



Australian Government

Department of Communications and the Arts

# Protection of cultural objects on loan scheme guidelines

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## 1. Introduction

The *Protection of Cultural Objects on Loan Act 2013* (the Act) supports the future of international cultural exhibitions in Australia. It establishes a scheme to protect Australian and foreign cultural objects on loan from overseas for temporary public exhibition.

This legislation addresses a significant obstacle that Australia's major cultural institutions have faced in securing international loans and aligns Australia with an emerging international standard to provide protection for those loans.

The Act encourages international loans for temporary public exhibition in Australia by 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 they are in Australia. This protection 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.

Eligible Australian borrowing institutions can apply for approval under the protection of cultural objects on loan scheme (the scheme). Approval of Australian borrowing institutions lasts for up to five years. Once an institution is 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. Approved institutions must ensure that the conditions of the scheme, including due diligence, consultation and publication standards, are satisfied for these loans. These requirements are outlined in the *Protection of Cultural Objects on Loan Regulation 2014* (the Regulation). Protection for an object lasts for up to two years from the date objects are imported into Australia.

The scheme protects cultural material of any type, with minimal exceptions. One of the exclusions is Australian cultural heritage material identified as Australian Protected Objects Class A under the *Protection of Movable Cultural Heritage Act 1986*.

These guidelines provide information on applying for approval under the scheme and outline the information and documentation required to support an application. They should be read before commencing your application and referred to while developing your application. These guidelines also describe how the scheme operates and detail the processes that approved borrowing institutions should consider prior to each international loan.

## 1.1 Overview of the scheme

### Step 1—approval of Australian borrowing institutions

National, state and territory borrowing institutions (museums, galleries, libraries and archives) can apply for approval.	→	Applications assessed.	→	Minister for the Arts approves (or does not approve) borrowing institution. <sup>1</sup>
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### Step 2—Approved borrowing institutions negotiate loans for temporary exhibition in Australia with overseas lenders

Exhibition development and international loans identified	→	Loan negotiations with overseas lenders commence	→	Due diligence and provenance checking undertaken	→	Consultation with relevant Australian individuals, groups or communities (if applicable)	→	Information on proposed loan published online 4 weeks prior to importation
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### Step 3—Object / exhibition imported and is protected by the Act

Loan is finalised and object is listed in a loan agreement between an overseas lender and an approved institution or exhibition facilitator who has an arrangement with an approved institution	→	Object arrives in Australia	→	Protection automatically given to the object and the entities associated with the loan	→	Protection ceases when object is exported from Australia <sup>2</sup>
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1. Approval is for up to 5 years and may be subject to conditions or revocation.
2. Protection applies for a maximum of two years unless there is approval of an extension due to exceptional circumstances.

## 2. Operation of the scheme

### 2.1. What is protected?

The scheme will protect all types of cultural objects on loan, including archaeological, artistic, ethnological, historical, literary, scientific or technological objects, providing that 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*<sup>1</sup> (see [section 2.2](#) for details)
- lender of the cultural object is not ordinarily a resident in Australia, or is a corporation incorporated under the law of a foreign country or a government of a foreign country.

The scheme provides comprehensive protection as:

- loans of cultural material that meet the conditions above will be automatically protected from seizure and suit under the Act
- it is not possible to remove or revoke the protection once the object has been imported into Australia.

### 2.2. What is not protected?

Protection can apply to single objects, groups of objects or entire exhibitions imported into Australia for temporary public exhibition. Protection can apply to Australian and foreign cultural heritage.

If protection is not required for certain objects proposed to be imported for temporary loan approved institutions can opt-out of protection. In order to opt-out of protection an approved borrowing institution must give notice in writing prior to importation of the object into Australia. See [section 6.1](#) for further information on opt-out provisions.

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

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

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<sup>1</sup> 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 *Proceeds of Crime Act 2002* and actions under Part IAA of the *Crimes Act 1914* are excluded from the scheme.<sup>2</sup>

### 2.3. How do protections work?

The Act protects objects from seizure or forfeiture under Commonwealth, state and territory laws in most situations.

In addition, to ensure the protection is comprehensive, the Act ensures that legal proceedings will not be able to be brought against people involved in the loan of the object, such as the lender, the exhibiting institution, the exhibition facilitator or people working for them. The Act describes these people as 'protected person(s)' and includes:

- a lender (including an officer, employee, courier or agent of a lender)
- an exhibiting institution<sup>3</sup> or an exhibition facilitator (including the parent organisation of such an institution or facilitator, or a person who is an officer, employee, agent or delegate of an institution or facilitator)
- a person or organisation engaged by a lender, exhibiting institution or exhibition facilitator to undertake services in relation to the loan including to transport, conserve, store or provide security for the object (including an officer, employee, agent or delegate of an organisation).

The Act sets out some limited circumstances in which a protected person can start proceedings against another protected person. These provisions recognise the fact that some protected people may have a reason to start proceedings against another protected person, for example to allow for circumstances such as a lender taking action to reclaim an object which is currently in the physical possession of a protected person in Australia.

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<sup>2</sup> Other exceptions under the Act include: Part 2 of the *Foreign Judgments Act 1991*; Part 7 of the *Trans-Tasman Proceedings Act 2010*; Part II of the *International Arbitration Act 1974* and sections of Commonwealth, state or territory laws that give the power of seizure solely to a police officer.

<sup>3</sup> An exhibiting institution is a borrowing institution, that has been approved by the Minister and that has made arrangements for the temporary public exhibition of an object /exhibition in Australia.

## 3. Applications to the scheme

### 3.1. Applicant eligibility

To be eligible for approval under the scheme, borrowing institutions must:

- collect and publicly exhibit in Australia objects that are of interest for archaeological, artistic, ethnological, historical, literary, scientific or technological reasons; and
- be established by a law of the Commonwealth, state or territory, or be prescribed by the Regulation.

### 3.2. The application

The integrity of the scheme is based on those institutions that are approved maintaining high standards of museum practice. Following approval, the borrowing institution has the responsibility of ensuring the legal and ethical aspects of each international loan, for which the protection of the Act will apply, are considered. The application process for approval under the scheme requires borrowing institutions to provide evidence regarding their collection management, acquisition and loans policies and procedures. [Section 4](#) and [section 5](#) of the guidelines provide information about the assessment of applications.

Applications can be submitted at any time throughout the year. Application forms are available from the Department of Communications and the Arts' website at: [www.arts.gov.au/collections/protection-of-loans](http://www.arts.gov.au/collections/protection-of-loans).

Applications should be concise and where more detail is required it should be provided in attachments. Should you have any queries please contact the Program Officer, Protection of Cultural Objects on Loan Scheme (contact details on [page v](#)).

Applications will be registered by the Department of Communications and the Arts and receipt confirmed by email. Applications will be reviewed by the Department of Communications and the Arts and evaluated to determine eligibility and ensure documentation is complete. The Minister for the Arts, or the Minister's delegate, will make the final decision on approval under the Act.

### 3.3. How long will it take to be approved?

Depending on the demand on the scheme at the time of application and the completeness of the information provided by the applicant, it is expected assessment and approval will take up to three months. Please contact the Program Officer if more precise information is required about a specific application.

All applicants will receive written notification of the outcome of their application.

Approval can last for up to five years. The exact approval dates will be provided in writing to the institution when notified of the approval.

A list of approved institutions is available on the Department of Communications and the Arts' website at: [www.arts.gov.au/collections/protection-of-loans](http://www.arts.gov.au/collections/protection-of-loans).

### 3.4. Conditions of approval

The Minister for the Arts, or the Minister's delegate, may place conditions on the approval provided to institutions. Any conditions of approval will be provided to the borrowing institution in writing and will be published on the Department of Communications and the Arts' website at:

[www.arts.gov.au/collections/protection-of-loans](http://www.arts.gov.au/collections/protection-of-loans).

### 3.5. Revocation of approval

The Minister for the Arts, or the Minister's delegate, may revoke the approval of an approved borrowing institution if they are satisfied that it has:

- contravened the Regulation or any conditions of approval, or
- not maintained standards of conduct regarding matters that were considered at the time of approval.

Protection will still apply to objects already imported into Australia under a temporary loan agreement if an institution's approval is revoked. However, objects imported by the institution after the revocation date will not be protected as it will no longer be an approved borrowing institution under the Act.

Borrowing institutions will be advised in writing if approval is revoked and this information will be published on the Department of Communications and the Arts' website at:

[www.arts.gov.au/collections/protection-of-loans](http://www.arts.gov.au/collections/protection-of-loans).

### 3.6. Appeals process

Applications can be made to the Administrative Appeals Tribunal for the review of decisions by the Minister for the Arts, or the Minister's delegate, regarding matters relevant to the approval of the borrowing institution. Reviews can be made on:

- a decision not to approve an institution;
- the imposition or variation of conditions of approval; or
- the revocation of approval.

## 4. Application assessment

Approved borrowing institutions are responsible for upholding the integrity of the scheme.

The approval process is based on institutions demonstrating they have the appropriate expertise and processes to undertake international loans to the highest international standards. Institutions applying to the scheme will be assessed on their policies and practices including:

- the institution's governance and management framework
- curatorial expertise and expertise in the management of collections
- experience in the exhibition of foreign loans
- procedures to identify objects in a foreign country that could be the subject of a loan and the negotiation of loan arrangements, including risk management protocols
- procedures for checking the provenance of objects collected or borrowed by the institution
- other processes that may be considered by the Minister for the Arts, or the Minister's delegate, are outlined in the Regulation, including:
  - consultation processes, particularly relating to Aboriginal and Torres Strait Islander cultural material
  - publication of information regarding international loans
  - enquiries and claims handling processes.

Applications will be considered in the context of national and international collection management standards. Relevant documents include:

- Australian Best Practice Guide to Collecting Cultural Material, Commonwealth of Australia (2014)
- International Council of Museums (ICOM) Code of Ethics for Museums (2013)
- Museums Australia Incorporated Code of Ethics (1999)
- Continuous Cultures, Ongoing Responsibilities: principles and guidelines for Australian museums working with Aboriginal and Torres Strait Islander cultural heritage, Museums Australia Incorporated (2005)
- National Standards for Australian Museums and Galleries, version 1.3 (2013)
- Protocols for Producing Indigenous Australian Visual Arts, Australia Council (2nd edition 2010)
- A more comprehensive list of resources can be found at [Appendix 6—Resources and references](#).

### 4.1. Institution's governance and management framework

Borrowing institutions applying to the scheme should demonstrate they are a well-managed public collecting institution. This includes having sound legal and management frameworks.

Institutions applying to the scheme should provide information on the following:

- the governance and management framework of the institution, demonstrating:
  - compliance with applicable Commonwealth, state or territory laws, by-laws and regulations, ensuring appropriate application to its activities, collection and site management
  - clearly defined roles and responsibilities associated with running the institution including clear lines of responsibility for activities such as financial delegations and the approval of acquisitions and inward loans

- processes to ensure staff training or awareness and compliance with legal obligations, policies and procedures
- processes to ensure policies and procedures are reviewed at regular intervals and made available to the public
- reporting procedures, including the production and publishing of an annual report
- the institution's record keeping policies demonstrating public accountability and a method of audit.

#### 4.2. Curatorial expertise and expertise in the management of collections

Borrowing institutions applying to the scheme should have the necessary curatorial and collection management expertise and experience to undertake international loans to the highest standards.

Institutions applying to the scheme should provide:

- the relevant areas of their staffing structure (such as curators, exhibition developers and researchers) to demonstrate staff possess appropriate qualifications, expertise and experience (or as applicable where specialised advice is sought from external sources)
- information demonstrating diversity in expertise and experience in the governing body, management and staff
- the institution's staff training policy and information regarding staff recognition of relevant professional codes of ethics or codes of practice
- the institution's processes to ensure staff members responsible for carrying out provenance checks for potential loans are aware of and comply with their obligations.

#### 4.3. Experience in the exhibition of foreign loans

Borrowing institutions applying to the scheme should demonstrate that they have the capacity to manage foreign loans by outlining their previous international loan program.

In the application institutions should provide brief information on recent temporary exhibitions that included foreign loans. While previous experience in international loans will be considered, a lack of experience will not exclude an institution from being considered for approval.

#### 4.4. Procedures for identifying objects in a foreign country that could be the subject of a loan, and the negotiation of loan arrangements

Borrowing institutions applying to the scheme should follow international best practice procedures for identifying the objects in a foreign country that could be subject of a loan, and in the negotiation of loan arrangements.

Institutions applying to the scheme should provide:

- Information on the processes for entering into an agreement to borrow an object from overseas including consideration of the legal and ethical status of that object
- policies or procedures which demonstrate they have an inward loan/ borrowing approval system in place
- a sample loan contract.

#### 4.5. Provenance and due diligence procedures

When applying to the scheme, institutions will be required to provide their policies and procedures which guide staff on checking the provenance of objects collected or borrowed. These policies and procedures should be informed by Australian law, national and international codes of ethics, professional codes of practice, professional publications and the nature of the institution's activities.

Institutions applying to the scheme should demonstrate that their policies and procedures for acquisitions and loans reflect the principles established by the Australian Best Practice Guide to Collecting Cultural Material. In addition, institutions may consider providing additional information to demonstrate that when undertaking international loans that will be protected by the Act there is:

- a commitment by the institution to the highest standards of legal, ethical and professional practice
- appropriate levels of due diligence research undertaken as relevant to the circumstances of the proposed loan.

Approved borrowing institutions are required to document their acquisition and loans policies and make them freely available on their website.

Further information on provenance and due diligence as relevant to the scheme is provided in [Section 5.1](#) and at [Appendix 2](#).

## 5. Scheme requirements

The requirements of the scheme are established by the *Protection of Cultural Objects on Loan Regulation 2014*.

Approved borrowing institutions are responsible for upholding the integrity of the scheme and are expected to ensure that best practice loan procedures are followed on each borrowing occasion. This includes:

- consultation, when appropriate, with individuals or communities in Australia about objects proposed for loan
- publication of information about loans that will be protected by the Act
- ensuring all appropriate permits or approvals are in place
- ensuring the appropriate and timely response to enquiries regarding loans.

### 5.1. Provenance and due diligence

Protection of an object under the Act does not remove the borrower's responsibility to undertake an appropriate amount of due diligence research prior to the loan. Decisions on the level of due diligence when borrowing cultural material may be based on identifying and mitigating potential risks. Borrowing some types of cultural material may involve higher levels of risk and the borrower should be satisfied they have acceptable legal and provenance information with which to make an informed decision on whether to proceed with the loan.

The institution's policies and procedures should reflect that borrowing institutions should not approve proceeding with a loan where:

- after undertaking due diligence there is suspicion about the object, or the circumstances surrounding the loan
- the circumstance of the lender, or the object, is such that to enter into the loan would be contrary to the standards, practice or legitimate expectations of the international museum community.

Borrowing objects of questionable provenance could be seen to condone or contribute to the illicit trade in cultural property.

Further guidance on provenance and due diligence procedures can be found at [Appendix 2](#) and resources and references can be found at [Appendix 6](#).

### 5.2. Consultation

Approved borrowing institutions are required to undertake consultations on objects proposed for loan, prior to import, where the objects relate to an Australian individual, group or community in Australia. Consultation should provide a mechanism for identifying issues regarding a proposed loan including addressing potential claims of legal interest in an object. Consultation may not be necessary for some loans, for example when considering the loan of material directly from the creator. However consultation must be conducted for all proposed loans of Aboriginal and Torres Strait Islander cultural heritage objects in recognition that such objects may hold special values and meanings for individuals and communities.

When applying to the scheme, borrowing institutions should provide their consultation policy and procedures. Consultation policies and procedures should recognise why consultation is an important aspect of the institution's roles and practices. This includes acknowledging the creation of genuine relationships of recognition and reciprocity between the collecting institution and individuals, groups or communities. It should also acknowledge that consultation assists in ensuring that all aspects of the historical, social or spiritual significance of objects, and associated intellectual property rights, have been considered.

Approved borrowing institutions will be required to document their loans consultation policy and make it freely accessible on their website.

Details of the consultation requirements are provided in [Appendix 3](#).

### 5.2.1. Aboriginal and Torres Strait Islander consultation

Consultations must be held for all proposed overseas loans of Aboriginal and Torres Strait Islander objects which are to be protected by the Act. These consultations must provide an opportunity for Aboriginal and Torres Strait Islander people, who may have an interest in objects proposed for loan, to learn about and be actively engaged in discussions about proposed loans and to raise any concerns.

Approved borrowing institutions organising loans of Aboriginal and Torres Strait Islander objects from overseas should ensure that consultation policies and procedures include specific reference to Aboriginal and Torres Strait Islander consultation. Borrowing institutions are also encouraged to use consultative curatorial processes for the development of Aboriginal and Torres Strait Islander exhibitions and promote ethical conduct, mutual respect and recognition of the diversity of customs and cultures.

### 5.2.2. Consultation with state and territory archives

Approved borrowing institutions are required to consult with national, state and territory archives or government record offices on the proposed loans of objects that may be relevant to those archives. This requirement relates most specifically to objects that may be state records that have left the custody of that state.

## 5.3. Publication of information

The publication of information about objects proposed for loan is an important transparency mechanism of the scheme. It allows public access to information on objects that will be protected by the Act before protection begins.

Approved borrowing institutions are required to publish information about objects proposed for loan on their website. Publication of the information should commence a minimum of four weeks prior to the object entering Australia and finish when the object is exported from Australia. Institutions applying to the scheme should outline how they propose to meet the scheme's publication requirements.

The published information should focus on descriptive and provenance details to enable the object to be identified. This information must be freely available and easily accessible on the institution's website. The information that must be published is outlined in [Appendix 4](#).

Where an exhibition is touring to more than one venue, only one exhibiting institution is required to publish the full details of the objects on their website. Other institutions may place a hyperlink from their website to the site with the full details.

## 5.4. Enquiry and claims handling

Approved borrowing institutions must document their enquiry and claims handling policy or procedures relating to objects that will be or are protected under the Act. These procedures should be made publicly available on their website.

Information on enquiry and claims handling requirements is outlined in [Appendix 5](#).

## 5.5. Permits and approvals

When organising loans and exhibitions from overseas, approved borrowing institutions must ensure that they follow normal administrative approval processes regarding imports and exports of material to and from Australia. This includes, but is not limited to:

- permits or certificates of exemption required under the *Protection of Movable Cultural Heritage Act 1986*
- approvals or permits required for export from the country of origin and/or country where the object is currently held
- permits or approvals required under the *Environment Protection and Biodiversity Conservation Act 1999* in regard to the Convention on International Trade in Endangered Species of Wild Fauna and Flora 1975
- permits or approvals required by Commonwealth, state or territory heritage laws including the *Historic Shipwrecks Act 1976* and the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*
- processes required by the Australian Customs and Border Protection Service and the Australian Quarantine and Inspection Service.

## 6. Details of the Scheme

### 6.1. Opt-out provisions

All cultural objects imported by an approved borrowing institution meeting the requirements detailed in [section 2.1](#) will be automatically protected under the Act. However, in some circumstances approved borrowing institutions may not want protection to apply to certain objects or exhibitions imported for temporary loan. For example, if borrowing an object directly from the creator the borrowing institution and the lender may consider the risk of legal action very unlikely and need for protection unnecessary.

The scheme provides a mechanism to enable institutions to opt-out of protection by providing a notice to the Minister for the Arts, or the Minister's delegate. The notice should be received by the Department of Communications and the Arts at least four weeks prior to importation of the object into Australia to ensure adequate time for notification to the Minister for the Arts, or the Minister's delegate. It is not possible to opt-out of the protection once the object has been imported into Australia.

If a borrowing institution wishes to opt-out of protection, it is considered best practice to notify the lender that the object will not be protected as an assumption may have been made by the lender that the loan would be automatically protected under the Act.

The notice to opt-out of protection should include an object list or information describing which objects are covered by the notice, a brief description of why protection is not required and the date of import and export. The notice should be sent to the Program Officer (contact details on [page v](#)).

If an approved 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.

### 6.2. Extensions to the period of protection

Protection of the object applies for up to two years from the date of importation. The Minister for the Arts, or the Minister's delegate, may extend the time period if the approved borrowing institution makes a case for an extension due to exceptional circumstances.

A request for an extension to the period of protection must be made in writing to the Department of Communications and the Arts and include an explanation of the circumstances for the extension. It must be received by the Department of Communications and the Arts at least six weeks prior to the end of the protection period to ensure adequate time for approval by the Minister for the Arts, or the Minister's delegate, before the period of protection ceases. If this timeframe cannot be met please contact the Program Officer (contact details on [page v](#)) as soon as possible.

Approvals for extensions beyond the two year period of protection will be provided to the institution in writing and will be published on the Department of Communications and the Arts' website at: [www.arts.gov.au/collections/protection-of-loans](http://www.arts.gov.au/collections/protection-of-loans).

### 6.3. Partnership arrangements

Protection can apply to objects imported into Australia under a temporary loan arrangement between a lender and either or both of the following:

- an approved borrowing institution
- an exhibition facilitator<sup>4</sup> that has an arrangement for the object with an approved borrowing institution.

In addition, institutions that are not approved can partner with an approved borrowing institution in order to provide protection for objects imported for temporary exhibition.

Some examples of possible partnership arrangements include:

- The object or exhibition is imported under a temporary loan arrangement between the lender and an approved borrowing institution for temporary public exhibition at multiple venues in Australia. The other venues may or may not be approved under the Act.
- The object or exhibition is imported under a temporary loan arrangement involving the lender, an exhibition facilitator and an approved borrowing institution. The object/s then move to another venue for temporary public exhibition under a separate temporary loan arrangement between the lender, an exhibition facilitator and a second approved borrowing institution.
- The object or exhibition is imported under a temporary loan arrangement between the lender, an approved borrowing institution and a venue which is not approved under the Act.

It is not a requirement of the scheme that the exhibition is displayed at the premises of the approved borrowing institution. Travelling or touring exhibitions can be protected through the involvement of a single approved borrowing institution or exhibition facilitator (provided the exhibition facilitator has an arrangement with an approved borrowing institution).

The protection provided by the Act does not exclude multi-party contract combinations or other arrangements being made for the exhibition.

The approved borrowing institution is responsible for ensuring the requirements of due diligence, consultation, publication and reporting are met on each borrowing occasion and therefore must determine the appropriate arrangements or requirements for a partnership. Approved borrowing institutions are advised to seek their own legal advice on any potential partnership arrangements.

Further information on partnership arrangements can be sought from the Program Officer (contact details on [page v](#)).

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<sup>4</sup> The term exhibition facilitator has been defined by the Act, see [Appendix 1—definitions](#).

## 7. Reporting requirements

### 7.1. Annual reports

Approved borrowing institutions are required to report annually on their participation in the scheme by providing information on the objects that have been imported into Australia for temporary public exhibition. Reports for the preceding financial year are due on 31 October each year.

The report should be provided to the Department of Communications and the Arts on the reporting template available at [www.arts.gov.au/collections/protection-of-loans](http://www.arts.gov.au/collections/protection-of-loans) and should include details of exhibitions that included objects imported into Australia under the scheme, including the:

- exhibition title, dates and venues
- an object list and the dates of importation and exportation of each object
- a statement confirming that provenance research or due diligence was conducted in accordance with the institution's policies
- a summary of the consultation, if any, that was undertaken on the objects protected by the Act
- a copy of the information on each object that was published by the borrowing institution during the publication period, including evidence, or a statement, that this was accessible to the public within the prescribed time frame (or if a hyperlink to another site with the published information was utilised then a statement to that effect)
- information on claims or significant enquiries made in relation to the objects during the consultation, publication or exhibition periods and the action taken by the approved borrowing institutions in relation to those claims or enquiries
- details of any partnership arrangements made during the year, including details of the parties involved and information on the exhibition and objects as listed above.

If the approved borrowing institution was first approved during that financial year, then the reporting period should commence from the date of approval.

The report should be provided to the Department of Communications and the Arts, at the contact details on [page v](#). The report will be provided to the Minister for the Arts, or the Minister's delegate.

### 7.2. Reporting of enquiries and claims

Approved borrowing institutions must notify the Department of Communications and the Arts, in writing and as soon as possible, regarding any claims or significant enquiries made in relation to an object either proposed to be imported or protected under the Act. If requested, approved borrowing institutions should also provide a copy of the written claim and the response from the approved borrowing institution.

Further guidance on enquiry and claims handling can be found at [Appendix 5](#).

## 8. Further information

### 8.1. Conflicts of interest

A conflict of interest arises where a person makes a decision or exercises power in a way that may be, or may be perceived to be, influenced by either material personal interests (financial or non-financial) or material personal associations.

Applicants must outline any actual or potential conflicts of interest on the application form, and outline how the conflicts will be managed.

### 8.2. Privacy and confidentiality

The information provided by applicants and approved borrowing institutions will be treated as confidential. The Department of Communications and the Arts is accountable to the Parliament of Australia and to the Australian public. Treatment of applications is subject to special obligations placed on Australian Public Service employees by the Privacy Act 1988 and the Public Service Act 1999, which govern the use of information provided.

### 8.3. Legal advice

The Department of Communications and the Arts cannot provide legal advice to applicants or approved borrowing institutions. Applicants should seek their own independent professional advice on all legal matters, including compliance with any statutory obligations.

## Appendix 1—Definitions

The *Protection of Cultural Objects on Loan Act 2013* includes a number of defined terms which are used in these guidelines.

The definitions in this appendix are provided to assist the understanding of the guidelines. These definitions are summaries of those included in the *Protection of Cultural Objects on Loan Act 2013* and other definitions are based on various international museums sector documents including those used by UNESCO, the International Council of Museums and Museums Australia.

### Approved borrowing institution

An approved borrowing institution is one that has been approved under Part 3 of the *Protection of Cultural Objects on Loan Act 2013* by the Minister for the Arts, or the Minister's delegate.

### Borrowing Institution

The *Protection of Cultural Objects on Loan Act 2013* defines a borrowing institution as an organisation that collects and publicly exhibits in Australia objects that are of interest for archaeological, artistic, ethnological, historical, literary, scientific or technological reasons and is either established by a law of the Commonwealth, a state or territory or has been prescribed. A borrowing institution, in relation to the protection of cultural objects on loan scheme, is a collecting institution that meets the criteria to be eligible to apply for approval under the *Protection of Cultural Objects on Loan Act 2013*.

### Collection management

A term encompassing all the practices and procedures implemented by an institution in acquiring, documenting, handling, accessing, storing, securing, lending, conserving and disposing of collection items.

### Due diligence

The requirement that every endeavour is made to verify the accuracy of information before deciding a course of action. In regard to collecting institutions due diligence particularly refers to identifying the source and history of an item offered for acquisition or loan before acquiring or borrowing it. It also relates to ensuring legal title, or authority to lend, on the part of the owner or lender.

### Exhibiting institution

An exhibiting institution is an approved borrowing institution that has made arrangements for the temporary public exhibition of an object in Australia and therefore has a relationship with an object to which the protections of the *Protection of Cultural Objects on Loan Act 2013* can apply (The exhibition does not have to be displayed at the exhibiting institution premises).

### Exhibition

Objects, words, images, interactive units, audio-visual techniques and other methods combined to communicate an idea, theme or story for public interest and enjoyment.

## Exhibition facilitator

An exhibition facilitator is a person or entity who has one or more temporary loan arrangements with a lender and an approved borrowing institution, and whose business is to make arrangements for objects from overseas collections to be publicly exhibited in Australia. An exhibition facilitator cannot be a lender or an approved borrowing institution.

## Lender

The lender of an object means an individual who is not ordinarily a resident in Australia, a corporation incorporated by a law of a foreign country, or a body politic of a foreign country (part of a foreign government), and which:

- is a party to a temporary loan arrangement for the object with a borrowing institution or an exhibition facilitator; and
- would reasonably be expected to have physical possession, custody or control of the object outside Australia for the period of the loan under the arrangement, apart from that arrangement.

Note: As per this definition the lender does not need to be the owner of the object, however the lender would be authorised to act on the owner's behalf in regards to the loan of the object.

## Loan

The loan of an object includes an arrangement for:

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

## Protected person

A protected person for an object means:

- a lender of the object
- an officer, employee or agent of a lender who accompanies the object for some or all of the time it is on loan
- an exhibition facilitator or an exhibiting institution for the object (including the parent of such an institution)
- a person who is an officer, employee, agent or delegate of an exhibition facilitator or exhibiting institution
- a person engaged by a lender, an exhibition facilitator or an exhibiting institution to do any of the following:
  - transport the object from one place in Australia to another or between Australia and a foreign country
  - carry out conservation work on the object in Australia
  - store the object in Australia
  - provide security for the object while it is being transported between Australia and a foreign country or while it is in Australia
  - provide a service that relates to the object and is prescribed by the Regulation
- an officer, employee, agent or delegate of a person described in the proceeding list.

## Temporary loan arrangement

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

## Venue

In relation to the protection of cultural objects on loan scheme the term venue is used to describe a place where an exhibition is on display and encompasses all institutions (regardless of whether or not they are eligible to apply for approval under the *Protection of Cultural Objects on Loan Act 2013*).

## Appendix 2—Guidance on provenance and due diligence procedures

Borrowing institutions applying to the Protection of Cultural Objects on Loan Scheme (the scheme) must have policies and procedures to guide staff on provenance and due diligence processes.

These policies should be informed by national and international codes of ethics, codes of practice and professional publications. Policies must ensure borrowing institutions only borrow objects that have legal title, established provenance and are not identified as having been looted or illegally obtained or exported. These policies must be made freely available on the borrowing institution's website.

The *Protection of Movable Cultural Heritage Act 1986* (PMCH Act) implements Australia's obligations under the UNESCO Convention on the Means of Prohibiting and Preventing Illicit Import, Export and Transfer of Ownership of Cultural Property, 1970 (1970 UNESCO Convention). The 1970 UNESCO Convention requires State Parties, such as Australia, to ensure that no collecting institution accepts illegally exported items. Institutions should avoid borrowing objects of questionable provenance as this could be seen to condone and contribute to the illicit trade in cultural property.

This appendix sets out the principles regarding provenance and due diligence research to which borrowing institutions should adhere when considering a loan. They are provided as an information guide only, not a full or authoritative statement of professional or legal advice.

Borrowing institutions applying to the scheme must demonstrate that they have the resources and expertise to undertake appropriate provenance and due diligence research. Institutions must have access to the necessary expertise and experience and ensure staff members are aware of who is responsible for carrying out provenance checks for potential loans and what procedures are expected of them. There must be a clear line of responsibility for approving acquisitions and loans as legally and ethically acceptable.

### 2.1. Loans policy

Approved borrowing institutions are responsible for ensuring their loan policies and procedures meet internationally recognised standards and that the institution borrows objects that are legally and ethically sound. The institution's loans policy should reflect:

- the principles for borrowing cultural material, as established by the Australian Best Practice Guide to Collecting Cultural Material
- the purpose of undertaking international loans
- the borrowing approval process and responsibility for decision making
- the use of legal loan agreements that detail responsibilities of both parties
- that if the lender cannot provide acceptable documentary evidence of the object's provenance it is the borrowing institution's responsibility to undertake due diligence to verify the accuracy of the provenance information before deciding its course of action
- that institutions should only borrow items if they are confident that they have not been illegally exported from the country of origin
- that institutions should only borrow items if they are convinced that their import into Australia does not contravene any Australian import restrictions, or international treaties or conventions to which Australia is a party.

## 2.2. Loans procedures

The institution's inward loan or borrowing procedures should reflect the type of activity undertaken by the institution and acknowledge the range of actions or due diligence research that may be required in various circumstances. The professional expertise of the institution should be utilised to ensure that best judgement and appropriate decision making occurs in each situation. Policies and procedures may consider a risk-management approach when undertaking short-term loans.

To demonstrate international best practice in negotiating loans, the borrowing institution's loans procedures may include processes to:

- determine whether further investigation is warranted before proceeding with an international loan
- assess any objections raised, or which may be raised, in relation to the loan of the object including the prospect of third party claims, ownership disputes or other allegations over unlawful export or activity
- identify risks in proceeding with a loan when there is unclear provenance for the reputation of the institution, the scheme and Australia as a venue for international loans.

Prior to a loan, collecting institutions should seek the history and chain of ownership of the object, or provenance, from the lender or other appropriate source. Borrowing institutions should only borrow works for which provenance has been established or that are judged to have a history that is considered secure. When undertaking research for a loan, borrowing institutions may consider undertaking the following:

- ensure the object is being borrowed from a reputable source
- confirm that the owner has legal title to the object or that the lender has the legal authority to lend the object
- consider the need to undertake further research into the provenance information provided by the lender
  - give extra consideration to specific types of objects, periods of conflict or those objects known to be at risk of illicit trade
- confirm evidence of a valid export licence or permit for the object from the country in which it is currently held and, when appropriate, export licences or permits from the country of origin
- check the object against databases of stolen art
- in the case of Australian Aboriginal and Torres Strait Islander cultural material, ensure consultation and collaboration with the Traditional Owners or authorised representatives
- consult with experts and fellow curators (either in relation to the object itself or generally in regard to countries of origin or export, or the reputation of the owner or lender of the object).

## 2.3. The lender

The borrowing institution may consider it appropriate to request provenance information from the lender. If the lender cannot provide acceptable documentary evidence of the object's provenance it is the borrowing institution's responsibility to undertake due diligence to verify the accuracy of information before deciding its course of action.

When the lender is a collecting institution consideration may be given to:

- the nature, status and reputation of the institution
- the institution's acquisition policy, provenance research procedures and commitment not to engage in illicit trade
- the history of collaboration (and loans) between institutions.

In the situation of non-institutional lenders a fuller investigation of the accuracy and completeness of the information provided by the lender may be warranted. Consideration should be given to:

- standard provenance and due diligence processes such as checking against the Art Loss Register and other relevant databases and the review of relevant published information
- undertaking research into the provenance information provided, the method of acquisition by the current owner and the identity of the supplier
- critical evaluation of gaps and discontinuity in the information.

Institutions may consider requiring the lender to guarantee that they have not provided false or misleading information, and that they have exercised reasonable care and expertise when providing information. This may include requesting the lender to:

- acknowledge their legal title and confirm their lawful right to lend the object
- confirm that there are no outstanding or current third party claims on the object and provide information on any past or potential claims
- confirm the known provenance of the object and that due diligence has been completed.

## 2.4. Concerns about provenance or potential claimants

If at any stage of the process the borrowing institution decides that there are doubts about an object's legal or ethical status they should not proceed with the loan. However, in practice objects are not always accompanied by detailed histories and in these circumstances, having taken into account information gathered through due diligence research, best judgement should apply.

In deciding whether to proceed with a loan when provenance is uncertain consideration should be given to whether the:

- research provides evidence or enough information to make an informed judgement that the object was legally exported from its country of origin and its importation into Australia does not contravene the provisions of the *Protection of Movable Cultural Heritage Act 1986*
- risks are considered as part of the decision to proceed and if the loan is in the best interests of the culture the material represents.

If the research undertaken by a borrower reveals information which indicates the possibility of a claim from a third party the borrower may need to consider:

- informing the lender of the information and discuss whether this information may be made available to others
- informing the third party of the facts discovered that appear to support the claim
- critically assessing the risks and whether to proceed with the loan.

## Appendix 3—Guidance on consultation processes

Consultation is an important aspect of the Protection of Cultural objects on Loan Scheme (the scheme).

Borrowing institutions are required to undertake consultation, within Australia, on objects proposed for loan from overseas as part of a temporary public exhibition. The principles for appropriate and respectful consultation have been included in the *Protection of Cultural Objects on Loan Regulation 2014* (the Regulation) and the guidelines in recognition of the legal protections provided to cultural objects under the *Protection of Cultural Objects on Loan Act 2013* (the Act). Consultation must be undertaken prior to the object being imported to Australia and provides a mechanism for the identification of any issues in relation to a proposed loan.

Depending on the circumstances, consultation may not be necessary for some loans. However consultation must be conducted for all proposed loans of Aboriginal and Torres Strait Islander cultural heritage objects in recognition that such objects may hold special values and meanings for Australian individuals and communities.

Borrowing institutions applying to the scheme are expected to have appropriate consultation policies and procedures in place and must ensure that their consultation policy is available on the institution's website. Specific consultation processes are required when proposing to borrow objects that are significant to: Australian individuals, family groups or communities; Aboriginal or Torres Strait Islanders; or state or territory archives.

### 3.1. General Consultation for loans

Borrowing institutions must assess whether an object proposed for loan from overseas relates to a particular Australian individual, group or community, and therefore requires consultation.

Factors that a borrowing institution may consider in determining whether consultation is required may include, but are not limited to, whether:

- the object is of historical significance to a particular person, group, event, place or activity, for example it is associated with an important historical event or the ownership changed hands during a time of conflict
- there are specific family associations with the object
- the object has social or spiritual significance to specific communities in Australia and there is a demonstrated contemporary attachment between the object and the community
- the object embodies beliefs, ideas, customs, traditions, practices or stories that are important for a particular community in Australia.

Consultation may not be required for all objects proposed for loan; however this conclusion would only be reached by the institution after careful consideration. If it is determined that the object has no cultural significance or links to an Australian individual or community, then the borrowing institution is not required to undertake consultation.

Borrowing institutions must assess the need for consultation on an individual object basis. For example while an entire exhibition may be proposed for loan the significance to Australia of each individual object must be considered.

The need for consultation must also be assessed on each borrowing occasion. Regardless of whether the same object has been on loan to Australia previously it may be important to reassess the consultation requirement for that object. For example, new information may be known about the history of that object that demonstrates a contemporary relevance to a part of the Australian community.

The consultation process is expected to provide opportunities for discussion and information sharing between borrowing institutions and Australian communities. Where appropriate there may be continuing dialogue established and reconnection with aspects of cultural heritage. The consultation process also provides an opportunity for members of communities to raise concerns about a proposed loan.

### 3.1.1 Deciding who to consult with

Once a borrowing institution has determined that an object has or may have a significant association in Australia, it must determine which individuals, communities, or organisations representing a community they should consult.

Consultation in relation to an object must be with:

- the individual, family group or community in Australia to which the object relates
- if the object relates to an Aboriginal or a Torres Strait Islander, then that individual or representatives of that person, or both
- if the object relates to a state or territory archive then the person or body responsible for that archive.

Consultation may need to occur with more than one community related to a particular object.

### 3.1.2 Appropriate methods of consultation

The borrowing institution's policies and procedures should detail the most appropriate methods of consultation and level of engagement required by a given situation.

Consultation must:

- give the individual, group or body being consulted adequate opportunity to comment
- be appropriate for the object proposed for loan and the individual, group or body being consulted
- be respectful and meaningful to the individual, group or body being consulted.
- Methods of consultation are varied and can involve, 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
- written engagement.

While the level of engagement may vary, consultation should be informed, respectful, ethical and meaningful. The borrowing institution must ensure there is adequate notice and time for consultation and follow up as required.

### 3.1.3 Outcomes of consultation

The borrowing institution's policies or procedures must include the process of approving inward loans, including how it will be demonstrated that appropriate consultation has been undertaken before the loan is finalised.

The institution must consider how it will appropriately investigate concerns raised during consultation; and the mechanisms for determining if it would proceed with a proposed loan if substantial concerns are identified by individuals, communities or organisations.

## 3.2. Consultation for Aboriginal and Torres Strait Islander related objects

Under the scheme consultation is required for all proposed international loans of Aboriginal and Torres Strait Islander cultural objects. Borrowing institutions must document their Aboriginal and Torres Strait Islander consultation policies and procedures and make these publicly available on their website.

The consultation policy must provide an appropriate framework for engagement and ensure opportunities for Aboriginal and Torres Strait Islanders to be informed about and be actively involved in discussions on proposed loans. It should also detail appropriate mechanisms for raising concerns about the loan prior to objects being imported into Australia.

Aboriginal and Torres Strait Islander objects, other than those objects identified as Class A objects under the *Protection of Movable Cultural Heritage Act 1986*, are included within the scope of the scheme to encourage foreign owners of such objects to consider lending those objects to Australian institutions for temporary public exhibition. The loan of these objects from overseas may provide unique opportunities for community access and new levels of engagement between overseas lenders and Australian communities. The 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 individuals and communities.

Australia has adopted the United Nations Declaration of the Rights of Indigenous Peoples 2007 which highlights the requirement for prior and informed consultation, participation and consent in activities of any kind that impact on Indigenous peoples. Accordingly approved borrowing institutions under the scheme are expected to protect the cultural and intellectual property rights of Aboriginal and Torres Strait Islander peoples.

The borrowing institution's Aboriginal and Torres Strait Islander consultation policy and procedures must be consistent with the most current and relevant protocols and professional practice. Applicants to the scheme should be familiar with the documents listed at [section 3.2.5](#).

### 3.2.1 What is an Aboriginal or Torres Strait Islander object?

Aboriginal and Torres Strait Islander cultural heritage encompasses a very broad and diverse range of objects and material. The borrowing institution is responsible for assessing which items proposed for loan from overseas may be related to Aboriginal or Torres Strait Islander culture. In addition to the general factors that must be considered in [section 3.1](#) the following factors should also be assessed in making this determination:

- was the object created by an Aboriginal or Torres Strait Islander person?
- does the object express Aboriginal or Torres Strait Islander culture?
- are there Aboriginal or Torres Strait Islander themes or content used, including representations of Aboriginal or Torres Strait Islander peoples, culture, imagery or issues, for example works containing inherited designs that are owned by particular communities or language groups?

### 3.2.2 Deciding who to consult with

It is important to recognise the diversity and complexity of the many different Indigenous cultures in Australia and acknowledge that concerns about the use of cultural material may differ from community to community.

Effective consultation requires firstly identifying people who have the authority to speak for the specific Aboriginal or Torres Strait Islander cultural material. The recognition of community structures and of organisations and individuals is important. There may be more than one individual, family group or community related to a particular cultural object and also shared rights to themes or imagery.

While there may be different approaches depending on locations or community arrangements, to ensure that consultation is carried out with the most appropriate person or group the institution may consider contacting:

- individuals such as the artist themselves, family descendants or community Elders
- nominated community representative bodies
- recognised Aboriginal or Torres Strait Islander owned and managed art, cultural, language or community centres
- regional authorities, local councils, historical societies, local libraries, land councils;
- the recognised identified body with specific responsibility for Indigenous cultural matters (such as the Victorian Registered Aboriginal Parties)
- Commonwealth, state and territory collecting institutions and government agencies (such as Indigenous Coordination Centres or Regional Operation Centres, museums, galleries, libraries and archives, state or territory departments of Indigenous Affairs, Indigenous heritage councils, committees or reference groups)
- 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.

If the origin of an object or the relevant community for an object is unknown, consultation with the relevant experts may be appropriate to determine whether the loan should proceed. In addition, it is acknowledged that in some situations there may be difficulties in identifying or contacting appropriate or active community groups, despite best and repeated efforts. This may be a factor that requires consideration in the decision to proceed with the loan.

If the borrowing institution frequently borrows Aboriginal and Torres Strait Islander cultural objects or is planning to hold a major exhibition with objects borrowed from overseas the establishment of an Aboriginal and Torres Strait Islander Advisory Committee is recommended.

### 3.2.3 Appropriate methods of consultation

While the level of engagement or involvement between a borrowing institution and Aboriginal and Torres Strait Islander peoples may vary depending on the proposed loans, the borrowing institution's policies and procedures must acknowledge key principles of meaningful consultation.

Consultation under the scheme should be:

- **Respectful**—respect and trust the knowledge and views of Aboriginal and Torres Strait Islander peoples, engage the appropriate people or groups for consultations.
  - For example, where appropriate, the institution should acknowledge a custodianship or care role rather than ownership.

- **Informed**—parties must be provided with factual information about the reasons for consultation and information on the objects that are proposed for loan.
  - Ensure the reasons for the consultation are provided prior to the meeting; where appropriate include information about the scheme and the implications for foreign loans under the scheme.
  - Be prepared to provide information on the object such as background information and photos. Be aware of cultural sensitivities about the material and consider provenance information such as where and how the object was collected and how it left Australia.
- **Ethical and Meaningful**—consultation should be carried out in a transparent and honest manner and as a means of obtaining feedback, listening to concerns and gathering information. Ensure that there is a common understanding of the issues and that there are appropriate opportunities for input and the reflection of community views.
  - Be aware of language barriers and use translators as appropriate.
  - Consider both male and female staff members attending to facilitate access and encourage input from all community members.
  - Be aware of cultural sensitivities such as asking permission to record conversations or taking photos.
  - Allow time for follow-up meetings or conversations to enable the issues to be discussed within the community or with others not present at the meeting.
  - Create opportunities for Aboriginal and Torres Strait Islander people to have informed input into decisions affecting how institutions store, conserve, research, display or in any other way use their cultural heritage.
  - Acknowledge contemporary Aboriginal and Torres Strait Islander cultural practices and promote cultural respect and understanding.
- **Outcome focused and sustainable**—where possible communities should be involved in the development of approaches to ensure there is common understanding of the issues and that community views, concerns and aspirations are considered. Involving communities is a two-way exchange that encourages discussion and provides an opportunity to influence the outcome.
  - Ensure there is adequate support so that people are able to participate and contribute to the consultation process.
  - Consider the benefits to the community such as provision of information and research regarding cultural objects held in overseas collections or special access during the loan, and where applicable, making copies of documents, photographs and film available.
  - Use recognised ethical research practices including the sharing of research outcomes with relevant Aboriginal and Torres Strait Islander communities.
- **Providing follow up communication**—acknowledge the participation of Aboriginal or Torres Strait Islander peoples and follow up the consultation by providing information on the outcome and copies of any information on the object and reports.
  - Provide information on who to contact if there are further questions or concerns.

### 3.2.4 Outcomes of consultation

The borrowing institution's policy or procedures must include mechanisms for considering the issues that arise during consultation and for determining whether the proposed loan should proceed if substantial concerns are identified by individuals, members of a community or organisations representing them.

The policy or procedures should also include requirements for documenting the consultation processes including methods for demonstrating that appropriate and meaningful consultation has occurred.

The outcomes for Aboriginal and Torres Strait Islander individuals and communities of consultations and loans should also be given careful consideration. Appropriate acknowledgement and recognition should be given for the information provided by Aboriginal and Torres Strait Islander individuals and communities, including in the exhibition material such as catalogues and in media coverage.

Following consultation, borrowing institutions should also consider:

- providing copies of research papers, photographs of objects, and the exhibition catalogue
- providing resources for key members of the community to view the objects or attend the exhibition and associated events
- providing access to information and the objects through online tools, such as virtual tours of the exhibition or video conferencing
- the continued engagement between the community and borrowing institution on future opportunities.

### 3.2.5 Aboriginal and Torres Strait Islander engagement protocols

Ensuring Aboriginal and Torres Strait Islander engagement and involvement in the activities of borrowing institutions is a much broader issue for most Australian collecting institutions.

Appropriate engagement will depend on the nature of the institutions activities and may include: representation of Aboriginal and Torres Strait Islander people on the institution's governing board or the establishment of Aboriginal and Torres Strait Islander advisory roles or a committee; the employment of Aboriginal and Torres Strait Islanders; and partnerships with other institutions or representative groups.

Applicants to the scheme should be familiar with the most current and relevant protocols and professional practice in regard to Aboriginal and Torres Strait Islander engagement, including, but not limited to, the following publications:

- Continuous Cultures, Ongoing Responsibilities: principles and guidelines for Australian museums working with Aboriginal and Torres Strait Islander cultural heritage, Museums Australia (2005)
- Protocols for Libraries, Archives and Information Services, Aboriginal and Torres Strait Islander Library and Information Network (Revised 2012)
- Valuing Art, Respecting Culture, Protocols for working with the Australian Indigenous visual arts and craft section, Doreen Mellor and Terri Janke, National Association for the Visual Arts Ltd (2001)
- Guidelines for Ethical Research in Australian Indigenous Studies, Australian Institute of Aboriginal and Torres Strait Islander Studies (2012)
- Protocols for producing Indigenous Australian visual arts, Australia Council, (2nd Edition, 2010)
- Indigenous Australian Art Charter of Principles for Publicly Funded Collecting Institutions, Indigenous Art Code Limited (2009).

### 3.3. Consultation with bodies responsible for state or territory archives

Borrowing institutions are required to consult with national, state and territory government archives on the proposed loan of objects that may be relevant to those archives. This requirement ensures that there is an avenue for the identification of any issues or concerns regarding objects that may be state records which have left the custody of the state. The borrowing institution must determine which state archival bodies to consult and ensure relevant information is considered as part of the decision process for proceeding with a loan.

## Appendix 4—Guidance on publication processes

The publication of information about objects proposed for loan is an important transparency mechanism of the Protection of Cultural Objects on Loan Scheme (the scheme).

The information published should focus on descriptive and provenance information to enable the object to be identified. Details of the specific publication requirements that borrowing institutions should follow are outlined in this appendix and provided for under the Protection of Cultural Objects on Loan Regulation 2014 (the Regulation).

### 4.1. Method of publication

Information on objects proposed for loan from overseas which are expected to be protected under Part 2 of the *Protection of Cultural Objects on Loan Act 2013* (the Act) are to be published by the borrowing institution in a freely accessible location on the institution's website.

Along with the object information, detailed in [section 4.3](#) below, institutions should consider including standard information on the scheme and information or links on how to obtain further details about the scheme or the objects published. For example:

- Under the requirements of the Protection of Cultural Objects on Loan Scheme these objects have been published on [insert date of web publication].
- Information on the *Protection of Cultural Objects on Loan Act 2013* can be found at [provide an internet link at the institution's website directing to the [Department of Communications and the Arts Protection of Cultural Objects on Loan webpage](#)].
- The [institution name] policies regarding foreign loans and claims handling can be found at [XXXX].

Further information on the objects can be obtained by contacting [add contact details for the borrowing institution].

If the object or exhibition is touring to more than one Australian venue, all venues and the approved borrowing institution (whether or not that institution is one of the venues for the exhibition) must publish the object information. However it is only necessary for one approved borrowing institution to have the full object details on their website, other institutions may simply place a hyperlink from their website to that site with full details.

### 4.2. Period of publication

Borrowing institutions are required to publish the specified information about an object for a period of at least four weeks before the object is imported into Australia until it is exported from Australia.

If the object or exhibition is touring to more than one Australian venue, all venues must include the object information, or hyperlink to the full information on the approved borrowing institution's website, from four weeks before the object is imported into Australia and for the length of the exhibition tour, until the object is exported from Australia.

### 4.3. Detailed information on the object

Borrowing institutions must make available the following information on their website:

- a photograph of the object
- one of the following:
  - the name of the lender (or if there is more than one entity, the name of each), or
  - the name of the person authorised to act on the lender's behalf (or if there is more than one lender, a person who is authorised to act on behalf of each lender), for example an authorised person would be a solicitor acting on a person's behalf, or
  - if the lender is a private lender who does not wish to be known publicly a statement such as 'private lender', 'private collection' or similar
- a description of the object sufficient to identify it, including as much of the following information as the borrowing institution is able to ascertain:
  - the type of object it is (for example a painting, sculpture, drawing, installation, historic artefact or a description of the material from which it was created, for example gouache and pen on paper)
  - the name and nationality of the artist, manufacturer or creator of the object
  - the title of the object
  - the dimensions of the object
  - the date on which the object was created or the period in which the object was created or likely to have been created (the date does not necessarily need to be a specific date, it could be a year, i.e. 1871, or a range of years i.e. 1871-1875)
  - a description of significant or identifying marks or significant inscriptions on the object (for example the description of a signature or an inscription on the back of a painting)
  - the place or likely place the object was created or manufactured; or if the object consists of archaeological or paleontological material, the place where the object was found, or likely to have been found
  - provenance information including the date and place the object was acquired by its current owner and where possible the date and place the object was acquired by the person who owned the object immediately before the object's current owner
- information about where the object may be seen by a member of the public while it is in Australia including:
  - each address in Australia at which the object is to be displayed and the period it will be on display at the address
  - the title of the temporary public exhibition in which the object is to be displayed.

The institution may also consider including a:

- statement detailing which registers / lists have been checked (such as the Art Loss Register, ICOM Red Lists, Interpol database of Stolen Art)
- brief summary of the full provenance for the object
- statement regarding time periods of concern such as 1933–1945, or for objects of Australian origin, the circumstance of their export from Australia.

#### 4.4. Image specifications

A thumbnail image is the minimum standard required to meet the publication requirements. A thumbnail image means low resolution image, of less than commercial quality and may be the type of resolution used for database searches.

Only one photograph is required of sufficient quality to assist with identification. The minimum requirement of one photograph also applies to objects which consist of multi-parts, such as a collection of photographic plates or a manuscript consisting of multiple leaves.

#### 4.5. Anonymity of the lender

Although the requirements allow for the lender to remain anonymous it is the responsibility of the borrower to inquire into the reasons for this request. If any doubts are raised it may be relevant for the borrower to consider further due diligence research before loan negotiations are continued.

#### 4.6. Errors or omissions in publication

If during the period of publication the institution becomes aware that the information it has published regarding an object is incomplete or inaccurate, the institution must, as soon as practicable, correct the information.

#### 4.7. Exemptions from publishing information about an object

In exceptional circumstances institutions may make an application to the Department of Communications and the Arts, requesting permission not to publish some or all of the required information on an object, or to reduce the length of the publication period.

The request must be made in writing and set out which type of information the institution does not wish to publish and the reasons not to publish that information.

The application must be made as soon as practicable before the object is to be imported into Australia. In most situations this is expected to be **eight weeks before** the object is to be imported to allow for approval to be obtained prior to the commencement of the four week publication period. The institution must liaise with the Department of Communications and the Arts as soon as practicable if timeframes cannot be met.

The Minister for the Arts, or the Minister's delegate, can grant or refuse an exemption and will notify the applicant in writing of the decision and the reasons for that decision as soon as possible.

An explanation for publication periods of less than four weeks should be provided in the institution's annual report under the scheme.

## Appendix 5—Guidance on enquiry and claims handling

Borrowing institutions approved under the *Protection of Cultural Objects on Loan Act 2013* (the Act) should document their enquiry or claims-handling policy or procedure and make it publicly available on their website.

Should a claim or enquiry be made regarding an object protected under the Act it is the responsibility of the institution to deal with that enquiry in an appropriate and timely way. These requirements are provided for under the *Protection of Cultural Objects on Loan Regulation 2014*.

### 5.1. Responsibilities of the borrowing institution

Approved borrowing institutions should provide details on their website of how potential claimants, or those with an enquiry about an object, can contact the institution should they wish to seek further information.

Institutions are encouraged to provide information on the appropriate format for making a request for information and the expected time for response. The borrowing institution must reply to potential claimants and those with a significant enquiry about an object within four weeks of receiving a request for information or claim.

#### 5.1.1 Information to be provided by the claimant

Where possible, the borrowing institution should seek the following information in writing from the claimant:

- the claimant's name, address and contact details
- where a claim or enquiry is being made on behalf of another person, that person's name, contact details and their relationship to the claimant
- a short summary of their claim to the object
- copies of any documents or other evidence that may be relevant to the claim or enquiry
- a statement confirming that the claimant is aware that the borrowing institution may inform the lender of the request and supply them with information on the claim.

#### 5.1.2 Consideration of a request

Borrowing institutions must consider the nature and circumstances of each enquiry or claim. In determining whether an enquiry or claim on an object is justified the following aspects may be considered:

- if the claimant or party making the enquiry is known to the institution, and whether the claim has been made in another jurisdiction
- the documentation or evidence provided by the claimant or party making the enquiry;
- in the case of Australian cultural material, including Aboriginal and Torres Strait Islander material, close examination of the object's provenance and history, including how the object left the custody of the individual or communities and the circumstances in which it was exported from Australia.

### 5.1.3 Information to be provided to the claimant

Within four weeks (28 days) of receiving an enquiry or claim borrowing institutions should provide a response to the person or persons. If the institution is satisfied about the nature and circumstances of the request for information or the claim, and that it is appropriate to disclose the information, then they must provide additional information to the person or persons including information:

- published in accordance with the publication requirements of the scheme, or the website address where this can be found
- on the provenance and due diligence research that was conducted in accordance with the policies and procedures of the institution as required under the Regulation.

Borrowing institutions must exercise caution when entering into contracts with a lender which require anonymity. If the borrower has doubts about the reasons for the lender's confidentiality the borrower may consider it appropriate to undertake further due diligence research and reconsider loan negotiations.

If the institution considers it appropriate to notify the lender of a potential claim, the claimant should be made aware that information regarding their enquiry may be provided to the lender. This transparency ensures that the relationship between borrower and lender is maintained.

### 5.1.4 If it is determined by the borrowing institution that the claim is justified

If a legitimate claim is made prior to importation, it is the responsibility of the approved borrowing institution to assess the continuation of loan negotiations. Once the object has been imported, protection cannot be revoked regardless of the integrity of the claim made.

Claims made on objects that are protected by the Act must be reported to the Minister for the Arts in writing and without delay. This notice should be provided to the Program Officer, Protection of Cultural Objects on Loan Scheme (contact details on [page v](#)).

## Appendix 6—References and resources

### National resources

*Australian Best Practice Guide to Collecting Cultural Material*

<https://www.arts.gov.au/publications/australian-best-practice-guide-collecting-cultural-material>

*Aboriginal and Torres Strait Islander Heritage Protection Act 1984*

<http://www.environment.gov.au/topics/heritage/laws-and-notice/indigenous-heritage-laws>  
<http://www.comlaw.gov.au/Series/C2004A02943>

Council of Australasian Archives and Records Authorities—Policy 2—Recovery of Estrays (2008)

<http://www.caara.org.au/index.php/policy-statements/recovery-of-estrays/>

*Environmental Protection and Biodiversity Conservation Act 1999*

<http://www.environment.gov.au/topics/about-us/legislation/environment-protection-and-biodiversity-conservation-act-1999>

*Historic Shipwrecks Act 1976*

<http://www.environment.gov.au/topics/heritage/historic-shipwrecks/historic-shipwrecks-laws>  
<http://www.comlaw.gov.au/Series/C2004A01619>

International Council of Museums Australia

<http://icom.org.au/site/>

Indigenous Australian Art Charter of Principles for Publically funded Collecting Institutions

[www.indigenousartcode.org](http://www.indigenousartcode.org)

Museums Galleries Australia

[www.museumsaustralia.org.au](http://www.museumsaustralia.org.au)

National Standards for Australian Museums and Galleries (version 1.5, 2016), Museums Australia  
<http://www.magsq.com.au/cms/page.asp?ID=5426>

*Protection of Movable Cultural Heritage Act 1986*

<http://www.comlaw.gov.au/Series/C2004A03252>

Protocols for working with Indigenous artists

<http://www.australiacouncil.gov.au/about/protocols-for-working-with-indigenous-artists/>

Significance 2.0: A guide to assessing the significance of collections

<http://www.environment.gov.au/heritage/publications/significance2-0/index.html>

## International resources

The Art Loss Register

[www.artloss.com](http://www.artloss.com)

Combating Illicit Trade: Due diligence guidelines for museums, libraries and archives on collecting and borrowing cultural material (2005)

<http://www.circulation-biens.culture.gouv.fr/pdf2/Combating.pdf>

Convention on International Trade in Endangered Species of Wild Fauna and Flora 1975

<http://www.cites.org>

Guidelines on the Acquisition of Archaeological Material and Ancient Art (2013)

<https://aamd.org/standards-and-practices#>

International Council of Museums

<http://icom.museum>

International Council of Museums—World Intellectual Property Organization Art and Cultural Heritage Mediation

<http://www.wipo.int/amc/en/center/specific-sectors/art/icom/>

ICOM International Observatory on Illicitly Traffic in Cultural Goods

<http://obs-traffic.museum/>

International Foundation for Art Research

<http://www.ifar.org/>

Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity

<http://www.cbd.int/abs/>

United Nations Educational, Scientific and Cultural Organization

[www.unesco.org](http://www.unesco.org)

### UNESCO Cultural conventions

[http://portal.unesco.org/en/ev.php-URL\\_ID=13649&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=-471.html](http://portal.unesco.org/en/ev.php-URL_ID=13649&URL_DO=DO_TOPIC&URL_SECTION=-471.html)

UN Convention on Biological Diversity 1992

<http://www.cbd.int/convention/text/default.shtml>

UN Declaration on the Rights of Indigenous Peoples 2007

[http://www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf)

UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects 1995

<http://www.unidroit.org/instruments/cultural-property/1995-convention>

World intellectual property organisation—traditional cultural expressions

<http://www.wipo.int/tk/en/folklore/>