Due Diligence and Provenance Policy
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1. Purpose

The National Gallery of Australia, as a major cultural collecting agency with a charter to collect Australian and international works of art across all media, conforms to appropriate policy and guidelines to ensure the objects it brings into the collection have clear title, appropriate ownership history (provenance) and conform to legislation in relation to moveable cultural heritage.

The Gallery and its functions are determined by the National Gallery of Australia Act 1975. The principal objectives of the Gallery, as outlined in s6 of the Act, are to develop and maintain a national collection of works of art and to exhibit, or make available for exhibition by others, works of art from the national collection. The Gallery is committed to ensuring the negotiation and administration of acquisitions and loans and the development and management of the Collection are undertaken on terms that are ethical, honourable, responsible and transparent to public scrutiny. In this manner, the Gallery seeks to maintain its standing and reputation for excellence and integrity both nationally and internationally.

This policy sets out the principles regarding provenance and due diligence research that informs and guides the Gallery’s decision-making when considering acquisitions, inward loans and other matters relating to the collection. The Gallery will make every effort to ensure it acquires and borrows works of art for which a reliable chain of ownership has been established or which have a secure title and history of legal and ethical transactions, and is committed to acting in a manner that does not directly or indirectly validate, endorse or provide an incentive to the illegal or unethical trade in cultural property. In order to do so, the Gallery will undertake due diligence research for all proposed acquisitions and inward loans as well as reviewing previous decisions and understandings about the collection. The findings and assessment of due diligence research will inform the Gallery’s decision-making processes in these matters and will be premised on informed professional judgement.

The objectives of this policy are:

(a) to ensure the Gallery applies rigorous, accountable and transparent standards in the research, consideration and assessment of provenance and
undertaking of due diligence in relation to acquisitions, the collection and incoming loans;

(b) to ensure the Gallery acquires and borrows works of art for which a reliable chain of ownership has been established or which are assessed through sound professional judgement to have a secure title and history of legal and ethical transactions;

(c) to ensure that acquisitions, loans and the management of the collection is conducted in an ethical, responsible and accountable manner;

(d) to maintain the Gallery’s standing and reputation for implementing best practice in the public eye and in the museum community, both nationally and internationally; and

(e) to ensure the Gallery does not directly or indirectly validate, endorse or provide an incentive to the illegal or unethical trade in cultural material.

2. Scope

This policy applies to all activities relating to the investigation of provenance in the conduct of Collection development and management and in relation to inward loans.

3. Responsibilities

Gallery staff involved in conducting, assessing and acting on provenance and due diligence research are bound by the Gallery’s Code of Ethics and other relevant Gallery documents, including but not limited to the Professional and Personal Conduct Guidelines, Fraud Strategy and Record-Keeping Policy.

3.1 Department Heads

Department Heads are responsible for:

(a) ensuring that employees under their management are aware of, have an understanding of and are implementing the requirements of this policy; and
(b) providing further training and instruction in the procedures noted in this policy, when requested by an employee or when requirements are identified in consultation with the employee.

3.2 Managers and Supervisors

Managers and supervisors are responsible for:

(a) ensuring that employees under their management are aware of, have an understanding of and are implementing the requirements of this policy; and

(b) recommending further training and instruction in the procedures noted in this policy, when requested by an employee or when requirements are identified in consultation with the employee.

3.3 Employees

Employees are responsible for:

(a) maintaining an understanding of and implementing the requirements of this policy; and

(b) requesting further training and instruction in the procedures noted in this policy when necessary.

4. Procedures

4.1 Principles

The Gallery adheres to the following principles:

(a) The Gallery is committed to the responsible acquisition of all works of art.

(b) The Gallery is committed to the principle that all collecting be done according to the highest standards of ethical and professional practice
and complies with Australian legislation and the Gallery’s approved acquisition strategies and collection development policies.

(c) The Gallery does not support the illicit trade in works of art, the destruction or defacing of ancient monuments, or the theft of works of art from individuals, museums or other repositories.

(d) The Gallery recognises the existence of trafficking in objects which have been stolen in peace-time, or appropriated by theft or other illicit means during times of civil unrest and armed conflict. The Gallery shall not knowingly acquire such objects.

(e) The Gallery recognises that some works of art for which Provenance information is incomplete or unobtainable may deserve to be publicly displayed, preserved, studied and published because of their rarity, importance and aesthetic merit, as well as the imperative to ensure that the work is widely published and viewed to increase the possibility of further information being offered.

4.2 Guidelines for the acquisition of works of art by purchase, gift, bequest and exchange

The Gallery’s curatorial staff have an ongoing role in ensuring acquisition processes are compliant with best professional practice and are responsible for researching the provenance of objects already acquired as well as those under consideration for acquisition. All acquisitions are considered by the Gallery’s Council, and acquisition submissions specifically report against provenance and the history of negotiations.

The Gallery’s acquisition guidelines provide that:

(a) The Gallery rigorously researches the provenance of a work of art prior to acquisition. Research includes, but is not limited to, determining:

i. the artist or cultural association of the creator, place of creation or archaeological point of origin, and date of creation;
ii. the ownership history of the work;

iii. countries in which the work has been located and when;

iv. the exhibition history of the work;

v. the publication history of the work;

vi. whether claims to ownership of the work have been made;

vii. whether the work appears in relevant databases of stolen or contested works; and

viii. the circumstances under which the work is being offered.

(b) The Gallery makes considerable effort to obtain accurate documentation with respect to the history of the work, including import and export documents, where relevant.

(c) Where appropriate, the Gallery consults authorities (for example: government, community representatives, museums, cultural centres and keeping places) in the country of origin regarding relevant cultural heritage and export legislation for proposed acquisitions.

(d) The Gallery requires vendors, donors and their representatives to provide all available evidence and documentation regarding the origins and provenance of a work of art offered for acquisition. If the Gallery is unfamiliar with the source of an acquisition it will, where practicable, consult with colleagues who have had prior dealings with the source or contact in question.

(e) The Gallery ensures that the work complies with the Art Acquisition Policy and, in the case of high-value items, seeks appropriate warranties and guarantees from the vendor.

(f) The Gallery complies with the Australian Government’s *Protection of Movable Cultural Heritage Act 1986*. 
(g) The Gallery recognises the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970 and acknowledges that Australia is a signatory to the Convention. The Gallery also recognises and is bound by the terms of the Protection of Cultural Objects on Loan Act 2013, and is guided by the ICOM Code of Ethics, Museums Australia Code of Ethics, the Australian Best Practice Guide to Collecting Cultural Material and other industry documents referenced in section 11.2.2.

(h) In the case of auction sales, the Gallery seeks documentary proof of provenance from the vendor via the auction house or, in the absence of this, a sworn affidavit, where practicable.

(i) The Gallery takes into consideration cultural sensitivities in its collecting and display of a work of art, and where appropriate and possible actively consults with the relevant community (or government, community representatives, museums, cultural centres and keeping places) when such works are being considered for acquisition or display.

4.3 Due Diligence in relation to Acquisitions and Loans

In the process of acquiring works of art, the development and management of the collection and when entering into inward and outward loan arrangements, the Gallery seeks to avoid any act or omission that: may attract legal liability; involve the Gallery in civil or criminal proceedings, or otherwise compromise the Gallery’s position and reputation for probity in public administration; or serves to provide a direct incentive to, or validation of, the illegal or unethical trade in cultural material.

The Gallery will make every effort to ensure it acquires and borrows works for which a reliable chain of ownership has been established or which have a secure title and history of legal and ethical transactions or are judged to have a secure history through their presence in the public domain. Works of art will be considered for acquisition or loan on the basis of the sound professional and ethical assessment of Provenance and
the conduct of due diligence investigations, in accordance with the Due Diligence and Provenance Procedures.

The Gallery will only acquire and borrow works where, in its professional judgement and on the basis of responsible levels of due diligence and the assessment of risk:

(a) information about the provenance and authenticity of the work of art can reasonably be ascertained and independently verified;

(b) a critical evaluation has been undertaken of gaps and discontinuities in the Provenance information;

(c) the Gallery is satisfied that:

   i. the work was exported from its country of origin and any intermediary country in accordance with that country's laws and lawfully imported into Australia; or

   ii. if not yet imported into Australia, has been exported from its country of origin and any intermediary country in accordance with that country's laws and is eligible to be lawfully imported into Australia.

(d) any pre-existing or prior disputes or wrong-doings have been assessed and evidence sought of the binding settlement, abandonment, or remission of liability, or that any claim has been otherwise extinguished on binding terms and in circumstances that do not compromise the contemporary ethical status of the work;

(e) with regard to Aboriginal or Torres Strait Islander art, the origin and source of the work of art and the identity of any community or individual that may wish to assert a legal, and/or customary interest in the work of art has been identified and representatives of relevant communities have been consulted in accordance with the Aboriginal and Torres Strait Islander Cultural Rights and Engagement Policy and Reconciliation Action Plan.
4.4 Guidelines in the event of incomplete Provenance

The Gallery recognises that complete and unbroken records of ownership are rare and the chain of ownership of many works may contain gaps, or may not be verifiable through documentary evidence. The Gallery recognises that there are many reasons for such gaps ranging from a past owner’s desire for anonymity to an absence of records of transactions arising from the nature of the trade in such material, or the transactions’ predating the requirement for such records. Resolving provenance gaps, particularly those coinciding with periods of war, conflict, political upheaval or natural disaster, may be further compounded by the fact that records have been lost or destroyed. Such gaps may also be an indication of illegal or unethical removal from a work of art’s country of origin and the acquisition or loan should be assessed for risk based on known information before proceeding. The Gallery will evaluate gaps or discontinuities in provenance or undocumented transactions to ensure no evidence or reasonable cause for suspicion can be found about the procurement of the work by its current owner, or any prior transactions or exchanges.

In order to gather further information, the Gallery reserves the right to initiate inquiries of prospective donors, sellers, lenders and third parties in order to seek to address gaps or doubts in regard to the chain of ownership or legal and ethical status of a work of art. In cases of gifts and bequests, the donor will be made aware that in the event of a substantiated claim against the work of art, the Gallery will comply with relevant Australian legislation and industry guidelines.

In the case of a broken chain of ownership the Gallery will conduct a risk assessment on the acquisition of the work that takes into account the nature of any gaps, the contemporary and historical art market for that type of object, history of the country of origin, the reputation of the vendor, the price of the work of art relative to the established market, the value of the work of art, and any other relevant factors. The Gallery may also contact authorities such as government, community representatives, museums, cultural centres and keeping places, in the country of origin where relevant.
If on assessment of the risk the Gallery proceeds with the acquisition or loan, the reasons and justification for taking this decision will be recorded. The Gallery recognises that some works of art for which provenance information is incomplete or unobtainable should be promoted in the public domain, providing access to the work to as great an audience as possible, and increasing the likelihood of further information being offered.

In acquisition and loan arrangements, the Gallery will require the seller, donor or lender to provide warranties and indemnities as to their account of title or possession.

4.5 Guidelines in the event of Provenance issues

In cases where specific provenance issues arise, the Gallery seeks assistance and advice from specialists from appropriate organisations.

Where an object belonging to the Gallery is claimed for restitution or repatriation such claims will be handled with respect and sensitivity. Any restitution act considered by the Gallery will take into account the individual merits of the case, the Gallery’s deaccessioning policy, cultural, legal and legislative factors and the long-term preservation of the work of art.

The Gallery recognises that information may be obtained subsequent to acquisition or approval of a loan that establishes another party’s claim to title or possession of a work. The Gallery will take such information or claims seriously and will investigate and respond in a timely, respectful and ethical manner in accordance with the public interest, as guided by the Work of Art Claims and Inquiries Handling Procedures and other established protocols.

The insurance value or purchase price of a work is not a consideration in the evaluation of provenance findings and establishing an appropriate legal and ethical response.

4.6 Custodianship of works of art unsuitable for Acquisition

In some circumstances, works may be borrowed or held by the Gallery in custody or trust in order to protect or preserve them, or in other arrangements under which the
5. Training and Instruction

Workers who require additional training to have a better understanding of this policy shall contact their manager or supervisor in the first instance, or be nominated for additional training by their manager in consultation with the employee.

The manager or supervisor may seek the assistance of their Head of Department to organise or assist in the provision of the required training.

6. Compliance

All employees are required to comply with this policy and disciplinary procedures may apply where an employee fails to comply with this policy without reasonable cause. The Director will ensure that compliance with this policy is assessed as part of the Gallery’s audit program.

7. Records

In accordance with the Record-Keeping Policy and established procedures, staff will maintain records of provenance and due diligence research and findings, including the findings of research for acquisitions and inward loans that are not approved to proceed, documenting relevant information and decision-making.

This policy and versions of the policy will be stored in accordance with the provisions of the Record-Keeping Policy.
8. Review

This document will be reviewed at least every two years to ensure it remains relevant. The document may be reviewed at earlier intervals where a change in operational procedures impacts on the policy content.

9. Consultation

Employees covered within the scope of this policy will be consulted in the development and subsequent reviews of the policy and their comments and feedback will be taken into consideration before the document is finalised.

10. Definitions

Aboriginal or Torres Strait Islander Art

means a work of art by an Aboriginal or Torres Strait Islander artist. Aboriginal and Torres Strait Islander Art is defined in accordance with the Aboriginal and Torres Strait Islander Cultural Rights and Engagement Policy.

Accession

means the process which formally acknowledges an work of art as part of the collection, in accordance with the Art Acquisitions Policy.

Acquisition

means the process of obtaining valid title to an work of art, in accordance with the Art Acquisitions Policy.

Act

means the National Gallery of Australia Act 1975.

Collection

means works of art in various media that are Gallery property and have been formally accessioned. For the purposes of this policy, the terms work of art, work and related terms
are used interchangeably to describe all art or other material Accessioned into the collection.

Council

means the governing Council of the Gallery under the Act.

Council Member

means a member of the governing Council appointed in accordance with the Act.

Director

means the Director of the Gallery appointed under the Act and includes a person appointed as acting Director.

Due Diligence

means the thorough assessment of an work of art to evaluate its authenticity, ownership and provenance and to identify and assess any gaps.

Gallery

means the National Gallery of Australia, a statutory authority established in accordance with the Act.

Inward Loan

means any contracted arrangement for the transfer of possession of a work of art to the Gallery on a temporary basis under which the transferor grants a temporary right of possession to the Gallery, in accordance with the Inward Loans Policy.

Outward Loan

means any contracted arrangement for the transfer of possession of a work of art from the Gallery to another party or parties on a temporary basis under which the Gallery grants a temporary right of possession to the borrower, in accordance with the Outward Loans Policy.

Provenance
means the history and ownership of an item from the time of its discovery or creation to the present day, from which authenticity and ownership may be determined.

**Title**

means the legal right to ownership of property.

### 11. References

This policy should be read in conjunction with the following:

#### 11.1 Gallery Policies

- *Aboriginal and Torres Strait Islander Cultural Rights and Engagement Policy*
- *Art Acquisitions Policy*
- *Exhibitions Development Policy*
- *Freedom of Information Policy*
- *Inward Loans Policy*
- *Outward Loans Policy*
- *Record-Keeping Policy*
- *Risk Management Policy*

#### 11.2 Guidelines, Procedures and Associated Documents

11.2.1 Gallery Guidelines, Procedures and Associated Documents

- *Aboriginal and Torres Strait Islander Reconciliation Action Plan*
- *Art Acquisitions Strategy*
- *Art Acquisitions Procedure*
- *Professional and Personal Conduct Guidelines*
- *Code of Ethics*
• Fraud Strategy

• Inward Loans Procedure

• Outward Loans Procedure

• Provenance and Due Diligence Research Procedure

• Work of Art Claims and Inquiries Handling Procedure

11.2.2 National and International Guidelines, Procedures and Associated Documents

The Gallery’s guidelines and principles have been informed by the Australian Government’s Australian Best Practice Guide to Collecting Cultural Material 2014, the Association of Art Museum Directors’ Report of the AAMD Task Force on the acquisition of archaeological materials and ancient art (2004) and Combating illicit trade: due diligence guidelines for museums, libraries and archives on collecting and borrowing cultural material (Department for Culture, Media and Sport, London, 2005). Other framing documents include:

• Art Gallery of New South Wales, Provenance and Due Diligence Research Policy, 2015

• National Museum of Australia, Collections Development Policy, 2014

• Australian Government, Attorney General’s Department, Ministry for the Arts, Protection of Cultural Objects on Loan: Scheme Guidelines 2014

• American Association of Art Museum Directors, Guidelines on the Acquisition of Archaeological Material and Ancient Art, 2013

• ICOM Code of Ethics, 2013

• Australia Council, Protocols for Producing Indigenous Australian Visual Arts, 2010

• Ministry for the Arts, Cultural Gifts Program Guide, 2009
• Pacific Islands Museums Association Code of Ethics for Pacific Museums and Cultural Centres, 2006

• Museums Australia, Continuing Cultures, Ongoing Responsibilities, 2005

• Department for Culture, Media and Sport, Cultural Property Unit, United Kingdom, Combating Illicit Trade: Due Diligence guidelines for museums, libraries and archives on collecting and borrowing cultural material, October 2005

• Smithsonian Institution, Collections Management, 2001

• Museums Australia, Code of Ethics, 1999

• Unidroit Convention on Stolen or Illegally Exported Cultural Objects, 1995

• Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (Amendment) 1979

• UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 1970


• ICOM Red Lists

• The Art Loss Register

• UNESCO, Database of National Cultural Heritage Laws

• ICOM, International Observatory on Illicit Traffic in Cultural Goods

• ICOM, World Intellectual Property Organisation Art and Cultural Heritage Mediation

• International Foundation for Art Research
11.3 Legislation


11.3.1 Commonwealth

- *National Gallery of Australia Act 1975*

- *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*

- *Biosecurity (Consequential Amendments and Transitional Provisions) Act 2015*

- *Customs Act 1901*

- *Environment Protection and Biodiversity Conservation Amendment (Wildlife Protection) Act 2001*

- *Personal Properties Securities Act 2009*

- *Protection of Cultural Objects on Loan Act 2013*

- *Protection of Cultural Objects on Loan Regulation 2014*

- *Protection of Movable Cultural Heritage Act 1986*

- *Protection of Movable Cultural Heritage Regulation 1987*

- *Public Governance, Performance and Accountability Act 2013*

11.3.2 Australian Capital Territory

- *Freedom of Information Act 2016*
• Public Interest Disclosure Act 2012

• Information Privacy Act 2014

• Financial Management Act 1996

• Financial Management Regulation 2005

• Sale of Goods Act 1954

• Sale of Goods (Vienna Convention) Act 1987

• Territory Records Act 2002

This policy is also informed by the traditions and precedents set since the establishment of the Gallery.
## Attachment A

### Summary of Amendments

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