

## HOTA Gallery Incoming Loans Policy

<b>Accountabilities</b>	
Approving Authority	Experience Gold Coast Board of Directors
Policy Owner	Gallery & Visual Arts Director
Policy Advisor	Registration Coordinator
Version and Date	v 1.0 (9 April 2024)
Approval Date	15 May 2024
Policy Reference	EGC_P034
Next Review Date	9 April 2027

### 1. SUMMARY

1.1. Incoming loans provide access to a diverse array of artworks not represented in the HOTA Gallery collection, thereby enhancing the audience engagement, academic, educational, and economic potential of HOTA Gallery’s exhibition program. Incoming loans also provide important opportunities for HOTA Gallery to engage in scholarly or professional research, or other projects or undertakings related to works of art, that may contribute significantly to HOTA Gallery’s broader functions.

### 2. PURPOSE

2.1. The objectives of the policy are to:

- 2.1.1. Ensure that HOTA Gallery manages and negotiates incoming loans on terms that are ethical, honourable, responsible, sustainable, and visible to public scrutiny.
- 2.1.2. Maintain and promote HOTA Gallery’s standing and reputation for excellence in the public and museum community both nationally and internationally.

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

- 2.2.1. Undertakes only those incoming loans that are appropriate to its status and function in all circumstances.
- 2.2.2. Demonstrates best practice in the risk management of potential and actual incoming loans.
- 2.2.3. Avoids any act or omission that may attract legal liability, involve HOTA Gallery in civil or criminal proceedings, or otherwise compromise HOTA Gallery’s position and reputation for integrity in public administration.

### 3. SCOPE

- 3.1. This policy applies to all activities relating to the incoming loan of works of art. Nothing in this policy detracts from the terms of any Loan Agreement to which HOTA Gallery is a party.

### 4. POLICY STATEMENT

#### 4.1. Principles

Incoming loans are critical to HOTA Gallery's capacity to realise its temporary exhibition program. Incoming loans provide access to an array of artworks not represented in the collection, thereby enhancing the audience engagement, academic, educational, and economic potential of HOTA Gallery's exhibition program.

HOTA Gallery will only undertake those incoming loans that are appropriate to its status, function and legal and ethical obligations in all circumstances. HOTA Gallery will demonstrate best practice in the risk management of incoming loans. In negotiating and managing loans, HOTA Gallery will seek to avoid any act or omission that attracts legal liability, involves HOTA Gallery in civil or criminal proceedings, or otherwise compromises HOTA Gallery's position and reputation for integrity in public administration.

HOTA Gallery will only borrow Objects where it has evidence that:

- 4.1.1. The Lender is reputable.
- 4.1.2. The Owner(s) hold valid title to the Object.
- 4.1.3. Where the Lender is not the sole Owner, the Lender has the legal authority to enter into the loan either:
  - 4.1.3.1. On behalf of the Owner and/or co-owners as an agent or representative
  - 4.1.3.2. As the party who would reasonably be expected to have possession, custody or control of the Object for the period of the loan, were that arrangement not in place.
- 4.1.4. The Objects have not been illegally exported from the country of origin or any intermediary countries and relevant export licenses and permits have or will be obtained for export from the country from which they will be exported.
- 4.1.5. The import of the Objects into Australia doesn't contravene Australian import restrictions, or international treaties or conventions to which Australia is a party or signatory.
- 4.1.6. The Objects have not been obtained through illicit or unauthorised means.
- 4.1.7. There are no current or outstanding third-party claims on the Objects.

HOTA Gallery recognises the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970 and acknowledges that Australia is a signatory to the Convention. HOTA Gallery also recognises and is bound by the terms of the Protection of Movable Cultural Heritage Act 1986, the PCOL Act, and PCOL Regulation and is guided by the ICOM Code of Ethics for Museums, Museums Australia Code of Ethics, and the Australian best practice guide to collecting cultural material.

HOTA Gallery will remain aware of and vigilant to all risks of legal and ethical controversy that may arise in connection with incoming loans and will respond in a timely manner to notice of matters that bear upon the legal, ethical and social propriety of a loan.

HOTA Gallery recognises that the Owner of an Object may elect to have the loan negotiated and managed on their behalf by an agent or third party or may elect to remain anonymous. In such instances, the identity of the Owner must be made known to HOTA Gallery and documented in the Loan Agreement. With the exception of this requirement and to the extent that it is able to do so within legislative and policy parameters, HOTA Gallery will comply with this request.

HOTA Gallery will borrow Objects for a fixed period only, which will be agreed between all parties and which can be extended by mutual agreement. Works of art will not be accepted for loan for an indefinite period. HOTA Gallery will return loans to the original place of dispatch unless negotiated prior to agreeing to the loan. HOTA Gallery will exercise the same standard of care for works of art on incoming loan as it does for its own collection in accordance with established procedures and professional museum standards.

#### **4.2. Approval of incoming loans**

Incoming loans for temporary exhibition are assessed and approved in line with the *Delegations of Authority Policy*. Incoming exhibitions at the first stage are endorsed by the Exhibitions and Collections Manager and the Curatorial and Engagement Manager before being approved by the Gallery Director and Head of Arts and Culture. If approved to the second stage, the incoming exhibition is presented to the Board for approval as per the *Exhibitions Policy*. Following Board approval, incoming exhibition loans are approved by the Gallery Director in consultation with the Curatorial and Engagement Manager.

Incoming loans to the collection are approved by the Gallery Director in consultation with the Curatorial and Engagement Manager and Registration Coordinator. HOTA Gallery negotiates and manages incoming loans on terms that are ethical, honourable, responsible, and transparent to public scrutiny, thereby maintaining its standing and reputation for excellence and integrity in the public and museum communities, both nationally and internationally. This policy sets out the principles HOTA Gallery will adopt and factors it will consider when assessing, approving, and facilitating incoming loans. For the purposes of this policy, incoming loans include loans to HOTA Gallery's collection, as well as temporary and touring exhibitions.

Once approved by the relevant authority, incoming loans for temporary and touring exhibition will be requested in writing from the Lender by the Gallery Director. Approved incoming loans will then be progressed to the Registration Coordinator.

In deciding whether to approve an incoming loan, consideration will be given to:

- 4.2.1. The terms of this policy.
- 4.2.2. The findings of provenance and due diligence investigations, conducted in Accordance with the *Provenance and Due Diligence Research Procedures*.
- 4.2.3. outcomes and recommendations arising from any community consultations.

### 4.3. Factors to be considered in the assessment of incoming loans

#### 4.3.1. Ethics, public accountability, and risk management

When considering an Object for incoming loan, HOTA Gallery will:

- 4.3.1.1. Practice and be prepared to show that it has practiced high standards of due diligence.
- 4.3.1.2. Seek to establish by all reasonable means all accessible information on the provenance, legal and ethical status and general legitimacy of the Object and on the legitimate interests of third parties.
- 4.3.1.3. Base the decision whether to borrow, and the terms on which incoming loans are entered into, on a thorough and conscientious appraisal and risk assessment of the information obtained.
- 4.3.1.4. Maintain thorough records of the process of incoming loan proposal, investigation and decision-making.

HOTA Gallery will not accept an incoming loan on terms that require it to:

- 4.3.1.5. Suppress reasonable misgivings about the Object or transact on the basis of a flawed provenance.
- 4.3.1.6. Compromise its standing, integrity or freedom to act conscientiously.
- 4.3.1.7. Act in any other manner contrary to the dictates of conscience and the public interest.

#### 4.3.2. Provenance and due diligence

In determining whether to enter into an incoming loan, HOTA Gallery will evaluate the available provenance information and undertake due diligence to enable it to make an informed assessment. In accordance with the *Exhibitions Policy* and *Provenance and Due Diligence Research Policy*, the Gallery Director or their delegate, in consultation with the Curatorial and Engagement Manager and/or Senior Curator will assess provenance and determine requirements for further investigation before approving to proceed with incoming loans for temporary or touring exhibitions or incoming loans to the collection and for other purposes.

Investigation, risk assessment and decision-making will be undertaken and documented in accordance with the *Provenance and Due Diligence Research Procedures*.

When undertaking an incoming loan, HOTA Gallery will require the Lender to provide warranties and indemnities regarding their account of provenance, ownership and/or possession.

After undertaking due diligence and determining to proceed with an incoming loan, if information emerges during the course of the negotiation or conduct of the loan that has the potential to expose HOTA Gallery to legal entanglement or to render the loan ethically contentious, further investigation and risk assessment will be undertaken in accordance with *Provenance and Due Diligence Research Policy and Procedures*.

#### 4.3.3. **Permits, approvals and reporting**

HOTA Gallery will act in compliance with all administrative and legal processes in place at an international, national and state level and will obtain all necessary permits or approvals and comply with all other reporting and accountability requirements in relation to the import and export of materials to Australia and movement of materials domestically.

#### 4.3.4. **Conflicts of interest: Staff and Board**

Unless in exceptional circumstances, works of art in the private collections of HOTA Gallery staff will not be accepted for incoming loan.

HOTA staff and members of the Board must declare any conflict of interest in an incoming loan. The declared conflict will be recorded. Board members and employees must exclude themselves from any discussion or decision in relation to an incoming loan in which they have an interest.

All incoming loans from the private collections of Board members or HOTA staff must be publicly acknowledged as being from a 'private collection'. The identity of the Lender will always be documented in internal records.

#### 4.3.5. **Repository of last resort**

HOTA Gallery recognises that there may be circumstances in which it will take possession of Objects that do not conform to the provenance and title standards outlined in this policy due to ethical, cultural or legal considerations. This includes circumstances in which there is a significant risk of damage, loss or destruction of the Object if HOTA Gallery fails to act; on the request of Aboriginal or Torres Strait Islander communities or other traditional owners; or where HOTA Gallery is fulfilling a statutory or legal requirement to do so. Such situations will usually be administered as incoming loans in accordance with this policy. Abandoned objects will be subject to the Abandoned Objects protocol.

In considering the incoming loan of such Objects, HOTA Gallery will consult with representatives of appropriate communities or groups, the professional museum community and/or relevant governments and will be guided in particular by the *Aboriginal and Torres Strait Islander Engagement Policy* regarding community consultation processes. HOTA Gallery will enter into such arrangements on the basis of sound, considered professional and ethical judgements. Such loans will be undertaken only in specific circumstances and HOTA Gallery will only enter into such arrangements in instances where the works of art are not being borrowed primarily for temporary exhibition purposes.

Such loans will be assessed and approved in accordance with this policy. The basis for the decision and any variations to the terms of the standard Loan Agreement will be documented in accordance with this policy and associated *Incoming Loans Procedures*.

#### 4.4. Additional considerations for incoming loans for temporary exhibition

##### 4.4.1. Consultation

Where relevant, consultation with appropriate individuals, groups, communities or statutory bodies will be undertaken as part of the assessment for incoming loans for temporary and touring exhibitions. Consultations will inform the decision-making as to whether HOTA Gallery will proceed with a proposed loan.

HOTA Gallery will undertake consultation where the Object:

- 4.4.1.1. Relates to or holds particular significance for an individual, group or community in Australia.
- 4.4.1.2. Was created by an Aboriginal or Torres Strait Islander artist, contains Aboriginal or Torres Strait Islander themes or content, or relates to an Aboriginal or Torres Strait Islander person or community.
- 4.4.1.3. Is a document or record that may be relevant to a state, territory or national archive or government records office.

HOTA Gallery is committed to the principle that consultation facilitates the establishment and strengthening of HOTA Gallery's relationships with its various communities. Accordingly, consultation will be undertaken in a manner that is both outcomes-focused in relation to the incoming loan in question and meaningful in the longer-term. Consultations will be conducted in an open, ethical, transparent and accountable manner, recognising at all times the cultural, social, spiritual and linguistic diversity of the individuals and communities involved. Consultations will be structured and undertaken in a manner consistent with the *Incoming Loans Procedures* and the *Aboriginal and Torres Strait Islander Engagement Procedures*.

HOTA Gallery will ensure an appropriate amount of time is allocated for consultation and further follow-up and will ensure that all parties are aware of the timeframe for consultation and decision-making about whether and on what terms the incoming loan will proceed.

Where relevant, consultation will be undertaken for Objects proposed for incoming loan for temporary and touring exhibitions on each occasion of loan, irrespective of whether the Objects has been previously borrowed.

#### 4.5. Loan Agreements: Formalising Approved Incoming Loans

Following approval to proceed with an incoming loan, if the proposed Lender agrees in principle to the loan, the Collections team will thereupon assume responsibility for negotiation and loan arrangements.

In consultation with the Lender, the Collections team will determine the identity of the party responsible for issuing the Loan Agreement and on whose terms the loan will be concluded. Where HOTA Gallery is responsible for issuing the Loan Agreement, incoming loans are concluded using HOTA Gallery's Incoming Loan Agreement which outlines standard terms, amended by special negotiation when so required, in accordance with the *Incoming Loans Procedures*. Where the Lender's Loan Agreement is used, the conditions will be assessed to ensure they are consistent with the terms outlined in this policy and HOTA Gallery's Incoming Loan Agreement.

Where necessary, amended or additional clauses to the Lender's Loan Agreement will be negotiated. In the instance of a Category A exhibition as per the *Exhibitions Policy*, an Exhibition Agreement contract will be undertaken in place of a Loan Agreement, with agreed exceptions.

Exhibition Agreement contracts and Loan Agreements for incoming loans for temporary exhibitions, including touring exhibitions, are approved and endorsed in accordance with the *Delegations of Authority Policy*. Loan Agreements for incoming loans for all other purposes, including incoming loans to the collection are approved and endorsed by the Gallery Director.

#### **4.6. Transparency and Accountability**

##### **4.6.1. Publication of incoming loans**

In addition to publication requirements specific to incoming loans protected under the terms of the PCOL Act, the Gallery Director will ensure that a list of all incoming loans to the collection is published in HOTA Gallery's annual report.

HOTA Gallery may publish or make available a printed or online catalogue or other document for each exhibition listing the Objects that are included in the exhibition.

##### **4.6.2. Record keeping**

Staff will maintain records (paper based and/or electronic) for each incoming loan, including proposed incoming loans that are not approved, documenting relevant information and decision-making. Records relating to incoming loans will be retained for a minimum of five years on the internal HOTA SharePoint system.

##### **4.6.3. Internal audit and review cycle**

The Gallery Director will ensure that compliance with this policy is assessed as part of HOTA Gallery's audit program. The policy will be reviewed on a regular basis in accordance with HOTA Gallery's audit program.

##### **4.6.4. Staff obligations**

HOTA Gallery staff involved in the assessment, approval and administration of incoming loans are bound by HOTA's Code of Ethics and Conduct and other relevant HOTA policies, including, but not limited to, the *Conflict of Interest Policy*, *Gifts and Benefits Policy* and established record keeping procedures.

## **5. RESPONSIBILITIES**

### **5.1. Gallery & Visual Arts Director**

- 5.1.1. Responsible for approving the loan of Objects.
- 5.1.2. Responsible for ensuring that the process and documentation relating to loans conform to all HOTA Gallery policies and that HOTA Gallery staff understand and comply with the policies.

**5.2. Registration Coordinator & Curatorial and Engagement Manager**

5.2.1. Responsible for monitoring and reviewing all aspects of the loans processes of HOTA Gallery.

Supporting Information	
Commonwealth of Australia Legislation	<ul style="list-style-type: none"> <li>• Crimes Act 1914</li> <li>• Customs Act 1901</li> <li>• Personal Properties Securities Act 2009</li> <li>• Proceeds of Crime Act 2002</li> <li>• Protection of Cultural Objects on Loan Act 2013</li> <li>• Protection of Cultural Objects on Loan Regulation 2014</li> <li>• Protection of Movable Cultural Heritage Act 1986</li> <li>• Protection of Movable Cultural Heritage Regulation 2018</li> <li>• Biosecurity Act 2015</li> <li>• Environmental Protection and Biodiversity Conservation Act 1999</li> </ul>
State Legislation	<ul style="list-style-type: none"> <li>• Right to Information Act 2009</li> <li>• Information Privacy Act 2009</li> <li>• Financial Administration and Audit Act 1977</li> <li>• Financial Accountability Act 2009</li> <li>• Public Records Act 2002</li> <li>• The Disposal of Uncollected Goods Act 1967</li> </ul>
Related HOTA Documents	<ul style="list-style-type: none"> <li>• <i>HOTA Gallery Collection Management Policy 2023-2026</i></li> <li>• <i>HOTA Gallery Acquisition Strategy</i></li> <li>• <i>HOTA Gallery Deaccessioning Strategy</i></li> <li>• <i>HOTA Gallery Provenance and Due Diligence Policy</i></li> <li>• <i>HOTA Gallery Inward Loans Policy</i></li> <li>• <i>HOTA Gallery Outward Loans Policy</i></li> <li>• <i>HOTA Gallery Exhibitions Policy</i></li> <li>• <i>HOTA Gallery Community Consultation Policy</i></li> <li>• <i>HOTA Gallery Inward Loans Claims Handling Procedures</i></li> <li>• <i>HOTA Gallery Cultural and Sensitive Material Checklist</i></li> <li>• <i>HOTA Gallery Community Consultation Procedures</i></li> <li>• <i>Aboriginal and Torres Strait Islander Engagement Procedures</i></li> <li>• <i>HOTA Gallery Incoming Loans Procedures</i></li> <li>• <i>HOTA Gallery Provenance and Due Diligence Research Procedures</i></li> <li>• <i>HOTA External Complaint Management Policy</i></li> <li>• <i>HOTA Gifts and Benefits Policy</i></li> <li>• <i>HOTA ICT Policy</i></li> <li>• <i>HOTA Non-current Asset Policy</i></li> <li>• <i>HOTA Delegations of Authority Policy</i></li> <li>• <i>HOTA Conflict of Interest Policy</i></li> <li>• <i>HOTA Code of Conduct</i></li> <li>• <i>HOTA Risk Management Policy</i></li> </ul>



<p>Related Sector Documents</p>	<ul style="list-style-type: none"> <li>• Australian Government, Attorney General's Department, Ministry for the Arts, <i>Australian best practice guide to collecting cultural material</i>, 2015</li> <li>• Australian Government, Attorney General's Department, Ministry for the Arts, <i>Protection of cultural objects on loan: scheme guidelines</i>, 2014</li> <li>• <i>Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)</i>, 1973, as amended 1979 and 1983</li> <li>• ICOM, <i>Code of Ethics for Museums</i>, 2017</li> <li>• ICOM, <a href="#">International Observatory on Illicit Traffic in Cultural Goods</a></li> <li>• ICOM, <i>Red Lists of cultural objects at risk</i></li> <li>• Museums Australia, <i>Continuing cultures, ongoing responsibilities</i>, 2005</li> <li>• Pacific Islands Museums Association, <a href="#">Code of Ethics for Pacific Museums and Cultural Centres</a>, 2006</li> <li>• Unidroit, <a href="#">Convention on Stolen or Illegally Exported Cultural Objects</a>, 1995</li> <li>• UNESCO, <a href="#">Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property</a>, 1970</li> <li>• UNESCO, <a href="#">Database of National Cultural Heritage Laws</a></li> <li>• UNESCO, <a href="#">The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict</a>, 1954, <a href="#">First Protocol</a>, 1954 and <a href="#">Second Protocol</a>, 1999</li> </ul>
<p><b>Definitions and Acronyms</b></p>	
<p><b>Aboriginal or Torres Strait Islander art</b></p>	<p>Artwork by an Aboriginal or Torres Strait Islander artist or containing Aboriginal or Torres Strait Islander themes or content. Aboriginal and Torres Strait Islander art is defined in accordance with the <i>Aboriginal and Torres Strait Islander Engagement Policy</i>.</p>
<p><b>Approved borrowing institution</b></p>	<p>An institution approved by the Minister for the Arts, or the Minister's delegate, under Part 3 of the Protection of Cultural Objects on Loan Act 2013.</p>
<p><b>Board</b></p>	<p>The Experience Gold Coast Board (EGC), consisting of a board of directors to a super entity which consists of Destination Gold Coast, Major Events Gold Coast, Study Gold Coast, Placemakers*, and HOTA, Home of the Arts. The EGC Board will review and confirm the acquisition and deaccessioning of artworks consistent with the <i>Delegations of Authority Policy</i>, as well as reviewing and approving proposals for relevant exhibitions as per the <i>Exhibitions Policy</i>.</p>
<p><b>Collection</b></p>	<p>Works of art in various media that are HOTA Gallery property and have been formally accessioned.</p>
<p><b>Collection exhibition</b></p>	<p>An exhibition of works of art that is largely drawn from the Gallery's collection and may include incoming loans and/or commissions, in accordance with the <i>Exhibitions Policy</i>.</p>

<b>Due diligence</b>	The thorough assessment of an Object to evaluate its authenticity, ownership and provenance and to identify and assess any gaps in the provenance.
<b>Exhibition program</b>	The forward program and schedule of temporary, collection and touring exhibitions.
<b>Gallery Director</b>	The Gallery & Visual Arts Director, Director of HOTA Gallery.
<b>Incoming loan</b>	Any contracted arrangement for the transfer of possession of an Object or other material to HOTA Gallery on a temporary basis under which the transferor grants a temporary right of possession to HOTA Gallery. It therefore includes loans in the strict legal sense of gratuitous bailments, bailments that arise from contracts that expressly benefit both HOTA Gallery and the party transferring possession and other sharing arrangements, such as a scheduled rotation of possession among co-owners. The terms Lender, Borrower, lending and borrowing and loan and all related or derivative terms are to be construed in the context of this definition and unless otherwise specified, references to incoming loan or any related terms may apply to proposed, contemplated, potential, approved or realised loan arrangements. The terms do not apply to transfers of possession to HOTA Gallery where HOTA Gallery is the sole Owner of the object and retains the sole right of possession.
<b>Incoming loan for temporary exhibition</b>	An incoming loan made for a finite period for the primary purpose of display at HOTA Gallery or in a touring exhibition.
<b>Incoming loan to the collection</b>	An incoming loan made for the purpose of display, research or other purposes associated directly with HOTA Gallery's collection, including but not exclusive to exhibition.
<b>International in relation to a loan</b>	Any loan arrangements pursuant to which an Object enters Australia from a country outside Australia with the consent of a party ordinarily resident or incorporated outside Australia who grants a temporary right of possession to the Object(s) to HOTA Gallery for a specified period.
<b>Loan Agreement</b>	A formal, legally binding written contract between the Lender, who may be the Owner of the Object(s) subject to the loan or their agent, and HOTA Gallery as Borrower, specifying the Object(s) and outlining the conditions and terms of the loan and the responsibilities of each party.
<b>Owner</b>	The party or parties who lawfully possess title to the Object.
<b>PCOL</b>	The Protection of Cultural Objects on Loan (PCOL) Scheme supports the future of international cultural exhibitions in Australia by providing a scheme (governed by the Protection of Cultural Objects on Loan Regulation 2014 (Cth)) to protect Australian and foreign cultural objects on loan from overseas for temporary public exhibition.
<b>Provenance</b>	The history of ownership of an item from the time of its discovery or creation to the present day, from which authenticity and ownership is determined.

<b>SharePoint</b>	SharePoint is a web-based collaborative platform that integrates natively with Microsoft 365. SharePoint is HOTA's document management and storage system.		
<b>Temporary exhibition</b>	An exhibition of works of art that may include Objects drawn from the collection, incoming loans and/or commissions. When used in the context of the whole phrase 'incoming loan for temporary exhibition,' this term has a different meaning.		
<b>Title</b>	The legal right to ownership of property.		
<b>Touring exhibition</b>	An exhibition of art that may include Objects drawn from the collection, incoming loans and/or commissions that HOTA Gallery tours to other venues, in accordance with the <i>Exhibitions Policy</i> .		
<b>Vernon CMS</b>	Vernon CMS is a mature Collection Management System that is used to manage the HOTA Gallery Collection.		
<b>Revision History</b>			
<b>Version</b>	<b>Approved By</b>	<b>Approval Date</b>	<b>Modification</b>
1.0	EGC Board	15 MAY 24	New policy in line with current practice

[HOTA Home of the Arts](#)

We acknowledge the Kombumerri families of the Yugambeh Language Region, the traditional custodians.