



# Protection of Cultural Objects on Loan Regulation 2014

## Select Legislative Instrument No. 142, 2014

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I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd),  
Governor-General of the Commonwealth of Australia, acting with the  
advice of the Federal Executive Council, make the following regulation.

Dated 02 October 2014

Peter Cosgrove  
Governor-General

By His Excellency's Command

George Brandis QC  
Minister for the Arts

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*OPC60244 - A*



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## **Part 1—Preliminary**

### **1 Name of regulation**

This regulation is the *Protection of Cultural Objects on Loan Regulation 2014*.

### **2 Commencement**

This regulation commences on the day after it is registered.

### **3 Authority**

This regulation is made under the *Protection of Cultural Objects on Loan Act 2013*.

### **4 Definitions**

Note: A number of expressions used in this regulation are defined in the Act, including the following:

- (a) borrowing institution;
- (b) lender;
- (c) loan;
- (d) parent.

In this regulation:

***Aboriginal person*** has the same meaning as in the *Aboriginal and Torres Strait Islander Act 2005*.

***Act*** means the *Protection of Cultural Objects on Loan Act 2013*.

***Torres Strait Islander*** has the same meaning as in the *Aboriginal and Torres Strait Islander Act 2005*.

### **5 Parents of borrowing institutions**

- (1) This section applies in relation to a borrowing institution that has a parent.

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- (2) If a provision of this regulation is expressed to require the borrowing institution to do, or not to do, a thing, the requirement applies to the parent instead of the institution.

Example: If a provision requires a borrowing institution to ensure there are policies and procedures in effect, the parent must ensure that those policies and procedures are in effect instead of the institution.

- (3) If a provision of this regulation authorises a borrowing institution to do a thing, the thing may be done by the parent instead of by the institution.

Example: If a provision authorises a borrowing institution to make an application, the parent may make the application instead of the institution.

## **Part 2—Borrowing institutions**

### **6 Prescribed borrowing institutions**

For subparagraph (b)(ii) of the definition of ***borrowing institution*** in section 5 of the Act, the Museum of Contemporary Art Limited (ABN 15 003 765 517) is prescribed.

## Part 3—Protected persons

### 7 Prescribed service

For subparagraph (e)(v) of the definition of *protected person* in section 5 of the Act, the service of exhibiting the object in Australia is prescribed.

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## **Part 4—Approval of institutions**

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

- (1) For paragraph 15(2)(f) of the Act, the matters that the Minister must consider in deciding whether to approve a borrowing institution are as follows:
  - (a) whether the policies and procedures of the borrowing institution or its parent display a commitment to loans of objects, to which Part 2 of the Act would apply, being made to the highest standards of ethical and professional practice and in accordance with applicable laws;
  - (b) whether the policies and procedures of the borrowing institution or its parent are likely to ensure that:
    - (i) proposed lenders of such objects are reputable and have legal authority to lend them; and
    - (ii) there are valid export licences or permits (if required) for such objects from the countries in which they are located before being exported to Australia;
  - (c) whether the policies and procedures mentioned in paragraphs (a) and (b) require adequate provenance and due diligence research of a kind mentioned in subsection (2) to be conducted in relation to such objects.
- (2) For paragraph (1)(c), provenance and due diligence research involves doing such of the following as may be appropriate in the circumstances of a proposed loan of an object:
  - (a) conducting checks into the matters mentioned in subparagraphs (1)(b)(i) and (ii) in so far as they relate to the object;
  - (b) considering documentary evidence of the object's history of ownership and export (having regard to the object's country of origin and other countries in which it has been located);
  - (c) examining information about the lender, and current and previous owners;

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- (d) checking that the object is not mentioned in databases or registers of lost or stolen objects;
  - (e) considering secondary documentation, such as archival material and images;
  - (f) examining the exhibition and publication history of the object;
  - (g) examining the object, or detailed descriptions or photos of the object;
  - (h) consulting experts in relation to any or all of the matters set out in the preceding paragraphs of this subsection.
- (3) The borrowing institution must ensure that the policies referred to in subsection (1) are published on the borrowing institution's website.

## **Part 5—Consultation**

### **9 Consultation policies and procedures**

- (1) A borrowing institution must ensure that there are written policies and procedures in effect that set out the consultation processes that will be used if the institution or a parent of the institution proposes the loan of an object to which Part 2 of the Act will apply.

Note: For how this rule applies if the borrowing institution has a parent, see section 5.

- (2) The policies and procedures must set out the consultation processes that will be used if such an object:
- (a) relates to an individual, family group or community in Australia; or
  - (b) relates to an Aboriginal person or a Torres Strait Islander; or
  - (c) is relevant to an archive of a State or Territory.
- (3) The policies and procedures must include a requirement for the following matters to be considered in deciding whether or not to consult in relation to the proposed loan of such an object:
- (a) whether the object has historical significance to a particular individual, group, event, place or activity;
  - (b) whether there are specific family associations with the object;
  - (c) whether the object has social or spiritual significance to a particular community in Australia;
  - (d) whether there is a demonstrated attachment between the object and an individual, family group or community in Australia;
  - (e) whether the object embodies beliefs, ideas, customs, traditions, practices or stories that are important to a particular community in Australia.
- (4) The policies and procedures must not be inconsistent with section 10.

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- (5) The borrowing institution must ensure that the policies referred to in subsection (1) are published on the borrowing institution's website.

**10 Form of consultation and who must be consulted**

- (1) Consultation undertaken in relation to the proposed loan of an object must:
- (a) give the individual, group or body being consulted an adequate opportunity to comment; and
  - (b) be appropriate for the object proposed to be loaned and the individual, group or body being consulted; and
  - (c) be respectful and meaningful to the individual, group or body being consulted.
- (2) Consultation undertaken in relation to the proposed loan of an object must be with:
- (a) any individual, family group or community in Australia to which the object relates; and
  - (b) if the object relates to an individual who is an Aboriginal person or a Torres Strait Islander—that individual or representatives of that individual (or both); and
  - (c) if the object relates to a State or Territory archive—the person or body responsible for that archive.
- (3) Subsection (2) does not limit who may be consulted in relation to the proposed loan of an object.

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

### **11 Publishing information about objects**

- (1) A borrowing institution must ensure that the following information is published on the institution's website about each object that is the subject of a proposed loan to the institution or its parent and to which Part 2 of the Act will apply:
- (a) a photograph of the object;
  - (b) one of the following:
    - (i) the name of the lender of the object;
    - (ii) the name of the person authorised to act on the lender's behalf;
    - (iii) the statement "private lender", "private collection" or a similar description;
  - (c) a description of the object sufficient to identify it, including as much of the following information as the borrowing institution or its parent is able to ascertain:
    - (i) the type of object;
    - (ii) the name and nationality of the artist, creator or manufacturer of the object;
    - (iii) the title of the object;
    - (iv) the dimensions of the object;
    - (v) the date on which, or the period during which, the object was, or is likely to have been, created or manufactured;
    - (vi) a description of significant marks or inscriptions on the object;
    - (vii) the place or likely place the object was created or manufactured;
    - (viii) if the object consists of archaeological or palaeontological material—the place where the object was found or likely to have been found;
    - (ix) the date and place the object was acquired by its current owner;

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- (x) the date and place the object was acquired by the person who owned the object immediately before the object's current owner;
- (d) each address in Australia at which the object is to be displayed and the period during which the object will be displayed at the address;
- (e) the title of the temporary public exhibition or exhibitions at which the object is to be displayed.

Note: For how this rule applies if the borrowing institution has a parent, see section 5.

- (2) The information must:
  - (a) be published on the borrowing institution's website at least 4 weeks before the object is to be imported into Australia; and
  - (b) remain on the institution's website until the object is exported from Australia.
- (3) This section does not apply in relation to information covered by a permission granted under section 12.

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

- (1) A borrowing institution may apply to the Minister for permission not to publish on the institution's website some or all of the information mentioned in subsection 11(1) about an object.

Note: For how this rule applies if the borrowing institution has a parent, see section 5.

- (2) The application must:
  - (a) be in writing; and
  - (b) set out:
    - (i) the information that the applicant does not wish to be published; and
    - (ii) the reasons for the application and supporting information; and
  - (c) be made as soon as practicable before the object is to be imported into Australia.
- (3) The Minister must, by written notice given to the applicant, either grant or refuse to grant the permission.

- (4) If the Minister refuses to grant the permission, the notice must include reasons for the refusal.

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

- (1) This section applies if:
- (a) a combination of 2 or more of the following propose the loan of an object under a temporary loan arrangement with the same lender or exhibition facilitator:
    - (i) a borrowing institution;
    - (ii) the parent of a borrowing institution; and
  - (b) the object is to remain in Australia until the arrangement has expired.
- (2) A borrowing institution referred to in subsection (1), or a parent of such an institution, is taken to comply with section 11 in relation to the object if:
- (a) there is included on the institution's website a hyperlink to information about the object published in accordance with section 11 on the website of one of the other borrowing institutions referred to in paragraph (1)(a) of this section; and
  - (b) the hyperlink is included as soon as practicable after the information is published on the other website; and
  - (c) the hyperlink remains on the website until the object is exported from Australia.

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

A borrowing institution must ensure that its website is updated to correct any error or omission in information published on the website in accordance with section 11 as soon as practicable after becoming aware of the error or omission.

Note: For how this rule applies if the borrowing institution has a parent, see section 5.

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

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

- (1) This section applies to a borrowing institution if:
    - (a) an object to which Part 2 of the Act applies is on loan to the institution or its parent; and
    - (b) the institution or parent receives:
      - (i) a written request for information about the object from one or more persons who may have an interest in the object; or
      - (ii) a written claim that one or more persons have an interest in the object; and
    - (c) the object has not been exported from Australia before the request or claim is received.
  - (2) The borrowing institution must, within 28 days after the request or claim is received, give the person or persons:
    - (a) the website address where information about the object is published as required by section 11; and
    - (b) information held by the institution or its parent as a result of provenance and due diligence research conducted in accordance with the policies and procedures mentioned in paragraph 8(1)(c).
- Note: For how this rule applies if the borrowing institution has a parent, see section 5.
- (3) Paragraph (2)(b) does not apply if the borrowing institution is satisfied, having regard to the nature of the information and the nature and circumstances of the request or claim, that it is not appropriate for the information to be given.
  - (4) If the borrowing institution or parent receives a claim mentioned in subparagraph (1)(b)(ii), the borrowing institution must give the Minister:
    - (a) written notice of the claim; and

(b) on request by the Minister—a copy of the claim.

## Part 8—Report to Minister

### 16 Report to Minister on activities of borrowing institution

- (1) A borrowing institution must ensure that:
- (a) a report is prepared on the activities of the borrowing institution during each financial year in relation to the loan, or proposed loan, of objects to which Part 2 of the Act applies; and
  - (b) the report is given to the Minister by the next 31 October after the financial year.

Note: For how this rule applies if the borrowing institution has a parent, see section 5.

- (2) The borrowing institution's report for a financial year must include:
- (a) the following information for each exhibition in which the institution was involved during the financial year that included an object to which Part 2 of the Act applies:
    - (i) the title of the exhibition;
    - (ii) a description of the object;
    - (iii) each location at which the exhibition was held;
    - (iv) the date on which the object was imported into Australia;
    - (v) the date on which the object was, or is to be, exported from Australia;
    - (vi) the date on which the exhibition commenced;
    - (vii) the date on which the exhibition ended or is to end;
    - (viii) the number of visitors who attended the exhibition during the financial year; and
  - (b) details of any provenance or due diligence research conducted in accordance with the policies and procedures mentioned in paragraph 8(1)(c); and
  - (c) details of any consultation undertaken in accordance with Part 5; and

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- (d) if information was published on the institution's website in accordance with section 11—a copy of that information; and
  - (e) if a hyperlink to information about an object was included on the institution's website in accordance with section 13—a statement to that effect; and
  - (f) a statement that the information published as mentioned in paragraph (d), or the hyperlink included as mentioned in paragraph (e), remained on the institution's website for at least the period required under Part 6, and any information that may confirm that statement.
- (3) If a request or claim mentioned in section 15 was received by a borrowing institution or a parent of a borrowing institution during the financial year, the report under this section must include information about:
- (a) the request or claim; and
  - (b) the action taken in accordance with section 15 in relation to the request or claim.

## Part 9—Miscellaneous

### 17 Delegation

The Minister may, by writing, delegate all or any of his or her functions and powers under this regulation to an SES employee or acting SES employee in the Department.

Note: The expressions *SES employee* and *acting SES employee* are defined in section 2B of the *Acts Interpretation Act 1901*.