

ART GALLERY OF SOUTH AUSTRALIA

Due Diligence and Provenance Policy

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1. Purpose of this Policy

This policy specifies the principles to be followed by the Art Gallery of South Australia (AGSA) regarding provenance and due diligence, to ensure that works of art have clear title of ownership, appropriate ownership history, conform to legislation in relation to moveable cultural heritage, and that the creator or cultural origin is verified. This policy informs and guides AGSA's decision making when considering acquisitions, inward loans to the collection or exhibitions and other matters relating to the collection.

2. Scope

This policy applies to all AGSA staff, officers and Art Gallery Board directors who are involved in processes relating to the acquisition and management of works of art and inward loans on behalf of AGSA.

3. Definitions

- **Provenance** means the history and ownership of a work of art from the time of its discovery or creation to the present day, from which authenticity and ownership may be determined.
- **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 in this information.

4. Principles

- 4.1 To apply the highest standards of ethical and professional practice to acquisitions and inward loans of works of art.
- AGSA will undertake due diligence research for all proposed acquisitions and inward loans, as well as reviewing previous decisions and existing collection works as appropriate, in accordance with the *Due Diligence and Provenance Procedures*.

- AGSA will ensure that all works of art for acquisition or loan have clear title of ownership and will require the seller, donor or lender to provide warranties and indemnities as to their account of title or possession. AGSA reserves the right to initiate inquiries of prospective donors, sellers, lenders and third parties in order to seek to address gaps or doubts in regard to the provenance or legal and ethical status of a work of art.
- AGSA will thoroughly research the provenance of works of art prior to acquisition, while recognising that in certain cases this information will be incomplete or unverifiable through documentary evidence. Any gaps in provenance will be evaluated to ensure that no evidence or reasonable cause for suspicion can be found about the procurement of the work by its current owner, or any prior transactions or exchanges.
- AGSA will not knowingly acquire or borrow works of art where there is any knowledge or reason to believe that the work of art was stolen or sold under duress. This includes works of art that were wrongfully taken by the Nazi regime during the period 1933 to 1945.
- AGSA does not support the illicit trade of works of art, the illegal excavation of antiquities and their export and sale (including the illegal export of works of art from countries whose legislation prevents that export) or the theft of works of art from individuals, museums or other repositories. AGSA does not seek, accept or borrow works from persons known to be involved in such activities.
- AGSA's research will be documented and conducted in a transparent and accountable manner as outlined in the *Due Diligence and Provenance Procedures*.

4.2 To respect cultural sensitivities in the collecting, display and publication of works of art.

- AGSA supports best practice and protocols to inform fair, sensitive and effective consultation in dealing with Indigenous artists, their representatives and their communities.
- AGSA will refrain from acquiring, displaying or publishing works of art which would offend the cultural sensitivities of Indigenous communities.

4.3 To comply with Australian legislation and Australian and international codes of practice concerning illicit transactions of works of art and the movement of cultural material, specifically:

- Convention on the Means of Prohibiting and Preventing the Illicit Import and Export and Transfer of Ownership of Cultural Property (UNESCO 1970, effective 1972)

- Protection of Movable Cultural Heritage Act (1986)
- Protection of Cultural Objects on Loan Act (2013)
- Code of Ethics for Museums (ICOM 2004)
- Code of Ethics for Art, History and Science Museums (1999)
- Indigenous Australian Charter of Principles for Publicly Funded Collecting Institutions (2009)

4.4 To handle claims for restitution of a work of art with respect, sensitivity and in a timely manner.

- In accordance with the *Due Diligence and Provenance Procedures* AGSA will thoroughly investigate in a timely and respectful manner, any new information that calls into question documented provenance, and any claims of title or possession made against objects.
- Any considered restitution by AGSA will take into account the individual merits of the case, AGSA's Deaccessioning Policy and Deaccessioning Procedure, cultural, legal and legislative factors, and the long-term preservation of the work of art.

4.5 Custodianship of works of art not owned by AGSA.

- In some circumstances, works may be borrowed or held in trust by AGSA in order to protect or preserve them, or under other arrangements under which AGSA is acting as a repository of last resort. In such instances, AGSA recognises that title and the usual standards of provenance may not be able to be ascertained.
- In such circumstances, AGSA does not seek to retain possession of the works should the lawful title holder be identified, and in these circumstances will seek to restore the work to the legal owner.

5. Responsibilities

5.1 The Art Gallery Board is responsible for ensuring that AGSA has the appropriate policies and procedures in place to address due diligence and provenance requirements.

5.2 The Director is responsible for ensuring that AGSA's staff understand and adhere to the policies and procedures.

5.3 The curatorial and other AGSA staff members are responsible for ensuring that appropriate research is undertaken to establish provenance and ownership of works of art being considered for acquisition and loan.

6. Related Policies and Procedures

- Acquisitions Policy
- Acquisitions Procedure
- Deaccessioning Policy

- Deaccessioning Procedure
- Inward Loans Policy
- Code of Ethics for the South Australian Public Sector

7. Review

This policy will be reviewed after its first year of operation and then on a five-yearly basis.

Policy approved by Art Gallery Board	16 April 2019
Policy reviewed after first year of operation (to be reviewed again in 2025)	22 April 2020