**EXPLANATORY STATEMENT**

*Protection of Movable Cultural Heritage Act 1986*

**Protection of Movable Cultural Heritage Regulations 2018**

Issued by authority of the Minister for Communications and the Arts

**Purpose**

This Explanatory Statement relates to the Protection of Movable Cultural Heritage Regulations 2018 (the Regulations).

The Regulations are enabled by section 49 of the *Protection of Movable Cultural Heritage Act* *1986* (the Act). Section 49 of the Act provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The Act regulates, and by extension protects Australia's movable cultural heritage, largely though an export control framework, and provides for the return of foreign cultural property that has been illegally exported from its country of origin and imported into Australia. The Act gives effect to, and implements Australia's obligations under the UNESCO *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*1970(the 1970 Convention).

The purpose of these Regulations is to repeal and remake the Protection of Movable Cultural Heritage Regulations 1987 (the 1987 Regulations), which are due to sunset on 1 April 2019. The Regulations are intended to largely maintain the regulatory arrangements under the 1987 Regulations in a manner that reflects modern drafting styles and practices.

The Regulations omit redundant provisions and associated definitions from the 1987 Regulations relating to the National Cultural Heritage Fund (the Fund). The provisions are redundant as amendments to the Act in 1999 resulted in the Fund being replaced by a special account, the National Cultural Heritage Account.

The Regulations prescribe a number of matters required or permitted to be prescribed by the Act.

Subsection 8(1) of the Act provides that the Regulations shall prescribe a list, to be known as the National Cultural Heritage Control List (the Control List), which lists the categories of objects that constitute the movable cultural heritage of Australia and that are subject to export control under the Act. The prescription of the Control List is fundamental to the operation of the provisions in the Act that regulate the export of movable objects of significance to Australia’s cultural heritage, as the Act does not regulate or restrict the export of Australian objects other than those prescribed on the list. Without the Control List, significant objects, including those that would have been denied an export permit, could be exported and permanently lost to Australia with no recourse to impose penalties or take other enforcement actions in relation to the objects.

Schedule 1 of the Regulations prescribes the Control List as required by subsection 8(1). The Control List prescribed substantially replicates the Control List prescribed by the 1987 Regulations, with modernised drafting.

The Regulations also implement some limited elements of the model proposed by the independent review of the Act undertaken by Mr Shane Simpson AM in 2015 (Simpson Review), as an interim measure until the remake of the primary legislation.

Part 5—Objects of Fine or Decorative Art of the National Cultural Heritage Control List prescribes the category of objects of fine and decorative art. Under the 1987 Regulations, whether objects were within the category was determined by medium, price, age and, in the case of paintings (which is the most commonly encountered media category), whether they were made by artists identifying as Australian Aboriginal or Torres Strait Islander. A single age and monetary threshold for these works is unnecessarily broad, and results in an unintended restriction on the secondary market value of works by Aboriginal and Torres Strait Islander artists. This iteration of the Regulations aims to redress the balance.

The Regulations therefore include a number of more specific categories that target specific regional styles, media and historical periods, each with their own age and monetary thresholds. These categories were independently developed by a specialist consultant, with reference to auction and art market results for these different styles and periods. The expected result of the new categorisation will be that significant works are more clearly targeted, and fewer works of a lesser significance are required to be assessed. This will reduce the overregulation of Aboriginal and Torres Strait Islander artists’ works on the secondary market, and provide more opportunities to market such works internationally.

Some other monetary value thresholds in Part 5 are also amended to better reflect the current market value in Australian dollars of the categorised objects, consistent with the Simpson Review.

Part 7—Numismatic objects of Schedule 1 to the Regulations is updated to reflect the current list of recipients of all Victoria Cross (VC) medals so that there is no doubt that these are prima facie on the Control List (with some exceptions) and are Class A objects unless owned or held on loan by the Commonwealth (including Departments of State such as the Department of Defence) or a principal collecting institution (as defined in section 3 of the Act). As Class A objects, these could not be exported in any circumstances. Amendments have also been made so that VC medals owned or held on loan by the Commonwealth or a principal collecting institution are Class B objects, meaning they may be able to be temporarily exported by the Commonwealth or certain statutory bodies for the purposes of public exhibition and commemoration.

The Regulations continue to provide that VC medals will not be on the Control List by reason of Part 7 where they are owned by the person to whom they are awarded or, in the case of a posthumous award, the person’s next of kin (except where the Commonwealth or a principal collecting institution holds the medal on loan). Similarly, other medals or decorations that may be on the control list under Part 7 will not be on the Control List where owned by the awardee (or their next of kin, for a posthumous award).

The Regulations also update an outdated reference in Part 3—Natural Science Objects of Schedule 1 to provisions of the *Wildlife Protection (Regulation of Exports and Imports) Act 1982*, which is no longer in force, with reference to provisions of the *Environment Protection and Biodiversity Conservation Act 1999*, which now contains the relevant provisions.

The Regulations also prescribe:

1. for the purposes of paragraph 7(1)(j) of the Act, additional categories of objects of importance to Australia or a particular part of Australia for a reason listed in subsection 7(1), which will be taken to be part of the movable cultural heritage of Australia for the purposes of section 8 of the Act;
2. for the purposes of subsection 10(7) of the Act, the period within which notice of a refusal to grant a permit under the Act must be given—namely 14 days;
3. for the purposes of subsection 12(6) of the Act, the period within which notice of a refusal to grant a certificate of exemption under the Act must be given—namely 14 days; and
4. for the purposes of section 22 of the Act, matters which must be set out in the register of expert examiners required to be maintained by the National Cultural Heritage Committee—namely the name of each person determined by the Committee to be an expert examiner for the purposes of the Act.

The periods prescribed for giving notices of permit and certificate of exemption refusals are the same as those prescribed under the 1987 Regulations. The Regulations do not replicate the requirement for the National Cultural Heritage Committee to include the residential or principal office addresses for expert examiners on the register for the purposes of section 22, as the Register of expert examiners is dealt with administratively.

The Register of expert examiners referenced in section 10 of the Regulations is an internal departmental document which does not affect the operation of the law and which is managed solely for the purpose of the administrative management of information relating to expert examiners who have applied to work, and who work, in that capacity. The expert examiners assist in assessing applications for export made by individuals or bodies corporate, and hold appropriate qualifications and skills in the field. They provide assessments to the National Cultural Heritage Committee, who further review the applications.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

**Consultation**

Consultation undertaken in making the Regulations included the Australian Government Department of Foreign Affairs and Trade, the Attorney-General’s Department, and the Department of Defence.

In addition, the Simpson Review comprised consultation with experts across the arts sector, collecting institutions and the wider community across the states and territories throughout July and August 2015.

A national online survey sought wider input on the model proposed by the Review, and received over 120 responses. Over 40 meetings were held and over 500 institutions and individuals were invited to attend, including academics, representatives of collecting institutions, Aboriginal and Torres Strait Islander communities, special interest groups, commercial arts sector, non-government organisations and state, territory and federal Government bodies. These stakeholders were largely supportive of changes to modernise and improve the legislation. The findings from the consultations fed into the final Simpson Review report, *Borders of Culture*, a copy of which is available from the Department of Communications and Arts website.

Some of the elements of the report in relation to Part 5 of the Control List are included in the Regulations.

**Regulatory Impact Statement**

The Office of Best Practice Regulation (OBPR) was consulted concerning any requirement to prepare a Regulatory Impact Statement (RIS) for the Regulations (OBPR reference ID 22158). OBPR advised that the regulatory impact of the Regulations is minor or machinery in nature and that a RIS is not required.

**Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act* *2011*

**Protection of Movable Cultural Heritage Regulations** **2018**

This statement of compatibility with human rights is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act* *2011*.

The Protection of Movable Cultural Heritage Regulations 2018 (the Regulations) are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

**Overview of the legislative instrument**

The purpose of the Regulations is to remake the Protection of Movable Cultural Heritage Regulations 1987 (the 1987 Regulations), which are enabled by section 49 of the *Protection of Movable Cultural Heritage Act 1986* (the Act), and which are due to sunset on 1 April 2019.

The Regulations:

* reflect modern drafting styles and practices;
* repeal redundant provisions and associated definitions from the 1987 Regulations in relation to the National Cultural Heritage Fund (the Fund) as a consequence of amendments to the Act in 1999 that resulted in the Fund being repealed and the National Cultural Heritage Account established in its place;
* prescribe, pursuant to section 49 of the Act, various matters required or permitted by the Act to be prescribed, namely:
* the list, known as the National Cultural Heritage Control List (the Control List), required to be prescribed by subsection 8(1) of the Act, which lists the categories of objects that constitute the movable cultural heritage of Australia and that are subject to export control under the Act;
* additional categories of objects of importance to Australia or a particular part of Australia for a reason listed in subsection 7(1), which will be taken to be part of the movable cultural heritage of Australia for the purposes of section 8 of the Act;
* prescribe the period of 14 days for the Minister to give notice of refusal to grant a permit for the purposes of subsection 10(7) of the Act, and to give notice of refusal to grant a certificate of exemption for the purposes of subsection 12(6) of the Act;
* prescribe that the register of expert examiners to be maintained by the National Cultural Heritage Committee must set out the name of each person determined by that Committee to be an expert examiner, for the purposes of section 22 of the Act;
* update aspects of Part 5—Objects of Fine or Decorative Art of Schedule 1 to better capture only the most significant types of Aboriginal and Torres Strait Islander objects of fine or decorative art, and to revise value thresholds as they relate to specific types of objects of fine and decorative art;
* update Part 7—Numismatic objects in Schedule 1 to list all current Victoria Cross medal awardees, and ensure it is possible for Victoria Cross medals owned or held on loan by the Commonwealth or a principal collecting institution to be temporarily exported for the purposes of public exhibition and commemoration; and
* repeal the 1987 Regulations.

The Act regulates, and by extension protects Australia's movable cultural heritage, largely though an export control framework, and provides for the return of foreign cultural property that has been illegally exported from its country of origin and imported into Australia. The Act gives effect to, and implements Australia's obligations under the UNESCO *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*1970 (the 1970 Convention).

The Regulations are fundamental to the effectiveness of the Act. The Regulations prescribe the National Cultural Heritage Control List (the Control List), which lists the categories of objects that constitute the movable cultural heritage of Australia and are subject to export control. In the absence of the Control List, it would not be possible to administer the provisions in the Act that relate to the export of objects. The practical implication of this is that there would be no controls in relation to the export of objects of movable cultural heritage. Consequently, significant objects, including those that would have been denied an export permit, could be exported and permanently lost to Australia, with no recourse to impose penalties or take other enforcement actions in relation to the objects.

The Regulations, in conjunction with the Act, enable Australia to fully meet its obligations as a State Party to the 1970 Convention, through ensuring that the provisions in the Act that relate to export control can be administered.

The Regulations also implement some limited elements of the model proposed by the independent review of the Act undertaken by Mr Shane Simpson AM in 2015 (Simpson Review), as an interim measure until the remake of the primary legislation. The elements that have been implemented relate to Part 5—Objects of Fine or Decorative Art. In particular, the Regulations seek to redress unintended restrictions on the secondary market value of works by Aboriginal and Torres Strait Islander artists, which is extant in the 1987 Regulations, by replacing the single monetary and age threshold around all Aboriginal and Torres Strait Islander works of fine and decorative art with more targeted categories and thresholds.

Specifically, Part 5 of the National Cultural Heritage Control List defines the categories of fine and decorative art regulated by the Act. The 1987 Regulations divided works by media, price, age and, in the case of paintings (which is the most used media category), according to whether they were made by artists identifying as Australian Aboriginal and Torres Strait Islanders, with a different age and monetary threshold for each case. The new Regulations do not differentiate between the works on this basis.

**Human rights implications**

Human rights engaged in these Regulations, as they operate in conjunction with the enabling Act, are the right to enjoy and benefit from culture, and the right to self-determination (contained in the International Covenant on Economic, Social and Cultural Rights to which Australia is a party).

The right to enjoy and benefit from culture, including the right to take part in cultural life

The Regulations engage the right to enjoy and benefit from culture, including the right to take part in cultural life.

Article 15(1)(a) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognises the right of everyone to take part in cultural life. Article 15(2) states that the steps to be taken by parties to the ICESCR to achieve the full realisation of the right shall include those necessary for the conservation, the development and the diffusion of science and culture. Article 15(4) states that parties to the ICESCR recognise the benefits to be derived from the encouragement and development of international contacts and co‑operation in the scientific and cultural fields.

To the extent that the right to enjoy and benefit from culture is engaged, this right is promoted by the Regulations as they operate in conjunction with the enabling Act. The Regulations are compatible with human rights because they promote the right to enjoy and benefit from culture and enhance cultural life in Australia and internationally by ensuring a continued ability of Australia to fulfil its obligations under the UNESCO *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property* 1970.

The Regulations in conjunction with the enabling Act enhance cultural life in Australia by safeguarding Australia’s movable cultural heritage, largely through an export control framework. The Regulations specify the objects regulated, with applicants required to apply for an export permit irrespective of whether the export is on a permanent or temporary basis.

The Regulations recognise an individual’s right to the enjoyment of cultural material they own whilst enabling Australia to enforce its right to restrict the movement of that material where it represents a significant part of Australia’s cultural heritage. The Regulations achieve this in relation to Australian cultural material firstly by prescribing a Control List of objects of importance to Australia, or a particular part of Australia, for a reason listed in subsection 7(1) of the Act, which fall into a category listed in that subsection. Secondly, the Regulations prescribe these objects as either Class A or B in accordance with subsection 8(2) of the Act with regard to whether these objects are so important by nature that they should be prohibited from export entirely, or should be able to be exported in certain circumstances on a case by case basis. Prescribing an object as a Class B object means that a person may apply for an export permit, at which point a ‘significance test’ is applied under paragraph 10(6)(b) of the Act to assess whether the object is suitable for export. Such applications for export are independently assessed by expert examiners with the appropriate qualifications and skills in the field, and the National Cultural Heritage Committee made up of experts and provided for in the Act.

Any limitations on individuals’ right to export objects which are regulated as protected objects of Australian cultural heritage are reasonable and justifiable in light of the overall aim of protecting the cultural heritage of Australia for the preservation and future enjoyment of people.

The Regulations pursue the legitimate objective of regulating the import and export of significant cultural material. To the extent that they may limit the right of people to enjoy and benefit from cultural property that they own as a result of the regulation of those objects, those limitations are reasonable, necessary and proportionate and the limitations are not arbitrary. Decisions made by the Minister to refuse to grant an export permit are merits reviewable, and there is sufficient flexibility to treat different cases on their individual merit.

The right to self-determination

The Regulations engage the right to self-determination to the extent that they allow Australian Aboriginal and Torres Strait Islander people to freely pursue their cultural development.

This is done in a manner which both promotes this right, by preventing the unrestricted export of Aboriginal and Torres Strait Islander heritage; but also limits this right as these export regulations also apply to Aboriginal and Torres Strait Islander people. This is done in a reasonable and proportionate manner to ensure the export of this significant material is regulated. Recommendations as to export are made by the National Cultural Heritage Committee, which includes an identified position for an Aboriginal or Torres Strait Islander person.

Part 1—Objects of Australian Aboriginal and Torres Strait Islander heritage of the National Cultural Heritage Control List prescribes categories of objects of Aboriginal and Torres Strait Islander heritage. These Regulations continue the protections of the 1987 Regulations which define a number of subcategories, including Indigenous human remains and secret sacred objects, as Class A objects. This is consistent with the Australian Government’s Indigenous Repatriation Policy, which seeks to return ancestral remains to Aboriginal and Torres Strait Islander communities.

Part 5—Objects of Fine or Decorative Art of the National Cultural Heritage Control List prescribes the category of objects of fine and decorative art. Under the 1987 Regulations, whether objects were within the category was determined by medium, price, age and, in the case of paintings (which is the most commonly encountered media category), whether they were made by artists identifying as Australian Aboriginal or Torres Strait Islander. A single age and monetary threshold for these works is unnecessarily broad, and results in an unintended restriction on the secondary market value of works by Aboriginal and Torres Strait Islander artists. This remake of the Regulations aims to redress the balance.

The Regulations therefore include a number of more specific categories that target specific regional styles, media and historical periods, each with their own age and monetary thresholds. These categories were independently developed during the Simpson Review, with reference to auction and art market results for these different styles and periods. The expected result of the new categorisation will be that significant works are more clearly targeted, and fewer works of a lesser significance are required to be assessed. This will reduce the overregulation of Aboriginal and Torres Strait Islander artists’ works on the secondary market, and provide more opportunities to market such works internationally.

Some other monetary value thresholds in Part 5 are also amended to better reflect the current market value in Australian dollars of the categorised objects, consistent with the Simpson Review.

**Conclusion**

The Regulations are compatible with human rights as they do not raise any human rights issues.

**Notes on Clauses**

Section 1 – Name of Regulations

This section provides that the instrument is the *Protection of Movable Cultural Heritage Regulations 2018*.

Section 2 – Commencement

This section provides that the Regulations commence on the day after the instrument is registered on the Federal Register of Legislation.

Section 3 – Authority

This section provides that the Regulations are made under the *Protection of Movable Cultural Heritage Act* *1986*.

Section 4 – Schedule 2

This section provides that each instrument that is specified in Schedule 2 to the Regulations is amended or repealed as set out in the applicable items in that Schedule, and any other item in that Schedule has effect according to its terms.

Section 5 – Definitions

Subsection 5(1) provides definitions relevant to the operation of the Regulations.

*Act* is defined to mean the *Protection of Movable Cultural Heritage Act 1986*.

*significance to Australia* for an object, means that the object is of Australian origin, has substantial Australian content, or has been used in Australia, and:

1. is associated with a person, activity, event, place or business enterprise, notable in history; or
2. has received a national or international award or has significant association with an international event; or
3. represents significant technological or social progress for its time; or
4. is an object of scientific or archaeological interest.

This definition is used in determining whether particular objects will be taken to be part of certain categories of objects prescribed to be on the Control List in Schedule 1 to the Regulations for the purposes of subsection 8(1) of the Act.

Subsection 5(2) provides that if an object of the kind mentioned in Schedule 1 has been repaired, restored or reassembled, the age of the object is not affected by that action for any provision of Schedule 1 unless the action has substantially modified the object. Because certain categories of objects prescribed to be on the Control List in Schedule 1 are defined by criteria which include their age, this is intended to clarify that certain actions do not have an effect on what can be taken to be the age of the object, unless the object has been substantially modified as a result.

Other terms used in the Regulations that are defined in the Act will have the same meaning as in the Act (subject to any contrary intention) by operation of subsection 13(1) of the *Legislation Act 2003*. One such term which has the meaning set out in the Act is ‘principal collecting institution’, which is used in Part 7 of the Control List prescribed in Schedule 1.

Section 6 – Categories of objects that are the movable cultural heritage of Australia

Subsection 7(1) of the Act provides that a reference in section 8 of the Act to the movable cultural heritage of Australia is a reference to objects that are of importance to Australia, or a particular part of Australia, for one of a number of specified reasons, and are objects falling within categories listed in paragraphs (a)-(j) of that subsection. Paragraph 7(1)(j) refers to any other prescribed categories.

This section provides that, for the purposes of paragraph 7(1)(j) of the Act, the following categories are prescribed:

1. archaeological objects of non-Australian origin;
2. natural science objects;
3. numismatic objects;
4. objects of social history;
5. philatelic objects.

Section 7 – National Cultural Heritage Control List

Subsection 8(1) of the Act provides that the Regulations shall prescribe a list, to be known as the National Cultural Heritage Control List (the Control List), which lists the categories of objects that constitute the movable cultural heritage of Australia and that are subject to export control under the Act. The prescription of the Control List is fundamental to the operation of the provisions in the Act that regulate the export of movable objects of significance to Australia’s cultural heritage, as the Act does not regulate or restrict the export of Australian objects other than those prescribed on the list.

Section 7 of the Regulations provides that, for the purposes of subsection 8(1) of the Act, the list of categories set out in Schedule 1 is prescribed.

Section 8 – Period for giving notice of refusal to grant permit

Under subsection 10(1) of the Act, a person may apply to the Minister for a permit to export a Class B object.

Subsection 10(7) provides that if the Minister refuses to grant the permit, the Minister shall, within prescribed period after the decision is made, cause to be served on the applicant a notice in writing of the refusal, setting out the reasons for the refusal.

Section 8 of the Regulations prescribes the period of 14 days for the Minister to give notice of refusal to grant a permit, for the purposes of subsection 10(7) of the Act.

Section 9 – Period for giving notice of refusal to grant certificate of exemption

Subsection 12(1) provides that where a person intends to import an Australian protected object in certain circumstances, the person may apply to the Minister for a certificate authorising the exportation of the object. This authorises a person who temporarily imports an object to Australia to later re-export that object where they may otherwise be unable to do so due to the operation of the Act.

Subsection 12(6) provides that if the Minister refuses to grant the certificate, the Minister shall, within the prescribed period after the decision is made, cause to be served on the applicant a notice in writing of the refusal, setting out the reasons for refusal.

Section 9 of the Regulations prescribes the period of 14 days for the Minister to give notice of refusal to grant a certificate of exemption, for the purposes of subsection 12(6) of the Act.

Section 10 – Register of expert examiners

When applications for permits of Australian protected objects are received by the Minister, the Act requires the Minister to refer the application to the National Cultural Heritage Committee (the Committee), who must in turn refer the application to one or more expert examiners. These examiners submit to the Committee a written report on the application, which is then forwarded to the Minister along with any recommendations made by the Committee.

The Committee is required under subsection 22(1) to maintain, in accordance with the Regulations, a register of the names of persons determined by the Committee to be expert examiners for the purposes of the Act.

Section 10 of the Regulations prescribes that, for the purposes of section 22 of the Act, the Register of expert examiners must set out the name of each person determined by that Committee to be an expert examiner.

Schedule 1 – National Cultural Heritage Control List

Schedule 1 lists the categories of objects which comprise the Control List for the purposes of section 8 of the Act, as prescribed by section 7 of the Regulations.

The Control List consists of 9 Parts each listing a category of objects. The Control List divides these categories of objects into Class A objects and Class B objects, as required by subsection 8(2) of the Act.

Class A objects are objects that cannot lawfully be exported otherwise than in accordance with a certificate of exemption. Class B objects are objects that it may be possible to temporarily or permanently export, but which cannot lawfully be exported otherwise than in accordance with an export permit or a certificate of exemption.

*Part 1—Objects of Australian Aboriginal and Torres Strait Islander heritage*

Clause 1.1 provides that this Part lists objects of the category ‘Objects of Australian Aboriginal and Torres Strait Islander heritage’.

Clause 1.2 provides that an object is in this category if it is:

1. of cultural significance to Aboriginal or Torres Strait Islander people, or made by Aboriginal or Torres Strait Islander people; and
2. not created specifically for sale; and
3. for an object mentioned in clause 1.4—is at least 30 years old, and is not adequately represented in Aboriginal or Torres Strait Islander community collections, or public collections in Australia.

Clause 1.3 lists certain objects of this category which are Class A objects, namely: sacred and secret ritual objects; bark and log coffins used as traditional burial objects; human remains; rock art; and, dendroglyphs.

Clause 1.4 provides that all objects in this category, other than those mentioned in clause 1.3, are Class B objects, and lists a number of examples of the kinds of objects in this category.

The note following clause 1.4 clarifies that objects of Aboriginal or Torres Strait Islander fine or decorative arts are dealt with in Part 5 of Schedule 1 (which deals with ‘Objects of fine or decorative art’). The intention is that objects that are within the category of objects listed in Part 5 are not also within the category of objects listed Part 1. This provision is included to provide clarity due to the ability for Aboriginal or Torres Strait Islander objects of fine and decorative art to come within both the categories specified in Part 1 and Part 5. For example, a person may seek to export an artwork that meets the criteria in paragraph 1.2(c) that is also a kind of object mentioned in clause 1.4. That object would be a Class B object under Part 1. However, if that artwork was created pre-1901, it would instead be a Class A object pursuant to item 1 of the table in clause 5.3 in Part 5. In this case, for the purposes of the Act, the object should be treated as though it were on the list under Part 5 and therefore not able to be exported due to being a Class A object.

*Part 2—Archaeological objects*

Clause 2.1 provides that this Part lists objects of the category ‘Archaeological objects’.

Clause 2.2 provides that an object is in this category if it is:

1. of significance to Australia; and
2. is an Indigenous or non-Indigenous object that was recovered, as mentioned in paragraph 7(1)(a) of the Act, after remaining for at least 50 years in the place from which it was removed; and
3. is not represented in at least 2 public collections in Australia by an object of equivalent quality.

The term ‘significance to Australia’ has the meaning given in section 5 of the Regulations.

Paragraph 7(1)(a) of the Act refers to objects recovered from: the soil or inland waters of Australia; the coastal sea of Australia or the waters above the continental shelf of Australia; or, the seabed or subsoil beneath the coastal sea of Australia or the waters above the continental shelf of Australia. ‘Australia’ is defined for the purposes of the Act to include the external Territories.

Clause 2.3 provides that all objects in this category are Class B objects, and lists a number of examples of the kinds of objects that are included in this category.

*Part 3—Natural science objects*

Clause 3.1 provides that this Part lists objects of the category ‘Natural science objects’.

Clause 3.2 provides that an object is in this category if it is:

1. of significance to Australia;
2. of a kind mentioned in clause 3.4; and
3. is not adequately represented in public collections in Australia.

The term ‘significance to Australia’ has the meaning given in section 5 of the Regulations.

Clause 3.3 provides that for the purposes of paragraph 3.2(c), an object of a kind well represented in public collections in Australia may nevertheless not be adequately represented because of the object’s quality or because of the place where the object was collected. This clarifies that the question of whether an object is ‘adequately represented’ for the purposes of this clause required not only considering the number of objects of the same kind that are represented, but also the quality and origin of those objects.

Clause 3.4 provides that all objects in this category are Class B objects, and lists the kinds of objects that will be included in this category for the purposes of paragraph 3.2(b).

Clause 3.5 defines a number of terms relevant to the kinds of Class B objects listed in clause 3.4.

*Part 4—Objects of applied science or technology*

Clause 4.1 provides that this Part lists objects of the category ‘Objects of applied science or technology’.

Clause 4.2 notes that objects in this category relate to human enterprise and activity, other than artistic activity, such as tools, weapons, implements and machines, and any other object produced by, or related to, such objects (including prototypes, models, patents and equipment).

Clause 4.3 provides that an object is in this category if:

1. it is of significance to Australia; and
2. for an object:
   1. of Australian origin—it was made in Australia at least 30 years ago; or
   2. that has substantial Australian content—the Australian content was made in Australia at least 30 years ago; or
   3. that is not of Australian origin—it was in use in Australia at least 30 years ago; and
3. it is of a kind mentioned in clause 4.4; and
4. it is not represented in at least 2 public collections in Australia by an object of equivalent quality.

The term ‘significance to Australia’ has the meaning given in section 5 of the Regulations.

Clause 4.4 provides that all objects in this category are Class B objects, and lists the kinds of objects that will be included in this category for the purposes of paragraph 4.3(c).

*Part 5—Objects of fine or decorative art*

Clause 5.1 provides that this Part lists objects of the category ‘Objects of fine or decorative art’.

Clause 5.2 provides that an object is in this category if it is:

1. an object of the kind mentioned in clause 5.3; or
2. an object of the kind mentioned in clause 5.4 that is an Australia-related object and is at least 30 years old.

For the purposes of paragraph 5.2(a), clause 5.3 provides that objects mentioned in Column 1 of the items in the table contained in the clause that have a current Australian market value of at least the amount mentioned in Column 2 of the table for that item are Class A objects.

For the purposes of paragraph 5.2(b), clause 5.4 provides that objects mentioned in Column 1 of the items in the table contained in the clause that have a current Australian market value of at least the amount mentioned in Column 2 of that item are Class B objects (providing those objects are Australia-related and at least 30 years old in accordance with paragraph 5.2(b)).

Objects in this category are subcategorised according to historical period, medium and in some cases creator or region of creation. In relation to determining whether an object that is ‘mixed media’ is a Class A object a Class B object in this category, the object should be categorised according to the primary medium, or where no single primary medium can be identified, as an object within item 15 of the table in clause 5.4 (any object of fine and decorative art not otherwise covered by an item of the table in clause 5.4).

For example, a person might seek to export a 50-year-old artwork that was ‘Australia-related’ and created using a mixture of oil paint and watercolours. If the primary medium could be ascertained to be oil painting, then the work would be a Class B object only if the current Australian market value of the object was $350,000, in accordance with item 4 of the table in clause 5.4. However, if the primary medium of the work was ascertained to be watercolour, the work would be a Class B object if the current Australian market value was at least $40,000, in accordance with item 1 of the table in clause 5.4. If no primary medium could be identified, the work would be a Class B object if the current Australian market value was at least $10,000 in accordance with item 15 of the table in clause 5.4.

Clause 5.5 provides that, notwithstanding clauses 5.2 to 5.4, an object is not in this category (and therefore not on the Control List) if it is owned by the person who created the object. This will ensure that the ability of artists to deal with their own work is not impeded.

Clause 5.6 provides that, for the purposes of Part 5, the term ‘Australia-related object’ means an object designed or made:

1. in or outside Australia by an Australian; or
2. in Australia by a foreign person who , at some time, worked or resided in Australia; or
3. outside Australia by a foreign person, if the object incorporates Australian motifs or subject matter, or is otherwise relevant to Australia.

*Part 6—Objects of documentary heritage*

Clause 6.1 provides that this Part lists objects of the category ‘Objects of documentary heritage’.

Clause 6.2 provides that an object is in this category if it is a document that:

1. is of significance to Australia; and
2. at least 30 years old; and
3. is not represented in at least 2 public collections in Australia by an object of equivalent quality.

Clause 6.3 provides that all objects in this category are Class B objects.

Clause 6.4 contains definitions of the term ‘document’ and ‘government records or archives’ for the purposes of the Part.

*Part 7—Numismatic objects*

Clause 7.1 provides that this Part lists objects of the category ‘Numismatic objects’.

Clause 7.2 provides that an object is in this category if it is:

1. a Victoria Cross medal awarded to a person mentioned in clause 7.3; or
2. an object of a kind mentioned in any of paragraphs 7.4(b) to (e) that:
   1. is of significance to Australia; and
   2. has a current Australian market value of at least $15,000; and
   3. is not represented in at least 2 public collections in Australia by an object of equivalent quality.

Clause 7.3 lists a number of Victoria Cross medal recipients and provides that a Victoria Cross medal awarded to any of those persons is a Class A object unless it is owned, or held on loan, by the Commonwealth or a principal collecting institution. This will allow, for example, a Victoria Cross medal in the collection of the Australian War Memorial to be temporarily exported for commemorative purposes.

The Commonwealth is intended to include Departments of State, such as the Department of Defence, but is not intended to have a restrictive meaning. The term ‘principal collecting institution’ has the meaning given in section 3 of the Act by operation of subsection 13(1) of the *Legislation Act 2003*. The term is defined in that section to mean any of the following established under a law of the Commonwealth, a State or a Territory:

1. a public art gallery; or
2. a public museum; or
3. a public library; or
4. public archives.

For example, a Victoria Cross medal awarded to a person listed in clause 7.3 should not be a Class A object where owned or held on loan by the Australian War Memorial, which is a statutory corporation established by the *Australian War Memorial Act 1980*.

Clause 7.4 lists the other kinds of objects that will be included in this category for the purposes of paragraph 7.2(b) (providing they meet the significance test, market value threshold and representation test in paragraph 7.2(b)), and that they will be Class B objects. For avoidance of doubt, a Victoria Cross medal awarded to a person mentioned in clause 7.3 that is owned or held on loan by the Commonwealth will be a Class B object regardless of whether it meets the tests and threshold in paragraph 7.2(b).

The result is that Victoria Cross medals that would otherwise be Class A objects but are owned or held on loan by the Commonwealth or a principal collecting institution are Class B objects, and may therefore be able to be temporarily exported, i.e. for the purposes of public exhibition and commemoration.

Paragraph 7.5(a), however, provides that a Victoria Cross medal awarded to a person mentioned in clause 7.3 is not in this category (and therefore not on the Control List), notwithstanding clauses 7.2 to 7.4, if it is:

1. owned by the person to whom the award was made, or, in the case of a posthumous award, the person’s next of kind; and
2. not held on loan by the Commonwealth or a principal collecting institution.

Paragraph 7.5(b) also provides that a medal or decoration mentioned in paragraph 7.4(b), or a citation or other document or insignia mentioned in paragraph 7.4(c) that relates to such a medal or decoration, is not in the category (and therefore not on the Control List), notwithstanding clauses 7.2 and 7.4, if it is owned by the person to whom the award was made or, in the case of a posthumous award, by the next of kin of that person. This would include any Victoria Crosses awarded to people not listed at Clause 7.3, which may otherwise be on the Control List by operation of paragraph 7.4(b).

*Part 8—Philatelic objects*

Clause 8.1 provides that this Part lists objects of the category ‘Philatelic objects’.

Clause 8.2 provides that an object is in this category if it is:

1. of significance to Australia; and
2. of the kind mentioned in clause 8.3; and
3. an object of which no more than 2 examples are known to exist in Australia; and
4. not represented in at least 2 public collections in Australia by an object of equivalent quality.

Clause 8.3 provides that all objects in this category are Class B objects, and lists the kinds of objects that will be included in this category for the purposes of paragraph 8.2(b).

*Part 9—Objects of historical significance*

Clause 9.1 provides that this Part lists objects of the category ‘Objects of historical significance’.

Clause 9.2 provides that an object is in this category if it is:

1. an object of the kind mentioned in clause 9.3; or
2. an object of the kind mentioned in clause 9.4 that is:
   1. associated with a person, activity, event, place or business enterprise, notable in Australian history; and
   2. at least 30 years old; and
   3. not represented in at least 2 public collections in Australia by an object of equivalent quality.

Clause 9.3 provides that each piece of the suit of metal armour worn by Ned Kelly at the event known as the siege of Glenrowan in Victoria in 1880 is a Class A object.

Clause 9.4 provides that objects in this category, other than objects mentioned in clause 9.3, are Class B objects, and lists the kinds of objects that will be included in this category for the purposes of paragraph 9.2(b).

Clause 9.5 sets of the meaning of the terms ‘Australian military history’ and ‘objects of heraldry’ for the purposes of Part 9.

Schedule 2 – Repeals

Item 1 of Schedule 2 repeals the Protection of Movable Cultural Heritage Regulations 1987, which are remade by these Regulations.