

Explanatory Statement

Issued by the Authority of the Minister for the Arts

Protection of Cultural Objects on Loan Act 2013

Protection of Cultural Objects on Loan Regulations 2024

Authority

The *Protection of Cultural Objects on Loan Regulations 2024* (the Regulations) is made under section 21 of the *Protection of Cultural Objects on Loan Act 2013* (the Act).

Section 21 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.

Purpose

The purpose of the instrument is 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 largely maintain the existing regulatory arrangements, with amendments to reflect current drafting styles and practices, and to ensure that the Regulations continue to be fit for purpose. These 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; and
- 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.'

Summary of the *Protection of Cultural Objects on Loan Regulations 2024*

The Act encourages loans of important art and cultural material by providing legal protection against seizure and suit for cultural objects borrowed from an overseas lender by an approved borrowing institution for the purpose of temporary public exhibition in Australia.

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 existing Regulation prescribes five institutions: Museum of Contemporary Art Limited, Art Gallery of Ballarat, Bendigo Art Gallery, Heide Museum of Modern Art, and HOTA, Home of the Arts.

There are other institutions in Australia that: satisfy paragraph 5(a) of the Act; routinely stage exhibitions that could 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—Chau Chak Wing Museum of the University of Sydney, the Ian Potter Museum of Art of the University of Melbourne, and the Museum of Old and New Art (Mona) in Tasmania—will allow them to be eligible to apply to become approved borrowing institutions. In order to be approved, listed institutions need to satisfy the Minister or their delegate that they comply with the requirements of the Act and the Regulations.

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

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

Subsection (5)(e)(v) of the Act establishes that this definition can 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. To adequately reflect current practices, and following consultation with stakeholders, the Regulations also prescribe the services of conducting research on, and undertaking imaging of protected objects, in Australia, and facilitating consultation related to protected objects, 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 Regulations are intended to continue, and in some cases enhance, these provisions, as outlined below.

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. The Regulations provide additional detail on these matters, with specific regard to the loans policies and procedures of the borrowing institution. Under the Regulations, the Minister must consider whether these 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 provenance and due diligence research.

The Regulations requires loans and other policies that demonstrate these matters to be published on the borrowing institution's website.

The Regulations requires institutions approved under the Act to have written consultation policies and procedures that explain the consultation they undertake in relation to proposed loans under the Act. To comply with the Regulations, these consultation policies must be published on the borrowing institution's websites. Under the Regulations, it is 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, a community that exclusively or predominantly made up of Aboriginal persons or Torres Strait Islanders;
- relate to, or embody the culture of, a First Nations community that is from a country that is not Australia;
- have a clear and continuing significance for a community in Australia.

Consultation is also mandatory when cultural objects proposed for loan are relevant to a State or Territory archive. Other consultation is discretionary, but the Regulations state that it must be conducted in a manner that provides adequate opportunity for comment, is appropriate to the object, and appropriate, respectful and meaningful to those being consulted. The current Regulations add to the existing Regulation by requiring borrowing institutions approved under Part 3 of the Act to include information in their consultation policies and procedures to explain the processes that will be followed if a proposed loan is not supported by a party consulted as part of the mandatory consulting requirements.

As a transparency measure, the Regulations require approved borrowing institutions to publish detailed listings of prescribed data on all objects proposed for loan under the Act on their websites at least four weeks before those objects are imported into Australia. In an enhancement of the arrangements under the existing Regulation, the Regulations state that these listings must be published on a dedicated page of the institution's website, titled 'Protection of Cultural Objects on Loan.' Exemptions from publishing may be granted, or refused, following an application provided to the Minister by the borrowing institution.

The Regulations 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 those objects. The Regulations require borrowing institutions to respond to the enquirer or claimant within 28 days, and prescribe minimum levels of information to be supplied. Borrowing institutions must also provide written notifications of claims to the Minister.

As an accountability measure, the Regulations require approved borrowing institutions to report annually on activities undertaken in relation to the Act and Regulations.

The Regulations repeals the *Protection of Cultural Objects on Loan Regulation*, which is due to sunset on 1 April 2025.

The Regulations is a legislative instrument for the purposes of the *Legislation Act 2003* and is subject to the default sunset requirements and disallowance.

The Regulations commence on 1 April 2025.

Details of the Regulations are set out in [Attachment A](#).

Regulation Impact Statement

The Office of Impact Analysis has advised that a Regulatory Impact Statement is not required. The reference number is OIA24-07966.

Consultation

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 Regulations. Borrowing institutions have confirmed that the matters proposed to be included in the 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. Amended provisions in the 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.

Statement of Compatibility with Human Rights

The Statement of Compatibility with Human Rights with respect to the Regulations and for the purposes of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out at Attachment B.

Details of the *Protection of Cultural Objects on Loan Regulations 2024*

Part 1—Preliminary

Section 1 – Name

This section provides that the name of the instrument is the *Protection of Cultural Objects on Loan Regulations 2024*.

Section 2 – Commencement

This section provides for the instrument to commence on the 1 April 2025.

Section 3 – Authority

This section provides that the instrument is made under section 21 of the *Protection of Cultural Objects on Loan Act 2013*.

Section 4 – Schedule 1

This section provides that each instrument specified in the Schedule to the instrument is amended or repealed as set out in the applicable item in the Schedule concerned, and that any other item in a Schedule to the instrument has effect according to its terms.

Part 2—Interpretation

Section 5 – Definitions

Section 5 provides that, 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*.

Section 6 – Organisations prescribed as *borrowing institutions*

This section prescribes eight institutions that are deemed to be appropriate to be listed as borrowing institutions, and therefore to be eligible to apply for protection under the *Protection of Cultural Objects on Loan Act 2013*.

The eight prescribed organisations are:

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

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

This section adds to the definition of a protected person for an object under the *Protection of Cultural Objects on Loan Act 2013* by prescribing the following services conducted in relation to objects protected under the Act:

- exhibiting the object in Australia;
- conducting research on the object, for the purposes of facilitating the temporary public exhibition of the object under arrangements made by the borrowing institution, in Australia;
- undertaking imaging of the object, for the purposes of facilitating the temporary public exhibition of the object under arrangements made by the borrowing institution, in Australia;
- facilitating consultation in relation to the object in Australia.

Part 3—Approval of institutions

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

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. Paragraph 15(2)(f) provides that the matters the Minister must consider may include matters prescribed by regulation.

Subsection 8(1) of the Regulation provides additional guidance for the Minister’s consideration. It establishes that, for the purposes of paragraph 15(2)(f) of the Act, the Minister must consider the standards of the borrowing institution’s loan policies and procedures.

Subsection 8(1)(a) specifies that the borrowing institution’s policies and procedures should display a commitment to loans, for which Part 2 of the Act will apply (‘protected objects’), being made to the highest standards of ethical and professional practice and in accordance with applicable laws.

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 located before being exported to Australia. These measures are intended to ensure that borrowing institutions exercise probity in relation to the lenders they engage with, and comply with relevant laws and administrative systems in relation to the international movement of cultural objects.

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, for the period for which the institution is an approved borrowing institution. This section qualifies adequate provenance and due diligence research as being in accordance with the information provided in 8(2).

Subsection 8(2) provides information on the forms and levels of provenance and due diligence research that would be appropriate for the consideration of loans of protected objects, to inform the Minister's decision as to whether the policies and procedures referred to in 8(1) would be considered adequate. The considerations in subsection 8(2)(a) to (h) are intended to assist institutions to deliberate on aspects of the nature of an object or its history that may indicate the need for further research, or that an object would not be suitable for loan. For example, certain objects and types of objects are known to be at increased risk of illicit trade 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 and archaeological sites. In these cases, further research, as described in the subparagraphs of subsection 8(2), may include conducting research activities such as checking the International Council of Museums Red List notices, the United Nations Educational, Scientific and Cultural Organization's listings of endangered heritage, Interpol's stolen art database, or other databases and registers of stolen or endangered cultural objects.

Specifically, subsection 8(2)(a) to (h) sets out that it may be appropriate to:

- undertake research to inform further consideration of the matters in 8(1)(b)(i) and (ii), that is, 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 country 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, the owner, and to examine information about 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 the likelihood of it being subject to theft or illegal excavation; and
- consult with experts in relation to any or all the matters set out in subsection 8(2)(a) to (g).

Subsection 8(3) is included as a transparency measure. It 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 would be 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 that may include information on internal working functions and guidance for staff undertaking specific duties related to provenance and due diligence research, including the activities outlined in subsection 8(2)(a) to (h).

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 4—Consultation

Section 9 – Purpose of this Part

This section states that this part of the Regulations is made for the purposes of paragraphs 21(3)(a) and (b) of the Act, which establish that a regulation may make provisions relating to:

- the consultation by borrowing institutions, or their parents, of members of communities, or organisations representing them, about proposed loans of objects relating to those communities to the institutions or parents by lenders or exhibition facilitators; and
- 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.

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 10 – General requirement to formulate and publish policies and procedures

Subsection 10(1) sets out that borrowing institutions, or their parents, 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.

Subsection 10(2) is included as a transparency measure. It sets out that the borrowing institution must ensure that their policies referred to in subsection 10(1), regarding consultation, are published on the institution’s website. Under this provision, it would be appropriate for an institution approved under the Act to publish a policy document stating the organisational position and commitment to best practice. As with subsection 8(3) of the Regulation, publication of detailed procedural documents is at the discretion of the institution.

Section 11 – Consultation with relevant communities

Subsection 11(1) establishes that there are certain circumstances in which a borrowing institution or its parent must consult members of a community, or organisations representing them, about the proposed loan of an object to which Part 2 of the Act will apply, if the object relates to that community.

Without limiting the consultation that can be undertaken by a borrowing institution in relation to a protected object, subsection 11(2) provides that the borrowing institution or its parent must consult members of the community, or organisations representing them, in relation to an object, under certain circumstances. Consultation is mandatory if any of the following circumstances apply:

- (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.

Subsection 11(2)(a) specifically requires that consultation is conducted in relation to all proposed loans of Aboriginal and Torres Strait Islander objects. This provision is included in recognition that such objects may hold special values and meanings for Aboriginal and Torres Strait Islander communities. It is intended to ensure that Aboriginal people and Torres Strait Islanders who may have an interest in objects proposed for loan will have adequate opportunities to learn about and be actively engaged in discussions on proposed loans prior to their importation into Australia. Subsections 11(2)(b) and 11(2)(c) extend such opportunities to members of First Nations (or indigenous) communities in countries other than Australia, and to members of other communities in Australia, including, but not limited to, those described as Culturally and Linguistically Diverse. For the purpose of the Regulations, the term ‘First Nations community’ is taken to broadly include people that are commonly and publicly recognised, or commonly and publicly self-identify, as First Nations or indigenous peoples.

Subsection 11(3) sets out the matters that borrowing institutions, or their parents, are to consider for the purposes of deciding whether to consult with members of the community, or organisations representing them, in relation to protected objects. This information is intended to assist institutions in determining whether consultation is mandatory, under subsection 11(2), or appropriate, in other circumstances. Under this provision, borrowing institutions or their parents must consider whether:

- the object has historical significance to a particular individual who is a member of the community, or a group within the community, or an event, place or activity relating to the community;
- the object has specific family associations for members of the community;
- 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; and
- if the object relates to a community in Australia, whether the object has social or spiritual significance to the community, or embodies beliefs, ideas, customs, traditions, practices or stories that are important to the community, if the community is in Australia.

It is the responsibility of the borrowing institution to determine the most appropriate specific members of the community, or organisations representing them, to consult in relation to a proposed loan of an object. While section 11 includes the stipulation that mandatory consultation must be with relevant members of the community, or organisations representing them, that have a relationship with the object, it does not limit who may be consulted. By way of guidance, borrowing institutions may consider seeking advice from, or consulting with: the creator of the object, their descendants or prominent members of their community based in Australia; recognised representative bodies of the relevant community; recognised cultural

centres, libraries or societies of the relevant community; relevant regional authorities, local councils, historical societies, local libraries, land councils; Commonwealth, state and territory collecting institutions and government agencies with a connection to the community; other experts, with a relationship to the community, who are able to provide advice on who is the most appropriate person or group to approach.

Section 12 – Consultation with State or Territory archives

This section establishes that 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. The object may be considered relevant to the archive if the object would ordinarily be expected to be in the archive. This section is also 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, still be owned by the state.

Section 13 – Processes in certain circumstances

This section establishes that the policies and procedures referred to in subsection 10(1) must set out 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 for which consultation must be undertaken in accordance with subsection 11(2) or section 12.

These policies and procedures must also include details on 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.

Section 14 – Form of consultation

This section provides that consultation carried out in accordance with Part 4 of the Regulations must:

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

This section provides the principles that must apply to the method of consultation. It is included to ensure that engagement undertaken in compliance with the Act and Regulations is appropriate to the people involved and sensitivities to their circumstances. The specific modes of consultation are a matter for the borrowing institution, or its parent, to determine. Examples of the forms or methods of consultation that may be applied include, but are not limited to: in-person engagement, including one-on-one discussions, small group or larger group meetings; other verbal or virtual engagement, including through telephone or teleconferencing tools, and other online tools and platforms; and written engagement, including surveys. In all cases, those consulted with should be made aware of the reasons for consultation and provided with relevant information about the actions and requirements of the *Protection of Cultural Objects on Loan Act 2013* and these Regulations.

Part 5—Publishing information about objects

Section 15 – Purpose of this Part

This section states that this part of the Regulations is made for the purposes of paragraphs 21(3)(c) of the Act, which establishes that a regulation may make a provision 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.

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 16 – Publishing information about objects

Subsection 16(1) details the information that a borrowing institution, or its parent, must publish online 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 could enable an object to be identified and assist persons trying to locate objects, and comprises:

- a photograph of the object;
- the name of the lender of the object, or the name of the person authorised to act on the lender’s behalf, or a statement such as “private lender,” or “private collection”
- 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:
 - the type of object;
 - the name and nationality of the artist, creator or manufacturer;
 - the title of the object;
 - the dimensions of the object;
 - the date (or probable date) created or manufactured;
 - a description of significant marks or inscriptions on the object;
 - the place (or probable place) the object was created or manufactured;
 - the place (or probable place) where the object was found;
 - the date and place the object was acquired by its current owner;
 - the date and place the object was acquired by the person who owned the object immediately before the object’s current owner;
 - each address in Australia at which the object is to be displayed and the period during which the object will be displayed;
 - the title of the temporary public exhibition or exhibitions at which the object is to be displayed.

Subsection 16(2) requires the information in subsection 16(1) to 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 four (4) weeks before the object is imported into Australia. The listing must remain on that webpage until the object is exported from Australia. The inclusion of a minimum four (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. The specification to publish on a webpage titled ‘Protection of Cultural Objects on Loan’ is intended to allow the listings to be more discoverable and more easily monitored by officials and parties that may have an interest in objected proposed for loan.

Subsection 16(3) provides that the above requirements do not apply in relation to information covered by a permission granted under section 17, which enables borrowing institutions to apply for exemptions from publishing, which may be granted or refused by the Minister.

Section 17 – Exemption from publishing information about an object

Subsections 17(1) and 17(2) set out that a borrowing institution, or its parent, may apply in writing to the Minister seeking permission not to publish some or all of the information prescribed by subsection 16(1). In the application to the Minister, the institution must detail the information that it does not wish to publish and the reasons for requesting an exemption, and provide relevant supporting documentation, if available. The application must be made as soon as practicable before the object is imported into Australia. Ideally, exemption requests would be received with sufficient time for a decision to be made prior to the four (4) week publication timeframe required under subsection 16(2).

The exemption provision recognises that some of the information required to be published may not be suitable for publication, and should be considered on a case-by-case basis. Examples of potential reasons for seeking not to publish certain information include legal, privacy and copyright concerns, and cultural or moral sensitivities.

Subsections 17(3) and 17(4) require the Minister to provide written notice either granting or refusing to grant the application for exemption. If the Minister refuses to grant an exemption, reasons for the refusal must be included in the written notice.

Section 18 – Including hyperlinks instead of publishing information

This section allows borrowing institutions or their parents to include, in lieu of the information itself, hyperlinks to information published in compliance with section 16 that is published on another borrowing institution's website. This provision is included to assist in reducing administrative burden on borrowing institutions, and avoid replication of compliance effort. 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 (that is, the object will not be exported and reimported for the purposes of a separate loan); then it is only necessary for one of those institutions to have the full published details on their website, in accordance with section 16.

If they wish to do so, the other institutions may publish a hyperlink to the site that published the full details, and still satisfy the requirements of section 16.

Subsection 17(2)(c) states that the hyperlink must be included as soon as practicable after the information has been published on the website of the other borrowing institution. Subsection 17(2)(d) requires the hyperlink to remain on the website until the object is exported from Australia.

Section 19 – Correcting errors or omissions in published information

This section provides that if a borrowing institution or its parent becomes aware of an error or omission in the information published in accordance with section 16, it must update or

correct the information as soon as practicable. This provision recognises that new or more accurate information may emerge about a loan subsequent to publication of information. It is intended to help ensure that the information published in relation to protected objects is as up to date and accurate as possible.

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

Section 20 – Purpose of this Part

This section states that this part of the Regulations is made for the purposes of paragraphs 21(3)(d) of the Act, which establishes that a regulation may make a provision relating to 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 related to a protected object that may be, or could lead to, a contravention of Part 2 of the Act. That is, an act or event that could mean the object does not meet the criteria for protection under the Act, or that may lead to the object not meeting the criteria for protection under the Act in the future.

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

This section sets out the processes that borrowing institutions or their parents must follow in the event that they have an object protected by Part 2 of the Act on loan to them and receive either:

- a request for information from a person or persons who may have an interest in that object, or
- a written claim of interest from a person or persons.

For the provision to apply, the object must not have been exported from Australia when the request for information or claim is received.

Subsection 21(2) is intended to provide clarity and consistency to borrowing institutions and members of the public about the processes to be followed if such a claim or request for information on an object protected under the Act is made. It sets out that the borrowing institution or parent must, within 28 days of receiving a request or claim:

- (a) 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 16; and
- (b) 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 subsection 8(1)

Subsection 21(3) states that paragraph (2)(b) 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. This provision recognises that it may not be appropriate or responsible for the borrowing institution or its parent to provide all the information it may hold in relation to a protected object. For example, the borrowing institution may hold some information relevant to the enquiry, and some information that it is inappropriate to disclose due to confidentiality clauses in contractual agreements or personal privacy concerns related to a third party. In addition, some requests may be considered unreasonable due to the nature of the request.

Under subsection 21(4), if a borrowing institution or its parent receives a claim of interest as mentioned in subsection 1(b), the borrowing institution or its parent must give the Minister written notice of the claim and, if requested by the Minister, a copy of the claim. This subsection is included to ensure information is provided to the Minister on any claims made in relation to objects protected under Part 2 of the Act.

Part 7—Report to Minister

Section 22 – Purpose of this Part

This section states that this part of the Regulations is made for the purposes of paragraphs 21(3)(e) of the Act, which establishes that a regulation may make a provision relating to providing the Minister with annual reports on the activities conducted by borrowing institutions in relation to the operation of the Act or Regulations. It is included as an accountability measure for borrowing institutions approved under the Act and to assist in ensuring compliance with the requirements of the Act and Regulations.

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

Subsection 23(1) requires borrowing institutions approved under the Act to prepare annual reports on activities relating to objects to which Part 2 of the Act apply, 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.

Subsection 23(2) states that the report must include the following information for each exhibition in which the borrowing institution was involved that included an object to which Part 2 of the Act applies:

- the title, location and dates of the exhibition;
- descriptions of the protected object or objects exhibited;
- the date on which each object was imported into Australia;
- the date on which each object was, or is to be, exported from Australia;
- 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 section 8;
- details of consultation undertaken, if any, in accordance with Part 3;
- a copy of the information required to be published in accordance with Part 4, and if a hyperlink to information was utilised in accordance with section 18, a statement to that effect; and
- a statement as to whether the information required to be published under Part 4 was published for at least the period required and any information to support that statement.

Subsection 23(2) has been drafted to account for exhibitions that may start in one financial year and end in another financial year.

Subsection 23(3) provides that borrowing institutions must include in their annual reports information on requests or claims of the type mentioned in section 21. 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 7—Miscellaneous

Section 24 – Delegation

This section enables the Minister to delegate all of his or her functions and powers under this Regulations (other than this power of delegation) to SES employees or acting SES employees in the Department. (The expressions SES employee and acting SES employee are defined in section 2B of the *Acts Interpretation Act 1901*). The delegations are included under the necessary or convenient to be prescribed power provided by section 21 of the Act.

Part 8— Application and saving provisions

Section 25 – Application of provisions on the approval of institutions

This section states that Part 2 (approval of institutions) applies in relation to institutions approved by the Minister on or after 1 April 2025. This includes instances when the application for approval was made by or on behalf of the borrowing institution before, on, or after 1 April 2025. The intention of this provision is to ensure that all institutions approved from 1 April onwards are held to the same standard.

Section 26 – Application and saving of provisions on consultation

Subsection 26(1) states that the provisions in Part 3 (consultation) apply 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.

Subsection 26(2) is a saving of the consultation provisions under the 2014 instrument. It states that, despite the repeal of the *Protection of Cultural Objects on Loan Regulation 2014* on 1 April 2025, the consultation provisions in Part 5 of that instrument, which were in force immediately before 1 April 2025, will continue 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.

These provisions recognise that minor changes to consultation requirements will require a period of time for institutions to implement and follow as the planning phase of exhibitions, which includes consultation activities, is completed several months prior to the importation of loans. The provisions are intended to provide institutions with a reasonable period to comply with strengthened requirements.

Section 27 – Application of provisions on publication of information about objects

This section states that Part 4 (publishing information about objects) applies on and after 1 April 2025 in relation to objects that are on loan to the borrowing institution or its parents on or after 1 April 2025. This includes objects imported into Australia before, on or after 1 April 2025.

The following scenarios are provided for clarity. Under this provision, if the object is imported into Australia on 15 March 2025, the borrowing institution or its parent will have published information under the *Protection of Cultural Objects on Loan Regulation 2014* four (4) weeks prior to that date. 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 4 of this instrument, in relation to the object, by 1 April 2025. If the object is imported into Australia on 15 April 2025, the borrowing institution or its parent will have published information under the *Protection of Cultural Objects on Loan Regulation 2014* 4 weeks prior to that date, but will be required to update the website, in accordance with Part 4 of this instrument, in relation to the object by 1 April 2025. Part 5 of this instrument does not apply to objects exported from Australia before 1 April 2025.

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

Under this section, if the Minister granted permission for the purposes of subsection 12(2) of the *Protection of Cultural Objects on Loan Regulation 2014*, which relates to exemptions from publishing information about protected objects, and that permission was in force immediately before the commencement of this instrument, it can be taken to be a permission for the purposes of section 17 of this instrument. This provision is included as a practical measure so that institutions do not need to reapply for exemptions already granted by the Minister.

Section 29 – Application and saving of provisions on information requests and claims

Subsection 29(1) states that Part 5 (actions to be taken by borrowing institution or parent) applies in relation to requests or claims received on or after 1 April 2025, whether the loan of the object commenced before, on or after 1 April 2025. The requirements listed in Part 5 also apply in relation to requests or claims received before 1 April 2025 under subsection 15(1) of the *Protection of Cultural Objects on Loan Regulation 2014*, providing that: 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 subsection 15(3) of that instrument does not apply in relation to the object; and the object is not exported from Australia before 1 April 2025.

Subsection 29(2) is a saving of the enquiries and claims handling provisions under the 2014 instrument. It states that, despite the repeal of the *Protection of Cultural Objects on Loan Regulation 2014* on 1 April 2025, the enquiries and claims handling provisions in Part 7 of that instrument (and related provisions in Part 2 and 6), which were in force immediately before 1 April 2025, will 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.

Section 30 – Application of provisions on reporting to the Minister

Subsection 30(1) states that Part 6 (report to Minister) applies in relation to the first financial year that ends after the commencement of this instrument.

Subsection 30(2) clarifies that a report given about activities conducted in the financial years ending 30 June 2025 or 30 June 2026 should report in accordance with the requirements in Part 6 and in accordance with the *Protection of Cultural Objects on Loan Regulation 2014*, whichever is applicable. Reporting is required to comply with Part 6 in relation to most activities undertaken from the commencement of this instrument on 1 April 2025. However, for activities conducted before the current Regulations was in force, or when a saving provision renders an aspect of the current Regulations not yet in force, the borrowing

institution must include information in accordance with the requirements of the previous instrument. Requiring institutions to include information in accordance with the *Protection of Cultural Objects on Loan Regulation 2014* is appropriate because the institutions were subject to reporting requirements under that instrument.

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 Regulations 2024

Overview

This Legislative Instrument 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*.

This instrument will promote increased access to Australian and overseas cultural material in Australia by:

- a) increasing the number of organisations eligible to apply to become approved borrow institutions under the *Protection of Cultural Objects on Loan Act 2013*, which provides legal protection for cultural objects on loan from overseas lenders for temporary public exhibition in Australia;
- b) encouraging overseas lenders to lend cultural objects to Australian arts organisations; and
- c) limiting the circumstances in which lenders, exhibiting institutions, exhibition facilitators and people working for them can lose ownership, physical possession, custody or control of objects while on loan to an approved Australian institution.

Human rights implications

This Legislative Instrument engages with the following rights or freedoms:

- Right to work in Article 6 of the *International Covenant on Economic, Social and Cultural Rights*
- Right to take part in cultural life in Article 15 of the *International Covenant on Economic, Social and Cultural Rights*
- Right for minority groups to enjoy their own culture and to profess and practise their own religion in Article 27 of the *International Covenant on Civil and Political Rights*
- Right to self-determination in Article 1 of the *International Covenant on Economic, Social and Cultural Rights* and Article 1 of the *International Covenant on Civil and Political Rights*.

Article 6 of the *International Covenant on Economic, Social and Cultural Rights* recognises the right to work. This Legislative Instrument promotes the realisation of this right by supporting the continuing viability of cultural organisations and employment in the cultural sector.

Article 15 of the *International Covenant on Economic, Social and Cultural Rights* recognises the right to take part in cultural life. This Legislative Instrument promotes the realisation of this right by supporting the exhibition of cultural material for the enjoyment and benefit of members of the Australian community, including underserved audiences in outer metropolitan and regional areas.

Article 27 *International Covenant on Civil and Political Rights* recognises the right for minority groups to enjoy their own culture and to profess and practise their own religion. This Legislative Instrument promotes the realisation of this right by supporting the exhibition of cultural objects in Australian cultural organisations, including those related to minority groups, for the enjoyment and benefit of the Australian community, including underserved audiences in outer metropolitan and regional areas.

Article 1 of the *International Covenant on Economic, Social and Cultural Rights* and Article 1 of the *International Covenant on Civil and Political Rights* recognise the right to self-determination, including that groups with a common racial or cultural identity, especially Indigenous peoples, have the right to a level of internal self-determination. Consultation about loans of cultural objects is required under the *Protection of Cultural Objects on Loan Regulations 2024* whenever an object:

- (a) relates to, or embodies the culture of, the community, if membership of the community is exclusively or predominantly Aboriginal persons or Torres Strait Islanders; or
- (b) relates to, or embodies the culture of, the community, if the community is a First Nations community that is from a country that is not Australia; or
- (c) has clear and continuing significance for the community, if the community is in Australia.

This Legislative Instrument will promote the realisation of the right to self-determination because it will result in more institutions borrowing objects in compliance with the *Protection of Cultural Objects on Loan Regulations 2024*.

Conclusion

The instrument is compatible with human rights because it promotes the realisation of human rights and does not raise any human rights issues.