

Protected Objects Amendment Bill

Government Bill

As reported from the committee of the whole House

Key to symbols used in reprinted bill

As reported from a select committee

Struck out (unanimous)

Subject to this Act,	Text struck out unanimously
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New (unanimous)

Subject to this Act,	Text inserted unanimously
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Hon Judith Tizard

Protected Objects Amendment Bill

Government Bill

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Part 1

Protected New Zealand objects, unlawfully exported protected foreign objects, and stolen protected foreign objects

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Protected Objects Amendment Act **2004**.

2 Commencement

- (1) **Section 13** comes into force on a date appointed by the Governor-General by Order in Council. 5
- (2) The rest of this Act comes into force on **(1 July 2005) ((1 January 2006)) 1 November 2006**.

2A Principal Act amended

This Act amends the Antiquities Act 1975.

Part 1 10

Amendments to principal Act

3 Title repealed

The Title of the principal Act is repealed.

4 Name of principal Act changed

- (1) As from the commencement of this section,— 15
- (a) the principal Act is called the **Protected Objects Act 1975**; and
- (b) every reference in any enactment and in any document to the Antiquities Act 1975 must, unless the context otherwise provides, be read as a reference to the **Protected Objects Act 1975**. 20

- (2) Section 1(1) is consequentially amended by omitting “Antiquities” and substituting “Protected Objects”.

5 New section 1A inserted

The following section is inserted after section 1:

“1A Purpose

5

The purpose of this Act is to provide for the better protection of certain objects by—

“(a) regulating the export of protected New Zealand objects; and

“(b) prohibiting the import of unlawfully exported protected foreign objects and stolen protected foreign objects; and 10

“(c) providing for the return of unlawfully exported protected foreign objects and stolen protected foreign objects; and

“(d) providing compensation, in certain circumstances, for the return of unlawfully exported protected foreign objects; and 15

“(e) enabling New Zealand’s participation in—

“(i) the UNESCO Convention; and

“(ii) the UNIDROIT Convention; and 20

“(f) establishing and recording the ownership of ngā taonga tūturu; and

“(g) controlling the sale of ngā taonga tūturu within New Zealand.”

6 Interpretation

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- (1) Section 2 is amended by repealing the definitions of **antiquity**, **artifact**, **authorised public museum**, and **work of art**.

- (2) Section 2 is amended by inserting the following definitions in their appropriate alphabetical order:

“**authorised public museum** means any public museum specified in Schedule 1 30

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“**comparable objects** excludes identical or similar objects that have unique associations

New (unanimous)

“**comparable examples** excludes identical or similar objects that have unique associations with New Zealand activities, events, ideas, movements, objects, persons, or places of importance

“**craft** has the same meaning as in section 2(1) of the Customs and Excise Act 1996 5

“**expert examiner** includes a body corporate or an association of persons

“**export** means—

“(a) placed on board any craft for (*export from*) transportation to a point outside New Zealand; or 10

“(b) taken into a Customs controlled area or customs place for removal from New Zealand; or

“(c) delivered as a postal article into the control of a postal service provider for removal from New Zealand 15

“**foreign cultural institution** means a museum, religious or secular public monument, or similar institution in a State, other than New Zealand, that is a party to the UNESCO Convention

“**foreign public collection** means a group of inventoried or otherwise identified cultural objects owned by— 20

“(a) a State, other than New Zealand, that is a party to the UNIDROIT Convention; or

“(b) a regional or local authority of that State; or

“(c) a religious institution in that State; or 25

“(d) an institution that is—

“(i) established for an essentially cultural, educational, or scientific purpose in that State; and

“(ii) recognised in that State as serving the public interest 30

“**import**, in relation to an object, means the arrival of that object in New Zealand in any manner, whether lawfully or unlawfully, from a point outside New Zealand

“**Ministry** means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act 35

“**ngā taonga tūturu** means 2 or more taonga tūturu

- “**object** includes a collection or assemblage of objects
- “**protected foreign object** means an object in or from a foreign State that is of importance for archaeology, prehistory, history, literature, art, or science and that belongs to the following categories: 5
- “(a) rare collections and specimens of fauna, flora, minerals, and anatomy, and objects of palaeontological interest:
- “(b) property relating to history, including the history of science and technology and military and social history, to the life of national leaders, thinkers, scientists, and artists, and to events of national importance: 10
- “(c) products of archaeological excavations (whether or not permitted) or of archaeological discoveries:
- “(d) elements of artistic or historical monuments or archaeological sites which have been dismembered: 15
- “(e) antiquities more than 100 years old, such as inscriptions, coins, and engraved seals:
- “(f) objects of ethnological interest:
- “(g) property of artistic interest, including (but not limited to)— 20
- “(i) pictures, paintings, and drawings produced entirely by hand on any support and in any material (excluding industrial designs and manufactured articles decorated by hand):
- “(ii) original works of statuary art and sculpture in any material: 25
- “(iii) original engravings, prints, and lithographs:
- “(iv) original artistic assemblages and montages in any material:
- “(h) rare manuscripts and incunabula, old books, documents, and publications of special interest singly or in collections: 30
- “(i) postage, revenue, and similar stamps, singly or in collections:
- “(j) archives, including sound, photographic, and cinematographic archives: 35
- “(k) articles of furniture more than 100 years old and old musical instruments
- “**protected New Zealand object** means an object forming part of the movable cultural heritage of New Zealand that— 40

- “(a) is of importance to New Zealand, or to a part of New Zealand, for aesthetic, archaeological, architectural, artistic, cultural, historical, literary, scientific, social, spiritual, technological, or traditional reasons; and

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- | | |
|--|---|
| <p>“(b) falls within—</p> <p style="padding-left: 20px;">“(i) 1 or more of the categories of protected objects set out in Schedule 4; or</p> <p style="padding-left: 20px;">“(ii) any category or categories of protected objects specified in regulations made under section 22</p> | 5 |
|--|---|

New (unanimous)

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| <p>“(b) falls within 1 or more of the categories of protected objects set out in Schedule 4</p> | 10 |
|--|----|

“**reciprocating State** means—

- | | |
|--|----|
| “(a) a State, other than New Zealand, that— | |
| “(i) is a party to the UNIDROIT Convention; or | |
| “(ii) is a party to the UNESCO Convention and provides New Zealand with treatment substantially the same as the treatment New Zealand provides under sections 10A to 10C ; or | 15 |
| “(b) a State that is specified in regulations made under section 22 | 20 |

“**stolen protected foreign object** includes (but is not limited to) an object that was, in accordance with the law of the relevant State,—

- | | |
|---|----|
| “(a) unlawfully excavated; or | |
| “(b) lawfully excavated but unlawfully retained | 25 |

“**taonga tūturu** means an object that—

- | | |
|---|----|
| “(a) relates to Māori culture, history, or society; and | |
| “(b) was, or appears to have been,— | |
| “(i) manufactured or modified in New Zealand by Māori; or | 30 |
| “(ii) brought into New Zealand by Māori; or | |
| “(iii) used by Māori; and | |
| “(c) is more than (60) <u>50</u> years old | |

- “**UNESCO Convention** means the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, done at Paris on 14 November 1970, a copy of the English text of which is set out in **Schedule 2** 5
- “**UNIDROIT Convention** means the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, done at Rome on 24 June 1995, a copy of the English text of which is set out in **Schedule 3**
- “**unique** means not existing in any other identical form 10
- “**unlawfully exported protected foreign object** means a protected foreign object exported from a reciprocating State in contravention of its laws; and includes (but is not limited to) an object that—
- “(a) has been temporarily exported from a State for purposes such as exhibition, research, or restoration under a permit issued by that State; and 15
- “(b) has not been returned to that State when required by that permit”.
- (3) Section 2 is amended by— 20
- (a) omitting from the definition of **collector** “artifacts” and substituting “taonga tūturu”; and
- (b) omitting from the definition of **found** “artifact” in each place where it appears and substituting in each case “taonga tūturu”; and 25
- (c) omitting from the definition of **replica of an artifact**—
- (i) “**an artifact**” and substituting “**a taonga tūturu**”; and
- (ii) “individual artifact” and substituting “individual taonga tūturu”. 30
- (4) Section 2 is amended by—
- (a) inserting in paragraph (a) of the definition of **relative** “, civil union partner, or de facto partner” after “spouse”; and
- (b) inserting in paragraph (c) of the definition of **relative** “, in a civil union, or in a de facto relationship” after “marriage”. 35
- (5) Section 2 is amended by adding the following subsection as subsection (2):

- “(2) Every reference in any enactment enacted, and in any document made, before the commencement of the Protected Objects Amendment Act 2004 to—
- “(a) the word **artifact** as defined in this Act before the commencement of the Protected Objects Amendment Act 2004 must, unless the context otherwise requires, be read as **taonga tūturu** as defined in this Act immediately after the commencement of the Protected Objects Amendment Act 2004; and 5
- “(b) the word **antiquity** as defined in this Act before the commencement of the Protected Objects Amendment Act 2004 must, unless the context otherwise requires, be read as **protected New Zealand object** as defined in this Act immediately after the commencement of the Protected Objects Amendment Act 2004.” 10 15

7 Minister may acquire antiquities

- (1) The heading to section 4 is amended by omitting “**antiquities**” and substituting “**protected New Zealand objects**”.
- (2) Section 4(1) is amended by omitting “antiquity” and substituting “protected New Zealand object”. 20
- (3) Section 4(2) is amended by omitting “antiquity” and substituting “protected New Zealand object”.

8 Sections 5 to 7 repealed

Sections 5 to 7 are repealed.

9 New Part 1 inserted 25

The following Part is inserted before section 8:

“Part 1

“**Protected New Zealand objects, unlawfully exported (*foreign*) protected foreign objects, and stolen protected foreign objects** 30

“*Protected New Zealand objects*

“5 Export prohibition

- “(1) A person may not export, or attempt to export, a protected New Zealand object from New Zealand—
- “(a) unless— 35

- “(i) that person has submitted to the chief executive an application for permission to export that object; and
- “(ii) the chief executive has—
- “(A) granted the application for permission to export; and 5
- “(B) provided that person with a certificate of permission under **section 7G** to export that object; and
- “(iii) the export conforms with any terms and conditions imposed by that authorisation; or 10
- “(b) unless the chief executive, by notice in the *Gazette*, exempts any category or categories of protected New Zealand objects from the provisions of this section if he or she is satisfied that sufficient examples of that category or those categories are held in public ownership in New Zealand. 15
- “(2) Every person who exports, or attempts to export, a protected New Zealand object, other than in accordance with **subsection (1)** or without reasonable excuse in the circumstances, commits an offence and is liable on summary conviction,— 20
- “(a) in the case of an individual, to a fine not exceeding \$100,000 or a term of imprisonment not exceeding 5 years, or to both:
- “(b) in the case of a body corporate, to a fine not exceeding \$200,000. 25

Compare: UNESCO Convention, art 3

“6 Applications for permission to export protected New Zealand objects

- “(1) An application for permission to export a protected New Zealand object from New Zealand must— 30
- “(a) be in the form prescribed by the chief executive; and
- “(b) demonstrate, to the satisfaction of the chief executive,—
- “(i) that the applicant has undisputed title to that object; and 35
- “(ii) if the object is held in trust, that all of the trustees support the application.

- “(2) Nothing in this section applies to any object lawfully taken and ordinarily kept outside New Zealand but temporarily within New Zealand.
- “7 Chief executive must refuse or grant applications for permission to export** 5
- “(1) The chief executive must, in writing,—
- “(a) refuse to grant an application for permission to export; or
- “(b) grant that application for permission to export— 10
- “(i) unconditionally; or
- “(ii) subject to any terms and conditions that the chief executive considers appropriate in the circumstances.
- “(2) If the chief executive grants an application for permission to export, he or she must provide the applicant with written notice of the terms and conditions imposed under **subsection (1)(b)(ii)** (if any). 15
- “7A Chief executive may not grant applications for permission to export in certain circumstances**
- “(1) The chief executive may not grant an application for permission to export if the chief executive determines that the object— 20
- “(a) is—
- “(i) a protected New Zealand object; and
- “(ii) substantially physically authentic and— 25
- “(A) made or naturally occurring in New Zealand; or
- “(B) made with New Zealand materials; or
- “(C) used by New Zealanders; or
- “(D) related to New Zealand; and 30
- “(b) is—
- “(i) associated with, or representative of, activities, events, ideas, movements, objects, persons, or places of importance to New Zealand; or
- “(ii) important to New Zealand for its technical accomplishment or design, artistic excellence, or symbolic, commemorative, or research value; or 35

“(iii) part of a wider historical, scientific, or cultural collection or assemblage of importance to New Zealand; and

Struck out (unanimous)

“(iv) defined by any additional relevant criteria that may be prescribed in regulations made under **section 22**; and

5

“(c) is of such significance to New Zealand or part of New Zealand that its export from New Zealand would substantially diminish New Zealand’s cultural heritage.

New (unanimous)

“(1A) Despite **subsection (1)**, and without limiting **section 7(1)(b)(ii) or section 8(1)**, the chief executive may grant an application that meets the criteria specified in that subsection if the grant is subject to the condition that the object be returned to New Zealand by a specified date.

10

“(2) In making a determination under **subsection (1)**, the chief executive must have regard to the advice of 2 or more expert examiners.

15

“Expert examiners

“7B Expert examiners

“(1) When determining an application for permission to export, the chief executive must consult 2 or more expert examiners.

20

“(2) For the purposes of **subsection (1)**, the chief executive must establish and maintain a register of expert examiners.

New (unanimous)

“(3) The chief executive must be satisfied that the expert examiners with whom he or she consults are experts in the field relevant to the particular application for permission to export.”

25

- “7C Matters expert examiners must consider**
 With respect to examining an object subject to an application for permission to export, the relevant expert examiner must have regard to the matters specified in **section 7A(1)**.
- “7D Expert examiners must recommend that applications for permission to export not be granted in certain circumstances** 5
 An expert examiner must provide the chief executive with a recommendation not to grant an application for permission to export if the protected New Zealand object is of such significance to New Zealand or part of New Zealand that its export from New Zealand would substantially diminish New Zealand’s cultural heritage. 10
- New (unanimous)**
- “7DA Protection from liability**
 No expert examiner may be held personally liable for any advice or recommendation that the expert examiner provides in good faith in relation to **sections 7A to 7D**. 15
- “Registered objects*
- “7E Register**
- “(1) The chief executive must establish and maintain a register of objects, or categories of objects, of national significance.** 20
- “(2) The register—**
- “(a) must include (but is not limited to) any protected New Zealand object in respect of which the chief executive has refused to grant an application for permission to export; and** 25
- “(b) may include any protected New Zealand object—**
- “(i) that its owner submits for inclusion in the register; and**
- “(ii) that is of such significance to New Zealand or part of New Zealand that its export from New Zealand would substantially diminish New Zealand’s cultural heritage.** 30
- “(3) An object may only be removed from the register if it no longer meets the criteria specified in **subsection (2)**.** 35

“(4) The register is not available for public inspection.

“7F Registered object may not be permanently exported

“(1) A registered object may not be permanently exported from New Zealand.

“(2) If a registered object is permanently exported from New Zealand, the chief executive may take any appropriate action that he or she thinks fit to seek to have the object returned to New Zealand. 5

“Certificate of permission

“7G Certificate of permission 10

If permission is granted by the chief executive for the export of a protected New Zealand object, a certificate must be issued to the applicant under the hand of the chief executive.”

10 Conditions imposed by chief executive

Section 8(1) is amended by omitting “antiquity” in each place where it appears and substituting in each case “protected New Zealand object”. 15

11 Appeal against chief executive’s decision

(1) Section 9(1) is amended by omitting “his” and substituting “his or her”. 20

(2) Section 9(1) is amended by omitting “antiquity” and substituting “protected New Zealand object”.

(3) Section 9(1) is amended by omitting “he” and substituting “the Minister”.

12 Application of Customs and Excise Act 1996 25

(1) Section 10(1) is amended by omitting “antiquity” and substituting “protected New Zealand object”.

(2) Section 10(1) is amended by omitting “other than section 235” and substituting “except sections 229, 235, 236(2) to (4), and 237 of that Act”. 30

(3) Section 10 is amended by inserting the following subsections after subsection 1:

- “(1A) The powers conferred on Customs officers under the Customs and Excise Act 1996 (except sections 229, 235, 236(2) to (4), and 237 of that Act) apply in relation to the export of a protected New Zealand object.
- “(1B) The forfeiture of an object under **subsection (1)** is not dependent on the seizure of that object.” 5
- (4) Section 10(2) is amended by—
- (a) omitting “antiquity” in each place where it appears and substituting in each case “protected New Zealand object”; and 10
 - (b) omitting “condemned”, and substituting “seized”; and
 - (c) omitting “Minister” in each place where it appears and substituting in each case “chief executive”; and
 - (d) omitting “Minister’s” and substituting “chief executive’s”. 15
- (5) Section 10 is amended by adding the following subsections:
- “(3) Subject to the provisions of this Act,—
- “(a) the provisions of the Customs and Excise Act 1996 relating to unlawful imports (except sections 229, 235, 236(2) to (4), and 237 of that Act) apply to an unlawfully exported protected foreign object; and 20
 - “(b) that object is to be treated as a prohibited import under section 54 of that Act.
- “(4) If the New Zealand Customs Service seizes an unlawfully exported protected foreign object or a stolen protected foreign object, that object must be— 25
- “(a) transferred to the Ministry; and
 - “(b) held by the Ministry, in accordance with the directions of the chief executive (if any), until any proceedings related to that object under this Act or the Customs and Excise Act 1996 are completed. 30
- “(5) Despite anything in the Customs and Excise Act 1996 or any other enactment,—
- “(a) a prosecution for an offence under this Act or the Customs and Excise Act 1996 with respect to a protected New Zealand object— 35
 - “(i) may be commenced at any time within 5 years from the date on which that offence was committed; but

- “(ii) may not be commenced after the expiration of 5 years from the date on which that offence was committed; and
- “(b) no customs duties or taxes are payable in respect of a protected foreign object whose return is ordered by a court under **section 10B or section 10E.**” 5
- 13 New headings and sections 10A to 10F inserted**
The following headings and sections are inserted after section 10:
- “*Unlawfully exported protected foreign objects*” 10
- “10A Import prohibitions**
A person may not import into New Zealand an unlawfully exported protected foreign object.
Compare: UNESCO Convention, arts 3, 7
- “10B Claims for return of unlawfully exported protected foreign objects** 15
- “(1) A reciprocating State may bring a claim in a court of competent jurisdiction for the return of an unlawfully exported protected foreign object against the person who possesses that object within— 20
- “(a) 3 years of the date on which the claimant knew—
- “(i) the location of that object; and
- “(ii) the identity of the possessor of that object; and
- “(b) 50 years of the date on which that object— 25
- “(i) was unlawfully exported; or
- “(ii) should have been returned to that State under a permit for temporary export issued by that State.
- “(2) The court must order the return of the unlawfully exported protected foreign object if the claimant establishes that— 30
- “(a) the removal of that object from the claimant’s territory significantly impairs 1 or more of the following interests:
- “(i) the physical preservation of that object or its context:
- “(ii) the integrity of a complex object: 35
- “(iii) the preservation of information, including (but not limited to) information of a scientific or historical character:

- “(iv) the traditional or ritual use of that object by a tribal or indigenous community; or
“(b) the object is of significant cultural importance for the claimant.

Compare: UNIDROIT Convention, art 5

5

“10C Compensation for and costs of returning unlawfully exported protected foreign objects

- “(1) If a court orders the return of an unlawfully exported protected foreign object, the relevant reciprocating State must, at the time of the return, pay fair and reasonable compensation to the person who possesses that object, provided that— 10
“(a) the object was acquired after it was unlawfully exported; and
“(b) the person did not know, and could not reasonably be expected to have known, that the object, at the time it was acquired, was unlawfully exported. 15
- “(2) In determining whether the person knew, or could reasonably be expected to have known, that the object was unlawfully exported, a court must have regard to the circumstances of the acquisition, including (but not limited to) the absence of an export certificate issued under the law of the relevant reciprocating State. 20
- “(3) If the relevant reciprocating State agrees, the person required to return an unlawfully exported protected foreign object may, in lieu of compensation,— 25
“(a) retain ownership of that object; or
“(b) transfer ownership, gratuitously or against payment, to a person who—
“(i) resides in that State; and
“(ii) provides any guarantees required by that State. 30
- “(4) The relevant reciprocating State must, without prejudice to its right to recover costs from any other person, meet the cost of returning an unlawfully exported protected foreign object under this section.
- “(5) Despite anything in this section, if a person required to return an unlawfully exported protected foreign object acquired that object gratuitously (by inheritance or otherwise), that person may not be placed in a position more favourable than the position of the person from whom that object was acquired. 35

Compare: UNIDROIT Convention, arts 6, 9(1)

40

*“Stolen protected foreign objects***“10D (Stolen protected foreign objects) Objects stolen from foreign cultural institutions**

- “(1) This section applies if—
- “(a) a protected foreign object that is documented as being part of the inventory of a foreign cultural institution is stolen and imported into New Zealand; and 5
 - “(b) the relevant reciprocating State provides New Zealand with the documentation and other evidence to establish its claim for the recovery and return of that object to the chief executive. 10
- “(2) If this section applies, the chief executive must,—
- “(a) at the request of the relevant reciprocating State, ask the New Zealand Customs Service to—
 - “(i) seize that object pursuant to its powers under the Customs and Excise Act 1996 (except sections 229, 235, 236(2) to (4), and 237 of that Act); and 15
 - “(ii) transfer that object to the Ministry; and
 - “(b) if that object is seized, return that object to that State if that State pays— 20
 - “(i) just compensation to any person who—
 - “(A) has valid title to that object; or
 - “(B) is an innocent purchaser; and
 - “(ii) all costs with respect to the return and delivery of the object. 25

Compare: UNESCO Convention, art 7(b)(ii)

“10E Restitution of stolen protected foreign objects

- “(1) A person in possession of a stolen protected foreign object must return that object to its rightful owner.
- “(2) A claim for the restitution of a stolen protected foreign object against the person who possesses that object may be brought in a court of competent jurisdiction within— 30
- “(a) 3 years of the date on which the claimant knew—
 - “(i) the location of that object; and
 - “(ii) the identity of the possessor of that object; and 35
 - “(b) 50 years of the date on which that object was stolen.
- “(3) **Subsection (2)(b)** does not apply if—
- “(a) that object—

- “(i) forms an integral part of an identified monument or archaeological site in the relevant reciprocating State; or
- “(ii) is part of a foreign public collection; or
- “(b) that object— 5
- “(i) was made by a member or members of a tribal or indigenous community for traditional or ritual use by that community; and
- “(ii) is to be returned to that community.
- “(4) Except as provided in **section 10D(2)(b)**, no compensation is payable for the restitution of a stolen protected foreign object. 10
- “(5) Despite anything in the Limitation Act 1950, any claim that the person who possesses the stolen protected foreign object may have against the person from whom that object was acquired may be brought within 2 years of the date on which the order for restitution was made. 15
- Compare: UNIDROIT Convention, arts 3, 4

“Application

- “**10F Application of certain sections**
- “(1) **Sections 10A to 10C** only apply to unlawfully exported (*foreign*) protected foreign objects that are unlawfully exported from a reciprocating State on or after the commencement of this section. 20
- “(2) **Sections 10D and 10E** only apply to stolen protected foreign objects that are stolen on or after the commencement of this section. 25
- “(3) **Sections 10A to 10C** do not apply if—
- “(a) the export of a protected foreign object is no longer unlawful in the relevant reciprocating State at the time that the object is imported into New Zealand or its return is requested; or 30
- “(b) the protected foreign object was exported from the relevant reciprocating State during the lifetime of the person who created it or within a period of 50 years following the death of that person. 35
- “(4) Despite **subsection (3)(b)**, **sections 10A to 10C** apply if—
- “(a) a protected foreign object was made by a member or members of a tribal or indigenous community for traditional or ritual use; and

- “(b) that object is to be returned to that community.
- “(5) In any proceedings under **sections 10B or 10E**, or in support of any similar proceedings in a reciprocating State, the court may grant any interim relief that it considers appropriate.
Compare: UNIDROIT Convention, arts 7, 8(3), and 10”. 5
- 14 New Part heading inserted**
The following Part heading is inserted before section 11:
“Part 2
“Ngā taonga tūturu ownership and Maori
Land Court”. 10
- 15 Establishing ownership and custody of artifacts**
- (1) The heading to section 11 is amended by omitting “**artifacts**” and substituting “**ngā taonga tūturu**”.
- (2) Section 11(1) is amended by omitting “artifact” in each place where it appears and substituting in each case “taonga tūturu”. 15
- (3) Section 11(2) is amended by—
- (a) omitting “artifact” in each place where it appears and substituting in each case “taonga tūturu”; and
- (b) omitting “Minister” and substituting “chief executive”; and 20
- (c) inserting “or occupation” after “virtue of ownership”.
- (4) Section 11(3) is amended by omitting “artifact” in each place where it appears and substituting in each case “taonga tūturu”. 25
- (5) Section 11 is amended by repealing subsections (4) and (5) and substituting the following subsections:
- “(4) Upon receipt of a notification in accordance with subsection (3), the chief executive must—
- “(a) take the action that the chief executive considers appropriate to— 30
- “(i) provide for the examination of the taonga tūturu, its care, its recording, and its custody on such conditions as the chief executive considers fit; and 35
- “(ii) notify any parties that may have an interest in the taonga tūturu; and

- “(b) publish a public notice that calls for claims of ownership to be lodged with the chief executive within 60 working days of the date on which the notice is published.
- “(5) If only 1 claim of ownership is lodged, the chief executive must, if satisfied that the claim is valid, apply to the Registrar of the Maori Land Court for an order that confirms the owner or owners of the taonga tūturu. 5
- “(6) If 2 or more competing claims are lodged, the chief executive must— 10
- “(a) consult the claimants for the purpose of resolving the competing claims; and
- “(b) if satisfied that the competing claims have been resolved and that the resolution is valid, apply to the Registrar of the Maori Land Court for an order that confirms the owner or owners of the taonga tūturu. 15
- “(7) If 2 or more competing claims are lodged, and cannot be resolved, the chief executive may, if requested by a claimant, facilitate the applications of any or all of the claimants to the Maori Land Court. 20
- “(8) For the purposes of this section, **ownership**, whether actual or traditional, includes (but is not limited to) collective or joint ownership.
- “(9) Every person who finds a taonga tūturu, knowing or having reasonable cause to suspect that it is a taonga tūturu, and who contravenes subsection (3), commits an offence and is liable on summary conviction,— 25
- “(a) in the case of an individual, to a fine not exceeding \$10,000 for each taonga tūturu:
- “(b) in the case of a body corporate, to a fine not exceeding \$20,000 for each taonga tūturu.” 30

16 Maori Land Court’s jurisdiction over artifacts

- (1) The heading to section 12 is amended by omitting “**artifacts**” and substituting “**ngā taonga tūturu**”.
- (2) Section 12(1) is amended by omitting “artifact” in the first place where it appears and substituting “taonga tūturu”. 35
- (3) Section 12(1)(a) is amended by—
- (a) omitting “Minister” and substituting “chief executive”; and

- (b) omitting “an artifact” and substituting “a taonga tūturu”.
- (4) Section 12(1)(b) is amended by omitting “artifact” and substituting “taonga tūturu”.
- (5) Section 12(1)(c) is amended by omitting “artifact” in both places where it appears and substituting in each case “taonga tūturu”. 5
- (6) Section 12(1)(d) is amended by—
- (a) omitting “artifact” and substituting “taonga tūturu”; and 10
- (b) omitting “him by the Maori Affairs Act 1953” and substituting “him or her by Te Ture Whenua Maori Act 1993”.
- (7) Section 12(1)(e) is amended by omitting “artifact” and substituting “taonga tūturu”. 15
- (8) Section 12(1)(g) is amended by—
- (a) omitting “artifact” and substituting “taonga tūturu”; and
- (b) omitting “section 443 of the Maori Affairs Act 1953” and substituting “section 222 of Te Ture Whenua Maori Act 1993”. 20
- (9) Section 12(2) is amended by—
- (a) omitting “artifact” in the first and third places where it appears and substituting in each case “taonga tūturu”; and 25
- (b) omitting “an artifact” and substituting “a taonga tūturu”; and
- (c) omitting “Maori custom” and substituting “Māori custom”.
- (10) Section 12(3) is amended by omitting “section 30(1)(f) of the Maori Affairs Act 1953 shall apply” and substituting “section 19(1)(b) of Te Ture Whenua Maori Act 1993 apply”. 30
- (11) Section 12 is amended by adding the following subsection:
- “(4) To avoid doubt, section 30 of Te Ture Whenua Maori Act 1993, and any other relevant provision in that Act, applies to any claim for ownership or any appeal lodged under this Act.” 35

17 New Part heading inserted

The following Part heading is inserted after section 12:

**“Part 3
“Miscellaneous”.**

18 Disposal of artifacts

5

- (1) The heading to section 13 is amended by omitting “**artifacts**” and substituting “**ngā taonga tūturu**”.
- (2) Section 13(1) is amended by—
- (a) omitting “artifact” in the first place where it appears and substituting “taonga tūturu”; and 10
- (b) omitting “an artifact” and substituting “a taonga tūturu”.
- (3) Section 13(2) is amended by omitting “artifact” in both places where it appears and substituting in each case “taonga tūturu”. 15
- (4) Section 13(3) is amended by—
- (a) omitting “his” and substituting “his or her”; and
- (b) omitting “he” and substituting “the chief executive”; and
- (c) omitting “artifacts” in both places where it appears and substituting in each case “ngā taonga tūturu”. 20
- (5) Section 13 is amended by repealing subsection (4) and substituting the following subsection:
- “(4) Every person, other than a registered collector, who contravenes the provisions of this section commits an offence and is liable on summary conviction,— 25
- “(a) in the case of an individual, to a fine not exceeding \$10,000 for each taonga tūturu:
- “(b) in the case of a body corporate, to a fine not exceeding \$20,000 for each taonga tūturu.” 30
- (6) Section 13(5) is amended by omitting “artifact” in both places where it appears and substituting in each case “taonga tūturu”.
- (7) Section 13(6) is amended by—
- (a) omitting “artifact” and substituting “taonga tūturu”; and 35
- (b) omitting “his” and substituting “his or her”.

19 Registration of collectors

- (1) Section 14(1) is amended by—
- (a) omitting “his” and substituting “his or her”; and
 - (b) omitting “artifacts” in both places where it appears and substituting in each case “ngā taonga tūturu”; and 5
 - (c) omitting “artifact” and substituting “taonga tūturu”.
- (2) Section 14(2) is amended by omitting “artifacts” and substituting “ngā taonga tūturu”.
- (3) Section 14(3) is amended by—
- (a) omitting “his” in both places where it appears and substituting in each case “his or her”; and 10
 - (b) omitting “His” and substituting “his or her”; and
 - (c) omitting “He” in both places where it appears and substituting in each case “he or she”.
- (4) Section 14(4) is amended by omitting “artifacts” and substituting “ngā taonga tūturu”. 15
- (5) Section 14 is amended by repealing subsection (6) and substituting the following subsections:
- “(6) Every person commits an offence who,—
- “(a) not being a registered collector,— 20
 - “(i) acquires or attempts to acquire a taonga tūturu, knowing or having reasonable cause to suspect that it is a taonga tūturu, otherwise than in accordance with any provision of this Act; or
 - “(ii) falsely declares to any person that he or she is a registered collector; or 25
 - “(b) being a registered collector, fails to comply with any of the conditions of registration specified in subsection (3).
- “(7) Every person who commits an offence under **subsection (6)** is liable on summary conviction,— 30
- “(a) in the case of an individual, to a fine not exceeding \$10,000 for each taonga tūturu:
 - “(b) in the case of a body corporate, to a fine not exceeding \$20,000 for each taonga tūturu.” 35

20 New section 14A inserted

The following section is inserted after section 14:

“14A Duties of executors

- “(1) If a registered collector dies, the executor of the estate of that collector must, as soon as practicable (but no later than 90 days after the death of that collector), notify the chief executive that the collector has died. 5
- “(2) Every person who knowingly contravenes **subsection (1)** commits an offence and is liable on summary conviction,—
- “(a) in the case of an individual, to a fine not exceeding \$10,000: 10
- “(b) in the case of a body corporate, to a fine not exceeding \$20,000.”

21 Licensing of auctioneers and secondhand dealers

- (1) Section 15(1) is amended by— 15
- (a) omitting “artifacts” in both places where it appears and substituting in each case “ngā taonga tūturu”; and
- (b) omitting “he” and substituting “he or she”.
- (2) Section 15(2) is amended by omitting “He” in each place where it appears and substituting in each case “he or she”. 20
- (3) Section 15(2)(a) is amended by—
- (a) omitting “every artifact” and substituting “every taonga tūturu”; and
- (b) omitting “an artifact” and substituting “a taonga tūturu”. 25
- (4) Section 15(2)(b) is amended by—
- (a) omitting “artifact” in the first and third places where it appears and substituting in each case “taonga tūturu”; and
- (b) omitting “an artifact” and substituting “a taonga tūturu”. 30
- (5) Section 15(2)(c) is amended by—
- (a) omitting “artifacts” and substituting “ngā taonga tūturu”; and
- (b) omitting “he” and substituting “he or she”; and 35
- (c) omitting “artifact” in both places where it appears and substituting in each case “taonga tūturu”.
- (6) Section 15(2)(d) is amended by—

- (a) omitting “artifact” in both places where it appears and substituting in each case “taonga tūturu”; and
- (b) omitting “him” and substituting “him or her”.
- (7) Section 15(2)(e) is amended by omitting “artifact” in both places where it appears and substituting in each case “taonga tūturu”. 5
- (8) Section 15(2)(f) is amended by—
- (a) omitting “an artifact” and substituting “a taonga tūturu”; and
- (b) omitting “artifacts” and substituting “ngā taonga tūturu”. 10
- (9) Section 15(2)(h) is amended by omitting “his” and substituting “his or her”.
- (10) Section 15 is amended by repealing subsection (6) and substituting the following subsections: 15
- “(6) Every person commits an offence who,—
- “(a) in a manner contrary to the provisions of this section, purchases or attempts to purchase, or sells or attempts to sell, a taonga tūturu, knowing or having reasonable cause to suspect that it is a taonga tūturu, or falsely declares to any person that he or she is a licensed auctioneer or a licensed secondhand dealer; or 20
- “(b) being a licensed auctioneer or a licensed secondhand dealer, fails to comply with any of the conditions of his or her licence specified in subsection (2). 25
- “(7) Every person who commits an offence under **subsection (6)** is liable on summary conviction,—
- “(a) in the case of an individual, to a fine not exceeding \$10,000 for each taonga tūturu:
- “(b) in the case of a body corporate, to a fine not exceeding \$20,000 for each taonga tūturu.” 30
- 22 Certificate of examination to be issued by authorised public museum**
- (1) Section 16(1) is amended by omitting “artifact” in both places where it appears and substituting in each case “taonga tūturu”. 35
- (2) Section 16(2) is amended by omitting “artifact” and substituting “taonga tūturu”.

- (3) Section 16(3) is amended by omitting “artifact” in both places where it appears and substituting in each case “taonga tūturu”.
- (4) Section 16(4) is amended by omitting “artifact” in both places where it appears and substituting in each case “taonga tūturu”. 5

New (unanimous)

- (5) Section 16(4) is amended by omitting “to a fine not exceeding \$500” and substituting “, in the case of an individual, to a fine not exceeding \$10,000 for each taonga tūturu or, in the case of a body corporate, to a fine not exceeding \$20,000 for each taonga tūturu”. 10

23 Disclosure of information

- (1) Section 17(1) is amended by omitting “artifact” in both places where it appears and substituting in each case “taonga tūturu”. 15
- (2) Section 17(2) is repealed and the following subsection substituted:
- “(2) Every person who knowingly acts in contravention of subsection (1) commits an offence and is liable on summary conviction,— 20
- “(a) in the case of an individual, to a fine not exceeding \$10,000 for each taonga tūturu:
- “(b) in the case of a body corporate, to a fine not exceeding \$20,000 for each taonga tūturu.”

24 Replica of artifact 25

- (1) The heading to section 18 is amended by omitting “**artifact**” and substituting “**taonga tūturu**”.
- (2) Section 18(1) is amended by omitting “artifact” and substituting “taonga tūturu”.
- (3) Section 18 is amended by repealing subsection (2) and substituting the following subsection: 30
- “(2) Every person who, without reasonable cause, fails to comply with the provisions of subsection (1) commits an offence, and is liable on summary conviction,—

- “(a) in the case of an individual, to a fine not exceeding \$10,000 for each taonga tūturu:
- “(b) in the case of a body corporate, to a fine not exceeding \$20,000 for each taonga tūturu.”
- 25 New section 18A inserted** 5
The following section is inserted after section 18:
- “18A Wilful damage**
Every person who wilfully damages or destroys an object that is subject to an export application, or has been refused export permission under this Act, commits an offence, and is liable on summary conviction,— 10
- “(a) in the case of an individual, to a fine not exceeding \$10,000 for each object or a term of imprisonment not exceeding 2 years:
- “(b) in the case of a body corporate, to a fine not exceeding \$20,000 for each object.” 15
- New (unanimous)**
- 25A Section 19 repealed**
Section 19 is repealed.
- 26 Annual report** 20
Section 20 is amended by—
- (a) omitting “his” and substituting “his or her”; and
- (b) omitting “the artifacts” in both places where it appears and substituting in each case “ngā taonga tūturu”; and
- (c) omitting “antiquities” and substituting “protected New Zealand objects”. 25
- 27 Saving of other enactments**
Section 21 is amended by omitting “he” and substituting “he or she”.
- 28 New section 22 substituted** 30
Section 22 is repealed and the following section substituted:
- “22 Regulations**
The Governor-General may, by Order in Council, make regulations—

Struck out (unanimous)

- “(a) specifying any category or categories of protected New Zealand objects; and
- “(b) specifying that a particular object is a protected New Zealand object; and
- “(c) specifying any additional relevant criteria for identifying a protected New Zealand object; and 5

New (unanimous)

- “(c) specifying that a particular object is a protected New Zealand object if that object—
 - “(i) is substantially physically authentic and is—
 - “(A) made or naturally occurring in New Zealand; or 10
 - “(B) made with New Zealand materials; or
 - “(C) used by New Zealanders; or
 - “(D) related to New Zealand; and
 - “(ii) is— 15
 - “(A) associated with, or representative of, activities, events, ideas, movements, objects, persons, or places of importance to New Zealand; or
 - “(B) important to New Zealand for its technical accomplishment or design, artistic excellence, or symbolic, commemorative, or research value; or 20
 - “(C) part of a wider historical, scientific, or cultural collection or assemblage of importance to New Zealand; and 25
 - “(iii) is of such significance to New Zealand or part of New Zealand that its export from New Zealand would substantially diminish New Zealand’s cultural heritage; and 30

- “(d) specifying that a State is a reciprocating State; and
- “(e) providing for any matters that are contemplated by this Act, or necessary for giving full effect to its provisions and for its due administration.

Compare: 1962 No 37, s 16”.

35

29 Schedule amended

The Schedule is amended by omitting the heading “**Schedule**” and substituting the heading “**Schedule 1**”.

30 New schedules added

The schedules set out in **Schedule 1** are added.

5

Part 2

Struck out (unanimous)

Miscellaneous provisions

New

Consequential amendments

30A Amendment to Gambling (Prohibited Property) Regulations 2005

10

Regulation 4(d) of the Gambling (Prohibited Property) Regulations 2005 is revoked and the following paragraph substituted:

“(d) a taonga tūturu (within the meaning of the **Protected Objects Act 1975**):”.

15

31 Amendments to Maori Land Court Rules 1994

(1) Rule 46(1) of the Maori Land Court Rules 1994 is amended by adding “; or” and also by adding the following paragraph:

“(g) an application is made under **section 11(5) or section 11(6)** of the **Protected Objects Act 1975** for an order recording the ownership of a taonga tūturu.”

20

(2) The heading to rule 163 of the Maori Land Court Rules 1994 is amended by omitting “**Antiquities**” and substituting “**Protected Objects**”.

(3) Rule 163(1) of the Maori Land Court Rules 1994 is amended by omitting “Antiquities” and substituting “Protected Objects”.

25

- (4) Rule 163(2) of the Maori Land Court Rules 1994 is amended by omitting “Antiquities” and substituting “Protected Objects”.

32 Consequential amendments to other Acts

The Acts specified in **Schedule 2** are consequentially amended in the manner indicated in that schedule. 5

s 30

Schedule 1**New Schedules 2, 3, and 4 added to principal Act**

s 2(1)

Schedule 2**UNESCO Convention on the Means of Prohibiting
and Preventing the Illicit Import, Export and
Transfer of Ownership of Cultural Property**

5

Done at Paris, 14 November 1970

Entry into force, 24 April 1972

Preamble

The General Conference of the United Nations Educational, Scientific and Cultural Organization, meeting in Paris from 12 October to 14 November 1970, at its sixteenth session, 10

Recalling the importance of the provisions contained in the Declaration of the Principles of International Cultural Co-operation, adopted by the General Conference at its fourteenth session, 15

Considering that the interchange of cultural property among nations for scientific cultural and educational purposes increases the knowledge of the civilization of Man, enriches the cultural life of all peoples and inspires mutual respect and appreciation among nations, *Considering* that cultural property constitutes one of the basic elements of civilization and national culture, and that its true value can be appreciated only in relation to the fullest possible information regarding its origin, history and traditional setting, 20

Considering that it is incumbent upon every State to protect the cultural property existing within its territory against the dangers of theft, clandestine excavation, and illicit export, 25

Considering that, to avert these dangers, it is essential for every State to become increasingly alive to the moral obligations to respect its own cultural heritage and that of all nations,

Considering that, as cultural institutions, museums, libraries and archives should ensure that their collections are built up in accordance with universally recognized moral principles, 30

Considering that the illicit import, export and transfer of ownership of cultural property is an obstacle to that understanding between nations which it is part of Unesco's mission to promote by recommending to interested States, international conventions to this end, 35

Schedule 2—continued

Considering that the protection of cultural heritage can be effective only if organized both nationally and internationally among States working in close co-operation,

Considering that the Unesco General Conference adopted a Recommendation to this effect in 1964,

5

Having before it further proposals on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property, a question which is on the agenda for the session as item 19.

Having decided, at its fifteenth session, that this question should be made the subject of an international convention,

10

Adopts this Convention on the fourteenth day of November 1970.

Article 1

For the purposes of this Convention, the term “cultural property” means property which, on religious or secular grounds, is specifically designated by each State as being of importance for archaeology, prehistory, history, literature, art or science and which belongs to the following categories:

15

- a. rare collections and specimens of fauna, flora, minerals and anatomy, and objects of palaeontological interest; 20
- b. property relating to history, including the history of science and technology and military and social history, to the life of national leaders, thinkers, scientists and artists and to events of national importance;
- c. products of archaeological excavations (including regular and clandestine) or of archaeological discoveries; 25
- d. elements of artistic or historical monuments or archaeological sites which have been dismembered;
- e. antiquities more than one hundred years old, such as inscriptions, coins and engraved seals; 30
- f. objects of ethnological interest;
- g. property of artistic interest, such as:
 - i. pictures, paintings and drawings produced entirely by hand on any support and in any material (excluding industrial designs and manufactured articles decorated by hand); 35
 - ii. original works of statuary art and sculpture in any material;
 - iii. original engravings, prints and lithographs;

Schedule 2—*continued*

- iv. original artistic assemblages and montages in any material;
- h. rare manuscripts and incunabula, old books, documents and publications of special interest (historical, artistic, scientific, literary, etc.) singly or in collections 5
- i. postage, revenue and similar stamps, singly or in collections;
- j. archives, including sound, photographic and cinematographic archives;
- k. articles of furniture more than one hundred years old and old musical instruments. 10

Article 2

1. The States Parties to this Convention recognize that the illicit import, export and transfer of ownership of cultural property is one of the main causes of the impoverishment of the cultural heritage of the countries of origin of such property and that international co-operation constitutes one of the most efficient means of protecting each country's cultural property against all the dangers resulting therefrom. 15
2. To this end, the States Parties undertake to oppose such practices with the means at their disposal, and particularly by removing their causes, putting a stop to current practices, and by helping to make the necessary reparations. 20

Article 3

The import, export or transfer of ownership of cultural property effected contrary to the provisions adopted under this Convention by the States Parties thereto, shall be illicit. 25

Article 4

The States Parties to this Convention recognize that for the purpose of the Convention property which belongs to the following categories forms part of the cultural heritage of each State: 30

- a. Cultural property created by the individual or collective genius of nationals of the State concerned, and cultural property of importance to the State concerned created within the territory of that State by foreign nationals or stateless persons resident within such territory; 35
- b. cultural property found within the national territory;

Schedule 2—*continued*

- c. cultural property acquired by archaeological, ethnological or natural science missions, with the consent of the competent authorities of the country of origin of such property;
- d. cultural property which has been the subject of a freely agreed exchange; 5
- e. cultural property received as a gift or purchased legally with the consent of the competent authorities of the country of origin of such property.

Article 5 10

To ensure the protection of their cultural property against illicit import, export and transfer of ownership, the States Parties to this Convention undertake, as appropriate for each country, to set up within their territories one or more national services, where such services do not already exist, for the protection of the cultural heritage, with a qualified staff sufficient in number for the effective carrying out of the following functions: 15

- a. contributing to the formation of draft laws and regulations designed to secure the protection of the cultural heritage and particularly prevention of the illicit import, export and transfer of ownership of important cultural property; 20
- b. establishing and keeping up to date, on the basis of a national inventory of protected property, a list of important public and private cultural property whose export would constitute an appreciable impoverishment of the national cultural heritage; 25
- c. promoting the development or the establishment of scientific and technical institutions (museums, libraries, archives, laboratories, workshops ...) required to ensure the preservation and presentation of cultural property; 30
- d. organizing the supervision of archaeological excavations, ensuring the preservation “in situ” of certain cultural property, and protecting certain areas reserved for future archaeological research; 35
- e. establishing, for the benefit of those concerned (curators, collectors, antique dealers, etc.) rules in conformity with the ethical principles set forth in this Convention; and taking steps to ensure the observance of those rules;

Schedule 2—*continued*

- f. taking educational measures to stimulate and develop respect for the cultural heritage of all States, and spreading knowledge of the provisions of this Convention;
- g. seeing that appropriate publicity is given to the disappearance of any items of cultural property. 5

Article 6

The States Parties to this Convention undertake:

- a. to introduce an appropriate certificate in which the exporting State would specify that the export of the cultural property in question is authorized. The certificate should accompany all items of cultural property exported in accordance with the regulations; 10
- b. to prohibit the exportation of cultural property from their territory unless accompanied by the above-mentioned export certificate; 15
- c. to publicize this prohibition by appropriate means, particularly among persons likely to export or import cultural property.

Article 7

The States Parties to this Convention undertake: 20

- a. to take the necessary measures, consistent with national legislation, to prevent museums and similar institutions within their territories from acquiring cultural property originating in another State Party which has been illegally exported after entry into force of this Convention, in the States concerned. Whenever possible, to inform a State of origin Party to this Convention of an offer of such cultural property illegally removed from that State after the entry into force of this Convention in both States; 25 30
- b. i. to prohibit the import of cultural property stolen from a museum or a religious or secular public monument or similar institution in another State Party to this Convention after the entry into force of this Convention for the States concerned, provided that such property is documented as appertaining to the inventory of that institution; 35

Schedule 2—*continued*

- ii. at the request of the State Party of origin, to take appropriate steps to recover and return any such cultural property imported after the entry into force of this Convention in both States concerned, provided, however, that the requesting State shall pay just compensation to an innocent purchaser or to a person who has valid title to that property. Requests for recovery and return shall be made through diplomatic offices. The requesting Party shall furnish, at its expense, the documentation and other evidence necessary to establish its claim for recovery and return. The Parties shall impose no customs duties or other charges upon cultural property returned pursuant to this Article. All expenses incident to the return and delivery of the cultural property shall be borne by the requesting Party.

Article 8

The States Parties to this Convention undertake to impose penalties or administrative sanctions on any person responsible for infringing the prohibitions referred to under Articles 6(b) and 7(b) above.

Article 9

Any State Party to this Convention whose cultural patrimony is in jeopardy from pillage of archaeological or ethnological materials may call upon other States Parties who are affected. The States Parties to this Convention undertake, in these circumstances, to participate in a concerted international effort to determine and to carry out the necessary concrete measures, including the control of exports and imports and international commerce in the specific materials concerned. Pending agreement each State concerned shall take provisional measures to the extent feasible to prevent irremediable injury to the cultural heritage of the requesting State.

Article 10

The States Parties to this Convention undertake:

Schedule 2—*continued*

- a. to restrict by education, information and vigilance, movement of cultural property illegally removed from any State Party to this Convention and, as appropriate for each country, oblige antique dealers, subject to penal or administrative sanctions, to maintain a register recording the origin of each item of cultural property, names and addresses of the supplier, description and price of each item sold and to inform the purchaser of the cultural property of the export prohibition to which such property may be subject; 5
10
- b. to endeavour by educational means to create and develop in the public mind a realization of the value of cultural property and the threat to the cultural heritage created by theft, clandestine excavations and illicit exports. 15

Article 11

The export and transfer of ownership of cultural property under compulsion arising directly or indirectly from the occupation of a country by a foreign power shall be regarded as illicit. 20

Article 12

The States Parties to this Convention shall respect the cultural heritage within the territories for the international relations of which they are responsible, and shall take all appropriate measures to prohibit and prevent the illicit import, export and transfer of ownership of cultural property in such territories. 25

Article 13

The States Parties to this Convention also undertake, consistent with the laws of each State:

- a. to prevent by all appropriate means transfers of ownership of cultural property likely to promote the illicit import or export of such property; 30
- b. to ensure that their competent services co-operate in facilitating the earliest possible restitution of illicitly exported cultural property to its rightful owner;
- c. to admit actions for recovery of lost or stolen items of cultural property brought by or on behalf of the rightful owners; 35

Schedule 2—continued

- d. to recognize the inalienable right of each State Party to this Convention to classify and declare certain cultural property as inalienable which should therefore ipso facto not be exported, and to facilitate recovery of such property by the State concerned in cases where it has been exported. 5

Article 14

In order to prevent illicit export and to meet the obligations arising from the implementation of this Convention, each State Party to the Convention should, as far as it is able, provide the national services responsible for the protection of its cultural heritage with an adequate budget and, if necessary, should set up a fund for this purpose. 10

Article 15

Nothing in this Convention shall prevent States Parties thereto from concluding special agreements among themselves or from continuing to implement agreements already concluded regarding the restitution of cultural property removed, whatever the reason, from its territory of origin, before the entry into force of this Convention for the States concerned. 15

Article 16

The States Parties to this Convention shall in their periodic reports submitted to the General Conference of the United Nations Educational, Scientific and Cultural Organization on dates and in a manner to be determined by it, give information on the legislative and administrative provisions which they have adopted and other action which they have taken for the application of this Convention, together with details of the experience acquired in this field. 20 25

Article 17

1. The States Parties to this Convention may call on the technical assistance of the United Nations Educational, Scientific and Cultural Organization, particularly as regards: 30
 - a. Information and education;
 - b. consultation and expert advice;
 - c. co-ordination and good offices.
2. The United Nations Educational, Scientific and Cultural Organization may, on its own initiative conduct research and publish studies on matters relevant to the illicit movement of cultural property. 35

Schedule 2—*continued*

3. To this end, the United Nations Educational, Scientific and Cultural Organization may also call on the co-operation of any competent non-governmental organization.
4. The United Nations Educational, Scientific and Cultural Organization may, on its own initiative, make proposals to States Parties to this Convention for its implementation. 5
5. At the request of at least two States Parties to this Convention which are engaged in a dispute over its implementation, Unesco may extend its good offices to reach a settlement between them. 10

Article 18

This Convention is drawn up in English, French, Russian and Spanish, the four texts being equally authoritative.

Article 19

1. This Convention shall be subject to ratification or acceptance by States members of the United Nations Educational, Scientific and Cultural Organization in accordance with their respective constitutional procedures. 15
2. The instruments of ratification or acceptance shall be deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization. 20

Article 20

1. This Convention shall be open to accession by all States not members of the United Nations Educational, Scientific and Cultural Organization which are invited to accede to it by the Executive Board of the Organization. 25
2. Accession shall be effected by the deposit of an instrument of accession with the Director-General of the United Nations Educational, Scientific and Cultural Organization. 30

Article 21

This Convention shall enter into force three months after the date of the deposit of the third instrument of ratification, acceptance or accession, but only with respect to those States which have deposited their respective instruments on or before that date. It shall enter into force with respect to any other State three months after the deposit of its instrument of ratification, acceptance or accession. 35

Schedule 2—continued**Article 22**

The States Parties to this Convention recognize that the Convention is applicable not only to their metropolitan territories but also to all territories for the international relations of which they are responsible; they undertake to consult, if necessary, the governments or other competent authorities of these territories on or before ratification, acceptance or accession with a view to securing the application of the Convention to those territories, and to notify the Director-General of the United Nations Educational, Scientific and Cultural Organization of the territories to which it is applied, the notification to take effect three months after the date of its receipt.

Article 23

1. Each State Party to this Convention may denounce the Convention on its own behalf or on behalf of any territory for whose international relations it is responsible.
2. The denunciation shall be notified by an instrument in writing, deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization.
3. The denunciation shall take effect twelve months after the receipt of the instrument of denunciation.

Article 24

The Director-General of the United Nations Educational, Scientific and Cultural Organization shall inform the States members of the Organization, the States not members of the Organization which are referred to in Article 20, as well as the United Nations, of the deposit of all the instruments of ratification, acceptance and accession provided for in Articles 19 and 20, and of the notifications and denunciations provided for in Articles 22 and 23 respectively.

Article 25

1. This Convention may be revised by the General Conference of the United Nations Educational, Scientific and Cultural Organization. Any such revision shall, however, bind only the States which shall become Parties to the revising convention.
2. If the General Conference should adopt a new convention revising this Convention in whole or in part, then, unless the new convention otherwise provides, this Convention shall cease to be open to ratification, acceptance or accession, as from the date on which the new revising convention enters into force.

Schedule 2—*continued***Article 26**

In conformity with Article 102 of the Charter of the United Nations, this Convention shall be registered with the Secretariat of the United Nations at the request of the Director-General of the United Nations Educational, Scientific and Cultural Organization.

5

Done in Paris this seventeenth day of November 1970, in two authentic copies bearing the signature of the President of the sixteenth session of the General Conference and of the Director-General of the United Nations Educational, Scientific and Cultural Organization, which shall be deposited in the archives of the United Nations Educational, Scientific and Cultural Organization, and certified true copies of which shall be delivered to all the States referred to in Articles 19 and 20 as well as to the United Nations.

10

The foregoing is the authentic text of the Convention duly adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization during its sixteenth session, which was held in Paris and declared closed the fourteenth day of November 1970.

15

IN FAITH WHEREOF we have appended our signatures this seventeenth day of November 1970.

20

The President of the General Conference The Director-General

Schedule 3

s 2(1)

**UNIDROIT Convention on Stolen or Illegally
Exported Cultural Objects****(Rome, 24 June 1995)**

THE STATES PARTIES TO THIS CONVENTION, 5
ASSEMBLED in Rome at the invitation of the Government of the
Italian Republic from 7 to 24 June 1995 for a Diplomatic Confer-
ence for the adoption of the draft Unidroit Convention on the Inter-
national Return of Stolen or Illegally Exported Cultural Objects,
CONVINCED of the fundamental importance of the protection of 10
cultural heritage and of cultural exchanges for promoting under-
standing between peoples, and the dissemination of culture for the
well-being of humanity and the progress of civilisation,
DEEPLY CONCERNED by the illicit trade in cultural objects and 15
the irreparable damage frequently caused by it, both to these objects
themselves and to the cultural heritage of national, tribal, indigenous
or other communities, and also to the heritage of all peoples, and in
particular by the pillage of archaeological sites and the resulting loss
of irreplaceable archaeological, historical and scientific information,
DETERMINED to contribute effectively to the fight against illicit 20
trade in cultural objects by taking the important step of establishing
common, minimal legal rules for the restitution and return of cul-
tural objects between Contracting States, with the objective of
improving the preservation and protection of the cultural heritage in
the interest of all, 25
EMPHASISING that this Convention is intended to facilitate the
restitution and return of cultural objects, and that the provision of
any remedies, such as compensation, needed to effect restitution and
return in some States, does not imply that such remedies should be 30
adopted in other States,
AFFIRMING that the adoption of the provisions of this Convention
for the future in no way confers any approval or legitimacy upon
illegal transactions of whatever kind which may have taken place
before the entry into force of the Convention,
CONSCIOUS that this Convention will not by itself provide a solu- 35
tion to the problems raised by illicit trade, but that it initiates a
process that will enhance international cultural co-operation and
maintain a proper role for legal trading and inter- State agreements
for cultural exchanges,

Schedule 3—*continued*

ACKNOWLEDGING that implementation of this Convention should be accompanied by other effective measures for protecting cultural objects, such as the development and use of registers, the physical protection of archaeological sites and technical co-operation,

5

RECOGNISING the work of various bodies to protect cultural property, particularly the 1970 UNESCO Convention on illicit traffic and the development of codes of conduct in the private sector,

HAVE AGREED as follows:

CHAPTER I - SCOPE OF APPLICATION AND DEFINITION

10

Article 1

This Convention applies to claims of an international character for:

- (a) the restitution of stolen cultural objects;
- (b) the return of cultural objects removed from the territory of a Contracting State contrary to its law regulating the export of cultural objects for the purpose of protecting its cultural heritage (hereinafter “illegally exported cultural objects”).

15

Article 2

For the purposes of this Convention, cultural objects are those which, on religious or secular grounds, are of importance for archaeology, prehistory, history, literature, art or science and belong to one of the categories listed in the Annex to this Convention.

20

CHAPTER II - RESTITUTION OF STOLEN CULTURAL OBJECTS

Article 3

25

(1) The possessor of a cultural object which has been stolen shall return it.

(2) For the purposes of this Convention, a cultural object which has been unlawfully excavated or lawfully excavated but unlawfully retained shall be considered stolen, when consistent with the law of the State where the excavation took place.

30

(3) Any claim for restitution shall be brought within a period of three years from the time when the claimant knew the location of the cultural object and the identity of its possessor, and in any case within a period of fifty years from the time of the theft.

35

Schedule 3—*continued*

- (4) However, a claim for restitution of a cultural object forming an integral part of an identified monument or archaeological site, or belonging to a public collection, shall not be subject to time limitations other than a period of three years from the time when the claimant knew the location of the cultural object and the identity of its possessor. 5
- (5) Notwithstanding the provisions of the preceding paragraph, any Contracting State may declare that a claim is subject to a time limitation of 75 years or such longer period as is provided in its law. A claim made in another Contracting State for restitution of a cultural object displaced from a monument, archaeological site or public collection in a Contracting State making such a declaration shall also be subject to that time limitation. 10
- (6) A declaration referred to in the preceding paragraph shall be made at the time of signature, ratification, acceptance, approval or accession. 15
- (7) For the purposes of this Convention, a “public collection” consists of a group of inventoried or otherwise identified cultural objects owned by:
- (a) a Contracting State 20
 - (b) a regional or local authority of a Contracting State;
 - (c) a religious institution in a Contracting State; or
 - (d) an institution that is established for an essentially cultural, educational or scientific purpose in a Contracting State and is recognised in that State as serving the public interest. 25
- (8) In addition, a claim for restitution of a sacred or communally important cultural object belonging to and used by a tribal or indigenous community in a Contracting State as part of that community’s traditional or ritual use, shall be subject to the time limitation applicable to public collections. 30

Article 4

- (1) The possessor of a stolen cultural object required to return it shall be entitled, at the time of its restitution, to payment of fair and reasonable compensation provided that the possessor neither knew nor ought reasonably to have known that the object was stolen and can prove that it exercised due diligence when acquiring the object. 35

Schedule 3—*continued*

(2) Without prejudice to the right of the possessor to compensation referred to in the preceding paragraph, reasonable efforts shall be made to have the person who transferred the cultural object to the possessor, or any prior transferor, pay the compensation where to do so would be consistent with the law of the State in which the claim is brought. 5

(3) Payment of compensation to the possessor by the claimant, when this is required, shall be without prejudice to the right of the claimant to recover it from any other person.

(4) In determining whether the possessor exercised due diligence, regard shall be had to all the circumstances of the acquisition, including the character of the parties, the price paid, whether the possessor consulted any reasonably accessible register of stolen cultural objects, and any other relevant information and documentation which it could reasonably have obtained, and whether the possessor consulted accessible agencies or took any other step that a reasonable person would have taken in the circumstances. 10 15

(5) The possessor shall not be in a more favourable position than the person from whom it acquired the cultural object by inheritance or otherwise gratuitously. 20

CHAPTER III - RETURN OF ILLEGALLY EXPORTED CULTURAL OBJECTS

Article 5

(1) A Contracting State may request the court or other competent authority of another Contracting State to order the return of a cultural object illegally exported from the territory of the requesting State. 25

(2) A cultural object which has been temporarily exported from the territory of the requesting State, for purposes such as exhibition, research or restoration, under a permit issued according to its law regulating its export for the purpose of protecting its cultural heritage and not returned in accordance with the terms of that permit shall be deemed to have been illegally exported. 30

(3) The court or other competent authority of the State addressed shall order the return of an illegally exported cultural object if the requesting State establishes that the removal of the object from its territory significantly impairs one or more of the following interests: 35

- (a) the physical Preservation of the object or of its context;
- (b) the integrity of a complex object;

Schedule 3—*continued*

- (c) the preservation of information of, for example, a scientific or historical character;
- (d) the traditional or ritual use of the object by a tribal or indigenous community,
- or establishes that the object is of significant cultural importance for the requesting State. 5
- (4) Any request made under paragraph 1 of this article shall contain or be accompanied by such information of a factual or legal nature as may assist the court or other competent authority of the State addressed in determining whether the requirements of paragraphs 1 to 3 have been met. 10
- (5) Any request for return shall be brought within a period of three years from the time when the requesting State knew the location of the cultural object and the identity of its possessor, and in any case within a period of fifty years from the date of the export or from the date on which the object should have been returned under a permit referred to in paragraph 2 of this article. 15
- Article 6*
- (1) The possessor of a cultural object who acquired the object after it was illegally exported shall be entitled, at the time of its return, to payment by the requesting State of fair and *(reason)* reasonable compensation, provided that the possessor neither knew nor ought reasonably to have known at the time of acquisition that the object had been illegally exported. 20
- (2) In determining whether the possessor knew or ought reasonably to have known that the cultural object had been illegally exported, regard shall be had to the circumstances of the acquisition, including the absence of an export certificate required under the law of the requesting State. 25
- (3) Instead of compensation, and in agreement with the requesting State, the possessor required to return the cultural object to that State may decide: 30
- (a) to retain ownership of the object; or
- (b) to transfer ownership against payment or gratuitously to a person of its choice residing in the requesting State who provides the necessary guarantees. 35
- (4) The cost of returning the cultural object in accordance with this article shall be borne by the requesting State, without prejudice to the right of that State to recover costs from any other person.

Schedule 3—*continued*

(5) The possessor shall not be in a more favourable position than the person from whom it acquired the cultural object by inheritance or otherwise gratuitously.

Article 7

- (1) The provisions of this Chapter shall not apply where: 5
- (a) the export of a cultural object is no longer illegal at the time at which the return is requested; or
- (b) the object was exported during the lifetime of the person who created it or within a period of fifty years following the death of that person. 10
- (2) Notwithstanding the provisions of sub-paragraph (b) of the preceding paragraph, the provisions of this Chapter shall apply where a cultural object was made by a member or members of a tribal or indigenous community for traditional or ritual use by that community and the object will be returned to that community. 15

CHAPTER IV - General Provisions

Article 8

- (1) A claim under Chapter II and a request under Chapter III may be brought before the courts or other competent authorities of the Contracting State where the cultural object is located, in addition to the courts or other competent authorities otherwise having jurisdiction under the rules in force in Contracting States. 20
- (2) The parties may agree to submit the dispute to any court or other competent authority or to arbitration.
- (3) Resort may be had to the provisional, including protective, measures available under the law of the Contracting State where the object is located even when the claim for restitution or request for return of the object is brought before the courts or other competent authorities of another Contracting State. 25

Article 9

- (1) Nothing in this Convention shall prevent a Contracting State from applying any rules more favourable to the restitution or the return of stolen or illegally exported cultural objects than provided for by this Convention. 30
- (2) This article shall not be interpreted as creating an obligation to recognise or enforce a decision of a court or other competent authority of another Contracting State that departs from the provisions of this Convention. 35

Schedule 3—*continued**Article 10*

- (1) The provisions of Chapter II shall apply only in respect of a cultural object that is stolen after this Convention enters into force in respect of the State where the claim is brought, provided that:
- (a) the object was stolen from the territory of a Contracting State after the entry into force of this Convention for that State; or
- (b) the object is located in a Contracting State after the entry into force of the Convention for that State.
- (2) The provisions of Chapter III shall apply only in respect of a cultural object that is illegally exported after this Convention enters into force for the requesting State as well as the State where the request is brought.
- (3) This Convention does not in any way legitimise any illegal transaction of whatever which has taken place before the entry into force of this Convention or which is excluded under paragraphs (1) or (2) of this article, nor limit any right of a State or other person to make a claim under remedies available outside the framework of this Convention for the restitution or return of a cultural object stolen or illegally exported before the entry into force of this Convention.

CHAPTER V - Final Provisions

Article 11

- (1) This Convention is open for signature at the concluding meeting of the Diplomatic Conference for the adoption of the draft Unidroit Convention on the International Return of Stolen or Illegally Exported Cultural Objects and will remain open for signature by all States at Rome until June 1996.
- (2) This Convention is subject to ratification, acceptance or approval by States which have signed it.
- (3) This Convention is open for accession by all States which are not signatory States as from the date it is open for signature.
- (4) Ratification, acceptance, approval or accession is subject to the deposit of a formal instrument to that effect with the depositary.

Article 12

- (1) This Convention shall enter into force on the first day of the sixth month following the date of deposit of the fifth instrument of ratification, acceptance, approval or accession.

Schedule 3—*continued*

(2) For each State that ratifies, accepts, approves or accedes to this Convention after the deposit of the fifth instrument of ratification, acceptance, approval or accession, this Convention shall enter into force in respect of that State on the first day of the sixth month following the date of deposit of its instrument of ratification, acceptance, approval or accession. 5

Article 13

(1) This Convention does not affect any international instrument by which any Contracting State is legally bound and which contains provisions on matters governed by this Convention, unless a contrary declaration is made by the States bound by such instrument. 10

(2) Any Contracting State may enter into agreements with one or more Contracting States, with a view to improving the application of this Convention in their mutual relations. The States which have concluded such an agreement shall transmit a copy to the depositary. 15

(3) In their relations with each other, Contracting States which are Members of organisations of economic integration or regional bodies may declare that they will apply the internal rules of these organisations or bodies and will not therefore apply as between these States the provisions of this Convention the scope of application of which coincides with that of those rules. 20

Article 14

(1) If a Contracting State has two or more territorial units, whether or not possessing different systems of law applicable in relation to the matters dealt with in this Convention, it may, at the time of signature or of the deposit of its instrument of ratification, acceptance, approval or accession, declare that this Convention is to extend to all its territorial units or only to one or more of them, and may substitute for its declaration another declaration at any time. 25

(2) These declarations are to be notified to the depositary and are to state expressly the territorial units to which the Convention extends. 30

(3) If, by virtue of a declaration under this article, this Convention extends to one or more but not all of the territorial units of a Contracting State the reference to:

(a) the territory of a Contracting State in Article 1 shall be construed as referring to the territory of a territorial unit of that State; 35

(b) a court or other competent authority of the Contracting State or of the State addressed shall be construed as referring to the court or other competent authority of a territorial unit of that State;

Schedule 3—*continued*

- (c) the Contracting State where the cultural object is located in Article 8 (1) shall *(b)* be construed as referring to the territorial unit of that State where the object is located;
- (d) the law of the Contracting State where the object is located in Article 8 (3) shall be construed as referring to the law of the territorial unit of that State where the object is located; and 5
- (e) a Contracting State in Article 9 shall be construed as referring to a territorial unit of that State.
- (4) If a Contracting State makes no declaration under paragraph 1 of this article, this Convention is to extend to all territorial units of that State. 10

Article 15

- (1) Declarations made under this Convention at the time of signature are subject to confirmation upon ratification, acceptance or approval. 15
- (2) Declarations and confirmations of declarations are to be in writing and to be formally notified to the depositary. 15
- (3) A declaration shall take effect simultaneously with the entry into force of this Convention in respect of the State concerned. However, a declaration of which the depositary receives formal notification after such entry into force shall take effect on the first day of the sixth month following the date of its deposit with the depositary. 20
- (4) Any State which makes a declaration under this Convention may withdraw it at any time by a formal notification in writing addressed to the depositary. Such withdrawal shall take effect on the first day of the sixth month following the date of the deposit of the notification. 25

Article 16

- (1) Each Contracting State shall at the time of signature, ratification, acceptance, approval or accession, declare that claims for the restitution, or requests for the return, of cultural objects brought by a State under Article 8 may be submitted to it under one or more of the following procedures: 30
- (a) directly to the courts or other competent authorities of the declaring State;
- (b) through an authority or authorities designated by that State to receive such claims or requests and to forward them to the courts or other competent authorities of that State; 35
- (c) through diplomatic or consular channels.

Schedule 3—*continued*

(2) Each Contracting State may also designate the courts or other authorities competent to order the restitution or return of cultural objects under the provisions of Chapters II and III.

(3) Declarations made under paragraphs 1 and 2 of this article may be modified at any time by a new declaration. 5

(4) The provisions of paragraphs 1 to 3 of this article do not affect bilateral or multilateral agreements on judicial assistance in respect of civil and commercial matters that may exist between Contracting States.

Article 17 10

Each Contracting State shall, no later than six months following the date of deposit of its instrument of ratification, acceptance, approval or accession, provide the depositary with written information in one of the official languages of the Convention concerning the legislation regulating the export of its cultural objects. This information shall be updated from time to time as appropriate. 15

Article 18

No reservations are permitted except those expressly authorised in this Convention.

Article 19 20

(1) This Convention may be denounced by any State Party, at any time after the date on which it enters into force for that State, by the deposit of an instrument to that effect with the depositary.

(2) A denunciation shall take effect on the first day of the sixth month following the deposit of the instrument of denunciation with the depositary. Where a longer period for the denunciation to take effect is specified in the instrument of denunciation it shall take effect upon the expiration of such longer period after its deposit with the depositary. 25

(3) Notwithstanding such a denunciation, this Convention shall nevertheless apply to a claim for restitution or a request for return of a cultural object submitted prior to the date on which the denunciation takes effect. 30

Article 20

The President of the International Institute for the Unification of Private Law (Unidroit) may at regular intervals, or at any time at the request of five Contracting States, convene a special committee in order to review the practical operation of this Convention. 35

Schedule 3—*continued**Article 21*

- (1) This Convention shall be deposited with the Government of the Italian Republic.
- (2) The Government of the Italian Republic shall:
- (a) inform all States which have signed or acceded to this Convention and the President of the International Institute for the Unification of Private Law (Unidroit) of:
- (i) each new signature or deposit of an instrument of ratification, acceptance approval or accession, together with the date thereof;
 - (ii) each declaration made in accordance with this Convention;
 - (iii) the withdrawal of any declaration;
 - (iv) the date of entry into force of this Convention;
 - (v) the agreements referred to in Article 13;
 - (vi) the deposit of an instrument of denunciation of this Convention together with the date of its deposit and the date on which it takes effect;
- (b) transmit certified true copies of this Convention to all signatory States, to all States acceding to the Convention and to the President of the International Institute for Unification of Private Law (Unidroit);
- (c) perform such other functions customary for depositaries.
- IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorised, have signed this Convention.
- DONE at Rome, this twenty-fourth day of June, one thousand nine hundred and ninety-five, in a single original, in the English and French languages, both texts being equally authentic.

Annex

- (a) Rare collections and specimens of fauna, flora, minerals and anatomy, and objects of palaeontological interest;
- (b) property relating to history, including the history of science and technology and military and social history, to the life of national leaders, thinkers, scientists and artists and to events of national importance;
- (c) products of archaeological excavations (including regular and clandestine) or of archaeological discoveries;
- (d) elements of artistic or historical monuments or archaeological sites which have been dismembered;

Schedule 3—*continued*

- (e) antiquities more than one hundred years old, such as inscriptions, coins and engraved seals;
- (f) objects of ethnological interest;
- (g) property of artistic interest, such as:
- (i) pictures, paintings and drawings produced entirely by hand on any support and in any material (excluding industrial designs and manufactured articles decorated by hand); 5
 - (ii) original works of statuary art and sculpture in any material;
 - (iii) original engravings, prints and lithographs; 10
 - (iv) original artistic assemblages and montages in any material;
- (h) rare manuscripts and incunabula, old books, documents and publications of special interest (historical, artistic, scientific, literary, etc.) singly or in collections; 15
- (i) postage, revenue and similar stamps, singly or in collections;
- (j) archives, including sound, photographic and cinematographic archives;
- (k) articles of furniture more than one hundred years old and old musical instruments. 20
-

Schedule 4

s 2(1)

Categories of protected New Zealand objects

- 1 Archaeological, ethnographic, and historical objects of non-New Zealand origin, relating to New Zealand**
- This category consists of archaeological and historical objects of non-New Zealand origin that—
- (a) have been in New Zealand for not less than ~~(60)~~ 50 years and are in or have been in a public collection; and
 - (b) are not represented by at least 2 comparable examples permanently held in New Zealand public collections; and
 - (c) include any object of Polynesian creation or modification brought to New Zealand before 1800 or created or modified by the former Polynesian inhabitants of the Kermadec Islands before 1800.
- 2 Art objects including fine, decorative, and popular art**
- (1) This category includes the following objects and their supporting documentation and preparatory material:
- (a) architectural material, including whole or parts of architectural structures, fixtures, fittings, and decoration and interior decoration:
 - (b) arms and armour:
 - (c) art works in fibre or fabric or both:
 - (d) artists' prints, posters, illustrated books, and similar art works with potential for multiple production:
 - (e) book art:
 - (f) ceramics and glass:
 - (g) costumes and textiles:
 - (h) furniture:
 - (i) horological instruments:
 - (j) jewellery and body adornment:
 - (k) metalwork:
 - (l) musical instruments:
 - (m) paintings:
 - (n) photographs, moving image art works, sound art works and film, and similar art works with potential for multiple production:
 - (o) sculpture, carving, and other 3-dimensional art works that are either unique or have potential for multiple production:

Schedule 4—*continued*

- (p) unique art works on paper, including watercolours, drawings, and sketches:
- (q) woodwork:
- (r) other art works, including (but not limited to) scrimshaw, plastics, paper, stone, shell, kauri gum, and bone. 5
- (2) An object is included in this category if it is—
- (a) not represented by at least 2 comparable examples permanently held in New Zealand public collections; and
- (b) made by—
- (i) an artist or maker born in or related to New Zealand and who is no longer living; or 10
- (ii) a living artist or maker born in or related to New Zealand where that artist or maker is not the owner; and
- (c) not less than ~~(60)~~ 50 years old. 15
- 3 Documentary heritage objects**
- (1) In this category, unless the context otherwise requires,—
- collection** means forming a collection assembled by a person, objects that originate from a common source, or objects devoted to a single theme, person, place, event, or thing 20
- record** means recorded information, in any format, created or received by a person or an organisation in the course of business undertaken by that person or organisation and stored in any format.
- (2) Objects in this category include (but are not limited to)— 25
- (a) books:
- (b) maps and other cartographic records:
- (c) photographs and negatives:
- (d) ephemera:
- (e) music scores: 30
- (f) film:
- (g) sound recordings:
- (h) cinematographic, video production, or any other production comprising moving images or recorded sound:
- (i) digitally born objects, supporting material, and applications and technical infrastructure important for their understanding. 35
- (3) An object is included in this category if it—

Schedule 4—*continued*

- (a) is not represented by at least 2 comparable examples permanently held in New Zealand public collections; and
- (b) is—
- (i) not less than ~~(60)~~ 50 years old; or 5
 - (ii) any unique document or collection of unique documents not less than ~~(60)~~ 50 years old; or

Struck out

- (iii) a public record as defined by the Archives Act 1957 and in a local archive protected by notice in the *Gazette* given under section 256 of the Local Government Act 1974. 10

New

- (iii) a public record and a protected record as defined by the Public Records Act 2005.

- (4) This category does not include any document owned by its living creator who was born in or is related to New Zealand. 15

4 Ngā taonga tūturu

This category includes any taonga tūturu.

5 Natural science objects

- (1) In this category, unless the context otherwise requires,—
- description** means the scientific description of a taxon in the manner prescribed by the international codes of zoological, mineralogical, and botanical nomenclature 20
- fossil**, irrespective of how it is preserved, means an object constituting the remains or traces of a non-human organism that lived in New Zealand prior to human habitation; including (but not limited to) the whole organism or parts of it, or trace evidence of its behaviour 25
- meteorite** means a natural object of extraterrestrial origin

Schedule 4—*continued*

mineral means an element or chemical compound that occurs naturally in rocks, soil, or water; and—

- (a) includes—
 - (i) crystals and naturally occurring metals; and
 - (ii) gemstones, whether or not polished or faceted by humans; but
- (b) does not include—
 - (i) minerals, ores, and concentrates intended for industrial use; or
 - (ii) any work made by humans from minerals

taxon means a taxonomic grouping of extant or extinct organisms, such as a genus, species, or sub-species

tektite means a small glassy natural object of non-volcanic origin

ventifact means a stone or pebble, shaped, worn, faceted, cut, or polished by the abrasive action of windblown dust or sand.

- (2) This category consists of extant or extinct native organisms, products of animal and plant behaviour (such as nests, coprolites, and kauri gum), fossils, fluids, rocks, and minerals (including, but not limited to, ventifacts, obsidians, pumices, meteorites, and tektites) of New Zealand origin or related to New Zealand. 20
- (3) Objects in this category include—
 - (a) a category of type specimen as defined by the current edition of the International Code of Botanical Nomenclature, the International Code of Zoological Nomenclature, or the International Code of Nomenclature of Bacteria: Bacteriological Code: 25
 - (b) a specimen considered to be scientifically important for defining a taxon through having been illustrated in the original description, or new material subsequently illustrated (that is, hypotypes) and used to expand or refine this description in the scientific literature: 30
 - (c) a specimen of an extant or extinct plant or rock or mineral, animal, or other organism or fossil or part thereof including any developmental stage, shell, or skeletal or supporting element, of which there is not a sufficient selection in New Zealand public collections 35

Schedule 4—continued

to define the variation, range, and environmental context of the taxon or object:

- (d) duplicates of a category of type specimen as defined by the current edition of the International Code of Botanical Nomenclature, the International Code of Zoological Nomenclature, or the International Code of Nomenclature of Bacteria: Bacteriological Code may be excluded from this category if there is sufficient original type material held in New Zealand public collections to define the taxon. 5
10

6 New Zealand archaeological objects

This category consists of any objects, assemblages, scientific samples, and organic remains derived from a New Zealand archaeological site, as defined by the Historic Places Act 1993. 15

7 Numismatic and philatelic objects

- (1) The philatelic category consists of any items of the New Zealand Post Museum Collection.
- (2) The numismatics category consists of the following objects: 20
- (a) examples of the Resolution and Adventure Medal, 1772:
 - (b) the Pattern Waitangi Crown:
 - (c) issued 50- and 100-pound New Zealand bank notes produced before 1933:
 - (d) examples of the New Zealand Cross, Victoria Cross, and George Cross, and their associated groups, awarded to a New Zealander or related to New Zealand: 25
 - (e) any related original art work and design of New Zealand coins and banknotes.
- (3) The numismatic and philatelic categories include (but are not limited to) dies and printing plates associated with the manufacture of New Zealand coins, banknotes, postage, and revenue stamps. 30

8 Science, technology, industry, economy, and transport objects 35

- (1) Objects in this category include (but are not limited to) any—
- (a) vessel:

Schedule 4—*continued*

- | | | |
|----------|---|----|
| (b) | machine: | |
| (c) | vehicle: | |
| (d) | aircraft: | |
| (e) | equipment: | |
| (f) | machinery: | 5 |
| (g) | tool: | |
| (h) | patent model: | |
| (i) | model: | |
| (j) | accessory: | |
| (k) | part: | 10 |
| (l) | component: | |
| (m) | prototype: | |
| (n) | object: | |
| (o) | device, apparatus, instrument, implement, or structure: | |
| (p) | dies and plates: | 15 |
| (q) | documentation: | |
| (r) | ephemera. | |
| (2) | Objects in this category are related to— | |
| (a) | air, land, and water transport: | |
| (b) | communication, printing, and information technology: | 20 |
| (c) | design: | |
| (d) | energy production and distribution: | |
| (e) | engineering: | |
| (f) | extractive industries: | |
| (g) | human and animal health: | 25 |
| (h) | hydrology: | |
| (i) | manufacturing: | |
| (j) | primary production and processing: | |
| (k) | research, invention, and applied technology: | |
| (l) | the service and recreation industries: | 30 |
| (m) | surveying. | |
| (3) | An object is included in this category if it is— | |
| (a) | not represented by at least 2 comparable examples permanently held in New Zealand public collections; and | |
| (b) | not less than (60) <u>50</u> years old. | 35 |
| 9 | Social history objects | |
| (1) | This category includes (but is not limited to) objects relating to— | |
| (a) | community organisations and activities: | |

Schedule 4—*continued*

- (b) courts, tribunals, and law enforcement, including (but not limited to) the police, law-breakers, and prison life:
 - (c) cultural life and arts and crafts:
 - (d) domestic life, including buildings, fixtures and decorations, equipment and furniture, costumes and textiles, and personal effects: 5
 - (e) education:
 - (f) exploration, voyaging, migration, and settlement:
 - (g) health, medicine, and welfare:
 - (h) international relations: 10
 - (i) leisure and recreation, including all forms of sport, entertainment, and tourism:
 - (j) New Zealand military history:
 - (k) personal histories:
 - (l) religion and missions: 15
 - (m) social and political issues:
 - (n) transport and communications:
 - (o) urban and rural culture:
 - (p) work life, including specialised trades and labour material, trade unionism, company activity and corporate identity, trade and commerce, and agriculture and industry: 20
 - (q) any other objects in these categories.
- (2) In this category, unless the context otherwise requires, **New Zealand military history** means the history of— 25
- (a) wars and conflicts involving New Zealand or New Zealanders or New Zealand residents, including (but not limited to) military and non-military activities and experiences:
 - (b) the New Zealand Defence Force and its antecedent components: 30
 - (c) operations and activities involving New Zealand Defence Forces:
 - (d) New Zealand allies within New Zealand or associated with New Zealand Defence Forces: 35
 - (e) forces opposing the New Zealand Defence Forces whether in New Zealand or overseas:
 - (f) regular or irregular sea, land, and air force units in which New Zealanders have taken part.

Schedule 4—*continued*

- (3) This category includes New Zealand manufactured or designed military objects and their associated documentation.
 - (4) An object is included in this category if it is—
 - (a) not represented by at least 2 comparable examples permanently held in New Zealand public collections; and
 - (b) not less than ~~(60)~~ 50 years old.
-

5

Schedule 2

s 32

Consequential amendments to other Acts**Archives, Culture, and Heritage Reform Act 2000
(2000 No 32)**

Omit from section 3(c)(i) “Antiquities” and substitute “Protected Objects”. 5

Conservation Act 1987 (1987 No 65)

Omit from section 46(6) “An antiquity” and substitute “a protected New Zealand object”.

Omit from section 46(6)(b)(ii) “Antiquities” and substitute “Protected Objects”. 10

Estate and Gift Duties Act 1968 (1968 No 35)

Omit from section 73(2)(b) “an antiquity” and substitute “a protected New Zealand object”.

Omit from section 73(2)(b) “Antiquities” and substitute “Protected Objects”. 15

Historic Places Act 1993 (1993 No 38)

Omit from section 19 “Antiquities” and substitute “Protected Objects”.

National Parks Act 1980 (1980 No 66)

Omit from section 60(1)(d) “antiquity” and substitute “protected New Zealand object”. 20

Omit from section 61(3)(b) “an antiquity” and substitute “a protected New Zealand object”.

Omit from section 61(3)(b)(i) “Antiquities” and substitute “Protected Objects”. 25

Omit from section 61(3)(b)(ii) “Antiquities” and substitute “Protected Objects”.

Omit from section 61(4)(b) “an antiquity” and substitute “a protected New Zealand object”. 30

Omit from section 61(4)(b)(i) “Antiquities” and substitute “Protected Objects”.

Omit from section 61(4)(b)(ii) “Antiquities” and substitute “Protected Objects”.

Omit from section 66(1)(b) “antiquities” and substitute “protected New Zealand objects”. 35

Omit from section 69(1) “artifact” and substitute “taonga tūturu”.

Omit from section 77 “Antiquities” and substitute “Protected Objects”.

National Parks Act 1980 (1980 No 66)—*continued***New****Ngaa Rauru Kiitahi Claims Settlement Act 2005 (2005 No 84)**

Omit from section 12 the definitions of **antiquities protocol** and **antiquities protocol area** and substitute the following definitions in their appropriate alphabetical order:

5

“**protected New Zealand objects protocol** means a protocol issued under section 21 by the Minister for Arts, Culture and Heritage that—

“(a) sets out how the Ministry for Culture and Heritage will interact with the governance entity on the matters specified in that protocol; and

10

“(b) provides for input by Ngaa Rauru Kiitahi into certain processes of the Ministry for Culture and Heritage in relation to the matters specified in the protocol; and

“(c) is in the form set out in Part 2 of Schedule 1 of the deed of settlement, or as the protocol is amended under section 21

15

“**protected New Zealand objects protocol area** means the area shown on the map attached to the protected New Zealand objects protocol, together with the adjacent waters”.

20

Omit from section 24(4) “antiquities protocol” and substitute “protected New Zealand objects protocol”.

Omit from section 24(4) “antiquities or artifacts” and substitute “protected New Zealand objects or ngā taonga tūturu”.

Omit from section 24(5) “**antiquity** and **artifact**” and substitute “**protected New Zealand object** and **taonga tūturu**”.

25

Omit from section 24(5) “Antiquities” and substitute “**Protected Objects**”.

Ngati Awa Claims Settlement Act 2005 (2005 No 28)

Omit from section 12 the definitions of **antiquities protocol** and **antiquities protocol area** and substitute the following definitions in their appropriate alphabetical order:

30

“**protected New Zealand objects protocol** means a protocol issued under section 21 by the Minister for Arts, Culture and Heritage that—

35

New

Ngati Awa Claims Settlement Act 2005 (2005 No 28)—*continued*

“(a) sets out how the Ministry for Culture and Heritage will interact with the Ngati Awa governance entity on the matters specified in the protocol; and

“(b) provides for Ngati Awa’s input into the processes of the Ministry in relation to the matters specified in the protocol; and 5

“(c) is in the form set out in Schedule 5.23 of the Ngati Awa deed of settlement

“**protected New Zealand objects protocol area** means the area shown on the map attached to the protected New Zealand objects protocol, together with the adjacent waters”. 10

Omit from section 24(3) “antiquities protocol” and substitute “protected New Zealand objects protocol”.

Omit from section 24(3) “antiquities or artifacts” and substitute “protected New Zealand objects or ngā taonga tūturu”. 15

Omit from section 24(3) “Antiquities” and substitute “**Protected Objects**”.

Omit from section 24(4) “**antiquity** and **artifact**” and substitute “**protected New Zealand object** and **taonga tūturu**”. 20

Omit from section 24(4) “Antiquities” and substitute “**Protected Objects**”. 20

Ngati Ruanui Claims Settlement Act 2003 (2003 No 20)

Omit from section 12 the definitions of **antiquities protocol** and **antiquities protocol area** and substitute the following definitions in their appropriate alphabetical order: 25

“**protected New Zealand objects protocol** means a protocol issued under section 26 by the Minister for Arts, Culture and Heritage that—

“(a) sets out how the Ministry for Culture and Heritage will interact with the governance entity in relation to the matters specified in that protocol; and 30

“(b) is in the form set out in Part 1 of the Cultural Redress Schedule, or as the protocol is amended under section 26

Ngati Ruanui Claims Settlement Act 2003 (2003 No 20)—*continued*

“**protected New Zealand objects protocol area** means the area shown on the map attached to the protected New Zealand objects protocol, together with the adjacent waters”.

Omit from section 29(4) “antiquities protocol” and substitute “protected New Zealand objects protocol”.

Omit from section 29(4) “antiquities or artifacts” and substitute “protected New Zealand objects or ngā taonga tūturu”. 5

Omit from section 29(4) “Antiquities” and substitute “Protected Objects”.

Omit from section 29(5) “**antiquity and artifact**” and substitute “**protected New Zealand object and taonga tūturu**”. 10

Omit from section 29(5) “Antiquities” and substitute “Protected Objects”.

Ngati Tama Claims Settlement Act 2003 (2003 No 126)

Omit from section 9 the definitions of **antiquities protocol** and **antiquities protocol area** and substitute the following definitions in their appropriate alphabetical order: 15

“**protected New Zealand objects protocol** means a protocol issued under section 20 by the Minister for Arts, Culture and Heritage that—

“(a) sets out how the Ministry for Culture and Heritage will interact with the governance entity on the matters specified in that protocol; and 20

“(b) is in the form set out in Part 1 of the Cultural Redress Schedule, or as the protocol is amended under section 20 25

“**protected New Zealand objects protocol area** means the area shown on the map attached to the protected New Zealand objects protocol, together with the adjacent waters”.

Omit from section 23(4) “antiquities protocol” and substitute “protected New Zealand objects protocol”. 30

Omit from section 23(4) “antiquities or artifacts” and substitute “protected New Zealand objects or ngā taonga tūturu”.

Omit from section 23(6) “**antiquity and artifact**” and substitute “**protected New Zealand object and taonga tūturu**”.

Omit from section 23(6) “Antiquities” and substitute “Protected Objects”. 35

New

Ngati Tuwharetoa (Bay of Plenty) Claims Settlement Act 2005 (2005 No 72)

Omit from section 12 the definitions of **antiquities protocol** and **antiquities protocol area** and substitute the following definitions in their appropriate alphabetical order:

“**protected New Zealand objects protocol** means a protocol issued under section 21 by the Minister for Arts, Culture and Heritage that—

“(a) sets out how the Ministry for Culture and Heritage will interact with the governance entity on the matters specified in the protocol; and

“(b) provides for the input of Ngati Tuwharetoa (Bay of Plenty) into the processes of the Ministry in relation to the matters specified in the protocol; and

“(c) is in the form set out in Schedule 5.3 of the deed of settlement

“**protected New Zealand objects protocol area** means the area shown on the map attached to the protected New Zealand objects protocol, together with the adjacent waters”.

Omit from section 24(3) “antiquities protocol” and substitute “protected New Zealand objects protocol”.

Omit from section 24(3) “antiquities or artifacts” and substitute “protected New Zealand objects or ngā taonga tūturu”.

Omit from section 24(3) “Antiquities” and substitute “**Protected Objects**”.

Omit from section 24(4) “antiquity and artifact” and substitute “**protected New Zealand object and taonga tūturu**”.

Omit from section 24(4) “Antiquities” and substitute “**Protected Objects**”.

Postal Services Act 1998 (1998 No 2)

Omit from section 5(1)(b)(ii) “Antiquities” and substitute “Protected Objects”.

Omit from section 10(2)(b) “Antiquities” and substitute “Protected Objects”.

Reserves Act 1977 (1977 No 66)

Repeal the definition of **antiquity** in section 2(1).

Insert in section 2(1), after the definition of **private land**:

Reserves Act 1977 (1977 No 66)—*continued*

“**protected New Zealand object** has the same meaning as in the **Protected Objects Act 1975**”.

Omit from section 94(1)(f) “antiquity” and substitute “protected New Zealand object”.

Omit from section 94(3) “antiquity” and substitute “protected New Zealand object”.

Omit from section 95(2)(b) “an antiquity” and substitute “a protected New Zealand object”.

Omit from section 95(2)(b)(i) “Antiquities” and substitute “Protected Objects”.

Omit from section 95(2)(b)(ii) “Antiquities” and substitute “Protected Objects”.

Omit from section 95(3)(b) “an antiquity” and substitute “a protected New Zealand object”.

Omit from section 95(3)(b)(i) “Antiquities” and substitute “Protected Objects”.

Omit from section 95(3)(b)(ii) “Antiquities” and substitute “Protected Objects”.

Omit from section 100(1)(b) “antiquities” and substitute “protected New Zealand objects”.

Omit from section 102(2) “artifact” and substitute “taonga tūturu”.

Te Uri o Hau Claims Settlement Act 2002 (2002 No 36)

Repeal the definitions of **antiquity** and **artifact** in section 107.

Insert in section 107, after the definition of **Crown-owned mineral**:

“**protected New Zealand object** has the same meaning as in the **Protected Objects Act 1975**”.

Omit from paragraph (a)(iv) of the definition of **protocol** in section 107 “Antiquities” and substitute “protected New Zealand objects”.

Insert in section 107, after the definition of **responsible Ministry**:

“**taonga tūturu** has the same meaning as in the **Protected Objects Act 1975**”.

Omit from the definition of **Te Uri o Hau Antiquities protocol area** in section 107 “**Antiquities**” and substitute “**protected New Zealand objects**”.

Omit from section 113(4) “antiquities or artefacts” and substitute “protected New Zealand objects or ngā taonga tūturu”.

Trans-Tasman Mutual Recognition Act 1997 (1997 No 60)

Repeal the Antiquities Act 1975 item in Schedule 2 and substitute:

Trans-Tasman Mutual Recognition Act 1997 (1997 No 60)—*continued*

“**Protected Objects Act 1975**, to the extent that it deals with any requirement described in section 10(2) applicable to the sale of any protected New Zealand object (within the meaning of the **Protected Objects Act 1975**)”.

Legislative history

3 February 2005	Introduction (Bill 243–1)
5 April 2005	First reading and referral to Government Administration Committee
1 August 2005	Reported from Government Administration Committee (Bill 243–2)
10 May 2006	Second reading
13 June, 19, 25 July 2006	Committee of the whole House (Bill 243–3)
