

# Protection of Movable Cultural Heritage Amendment Regulations 2001 (No. 1) 2001 No. 173

## EXPLANATORY STATEMENT

### Statutory Rules 2001 No. 173

Issued with 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 2001 (No. 1)

The *Protection of Movable Cultural Heritage Act 1986* (the Act) regulates the export of objects which are identified as part of Australia's movable cultural heritage. Subsection 7(1) of the Act provides 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.

Section 49 of the Act provides that the Governor-General may make regulations for the purpose of the Act.

Subsection 8(1) of the Act provides that the regulations shall prescribe a list, the National Cultural Heritage Control List (the Control 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 1987* (the PMCH Regulations) provides that the list of objects that constitute Australia's movable cultural heritage is set out in Schedule 1 of the PMCH Regulations.

Subsection 8(2) of the Act provides that the Control 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.

The Regulations add a new category of Class A objects to the Control List. The new category consists of all pieces of the suit of metal armour worn by Ned Kelly during the siege at Glenrowan in Victoria in 1880.

Subsection 9(1) of the Act provides that an Australian protected object is forfeited if it is exported otherwise than in accordance with a permit or a certificate. ("Australian protected object" is defined in subsection 3(1) to mean a Class A object or a Class B object.)

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 subsection 10(1) or 10A(1) of the Act may authorise the export of a Class B object which is already in Australia.

In January 2001, an application was lodged under subsection 10(1) of the Act for an export permit for a shoulder piece from the armour. On 10 May 2001 the Minister for the Arts and the Centenary of Federation refused an export permit for the piece under subsection 10(5) of the Act. The Minister's decision was made on the basis that the piece is a Class B object covered by Part 9 of the Control List (ie objects of historical significance), the export of which would significantly diminish Australia's cultural heritage (see subsection 10(6) of the Act).

All other remaining pieces of Kelly's armour are held in Victorian public collections. The shoulder piece is the only piece in private hands. It is being offered for sale by its current owner through Christies Australia, who intend to auction the piece on 10 July 2001. There is overseas interest in the sale.

The Regulations commence on gazettal. Accordingly, all pieces of Kelly's armour, including the shoulder piece for which a permit has been refused, will become Class A objects from the date of gazettal.

Details of the Regulations are set out in the Attachment.

## ATTACHMENT

### **DETAILS OF THE REGULATIONS**

#### **Regulation 1 - Name of Regulations**

Regulation 1 provides that the name of the Regulations is the *Protection of Movable Cultural Heritage Amendment Regulations 2001 (No. 1)*.

#### **Regulation 2 - Commencement**

Regulation 2 provides that the Regulations commence on gazettal.

#### **Regulation 3 - Amendment of *Protection of Movable Cultural Heritage Regulations 1987***

Regulation 3 provides that Schedule 1 of the Regulations amends the PMCH Regulations. Schedule 1 of the PMCH Regulations sets out the Control List.

#### SCHEDULE 1 - AMENDMENTS

Item 1 - Schedule 1, item 9.2

Items 9.2 and 9.3 of the Control List currently provide as follows:

9.2 An object is in this category if it:

- (a) is an object of the kind mentioned in item 9.3; and
- (b) is associated with a person, activity, event, place or business enterprise, notable in Australian history; and
- (d) is not represented in at least 2 public collections in Australia by an object of equivalent quality.

9.3 Objects in this category are Class B objects for the Act, and include:

- (a) objects of heraldry; and
- (b) objects relating to Australian military history; and
- (c) objects relating to domestic life, including buildings, fixtures and decorations, equipment and furniture, costumes and textiles and personal effects; and
- (d) objects relating to work life, including specialised trades and labour material, trade unionism, company activity and corporate identity, trade and commerce; and
- (e) objects relating to courts and tribunals, law enforcement including the police, lawbreakers, convicts and prison life; and
- (f) objects relating to education; and
- (g) objects relating to health and medicine; and
- (h) objects relating to arts and crafts; and

- (i) objects relating to leisure and recreation, including all forms of sport, entertainment and tourism; and
- (j) objects relating to politics; and
- (k) objects relating to exploration; and
- (l) objects relating to migration; and
- (m) objects relating to community activities; and
- (n) objects relating to religion.

*Note* A Class B object can be exported from Australia if a permit or certificate is granted under the Act in relation to the object.

The amendment to item 9.2 of the Control List made by this item is consequential on new item 9.2A of the Control List, inserted by item 2 below.

The effect of this amendment is that the criteria currently in paragraphs 9.2(b), (c) and (d) of the Control List do not apply to the new category of objects in item 9.2A of the Control List.

#### **Item 2 - Schedule 1, after item 9.2**

Item 2 inserts new item 9.2A in the Control List, to add a new category of objects to Part 9 of the Control List. The new category consists of all pieces of the suit of metal armour worn by Ned Kelly at the siege of Glenrowan in Victoria in 1880.

#### **Item 3 - Schedule 1, item 9.3**

All objects currently in Part 9 of the Control List are Class B objects. The amendment to item 9.3 of the Control List made by this item ensures that the objects added to the Control List by these Regulations as item 9.2A are Class A objects.