



MINISTER FOR THE ARTS

Departmental No. 95 of 2023

Minute Paper for the Executive Council

Executive Council Meeting No. 10

Subject

Protection of Cultural Objects on Loan Act 2013

Protection of Cultural Objects on Loan Amendment Regulations 2023

Approved in Council

Recommended for the approval of His Excellency the Governor-General in Council that he make Regulations in the attached form.

[Handwritten signature of David Hurley]

David Hurley
Governor-General

25 May 2023

[Handwritten signature of Tony Burke]

Tony Burke
Minister for the Arts

Filed in the Records
of the Council

s22(1)(a)(ii)
Secretary to the Executive Council

Released under the Freedom of Information Act 1982 by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts



Protection of Cultural Objects on Loan Amendment Regulations 2023

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 25 May 2023

David Hurley
Governor-General

By His Excellency's Command

Tony Burke
Minister for the Arts

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1 Name

This instrument is the *Protection of Cultural Objects on Loan Amendment Regulations 2023*.

2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

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

3 Authority

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

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 Amendments

Schedule 1—Amendments***Protection of Cultural Objects on Loan Regulation 2014*****1 Section 6**

Omit all the words after “Act,”, substitute:

the following organisations are prescribed:

- (a) Museum of Contemporary Art Limited (ABN 15 003 765 517);
- (b) Art Gallery of Ballarat (ABN 28 145 246 224);
- (c) Bendigo Art Gallery (ABN 59 616 353 093);
- (d) Heide Park and Art Gallery, trading as Heide Museum of Modern Art (ABN 60 005 712 943);
- (e) HOTA Gold Coast Pty Ltd, trading as HOTA, Home of the Arts (ABN 85 060 787 466).

EXPLANATORY MEMORANDUM

Minute No. 95 of 2023 - Minister for the Arts

Subject - *Protection of Cultural Objects on Loan Act 2013*

Protection of Cultural Objects on Loan Amendment Regulations 2023

The proposed instrument would expand the number of institutions eligible to be 'prescribed borrowing institutions', under section 6 of the *Protection of Cultural Objects on Loan Regulation 2014*, to encourage increased loans of cultural objects from overseas lenders.

The *Protection of Cultural Objects on Loan Act 2013* (the Act) seeks to encourage loans of important art and cultural material by providing legal protection against seizure and suit for cultural objects borrowed from overseas lenders by approved borrowing institutions for the purpose of temporary public exhibition in Australia. Section 21 of the Act empowers the Governor-General to make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The purpose of the proposed *Protection of Cultural Objects on Loan Amendment Regulations 2023* (proposed Regulations) would be to prescribe four additional borrowing institutions at section 6 of the *Protection of Cultural Objects on Loan Regulation 2014* (the Regulation) as enabled under subparagraph 5(b)(ii) of the Act.

Section 5 of the Act defines a borrowing institution as an organisation that:

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

A borrowing institution that meets these criteria can apply to become an approved borrowing institution under section 15 of the Act and gain legal protection under the Act. There are no specified requirements in section 5 of the Act, or in the Act's Explanatory Memorandum, for when institutions may be prescribed under the Regulation as a borrowing institution. Section 6 of the Regulation currently prescribes one institution, the Museum of Contemporary Art Limited.

There are a number of other institutions in Australia that satisfy paragraph 5(a) of the Act and routinely stage exhibitions likely to include international loans. These institutions are not currently eligible to apply for protection under the Act because they are not established by a Commonwealth, State or Territory law, or prescribed by regulation. Prescribing additional organisations under the Regulation as borrowing institutions would allow them to be eligible to apply to become an approved borrowing institution under the Act. In order to be approved, the institutions will need to satisfy the Minister or their delegate that they

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comply with the requirements of the Act and the Regulation. Increasing the number of institutions eligible for approval would encourage more loans of cultural objects to Australia and provide Australians with greater access to this material.

A number of institutions in Australia that are not currently eligible to apply for protection under the Act, but routinely stage international exhibitions, were consulted during the drafting of the proposed Regulations to determine if it would be appropriate to list them as borrowing institutions. Through this consultation, it was determined that the Art Gallery of Ballarat, Bendigo Art Gallery, Heide Museum of Modern Art, and HOTA, Home of the Arts would be suitable to be listed given their relevant collection and exhibition activities and therefore be eligible to apply under the Act to become approved borrowing institutions.

Schedule 1 of the proposed Regulations would prescribe the following four additional organisations, Art Gallery of Ballarat, Bendigo Art Gallery, Heide Museum of Modern Art, and HOTA, Home of the Arts, as borrowing institutions under section 6 of the Regulation. Following their prescription, these organisations would be eligible to apply to be approved borrowing institutions under the Act. These organisations are prescribed in addition to the Museum of Contemporary Art Limited, which has previously been prescribed under the Regulation.

The Act does not specify conditions that need to be satisfied before the Governor-General's power can be exercised.

The proposed Regulations would be a legislative instrument for the purposes of the *Legislation Act 2003*.

The proposed Regulations are to commence on the day after they are registered on the Federal Register of Legislation.

The Minute recommends that the Regulations be made in the form proposed.

Authority: Section 21 of the *Protection of Cultural Objects on Loan Act 2013*