

Policy Statement

The Council of Trustees of the National Gallery of Victoria is committed to overseeing an effective policy and procedural framework in relation to inward loans that ensures compliance with the highest legal and ethical requirements.

Application

This policy applies when the NGV borrows works of art.

Context

This policy should be read in conjunction with the following:

- Commonwealth of Australia, Ministry of Arts, *Australian Best Practice Guide to Collecting Cultural Material* 2013
- Commonwealth of Australia, Ministry of Arts, *Protection of Cultural Objects on Loan: Scheme Guidelines* 2014
- *Protection of Moveable Cultural Heritage Act 1986*
- *Protection of Cultural Objects on Loan Act 2013*
- *Protection of Cultural Objects on Loan Regulation 2014*

Policy

1. Key Principle

- 1.1 The NGV is committed to only borrow works of art in accordance with the highest standards of due diligence (including ethical and professional practice, and in accordance with applicable law).

2. Implementing the Key Principle when Borrowing for a Public Exhibition

- 2.1 The NGV is committed to accepting a work of art on loan only if the NGV is satisfied that:
- 2.1.1 the lender is reputable;
 - 2.1.2 the lender has authority to lend the object;
 - 2.1.3 there are no current or outstanding third-party claims on the work of art;
 - 2.1.4 all relevant export licences and/or permits have been or will be obtained;
 - 2.1.5 there is acceptable legal and provenance information available for the NGV to base its decision to proceed with the loan; and
 - 2.1.6 there are no reasonable suspicions that the object was illicitly obtained.
- 2.2 If the NGV is not convinced that the provenance information provided by the lender concerning a work of art proposed for loan is adequate, the NGV will undertake its own due diligence research in accordance with the *Protection of Cultural Objects on Loan Regulation 2014*.
- 2.3 Following such due diligence research, the NGV will exercise professional judgement in determining if the legal and ethical status of the work of art is sound and that any risk is considered prior to borrowing the work of art.
- 2.4 The NGV will not proceed with an inward loan if, after undertaking due diligence, there is reasonable suspicion about the object, the lender or the circumstances surrounding the loan.

3. Implementing the Key Principle when Borrowing a Work of Art for Purposes Other than Public Exhibition

- 3.1** The NGV is committed to implementing the same Key Principle when borrowing a work of art for purposes other than public exhibition (such as academic research) as it does for a work of art borrowed for public exhibition.
- 3.2** The NGV nonetheless acknowledges that in some cases the nature of the loan may mitigate against a strict application of the Key Principle – for example, when research relates to provenance or in situations where the NGV acts as a “repository of last resort” (including, for example, as custodian for a work of art for which a full provenance history is not available or to protect a work of art from destruction or deterioration or where sensitive and significant cultural material is placed with it at the request of traditional owners).
- 3.3** In cases where the NGV accepts a loan for purposes other than public exhibition in circumstances in which the Key Principle is not applied, the NGV will nonetheless undertake a risk management assessment, informed by Australian legal requirements and ethical standards, to ensure that legal and ethical risks are thoroughly considered.

4. Borrowing works of art from overseas

- 4.1** Where the NGV is considering the loan of a work of art from an overseas lender in circumstances where Part 2 of the *Protection of Cultural Objects on Loan Act 2013* applies to the work of art, the NGV must be satisfied that:
- 4.1.1 the loan will comply with the requirements of this policy;
 - 4.1.2 the consultation, publication and claims handling requirements of the *Protection of Cultural Objects on Loan Regulation 2014* will be met; and
 - 4.1.3 the work of art can be borrowed from the lender without contravening national or international conventions, treaties and laws which control the movement of cultural items and natural heritage.
- 4.2** In all cases, consultation required for the purposes of the *Protection of Cultural Objects on Loan Regulation 2014* will be:
- 4.2.1 informed;
 - 4.2.2 respectful;
 - 4.2.3 ethical;
 - 4.2.4 meaningful;
 - 4.2.5 outcome focused and sustainable; and
 - 4.2.6 accompanied by appropriate follow-up communication.
- 4.3** In particular, for consultations with Aboriginal people and Torres Strait Islanders under the *Protection of Cultural Objects on Loan Regulation 2014*:
- 4.3.1 the NGV will actively seek to identify as soon as practicable, and well before any loan is finalised:
 - 4.3.1.1 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 that are owned by particular communities or language groups); and

- 4.3.1.2 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 relevant work of art;
- 4.3.2 identified people, communities and groups will be contacted as soon as possible and provided with information about:
 - 4.3.2.1 the work of art proposed for the loan;
 - 4.3.2.2 the context and purpose of the loan;
 - 4.3.2.3 why they are being contacted;
 - 4.3.2.4 how they may engage with the NGV to express their views; and
 - 4.3.2.5 who to contact at the NGV in relation to the consultation.
- 4.3.3 the NGV will actively follow-up on identified contacts and will allow appropriate time for consultation (including follow-up) before concluding any loan; and
- 4.3.4 the NGV will provide mechanisms for Aboriginal and Torres Strait Islander people, groups and/or communities to actively engage with it in the consultation process, including, where appropriate:
 - 4.3.4.1 telephone and other distance communication technologies;
 - 4.3.4.2 written engagement; and
 - 4.3.4.3 face-to-face meetings with individuals and/or groups, as appropriate according to relevant cultural and ethical protocols.

4.4 All consultations with Aboriginal and Torres Strait Islander people, groups and/or communities will adhere to the principles of prior and informed consultation, participation and consent, and comply with the most recent ethical and professional frameworks that apply from time to time.

5 Opting out of the *Protection of Cultural Objects on Loan Act 2013* when borrowing works from overseas

- 5.1** Notwithstanding the provisions set out above in relation to inward loans from overseas, the NGV recognises that in some situations neither it nor the lender may consider the risk of legal action in respect of the work to be very high. This may particularly be the case where the NGV is borrowing a work directly from its creator.
- 5.2** In such cases, the NGV may consider it unlikely that it will need to seek to rely on the protections of the *Protection of Cultural Objects on Loan Act* and that it would therefore be appropriate for the NGV to opt-out of those protections by giving the relevant notice to the Minister for the Arts or the Minister's delegate.
- 5.3** In such cases, however, the NGV will only opt out of the statutory protections if the lender consents to this (including by acknowledging in a written loan agreement that the NGV may opt out of the statutory protections in respect of the work).

6 Documenting inward loans

- 6.1** All inward loans, whether for exhibition, display and/or research purposes must be documented in written loan agreements, the terms and conditions of which must:
 - 6.1.1 record the rights, obligations and responsibilities of each party; and
 - 6.1.2 include appropriate warranties and indemnities from the lender, particularly in relation to the lender's authority to lend the work of art, the provenance of the work of art and the legal export of the work of art from any country.
- 6.2** The NGV will maintain files on all matters to do with loans. Relevant records to be maintained within files include information on approval processes, key decisions, consultations, transactions, negotiations, provenance, due diligence undertaken, compliance with policies and procedures and signed copies of loan agreements.

6.3 All records and documents maintained in relation to inward loans will be kept permanently.

7 Conflicts of Interest

7.1 All inward loans of works of art for the purpose of public exhibition from Trustees and employees of the NGV, their relatives and/or other related parties will be disclosed to, and minuted by, the Council of Trustees before any agreement is reached by the NGV in relation to the loan.

7.2 Trustees and employees must exclude themselves from any decision within the NGV that relates to works of art or loans in which they, relatives or related parties have any interest. This exclusion must be minuted.

8 Risk Management

8.1 When making decisions relating to inward loans, the NGV will undertake risk assessments, informed by Australian legal requirements and standards, to ensure that all legal and ethical risks are thoroughly evaluated and considered.

9 Education and awareness

9.1 NGV staff involved in inward loans will be made aware of and must adhere to all relevant NGV policies.

9.2 In particular, staff involved in inward loans of Aboriginal and Torres Strait Islander works of art must be aware of and keep up-to-date with all relevant protocols and professional practices.

10 Approvals

10.1 The Director is responsible for approving all requests for inward loans.

10.2 The Director may delegate the negotiation and finalisation of inward loan agreements. Delegates will conduct negotiations and conclude inward loan agreements in line with this Policy.

Definitions

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.

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.

Breach of Policy

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

Further Information

- International Council of Museums, *Code of Ethics* (2013)
- Museums Australia, *Code of Ethics* (1985; revised 1999)
- Museums Australia, *Continuing Cultures, Ongoing Responsibilities* (2005)
- Aboriginal and Torres Strait Islander Library, Information and Resource Network Inc, *Aboriginal and Torres Strait Islander Protocols for Libraries, Archives and Information Services* (2012)
- AIATSIS, *Guidelines for Ethical Research in Australian Indigenous Studies* (2012)
- Doreen Mellor and Terri Janki, NAVA, *Valuing Art, Respecting Culture: Protocols for working with the Australian Indigenous Visual Arts and Craft Sector* (2011)

- Indigenous Art Code Ltd, *Indigenous Australian Art Charter of Principles for Publicly Funded Collecting Institutions* (2009)
 - Pacific Islands Museums Association *Code of Ethics for Pacific Museums and Cultural Centres* (2006)
 - *Convention on International Trade in Endangered Species of Wild Fauna and Flora* (CITES) (Amendment) 1979
 - *United Nations Declaration on the Rights of Indigenous Peoples* 2007
 - *UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property* 1970
 - *Protection of Cultural Objects on Loan Regulation* 2014
- Victorian
- *Aboriginal Heritage Act* 2006
 - *Financial Management Act* 1994
 - *Freedom of Information Act* 1982
 - *Information Privacy Act* 2000
 - *National Gallery of Victoria Act* 1966
 - *Public Records Act* 1973

Approval

Approved by the Council of Trustees
6 May 2015

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