



# **OUTWARD LOANS Policy**

## SUMMARY

### Outward Loans Policy

Summary description of Policy This policy sets out the principles by which the National Gallery assesses, approves and conducts outward loans from the national collection.

Policy Status  New Policy  
 Revision of Existing Policy

Approval Authority Council

Policy Steward Head of Registration

Contract area Registration

## APPROVALS

Position	Name	Endorsed/Approved	Date
Assistant Director	Natasha Bullock	Yes, endorsed	12 December 2022
Director	Nick Mitzevich	Yes, endorsed	20 January 2023
Council	Ryan Stokes	Yes, approved	3 February 2023

# TABLE OF CONTENTS

1.	Purpose.....	4
1.1.	Scope.....	4
2.	Policy Statement.....	5
2.1.	Loan requests .....	5
2.2.	Assessing outward loans .....	5
2.3.	Approving outward loans.....	6
2.4.	Formalising approved outward loans – Loan Agreements .....	6
2.5.	Associated costs of a loan .....	6
2.6.	Significant Loan requests and curatorial involvement.....	6
2.7.	Lending works under the furnishing loans program .....	6
2.8.	Managing risk of outward loans .....	7
2.9.	Assigning and transferring rights .....	7
2.10.	Record keeping.....	7
3.	Roles, Responsibilities and Authorities.....	8
4.	Revision History .....	9
5.	Definitions .....	10
6.	guidelines and Legislation .....	12
6.1.	Legislation .....	12
6.2.	National and international guidelines, procedures and associated documents .....	12

# **1. PURPOSE**

The purpose of this policy is to provide a framework for the National Gallery of Australia (National Gallery) management of outgoing loans in accordance with legal, ethical and best practice standards.

The National Gallery is committed to making the national collection accessible to broad and diverse audiences both across Australia and internationally, consistent with the *National Gallery Act 1975*. In managing outgoing loans, the National Gallery will balance the accessibility of the national collection with terms that are ethical, honourable, responsible, sustainable, and visible to public, while also maintaining its standing and reputation for integrity and excellence in the public and museum community, both nationally and internationally.

## **1.1. SCOPE**

This policy applies to all National Gallery employees (ongoing, non-ongoing, casual or otherwise) who are responsible for assessing, approving and managing the outgoing loans of the national collection.

This policy applies to all activities relating to the outward loan of the national collection, and other works belonging to third parties from the National Gallery to other parties, for the purposes of exhibition, conservation, research or to give access to parts of the collection to traditional owners and communities, excluding works and material from the Study Collection.

## **2. POLICY STATEMENT**

### **2.1. LOAN REQUESTS**

The National Gallery considers loan requests from recognised regional, national and international cultural institutions to display the works. The National Gallery may also lend for other purposes, such as for conservation or provenance research or to give access to parts of the collection to traditional owners and communities. The National Gallery assesses loans for other purposes on a case-by-case basis in accordance with the principles, objectives and criteria for assessment outlined in this policy.

The National Gallery will consider loan requests received in writing addressed to the Director twelve months or more prior to the opening of the borrower's exhibition. This timeframe enables the National Gallery to adequately address the resources, condition and availability of the works in the loan request within a broader program of activities.

Consideration and approval may be given to loan requests received with less than the required notice period, however priority will be given to requests received within the full period of notice.

The National Gallery reserves the right to refuse any loan request if internal resources do not permit the loan to be facilitated in the required timeframe. The National Gallery aims to provide notice of the status of the loan request within three months of receiving the initial formal written request.

When requesting works of art by living artists, the borrower must confirm that they consulted with the artist and that the artist is aware of how their works are intended to be presented and interpreted.

### **2.2. ASSESSING OUTWARD LOANS**

When assessing an outward loan, the National Gallery must consider the scholarly, artistic or educational value of the exhibition or display concept and its feasibility. Preference is given for:

- Exhibitions that demonstrate innovative ways of increasing knowledge, understanding and appreciation of art to broad and diverse audiences
- Exhibitions that demonstrate original research and that will make a contribution to art historical or other knowledge
- Major solo exhibitions that enhance the knowledge of the work of the artist
- Exhibitions that increase cultural understanding of Aboriginal and Torres Strait islander people, culture and art.

The National Gallery must also consider:

- The availability of the work of art, including any commitments to current or planned National Gallery exhibition program, or prior commitments to other borrowers
- Any restrictions imposed on outward loan or display under the terms of the acquisition or by virtue of the nature of the work, including First Nations works of art to which access is restricted or community concerns have been identified, in accordance with the Reconciliation Action Plan.
- The material condition of the work, including its ability to travel and the impact of handling, installation, light exposure and environmental conditions on the work
- The adequacy and appropriateness of the borrower's facilities and the ability of the borrower to meet and maintain facility, environmental and security requirements in accordance with the terms of the outward loan agreement or touring exhibition contract throughout the loan period
- The public nature and reliability of the borrowing institution and its legal and financial position
- The provenance of the work, in accordance with the Provenance and Due Diligence Policy
- Whether the exhibition includes works (including those from other lenders) that are known to have been stolen, improperly attributed, illegally exported or excavated, or are associated with unethical actions

- The availability of appropriately skilled staff and any sub-contractors at the borrowing institution to administer, manage and oversee the loan and comply with the terms of the outward loan agreement throughout the loan period
- The environmental, political and financial stability of the country or region in which the loans will reside, including risk of natural disaster.

### **2.3. APPROVING OUTWARD LOANS**

The Director has authority to approve outward loans. Where a loan is high value, a destination work or complex the Director may at his discretion consult Council regarding the loan request.

Notification of approval or decline of a loan request will be made in writing by the Director.

### **2.4. FORMALISING APPROVED OUTWARD LOANS – LOAN AGREEMENTS**

Loans must be formally documented using the National Gallery's Outward Loan Agreement or Touring Exhibition Contract with any amendments by special negotiation. The Outward Loan Agreement specifies the terms and conditions of the loan and the schedule of works being borrowed.

Outward Loan Agreements must be approved by the Director and countersigned by an appropriate representative of the borrower.

Works will not be released for loan until both parties have completed and signed the Outward Loan Agreement or the Exhibition Contract.

### **2.5. ASSOCIATED COSTS OF A LOAN**

The National Gallery is obliged to recover some of the costs associated with facilitating an outgoing loan.

Borrowers are responsible for all packing, freight, courier expenses and other related costs in relation to the objects approved for loan.

If the borrower withdraws or cancels a loan request before the exhibition begins, or the loan period expires, the National Gallery may charge the borrower for any material or administration costs incurred in preparing and processing the loan to the date of cancellation as well as a cancellation fee.

### **2.6. SIGNIFICANT LOAN REQUESTS AND CURATORIAL INVOLVEMENT**

If the works of art requested for loan form a significant proportion of the content of a borrower's exhibition, the National Gallery may contribute to decision-making about the display and interpretation of the National Gallery's collection. A significant proportion is generally considered more than 10 works of art; however, discretion may be applied with multi-part works.

The National Gallery may request to be credited as a significant lender. National Gallery curators (including emeritus curators) who have had significant curatorial or research involvement in the borrower's exhibition must be credited in:

- Any accompanying exhibition catalogues
- Display texts or panels
- Associated media releases and exhibition speeches.

### **2.7. LENDING WORKS UNDER THE OFFICIAL ESTABLISHMENT LOANS PROGRAM**

The National Gallery may curate a selection of works for outward loan to official establishments under the Official Establishment Loans Program. Establishments include Admiralty House, Government House, Kirribilli House, The Lodge, and the Prime Minister's Office at Parliament House.

Other official establishments may be considered on a case-by-case basis.

The Director approves the list of works offered for inclusion in the Official Establishment Loans Program, on the advice of curatorial and conservation staff.

## **2.8. MANAGING RISK OF OUTWARD LOANS**

The National Gallery must demonstrate best practice in the risk management of outward loans to avoid any act, omission or circumstance that may compromise the National Gallery's position and reputation for integrity in public administration. With all outward loans, the National Gallery must also mitigate the risk of physical deterioration or damage, theft, loss or seizure of the work of art as well as the risk of civil or criminal proceedings.

As the visual arts and culture sector, both nationally and internationally, is highly dependent on networks and relationships, it is important that any conflicts of interest in the assessment of outward loans is declared. If a conflict of interest exists, the individual concerned should exclude themselves from any discussion or decision in relation to matters in which they have declared an interest and take any other action in accordance with the Conflict of Interest Policy.

## **2.9. ASSIGNING AND TRANSFERRING RIGHTS**

A borrower must seek the National Gallery's consent if they wish to:

- Assign or transfer any of their rights, powers or obligations to a third party under a sub-bailment, or substitutional bailment
- Arrange possession of the work by a third party.

Before and during the loan period and until the work is returned to the National Gallery, the borrower must secure immunity from seizure and/or other legal protection if this is available within the borrower's jurisdiction.

For international loans, the National Gallery prefers those borrowers who have known consignor approval status for any freighting of works of art by air.

## **2.10. RECORD KEEPING**

The Director must ensure that a list of all outward loans is published in the National Gallery's annual report.

In accordance with established procedures, staff must maintain records (paper-based and/or electronic) for each outward loan, including outward loan requests that are not approved, that document relevant information and decision-making.

### 3. ROLES, RESPONSIBILITIES AND AUTHORITIES

<b>Roles</b>	<b>Responsibilities and authorities</b>
Director	<ul style="list-style-type: none"><li>▪ Approves requests for outgoing loan to their delegation.</li></ul>
Loans Steering Group	<ul style="list-style-type: none"><li>▪ Strategically reviews and endorses requests for outgoing loan prior to formal approval by the Director.</li></ul>
Loans Working Group	<ul style="list-style-type: none"><li>▪ Operationally assesses the outcomes of the Loans Steering Group.</li></ul>
Head of Registration	<ul style="list-style-type: none"><li>▪ Ensures that outgoing loans from the national collection are managed in accordance with this policy, related legislation, policies, plans and procedures and accepted best practice standards.</li></ul>
Associate Registrar, Loans and Exhibitions	<ul style="list-style-type: none"><li>▪ Oversees the operation of the Registration unit with regard to outgoing loan management.</li></ul>
Registrars	<ul style="list-style-type: none"><li>▪ Manage the outgoing loan program, including record keeping, and ensure a commitment to the highest legal and ethical standards of due diligence, object security and risk assessment.</li></ul>



## 4. REVISION HISTORY

Version	Date	Policy Steward	Comments
V1	November 2017	Head of Registration	New policy
V2	December 2020	Head of Registration	Update to the principals of the policy as well as formatting changes.
V3	February 2022	Assistant Director, Collections and Exhibitions	Full review of policy conducted and benchmarked for best practice.

## 5. DEFINITIONS

<b>Term</b>	<b>Definition</b>
<b>Act</b>	The <i>National Gallery Act 1975</i> .
<b>Collection</b>	Works of art in various media that are National Gallery property and have been formally accessioned. In 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.
<b>Council</b>	The National Gallery's governing body appointed in accordance with the <i>National Gallery Act 1975</i> .
<b>Director</b>	The Director of the National Gallery appointed under the Act and includes a person appointed by the Minister as acting Director.
<b>Due diligence</b>	The thorough assessment of a work of art to evaluate its authenticity, ownership and provenance and to identify and assess any gaps.
<b>Exhibition Program</b>	The forward program and schedule of temporary, collection and touring exhibitions.
<b>National Gallery</b>	The National Gallery of Australia, a statutory authority established in accordance with the Act.
<b>Outward loan</b>	Any contracted arrangement for the transfer of possession of an object or non-collection material from the National Gallery to another party or parties on a temporary basis under which the National Gallery grants a temporary right of possession to the borrower. For the purpose of this policy, outgoing loans encompasses touring exhibitions. The terms lender, borrower, lending, borrowing, and loan are to be construed in the context of this definition and unless other specified, references to outgoing loans or any related terms may apply to proposed, contemplated, potential, approved or realised loan arrangements.
<b>Loan Agreement (Outgoing)</b>	A formal, legally binding written contract between the National Gallery as lender and the approved borrower specifying the work(s) of art and outlining the conditions and terms of the loan, and the responsibilities of each party.
<b>Loans Steering Group</b>	Strategically reviews and endorses requests for outward loan from the collection prior to approval by the Director.
<b>Loans Working Group</b>	Operationally assesses the outcomes of the Loans Steering Group.
<b>Protection of cultural objects on loan (PCOL)</b>	PCOL is used in this policy to refer to the <i>Protection of Cultural Objects on Loan Act 2013</i> , <i>Protection of Cultural Objects on Loan Regulation 2014</i> and <i>Protection of Cultural Objects on Loan Scheme</i> .
<b>Provenance</b>	The history of ownership of an item from the time of its discovery or creation to the present day, or as much information as can be discovered, from which authenticity and legal ownership are determined.
<b>Title</b>	The legal right to ownership of property.

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**Touring exhibition**

An exhibition of work(s) of art that may include works drawn from the collection, inward loans and/or commissions that the National Gallery tours to other venues.

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## 6. GUIDELINES AND LEGISLATION

### 6.1. LEGISLATION

The Gallery recognises the 1970 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.

#### COMMONWEALTH

- *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*
- *Freedom of Information Act 1982*
- *Income Tax Assessment Act 1997*
- *National Gallery Act 1975*
- *Personal Properties Securities Act 2009*
- *Privacy Act 1988*
- *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*
- *Public Interest Disclosure Act 2013*

#### AUSTRALIAN CAPITAL TERRITORY

- *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*

### 6.2. NATIONAL AND INTERNATIONAL GUIDELINES, PROCEDURES AND ASSOCIATED DOCUMENTS

The National Gallery's guidelines and principles have been informed by:

- Australian Government's *Australian Best Practice Guide to Collecting Cultural Material* 2014
- Association of Art Museum Directors' Report of the AAMD Task Force on the acquisition of archaeological materials and ancient art, 2004
- *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:

- Australia Council, *Protocols for Producing Indigenous Australian Visual Arts*, 2010
- *Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)(Amendment)* 1979
- Museums Australia, *Continuing Cultures, Ongoing Responsibilities*, 2005

- American Association of Art Museum Directors, *Guidelines on the Acquisition of Archaeological Material and Ancient Art*, 2013
- Art Loss Register [www.artloss.com](http://www.artloss.com)
- UNESCO, *The Hague Convention 1954, First Protocol 1954 and Second Protocol 1999*
- ICOM *Code of Ethics*, 2013
- ICOM Red Lists
- INTERPOL <https://www.interpol.int/Crime-areas/Works-of-art>
- Ministry for the Arts, *Cultural Gifts Program Guide*, 2009
- Pacific Islands Museums Association, *Code of Ethics for Pacific Museums and Cultural Centres*, 2006
- Unidroit *Convention on Stolen or Illegally Exported Cultural Objects*, 1995
- UNESCO *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*, 1970