

# REVIEW OF THE PROTECTION OF MOVABLE CULTURAL HERITAGE ACT 1986



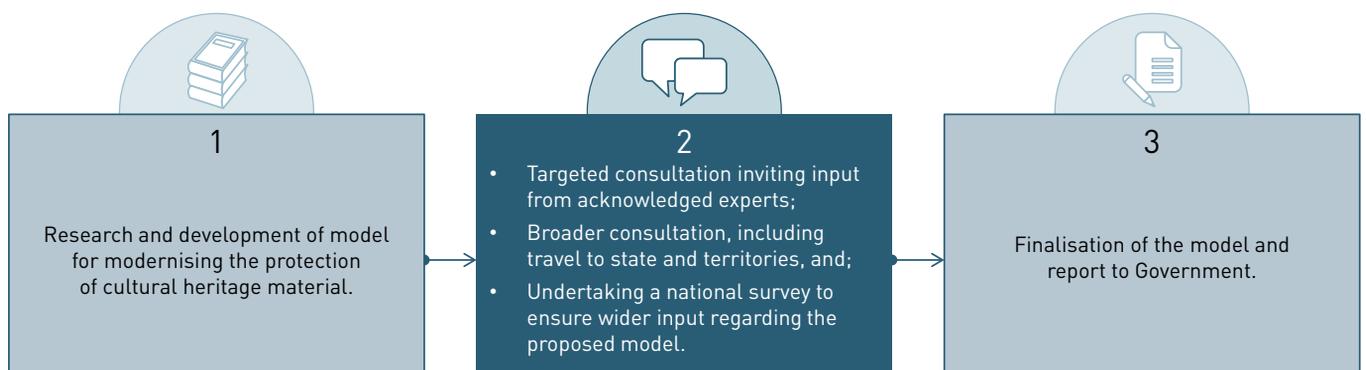
## Introduction and background

The *Protection of Movable Cultural Heritage Act 1986* provides Australia's regulatory framework for the import and export of significant cultural material. It has allowed Australia to fulfil its obligations under the UNESCO *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970* and seeks to provide protection to both Australian and foreign cultural material.

Such legislation must balance the public interest in protecting cultural material with the public and private interests of property ownership and the maintenance of a legitimate trade in such material. The Minister for the Arts has appointed Australia's pre-eminent cultural property lawyer, Mr Shane Simpson AM to conduct this important review and recommend the changes necessary to:

- deliver a balanced, more efficient, and more flexible system
- permit Australia to fulfil its international role in the protection of movable cultural property.

## Methodology of the review



The review is currently in Stage 2. A Position Paper has been developed that describes a new model for the protection of cultural heritage. This summary document provides an overview of that Position Paper and the proposed changes.

## Invitation to comment from Mr Shane Simpson AM



In my Position Paper I set out in some detail my view as to the numerous issues that need attention with regard to the Act and how they might be best resolved. I have taken the, perhaps unusual, approach of proposing preferred models for change because I believe that this will promote more focussed and incisive comment from the sector.

I look forward to considering your comments once you have had a chance to consider the proposals described in the Position Paper. If you support an approach, tell me. If it won't work, tell me why and how the issue can be better resolved. Similarly, if I've missed an issue, tell me what it is and what you think should be done. I do not promise that the final report will reflect your view but I can assure you that it will have been properly considered.

### How to provide feedback and comment

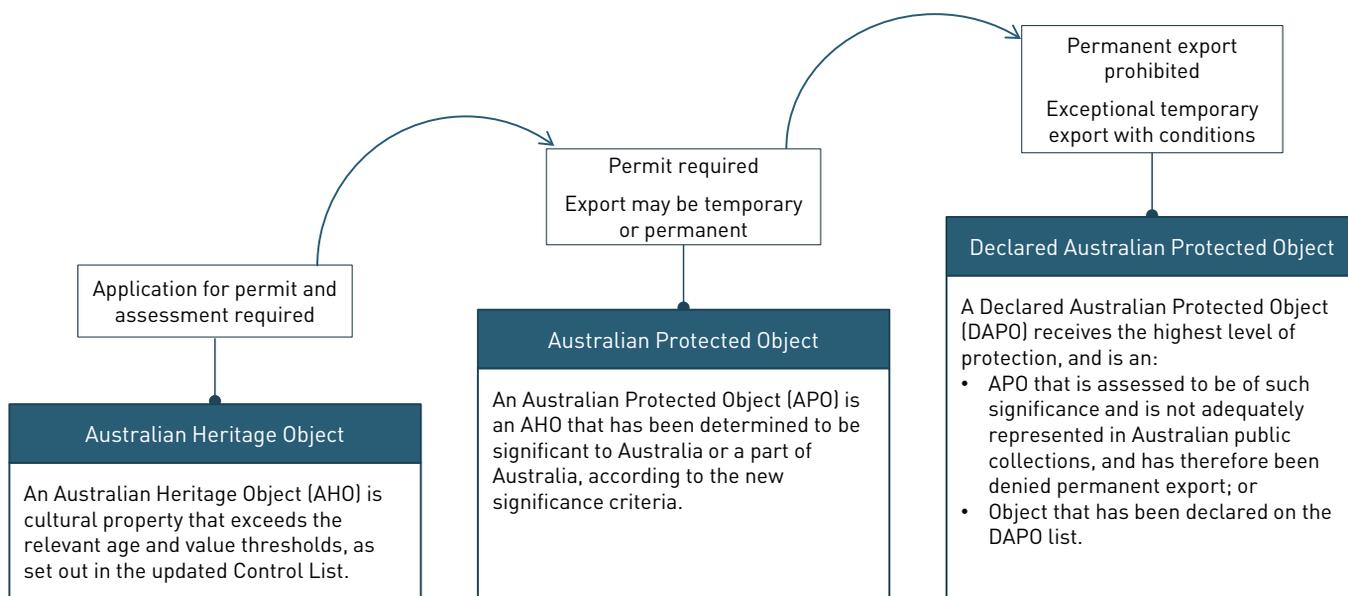
Feedback can be provided through our online survey or during the consultation process. The survey will be available on the Review's website.

<http://arts.gov.au/topics/public-consultations/review-protection-movable-cultural-heritage-act>

# Modernising the process for export control of Australian cultural material

The new model provides clearer definitions of the cultural material protected by the Act, and reconfigures the National Cultural Heritage Control List to provide objective standards to define objects regulated by the Act.

It also establishes a new system of categorising cultural material as defined below.



## Improvements to the export permit process

There are a number of key improvements to the features of the export process for cultural heritage material. These include:

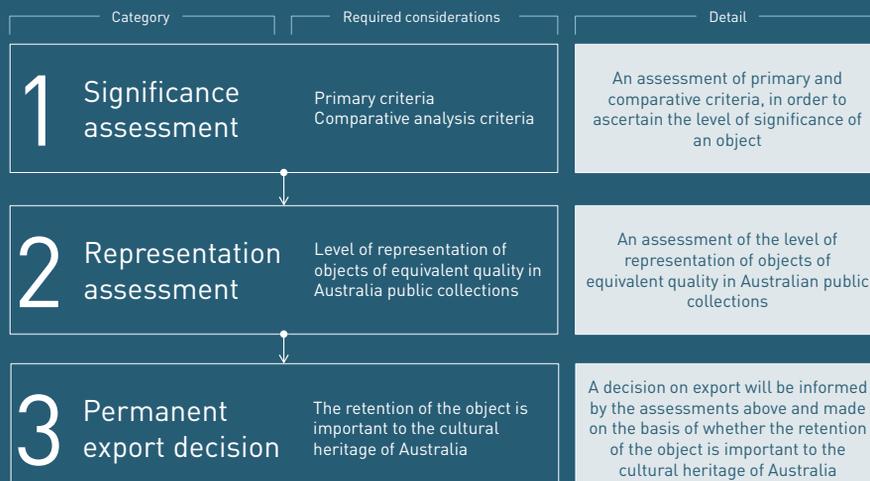
- Improved clarity for exporters through the use of objective criteria for determining whether a permit application is necessary.
- New, transparent, flexible and shortened decision processes.
- Improved use of external experts for the assessment of permit applications and the provision of advice.
- Modernisation of enforcement powers and procedures.
- Better articulated purpose and priorities of the National Cultural Heritage Account.
- Simplification of the process for temporary export permits, including broadening eligibility for General Permits.

## Significance and representation process

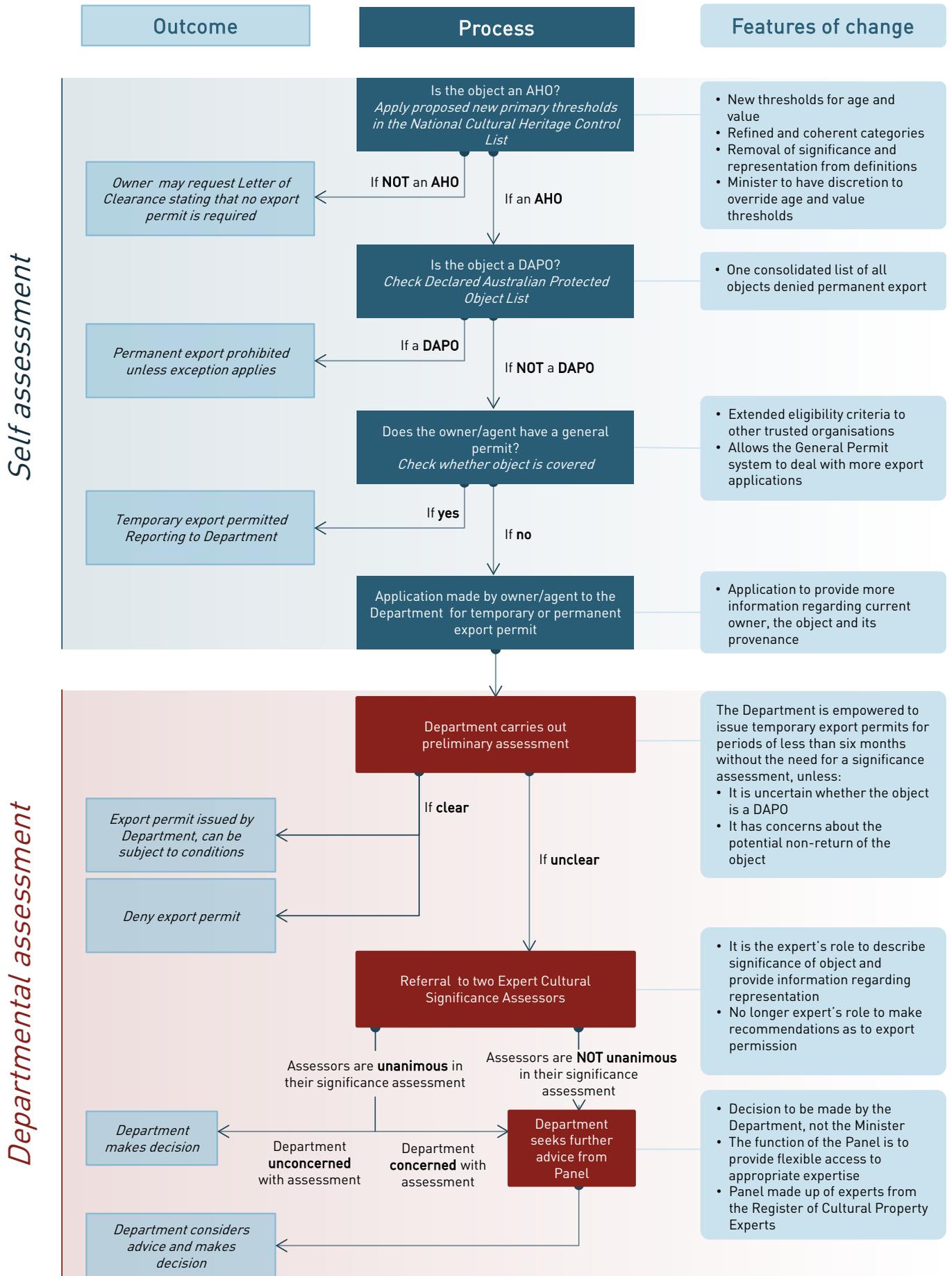
The significance and representation of an object is an important part of determining whether it can be exported.

There are a number of proposed changes to significance and representation that include:

- a positive test for the determination of the significance level required to deny the export of an object
- clarification and articulation of the criteria for significance and representation assessment
- recognition of significance assessments undertaken by state and territory agencies.



# Proposed export permit process



## Enhancing the protection of foreign cultural material

A new model is proposed for the protection of foreign cultural material. This is illustrated below. The changes will increase the effectiveness and transparency of the processes to recover and return foreign cultural material. The suggested changes include:

- provisions to protect stolen and looted cultural material
- consolidation and extension of criminal sanctions
- modern law enforcement provisions that encompass a range of powers, including injunction, search and seizure powers that provide for more effective prosecution and reflect current best practice
- enhanced clarity, due diligence obligations and transparency of process
- adoption of the UNIDROIT mechanisms to give foreign claimants access to Australian courts
- retention of non-court procedure for objects stolen from inventoried collections or identified sites
- availability of an alternative dispute resolution mechanism for claimants and Australian owners
- time limitations for the bringing of claims limitations regarding claims against illegal exports to clarify expectations for importers in regard to due diligence as to title and provenance
- consolidation of processes across government for the return of looted and stolen material.

### Proposed process regarding foreign claims

