

NORFOLK



ISLAND

PROTECTION OF MOVABLE CULTURAL HERITAGE ACT 1987

[Consolidated as at 1 March 2013
on the authority of the Administrator
and in accordance with
the *Enactments Reprinting Act 1980*]

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Protection of Movable Cultural Heritage Act 1987

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

PART 1 — PRELIMINARY

Short title

1. This Act may be cited as the *Protection of Movable Cultural Heritage Act 1987*.

Commencement

2. This Act shall come into operation on a date fixed by the Administrator by notice published in the Gazette.

Interpretation

3. (1) In this Act, unless the contrary intention appears —
- “aircraft” means a machine that derives support in the atmosphere from the reactions of the air or from buoyancy;
 - “appoint” includes re-appoint;
 - “Australia” includes the external Territories other than Norfolk Island;
 - “certificate” means a certificate in force under section 16;
 - “Chairman” means the Chairman of the Committee;
 - “Chief Executive Officer” means the Chief Executive Officer within the meaning of the *Public Sector Management Act 2000*;
 - “Class A object” means an object included in the class of Class A objects in the Control List;
 - “Class B object” means an object included in the class of Class B objects in the Control List;
 - “Committee” means the Norfolk Island Cultural Heritage Committee established under section 8;
 - “Control List” means the Norfolk Island Cultural Heritage Control List in force under section 15;
 - “Court” means the Court of Petty Sessions;
 - “export” means export from Norfolk Island;
 - “import” means import into Norfolk Island;
 - “inspector” means a person who is an inspector pursuant to section 22;

“licence” means a licence in force under section 17A;

“member” means a member of the Committee;

“permit” means a permit in force under section 17;

“protected object” means, in relation to —

- (a) Norfolk Island - an object that is in a category of objects included in the Control List;
- (b) Australia - an object that is in a category of objects included in the Control List within the meaning of the *Protection of Movable Cultural Heritage Act 1986* of the Commonwealth; and
- (c) a foreign country - a protected object of that country;

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

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

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

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

Crown and Administration bound

- 4. (1) This Act binds the Crown in right of Norfolk Island.
- (2) This Act binds the Administration.

Movable cultural heritage of Norfolk Island

5. (1) In this Act, a reference to the movable cultural heritage of Norfolk Island is a reference to objects that are of importance to Norfolk Island for ethnological, archaeological, historical, literary, artistic, scientific or technological reasons, being objects falling within one or more of the following categories:

- (a) objects recovered from —
 - (i) the Territory of Norfolk Island described in Schedule 1 to the *Norfolk Island Act 1979*;
 - (ii) the territorial waters within the meaning of the *Territorial Waters Act 1926*; or
 - (iii) the seabed or subsoil beneath the territorial waters referred to in subparagraph (ii);
- (b) objects relating to the convicts, free settlers, military and naval personnel associated with the penal settlement and Pitcairn Islanders and their descendants;
- (c) objects of ethnographic art or ethnography;

- (d) military or naval objects;
- (e) objects of decorative art;
- (f) objects of fine art;
- (g) objects of scientific or technological interest;
- (h) books, records, documents or photographs, graphic, film or television material or sound recordings;
- (i) prescribed categories.

(2) The generality of paragraph (1)(i) is not limited by any of the other categories described in subsection (1).

Movable cultural heritage of Australia

6. In this Act, a reference to the movable cultural heritage of Australia is a reference to the movable cultural heritage of Australia within the meaning of the *Protection of Movable Cultural Heritage Act 1986* of the Commonwealth.

Movable cultural heritage of foreign country

7. In this Act, a reference to the movable cultural heritage, in relation to a foreign country, is a reference to objects that are of importance to that country, or to a particular part of that country, for —

- (a) ethnological, archaeological, historical, literary, artistic, scientific or technological reasons; or
- (b) prescribed reasons.

PART 2 — ADMINISTRATION

Cultural Heritage Committee

8. There shall be a committee, to be known as the Norfolk Island Cultural Heritage Committee.

Constitution of Committee

9. (1) The Committee shall consist of 4 persons appointed by the Minister on the recommendation of the Legislative Assembly.

(2) A member —

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

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

(4) The exercise of a power or the performance of a function by the Committee is not invalidated by reason only that there is a vacancy in an office of a member of the Committee.

Functions of Committee

10. The functions of the Committee are to furnish advice to the Minister, either of its own motion or on request made to it by the Minister, in relation to —

- (a) the examination of proposed regulations so far as they relate to the Control List;
- (b) applications for certificates in relation to the export of Class A objects; and
- (c) applications for permits in relation to the export of Class B objects.

Meetings of Committee

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

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

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

(4) Subject to subsection (5), the Chairman shall preside at all meetings.

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

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

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

Disclosure of interest

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

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

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

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

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

Removal and resignation

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

(2) If a member fails, without reasonable excuse, to comply with section 12, the Minister shall terminate the appointment of the member.

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

Delegation by Minister

14. (1) The Minister may, by instrument in writing, delegate to a person any of the Minister's powers and functions under this Act, other than this power of delegation.

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

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

PART 3 — CONTROL OF EXPORTS AND IMPORTS**Norfolk Island Cultural Heritage Control List**

15. (1) Subject to subsection (2), the Regulations shall prescribe a list, to be known as the Norfolk Island Cultural Heritage Control List, of categories of objects that constitute the movable cultural heritage of Norfolk Island and are subject to export control.

(2) The Control List shall divide the objects referred to in subsection (1) into 2 classes, namely —

- (a)** Class A objects, being objects that shall not be exported otherwise than in accordance with a certificate granted by the Minister on the recommendation of the Legislative Assembly; and
- (b)** Class B objects, being objects that shall not be exported otherwise than in accordance with a permit granted by the Minister.

Certificate of permission to export Class A objects

16. (1) A person may apply to the Minister for a certificate of permission to export a Class A object.

(2) An application for a certificate referred to in subsection (1) shall be in writing in a form approved by the Minister.

(3) The Minister shall, after receipt of an application for a certificate, refer the application to —

- (a)** the Committee; and
- (b)** the Legislative Assembly,

and the Assembly shall consider the application and may —

- (c)** recommend, subject to such conditions, if any, as it specifies; or

(d) refuse to recommend,
the grant of a certificate.

(4) In considering an application, the Legislative Assembly —

- (a) shall have regard, among other considerations, to —
 - (i) the reasons referred to in subsection 5(1) that are relevant to the object to which the application relates; and
 - (ii) the advice of the Committee;
- (b) if satisfied that the object is of such importance to Norfolk Island having regard to the reasons referred to in subsection 5(1) that its loss would significantly diminish the cultural heritage of Norfolk Island - shall not recommend the grant of a certificate to export the object permanently; and
- (c) may have regard to the opinion of any person including a person who, in the opinion of the Legislative Assembly, the Minister or the Committee, has special knowledge or expertise in relation to an object or class of objects.

(5) A certificate shall be in writing in a form approved by the Minister and the conditions, if any, referred to in paragraph (3)(c) shall be endorsed on it.

(6) A certificate remains in force for the period specified in the certificate.

(7) Where the Legislative Assembly refuses to recommend the grant of a certificate to export a Class A object, the Minister shall, as soon as practicable after the refusal, cause to be served on the applicant notice in writing of the refusal, setting out the reasons for the refusal.

Permit to export Class B objects

17. (1) A person may, in writing in a form approved by the Minister, apply to the Minister for a permit to export a Class B object.

(2) The Minister may refer an application referred to in subsection (1) to the Committee.

(3) The Minister may, subject to such conditions, if any, as the Minister specifies, grant or refuse to grant a permit.

(4) A permit granted under this section shall be in writing in a form approved by the Minister and the conditions, if any, referred to in subsection (3) shall be endorsed on the permit.

(5) A permit remains in force for the period specified in the permit.

(6) Where the Minister refuses to grant a permit to export a Class B object, the Minister shall, as soon as practicable after the refusal, cause to be served on the applicant notice in writing of the refusal, setting out the reasons for the refusal.

(7) The Minister shall, as soon as practicable after complying with subsection (6), cause a copy of the notice referred to in that subsection to be laid before the Legislative Assembly.

Licence to export protected objects of Australia

17A. (1) A person may apply to the Minister for a licence to export a protected object of Australia to which this section applies.

(2) This section applies to protected objects of Australia that are not protected objects of Norfolk Island.

(3) A licence under this section is not required for the export directly to Australia of a protected object of Australia to which this section applies.

(4) Where the Minister receives an application under subsection (1), the Minister shall refer the application to the Commonwealth Minister.

(5) The Commonwealth Minister shall consider the application and may recommend to the Minister that —

- (a)** a licence be granted, subject to such conditions, if any, as are specified in the recommendation; or
- (b)** a licence not be granted.

(6) The Minister shall grant or refuse to grant a licence in accordance with the Commonwealth Minister's recommendation.

(7) A licence under this section shall be in writing and the conditions, if any, recommended under paragraph (5)(a) shall be endorsed on the licence.

(8) A licence remains in force for the period specified in the licence.

(9) Where the Commonwealth Minister recommends to the Minister that a licence not be granted, the Commonwealth Minister shall, as soon as practicable after the making of the recommendation, provide in writing to the Minister the reasons for the recommendation.

(10) The Minister shall, as soon as practicable after receiving reasons provided by the Commonwealth Minister in accordance with subsection (9) —

- (a)** cause a copy of the reasons to be laid before the Legislative Assembly; and
- (b)** provide a copy of the reasons to the person who made the application to which the reasons relate.

Variation, etc, of conditions and period of certificate, permit or licence

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

- (a)** impose a condition to which the certificate, permit or licence is to be subject;
- (b)** vary or revoke a condition of the certificate, permit or licence;
- (c)** vary the period of effect of the certificate, permit or licence; or
- (d)** revoke the certificate, permit or licence.

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

(3) The Minister shall not exercise a power under subsection (1) in relation to a certificate, or permit or licence except on an application by the holder of the certificate, permit or licence made in writing in a form approved by the Minister.

(4) The Minister shall not exercise a power under subsection (1) in relation to a licence except —

- (a) on application in writing by the holder of the licence; and
- (b) in accordance with a recommendation of the Commonwealth Minister.

Unlawful exports

19. (1) Where a person exports a protected object of Norfolk Island otherwise than in accordance with a certificate or permit, the object is forfeited.

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

(3) A person shall not knowingly —

- (a) export or attempt to export a protected object of Norfolk Island otherwise than in accordance with a certificate or permit ; or
- (b) contravene, or attempt to contravene, a condition of a certificate or permit.

- Penalty:
- (a) if the person is a natural person - 100 penalty units or imprisonment for 5 years or both; or
 - (b) if the person is a body corporate - 200 penalty units.

(3A) Where a person exports a protected object of Australia to which section 17A applies otherwise than in accordance with a licence, the object is forfeited.

(3B) Where a person attempts to export a protected object of Australia to which section 17A applies otherwise than in accordance with a licence, the object is liable to forfeiture.

(3C) A person shall not knowingly —

- (a) export or attempt to export a protected object of Australia to which section 17A applies otherwise than in accordance with a licence; or
- (b) contravene, or attempt to contravene, a condition of a licence.

- Penalty:
- (a) if the person is a natural person — 100 penalty units or imprisonment for 5 years or both; or
 - (b) if the person is a body corporate — 200 penalty units.

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

- (a) the object has been placed on board a ship or aircraft in Norfolk Island with the intention that it be taken out of Norfolk Island by the ship or aircraft and the departure of the ship or aircraft has commenced; or

- (b) the object has been delivered as a postal article into the control of the Norfolk Island postal authorities with the intention that it be sent out of Norfolk Island by post and the movement of the postal article has commenced.

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

(6) For the purposes of this section, a person who exports or attempts to export a protected object of Norfolk Island, or a protected object of Australia to which section 17A applies, shall be taken to have exported, or have attempted to export, the object otherwise than in accordance with —

- (a) in the case of a protected object of Norfolk Island - a certificate or permit; or
- (b) in the case of a protected object of Australia to which section 17A applies - a licence,

unless, before exporting or attempting to export the object, the person produces a certificate, permit or licence authorising the export to the Collector within the meaning of the *Customs Act 1913*.

(7) For the purposes of this section, a person shall not be taken to have exported or attempted to export a protected object of Australia to which section 17A applies by reason only that the person has exported or attempted to export the object directly to Australia.

Unlawful imports

20. (1) Where —

- (a) a protected object of Australia or a foreign country has been exported from Australia or that country;
- (b) the export was prohibited by a law of Australia or that country relating to cultural property; and
- (c) the object is imported,

the object is liable to forfeiture.

(2) A person shall not import an object, knowing that —

- (a) the object is a protected object of Australia or a foreign country that has been exported from Australia or that country; and
- (b) the export was prohibited by a law of Australia or that country relating to cultural property.

- Penalty: (a) if the person is a natural person — 100 penalty units or imprisonment for 5 years or both; or
- (b) if the person is a body corporate — 200 penalty units.

PART 4 — ENFORCEMENT OF ACT**Interpretation**

21. (1) In this Part (except sections 28, 29, 30 and 31), “forfeited” includes liable to forfeiture.

(2) Where, at a particular time, an object is delivered by a Customs officer within the meaning of the *Customs Act 1913* to an inspector or voluntarily surrendered to an inspector by the owner or person having possession, custody or control of an object, the object shall, for the purposes of this Part, be taken to be seized under this Act by the inspector at that time.

Inspectors

22. (1) The Minister may, by instrument in writing, appoint a person to be an inspector for the purposes of this Act.

(2) A member of the Police Force is, by force of this section, an inspector.

Certificate of appointment

23. (1) The Minister shall issue to a person appointed as an inspector a certificate of appointment.

(2) A person who ceases to be an inspector shall return the certificate of appointment as inspector to the Minister as soon as practicable.

Penalty: 2 penalty units.

Search warrants

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

- (a)** to enter on the land or on or into the premises, structure, vessel, aircraft or vehicle;
- (b)** to search the land, premises, structure, vessel, aircraft or vehicle for things of that kind; and
- (c)** to seize any thing of that kind found there that the inspector believes on reasonable grounds to be forfeited or connected with that offence.

(2) A Magistrate shall not issue a warrant under subsection (1) unless —

- (a)** the informant or another person has given to the Magistrate, either orally or by affidavit, such further information, if any, as the Magistrate requires concerning the grounds on which the issue of the warrant is being sought; and
- (b)** the Magistrate is satisfied that there are reasonable grounds for issuing the warrant.

(3) There shall be stated in a warrant issued under this section —

- (a) a statement of the purpose for which the warrant is issued, that shall include a reference to the nature of the forfeited thing or things, or the offence, in relation to which the entry and search are authorised;
- (b) whether entry is authorised to be made at any time of the day or night or during specified hours of the day or night;
- (c) a description of the kind of things authorised to be seized; and
- (d) a date, not being later than 30 days after the date of issue of the warrant, on which the warrant ceases to have effect.

(4) If, in the course of searching, in accordance with a warrant issued under this section, for things that are forfeited or connected with a particular offence, being things of a kind specified in the warrant, an inspector finds any thing that the inspector believes on reasonable grounds to be forfeited or connected with the offence, although not of a kind specified in the warrant, or to be connected with another offence against this Act, and the inspector believes on reasonable grounds that there is a compelling need for the immediate seizure of the thing in order to prevent its exportation, importation, concealment, loss or destruction, or its use in committing, continuing or repeating the offence or in committing the other offence, the inspector may seize that thing.

(5) For the purposes of this section, a thing is connected with a particular offence if it is —

- (a) a thing in respect of which the offence was committed;
- (b) a thing that will afford evidence of the offence; or
- (c) a thing that was used, or is intended to be used, for the purpose of the offence.

(6) A reference in this section to an offence includes a reference to an offence that there are reasonable grounds for believing has been, or will be, committed.

Searches in emergencies

25. (1) An inspector may —

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

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

- (c) the inspector believes on reasonable grounds that it is necessary to do so in order to prevent the exportation or importation of that thing or the concealment, loss or destruction of any thing forfeited or connected with an offence against this Act; and

- (d) the search or entry is made in circumstances of such seriousness and urgency as to require and justify immediate search or entry without the authority of an order of a Court or of a warrant issued under this Act.

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

(3) Subsections 24(5) and (6) apply in relation to this section as they apply in relation to section 24.

Powers of arrest

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

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

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

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

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

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

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

Seizure of protected objects

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

Power of retention

- 28. (1)** A thing seized under this Act may be retained —
- (a) in the case of a protected object seized on the grounds that it is forfeited by virtue of subsection 19(1) or (3A) - until a Court orders the return of the object or the object is disposed of under section 31;
 - (b) in the case of any other protected object - until a Court orders the return of the object or the object is forfeited; or
 - (c) in the case of any other thing - until the end of the period of 60 days after the seizure or, if proceedings involving the thing are instituted within that period, until those proceedings (including an appeal to a Court in relation to those proceedings) are terminated.

(2) The Minister may, by instrument in writing, authorise a thing seized under this Act (other than a protected object that is forfeited) to be released to the owner, or the person who had the possession, custody or control of the thing immediately before it was seized, and thereupon sections 29 and 30 do not apply, or cease to apply, as the case requires, in relation to the thing.

Notice of seizure

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

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

- (a) identifying the object and the date of the seizure;
- (b) setting out the reasons for the seizure;
- (c) setting out the terms of subsection 30(1); and
- (d) where subsection (5) applies - setting out the terms of that subsection and specifying, and setting out the address of, an appropriate person and stating that a notice under that subsection is to be given to that person.

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

(4) Where —

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

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

(5) Where a protected object has been seized on the grounds that it is liable to forfeiture by virtue of subsection 19(2), 19 (3B) or 20(1) and a notice under subsection (2) is served in respect of the object, the object is forfeited unless, within 30 days after the service of the notice, the owner, or the person who had possession, custody or control of the object immediately before it was seized —

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

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

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

the object is forfeited.

(7) Where notice is given under subsection (5) to the appropriate person, the appropriate person shall serve on the person who gave the notice a notice, in writing, setting out the terms of subsection (8).

(8) Where —

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

the object is forfeited.

Court proceedings

30. (1) Where —

- (a) a protected object has been seized under this Act; and
- (b) the object is not forfeited by or under section 29 or this section,

the owner, or the person who had the possession, custody or control of the object immediately before it was seized, may bring an action against the Administration in a Court of competent jurisdiction for the recovery of the object on the ground that the object is not forfeited or liable to be forfeited.

(2) Where —

- (a) a protected object has been seized on the grounds that it is liable to forfeiture by virtue of subsection 19(2), 19(3B) or 20(1);
- (b) a person brings an action for recovery of the object; and
- (c) the person discontinues the action,

the object is forfeited.

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

- (a) the object is forfeited by virtue of subsection 19(1) or (3A); or
- (b) the object is liable to forfeiture by virtue of subsection 19(2), 19 (3B) or 20(1),

and the Court —

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

(4) Where a person is convicted of attempting to export a protected object in contravention of subsection 19(3) or (3C) or of an offence against subsection 20(2) in relation to a protected object, the Court shall order that the object is forfeited.

Result of forfeiture

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

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

Production of permit

32. (1) An inspector may require a person whom the inspector suspects on reasonable grounds —

- (a) of intending to export, of exporting or of having exported a protected object of Norfolk Island - to produce a certificate or permit; or
- (b) except in relation to an exportation directly to Australia, of intending to export, of exporting or of having exported a protected object of Australia - to produce a licence,

authorising the export or to provide evidence of the existence and contents of such a certificate, permit or licence.

(2) A person shall not, without reasonable excuse, fail to comply with a requirement made under subsection (1).

Penalty: 10 penalty units.

Proof of authority

33. An inspector (other than a member of the Police Force who is in uniform) is not entitled to exercise any powers under section 25, 26, 27, 32 or 36 in relation to a person unless -

- (a) if the inspector is a member of the Police Force - the inspector produces, for inspection by the person, written evidence of the fact that the inspector is a member of the Police Force; or
- (b) in any other case - the inspector produces his or her certificate of appointment for inspection by the person.

Foreign country to request return of objects

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

(2) Proceedings for a contravention of section 20 in relation to a protected object of a foreign country shall not be instituted unless the Administration has received from the government of the foreign country a request for the return of the object.

(3) In any proceedings, the production of a document purporting to be signed by the Chief Executive Officer and stating that the Administration has received a request from the government of a specified foreign country for the return of a specified protected object is prima facie evidence of the facts stated.

False statements

35. (1) A person shall not, in connection with an application for a permit, certificate or licence or an application under subsection 18(3) or (4), knowingly make a statement or furnish a document that is false or misleading in a material particular.

- Penalty:
- (a) if the person is a natural person — 50 penalty units or imprisonment for 2 years or both; or
 - (b) if the person is a body corporate — 100 penalty units.

(2) A person shall not, to an inspector exercising powers under this Act, knowingly make a statement or furnish a document that is false or misleading in a material particular.

Penalty for an offence against subsection (2):

- (a) if the person is a natural person — 20 penalty units.
- (b) if the person is a body corporate — 50 penalty units.

Assistance of inspectors

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

Penalty: 20 penalty units or imprisonment for 12 months or both.

Obstruction of inspectors

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

Penalty: 20 penalty units or imprisonment for 12 months or both.

Personation of inspectors

38. A person shall not, by words or conduct, falsely represent that the person is an inspector.

Penalty: 50 penalty units or imprisonment for 2 years or both.

PART 5 — MISCELLANEOUS**Application for review**

39. (1) A person who is aggrieved by the decision of the Minister to refuse to grant a permit under section 17 or a licence under section 17A may, within 14 days after service of the notice of the decision, apply to the Court for a review of the decision.

(2) The Minister shall be the respondent to an application made under subsection (1).

Review by Court

40. (1) In considering an application under section 39, the Court may —

- (a) where the applicant establishes to the Court's satisfaction that the decision of the Minister was unreasonable - revoke the decision and issue a permit or licence; or
- (b) confirm the decision of the Minister.

(2) Where the Court issues a permit or licence under paragraph (1)(a), the permit or licence —

- (a) may be subject to such conditions, if any, as the Court thinks fit and as are endorsed on the permit or licence; and
- (b) remains in force for the period specified in it.

(3) Where an application under section 39 relates to a decision made by the Minister in accordance with a recommendation of the Commonwealth Minister under section 17A, the reasonableness of the decision shall, for the purposes of subsection (1), be considered by the Court as if —

- (a) the decision had been made by the Minister in the discretion of the Minister; and
- (b) the reasons for the Commonwealth Minister's recommendation were the reasons for the decision.

Offences by body corporate

41. (1) Where a body corporate contravenes or is guilty of an offence against this Act, any officer of the body corporate who was in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the commission of the offence, is also guilty of the offence.

(2) For the purposes of subsection (1), “officer” in relation to a body corporate, includes a director, secretary, executive officer, manager or employee of the body corporate.

Regulations

42. The Administrator may make Regulations, not inconsistent with this Act, prescribing matters —

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

NOTES

The *Protection of Movable Cultural Heritage Act 1987* as shown in this consolidation comprises Act No. 20 of 1987 and amendments as indicated in the Tables below.

Enactment	Number and year	Date of commencement	Application saving or transitional provision
<i>Protection of Movable Cultural Heritage Act 1987</i>	20, 1987	1.4.88	
<i>Protection of Movable Cultural Heritage Amendment Act 1987</i>	24, 1987	1.4.88	

[Previously consolidated as at 18 June 2004]

<i>Interpretation (Amendment) Act 2012</i> <i>[to substitute throughout — Commonwealth Minister for Minister; and to substitute Minister for executive member]</i>	14, 2012	28.12.12
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Table of Amendments

ad = added or am = amended rep = repealed rs = repealed and
 inserted substituted

Provisions affected		How affected
3	am	24, 1987
17A	ad	24, 1987
18(1), (2)	am	24, 1987
18(4)	ad	24, 1987
19(3A), (3B), (3C)	ad	24, 1987
19(6)	rs	24, 1987
19(7)	ad	24, 1987
28(1)(a)	am	24, 1987
29(5)	am	24, 1987
30(2)(a)	am	24, 1987
30(3)(a)	am	24, 1987
30(3)(b)	am	24, 1987
30(4)	am	24, 1987
32(1)	rs	24, 1987
34	am	24, 1987
35(1)	am	24, 1987
39(1)	am	24, 1987
40(1), (2)	am	24, 1987
40(3)	ad	24, 1987

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