

THE PARLIAMENT OF THE COMMONWEALTH  
OF AUSTRALIA

HOUSE OF REPRESENTATIVES

Protection of Movable Cultural Heritage Bill 1985

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Arts,  
Heritage and Environment, the Hon. Barry Cohen)



## OUTLINE

The purpose of the Bill is to provide for the protection of Australia's heritage of important movable cultural objects by introducing export controls and to extend protection to the cultural heritage of other countries through import controls.

Implementation of the Act will enable Australia to become a party to the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.

The legislation will replace existing provisions of the Customs Act 1901 concerning the import and export of certain cultural items by a more comprehensive and more readily accessible scheme.

Under the Bill the export of Australian protected objects is prohibited unless an appropriate permit or certificate has been issued by the Minister. A National Control List of protected cultural property will identify categories of objects prohibited from export or requiring export authorization. On receiving an application for a permit or certificate the Minister will refer it to a committee which in turn will submit the application for expert examination by appropriately qualified people. On receipt of expert advice the committee will submit a report to the Minister with recommendations concerning the granting of a permit or certificate. The overriding criterion which will determine whether a permit should be granted will be that the loss of the object would significantly diminish the cultural heritage of Australia.

Under the legislation an Australian protected object exported without a permit will be forfeited to the Commonwealth, thus providing the Commonwealth with the right to recover the object

overseas. Where there is an attempt to export an Australian protected object without a permit that object will be liable to forfeiture. The Bill provides a mechanism whereby the owner will be served with a notice advising of the seizure of the object and of the right of that person to recover possession of the object.

Imported objects forming part of the cultural heritage of a foreign country and so recognised under the law of that country will not be seized unless a formal request to return the object has been received from the government of that country.

The Bill is thus designed to recognise an individual's right to enjoyment of property whilst establishing the nation's right to restrict the movement of that property where it represents an irreplaceable part of the cultural heritage.

A Fund is established under the Bill to facilitate acquisition of objects prohibited from export under the legislation. This will provide an alternative market for the disposal of Australian protected objects prohibited from export by the operation of this Bill.

The primary sanction in the Bill to discourage unlawful export or import of important cultural heritage objects will be loss of the object through seizure or forfeiture. The penalties indicate the seriousness of knowingly exporting an object considered to be an irreplaceable part of Australia's cultural heritage and to a degree reflect the substantial prices obtainable internationally for objects which form part of the national cultural heritage of Australia or foreign countries.

#### Financial Implications

Funds will be required for administration of the export and import controls and the National Cultural Heritage Fund.

Costs and staff associated with the development and implementation of the legislation will be met from within existing departmental resources and approved portfolio targets.

The Committee will have certain administrative costs which will include provision for publicity to ensure that the controls are widely known and fully understood. Costs in 1985-86 will be limited to administrative measures relating to the implementation of the legislation and are estimated to be \$50,000.

Estimated costs for 1986-87 are \$200,000 for staffing, administration and publicity. The amount to be provided to the National Cultural Heritage Fund will be a matter for the Government in the Budget context.



## NOTES ON CLAUSES

### PART 1 - PRELIMINARY

#### Clause 1: Short title

#### Clause 2: Commencement

This clause provides for the legislation to come into effect on a date to be fixed by Proclamation.

#### Clause 3: Interpretation

Sub-clause 3 (1) contains the terms and expressions used in the legislation.

Sub-clause 3 (4) provides that for the purposes of the legislation a body corporate is liable for any persons in its employ or concerned in the management where such a person has some knowledge or is acting on behalf of the body corporate.

Sub-clause 3 (5) provides that movable cultural heritage in relation to a foreign country is a reference to objects that are of importance to that country, or part of that country, for ethnological, archaeological, historical, literary, artistic, scientific or technological reasons or such as are prescribed.

Sub-clause 3 (6) extends the definition of export or import of objects to include objects entering into Australia for the purpose of transshipment or transit or as part of the stores or equipment of a vessel or aircraft.

#### Clause 4: Act to bind Crown

This clause provides that the Act will bind the Crown in right of the Commonwealth, the States, the Northern Territory and Norfolk Island.

#### Clause 5: Application

This clause provides that the legislation will apply both within and outside Australia.

#### Clause 6: Extension to Territories

This clause provides for the application of the legislation to every external Territory other than Norfolk Island.



## PART II - CONTROL OF EXPORTS AND IMPORTS

### Division 1 - Exports

#### Clause 7: Movable cultural heritage of Australia

This clause defines what is meant in this Bill by the movable cultural heritage of Australia. It is a comprehensive description designed to ensure that the cultural heritage of Australia embraces a wide range of material and is not confined to objects of fine art. The definition is consistent with that provided by UNESCO for member nations party to the Convention.

In essence, a reference to movable cultural heritage of Australia is a reference to objects that are of importance to Australia, for amongst other reasons ethnological, archaeological, historical, literary, artistic, scientific or technological reasons, being objects falling into one or more categories specified in the Bill, e.g. objects recovered from the sea, objects relating to members of the Aboriginal race of Australia or the indigenous people of the Torres Strait Islands, objects of fine art, objects of military interest, objects of scientific or technological interest.

The list of categories is not exhaustive. Provision is made in sub-clause 7(1) for the possibility of adding further categories to those listed.

#### Clause 8: National Cultural Heritage Control List

This clause provides for the drawing up of categories of protected cultural material to be known as the National Cultural Heritage Control List, to be prescribed in regulations. The List

will be based on the categories given in clause 7 and will set out for each category those criteria which will be used to determine whether or not an object falling within that category may be judged to be of such importance that its loss would significantly diminish the cultural heritage of Australia and should therefore become subject to export controls.

The criteria will vary with each category, but are likely to include such factors as age, value, rarity, historical association and availability of similar objects in public collections.

Sub-clause 8 (2) provides for the division of the Control List into two classes, A and B. This division will apply to all categories.

Class A objects will be those for which a permit to export will not be granted except in one circumstance. If a Class A object is already located outside Australia and its owner wishes to import it into Australia temporarily, and if it is granted a certificate of exemption under clause 12, then that Class A object may be exported again from Australia.

Class B objects will be those for which a permit to export may be granted. Class B objects may be exported from Australia only in accordance with a permit granted under clause 10 or with a certificate of exemption granted under clause 12.

The categories and criteria of the National Cultural Heritage Control List will expand and refine the application of export controls on cultural heritage objects at present exercised under the Second and Twelfth Schedules of the Customs (Prohibited Exports) Regulations made under the Customs Act 1901. The object is to ensure that a wider range of cultural material will be protected, although refusal to grant an export permit will be applied only to objects of outstanding significance to the cultural heritage.

### Clause 9: Unlawful exports

This clause prohibits the export or attempted export of Australian protected objects except in accordance with a permit or certificate granted by the Minister under clauses 10 or 12. If an object is exported then, by virtue of sub-clause 9 (1), that object will be immediately forfeited to the Commonwealth. Sub-clause 9 (2) provides that an attempt to export an Australian protected object without a permit or certificate will make that object liable to forfeiture. Sub-clause 9 (5) provides that a person shall be taken to attempt to export an object if that person conveys, or has possession of, that object with intent to export it or knowing that it is intended to be exported. Sub-clause 9 (4) defines "export" as meaning the point in time when a vessel or aircraft carrying the object is commencing its departure out of Australia or, where the object has been delivered to the control of the Australian Postal Commission, when the movement of that object has commenced.

Sub-clause 9 (3) will make it an offence to knowingly export or attempt to export an Australian protected object except in accordance with the terms of a permit or certificate or to knowingly contravene a condition of a permit or certificate. Such an offence will be punishable by a fine of up to \$100,000 or imprisonment for up to 5 years or both, in the case of a natural person. In the case of a body corporate, the offence is punishable by a fine of up to \$200,000. These fines are comparable to those applying for deliberate contravention of export provisions designed to protect endangered species under the Wildlife Protection (Regulation of Exports and Imports) Act 1982.

The provision in this clause for forfeiture of any object which is exported in contravention of this legislation will replace, on proclamation, the existing powers of forfeiture of cultural

objects prohibited for export under the Second and Twelfth Schedules of the Customs (Prohibited Exports) Regulations made under the Customs Act 1901.

The object of forfeiture in the case of export without a permit, or liability to forfeiture in the case of an attempted export, is to enable the Commonwealth to gain possession of objects of great cultural significance which would otherwise be lost to Australia through unlawful export. It should be noted that under paragraph 38(b), the Minister has the power to dispose of a forfeited object, which would include the power to return in appropriate circumstances a forfeited object to the former owner.

As the primary purpose of the legislation is to protect the national cultural heritage of Australia by keeping cultural objects of outstanding importance to Australia in Australia, a distinction is made for the purposes of prosecution between persons who, in all innocence, export an Australian protected object without a permit and persons who knowingly export or attempt to export without a permit; only the latter will be subject to prosecution by virtue of sub-clause 9 (3).

#### Clause 10: Grant of permits

This clause provides for the granting by the Minister of a permit to export Class B objects (so identified by reference to the Control List) subject to whatever conditions the Minister may impose.

A person may apply to the Minister in writing for a permit to export an Australian protected object in accordance with a form to be prescribed in the regulations or a form approved by the Minister. On receipt of an application for a permit to export a Class B object, the Minister shall refer it to the National Cultural Heritage Committee for advice (the Committee is established by clause 15).

The Committee shall refer the application to one or more examiners expert in the category of material into which the object falls. The examiner shall make a written report on the application to the Committee. The Committee shall forward to the Minister this report, together with any recommendations it may wish to make. The Minister shall consider the written report of the examiner and any recommendations from the Committee and then either grant a permit to export the object, with or without conditions, or refuse to grant a permit.

When considering the application, the expert examiner, the Committee and the Minister shall all take into account, amongst other things, the reasons listed in clause 7 which are relevant to the object the subject of the application and whether or not for those reasons as elaborated in the categories and criteria prescribed in the Control List the object is of such importance that its loss will significantly diminish the cultural heritage of Australia.

If the expert examiner or Committee is satisfied that the object is of such importance, then the expert examiner or Committee may recommend against granting a permit to export the object permanently. If the Minister is equally satisfied the Minister may refuse a permit to export the object permanently. The qualification "permanently" is required so as to enable the Minister to grant a permit to take an Australian protected object out of Australia for temporary purposes such as exhibition, conservation, study or other short term reasons and in such instances the Minister will grant a certificate rather than a permit (Clause 12).

If the Minister refuses to grant a permit to export an Australian protected object the Minister must, within a period to be prescribed in the regulations, notify the applicant in writing of that refusal and of the reasons for the refusal. The decision to

refuse the grant of a permit is subject to review by the Administrative Appeals Tribunal (Clause 48).

#### Clause 11: Permits

This clause provides that a permit to export an Australian protected object granted under clause 10 shall be in writing and in the form prescribed in regulations or, if no form is prescribed, in a form approved by the Minister. By virtue of sub-clause 11 (2) the permit shall come into force on the date on which it is granted and remains in force either for the period specified in the permit or indefinitely.

#### Clause 12: Certificates of exemption

This clause provides for the Minister to grant a certificate of exemption authorising the export of an object falling within the categories protected by the Control List where that object is normally located outside Australia.

If a person or an institution wishes to import into Australia temporarily (for example, for exhibition or conservation purposes) an Australian protected object, the person or institution will need a certificate authorising the subsequent export of that object from Australia. The certificate of exemption must be applied for before the object is imported into Australia.

An application must be made in writing in the prescribed form or, if there is no prescribed form, in a form approved by the Minister. The Minister may grant a certificate, subject to any conditions as the Minister may specify, or refuse to grant a certificate.

If the Minister grants a certificate, it will be issued in writing and in the prescribed form, or if no form is prescribed,

in a form approved by the Minister. By virtue of sub-clause 12 (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.

If the Minister refuses to grant a certificate the Minister must, within a period to be prescribed in regulations, notify the applicant in writing of the refusal and of the reasons for the refusal.

The decision to refuse to grant a certificate of exemption is subject to review by the Administrative Appeals Tribunal (Clause 48).

Clause 13: Variation, etc, of conditions of permit or certificate

This clause provides for the conditions of permits or certificates of exemption which the Minister has granted under either clauses 10 or 12 to be varied at any time while the permit or certificate is in force, as the case may be. A variation will take effect when written notice of the variation is served on the holder of the permit or certificate or on a date specified in the notice.

The Minister under this clause may also impose a condition, revoke or vary an existing condition or the period specified or revoke in entirety the permit or certificate. The Minister shall only exercise the power to vary a condition in relation to a certificate where the holder of that certificate has so applied in writing in the prescribed form or in a form approved by the Minister. An exercise of power under this clause is subject to review by the Administrative Appeals Tribunal (Clause 48).

## Division 2 - Imports

### Clause 14: Unlawful Imports

This clause provides for the reciprocal protection of the movable cultural heritage of other countries which are parties to the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, or countries with which Australia bilateral agreements the purpose of which is to protect objects exported from a foreign country. Where an object forms part of the moveable cultural heritage of a foreign country and it is has been unlawfully exported from that country and imported into Australia, that object is liable to forfeiture.

Any person knowingly importing such a protected object, being an unlawful export of a foreign country, is guilty of an offence punishable by a fine of up to \$100,000 or by imprisonment of up to 5 years, or both. In the case of a body corporate the offence is punishable by a fine of up to \$200,000.

A prior condition of the enforcement of these provisions is an official request from the government of the country concerned (Clause 41). As set down in the terms of the 1970 UNESCO Convention, a country making such a request for the return of an illegally exported cultural object must be prepared to provide compensation to an innocent third party purchaser.



### Part III - Administration

#### Clause 15:

This clause establishes the National Cultural Heritage Committee.

#### Clause 16: Functions of Committee

This clause provides for the functions of the National Cultural Heritage Committee (the Committee) which fall into two categories:

- (a) the provision of advice to the Minister, either at the Minister's request or of its own initiative, on the general operation of the Act, the content of the Control List and the operation of the National Cultural Heritage Fund; and
- (b) the maintenance of the register of expert examiners referred to in clause 22. The Committee will also cooperate with appropriate authorities of the Commonwealth, States or Territories and with other organisations and individuals on matters relating to its functions.

#### Clause 17: Constitution of Committee

This clause provides for the appointment by the Minister of the members of the Committee, the composition of the Committee, and the terms and conditions of appointment of the members. There shall be 10 members, including the Chairperson. Four members will represent the main public collecting institutions - museums, galleries, libraries and archives. There will be a nominee of the Minister for Aboriginal Affairs, a member of the Australian Vice-Chancellors' Committee and 4 other members with experience relevant to the cultural heritage.

Members shall hold office for 4 years and are eligible for re-appointment.

The Minister shall designate one of the members to be Chairperson.

Exercise of a power or performance of a function by the Committee is not to be invalidated by irregularities in the composition of the Committee for limited periods, as specified in sub-clause 17 (5).

#### Clause 18: Removal and resignation

This clause provides for the removal or the resignation of members of the Committee on such grounds as misbehaviour or physical or mental incapacity or where, with respect to the nominee of the Minister for Aboriginal Affairs, that Minister so requests.

#### Clause 19: Remuneration and allowances

This clause provides for the payment of remuneration and allowances to members of the Committee in accordance with the determination of the Remuneration Tribunal, other than those members who are full-time public servants.

#### Clause 20: Disclosure of interests

This clause provides for the disclosure by members of any direct or indirect pecuniary interest in matters coming before the Committee and for the procedures to be followed in the event of such a disclosure.

#### Clause 21: Meetings

This clause provides for the frequency and method of convening meetings of the Committee, specifying a quorum of 5 members and the procedures which such meetings are to follow.

#### Clause 22: Register of expert examiners

This clause provides that the Committee shall maintain a register of persons which it determines are expert examiners for the purposes of this Bill. The expert examiners may be individuals, whether resident in Australia or outside Australia, corporate bodies or associations of persons.

#### Clause 23: Expert examiners

This clause provides that it is the function of an expert examiner to advise the Committee on matters referred to the expert examiner by the Committee. The examiners will be expert in ethnological, archaeological, historical, literary, artistic, scientific or technological fields and will be able to advise on whether objects proposed for export fall within the categories and criteria of the Control List.

#### Clause 24: Delegation

This clause provides that the Minister may delegate the Minister's powers other than the power of delegation.

Instruments of delegation are to be in writing. A delegation by the Minister does not prevent the Minister from exercising the Minister's powers under the Bill.

#### PART IV - NATIONAL CULTURAL HERITAGE FUND

##### Clause 25: National Cultural Heritage Fund

This clause establishes the National Cultural Heritage Fund, the purpose of which is to facilitate the acquisition of Australian protected objects and for associated purposes.

Details relating to the following matters may be prescribed in the regulations:

- (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 purpose 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 of the Fund.

##### Clause 26: Taxation

The clause provides that income and transactions of the Fund are exempt from taxation under any law of the Commonwealth, States or Territories.

## PART V-ENFORCEMENT OF ACT

### Clause 27: Interpretation

This clause provides that seizure for the purposes of the legislation occurs when the goods are delivered to an inspector by a Customs Officer. In this Part "forfeiture", unless otherwise expressed, means forfeited or liable to forfeiture.

### Clause 28: Inspectors

This clause provides for the appointment of inspectors by the Minister. Members of the Australian Federal Police and members of the police forces of the States or external Territories are ex officio inspectors.

### Clause 29: Identity cards

This clause provides for the issue of identity cards to inspectors by the Minister and specifies the circumstances requiring the return of those cards.

### Clause 30: Search warrants

By this clause a Magistrate may issue a search warrant based on an information on oath laid before him, authorising an inspector to enter, by force if necessary, and search any premises, structure, vessel, aircraft, or vehicle and seize anything which the inspector believes to be connected with an offence. This warrant will apply only to things alleged to be in or on the premises at the time the warrant is issued and for a further period of 24 hours. Search warrants will not be issued unless the Magistrate has all the necessary information and is satisfied that reasonable grounds exist for issuance. A warrant issued under this clause shall state the purpose for which it is issued,

a description of the kind of things authorised to be seized, the time of authorized entry, and the date, not later than one month from issue, when the warrant ceases to have effect. The clause also provides for the warrant to extend to things not specified in the warrant thereby enabling the inspector to seize those things which the inspector believes to be connected with the offence and where the inspector believes such seizure to be necessary to prevent its exportation, importation, concealment, loss or destruction or its use in committing, continuing or repeating the offence. Sub-clauses 30(5) and 30(6) define a thing as being connected with a particular offence if it is a thing in respect of which an offence occurred, affords evidence of that offence or is used or intended to be used for the purpose of the offence. A reference in this clause to a offence also covers the situation where reasonable grounds exist for believing the offence has occurred.

#### Clause 31: Search warrants granted by telephone

Clause 31 provides that an inspector may in urgent circumstances apply by telephone for a search warrant to be issued by a Magistrate. Where a Magistrate is satisfied that reasonable grounds exist for issuing the warrant, it may then be issued and operates as if it were issued under clause 30. If the requirements of this clause are complied with, the terms of the warrant will authorise any search, entry or seizure deemed necessary. The clause specifies the requirements for subsequent confirming documentation. If a warrant issued under this clause is not produced in any court proceedings, or the court is not satisfied that the procedures in the clause have been complied with, the seizure will be unauthorised.

#### Clause 32: Searches in emergencies

Sub-clause 32 (1) provides that an inspector may search a person or enter any land, premises, vessel, aircraft, structure or

vehicle and seize anything the inspector reasonably believes may be connected with a contravention of the legislation without having first obtained a court order or warrant, if the inspector reasonably believes such actions are necessary to prevent the exportation or importation of that thing or the concealment, loss or destruction of any such thing, and in circumstances where the seriousness and urgency of the situation justify immediate action.

Under sub-clause 32 (2), an inspector may also, in the same circumstances as in sub-clause 32 (1) stop any person or vessel, aircraft or vehicle. Sub-clauses 30 (5) and 30 (6) apply in relation to this clause.

#### Clause 33: Powers of arrest

This clause provides that an inspector may, without warrant, arrest any person if the inspector has reasonable grounds to believe that the person is committing or has committed an offence against this legislation and that proceedings against the person by summons would not be effective. A person so arrested must forthwith be brought before a Magistrate or other proper authority. Failure to provide true evidence of name and address on request constitutes "reasonable grounds" for believing that a summons would not be effective.

#### Clause 34: Seizure of protected objects

This clause provides that the inspector may seize a protected object that the inspector believes on reasonable grounds to be forfeited.

#### Clause 35: Power of retention

This clause provides that a thing seized (such as relevant evidence, for example) may be retained until -

- (a) in the case of a unlawfully exported Australian protected object, the court orders the return of the object or it is otherwise disposed of;
- (b) in the case of any other protected object, the court orders the return of the object or the object is forfeited;
- (c) in the case of any other thing, the end of 60 days or the end of court proceedings where instituted.

Sub-clause 35(2) provides that the Minister may, in writing, authorise anything seized (other than a protected object that has been forfeited) to be released to the owner or the person who had possession, custody or control of the thing immediately before it was seized.

#### Clause 36: Notice of seizure

This clause provides, in sub-clause 36(2), that as soon as practicable after seizure of a protected object, the inspector shall serve on the owner or the person who had custody of the object immediately before it was seized, a notice in writing identifying the object, the date of seizure, the reasons for the seizure and the person's right to recover the object provided for in clause 37. The notice shall also indicate that should the person fail to respond by either claiming the object or instituting proceedings for recovery, the object is forfeited.

Sub-clause 36(3) provides that an inspector is not required to serve a notice if the inspector has insufficient information to do so.

Sub-clause 36(4) provides that where a notice has not been served, yet within 30 days the owner provides sufficient information for such a notice to be served the inspector shall be advised accordingly. This means that the inspector would then be in a position to provide a notice under sub-clause 36(2).



Sub-clause 36(5) provides that when a protected object is seized on the grounds that it is liable to forfeiture, the object is forfeited within 30 days of service of a notice under sub-clause 36(2) unless the owner gives a notice to the Minister or a person designated by the Minister claiming the object, or institutes proceedings for recovery.

Sub-clause 36(6) provides that if a notice has not been provided under sub-clause 36(2) and a person entitled to be served with such a notice has not provided the Minister or a person designated by the Minister with sufficient information to enable the notice to be served, the object is forfeited.

Sub-clause 36(7) provides that where an owner gives notice claiming the object, the Minister or a person designated by the Minister shall in turn give that person a notice specifying that should that person fail to bring an action for recovery of the object within 4 months the object, is forfeited.

#### Clause 37: Court proceedings

Sub-clause 37(1) provides that where a protected object has been seized and the object has not been forfeited, the owner or the person who had possession, custody or control of the object immediately before seizure may institute proceedings for recovery on the ground that the object is not forfeited or liable to be forfeited.

Sub-clause 37(2) provides that where a person discontinues an action for recovery of a protected object liable to forfeiture, that object is forfeited.

Sub-clause 37(3) provides that in an action for recovery of a protected object the court shall determine , on a balance of probabilities, whether or not the object is one to which sub-

clauses 9(1), 9(2) or 14(1) apply. If the object is one to which sub-clause 9(1) applies, the court shall reject the claim for recovery. If the object is one to which sub-clauses 9(2) or 14(1) apply, the court shall order the object be forfeited, or in any other case, order the return of the object.

Sub-clause 37(4) provides that where a person is convicted of an offence under sub-clauses 9(3) or 14(2), the court shall order the object be forfeited.

#### Clause 38: Result of forfeiture

This clause provides that where a protected object is forfeited, all title and interest vest in the Commonwealth. The object shall be dealt with, and disposed of, in accordance with the direction of the Minister. Any costs incurred by the Commonwealth in transporting or disposing of the object are a debt due to the Commonwealth and may be recovered accordingly in a court of competent jurisdiction.

#### Clause 39: Production of permit

This clause provides that where an inspector believes on reasonable grounds that a person is intending to export or has exported an Australian protected object, the inspector may require the production of a permit. Failure to comply with such a request by a person without reasonable excuse constitutes an offence, punishable on conviction by a fine not exceeding \$1,000.

#### Clause 40: Proof of authority

This clause provides that an inspector must, before being able to exercise any of the powers conferred by clauses 32, 33, 34, 39, or 43, produce proof of authority to a person in all instances except where that inspector is a member of the police force in uniform.

clauses 9(1), 9(2) or 14(1) apply. If the object is one to which sub-clause 9(1) applies, the court shall reject the claim for recovery. If the object is one to which sub-clauses 9(2) or 14(1) apply, the court shall order the object be forfeited, or in any other case, order the return of the object.

Sub-clause 37(4) provides that where a person is convicted of an offence under sub-clauses 9(3) or 14(2), the court shall order the object be forfeited.

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#### Clause 40: Proof of authority

This clause provides that an inspector must, before being able to exercise any of the powers conferred by clauses 32 33, 34,39, or 43, produce proof of authority to a person in all instances except where that inspector is a member of the police force in uniform.

Clause 41: Foreign country to request return of objects

This clause provides that inspectors may not exercise any powers conferred by this Part 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 that foreign country a request for the return of the object.

Similarly, no proceedings can be instituted for illegal import of a protected object of a foreign country unless the Commonwealth has received from the Government of that foreign country a request for the return of the object.

In any proceedings, production of a document signed by the Secretary of the Department which states that the Commonwealth has received such a request is prima facie evidence of the facts stated.

Clause 42: False statements

This clause provides that it is an offence for a person knowingly to make false or misleading statements in connection with an application for a permit or to furnish documents that the person knows to be false or misleading. The penalty for a natural person is a fine not exceeding \$5,000 and, for a body corporate, a fine not exceeding \$20,000. Similarly, it is an offence knowingly to make false or misleading statements or furnish documents that the person knows to be false or misleading to an inspector. The definition of person within this section includes a natural person or a body corporate. The penalty for a natural person is a fine not exceeding \$2,000 and for a body corporate, fine not exceeding \$5,000.

#### Clause 43: Assistance of inspectors

This clause requires an owner or person in charge of property such as premises, a structure, a vessel, aircraft or a vehicle, to provide reasonable assistance on request to an inspector exercising the powers of an inspector conferred under this Part in relation to the property.

Non-compliance with a request for assistance from the inspector carries a fine of \$2,000 or 12 months imprisonment or both.

#### Clause 44: Obstruction of inspectors

This clause provides that persons obstructing or hindering without reasonable excuse an inspector in the exercise of the powers conferred by the Act are liable to a fine of \$2,000 or imprisonment for 12 months or both.

#### Clause 45: Personation of inspectors

This clause provides a penalty of a fine not exceeding \$5,000 or imprisonment for a term not exceeding 2 years, or both, where a person falsely represents that he or she is an inspector by words or conduct.

#### Clause 46: Indictable offences

Sub-clause 46 (1) provides that offences against sub-clauses (2), 14(2) or 42(1) or clause 45 are indictable offences. An offence against clauses 43 and 44 is punishable on summary conviction. Notwithstanding sub-clause 46(1), sub-clause 46(2) provides that such offences may be dealt with summarily if the court is satisfied that it is proper to do so and the defendant and the prosecutor agree.

Where a court of summary jurisdiction convicts a person of an

offence referred to in sub-clause 46(1) the following penalties apply:

(a) in the case of an offence against sub-clauses 9 (3) or 14 (2) -

(i) if the person is a natural person - a fine not exceeding \$5,000 or imprisonment for a term 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-clause 42 (1) or clause 45 -

(i) if the person is a natural person - a fine not exceeding \$2,000 or imprisonment for a term not exceeding 12 months, or both; or

(ii) if the person is a body corporate - a fine not exceeding \$10,000.

## PART VI-MISCELLANEOUS

### Clause 47: Annual report

This clause provides for an annual report to be prepared on the working of the legislation and the administration of the National Cultural Heritage Fund as soon as practicable after 30 June in each year, together with financial statements for the financial year in a form approved by the Minister for Finance. The financial statements shall be submitted for scrutiny to the Auditor-General. A copy of the annual report, together with a copy of the Auditor-General's report shall be tabled in Parliament within 15 sitting days of receipt by the Minister of the report from the Auditor-General.

### Clause 48: Administrative Appeals Tribunal

This clause provides for the right of a person who applies for an export permit or a certificate of exemption for review, by the Administrative Appeals Tribunal, of the Minister's decision -

- (a) to refuse to grant an export permit or certificate of exemption;
- (b) to impose a condition or conditions on an export permit or on a certificate of exemption;
- or
- (c) to vary the conditions or period of an export permit or a certificate of exemption.

Notification of a decision made by the Minister in respect of an export permit or a certificate of exemption must also include a statement that the person may apply to the Administrative Appeals Tribunal for a review of that decision.

Notwithstanding this provision, if such a statement is not included in the notification of the Minister's decision, that decision will remain valid.

Clause 49: Regulations

This clause provides that the Governor-General may make regulations prescribing matters required or permitted to be prescribed or convenient or necessary for giving effect to the Act.