

Outward Loan Policy

Summary

Outward Loan Policy	
Description of Policy	This policy sets out the principles the Gallery adheres to and the factors it considers when assessing, approving and conducting Outward Loans.
Policy applies to	<input checked="" type="checkbox"/> NGA wide <input type="checkbox"/> Specific (eg. Department)
Policy Status	<input checked="" type="checkbox"/> New policy <input type="checkbox"/> Revision of Existing Policy
Approval Authority	Council
Responsible Officer	Natalie Beattie
Contact area	Registration
Date of Policy Review*	August 2019
*Unless otherwise indicated, this policy will still apply beyond the review date.	
Related Policies, Procedures, Guidelines and Local Protocols	NGA Policy on Policy Development NGA Risk Management Framework and Policy Aboriginal and Torres Strait Islander Cultural Rights and Engagement Policy (in development) Due Diligence and Provenance Policy Freedom of Information Policy Inward Loans Policy Record-Keeping Policy Exhibitions Development Policy (in development) Aboriginal and Torres Strait Islander Reconciliation Action Plan (in development) Art Acquisitions Strategy Art Acquisitions Procedure 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

Approvals

Position	Name	Endorsed	Date
Assistant Director	Adam Worrall	Yes / No	
Deputy Director	Kirsten Paisley	Yes / No	
Director	Gerard Vaughan	Yes / No	
Council	Audit and Risk Committee	Yes / No	

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1. Policy

Outward Loan Policy

2. Scope

This policy applies to all activities relating to the outward loan of works of art from the National Gallery of Australia (the Gallery) to other parties. Nothing in this policy detracts from the terms of any loan agreement to which the Gallery is a party.

3. Purpose

The Gallery and its functions are determined by the *National Gallery of Australia Act 1975*. The principal functions 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. Facilitating access to and appreciation of art through an active outward loans program directly supports the second of these objectives.

This policy sets out the principles that the Gallery follows and factors it will consider when assessing, approving and conducting outward loans from the collection.

4. Definitions and abbreviations

In this policy,

Aboriginal or Torres Strait Islander art

means a work of art:

- (a) by an Aboriginal or Torres Strait Islander artist; or
- (b) containing Aboriginal or Torres Strait Islander themes or content.

Aboriginal and Torres Strait Islander art is defined in accordance with the Aboriginal and Torres Strait Islander Cultural Rights and Engagement Policy and Reconciliation Action PlanAct

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. In this policy, the collection does not include the Art Archive Collection.

Collection Exhibition

means an exhibition of works of art that is largely drawn from the Gallery collection and may include inward loans and/or commissions

Council member

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

Director

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

Due diligence

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

Exhibition program

means the forward program and schedule of temporary, collection and travelling exhibitions

External exhibition

means an exhibition not organised by or displayed at the National Gallery of Australia

External travelling exhibition

means a travelling exhibition not organised by the National Gallery of Australia

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 or other material to the Gallery on a temporary basis, under which the transferor grants a temporary right of possession to the Gallery. It therefore includes loans in the strict legal sense of gratuitous bailments; bailments that arise from contracts that expressly benefit both the Gallery and the party transferring possession; and other sharing arrangements, such as a scheduled rotation of possession among co-owners.

The terms lender, borrower, lending and borrowing and loan and all related or derivative terms are to be construed in the context of this definition and unless otherwise specified, references to inward loan or any related terms may apply to proposed, contemplated, potential, approved or realised loan arrangements. The terms do not apply to transfers of possession to the Gallery where the Gallery is the sole owner of the object and retains the sole right of possession.

The terms inward/s and incoming are interchangeable for the purpose of this policy.

Inward loan for temporary exhibition

means an inward loan made for a finite period for the primary purpose of display at the Gallery venue or in an NGA travelling exhibition.

Inward loan to the collection

means an inward loan made for the purpose of display, research or other purposes associated directly with the Gallery's collection, including but not limited to exhibition (excluding works of art that are to be submitted to Council for acquisition).

International loan

in relation to an outward loan means any loan arrangements pursuant to which a work of art from the collection leaves Australia with the consent of a party ordinarily resident or incorporated outside Australia to whom the Gallery grants a temporary right of possession of the work(s) of art from the collection for a specified period.

Loan Agreement (Outgoing)

means a formal, legally binding written contract between the Gallery as lender, and the approved borrower specifying the work(s) of art and outlining the conditions and terms of the loan and the responsibilities of each party.

Loans Committee

means the committee established to review and discuss requests for outward loans from the collection (and any inward loans to supplement the collection display). Representatives of Curatorial, Conservation, Exhibitions, Registration and Travelling Exhibitions comprise the Loans Committee.

Outward Loans

means any contracted arrangement for the transfer of possession of a work of art or other collection item that has been acquired by the Gallery and accessioned into the collection to a lender, on a temporary basis, under which the Gallery grants a temporary right of possession to the Lender.

The terms lender, borrower, lending and borrowing and loan and all related or derivative terms are to be construed in the context of this definition and unless otherwise specified, references to outward loan or any related terms may apply to requested, potential, approved or realised loan arrangements.

PCOL

means Protection of Cultural Objects on Loan and is used in this policy in reference to the *Protection of Cultural Objects on Loan Act 2013*, *Protection of Cultural Objects on Loan Regulation 2014* and *Protection of Cultural Objects on Loan Scheme*.

Provenance

means the history of ownership of an item from the time of its discovery or creation to the present day, or as much information as can be discovered, from which authenticity and legal ownership is determined.

Temporary exhibition

means an exhibition of works of art on display at the Gallery including inward loans and/or commissions and may include works drawn from the collection.

Title

means the legal right to ownership of property.

Travelling exhibition

means an exhibition of work(s) of art that may include works drawn from the collection, inward loans and/or commissions that the Gallery tours to other venues

5. Principles

5.1 Principles

The Gallery is committed to conducting a wide-reaching outward loans program, making its collection accessible to broad and diverse audiences across Australia, as well as internationally. In managing its outward loans program, the Gallery will seek to balance the accessibility of the collection and its display in a variety of cultural, aesthetic and intellectual contexts, with practical and ethical considerations regarding the long-term care, preservation, display, interpretation and stewardship of the collection.

Outward loans are assessed and approved in accordance with the powers afforded to the Gallery under the Act and this occurs within an accepted approval and management framework.

The Council of the Gallery supports an active program of loans from its collection. The objectives of this policy are to ensure that the Gallery:

- (a) advances its mission and objectives by making its Collections accessible to broad audiences through an active and soundly-managed outward loans program;
- (b) manages and negotiates outward loans on terms that are ethical, honourable, responsible, sustainable and visible to public scrutiny; and
- (c) maintains its standing and reputation for integrity and excellence in the public and the museum community, both nationally and internationally.

These objectives are to be achieved by ensuring that the Gallery:

- (a) demonstrates best practice in the risk-management of outward loans;
- (b) avoids any act or omission that may compromise the Gallery's position and reputation for integrity in public administration.

Facilitating access to its collection through an active outward loans program is consistent with the Gallery's principal function to exhibit, or make available for exhibition by others, works of art from the national collection.

The Gallery will consider loan requests from recognised regional, national and international cultural institutions for exhibition and display purposes. From time to time the Gallery may conduct outward loans for other purposes, including but not limited to conservation or provenance research or in order to facilitate access to parts of the collection by traditional owners and communities. The Gallery does not lend to commercial galleries, institutions or venues, or to private individuals.

The Gallery will manage the outward loans program in a sustainable, responsible and resourceful manner, including:

- (a) the strategic use of human, material and financial resources;
- (b) the consideration of Gallery priorities and commitments, including but not limited to the exhibition program, as part of the assessment and approval of outward loan requests; and
- (c) the strategic management of risks.

In negotiating and managing outward loans, the Gallery will seek to control and mitigate the risk of physical deterioration or damage, theft, loss, or seizure of the work of art, or of civil or criminal proceedings or any other act, omission or circumstance that would compromise the Gallery's Collection or position and reputation for integrity in public administration.

Where not already negotiated as a Travelling Exhibition coordinated by the Gallery, in the event that the works of art requested for Loan constitute a significant proportion of the content of the borrower's exhibition, the Gallery may request to be credited as a partner and to contribute to decision-making about display and interpretation of the NGA collection.

In such instances, the Gallery also reserves the right to impose an exhibition fee to cover costs associated with the development and preparation of the exhibition.

Should a loan request be withdrawn or cancelled by the borrower prior to the commencement or expiration of the loan period, the Gallery reserves the right to charge the borrower for any material costs incurred in the preparation and processing of the loan to the date of cancellation.

The Gallery will not permit borrowers to assign or transfer any of its rights, powers or obligations to a third party under a sub-bailment, or substitutional bailment arrangement or to transfer possession of the work to a third party without the Gallery's prior consent.

Where available within the borrower's jurisdiction and not otherwise negotiated and agreed by the Gallery, the borrower must undertake to ensure that immunity from seizure and/or other legal protection is secured and operative prior to the commencement and throughout the duration of the loan period until the work is returned to the Gallery.

5.2 Furnishing collection loans

The Gallery will also make a curated selection of works available for outward loan to official establishments (Admiralty House, Government House, Kirribilli House, The Lodge, the Prime Minister's Office at Parliament House, the Australian Embassy in Washington DC, the Australian Consul-General in New York) known as the Furnishing Loans program. The Deputy Director will approve the list of works included in the Furnishing Loans program, on the advice of curatorial and conservation staff.

5.3 Outward loans for other purposes

Loans for other purposes will be assessed on a case-by-case basis in accordance with the principles, objectives and criteria for assessment outlined in this policy.

5.4 Criteria in the assessment of outward loans

5.4.1 The work of art and gallery priorities

In assessing requests to borrow works from the collection, the Gallery will have regard to:

- (a) the availability of the work of art, including any commitments to current or planned Gallery programs and schedules, or prior commitments to other borrowers;
- (b) any restrictions imposed on outward loan or display under the terms of the acquisition or by virtue of the nature of the work, including Aboriginal or Torres Strait Islander works of art to which access is restricted or community concerns have been identified, in accordance with the Aboriginal and Torres Strait Islander Cultural Rights and Engagement Policy;
- (c) the material condition of the work, including but not limited to its ability to travel and the

- impact of handling, installation, light exposure and environmental conditions on the work;
- (d) the provenance of the work of art, in accordance with the Provenance and Due Diligence Research Procedures; and
 - (e) the formal letter of request having been received by the Gallery a minimum of twelve months before the opening of the borrower's exhibition and available resources required to prepare the loan.

5.4.2 The borrower and purpose for the loan

In addition, the Gallery will consider the following factors in assessing loan requests:

- (a) the public nature and reliability of the Borrowing institution and its legal and financial situation;
- (b) the scholarly, artistic or educational value of the exhibition or display concept and its feasibility, including consideration of whether the exhibition includes works that are known to have been stolen, improperly attributed, illegally exported or illegally excavated;
- (c) the adequacy and appropriateness of the borrower's facilities and the ability of the borrower to meet and maintain facility, environmental and security requirements in accordance with the terms of the outward loan agreement or travelling exhibition contract throughout the loan period;
- (d) the availability of appropriate staff and any sub-contractors at the borrowing institution in order to administer, manage and oversee the loan and comply with the terms of the outward loan agreement throughout the loan period; and
- (e) the geological, political and financial stability of the country or region in which the loans will reside.

5.5 Approval of Outward Loans

All outward loan requests will be reviewed by the appropriate Senior Curator, Head of either International or Australian Art, Head Registrar and Head of Conservation in accordance with the terms of this policy. Recommendations for the approval of loan requests will be made in accordance with established procedures.

Outward loan requests are endorsed by the Loans Committee. The Director or his/her delegate has authority to approve outward loans. A summary of works of art approved for outward loan will be circulated to the members of the Loans Committee for noting.

The grounds for approval of any outward loan request that do not accord with the terms outlined in this policy will be minuted by the Loans Committee and risk-managed on a case-by-case basis.

5.6 Formalising approved outward loans – loan agreements

Loans will be formally documented using the Gallery's outward loan agreement or travelling exhibition contract, amended by special negotiation when so required. Outward loan agreements

are approved and endorsed under the delegated authority of the Director by the Head Registrar and counter-signed by an appropriate representative of the Borrower. The outward loan agreement specifies the terms and conditions of the loan and the schedule of works being borrowed. The outward loan agreement is included in the travelling exhibitions Contract and is approved and endorsed under the delegated authority of the Director by the Head Registrar.

Works will not be released for Loan until the outward loan agreement has been completed and signed by both parties.

5.7 Transparency and accountability

5.7.1 Publication of outward loans

The Director will ensure that a list of all outward loans is published in the Gallery's *Annual Report*.

5.7.2 Record-keeping

In accordance with the Record-Keeping policy and established procedures, staff will maintain records (paper-based and electronic) for each outward loan, including outward loan requests that are not approved, documenting relevant information and decision-making.

5.7.3 Staff obligations

Gallery staff involved in the assessment, approval and administration of outward loans 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, Risk Management Framework and Policy and Record-Keeping Policy.

6. Responsibilities

6.1 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.

6.2 Managers and Supervisors

Managers and Supervisors are responsible for:

- (a) ensuring that employees under their follow and implement the requirements of this policy; and
- (b) providing advice and instructions in the procedures stated in this policy, as requested.

6.3 Employees

Employees are responsible for:

- (a) maintaining an understanding of and implementing the requirements of this policy; and
- (b) requesting assistance as required in the implementation of this policy, escalating foreseeable issues to their manager.

7. Related content

7.1 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:

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

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

Museums Australia, Continuing Cultures, Ongoing Responsibilities, 2005

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

Art Loss Register www.artloss.com

UNESCO, The Hague Convention 1954, First Protocol 1954 and Second Protocol 1999

ICOM Code of Ethics, 2013

ICOM Red Lists

INTERPOL <https://www.interpol.int/Crime-areas/Works-of-art>

Ministry for the Arts, Cultural Gifts Program Guide, 2009

Museums Australia, Code of Ethics, 1999

Pacific Islands Museums Association, Code of Ethics for Pacific Museums and Cultural Centres, 2006

Unidroit Convention on Stolen or Illegally Exported Cultural Objects, 1995

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

7.2 Legislation

The Gallery recognises the 1970 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.

7.2.1 Commonwealth

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

Income Tax Assessment Act 1997

NGA Act 1975

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

7.2.2 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

Uncollected Goods Act 1996

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

8. Policy review date

September 2019

9. Revision history

Version	Date	Responsible officer	Comments
	Month and Year	Title of the person approving document (same as in the footer)	Briefly describe the amendments