

Art Acquisition Policy

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1. Purpose

The National Gallery of Australia's collection is rich and varied, encompassing Australian and international art. The Gallery and its functions are determined by the *National Gallery of Australia Act 1975*. The principal functions of the Gallery, as outlined in s6 of the *Act*, are to develop and maintain a national collection of works of art and to exhibit, or make available for exhibition by others, works of art from the national collection. Giving particular emphasis to the visual art of Australia, Europe and North America as well as Asian and Pacific countries, the development and enhancement of the collection is essential to ensure that the Gallery remains a vibrant, living entity.

Acquisition and accessioning of works of art is conducted in accordance with the powers afforded to the Gallery under the *Act* and this occurs within an accepted approval and management framework. The Gallery acquires works of art by various methods and is committed to ensuring that all acquisitions are negotiated and managed on terms that are ethical, honourable, responsible and transparent to public scrutiny. This policy sets out the principles the Gallery models and factors it will consider when acquiring works of art for the collection.

The objectives of this policy are to ensure that:

- (a) the Gallery advances its mission to enhance and develop the collection;
- (b) the Gallery applies rigorous, ethical and accountable standards in the consideration, assessment and negotiation of acquisitions;
- (c) acquisitions to the collection are considered and approved in accordance with established delegated authority;
- (d) curatorial staff have clear procedures regarding interactions with vendors, artists, donors, gallerists and auction houses. .

These objectives are to be achieved by ensuring that the Gallery:

- (a) acquires works of art that fit within the Gallery's collecting priority areas;
- (b) obtains valid title to works acquired for the collection; and

- (c) avoids any act or omission that may compromise the Gallery's position and reputation for integrity.

2. Scope

This policy applies to all activities relating to the acquisition and accessioning of works of art into the collection.

3. Responsibilities

3.1 Department Heads

Department Heads are responsible for:

- (a) ensuring that employees under their management are aware of, have an understanding of and are implementing the requirements of this policy; and
- (b) providing further training and instruction in the procedures noted in this policy, when requested by an employee or when requirements are identified in consultation with the employee.

3.2 Managers and Supervisors

Managers and supervisors are responsible for:

- (a) ensuring that employees under their management follow and implement the requirements of this policy; and
- (b) providing advice and instruction in the procedures stated in this policy, as required.

3.3 Employees

Employees are responsible for:

- (a) maintaining an understanding of and implementing the requirements of this policy; and

- (b) requesting assistance as required in the implementation of this policy, escalating foreseeable issues to their manager.

4. Procedures

4.1 Principles

The development of the collection is essential to ensure the Gallery fulfils the functions prescribed by the *Act*. The Gallery acquires works of art that fit within identified collecting areas, selected on the basis of the significance of the artist and/or the specific quality of the work of art, as well as relevance to the collection.

The Gallery ensures that all acquisitions are negotiated and managed on terms that are ethical, honourable, responsible and visible to public scrutiny and maintains the Gallery's standing and reputation for collecting excellence in the public and the museum community, both nationally and internationally. In developing its collection, the Gallery will seek to ensure that it acquires authentic works of art with valid title and an established chain of ownership, and that it obtains works legally, in accordance with relevant law.

The Gallery recognises the UNESCO *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970* (the Convention) and acknowledges that Australia is a signatory to the Convention. The Gallery also recognises and is bound by the terms of the *Protection of Moveable Cultural Heritage Act 1986* and is guided by the International Council of Museums (ICOM) *Code of Ethics*, Museums Australia *Code of Ethics* and the Australian *Best Practice Guide to Collecting Cultural Material*.

4.2 Considerations in Collecting — Collecting Priorities

The Gallery's founding document is the 1966 'Lindsay Report' from the National Art Gallery Committee of Inquiry. That report, mindful of other Australian state collections, placed its greatest emphasis on:

- (a) modern art worldwide

- (b) the whole of Australian art
- (c) works of art representing the high cultural achievement of Australia's neighbours in southern and eastern Asia and the Pacific Islands.

Today, the Gallery aims to acquire an ambitious range of works of art that enhance and develop the existing collection of Australian and international art. The Gallery will continue its program of acquiring major works of art in accordance with the Act and the Art Acquisition Strategy. Works of art proposed for acquisition must fit the NGA's Art Acquisition Strategy for that collecting area, which is established by consultation between curatorial and executive staff, and endorsed by the governing Council.

4.3 Other Considerations in Collecting

4.3.1 Provenance

When considering acquiring a work for the collection, the Gallery will practise, and be prepared to show that it has practised, the highest standards of due diligence. As a general principle, the Gallery will not acquire a work of art through any means or methods, unless it can acquire valid title. To establish the provenance of a work of art and the veracity of title, the curator will carry out thorough research before proposing the work for acquisition in accordance with the established Due Diligence and Provenance Policy and Procedures.

4.3.2 Condition and Care

The Gallery will consider the factors that may impact on the condition, care and preservation of the work of art prior to its acquisition, including any issues or unusual costs in relation to:

- (a) the current condition and/or long-term care of the work of art;
- (b) the storage and movement of the work of art, including but not limited to long-term storage issues and costs and workplace health and safety issues; and

- (c) documentation, display and loan.

4.3.3 Conditional Acquisitions

As a general rule, the Gallery does not accept acquisitions that carry restrictions or conditions. Donors and sellers of works of art will relinquish all proprietary rights to the work other than copyright. In extraordinary circumstances, exceptions may be made by the Council, on the recommendation of the Collections Committee. These exceptions may include custodial arrangements legally negotiated on a case-by-case basis.

4.4 Methods of Acquisition

4.4.1 Gift

The Gallery undertakes to publish an image of any gifted work of art together with details of the work and the agreed credit line on the Gallery's website within a reasonable time-frame of receiving the gift. The Gallery will, on request, provide a publication-quality image free of charge to the donor for non-commercial use within the parameters of the Gallery's obligations as regards copyright.

4.4.1A Outright Gift

Any donation of work by a living individual or individuals, or an institution or organisation is considered 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 work and clear intent on the part of the Gallery to accept the gift for the purpose of accessioning into the collection. The transfer of both possession and title must be absolute and unencumbered. As a general rule, the Gallery will not accept or recognise a gift where there is reserve to the donor of any power of control or revocation. In exceptional circumstances in which the Gallery elects to accept an encumbered or

restricted gift, the basis of this decision will be minuted by the Collections Committee and approved by the Council.

The donor is required to sign a Deed of Gift, evidencing full transfer of title and possession, providing the Gallery with a range of warranties and indemnities and affirming the agreement of both or all parties to the transfer and acceptance of title and possession of the work of art. In the event that the Gallery elects to accept a gift with encumbrances or restrictions, such matters will be documented as variations to the Deed of Gift.

The Gallery also accepts gifts made under the Cultural Gifts Program. Such gifts are assessed against this policy and the Art Acquisition Strategy, and follow the Art Acquisitions Procedure – Cultural Gifts, but must also meet the Cultural Gifts Program requirements outlined by the Department of Communications and the Arts.

4.4.1B Promised Gift

A donor may promise a gift to the Gallery during their lifetime. A promised gift is a commitment by the donor to give a work to the Gallery wherein part or all of the receipt of the gift is deferred until an agreed date(s) in the future. The donor will work with Gallery staff to assess the title and provenance of the promised gift to ensure that it meets due diligence and provenance requirements prior to acceptance of the promised gift by the Gallery.

Title is retained in the work of art by the donor until such time as the gift is realised. The donor may retain physical possession of the work until the gift is realised or may enter into loan arrangements with the Gallery.

Unless in exceptional circumstances, the Gallery will only realise the promised gift after possession of the work of art has transferred to the Gallery in order to ensure that:

- (a) the work is complete and all components or parts have been received; and
- (b) the work is in an acceptable condition, consistent with the condition understood at the time the acquisition agreement was entered into.

Should the work of art not be in an acceptable condition, or in the event that other factors relating to the authenticity, provenance or attribution of the work are not as they were understood to be at the time of the agreement, the Gallery reserves the right to not proceed with acquiring the work.

4.4.2 Purchase

Works of art may be purchased for the purpose of accession into the collection.

4.4.2A Purchase from dealers, commercial galleries, shops, private individuals and companies

Although warranty of title is implied in the sale of goods, a Purchase Agreement and/or Vendor Warranty will be entered into as appropriate. These documents stipulate the warranties and undertakings the seller makes in relation to the title and authenticity of the work which they are selling, guaranteeing that it is free from restrictions, lien or encumbrances.

Unless in exceptional circumstances, the Gallery will pay for purchases after the work of art has been received and the Purchase Agreement completed by both parties in order to ensure that:

- (a) the correct work has been received;
- (b) the work is complete and all components or parts have been received; and

- (c) the work is in an acceptable condition, consistent with the condition understood at the time the agreement to purchase was entered into.

In circumstances where part or full payment is required in order to secure the transfer of possession of the work, in accordance with this policy, acquisition approval must be obtained and the Purchase Agreement must be completed and approved by all parties prior to the payment being made.

Curators follow the “Art Acquisitions Procedure – Purchases” which stipulates procedures relating to the approval process, best practice regarding interactions with vendors, and meeting public and governance expectations of due diligence and expenditure of government funding.

4.4.2B Purchase at Auction

Works of art may be purchased at auction and, in such instances, purchases are made on the auction house’s terms and are not formalised through a Purchase Agreement. The auction house’s terms of sale must be evaluated for warranty of title and authenticity in accordance with this policy and established Due Diligence and Provenance Policy and Procedures.

4.4.3 Bequest

All, some or none of the works of art offered to the Gallery by bequest may be accepted for the purpose of accession into the collection. In accordance with the conditions of the bequest, works may be also acquired as property to be disposed of to benefit the collection.

For accepted bequests, a copy of the will, codicils and any other related documentation will be retained as part of the Gallery’s records.

4.4.4 Commission

The Gallery may acquire works of art by contracting an artist to produce a work for the collection. The terms and conditions of the commission will be stipulated in the Work of Art Proposal approved by Council and the Memorandum of Understanding established between the Gallery and the artist/s. The work of art is only submitted to Council for approval to accession into the collection subsequent to completion.

4.4.5 Other Processes for Acquisition

4.4.5A Joint Ownership

The Gallery recognises the potential benefits of joint ownership arrangements. The Gallery may undertake to acquire a work of art jointly with another collecting institution for accession into the collection. Any transactions involving binding terms for permanent or temporary joint ownership must be reviewed and approved by the Collections Committee. Binding terms must ensure that conditions for shared possession, preservation and conservation, storage conditions, display, insurance, outward loan, freight, packing, handling and other considerations for collection management and access are agreed.

The agreement must also make provision for first option for purchase of the remainder of the Title in the work to be given to the co-owner(s) in the event that either or any of the parties intends to dispose of their share, and that if this option is not taken that any new co-owner must be able to meet agreed museum-standard conditions in order to acquire part title of the work and agree to maintain appropriate custodial arrangements with the Gallery.

4.4.5B Other

Other forms of acquisition may be considered by the Collections Committee on a case-by-case basis. Any consideration of other forms of acquisition will be undertaken with reference to the principles of this policy.

4.5 Delegated authority to acquire

Acquisitions to the collection are approved by the Council or its delegate.

The Director has delegated authority to approve acquisitions within established limits. A summary of works acquired under the Director's delegation will be submitted to the next scheduled Collections Committee meeting.

The Director and the Council Chair together have a further delegation, as do the Director and the Chairs of the Council and Council Collections Committee together. A summary of works acquired under these delegations will be submitted to the next scheduled Collections Committee meeting.

All proposed acquisitions with a purchase price over these delegations must be presented to the Collections Committee for endorsement. Acquisition of a work of art offered for sale at auction with a price over the Director's delegation may be endorsed by the Collections Committee either at a scheduled meeting or by means of a memo outside the standard meeting cycle. Works of art acquired at auction and endorsed by memo will be re-presented for noting to the subsequent scheduled Collections Committee meeting.

All acquisitions will be considered on their merit, taking into account the principles and terms of this policy and the details of the proposed acquisition outlined in the Submission for Acquisition. Prior to consideration by the Collections Committee, proposed acquisitions are approved by the Director and Deputy Director. Acquisition submissions are prepared by the relevant curator after approval to proceed is issued by the Director and Deputy Director.

The decisions of the Collections Committee, including summary listings of works acquired by Director's delegation or at auction will be minuted and ratified by the Council at their subsequent meeting.

4.6 Acquisition and Accession into the Collection

For gifts: Title in a gift passes when the Council approves the acquisition. The process is formalised when the Deed of Gift is executed by the Donor. The Gallery employs a

template Deed of Gift. Exceptions will be considered on a case-by-case basis and approved by the Director or his/her delegate.

For purchases: The Gallery employs a template Purchase Agreement, the terms of which are agreed prior to submission to Council. In the case of acquisition by purchase (other than purchases at auction), title passes in accordance with the terms of the Purchase Agreement, implemented once the Council has approved the acquisition.

For auctions: Title passes in accordance with the terms and conditions of sale established by individual auction houses, including on-line auction houses and entities.

For commissions: Title passes when the parties intend it to pass, as agreed and documented in the Memorandum of Understanding.

Irrespective of the method of acquisition, the date of accession into the collection is the date of the Council meeting at which the acquisition is formally approved.

4.7 Acquisition for Purposes Other than Accession into the Collection

As a general rule, the Gallery will not acquire works of art for purposes other than accession into the collection. However, works of art may be acquired and not accessioned into the collection in circumstances where the conditions of a bequest allow the Gallery to acquire title and dispose of all or some of the bequeathed works.

Any proceeds arising from the disposal of works of art in this manner will be used within the terms of the bequest, generally solely for the acquisition of works of art for the collection. The original source of the bequest will be credited in relation to any subsequent purchases arising from the proceeds of such disposal.

The Council will be advised of any works of art acquired for purposes other than accession into the collection.

4.8 Transparency and Accountability

4.8.1 Publication of Acquisitions

The Director will ensure that a list of all acquisitions approved in the financial year is published in the Annual Report.

Unless otherwise restricted in accordance with the Aboriginal and Torres Strait Islander Cultural Rights and Engagement Policy, other policies or legal obligations, the Gallery will make provenance information about new acquisitions and, to the greatest extent possible, the existing collection, accessible to the public on the Gallery's website.

4.8.2 Record-keeping

In accordance with the Record-Keeping Policy and established procedures, staff will maintain records (paper-based and/or electronic) for each proposed acquisition, including those that are not approved at Council, documenting relevant information and decision-making.

4.8.3 Conflicts of Interest — Staff and Council Members

Members of the Collections Committee must declare any conflict of interest and this conflict must be actively managed. Gallery staff involved in the acquisition process and members of the governing Council and the Collections Committee must declare any conflict of interest in an acquisition. The declared conflict will be minuted by the Collections Committee. Staff, Council and Committee members must exclude themselves from any discussion or decision by the Collections Committee and/or governing Council in relation to an acquisition in which they have an interest and this will be minuted.

Gallery staff involved in the acquisition of works of art are bound by the Gallery's Code of Ethics and other relevant Gallery documents, including but not limited to the Professional and Personal Conduct Guidelines, Fraud Strategy and Record-Keeping Policy.

5. Training and Instruction

Workers who require additional support to have a better understanding of this policy must contact their manager or supervisor in the first instance, or be nominated for additional training by their manager in consultation with the employee.

The manager or supervisor may seek the assistance of the Deputy Director to organise or assist in the provision of the required assistance.

6. Compliance

All employees are required to comply with this policy and disciplinary procedures may apply where an employee fails to comply with this policy without reasonable cause.

7. Records

This policy and versions of the policy will be stored in accordance with the provisions of the Record-Keeping Policy.

8. Review

This document will be reviewed at least every two years to ensure it remains relevant. The document may be reviewed at earlier intervals where a change in operational procedures impacts on the policy content.

9. Consultation

Employees covered within the scope of this policy will be consulted in the development and subsequent reviews of the policy and their comments and feedback will be taken into consideration before the document is finalised.

10. Definitions

In this policy:

Aboriginal or Torres Strait Islander art

means a work of art by an Aboriginal or Torres Strait Islander artist. Aboriginal and Torres Strait Islander Art is defined in accordance with the Aboriginal and Torres Strait Islander Cultural Rights and Engagement Policy.

Act

means the *National Gallery of Australia Act 1975*.

Accession

means the process which formally acknowledges a work of art as part of the Collection.

Acquisition

means the process of obtaining valid title to a work of art. Works may be acquired through various methods for the purpose of accessioning into the collection or acquisition without accessioning for purposes outlined in this policy.

Collection

means works of art in various media that are Gallery property and have been formally accessioned. For the purposes of this policy, the terms work of art, work and related terms are used interchangeably to describe all art or other material Accessioned into the Collection. In this policy, the Collection does not include the Art Archive Collection.

Collections Committee

means the Council sub-committee established to review and recommend the acquisition of works of art to and deaccession from the collection.

Council

means the governing Council of the Gallery under the *Act*.

Council Member

means a member of the governing Council appointed in accordance with the *Act*.

Deed of Gift

means a formal, legally binding document that establishes that title to a work of art is given to the Gallery as a gift by the donor(s). The Deed of Gift also outlines the terms and conditions of the gift and its acceptance.

Director

means the Director of the Gallery appointed under the *Act* and includes a person appointed by the Minister as acting Director.

Due Diligence

means the thorough assessment of a work of art to evaluate its authenticity, ownership and Provenance and to identify and assess any gaps.

Gallery

means the National Gallery of Australia, an Australian Government agency established in accordance with the *Act*.

Provenance

means the history and ownership of an item from the time of its discovery or creation to the present day, from which authenticity and ownership may be determined.

Purchase Agreement

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

Submission for Acquisition

means a document that details information about a work of art proposed for acquisition and outlines considerations in assessing the acquisition. The submission will detail the known provenance of the work and will identify direct costs and, in the case of works acquired through purchase, the potential funding source.

Title

means the legal right to ownership of property.

11. References

This policy should be read in conjunction with the following:

11.1 Gallery Policies

- *Aboriginal and Torres Strait Islander Cultural Rights and Engagement Policy*
- *Due Diligence and Provenance Policy*
- *Exhibitions Development Policy*
- *Freedom of Information Policy*
- *Inward Loans Policy*
- *Outward Loans Policy*
- *Record-Keeping Policy*
- *Risk Management Policy*

11.2 Guidelines, Procedures and Associated Documents

11.2.1 Gallery Guidelines, Procedures and Associated Documents

- *Aboriginal and Torres Strait Islander Reconciliation Action Plan*
- *Art Acquisitions Strategy*
- *Art Acquisition Procedures*
- *Professional and Personal Conduct Guidelines*
- *Code of Ethics*
- *Fraud Strategy*
- *Inward Loans Procedure*
- *Outward Loans Procedure*
- *Provenance and Due Diligence Research Procedure*

- *Work of Art Claims and Inquiries Handling Procedure*

11.2.2 National and International Guidelines, Procedures and Associated Documents

The Gallery's guidelines and principles have been informed by the Australian Government's *Australian Best Practice Guide to Collecting Cultural Material 2014*, the Association of Art Museum Directors' *Report of the AAMD Task Force on the acquisition of archaeological materials and ancient art* (2004) and *Combating illicit trade: due diligence guidelines for museums, libraries and archives on collecting and borrowing cultural material* (Department for Culture, Media and Sport, London, 2005). Other framing documents include:

- Art Gallery of New South Wales, *Art Acquisitions Policy*, 2015
- National Gallery of Victoria, *Acquisition and Accession Policy*, 2014
- National Museum of Australia, *Collections Development Policy*, 2014
- American Association of Art Museum Directors, *Guidelines on the Acquisition of Archaeological Material and Ancient Art*, 2013
- ICOM *Code of Ethics*, 2013
- Australia Council, *Protocols for Producing Indigenous Australian Visual Arts*, 2010
- Ministry for the Arts, *Cultural Gifts Program Guide*, 2009
- Pacific Islands Museums Association *Code of Ethics for Pacific Museums and Cultural Centres*, 2006
- Museums Australia, *Continuing Cultures, Ongoing Responsibilities*, 2005
- Smithsonian Institution, *Collections Management*, 2001
- UNESCO, *The Hague Convention 1954, First Protocol 1954 and Second Protocol 1999*

- Museums Australia, *Code of Ethics*, 1999
- *Unidroit Convention on Stolen or Illegally Exported Cultural Objects*, 1995
- *Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (Amendment) 1979*
- *UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*, 1970
- *ICOM Red Lists*

11.3 Legislation

The Gallery recognises the 1972 *UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import and Export and Transfer of Ownership of Cultural Property* and complies with the Australian Government's *Protection of Movable Cultural Heritage Act 1986*. In addition, the Gallery adheres to the *Code of Ethics for Museums* (2004) of the International Council of Museums (ICOM) and the *Code of ethics for art, history & science museums* (1999) of Museums Australia, which preclude museums from participating in transactions involving illicit material.

11.3.1 Commonwealth

- *National Gallery of Australia Act 1975*
- *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*
- *Biosecurity (Consequential Amendments and Transitional Provisions) Act 2015*
- *Customs Act 1901*
- *Environment Protection and Biodiversity Conservation Amendment (Wildlife Protection) Act 2001*
- *Income Tax Assessment Act 1997*

- *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*
- *Public Governance, Performance and Accountability Act 2013*

11.3.2 Australian Capital Territory

- *Freedom of Information Act 2016*
- *Public Interest Disclosure Act 2012*
- *Information Privacy Act 2014*
- *Financial Management Act 1996*
- *Financial Management Regulation 2005*
- *Sale of Goods Act 1954*
- *Sale of Goods (Vienna Convention) Act 1987*
- *Territory Records Act 2002*
- *Uncollected Goods Act 1996*

This policy is also informed by the traditions and precedent set since the establishment of the Gallery.

Attachment A

Summary of Amendments

| Amended | Version # | Description of Amendments | Approval of Amendments |
|---------|-----------|---------------------------|------------------------|
| | | | |