

Ngākahu National Repatriation Project: Workshop 3

The Protected Objects Act 1975 and Koiwi Tangata

The Protected Objects Act 1975 (formerly the Antiquities Act) regulates:

- the export of protected New Zealand objects
- the import of unlawfully exported or stolen protected foreign objects, and provisions for their return
- the care, ownership and trade of ngā taonga tūturu, including the obligations of finders and the Crown when taonga are found.

Export Provisions

Before a protected New Zealand object can be exported from New Zealand, temporarily or permanently, permission must be granted by the Chief Executive of Manatū Taonga the Ministry for Culture and Heritage.

To be a protected New Zealand object, an object must be:

- 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
- fall within 1 or more of the categories of protected objects set out in Schedule 4

Under the Act, there are nine categories of protected New Zealand objects:

1. **Archaeological, ethnographic, and historical objects of non-New Zealand origin, relating to New Zealand**
2. Art objects including fine, decorative, and popular art
3. Nga taonga tūturu
4. Natural science objects
5. New Zealand archaeological objects
6. Numismatic and philatelic objects
7. Science, technology, industry, economy, transport objects
8. Social history objects
9. Documentary heritage objects

*A protected
New Zealand
object may be
any object over
50 years old
with significant
New Zealand
provenance*

Repatriation of koiwi tangata and burial taonga

Where repatriation of koiwi tangata and / or burial taonga with origins outside New Zealand is proposed, exporters should be aware that:

- Burial goods may fall under the first category of protected New Zealand object, **Archaeological, ethnographic, and historical objects of non-New Zealand origin, relating to New Zealand**. These will require export permission from MCH.

Objects in this category need to have been in NZ for at least 50 years and be / have been in a public collection; not be represented by at least 2 comparable examples in public collections; and be of some manner of importance to NZ.

- To date, Manatū Taonga has **not** considered koiwi tangata from other countries of origin (for example, mummified human remains) to fall under the definition of a protected New Zealand object for export purposes.

Assessing an Export Application

When the Ministry receives an export application, we consider if the object is a protected New Zealand object. If it is, the Act requires the Chief Executive to consult two or more external experts with expertise relevant to the object. The experts will provide the Chief Executive with written advice and a recommendation on export.

Expert examiners must consider criteria at s7A of the Act:

- Is the object substantially physically authentic? **AND**
- made or naturally occurring in New Zealand; OR made with New Zealand materials; OR used by New Zealanders; OR related to New Zealand? **AND**
- Is the object associated with, or representative of, activities, events, ideas, movements, objects, persons, or places of importance to New Zealand? OR Is the object important to New Zealand for its technical accomplishment or design, artistic excellence, or symbolic, commemorative, or research value? OR Is the object part of a wider historical, scientific, or cultural collection or assemblage of importance to New Zealand? **AND**
- Is the object 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?

Export Decisions

If the Chief Executive approves the export of a protected New Zealand object the exporter is issued a certificate which is to be presented to Customs prior to the object being exported. The Chief Executive can also impose conditions on the export; these conditions (for example a time period or transfer of ownership) will be listed on the export certificate.

If the Chief Executive declines the export of a protected New Zealand object, the applicant may appeal the decision within 28 days to the Minister for Arts, Culture and Heritage. If the Minister upholds the decision, or no appeal is made, the object cannot be permanently exported from New Zealand and it is automatically included on the Nationally Significant Objects Register.

Taonga Tūturu

Taonga tūturu is one of 9 categories of protected New Zealand objects defined in the Protected Objects Act. The Act regulates the export of all categories of protected New Zealand objects but taonga tūturu is the only category of objects to have separate regulations regarding ownership and trade.

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

(ii) brought into New Zealand by Māori; or

(iii) used by Māori; and

(c) is more than 50 years old

Under the Act, all taonga tūturu found are in the first instance (prima facie) Crown owned to allow claims for ownership to be heard by the Māori Land Court.

Taonga Tūturu Found with Koiwi Tangata

In these circumstances the Ministry will take account; tikanga from those iwi and hapū and any signed MOU or whakaaetanga with the Ministry, which may include the reburial of those taonga tūturu found with the koiwi tangata. Reburial of koiwi and associated found taonga tūturu, is an accepted cultural practice throughout the Aotearoa.

Engaging with Iwi and Hapū

The Ministry will provide as much information to all groups that it can identify as having an interest in the taonga tūturu. It is with the utmost importance that the Ministry continually expresses respect for the taonga (the mana and mauri) and the people who connect to those taonga (mana tangata). As an honourable Treaty partner, the Ministry endeavours to maintain consistent and transparent communications with all parties.

Participation in the Management of Taonga Tūturu Found with Tangata Koiwi

This Ministry needs to be available to participate in hui and communicate clearly in writing about the following:

- The context in which taonga tūturu were found
- the obligations of the Ministry under the Act
- The process and timeframes the Ministry will undertake to meet these obligations
- The wishes expressed by iwi/interested parties in the process.

Before the taonga tūturu can be publicly notified, the Ministry needs to be formally notified of the find and the taonga tūturu must be recorded in the Protected Objects Database. The archaeologist (on behalf of the authority holder) will be responsible for either notifying the taonga tūturu themselves, or for taking them to the nearest public museum to be notified.

When the Ministry is informed that taonga tūturu have been found in association with koiwi tangata as part of an archaeological excavation (undertaken with an Authority granted by Heritage NZ), the Ministry needs to be involved in hui with the archaeologist and iwi involved as early as possible.

The following should be discussed at the hui:

- Where are the taonga now? What is the appropriate way to care for them?
- Are there other groups that are not involved in discussions who may have an interest in this kaupapa?

- What will happen if other taonga are found on the site?
 - Those found in direct association with koiwi?
 - Any taonga that are found as part of the same excavation but not directly with any koiwi?
- Explain the Ministry's responsibilities under the Act
 - The Ministry **must** publicly notify and call for claims of ownership
 - Note the Ministry does not want to stop reburial if that is what iwi want to do, but time is required to complete requirements
 - Refer to Long Bay Restaurant Excavation case (2015-59 & 2016-09)
- Inform the hui of the requirements the Ministry needs to meet under the Act:
 - The Ministry has to publish a public notice and to write to any iwi identified as having an interest in the taonga tūturu. The letter will include information about the context in which taonga tūturu were found, the obligations of the Ministry under the Act, the process and timeframes the Ministry will undertake to meet these obligations and the wishes expressed by iwi/interested parties in the process.
 - 60-working day notification period
 - At the end of the 60 days, the Ministry will assess the responses to the letters and public notice
 - If iwi agree with the contents of the letter regarding the wishes expressed by the hui, it would be helpful for the Ministry to have that in writing
 - The Ministry will write to interested parties again following the 60-day notice period with an update and any further information
 - The Ministry is happy to participate in any hui to provide information and answer questions if that is helpful.

Following notification, the processes followed by the Ministry will vary. It is possible for claims of ownership to be lodged, even if the taonga tūturu are reburied. The Ministry will need to clearly inform those groups seeking ownership that the taonga may be reburied. The Ministry may also wish to have a conversation with the potential owners about what will happen to the taonga if no claims of ownership are received and to consider whether custodianship would be an appropriate way to recognise their interests.

If there are no objections to the reburial, the taonga tūturu do not need to go through the Māori Land Court. The Ministry can remain *prima facie* owner of these taonga and record that long term custody remains with one or more iwi groups. Before finalising the reburial of taonga tūturu, the Ministry must identify the appropriate custodians for the taonga, and confirm this with all interested parties.

In the circumstances where interested parties are not able to reach agreement, the Ministry will apply to the Māori Land Court to determine ownership and custody.

Who to contact

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