

# LOANS POLICY

Approved 17 August 2020  
Queensland Art Gallery Board of Trustees

## 1. PURPOSE

This policy sets out the key assessment criteria and requirements the Queensland Art Gallery | Gallery of Modern Art ('the Gallery' or 'QAGOMA') will adhere to in managing works of art 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 lending of works of art from the Gallery's Collection and to borrowing works of art for the purpose of Gallery exhibitions.

This policy also applies to works of art relating to trusts of which the Board is trustee, where practicable and with due regard to the conditions of each trust as specified in its formal dossier.

## 3. POLICY STATEMENT

This policy outlines the Gallery's commitment to:

- facilitating access to the Collection through an active outgoing loans program
- securing loans that support exhibition initiatives and enhance visitor experience
- engaging in consultation with relevant individuals, communities, advisory panels and external organisations as necessary
- carrying out due diligence regarding provenance of works of art for loan
- managing loans on terms that are ethical and responsible
- demonstrating best practice in care, security and risk management of works of art
- managing complaints and/or claims regarding incoming and outgoing loans.

## 4. DEFINITIONS

The following definitions apply to this document:

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

**Authentic:** a work of art found to be genuine, 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 full beneficial and legal 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 work of art directly or indirectly from one entity or person to another.

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

## 5. POLICY ELEMENTS

### 5.1 OUTGOING LOANS

#### 5.1.1 Approvals

Loan requests are considered through an assessment procedure administered by the Registration Section. The decision to approve or refuse a loan request for a work of art valued at or above \$2 million is made by the Board of Trustees, in consideration of a recommendation by the Director and Deputy Director, Collection and Exhibitions. For all works of art below this threshold, the decision is made by the Director in consideration of a recommendation by the Deputy Director, Collection and Exhibitions and the relevant Curatorial Manager, Conservator and the Registrar, Exhibitions and Loans.

#### 5.1.2 Loan assessment criteria

Loans from the Collection will be considered for exhibitions, which contribute to delivering compelling exhibitions, connecting people with the enduring power of art and ideas, and building organisational capacity. 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 endeavour to lend works of art from the Collection to other organisations for the purpose of public exhibition and display provided that:

- the borrower has submitted a loan application in writing to the Director, including a synopsis of the exhibition, details of the work of art requested, exhibition venues and dates, and the period of time the work of art will be required
- the borrower must allow for no less than a twelve-month period between the date of receipt of the request and the date that the work of art is required to be despatched to the borrower
- the work of art requested for loan is in suitable condition for travel and display, and not already committed to Gallery exhibitions or on permanent display due to its great value and importance to local visitors
- the borrower meets costs, as outlined in section 5.1.4 Costs and charges
- the borrower can provide appropriate insurance, security, transport, environmental and display / storage conditions and standards as prescribed by the Gallery in the loan agreement
- interpretation of the work of art 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 5.1.5 Specific requirements.

Loans to Queensland Government offices are governed by a separate policy and procedures (please refer to Related documents).

The Gallery does not permit borrowers to lend works of art to third parties.

### **5.1.3 Period of loan**

- The Gallery will lend a work of art for a designated period based on confirmed venues only.
- The Gallery reserves the right to cancel any agreed loan or to recall a work of art 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, although the Gallery reserves the right to do so in relation to large-scale, physically complex works that require unique design and installation solutions to successfully mount them. However, where applicable, the borrower is expected to meet all costs associated with:

- the design and construction of a packing case for the work of art and delivery of the packing case from the manufacturer to the Gallery
- framing, glazing, mounts or other special preparation of the work of art for loan
- transportation (and the supervision thereof) of the work of art between the Gallery and the borrower
- the services of Customs brokers and freight forwarders
- security for transits of the work of art between the Gallery and the borrower, and whilst the work of art is in the possession of the borrower
- airfares for a Gallery courier to/from the borrower's venue (when deemed necessary by the Gallery)
- 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 required by the Gallery
- a daily living allowance at an agreed rate for the courier
- insurance premiums
- collection images for reproduction purposes
- other costs arising from the preparation of a work of art for loan
- material and labour costs associated with the restoration or conservation of a work of art returned to the Gallery in damaged condition
- any expenses incurred in the preparation of a loan (such reimbursement to be made upon receipt of an invoice accompanied by copies of all accounts relating to the costs incurred by the Gallery)
- QAGOMA costs already incurred should a borrower withdraw a loan request at any stage after written approval has been given by the Gallery.

### **5.1.5 Specific requirements**

The Gallery may apply specific loan conditions, including as a result of any of the following considerations:

- compliance with national legislation and/or international conventions, treaties and laws that control the movement of cultural objects and natural heritage
- the applicability of immunity from seizure legislation
- due diligence regarding provenance of works of art for loan

- consultation with key stakeholders
- use of couriers for works of art transportation and installation
- insurance
- intellectual property, copyright and reproduction considerations
- security of works of art and other appropriate protections, including facilities documentation.

### 5.1.6 Additional criteria for international loans

Where the Gallery is considering the loan of a work of art to an overseas borrower, the Gallery will contact the relevant Australian Embassy in locations with a known history of civil unrest to make them aware of the outgoing loan, and to seek support in monitoring the safety of the work of art.

## 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 works of art 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 written agreement with a lender
- 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 work of art, including that there:
  - are no outstanding or current third-party claims on the work of art
  - is acceptable and satisfactory provenance information available for the Gallery to base its decision to proceed with the loan
  - are no suspicions that the work of art was obtained through unauthorised or illicit activities.
- the lender agrees to provide a written warranty that:
  - accounts for known provenance details for the work of art
  - the lender is not aware of any matter including third-party claims which might prevent or impede the return of the work of art to the lender
  - the lender holds title or has the authority to lend the work of art to the Gallery (including where the lender is not the sole owner).
- the work of art does not comprise Aboriginal and Torres Strait Islander secret/sacred or culturally sensitive material, and where deemed necessary, the Gallery has consulted with relevant stakeholders and communities in accordance with its Aboriginal and Torres Strait Islander

Engagement Strategy and has obtained advice from the Indigenous Advisory Panel and with other relevant communities where required (see 5.2.3 Consultation)

- the Gallery is willing and able to comply with the terms and conditions of loan set out by the lender.

### 5.2.3 Consultation

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

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

In particular, for consultations with Aboriginal and Torres Strait Islander people, 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 of which particular communities or language groups are custodians)
- 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 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
- 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, according to the [Record Management Business Rules and Procedures](#).

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

- telephone and other distance communication technologies
- written engagement
- 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 or communities will adhere to the principles of prior and informed consultation, participation and consent, and comply with the most current and relevant ethical and professional frameworks.

#### 5.2.4 Repository of last resort

The Gallery recognises that there may be circumstances in which it will take possession of a work of art that, in light of ethical, cultural or legal considerations, does not fully conform to the provenance and title standards outlined in this policy, and detailed in the [Provenance and Due Diligence Policy](#).

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

- administer the loan in accordance with this policy and [Incoming Loans Procedure](#) or, in certain circumstances and under special arrangements with the appropriate owners or authorities, act as the custodian of the work of art to ensure its protection and preservation as a “repository of last resort” or while any relevant 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 work of art is not being borrowed primarily for temporary exhibition purposes
- exercise sound, considered professional and ethical judgement.

#### 5.2.5 Additional criteria for international loan

Where the Gallery is considering the loan of a work of art from an overseas lender, the Gallery will comply with the [Protection of Cultural Objects on Loan Act 2013](#) and regulations made under that Act, including in relation to consultation, publication and claims-handling. The Gallery must be satisfied that the work of art may 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* are not required, either due to risk management treatments 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.
- 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. ROLES AND RESPONSIBILITIES

### BOARD OF TRUSTEES

- Approve outgoing loans for the Gallery as per the Board’s Instrument of Delegation.
- Periodically review the Gallery’s processes for incoming and outgoing loans of works of art from the Collection.

### DIRECTOR

- Oversee the control and management of the Gallery’s assets, including the Collection and works of art in the Gallery’s care.
- Approve outgoing loans from the Gallery’s Collection up to a financial value as per the Board of Trustees Instrument of Delegation.
- Seek advice from the Deputy Director, Collection and Exhibitions, curatorial and registration staff regarding the rationale for incoming and outgoing loans, to inform decision-making.

- Provide the Board of Trustees with advice and recommendations on outgoing loans, supported by information from registration staff in line with Outgoing Loan Procedures.

#### **DEPUTY DIRECTOR, COLLECTION AND EXHIBITIONS**

- Provide the Director with advice and recommendations on incoming and outgoing loans for the Gallery, based on research and documentation from curatorial and registration staff.
- Oversee the loans documentation process.
- Inform the Director of any issues relating to incoming or outgoing loans.
- Support communication with borrowers and lenders, especially from high-profile institutions and Government offices.

#### **REGISTRATION**

- Advise and provide recommendations to curatorial staff on logistical requirements for incoming loans, including transport, insurance, packing, etc. Undertake logistical arrangements for loans.
- Liaise with private and institutional lenders on loan logistics for incoming loans and formalise through loan agreements.
- Liaise with conservation and curatorial staff to determine the suitability of works of art for outgoing loan.
- Provide advice and recommendations to Deputy Director, Collection and Exhibitions on the suitability of Collection works for outgoing loan.
- Undertake logistical arrangements for loans.
- Adhere to processes for the documentation of incoming loans, as outlined in the Incoming Loan Procedures and Outgoing Loan Procedures.

#### **CURATORIAL**

- Advise registration staff of suitability of works of art from the Collection for outgoing loan.
- Recommend works for incoming loan from private and institutional lenders to the Deputy Director, Collection and Exhibitions and Director, and issue loan letters via the Director.
- Liaise with registration, conservation and exhibitions management staff on suitability of incoming loans for exhibitions and to augment collection displays.

## **7. ADMINISTRATION**

### **7.1 RELATED DOCUMENTS**

- *Aboriginal and Torres Strait Islander Engagement Strategy*
- [Aboriginal and Torres Strait Islander Heritage Protection Act 1984](#)
- [Acquisitions Policy for Works of Art](#)
- [Code of Conduct for the Queensland Public Service](#)
- [Customs Act 1901](#)
- [Delegation Manual](#)
- [Exhibition Policy](#)
- [Fraud and Corruption Policy](#)
- *Incoming Loans Procedure*
- *Outgoing Loans Procedure*
- [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 2018](#)
- [Provenance and Due Diligence Policy](#)
- [Provenance and Due Diligence Procedures](#)
- [Queensland Art Gallery Act 1987](#)
- [Queensland Art Gallery Board of Trustees Instrument of Delegation](#)
- [Record Management Business Rules and Procedures](#)

## 7.2 DOCUMENT OVERSIGHT

<b>Approval authority</b>	Queensland Art Gallery Board of Trustees		
<b>Maintained by</b>	Deputy Director, Collection and Exhibitions; Head, Conservation and Registration		
<b>Release</b>	Internal and External (to borrowers)	<b>File reference</b>	QR/20/48452
<b>Approval date</b>	17 August 2020	<b>Next review by</b>	August 2023

## 7.3 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')
1.2	Queensland Art Gallery Board of Trustees	17 August 2020	Standard review including text updates; expansion of scope to include trusts of which the Board is trustee; addition of clause regarding international outgoing loans; related documents updates; and the introduction of the 'roles and responsibilities' section to align with current policy template.
1.3	Minor amendment approved by Head, Governance and Reporting	May 2021	Amendment to loan notification period from 6 to 12 months as per approval by the Executive Management Team.