

LOANS POLICY

Approved 18 August 2017
Queensland Art Gallery Board of Trustees

1. PURPOSE

This policy sets out the key principles that the Gallery will adhere to in the management of loans. The Gallery is committed to expanding Collection access through outgoing loans that broaden and diversify audiences across Queensland, nationally and internationally. The Gallery also seeks to support its programs through incoming loans for temporary exhibition, tours and other purposes.

2. SCOPE

This policy applies to the temporary OUTGOING movement of works of art from the Gallery's Collection and the INCOMING movement of works of art for the purpose of Gallery exhibitions.

3. POLICY STATEMENT

This document outlines the Gallery's commitment to the following:

- Facilitating access to the Collection through an active outgoing loans programme;
- Securing loans from other sources that support exhibition initiatives and enhance visitor experience;
- Engaging in consultation with relevant individuals, communities, statutory bodies as necessary;
- Carrying out due diligence regarding provenance of object(s) for loan;
- Managing loans on terms that are ethical, responsible and transparent;
- Demonstrating best practice in care, security and risk management; and
- Managing customer complaints and or claims regarding incoming and outgoing loans.

4. DEFINITIONS

The following definitions apply to this document:

Acquisition: means the acceptance, through gift or purchase, of a work of art into the Gallery's Collection.

Authentic: an item found to be genuine and not a copy or of disputed origin and supported by evidence.

Due Diligence: the steps undertaken to verify the accuracy of information before deciding on a course of action, including establishing authenticity and checking provenance information, identifying and assessing any gaps in the chain of ownership, including consulting with external experts and checking stolen art databases etc.

Legal title: the right to ownership of property and its subsequent transfer. This may be supported by full evidence of every transaction subsequent to the first owner's title.

Loan: the temporary transfer of the physical possession, custody or control of an object directly or indirectly from one entity to another.

Provenance: the research into the history and chain of ownership of a work of art since its creation to the present day, to determine authenticity and verify ownership and history.

5. POLICY/PROCEDURE/GUIDELINE ELEMENTS

5.1 OUTGOING LOANS

5.1.1 Approvals

Loan requests are considered through an assessment procedure administered by the Registration department. The decision to approve or refuse a loan request is made by the Director in consideration of the recommendation of the Deputy Director, Collection and Exhibitions and the relevant Curatorial Manager, Conservator and the Registrar, Exhibitions and Loans.

Normally, the applicant is informed of the Gallery's decision to approve or refuse a loan within eight weeks of receipt of the request.

5.1.2 Loan assessment criteria

Loans from the Collection will be considered for exhibitions which contribute to education, research and public enjoyment. The Collection is held in public trust and the Gallery is unable to lend to individuals or organisations in the private sector.

The Gallery will endeavor to lend objects from the Collection to other organisations for the purpose of public exhibition and display provided that:

- the borrower has submitted the loan application in writing to the Director, including a synopsis of the exhibition, details of the object requested, exhibition venues and dates, and the period of time the object will be required;
- the borrower must allow for no less than a six-month period between the date of receipt of the request and the date that the object is required to be despatched to the borrower;
- the object(s) requested for loan is in suitable condition for travel and display, not already committed to Gallery exhibitions or is on display because of great value and importance to local visitors;
- the borrower meets costs, as outlined in section *Costs and charges*;
- the borrower can provide appropriate insurance, security, transport, environmental and display/storage conditions for requested Collection works of art on loan;
- the borrower must be able to maintain prescribed standards of care and environmental conditions for objects on loan and comply with any specific conservation or security instructions the Gallery may impose;
- interpretation of the object(s) by the borrower in display, research, and publication materials is consistent with the aims and objectives of the Gallery;
- if the loan application is for the purpose of travelling exhibitions the borrower must provide details of all venues, venue facilities, and transport sufficient to satisfy the Gallery that the minimum standards of care and security can be achieved for the loan period;
- the borrower must be able to satisfy any other requirement as outlined in section *Specific requirements*;
- loans to Queensland Government offices are governed by a separate policy and procedures; and
- the Gallery does not permit borrowers to lend object(s) to third parties.

5.1.3 Period of loan

- The Gallery will lend the object(s) for a designated period based on confirmed venues only.
- The Gallery reserves the right to cancel any agreed loan or to recall the object(s) at any time by notice in writing to the borrower.

5.1.4 Costs and charges

The determination of indirect costs to be passed on to the borrower will be assessed by the Gallery. It is customary for the Gallery not to charge a fee for loans from the Collection or for staff resources used in loan administration. However, where applicable, the borrower is expected to meet all costs associated with:

- the design and construction of a packing case for the object and its delivery from the manufacturer to the Gallery;

- framing, glazing, mounts or other special preparation of the object for loan;
- transportation (and the supervision thereof) of the object between the Gallery and the borrower and return;
- the services of Customs brokers and freight forwarders;
- security for transits of the object between the Gallery and the borrower and return, and whilst the object is in the possession of the borrower;
- airfares for a Gallery courier to/from the borrower's venue;
- accommodation for an agreed duration for the courier in the city of the borrower, stopovers in transit to and from that city; and at each venue when a courier is nominated by the Gallery;
- a daily allowance at an agreed rate for the courier;
- insurance premiums;
- collection images for reproduction purposes;
- other costs arising from the preparation of object(s) for loan;
- material and labour costs associated with the restoration or conservation of object(s) returned to the Gallery in damaged condition;
- the borrower is to reimburse the Gallery for any expenses incurred in the preparation of a loan. Such reimbursement is to be made upon receipt of an invoice accompanied by copies of all accounts relating to the costs incurred by the Gallery; and
- should the borrower withdraw a loan request at any stage after written approval has been given by the Gallery, the Gallery will be entitled to charge the borrower for any agreed costs already incurred.

5.1.5 Specific requirements

The Gallery may apply specific loan conditions in relation to the following:

- compliance with national legislation and/or international conventions, treaties and laws that control the movement of cultural objects and natural heritage;
- immunity from seizure;
- due diligence regarding Provenance of object(s) for loan;
- consultation with key stakeholders;
- use of couriers for works of art transportation and installation;
- insurance;
- intellectual property, copyright, reproduction; and
- facilities documentation.

5.2 INCOMING LOANS

5.2.1 Approvals

Incoming loans for temporary or touring exhibition must be approved by the Director or Deputy Director, Collection and Exhibitions. Incoming loans will be requested in writing from the lender by the Director.

All terms and conditions of the loan must be recorded in a written loan agreement between the lender and the Gallery.

5.2.2 Loan assessment criteria

Incoming loans support the Gallery's objective to deliver compelling exhibitions. In addition, incoming loans contribute significantly to the Collection, touring exhibitions, study and research. The Gallery will borrow object(s) in compliance with the Provenance and Due Diligence Policy, Provenance and Due Diligence Procedures and Incoming Loans Procedures, and provided that:

- the Director or Deputy Director, Collection and Exhibitions has made a request or entered into an agreement with a lender to lend object(s) to the Gallery;
- the Gallery has evaluated available provenance information and undertaken due diligence to enable it to make an informed assessment of the provenance and chain of title of the object(s) to be borrowed, including that there:

- are no outstanding or current third party claims on the object(s);
- is acceptable and satisfactory legal and provenance information available for the Gallery to base its decision to proceed with the loan; and
- are no suspicions that the object(s) was obtained through unauthorised or illicit activities;
- the lender agrees to provide a written warranty that:
 - accounts for known provenance details for the object(s) to be loaned;
 - the lender is not aware of any matter including third party claims which might prevent or impede the return of the object(s) to the lender; and
 - the lender holds title or has the authority to lend the object(s) to the Gallery and where the lender is not the sole owner, the lender has the legal authority to enter into a loan agreement;
- the object(s) does not comprise Aboriginal and Torres Strait Islander secret/sacred or culturally sensitive material, and where deemed necessary, the Gallery will seek consultation with relevant stakeholders and communities in accordance with its Aboriginal and Torres Strait Islander Engagement Strategy and with other relevant communities where required (see 5.2.3 Consultation); and
- the Gallery is willing and able to comply with the terms and conditions of loan set out by the lender.

5.2.3 Consultation

Consultation required for the purposes of the Protection of Cultural Objects on Loan Regulation 2014 will be informed; respectful; ethical; meaningful; outcome focused and sustainable; and accompanied by appropriate follow-up communication.

The Gallery will consider the following factors to determine whether consultation is required:

- if the object is of historical significance to a particular person, group, event, place or activity;
- there are specific family associations with the object;
- the object has social or spiritual significance to specific communities in Australia, and there is a demonstrated contemporary attachment between the object and the community; and
- the object embodies beliefs, ideas, customs, traditions, practices or stories that are important for a particular community in Australia.

In particular, for consultations with Aboriginal people and Torres Strait Islanders the Gallery will actively seek to identify as soon as practicable, and well before any loan is finalised:

- any work of art that may be classified as an Aboriginal and Torres Strait Islander work of art, having regard to whether or not it was created by an Aboriginal or Torres Strait Islander person, whether it expresses Aboriginal or Torres Strait Islander culture or whether there are any Aboriginal or Torres Strait Islander themes or content used, including representations of Aboriginal or Torres Strait Islander peoples, culture, imagery or issues (for example, works containing inherited designs that are owned by particular communities or language groups); and
- any Aboriginal and Torres Strait Islander person, group and/or community that, as a result of the above, should be consulted as having the authority to speak in relation to the relevant work of art.

Identified people, communities and groups will be contacted as soon as possible and provided with information about:

- the work of art proposed for the loan;
- the context and purpose of the loan;
- why they are being contacted;
- how they may engage with the Gallery to express their views; and
- who to contact at the Gallery in relation to the consultation.

The Gallery will actively follow-up on identified contacts and will allow appropriate time for consultation (including follow-up) before concluding any loan. The curator will maintain detailed records of the consultation process, including a record of the outcomes of the consultation.

The Gallery will provide mechanisms for Aboriginal and Torres Strait Islander people, groups and/or communities to actively engage with it in the consultation process, including, where appropriate:

- telephone and other distance communication technologies;
- written engagement; and
- face-to-face meetings with individuals and/or groups, as appropriate according to relevant cultural and ethical protocols.

All consultations with Aboriginal and Torres Strait Islander people, groups and/or communities will adhere to the principles of prior and informed consultation, participation and consent, and comply with the most recent ethical and professional frameworks that apply.

5.2.4 Repository of last resort

The Gallery recognises that there may be circumstances in which it will take possession of works that do not conform to the Provenance and title standards outlined in this policy as a consequence of ethical, cultural or legal considerations.

In considering the incoming loan of such works the Gallery will:

- administer the loan in accordance with the Loans Policy and Incoming Loans Procedure or in certain circumstances and under special arrangements with the appropriate owners or authorities, the Gallery may act as the custodian of an artwork to ensure its protection and preservation as a last resort measure or while legal or governmental investigations are taking place.
- consult with representatives of appropriate communities or groups, the professional museum community, and / or relevant governments;
- only enter into such arrangements in instances where the object is not being borrowed primarily for temporary exhibition purposes; and
- exercise sound, considered professional and ethical judgements.

5.2.5 Additional criteria for international loan

Where the Gallery is considering the loan of object(s) from an overseas lender the Gallery will comply with terms and regulations of the *Protection of Cultural Objects on Loan Act 2013*. The Gallery must be satisfied that loan will comply with the Loan Policy and other related procedures for incoming loans and in addition that:

- the consultation, publication and claims handling requirements of the *Protection of Cultural Objects on Loan Regulations 2014* will be met; and
- the object(s) can be borrowed without contravening national or international conventions, treaties and laws that control the movement of cultural items and natural heritage.

The Gallery acknowledges that there will be instances in which the safeguards afforded by the *Protection of Cultural Objects on Loan Act 2013* are not required, either due to risk management or a willingness on the part of the Gallery and the lender to forego the protections. In such instances:

- the Gallery may elect to opt-out of protection in accordance with the terms of the Act; and
- the decision to opt-out will be determined by the Director, in consultation with the Deputy Director, Collection and Exhibitions, relevant Curatorial Manager and the Head of Conservation and Registration.

6. ADMINISTRATION

6.1 RELATED DOCUMENTS

Gallery Policies

- *Acquisitions Policy*
- *Code of Conduct for the Queensland Public Service*
- *Exhibition Policy*
- *Fraud Control Policy*
- *Gifts and Benefits Policy*
- *Provenance and Due Diligence Policy*

- *Record Keeping Policy*
- *Queensland Art Gallery Board Instrument of Delegation*

Gallery Guidelines and Procedures

- *Aboriginal and Torres Strait Islander Engagement Strategy*
- *Incoming Loans Procedure*
- *Outgoing Loans Procedure*
- *Provenance and Due Diligence Procedures*
- *Record Management Business Rules and Procedures*
- *Risk Management Framework*

National and International Guidelines and Procedures

- *The Art Loss Register*
- *Australian Government, Australian Best Practice Guide to Collecting Cultural Material*
- *CITES Convention on International Trade in Endangered Species of Wild Fauna and Flora*
- *Collections Law – Legal Issues for Australian Archives, Galleries, Libraries and Museums*
- *Combating Illicit Trade: Due diligence guidelines for museums, libraries and archives on collecting and borrowing cultural material (2005)*
- *ICOM Code of Ethics for Museums*
- *ICOM International Observatory on Illicit Traffic in Cultural Goods*
- *ICOM Red List*
- *ICOM-WIPO Art and Cultural Heritage Mediation*
- *IFAR Provenance Guide*
- *Indigenous Australian Art Charter of Principles for Publicly Funded Collecting Institutions*
- *Interpol Works of Art Database*
- *Museums Australia Inc. Code of Ethics*
- *Museums Australia Inc. Continuous Cultures, Ongoing Responsibilities*
- *Museums Australia Inc. National Standards for Australian Museums and Galleries (Version 1.4, 2014)*
- *PIMA Code of Ethics for Pacific Museums and Cultural Centres*
- *Protocols for producing Indigenous Australian visual arts (2nd edition, 2010)*
- *Significance 2.0: A Guide to Assessing the Significance of Collections*
- *UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects*
- *UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970*
- *UNESCO Database of National Cultural Heritage Laws*
- *UNESCO Convention of the Protection of Cultural Property in the Event of Armed Conflict with Regulations of the Execution of the Convention 1954*
- *UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions 2005*
- *UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage 2003*

Queensland Legislation

- *Gifts and Benefits Directive*
- *Public Interest Disclosure DSITIA*
- *Public Records Act 2002*
- *Queensland Art Gallery Act 1987*

Commonwealth Legislation

- *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*
- *Customs Act 1901*
- *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*

- *Biosecurity Act 2015*
- *Environment Protection and Biodiversity Conservation Act 1999*

6.2 DOCUMENT OVERSIGHT

Approval authority	Queensland Art Gallery Board of Trustees		
Maintained by	Deputy Director, Collection and Exhibitions; Head, Conservation and Registration		
Release	External (to borrowers)	File reference	QR/17/14579
Approval date	18 August 2017	Next review by	August 2020

6.3 DOCUMENT HISTORY

Version	Approved by	Date	Revisions
1.1	Queensland Art Gallery Board of Trustees	18 August 2017	Document changed to a policy (previously 'Guidelines for Loans from the Collection')

7. LICENCE



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