

Aboriginal and Torres Strait Islander Cultural Rights and Engagement Policy

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1. Purpose

The purpose of this document is to align the work of the National Gallery of Australia to the external environment with regards to Aboriginal and Torres Strait Islander arts. This includes national and international Indigenous rights and priorities relating to Indigenous art and culture. Additionally, this document aims to outline the intentions of the Gallery in relation to its commitment to Aboriginal and Torres Strait Islander peoples, and their arts and cultures. It also seeks to define and attribute roles and responsibilities to this effect and ensure an organisation-wide approach, recognising that the Gallery, as a national institution is accountable to the public, and in particular Aboriginal and Torres Strait Islander peoples.

1.1 Overarching Principles

- (a) The Gallery is located on the lands of the Ngunnawal and Ngambri peoples, and recognises them as the traditional owners and ongoing custodians of the land, and pays its respect to their Elders past, present and future. All principles and practices of the Gallery in relation to Aboriginal and Torres Strait Islander peoples depart from this recognition of ongoing custodianship, and the associated social and cultural rights.
- (b) Australian Aboriginal and Torres Strait Islander culture and art is the oldest ongoing tradition in the world, dating back 65,000 years. Arts and cultural expression continue to be a crucial element of the social, cultural and economic fabric of Aboriginal and Torres Strait Islander peoples and communities throughout Australia.
- (c) Aboriginal and Torres Strait Islander art occupies a unique place within Australian art and history. Aboriginal and Torres Strait Islander art embraces global social, cultural and economic changes and is influenced by the wider arts and cultural environment across Australia and internationally whilst remaining connected to and regardful of thousands of years of heritage and continuous cultural practice. The Gallery recognises that contemporary Aboriginal and Torres Strait Islander artists often have rights and responsibilities as custodians of culture in relation to their artistic practice and acknowledges that Indigenous

Cultural and Intellectual Property (ICIP) must be respected for both individual and collective cultural rights.

- (d) As the nation's premier visual arts collecting institution, the Gallery has a crucial role in the collection, exhibition and interpretation of Aboriginal and Torres Strait Islander art. Representing Aboriginal and Torres Strait Islander artists from across Australia, the Gallery's collection celebrates Indigenous Australia's ongoing cultural heritage and its myriad contemporary expressions. The Gallery is committed to the development of understanding and appreciation of contemporary and past Aboriginal and Torres Strait Islander art and art practices, ensuring that in all areas of the Gallery representation and interpretation of works is respectful and reflects Aboriginal and Torres Strait Islander peoples' desire and authority to speak for themselves through their own interpretations and perspectives.
- (e) Aboriginal and Torres Strait Islander peoples have the right to self-determination in their cultural affairs as well as in their maintenance, practice and expression of cultural material. Historically, this right has not always been upheld in Australia. The Gallery is committed to working alongside Aboriginal and Torres Strait Islander peoples to correct these inequities and support self-determination as reflected in Gallery practices, policies, processes, and directions through appropriate consultation with relevant Aboriginal and Torres Strait Islander artists, communities, agencies and organisations.
- (f) Ensuring appropriate Aboriginal and Torres Strait Islander participation in all aspects of the Gallery's dealings with Aboriginal and Torres Strait Islander art is central to this policy, which is informed by the principles outlined in the Australia Council's *Protocols for Producing Indigenous Australian Visual Arts* and the *United Nations Declaration on the Rights of Indigenous People*.
- (g) The Gallery aspires to ethically and accountably bring the best Indigenous Australian art to the people of Australia. It has been a signatory to the *Indigenous Australian Art Charter of Principles for Publicly Funded Collecting Institutions* since 2010 and demonstrates this responsibility through utilising and

promoting best practice for the acquisition, commission, display, publication, communication, storage, research, conservation, borrowing, lending and deaccessioning of Aboriginal and Torres Strait Islander art and art containing Aboriginal or Torres Strait Islander themes or content. As per 2.5.15 of the *Charter*, the Gallery reports on its implementation and observance of the *Charter* in its Annual Report. There is also international interest in the Gallery's collection of Aboriginal and Torres Strait Islander art. In dealing with loans and travelling exhibitions, the Gallery will take a strong leadership role in encouraging and promoting ethical conduct based on good faith and mutual respect, recognising the diversity of customs and laws pertaining to Aboriginal and Torres Strait Islander art.

- (h) The Gallery is committed to pursuing best practice, consistent with applicable legislation, in Repatriation from within its own collection and to cooperate and assist Aboriginal and Torres Strait Islander peoples and other organisations in the repatriation of human remains and objects of cultural patrimony. The Gallery will deal with any claims on a case-by-case basis in keeping with relevant legislation including the *Protection of Cultural Objects on Loan Act 2013* and the Gallery's Inward Loans, Art Acquisition and other related policies and procedures, including its claims handling procedure. The Gallery is also open to negotiating other arrangements in the management, care and custody of relevant items. For all future activities, it is the Gallery's policy to ensure prior and informed consent for any further acquisitions or loans of works which include any elements of human remains or objects of cultural patrimony from the individuals and/or communities directly concerned.
- (i) The Gallery recognises Aboriginal and Torres Strait Islander people/s unique interest and investment in the breadth of the Gallery's collections, exhibitions and operations beyond its activities specifically involving Aboriginal and Torres Strait Islander people/s and their arts and culture. In recognition of this the Gallery is committed to developing and maintaining an Indigenous Advisory Committee to inform and review broader strategic direction and goals and to ensure the Gallery is pursuing organisation-wide best practice towards being a

welcoming, respectful, anti-discriminatory and culturally safe national institution for Aboriginal and Torres Strait Islander peoples.

- (j) The Gallery is committed to developing and maintaining an active Reconciliation Action Plan which outlines measurable targets in relation to the principles outlined in this policy and should be read concurrently with this document. It identifies current milestones and progress towards best practice in:
- i. **Indigenous Leadership and Self-Determination in the Arts** including employment and income generation, internships and scholarships, access to the collection, supporting development opportunities for the Indigenous arts and cultural sector, and in the ethical collection, display, documentation, promotion, representation, education, borrowing, lending and research of Aboriginal and Torres Strait Islander arts and culture and its artists, and communities.
 - ii. **Cultural Safety** for all Aboriginal and Torres Strait Islander peoples, recognising the breadth of diversity and cultures in Indigenous Australia, including training and education in cultural safety for gallery employees, and the development of relevant practices and procedures to support a foundation of trust and respect between our Indigenous and non-Indigenous stakeholders.
 - iii. **Respect and Recognition:** Aboriginal and Torres Strait Islander art and culture is a continuum of the past, present and future. To demonstrate the Gallery's respect and recognition of this living culture, the Reconciliation Action Plan will include: protocols for Welcome to Country and Acknowledgement of Country; display of the Aboriginal and Torres Strait Islander flags; celebration of National Reconciliation Week, NAIDOC Week and other significant days for Aboriginal and Torres Strait Islander communities; consent protocols for photography and for both living and deceased peoples and respecting privacy in personal and cultural affairs; and developing and maintaining relationships with the local Aboriginal community

including recognising their cultural authority in relation to place and stories of the Canberra region.

1.2 Objectives

In executing this policy the gallery is committed to realising the following objectives:

- (a) To recognise and respect Aboriginal and Torres Strait Islander peoples' rights to access, maintain and control their cultural heritage.
- (b) To meaningfully engage with Aboriginal and Torres Strait Islander peoples, their cultural heritage and associated rights, and to ensure the Gallery applies best practice in all its activities, particularly activities concerning:
 - i. Aboriginal or Torres Strait Islander art; and
 - ii. art with Aboriginal or Torres Strait Islander themes or content.
- (c) To publically acknowledge the importance and value of Indigenous Cultural and Intellectual Property and support the recognition of ICIP rights.
- (d) To ensure the Gallery applies best practice in engaging with the public about Aboriginal and Torres Strait Islander peoples and their art, and in representing Aboriginal and Torres Strait Islander peoples and their art.
- (e) To establish and maintain transparent feedback, claims and complaints-handling processes regarding the Gallery's engagement with Aboriginal and Torres Strait Islander people and its dealings with ICIP.

1.3 Principles for Engagement with Aboriginal and Torres Strait Islander Peoples

In engaging with Aboriginal and Torres Strait Islander peoples the Gallery will have regard to the following principles, regardful of relevant territory and Commonwealth law, including the institution's enabling legislation:

- (a) Aboriginal and Torres Strait Islander peoples have the right to self-determination in their cultural affairs , the expression of cultural

material and the fulfilment of their cultural aspirations and to seek, and reasonably expect, assistance from the Gallery in the realisation of these rights;

- (b) cultural material includes works by Aboriginal and Torres Strait Islander artists, as well as works with Aboriginal and Torres Strait Islander themes and content;
- (c) Aboriginal and Torres Strait Islander peoples should have ready access to the Gallery and its collection of Aboriginal and Torres Strait Islander art and inform the Gallery's provision of access to others where relevant, in particular with sensitive cultural material:
 - i. 'Access' in this instance not being limited to knowledge of and physical access to collections for viewing, research, making reproductions and ceremonial use where doing so is consistent with the Gallery's care of the collection obligations, but also access to funding, policy development and implementation processes, and training and employment.
 - ii. 'Collections' in this instance not being limited to works of art and/or cultural materials but also information associated with these including research, provenance and due diligence documentation, photographs, and any other information related to Aboriginal and Torres Strait Islander culture and history held by the Gallery.
- (d) The purchase of Aboriginal or Torres Strait Islander art by the Gallery does not diminish the artist or relevant community's cultural and/or financial interest in the work, including works acquired by the Gallery through resale.

- (e) The Gallery respects and seeks to honour the cultural investment and generosity of Aboriginal and Torres Strait Islander artists and communities in sharing their cultural heritage with audiences.
- (f) The Gallery recognises that as “living cultures” the norms and views of Aboriginal and Torres Strait Islander communities may change over time.
- (g) As appropriate Aboriginal and Torres Strait Islander peoples will be consulted in the development and implementation of all exhibitions and programs of Aboriginal and Torres Strait Islander art without a pre-determined outcome and with clear information, in order to ensure that the views and opinions of the artists and/or communities concerned are fully revealed and explored.
- (h) Consultation with Aboriginal and Torres Strait Islander people will be in the form that is most effective for the people concerned, including:
 - i. where necessary, the first language of the Aboriginal or Torres Strait Islander people will be used;
 - ii. where consultation involves a group, the majority of participants will be Aboriginal or Torres Strait Islander;
 - iii. where requested, utilisation of representatives of the Aboriginal or Torres Strait Islander people chosen in accordance with the community’s own procedures, regardless of cultural protocols, authority structures and the specific role of Elders;
 - iv. where culturally sensitive content is involved, such as secret, sacred or gender-specific works, every effort to establish special communication procedures prior to consultation will be undertaken.

- (i) Consultation with Aboriginal and Torres Strait Islander peoples will directly involve a curator from the Aboriginal and Torres Strait Islander Art Department and other nominated Gallery representative who is Aboriginal or a Torres Strait Islander as required.
- (j) To the greatest extent practicable, sufficient time, flexibility and adaptability will be planned for in the consultation process to enable culturally respectful consultation and follow-up to be conducted.
- (k) To the greatest extent practicable, the Gallery will give effect to the views of Aboriginal and Torres Strait Islander artists as to how they wish to be represented in exhibitions, programs and related activities.
- (l) To the greatest extent practicable, the Gallery will give effect to the views of relevant communities and where there are differences of views, the Gallery will seek to achieve a consensus.
- (m) There will be fair payment for engagement and consultation rendered in the implementation of these procedures.
- (n) The participation of representatives will be recognised and acknowledged and ongoing dialogue and engagement fostered wherever possible.
- (o) There will be clear written records of all consultations and dealings with Aboriginal and Torres Strait Islander artists and communities to sustain accountability.

2. Scope

This policy applies to all activities relating to the diverse range of engagements that the Gallery undertakes with Aboriginal and Torres Strait Islander stakeholders and activities which involve Indigenous Cultural and Intellectual Property.

3. Responsibilities

This policy applies gallery-wide. As such, implementation of this policy is a shared responsibility across the Gallery. The Gallery's Reconciliation Action Plan and aligned goals in the Strategic Plan will at times assign strategies, key performance indicators and responsibility for action to key individuals and/or departments, however it is the responsibility of all employees to understand the policy and its implications and to assume responsibility for the parts of the policy which they can affect within their roles.

The Director is personally responsible for the implementation of this policy and is accountable to the Council in relation to the progression of the commitments contained within this policy. The Director will also advise the NGA's Indigenous Advisory Committee on the progression of this policy.

Gallery staff involved in engagement with Aboriginal and Torres Strait Islander communities are bound by the Gallery's Code of Conduct and other relevant Gallery policies and procedures.

3.1 Department Heads

Department Heads are responsible for:

- (a) implementing this policy within their departments, including ensuring that performance expectations are included into their own and staff work-plans and being accountable to these expectations to the Director;
- (b) ensuring that employees under their management are aware of and have an understanding of the requirements of this policy; and
- (c) providing further training and instruction in the procedures noted in this policy.

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. Complaints

- (a) A complaint may be made to the Director regarding non-compliance with this policy.
- (b) The Director will ensure all complaints are investigated and that appropriate action is taken in response.
- (c) The Director will advise the complainant of the outcome of the complaint.

5. Training and Instruction

Cultural Safety training is compulsory for all staff, together with refreshment of individuals' understanding of this policy and their role in implementing the Reconciliation Action Plan, to be carried out on a basis identified within the Reconciliation Action Plan.

Employees who require additional training to have a better understanding of this policy shall contact their manager or supervisor in the first instance. The manager or supervisor may seek the assistance of the Director or his/her delegate 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 without reasonable cause. The Director will ensure that compliance with these procedures is assessed as part of the Gallery's audit program.

7. Records

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

- (a) Appropriate records of consultations and decision-making will be maintained in accordance with established record-keeping policy and procedures, in particular in the areas of exhibitions, loans, acquisitions and public programs.
- (b) Files must include evidence of the consultation and decision-making processes and outcomes including:
 - i. peoples/representatives consulted;
 - ii. methods of consultation, including strategies to facilitate genuine and meaningful exchange;
 - iii. the peoples/representative's decisions or wishes on the matter;
 - iv. the outcome or decision made by the Gallery on the matter;
 - v. any additional outcomes for the community arising from the consultation and engagement and evidence that these have been acted upon.

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 and the Indigenous Advisory Committee, when established, 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

In this policy:

Aboriginal or Torres Strait Islander person or people/s

means a person or people/s who:

- (a) is of Australian Aboriginal and/or Torres Strait Islander descent;
- (b) identifies as an Australian Aboriginal and/or Torres Strait Islander person; and
- (c) is accepted as an Australian Aboriginal and/or Torres Strait Islander person by their community.

Please note that whilst these terms are used for administrative purposes consistent with federal Government usages, the Gallery acknowledges that these are contested terms. Whilst these terms are used broadly to identify the First Peoples of the country we now call Australia, wherever possible when referring to individual artists and particular communities the terms used by the artists and communities themselves will be used, such as their specific language groups, nations, clans and kinship affiliations.

Aboriginal or Torres Strait Islander art

means a work of art:

- (a) by an Aboriginal or Torres Strait Islander artist

Aboriginal and Torres Strait Islander Art Department

means the section of the Gallery with responsibility for the collection, research and exhibition of Aboriginal and Torres Strait Islander art. The Aboriginal and Torres Strait Islander Art Department sits within the overarching Australian Art Department.

Aboriginal and Torres Strait Islander themes or content

Means themes or content based on the cultural expression and heritage of Aboriginal and Torres Strait Islander peoples, past present or future, or includes any representations of Aboriginal and Torres Strait Islander people, culture, imagery or issues.

Act

means the *National Gallery of Australia Act 1975*.

Community

in the context of this policy, is a group of people with a shared heritage, culture, language or geographic location.

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*.

Cultural material

means any physical and documentary material that represents the intangible and tangible elements of a culture.

Culturally respectful

is defined by the relevant Aboriginal or Torres Strait Islander community.

Cultural safety

is where an individual and/or a community feels that their cultural identity has been respected and regarded and has not been diminished, demeaned or disempowered. Culture

is not restricted to ethnicity or 'race' but also includes, for example: age or generation; gender; sexual orientation; occupation and socio-economic status; citizenship; religious or spiritual beliefs; and disability. It is defined by the relevant Aboriginal or Torres Strait Islander community.

Cultural patrimony

means works or cultural materials possessing ongoing cultural, traditional, or historical significance to a group and their heritage.

Curator

means the person responsible for the conceptual development and research of the collection and exhibitions, including identifying and sourcing loans for exhibition.

Director

means the Director under the *Act*, and includes a person appointed as acting Director.

Gallery

means the National Gallery of Australia

Indigenous Cultural and Intellectual Property (ICIP)

Means all the rights that Indigenous people have, and want to have, to protect their traditional arts and culture. The idea of ICIP is based on the principle of self-determination. The Gallery subscribes to the definition provided by Artists in the Black (see www.aitb.com.au).

Local community

means the group of people residing where an exhibition takes place.

Repatriation

means the return of a work of art or cultural material to individuals or communities of origin.

Representative

means the person nominated by a particular group of people to act on their behalf.

Sacred/secret materials

means works of special spiritual or religious significance to Aboriginal and Torres Strait Islander peoples. These items are usually associated with ceremonies restricted to certain people and are not for access or viewing by the general public.

Self-determination

means the sovereign right of Aboriginal and Torres Strait Islander peoples to make decisions about their lives, communities and cultural needs.

11. References

11.1 Related Gallery Policies

- *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

- Aboriginal and Torres Strait Islander Policy, Museum of Contemporary Art
- Aboriginal and Torres Strait Islander Engagement Policy, Art Gallery of NSW, 2015
- Indigenous Cultural Rights and Engagement Policy, National Museum of Australia, 2015
- *Australian best practice guide to collecting cultural material*, Australian Government, Attorney General's Department, Ministry for the Arts, 2014
- *Code of Ethics*, International Council of Museums, 2013
- *Guidelines for ethical research in Australian Indigenous studies*, AIATSIS, 2012
- *Protocols for Producing Indigenous Australian Visual Arts*, Australia Council, 2010
- *Indigenous Australian Art Charter of Principles for Publicly Funded Collecting Institutions*, 2009

- *Protocols for producing Indigenous Australian visual arts*, Australia Council for the Arts, 2007, 2nd edition
- *Declaration on the rights of Indigenous peoples*, United Nations 2007
- Franchesca Cubillo, *Winston Churchill Memorial Trust of Australia Report by Franchesca Cubillo*, 2006
- *Continuing Cultures, Ongoing Responsibilities*, Museums Australia, 2005
- *Previous possessions, new obligations: policies for museums in Australia and Aboriginal and Torres Strait Islander peoples*, Museums Australia, 2000
- *Code of Ethics*, Museums Australia, 1999
- Canada Communication Group, *Report of the Royal Commission on Aboriginal Peoples: Volume 3: Gathering Strength, Chapter 6 – Arts and Heritage; Appendix 6A: Excerpts from Turning the Page: Forging New Partnerships Between Museums and First Peoples*, 1996
- *UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*, 1970

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*
- *Copyright Act 1968*
- *Customs Act 1901*
- *Income Tax Assessment Act 1997*

- *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

Amended	Version #	Description of Amendments	Approval of Amendments
Month and Year		Briefly describe the amendments	Title of the person approving document (same as in the footer)