

## Policy Statement

Control of the State Collection is vested in the Council of Trustees of the National Gallery of Victoria by virtue of The National Gallery of Victoria Act (1966), as amended. The Council of Trustees acknowledges its obligations under the National Gallery of Victoria Act (1966) to maintain, conserve, develop and promote the State Collection of works of art.

Acquisition and accessioning of works of art into the State Collection occurs within an accepted framework to ensure compliance with legal and ethical requirements in accordance with Collection Development strategies. Acquisition priorities will be determined in accordance with the NGV Collection Strategy, as revised from time to time.

## Application

This Policy applies to all activities relating to acquisition and accessioning to the State Collection and acquisition of works of art and other material that are not accessioned.

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## Context

This policy should be read in conjunction with the following:

- Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (Amendment) 1979
- *Australian Best Practice Guide to Collecting Cultural Material*, Australian Government, Attorney General's Department, Ministry for the Arts, 2014
- ICOM Code of Ethics, 2006
- Museums Australia Code of Ethics
- Pacific Islands Museums Association Code of Ethics for Pacific Museums and Cultural Centres
- The 1995 Unidroit Convention
- UNESCO 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property
- UNESCO Red List
- United Nations Declaration on the Rights of Indigenous Peoples 2007

This policy is also informed by the traditions and precedent set since the establishment of the National Gallery of Victoria in 1861. The NGV Collections Strategy (as revised from time to time) identifies a series of key priorities guiding collection growth. While acknowledging that acquisitions will be made across the whole collection as significant opportunities arise, collecting will be actively focused according to the NGV Collections Strategy.

It is recognised that the Collections have been formed almost in their entirety on the basis of donations from the community. Since the establishment of the Felton Bequest in 1904, the State Government has generally played a limited role in funding acquisitions for the NGV, except for the Victorian Foundation for Living Australian Artists.

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## Key Principles

### 1. Acquisition and Accession

- 1.1** Works of art are chattels. As a result, ownership (“property” or “title”) passes when the parties intend it to pass. This is best done by express agreement. At the NGV, following in principle approval of the acquisition by the Council of Trustees, property passes when the donor signs the relevant template Deed of Gift (for donations) or on the date of the agreement under the template Purchase Agreement (for purchases other than at auction). This is also the date of Accession into the State Collection.
- 1.2** For gifts from the Felton Bequest, the terms of the Will have been understood to require that property in the work passes to the NGV at a formal ceremony to hand over the work, at which the Deed of Gift will be executed. Thus, if the Council has approved in principle the acquisition of the work, the date of the handover ceremony and completion of the Deed of Gift is the date of both its Acquisition and its Accession into the State Collection.
- 1.3** The Council of Trustees may give approval to bid at auction at a scheduled meeting or by circular resolution. For works purchased through auction, property passes in accordance with the terms set out by the auction house. The date of property passing is also the date of Accession into the State Collection.

### 2. Acquisition and Non-Accession

- 2.1** In some instances, where the acquisition is of benefit to the NGV, works of art or other material can be acquired which are not Accessioned into the State Collection. Works of art or other material may be acquired but not accessioned for two principal reasons:
- The Material is not appropriate for accession into the State Collection, but is of benefit in that it relates to or supports the State Collection for the purposes of research, study or reference.
  - Acceptance of a bequest or gift with the intention of later sale or disposal, with any proceeds that may arise from the disposal used for the acquisition of other works of art.
- 2.2** Works of art acquired through bequest or gift with the intention of later sale are managed in accordance with NGV's processes for managing assets.
- 2.3** The Council of Trustees will be advised of any works of art or material acquired but not accessioned into the State Collection. The NGV uses a separate template Deed of Gift for such items that makes it clear to the donor that the material is being acquired for purposes other than accessioning into the State Collection.

### 3. Methods of Acquisition

- 3.1** Works of art may be acquired through a variety of means, including gift, bequest, purchase or commission. In some instances other methods of acquisition will be considered on a case-by-case basis where the transactions enable the passing of legal title to the NGV. To safeguard the integrity of the Collection and guard against misrepresentation, it is critical that, prior to

acquisition, regardless of method, the object ownership be thoroughly researched and due diligence undertaken as outlined in section 5.1 Provenance and Authenticity.

**3.2** Acquisitions of all works of art must be in accordance with financial delegations.

**3.3 Gifts**

**3.3.1 Outright Gift**

Any donation of art by an individual or organisation is categorised as a gift. To make a valid gift, there must be a clear intention on the part of the donor to transfer title and possession of the property. It is essential to the validity of such a gift that the transfer of both possession and title shall be absolute and unencumbered. The donor is required to sign a standard Deed of Gift, evidencing the donor's full transfer of title and possession, and providing the NGV with a range of warranties and indemnities.

**3.3.2 Pledged Gift**

A donor may undertake to pledge a gift to the NGV. A pledge is a commitment to the NGV where part or all of the receipt of the gift is deferred until an agreed date(s) in the future.

**3.4 Purchase**

**3.4.1 Dealers, shops and private individuals and companies**

Works of art may be purchased for the Collection. Although warranty of title is implied in every sale of a work of art, a Purchase Agreement must be entered into. This agreement sets out the various warranties that the vendor gives that they convey good title, free from encumbrances.

**3.4.2. Auctions**

One of the ways that works of art may be purchased is through auction. In these cases, however, the auction house generally provides little by way of warranty (except in relation to the way they have described the work). The NGV must undertake research and due diligence as outlined in section 5.1 Provenance and Authenticity. Also, purchases are made on the auction house's terms and are not formalised through the NGV's template Purchase Agreement.

**3.5 Bequest**

The decision as to whether or not to accession a work(s) of art offered through bequest is determined according to the Collections Strategy and all other clauses of the Acquisitions and Accessions Policy.

Bequests of works of art do not have to be accepted. All, some, or no works of art may be accessioned into the State Collection or accepted for acquisition and non-accession.

**3.6 Commission**

The NGV may commission an artist to produce a work of art for the Collection. The terms and conditions of the commission will be stipulated in the commissioning contract. The contract must contain clauses to ensure that the execution of the contract effects the transfer of both possession and title to the NGV and that this transfer is absolute, unencumbered and free of restrictions.

**3.7 Other Processes for Acquisition**

### 3.7.1 Permanent Joint Ownership

The NGV recognises the increasing frequency of this form of ownership and its potential benefits. Accordingly, the NGV may undertake to jointly acquire an artwork with another collecting institution. Any transactions involving binding terms for permanent joint ownership of an artwork must be reviewed and approved by the Council of Trustees and must ensure conditions for shared possession, preservation and conservation, storage conditions, display, outward loan, freight packing and handling and other considerations for collection management and access are agreed.

3.7.2 Other forms of acquisition may be considered by the Council of Trustees from time to time and on a case by case basis, including but not limited to acquisition of unclaimed property in accordance with the terms of the National Gallery of Victoria Act (1966), s.16. Other forms of acquisition will be considered with reference to the terms of this Policy.

## 4. Conditional Acquisitions

Conditional gifts, pledges or bequests will be discouraged. Donors of works of art will relinquish all rights to the work donated, except in exceptional circumstances in which an exemption is granted by the Council of Trustees.

## 5. Considerations in the Acceptance of Acquisitions

When considering acquiring a work of art, the NGV will be open and transparent in its decision making processes and procedures and will practise and demonstrate standards of professional due diligence.

### 5.1 Provenance and Authenticity

The NGV fully supports the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 1970 and acknowledges that Australia is a signatory to the Convention. The NGV also recognises and is bound by the terms of the Protection of Moveable Cultural Heritage Act (1986).

To establish the provenance and authenticity of the work of art and the veracity of the title held by the donor or vendor, the NGV will undertake thorough research and due diligence before proposing a work of art for acquisition or accessioning according to its established procedures. The Gallery adheres to Australian and International museum best practice in this matter, including the Australian Government's *Australian Best Practice Guide to Collecting Cultural Material* (2014), Museums Australia Inc. Code of Ethics and the ICOM Code of Ethics for Museums.

### 5.2 Condition and care

In acquiring any work of art, the Gallery will also take into account limitations on collecting imposed by a range of factors, including:

- the condition, preservation and/or long term care of a work of art and if necessary conservation measures are not feasible, a work of art will not normally be acquired.
- issues and costs associated with the freight and packing, as well as long-term storage, preservation, documentation, display and outward loan.

### 5.3 Conflict of Interest

All acquisitions of works of art by any method from Trustees or employees of the NGV and their related parties must be disclosed to and minuted by the Council of Trustees as part of its accepted accessioning process for the State Collection. Trustees and employees must exclude themselves from any discussion or decision by the Acquisition Committee and/or Council of Trustees in relation to acquisitions in which they or their related parties are involved and this exclusion will be minuted.

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## Definitions

### Accession

The process which formally acknowledges a work of art as part of the State Collection and, prima facie, a work to be held in perpetuity.

### Acquisition

The process of obtaining legal title to a work of art. Works may be acquired through various methods, including but not limited to gift, purchase, bequest, or commission. Works of art may be acquired for the purpose of accessioning into the State Collection, or acquired and not accessioned.

### Bequest

A gift or form of pledge made to the NGV, forming part of a Donor's will, to be received under a will following the Donor's death.

### Commissioning

The process whereby the NGV contracts an artist to create a work of art. Not all commissioned works of art are acquired for the State Collection and the terms of the Commissioning Contract will stipulate the parameters and requirements for each party to the contract.

### Deed of Gift

A formal, legally binding document that establishes that title to a work is given to the NGV as a gift. The NGV's template Deed of Gift also outlines the terms and conditions of the gift and its acceptance (and includes warranties and indemnities from the donor).

### Development Collection

Provided for in the National Gallery of Victoria Act (1966) as a part of the State Collection from which the Council can exchange, sell, lease or dispose of works of art without having to:

- Satisfy the s.14(2) test that the works are "unnecessary and inappropriate to the activities" of the NGV, or
- Obtain approval from the Governor-in-Council [s.14 (2A)]

No works have been added to the Development Collection since 1997.

### Donor

An individual, organisation or group who has made or is proposing to make a gift to the NGV.

### Due Diligence

For the purposes of this policy, a comprehensive assessment of an artwork to assess its ownership and provenance and to identify any gaps in these.

**Gift**

The gratuitous transfer of property and title in a work of art.

**Pledge**

A gift commitment made where part or all of the receipt of the gift is deferred until an agreed date(s) in the future.

**Provenance**

The history and ownership of a work of art from the time of its discovery or creation to the present day, which assist in the assessment of authenticity and ownership.

**Purchase**

The acquisition of property and title in a work of art through the exchange of money or other valuable consideration.

**Purchase Agreement**

A formal, legally binding written contract which outlines the rights, obligations and undertakings of the buyer and seller of a work of art and outlines the terms and conditions of the sale and the transfer of both property and title.

**State Collection**

The Collection of formally Accessioned works, excluding the Development Collection.

**Title**

The legal right to ownership of property.

**Victorian Foundation for Living Australian Artists**

Established in 2002 under a Memorandum of Understanding between the Minister for the Arts and the Council of Trustees of the National Gallery of Victoria.

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**Breach of Policy**

Breach of this Policy by staff may result in disciplinary action.

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**Further Information**

**Legislation**

Commonwealth

- Customs Act 1901
- Income Tax Assessment Act 1997
- Personal Properties Securities Act 2009
- Protection of Moveable Cultural Heritage Act 1986
- Quarantine Act 1908
- Wildlife Protection (Regulation of Exports and Imports) Act 1982

Victorian

- Aboriginal Heritage Act 2006
- Dangerous Goods Act 1985
- Drugs, Poisons and Controlled Substances Act 1981
- Firearms Act 1996
- Freedom of Information Act 1982
- Goods Act 1958
- Heritage Act 1995
- Human Tissue Act 1982
- Information Privacy Act 2000
- National Gallery of Victoria Act 1966
- Occupational Health and Safety Act 1985
- Public Records Act 1973

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**Approval**

Approved by the Council of Trustees  
29 August 2014

**Date of next review**

(3 years)