

# PROVENANCE AND DUE DILIGENCE POLICY

Approved 17 August 2020

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' or 'QAGOMA'), with respect to incoming loans and the acquisition of works of art for the permanent collection ('the Collection') of the Gallery. The Gallery applies this policy through a set of procedures, which can be found in the [Provenance and Due Diligence Procedures](#).

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, gifts and bequests.

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 title to a sufficient ethical and legal degree, and that the Gallery does not contribute to, or in any way legitimise or support, the illegal or unethical trade in cultural property.

## 2. SCOPE

This policy is applicable to all related activities and staff involved in the loans and acquisition processes of the Gallery. This policy should be read in conjunction with the [Gallery's Acquisitions Policy for Works of Art](#) and the Gallery's [Loans Policy](#). This policy also serves as source of information for the public.

This policy also applies 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 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 of works of art in a responsible manner.

The Gallery applies the ethical standards set out in UNESCO's *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* and the *ICOM Code of Ethics for Museums*, and including by consulting lost and stolen art registers, and local governments and organisations where appropriate.

## 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:** an item 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, and 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 should ideally 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 a work of art directly or indirectly from one entity 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 PRINCIPLES AND MEASURES

Works of art will only be acquired for the Collection, or approved as an incoming loan, in circumstances where the Gallery has sufficient verification that:

- full title of the work of art can be transferred by the vendor or donor, or in the case of loans, that the lender has full title or authority to offer a work of art for loan and enter into a loan agreement;
- that the work of art has a proven history of sound ownership for a reasonable period; and
- the Gallery's actions will comply with conventions or legislation addressing the movement of cultural material and the protection of endangered species.

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

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

- research will be documented and conducted in a transparent and accountable manner in accordance with the [Record Management Business Rules and Procedures](#).
- evidence of the history and ownership of works of art will be rigorously tested and assessed.

- the Gallery's national and international reputation for standards of excellence will be maintained by conducting provenance and due diligence measures to a high international standard through observing national and international laws and best practice guidelines for the protection of cultural material.
- the Gallery will act in a responsible, ethical and legal manner when considering works for acquisition and incoming loan.
- the Gallery will in no way legitimise or support the illegal or unethical trade of cultural material, and that the Gallery will not seek or accept works from persons known to be involved in such activities.
- the Gallery will obtain governmental, community, specialist or legal advice or comment where appropriate, including in consultation with the Gallery's Indigenous Advisory Panel and through adherence to 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 a work of art to ensure its protection and preservation as a 'repository of last resort' or while legal or governmental investigations are taking place.

- such consultation will particularly apply to works of historical Aboriginal and Torres Strait Island art, where the full history of a work of art may not be available. The Gallery will use discretion on a case-by-case basis to determine the appropriateness of holding or exhibiting such works of art, and will undertake ongoing research and consultation to determine relevant history, title and protections (including, where relevant, appropriate restrictions on access and display).

## 5.2 TRANSPARENCY AND ACCOUNTABILITY

Staff are obliged to document and record all provenance and due diligence research, related activities and the decision making process for works of art, including those that do not result in acquisition or loan. Staff will consult and follow the steps outlined in the [Provenance and Due Diligence Procedures](#) for loans and acquisitions and are bound by related policies such as the [Acquisitions Policy for Works of Art](#), [Exhibition Policy](#), [Loans Policy](#), and the [Gifts and Benefit Directive](#).

A summary of provenance research will be included in all acquisition assessments, acquisition proposals, and Director's delegation documents for purchases, gifts and loan reviews. Where possible, and in accordance with privacy rights and considerations, the Gallery will publish provenance information to encourage and enhance knowledge of works of art with incomplete or unsubstantiated provenance information in the Collection. The Gallery will also undertake rigorous investigation on any new information that may call into question documented provenance. Any claims of title or possession made against works of art will be fully 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 \(PCOL\) 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](#). All works of art that enter the

Gallery (whether by way of acquisition or loan) will be assessed for provenance. 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, particularly (but not only) for any work of art proposed to be borrowed, and provenance details for such works will be published online on the Gallery's website as required by the PCOL scheme. Further information is available in the Incoming Loan Procedures and Outgoing Loan Procedures and related documents. Lenders and the Gallery are able to opt out of the PCOL scheme.

## **6. ROLES AND RESPONSIBILITIES**

### **BOARD OF TRUSTEES**

- Approve loans and acquisitions for the Gallery over a determined financial value as per the Board's Instrument of Delegation.
- Oversee the Gallery's processes for loans from and acquisitions of works of art to the Collection.

### **DIRECTOR**

- As representative of the Board, oversee the control and management of the Gallery's assets, including the Collection and works of art in the Gallery's care.
- Approve loans from and acquisitions for the Gallery's Collection up to a financial value as per the Board's Instrument of Delegation.
- Seek advice from the Deputy Director, Collection and Exhibitions, and curatorial staff regarding the research and documentation of available provenance and due diligence information, to inform decision-making regarding loans and acquisitions.
- Provide the Board of Trustees with advice and recommendations on loans and acquisitions for the Gallery, including information concerning provenance and legal title.

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

- Provide the Director with advice and recommendations on loans and acquisitions for the Gallery, based on research and documentation of provenance and legal title.
- Oversee the research and documentation of provenance and legal title for works of art.
- Inform the Director of any issues concerning provenance or legal title are raised through internal processes or from an external party.

### **CURATORIAL STAFF**

- Undertake research relating to provenance and legal title of works of art for incoming loan or proposed for acquisition, with a view to minimising incomplete provenance, including but not limited to: obtaining purchase receipts and documentation from owners and dealers; consulting with legal and art history professionals; reviewing literature, news reports and other documents related to historical works; relevant community consultation; contacting other arts institutions with similar collecting focusses and materials to share resources.
- Adhere to processes for provenance assessments as outlined in the [Provenance and Due Diligence Procedures](#).
- Monitor public feedback regarding incomplete provenance and document appropriately.
- Advise the Deputy Director, Collection and Exhibitions, of any issues concerning provenance and legal title, and seek further professional advice to inform considerations.

## REGISTRATION STAFF

- Upon verification of provenance research, update the provenance records of works of art in the Collection.
- Adhere to processes for the documentation of incoming loans, as outlined in the Incoming Loan Procedures.
- Advise curatorial staff and Deputy Director, Collection and Exhibitions, if issues relating to provenance and legal title are discovered through correspondence and documentation.

## EXHIBITIONS MANAGEMENT

- Work with curatorial staff to ensure relevant information is published on the Gallery's website within appropriate timelines, in line with the requirements of the [Protection of Cultural Objects on Loan \(PCOL\) Scheme](#).
- Report annually to the Department of Infrastructure, Transport, Regional Development and Communications (Office for the Arts) on the Gallery's participation in the [Protection of Cultural Objects on Loan \(PCOL\) Scheme](#).
- Report to the Department of Infrastructure, Transport, Regional Development and Communications (Office for the Arts) on any claims or significant enquiries made in relation to a work of art either proposed to be imported or protected under the [Protection of Cultural Objects on Loan \(PCOL\) Scheme](#).
- Manage the application process for the Gallery to remain an approved borrower under the [Protection of Cultural Objects on Loan Act 2013](#)

## 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*
- [Loans Policy](#)
- *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 1987*
- [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		
<b>Release</b>	Internal and External	<b>File reference</b>	QR/20/48472
<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	New policy
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 Gallery is trustee; inclusion of provision for works of historical Aboriginal and Torres Strait Island art, when ownership history, legal title and permissions may not be available; and the introduction of the 'roles and responsibilities' section to align with current policy template.