

The NEW ZEALAND

Archaeological Association Inc.

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Mark Lindsay
Ministry for Culture and Heritage
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Dear Mark

Proposed Amendments to the Antiquities Act

Thank you for the opportunity to comment on this proposal.

General

The Association was a prime mover in the present Act becoming law. It was an integral part of the law change which also saw the change to the Historic Places Act (1975 amendment) which introduced protection to archaeological sites.

It is worth revisiting why these were seen as linked. The intention at that time was to ensure that any commercial motivation for excavating Maori archaeological sites was removed. The Crown presumption of ownership of new objects was implicit in this and led to the need for a process to deal with new objects. Hence the registration procedure. To make it likely that objects found before 1975 that were in trade were legitimate, the provision for trade to be only in registered artifacts followed, leading logically to licensing of dealers and owners.

There is a presumption in the present Act that New Zealand's cultural heritage is diminished as a result of the export of artifacts. The current system of ensuring registration before sale is a fairly certain way of ensuring sales though regular outlets are captured before export is considered.

Are these concerns still relevant today?

Certainly retaining the basic intent of removing any commercial advantage through excavating artifacts must continue. We believe the Act has been successful in that regard. Excavation for gain since 1975 has been confined to non-Maori items.

We have no way of judging how successful the process of registration has been on limiting export. Casual observation in auctions suggests that attention is regularly drawn to the provisions of the Act and in a specific instance a verbal indication before a sale to an auctioneer that a item was Maori, rather than foreign as catalogued, brought a warning at the sale.

We do not believe the present provisions in respect of registration and export of artifacts are contentious. We would like to see them retained for Maori Cultural Heritage objects, and the export restriction extended to non-Maori objects of archaeological origin.

The Association is aware that there are costs in the registration before sale system. It judges the gains as worth the costs. That the system is unsuitable for wider application is recognised.

Need

The Association recognises and welcomes the intent to cover a wider range of objects than the present Act. However the fairly general restraint on export of artifacts under the present Act is not going to be acceptable in some classes of objects. The Association is concerned that the wording of any proposed changes, in recognising some objects may be more freely exported, may weaken the protection that applies to Maori heritage items.

The more central role of Maori in relation to Maori Cultural Heritage Objects reflects changes in New Zealand society in the last quarter century and is welcomed by the Association.

We particularly see the need for the protection of objects of non-Maori origin which come from archaeological contexts. It is noticeable that there is an uneven application of the present act to material from the 19th century with the Maori part only covered by the present Act. We believe like provisions on export should extend to non-Maori objects.

Detailed Submissions

Ratification of International Treaties

We suggest ***the Convention on the Protection of the Underwater Cultural Heritage (UNESCO 2001)*** should be added to the list.

How Objects come within the purview of the Act.

This is key to the Act having effect. With the present Act there is a general ban on export of narrowly defined artifacts, which can be overcome by exception.

Now there will be a very broad definition of material subject to export approval. We are concerned it may register little in the public mind, making the only effective control being over the objects that have been deemed to be of national interest.

Given the proposals, it would be simple for an individual to plead ignorance on export controls of an object after the event. We feel the breadth, subjectiveness of the categories, and , given changes the difficulty of understanding the regulations, may result in the imposition of token penalties.

We urge that you consider how to clarify for the public the categories of objects covered.

Definitions of Significant Objects

We suggest rather than "contemporary thinking" which is rather loose, "contemporary debate" might be a better term.

Role of Experts

The liability of experts is a matter that will have to be considered. We are not aware of the decisions of the museums being challenged under the present provisions. Owners of an object may be more inclined to challenge an independent assessor. The independent assessors' opinions should not be subject to the pressure of personally facing at least court costs or damages. The mechanisms for avoiding that should be explored before the Act comes into force, otherwise it may prove a difficulty which creates a long delay in the Act becoming effective.

Status of Existing Registered Artifacts

We are unclear as to how these fit into the proposed hierarchy. Our preference is that they be deemed by the legislation to be objects within the appropriate cultural heritage category, so there is no confusion by their owners about their status.

Intention to Export

We wonder at the practicality of the first criterion for an unlawful export. The only time intervention under this provision would seem to be (once an aircraft had started taxiing or a ship cast off. It is suggested that taking an object into a customs controlled area, with the intent of exporting it would allow earlier intervention . Similarly, taking an object on board a ship or aircraft that had been cleared by immigration for departure shows intent to export . We are not sure of the need for movement of the article to have commenced when in postal services. Does this mean there could not be intervention at a post office - only at a mail centre? This does not seem relevant to demonstrating intent.

Our suggestion is:

An 'unlawful export' will occur even when an object is still in New Zealand but there is a demonstrable intention to export it. Any protected object will be deemed to be exported when:

- it has been placed on board a *vessel* with the intention that it is exported from New Zealand and a *Customs clearance for the vessel has been sought*; or
- *it has been taken into a Customs controlled area at a port or airport with the intention that it is exported from New Zealand*; or
- the object has been delivered as a postal article into the control of a postal service provider with the intention that it is sent out of New Zealand.

Maori Cultural Heritage Object Nga Taonga Pumau a te Maori

There seem to us to be four problems with the proposed definition.

Firstly, it requires an object to be recognised as being of significance or value to Maori before it qualifies. There may well be circumstances where there is need to apply the provisions of the Act to an object, but the process of recognising significance or value has not yet been undertaken. The definition should, like the present definition of an artifact, allow that an object appears to be covered to ensure in urgent cases process does not inhibit the application of the Act.

A descent line must include two generations - as expressed it is a tautology. It is not clear if the intent is that the object should have been handed down twice or once.

Thirdly there are rare but very significant objects which appear to have been imported to New Zealand by ancestors of Maori many centuries previously and there are Polynesian objects found in the Kermadec Islands, both categories to which applying the title Maori might be questioned. We recognise these would fit in the first category of the proposed regulated list, however this would be subject to the two objects in public collections test. The Kermadec items in particular should not be subject to this as they are all nationally important. This should be put beyond doubt by including them in this definition.

Last the definition must encompass the objects created or modified by the Moriori of the Chatham Islands. We are sure their descendents would not wish their cultural objects labelled Maori.

We would suggest:

For the purposes of this Act, a Maori cultural heritage object is any object *which*

(a) is or appears to be, created, modified or recognised by Maori which:

- *is or is likely to be of significance or value to Maori; and*

- is not less than 60 years old, or
 - has been handed down *through at least two generations of a descent line, or*
- (b) *is or appears to be, created, modified or recognised by Moriori of the Chatham Islands which:*
- *is or is likely to be of significance or value to Moriori; and*
 - *is not less than 60 years old, or*
 - *has been handed down through at least two generations of a descent line, and*
- (c) *includes 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.*

Proposed Cultural Heritage Categories

2. ART OBJECTS INCLUDING FINE, DECORATIVE AND POPULAR ART

The Association is concerned at the generality of the inclusion of objects

"less than 60 years old and an object in which there is a national interest, and made by a living artist or maker born in or related to New Zealand where that artist is not the owner and it is deemed to be an object in which there is a national interest"

The Association doubts the preparedness or desire of the New Zealand public for such a potential restriction on movements of their property where it is of recent creation. The Association is concerned at debate over the Act amendment being captured by this proposal and the opportunity to change the Act being lost, or its export restrictions being greatly weakened as a result of the inclusion of this category.

We would urge deleting these provisions.

2. An object is included in this category if it is:

- *a significant New Zealand moveable cultural heritage object; and*
- *not represented by at least two comparable examples in New Zealand public collections; and*

- *made by an artist or maker born in or related to New Zealand and who is no longer living; and*
- *not less than 60 years old;*

6. NEW ZEALAND ARCHAEOLOGICAL OBJECTS

The Association supports this category and its widening from the artifacts protected under the present Act. The inclusion of a date in the definition is problematic. Under the HPA archaeological sites where occupation commenced before 1900 but spanned it are still protected. This provision would recognise only those contents of such a site older than 1900. We think this is problematic and potentially open to abuse where an opinion of the Trust that a site is older than 1900 would not be sufficient to allow objects from the site to be taken into this category. It should be sufficient. We would suggest:

1. 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.

Matters Supported

The Association supports the intention to update the Antiquities Act , and considers it timely.

We understand that the provisions for registration of collectors and dealers and of trade in Maori artifacts only being in registered artifacts. We regard all these provisions as important.

Thank you for the opportunity to submit.

Yours faithfully

Garry Law

President