



Museums Australia is the national association for museums and galleries in Australia.  
ICOM-Australia (National Committee of the International Council of Museums, Paris) is a key partner.

## **Review of *Protection of Movable Cultural Heritage Act 1986*: Museums Australia submission (March 2009)**

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## Introduction

Museums Australia (MA) welcomes the Commonwealth's *Review of the effectiveness and efficiency of the PMCH legislation* (the Review), and appreciates the opportunity to contribute to the review process.

### A. Museums Australia's engagement with the PMCH Review

The Review directly intersects with central issues in MA's organisational vision and guiding objectives:

*for natural and cultural heritage to be valued, sustained and communicated as it represents the shared histories, heritage and identities of all Australians.*

#### For background reference:

- Museums Australia is the national organisation for the museums sector. Members encompass individuals (including volunteers), national and state institutions, as well as local and community-run museums across remote, rural and regional Australia.
- The international (ICOM) definition of *museums* includes galleries, historic sites, keeping places, botanic gardens and zoos – that is, public sector institutions, large and small, dedicated to the conservation, collecting and interpretation of cultural heritage in its broadest aspects.
- The museums sector includes places and their collections, and encompasses the conservation, continuation and communication of Australia's historic, natural and Indigenous heritage: both tangible and intangible.

(See **Attachment 1** for an overview of Museums Australia's national geographic extent and diverse regional footprint.)

### B. Current broad policy and program context of the PMCH Review

From MA's vantage-point, the timeliness and potential outcomes of the PMCH Review have a two-fold importance:

- (i) in the Review's immediate potential to improve current operations of the legislation it addresses; and
- (ii) in the potential improvements (from a broader, longer-term perspective) that Review recommendations could trigger: to open out an analysis of ways in which this particular Commonwealth program relates to and could significantly improve wider measures for the identification, conservation and protection of Australia's cultural heritage.

Having stressed the timeliness and larger potential of the PMCH Review, it is also important to note that it is being conducted within a **fluid and changing environment of wider policy and program initiatives** currently in process or under review by the Commonwealth. These include:

- Collections Council of Australia's current revision and re-publication of ***Significance: A Guide to Assessing the Cultural Heritage of Objects and Collections*** (2001);
- Review of the Collections Australia Network (CAN);
- Review of the *EPBC Act* – focussed on protection of collections associated with places of 'national' and 'Commonwealth' significance;
- Development by the Cultural Ministers Council of the *National Arts and Disability Strategy* (guided by the principles of the UN Convention on the Rights of Persons with Disabilities and affirming the Australian government's commitment to social inclusion) – together with other associated parliamentary inquiries;
- *Cutler Review of Innovation* and the anticipated White Paper response to that Review;
- Preparation of the framework for the *2011 State of the Environment Report* (reporting on cultural heritage).

### **C. Key general points framing MA's response to the PMCH Review**

- (i) MA believes that consideration of the **broader legislative, governance and policy context** within which the PMCH system operates is crucial to harvesting best value through this Review, in addressing the specific PMCH objectives identified.
- (ii) **Australian government policy objectives outlined in the Introduction to the Review's Discussion Paper are not sufficiently connected to the questions raised**  
Museums Australia notes with concern that the two broadest and most overarching of the Government's objectives are not specifically addressed in the Review Discussion Paper.

In MA's opinion, and from the vantage-point of the museums and galleries sector broadly, the two stated Australian government policy objectives (quoted below) are pivotal to any successful achievement of the specific objectives of the PMCH Review:

**Australian government policy objective 1:**

*to protect and conserve Australia's most significant movable cultural heritage and to promote Australian arts and culture;*

**Australian government policy objectives 2:**

*to work in partnership with the states and territories within an effective federal arrangement.*

Museums Australia therefore advocates within this submission that consideration of these two federal policy objectives is crucial to achieving nationally effective solutions to any inefficiencies that may be currently inhibiting the effectiveness of PMCH operations.

Consequently, we have structured the main body of MA's submission in four parts, believing this structure will provide most value to the Review.

## **D. Four-part structure of the body of MA's submission to the Review**

### **Part One: PMCH Review questions – MA responses**

**Part One** addresses briefly each of the **PMCH Review questions**, as set out in the Discussion Paper (and referenced also to the **key issues** raised in **Part Two** of this submission).

MA's comments and recommendations within this section are (a) both specific and detailed, and (b) raise some broader policy issues concerning ideal best approaches to redressing the inefficiencies in the PMCH system – foreshadowing some of the broader **Recommendations** contained within this submission as a whole.

### **Part Two: Analysis of issues associated with the assessment of significance**

The assessment of *significance* (of movable cultural heritage items) is crucial to the PMCH legislation. However achievement of rigorous and authoritative assessment of significance is complex and is dependent on a number of factors.

The following factors are discussed in detail in **Part Two** of the submission:

- 2.1** Assessment of Significance Methodology
- 2.2** National Data Sets: development of and access to appropriate data sets to support the assessment of significance
- 2.3** Establishment of a National Significance Threshold
- 2.4** Establishment of a National Register (of movable cultural heritage)

### **Part Three: Indigenous cultural heritage and policy issues for museums**

Having addressed aspects of Indigenous heritage briefly in **Part One**, following the Discussion Paper framework and sequence of questions, **Part Three** of the submission takes up a number of issues affecting Indigenous heritage in a broader framework. In particular it engages the scope of Museums Australia's long-standing Indigenous policy commitment to improving relations between museums and Indigenous people in the care, representation and public projection of their heritage.

### **Part Four: Need for a national cultural policy framework**

**Part Four** argues the need for a broad national cultural policy framework – as a much needed instrument for shaping goals and achieving outcomes in many areas of government impact on Australia's cultural life and care for heritage nationally, including improved efficiencies in the PMCH program and legislative impacts.

## **E. Executive summary of Recommendations**

### **MA Recommendation 1**

***That a cohesive framework encompassing the sweep of Australia's natural and cultural experience through time should be established to guide the development of all PMCH-associated lists (including the suggested National Register).***

### **MA Recommendation 2 (concerning Indigenous heritage)**

***2.1 That a clear set of protocols be developed in consultation with Indigenous representatives to ensure that appropriate Indigenous expertise and representatives are enabled to have direct cultural input and influence to secure adequate national measures for the protection of Indigenous heritage.***

- We note the set of principles published in *Ask First*, by the former Australian Heritage Commission, but it is not clear if these principles are accepted as standards governing Commonwealth practice.

***2.2 That steps be taken to ensure that the wider public is well informed about the value and sensitivity of Indigenous material culture and the need for appropriate consultation with Indigenous people, especially with regard to its high-order intangible heritage values.***

***2.3 That an explanatory pamphlet concerning Indigenous artworks and cultural objects – a 'plain English guide' to the management of Indigenous heritage (and related ethical policies/codes of practice) – be developed and made widely available for general public awareness and use.***

***2.4 That the Commonwealth work speedily towards determining when and if separate legislation will be drafted to provide specifically for the roles and responsibilities of Indigenous people in the identification and conservation of their cultural heritage nationwide.***

***2.5 That consideration be directed to other Commonwealth programs and legislation concerned with the identification and protection of Indigenous cultural heritage, to achieve more integrated outcomes for communities.***

Such consideration should include:

- recommendations in the Evatt Report
- proposed revision of the Commonwealth *Aboriginal and Torres Strait Islander Heritage Protection Act*
- connection of these instruments with the EPBC Review and management of the National Heritage System (remembering that the EPBC legislation protects movable **heritage** associated with the Indigenous places on the NHL and CHL lists)

### **MA Recommendation 3**

***That an agreed framework and set of guidelines needs to be developed within which the changing parameters affecting monetary value can be articulated and considered.***

### **MA Recommendation 4**

***That a National List of Heritage Objects of outstanding national significance be established, in collaboration with S/T and local governments.***

### **MA Recommendation 5**

***That the Commonwealth ensure that the MPCH system is properly resourced to be able to provide protection and care for all Australian Protected Objects.***

**MA Recommendation 6**

*That a set of protocols be developed to govern the care and protection of Class A objects granted temporary export permits.*

**MA Recommendation 7**

*That the Commonwealth bring together the many different lists and sets of objects of 'national' significance, to analyse the various assessment thresholds currently in use and develop a standardised set of assessment thresholds (local, S/T, national and world significance) – as has been achieved by the Australian Heritage Council for place-based heritage.*

**MA Recommendation 8**

*That the Commonwealth establish two bodies responsible for collections at a national level:*

*(A) a 'COAG Collections Forum' (or similar) – comparable to the Heritage Chairs and Officials of Australia and NZ, or the Cultural Ministers Council Standing Committee*

*(B) an 'Australian Collections Council' (or similar) developed through expansion of the responsibilities of the present Expert Committee advising the PMCH system, to take on similar responsibilities to the Australian Heritage Council in terms of establishing national significance thresholds, and advising on the identification, protection and conservation of Australia's collections.*

**MA Recommendation 9**

*That the Commonwealth exercise leadership and commit to working with S/T and local governments to develop a national cultural heritage policy, and stimulate cohesive program support for the identification, protection, conservation and communication of Australia's cultural heritage.*

## Part One: PMCH Review questions – MA responses

### 1. National Cultural Heritage Control List

#### 1.1 *Does the current Control List capture Australia's most significant cultural objects?*

No, the current Control List does not capture Australia's most significant objects. No List can be definitive, it can only be indicative at a point in time.

All collections registers, inventories, and 'lists' are evolving, in a continuing process, as

- interpretation evolves, and
- new entries shift the balance of established data sets, and influence the national value-setting process.

We suggest that the Control List could and should be reconsidered through the **development of a cohesive framework** encompassing the **sweep of Australia's natural and cultural experience through time**.

Such a framework – for example, **Australian Heritage Themes** – was developed by the former Australian Heritage Commission to shape the then-anticipated National Heritage List.

See: [www.environment.gov.au/heritage/ahc/publications/commission/books/australia](http://www.environment.gov.au/heritage/ahc/publications/commission/books/australia)

See also **Part Two** (below) for analysis of issues associated with the assessment of significance

#### **MA Recommendation 1**

***That a cohesive framework encompassing the sweep of Australia's natural and cultural experience through time should be established to guide the development of all PMCH-associated lists (including the suggested National Register).***

#### 1.2 *Are the Class A objects listed in the Control List still our 'most significant'?*

Museums Australia proposes that the List of Class A Objects most definitely needs revision. The List at present does not adequately cover or represent **people, places or achievements** of national significance.

#### 1.3 *Is the list of Class B objects too broad or too narrow?*

As suggested above, MA considers that a key problem with the Class B Lists is that there is **no cohesive framework to interconnect the Lists effectively**. For example, what aspects and which parts of the national experience, national history and heritage, and national cultural achievements would need to be covered?

#### 1.4 *There have been calls for Part 4 Objects of Applied Science or Technology to be broadened to include space and satellite, alternative energy – solar, nuclear, computing, and medical innovations.*

Agreed. However this is just one example indicating the need, within the management of the PMCH system, for a cohesive framework that would both **more effectively connect**

**established categories** – allowing for **flexible and appropriate creation of new categories** as well as the **appropriate amalgamation of old ones**.

**1.5 Do all categories on the Control List need to remain separately listed? For example, could philatelic objects become a sub-category of Part 9, objects of historical significance?**

This could certainly occur. However, the overarching structure needs to be considered (as suggested above).

Philatelic objects are possibly amongst the very best described and assessed sets of data. Therefore philatelic data sets might sit a little awkwardly within a broader data set that is less authoritatively assessed.

**1.6 Does the Control List allow an appropriate assessment to be made of Indigenous artworks regarded as having exceptional spiritual, cultural and historical significance?**

The Control List regarding Indigenous artworks functions well as a warning that these kinds of objects must be treated differently from other kinds of artworks and objects.

However MA proposes that a number of steps need to be taken to ensure that appropriate cultural consultation occurs, and that the wider public is well informed about the value and sensitivity of Indigenous material culture, especially with regard to its **high-order intangible heritage values**.

(See **Part Three** of this submission for further discussion of this crucially important issue.)

**MA Recommendation 2 (concerning Indigenous heritage)**

**2.6 That a clear set of protocols be developed in consultation with Indigenous representatives to ensure that appropriate Indigenous expertise and representatives are enabled to have direct cultural input and influence to secure adequate national measures for the protection of Indigenous heritage.**

- We note the set of principles published in *Ask First*, by the former Australian Heritage Commission, but it is not clear if these principles are accepted as standards governing Commonwealth practice.

**2.7 That steps be taken to ensure that the wider public is well informed about the value and sensitivity of Indigenous material culture and the need for appropriate consultation with Indigenous people, especially with regard to its high-order intangible heritage values.**

**2.8 That an explanatory pamphlet concerning Indigenous artworks and cultural objects – a ‘plain English guide’ to the management of Indigenous heritage (and related ethical policies/ codes of practice) – be developed and made widely available for general public awareness and use.**

**2.9 That the Commonwealth work speedily towards determining when and if separate legislation will be drafted to provide specifically for the roles and responsibilities of Indigenous people in the identification and conservation of their cultural heritage nationwide.**

**2.10 That consideration be directed to other Commonwealth programs and legislation concerned with the identification and protection of Indigenous cultural heritage, to achieve more integrated outcomes for communities.**

Such consideration should include:

- recommendations in the Evatt Report

- proposed revision of the Commonwealth *Aboriginal and Torres Strait Islander Heritage Protection Act*
- connection of these instruments with the EPBC Review and management of the National Heritage System (remembering that the EPBC legislation protects movable **heritage** associated with the Indigenous places on the NHL and CHL lists)
- connection with the ***Indigenous collections portal*** under development within DEWHA.

## 2. Thresholds and the PMCH Regulations

### 2.1 ***Are the age thresholds still appropriate? Given the pace of technological change, do the age thresholds specified make it likely that significant objects will be lost to Australia?***

As suggested above, MA advocates a new and much more integrated approach to the setting of national significance thresholds – which would encompass the determining of specific parameters such as age thresholds.

Such an approach would aim to achieve a more cohesive framework within which national heritage significance thresholds are developed in general, and within which more specific issues (such as age thresholds) could be determined in a better informed, more consistently applied and effectively regulated manner.

### 2.2 ***Should a new category be introduced to allow the Minister to determine objects of national significance that are under age or monetary thresholds?***

MA suggests that ministerial discretion be provided for within the PMCH Regulations, to determine the status of objects such those indicated – however (again) such ministerial discretion needs to be applied within a clearly articulated framework.

### 2.3 ***At what level should the monetary thresholds for the object categories be set?***

MA believes it is not appropriate to suggest a monetary threshold in the absence of agreed guidelines for the setting of thresholds generally for the PMCH system.

#### ***MA Recommendation 3***

***That an agreed framework and set of guidelines needs to be developed within which the changing parameters affecting monetary value can be articulated and considered.***

### 2.4 ***How often should the thresholds be reviewed and on what basis?***

MA suggests a minimum of every three years – however (again), as suggested above, the timeframe for review should be set within an agreed framework setting out the parameters that determine monetary value.

### 2.5 ***Is ‘current Australian market value’ an appropriate benchmark?***

No. See above. The basis for ‘agreed market value’ should be determined following the articulation of a more coherent regulatory framework.

## 3. Significance and the PMCH Regulations to Australia

**3.1 Should the definition of ‘significance’ in the PMCH Regulations be amended? The criteria developed by the former Heritage Collections Council (now being reviewed by the Collections Council of Australia) are well understood throughout the collections sector – should they be adopted to assess which Australian protected objects should be denied export permits?**

The assessment of significance, as outlined above, is the appropriate process – however as argued below - in **Part Two (2.2)**

The assessment of any object’s national (state or local) significance is fundamentally a **comparative process**, and is dependent on appropriate application of the methodology, and crucially, access to appropriate data sets to enable a comparison to occur.

Therefore, two matters must be addressed:

- agreement as to the appropriate significance assessment methodology, and
- ensuring access to appropriate data sets so the most appropriate comparative assessment can be made.

#### **4. Indigenous objects**

**4.1 Should there be special protection for objects relating to Aboriginal and Torres Strait Islander heritage? Should this also include artwork that is identified as having secret and sacred significance for Aboriginal and Torres Strait Islander community members?**

MA strongly supports the need for ‘special protection’ for objects relating to Aboriginal and Torres Strait Islander Heritage.

As outlined in **Part Three**, such special protection needs to be provided within a set of protocols and guidelines developed in consultation with Indigenous representatives, and in association with the overarching Commonwealth and S/T Aboriginal and Torres Trait Islander Heritage protection legislation.

#### **5. A National Register?**

**5.1 Should a National List of Heritage Objects of outstanding national significance be established?**

MA affirms the value of establishing a **National List of Heritage Objects of outstanding national significance**.

As outlined in **Part Two**, this would require collaboration with S/T and local government authorities to develop a comprehensive national assessment system, including the development of an agreed set of local, S/T, national and indeed world (UNESCO *Memory of the World*) thresholds.

#### **MA Recommendation 4**

**That a National List of Heritage Objects of outstanding national significance be established, in collaboration with S/T and local governments.**

#### **6. Export Permit Applications**

**6.1 Should applicants for export permits under the PMCH Act be required to provide more rigorous documentation, including undertaking some of the**

***research currently undertaken by the expert examiners? Would this assist in streamlining the assessment process?***

MA suggests that applicants should be required to support their application with as detailed an account of the history of their ownership and the provenance of the object as they can provide.

However experience with the *EPBC* Act – and especially public nominations to the National Heritage List – suggests that it is extremely difficult for the general public to understand satisfactorily the complex issues that the Act entails. An example is the concept of a ‘national heritage threshold’.

**6.2 *Should a fee be charged for the processing of permit applications? It would deter frivolous applications.***

MA agrees that the imposition of a processing fee could usefully deter frivolous applications.

**6.3 *Should the Department be given a greater decision-making role in regard to objects that are not Australian protected objects?***

Again, as argued above, such a decision can only be made effectively within an agreed and well articulated policy and regulatory framework, within which lines of authority can be properly determined.

**6.4 *Should export permits be denied when there is no interest from a public collecting institution in acquiring an object, and no immediate prospect of its proper conservation and preservation in Australia?***

MA would, reluctantly, say yes - since the object may otherwise languish.

**6.5 *Should a register be kept of the owner and location of those Australian protected objects which have been denied export permits? Should funding be provided to assist private individuals or public institutions with the conservation of these objects?***

MA suggests that for the Commonwealth to acknowledge the significance of an Australian Protected Object, and then take no further responsibility for its protection and care, is irresponsible.

It should be a key responsibility of the PMHC system to ensure that such objects are properly recorded, and that appropriate referrals and resources are provided to secure their ongoing protection and care.

***MA Recommendation 5***

***That the Commonwealth ensure that the PMCH system is properly resourced to be able to provide protection and care for all Australian Protected Objects.***

(See **Part Four** below concerning the need for a **National Cultural Policy**, properly resourced.)

**7. Temporary Export Permit Applications**

**7.1 *Should Australia adopt a similar approach to Canada and automatically grant temporary export permits for up to five years?***

Since the Commonwealth has little authority or capacity to provide appropriately stringent arrangements for the care and protection of objects once they are outside Australian jurisdiction, MA considers that automatically extending temporary export permits would place significant objects at unacceptable risk.

**7.2 *Should the exemption from the Temporary Export Permit process be extended to include other institutions and organisations that have responsibility and ownership for Australian Protected Objects?***

Since these institutions are already responsible for the care and protection of these objects, it would seem reasonable, within agreed guidelines, to extend the exemption to include these institutions and organisations.

**7.3 *Should Class A objects be granted temporary export permits where the Minister is satisfied that a valid reason exists?***

MA supports the granting of temporary export permits for exhibition purposes of Class A objects, but only if the objects are moving between the custody of one fully reputable public institution and another.

**MA Recommendation 6**

***That a set of protocols be developed to govern the care and protection of Class A objects granted temporary export permits.***

**8. Expert Examiners**

**8.1 *Should the register of expert examiners be reviewed every five years?***

Yes. This review should be integrated into the PMCH system.

**8.2 *Should onsite and online training be provided for expert examiners to support their work under the PMCH Act?***

Provision of training for expert examiners will benefit the PMCH system, ensuring that Australia's significant objects are assessed according to the most professional standards.

**8.3 *Should expert examiners, or the institutions to which they belong, be paid for their assessments?***

The principle of remuneration for professional services should be applied, with special provisions developed to ensure that there is not a double benefit to public institutions that may gain (through accession of objects) from the opportunity to acquire objects for their collection through the PMCH system.

**8.4 *Should any payments be restricted to expert examiners working in the private sector?***

See (8.3) above.

**8.5 *Are there measures that could be implemented to assist expert examiners in undertaking their role?***

Expert examiners should be eligible for the normal travel and other benefits (similar to sitting fees) paid to those assisting the Commonwealth through provision of their expertise.

## **9. National Cultural Heritage Account**

### **9.1 *Should Australian Government funding to the Account be increased to enhance its capacity to fulfil its purpose and if so what amount would be appropriate?***

Australian Government funding should be increased. However the amount would need to be determined within the larger ***national cultural policy framework***, as discussed in **Part Four**.

### **9.2 *Should the option of providing tax deductibility status for donations to the Account be explored with the Australian Taxation Office?***

There would be great merit in streamlining all parts of the taxation system to provide maximum efficiency and benefit to Australia's cultural heritage.

### **9.3 *Should Australia consider a greater linkage between the Protection of Movable Cultural Heritage and the Cultural Gifts Program?*** [http://www.arts.gov.au/tax\\_incentives/cultural\\_gifts\\_program](http://www.arts.gov.au/tax_incentives/cultural_gifts_program)

Definitely - within a ***national cultural policy framework***, as outlined in **Part Four**.

## **10. Enforcement provisions**

### **10.1 *Should the PMCH Act include similar enforcement mechanisms to those in the EPBC Act?***

As the benefits or otherwise of the enforcement mechanisms of the EPBC Act are currently under consideration in the EPBC Review, MA suggests that this question be discussed with the EPBC Review team.

### **10.2 *Should s.48 of the PMCH Act be similar to that of the EPBC Act? This would mean that a judicial review, but not merits review, of a Ministerial decision, would still be available under the Administrative Decisions (Judicial Review) Act 1977, section 39B of the Judiciary Act 1903 and section 75 of the Constitution.***

See Q (10.1) above.

## **11. Broader arts and culture policy framework**

### **11.1 *Is the PMCH legislation having an unintended impact on any of Australia's other arts and culture policy objectives?***

MA suggests that the PMCH legislation could be considered – as a system – to be having an unintended negative impact on ***the identification, conservation and protection of Australia's cultural heritage***, because it currently operates in a ***national policy vacuum***.

The PMCH Act – as the only Commonwealth legislative instrument directly responsible for the identification and protection of Australia's nationally significant collections – perform

assumes an authority beyond the evidence generally able to be sourced in relation to the judgments to which it gives substantive effect. This is because, at present, it must generally rely on incomplete and inadequate data and systems of assessment to identify objects of 'national significance' to Australia.

This anomalous circumstance has arisen because the PMCH system is required to operate ***in the absence of an integrated national collections management system***. Such a system, MA believes, is indispensable to a proper assessment of nationally significant objects.

## **12. International Conventions**

### ***12.1 Should Australia consider ratifying the UNIDROIT Convention on the Return of Stolen or Illegally Exported Cultural Objects?***

Yes. The UNIDROIT Convention is an indispensable partner instrument internationally to the 1970 UNESCO Convention, in efforts to protect cultural heritage more effectively internationally, and to curb illicit trafficking of cultural heritage.

### ***12.2 Are there other measures which could be introduced to enhance Australia's ability to counter illicit trade, including international collaboration?***

Museums play an essential role internationally – especially through the International Council of Museums (ICOM, Paris) and the NGO networks that exist in 140 countries.

The **ICOM Australian National Committee**, a partner body to MA and acknowledged in MA's constitution, provides an effective footprint for ICOM's worldwide structures within the Australian museums sector. Moreover, the National Director of Museums Australia (Bernice Murphy) has for fourteen years been directly involved with ICOM's Executive Council (as Vice-President of ICOM, and in the last four years as Chair of the Ethics Committee of ICOM). Issues of cultural heritage protection, repatriation claims, restitutions of cultural heritage – especially of Indigenous cultural heritage and often involving human remains – have become burning issues within the agenda and actions of ICOM's Ethics Committee, and within the broad programs of ICOM encompassing museums internationally.

Museums Australia – and its partner body, ICOM Australia (chaired by National Museum of Australia Director, Craddock Morton) – stand ready to assist with provision of advice, raising of awareness (training of staff), and would be most willing to meet with PMCH representatives to discuss the advantages of closer cooperation and sharing of knowledge about cultural heritage protection concerning more effective action internationally.

## Part Two: Analysis of issues associated with the assessment of significance

The assessment of significance is crucial to the PMCH legislation. However achievement of rigorous and authoritative assessment of significance is complex and is dependent on a number of factors.

The following factors are discussed in detail in this section of the submission:

- 2.1 Assessment of Significance Methodology
- 2.2 National Data Sets: development of and access to appropriate data sets to support the assessment of significance
- 2.3 Establishment of a National Significance Threshold
- 2.4 Establishment of a National Register (of movable cultural heritage)

### 2.1 Assessment of Significance Methodology

The assessment of any object's national (state or local) significance is fundamentally a *comparative process*.

It therefore requires implementation of a methodology that is dependent upon the following conditions:

- quality research conducted into the background history (provenance) of objects and their relationship (actual or potential) to a variety of collections;
- understanding and availability of requisite data sets on which any significance assessment process would depend for integrity of outcomes, as well as any further judgments or recommended actions (including conservation, resource allocation or program development) based on such outcomes.

There have been many positive developments in the museums (and collections) sectors regarding the assessment of significance methodology over the past decade, so that it is now a recognised and valued part of collection management.

However significance assessment is often not applied with sufficient rigour or understanding of its intellectual basis. Consequently the assessments made are often poorly judged and inadequately informed.

This is a compounding problem, as these poorly informed judgements at an initial stage have negative downstream consequences in further relay of such judgements. The comparative data available – not always reliable at the start – gradually gains 'authority' through its circulation, progressively distorting further judgments and resulting in ill-informed assessments.

This problem – of proliferating effects of poorly based primary judgments – causes major difficulties for the PMCH system.

The source of the problem is twofold:

- first, through the **lack of a national system** for ensuring that collection-related data has integrity
- second, through the **lack of agreed thresholds** for levels of significance (at local, S/T, national and international levels).

## 2.2 National data sets: development of and access to appropriate data sets to support assessment of significance

As described above (2.1) the assessment of any object's national (state or local) significance is fundamentally **a comparative process**.

It is dependent upon

- quality research, and
- understanding and availability of appropriate data sets.

Therefore improving the quality and availability of the data sets – at all levels of significance, and across all kinds of objects and collections – is crucial to achieving authoritative assessments.

MA affirms two positive aspects of progress in significance assessment of heritage items achieved in recent years; namely that

- the use of the assessment of significance methodology is widespread, and
- such use is being actively encouraged (for example, through the Cultural Ministers Council's commissioning of the Collections Council's revision and national distribution of the publication, ***Significance: A Guide to Assessing the Cultural Heritage of Objects and Collections*** (2001).

However a nation-wide problem exists, that can only be addressed by concerted action at a national level. This is that very little attention is being directed to the crucially connected issues of the **development and accessibility of appropriate data sets**.

While there are numerous ways in which communities and institutions are encouraged and supported to document and care for their collections – including assessment of significance of individual objects and collections – there is a **lack of national coordination to provide cohesion across these programs**.

There is currently no Commonwealth policy or program commitment directed towards achieving these important national objectives.

As a consequence, the data sets available for comparative assessment are generally grossly incomplete and inadequate, and the assessments made therefore frequently lack important underpinnings of evidence-based judgment and authority.

This general problem cascades through the levels of significance established across increasingly complex sets and lists of differing kinds of objects. It causes most acute deficiencies in judgment processes at the most important threshold of all in terms of Commonwealth responsibilities (and resource implications): where an assessment of **national significance** is required.

The conditions described highlight the general issue that most plagues the PMCH system. It can be encompassed in the following question: **How may it reasonably and reliably be determined that a particular object is of national significance?**

### 2.3 Establishment of a *National Significance Threshold*

There are currently many different sets of objects and collections nominated and/or assessed as being of national significance. These include those objects on the Control List – with no definitive criteria or agreed threshold for determining their level of significance.

The sets/lists currently include:

- Movable heritage associated with places of National and Commonwealth Heritage significance (under the *EPBC Act*)
- Movable heritage inscribed on the *Memory of the World Register*
- Collections assessed as of National Significance under the *Community Heritage Grants Program*
- Objects selected as ‘National Treasures’ by Australian libraries (and particularly the National Library of Australia for its proposed National Treasures Gallery)
- Lists of ‘national’ objects developed by institutions, including:
  - The Migrant Heritage Centre (NSW)
  - Powerhouse Register of National Australian Dress

Establishing **thresholds** is a complex and highly skilled process.

It needs to be understood that **place-based assessment of significance** has been developed through decades of work in determining thresholds of value. Such place-based assessment, based on the methodology of the *Burra Charter* and its associated Guidelines, now provides the intellectual foundations of the assessment of significance methodology as applied to **objects**.

However, while **place-based assessment** has successfully evolved a **hierarchy of levels** of significance through decades of collaborative endeavour between governments (at local, S/T, national and world levels), no such federal commitment towards the development of a comparably rigorous hierarchy of levels for **object-based assessment** has yet been achieved.

The EPBC Act protects **objects** associated with **places** of ‘national’ and ‘Commonwealth’ significance. It should be noted that several state/territory jurisdictions also now protect objects associated with places of S/T significance.

Australia is a signatory party to the *UNESCO Memory of the World Register*. Thereby Australia is *ipso facto* engaging a set of thresholds at different levels of significance for objects – but without the **cohesive federal framework necessary** to develop a well reasoned hierarchy of thresholds to influence discriminations as to the varying heritage values of objects, or to secure authoritative judgment in achieving significance assessments projecting a **national level of values**.

Unless and until the Commonwealth exercises national leadership, and commits to working collaboratively (through the COAG process) with S/T governments to achieve an **agreed set of thresholds** for the assessment of local, S/T, national and international significance of **objects**, the PMCH system will continue to struggle to make adequate determinations of national significance that are integral to its responsibilities.

In terms of the challenges sketched here: it may be noted that it has taken the Australian Heritage Council no less than five years to achieve an agreed Table of Values for assessment of **places** of national heritage value. Nevertheless there are considerable resource implications entailed in any continuing failure to assess the **objects** that make up our national heritage more robustly and comprehensively. Since there will always be sharp competition for resource allocation, it is all the more important to shape good policy frameworks within which resources can be most wisely applied.

#### **MA Recommendation 7**

*That the Commonwealth bring together the many different lists and sets of objects of 'national' significance, to analyse the various assessment thresholds currently in use and develop a standardised set of assessment thresholds (local, S/T, national and world significance) – as has been achieved by the Australian Heritage Council for place-based heritage.*

### **2.4 Establishment of a National Register (of movable cultural heritage)**

MA advocates strongly that a National Register be established.

Such a Register would need to be shaped as an effective federal register.

However, as discussed in (2.3) above, the development of a comprehensive national assessment system, including the establishment of an agreed set of local, S/T, National and World (*Memory of the World*) thresholds, would require collaboration with S/T and local government authorities.

There are substantial issues that would need to be addressed to achieve the improvements envisaged in this submission. Such issues include the following considerations:

- The Commonwealth has **no constitutional power to compel private owners** to bring their objects into the public domain.
- Significance-related **data sets** are necessarily provisional, evolving, and always incomplete (in some areas more than others).
- A pervasive deficiency in the current system of assessment is caused by the lack of an agreed, standardised **national significance threshold** to guide significance assessment.
- A further deficiency arises through the lack of an established single COAG forum responsible for collections – at present, several ministerial councils share responsibilities for collections, including
  - the Cultural Ministers Council (CMC), focussed primarily on national collecting institutions and arts responsibilities, including the Australia Council – but not directly covering the museums sector (the Collections Council of Australia is not a grant giving body like the Australia Council);
  - the Environment, Protection & Heritage Council (EPHC), is now largely composed of S/T environment ministers (not necessarily responsible for heritage) – unlike the Commonwealth Minister, whose responsibilities cover collections as well as environment and heritage.

**MA Recommendation 8**

***That the Commonwealth establish two bodies responsible for collections at a national level:***

***(B) a 'COAG Collections Forum' (or similar) – comparable to the Heritage Chairs and Officials of Australia and NZ, or the Cultural Ministers Council Standing Committee.***

***(C) an 'Australian Collections Council' (or similar) developed through expansion of the responsibilities of the present Expert Committee advising the PMCH system, to take on similar responsibilities to the Australian Heritage Council in terms of establishing national significance thresholds, and advising on the identification, protection and conservation of Australia's collections.***

### Part Three: Indigenous cultural heritage and policy issues for museums

Having briefly addressed aspects of Indigenous heritage in **Part Two**, following the PMCH Discussion Paper framework and sequence of questions, this part of the submission takes up a number of issues affecting Indigenous heritage in a broader framework. It also engages the work and cumulative achievement of MA's long-standing Indigenous policy commitment: which has steadily sought to establish agreed principles and protocols to shape relations between museums and Indigenous people in the care, representation and public projection of their heritage.

#### Indigenous Heritage

MA strongly supports the right of Indigenous people to identify and conserve their own heritage as set out in our national policy: *Continuing Cultures On-Going Responsibilities* - see [www.museumsaustralia.org.au](http://www.museumsaustralia.org.au)

However MA is concerned by two broad issues touching upon the Commonwealth's role in relation to Indigenous heritage:

- (i) There is a regrettable lack of a set of Commonwealth protocols governing relations with Indigenous people in the care and protection of their heritage.
- (ii) There currently exists a multiplicity of Commonwealth programs and provisions that impinge directly upon the protection and care of Indigenous heritage, but very little regular connection or means of rationalising how these many diverse provisions impact upon the protection and affirmative management of Indigenous cultural heritage **from the point of view of Indigenous communities.**

For example, in addition to provisions under the PMCH Act, other legislative programs include:

- The *EPBC Act*, that protects identified places and associated collections assessed as having national Indigenous values;
- The *Aboriginal and Torres Strait Islander Heritage Act 1984*, currently under review, in consideration of the Report written 15 years ago by Justice Elizabeth Evatt: *Review of the Aboriginal and Torres Strait Islander Heritage Protection Act 1984*.

The Commonwealth also supports Aboriginal and Torres Trait Islander culture and heritage through a multitude of programs.

Key among these are:

- *Caring for Country*
- The many different programs supporting Indigenous artists and art centres and jointly supported by the DEWHA and FACSIA portfolios
- The Return of Indigenous Cultural Property Program (RICP)
- The Indigenous Cultural Portal currently under development by DEWHA

NOTE (from **Part Two**) earlier, the relevance to this section of **MA Recommendation 2**:

***MA Recommendation 2 (concerning Indigenous heritage)***

***2.1 That a clear set of protocols be developed in consultation with Indigenous representatives to ensure that appropriate Indigenous expertise and representatives are enabled to have direct cultural input and influence to secure adequate national measures for the protection of Indigenous heritage.***

- We note the set of principles published in *Ask First*, by the former Australian Heritage Commission, but it is not clear if these principles are accepted as standards governing Commonwealth practice)

***2.2 That steps be taken to ensure that the wider public is well informed about the value and sensitivity of Indigenous material culture and the need for appropriate consultation with Indigenous people, especially with regard to its high-order intangible heritage values.***

***2.3 That an explanatory pamphlet concerning Indigenous artworks and cultural objects – a ‘plain English guide’ to the management of Indigenous heritage (and ethical policies thereto) – be developed and made widely available for general public awareness and use.***

***2.4 That the Commonwealth work speedily towards determining when and if separate legislation will be drafted to provide specifically for the roles and responsibilities of Indigenous people in the identification and conservation of their cultural heritage nationwide.***

***2.5 That consideration be directed to other Commonwealth programs and legislation concerned with the identification and protection of Indigenous cultural heritage, to achieve more integrated outcomes for communities.***

Such consideration should include:

- recommendations in the Evatt Report
- proposed revision of the Commonwealth *Aboriginal and Torres Strait Islander Heritage Protection Act*
- connection of these instruments with the EPBC Review and management of the National Heritage System (remembering that the EPBC legislation protects movable **heritage** associated with the Indigenous places on the NHL and CHL lists)

## Part Four: Need for a national cultural policy framework

**Part Four** argues the need for a **broad national cultural policy framework** – as a much needed instrument for shaping goals and achieving outcomes in many areas of government impact on Australia’s cultural life and care for heritage nationally, including improved efficiencies in the PMCH program and legislative impacts.

This section finally raises an encompassing argument – shaped in many earlier parts of this Submission – of the need for a broad national cultural policy framework, without which so many strands of government legislation, policy initiatives and programs that impinge on national heritage cannot successfully be interconnected or rationalised.

Although this section and argument comes last in this submission, it is – in the view of Museums Australia – one of the most important arguments and **Recommendations** within this whole Submission.

Museums Australia strongly advocates the important and inescapable connections between broad government policy settings influencing the cultural heritage horizon, and the impact of legislation within any part of this territory.

The two broad, Government-stated objectives in the PMCH Review Discussion Paper with which the museums sector nationally is deeply concerned (and positively aligned) are:

**Commonwealth Government objective 1:**

*to protect and conserve Australia’s most significant movable cultural heritage and to promote Australian arts and culture;*

**Commonwealth Government objective 2:**

*to work in partnership with the states and territories within an effective federal arrangement.*

Consideration of these two federal policy objectives (quoted also under **(C)** in the **Introduction** to this submission) is crucial, MA believes, to achieving nationally effective solutions in overcoming any inefficiencies currently inhibiting the effectiveness of PMCH operations.

### 4.1 The imperatives of Commonwealth oversight and coordination

The Commonwealth itself crucially lacks a **national cultural policy framework** – one that would include specific address to national **heritage** considerations alongside the long-standing attention to **arts development** (through the Australia Council).

All heritage legislative provisions, government programs or other measures by the Commonwealth that could be vitally informed by such a framework remain severely undercut by this missing policy key.

Only through such initiative by the Commonwealth can **the states, territories and local government** adequately contribute their roles and responsibilities towards achievement of a coherent and integrated outcomes across the horizon of cultural heritage nationally.

Moreover it is only at the Commonwealth’s behest that important comparisons, initiatives or coordination of **cross-border regional situations** may be appraised across the huge geographical spread of Australia’s distributed communities.

In view of the situation described, there are often negative circumstances looming (threatened losses in cultural heritage care) that need remediation through Commonwealth initiative or oversight.

For example:

- As has been stressed in **Part Two**, the Australian government is currently doing little to coordinate actions that might ensure that data sets available for identification and interpretation of objects in the public domain are adequate to ensure that **the significance of such objects** may be assessed with authority and integrity.
- These circumstances mitigate seriously against good judgment or timely conferral in the case of a sudden threat to heritage – especially an export request or customs seizure, which may require an informed and expedited response to facilitate urgent decisions as a prelude to effective action.
- Inability to assist government officials in forming judgments appropriately and speedily in the case of export controls on cultural heritage may inevitably delay procedural resolution of cases and raise frustrations in compliance regulations.
- The present situation furthermore inhibits establishment of conditions whereby an object is able to be appropriately assessed from the point of view of the **level** of its significance – whether at national, state or local levels – so that appropriate frameworks, resources and desirable actions may be determined in relation to objects under review.

Museums Australia has therefore argued throughout this submission that advancement of **the broader Australian government policy objectives**, as stated in the Introduction to the PMCH Review Paper, requires Commonwealth initiative in the development of a **coherent national cultural policy framework**.

Only through the existence and guiding influence of such a policy framework could the PMCH and other legislative and policy programs work more cohesively and effectively (and with more astute allocation of resources for broadest community impact) to achieve the Australian government policy objectives outlined in framing the context for the PMCH Review.

#### **MA Recommendation 9**

***That the Commonwealth exercise leadership and commit to working with S/T and local governments to develop a national cultural heritage policy, and stimulate cohesive program support for the identification, protection, conservation and communication of Australia's cultural heritage .***

## Attachment 1



Museums Australia is the national association for museums and galleries in Australia.  
ICOM-Australia (the National Committee of the International Council of Museums, Paris) is a key partner.

### Profile of Museums Australia

(formed 1994, combining various museum organisations, the oldest dating back to the 1930s)

**Museums Australia (museums + galleries)** encompasses a diverse range of museums, galleries, historic sites, heritage centres, botanic and zoological gardens, research centres, Indigenous Cultural Centres, and Keeping Places across Australia; it includes some other cultural heritage organisations.

MA is a service and professional development organisation. It seeks to provide professional stimulus and value for the whole museums sector nationally (and especially regionally)

- MA produces **programs and services nationally**, not confined to MA members alone;
- MA works with a **range of “third sector” partners in the non-profit area of cultural heritage** provision – e.g. Federation of Australian Historical Societies, ICOMOS, ACNT.
- MA is not a union or lobbyist organisation – remuneration and employment conditions are matters for relevant employing authorities at all levels of government or other bodies;
- as a service organisation, MA is focused as much on museums’ **service to Australian communities** as on the **capacities of museums** themselves to increase resources and skills, and render such service;
- MA also **acts internationally** as a museums organisation (and especially – in partnership with ICOM-Australia – with proactive attention to the Asia-Pacific region).

#### MA membership

Currently membership (Oct. 2008): **1673 members**

- **923 individual members** = 55.47%
- **745 institutional members** = 44.53% (reaching many more individuals through the large institutions than can ever be calculated precisely)

#### A current national snapshot of MA institutional members

(This snapshot captures the variety of institutions: from tiny, regional and remote, to large/capital city institutions; from parks and zoos to art galleries and historic houses)

##### QLD

- Calliope River Historical Village (Gladstone)
- Yugambah Museum, Language and Heritage Resource Centre (Indigenous museum project – Yugambah is south of Brisbane area); (\*MA and ABC Radio National “Marvellous Regional Museums”- Indigenous Cultural Centre/ Keeping Place category winner 2008)
- North Burnett Regional Council (incl. Mundubbera Art Gallery (Gayndah), an Indigenous cultural centre and gallery (Gayndah)
- Cairns Regional Gallery (Cairns)
- Tableland Regional Gallery (Atherton)
- Brisbane Botanic Gardens (Mt Coot-Tha)
- University of Queensland Art Museum (UQ)
- University of Technology Art Museum (QUT)
- University of Queensland Anthropology Museum (School of Social Sciences, UQ)

##### NT

- Museum and Art Gallery of the Northern Territory (Darwin)
- Northern Territory Police Museum, Winnelli (Darwin)

- Catherine Outback Heritage Museum (Catherine)
- Chung Wah Society Inc. (Darwin) (for Chinese heritage; volunteer-run)
- Northern Territory Police Museum (Darwin)
- Strehlow Research Centre (Alice Springs)
- National Pioneer Women's Hall of Fame (Alice Springs)

#### TAS

- Levendale and Woodsdale History Room (Orford)
- Devonport Regional Gallery (Devonport)
- Beaconsfield Mine and Heritage Centre (Beaconsfield)

#### VIC

- Zoos Victoria (Melbourne)
- Museum Victoria (Melbourne)
- Latrobe Regional Gallery (Morwell)
- Sovereign Hill (Ballarat)
- Insectarium of Victoria (Mt Macedon)
- Swan Hill Regional Art Gallery (Swan Hill)
- Bendigo Art Gallery (Bendigo)
- Ararat Regional Gallery (Ararat)
- Parks Victoria
- Royal Botanic Gardens Melbourne Library (MA has some library members – eg. of schools, caring for archives and collections of a school)
- Monash University Museum of Art (Clayton)
- La Trobe University Art Museum (Bundoora)

#### NSW

- Lake Macquarie Regional Gallery (Lake Macquarie)
- Zoology Museum, University of New England (Armidale)
- Goulburn Regional Art Gallery (Goulburn)
- Goulburn Mulwaree Parks and Recreation Services

#### SA

- Architecture Museum, University of South Australia
- Art Gallery of South Australia
- Army Museum of South Australia (Keswick)
- Flinders University Art Museum
- Mary McKillop Penola Centre (Penola)
- Olive Wood, Renmark

#### WA

- Broome Historical Society (Broome) (Volunteer-run)
- Museum of Natural History (Guildford, WA)
- Geraldton Art Gallery (Geraldton)
- Ongerup and Needilup District Museum, Ongerup (north of Albany)
- Carnamah Historical Society (300 km north of Perth)
- Kodja Place and Visitors Centre, Kojanup, south of Perth (\* winner of MA and ABC Radio National "Marvellous Regional Museums" National Winner (all categories), 2008); ABC Radio National Life Matters program travelled Sydney-WA and produced a 1-hour from Kodja Place in August, to mark their winning of the national award.

#### ACT

In addition to the major institutional members of MA in Canberra (**National Gallery of Australia, Australian War Memorial, National Museum of Australia, Old Parliament House**) MA includes the following institutional members:

- Australian Customs Service
- ACT Historic Places (incl. Lanyon Art Gallery; Blundells Cottage)
- Canberra Museum and Art Gallery (Canberra Civic)

- Australian Natural Wildlife Collection (CSIRO)
- Australian Council of National Trusts (ACNT)