



MINISTER FOR THE ARTS

Departmental No. 37

Minute Paper for the Executive Council

Executive Council Meeting No. 21

Subject

Protection of Cultural Objects on Loan Regulation 2014

Recommended for the approval of His Excellency the Governor-General in Council that he make a Regulation in the attached form.

Approved in Council

[Handwritten signature of George Brandis QC]

George Brandis QC Minister for the Arts

Peter Cosgrove

Peter Cosgrove Governor-General

2 OCT 2014

Filed in the Records of the Council

s22(1)(a)(ii)

Secretary to the Executive Council

Released under the Freedom of Information Act 1982 by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts



# Protection of Cultural Objects on Loan Regulation 2014

Select Legislative Instrument No. , 2014

I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd),  
Governor-General of the Commonwealth of Australia, acting with the  
advice of the Federal Executive Council, make the following regulation.

Dated 2 OCT 2014

Peter Cosgrove

Peter Cosgrove  
Governor-General

By His Excellency's Command

George Brandis QC  
Minister for the Arts

OPC60244 - A

Released under the Freedom of Information Act 1982 by the Department of  
Infrastructure, Transport, Regional Development, Communications and the Arts

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## Part 1—Preliminary

### 1 Name of regulation

This regulation is the *Protection of Cultural Objects on Loan Regulation 2014*.

### 2 Commencement

This regulation commences on the day after it is registered.

### 3 Authority

This regulation is made under the *Protection of Cultural Objects on Loan Act 2013*.

### 4 Definitions

Note: A number of expressions used in this regulation are defined in the Act, including the following:

- (a) borrowing institution;
- (b) lender;
- (c) loan;
- (d) parent.

In this regulation:

*Aboriginal person* has the same meaning as in the *Aboriginal and Torres Strait Islander Act 2005*.

*Act* means the *Protection of Cultural Objects on Loan Act 2013*.

*Torres Strait Islander* has the same meaning as in the *Aboriginal and Torres Strait Islander Act 2005*.

### 5 Parents of borrowing institutions

- (1) This section applies in relation to a borrowing institution that has a parent.

**Part 1 Preliminary****Section 5**

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- (2) If a provision of this regulation is expressed to require the borrowing institution to do, or not to do, a thing, the requirement applies to the parent instead of the institution.

Example: If a provision requires a borrowing institution to ensure there are policies and procedures in effect, the parent must ensure that those policies and procedures are in effect instead of the institution.

- (3) If a provision of this regulation authorises a borrowing institution to do a thing, the thing may be done by the parent instead of by the institution.

Example: If a provision authorises a borrowing institution to make an application, the parent may make the application instead of the institution.

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## Part 2—Borrowing institutions

### 6 Prescribed borrowing institutions

For subparagraph (b)(ii) of the definition of *borrowing institution* in section 5 of the Act, the Museum of Contemporary Art Limited (ABN 15 003 765 517) is prescribed.

## Part 3 Protected persons

### Section 7

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## Part 3—Protected persons

### 7 Prescribed service

For subparagraph (e)(v) of the definition of *protected person* in section 5 of the Act, the service of exhibiting the object in Australia is prescribed.

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## Part 4—Approval of institutions

### 8 Matters Minister must consider in approving a borrowing institution

- (1) For paragraph 15(2)(f) of the Act, the matters that the Minister must consider in deciding whether to approve a borrowing institution are as follows:
- (a) whether the policies and procedures of the borrowing institution or its parent display a commitment to loans of objects, to which Part 2 of the Act would apply, being made to the highest standards of ethical and professional practice and in accordance with applicable laws;
  - (b) whether the policies and procedures of the borrowing institution or its parent are likely to ensure that:
    - (i) proposed lenders of such objects are reputable and have legal authority to lend them; and
    - (ii) there are valid export licences or permits (if required) for such objects from the countries in which they are located before being exported to Australia;
  - (c) whether the policies and procedures mentioned in paragraphs (a) and (b) require adequate provenance and due diligence research of a kind mentioned in subsection (2) to be conducted in relation to such objects.
- (2) For paragraph (1)(c), provenance and due diligence research involves doing such of the following as may be appropriate in the circumstances of a proposed loan of an object:
- (a) conducting checks into the matters mentioned in subparagraphs (1)(b)(i) and (ii) in so far as they relate to the object;
  - (b) considering documentary evidence of the object's history of ownership and export (having regard to the object's country of origin and other countries in which it has been located);
  - (c) examining information about the lender, and current and previous owners;



**Part 4** Approval of institutions**Section 8**

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- (d) checking that the object is not mentioned in databases or registers of lost or stolen objects;
  - (e) considering secondary documentation, such as archival material and images;
  - (f) examining the exhibition and publication history of the object;
  - (g) examining the object, or detailed descriptions or photos of the object;
  - (h) consulting experts in relation to any or all of the matters set out in the preceding paragraphs of this subsection.
- (3) The borrowing institution must ensure that the policies referred to in subsection (1) are published on the borrowing institution's website.

## Part 5—Consultation

### 9 Consultation policies and procedures

- (1) A borrowing institution must ensure that there are written policies and procedures in effect that set out the consultation processes that will be used if the institution or a parent of the institution proposes the loan of an object to which Part 2 of the Act will apply.

Note: For how this rule applies if the borrowing institution has a parent, see section 5.

- (2) The policies and procedures must set out the consultation processes that will be used if such an object:
- (a) relates to an individual, family group or community in Australia; or
  - (b) relates to an Aboriginal person or a Torres Strait Islander; or
  - (c) is relevant to an archive of a State or Territory.
- (3) The policies and procedures must include a requirement for the following matters to be considered in deciding whether or not to consult in relation to the proposed loan of such an object:
- (a) whether the object has historical significance to a particular individual, group, event, place or activity;
  - (b) whether there are specific family associations with the object;
  - (c) whether the object has social or spiritual significance to a particular community in Australia;
  - (d) whether there is a demonstrated attachment between the object and an individual, family group or community in Australia;
  - (e) whether the object embodies beliefs, ideas, customs, traditions, practices or stories that are important to a particular community in Australia.
- (4) The policies and procedures must not be inconsistent with section 10.

**Part 5 Consultation****Section 10**

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- (5) The borrowing institution must ensure that the policies referred to in subsection (1) are published on the borrowing institution's website.

**10 Form of consultation and who must be consulted**

- (1) Consultation undertaken in relation to the proposed loan of an object must:
- (a) give the individual, group or body being consulted an adequate opportunity to comment; and
  - (b) be appropriate for the object proposed to be loaned and the individual, group or body being consulted; and
  - (c) be respectful and meaningful to the individual, group or body being consulted.
- (2) Consultation undertaken in relation to the proposed loan of an object must be with:
- (a) any individual, family group or community in Australia to which the object relates; and
  - (b) if the object relates to an individual who is an Aboriginal person or a Torres Strait Islander—that individual or representatives of that individual (or both); and
  - (c) if the object relates to a State or Territory archive—the person or body responsible for that archive.
- (3) Subsection (2) does not limit who may be consulted in relation to the proposed loan of an object.

## Part 6—Publishing information about objects

### 11 Publishing information about objects

- (1) A borrowing institution must ensure that the following information is published on the institution's website about each object that is the subject of a proposed loan to the institution or its parent and to which Part 2 of the Act will apply:
- (a) a photograph of the object;
  - (b) one of the following:
    - (i) the name of the lender of the object;
    - (ii) the name of the person authorised to act on the lender's behalf;
    - (iii) the statement "private lender", "private collection" or a similar description;
  - (c) a description of the object sufficient to identify it, including as much of the following information as the borrowing institution or its parent is able to ascertain:
    - (i) the type of object;
    - (ii) the name and nationality of the artist, creator or manufacturer of the object;
    - (iii) the title of the object;
    - (iv) the dimensions of the object;
    - (v) the date on which, or the period during which, the object was, or is likely to have been, created or manufactured;
    - (vi) a description of significant marks or inscriptions on the object;
    - (vii) the place or likely place the object was created or manufactured;
    - (viii) if the object consists of archaeological or palaeontological material—the place where the object was found or likely to have been found;
    - (ix) the date and place the object was acquired by its current owner;

**Part 6** Publishing information about objects**Section 12**

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- (x) the date and place the object was acquired by the person who owned the object immediately before the object's current owner;
- (d) each address in Australia at which the object is to be displayed and the period during which the object will be displayed at the address;
- (e) the title of the temporary public exhibition or exhibitions at which the object is to be displayed.

Note: For how this rule applies if the borrowing institution has a parent, see section 5.

- (2) The information must:
  - (a) be published on the borrowing institution's website at least 4 weeks before the object is to be imported into Australia; and
  - (b) remain on the institution's website until the object is exported from Australia.
- (3) This section does not apply in relation to information covered by a permission granted under section 12.

**12 Exemption from publishing information about an object**

- (1) A borrowing institution may apply to the Minister for permission not to publish on the institution's website some or all of the information mentioned in subsection 11(1) about an object.

Note: For how this rule applies if the borrowing institution has a parent, see section 5.

- (2) The application must:
  - (a) be in writing; and
  - (b) set out:
    - (i) the information that the applicant does not wish to be published; and
    - (ii) the reasons for the application and supporting information; and
  - (c) be made as soon as practicable before the object is to be imported into Australia.
- (3) The Minister must, by written notice given to the applicant, either grant or refuse to grant the permission.

## Section 13

- (4) If the Minister refuses to grant the permission, the notice must include reasons for the refusal.

### 13 Including hyperlinks instead of publishing information

- (1) This section applies if:
- (a) a combination of 2 or more of the following propose the loan of an object under a temporary loan arrangement with the same lender or exhibition facilitator:
    - (i) a borrowing institution;
    - (ii) the parent of a borrowing institution; and
  - (b) the object is to remain in Australia until the arrangement has expired.
- (2) A borrowing institution referred to in subsection (1), or a parent of such an institution, is taken to comply with section 11 in relation to the object if:
- (a) there is included on the institution's website a hyperlink to information about the object published in accordance with section 11 on the website of one of the other borrowing institutions referred to in paragraph (1)(a) of this section; and
  - (b) the hyperlink is included as soon as practicable after the information is published on the other website; and
  - (c) the hyperlink remains on the website until the object is exported from Australia.

### 14 Correcting errors or omissions in published information

A borrowing institution must ensure that its website is updated to correct any error or omission in information published on the website in accordance with section 11 as soon as practicable after becoming aware of the error or omission.

Note: For how this rule applies if the borrowing institution has a parent, see section 5.

**Part 7** Actions to be taken by borrowing institution or parentSection 15

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**Part 7—Actions to be taken by borrowing institution or parent****15 Information requests and claims in relation to an object**

- (1) This section applies to a borrowing institution if:
- (a) an object to which Part 2 of the Act applies is on loan to the institution or its parent; and
  - (b) the institution or parent receives:
    - (i) a written request for information about the object from one or more persons who may have an interest in the object; or
    - (ii) a written claim that one or more persons have an interest in the object; and
  - (c) the object has not been exported from Australia before the request or claim is received.
- (2) The borrowing institution must, within 28 days after the request or claim is received, give the person or persons:
- (a) the website address where information about the object is published as required by section 11; and
  - (b) information held by the institution or its parent as a result of provenance and due diligence research conducted in accordance with the policies and procedures mentioned in paragraph 8(1)(c).
- Note: For how this rule applies if the borrowing institution has a parent, see section 5.
- (3) Paragraph (2)(b) does not apply if the borrowing institution is satisfied, having regard to the nature of the information and the nature and circumstances of the request or claim, that it is not appropriate for the information to be given.
- (4) If the borrowing institution or parent receives a claim mentioned in subparagraph (1)(b)(ii), the borrowing institution must give the Minister:
- (a) written notice of the claim; and

Actions to be taken by borrowing institution or parent **Part 7**

Section 15

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(b) on request by the Minister—a copy of the claim.



## Part 8 Report to Minister

## Section 16

**Part 8—Report to Minister****16 Report to Minister on activities of borrowing institution**

- (1) A borrowing institution must ensure that:
- (a) a report is prepared on the activities of the borrowing institution during each financial year in relation to the loan, or proposed loan, of objects to which Part 2 of the Act applies; and
  - (b) the report is given to the Minister by the next 31 October after the financial year.

Note: For how this rule applies if the borrowing institution has a parent, see section 5.

- (2) The borrowing institution's report for a financial year must include:
- (a) the following information for each exhibition in which the institution was involved during the financial year that included an object to which Part 2 of the Act applies:
    - (i) the title of the exhibition;
    - (ii) a description of the object;
    - (iii) each location at which the exhibition was held;
    - (iv) the date on which the object was imported into Australia;
    - (v) the date on which the object was, or is to be, exported from Australia;
    - (vi) the date on which the exhibition commenced;
    - (vii) the date on which the exhibition ended or is to end;
    - (viii) the number of visitors who attended the exhibition during the financial year; and
  - (b) details of any provenance or due diligence research conducted in accordance with the policies and procedures mentioned in paragraph 8(1)(c); and
  - (c) details of any consultation undertaken in accordance with Part 5; and

## Section 16

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- (d) if information was published on the institution's website in accordance with section 11—a copy of that information; and
  - (e) if a hyperlink to information about an object was included on the institution's website in accordance with section 13—a statement to that effect; and
  - (f) a statement that the information published as mentioned in paragraph (d), or the hyperlink included as mentioned in paragraph (e), remained on the institution's website for at least the period required under Part 6, and any information that may confirm that statement.
- (3) If a request or claim mentioned in section 15 was received by a borrowing institution or a parent of a borrowing institution during the financial year, the report under this section must include information about:
- (a) the request or claim; and
  - (b) the action taken in accordance with section 15 in relation to the request or claim.

**Part 9** MiscellaneousSection 17

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**Part 9—Miscellaneous****17 Delegation**

The Minister may, by writing, delegate all or any of his or her functions and powers under this regulation to an SES employee or acting SES employee in the Department.

Note: The expressions *SES employee* and *acting SES employee* are defined in section 2B of the *Acts Interpretation Act 1901*.

EXPLANATORY MEMORANDUM

Minute No. ~~37~~ of 2014 - Minister for the Arts

Subject - *Protection of Cultural Objects on Loan Act 2013*

*Protection of Cultural Objects on Loan Regulation 2014*

The *Protection of Cultural Objects on Loan Act 2013* (the Act) establishes a scheme to provide protection for cultural objects on loan from overseas for the purposes of temporary exhibition in Australia by approved borrowing institutions. The authority under the Act for the matters that are included in the proposed regulation are provided at Attachment A.

The purpose of the proposed Regulation is to provide key requirements for borrowing institutions approved under Part 3 of the Act ensuring the appropriate rigour and integrity of the scheme. The proposed Regulation will ensure accountability and transparency under the scheme by:

- providing detail in regard to the matters which must be considered by the Minister in deciding whether to approve a borrowing institution under Part 3 of the Act, with specific regard to the loans policies and procedures of the borrowing institution;
- detailing the consultation requirements that borrowing institutions must consider when proposing to import an object for temporary exhibition in Australia including requirements for institutions to have specific policies regarding consultation with Aboriginal and Torres Strait Islander communities and state and territories archives and make these policies publically available;
- detailing the information that borrowing institutions are required to publish relating to objects proposed for loan on the institution's website for a specified period of time;
- detailing the actions that borrowing institutions must take when they receive an enquiry or a claim regarding an object for which protection under Part 2 of the Act applies;
- providing the requirements of information to be included in an annual report to the Minister on the activities undertaken by a borrowing institution in relation to the operation of the Act or Regulation;
- prescribing an organisation as borrowing institution for the purposes of the Act; and
- extending the range of services included in the definition of protected person by prescribing the service of exhibiting the object in Australia.

Extensive consultation has been undertaken in relation to the matters addressed by the proposed Regulation. This has included consultation with national, state and territory collecting institutions, state and territory arts officials and other experts to ensure that the requirements for policies and procedures proposed in the Regulation meet international best practice standards and are considered practical and administratively workable for participating borrowing institutions. The development of the scheme follows strong demand from the sector and participation in the scheme is voluntary. The use of Regulation for detailing matters, which ensure the appropriate operation of the scheme, is considered integral to the overall effectiveness of the Act.

s22(1)(a)(ii)


Subsection 21(2) specifies that before the Governor-General makes a regulation prescribing a law of the Commonwealth for the purposes of 8(1)(e), the Minister must be satisfied that the law to be prescribed gives effect to an agreement between Australia and one or more foreign countries or international organisations. It is not proposed to prescribe any laws of the Commonwealth under subsection 8(1)(e) at this time. The Act does not specify any further preconditions that need to be met before the power to make a Regulation may be exercised.

The proposed Regulation would be a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The proposed Regulation would commence on the day after it is registered.

Authority: Subsection 21(1) of the *Protection of Cultural Objects on Loan Act 2013*

s22(1)(a)(ii)



## Attachment A

The matters included in the proposed regulation are provided for under the following sections of the *Protection of Cultural Objects on Loan Act 2013* (the Act).

Subsection 21(1) of the Act enables the Governor-General to make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Act.

Paragraph 21(3)(a) of the Act enables regulations to be made relating to the consultation to be undertaken by borrowing institutions, or their parents, of members of communities, or the organisations representing them, about proposed loans of objects relevant to those communities.

Paragraph 21(3)(b) of the Act enables regulations to be made relating to the consultation to be undertaken by borrowing institutions, or their parents, of persons or bodies responsible for archives of States or Territories about the proposed loans of objects relevant to those archives.

Paragraph 21(3)(c) of the Act enables regulations to be made relating to the publication of information by borrowing institutions, or their parents, about objects proposed to be lent to them by lenders or exhibition facilitators.

Paragraph 21(3)(d) of the Act enables regulations to be made relating to the action to be taken by a borrowing institution, or its parent, if it becomes aware of an act or event that:

- relates to an object to which Part 2 of the Act applies, in connection with the institution; and
- the institution or parent believes may be or lead to a contravention of Part 2 of the Act.

Paragraph 21(3)(e) of the Act enables regulations to be made prescribing borrowing institutions to provide a report to the Minister, by 31 October, on activities undertaken in the previous financial year in relation the operation of the Act or Regulation.

Paragraph (b)(ii) of the definition of *borrowing institution* in section 5 of the Act enables an organisation to be prescribed by regulation as a borrowing institution.

Paragraph (e)(v) of the definition of *protected persons* in section 5 of the Act enables a service that relates to the object to be prescribed by regulation. Paragraph (e) of this definition establishes that this service would be carried out by a person engaged by a lender of the object, and exhibition facilitator or an exhibiting institution and includes matters which are considered to be part of the usual activities associated with the loan of an object.

Paragraph 15(2)(f) of the Act enable matters for the purposes of paragraph 15(2) to be prescribed by regulation.

s22(1)(a)(ii)



MINISTER FOR THE ARTS

Departmental No. 476 of 2024

Minute Paper for the Executive Council

Executive Council Meeting No. ..... 26

Subject

*Protection of Cultural Objects on Loan Act 2013*

*Protection of Cultural Objects on Loan Regulations 2024*

Recommended for the approval of Her Excellency the Governor-General in Council that she make Regulations in the attached form.

Approved in Council

Sam Mostyn AC  
Governor-General

12 December 2024

Filed in the Records  
of the Council

s22(1)(a)(ii)



Secretary to the Executive Council

Tony Burke  
Minister for the Arts

Released under the Freedom of Information Act 1982 by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts



## Protection of Cultural Objects on Loan Regulations 2024

I, the Honourable Sam Mostyn AC, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 12 December 2024

Sam Mostyn AC  
Governor-General

By Her Excellency's Command

Tony Burke  
Minister for the Arts



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**Part 1 Preliminary****Section 1**

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**Part 1—Preliminary****1 Name**

This instrument is the *Protection of Cultural Objects on Loan Regulations 2024*.

**2 Commencement**

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. The whole of this instrument	1 April 2025.	1 April 2025

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

**3 Authority**

This instrument is made under the *Protection of Cultural Objects on Loan Act 2013*.

**4 Schedule 1**

Each instrument that is specified in Schedule 1 to this instrument is amended or repealed as set out in the applicable items in that Schedule, and any other item in that Schedule has effect according to its terms.

## Part 2—Interpretation

### 5 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) borrowing institution;
- (b) lender;
- (c) loan;
- (d) parent.

In this instrument:

*Aboriginal person* has the same meaning as in the *Aboriginal and Torres Strait Islander Act 2005*.

*Act* means the *Protection of Cultural Objects on Loan Act 2013*.

*Torres Strait Islander* has the same meaning as in the *Aboriginal and Torres Strait Islander Act 2005*.

### 6 Organisations prescribed as *borrowing institutions*

For the purposes of subparagraph (b)(ii) of the definition of *borrowing institution* in section 5 of the Act, the following organisations are prescribed:

- (a) Chau Chak Wing Museum of the University of Sydney (ABN 15 211 513 464);
- (b) Museum of Contemporary Art Limited (ABN 15 003 765 517);
- (c) Art Gallery of Ballarat (ABN 28 145 246 224);
- (d) Bendigo Art Gallery of the Greater Bendigo City Council (ABN 74 149 638 164);
- (e) Heide Park and Art Gallery, trading as Heide Museum of Modern Art (ABN 60 005 712 943);
- (f) The Ian Potter Museum of Art of the University of Melbourne (ABN 84 002 705 224);
- (g) HOTA Gold Coast Pty Ltd, trading as HOTA Home of the Arts (ABN 85 060 787 466);
- (h) Moorilla Estate Pty Ltd, trading as Museum of Old and New Art (Mona) (ABN 34 120 281 656).

### 7 Services prescribed for the definition of *protected person*

For the purposes of subparagraph (e)(v) of the definition of *protected person* for an object, in section 5 of the Act, the following services are prescribed:

- (a) exhibiting the object in Australia;
- (b) conducting research on the object, for the purposes of facilitating the temporary public exhibition of the object under arrangements made by a borrowing institution, in Australia;
- (c) undertaking imaging of the object, for the purposes of facilitating the temporary public exhibition of the object under arrangements made by a borrowing institution, in Australia;

Part 2 Interpretation

Section 7

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- (d) facilitating consultation under Part 4 of this instrument in relation to the object.

*Released under the Freedom of Information Act 1982 by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts*

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## Part 3—Approval of institutions

### 8 Matters the Minister must consider in approving a borrowing institution

- (1) For the purposes of paragraph 15(2)(f) of the Act, the matters that the Minister must consider in deciding whether to approve a borrowing institution are the following:
- (a) whether the policies and procedures of the borrowing institution or its parent display a commitment to the loan of objects to which Part 2 of the Act applies, or would apply, being made to the highest standards of ethical and professional practice and in accordance with applicable laws;
  - (b) whether the policies and procedures of the borrowing institution or its parent are likely to ensure that:
    - (i) lenders of such objects are reputable and have legal authority to lend such objects; and
    - (ii) there are valid export licences or permits (if required) for such objects from the countries in which they are located before being exported to Australia;
  - (c) whether the policies and procedures of the borrowing institution or its parent include requirements for the borrowing institution or its parent to undertake adequate provenance and due diligence research of a kind mentioned in subsection (2) of this section, in relation to such objects, for the period for which the institution is an approved borrowing institution.
- (2) For the purposes of paragraph (1)(c), provenance and due diligence research, in relation to the proposed loan of an object, involves doing any of the following that may be appropriate in the circumstances:
- (a) conducting checks into the matters mentioned in subparagraphs (1)(b)(i) and (ii) in so far as they relate to the object;
  - (b) considering documentary evidence of the object's history of ownership and export (having regard to the object's country of origin and other countries in which it has been located);
  - (c) examining information about the lender of the object, and current and previous owners of the object;
  - (d) checking that the object is not mentioned in databases or registers of lost or stolen objects;
  - (e) considering secondary documentation, such as archival material and images relating to:
    - (i) the object; or
    - (ii) works related to the object; or
    - (iii) the lender of the object; or
    - (iv) current and previous owners of the object;
  - (f) examining the exhibition and publication history of the object;
  - (g) examining the object, or detailed descriptions or photos of the object;
  - (h) consulting experts in relation to any or all of the matters set out in the preceding paragraphs of this subsection.

**Part 3 Approval of institutions****Section 8**

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- (3) The borrowing institution must ensure that the policies and procedures referred to in subsection (1) are published on the website of the borrowing institution or its parent.

## Part 4—Consultation

### 9 Purpose of this Part

This Part is made for the purposes of paragraphs 21(3)(a) and (b) of the Act.

### 10 General requirement to formulate and publish policies and procedures

- (1) A borrowing institution or its parent must formulate written policies and procedures, in accordance with this Part, that set out the consultation processes that will be used by the borrowing institution or its parent, if the borrowing institution or its parent proposes the loan of an object to which Part 2 of the Act will apply.
- (2) The borrowing institution or its parent must ensure that the policies and procedures are published on the website of the borrowing institution or its parent.

### 11 Consultation with relevant communities

#### *When consultation is required*

- (1) Subsection (2) sets out the circumstances in which a borrowing institution or its parent must consult members of a community, or organisations representing members of a community, about the proposed loan of an object to which Part 2 of the Act will apply, if the object relates to that community.
- (2) Without limiting the circumstances in which the borrowing institution or its parent consults in relation to the object, the borrowing institution or its parent must consult, in relation to the object, members of each community to which any of the following circumstances apply, or organisations representing such members:
  - (a) membership of the community is exclusively or predominantly Aboriginal persons or Torres Strait Islanders, and the object relates to, or embodies the culture of, that community;
  - (b) the community is a First Nations community that is from a country that is not Australia, and the object relates to, or embodies the culture of, that community;
  - (c) the community is in Australia and the object has clear and continuing significance for that community.

#### *Matters to be considered for the purposes of deciding whether to consult*

- (3) A borrowing institution or its parent must consider the following matters for the purposes of deciding whether to consult (whether or not under subsection (2)) members of a community, or organisations representing members of a community, about the proposed loan of an object to which Part 2 of the Act will apply, if the object relates to that community:
  - (a) whether the object has historical significance to:
    - (i) a particular individual who is a member of the community; or
    - (ii) a group within the community; or
    - (iii) an event, place or activity relating to the community;

**Part 4 Consultation****Section 12**

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- (b) whether a member of the community has specific family associations with the object;
- (c) whether there is a demonstrated attachment between the object and the community, a particular individual who is a member of the community or a family group within the community;
- (d) if the community is in Australia:
  - (i) whether the object has social or spiritual significance to the community; and
  - (ii) whether the object embodies beliefs, ideas, customs, traditions, practices or stories that are important to the community.

**12 Consultation with State or Territory archives**

A borrowing institution or its parent must consult persons or bodies responsible for an archive of a State or Territory, about the proposed loan of an object to which Part 2 of the Act will apply, if the object is relevant to the archive.

Example: The object may be relevant to the archive if the object would ordinarily be expected to be in the archive.

**13 Processes in certain circumstances**

The policies and procedures of the borrowing institution or its parent must set out:

- (a) the consultation processes that will be used by the borrowing institution or its parent in relation to the proposed loan of an object to which Part 2 of the Act will apply, if the object is one in relation to which consultation must be undertaken in accordance with subsection 11(2) or section 12 of this instrument; and
- (b) the processes that will be followed by the borrowing institution or its parent when a person, organisation or body consulted in accordance with subsection 11(2) or section 12 does not support the proposed loan of the object.

**14 Form of consultation**

Consultation undertaken in accordance with this Part must:

- (a) give persons, organisations or bodies being consulted an adequate opportunity to comment; and
- (b) be appropriate for the object proposed to be loaned and the persons, organisations or bodies being consulted; and
- (c) be respectful and meaningful to the persons, organisations or bodies being consulted.



## Part 5—Publishing information about objects

### 15 Purpose of this Part

This Part is made for the purposes of paragraph 21(3)(c) of the Act.

### 16 Publishing information about objects

- (1) A borrowing institution or its parent must ensure that the following information is published, in accordance with subsection (2), about each object that is the subject of a proposed loan to the borrowing institution or its parent, and to which Part 2 of the Act will apply:
  - (a) a photograph of the object;
  - (b) one of the following:
    - (i) the name of the lender of the object;
    - (ii) the name of the person authorised to act on the lender's behalf;
    - (iii) the statement “private lender”, “private collection” or a similar description;
  - (c) a description of the object sufficient to identify it, including as much of the following information as the borrowing institution or its parent is able to ascertain:
    - (i) the type of object;
    - (ii) the name and nationality of the artist, creator or manufacturer of the object;
    - (iii) the title of the object;
    - (iv) the dimensions of the object;
    - (v) the date on which, or the period during which, the object was, or is likely to have been, created or manufactured;
    - (vi) a description of significant marks or inscriptions on the object;
    - (vii) the place or likely place the object was created or manufactured;
    - (viii) if the object consists of archaeological or palaeontological material—the place where the object was found or likely to have been found;
    - (ix) the date and place the object was acquired by its current owner;
    - (x) the date and place the object was acquired by the person who owned the object immediately before the object's current owner;
  - (d) each address in Australia at which the object is to be displayed and the period during which the object will be displayed at the address;
  - (e) the title of the temporary public exhibition or exhibitions at which the object is to be displayed.
- (2) The information must:
  - (a) be published on a dedicated webpage titled *Protection of Cultural Objects on Loan*, on the website of the borrowing institution or its parent, at least 4 weeks before the object is imported into Australia; and
  - (b) remain on that webpage until the object is exported from Australia.
- (3) This section does not apply in relation to information covered by a permission granted under section 17.

## Part 5 Publishing information about objects

## Section 17

**17 Exemption from publishing information about an object**

- (1) A borrowing institution or its parent may apply to the Minister for permission not to publish on the website of the borrowing institution or its parent some or all of the information mentioned in subsection 16(1) about an object.
- (2) The application must:
  - (a) be in writing; and
  - (b) set out:
    - (i) the information that the applicant does not wish to be published; and
    - (ii) the reasons for the application, and any supporting information; and
  - (c) be made as soon as practicable before the object is imported into Australia.
- (3) The Minister must, by written notice given to the applicant, either grant or refuse to grant the permission.
- (4) If the Minister refuses to grant the permission, the notice must include reasons for the refusal.

**18 Including hyperlinks instead of publishing information**

- (1) This section applies if:
  - (a) 2 or more borrowing institutions, or parents of borrowing institutions, propose the loan of an object under a temporary loan arrangement with the same lender or exhibition facilitator; and
  - (b) the object remains in Australia for the period of the arrangement.
- (2) The borrowing institution or the parent of a borrowing institution is taken to comply with section 16 in relation to the object if:
  - (a) a dedicated webpage (the *webpage*) titled *Protection of Cultural Objects on Loan* on the website of the borrowing institution or its parent includes a hyperlink to information about the object published on the website (the *other website*) of one of the other borrowing institutions, or parents of borrowing institutions, referred to in paragraph (1)(a) of this section; and
  - (b) the information published on the other website is published in accordance with section 16; and
  - (c) the hyperlink is included on the webpage as soon as practicable after the information is published on the other website; and
  - (d) the hyperlink remains on the webpage until the object is exported from Australia.

**19 Correcting errors or omissions in published information**

A borrowing institution or its parent must ensure that its website is updated to correct any error or omission in information published on the website in accordance with section 16 as soon as practicable after becoming aware of the error or omission.

## **Part 6—Actions to be taken by borrowing institution or parent**

### **20 Purpose of this Part**

This Part is made for the purposes of paragraph 21(3)(d) of the Act.

### **21 Information requests and claims in relation to an object**

#### *Receiving requests or claims*

- (1) This section applies to a borrowing institution or its parent if:
  - (a) an object to which Part 2 of the Act applies is on loan to the borrowing institution or its parent; and
  - (b) the borrowing institution or its parent receives:
    - (i) a written request for information about the object from one or more persons who may have an interest in the object; or
    - (ii) a written claim that one or more persons have an interest in the object; and
  - (c) the object has not been exported from Australia before the request or claim is received.

#### *Requirement to provide information*

- (2) The borrowing institution or its parent must, within 28 days after the request or claim is received, give the person or persons:
  - (a) the address of the webpage on which information about the object is published, as required by section 16 or 18; and
  - (b) information held by the borrowing institution or its parent as a result of provenance and due diligence research conducted in accordance with the policies and procedures mentioned in paragraph 8(1)(c).
- (3) Paragraph (2)(b) of this section does not apply if the borrowing institution or its parent is satisfied, having regard to the nature of the information and the nature and circumstances of the request or claim, that it is not appropriate for the information to be given.

#### *Minister to be notified of claims*

- (4) If the borrowing institution or its parent receives a claim mentioned in subparagraph (1)(b)(ii), the borrowing institution or its parent must give the Minister:
  - (a) written notice of the claim; and
  - (b) if requested by the Minister—a copy of the claim.

## Section 22

**Part 7—Report to Minister****22 Purpose of this Part**

This Part is made for the purposes of paragraph 21(3)(e) of the Act.

**23 Report to the Minister on activities of borrowing institution**

- (1) A borrowing institution or its parent must ensure that:
  - (a) a report for each financial year is prepared on the activities of the borrowing institution during that financial year in relation to the loan, or proposed loan, of objects to which Part 2 of the Act applies; and
  - (b) the report is given to the Minister by the next 31 October after that financial year.
- (2) The report for the borrowing institution for a financial year must include:
  - (a) the following information for each exhibition in which the institution was involved during the financial year that included an object to which Part 2 of the Act applies:
    - (i) the title of the exhibition;
    - (ii) a description of the object;
    - (iii) each location at which the exhibition was held;
    - (iv) the date on which the object was imported into Australia;
    - (v) the date on which the object was, or is to be, exported from Australia;
    - (vi) the date on which the exhibition commenced;
    - (vii) the date on which the exhibition ended or is to end;
    - (viii) the number of visitors who attended the exhibition during the financial year; and
  - (b) details of any provenance or due diligence research conducted in accordance with the policies and procedures mentioned in paragraph 8(1)(c) of this instrument; and
  - (c) details of any consultation undertaken in accordance with Part 4; and
  - (d) if information was published on a dedicated webpage titled *Protection of Cultural Objects on Loan* on the website of the borrowing institution or its parent, in accordance with section 16—a copy of that information; and
  - (e) if a hyperlink to information about an object was included on a dedicated webpage titled *Protection of Cultural Objects on Loan* on the website of the borrowing institution or its parent, in accordance with section 18—a statement to that effect; and
  - (f) a statement that the information published as mentioned in paragraph (d) of this subsection, or the hyperlink included as mentioned in paragraph (e) of this subsection, remained on the website of the borrowing institution or its parent for at least the period required under Part 5, and any information that may confirm that statement.
- (3) If a request or claim mentioned in section 21 was received by a borrowing institution or its parent during the financial year, the report must include information about:
  - (a) the request or claim; and

**Section 23**

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- (b) the action taken in accordance with section 21 in relation to the request or claim.

**Part 8** MiscellaneousSection 24

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**Part 8—Miscellaneous****24 Delegation**

The Minister may, by writing, delegate all or any of the Minister's functions and powers under this regulation to an SES employee or acting SES employee in the Department.

Note: The expressions *SES employee* and *acting SES employee* are defined in section 2B of the *Acts Interpretation Act 1901*.

## Part 9—Application and saving provisions

### 25 Application of provisions on the approval of institutions

Part 3 (approval of institutions) applies in relation to institutions approved by the Minister on or after 1 April 2025, whether the application by or on behalf of the borrowing institution was or is made before, on or after 1 April 2025.

### 26 Application and saving of provisions on consultation

#### *Application of consultation provisions under this instrument*

- (1) Part 4 (consultation) applies in relation to the proposed loan of an object for which the temporary public exhibition in Australia by a borrowing institution begins on or after 1 January 2026.

#### *Saving of consultation provisions under the 2014 instrument*

- (2) Despite the repeal of the *Protection of Cultural Objects on Loan Regulation 2014* on 1 April 2025, Part 5 (consultation) of that instrument, as in force immediately before 1 April 2025, continues to apply in relation to the proposed loan of an object for which the temporary public exhibition in Australia by a borrowing institution begins before 1 January 2026.

### 27 Application of provisions on publication of information about objects

Part 5 (publishing information about objects) applies on and after 1 April 2025 in relation to objects on loan to the borrowing institution or its parent on or after 1 April 2025, whether the object was or is imported into Australia before, on or after 1 April 2025.

Example 1: If the object is imported into Australia on 15 March 2025, the borrowing institution or its parent will have published, 4 weeks prior to that date, information under the *Protection of Cultural Objects on Loan Regulation 2014*. If the object is still on loan to the borrowing institution or its parent on 1 April 2025, the borrowing institution or its parent is required to update the website, in accordance with Part 5 of this instrument, in relation to the object by 1 April 2025.

Example 2: If the object is imported into Australia on 15 April 2025, the borrowing institution or its parent will have published, 4 weeks prior to that date, information under the *Protection of Cultural Objects on Loan Regulation 2014*, but will be required to update the website, in accordance with Part 5 of this instrument, in relation to the object by 1 April 2025.

Example 3: Part 5 of this instrument does not apply to objects exported from Australia before 1 April 2025.

### 28 Saving of exemptions from publishing information about an object granted under the *Protection of Cultural Objects on Loan Regulation 2014*

- (1) This section applies if a permission granted by the Minister for the purposes of subsection 12(3) of the *Protection of Cultural Objects on Loan Regulation 2014* was in force immediately before the commencement of this instrument.
- (2) The permission is taken, after that commencement, to be a permission for the purposes of subsection 17(3) of this instrument.

## Part 9 Application and saving provisions

## Section 29

**29 Application and saving of provisions on information requests and claims***Application of provisions under this instrument*

- (1) Part 6 (actions to be taken by borrowing institution or parent) applies in relation to requests or claims:
- (a) received on or after 1 April 2025, whether the loan of the object commenced before, on or after 1 April 2025; or
  - (b) received under subsection 15(1) of the *Protection of Cultural Objects on Loan Regulation 2014* before 1 April 2025 if:
    - (i) the borrowing institution or its parent has not given information in accordance with subsection 15(2) of that instrument in relation to the object by 1 April 2025; and
    - (ii) subsection 15(3) of that instrument does not apply in relation to the object; and
    - (iii) the object is not exported from Australia before 1 April 2025.

*Saving of provisions under the 2014 instrument*

- (2) Despite the repeal of the *Protection of Cultural Objects on Loan Regulation 2014* on 1 April 2025, Part 7 (actions to be taken by borrowing institution or parent) of that instrument, and Parts 2 and 6 of that instrument, as they relate to the requirements of Part 7, as in force immediately before 1 April 2025, continue to apply in relation to requests or claims received before 1 April 2025 under subsection 15(1) of that instrument, if the object is exported from Australia before 1 April 2025 but after the request or claim is received.

**30 Application of provisions on reporting to the Minister**

- (1) Part 7 (report to Minister) applies in relation to the first financial year that ends after the commencement of this instrument.
- (2) A report given in relation to a financial year ending on 30 June 2025 or 30 June 2026 must, in addition to the requirements set out in Part 7 of this instrument, include information about any activities of the borrowing institution undertaken during that financial year in accordance with the *Protection of Cultural Objects on Loan Regulation 2014*.



Schedule 1 Repeals

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## Schedule 1—Repeals

### *Protection of Cultural Objects on Loan Regulation 2014*

#### **1 The whole of the instrument**

Repeal the instrument.

EXPLANATORY MEMORANDUM

Minute No. 476 of 2024 - Minister for the Arts

Subject - *Protection of Cultural Objects on Loan Act 2013*

*Protection of Cultural Objects on Loan Regulations 2024*

The proposed instrument would repeal and remake the *Protection of Cultural Objects on Loan Regulation 2014*, which sunsets on 1 April 2025. The remade Regulations would largely maintain the current regulatory arrangements, with amendments to reflect current drafting styles and practices, and to ensure that the Regulations continue to be fit for purpose.

The *Protection of Cultural Objects on Loan Act 2013* (the Act) seeks to encourage loans of important art and cultural material by providing legal protection against seizure and suit for cultural objects borrowed from overseas lenders by approved borrowing institutions for the purpose of temporary public exhibition in Australia. Section 21 of the Act empowers the Governor-General to make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The purpose of the proposed *Protection of Cultural Objects on Loan Regulations 2024* (proposed Regulations) would be to repeal and remake the *Protection of Cultural Objects on Loan Regulation 2014* (the existing Regulation), which sunsets on 1 April 2025. The remade Regulations would largely maintain the current regulatory arrangements, with amendments to reflect current drafting styles and practices, and to ensure that the Regulations continue to be fit for purpose.

The fit for purpose amendments comprise:

- prescribing three additional institutions as eligible to apply for approval under the Act
- extending the Act's definition of "protected persons" to include persons who provide the services of conducting research on and undertaking imaging of objects protected under the Act, and facilitating consultation in relation to such objects
- strengthening the requirements of the Act related to conducting provenance and due diligence research on objects protected by, and proposed to be protected by, the Act
- further strengthening the consultation requirements of the Act, particularly in relation to First Nations cultural objects
- adding to the existing requirement to publish listings of proposed loans under the Act by requiring institutions to publish listings on a dedicated webpage on their websites that has the title Protection of Cultural Objects on Loan.

s22(1)(a)(ii)

The Act was introduced to address a significant obstacle that Australia's major cultural institutions had previously faced in securing international loans of cultural objects. The legislation aligns Australia with an international standard to provide protection for such loans. The existing Regulation was introduced to provide detail on aspects of the operation of the Act, and to add important integrity and transparency measures related to provenance and due diligence research, consultation, publication of proposed loans, and reports to the Minister. It also prescribed one additional borrowing institution as eligible to apply for approval under the Act, the Museum of Contemporary Art, and added the service of exhibiting an object in Australia to the definition of a protected person under the Act. The *Protection of Cultural Objects on Loan Amendment Regulations 2023* prescribed four additional borrowing institutions (Art Gallery of Ballarat, Bendigo Art Gallery, Heide Museum of Modern Art, and HOTA, Home of the Arts).

The proposed Regulations would replace the existing Regulation when it sunsets on 1 April 2025. In line with the Guide to Managing Sunsetting of Legislative Instruments issued by the Attorney-General's Department, the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department) reviewed and assessed the performance of the existing Regulation in terms of fitness for purpose and conducted consultation with relevant stakeholders.

Based on this review, it was determined that the existing Regulation should be remade as it is necessary for the Act to continue to operate efficiently and effectively, with transparency and accountability measures in place. If the proposed Regulations is not made before the sunsetting date there will be uncertainty about the eligibility of prescribed institutions and a risk that loans under the Act will be managed with reduced probity. Lenders of objects eligible for protection may be reluctant to lend if there is an interruption to the legislative framework and this may impact the ability of approved borrowing institutions to secure loans and exhibitions from overseas lenders, including globally significant objects and those that relate to key moments in Australia's cultural and artistic history.

The details and effect of the proposed Regulations, and a summary of the consultation undertaken to inform the proposed Regulations, are provided in the Attachment.

The Act does not specify conditions that need to be satisfied before the Governor-General's power can be exercised.

The proposed Regulations would be a legislative instrument for the purposes of the *Legislation Act 2003*.

The proposed Regulations are to commence on 1 April 2025.

The Minute recommends that the Regulations be made in the form proposed.

Authority: Section 21 of the *Protection of Cultural Objects on Loan Act 2013*

## ATTACHMENT

Details and effect of key provisions of the proposed *Protection of Cultural Objects on Loan Regulations 2024*Section 1 – Name of Regulations

This section would provide that the title of the Regulations is the *Protection of Cultural Objects on Loan Regulations 2024*.

Section 2 – Commencement

This section would provide for the Regulations to commence on 1 April 2025.

Section 3 – Authority

This section would provide that the Regulations are made under the *Protection of Cultural Objects on Loan Act 2013* (the Act).

Section 4 – Schedule 1

This section would provide that each instrument that is specified in Schedule 1 to this instrument is amended or repealed as set out in the applicable items in that Schedule, and any other item in a Schedule to this instrument has effect according to its own terms.

Section 6 – Organisations prescribed as *borrowing institutions*

This section would prescribe three additional organisations as borrowing institutions under section 5 of the Act, namely Chau Chak Wing Museum at the University of Sydney, the Ian Potter Museum at the University of Melbourne, and the Museum of Old and New Art (Mona) in Tasmania.

Section 5 of the Act defines a borrowing institution as an organisation that:

- (a) collects and publicly exhibits in Australia objects that are of interest for archaeological, artistic, ethnological, historical, literary, scientific or technological reasons; and
- (b) is either:
  - (i) established by a law of the Commonwealth, a State or a Territory, except a law prescribed by regulation for the purposes of this subparagraph; or
  - (ii) prescribed by regulation as a borrowing institution.

A borrowing institution that meets these criteria can apply to become an approved borrowing institution under section 15 of the Act.

There are no specified requirements outlined in section 5, or the Explanatory Memorandum, for when organisations may be prescribed. Section 6 of the *Protection of Cultural Objects on Loan Regulation 2014* (the existing Regulation) prescribes five institutions, the Museum of Contemporary Art Limited, Art Gallery of Ballarat, Bendigo Art Gallery, Heide Museum of Modern Art, and HOTA Home of the Arts.

The proposal to prescribe additional borrowing institutions in regulation recognises that there are other institutions in Australia that satisfy paragraph 5(a) of the Act, routinely stage exhibitions likely to include international loans, and are likely to have the capacity to meet the requirements of the Act. These institutions are not currently eligible to apply for protection under the Act because they are not established by a Commonwealth, State or Territory law, or prescribed by regulation. Prescribing three additional organisations would allow these organisations to be eligible to apply to become approved borrowing institutions. In order to be approved, listed institutions will need to satisfy the Minister or their delegate that they comply with the requirements of the Act and the Regulations.

#### Section 7 – Services prescribed for the definition of *protected person*

This section would prescribe the services of conducting research on, and undertaking imaging of, objects protected under the Act in Australia, and facilitating consultation related to objects protected under the Act.

Section 5 of the Act defines a protected person to include:

- an overseas lender (including an officer, employee, courier or agent of the lender)
- a borrowing institution that has an arrangement with an overseas lender for the temporary public exhibition of an object in Australia (including the parent of such an institution, or a person who is an officer, employee, agent or delegate of the institution)
- an exhibition facilitator that has an arrangement with a lender and a borrowing institution (including the parent of such a facilitator, or a person who is an officer, employee, agent or delegate of the facilitator)
- a person or organisation engaged by a lender, exhibiting institution or exhibition facilitator to undertake services in relation to the loan including to transport, conserve, store or provide security for the object (including an officer, employee, agent or delegate of an organisation).

Subsection (5)(e)(v) of the Act allows for this definition to be extended to a person that provides a service that relates to the object and is prescribed by regulation. The existing Regulation prescribes the service of exhibiting the object in Australia.

The existing Regulation includes provisions to help ensure that approved borrowing institutions manage international loans with a high degree of probity and in line with contemporary legal and ethical best-practice standards. The proposed Regulations are intended to continue, and in some cases enhance, these provisions, as outlined below.

#### Section 8 – Matters the Minister must consider in approving a borrowing institution

Subsection 15(2) of the Act outlines matters the Minister must consider in deciding whether to approve a borrowing institution under Part 3 of the Act. This section would provide additional detail on these matters, with specific regard to the loans policies and procedures of the borrowing institution. Under the Regulations, it is proposed that the Minister must consider whether the policies and procedures of the borrowing institution display a commitment to international loans of cultural objects being made in accordance with applicable laws, including those related to the international movement of objects, and to the highest standards of ethical and professional practice, with appropriately stringent levels of

provenance and due diligence research. The proposed Regulations would also require these policies and procedures to be published on the borrowing institution's website.

#### Section 10 – General requirement to formulate and publish policies and procedures

This section would require borrowing institutions approved under the Act to have written consultation policies and procedures that explain the consultations they undertake in relation to proposed loans under the Act, and to publish those policies and procedures on their website.

#### Section 11 – Consultation with relevant communities

Under the proposed Regulations, it would be mandatory for borrowing institutions to consult with community members, or organisations that represent them, when cultural objects proposed for loan: relate to, or embody the culture of, Aboriginal and Torres Strait Islander communities; relate to, or embody the culture of, First Nations communities from countries other than Australia; or have a clear and continuing significance for a community in Australia.

#### Section 12 – Consultation with State or Territory archives

Consultation would also be mandatory when cultural objects proposed for loan are relevant to a state or territory archive.

#### Section 13 – Processes in certain circumstances

The proposed Regulations seek to improve on the existing Regulation by requiring borrowing institutions approved under Part 3 of the Act to include information in their policies and procedures to explain the processes that will be followed if a loan is not supported by a person or organisation consulted as part of the mandatory consulting requirements.

#### Section 14 – Form of consultation

Consultation not required under sections 11 and 12 would be discretionary, but institutions would be required to conduct consultations in a manner that provides adequate opportunity for comment, is appropriate to the object and appropriate, respectful and meaningful to those being consulted.

#### Section 16 – Publishing information about objects

This section would require approved borrowing institutions to publish detailed listings of objects proposed for loan under the Act on their websites at least four weeks before objects are imported into Australia. In a strengthening of the current arrangement, the proposed Regulations would require the listings to be published on a dedicated page of the borrowing institution's website that is titled 'Protection of Cultural Objects on Loan.'

Section 17 – Exemptions from publishing information about an object

In line with the existing Regulation, this section would allow exemptions from publishing to be granted, or refused, on application to the Minister.

Section 21 – Information requests and claims in relation to an object

The proposed Regulations would detail the actions that approved borrowing institutions must take if they receive requests for information, or claims, about protected objects on loan to them from parties who may have an interest in. This includes requiring responses to be provided to the enquirer or claimant within 28 days, and notification of claims provided to the Minister.

Section 23 – Report to the Minister on activities of borrowing institution

This section would continue the current arrangement that requires approved borrowing institutions to report annually on activities undertaken in relation to the Act and Regulations.

Schedule 1 – Repeals**Item [1] – The whole of the instrument**

This item would repeal the *Protection of Cultural Objects on Loan Regulations 2014*.

**Consultation undertaken in relation to the proposed Regulations**

The Office of Impact Analysis was consulted about the proposed amendments to the regulatory arrangement and advised that a Regulatory Impact Statement is not required in relation to the proposed Regulations. The reference number is OIA24-07966.

In accordance with Section 17 of the *Legislative Instruments Act 2003*, the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department) conducted targeted consultation to determine views on both the effectiveness of the existing Regulation and areas that could be improved through the remade Regulations.

Consultation has ensured that the current practices and protocols for international loan arrangements, best practice procedures for provenance identification of objects and consultation arrangements, particularly in relation to First Nations engagement, have been appropriately incorporated into the proposed Regulations. Borrowing institutions have confirmed that the matters proposed to be included in the proposed Regulations are achievable and support best practice in the sector.

The Department consulted through meetings held in-person and online with curators, registrars, provenance researchers and collections managers from institutions that make or have made use of the Act, or may seek to in the future, and experts in the management of First Nations cultural heritage (see below for details). In addition to these meetings, in early 2024, institutions approved under the Act provided feedback on current and possible future arrangements by responding to a short survey. The survey was accompanied by information sheets explaining the Act and the existing Regulation. Individuals working in the field of

Aboriginal and Torres Strait Islander repatriation, and members of the Australian Government's Advisory Committee for Indigenous Repatriation were provided with a discussion paper explaining the operations of the Protection of Cultural Objects on Loan Scheme prior to being consulted.

Representatives from borrowing institutions approved under the Act reported that the existing Regulation is practical and assists them to meet international best-practice standards in the legal and ethical management of loans. All consider the Act essential to their ability to attract international exhibitions. The only suggested changes from this group were to provide additional information about legal responsibilities to lenders, which is best achieved through guidance documents rather than regulation, and an extension to the definition of protected persons to cover services related to researching, imaging and facilitating consultation related to protected objects.

First Nations cultural heritage experts recognised that the Act is important in enabling access to material held by overseas lenders that require immunity from seizure and suit, with representatives from the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) noting that it may seek to gain approval under the Act to secure international loans in the future. However, they noted opposition to the legislation among some community groups due to the perception that it prevents permanent repatriation and the fulfillment of claims on objects held overseas. To improve the integrity of the Act, some of the people consulted suggested strengthening consultation measures, including by requiring First Nations endorsement and direct notification of proposed loans. The consensus among these experts was that consultation should also be carried out in relation to First Nations material from countries other than Australia. Provisions in the proposed Regulations respond to these views by adding a requirement for borrowing institutions to have policies and procedures in place that: specifically state how they will manage loans when parties consulted with do not support a proposed loan; include mandatory consultation in relation to First Nations objects from countries other than Australia; and incorporate changes to publishing requirements that will enable information on proposed loans to be more easily accessible.

Consultations also assisted in identifying three additional institutions that should be prescribed in order to make them eligible to apply for approval. These institutions were identified on the basis that they undertake international loans of cultural objects, stage major exhibitions that include international cultural objects, and are likely to have the capacity to meet the requirements of the Protection of Cultural Objects on Loan Scheme.

The parties listed below were consulted regarding the matters proposed for inclusion in the Regulations.

Staff involved in implementing (or seeking to implement) the Protection of Cultural Objects on Loan Scheme at the following institutions:

- Art Gallery of New South Wales
- Australian Museum
- Museums Victoria
- National Gallery of Australia
- National Gallery of Victoria



- National Museum of Australia
- Queensland Art Gallery | Gallery of Modern Art
- Queensland Museum
- Powerhouse (Museum of Applied Arts and Sciences)
- State Library of New South Wales
- State Library Victoria
- Tasmanian Museum and Art Gallery
- Western Australian Museum
- Museum of Old and New Art
- Bendigo Art Gallery.

Staff working in Indigenous Repatriation at the following institutions:

- Australian Museum
- Museum and Gallery of the Northern Territory
- Museums Victoria
- National Museum of Australia
- Queensland Museum
- South Australian Museum
- Tasmanian Museum and Art Gallery
- Western Australian Museum.

Members of the Advisory Council for Indigenous Repatriation.

Representatives from the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) involved in the AIATSIS Return of Cultural Heritage Program, Collection Management, and the National Resting Place Project.