

NORFOLK



ISLAND

PROTECTION OF MOVABLE CULTURAL HERITAGE AMENDMENT ACT 1987

Act No. 24 of 1987

An Act to amend the *Protection of Movable Cultural Heritage Act 1987*

[Assented to 21 December 1987]

BE IT ENACTED by the Legislative Assembly of Norfolk Island as follows —

Short title

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

Commencement

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

Principal Act

3. The *Protection of Movable Cultural Heritage Act 1987* is in this Act referred to as the Principal Act.

Interpretation

4. Subsection 3(1) of the Principal Act is amended by inserting after the definition of “inspector” —

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

New section

4. The Principal Act is amended by inserting after section 17 —

Licence to export protected objects of Australia

“ 17A. (1) A person may apply to the executive member 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 executive member receives an application under subsection (1), the executive member shall refer the application to the Minister.

(5) The Minister shall consider the application and may recommend to the executive member 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 executive member shall grant or refuse to grant a licence in accordance with the 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 Minister recommends to the executive member that a licence not be granted, the Minister shall, as soon as practicable after the making of the recommendation, provide in writing to the executive member the reasons for the recommendation.

(10) The executive member shall, as soon as practicable after receiving reasons provided by the 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 or permit**5.** Section 18 of the Principal Act is amended by —

- (a) omitting from subsections (1) and (2) “certificate or permit” (wherever occurring) and substituting “certificate, permit or licence”; and
- (b) adding at the end —
 - “ (4) The executive member 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 Minister.”.

Unlawful exports**6.** Section 19 of the Principal Act is amended by —

- (a) inserting after subsection (3) —
 - “ (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.”; and

- (b) omitting subsection (6) and substituting —
- “ (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.”.

Production of permit

7. Section 32 of the Principal Act is amended by omitting subsection (1) and substituting —

- “ (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.”.

Review by Court

8. Section 40 of the Principal Act is amended by —

- (a) omitting from subsection (1) and (2) “permit” (wherever occurring) and substituting “permit or licence”; and
- (b) adding at the end —

“ (3) Where an application under section 39 relates to a decision made by the executive member in accordance with a recommendation of the 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 executive member in the discretion of the executive member; and
 - (b) the reasons for the Minister’s recommendation were the reasons for the decision.”.

Consequential amendments

9. The Principal Act is amended in accordance with the Schedule.

SCHEDULE

Section 9

Item No.	Provision amended	Amendment
1	Paragraph 28(1)(a)	Omit “subsection 19(1)”, substitute “subsection 19(1) or (3A)”
2	Subsection 29(5)	Omit “subsection 19(2) or 20(1)”, substitute “subsection 19(2), 19(3B) or 20(1)”
3	Paragraph 30(2)(a)	Omit “subsection 19(2) or 20(1)”, substitute “subsection 19(2), 19(3B) or 20(1)”
4	Paragraph 30(3)(a)	Omit “subsection 19(1)”, substitute “subsection 19(1) or (3A)”
5	Paragraph 30(3)(b)	Omit “subsection 19(2) or 20(1)”, substitute “subsection 19(2), 19(3B) or 20(1)”
6	Subsection 30(4)	Omit “subsection 19(3)”, substitute “subsection 19(3) or (3C)”
7	Section 34	Omit “Australia or” (wherever occurring)
8	Subsection 35(1)	Omit “permit or certificate or an application under subsection 18(3)”, substitute “permit, certificate or licence or an application under subsection 18(3) or (4)”

Item No.	Provision amended	Amendment
9	Subsection 39(1)	After “section 17”, insert “or a licence under section 17A”

Notified Gazette No. 59, 30 December 1987.

Commenced 1 April 1988 (Gazette No. 14, 24 March 1988).

This enactment amends Act No. 20 of 1987.

Printed on the authority of the Administrator.

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