

GUIDELINE FOR MANAGING ETHICAL ISSUES RELATING TO SERIOUS MISCONDUCT BY AN ARTIST

Approved 23 June 2022
Queensland Art Gallery Board of Trustees

1. PURPOSE

This document sets out the principles that the Queensland Art Gallery | Gallery of Modern ('the Gallery' or 'QAGOMA'), will apply to ensure ethical decision-making when an artist connected in some way with the Gallery is either suspected of engaging or shown to have engaged in serious misconduct, including criminal activity.

2. SCOPE

These principles will be applied when a decision is required on whether, because of concerns over serious misconduct by an artist, to:

- acquire, display, borrow or lend that artist's work; or
- involve that artist in the Gallery's programs

However, these principles do not apply to works that may be deemed controversial because of their subject matter or the social or political issues they may address or raise. Such concerns will be addressed through the agreed processes which guide curating and programming at the Gallery, which is facilitated through the exhibition approval and management process.

3. GUIDELINE STATEMENT

In its role as a major Queensland cultural institution, the Gallery is committed to protecting the artist's right to freedom of expression, which can include presenting and acquiring for the people of Queensland work that may be aesthetically, socially, or politically challenging to some viewers.

At the same time, given the Gallery's standing as a government body, if it becomes aware of allegations or proof of serious misconduct on the part of a relevant artist, it must not ignore that information when making decisions relating to acquiring, displaying, borrowing, or lending the artist's work or involving the artist in the Gallery's programs.

This Guideline provides a single point of reference when determining an ethical course of action and communicating the outcome of the determination to stakeholders, including the general public.

In line with the [Human Rights Act 2019](#), QAGOMA acknowledges the importance of respecting, protecting and promoting human rights. When making a decision under this guideline, the decision-makers must comply with that obligation.

4. DEFINITIONS

The following definitions apply to this document:

Display: can be physical, online or in Gallery publications.

Ethical decision-making: reaching a decision as to proper and right conduct having regard to all the circumstances of a case – and thereby deciding the answer to the central question of ethics (namely "what ought the Gallery to do in this situation?").

Programs: includes exhibitions and public programs e.g. Children’s Art Centre activities, interviews, symposiums and other artist engagement opportunities.

Serious misconduct is:

- conduct that does not meet the standards the Queensland community reasonably expects in either a personal or professional context; or
- any activity where an artist is accused, charged or convicted of an indictable offence

5. GUIDELINE ELEMENTS

5.1 GUIDING PRINCIPLES

Gallery staff will adhere to the following guiding principles when making decisions concerning artists accused of serious misconduct:

- act with transparency, honesty and integrity
- adopt a balanced, rational and considered response
- address each case independently and on its own merits
- adhere to QAGOMA’s vision, purpose and principles
- demonstrate strong leadership.

5.2 CONSIDERATIONS

Factors that must be considered in making any decisions concerning alleged or proven serious misconduct by an artist include (without limitation):

- ensure the decision is compatible with human rights; that is, it does not limit a human right; or it limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the *Human Rights Act 2019*
- the impact on any victim
- impacts on any other person or community (including the family or community of any victim, and on any other artists or important stakeholders)
- any potential risk to the public
- whether the relevant serious misconduct has been proven or is still an allegation only
- in the case of allegations only, the strength of the information on which the allegations are or appear to be based
- the nature of the artist’s connection to the Gallery
- the nature and severity of the serious misconduct, including whether the conduct or activity has led to a criminal conviction, and whether or not the matter is under appeal or whether any allegations are yet to be proven or admitted
- for international artists, the context of the relevant laws of that artist’s home country that may be applicable to the accusation/charge/conviction; and how these laws may be perceived in Australia
- any response or statements by the artist in relation to the serious misconduct, including whether any remorse has been demonstrated or rehabilitation undertaken and, if so, any known outcomes of that rehabilitation
- the extent to which the artist has already served time for any criminal activity that forms part of the serious misconduct
- the time that elapsed since the alleged or proven serious misconduct took place
- the importance of the artist and the cultural significance of the relevant work
- (in relation to works) the context in which the work is to be used or shown by the Gallery
- (in relation to artists involved in a Gallery program) how closely the serious misconduct is related to the work the artist is or will be retained or employed to do
- whether the nature or the seriousness of the serious misconduct balances out the general presumption that the Gallery will uphold freedom of expression and its obligation to collect and display

works that some sections of society (or even society more generally) may at times find challenging, difficult or unpalatable

- how and where the artwork is to be displayed or reproduced, including what labelling or other contextual information may be provided in relation to the work, the artist or the serious misconduct
- the potential impact on the artist (if the artist is still alive)
- the potential impact on the reputation of QAGOMA through any association with the artist
- advice received from key stakeholders including, but not limited to, members of the Queensland Art Gallery Board of Trustees (the Board), the Ethics Reference Group (Reference Group), the Indigenous Advisory Panel, key staff, external specialists and others as reasonably required.

5.3 ETHICS REFERENCE GROUP

The role of the Reference Group is to assist the Gallery in considering and responding to ethical issues, with reference to the considerations outlined in this document.

The Reference Group is convened by the Director when:

- information relating to alleged or proven serious misconduct by an artist becomes known that requires, or may require, an action, decision, or other response by the Gallery
- the Gallery is considering whether to acquire, display, borrow, or lend the work of an artist associated with alleged or proven serious misconduct.

The Reference Group will consist of:

- the Director (as Chair of the Reference Group)
- two members of the Board of Trustees (excluding the Board's Chair)
- Chair, Indigenous Advisory Panel
- members of the Executive Management Team, as relevant on a case-by-case basis
- external specialists, as deemed necessary on a case-by-case basis.

The Reference Group will provide advice to the Director that helps guide their decision and response, including the extent, if any, of public declaration of the Gallery's position in relation to the issue.

5.4 COMMUNICATION OF DECISIONS

The Gallery will communicate to the artist (or, if relevant, to the artist's estate) any decisions relating to serious misconduct that might reasonably have an adverse effect on that artist or their reputation.

The Gallery will communicate decisions made under this Guideline to relevant staff, including those directly involved in the management, research and interpretation, programming, and promotion of artworks in exhibitions and in the Collection or in collections held in trust by the Board (e.g. The Josephine Ulrick and Win Schubert Charitable Trust Collection).

The method of communication will be determined on a case-by-case basis by the Director.

6. ROLES AND RESPONSIBILITIES

When the Gallery becomes aware of serious misconduct by an artist who is being considered for, or is currently involved with, an exhibition or program or other association, the following deliberations will apply:

DIRECTOR

- Seek advice from the Executive Management Team to determine if the artist's involvement might significantly damage the Gallery's reputation.
 - If the Executive Management Team determines the issue can be appropriately addressed without requiring referral to the Reference Group, then no further action is required.

- If the Executive Management Team determines the issue is currently, or likely to become, a matter of public interest, then the Director will inform the Board in a timely manner of their intention to convene the Reference Group.
- Convene and consult with the Reference Group to consider the nature of the artist’s serious misconduct and its possible implications.
- Decide how the Gallery will proceed in light of the alleged or proven serious misconduct, having taken into consideration the advice of the Reference Group.
- In instances where the Director may not agree with the recommendations of the Reference Group, the matter should be referred to the Board for further consideration.
- Inform and discuss matters and actions with the Board in a timely manner.

EXECUTIVE MANAGEMENT TEAM

- Inform the Director if they become aware that serious misconduct on the part of a relevant artist has been alleged or proven.
- Provide advice to the Director on the management of individual cases.
- Support the communication and management of outcomes specific to each matter.

ETHICS REFERENCE GROUP

- Provide the Director with advice and recommendations on the ethical management of matters where serious misconduct by a relevant artist has been alleged or proven.

SENIOR LEADERSHIP TEAM

- Inform the Executive Management Team if any members of their team become aware that serious misconduct on the part of a relevant artist has been alleged or proven.
- Support the Gallery in communicating the ethical management of matters where serious misconduct by a relevant artist is alleged or proven.
- Ensure the implementation of the outcomes specific to each matter.

7. ADMINISTRATION

7.1 RELATED DOCUMENTS

- *Acquisitions Policy for Works of Art*
- *Exhibitions Policy*
- *Ethics Reference Group Terms of Reference*
- *Philanthropic Gift Acceptance Policy*
- [Human Rights Act 2019](#) (further resources, including a decision tool, available at the [Queensland Government Human Rights Portal](#))
- *Loans Policy*
- *Provenance and Due Diligence Policy*
- [Code of Conduct for the Queensland Public Service](#)
- *Sponsorship Policy*

7.2 DOCUMENT OVERSIGHT

Approval Authority	Queensland Art Gallery Board of Trustees		
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7.3 DOCUMENT HISTORY

Version	Approved by	Date	Revisions
1.0	Queensland Art Gallery Board of Trustees	July 2019	New guideline.
1.1	Queensland Art Gallery Board of Trustees	June 2022	The document has been updated to acknowledge that decisions made as a result of the guideline must be compatible with the <i>Human Rights Act 2019</i> . For international artists, consideration regarding how the laws of their country may be perceived in Australia has also been included. Minor technical changes have been made to align the document with the Gallery's current governing document template and ensure gender neutral terminology is used.