



Australian Government

**Department of Infrastructure, Transport,
Regional Development, Communications, Sport and the Arts**

OFFICE FOR THE ARTS / COLLECTIONS AND CULTURAL HERITAGE

Protection of Cultural Objects on Loan Scheme—scheme guidelines

July 2025



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1. Introduction

The Protection of Cultural Objects on Loan Act 2013 (the Act) supports international cultural exhibitions in Australia. It establishes a Scheme that protects Australian and international cultural objects on loan from overseas lenders for temporary public exhibition in Australia. Providing this protection addresses a significant obstacle that Australia’s major cultural institutions have faced in securing international loans of cultural objects, and aligns Australia with an international standard to protect such 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**. The Act prevents most types of legal action in relation to loaned objects, including seizure and suit (legal proceedings brought to a court of law) and the enforcement of legal judgements and orders.

Eligible Australian borrowing institutions can apply for approval under the Protection of Cultural Objects on Loan Scheme (the Scheme). Approvals last for up to five years and can be renewed. Once an institution is approved, the cultural objects it imports for temporary public exhibition are automatically protected if the agreement is with a lender who is not ordinarily a resident in Australia.

The Scheme protects cultural material of any type, with minimal exceptions (as outlined in **section 2**). Protection for an object lasts for up to two years from the date it is imported into Australia, but may be extended in exceptional circumstances.

To gain protection of objects under the Act, approved borrowing institutions must satisfy the conditions of the Scheme for each loan, including provenance research, due diligence, consultation and publication standards. These requirements are outlined in the Protection of Cultural Objects on Loan Regulations 2024 (the Regulations). You can access the full text of the Act and the Regulations by searching the Federal Register of Legislation at www.legislation.gov.au.

These Guidelines provide information on applying for approval under the Scheme and outline the information and documentation required to support an application. They also describe how the Scheme operates and details the processes that approved borrowing institutions should follow in relation to international loans.

You should read these Guidelines before commencing an application under the Act and continue to refer to them while developing your application. The department cannot provide legal advice to applicants or approved borrowing institutions. Applicants and approved borrowing institutions should seek their own independent professional advice on all legal matters, including compliance with any statutory obligations.

A list of Frequently Asked Questions is published on the following website: <https://www.arts.gov.au/funding-and-support/protection-cultural-objects-loan-scheme>.

Please also contact the Protection of Cultural Objects on Loan Program Officer for advice on Scheme requirements.

Contact details

Program Officer
Protection of Cultural Objects on Loan Scheme
Department of Infrastructure, Transport, Regional Development, Communications, Sport and the Arts
Office for the Arts
GPO Box 594 Canberra, ACT 2601

Email: ProtectionofLoans@arts.gov.au

1.1 Overview of the Scheme

Stage 1—Approval of Australian borrowing institutions

National, state and territory borrowing institutions, and institutions prescribed in the Regulations can **apply for approval**

Applications are **assessed by the Office for the Arts**

The **Minister for the Arts, or their delegate, approves** (or does not approve) the borrowing institutions for up to 5 years, with or without conditions

Stage 2—Approved borrowing institutions (ABIs) negotiate international loans for temporary public exhibition in Australia

Develop exhibition and identify international loan/s

Negotiate loan/s with overseas lender/s

Conduct **provenance research and due diligence** checks

Consult with relevant parties, as required

Publish information on proposed loans at least 4 weeks prior to import

Stage 3—Object/s imported and protected by the Act

Approved borrowing institution finalises objects for loan and ensures they are listed in a **loan agreement** between the overseas lender and the ABI and/or exhibition facilitator

ABI makes arrangements for importation - **object/s imported into Australia**

Protection automatically applies to the object/s for a maximum of two years from date of import

Protection **ceases after two years** or on the date of export if exported inside the two-year period (with extensions possible, under exceptional circumstances and subject to approval)

2. Operation of the Scheme

2.1 What is protected?

The Scheme applies to all types of cultural objects on loan (including **Australian and international objects** of archaeological, artistic, ethnological, historical, literary, scientific or technological interest) providing that:

- the cultural object is imported into Australia for **temporary public exhibition**
- the cultural object is covered by an arrangement (e.g. a loan agreement or exhibition contract) involving a **borrowing institution approved** under the Act (referred to as an ‘approved borrowing institution’ in these Guidelines)
- the lender of the cultural object is **not ordinarily resident in Australia**, or is a corporation incorporated under the law of a foreign country, or a government of a foreign country
- the cultural object is **not** a Class A Australian Protected Object as defined under the *Protection of Movable Cultural Heritage Act 1986* (see **section 2.2** for details).

Protection can apply to single objects, groups of objects, or entire exhibitions.

Loans of cultural objects that meet the conditions above are automatically protected from seizure and suit under the Act for up to two years from the date of import, unless an extension is granted by the Minister for the Arts or their delegate in exceptional circumstances (see **section 6.2** for details on the process for requesting extensions).

Protection automatically ceases when the object is exported from Australia, or after the expiry of the two-year period and any approved extension periods, whichever occurs sooner. It is not possible to remove or revoke the protection once the object has been imported into Australia.

2.2 What is not protected?

Loans of cultural objects that do not meet all the conditions outlined in **section 2.1** are not protected by the Scheme.

Approved borrowing institutions can elect to forego the protections of the Scheme if they consider protection is not required for certain cultural objects. To do this, the approved borrowing institution must provide the department with written notice to opt-out of the Scheme before the object is imported into Australia. See **section 6.1** for further information on opt-out provisions.

The Scheme specifies exceptions to protection to ensure compliance with ethical and international obligations, and criminal law requirements.

Australian Protected Objects as designated by the *Protection of Movable Cultural Heritage Act 1986* and *Protection of Movable Cultural Heritage Regulations 2018*. Class A Australian Protected Objects are prohibited exports from Australia and regulated under the *Protection of Movable Cultural Heritage Act 1986*. A list of Class A Australian Protected Objects can be found in the *Protection of Movable Cultural Heritage Regulations 2018* at:

https://classic.austlii.edu.au/au/legis/cth/num_reg_es/pomchr2018201801710518.html

Please note that **Class B Australian Protected Objects** as defined under the *Protection of Movable Cultural Heritage Act 1986* are protected under the Scheme.

For more details on the *Protection of Movable Cultural Heritage Act 1986*, refer to the Movable Cultural Heritage webpage on the website at www.arts.gov.au/what-we-do/cultural-heritage/movable-cultural-heritage. You can access the full text of the Act and the Regulations via the Federal Register of Legislation at www.legislation.gov.au.

Importantly, the Act does not provide protection for criminal activities. Legal proceedings under the *Proceeds of Crime Act 2002* and actions under Part IAA of the *Crimes Act 1914* are excluded from the Scheme. In recognition of Australia's international obligations, this limitation extends to criminal activities under the United Nations conventions against the proceeds of crime, corruption, illicit drug trafficking and organised crime.

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.

2.3 How do protections work?

The Act protects cultural objects on loan from seizure or forfeiture under Commonwealth, state and territory laws, with limited exceptions (see **section 2.2**).

The Act prevents legal proceedings and the enforcement of legal judgements and orders against 'protected person(s).' The Act and Regulations defines a **protected person(s)** as:

- a lender and any person who is an officer, employee agent or delegate of that lender
- an exhibiting institution¹ (or their parent) and any person who is an officer, employee, agent or delegate of that institution
- an exhibition facilitator² (or their parent) and any person who is an officer, employee, agent or delegate of that facilitator
- a person or organisation engaged by a lender, exhibiting institution or exhibition facilitator to do any of the following activities:
 - transport a protected object in Australia, or between Australia and another country
 - carry out conservation work on a protected object in Australia
 - store a protected object in Australia
 - provide security for a protected object while it is being transported between Australia and another country or while it is in Australia
 - exhibit a protected object in Australia
 - conduct research related to the exhibition of a protected object in Australia
 - undertake imaging related to the exhibition of a protected object in Australia
 - facilitate consultation related to a protected object.

The Act provides protection for all individuals and organisations that meet the definition of 'protected persons.' However, it also recognises that protected persons will have varying roles and levels of authority in relation to protected objects and that there may be a need to take action against another protected person. The Act allows one protected person to start legal proceedings against a second protected person *if* the second protected person has a lesser claim to the protected object. The Act sets out that lenders and those working for them will have the highest claim to the object, followed by exhibition facilitators and exhibiting institutions, then people working for exhibition facilitators and exhibiting institutions, and then those engaged to provide relevant services. This means that an exhibition facilitator can start legal proceedings for a protected object against a person it has engaged to transport that object, and a lender can start an action to reclaim a protected object from an exhibiting institution. Conversely, a person engaged to undertake a service related to a protected object cannot start legal proceedings for that object against the lender.

¹ The Act defines an exhibiting institution as a **borrowing institution approved by the Minister** that has made arrangements for the temporary public exhibition of a cultural object in Australia.

² The Act defines an exhibition facilitator as a person or organisation that has a temporary loan arrangement for the object with the exhibiting institution (or their parent), is not the lender, and carries on a business of making arrangements for temporary public exhibitions 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 in regulation.

Being prescribed in regulation means that the institution is not established by a Commonwealth, state or territory law but is listed as an institution eligible to apply to be an approved borrowing institution in the Regulations. The institutions currently prescribed in regulation are listed in Part 2 section 6 of the Regulations, which are published at www.legislation.gov.au/F2024L01733.

3.2 The application

Before commencing an application, please discuss your intention to apply to the Scheme by contacting the Protection of Cultural Objects on Loan Program Officer at ProtectionofLoans@arts.gov.au.

The integrity of the Scheme is based on approved borrowing institutions maintaining high standards of practice for the management of collections, cultural heritage and international loans of cultural objects. The application process for approval is rigorous. It requires borrowing institutions to provide evidence regarding their collection management, acquisition, loans and exhibition policies and procedures.

Section 4 and **section 5** of the Guidelines provide information about the assessment of applications. Following approval, the borrowing institution is responsible for ensuring that due consideration is given to the legal and ethical aspects of each international loan proposed for protection under the Act.

Applications can be submitted at any time throughout the year through the department's online grants management portal, available at: <https://www.arts.gov.au/funding-and-support/protection-cultural-objects-loan-scheme>.

Applications should address all sections of the application form accurately and concisely and provide all requested attachments. Should you encounter any difficulties, or need advice to assist in completing the application form, please contact the Program Officer via [02 6136 6533](tel:0261366533) or [02 6136 6520](tel:0261366520), and ProtectionofLoans@arts.gov.au.

The department registers applications and confirms receipt by email. The Program Officer assesses the information provided in the application form to determine the applicant's eligibility and demonstrated capacity to uphold Scheme requirements. During the assessment, applicants may be asked to clarify responses or provide additional documentation. Recommendations to approve (or not approve) applications are submitted to the Minister for the Arts (or the Minister's delegate in the department). The Minister, or delegate, makes the final decision on all approvals under the Act.

The department is able to provide general advice on the operations of the Scheme, guidance on the application process, and the requirements for approval. The Program Officer can also assist by reviewing and providing general feedback on policy documents. However, the decision to approve or not approve an institution is at the discretion of the Minister for the Arts, or the Minister's delegate.

3.3 How long will it take to be approved?

The amount of time required to prepare an application varies considerably depending on whether the applicant has current written policies and procedures in place that align with the Scheme's requirements.

Applicants have reported allocating a minimum of three months to prepare an application, which has included compiling the required documentation, conferring with relevant staff, and updating, checking and obtaining endorsement for revised policies and procedures. The Program Officer is able to assist by explaining the Scheme, providing guidance documents, reviewing draft applications and supporting documents, and identifying areas for improvement.

Depending on the demand of the Scheme at the time of application and the completeness of the information provided by the applicant, the assessment process usually takes between 6 and 8 weeks from the date of submission. Please contact the Program Officer if you are seeking approval to coincide with a specific loan or exhibition. While efforts will be made to expedite the process, the department cannot guarantee that assessments will be processed to meet external deadlines.

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

Approvals can be made with or without conditions and last for up to five years, subject to possible revocation by the Minister (see **sections 3.4 and 3.5** for details). The exact approval dates and any relevant conditions (see below) are provided in writing to the institution when notified of the approval and included in an official Notice of Approval. This Notice can be shared with potential lenders to demonstrate the borrowing institution's ability to offer the protections of the Scheme.

A list of current and former approved borrowing institutions, including publication of the Notice of Approval, is available at: <https://www.arts.gov.au/funding-and-support/protection-cultural-objects-loan-scheme>.

3.4 Conditions of approval

The Minister for the Arts, or the Minister's delegate, may place conditions on the approval of an institution. Any conditions of approval will be provided and explained to the borrowing institution in writing, and published at: <https://www.arts.gov.au/funding-and-support/protection-cultural-objects-loan-scheme>.

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 Regulations or any specified conditions of approval; or
- not maintained standards of conduct regarding matters that were considered at the time of approval.

If an institution's approval is revoked, protection will still apply to objects already imported into Australia under a temporary loan agreement. 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 at: <https://www.arts.gov.au/funding-and-support/protection-cultural-objects-loan-scheme>.

3.6 Appeals process

Applications can be made to the Administrative Review 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
- the revocation of approval.

3.7 Conflicts of interest

A conflict of interest arises when 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 acknowledge any actual or potential conflicts of interest on the application form, and outline how the conflicts will be managed.

Privacy and confidentiality

The information provided by applicants and approved borrowing institutions will be treated as confidential. The department 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.

4. Application assessment

Approved borrowing institutions are responsible for upholding the integrity of the Scheme. To gain approval, institutions must demonstrate that they have the appropriate expertise and processes to undertake international loans which align with international legal, ethical and professional standards. In line with the requirements outlined in the Act and the Regulations, institutions applying to the Scheme are assessed on the adequacy of their:

- governance and management framework and commitment to undertaking loans in accordance with the highest standards of international best practice and in compliance with applicable laws (see **sections 4.1 and 5.5**)
- expertise in curation and the management of collections (see **section 4.2**)
- experience in negotiating, managing and exhibiting international loans of cultural objects (see **section 4.3**)
- policies and procedures for identifying cultural objects in another country that could be the subject of a loan, negotiating loan arrangements, and managing related risks (see **section 4.4**)
- policies and procedures for undertaking due diligence and checking the provenance, ownership, and legal and ethical status of cultural objects proposed for acquisition or inward loan (see **sections 4.5 and 5.1**)
- consultation processes, particularly in relation to First Nations cultural material (see **section 5.2**)
- procedures for publishing information regarding international loans (see **section 5.3**)
- enquiries and claims handling processes (see **section 5.4**).

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 (2015)
- *Checklist on Ethics of Cultural Property Ownership*, International Council of Museums (ICOM) (2011)
- *ICOM Code of Ethics for Museums*, International Council of Museums (2013, 2017)
- *Continuous Cultures, Ongoing Responsibilities: principles and guidelines for Australian museums working with Aboriginal and Torres Strait Islander cultural heritage*, Museums Australia Incorporated (2005)
- *First Peoples: A Roadmap for Enhancing Indigenous Engagement with Museums and Galleries*, Australian Museums and Galleries Association (2018)
- *Guidelines for Ethical Research in Australian Indigenous Studies*, Australian Institute of Aboriginal and Torres Strait Islander Studies, 2012

- *National Standards for Australian Museums and Galleries*, The National Standards Taskforce (2013, 2023)
- *Protocols for Producing Indigenous Australian Visual Arts*, Australia Council (2nd edition 2010)
- *Protocols for Using First Nations Cultural and Intellectual Property in the Arts*, Australia Council for the Arts (2019).

A list of further resources can be found at **Appendix F—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 and exhibiting institution. This includes having sound legal, ethical and management frameworks.

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

- the governance and management framework of the institution, including:
 - compliance with applicable Commonwealth, state or territory laws, by-laws and regulations that apply to its activities, collection and site management
 - adherence to ethical principles and professional codes and standards
 - clearly defined roles and responsibilities associated with running the institution, including clear lines of responsibility for activities such as financial management and delegations, and the approval of acquisitions, exhibitions and inward loans
 - appropriate processes to ensure staff training, awareness and compliance with legal obligations, policies and procedures
 - appropriate 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 risk management and recordkeeping policies and procedures, demonstrating public accountability and a method of audit, especially those related to the management of international loans of cultural objects.

4.2 Curatorial, loans and collection management expertise

Borrowing institutions applying to the Scheme should have the necessary curatorial and collection management expertise and experience to undertake international loans of cultural objects in line with international best practice standards.

Institutions applying to the Scheme should provide:

- their organisational and staffing structure, with particular reference to sections of the organisation responsible for implementing the Scheme
- a selection of relevant position descriptions related to managing international loans to demonstrate staff, such as curators, registrars, collection managers, exhibition developers and researchers, possess appropriate qualifications, expertise and experience (or the ability to obtain specialised advice from external sources),
- information demonstrating diversity in expertise and experience in the governing body, management and staff
- the institution’s staff training policy
- information regarding staff recognition of relevant professional codes of ethics or codes of practice
- information on their processes to ensure staff members responsible for carrying out provenance research and due diligence checks for acquisitions and loans are aware of, and comply with, their obligations

- information on their processes to ensure staff members responsible for carrying out consultation for potential acquisitions and loans are aware of, and comply with, their obligations.

4.3 Experience in international loans of cultural objects

Borrowing institutions applying to the Scheme should demonstrate that they have the capacity to manage international loans of cultural objects for temporary public exhibition by outlining their previous international loans program. Alternatively, they can demonstrate likely capacity to manage international loans through a strong track record in managing loans from institutions in Australia that uphold high standards of collections care and management.

In the application, institutions are requested to provide details of recent temporary exhibitions that included international loans of cultural objects, or significant domestic institutional loans. A lack of experience in managing loans does not exclude an institution from being considered for approval. However, applicants without a strong track record in this area will need to supply information that demonstrates capacity and the proposed strategies it will implement to meet best practice standards.

4.4 Procedures for identifying objects for international loan, and the negotiation of loan arrangements

Borrowing institutions applying to the Scheme should follow international best practice procedures when identifying cultural objects in another country that could be subject of a loan, and when negotiating 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 that demonstrate an appropriate inward loan and borrowing approval system
- a sample loan agreement and/or exhibition contract covering international loans that aligns with industry standards.

4.5 Provenance and due diligence processes

When applying to the Scheme, institutions are required to provide the policies and procedures that guide their 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.

Approved borrowing institutions are required to have written policies and procedures in place which are likely to ensure that lenders of international cultural objects are reputable and have legal authority to lend the objects. In addition, the policies and procedures must be designed to ensure that adequate provenance and due diligence research is conducted in relation to all international loans of cultural objects.

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* (<https://www.arts.gov.au/publications/australian-best-practice-guide-collecting-cultural-material>) and demonstrate:

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

In addition, borrowing institutions should demonstrate that their policies and procedures prevent them approving or proceeding with a loan where:

- after undertaking adequate provenance and due diligence research, there is clear reason to doubt the legal or ethical status of 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, practices or legitimate expectations of the international museum community.

Approved borrowing institutions are required to document their acquisition, loans, provenance research and due diligence policies and make them freely available on their website.

Further information on provenance and due diligence requirements of the Scheme is provided in **section 5.1** and at **Appendix 2**.

5. Scheme compliance requirements

Approved borrowing institutions are responsible for complying with Scheme requirements and upholding the integrity of the Act. They are expected to ensure that best practice loan procedures are followed on each borrowing occasion, regardless of whether the cultural object has previously entered Australia under the Scheme. The Scheme requirements are explained below and comprise:

- maintaining best practice **provenance and due diligence policies and procedures** for the duration of approval (see **section 5.1**)
- ensuring **consultation** is carried out, when appropriate, with relevant individuals, communities or organisations about objects proposed for loan (see **section 5.2**)
- **publishing** information about loans proposed to be protected under the Act (see **section 5.3**)
- ensuring the appropriate and timely response to **claims and enquiries** regarding loans (see **section 5.4**)
- ensuring all necessary **permits or approvals** are in place (see **section 5.5**)
- providing information as requested by the department and submitting annual reports on activities relevant to the Scheme (see **section 5.6**).

In addition, approved borrowing institutions are required to comply with requirements when electing to opt out of the Scheme, or seeking to extend the period of protection. Information about opting out and requesting extensions is provided in **section 6**.

5.1 Ongoing provenance and due diligence research

Once approved, institutions are responsible for undertaking adequate provenance and due diligence research in line with their policies and procedures prior to any loan entering Australia under the Scheme.

Institutions may determine that additional checks are required for some proposed loans based on their identification and mitigation of potential risks. Borrowing some types of cultural material may involve higher levels of risk and the borrower should be satisfied they have sufficient legal and provenance information to make an informed decision on whether to proceed with the loan.

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

The Regulations specify that adequate provenance and due diligence research involves doing any (or all) of the following, appropriate to the circumstances of the proposed loan:

- conducting checks to ensure that the lender is reputable and has the legal authority to lend
- conducting checks to ensure that all relevant permits and approvals have been obtained
- considering documentary evidence of the object's history of ownership and export from both the object's country of origin and other countries in which it has been located

- examining information about the lender of the object, and current and previous owners of the object
- checking that the object is not mentioned in databases or registers of lost or stolen objects
- considering secondary documentation, such as archival material and images relating to the object, works related to the object, the lender of the object, or current and previous owners of the object
- examining the exhibition and publication history of the object
- examining the object, or detailed descriptions or photos of the object
- consulting experts in relation to any or all of the above matters.

Further guidance on provenance and due diligence procedures can be found at **Appendix B** and resources and references can be found at **Appendix F**.

5.2 Consultation

Under the Act, borrowing institutions applying to the Scheme should provide their consultation policies and procedures related to proposed loans. 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 are required to have written policies and procedures outlining the consultation they will undertake in relation to the cultural objects they intend to borrow under the Act. These policies and procedures must ensure that approved borrowing institutions consult members of the relevant community (or organisations) representing them, when a cultural object is proposed for loan:

- relates to or embodies the culture of an Aboriginal or Torres Strait Islander community (see **section 5.2.1**)
- relates to or embodies the culture of a First Nations community of a country other than Australia (see **section 5.2.2**)
- has clear and continuing significance for a community in Australia.

In addition, it is mandatory to consult with persons or bodies responsible for an archive of a State or Territory if a cultural object proposed for loan is relevant to that archive (see **section 5.2.3**).

Consultation must be conducted prior to the importation of the object to ensure it can provide a mechanism for identifying issues regarding a proposed loan, including potential claims of legal interest.

Approved borrowing institutions may determine that consultation is not necessary for some loans. To make this determination, they must be satisfied that the cultural object has no relationship or significance to the communities and organisations referred to above. For example, in some instance it may be appropriate not to consult in relation to a cultural object that has low risks associated with its lender, history and provenance.

Approved borrowing institutions are required to document their loans consultation policies and procedures and make them freely accessible on their websites.

Additional guidance and details about Scheme consultation requirements are provided in **Appendix C**.

5.2.1 Consultation with Aboriginal and Torres Strait Islanders and international First Nations communities

Consultation with members of relevant communities (or organisations representing them) is mandatory when proposing to borrow objects that relate to or embody the culture of Aboriginal and Torres Strait Islander communities and First Nations communities from countries other than Australia. These

consultations must provide an opportunity for 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 cultural objects or cultural objects from First Nations communities other than Australia should ensure that consultation policies and procedures include specific reference to Aboriginal and Torres Strait Islander and First Nations consultation.

Borrowing institutions are also encouraged to use consultative curatorial processes for the development of all First Nations 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 a dedicated page of their websites that includes 'Protection of Cultural Objects on Loan' in its title. 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 are required to outline how they propose to meet the Scheme's publication requirements.

The published information must include descriptive and provenance details that would help enable the object to be identified. This information must be freely available and easily accessible on the institution's website on a page titled 'Protection of Cultural Objects on Loan.' The information that must be published is outlined in **Appendix D**.

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 procedure relating to objects that will be or are protected under the Act. These procedures should be made publicly available on their website.

Approved borrowing institutions must notify the Office for the Arts (on behalf of the Minister), 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 E**.

5.5 Permits and approvals

When organising loans and exhibitions from overseas, approved borrowing institutions must ensure that they follow industry standard 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](#) and its Regulations
- 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 [Underwater Cultural Heritage Act 2018](#) 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.

5.6 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 through the online grants management portal 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 and the requirements of the Regulations
- 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.

The report should be provided to the Office for the Arts, at the contact details in **section 1**, or through the department's online grants management portal. The report will be provided to the Minister for the Arts, or the Minister's delegate.

6. Additional Scheme provisions

6.1 Opting out of protection

The Act automatically protects all cultural objects imported by an approved borrowing institution that meet the requirements detailed in **section 2.1**. However, the Scheme recognises that protection is not always required by approved borrowing institutions, exhibition facilitators and lenders. 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 the need for protection unnecessary. Therefore, the Act provides a mechanism to enable institutions to opt out of protection, at their discretion, for one or more cultural objects that would ordinarily be protected under the Scheme.

To opt out of protection, an approved borrowing institution must provide a written notice to the Minister for the Arts, or the Minister's delegate, via the Office for the Arts (contact details in **section 1**). The notice must be received by the Office for the Arts at least four weeks before the object enters Australia. It is not possible to opt out of the protection once the object has been imported into Australia. The approved borrowing institution must include information describing the object or objects covered by the notice, a brief description of why protection is not required, and the date of import and export.

The Minister or their delegate is not required to approve the opt out notice for it to take effect. However, they must be satisfied that the approved borrowing institution has provided all required information. The Office for the Arts will request additional information if necessary, or advise that the notice has been received and the object will therefore not be protected.

If a borrowing institution intends to opt out of protection, it should notify the lender that the object will not be protected as the lender may assume, or want, their loan to be automatically protected under the Act.

If an approved borrowing institution opts out of protection for certain objects they are not required to meet Scheme requirements, such as consultation and publication, for those objects. However, the loans should be managed in line with the loan policies and procedures that the institution provided to gain approval under the Act.

6.2 Requesting to extend the period of protection

Cultural objects imported under the Act are protected 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 strong 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 and include an explanation of the exceptional circumstances leading to the extension request. It must be received at least six weeks prior to the end of the protection period to ensure adequate time for consideration by the Minister for the Arts, or the Minister's delegate. If this timeframe cannot be met, please contact the Program Officer (contact details in **section 1**) as soon as possible.

Extensions beyond the two-year period of protection are at the discretion of the Minister for the Arts, or the Minister's delegate. If an extension request is approved, a notice of extension will be provided to the institution in writing and published at: <https://www.arts.gov.au/funding-and-support/protection-cultural-objects-loan-scheme>.

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 facilitator³ that has an arrangement for the object with an approved borrowing institution.

In addition, institutions that are not approved under the Act 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 another institution or a venue that 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 a single exhibition facilitator, provided that 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 of cultural objects.

The approved borrowing institution is responsible for ensuring the requirements of provenance and due diligence research, 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 partnerships can be sought from the Program Officer (contact details in **section 1**).

³ The term exhibition facilitator has been defined by the Act, see **Appendix A—definitions**.

Appendix A — Definitions

The Act includes a number of defined terms that are used in these Guidelines. The definitions in this Appendix are provided to assist understanding of the Guidelines. Most of these definitions are summaries of those included in the Act. Other definitions are based on various international museums sector documents including those used by UNESCO, the International Council of Museums, and the Australian Museums and Galleries Association.

Please note that the following definitions use the term ‘person’ in its legal sense, and can mean an individual, or an entity, such as an organisation, or a body politic.

Approved borrowing institution

An approved borrowing institution is an Australian collecting and exhibiting institution that has been approved under Part 3 of the Act by the Minister for the Arts, or the Minister’s delegate.

Borrowing institution

The Act 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 in regulation. In relation to the Scheme, a borrowing institution is a collecting institution that meets the criteria to be eligible to apply for approval under the Act. The term ‘approved borrowing institution’ is used to refer to those borrowing institutions that have attained approval under the Act.

Collection management

A term encompassing all the practices and procedures that institutions follow in acquiring, documenting, handling, accessing, storing, securing, lending, conserving and disposing of collection items.

Due diligence

The requirement that endeavours are made to verify the accuracy of information before deciding a course of action. In relation to collecting institutions, due diligence particularly refers to a process of thoroughly assessing the circumstances surrounding an object to identify its source and history before acquiring or borrowing it. It also relates to ensuring legal title, or authority to lend, on the part of the owner or lender, and investigating the ethical status of an object’s history and ownership.

Exhibiting institution

The Act defines an exhibiting institution as a borrowing institution that has made arrangements for the temporary public exhibition in Australia of an object eligible for protection under the Act. ‘Exhibiting institution’ is synonymous with the term ‘approved borrowing institution.’ An exhibiting institution has a relationship with an object to which the protection of the Act can apply. However, the object does not have to be displayed at the exhibiting institution’s premises.

Exhibition

A public display of 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

The Act defines an exhibition facilitator as a person who has a temporary loan arrangement with both the lender of an object and an approved borrowing institution, who carries on a business of making arrangements for temporary public exhibitions in Australia of objects from collections outside Australia. An exhibition facilitator cannot be a lender or an approved borrowing institution.

Lender

The term ‘lender’ refers to a person who agrees to lend a piece of property, but it has a narrower meaning under the Act. Under the Act, a lender of an object is:

- a) one of the following:
 - i. an individual who is not ordinarily resident in Australia
 - ii. a corporation incorporated by or under a law of a foreign country
 - iii. a body politic of a foreign country (part of a foreign government)

and
- b) a party to a temporary loan arrangement for an object with an approved borrowing institution or an exhibition facilitator

and
- c) the person who would reasonably be expected to have physical possession, custody or control of the object outside Australia during the loan period, if the temporary loan arrangement was not in place.

Under this definition, the lender can be the owner of the object, or a person authorised to act on the owner’s behalf in relation to the loan of the object. Examples of a lender of an object include:

- a person who owns the object, lives outside of Australia and has an agreement to lend the object to an approved borrowing institution
- an overseas museum that has custody of the object and an agreement to lend the object to the facilitator of an exhibition at an approved borrowing institution in Australia.

Loan

The Act defines the loan of an object to be 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 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.

In collecting institutions, arrangements for loans are usually formalised through written loan agreements or exhibition contracts.

Protected person

The Act defines a protected person for an object as any of the following:

- a) a lender of the object
- b) an officer, employee or agent of a lender who accompanies the object for some or all of the time it is on loan
- c) an exhibition facilitator or an exhibiting institution for the object (or their parent institution)
- d) or a person who is an officer, employee, agent or delegate of an exhibition facilitator or exhibiting institution (or their parent institution)

- e) a person engaged by a lender, an exhibition facilitator or an exhibiting institution for an object to do any of the following:
- i. transport the object from one place in Australia to another or between Australia and another country
 - ii. carry out conservation work on the object in Australia
 - iii. store the object in Australia
 - iv. provide security for the object while it is being transported between Australia and another country or while it is in Australia
 - v. provides the services of:
 - exhibiting the object in Australia
 - conducting research on the object, for the purposes of facilitating the temporary public exhibition of the object under arrangements made by a borrowing institution, in Australia
 - undertaking imaging of the object, for the purposes of facilitating the temporary public exhibition of the object under arrangements made by a borrowing institution, in Australia
 - facilitating consultation under Part 4 of this instrument in relation to the object.
- f) an officer, employee, agent or delegate of a person described under e).

Some examples of protected persons are lenders, approved borrowing institutions and their directors, curators, registrars, conservators, collections managers, packers and installers, organisations that develop exhibitions for approved borrowing institutions, and people who work with protected objects, such as transport workers, security personnel, exhibition designers, researchers, photographers and consultation facilitators.

Provenance research

Investigation of the history, ownership and whereabouts of an object from the time of its discovery or creation to the present day. Provenance research is undertaken to assist in determining the authenticity and ownership of cultural objects.

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. In collecting institutions, arrangements for loans are usually formalised through written loan agreements or exhibition contracts.

Venue

In relation to the 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 Act).

Appendix B — Guidance on provenance and due diligence procedures

This Appendix sets out the principles regarding provenance and due diligence research that approved borrowing institutions should adhere to 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 have policies and procedures to guide staff on provenance research 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.

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.

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* (<https://www.arts.gov.au/publications/australian-best-practice-guide-collecting-cultural-material>), 2015
- the purpose/s of undertaking international loans
- the borrowing approval process and responsibility for decision making regarding international loans
- 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 the institution should only borrow items if it is confident that the object has not been illegally exported from the country of origin
- that the institutions should only borrow cultural objects if it is convinced that the import of the object into Australia does not contravene any Australian import restrictions, or international treaties or conventions to which Australia is a party.

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 relation to each object proposed for loan under the Scheme. 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 that:

- 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, in terms of the reputation of the institution, the integrity of the Scheme and the international view of Australia as a venue for international loans.

Prior to agreeing to borrow a cultural object from an international lender, approved borrowing institutions should seek the history and chain of ownership of the object to establish provenance from the lender or other appropriate source. Institutions should only borrow cultural objects for which provenance has been established, or that are judged to have a history that is considered secure.

When undertaking research for a loan, approved 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 country of origin
- check the object against databases of stolen art
- in relation to Aboriginal and Torres Strait Islander cultural objects, cultural objects that relate to or embody the culture of First Nations communities in countries other than Australia, an object's relevance to individuals and groups, and to places and events in Australia, and cultural objects relevant to a national, State or Territory archive, ensure consultation and collaboration with relevant parties is conducted in line with the requirements in **section 5.2**
- 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).

The lender

The approved 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.

For cultural objects proposed for loan from 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 in writing through a formal declaration or warranty
- 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 in writing.

Concerns about provenance or potential claims

If at any stage of the process the approved borrowing institution decides that there are substantiated concerns about an object's legal or ethical status, it should not proceed with the loan. However, in practice, cultural objects are not always accompanied by detailed histories. In these circumstances, having considered 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* ([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 C — Guidance on consultation processes

This Appendix provides general guidance on consultation processes that align with the Scheme. It is provided as an information guide only, not a full or authoritative statement on community consultation best practice.

Approved 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 are included in the Regulations. Consultation must be undertaken prior to the object being imported to Australia and provide a mechanism for the identification of any issues in relation to a proposed loan.

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.

General consultation for loans

Under the Regulations, approved borrowing institutions must assess whether an object proposed for an incoming international loan requires consultation to the degree they see fit. However, they **must** consult members of the relevant community, or organisations representing them, when a cultural object proposed for loan:

- relates to or embodies the culture of an Aboriginal or Torres Strait Islander community
- relates to or embodies the culture of a First Nations community of a country other than Australia
- has clear and continuing significance for a community in Australia.

In addition, it is mandatory to consult with persons or bodies responsible for an archive of a State or Territory if a cultural object proposed for loan is relevant to that archive.

Factors that an approved 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 any Aboriginal or Torres Strait Islander community, First Nations community from a country other than Australia or Australian individual or community, then the borrowing institution is not required to undertake consultation.

Approved 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 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. This allows for new information to be assessed, which could demonstrate 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.

Deciding who to consult with

Once a borrowing institution has determined that an object requires consultation, it must determine which individuals, communities, or organisations representing a community they should consult.

Consultation in relation to an object must be with members of the relevant community, or organisations representing them or, if the object is relevant to a State or Territory archive, the person or body responsible for that archive.

Members of relevant communities may include individuals, family members, or community groups. Depending on the object, consultation may need to occur with members of more than one community.

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.

Outcomes of consultations

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.

Consultation for First Nations objects

Under the Scheme, consultation is required for all proposed international loans of Aboriginal and Torres Strait Islander cultural objects, and objects that relate to or embody the culture of First Nations communities outside Australia. 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 overseas 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 on 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 and other First Nations peoples.

The borrowing institution's Aboriginal and Torres Strait Islander consultation policies and procedures must be consistent with the most current and relevant protocols and professional practice (relevant documents are listed in the following pages).

What is an Aboriginal or Torres Strait Islander object?

The requirement to consult applies to any cultural object proposed for loan that relates to or embodies the culture of a First Nations community. Under the Regulations, the term 'First Nations community' is taken to broadly include people that are commonly and publicly recognised, or commonly and publicly self-identify, as First Nations or indigenous peoples.

In Australia, the term First Nations refers to Aboriginal and Torres Strait Islander peoples. 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 noted above, the following factors should also be assessed in making this determination:

- was the object created by a member of a First Nations (indigenous) community, including an Aboriginal or Torres Strait Islander person?
- does the object express or embody the culture of 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?

Deciding who to consult with

It is important to recognise the diversity and complexity of the many different Indigenous cultures in Australia and other parts of the world and to 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 First Nations organisations.

In Australia, relevant authorities may include:

- 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 the Australian Institution for Aboriginal and Torres Strait Islander Studies (AIATSIS), 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.

Appropriate methods of consultation

While the level of engagement or involvement between a borrowing institution and Aboriginal and Torres Strait Islander or other First Nations 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 or other First Nations 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 international loans of cultural objects 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 its community or place of origin.

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 or other First Nations groups' 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 or other First Nations communities.

Providing follow up communication—acknowledge the participation of Aboriginal or Torres Strait Islander or other First Nations 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.

Outcomes of consultations

The borrowing institution's policies 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, and other First Nations, 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 and other First Nations 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.

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).

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 D — Guidance on publication processes

The publication of information about objects proposed for loan is an important transparency mechanism of 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 Regulations.

Method of publication

Information on objects proposed for loan from overseas that are expected to be protected under Part 2 of the Act are to be published by the borrowing institution in a freely accessible webpage on the institution's website. This webpage must have a title that includes the words 'Protection of Cultural Objects on Loan.'

Along with the object information, detailed in the section 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 Infrastructure, Transport, Regional Development, Communications, Sports and the Arts' Protection of Cultural Objects on Loan webpage: <https://www.arts.gov.au/funding-and-support/protection-cultural-objects-loan-scheme>].
- The [institution name] policies regarding international loans of cultural objects and claims handling can be found at [insert link / location].

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.

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.

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)
 - 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
 - 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, for example 1871, or a range of years, for example 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.

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.

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.

Errors or omissions in the 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 correct the information as soon as practicable.

Exemptions from publishing information about an object

In exceptional circumstances institutions may make an application to the Office for 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 at least **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 Office for 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 E — Guidance on enquiry and claims handling

Borrowing institutions approved under the Act are required to 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 Regulations.

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.

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.

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.

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 Regulations.

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.

If it is determined 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 in **section 1**).

Appendix F —References and resources

Australian resources

Aboriginal and Torres Strait Islander Heritage Protection Act 1984

<https://www.legislation.gov.au/C2004A02943>

[Aboriginal and Torres Strait Islander Library, Information and Resource Network—**Protocols for Libraries, Archives and Information Services**, revised 2012](https://atsilirn.aiatsis.gov.au/protocols.php) <https://atsilirn.aiatsis.gov.au/protocols.php>

Arts Tasmania, AMaGA Victoria, History Trust of South Australia, Museum and Art Gallery of the Northern Territory, Museums & Galleries of NSW, Museums & Galleries Queensland, **National Standards for Australian Museums and Galleries**, v 2.0 2023, <https://magsq.com.au/national-standards/>

Australian Council for the Arts, **Protocols for working with Indigenous artists** revised 2019, <http://www.australiacouncil.gov.au/about/protocols-for-working-with-indigenous-artists/>

Australia Council for the Arts, **Protocols for producing Indigenous Australian visual arts** (2nd edition, 2010) http://www.australiacouncil.gov.au/_data/assets/pdf_file/0004/32368/Visual_arts_protocol_guide.pdf

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/>

Creative Australia, **First Nations Cultural and Intellectual Property in the Arts**, 2019 <https://creative.gov.au/investment-and-development/protocols-and-resources/protocols-for-using-first-nations-cultural-and-intellectual-property-in-the-arts/>

Environmental Protection and Biodiversity Conservation Act 1999

<https://www.legislation.gov.au/C2004A00485>

Underwater Cultural Heritage Act 2018 <https://www.legislation.gov.au/C2018A00085>

International Council of Museums Australia [International Council of Museums Australia - ICOM Australia - ICOM Australia](https://www.icomaustralia.org.au/)

Ministry for the Arts, **Australian Best Practice Guide to Collecting Cultural Material**, 2015, <https://www.arts.gov.au/publications/australian-best-practice-guide-collecting-cultural-material>

Protection of Movable Cultural Heritage Act 1986 <https://www.legislation.gov.au/C2004A03252>

Collections Council of Australia Ltd, **Significance 2.0: A guide to assessing the significance of collections**, 2009 [Significance 2.0 | Office for the Arts](https://www.significance2.0.gov.au/)

International resources

The Art Loss Register www.artloss.com

Combating Illicit Trade: Due diligence guidelines for museums, libraries and archives on collecting and borrowing cultural material, 2005, https://www.obs-traffic.museum/sites/default/files/ressources/files/DCMS_DD_Guidelines.pdf

Convention on International Trade in Endangered Species of Wild Fauna and Flora 1975
<http://www.cites.org>

Association of Art Museum Directors, **Standards and Practices**, <https://aamd.org/standards-and-practices>

International Council of Museums <http://icom.museum>

International Council of Museums—World Intellectual Property Organization Dispute Resolution (ADR) for Arts and Cultural Heritage, <https://www.wipo.int/amc/en/center/specific-sectors/art/>

ICOM International Observatory on Illicitly Traffic in Cultural Goods <http://obs-traffic.museum/>

International Foundation for Art Research <http://www.ifar.org/>

Convention on Biological Diversity, ***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***, 2014, <http://www.cbd.int/abs/>

United Nations Educational, Scientific and Cultural Organization www.unesco.org

UNESCO ***Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property***, 1970 <https://www.unesco.org/en/legal-affairs/convention-means-prohibiting-and-preventing-illicit-import-export-and-transfer-ownership-cultural>

Convention on Biological Diversity, ***Convention on Biological Diversity 1993***
<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

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***
<https://www.wipo.int/en/web/traditional-knowledge/traditional-cultural-expressions/index©>

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