



Protection of Cultural Objects on Loan Act 2013

No. 12, 2013

**An Act to encourage the loan of objects from
overseas for temporary public exhibition in
Australia, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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**An Act to encourage the loan of objects from
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[Assented to 14 March 2013]

The Parliament of Australia enacts:

Protection of Cultural Objects on Loan Act 2013 No. 12, 2013 1

Part 1—Preliminary

1 Short title

This Act may be cited as the *Protection of Cultural Objects on Loan Act 2013*.

2 Commencement

- (1) Each provision of this Act 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.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	14 March 2013
2. Sections 3 to 21	A single day to be fixed by Proclamation. However, if the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	14 September 2013

Note: This table relates only to the provisions of this Act as originally enacted.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

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

3 Objects of this Act

- (1) The main object of this Act is to encourage lenders to lend objects for temporary public exhibition in Australia under arrangements involving certain institutions.
- (2) This Act seeks to achieve that object by limiting the circumstances in which ownership or physical possession, custody or control of the objects in Australia can be affected by:
 - (a) legal proceedings; or
 - (b) the enforcement of a judgement or order of a court; or
 - (c) an action taken under a law of the Commonwealth, a State or a Territory; or
 - (d) the operation of such a law.

4 Simplified outline

The following is a simplified outline of this Act:

This Act deals with objects that are normally in a foreign country but are imported into Australia on loan for temporary public exhibition under arrangements made by certain institutions approved by the Minister.

While the objects are in Australia, Part 2 limits the circumstances in which lenders, exhibition facilitators, exhibiting institutions and people working for any of them can lose ownership or physical possession, custody or control of the objects because of:

- (a) legal proceedings in Australian or foreign courts; or
- (b) the exercise of certain powers (such as powers of seizure) under Commonwealth, State and Territory laws; or
- (c) the operation of such laws.

Part 3 deals with the approval of institutions by the Minister, and the end of such approval.

Part 4 deals with miscellaneous matters.

5 Definitions

In this Act:

acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.

Australia, when used in a geographical sense, includes the external Territories.

borrowing institution means an organisation (whether a person or not) 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.

Note: For prescription by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

exhibiting institution for an object means the borrowing institution that has made arrangements for the temporary public exhibition of the object in Australia.

exhibition facilitator for an object means a person who:

- (a) has a temporary loan arrangement for the object with a lender of the object; and
- (b) has a temporary loan arrangement for the object with:
 - (i) an exhibiting institution for the object; or
 - (ii) the parent of such an institution; and
- (c) is not a lender of the object, an exhibiting institution for the object or the parent of such an institution; and

- (d) carries on a business (whether or not for profit) of making arrangements for temporary public exhibitions in Australia of objects from collections outside Australia.

heritage law means a law of the Commonwealth, a State or a Territory that relates to heritage, whether or not the law relates to:

- (a) heritage of a particular community, such as Aboriginal or Torres Strait Islander heritage; or
- (b) heritage of a particular kind, such as:
 - (i) objects associated with historic shipwrecks; or
 - (ii) records of government; or
 - (iii) other archival material.

just terms has the same meaning as in paragraph 51(xxxi) of the Constitution.

lender of an object means a person who:

- (a) is:
 - (i) an individual who is not ordinarily resident in Australia; or
 - (ii) a corporation incorporated by or under the law of a foreign country; or
 - (iii) a body politic of a foreign country (or part of a foreign country); and
- (b) is a party to a temporary loan arrangement (the **head arrangement**) for the object with a borrowing institution, the parent of a borrowing institution or a person who:
 - (i) has, or may reasonably be expected to have in future as a result of the head arrangement, a temporary loan arrangement for the object with a borrowing institution or the parent of a borrowing institution; and
 - (ii) is not an exhibiting institution for the object or the parent of such an institution; and
 - (iii) carries on a business (whether or not for profit) of making arrangements for temporary public exhibitions in Australia of objects from collections outside Australia; and

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- (c) would reasonably be expected to have physical possession, custody or control of the object outside Australia for the period of the loan under the head arrangement, apart from that arrangement.

loan of an object includes an arrangement for:

- (a) the temporary transfer of the physical possession, custody or control of the object directly or indirectly from one person to another person, whether or not any consideration is provided for the transfer; and
- (b) the transfer of the physical possession, custody or control of the object directly or indirectly from the other person back to the first person.

parent of a borrowing institution that is not a person means:

- (a) if the institution is a Department of State, or part of such a Department, of the Commonwealth, a State or a Territory—the Commonwealth, State or Territory (as appropriate); or
- (b) if the operations of the institution are a distinct part of the operations of a body corporate—that body.

protected person for an object means:

- (a) a lender of the object; or
- (b) an officer, employee or agent of a lender of the object who accompanies the object for some or all of the time it is on loan; or
- (c) an exhibition facilitator for the object, an exhibiting institution for the object or the parent of such an institution; or
- (d) a person who is:
 - (i) an officer, employee, agent or delegate of an exhibition facilitator for the object; or
 - (ii) an officer, employee, agent or delegate of an exhibiting institution for the object or the parent of such an institution; or
- (e) a person engaged by a lender of the object, an exhibition facilitator for the object or an institution or parent described in paragraph (c) to do any of the following:

- (i) transport the object from one place in Australia to another or between Australia and a foreign country;
- (ii) carry out conservation work on the object in Australia;
- (iii) store the object in Australia;
- (iv) provide security for the object while it is being transported between Australia and a foreign country or while it is in Australia;
- (v) provide a service that relates to the object and is prescribed by regulation; or
- (f) an officer, employee, agent or delegate of a person described in paragraph (e).

temporary loan arrangement for an object means an arrangement for the loan of the object for temporary public exhibition of the object in Australia under arrangements made by a borrowing institution.

6 This Act binds the Crown

This Act binds the Crown in each of its capacities.

7 Extension to external Territories

This Act extends to every external Territory.

Part 2—Protection

8 Application of this Part

- (1) This Part applies to an object if:
- (a) the object is imported into Australia on loan under a temporary loan arrangement between a lender of the object and either or both of the following:
 - (i) an exhibiting institution for the object or the parent of such an institution;
 - (ii) an exhibition facilitator for the object who has an arrangement with either an exhibiting institution for the object or the parent of such an institution; and
 - (b) the object is imported only or mainly for the purpose of temporary public exhibition of the object in Australia under arrangements made by the institution; and
 - (c) the institution is approved under Part 3 when the object is imported; and
 - (d) one or more of the following circumstances exist:
 - (i) the loan is in the course of trade or commerce between Australia and a foreign country;
 - (ii) the lender of the object is a foreign corporation within the meaning of paragraph 51(xx) of the Constitution;
 - (iii) the institution, the parent of the institution or the exhibition facilitator is a corporation to which paragraph 51(xx) of the Constitution applies or a corporation established by a law of the Commonwealth or a Territory;
 - (iv) the parent of the institution or the exhibition facilitator is the Commonwealth or a Territory;
 - (v) the public exhibition of the object is to occur, is occurring or has occurred in a Territory;
 - (vi) the public exhibition of the object is to occur, is occurring or has occurred in a place acquired by the Commonwealth for public purposes within the meaning of paragraph 52(i) of the Constitution;

- (vii) this Part is appropriate and adapted to giving effect to Australia's obligations under an agreement that is between Australia and one or more foreign countries or international organisations and that is relevant to the loan of the object by the lender; and
- (e) the import does not contravene a law of the Commonwealth prescribed by regulation for the purposes of this paragraph; and
- (f) the object is not a Class A object as defined in the *Protection of Movable Cultural Heritage Act 1986* when the object is imported; and
- (g) the object is not specified in a written notice that:
 - (i) was given by the institution or its parent to the Minister before a time that was prescribed by regulation and was before the object is imported; and
 - (ii) was in a form approved by the Minister; and
 - (iii) has not been withdrawn before the object is imported.

Note: A law is to be prescribed for the purposes of paragraph (1)(e) only if it gives effect to an international agreement: see section 21.

- (2) This Part ceases to apply to the object:
 - (a) when one of the following events occurs:
 - (i) the end of 24 months starting on the day the object is imported into Australia;
 - (ii) the export of the object from Australia; or
 - (b) if, before an event described in paragraph (a) occurs, the Minister declares by notice published on the Department's website that this Part ceases to apply to the object at a time that:
 - (i) is worked out in accordance with the declaration; and
 - (ii) is at least 24 months after the day the object is imported into Australia;at the time worked out in accordance with the declaration.
- (3) The Minister may make a declaration for the purposes of paragraph (2)(b):
 - (a) only on application by the exhibiting institution; and

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- (b) only if the Minister is satisfied that exceptional circumstances justify the making of the declaration.
- (4) A declaration made under subsection (3) is not a legislative instrument.

Certain movements of objects are not import or export

- (5) For the purposes of this section, the object is neither imported into Australia nor exported from Australia merely because the object is moved between an external Territory and either a State or an internal Territory (whether the movement is to or from the external Territory, State or internal Territory).

9 Protection from suit

Actions in personam

- (1) Proceedings for an action in personam relating to the object cannot be started against a protected person for the object.

Note: If such proceedings have been started before this Part applies to the object, a judgement or order made in the proceedings cannot be enforced while this Part applies to the object: see section 10.

Actions in rem

- (2) Proceedings for an action in rem relating to the object cannot be started.

Note: If such proceedings have been started before this Part applies to the object, a judgement or order made in the proceedings cannot be enforced while this Part applies to the object: see section 10.

Exception for protected persons starting proceedings

- (3) Subsections (1) and (2) do not prevent a person who is a protected person for the object because of a particular paragraph of the definition of **protected person** in section 5 from starting proceedings against a person who is a protected person for the object because of that paragraph, or a later paragraph, of that definition.

Example: An exhibiting institution can start an action against a person it engages to transport the object, because:

- (a) the exhibiting institution is a protected person because of paragraph (c) of the definition of *protected person*; and
- (b) the person engaged to transport the object is a protected person because of paragraph (e) of that definition.

Exception for certain proceedings

- (4) Subsections (1) and (2) do not apply to:
 - (a) proceedings under the *Proceeds of Crime Act 2002*; or
 - (b) proceedings prescribed by regulation for the purposes of this subsection.

This section applies to starting of proceedings in any way

- (5) This section applies to the starting of proceedings in a federal court or a court of a State or Territory by claim, cross-claim or otherwise.

10 Protection from enforcement of judgements and orders

- (1) An act cannot be done in relation to the object to enforce a judgement or order of a federal court or a court of a State, Territory or foreign country that:
 - (a) is a judgement or order in personam against a protected person for the object; or
 - (b) is a judgement or order in rem relating to the object.

Exception for some foreign judgements and awards

- (2) Subsection (1) does not prevent an act from being done:
 - (a) under Part 2 of the *Foreign Judgments Act 1991* to enforce a judgement of:
 - (i) a superior court of a country in relation to which that Part extends; or
 - (ii) an inferior court to which that Part extends; or
 - (b) under Part 7 of the *Trans-Tasman Proceedings Act 2010* to enforce a judgement of a court of New Zealand; or
 - (c) under Part II of the *International Arbitration Act 1974*.

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Exception for judgements and orders favouring protected persons

- (3) Subsection (1) does not prevent an act from being done to enforce a judgement or order in favour of a protected person for the object, unless:
- (a) that person is a protected person for the object because of a particular paragraph of the definition of **protected person** in section 5; and
 - (b) the judgement or order is against a person who is a protected person for the object because of an earlier paragraph of that definition.

Exception for certain other judgements and orders

- (4) Subsection (1) does not apply to:
- (a) an order made under the *Proceeds of Crime Act 2002*; or
 - (b) a judgement or order made in proceedings prescribed by regulation for the purposes of this subsection.

11 Protection from seizure under statutory powers

- (1) The object cannot be seized under a law of the Commonwealth, a State or a Territory.
- (2) Subsection (1) does not prevent seizure under:
- (a) Part IAA of the *Crimes Act 1914*; or
 - (b) Part 3-5 of the *Proceeds of Crime Act 2002*; or
 - (c) a law of the Commonwealth, a State or a Territory that gives a police officer (however described) a power of seizure and does not give that power to anyone other than a police officer; or
 - (d) a law of the Commonwealth, a State or a Territory prescribed by regulation for the purposes of this subsection.

12 Protection from forfeiture

- (1) The object cannot be forfeited because of a law of the Commonwealth, a State or a Territory.

- (2) Subsection (1) does not prevent forfeiture (or the possibility of forfeiture) because of:
- (a) Part IAA of the *Crimes Act 1914*; or
 - (b) Part 2-2 or 2-3 of the *Proceeds of Crime Act 2002*; or
 - (c) a law of the Commonwealth, a State or a Territory prescribed by regulation for the purposes of this subsection.

13 Protection from heritage laws and things done under them

- (1) Nothing in, or done under, a heritage law prohibits or restricts, conditionally or unconditionally, a protected person for the object doing anything in relation to the object for the purpose of:
- (a) giving effect to a temporary loan arrangement for the object (whether or not the person is party to the arrangement); or
 - (b) meeting the person's obligations to another protected person who is party to a temporary loan arrangement for the object.
- (2) Nothing in, or done under, a heritage law affects:
- (a) ownership of the object; or
 - (b) physical possession, custody or control of the object by a protected person; or
 - (c) a right of a protected person to physical possession, custody or control of the object.

Exception for prescribed heritage laws

- (3) This section does not apply to a heritage law prescribed by regulation for the purposes of this subsection.

Relationship of this section with the rest of this Part

- (4) This section does not limit any other section of this Part, and is not limited by any other section of this Part.

14 Relationship with other laws

This Part has effect despite:

- (a) any other law of the Commonwealth (whether made before or after the commencement of this section); and

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- (b) any rule of common law or equity (including, for example, a rule of private international law).

Part 3—Approval of institutions

Division 1—Approval

15 Approval

- (1) On application by or on behalf of a borrowing institution, the Minister may approve the institution, for a specified period not more than 60 months, by notice given to the institution and published on the Department's website.

Considerations in deciding whether to approve

- (2) In deciding whether to approve a borrowing institution, the Minister must consider:
 - (a) the institution's curatorial expertise and expertise in management of collections; and
 - (b) the procedures used by the institution to identify the provenance of objects collected or exhibited by the institution; and
 - (c) the procedures used by the institution to identify objects in a foreign country that could be the subject of temporary loan arrangements for exhibition under arrangements made by the institution; and
 - (d) the procedures used by the institution or by its parent for negotiating temporary loan arrangements for objects that are normally in a foreign country (whether those arrangements are with lenders or exhibition facilitators); and
 - (e) whether the institution often publicly exhibits in Australia objects that are normally in a foreign country; and
 - (f) the matters (if any) prescribed by regulation for the purposes of this paragraph.

This does not limit the matters the Minister may consider.

Approval is not a legislative instrument

- (3) A notice under subsection (1) is not a legislative instrument.

Part 3 Approval of institutions

Division 1 Approval

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16 Conditions on approval

- (1) The Minister may impose, vary and revoke conditions on the approval of a borrowing institution, by notice given to the institution and published on the Department's website.
- (2) A notice under subsection (1) is not a legislative instrument.

Division 2—Revocation of approval

17 Revocation of approval

- (1) The Minister may revoke an approval of a borrowing institution by notice given to the institution and published on the Department's website if the Minister is satisfied:
 - (a) that there has been:
 - (i) a contravention of a regulation involving the institution;
or
 - (ii) a contravention of any conditions on the approval; or
 - (b) that the approval should be revoked, having regard to the matters described in paragraphs 15(2)(a), (b), (c), (d), (e) and (f) and any other relevant matters.
- (2) A notice under subsection (1) is not a legislative instrument.

Division 3—Review of decisions

18 Review by the Administrative Appeals Tribunal

Applications may be made to the Administrative Appeals Tribunal for decisions of the Minister:

- (a) to refuse to approve a borrowing institution under section 15; or
- (b) to impose or vary under section 16 a condition on the approval of a borrowing institution; or
- (c) to revoke under section 17 an approval of a borrowing institution.

Part 4—Miscellaneous

19 Delegation

The Minister may, by writing, delegate all or any of his or her functions and powers under this Act, except section 21, 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*.

20 Compensation for acquisition of property

- (1) If the operation of this Act would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may start proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

21 Regulations

- (1) The Governor-General may make regulations prescribing matters:
 - (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Before the Governor-General makes a regulation prescribing a law of the Commonwealth for the purposes of paragraph 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.
- (3) A regulation may make provision relating to:
 - (a) the consultation by borrowing institutions, or their parents, of members of communities, or organisations representing them, about proposed loans of objects relating to those

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communities to the institutions or parents by lenders or exhibition facilitators; and

- (b) the consultation by borrowing institutions, or their parents, of persons or bodies responsible for archives of States or Territories about proposed loans of objects relevant to those archives to the institutions or parents by lenders or exhibition facilitators; and
- (c) the publication of information by borrowing institutions or their parents about objects proposed to be lent to them by lenders or exhibition facilitators; and
- (d) the action to be taken by a borrowing institution, or a parent of a borrowing institution, if it becomes aware of an act or event:
 - (i) that relates to an object to which Part 2 applies in connection with the institution; and
 - (ii) that the institution or parent believes may be or lead to a contravention of Part 2; and
- (e) the giving to the Minister of reports on activities of borrowing institutions relevant to the operation of this Act or a regulation in a financial year by the next 31 October after the financial year; and
- (f) the giving to the Minister of other reports relevant to the operation of this Act or a regulation.

This does not limit subsection (1).

*[Minister's second reading speech made in—
House of Representatives on 28 November 2012
Senate on 28 February 2013]*

(212/12)

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