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Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

Protection of Cultural Objects on Loan Bill 2012

No. , 2012

(Regional Australia, Local Government, Arts and Sport)

**A Bill for an Act to encourage the loan of objects
from overseas for temporary public exhibition in
Australia, and for related purposes**

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1 **A Bill for an Act to encourage the loan of objects**
2 **from overseas for temporary public exhibition in**
3 **Australia, and for related purposes**

4 The Parliament of Australia enacts:

5 **Part 1—Preliminary**
6

7 **1 Short title**

8 This Act may be cited as the *Protection of Cultural Objects on*
9 *Loan Act 2012*.

Section 2

1 **2 Commencement**

2 (1) Each provision of this Act specified in column 1 of the table
3 commences, or is taken to have commenced, in accordance with
4 column 2 of the table. Any other statement in column 2 has effect
5 according to its terms.
6

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Sections 3 to 21	A single day to be fixed by Proclamation. However, if the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	

7 Note: This table relates only to the provisions of this Act as originally
8 enacted. It will not be amended to deal with any later amendments of
9 this Act.

10 (2) Any information in column 3 of the table is not part of this Act.
11 Information may be inserted in this column, or information in it
12 may be edited, in any published version of this Act.

13 **3 Objects of this Act**

14 (1) The main object of this Act is to encourage lenders to lend objects
15 for temporary public exhibition in Australia under arrangements
16 involving certain institutions.

17 (2) This Act seeks to achieve that object by limiting the circumstances
18 in which ownership or physical possession, custody or control of
19 the objects in Australia can be affected by:

20 (a) legal proceedings; or

- 1 (b) the enforcement of a judgement or order of a court; or
2 (c) an action taken under a law of the Commonwealth, a State or
3 a Territory; or
4 (d) the operation of such a law.

5 **4 Simplified outline**

6 The following is a simplified outline of this Act:

7 This Act deals with objects that are normally in a foreign country
8 but are imported into Australia on loan for temporary public
9 exhibition under arrangements made by certain institutions
10 approved by the Minister.

11 While the objects are in Australia, Part 2 limits the circumstances
12 in which lenders, exhibition facilitators, exhibiting institutions and
13 people working for any of them can lose ownership or physical
14 possession, custody or control of the objects because of:

15 (a) legal proceedings in Australian or foreign courts;
16 or

17 (b) the exercise of certain powers (such as powers of
18 seizure) under Commonwealth, State and Territory
19 laws; or

20 (c) the operation of such laws.

21 Part 3 deals with the approval of institutions by the Minister, and
22 the end of such approval.

23 Part 4 deals with miscellaneous matters.

24 **5 Definitions**

25 In this Act:

26 ***acquisition of property*** has the same meaning as in paragraph
27 51(xxxi) of the Constitution.

Section 5

1 **Australia**, when used in a geographical sense, includes the external
2 Territories.

3 **borrowing institution** means an organisation (whether a person or
4 not) that:

5 (a) collects and publicly exhibits in Australia objects that are of
6 interest for archaeological, artistic, ethnological, historical,
7 literary, scientific or technological reasons; and

8 (b) is either:

9 (i) established by a law of the Commonwealth, a State or a
10 Territory, except a law prescribed by regulation for the
11 purposes of this subparagraph; or

12 (ii) prescribed by regulation as a borrowing institution.

13 Note: For prescription by class, see subsection 13(3) of the *Legislative*
14 *Instruments Act 2003*.

15 **exhibiting institution** for an object means the borrowing institution
16 that has made arrangements for the temporary public exhibition of
17 the object in Australia.

18 **exhibition facilitator** for an object means a person who:

19 (a) has a temporary loan arrangement for the object with a lender
20 of the object; and

21 (b) has a temporary loan arrangement for the object with:

22 (i) an exhibiting institution for the object; or

23 (ii) the parent of such an institution; and

24 (c) is not a lender of the object, an exhibiting institution for the
25 object or the parent of such an institution; and

26 (d) carries on a business (whether or not for profit) of making
27 arrangements for temporary public exhibitions in Australia of
28 objects from collections outside Australia.

29 **heritage law** means a law of the Commonwealth, a State or a
30 Territory that relates to heritage, whether or not the law relates to:

31 (a) heritage of a particular community, such as Aboriginal or
32 Torres Strait Islander heritage; or

33 (b) heritage of a particular kind, such as:

34 (i) objects associated with historic shipwrecks; or

35 (ii) records of government; or

1 (iii) other archival material.

2 **just terms** has the same meaning as in paragraph 51(xxxi) of the
3 Constitution.

4 **lender** of an object means a person who:

5 (a) is:

6 (i) an individual who is not ordinarily resident in Australia;
7 or

8 (ii) a corporation incorporated by or under the law of a
9 foreign country; or

10 (iii) a body politic of a foreign country (or part of a foreign
11 country); and

12 (b) is a party to a temporary loan arrangement (the **head**
13 **arrangement**) for the object with a borrowing institution, the
14 parent of a borrowing institution or a person who:

15 (i) has, or may reasonably be expected to have in future as
16 a result of the head arrangement, a temporary loan
17 arrangement for the object with a borrowing institution
18 or the parent of a borrowing institution; and

19 (ii) is not an exhibiting institution for the object or the
20 parent of such an institution; and

21 (iii) carries on a business (whether or not for profit) of
22 making arrangements for temporary public exhibitions
23 in Australia of objects from collections outside
24 Australia; and

25 (c) would reasonably be expected to have physical possession,
26 custody or control of the object outside Australia for the
27 period of the loan under the head arrangement, apart from
28 that arrangement.

29 **loan** of an object includes an arrangement for:

30 (a) the temporary transfer of the physical possession, custody or
31 control of the object directly or indirectly from one person to
32 another person, whether or not any consideration is provided
33 for the transfer; and

34 (b) the transfer of the physical possession, custody or control of
35 the object directly or indirectly from the other person back to
36 the first person.

Section 5

- 1 **parent** of a borrowing institution that is not a person means:
2 (a) if the institution is a Department of State, or part of such a
3 Department, of the Commonwealth, a State or a Territory—
4 the Commonwealth, State or Territory (as appropriate); or
5 (b) if the operations of the institution are a distinct part of the
6 operations of a body corporate—that body.

- 7 **protected person** for an object means:
8 (a) a lender of the object; or
9 (b) an officer, employee or agent of a lender of the object who
10 accompanies the object for some or all of the time it is on
11 loan; or
12 (c) an exhibition facilitator for the object, an exhibiting
13 institution for the object or the parent of such an institution;
14 or
15 (d) a person who is:
16 (i) an officer, employee, agent or delegate of an exhibition
17 facilitator for the object; or
18 (ii) an officer, employee, agent or delegate of an exhibiting
19 institution for the object or the parent of such an
20 institution; or
21 (e) a person engaged by a lender of the object, an exhibition
22 facilitator for the object or an institution or parent described
23 in paragraph (c) to do any of the following:
24 (i) transport the object from one place in Australia to
25 another or between Australia and a foreign country;
26 (ii) carry out conservation work on the object in Australia;
27 (iii) store the object in Australia;
28 (iv) provide security for the object while it is being
29 transported between Australia and a foreign country or
30 while it is in Australia;
31 (v) provide a service that relates to the object and is
32 prescribed by regulation; or
33 (f) an officer, employee, agent or delegate of a person described
34 in paragraph (e).

35 **temporary loan arrangement** for an object means an arrangement
36 for the loan of the object for temporary public exhibition of the

1 object in Australia under arrangements made by a borrowing
2 institution.

3 **6 This Act binds the Crown**

4 This Act binds the Crown in each of its capacities.

5 **7 Extension to external Territories**

6 This Act extends to every external Territory.
7

1 **Part 2—Protection**
2

3 **8 Application of this Part**

4 (1) This Part applies to an object if:

- 5 (a) the object is imported into Australia on loan under a
6 temporary loan arrangement between a lender of the object
7 and either or both of the following:
8 (i) an exhibiting institution for the object or the parent of
9 such an institution;
10 (ii) an exhibition facilitator for the object who has an
11 arrangement with either an exhibiting institution for the
12 object or the parent of such an institution; and
13 (b) the object is imported only or mainly for the purpose of
14 temporary public exhibition of the object in Australia under
15 arrangements made by the institution; and
16 (c) the institution is approved under Part 3 when the object is
17 imported; and
18 (d) one or more of the following circumstances exist:
19 (i) the loan is in the course of trade or commerce between
20 Australia and a foreign country;
21 (ii) the lender of the object is a foreign corporation within
22 the meaning of paragraph 51(xx) of the Constitution;
23 (iii) the institution, the parent of the institution or the
24 exhibition facilitator is a corporation to which paragraph
25 51(xx) of the Constitution applies or a corporation
26 established by a law of the Commonwealth or a
27 Territory;
28 (iv) the parent of the institution or the exhibition facilitator
29 is the Commonwealth or a Territory;
30 (v) the public exhibition of the object is to occur, is
31 occurring or has occurred in a Territory;
32 (vi) the public exhibition of the object is to occur, is
33 occurring or has occurred in a place acquired by the
34 Commonwealth for public purposes within the meaning
35 of paragraph 52(i) of the Constitution;

- 1 (vii) this Part is appropriate and adapted to giving effect to
2 Australia's obligations under an agreement that is
3 between Australia and one or more foreign countries or
4 international organisations and that is relevant to the
5 loan of the object by the lender; and
6 (e) the import does not contravene a law of the Commonwealth
7 prescribed by regulation for the purposes of this paragraph;
8 and
9 (f) the object is not a Class A object as defined in the *Protection*
10 *of Movable Cultural Heritage Act 1986* when the object is
11 imported; and
12 (g) the object is not specified in a written notice that:
13 (i) was given by the institution or its parent to the Minister
14 before a time that was prescribed by regulation and was
15 before the object is imported; and
16 (ii) was in a form approved by the Minister; and
17 (iii) has not been withdrawn before the object is imported.

18 Note: A law is to be prescribed for the purposes of paragraph (1)(e) only if it
19 gives effect to an international agreement: see section 21.

- 20 (2) This Part ceases to apply to the object:
21 (a) when one of the following events occurs:
22 (i) the end of 24 months starting on the day the object is
23 imported into Australia;
24 (ii) the export of the object from Australia; or
25 (b) if, before an event described in paragraph (a) occurs, the
26 Minister declares by notice published on the Department's
27 website that this Part ceases to apply to the object at a time
28 that:
29 (i) is worked out in accordance with the declaration; and
30 (ii) is at least 24 months after the day the object is imported
31 into Australia;
32 at the time worked out in accordance with the declaration.
- 33 (3) The Minister may make a declaration for the purposes of
34 paragraph (2)(b):
35 (a) only on application by the exhibiting institution; and

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1 (b) only if the Minister is satisfied that exceptional
2 circumstances justify the making of the declaration.

3 (4) A declaration made under subsection (3) is not a legislative
4 instrument.

5 *Certain movements of objects are not import or export*

6 (5) For the purposes of this section, the object is neither imported into
7 Australia nor exported from Australia merely because the object is
8 moved between an external Territory and either a State or an
9 internal Territory (whether the movement is to or from the external
10 Territory, State or internal Territory).

11 **9 Protection from suit**

12 *Actions in personam*

13 (1) Proceedings for an action in personam relating to the object cannot
14 be started against a protected person for the object.

15 Note: If such proceedings have been started before this Part applies to the
16 object, a judgement or order made in the proceedings cannot be
17 enforced while this Part applies to the object: see section 10.

18 *Actions in rem*

19 (2) Proceedings for an action in rem relating to the object cannot be
20 started.

21 Note: If such proceedings have been started before this Part applies to the
22 object, a judgement or order made in the proceedings cannot be
23 enforced while this Part applies to the object: see section 10.

24 *Exception for protected persons starting proceedings*

25 (3) Subsections (1) and (2) do not prevent a person who is a protected
26 person for the object because of a particular paragraph of the
27 definition of **protected person** in section 5 from starting
28 proceedings against a person who is a protected person for the
29 object because of that paragraph, or a later paragraph, of that
30 definition.

31 Example: An exhibiting institution can start an action against a person it engages
32 to transport the object, because:

- 1 (a) the exhibiting institution is a protected person because of
 2 paragraph (c) of the definition of *protected person*; and
 3 (b) the person engaged to transport the object is a protected person
 4 because of paragraph (e) of that definition.

5 *Exception for certain proceedings*

- 6 (4) Subsections (1) and (2) do not apply to:
 7 (a) proceedings under the *Proceeds of Crime Act 2002*; or
 8 (b) proceedings prescribed by regulation for the purposes of this
 9 subsection.

10 *This section applies to starting of proceedings in any way*

- 11 (5) This section applies to the starting of proceedings in a federal court
 12 or a court of a State or Territory by claim, cross-claim or
 13 otherwise.

14 **10 Protection from enforcement of judgements and orders**

- 15 (1) An act cannot be done in relation to the object to enforce a
 16 judgement or order of a federal court or a court of a State, Territory
 17 or foreign country that:
 18 (a) is a judgement or order in personam against a protected
 19 person for the object; or
 20 (b) is a judgement or order in rem relating to the object.

21 *Exception for some foreign judgements and awards*

- 22 (2) Subsection (1) does not prevent an act from being done:
 23 (a) under Part 2 of the *Foreign Judgments Act 1991* to enforce a
 24 judgement of:
 25 (i) a superior court of a country in relation to which that
 26 Part extends; or
 27 (ii) an inferior court to which that Part extends; or
 28 (b) under Part 7 of the *Trans-Tasman Proceedings Act 2010* to
 29 enforce a judgement of a court of New Zealand; or
 30 (c) under Part II of the *International Arbitration Act 1974*.

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1 *Exception for judgements and orders favouring protected persons*

2 (3) Subsection (1) does not prevent an act from being done to enforce
3 a judgement or order in favour of a protected person for the object,
4 unless:

5 (a) that person is a protected person for the object because of a
6 particular paragraph of the definition of *protected person* in
7 section 5; and

8 (b) the judgement or order is against a person who is a protected
9 person for the object because of an earlier paragraph of that
10 definition.

11 *Exception for certain other judgements and orders*

12 (4) Subsection (1) does not apply to:

13 (a) an order made under the *Proceeds of Crime Act 2002*; or

14 (b) a judgement or order made in proceedings prescribed by
15 regulation for the purposes of this subsection.

16 **11 Protection from seizure under statutory powers**

17 (1) The object cannot be seized under a law of the Commonwealth, a
18 State or a Territory.

19 (2) Subsection (1) does not prevent seizure under:

20 (a) Part IAA of the *Crimes Act 1914*; or

21 (b) Part 3-5 of the *Proceeds of Crime Act 2002*; or

22 (c) a law of the Commonwealth, a State or a Territory that gives
23 a police officer (however described) a power of seizure and
24 does not give that power to anyone other than a police
25 officer; or

26 (d) a law of the Commonwealth, a State or a Territory prescribed
27 by regulation for the purposes of this subsection.

28 **12 Protection from forfeiture**

29 (1) The object cannot be forfeited because of a law of the
30 Commonwealth, a State or a Territory.

- 1 (2) Subsection (1) does not prevent forfeiture (or the possibility of
2 forfeiture) because of:
3 (a) Part IAA of the *Crimes Act 1914*; or
4 (b) Part 2-2 or 2-3 of the *Proceeds of Crime Act 2002*; or
5 (c) a law of the Commonwealth, a State or a Territory prescribed
6 by regulation for the purposes of this subsection.

7 **13 Protection from heritage laws and things done under them**

- 8 (1) Nothing in, or done under, a heritage law prohibits or restricts,
9 conditionally or unconditionally, a protected person for the object
10 doing anything in relation to the object for the purpose of:
11 (a) giving effect to a temporary loan arrangement for the object
12 (whether or not the person is party to the arrangement); or
13 (b) meeting the person's obligations to another protected person
14 who is party to a temporary loan arrangement for the object.
- 15 (2) Nothing in, or done under, a heritage law affects:
16 (a) ownership of the object; or
17 (b) physical possession, custody or control of the object by a
18 protected person; or
19 (c) a right of a protected person to physical possession, custody
20 or control of the object.

21 *Exception for prescribed heritage laws*

- 22 (3) This section does not apply to a heritage law prescribed by
23 regulation for the purposes of this subsection.

24 *Relationship of this section with the rest of this Part*

- 25 (4) This section does not limit any other section of this Part, and is not
26 limited by any other section of this Part.

27 **14 Relationship with other laws**

- 28 This Part has effect despite:
29 (a) any other law of the Commonwealth (whether made before or
30 after the commencement of this section); and

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1
2
3

(b) any rule of common law or equity (including, for example, a rule of private international law).

1 **Part 3—Approval of institutions**

2 **Division 1—Approval**

3 **15 Approval**

- 4 (1) On application by or on behalf of a borrowing institution, the
5 Minister may approve the institution, for a specified period not
6 more than 60 months, by notice given to the institution and
7 published on the Department’s website.

8 *Considerations in deciding whether to approve*

- 9 (2) In deciding whether to approve a borrowing institution, the
10 Minister must consider:
- 11 (a) the institution’s curatorial expertise and expertise in
12 management of collections; and
 - 13 (b) the procedures used by the institution to identify the
14 provenance of objects collected or exhibited by the
15 institution; and
 - 16 (c) the procedures used by the institution to identify objects in a
17 foreign country that could be the subject of temporary loan
18 arrangements for exhibition under arrangements made by the
19 institution; and
 - 20 (d) the procedures used by the institution or by its parent for
21 negotiating temporary loan arrangements for objects that are
22 normally in a foreign country (whether those arrangements
23 are with lenders or exhibition facilitators); and
 - 24 (e) whether the institution often publicly exhibits in Australia
25 objects that are normally in a foreign country; and
 - 26 (f) the matters (if any) prescribed by regulation for the purposes
27 of this paragraph.

28 This does not limit the matters the Minister may consider.

29 *Approval is not a legislative instrument*

- 30 (3) A notice under subsection (1) is not a legislative instrument.

Part 3 Approval of institutions

Division 1 Approval

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1 **16 Conditions on approval**

2 (1) The Minister may impose, vary and revoke conditions on the
3 approval of a borrowing institution, by notice given to the
4 institution and published on the Department's website.

5 (2) A notice under subsection (1) is not a legislative instrument.
6

1 **Division 2—Revocation of approval**

2 **17 Revocation of approval**

3 (1) The Minister may revoke an approval of a borrowing institution by
4 notice given to the institution and published on the Department's
5 website if the Minister is satisfied:

6 (a) that there has been:

7 (i) a contravention of a regulation involving the institution;

8 or

9 (ii) a contravention of any conditions on the approval; or

10 (b) that the approval should be revoked, having regard to the
11 matters described in paragraphs 15(2)(a), (b), (c), (d), (e) and
12 (f) and any other relevant matters.

13 (2) A notice under subsection (1) is not a legislative instrument.
14

1 **Division 3—Review of decisions**

2 **18 Review by the Administrative Appeals Tribunal**

3 Applications may be made to the Administrative Appeals Tribunal
4 for decisions of the Minister:

- 5 (a) to refuse to approve a borrowing institution under section 15;
6 or
7 (b) to impose or vary under section 16 a condition on the
8 approval of a borrowing institution; or
9 (c) to revoke under section 17 an approval of a borrowing
10 institution.
11

Part 4—Miscellaneous**19 Delegation**

The Minister may, by writing, delegate all or any of his or her functions and powers under this Act, except section 21, 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*.

20 Compensation for acquisition of property

- (1) If the operation of this Act would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may start proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

21 Regulations

- (1) The Governor-General may make regulations prescribing matters:
 - (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Before the Governor-General makes a regulation prescribing a law of the Commonwealth for the purposes of paragraph 8(1)(e), the Minister must be satisfied that the law to be prescribed gives effect to an agreement between Australia and one or more foreign countries or international organisations.
- (3) A regulation may make provision relating to:
 - (a) the consultation by borrowing institutions, or their parents, of members of communities, or organisations representing them, about proposed loans of objects relating to those

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- 1 communities to the institutions or parents by lenders or
2 exhibition facilitators; and
- 3 (b) the consultation by borrowing institutions, or their parents, of
4 persons or bodies responsible for archives of States or
5 Territories about proposed loans of objects relevant to those
6 archives to the institutions or parents by lenders or exhibition
7 facilitators; and
- 8 (c) the publication of information by borrowing institutions or
9 their parents about objects proposed to be lent to them by
10 lenders or exhibition facilitators; and
- 11 (d) the action to be taken by a borrowing institution, or a parent
12 of a borrowing institution, if it becomes aware of an act or
13 event:
- 14 (i) that relates to an object to which Part 2 applies in
15 connection with the institution; and
- 16 (ii) that the institution or parent believes may be or lead to a
17 contravention of Part 2; and
- 18 (e) the giving to the Minister of reports on activities of
19 borrowing institutions relevant to the operation of this Act or
20 a regulation in a financial year by the next 31 October after
21 the financial year; and
- 22 (f) the giving to the Minister of other reports relevant to the
23 operation of this Act or a regulation.

24 This does not limit subsection (1).