



ACQUISITIONS POLICY

SUMMARY

Name of Policy	
Description of Policy	This policy sets out the principles by which the National Gallery of Australia acquires collection material to develop and enhance its collections.
Policy applies to	<input checked="" type="checkbox"/> National Gallery wide <input type="checkbox"/> Specific (e.g. Department)
Policy Status	<input type="checkbox"/> New Policy <input checked="" type="checkbox"/> Revision of Existing Policy
Approval Authority	Director
Responsible Officer	Head Curators
Contact area	Curatorial
Date of Policy Reviews*	February 2023
Related Policies, Procedures, Guidelines and Local Protocols	<ul style="list-style-type: none">▪ <i>National Gallery Act 1975</i>▪ <i>Public Governance, Performance and Accountability Act 2013</i>▪ <i>Financial Delegations</i>▪ <i>Reconciliation Action Plan</i>▪ <i>Due Diligence and Provenance Policy</i>▪ <i>Deaccessioning Policy</i>▪ <i>Research Library Collection Development Policy and Research Archive Acquisition Policy</i>▪ <i>The Copyright Act 1968</i>▪ <i>The Privacy Act 1988</i>▪ <i>Australian Best Practice Guide to Collecting Cultural Material 2015</i>▪ <i>Collections Law: Legal issues for Australian Archives, Galleries, Libraries and Museum</i>▪ <i>Vision for the national collection 2019</i>

*Unless otherwise indicated, this policy will still apply beyond the review date.

APPROVALS

Position	Name	Endorsed	Date
Director	Nick Mitzevich	Yes	20 January 2023
Council	Ryan Stokes	Yes	

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1. PURPOSE

The National Gallery of Australia (the Gallery) and its functions are determined by the *National Gallery Act 1975* (the Act). The principal functions of the National Gallery, as outlined in s 6 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. The National Gallery acquires works of art and other collection material in accordance with the powers afforded to it under the Act and within an accepted approval and management framework.

This policy sets out the principles by which the National Gallery of Australia acquires works of art to develop and enhance its collections.

The objectives of this policy are to ensure that:

- A.** The National Gallery advances its mission to enhance and develop the collections to maintain a vibrant, living entity;
- B.** The National Gallery applies rigorous, ethical and accountable standards when considering, assessing and negotiating acquisitions;
- C.** Acquisitions are considered and approved in accordance with established delegated authority;
- D.** Staff have clear procedures regarding interactions with vendors, artists, donors, gallerists and auction houses.

To achieve these objectives, the National Gallery:

- A.** Acquires material that fits within its collecting strategy as articulated in the *Vision for the national collection*;
- B.** Obtains valid title to material acquired for the collections;
- C.** Avoids any act or omission that may compromise its position and reputation for integrity.

2. SCOPE

This policy applies to all activities relating to the acquisition of works of art and other material into the National Gallery's national collection (also referred to as the permanent collection) and Study Collection (previously Art Archive).

3. RESPONSIBILITIES

3.1. CURATORS

Review and assess potential collection material for title, significance and condition and prepare acquisition proposals for the consideration of the Head Curators, Director, Council and, where necessary, the Minister responsible for the Arts.

3.2. HEAD CURATORS

In consultation with the Director, ensure the processes for acquisition are undertaken in accordance with this policy and related policies, plans and procedures.

3.3. DIRECTOR

Reviews and approves proposed acquisitions within the Director's delegation or makes a recommendation regarding the proposed acquisition to the Council Chair, the Collections Committee Chair, the Collections Committee or, where necessary, the Minister responsible for the Arts.

3.4. COLLECTIONS COMMITTEE CHAIR

Reviews and approves proposed acquisitions within the Collections Committee Chair and Council Chair delegation, or where necessary provides support for the Chair of Council recommending the proposed acquisition to the Minister responsible for the Arts for approval.

3.5. COLLECTIONS COMMITTEE

Supports the Collections Committee Chair to review and approve proposed acquisitions within the Council's delegation, or makes a recommendation to the Minister responsible for the arts regarding the proposed acquisition.

3.6. COUNCIL CHAIR

Reviews and approves proposed acquisitions within the Collections Committee Chair and Council Chair delegation, or where necessary makes a recommendation regarding the proposed acquisition to the Minister responsible for the Arts.

3.7. COUNCIL

Ratifies the Collections Committee endorsement of proposed acquisitions within the Council's delegation or supports the Chair of Council making a recommendation regarding the proposed acquisition to the Minister responsible for the Arts.

3.8. MINISTER RESPONSIBLE FOR THE ARTS

Reviews and approves proposed acquisitions that exceed the Council's delegation.

3.9. GOVERNANCE AND REPORTING MANAGER

Ensures the Council acquisition process is documented.

3.10. HEAD OF REGISTRATION

Ensures all documentation of acquisition is completed.

4. PROCEDURES

4.1. PRINCIPLES

The National Gallery acquires works of art for the national collection that fit within the Vision for the national collection, including that they:

- Are of singular outstanding quality;
- Have an enduring influence and legacy;
- Enhance the stature and relevance of the collection.

The Study Collection comprises works of art and other material acquired for study or research that relate to works of art or artists represented in the national collection. The Study Collection includes material such as artists' books, audio visual items, publications, objects, photographs, collages, drawings and other material.

The National Gallery negotiates and manages all acquisitions ethically and in a way that maintains the National Gallery's standing and reputation for collecting excellence in the national and international public and the museum community. The National Gallery seeks to ensure that it legally acquires authentic material with valid title and an established chain of ownership.

The National 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 National 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 (under review 2023) and the Australian Best Practice Guide to Collecting Cultural Material.

4.2. COLLECTING PRIORITIES

The National Gallery's founding document, the 1966 Lindsay Report from the National Art Gallery Committee of Inquiry placed its greatest emphasis on the following three collecting areas:

- Modern art worldwide
- The whole of Australian art
- Works of art representing the high cultural achievement of Australia's neighbours in southern and eastern Asia and the Pacific Islands.

The National Gallery aims to acquire an ambitious range of works of art that enhance and develop the existing collection of Australian and international art. The National Gallery will continue its program of acquiring major works of art in accordance with the Act and the *Vision for the national collection*. Works of art proposed for acquisition must fit the 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

The National Gallery must conduct, and be prepared to show that it has conducted, the highest standards of due diligence when considering acquisition of material for its collection. The National Gallery aims to establish the work's provenance and acquire a valid title. Before proposing an acquisition, curators must thoroughly investigate the work's provenance in accordance with the established Due Diligence and Provenance Policy and procedures.

4.3.2. Condition and care

Before acquiring material, the National Gallery must consider the factors that may impact on the condition, care and preservation of the material. This includes any issues or unusual costs in relation to:

- A.** the current condition and/or long-term care;
- B.** the storage and movement of the collection material, including long-term storage issues and costs, and workplace health and safety;
- C.** documentation, display and loan.

4.3.3. Conditional acquisitions

The National Gallery generally does not accept acquisitions that carry restrictions or conditions. Other than copyright, donors and sellers relinquish all proprietary rights. In extraordinary circumstances, such as a legally negotiated custodial arrangement, Council may make exceptions on a case-by-case basis on the recommendation of the Collections Committee.

4.4. METHODS OF ACQUISITION

4.4.1. Outright gift

Any donation of material by a living individual or individuals, or an institution or organisation, is considered a gift. To make a valid gift, the donor must have a clear intent to transfer title and possession of the material, and the National Gallery must have the clear intent to accept it.

The transfer of both possession and title must be absolute and unencumbered. If the donor reserves any power of control or revocation, the National Gallery will generally not accept the gift. In exceptional circumstances, the National Gallery may elect to accept an encumbered or restricted gift. The basis of this decision must be minuted by the Collections Committee and approved by the Council.

All donors are required to sign a Deed of Gift which:

- A.** evidences full transfer of title and possession;
- B.** provides the National Gallery with a range of warranties and indemnities;
- C.** affirms the agreement of both or all parties to the transfer and acceptance of title and possession of the work of art.

If the National Gallery elects to accept a gift with encumbrances or restrictions, this must be documented as variations to the Deed of Gift.

An outright gift made under the Cultural Gifts Program must meet the requirements of the Cultural Gifts Program as well as this policy and the *Vision for the national collection*. Under the Cultural Gifts Program the gift must be independently valued, with the outcome submitted to the Cultural Gifts Program.

For gifts made under the Cultural Gifts Program or the American Friends of the National Gallery of Australia, a Deed of Gift is not required. Instead, the donor must provide a Certificate of Donation.

4.4.2. Promised gift

A donor may promise a gift to the National Gallery during their lifetime. A promised gift is a commitment by the donor to give a work to the National Gallery wherein part or all of the receipt of the gift is deferred until an agreed future date(s).

Before accepting the promised gift, National Gallery staff must, with the donor, conduct due diligence and investigate the provenance of the promised gift.

The donor retains the title of the gift until the gift is realised. The donor may also retain physical possession until the gift is realised or may enter into a loan arrangement with the National Gallery.

The National Gallery will generally only realise the promised gift after they have received possession of the work of art to ensure that:

- A.** the material is complete and all components or parts have been received;

- B.** the material is in an acceptable condition, consistent with the condition understood at the time of agreeing to the acquisition.

The National Gallery reserves the right to not proceed with an acquisition if:

- A.** the material is not in an acceptable condition;
- B.** issues arise relating to the material's authenticity and provenance;
- C.** attribution of the material is not as it was understood to be at the time of the agreement;
- D.** the *Vision for the national collection* has changed since the gift was initially proposed.

4.4.3. Purchase from dealers, commercial galleries, shops, private individuals and companies

The National Gallery must enter into a Purchase Agreement that sets out the warranties and undertakings the seller makes in relation to the title and authenticity of the material which they are selling. The Agreement is a guarantee that the material is free from restrictions, lien or encumbrances.

The National Gallery generally only pays for purchases after both parties have completed the Purchase Agreement and the National Gallery has received the material. This is to ensure that:

- A.** the correct material has been received;
- B.** it is complete and all components or parts have been received
- C.** it is in an acceptable condition, consistent with the condition understood at the time the agreement to purchase was entered into.

If the National Gallery is required to make part or full payment to secure the transfer of possession, all parties must approve the acquisition and complete the Purchase Agreement before the National Gallery makes any payment.

4.4.4. Purchase at auction

If the National Gallery buys material at auction, the purchase is made on the auction house's terms and is not formalised through a Purchase Agreement. The National Gallery must evaluate the auction house's terms of sale for warranty of title and authenticity in accordance with this policy and the Due Diligence and Provenance Policy.

4.4.5. Bequest

The National Gallery may accept all, some or none of the material offered to it by bequest, and must retain a copy of the will, codicils and any other related documentation.

Where a bequest is negotiated with the National Gallery in advance, the National Gallery will assess the suitability of the bequest material for the National Gallery's collections and National Gallery staff must, with the help of the benefactor if possible, conduct due diligence and investigate the material's provenance.

Conditions of a bequest may also allow the National Gallery to acquire the title and dispose of all or some of the bequeathed material. Any proceeds arising from this disposal must be used within the terms of the bequest, generally solely for the acquisition of material for the collections. The original source of the bequest must be credited in relation to any subsequent purchases arising from the proceeds of the disposal.

Unsolicited bequests may be accepted for entry into the collections or as property to be disposed of to benefit the collections or in another manner determined to be in the best interest of the National Gallery.

4.4.6. Commission

The commissioning process and the acquisition process for a work of art or other collection material are separate. The terms and conditions of a commission, including an option to acquire, are stipulated in the Commissioning Agreement established between the National Gallery and the artist/s and approved by Council. If the National Gallery wishes to acquire a work it has commissioned, it must be submitted for consideration through the acquisition process following completion of the work.

In exceptional circumstances, a commission may be presented to Council for acquisition and bypass the intent to commission requirement.

4.4.7. Joint ownership

The National Gallery may undertake to acquire collection material jointly with another collecting institution. Any transactions involving binding terms for permanent or temporary joint ownership must be reviewed and approved by Council through the Collections Committee. Binding terms must ensure both parties agree to conditions for shared possession, preservation and conservation, storage conditions, display, insurance, outward loan, freight, packing, handling and other considerations for collection management and access.

The agreement must also stipulate that in the event that the co-owner(s) intends to dispose of their share, first option for purchase of the remainder of the title in the work to be given to the remaining co-owner(s). If the co-owner does not take this option, any new co-owner(s) must be able to meet museum-standard conditions in order to acquire part title of the work and agree to maintain appropriate custodial arrangements with the National Gallery.

4.4.8. Other forms of acquisition

Other forms of acquisition may be considered by the Council on a case-by-case basis in accordance with the principles of this policy.

4.5. DELEGATED AUTHORITY TO ACQUIRE

Acquisitions must be approved by the relevant financial delegate. The total acquisition cost is inclusive of freight, packing, display, conservation and other related expenses.

Under the Act, the Council may approve acquisitions up to AU \$10,000,000 (as at 1 January 2020). Proposed acquisitions over AU \$10,000,000 must be first endorsed by the Council, then referred by the Chair of the Council to the Minister for approval.

The Director has delegated authority to approve acquisitions within established limits. The Director and the Chairs of the Council and Council Collections Committee together have a further delegation. A summary of works acquired under these delegations must 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 via memo outside the standard meeting cycle. Works of art acquired at auction and endorsed by memo must be re-presented for ratification to the subsequent scheduled Collections Committee meeting, following completion of due diligence.

The National Gallery considers all acquisitions on their merit, in accordance with this policy and the acquisition proposal. Acquisition proposals are prepared by the relevant curator after the Director and Head Curator issue their approval to proceed. The proposal must be approved by the Director before consideration by the Collections Committee.

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 the subsequent meeting.

4.6. ACCESSION OF ACQUISITIONS INTO THE NATIONAL GALLERY

- 4.6.1. For gifts
Title in a gift passes when the acquisition is approved by the appropriate delegate. The process is formalised when the Deed of Gift is executed by the Donor.
- 4.6.2. For purchases
The National Gallery employs a Purchase Agreement, the terms of which are agreed before 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 appropriate delegate has approved the acquisition.
- 4.6.3. For auctions
Title passes in accordance with the terms and conditions of sale established by individual auction houses, including online auction houses and entities.
- 4.6.4. For commissions
Title passes if and when the parties intend it to pass, as agreed and documented in the Commissioning Agreement and/or Purchase Agreement.

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 OTHER PURPOSES

The National Gallery generally only acquires collection material for its collections. Where cultural material is acquired for purposes other than entering the collections, Council must be advised.

4.8. TRANSPARENCY AND ACCOUNTABILITY

- 4.8.1. Publication of acquisitions
The Director will ensure that a list of all acquisitions (including purchased price) approved in the financial year is published in the Annual Report.
Unless otherwise restricted in accordance with the National Gallery's Reconciliation Action Plan, other policies or legal obligations, the National Gallery must make provenance information about new art acquisitions and, to the greatest extent possible, the existing national collection of art, accessible to the public on the National Gallery's website.
The National 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 National Gallery's website within a reasonable timeframe of receiving it. The National Gallery will, on request, provide a publication-quality image free of charge to the donor for non-commercial use within the parameters of the National Gallery's obligations as regards copyright.

4.8.2. Record-keeping

In accordance with established procedures, staff must maintain records for each proposed acquisition, including those that are not approved by the Council.

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. National 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 which is 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.

This policy is linked to the National Gallery of Australia's Ethics Framework. National Gallery staff involved in the acquisition of collection material are bound by the Ethics Framework and other relevant National Gallery documents, including but not limited to the Professional and Personal Conduct Guidelines and Fraud Strategy.

5. REFERENCES

This policy should be read in conjunction with the following:

5.1. NATIONAL GALLERY POLICIES

Reconciliation Action Plan
Due Diligence and Provenance Policy
Deaccessioning Policy
Research Library Collection Development Policy
Research Archive Acquisition Policy
Exhibitions Development Policy
Financial Delegations
Freedom of Information Policy
Inward Loans Policy
Outward Loans Policy
Risk Management Policy

5.2. GUIDELINES, PROCEDURES AND ASSOCIATED DOCUMENTS

5.2.1. National Gallery guidelines, procedures and associated documents

Art Acquisitions Strategy
Art Acquisition Procedures
Professional and Personal Conduct Guidelines
Ethics Framework
Fraud Strategy
Inward Loans Procedure
Outward Loans Procedure
Provenance and Due Diligence Research Procedure
Work of Art Claims and Inquiries Handling Procedure

5.2.2. National and international guidelines, procedures and associated documents

The National 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, *Acquisitions Policy*, 2014
Terri Janke, *First Peoples: A Roadmap for Enhancing Indigenous Engagement in Museums and Galleries*, Australian Museums and Galleries Association, 2018
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 (under review 2023)
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

5.3. LEGISLATION

The National 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 National 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, under review 2023) of the Australian Museums and Galleries

Association (formerly Museums Australia), which preclude museums from participating in transactions involving illicit material.

5.3.1. Commonwealth

National Gallery 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

5.3.2. 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 National Gallery.

6. REVISION HISTORY

Version	Date	Responsible Officer	Comments
CUR1.2	Feb 2023	Council	Complete review of the Policy to ensure it complies with National Gallery processes and legislation

DEFINITIONS

Act	The <i>National Gallery Act 1975</i> .
Accession	The process which formally acknowledges a work of art as part of the national collection of art.
Acquisition	The process of obtaining valid title to a work of art or other collection material. Works may be acquired through various methods to enter the collections or acquired without entering the collections in accordance with this policy.
Collection material	Art in various media that are National Gallery property and have been formally accessioned into the national collection of art. It includes any other material acquired for other collecting areas within the National Gallery, including the Study Collection (previously Art Archive).
Collections Committee	The Council sub-committee established to review and recommend the acquisition or deaccession of collection material.
Council	The governing Council of the National Gallery under the Act.
Council member	A member of the governing Council appointed in accordance with the Act.
Deed of gift	A formal, legally binding document that establishes that title to a work of art is given to the National 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	The Director of the National Gallery appointed under the Act and includes a person appointed by the Minister as acting Director.
Donor	A person, persons or entity that makes a gift of a work of art, directly to the National Gallery or through the Australian Government's Cultural Gifts Program or supports the acquisition of a particular work of art by cash donation.
Due diligence	The thorough assessment of a work of art or other collection material to evaluate its authenticity, ownership and provenance and to identify and assess any gaps.
National Gallery	The National Gallery of Australia, a statutory body established in accordance with the Act.
Provenance	The history and ownership of an object from the time of its discovery or creation to the present day, used to determine authenticity and ownership.
Purchase agreement	A formal, legally binding written contract which outlines the rights, obligations and undertakings of the buyer and seller, the terms and conditions of the sale and the transfer of both property and title.
Proposal for acquisition	A document that details information about collection material proposed for acquisition and outlines considerations in assessing it. The proposal details the known provenance and direct costs and, in the case of material acquired through purchase, the potential funding source.
Study collection	Previously Art Archive, a collection that comprises works of art and other material designated for the purpose of study or research that supports or relates to works of art or artists represented in the collection.

Title The legal right to ownership of property.

Work(s) A reference to one or more collection items.
