



Guidance for Lenders—Protection of Cultural Objects on Loan

Overview

The Protection of Cultural Objects on Loan Act 2013 (the Act) establishes a scheme to protect cultural objects on loan from overseas from seizure whilst in Australia for temporary exhibition.

The Act encourages international loans by limiting the circumstances in which lenders, borrowing institutions, exhibition facilitators and people working for them can lose ownership, physical possession, custody or control of objects while they are in Australia.

The protection provided by the Act is often referred to as immunity from seizure and suit. Under the Act most types of legal action including seizure and suit (legal proceedings brought to a court of law) and the enforcement of judgements and orders are prevented from the time of import until the export of the object.

Approved Australian Borrowing Institutions

Eligible Australian borrowing institutions can apply for approval under the scheme. In order to be approved a borrowing institution must demonstrate appropriate expertise, protocols and practices, and meet national and international standards in regard to loans policy, provenance checking and due diligence research. Once approved, objects that are imported by the institution for temporary public exhibition in Australia from a lender who is not ordinarily resident in Australia will be automatically protected.

A list of approved Australian borrowing institutions is at: <https://www.arts.gov.au/funding-and-support/protection-cultural-objects-loan-scheme>.

The scheme allows exhibition facilitators and institutions, which are not approved, to partner with an approved borrowing institution in order to provide protection for objects imported for temporary exhibition.

Requirements for approved Australian borrowing institutions can be found in the protection of cultural objects on loan scheme guidelines at: <https://www.arts.gov.au/funding-and-support/protection-cultural-objects-loan-scheme>.

These requirements are also outlined in the Protection of Cultural Objects on Loan Regulation 2014 (the Regulation).



What is protected?

The scheme protects all types of cultural objects on loan, including archaeological, artistic, ethnological, historical, literary, scientific or technological objects, if certain conditions are met, including that the:

- object is imported into Australia for temporary public exhibition under arrangements involving an approved borrowing institution
- object is not a Class A Australian Protected Object as defined under the Protection of Movable Cultural Heritage Act 1986, and
- lender of the object is not usually resident in Australia, or is a corporation incorporated in a foreign country or part of the government of a foreign country.

The scheme provides comprehensive protection. If the loan meets the conditions above it will be automatically protected under the Act and protection cannot be removed or revoked once the object has been imported into Australia.

Protection can apply to single objects, groups of objects or entire exhibitions and can apply to Australian objects and foreign cultural heritage objects.

The Act protects objects from seizure or forfeiture under Australian Commonwealth, state and territory laws and ensures that legal proceedings cannot be brought against people involved in the loan. The Act describes these people as 'protected person(s)' and includes:

- the lender (and an officer, employee or agent of a lender)
- the exhibiting institution or exhibition facilitator (and an officer, employee, agent or delegate of an exhibiting institution or exhibition facilitator)
- a person engaged by the lender, exhibiting institution or exhibition facilitator to transport, conserve, store, display or provide security for the object in Australia (and an officer, employee, agent or delegate providing such a service).

What is not protected?

The scheme contains some exceptions to protection to ensure compliance with ethical and international obligations and criminal law requirements.

Australian Protected Objects designated as Class A under the Australian Protection of Movable Cultural Heritage Act 1986 (PMCH Act) and Protection of Movable Cultural Heritage Regulation 1987 are excluded from the scheme.¹ Class A objects include Victoria Cross medals awarded to Australian recipients, the suit of armour worn by Ned Kelly and the most significant and sensitive Aboriginal and Torres Strait Islander material, such as, secret sacred ritual objects, ancestral remains, bark coffins and dendroglyphs (tree carvings).

¹ Please note that Class B Australian Protected Objects as defined under the Protection of Movable Cultural Heritage Act 1986, including objects which are considered of exceptional cultural significance to Australia, are protected under the scheme.



The Act does not provide protection for criminal activities and in recognition of Australia's international obligations—including those under the United Nations conventions against the proceeds of crime, corruption, illicit drug trafficking and organised crime—legal proceedings under the Australian Proceeds of Crime Act 2002 and Part IAA of the Crimes Act 1914 are excluded from the scheme.

In addition, the Act sets out some limited circumstances in which a protected person can start proceedings against another protected person. These provisions recognise that some protected people may have a reason to start proceedings against another protected person. For example where a lender may take action to reclaim an object which is currently in the possession of a protected person in Australia. These provisions have been included to protect the lender.

Period of protection—import to export (up to 2 years)

The protections provided by the Act apply from the time the object is imported into Australia, until the day it is exported up to a maximum of two years unless there is an approved extension for exceptional circumstances.

A request for an extension to the period of protection must be made in writing by the Australian borrowing institution and include an explanation of why an extension is required. For example, a request for extension may be made if conservation work is required prior to the object being transported. The request must be approved by the Minister for the Arts, or the Minister's delegate, before the period of protection ends.

Provenance, consultation and publication

Approved Australian borrowing institutions must ensure the requirements of the Act and the Regulation are satisfied on every borrowing occasion. These requirements include checking the provenance information of the object, consultation with Australian communities where the objects may relate to them, and the publication of information on the proposed loan objects prior to their importation into Australia.

Under the scheme, approved borrowing institutions are required to undertake consultations with parties in Australia where objects proposed for loan may relate to them. Consultations in relation to proposed loans of Aboriginal and Torres Strait Islander objects and Australian state records have specific requirements under the guidelines.

Australian institutions are also required to publish, on their website, information about objects proposed for protection under the scheme. The publication of information must commence four weeks prior to the object entering Australia and finish when the object is exported from Australia.

The published information must enable the object to be identified and include:

- a photograph of the object
- details and description of the object
- the name of the lender (where applicable private lender or private collection may be used)
- a summary of the object's recent provenance.

Opt-out Provision

The scheme provides a mechanism for borrowing institutions to opt-out of protection should the borrower and lender wish to do so. In order to opt-out of protection the Australian institution must notify the Minister for the Arts, or the Minister's delegate, in writing before the object is imported into Australia. Protection cannot be revoked after the object is imported.

If a borrowing institution opts-out of protection for certain objects they are not required to meet the associated requirements, such as consultation and publication, for those objects.

Further Information

Further information on the protection of cultural objects on loan scheme can be found at www.arts.gov.au/funding-and-support/protection-cultural-objects-loan-scheme.

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