

Deaccessioning Policy

Summary

Description of Policy	Deaccessioning Policy
Policy applies to	<input checked="" type="checkbox"/> NGA wide <input type="checkbox"/> Specific (eg. Department)
Policy Status	<input type="checkbox"/> New policy <input checked="" type="checkbox"/> Revision of Existing Policy (previously Art Acquisition Policy)
Approval Authority	<i>Director</i>
Responsible Officer	<i>Assistant Director, Artistic Programs</i>
Contact area	<i>Artistic Programs</i>
Date of Policy Review*	<i>October 2022</i>
Related Policies, Procedures, Guidelines and Local Protocols	<i>National Gallery Act 1975 Public Governance, Performance and Accountability Act 2013 Council Instructions including Financial Delegations Aboriginal and Torres Strait Islander Cultural Rights and Engagement Policy Due Diligence and Provenance Policy Acquisitions Policy Research Library Collection Development Policy Research Archive Acquisition Policy The Copyright Act 1968 The Privacy Act 1988 Privacy Policy Australian Best Practice Guide to Collecting Cultural Material 2015 Collections Law: Legal issues for Australian Archives, Galleries, Libraries and Museums</i>
*Unless otherwise indicated, this policy will still apply beyond the review date.	

Approvals

<i>Assistant Director</i>	Natasha Bullock	Yes	
<i>Director</i>	Nick Mitzevich	Yes	
<i>Council</i>	Ryan Stokes	Yes	

Table of contents

1. Purpose.....	4
2. Scope	5
3. Responsibilities	5
4. Procedures	6
5. Definitions.....	14
6. References	15
Attachment A.....	20

1. Purpose

A core function of the National Gallery of Australia, as outlined in the *National Gallery Act 1975* (the Act), is to develop and maintain a national collection of works of art. In pursuing this aim, the Gallery must, from time to time, refine the national collection through careful deaccessioning of collection material that is, as outlined in section 9 of the Act, unfit or no longer required. Once the material is formally deaccessioned (removed from the collection), it may be disposed of by various means including sale, gift and destruction. The Act empowers the Gallery to exchange works of art for any other works of art if it would be advantageous to the collection. Under certain circumstances, it may be necessary for the Gallery to reconstitute or repatriate a deaccessioned item.

All proposals to deaccession collection material are rigorously assessed and require a resolution from the Gallery's Council and ministerial approval. An exception for ministerial approval applies only in the instance of an exchange of works, as per section 10 (1) and (2) of the Act. The Council will only consider a resolution to deaccession when such a course of action is recommended by the Director based on advice from relevant staff in accordance with this policy. Collection material is deaccessioned only when consistent with applicable legislation, as well as industry standard practice and ethics.

When deaccessioning any item, the Gallery must balance a range of considerations, including but not limited to:

- (a) the reason it has been proposed for deaccession
- (b) the public interest
- (c) the Gallery's reputation
- (d) the effect on the willingness of current and future benefactors to donate or bequeath material to the Gallery
- (e) the effect on the Gallery's relationship with any living artist

- (d) conditions outlined in policies related to the Australian Government's Cultural Gifts Program.

2. Scope

This policy sets out the process and criteria for the deaccession and disposal or exchange of material acquired in accordance with the Gallery's Acquisitions Policy. This includes the national collection, the Research Library Archive and the Study Collection (previously Art Archive). It does not apply to material forfeited to or seized by a government under legislation, or surrendered pursuant to a court order, although following such action the deaccession process should be instituted to formalise the removal of the material from the collection. This policy is also distinct from procedures relating to Gallery assets that are not accessioned into the collections, including works of art left with the Gallery whose owners cannot be identified or located, provisions for which are outlined in Section 11 of the Act.

3. Responsibilities

Curators: review and assess collection material for title, significance and condition and make recommendations for deaccession and exchange or disposal.

Assistant Director, Artistic Programs: oversees sustainable collection development and management to ensure the whole collection is maintained to an optimum level and that processes of deaccession and disposal or exchange are undertaken in accordance with the Act, this policy and related policies, plans and procedures.

Director: makes recommendation to the Council regarding deaccession and disposal or exchange on the advice of the Assistant Director, Artistic Programs.

Council: reviews a deaccessioning proposal and decides whether to approve the deaccession and disposal of collection material as recommended by the Director, in accordance with the Act, this policy and related policies, plans and procedures.

Minister responsible for the Arts: decides whether to approve the Council's recommendation to deaccession and dispose or exchange of the material.

Head of Registration: ensures all documentation of deaccession and disposal or exchange processes is completed for permanent retention in accordance with the Act, this policy and related policies, plans and procedures.

4. Procedures

4.1 Principles

The Gallery's power to deaccession a work of art is set out in section 9 of the Act, which provides that the Council may resolve to dispose of a work of art by way of sale, gift or destruction if it is satisfied that it is unfit for the collection or is no longer required. However, such a resolution must be approved by the Minister before any disposal can take place.

Section 10 of the Act further provides that the Council may, if satisfied that it would be advantageous to do so, exchange one work of art for another. Ministerial approval is not required for such an exchange, although the Gallery will inform the responsible government department of any proposed exchanges and the terms of the exchange.

The overarching principles which apply are:

- (a) Collection material will only be deaccessioned if to do so will improve the overall quality of the collection, having regard to the matters set out at 4.2.
- (b) The Gallery will not base any deaccessioning decision on current trends or personal tastes but will strive to make such decisions objectively, having regard to the long-term interests of the collection and the public interest, and the recommendations of relevant curatorial staff and the Director.
- (c) The method of disposal or exchange of collection material under this policy must consider the protection of the public interest as well as the interests of the Gallery.
- (d) Funds received from the disposal or exchange of collection material must be used only for the acquisition of material for the collection, preferably in the same collecting area, unless the Council otherwise determines.

- (e) Where possible and relevant, the name of the donor or the fund from which deaccessioned material was originally acquired is to be credited to a new acquisition.
- (f) The Gallery will list each object deaccessioned from the collection during the preceding year in its annual report.
- (g) Deliberations around the deaccession and disposal process will consider ongoing costs with the care, management and storage of the material in relation to its cultural value.

4.2 Criteria

In determining whether collection material will be deaccessioned, the Council will have regard, among other things, to whether:

- (a) it no longer falls within the parameters of the Acquisitions Policy, or is no longer representative of the collection, having regard to the Gallery's Art Acquisition Strategy at the time of deaccessioning
- (b) its significance or aesthetic merit falls below the general level of the collection
- (c) it lowers the overall quality of representation of an artist or collection area
- (d) it is identified as an object of significance to an Aboriginal or Torres Strait Islander community or Indigenous community in another country and will be returned to that community or a representative museum, cultural centre or keeping place as negotiated, as required by law or determined by principles of best practice
- (e) it is identified as required by law or the principles of best practice to be returned to its country or community of origin, or investigation of title to the work finds that the valid title-holder is a person or entity other than the Gallery, or on the balance of probability is highly likely to be
- (f) it no longer falls within the parameters of the Acquisitions Policy or Due Diligence and Provenance Policy or was acquired in circumstances that

- do not meet the current due diligence standards expected of an Australian national cultural collecting institution such as the Gallery
- (g) the legal and/or ethical circumstances are such that it is unfit to remain in the collection and should be returned to a particular person, entity, community or country
 - (h) it is of a type that may be better placed in another public collecting institution
 - (i) it can be exchanged to improve the overall quality of the collection
 - (j) the Gallery has acquired a superior example
 - (k) it has deteriorated to such an extent that it is no longer able to be exhibited and is unable to be acceptably restored
 - (l) it is falsely documented, described or attributed, or is on the balance of probability highly likely to be
 - (m) it is a forgery, or is incorrectly identified or attributed, or is, on all available evidence, extremely likely to have been
 - (n) the provenance is undocumented, or no documentation is available
 - (o) it is a duplicate of another object, where such duplication serves no reasonable scholarly or educational purpose, a duplicate being an object produced as a multiple or in an edition – for example, a work of art struck from the same die or printed from the same block or plate
 - (p) it presents a risk to people, the Gallery buildings or to other works of art.

4.3 Restrictions

Subject to 4.9, the Gallery will not deaccession:

- (a) a work of art by a living artist without first engaging with the artist
- (b) collection material acquired subject to a restriction that it be retained for a certain period until that period of time expires

- (c) collection material donated or bequeathed to the Gallery without first engaging with any relevant donor, executor, trustee or personal representative of the donor or testator, having regard to any conditions or trusts attaching to gifts or bequests and to whether or not the relevant person can reasonably be identified and contacted.

4.4 Proposal

Before the Director considers whether collection material should be deaccessioned, relevant curator will prepare a submission outlining:

- the reasons for the proposed deaccessioning, taking into account the matters set out in this policy (particularly those in 4.2) and related Gallery policies
- the context of the material within the collection
- the effect the deaccessioning would likely have on the collection
- the recommended method of disposal or exchange
- associated costs and any identified source of funding
- where relevant, cost estimates for ongoing conservation, maintenance and storage of the object proposed for deaccession should it be retained
- applicable legislation and/or international agreements
- an estimate of the current market value, with documentary evidence to support that valuation where possible
- in the case of gifts and bequests, a statement of:
 - i. any relevant conditions that accompanied the donation or bequest
 - ii. the response of the donor, trustee or personal representatives when contacted

- iii. where the donor, trustee or personal representatives could not be contacted, a summary of the steps taken to contact the relevant person
- iv. whether there are any legal restrictions on deaccessioning the collection material
- v. the implications of deaccessioning collection material gifted or bequeathed to the Gallery, including any considerations related to the Australian Government's Cultural Gifts Program
- vi. the object being considered for the reattribution of the donor's credit line.

4.5 Approval

- (a) The Director will make an in-principle determination on behalf of Council after considering the deaccession proposal.
- (b) Except in relation to material to which the Gallery is found not to have valid title, or that poses a danger to people, to the Gallery building, reputation and/or to other collection material, a period that allows for the appropriate consultation between the Director's in-principle determination and Council's final determination to deaccession is to occur.
- (c) During the consultation and research period relevant curatorial staff undertake due diligence in relation to the proposed deaccession and other duties such as cataloguing, updating the Collection Management System, stakeholder consultation, and confirmation of the information listed under 4.4.
- (d) The proposal for final determination will include a clear plan and timeline for disposal or exchange, and the final determination will include a resolution from Council as to the means by which the subsequent disposal or exchange will be effected and whether or not the provenance is to remain confidential.
- (e) The *Australian Accounting Standard* AASB 116 Property, Plant and Equipment requires that the carrying amount of an item of property, plant and equipment (including heritage and cultural assets) is derecognised when no future

economic benefits are expected from its use or disposal. Following the final determination, the Chief Finance Officer must be informed to ensure the deaccessioned object is derecognised from the Gallery's financial accounts and relevant disclosures included in annual financial statements. The specific treatment is discussed and agreed with the Gallery's external auditors and the relevant government department.

- (f) In cases to which section 9 of the Act applies, Gallery staff will promptly seek the approval of the Minister to the proposed deaccession following a final determination. The communication to the Minister will include a statement as to how the object is to be disposed of or exchanged.
- (g) In cases to which section 10 of the Act applies, Gallery staff will promptly inform the responsible government department of the final determination.
- (h) When collection material has been deaccessioned following a final determination and ministerial approval (as required), the Director will report relevant details at the next Council meeting.

4.6 Disposal

- (a) Unless the Council determines to the contrary, the means by which collection material is disposed of or exchanged after a final determination and any required ministerial approval must be open and accountable. Such means include sale, public auction, public tender, or transfer to another institution that operates on a not-for-profit basis.
- (b) The Gallery must in the first instance consider whether another Australian public collecting institution or publicly funded body may be interested in acquiring the collection material, including by way of sale, gift or exchange.
- (c) Where the Gallery has decided to exchange a work of art under section 10 of the Act, the agreement for exchange may include provision for payment or receipt of money in addition to the work of art, in recognition of the difference in value between the works of art exchanged.

- (d) If material is to be disposed of from the collection as a result of the matters set out in clause 4.2(k), and where this does not compromise the Gallery's obligations relating to the proper management of gifts acquired through the Australian Government's Cultural Gifts Program, the Gallery may first assign it to its conservation department for practical testing or research purposes.
- (e) Deaccessioned collection material that is a danger to people or to property (4.2(p)), is a forgery (4.2(m)), or is degraded to the point where it is no longer recognisable or restorable and does not have any saleable value (4.2(k)), may be destroyed or recycled for materials or components if all other avenues for disposal have been exhausted.
- (f) Where it is found, through an evidence-based decision-making process founded on the civil standard of proof, that collection material is required by law or the principles of best practice to be returned to its country or community of origin, or the valid title-holder is a person or entity other than the Gallery, the Gallery does not have a legal or moral right over the object in question. Items of this type will be deaccessioned and returned to the valid title-holder, or transferred by restitution or repatriation.

4.7 Records relating to collection material that has been deaccessioned

- (a) Following the Minister's approval to deaccession or following a Council resolution to exchange:
 - i. relevant collection management system records and other documentation will be updated to reflect the deaccession and subsequent disposal or exchange
 - ii. any assigned accession or other internal record number will not be reassigned. Any accession numbers or other markings identifying the collection material as having belonged to the Gallery are removed.

- iii. relevant collection records will not be retired in the current collection management system and will retain a reference to the unique identifier and any assigned accession number in any future system
- (b) Except in relation to a gift or exchange with another public institution, the Gallery will retain all original documentary material concerning the collection material, including photographs and appraisals and provide copies of relevant documentation to the recipient where required.
- (c) In the case of a gift to or exchange with another public institution, the original documentation will be transferred to that gallery or museum, with the Gallery retaining copies.
- (d) Images of deaccessioned collection material may be released by the Gallery for academic and other purposes where agreed on a case-by-case basis between the Curator of Provenance, relevant curator, Assistant Director, Artistic Programs, Head of Communications, Director and present owner where relevant with consideration to the method of disposal and to the rights of the current owner and the copyright holder for both the image and the object.
- (e) Where a deaccessioned work of art has related material in the Study Collection (previously Art Archive), Research Library Archive or other such supplementary collection, consideration will be given to deaccessioning that material also.

4.8 Ethics, confidentiality and disclosure

- (a) Under no circumstances will collection material be transferred, given away or knowingly sold to any member of the Council or Gallery staff, or any member of the immediate family of a member of Council or Gallery staff.
- (b) Prior to public disclosure by the Gallery of ministerial or Council approval to deaccession and dispose of or exchange collection material, neither Gallery staff nor members of Council will inform any non-essential third parties that it is being considered for deaccessioning. Such information must be kept confidential.

- (c) Generally, in deaccessioning collection material, and especially via public auction or sale through a third party, the Gallery will be discreet and not publicise the fact that it has been a part of the collection or that it is being deaccessioned.
- (d) In support of the objective set out in clause 4.8(c), the Council may require any person assisting with the disposal of collection material to remain discreet regarding the provenance and not use its provenance to promote its sale.
- (e) While adherence to clause 4.8(c) is recommended, there may be cases where Council determines there is a need to communicate the deaccession publicly.

5. Definitions

In this policy:

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 Engagement Policy.

Accession means the process which formally acknowledges a work of art as part of the collection.

Acquisition means the process of obtaining valid title to collection material. Works may be acquired through various methods for the purpose of accessioning into the collections or acquisition without accessioning for purposes outlined in this policy.

Act means the *National Gallery Act 1975*.

Collection Material means works of art in various media that are Gallery property and have been formally accessioned into the national collection, the Research Library Archive or the Study Collection (previously Art Archive). 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.

Deaccession means the process that formally removes collection material from the collection. Following deaccession, it may be disposed of by sale, gift, destruction, exchange, returned to its rightful owner, or transferred via restitution or repatriation.

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

Disposal means selling, giving, exchanging, returning, transferring or destroying collection material that has been deaccessioned in accordance with the guidelines above.

Donor means a person, persons or entity that makes a gift of a work of art, directly to the Gallery or through the Australian Government's Cultural Gifts Program, or supports the acquisition of a particular work of art by cash donation.

Due diligence means the thorough assessment of collection material to evaluate its authenticity, ownership, legal and ethical status and provenance and to identify and assess any issues.

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

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

Repatriation is the process whereby material in a museum collection is returned to lineal descendants and/or culturally affiliated communities, including countries of origin.

Restitution is returning to the valid title-holder objects that have been obtained through illicit dealings, pillaged in times of war or stolen, or that may have been otherwise illegally obtained.

Study collection (previously Art Archive) comprises works of art and other material designated for the purpose of study or research that support or relate to works of art or artists represented in the collection.

Title means the legal right to ownership of property.

6. References

This policy should be read in conjunction with the following:

6.1 Gallery policies

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

6.2 Guidelines, procedures and associated documents

6.2.1 Gallery guidelines, procedures and associated documents

- *Art Acquisitions Strategy*
- *Art Acquisition Procedures*
- *Professional and Personal Conduct Guidelines*
- *Code of Ethics*
- *Fraud Control Plan*
- *Inward Loans Procedure*
- *Outward Loans Procedure*
- *Provenance and Due Diligence Research Procedure*
- *Work of Art Claims and Inquiries Handling Procedure*

6.2.2 National and international guidelines, procedures and the 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, 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:

- National Museum of Australia, *Deaccessioning and Disposal Policy*
- Australian Government, Attorney General's Department, Ministry for the Arts, *Protection of Cultural Objects on Loan: Scheme Guidelines*, 2014
- ICOM, *Code of Ethics 2013*
- American Association of Art Museum Directors, *Guidelines on the Acquisition of Archaeological Material and Ancient Art*, 2013
- Pacific Islands Museums Association *Code of Ethics for Pacific Museums and Cultural Centres 2006*
- 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
- Museums Australia, *Continuing Cultures, Ongoing Responsibilities 2005*
- Terri Janke, *First Peoples: A Roadmap for Enhancing Indigenous Engagement in Museums and Galleries*, Australian Museums and Galleries Association, 2018
- Smithsonian Institution, *Collections Management*, 2001
- Museums Australia, *Code of Ethics 1999*
- UNESCO, *The Hague Convention 1954, First Protocol 1954 and Second Protocol 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*
- *The Art Loss Register*
- *ICOM, International Observatory on Illicit Traffic in Cultural Goods*
- *ICOM, Red Lists*
- *ICOM, World Intellectual Property Organisation Art and Cultural Heritage Mediation*
- *International Foundation for Art Research*
- *UNESCO, Database of National Cultural Heritage Laws*

6.3 Legislation

The Gallery recognises the 1972 *UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import and Export and Transfer of Ownership of Cultural Property* and complies with the Australian Government's *Protection of Movable Cultural Heritage Act 1986*. In addition, the Gallery adheres to the *Code of Ethics for Museums* (2004) of the International Council of Museums (ICOM) and the *Code of ethics for art, history & science museums* (1999) of Museums Australia, which preclude museums from participating in transactions involving illicit material.

6.3.1 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*
- *Freedom of Information Act 2016*
- *Public Interest Disclosure Act 2012*
- *Information Privacy Act 2014*
- *Financial Management Act 1996*
- *Financial Management Regulation 2005*
- *Archives Act 1983*

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
30 April 2008	1	Document created	National Gallery of Australia Council
November 2015	2	Due diligence review	National Gallery of Australia Council
August 2017	3	Format and content revised	National Gallery of Australia Council
December 2019	3	Format and content revised	National Gallery of Australia Council