

# PROVENANCE AND DUE DILIGENCE POLICY

Approved 18 August 2017  
Queensland Art Gallery Board of Trustees

## 1. PURPOSE

This policy sets out the key principles for provenance and due diligence measures undertaken by the Queensland Art Gallery | Gallery of Modern Art ('the Gallery'), with respect to incoming loans and the acquisition of artworks for the permanent collection ('the Collection') of the Gallery.

Provenance and due diligence measures are applied to loans and acquisitions to ensure the Gallery acts in an ethical and legal manner when considering works for exhibition and display, and for acquisition through purchases and gifts.

The aim of this policy is to ensure the Gallery borrows and acquires works of art which are judged to have secure and sound history and legal title to a sufficient ethical and legal degree, and that the Gallery does not contribute to or validate the illegal or unethical trade in cultural property in any manner.

This policy sets out the principles which underpin the provenance and due diligence considerations required in the researching and assessing of the history, legal title and protections relevant to artworks being considered for incoming loans and acquisition. The Gallery applies this policy through a set of procedures which can be found in the *Provenance and Due Diligence Procedures*.

## 2. SCOPE

This policy is applicable to all staff involved in the loans and acquisition processes of the Gallery. This policy should be read in conjunction with the Gallery's Acquisitions Policy and Loans Policy. This policy also serves as source of information for the public and is reviewed on a regular basis to ensure it reflects current best practice.

## 3. POLICY STATEMENT

The Provenance and Due Diligence Policy supports the Gallery's primary objective, as stated in the *Queensland Art Gallery Act 1987*, which is 'to contribute to the cultural, social and intellectual development of all Queenslanders', by ensuring it conducts acquisitions and loans in a responsible manner.

The Gallery observes the UNESCO *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970*, to which Australia is a signatory. The Gallery is also bound by the *Protection of Moveable Cultural Heritage Act 1986*. The Gallery follows stringent procedures to establish provenance documentation and proof of ownership and origin, adhering to Australian and international museum best practice, including the *Protection of Cultural Objects on Loan Act 2013*, Museums Australia's Code of Ethics for Art, History & Science Museums and the ICOM Code of Ethics for Museums, as well as consulting lost and stolen art registers, and local governments and organisations where appropriate.

## 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 ELEMENTS

### 5.1 PRINCIPLES AND MEASURES

'Provenance' refers to the history of ownership of an artwork. Artworks will only be acquired for the Collection, or approved as an incoming loan, in circumstances where the Gallery has sufficient verification that:

- Legal title in the artwork can be transferred by the vendor or donor, or in the case of loans, that the lender has legal title or legal authority to offer a work for loan and enter into a loan agreement;
- That the artwork has a proven history of sound ownership for a reasonable period; and
- The Gallery's actions would be compliant with conventions or legislation addressing the movement of cultural material.

Artworks will not be acquired through purchase, accepted as gifts, or approved as incoming loans in cases where there is any knowledge or reason to believe that the artwork was stolen or sold under duress. The Gallery recognises that gaps in provenance do not necessarily indicate that an object's provenance is questionable. In some cases, the gaps are a reflection of the age of the works in question and their history of collection over long periods of time. In undertaking due diligence and provenance research the Gallery will apply its professional judgement and risk management strategies to investigate the history of objects proposed for acquisition or incoming loan.

The Gallery maintains the following guiding principles in respect to provenance research and exercising due diligence:

- The Gallery's research will be documented and conducted in a transparent and accountable manner in accordance with the Record Management Business Rules Procedure;
- That evidence of the history and ownership of objects is rigorously tested and assessed;
- The Gallery's national and international reputation for standards and excellence is maintained in the public and the museum community by conducting provenance and due diligence measures to a high international standard through observation of national and international laws and best practice guidelines for the protection of cultural material;
- The Gallery acts in a responsible, ethical and legal manner when considering works for acquisition and incoming loan;
- The Gallery in no way validates or contributes to the illegal or unethical trade of cultural material, and that the Gallery does not seek or accept works from persons known to be involved in such activities; and
- The Gallery seeks governmental, community, specialist or legal advice where appropriate, including consultation with the Gallery's Indigenous Advisory Committee and adherence with the Aboriginal and Torres Strait Islander Engagement Strategy.

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.

## 5.2 TRANSPARENCY AND ACCOUNTABILITY

Staff are obliged to document and record provenance and due diligence research, related activities and the decision making process for artworks including those that do not result in acquisition or loan. Staff consult and follow steps outlined in the Provenance and Due Diligence Procedures for Loans and Acquisitions and are bound by related policies such as the Acquisitions Policy, Exhibition Policy, Loans Policy, and the Gifts and Benefit Directive.

A summary of provenance research is included in all Acquisition Assessments, Acquisition Proposals, and Director's Delegation documents for purchases and gifts and loan reviews. Where possible, and in accordance with privacy rights and considerations, the Gallery publishes provenance information publicly in order to encourage and enhance knowledge of objects with incomplete or unsubstantiated provenance information in its existing Collection. The Gallery also undergoes rigorous investigation on any new information that may call into question documented provenance. Any claims of title or possession made against objects are dealt with the utmost seriousness. Such enquiries will be investigated by the Gallery in a timely and respectful manner in accordance with this Policy and other established protocols.

The Gallery's website includes information on its current and previous provenance research projects, including a database of Nazi / World War Two Objects with Incomplete Provenance, and Asian Art Objects with Incomplete Provenance.

### 5.2.1 Loans under the Protection of Cultural Objects on Loan scheme

The Gallery is an approved borrower under the Commonwealth Government's Protection of Cultural Objects on Loan Scheme. The scheme provides legal protection for cultural objects on loan from overseas lenders for temporary public exhibition in Australia as a result of the *Protection of Cultural Objects on Loan Act 2013* and the *Protection of Cultural Objects on Loan Regulation 2014*. For objects that enter the Gallery under this scheme, a provenance assessment is required for all objects. The Gallery will evaluate available provenance information and undertake due diligence to enable it to make an informed assessment of the provenance and chain of title of the object(s) to be borrowed and provenance details will be published online on the Gallery's website as required by the scheme. See Incoming and Outgoing Loan Procedures. Lenders are able to opt out of the scheme.

## 6. ROLES AND RESPONSIBILITIES

Provenance and due diligence procedures are administered by curatorial, registration staff and allocated project teams in advance of incoming loans and acquisitions. The Director has delegation to approve loans and acquisitions for the Gallery up to a financial value determined by the Board of Trustees.

The Director, as representative of the Board, oversees the control, management and maintenance of the Gallery and its property, including the Collection and temporary loans (See *The Queensland Art Gallery Act 1987*).

## 7. ADMINISTRATION

### 7.1 RELATED DOCUMENTS

#### **Gallery Policies**

- *Acquisitions Policy*
- *Code of Conduct for the Queensland Public Service*
- *Exhibition Policy*
- *Fraud Control Policy*

- *Gifts and Benefits Policy*
- *Loans 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 Resources**

- *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 (2<sup>nd</sup> 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*

## 7.2 DOCUMENT OVERSIGHT

<b>Approval authority</b>	Queensland Art Gallery Board of Trustees		
<b>Maintained by</b>	Deputy Director, Collection and Exhibitions		
<b>Release</b>	External	<b>File reference</b>	QR/17/14578
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## 7.3 DOCUMENT HISTORY

Version	Approved by	Date	Revisions
1.1	Queensland Art Gallery Board of Trustees	18 August 2017	New policy

## 8. LICENCE



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