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## PROTECTION OF CULTURAL OBJECTS ON LOAN REGULATION 2014

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### EXPLANATORY STATEMENT

#### **Select Legislative Instrument No. 142, 2014**

Issued by the authority of the Minister for the Arts

*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 matters that are included in the proposed regulation are provided for under the following sections of 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.

Subsection 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 the proposed loans of objects that may relate to those communities.

Subsection 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 State or Territories about the proposed loans of objects that may be relevant to those archives.

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

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

- (i) relates to an object that is protected under the Act in connection with the institution;  
and
- (ii) the institution or parent believes may be or lead to a contravention of protection under the Act.

Subsection 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 financial year in relation the operation of the Act or Regulation.

Subsection (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.

Subsection (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.

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

The purpose of this Regulation is to:

- provide 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;
- detail the consultation requirements that borrowing institutions must consider when proposing to import an object for temporary exhibition in Australia including a requirement for institutions to have written consultation policies publically available;
- detail 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;
- detail the actions that borrowing institutions must take when they receive an enquiry or a claim of interest regarding an object for which protection under Part 2 of the Act applies;
- detail 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;
- prescribe an organisation as a borrowing institution for the purposes of the Act; and
- extend the range of services included in the definition of protected persons by prescribing the service of exhibiting the object in Australia.

Extensive consultation has been undertaken in relation to the matters addressed by the Regulation to ensure that the requirements meet international best practice standards and are considered practical and administratively workable for participating borrowing institutions. The development of the Act and Regulation 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.

Details of the Regulation are set out in the Attachment.

Subsection 21(2) of the Act 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 for this purpose.

The Act does not specify any further preconditions that need to be met before the power to make the Regulation may be exercised in relation to other provisions of the Act.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulation will commence on the day after it is registered.

### **Consultation**

Extensive consultation was carried out during the development of the policy and the Act. In 2011 a discussion paper was released for public comment and specific consultation was undertaken with the sector and Commonwealth departments and agencies including the Attorney-General's Department, the Department of the Environment, the Australian Federal Police, and the National Archives of Australia.

In accordance with Section 17 of the *Legislative Instruments Act 2003* consultation has been carried out in relation to the proposed Regulation. This stage of the consultation process has included conducting national meetings, including with national, state and territory collecting institutions and state and territory arts officials, to discuss matters that were proposed to be addressed by the Regulation. Specific discussions were also held with various Indigenous advisory committees including the National Museum of Australia's Indigenous Advisory Committee and the Ministry for the Arts' Repatriation Advisory Committee regarding the proposed requirements for Aboriginal and Torres Strait Islander consultation to be detailed in the Regulation. Information was also sought on key principles and processes of appropriate consultation with Aboriginal and Torres Strait Islander communities from senior curators and researchers, including at the National Film and Sound Archive, the National Museum of Australia, Museum Victoria and the Art Gallery of South Australia.

Discussions with stakeholders focussed on gathering information regarding current best practice in the collections sector and ensuring that the measures proposed to be addressed in the Regulation will be operable for institutions. 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 Aboriginal and Torres Strait Islander engagement, have been appropriately incorporated into the Regulation.

Borrowing institutions have confirmed that the matters proposed to be included in the Regulation are achievable and support best practice in the sector.

The following parties were consulted regarding the matters proposed for inclusion in the Regulation.

**Commonwealth and Australian Capital Territory**

- Arts ACT
- Canberra Museum and Gallery
- Department of the Environment
- National Gallery of Australia
- National Museum of Australia
- National Museum Indigenous Advisory Committee
- National Library of Australia
- National Archives of Australia
- National Portrait Gallery of Australia
- National Film and Sound Archive

**New South Wales**

- Arts NSW
- Art Gallery of NSW
- Australian Museum
- Powerhouse Museum
- State Library of NSW

**Queensland**

- Arts Queensland
- Queensland Museum
- Queensland Art Gallery / Gallery of Modern Art
- State Library of Queensland

**Western Australia**

- Art Gallery of Western Australia
- State Records of Western Australia
- WA Department of Culture and the Arts
- Western Australian Museum

**Victoria**

- Arts Victoria
- Museum Victoria
- National Gallery of Victoria

**South Australia**

- Art Gallery of South Australia
- South Australian Museum

**Tasmania**

- Arts Tasmania
- Tasmania Museum and Art Gallery

**Northern Territory**

- Araluen Cultural Precinct, Alice Springs
- Museums and Galleries of the Northern Territory

### **Regulation Impact Statement**

The Regulation has been assessed as not requiring a Regulation Impact Statement by the Office of Best Practice Regulation (OBPR ID number 17170).

The Regulation will not impose any direct or indirect regulatory requirements on business (or Government Business Enterprises), not-for-profit organisations or individuals.

The *Protection of Cultural Objects on Loan Act 2013* (the Act) establishes that only Australia's major public collecting institutions, as established by a law of the Commonwealth, state or territory; or that are specifically prescribed, are eligible to apply to the scheme. The Regulation only relates to those agencies that have voluntarily chosen to apply to the scheme and does not prevent any institutions from exhibiting loaned cultural material.

There will be no adverse effects on business or community. The intention of the Act and the Regulation is to encourage significant cultural exhibitions to tour to Australia, for the benefit of the Australian public.

## **Statement of Compatibility with Human Rights**

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

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

The *Protection of Cultural Objects on Loan Regulation 2014* (the Regulation) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in Section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

### **Overview of the Legislative Instrument**

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 Regulation provides the details of the scheme that apply to borrowing institutions, approved under Part 3 of the Act. The Regulation includes:

- the expected standard of a borrowing institutions loans policies and procedures which may be considered by the Minister when deciding to approve an institution;
- those consultation requirements that borrowing institutions must undertake when proposing to import an object for temporary public exhibition in Australia;
- publication requirements for objects proposed for loan;
- guidance on the process to follow when receiving and responding to an enquiry or claim of interest in an object proposed for loan; and
- annual reporting requirements on activities undertaken by the borrowing institution in relation to the operation of the Act or Regulations.

### **Human rights implications**

The Regulation engages the following human rights: *Right to enjoy and benefit from culture*.

The Regulation engages the right to enjoy and benefit from culture, including the right to take part in cultural life by supporting and encouraging the loan of cultural objects from overseas and providing access to Australian audiences.

Article 15(1)(a) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognises the right of everyone to take part in cultural life. Article 15(2) states that the steps to be taken by parties to the ICESCR to achieve the full realisation of the right shall include those necessary for the conservation, the development and the diffusion of science and culture. Article 15(4) states that parties to the ICESCR recognise the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

The right to enjoy and benefit from culture is engaged, and promoted by the Act and Regulation. The Protection of Cultural Objects on Loan Scheme as established by the Act and Regulation enhances cultural life in Australia by addressing a significant obstacle Australia's

major museums and galleries face in securing the loan of cultural objects from overseas. The absence of such legislation in Australia made it increasingly difficult for institutions to secure international loans as borrowing institutions have not been able to provide sufficient assurances to lenders that objects will be returned at the end of the loan period.

The Act and Regulation support cultural exchange and international co-operation. Loans of cultural objects, such as artworks and artefacts, are an important element of cultural diplomacy and can strengthen bilateral and multi-lateral relations. They are also an important way for museums and galleries to provide Australians with access to a comprehensive range of cultural objects that are not represented in Australian collections and support intercultural dialogue and respect for cultural diversity.

To encourage increased access and consultation with communities in Australia, the Regulation has been drafted to require borrowing institutions to consult with persons or groups who may have an interest in proposed loans and to publish certain information on proposed loans prior to their importation into Australia. This is included as a transparency measure providing a mechanism for the identification of issues in relation to a proposed loan prior to importation.

Part 5 of the Regulation details that borrowing institutions must consult with individuals, members of communities, or organisations representing them, about proposed loans of objects relating to those communities. This is relevant to proposed loans of objects that may be of particular interest to certain persons or groups within the community, including persons or groups who may consider they have experienced a loss of cultural property in the past.

The Regulation includes a specific requirement for borrowing institutions to consult with Aboriginal and Torres Strait Islander communities or those representing them, regarding all proposed loans of Aboriginal and Torres Strait Islander objects. The inclusion of specific consultation requirements in the Regulation will provide opportunities for members of Aboriginal and Torres Strait Islander communities to see and connect with objects from their cultural heritage that may not otherwise be loaned to Australian institutions. The consultation and publication requirements included in the Regulation and the exhibition of these objects will also increase awareness of the holdings of those objects in foreign collections and facilitate exchange of information between collecting institutions and Aboriginal and Torres Strait Islander communities regarding these objects. Requiring a borrowing institution to undertake consultation prior to importation provides an opportunity for active involvement and discussion about proposed loans and provides an opportunity for Aboriginal and Torres Strait Islander communities to identify material, access information and be included in decision making.

Part 6 of the Regulation provides that borrowing institutions must publish information about those objects proposed to be lent to them. The publication of information about an object that is proposed will be protected under Part 2 of the Act, prior to its importation into Australia, will enable a person to raise questions about the object's history and ownership. This is an important transparency mechanism and provides information to assist persons who may be attempting to locate objects they believe they or their ancestors have a connection to.

Part 7 of the Regulation sets out that borrowing institutions must provide detailed information to any person with a reasonable enquiry or claim of interest regarding an object to which Part 2 of the Act applies. The provision of this information may assist those gathering information on an object and may assist a person with concerns about the provenance of an object to make a clearer case for future action or a claim being started in the country the object is usually held.

### **Conclusion**

The Act and its supporting Regulation promote the right to enjoy and benefit from culture by increasing access to objects brought into Australia under a loan arrangement for temporary public exhibition and enables increased international cultural exchange. The Regulation is compatible with human rights because it advances the protection of human rights and provides provisions which support increased community consultation and access to information about cultural material of significance to them.

**DETAILS OF THE *PROTECTION OF CULTURAL OBJECTS ON LOAN REGULATION 2014***

**Part 1 – Preliminary**

**Section 1: Name of Regulation**

1. This section provides that the name of the Regulation is the *Protection of Cultural Objects on Loan Regulation 2014*.

**Section 2: Commencement**

2. This section provides that the Regulation will commence on the day after it is registered.

**Section 3: Authority**

3. This section establishes that this Regulation is made under the authority provided by the *Protection of Cultural Objects on Loan Act 2013*.

**Section 4: Definitions**

4. Section 4 sets out definitions of key terms used in the Regulation.
5. The terms *Aboriginal person* and *Torres Strait Islander* have the same meaning as defined in the *Aboriginal and Torres Strait Islander Act 2005* to mean:
  - *Aboriginal person* means a person of the Aboriginal race of Australia; and
  - *Torres Strait Islander* means a descendant of an Indigenous inhabitant of the Torres Strait Islands.

**Section 5: Parent of borrowing institutions**

6. Section 5(2) establishes that when a borrowing institution has a parent, the provisions of the Regulation which require the borrowing institution to do, or not to do, a thing, can be taken to apply to the parent. Section 5(3) establishes that if a provision of the Regulation authorised the borrowing institution to do a thing, the thing may be done by the parent instead of the institution. The terms borrowing institution and parent are defined by the Act.

## **Part 2 – Borrowing institutions**

### **Section 6: Prescribed borrowing institutions**

7. Section 6 sets out that, for subparagraph (b)(ii) of the definition borrowing institution in section 5 of the Act, the Museum of Contemporary Art Limited (ABN 15 003 765 517) is prescribed. The Museum of Contemporary Art currently meets subsection (a) of this definition, however it is not established by a law of the Commonwealth, a State or a Territory. This provision in the Regulation enables the Museum of Contemporary Art to apply under section 15 of the Act for approval if it wishes to do so.

## **Part 3 - Protected Persons**

### **Section 7: Prescribed service**

8. Section 7 sets out that, for subparagraph (e)(v) of the definition of *protected persons* in section 5 of the Act, the service of exhibiting the object in Australia is prescribed. This provision ensures that organisations, which are not borrowing institutions, who may display an object which is protected by the Part 2 of the Act, will be included in the definition of protected persons. Additionally, subparagraph (f) of the same definition under section 5 of the Act sets out that an officer, employee, agent or delegate of a person described in paragraph (e) will also be protected.

## **Part 4 – Approval of institutions**

### **Section 8: Matters Minister must consider in approving a borrowing institution**

9. Subsection 15(2) of the Act establishes that in deciding whether to approve a borrowing institution under the Act, the Minister must consider the procedures used by the borrowing institution in identifying the provenance of objects collected or exhibited and the procedures of the institution regarding temporary loan arrangements. Subsection 8(1) of the Regulation provides additional guidance for the Ministers consideration as it establishes that under paragraph 15(2)(f) of the Act the Minister must consider the standards of the borrowing institutions loan policies and procedures.
10. Subsection 8(1)(a) specifies that the borrowing institutions policies and procedures should display a commitment to loans, for 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.
11. Subsection 8(1)(b) establishes that the Minister must consider whether the borrowing institution's loan policies and procedures are likely to ensure that: (i) the proposed lenders of such objects are reputable and have the legal authority to lend them; and (ii)

that there are valid export licences or permits, if they are required, for the objects from the countries in which they are currently located.

12. Subsection 8(1)(c) sets out that the Minister must consider whether the policies and procedures mentioned in the preceding two paragraphs require adequate provenance and due diligence research to be conducted in relation to such objects. This paragraph makes reference to the further information provided in 8(2).
13. Subsection 8(2) provides information on provenance and due diligence research that may be appropriate for the consideration of loans, for which Part 2 of the Act will apply. It establishes that the institutions policies and procedures (mentioned in 8(1)) should allow for the circumstances of the proposed loan of an object to be considered and as appropriate for further research to be undertaken (as set out in 8(2)(a) to (h)). The nature of an object or its history may include indicators that further research is required, for example certain objects are known to be at increased risk of illicit trades due to ownership transfers occurring during times of conflict, social upheaval or nature disasters. In addition, there are known geographic regions where there have been significant thefts from historic sites. In these cases further research, as described in the subparagraphs of subsection 8(2), may include such things as checking the International Council of Museums Red List databases or other databases or registers of stolen art.
14. Subsection 8(2)(a) to (h) sets out that it may be appropriate to:
  - further consider the matters in 8(1)(b)(i) and (ii) being: the reputation of the lender and their legal authority to lend the objects; and the existence, if required, of export licences or permits from the county in which the object is located before its export to Australia;
  - consider the documentary evidence of the object's history of ownership and export from the object's country of origin or other intermediate countries, if applicable;
  - examine information about the lender and in situations where the lender is not the owner, to examine information about the owner and previous owners;
  - check that the object is not included in databases or registers of lost or stolen objects;
  - consider secondary documentation when checking the circumstances of an object, for example archival material and images;
  - examine the publication history of the object;
  - examine the physical object, or detailed description or photos of the object, as this may be appropriate when considering its authenticity; and
  - consult with experts in relation to any or all the matters set out in the preceding paragraphs, those being subsection 8(2)(a) to (g).
15. Subsection 8(3) is included as a transparency measure and sets out that the borrowing institution must ensure that their policies referred to in subsection 8(1), regarding

temporary loans, are published on the institution's website. Under this provision it is considered that while it is appropriate for an institution approved under the Act to publish a policy document stating the organisational position and commitment to best practice, it remains at the institution's discretion to consider publishing more detailed procedural documentation which may include information on internal working functions and guidance for staff undertaking the specific duties.

16. A decision by the Minister, made under section 15 of the Act, may include consideration of the matters included in section 8 of this Regulation. Under section 18 of the Act applications can be made to the Administrative Appeals Tribunal for the review of a decision by the Minister to refuse to approval a borrowing institution under section 15. This provision of the right to review is consistent with Commonwealth policy that all administrative decisions that affect the interests of a person are open to review on the merits of the situation.

### **Part 5 – Consultation**

17. Part 5 of the Regulation is consistent with subclause 21(3)(a) and (b) of the Act and contains a requirement for borrowing institutions to consult with people and communities in Australia regarding proposed loans of objects from overseas prior to their importation. Consultation undertaken prior to importation provides a mechanism for the identification of any issues in relation to a proposed loan and provides an opportunity for members of communities to raise any concerns about the proposed loan before protection under Part 2 of the Act applies to that object.

### **Section 9: Consultation policies and procedures**

18. Subsection 9(1) sets out that borrowing institutions must ensure there are written consultation policies and procedures which will be used when proposing to loan an object to which Part 2 of the Act will apply. As reflected in the note below this subsection and as described in section 5 of the Regulation, if the borrowing institution has a parent then it is the parent who is responsible for ensuring the application of subsection 9(1).
19. Subsection 9(2) sets out that the borrowing institution's policies and procedures must set out consultation processes that will be used if an object proposed to be loaned:
  - relates to an individual, family group or community in Australia; or
  - relates to an Aboriginal person or Torres Strait Islander; or
  - is relevant to an archive of a State or Territory.
20. Subsection 9(3) sets out that the consultation policies and procedures of the borrowing institution must include consideration of the following matters when determining whether consultation is required:

- whether the object has historical significance to a particular individual, group, event, place or activity;
  - whether there are specific family associations with the object;
  - whether the object has social or spiritual significance to a particular community in Australia;
  - whether there is a demonstrated attachment between the object and an individual, family or community in Australia; and
  - whether the object embodies beliefs, ideas, customs, traditions, practices or stories that are important to a particular community in Australia.
21. Subsection 9(4) ensures that the borrowing institution's policies and procedures are consistent with section 10 of the Regulation.
22. Subsection 9(5) is included as a transparency measure and sets out that the borrowing institution must ensure that their consultation policies, as referred to in subsection 9(1), are published on the institutions' website. As with subsection 8(3) of the Regulation, it may be that publication of detailed procedural documents are at the discretion of the institution.

### **Section 10: Form of consultation and who must be consulted**

23. Subsection 10(1) sets out that consultation undertaken in relation to the proposed loan of an object must:
- give individual, group or body being consulted an adequate opportunity to comment; and
  - be appropriate for the object proposed to be loaned and the individual, group or body being consulted; and
  - be respectful and meaningful to the individual, group or body being consulted.
24. This section provides the principles which must apply to the method of consultation. It has been drafted in recognition that the nature of consultation can be varied and engagement must be appropriate to the people involved and sensitivities of the circumstances. In relation to the specific form of consultation, it is a matter for the borrowing institution to determine the most appropriate method for that consultation circumstance. An example of the forms or methods of consultation that may be applied include, but are not limited to:
- in person engagement, including one-on-one, small group or larger group engagement;
  - other verbal or virtual engagement, including through telephone or teleconferencing tools and other online tools; and
  - written engagement.

25. Subsection 10(2) sets out that when consultation is undertaken in relation to the proposed loan of an object then it must be with:
- the individual, family group or community in Australia to which the object relates; and
  - if the object relates to an Aboriginal person or a Torres Strait Islander, then that individual or their representatives (or both) and can be taken to include one or more individuals and where appropriate family groups or communities; and
  - if the object relates to a state or territory archives, then that the person or body responsible for that archive.
26. Subsection 10(2)(b) is included to ensure that if an object proposed for loan relates to an Aboriginal person or Torres Strait Islander then consultation must be undertaken. The specific requirement to undertake consultation for all proposed loans of Aboriginal and Torres Strait Islander objects is included in recognition that such objects may hold special values and meanings for communities. This requirement ensures adequate opportunities for Aboriginal people and Torres Strait Islanders who may have an interest in objects proposed for loan to learn about and be actively engaged in discussions on proposed loans prior to their importation into Australia.
27. Subsection 10(2)(c) is included in recognition that a public record can inadvertently leave the custody of the state and unless authorised by the state archivist, or other legal instrument, the public record is still owned by the state.
28. It is the responsibility of the borrowing institution to determine the most appropriate people, groups or organisations to consult in relation to a proposed loan of an object. Subsection 10(3) makes it clear that subsection 10(2) does not intend to limit who may be consulted in relation to an object.

## **Part 6 – Publishing information about objects**

29. Part 6 of the Regulation is consistent with subclause 21(3)(c) of the Act and details information that must be published by a borrowing institution about objects proposed for loan. The requirement is included as an important transparency mechanism and ensures public access to information regarding objects that are proposed to be protected under Part 2 of the Act, before that protection applies.

## **Section 11: Publishing information about objects**

30. Subsection 11(1) provides the information that a borrowing institution must publish on its website regarding an object that is proposed for loan, for which Part 2 of the Act will apply. The information is focussed on descriptive information that would enable an object to be identified and may be of assistance to persons trying to locate objects. The information to be published includes:

- a photograph of the object;
- the name of the lender, name of the person authorised to act on behalf of the lender, or the statement ‘private lender’, ‘private collection’ or similar;
- a description of the object sufficient to identify it, including such information as:
  - the type of object;
  - the artist name or manufacturer;
  - the title;
  - the dimensions;
  - the date of creation;
  - a description of significant inscriptions;
  - the place of creation, manufacture or discovery;
  - recent provenance information such as the date and place the object was acquired by the current owner and the owner immediately before the current owner;
- each address in Australia at which the object is to be displayed and the period the object will be displayed at that address; and
- the title of the temporary public exhibition or exhibitions in which the object is to be displayed.

31. Subsection 11(2) specifies that this information must be published on the borrowing institution’s website at least 4 weeks prior to the object’s importation into Australia and remain available online until the object is exported from Australia. The inclusion of a minimum 4 week publication period prior to importation is intended to enable sufficient time for concerns to be raised before the object is imported into Australia.
32. Subsection 11(3) provides that this section does not apply to information covered by an exemption granted under section 12.

## **Section 12: Exemption from publishing information about an object**

33. Subsections 12(1) and 12(2) set out that a borrowing institution may apply, in writing, to the Minister for permission not to publish some or all of the information prescribed by subsection 11(1). In the application to the Minister, the institution must detail the information that it does not wish to publish, the reasons for the application and supporting documentation. The application must be made as soon as practicable before the object is imported into Australia. This provision will enable aspects related to the publication of information to be considered on a case by case basis, such as information privacy and image copyright issues.
34. Subsections 12(3) and 12(4) enable the Minister to, in writing, grant or refuse the application. If the Minister refuses to grant permission, the notice must include the reasons for the refusal.

### **Section 13: Including hyperlinks instead of publishing information**

35. Section 13 is included in Regulation to assist in reducing administrative requirements and avoid a replication of measures for institutions. It provides that:
- where two or more borrowing institutions, or their parents, propose to loan the same object under an agreement with the same lender or exhibition facilitator; and
  - the object will remain in Australia until the loan agreement has expired (for example for the same occasion of its loan to Australia); then
  - it is only necessary for one of those institutions to have the full published details on their website, in accordance with section 11, and if they wish to do so the other institutions may place an hyperlink from their website to the site with the full details and still satisfy the requirements of this part of the Regulation.
36. In addition subsection 13(2) provides that the hyperlink must be included as soon as practicable after the information has been published on the website of the other borrowing institution and that the hyperlink it remains on the website until the object is exported from Australia.

### **Section 14: Correcting errors or omissions in published information**

37. Section 14 provides that if borrowing institution becomes aware of an error or omission in the information published, in accordance with section 11, it must update or correct the information as soon as practicable.

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

38. Part 5 of the Regulation is consistent with subclause 21(3)(d) of the Act and is included to provide guidance to borrowing institutions for use when they receive a request for information or a claim of interest in relation to an object that is protected under Part 2 of the Act. These provisions in the Regulation provide clarity and consistency for borrowing institutions and members of the public about the process to be followed if a claim on an object, which is protected under the Act, is made.

### **Section 15: Information requests and claims in relation to an object**

39. Subsection 15(1) sets out that section 15 applies if a borrowing institution, has on loan an object to which Part 2 of the Act applies, and it either:
- receives a written request for information about the object from a person or group who may have an interest in the object; or
  - receives a written claim that one or more persons have an interest in the object; and
  - the object has not been exported from Australia before the request or claim is received.

40. Subsection 15(2) sets out that the borrowing institution or parent must, within 28 days of receiving a request or claim:
- give the person or group who made the request or claim the website address where the information about the object is published, in accordance with section 11; and
  - provide information held by the institution as a result of provenance and due diligence research conducted in accordance with the institution's policies and procedures as mentioned in paragraph 8(1)(c).
41. Subsection 15(3) provides that the borrowing institution may have regard to the nature of the information it holds and the nature and circumstances of the request or claim in determining whether it is appropriate to provide some or all of the information set out in paragraph 15(2)(b). This provision is included as it may not be appropriate or responsible for the borrowing institution to provide all the information it may hold. For example, the borrowing institution may hold a variety of information, some of which it may not be relevant to the enquiry or appropriate to disclose due to confidentiality clauses in contractual agreements or personal privacy concerns. In addition some requests may be considered unreasonable due to the nature of the request.
42. Subsection 15(4) has been included to ensure information is provided to the Minister on claims made in relation to objects which are protected under Part 2 of the Act and provides that if the borrowing institution or parent receives a claim mentioned in subparagraph 15(1)(b)(ii) then the borrowing institution or parent must:
- notify the Minister, in writing, of the claim; and
  - on request by the Minister provide a copy of the claim.

### **Part 8 – Report to Minister**

43. Part 8 of the Regulation is consistent with subclause 21(3)(e) of the Act and is included in the Regulation as an accountability measure for borrowing institutions approved under the Act. Reporting from approved borrowing institutions on their activities in relation to the operation of the Act and Regulation will assist in ensuring compliance with the requirements of the scheme.

### **Section 16: Report to Minister on activities of borrowing institution**

44. Subsection 16(1) provides that a borrowing institution must prepare a report on the activities of the borrowing institution or its parent which involve objects to which Part 2 of the Act applies, and provide it to the Minister on or before 31 October each year. The report must cover the period of activity during the previous financial year.

45. Subsection 16(2) states that the report must include the following information for each exhibition in which the borrowing institution is involved during the financial year that includes an object to which Part 2 of the Act applies:
- the title of the exhibition;
  - a description of the objects to which Part 2 of the Act applies;
  - each location at which the exhibition was held;
  - the date on which the object was imported into Australia;
  - the date on which the object was, or is to be, exported from Australia;
  - the date on which the exhibition commenced;
  - the date on which the exhibition ended, or is to end;
  - the number of visitors who attended the exhibition during the financial year;
  - details of provenance or due diligence research, if any, conducted in accordance with the policies and procedures mentioned in 8(1)(c);
  - details of consultation undertaken, if any, in accordance with Part 5 of the Regulation;
  - a copy of the information required to be published under Part 4 of the Regulation, and if a hyperlink to information about an was utilised in accordance with section 13, a statement to that effect; and
  - a statement that the information required to be published under Part 6 was published for at least the period required and any information that may confirm that statement.
46. Subparagraphs 15(2)(a)(v) and (vii) are drafted to account for exhibitions that may start in one financial year and end in another financial year.
47. Subsection 13(3) provides that borrowing institutions must also report requests or claims, made in relation to an object to which Part 2 of the Act applies, as mentioned in section 15. The report must include information about:
- the request or claim; and
  - the action taken by the borrowing institution or parent in relation to the request or claim.

## **Part 9 – Miscellaneous**

### **Section 17: Delegation**

48. Section 17 enables the Minister to delegate all of his or her functions and powers under this Regulation (other than this power of delegation) to a Senior Executive Service employee or acting Senior Executive Service employee in the Department.