

Explanatory Statement

Issued by the Authority of the Minister for Arts

Protection of Movable Cultural Heritage Act 1986

Protection of Movable Cultural Heritage Amendment (2025 Measures No. 1) Regulations 2025

Authority

The *Protection of Movable Cultural Heritage Amendment (2025 Measures no. 1) Regulations 2025* is made under section 49 of the *Protection of Movable Cultural Heritage Act 1986* (the Act).

Section 49 of the Act empowers the Governor-General to 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.

Purpose

The purposes of the instrument are to amend the *Protection of Movable Cultural Heritage Regulations 2018* (the existing Regulations):

- to facilitate the temporary export of certain Aboriginal and Torres Strait Islander works to allow for greater opportunities to promote the cultural significance of historical First Nations art internationally; and
- to include in the National Cultural Heritage Control List the names of all Victoria Cross medal holders.

Background

The Act regulates, and by extension protects, Australia's movable cultural heritage, largely through an export control framework, and provides for the return of foreign cultural property that has been illegally exported from a foreign country and imported into Australia. The Act also establishes the National Cultural Heritage Account and the National Cultural Heritage Committee and gives effect to 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*.

Subsection 8(1) of the Act provides that the regulations prescribe a list, known as the National Cultural Heritage Control List (the Control List), of categories of objects that constitute the movable cultural heritage of Australia and are subject to export control. These objects are known as Australian protected objects. The Control List is in Schedule 1 to the *Protection of Movable Cultural Heritage Regulations 2018* (the existing Regulations).

Subsection 8(2) of the Act provides that the Control List divides Australian protected objects into Class A and Class B objects. Class A objects cannot be exported unless accompanied by a certificate of exemption. Certificates of exemption are available for

objects not held in Australia, and where a person wishes to import an object for temporary purposes and subsequently export it. Class B objects are not to be exported otherwise than in accordance with such a certificate of exemption, or in accordance with an export permit. Export permits are for objects held in Australia and are only issued on a temporary or permanent basis if it is determined that exporting the object would not significantly diminish Australia's cultural heritage.

Summary of the *Protection of Movable Cultural Heritage Amendment (2025 Measures No. 1) Regulations 2025*

The *Protection of Movable Cultural Heritage Amendment (2025 Measures No. 1) Regulations 2025* (the amending Regulations) makes minor amendments to Part 5 and Part 7 of the existing Regulations.

Under the existing Regulations, Part 5 of the Control List provides that pre-1901 Aboriginal or Torres Strait Islander artworks, and pre-1960 Aboriginal and Torres Strait Islander sculptures, with a value of at least \$25,000, are Class A objects. This means that such objects are prohibited from export, unless accompanied by a certificate of exemption. As certificates of exemption are not available for objects held in Australia, it is not possible for Australian individuals or institutions to export the Class A pre-1901 Aboriginal or Torres Strait Islander artworks, and pre-1960 Aboriginal or Torres Strait Islander sculptures, in their possession.

The amending Regulations provides that Class A pre-1901 Aboriginal and Torres Strait Islander artworks with a value of at least \$25,000 and Class A pre-1960 Aboriginal sculptures with a value of at least \$25,000 are reclassified as Class B objects if they are owned, or held on loan, by the Commonwealth or a principal collecting institution. Section 3 of the Act defines a principal collecting institution as a public art gallery, a public museum, a public library or a public archives established under a Commonwealth, State or Territory law.

The amendments to Part 5 of the Control List enable a wider range of Aboriginal and Torres Strait Islander artworks to be temporarily exported, under certain limited circumstances and under the stewardship of the Commonwealth or principal collecting institutions, to provide greater international access to historical Aboriginal and Torres Strait Islander art.

Under the existing Regulations, Part 7 of the Control List provides a list of Australian Victoria Cross (VC) and VC for Australia medal holders and states that the medals awarded to these individuals are Class A objects unless they are owned, or held on loan, by the Commonwealth or a principal collecting institution, in which case they are Class B objects. The medals are listed individually, so the Control List should be updated when a new medal is awarded.

The amending Regulations updates the Control List to include the VC for Australia medal awarded to the late Private Richard Leslie Norden on 1 October 2024.

The amendment to Part 7 of the Control List ensures the Control List includes all VC and VC for Australia medals awarded to Australians to date, and provides Private Norden's medal with the same protection as those other VC medals.

The amending Regulations is a legislative instrument for the purposes of the *Legislation Act 2003* and is subject to the default sunseting requirements and disallowance.

The amending Regulations commences the day after it is registered.

Details of the instrument are set out in Attachment A.

Consultation

The department conducted targeted consultation with the National Gallery of Victoria (the Gallery) in relation to its international tour of a major exhibition of First Nations art, scheduled to be shown at venues in North America, Europe and potentially Japan between October 2025 and January 2028. The Gallery provided evidence of support for the proposed amendment to Part 5 from First Nations community members. Other principal collecting institutions supported similar amendments made to Part 5 in 2021, and to Part 7 in 2018 and 2021.

The Office of Impact Analysis was consulted about the proposed amendments to the existing Regulations and advised that a Regulatory Impact Statement is not required. The reference number is O1A25-09679.

Statement of Compatibility with Human Rights

A statement of compatibility with human rights for the purposes of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out at Attachment B.

Details of the *Protection of Movable Cultural Heritage Amendment (2025 Measures No. 1) Regulations 2025*

Section 1 — Name of Regulations

This section provides that the title of the regulations is the *Protection of Movable Cultural Heritage Amendment (2025 Measures No. 1) Regulations 2025* (the Regulations).

Section 2 — Commencement

This section provides for the Regulations to 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* (the Act).

Section 4 — Schedules

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

Schedule 1 — Amendments

This section makes amendments to the classification of certain Aboriginal and Torres Strait Islander artworks, when those objects are owned, or held on loan, by the Commonwealth or a principal collecting institution. It also provides cultural heritage protection for a Victoria Cross (VC) for Australia medal awarded on 1 October 2024.

Part 5 of Schedule 1

Schedule 1 to the *Protection of Movable Cultural Heritage Regulations 2018* (the existing Regulations) contains the National Cultural Heritage Control List (the Control List). The Control List provides categories of objects that constitute the movable cultural heritage of Australia and are subject to export control. As required under subsection 8(2) of the Act, the Control List divides these Australian protected objects into Class A and Class B objects. Class A objects are not to be exported otherwise than in accordance with a certificate of exemption, which may only be granted for objects that are held outside of Australia and where such objects are to be imported and re-exported. Class B objects are not to be exported otherwise than in accordance with such a certificate of exemption, or in accordance with an export permit. Export permits are for objects held in Australia and are only granted if it is determined that the export of the object would not significantly diminish the cultural heritage of Australia.

Part 5 of Schedule 1 to the existing Regulations lists objects of the category 'Objects of fine or decorative art' in either clause 5.3 or clause 5.4. Clause 5.3 provides a table of objects that are Class A objects. Item 1 of this table lists pre-1901 Aboriginal or Torres Strait Islander artworks with a market value of at least \$25,000. Item 2 lists Pre-1960

Aboriginal or Torres Strait Islander bark paintings or sculptures with a market value of at least \$25,000 and not covered by item 1, other than bark paintings owned, or held on loan, by the Commonwealth or a principal collecting institution. Section 3 of the Act defines a principal collecting institution as a public art gallery, a public museum, a public library or a public archives established under a Commonwealth, State or Territory law. Clause 5.4 provides a table of Class B objects.

Items 1 and 3 of the Regulations amend Clause 5.3 and Clause 5.4 of the Control List to provide that Aboriginal or Torres Strait Islander artworks created prior to 1901 with a current Australian market value of at least \$25,000 are Class A objects, unless they are owned, or held on loan, by the Commonwealth or a principal collecting institution, in which case they are Class B objects.

Items 2 and 4 of the Regulations amend Clause 5.3 and Clause 5.4 of the Control List to provide that Aboriginal or Torres Strait Islander sculptures created prior to 1960 with a current Australian market value of at least \$25,000 are Class A objects, unless they are owned, or held on loan, by the Commonwealth or a principal collecting institution, in which case they are Class B objects.

Under the existing Regulations, individuals and organisations in Australia cannot export pre-1901 Aboriginal or Torres Strait Islander artworks, and pre-1960 Aboriginal or Torres Strait Islander sculptures, that have a value of at least \$25,000. The amendments allow such objects to be exported, under certain limited circumstances, to provide greater international access to historical Aboriginal and Torres Strait Islander art.

The amendments to Part 5 of the Control List are limited to objects under the control of the Commonwealth or principal collecting institutions because these institutions have the necessary expertise and experience to manage cultural heritage material to the highest professional standards, as appropriate for items designated as Class A Australian protected objects. Including items on loan to principal collecting institutions facilitates the safe temporary export of comparable Class A pre-1901 Aboriginal and Torres Strait Islander artworks that are held by other institutions, individuals and community organisations that do not meet the definition of a principal collecting institution.

These amendments are intended to support temporary exports of Australian protected objects. Exports of Class B objects held in Australia require a valid export permit issued under either section 10 or section 10A of the Act. Permits under section 10 are in respect to particular objects. Decisions on granting such permits are made by the Minister for the Arts, or their delegate, following assessment and recommendation by the National Cultural Heritage Committee (the Committee) and one or more expert examiners. Subsection 10(6) of the Act states that, in considering an application for an export permit, an expert examiner, the Committee and the Minister shall not recommend the grant of a permit, or grant a permit, as the case may be, to export the object permanently if they are satisfied it is of such importance to Australia, or a part of Australia, that for those reasons its loss to Australia would significantly diminish the cultural heritage of Australia.

Section 10A of the Act allows principal collecting institutions to apply to the Minister for a general permit to export Class B objects that have been accessioned into their collections for a period of up to two years, which can be extended. A condition of the general permit is that Class B objects must only be exported on loan for the purposes of research, public

exhibition or a similar purpose. General permits cannot be used to permanently export objects from Australia. It is expected that principal collecting institutions that have been granted a general permit will use that permit for the temporary export of pre-1901 Aboriginal or Torres Strait Islander artworks, and pre-1960 Aboriginal and Torres Strait Islander sculptures, in their collections. The Act does not allow for the use of a general permit to export Class B objects held on loan by a principal collecting institution. Principal collecting institutions would therefore be required to apply for a permit to authorise the temporary export of such objects under section 10 of the Act.

Part 7 of Schedule 1

Part 7 of the Control List prescribes objects of the category 'Numismatic objects' (a category of objects that includes currency, coins, tokens and medals). Clause 7.3 lists Australian VC and VC for Australia medal holders and states that the medals awarded to these individuals are Class A objects unless they are owned, or held on loan, by the Commonwealth or a principal collecting institution, in which case they are Class B objects.

Item 5 of the Regulations amends Clause 7.3 to add the Victoria Cross for Australia medal awarded to the late Private Richard Leslie Norden on 1 October 2024.

According to the Australian Honours list, Private Norden received the medal "for most conspicuous acts of gallantry in action in the presence of the enemy in the 'AO Surfers' Area of Operations in the Bien Hoa province, Vietnam, on 14 May 1968 during the Battle of Fire Support Base Coral."

The amendment brings the Control List up to date in relation to Victoria Cross medals and provide Private Norden's medal with the same protections as those awarded to other Australians.

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 Amendment (2025 Measures No. 1) Regulations 2025

Overview

This Legislative Instrument is 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*.

This Legislative Instrument will promote increased access to Australian cultural material, and greater international awareness of historical Aboriginal and Torres Strait Islander art, by:

- a) enabling pre-1901 Aboriginal and Torres Strait Islander artworks that are owned or held on loan by the Commonwealth or a principal collecting institution to be temporarily exported on loan to international borrowers for the purposes of research, public exhibition or a similar purpose;
- b) enabling pre-1960 Aboriginal and Torres Strait Islander sculptures that are owned or held on loan by the Commonwealth or a principal collecting institution to be temporarily exported on loan to international borrowers for the purposes of research, public exhibition or a similar purpose.

It will also ensure that the National Cultural Heritage Control List recognises and safeguards all Victoria Cross (VC) and VC for Australia medals awarded to Australians, to date.

Human rights implications

This Legislative Instrument engages with the following rights:

- Right to work in Article 6 of the *International Covenant on Economic, Social and Cultural Rights*
- Right to take part in cultural life in Article 15 of the *International Covenant on Economic, Social and Cultural Rights*
- Right to self-determination in Article 1 of the *International Covenant on Economic, Social and Cultural Rights* and Article 1 of the *International Covenant on Civil and Political Rights*.

Article 6 of the *International Covenant on Economic, Social and Cultural Rights* recognises the right to work. This Legislative Instrument promotes the realisation of this right by supporting the continuing viability of principal collecting institutions in Australia, which provide opportunities for employment in the cultural sector.

Article 15(1) of the *International Covenant on Economic, Social and Cultural Rights* (the Covenant) recognises the right to take part in cultural life. Article 15(2) states that the full realisation of this right shall include steps necessary for the conservation, development

and diffusion of science and culture. Article 15(4) states that parties to the Covenant recognise the benefits to be derived from the encouragement and development of international contacts and cooperation in the scientific and cultural fields.

This Legislative Instrument makes minor amendments to the *Protection of Movable Cultural Heritage Regulations 2018* (the existing Regulations) established under the *Protection of Movable Cultural Heritage Act 1986* (the Act). These amendments will not change the key mechanisms of the existing Regulations and Act, which will continue to promote the realisation of the right to take part in cultural life by safeguarding Australia's movable, cultural heritage, largely through an export control framework. This framework recognises individuals' rights to the enjoyment of the cultural material they own, while regulating the international movement of objects that represent a significant part of Australia's cultural heritage to ensure they are available for future generations. The existing Regulations achieve this by prescribing the National Cultural Heritage Control List (Control List), which lists the categories of objects subject to export control. These objects are designated as Australian protected objects in one of two categories: Class A and Class B. Class A objects are not to be exported otherwise than in accordance with a certificate of exemption, which may only be granted for objects that are held outside of Australia and where such objects are to be imported and re-exported. Class B objects are not to be exported otherwise than in accordance with such a certificate of exemption, or in accordance with an export permit. Export permits are for objects held in Australia and are only granted if it is determined that the export of the object would not significantly diminish the cultural heritage of Australia.

This Legislative Instrument provides flexibility in relation to Class A pre-1901 Aboriginal and Torres Strait Islander artworks, and Class A pre-1960 Aboriginal and Torres Strait Islander sculptures, by allowing for these two categories of objects to be temporarily exported as Class B objects on loan for the purposes of research, public exhibition or similar activities, if they are owned or held on loan by the Commonwealth or a principal collecting institution. This amendment to the current Control List further promotes the right to take part in cultural life by supporting the international exhibition of a wider range of Aboriginal and Torres Strait Islander cultural material, for the enjoyment and benefit of audiences worldwide. Enabling a greater range of objects to be shared with international cultural organisations will contribute to the encouragement and development of international cooperation, and therefore engages with Article 15(4) of the Covenant.

This Legislative Instrument also brings the Control List up to date in relation to VC and VC for Australia medals by including the medal awarded to Private Richard Leslie Norden on 1 October 2024. It will mean that all VC medals awarded to Australians are recognised and equally protected as Class A objects, unless they are owned by the Commonwealth or a principal collecting institution, in which case they are recognised and protected as Class B objects. This amendment engages with Article 15(2) of the Covenant supporting the conservation, development and diffusion of culture.

Article 1 of the *International Covenant on Economic, Social and Cultural Rights* and Article 1 of the *International Covenant on Civil and Political Rights* recognise the right to self-determination, including that groups with a common racial or cultural identity, especially Indigenous peoples, have the right to a level of internal self-determination. This Legislative Instrument will promote the realisation of the right to self-determination

because it will allow Aboriginal and Torres Strait Islander people to more freely pursue their cultural development and the international promotion of their cultural heritage.

The existing Regulations assists in protecting Aboriginal and Torres Strait Islander cultural heritage by preventing its unrestricted export. However, it limits the right to self-determination by imposing export prohibitions on certain categories of Aboriginal and Torres Strait Islander art that apply to all Australians, including Aboriginal and Torres Strait Islander people. This prevents certain categories of important Aboriginal and Torres Strait Islander works of art from being shared with the international community.

By reclassifying pre-1901 Aboriginal and Torres Strait Islander artworks and pre-1960 Aboriginal and Torres Strait Islander sculptures as Class B objects under certain limited circumstances, this Legislative Instrument enables such objects to be temporarily and responsibly exported under the stewardship of the Commonwealth or a principal collecting institution for purposes such as research and public exhibition. It is intended that principal collecting institutions will consult with members of Aboriginal and Torres Strait Islander communities and obtain their support before exporting such objects, and assist Aboriginal and Torres Strait Islander people wishing to export similar objects in their possession. The amendments will provide increased opportunities to internationally promote Aboriginal and Torres Strait Islander culture, enhance understanding of Australian cultural heritage, and enable Aboriginal and Torres Strait Islander people to decide how they wish to share art produced by their ancestors, including with international audiences.

Conclusion

The Legislative Instrument is compatible with human rights as it promotes the realisation of human rights and does not raise any human rights issues.