

Protection of Movable Cultural Heritage Amendment Regulations 1998 (No. 1) 1998 No. 367

EXPLANATORY STATEMENT

Statutory Rules 1998 No. 367

Issued by the Authority of the Minister for the Arts and the Centenary of Federation

Protection of Movable Cultural Heritage Act 1986

Protection of Movable Cultural Heritage Amendment Regulations 1998 (No. 1)

Background

Section 49 of the *Protection of Movable Cultural Heritage Act 1986* (the Act) provides for regulations to be made under the Act.

The Act regulates the export of objects which are identified as part of Australia's movable cultural heritage. Subsection 7(1) of the Act sets out that Australia's movable cultural heritage consists of objects of importance to Australia for ethnological, archaeological, historical, literary, artistic, scientific or technological reasons that fall within certain specified categories.

Subsection 8(1) of the Act provides that the regulations shall prescribe a list, the National Cultural Heritage Control List (the List), of categories of objects that constitute the movable cultural heritage of Australia and are to be subject to export control. Regulation 4 of the Protection of Movable Cultural Heritage Regulations provides that the list of *objects* that constitute Australia's movable cultural heritage is set out in the Schedule.

These Regulations amend the Protection of Movable Cultural Heritage Regulations to recognise the special place of Victoria Cross medals in Australia's cultural heritage, and to revoke the List and replace it with a new, revised and streamlined list which reflects changes to categories, age and monetary thresholds, and which is easier for users of the List to understand.

Subsection 8(2) of the Act provides that the List shall divide the objects into Class A objects, which are not to be exported otherwise than in accordance with a certificate, and Class B objects, which are not to be exported otherwise than in accordance with a permit or certificate. Subsection 9(1) of the Act provides that a protected object is forfeited if it is exported otherwise than in accordance with a permit or a certificate.

A certificate under subsection 12(1) of the Act may authorise the export of a Class A or Class B object which a person intends to import into Australia temporarily and subsequently export. A permit under subsections 10(1) or 10A(1) of the Act may authorise the export of a Class B object which is already in Australia.

These Regulations reclassify Victoria Cross medals as Class A objects. This amendment commences on gazettal. The new List, which commences on 1 May 1999 to provide sufficient time for a public education campaign, differs from the current list in the following ways:

- (i) it introduces a new framework for assessment of most objects with significance to Australia as the central criterion (this does not apply to Class A objects, Aboriginal and Torres Strait Islander objects in Part 1 of the List, and fine and decorative arts objects in Part 5 of the List);
- (ii) new standard minimum age thresholds apply to most objects;

- (iii) monetary thresholds for fine and decorative arts objects are amended to compensate for changes in market prices since the List was created in 1988 (Part 5 of the List);
- (iv) artworks by living artists are included in the List for the first time (Part 5 of the List);
- (v) foreign objects, except those specifically related to Australia, are removed from the List;
- (vi) some categories of objects are revised; and
- (vii) all Class B objects (except Aboriginal and Torres Strait Islander Class B objects in Part 1 of the List, natural science objects in Part 3 of the List and fine and decorative arts objects in Part 5 of the List) already represented in two public collections in Australia by an object of equivalent quality are excluded from the List.

Details of the Regulations are set out in the Attachment.

ATTACHMENT

Details of amendment

Regulation 1 - Name of regulations

The regulation provides that these regulations are the *Protection of Movable Cultural Heritage Amendment Regulations 1998 (No. 1)*.

Regulation 2 - Commencement

The regulation provides that regulations 1 to 3 and Schedule 1 commence on gazettal and Schedule 2 commences on 1 May 1999.

Regulation 3 - Amendment of Protection of Movable Cultural Heritage Regulations

The regulation provides that Schedules 1 and 2 amend the Protection of Movable Cultural Heritage Regulations.

Schedule 1 - Amendments of Protection of Movable Cultural Heritage Regulations commencing on gazettal.

Item 1 - Regulation 1

The item substitutes Regulation 1 of the Protection of Movable Cultural Heritage Regulations with a regulation which provides that these regulations are the *Protection of Movable Cultural Heritage Regulations 1987*. This is to update the style and citation of the regulations.

Item 2 - Schedule, after Part VII

The item inserts a new Part VIIA into the List which deals with Victoria Cross medals. An object is in this category if it is a Victoria Cross medal awarded to a person in the table in item 1 of Part VIIA.

Item 2 of Part VIIA contains a special rule in relation to Victoria Cross medals owned by the person to whom the award was made, or owned by the next-of-kin of that person, if the award was made posthumously. These Victoria Cross medals are not objects included in this Part, and therefore are not subject to the export limitations of the Act. This reflects the intention that awardees should have full control over their Victoria Cross medals.

Item 3 of Part VIIA provides that Victoria Cross medals are Class A objects.

Item 3 - Schedule, Part VII, item 1, definition of *heraldry and historical material*, paragraph (a)

This item amends the definition of *heraldry and historical material* in item 1 of Part VII of the List, which deals with military and heraldry objects, so that it is clear that medals mentioned in Part VIIA, that is Victoria Cross medals, are not Part VII objects.

Item 4 - Schedule. Part VII, item 2A

This item omits item 2A from Part VII as item 2A referred only to Victoria Cross medals. This item has not been reproduced in Part VIIA of the List because Part VIIA includes an alphabetical listing of all Victoria Cross medals which are included in the List.

Schedule 2 - Amendments of the Protection of Movable Cultural Heritage Regulations commencing on 1 May 1999

Item 1 - Subregulation 2(1)

Item 1 inserts a definition of "significance to Australia" which is a term used in numerous parts of the List.

Item 2 - Subregulation 2(2)

Item 2 substitutes a new subregulation for subregulation 2(2), which updates the style of the subregulation, and removes the reference to foreign objects. It provides that the repair, restoration or reassembly of an object in the Control List, which is in the Schedule 1 to these Regulations, does not affect the age of the object unless the object has been substantially modified by the repair, restoration or reassembly.

Item 3 - Subregulation 2(3)

Item 3 omits subregulation 2(3) which sets out when an object is taken to be a foreign object for the purposes of paragraph 2(c). It is consequential upon the amendment in item 2.

Item 4 - Regulation 4

Item 4 omits the reference in regulation 4 to the list as "the Schedule" and replaces it with a reference to the list as "Schedule 1".

Item 5 - Regulation 7

Item 5 updates regulation 7 to modernise its style. It provides that the register of expert examiners required to be maintained under section 22 of the *Protection of Movable Cultural Heritage Act 1986* must include the name of the expert examiner and, where the expert examiner is a natural person, their residential address, and where the expert examiner is a body or association, the address of the principal office of the body or association.

Item 6 - Schedule 1 - National cultural heritage control list - categories of objects

Item 6 omits the Schedule in the Regulations and substitutes the new Schedule 1.

Schedule 1

Part 1 - Objects of Australian Aboriginal and Torres Strait Islander (ATSI) Heritage

Item 1.1 provides that this part of the Schedule lists objects in the category *Objects of Australian Aboriginal and Torres Strait Islander Heritage*. Part 5 of the Schedule, Objects of Fine or Decorative Art includes Aboriginal and Torres Strait Islander objects of fine or decorative art, which are objects made in the indigenous tradition by Aboriginal and Islander people, which are not objects listed in Part 1 of the Schedule. An object cannot be both an object of Aboriginal and Torres Strait Islander Heritage and an object of Aboriginal or Torres Strait Islander fine or decorative art.

For any object to be an object in Part 1 of the Schedule, it must be an object of cultural significance to, or made by, Aboriginal or Torres Strait Islander people, and not made specifically for sale. An example of such an object is a boomerang which was made by an Aboriginal person, not for sale. Even if this boomerang is painted in such a way that the boomerang could be considered to be a work of art, it will not be an object of Aboriginal and Torres Strait Islander fine or decorative art because it is an object of Aboriginal and Torres Strait Islander Heritage. An example of an object of Aboriginal or Torres Strait Islander fine or decorative art is a painting made in the indigenous tradition by an Aboriginal or Torres Strait Islander person, at least 20 years ago. Such an object would be included in Part 5 of the Schedule rather than Part 1.

Item 1.2 sets out when an object is in this category. An object is in this category if it is an object of cultural significance to, or made by, Aboriginal or Torres Strait Islander people, is not an object made specifically for sale, and if it is an object in item 1.4 (a Class B object), is at least 30 years old and is not adequately represented in Aboriginal or Torres Strait Islander community collections or public collections in Australia.

Item 1.3 sets out which objects of Australian Aboriginal and Torres Strait Islander Heritage are Class A objects and item 1.4 sets out which are Class B objects.

Part 2 - Archaeological Objects

Item 2.1 provides that this part of the Schedule lists objects in the category

Archaeological Objects.

Item 2.2 sets out when an object is in this category. An object is in this category if it is of significance to Australia, within the meaning of the definition of "significance to Australia" in these regulations, is an object that was removed, from the soil, inland waters, coastal sea, or waters above the continental shelf (or the seabed or subsoil beneath these waters) after being in place for at least 50 years, and is not represented in at least two public collections in Australia by an object of equivalent quality. For the purposes of this Part, an archaeological object which is complete is not of equivalent quality to the same object which is incomplete.

Item 2.3 provides that objects in this category are Class B objects for the Act, and lists objects included in the category.

Part 3 - Natural Science Objects

Item 3.1 provides that this part of the Schedule lists objects in the category *Natural Science Objects.*

Item 3.2 sets out when an object is in this category. An object is in this category if it is of significance to Australia within the meaning of the definition of "significance to Australia" in these regulations, is the kind of object mentioned in item 3.4, and is not adequately represented in public collections in Australia.

Item 3.3 provides that an object in Part 3 of a kind well represented in public collections, may not be adequately represented because of the object's quality or the place where the object was collected. For example, while there may be many fossils of the teeth of a prehistoric crocodile in public collections, there may not be any fossils of the whole jaw. In this case, the fossil of the whole jaw would be regarded as not adequately represented in public collections. Similarly, if there are many examples of the fossils of a leg bone of a particular early kangaroo from Lake Mungo in NSW in public collections, but none from tropical north Queensland, a fossil of the leg bone of the kangaroo found in north Queensland would be regarded as not adequately represented in public collections.

Item 3.4 provides that objects in this category are Class B objects for the Act, and lists objects included in the category.

Part 4 - Applied Science or Technology Objects

Item 4.1 provides that this part of the Schedule lists objects in the category *Applied Science or Technology Objects.*

Item 4.2 provides that objects in this category relate to human enterprise and activity and include such objects as tools, weapons, implements and machines, and any other object produced by, or related to these objects. The Part also includes prototypes and models.

Item 4.3 sets out when an object is in this category. An object is in this category if it is of significance to Australia within the meaning of the definition of "significance to Australia" in these regulations, if it is an object of the kind mentioned in item 4.4, if it was made in Australia at least 30 years ago or in use in Australia at least 30 years ago, and if it is not represented in at least two public collections in Australia by an object of equivalent quality. For the purposes of this Part, an applied science or technology object which is in perfect condition is not of equivalent quality to the same object in poorer condition.

Item 4.4 provides that objects in this category are Class B objects for the Act, and lists objects included in the category Objects of Applied Science or Technology. Objects in the category include agricultural objects, engineering objects, objects of air, rail, road and water transport, objects of scientific interest and objects of weaponry.

Part 5 - Objects of Fine and Decorative Arts

Item 5.1 provides that this part of the Schedule lists objects in the category *Objects of Fine and Decorative Arts*.

Item 5.2 sets out when an object is in this category. An object is in this category if it is an Australia-related object, is at least 20 years old (if it is an object of Aboriginal fine or decorative art), or at least 30 years old (if it is any other object in the Table in item 5.3).

Item 5.3 provides that objects in this category are Class B objects for the Act, and lists objects included in the category by reference to the table. The table lists objects and monetary values. For example, a sculpture which is an object in this category due to item 5.3, is a Class B object for the Act if it is valued at \$30,000 or more (see item 9 of the table).

Item 5.4 provides that this category includes an object of fine and decorative art not mentioned in item 5.3 if the object documents a notable person or event in Australian science, technology, the arts or history. For example, a sculpture of the Australian scientist Howard Florey which is not valued at more than \$30,000 will be a Class B object for the Act as a result of item 5.4.

Item 5.5 provides that an object is not in this category if it is an object which is owned by the artist who created the object.

Item 5.6 provides definition of the terms "Australia-related object" and "object of Aboriginal or Torres Strait Islander fine or decorative art" which are used in this Part. The definition of "object of Aboriginal or Torres Strait Islander fine or decorative art" includes that an object which is an object listed in Part 1 of the Schedule, Objects of Australian Aboriginal and Torres Strait Islander Heritage, does not fall within the definition. This ensures that there is no overlap between Parts 1 and 5 of the Schedule in relation to Aboriginal or Torres Strait Islander objects, as an object which is a Part 1 object cannot be a Part 5 object. Paintings or carvings in the indigenous tradition, by Aboriginal or Torres Strait Islanders, which are not Part 1 objects, are likely to be the only Aboriginal and Torres Strait Islander fine or decorative art objects.

Part 6 - Documentary Heritage

Item 6.1 provides that this part of the Schedule lists objects in the category *Objects of Documentary Heritage*.

Item 6.2 sets out when an object is in this category. An object is in this category if it is a document as defined at item 6.4 which is of significance to Australia within the meaning of the

definition of "significance to Australia" in these regulations, is at least 30 years old, and is not represented in at least two public collections in Australia by an object of equivalent quality. For the purposes of this Part, an object of documentary heritage which is the original or master copy of a document, is not of equivalent quality to copies of the same document.

Item 6.3 provides that objects in this category are Class B objects for the Act.

Item 6.4 provides definitions of the terms "document" and "government records or archives" which are used in this Part.

Part 7 - Numismatic Objects

Item 7.1 provides that this part of the Schedule lists objects in the category *Numismatic Objects*.

Item 7.2 sets out when an object is in this category. An object is in this category if it is a Victoria Cross medal awarded to a person mentioned in the List at item 7.3, or if it is an object of the kind mentioned in item 7.4 that is of significance to Australia within the meaning of the definition of "significance to Australia" in these regulations, is at least 30 years old, has a market value of at least \$15,000 and is not represented in at least two public collections in Australia by an object of equivalent quality. For the purposes of this Part, a numismatic object which is in perfect condition is not of equivalent quality to the same object in poorer condition.

Item 7.3 provides that a Victoria Cross medal awarded to a person mentioned in the table in this item is a Class A object for the Act.

Item 7.4 sets out the objects of this category that are Class B objects for the Act.

Item 7.5 contains a special rule in relation to medals owned by the person to whom the award was made, or medals owned by the next-of-kin of that person, if the award was made posthumously. These medals are not objects included in this Part, and therefore are not subject to the export limitations of the Act. This reflects the intention that awardees should have full control over their medals.

Part 8 - Philatelic Objects

Item 8.1 provides that this part of the Schedule lists objects in the category *Philatelic Objects*.

Item 8.2 sets out when an object is in this category. An object is in this category if it is of significance to Australia within the meaning of the definition of "significance to Australia" in these regulations, is an object of the kind mentioned in item 8.3, and is not represented in at least two public collections in Australia by an object of equivalent quality. For the purposes of this Part, a philatelic object which is in perfect condition is not an object of equivalent quality to the same philatelic object in poorer condition.

Item 8.3 provides that objects in this category are Class B objects for the Act, and lists objects included in the category.

Part 9 - Objects of Historical Significance

Item 9.1 provides that this part of the Schedule lists objects in the category *Objects of Historical Significance*.

Item 9.2 sets out when an object is in this category. An object is in this category if it is an object of the kind mentioned in item 9.3, is associated with a person, activity, event, place or business enterprise notable in Australian history, is at least 30 years old, and is not represented in at least two public collections in Australia by an object of equivalent quality. For the purposes of this

Part, an object of historical significance which has a unique feature is not of equivalent quality to the same kind of object which does not have that feature.

Item 9.3 provides that objects in this category are Class B objects for the Act, and lists objects included in the category.

Item 9.4 provides definitions of the terms "Australian military history" and "objects of heraldry" used in this Part.