Submission to the Review of the Movable Cultural Heritage Act 1986 and Regulations
March 2009

Executive Summary
Australia ICOMOS supports and encourages a transparent review of cultural heritage legislation with the ultimate aim of providing more effective awareness, assessment, management and protection of objects and places in Australia. As such, as well as addressing the relevant discussion paper questions, we have considered the following three elements as vital to this review:

- Creating legislation which can provide better protection for significant Australian objects;
- Creating adequate protection for keeping objects in situ?
- Facilitating and encouraging a greater comparative understanding of each category of object;
- Ensuring that the approach to cultural heritage in Australia, be it place-based or object-based, is consistent in its use of terminology, methodology and approach.

Introduction
Australia ICOMOS welcomes this opportunity to participate in the review of the PMCH Act. We understand that the review will be receiving submissions from a number of heritage practitioners and other organisations and would welcome a future opportunity to discuss and debate the issues raised through the submission process. In formulating this preliminary submission we have had some brief discussions with the Museums and Galleries Foundation of NSW with whom, notwithstanding our different organisational objectives, we share some common concerns in relation to the effectiveness of the PMCH Act.

Australia ICOMOS, Australia’s leading non-government professional organisation for cultural heritage, is the Australian national committee of the International Council on Monuments and Sites. This is a non-government professional/expert organisation primarily concerned with the philosophy, terminology, methodology and techniques of cultural heritage conservation. Internationally, ICOMOS works closely with UNESCO,
and acts as UNESCO’s principal adviser on cultural aspects of the operation of the World Heritage Convention. As members of an international NGO, we are part of a global professional network.

Australia ICOMOS has a key role in contributing to heritage conservation philosophy, methods and standards of practice in Australia. Our members are professionally qualified and experienced practitioners from a wide range of disciplines, working in all facets of the understanding and protection of Australia’s cultural heritage places, at all levels of government and in the private sector. We regularly provide feedback and advice on heritage policy and philosophy to the Australian Government.

Australia ICOMOS has worked closely with the Commonwealth government on many issues including the development of the Australian heritage legislation.

The Review Process

We are aware of the expansive list of questions raised in the discussion paper which informs this review, however we have limited our feedback to those areas where we feel we can make effective comment.

We urge the government to make the most of this opportunity to improve Australia’s track record in relation to the protection of movable cultural heritage within Australia and of that located outside of Australia.

Although there is little information yet available on how the Review panel will engage with the Australian public beyond this call for submissions we take this opportunity to invite the review panel to consult with us further as the review progresses.

The Discussion Paper to which this submission responds, poses a number of questions for consideration. We suggest that, in considering the matter of cultural heritage, these additional vital questions should also be considered as the review progresses:

- Does the PMCH Act accord adequate protection for retaining the context of movable cultural heritage, that is, for keeping objects in situ?
- How does the Act facilitate or encourage a greater comparative understanding of each category of object?

Specific questions posed by the Discussion Paper in relation to cultural heritage

1. National Cultural Heritage Control List

*Does the current Control List capture Australia’s most significant cultural objects?*

- *Are the Class A objects listed in the Control List still our ‘most significant’?*
- *Is the list of Class B objects too broad or too narrow?*
The current list does not adequately capture Australia’s most significant cultural objects, in particular the Class A List which does not adequately reflect the wealth of highly significant categories of Australian objects. Further, the two classes (A and B) are too prescriptive. In their attempt to identify all possible categories of cultural objects, they create the risk that objects which do not neatly fall into a specific category may not be offered protection.

This list needs to be understood in terms of the ‘historic themes’ and significance criteria in order to be more effective in representing all categories of important objects. The use of themes would assist with establishing a baseline of what is important to ‘Australia’s story’ assessed by nation-wide significance criteria. Importantly, this would assist those administering the legislation to know which objects to retain and which can be issued export permits.

The effect of categorisation in the various lists has, at times, acted to exclude unlisted objects from consideration. The lists themselves attempt to address the concerns of a number of interest groups, rather than take a thematic approach that would allow examiners to make a case for a specific object without having to locate it within one of the specified object categories.

It is our view that the two lists should be merged into one master list which contains flexibility to recognise and protect objects which do not fall neatly into a specific category. There may not be the need to list all possible categories and types, but rather to provide broad definitions which may apply to a greater number of objects. Additionally, the list should be based on a thorough comparative understanding of Australia’s important objects. This understanding should be based on standardised use of historic themes and comparative analysis.

2. Thresholds and the PMCH Regulations

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

The age thresholds and monetary values can be useful in some situations as they provide an easy trigger for the application of the Act. However, in this area the Act becomes very prescriptive in its attempt to classify all possible types and parameters of objects – again running the risk that some objects (particularly more modern objects) may not be offered protection.

It is our view that the age thresholds and monetary value triggers need some flexibility and an overarching principle that significant objects outside the specified age range will require protection under the Act.
At what level should the monetary thresholds for the object categories be set?
How often should the thresholds be reviewed and on what basis?
Is ‘current Australian market value’ an appropriate benchmark?

Presently, the significance of an object and thus the trigger for the implementation of the Act is based on age and monetary values as indicators for significance. This does not recognise the myriad other components which afford an object cultural significance. Although monetary values may act as useful triggers for the implementation of the legislation, they do not allow for an objective significance assessment using standardised significance assessment criteria (see also Question 3 below). As such, they may skew the assessment process in favour of “costly” objects rather than significant objects.

*It is our view that conservation should be based on significance. Age and monetary value do sometimes reflect other heritage values (e.g. age may correlate with rarity). Age and monetary value however are not significance assessment criteria and should not be used as a substitute for such. They currently serve as a trigger for further assessment. However Australia ICOMOS advocates the use of standardised significance criteria to provide more flexible and systematic protection for Australia’s cultural heritage. Any thresholds set should be regularly reviewed to ensure that the legislation is in accordance with current best-practice.*

3. Significance and the PMCH Regulations to Australia

*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?*

*Are there other models that should be considered?*

This issue is vital to the long term success of the PMCH Act in Australia and the effectiveness of its protective mechanisms. Australia ICOMOS defines cultural significance as *aesthetic, historic, scientific, social or spiritual value for past, present or future generations*. This is the same definition used by the Heritage Collections Council which developed its guidelines to be consistent with the Burra Carter (Australia ICOMOS 1999). It is the definition adopted by most heritage authorities and practitioners in Australia and should be the definition used in the PMCH Regulations.

The current use of age thresholds and monetary values are not adequate to provide an objective understanding of the comparative significance of Australia’s cultural objects. Unfortunately, a key weakness of the PMCH Act is its lack of clarity and guidance to create a consistent approach to the significance assessment of objects. As such, *ad hoc* approaches are made which can degrade the influence of the significance assessment process.
In addition the current significance assessment process does not accord *in situ* objects protection nor does it recognise, encourage or provide incentive to retain objects in their place. The requirement that specifies that an object should not be ‘adequately represented in Australian public institutions’ further exacerbates this problem. Regardless of the amount of an object type represented in public collections, greater significance should be afforded to objects which are still situated within their historic context as this enhances their significance and our understanding and interpretation of this significance.

Finally, the lack of coherence between the significance assessment of a place and the significance assessment of an object creates discordance within the cultural heritage industry and increases confusion in the general public on how significance is assessed and objects or places afforded protection.

*It is our view that the use of a method for assessing significance should be mandated in the Act and further, that a standardised set of significance assessment guidelines should sit alongside the PMCH Act; such as the widely used Australian Collections Council guidelines (Significance: A guide to assessing the significance of cultural heritage objects and collections) which was adapted from the process outlined in the Burra Charter (Australia ICOMOS 1999). The guidelines should be reviewed for consistency with the current National List Criteria*

4. Indigenous objects

*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?*

Protection of possible secret/sacred objects should be decided on a case-by-case basis by the relevant Indigenous community wherever possible and with specialist input as necessary. Requirements and guidelines for consulting with Indigenous communities on such issues should be established based on other best practice guidelines, to guide this process in a systematic manner. It is likely that the ‘social value’ criterion of significance assessment may apply widely to Indigenous communities and their attachment to items.

4. National Register

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

The lack of a national list of cultural heritage objects downplays their value in regards to that of cultural heritage “places”, the management of which has long included registers and lists. However, the use of a National Heritage List would lie more in its value to assist with comparative understanding of objects and the identification of broad categories of objects which Australia should aim to conserve for future generations.
Nevertheless, the weakness of such lists lies in the perception that the list is the only indication of significance, that is, the perception that if an object is not listed it is therefore not significant. Any list established would need to be very clear on its purpose. However, there are at present a confusing number of statutory and non-statutory heritage registers in Australia. The establishment of further registers would only exacerbate this situation. The amalgamation of object categories into existing registers, such as the National Heritage List, would provide consistency in approach, minimise the creation of further lists and would provide equal recognition for both objects within heritage places and objects in their own right.

It is our view that a National Register would be a useful tool in building and encouraging a comparative knowledge of object categories in Australia and their relative significance. It would be useful as an aid to identifying gaps in knowledge where thematic studies would be useful. The development of a list would also bring consistency to the management of cultural heritage objects and the management of cultural heritage places in Australia. A list should not be used as the only means of triggering the protective aspects of the PMCH Act. Most importantly, existing registers should be utilized to allow conservation of both objects/collections within heritage places and in their own right, rather than establishing a new register.

8. Expert Examiners

Should the register of expert examiners be reviewed every five years?
Should onsite and online training be provided for expert examiners to support their work under the PMCH Act?
Should expert examiners, or the institutions to which they belong, be paid for their assessments?

The expert examiners play a vital role in the implementation of the PMCH Act, however they are under-resourced and not provided with adequate, systematic and consistent guidance on their approach to significance assessment. The use of examiners for each case creates a lengthy process that could be streamlined. For example, funds to support professional staff in-house that could assist in processing and assessing standard applications, and referring to expert examiners only those which required detailed investigation. Thorough guidelines would need to be established to provide clear parameters for such a process.

It is our view that the register of examiners should be reviewed every five years to ensure that object categories are represented by appropriately experienced and qualified professionals. Examiners should be provided with annual training to ensure consistent approaches to the cultural heritage management of objects. Further, all expert examiners should be recompensed for their time and knowledge. They should be supported by in-house professional heritage experts.
9. National Cultural Heritage Account

Should Australian Government funding to the Account be increased to enhance its capacity to fulfill its purpose and if so what amount would be appropriate?
Should the option of providing tax deductibility status for donations to the Account be explored with the Australian Taxation Office?

The National Cultural Heritage Account should be increased. Presently, the Account exists purely for the purpose of facilitating the purchase of Australian-protected objects. Whilst this is a worthy objective, there are many areas in which the Account could be expended to more accurately reflect the threats faced by many significant Australia objects, other than simply exportation. For example, there is a real need for the facilitation and encouragement of the retention and conservation of objects in their place and the Account could be used as a vital tool for programs (such as thematic studies, conservation projects and other financial incentives aimed at avoiding the initial relocation of the object).

In addition, the Account could also be used to facilitate the protection for objects of significance to Australia which are currently located outside of Australia. This is an area where the Act contains a fundamental weakness in that it aims to protect the export of Australian objects, but does not prohibit further trading of objects which were previously relocated outside Australia.

*It is our view that the Account should be increased so that it can provide for financial incentives for the retention of objects in their place/context, and also to assist with the acquisition of important Australian objects which are currently located outside of Australia.*

Other Major Issues for the Review to Consider

In addition to the major issues dealt with in the responses to the review questions above, Australia ICOMOS is of the opinion that there are several other important issues for the review to consider. In particular, Australia ICOMOS would like the following questions added to the range of questions against which the legislation is tested.

*Does the PMCH Act accord with best practice objectives for heritage legislation?*

Australia ICOMOS see this as a primary test for heritage legislation. This review is an opportunity to consider the existing legislation in the light of this question and address fundamental issues such as the compatibility of object-based cultural heritage objectives with place-based cultural heritage objectives. The legislative separation of objects and places can be a barrier to effective integrated management of the multiple values of cultural heritage. The current focus of the review does not direct enough attention to the interrelationship between objects and places, the significance of this relationship, or to the need for consistent cultural heritage management in Australia. Therefore the review should consider ways in which this ‘fit’ can be improved. We reiterate that whatever legislative solution is adopted, it should facilitate and encourage the assessment and
management of cultural heritage in a holistic way that takes account of all its significant values and components.

*Does the PMCH Act accord adequate protection for retaining the context of movable cultural heritage, that is, for keeping objects in their place?*

This important aspect was discussed in relation to the discussion paper questions 3 and 5, however we reiterate here the vital need for the PMCH Act to provide protection, and incentive to retain, the relationship between objects and their place, and the need to retain and enhance this relationship wherever possible and always as the preferred management option.

*How does the Act facilitate or encourage a greater comparative understanding of each category of object?*

The lack of comparative understanding of categories and types of objects hinders the process of significance assessment. This in turn affects the effective and appropriate management of objects. At present the Act does not adequately facilitate any comparative analysis, apart from requiring that two comparable examples of a particular object type should exist in public collections before a like object can be exported. This frames comparative analysis in negative terms, whereas it should be fundamental to any assessment.

Comparative analysis of objects should be incorporated into standardized significance assessment procedures adopted as guidelines for the Act. The Australian Historic Themes (and as a follow on, thematic studies) should also be applied to ensure that a comprehensive and representative collection of movable items that portray Australia’s natural, Indigenous and settler-history story is identified and afforded appropriate protection.

Please do not hesitate to contact me on 0425215012 or by emailing. [austicomos@deakin.edu.au](mailto:austicomos@deakin.edu.au) should you require clarification of any points raised in this submission.

Yours Sincerely

Dr Susan McIntyre-Tamwoy
President, Australia ICOMOS

6th March 2009