ship or aircraft from that place has commenced; or
- (b) the object has been delivered as a postal article into the control of the Australian Postal Commission at a particular place in Australia with the intention that it be sent out of Australia by post and the movement of the postal article from that place has commenced.

(5) Without limiting the meaning of references in this section to a person attempting to export an object, a person shall be taken to attempt to export an object if the person conveys, or has possession of, the object with intent to export it or knowing that it is intended to be exported.

(6) For the purposes of this section, a person who exports or attempts to export an Australian protected object shall be taken to export, or attempt to export, the object otherwise than in accordance with a permit or certificate unless, before exporting or attempting to export the object, the person produces a permit or certificate authorising the export—

- (a) where the export is not from an external Territory—to an officer of Customs; or
- (b) where the export is from an external Territory—to an inspector performing duties in relation to the export of Australian protected objects.

Grant of permits

10. (1) A person may apply to the Minister for a permit to export a Class B object.

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(2) An application shall be made in writing in the prescribed form, or, if no form is prescribed, the form approved by the Minister.

(3) On receipt of an application, the Minister shall refer it to the Committee and the Committee shall refer it to one or more expert examiners.

(4) The expert examiner or examiners shall submit to the Committee a written report on the application, and the Committee shall forward the report to the Minister together with the written recommendations (if any) made by the Committee.

(5) The Minister shall consider the report and recommendations (if any) and—

- (a) grant a permit, subject to such conditions (if any) as the Minister specifies; or
- (b) refuse to grant a permit.

(6) In considering the application, an expert examiner, the Committee and the Minister—

- (a) shall have regard, among other things, to the reasons referred to in sub-section 7(1) that are relevant to the object to which the application relates; and
- (b) if satisfied that the object is of such importance to Australia, or a part of Australia, for those reasons, that its loss to Australia would significantly diminish the cultural heritage of Australia—shall not recommend the grant of a permit, or grant a permit, as the case may be, to export the object permanently.

(7) If the Minister refuses to grant the permit, the Minister shall, within the prescribed period after the decision is made, cause to be served on the applicant notice in writing of the refusal, setting out the reasons for the refusal.

Permits

11. (1) A permit granted under section 10 shall be in writing in the prescribed form, or if no form is prescribed, the form approved by the Minister.

(2) A permit granted under section 10 comes into force on the date on which it is granted and remains in force for an indefinite period or for a period specified in the permit.

Certificates of exemption

12. (1) Where a person intends to import an Australian protected object—

- (a) for temporary purposes; or
- (b) in circumstances in which the person may wish subsequently to export the object,

the person may apply to the Minister for a certificate authorising the exportation of the object.

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(2) An application shall be made in writing in the prescribed form or, if no form is prescribed, the form approved by the Minister.

(3) On receipt of an application, the Minister shall—

(a) grant a certificate, subject to such conditions (if any) as the Minister specifies; or

(b) refuse to grant a certificate.

(4) A certificate shall be in writing in the prescribed form or, if no form is prescribed, the form approved by the Minister.

(5) A certificate comes into force on the date on which it is granted and remains in force for the period specified in the certificate.

(6) If the Minister refuses to grant a certificate, the Minister shall, within the prescribed period after the decision is made, cause to be served on the applicant notice in writing of the refusal, setting out the reasons for the refusal.

Variation, &c., of conditions and period of permit or certificate

13. (1) At any time while a permit or certificate is in force, the Minister may, by notice in writing served on the holder of the permit or certificate—

(a) impose a condition to which the permit or certificate is to be subject;

(b) vary or revoke a condition of the permit or certificate;

(c) vary the period of effect of the permit or certificate; or

(d) revoke the permit or certificate.

(2) A notice under sub-section (1) takes effect when it is served on the holder of the permit or certificate or on such later date (if any) as is specified in the notice.

(3) The Minister shall not exercise a power under sub-section (1) in relation to a permit or certificate except upon an application by the holder of the permit or certificate made in writing in the prescribed form, or, if no form is prescribed, the form approved by the Minister.

Division 2—Imports

Unlawful imports

14. (1) Where—

(a) a protected object of a foreign country has been exported from that country;

(b) the export was prohibited by a law of that country relating to cultural property; and

(c) the object is imported,
the object is liable to forfeiture.

- (2) Where a person imports an object, knowing that—
 - (a) the object is a protected object of a foreign country that has been exported from that country; and
 - (b) the export was prohibited by a law of that country relating to cultural property,the person is guilty of an offence punishable, on conviction, by—
 - (a) if the person is a natural person—a fine not exceeding \$100,000 or imprisonment for a period not exceeding 5 years, or both; or
 - (b) if the person is a body corporate—a fine not exceeding \$200,000.

PART III—ADMINISTRATION

National Cultural Heritage Committee

15. There shall be a committee, to be known as the National Cultural Heritage Committee.

Functions of Committee

- 16.** The functions of the Committee are—
- (a) to furnish advice to the Minister, either of its own motion or on request made to it by the Minister—
 - (i) in relation to the operation of this Act;
 - (ii) in relation to objects that should be included in, or removed from, the Control List;
 - (iii) in relation to the classification and re-classification of objects so included; and
 - (iv) in relation to the operation of the Fund;
 - (b) to furnish advice to the Minister pursuant to sub-section 10 (4);
 - (c) to establish and maintain the register referred to in section 22; and
 - (d) to consult and co-operate with appropriate authorities of the Commonwealth, of the States and of the Territories, and with other organisations, associations and persons, on matters related to its functions.

Constitution of Committee

- 17. (1)** The Committee shall consist of—
- (a) 4 persons, each of whom represents a different collecting institution;
 - (b) a member of The Australian Vice-Chancellors' Committee;
 - (c) a nominee of the Minister for Aboriginal Affairs; and
 - (d) 4 persons having experience relevant to the cultural heritage of Australia.
- (2)** A member of the Committee—
- (a) shall be appointed by the Minister;
 - (b) holds office on a part-time basis;

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- (c) holds office for such period, not exceeding 4 years, as is specified in the instrument of appointment; and
- (d) is eligible for re-appointment.

(3) The Minister shall designate, in writing, one of the members to be the Chairperson.

(4) The Chairperson may be referred to as the Chairman or the Chairwoman.

(5) The exercise of a power or the performance of a function by the Committee is not invalidated by reason only that—

- (a) there is a vacancy for a period of not more than 3 months in an office of a member referred to in paragraph (1) (b) or (c); or
- (b) the number of members referred to in paragraph (1) (a) or (d) falls below 4 for a period of not more than 3 months.

(6) For the purposes of this section, a person shall be taken to represent a collecting institution if the person holds a senior position in connection with the collecting functions of that institution.

(7) In this section, “collecting institution” means—

- (a) a public art gallery;
- (b) a public museum;
- (c) a public library; or
- (d) public archives.

Removal and resignation

18. (1) The Minister may terminate the appointment of a member for misbehaviour or physical or mental incapacity.

(2) The Minister may terminate the appointment of a member referred to in paragraph 17 (1) (c) on the request of the Minister for Aboriginal Affairs.

(3) If a member fails, without reasonable excuse, to comply with section 20, the Minister shall terminate the appointment of the member.

(4) A member may resign the office of member by writing signed by the member and delivered to the Minister.

Remuneration and allowances

19. (1) A member shall be paid such remuneration as is determined by the Remuneration Tribunal.

(2) A member shall be paid such allowances as are prescribed.

(3) Sub-sections (1) and (2) have effect subject to the *Remuneration Tribunals Act 1973*.

Disclosure of interests

29. (1) A member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Committee shall, as soon as possible after the relevant facts have come to the knowledge of the member, disclose the nature of the interest at a meeting of the Committee.

(2) A disclosure under sub-section (1) shall be recorded in the minutes of the meeting of the Committee and the member shall not, unless the Minister or the Committee otherwise determines—

- (a) be present during any deliberation of the Committee with respect to that matter; or
- (b) take part in any decision of the Committee with respect to that matter.

(3) For the purpose of the making of a determination by the Committee under sub-section (2) in relation to a member who has made a disclosure under sub-section (1), a member who has a direct or indirect pecuniary interest in the matter to which the disclosure relates shall not—

- (a) be present during any deliberation of the Committee for the purpose of making the determination; or
- (b) take part in the making by the Committee of the determination.

Meetings

21. (1) Meetings of the Committee shall be held at such times and places as the Committee from time to time determines.

(2) The Chairperson may at any time convene a meeting.

(3) At a meeting, 5 members constitute a quorum.

(4) Subject to sub-section (5), the Chairperson shall preside at all meetings.

(5) If the Chairperson is absent from a meeting, the members present shall elect one of their number to preside at the meeting.

(6) Questions arising at a meeting shall be determined by a majority of the members present and voting.

(7) The member presiding at a meeting has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

Register of expert examiners

22. (1) The Committee shall, in accordance with the regulations, maintain a register of the names of persons determined by the Committee to be expert examiners for the purposes of this Act.

(2) In sub-section (1), “person” includes—

- (a) a body or association of persons, whether incorporated or not; and
- (b) a person resident or domiciled outside Australia.

Expert examiners

23. It is the function of an expert examiner to give advice to the Committee on a matter referred by the Committee.

Delegation

24. (1) The Minister may, either generally or as otherwise provided by the instrument of delegation, by instrument in writing, delegate to—

- (a) the person holding or performing the duties of the office of Secretary to the Department; or
- (b) a person holding or performing the duties of a Senior Executive Service office within the meaning of the *Public Service Act 1922*, being an office in the Department,

all or any of the Minister's powers under this Act, other than this power of delegation or a power conferred by section 17 or 18, sub-section 28 (3), (4) or (5) or section 38 or 47.

(2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Minister.

(3) A delegation under this section does not prevent the exercise of a power by the Minister.

PART IV—NATIONAL CULTURAL HERITAGE FUND

National Cultural Heritage Fund

25. (1) There shall be a fund, to be known as the National Cultural Heritage Fund.

(2) The purposes of the Fund are—

- (a) to facilitate the acquisition of Australian protected objects; and
- (b) such other purposes as are prescribed.

(3) The regulations may make provision for matters relating to the Fund including, in particular—

- (a) the administration of the Fund;
- (b) the money of which the Fund shall consist;
- (c) the manner in which gifts and bequests made for the purposes of the Fund shall be dealt with;
- (d) payments to be made out of the Fund;
- (e) investment of money of the Fund; and
- (f) the audit of accounts and records relating to the Fund.

(4) Without limiting the generality of paragraph (3) (f), regulations made for the purposes of that paragraph may confer powers and functions, and impose duties, on the Auditor-General and, in particular, may apply section 63G of the *Audit Act 1901* in relation to the Fund with such modifications as are specified in the regulations.

Taxation

26. The income and transactions of the Fund are not subject to taxation under any law of the Commonwealth or of a State or Territory.

PART V—ENFORCEMENT OF ACT

Interpretation

27. (1) In this Part (except sections 35, 36, 37 and 38), “forfeited” includes liable to forfeiture.

(2) Where, at a particular time, an object is delivered by a Customs officer to an inspector under section 203A of the *Customs Act 1901* or voluntarily surrendered to an inspector by the owner or person having possession, custody or control of the object, the object shall, for the purposes of this Part, be taken to be seized under this Act by the inspector at that time.

Inspectors

28. (1) The Minister may, by instrument in writing, appoint a person as an inspector.

(2) By force of this sub-section—

(a) a member or special member of the Australian Federal Police; and

(b) a member of a police force of a State or Territory,

is an inspector.

(3) The Minister may make an arrangement with a Minister of a State for and in relation to the exercise of powers, and the performance of duties, of inspectors under this Act by officers of the State.

(4) An arrangement may contain such incidental or supplementary provisions as the Minister and the Minister of the State think necessary.

(5) The Minister may arrange with the Minister of a State with whom an arrangement is in force for the variation or revocation of the arrangement.

(6) An arrangement, or the variation or revocation of an arrangement, shall be in writing and a copy of each instrument by which an arrangement has been made, varied or revoked shall be published in the *Gazette*.

Identity cards

29. (1) The Minister may cause to be issued to an inspector, other than a member of a police force, an identity card in a form approved by the Minister by instrument in writing.

(2) A person who ceases to be an inspector shall forthwith return his or her identity card to the Minister.

(3) A person who contravenes sub-section (2) is guilty of an offence punishable on conviction by a fine not exceeding \$100.

Search warrants

30. (1) Where an information on oath is laid before a Magistrate alleging that there are reasonable grounds for suspecting that there may be, at that time or within the next following 24 hours, upon any land or upon or in any premises, structure, vessel, aircraft or vehicle, a thing or things of a particular kind that is or are forfeited or connected with a particular offence against this Act, and the information sets out those grounds, the Magistrate may issue a search warrant authorising an inspector named in the warrant, with such assistance as he or she thinks necessary and if necessary by force—

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- (a) to enter upon the land or upon or into the premises, structure, vessel, aircraft or vehicle;
 - (b) to search the land, premises, structure, vessel, aircraft or vehicle for things of that kind; and
 - (c) to seize any thing of that kind found there that he or she believes on reasonable grounds to be forfeited or connected with that offence.
- (2) A Magistrate shall not issue a warrant under sub-section (1) unless—
- (a) the informant or some other person has given to the Magistrate, either orally or by affidavit, such further information (if any) as the Magistrate requires concerning the grounds on which the issue of the warrant is being sought; and
 - (b) the Magistrate is satisfied that there are reasonable grounds for issuing the warrant.
- (3) There shall be stated in a warrant issued under this section—
- (a) a statement of the purpose for which the warrant is issued, which shall include a reference to the nature of the forfeited thing or things, or the offence, in relation to which the entry and search are authorised;
 - (b) whether entry is authorised to be made at any time of the day or night or during specified hours of the day or night;
 - (c) a description of the kind of things authorised to be seized; and
 - (d) a date, not being later than one month after the date of issue of the warrant, upon which the warrant ceases to have effect.
- (4) If, in the course of searching, in accordance with a warrant issued under this section, for things that are forfeited or connected with a particular offence, being things of a kind specified in the warrant, an inspector finds any thing that he or she believes on reasonable grounds to be forfeited or connected with the offence, although not of a kind specified in the warrant, or to be connected with another offence against this Act, and he or she believes on reasonable grounds that there is a compelling need for the immediate seizure of the thing in order to prevent its exportation, importation, concealment, loss or destruction, or its use in committing, continuing or repeating the offence or in committing the other offence, the inspector may seize that thing.
- (5) For the purposes of this section, a thing is connected with a particular offence if it is—
- (a) a thing in respect of which the offence was committed;
 - (b) a thing that will afford evidence of the offence; or
 - (c) a thing that was used, or is intended to be used, for the purpose of the offence.
- (6) A reference in this section to an offence includes a reference to an offence that there are reasonable grounds for believing has been, or will be, committed.

Search warrants granted by telephone

31. (1) Where, by reason of circumstances of urgency, an inspector considers it necessary to do so, the inspector may make application for a search warrant to a Magistrate, by telephone, in accordance with this section.

(2) Before so making application, an inspector shall prepare an information of a kind referred to in sub-section 30 (1) that sets out the grounds on which the issue of the warrant is being sought, but may, if it is necessary to do so, make the application before the information has been sworn.

(3) Where a Magistrate is, upon application made under sub-section (1), satisfied—

- (a)** after having considered the terms of the information prepared in accordance with sub-section (1); and
- (b)** after having received such further information (if any) as the Magistrate requires concerning the grounds on which the issue of the warrant is being sought,

that there are reasonable grounds for issuing the warrant, the Magistrate shall complete and sign such a search warrant as the Magistrate would issue under section 30 if the application had been made to the Magistrate in accordance with that section.

(4) Where a Magistrate signs a warrant under sub-section (3)—

- (a)** the Magistrate shall inform the inspector of the terms of the warrant and the date on which and the time at which it was signed, and record on the warrant the reasons for granting the warrant; and
- (b)** the inspector shall complete a form of warrant in the terms furnished by the Magistrate and write on it the name of the Magistrate and the date on which and the time at which the warrant was signed.

(5) Where an inspector completes a form of warrant in accordance with sub-section (4), the inspector shall, not later than the day next following the date of expiry of the warrant, forward to the Magistrate who signed the warrant the form of warrant completed by the inspector and the information duly sworn in connection with the warrant.

(6) Upon receipt of the documents referred to in sub-section (5), the Magistrate shall attach to them the warrant signed by the Magistrate and deal with the documents in the manner in which the Magistrate would have dealt with the information if the application for the warrant had been made in accordance with section 30.

(7) A form of warrant duly completed by an inspector in accordance with sub-section (4) is, if it is in accordance with the terms of the warrant signed by the Magistrate, authority for any search, entry or seizure that the warrant so signed authorises.

(8) Where it is material, in any proceedings, for a court to be satisfied that a search, entry or seizure was authorised in accordance with this section, and the warrant signed by a Magistrate in accordance with this section authorising the search, entry or seizure is not produced in evidence, the court shall assume, unless the contrary is proved, that the search, entry or seizure was not authorised by such a warrant.

Searches in emergencies

32. (1) An inspector may—

- (a) search a person, or the clothing that is being worn by, and property in the immediate control of, a person, suspected by the inspector to be carrying any thing that is forfeited or connected with an offence against this Act; or
- (b) enter upon any land, or upon or into any premises, structure, vessel, aircraft or vehicle, on or in which the inspector believes on reasonable grounds that any thing forfeited or connected with an offence against this Act is situated,

and may seize any such thing found in the course of that search, or upon the land or in the premises, structure, vessel, aircraft or vehicle, as the case may be, if—

- (c) the inspector believes on reasonable grounds that it is necessary to do so in order to prevent the exportation or importation of that thing or the concealment, loss or destruction of any thing forfeited or connected with an offence against this Act; and
- (d) the search or entry is made in circumstances of such seriousness and urgency as to require and justify immediate search or entry without the authority or an order of a court or of a warrant issued under this Act.

(2) An inspector may stop a person, vessel, aircraft or vehicle for the purposes of sub-section (1).

(3) Sub-sections 30 (5) and (6) apply in relation to this section as they apply in relation to section 30.

Powers of arrest

33. (1) An inspector may, without warrant, arrest any person if the inspector believes on reasonable grounds—

- (a) that the person is committing or has committed an offence against this Act; and
- (b) that proceedings against the person by summons would not be effective.

(2) Where a person is arrested under sub-section (1), an inspector shall forthwith bring the person, or cause the person to be brought, before a Magistrate or other proper authority to be dealt with in accordance with law.

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(3) Without limiting the generality of the meaning of any expression in sub-section (1), where—

- (a) an inspector requests a person whom the inspector finds committing, or whom the inspector believes on reasonable grounds to have committed, an offence against this Act, being a person whose full name or usual place of residence are unknown to the inspector, to state his or her full name or usual place of residence, as the case may be; and
- (b) the person—
 - (i) refuses or fails to comply with the request; or
 - (ii) whether or not in compliance, or purported compliance, with the request, states as his or her full name or usual place of residence a name or a place, as the case may be, that the inspector believes on reasonable grounds to be false or misleading in a material particular,

the inspector shall be taken, for the purposes of paragraph (1) (b), to have reasonable grounds for believing that proceedings against the person by summons in respect of the offence will not be effective.

(4) Nothing in this section prevents the arrest of a person in accordance with any other law.

Seizure of protected objects

34. An inspector may seize a protected object that the inspector believes on reasonable grounds to be forfeited.

Power of retention

35. (1) A thing seized under this Act may be retained—

- (a) in the case of a protected object seized on the grounds that it is forfeited by virtue of sub-section 9 (1)—until a court orders the return of the object or the object is disposed of under section 38;
- (b) in the case of any other protected object—until a court orders the return of the object or the object is forfeited; or
- (c) in the case of any other thing—until the end of the period of 60 days after the seizure or, if proceedings involving the thing are instituted within that period, until those proceedings (including any appeal to a court in relation to those proceedings) are terminated.

(2) The Minister may, by instrument in writing, authorise any thing seized under this Act (other than a protected object that is forfeited) to be released to the owner, or the person who had the possession, custody or control of the thing immediately before it was seized, and thereupon sections 36 and 37 do not apply, or cease to apply, as the case requires, in relation to the thing.

Notice of seizure

36. (1) In this section, “appropriate person” means the Minister or a person designated by the Minister in writing for the purposes of this section.

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(2) Subject to this section, as soon as practicable after a protected object has been seized by an inspector under this Act, the inspector shall serve on the owner, or the person who had the possession, custody or control of the object immediately before it was seized, a notice in writing—

- (a) identifying the object and the date of the seizure;
- (b) setting out the reasons for the seizure;
- (c) setting out the terms of the provisions of sub-section 37 (1); and
- (d) where sub-section (5) applies—setting out the terms of the provisions of that sub-section and specifying, and setting out the address of, an appropriate person and stating that any notice under that sub-section is to be given to that person.

(3) An inspector is not required to serve a notice under sub-section (2) if, after making such inquiries as the inspector thinks appropriate, the inspector does not have sufficient information to do so.

(4) Where—

- (a) a notice under sub-section (2) has not been served in respect of an object seized by an inspector under this Act; and
- (b) within 30 days after the day on which the object was seized, a person who claims to be a person entitled to be served with such a notice gives an appropriate person sufficient information, in writing, to enable the notice to be served,

the appropriate person shall forthwith convey that information to the inspector.

(5) Where a protected object has been seized on the grounds that it is liable to forfeiture by virtue of sub-section 9 (2) or 14 (1) and a notice under sub-section (2) is served in respect of the object, the object is forfeited unless, within 30 days after the service of the notice, the owner, or the person who had possession, custody or control of the object immediately before it was seized—

- (a) gives notice, in writing, to the appropriate person specified in the notice under sub-section (2) claiming the object; or
- (b) brings an action for recovery of the object.

(6) Where, at the end of the period of 30 days after the day on which a protected object was seized under this Act—

- (a) a notice has not been served in respect of the object under sub-section (2); and
- (b) a person claiming to be a person entitled to be served with such a notice has not given an appropriate person sufficient information to enable the notice to be served,

the object is forfeited.

(7) Where notice is given under sub-section (5) to the appropriate person, the appropriate person shall serve on the person who gave the notice

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a notice, in writing, setting out the terms of the provisions of sub-section (8).

(8) Where—

- (a) a notice is given to a person under sub-section (7) in relation to an object; and
- (b) the person does not, within 4 months after the service of the notice, bring an action for recovery of the object,

the object is forfeited.

Court proceedings

37. (1) Where—

- (a) a protected object has been seized under this Act; and
- (b) the object is not forfeited by section 36 or by or under this section, the owner, or the person who had the possession, custody or control of the object immediately before it was seized, may bring an action against the Commonwealth in a court of competent jurisdiction for the recovery of the object on the ground that the object is not forfeited or liable to be forfeited.

(2) Where—

- (a) a protected object has been seized on the grounds that it is liable to forfeiture by virtue of sub-section 9 (2) or 14 (1);
 - (b) a person brings an action for recovery of the object; and
 - (c) the person discontinues the action,
- the object is forfeited.

(3) Where an action is brought for recovery of a protected object, the court shall determine, on a balance of probabilities, whether—

- (a) the object is forfeited by virtue of sub-section 9 (1); or
- (b) the object is liable to forfeiture by virtue of sub-section 9 (2) or 14 (1),

and the court—

- (c) where paragraph (a) applies—shall reject the claim for recovery;
- (d) where paragraph (b) applies—shall order that the object is forfeited; or
- (e) in any other case—may order the return of the object.

(4) Where a person is convicted of attempting to export a protected object in contravention of sub-section 9 (3) or of an offence against sub-section 14 (2) in relation to a protected object, the court shall order that the object is forfeited.

Result of forfeiture

38. Where a protected object is forfeited by or under this Act—

- (a) all title and interest in the object is vested in the Commonwealth without further proceedings;
- (b) the object shall be dealt with and disposed of in accordance with the directions of the Minister; and
- (c) any costs incurred by the Commonwealth in transporting or disposing of the object are a debt due to the Commonwealth by the person who was the owner of the object immediately before it was forfeited and may be recovered by the Commonwealth in a court of competent jurisdiction.

Production of permit

39. (1) An inspector may require any person whom the inspector suspects on reasonable grounds of intending to export, of exporting, or of having exported, an Australian protected object to produce a permit or certificate authorising the export or to produce evidence of the existence and contents of such a permit or certificate.

(2) A person who, without reasonable excuse, fails to comply with a requirement made under sub-section (1) is guilty of an offence punishable on conviction by a fine not exceeding \$1,000.

Proof of authority

40. An inspector (other than a member of a police force who is in uniform) is not entitled to exercise any powers under section 32, 33, 34, 39 or 43 in relation to a person unless—

- (a) if the inspector is a member of a police force—the inspector produces, for inspection by the person, written evidence of the fact that the inspector is a member of that police force; or
- (b) in any other case—the inspector produces his or her identity card for inspection by the person.

Foreign country to request return of objects

41. (1) A power conferred by this Part shall not be exercised by an inspector in relation to a protected object of a foreign country unless the inspector believes on reasonable grounds that the Commonwealth has received from the Government of the country a request for the return of the object.

(2) Proceedings for a contravention of section 14 in relation to a protected object of a foreign country shall not be instituted unless the Commonwealth has received from the Government of the country a request for the return of the object.

(3) In any proceedings, the mere production of a document purporting to be signed by the Secretary to the Department and stating that the Commonwealth has received a request from the Government of a specified

foreign country for the return of a specified protected object is *prima facie* evidence of the facts stated.

False statements

42. (1) A person who, in connection with an application for a permit or certificate or an application under sub-section 13 (3), makes a statement, or furnishes a document, that the person knows is false or misleading in a material particular is guilty of an offence punishable on conviction by—

- (a) if the person is a natural person—a fine not exceeding \$5,000 or imprisonment for a period not exceeding 2 years, or both; or
- (b) if the person is a body corporate—a fine not exceeding \$20,000.

(2) A person who, to an inspector exercising powers under this Act, makes a statement, or furnishes a document, knowing it to be false or misleading in a material particular, is guilty of an offence punishable on conviction by—

- (a) if the person is a natural person—a fine not exceeding \$2,000; or
- (b) if the person is a body corporate—a fine not exceeding \$5,000.

Assistance of inspectors

43. An inspector exercising or proposing to exercise powers pursuant to this Part in relation to property, being any premises, structure, vessel, aircraft or vehicle, may require the owner or person in charge of the property to provide reasonable assistance to the inspector in the exercise of those powers in relation to the property, and the person shall comply with the request.

Penalty: \$2,000 or imprisonment for 12 months, or both.

Obstruction of inspectors

44. A person shall not, without reasonable excuse, obstruct or hinder an inspector exercising powers under this Act.

Penalty: \$2,000 or imprisonment for 12 months, or both.

Personation of inspectors

45. A person who, by words or conduct, falsely represents that he or she is an inspector is guilty of an offence punishable on conviction by a fine not exceeding \$5,000 or imprisonment for a period not exceeding 2 years, or both.

Indictable offences

46. (1) An offence against sub-section 9 (3), 14 (2) or 42 (1) or section 45 is an indictable offence.

(2) An offence against section 43 or 44 is punishable on summary conviction.

(3) Notwithstanding that an offence referred to in sub-section (1) is an indictable offence, a court of summary jurisdiction may hear and determine

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proceedings in respect of the offence if the court is satisfied that it is proper to do so and the defendant and the prosecutor consent.

(4) Where, in accordance with sub-section (3), a court of summary jurisdiction convicts a person of an offence referred to in sub-section (1), the penalty that the court may impose is—

- (a) in the case of an offence against sub-section 9 (3) or 14 (2)—
 - (i) if the person is a natural person—a fine not exceeding \$5,000 or imprisonment for a period not exceeding 2 years, or both; or
 - (ii) if the person is a body corporate—a fine not exceeding \$20,000; or
- (b) in the case of an offence against sub-section 42 (1) or section 45—
 - (i) if the person is a natural person—a fine not exceeding \$2,000 or imprisonment for a period not exceeding 12 months, or both; or
 - (ii) if the person is a body corporate—a fine not exceeding \$10,000.

PART VI—MISCELLANEOUS

Annual report

47. (1) The Minister shall, as soon as practicable after 30 June in each year, cause to be prepared a report on the working of this Act and the administration of the Fund during the year that ended on that 30 June, together with financial statements in respect of that year in such form as the Minister for Finance approves.

(2) The Minister shall submit the financial statements referred to in sub-section (1) to the Auditor-General, who shall report to the Minister—

- (a) whether the statements are based on proper accounts and records;
- (b) whether the statements are in agreement with the accounts and records;
- (c) whether the receipt, expenditure and investment of money of the Fund during the year have been in accordance with this Act and the regulations; and
- (d) as to such other matters arising out of the statements as the Auditor-General considers should be reported to the Minister.

(3) The Minister shall cause a copy of the report and financial statements referred to in sub-section (1), together with a copy of the report of the Auditor-General, to be laid before each House of the Parliament within 15 sitting days of that House after the Minister receives the Auditor-General's report.

Administrative Appeals Tribunal

48. (1) Application may be made to the Administrative Appeals Tribunal for review of—

- (a) a decision by the Minister to refuse to grant a permit or certificate;
- (b) a decision by the Minister to impose a condition under paragraph 10 (5) (a) or 12 (3) (a); or
- (c) a decision by the Minister under sub-section 11 (2), 12 (5) or 13 (1).

(2) Where a person is notified of a decision referred to in sub-section (1), the Minister shall cause to be served on the person a notice stating that, subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for review of the decision.

(3) A failure to comply with sub-section (2) in relation to a decision does not affect the validity of the decision.

Regulations

49. The Governor-General may make regulations, not inconsistent with this Act, prescribing matters—

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

[Minister's second reading speech made in—
House of Representatives on 27 November 1985
Senate on 11 March 1986]