

Explanatory Statement

Issued by the Authority of the Minister for the Arts

Protection of Cultural Objects on Loan Act 2013

Protection of Cultural Objects on Loan Amendment Regulations 2023

Authority

The *Protection of Cultural Objects on Loan Amendment Regulations 2023* is made under section 21 of the *Protection of Cultural Objects on Loan Act 2013*.

Section 21 empowers the Governor-General to make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Purpose

The purpose of the instrument is to prescribe four additional borrowing institutions in the *Protection of Cultural Objects on Loan Regulation 2014* (the Regulation) as enabled by the subparagraph 5(b)(ii) of the *Protection of Cultural Objects on Loan Act 2013* (the Act).

Increasing the number of institutions eligible for approval has the potential to encourage more loans of cultural objects to Australia and provide Australians with greater access to this material.

Background

The Act encourages loans of important art and cultural material by providing legal protection against seizure and suit for cultural objects borrowed from an overseas lender by an approved borrowing institution for the purpose of temporary public exhibition in Australia. Section 5 of the Act defines a borrowing institution as an organisation that:

- (a) collects and publicly exhibits in Australia objects that are of interest for archaeological, artistic, ethnological, historical, literary, scientific or technological reasons; and
- (b) is either:
 - (i) established by a law of the Commonwealth, a State or a Territory, except a law prescribed by regulation for the purposes of this subparagraph; or
 - (ii) prescribed by regulation as a borrowing institution.

A borrowing institution that meets these criteria can apply to become an approved borrowing institution under section 15 of the Act.

There are no specified requirements outlined in section 5, or the Explanatory Memorandum, for when organisations may be prescribed as borrowing institutions under the Regulation. Section 6 of the Regulation currently prescribes one institution, the Museum of Contemporary Art Limited.

There are a number of other institutions in Australia that satisfy paragraph 5(a) of the Act and routinely stage exhibitions likely to include international loans. These institutions are not currently eligible to apply for protection under the Act because they are not established by a

Commonwealth, State or Territory law, or prescribed by regulation. By prescribing additional organisations under the Regulation as borrowing institutions, it allows them to be eligible to apply to become an approved borrowing institution under the Act.

Being listed as an eligible borrowing institution in the Regulation will make these institutions eligible to apply to become an approved borrowing institution under the Act. In order to be approved, listed institutions will need to satisfy the Minister or their delegate that they comply with the requirements of the Act and the Regulation.

Summary of the *Protection of Cultural Objects on Loan Amendment Regulations 2023*

Schedule 1 of the *Protection of Cultural Objects on Loan Amendment Regulations 2023* (amending Regulations) prescribes the following four additional organisations, Art Gallery of Ballarat, Bendigo Art Gallery, Heide Museum of Modern, and HOTA, Home of the Arts, as borrowing institutions under section 6 of the Regulation. Following their prescription, these organisations will be eligible to apply to be approved borrowing institutions under the Act.

The amending Regulations are a legislative instrument for the purposes of the *Legislation Act 2003* and is subject to the default sunseting requirements and disallowance. The amending Regulations commence the day after it is registered.

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

Consultation

The Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the department) consulted with a number of cultural institutions in Australia that are not currently eligible to apply for protection under the Act, but routinely stage international exhibitions, to determine if they would benefit from being eligible to apply for protection under the Act. The Art Gallery of Ballarat, Bendigo Art Gallery, Heide Museum of Modern Art, and HOTA, Home of the Arts outlined their interest in being prescribed and were deemed appropriate to be prescribed given their relevant collection and exhibition activities.

The department consulted with the Office of Impact Analysis (OIA) and provided a completed Australian Government Regulation Impact Statement (RIS) Preliminary Assessment Form. Based on this document, the OIA advised that the preparation of a RIS Impact Analysis was not required as the proposal is unlikely to have a more than minor regulatory impact, as it would permit but not mandate a limited number of institutions to apply for approval under the Act (reference number OBPR22-03834).

Statement of Compatibility with Human Rights

A statement of compatibility with human rights for the purposes of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out at [Attachment B](#).

Details of the *Protection of Cultural Objects on Loan Amendment Regulations 2023*

Section 1 – *Protection of Cultural Objects on Loan Amendment Regulations 2023*

This section provides that the name of the instrument is the *Protection of Cultural Objects on Loan Amendment Regulations 2023*.

Section 2 – Commencement

This section provides for the instrument to commence on the day after it is registered on the Federal Register of Legislation.

Section 3 – Authority

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

Section 4 – Schedules

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

Schedule 1 – Amendments

Schedule 1 prescribes four additional institutions under section 6 of the *Protection of Cultural Objects on Loan Regulation 2014* (the Regulation) who are deemed to be appropriate to be listed as borrowing institutions and be eligible to apply for protection under the *Protection of Cultural Objects on Loan Act 2013*. These organisations are:

- Art Gallery of Ballarat (ABN 28 145 246 224)
- Bendigo Art Gallery (ABN 59 616 353 093)
- Heide Park and Art Gallery, trading as Heide Museum of Modern Art (ABN 60 005 712 943), and
- HOTA Gold Coast Pty Ltd, trading as HOTA, Home of the Arts (ABN 85 060 787 466).

These organisations are prescribed in addition to the Museum of Contemporary Art Limited, which has previously been prescribed under the Regulation.

Statement of Compatibility with Human Rights

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

Protection of Cultural Objects on Loan Amendment Regulations 2023

Overview

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

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

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

Human rights implications

This Legislative Instrument engages with the following right:

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

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

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

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

Article 1 of the *International Covenant on Economic, Social and Cultural Rights* and Article 1 of the *International Covenant on Civil and Political Rights* recognise the right to self-determination, including that groups with a common racial or cultural identity, especially Indigenous peoples, have the right to a level of internal self-determination. Consultation about loans of cultural objects is required under the *Protection of Cultural Objects on Loan Regulation 2014* whenever an object: relates to an individual, family group or community in Australia; or relates to an Aboriginal person or a Torres Strait Islander. This Legislative Instrument will promote the realisation of the right to self-determination because it will result in more institutions borrowing objects in compliance with the *Protection of Cultural Objects on Loan Regulation 2014*.

Conclusion

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