

HOTA Gallery Provenance and Due Diligence Research Policy

Accountabilities	
Approving Authority	Experience Gold Coast Board of Directors
Policy Owner	Gallery & Visual Arts Director
Policy Advisor	Curatorial and Engagement Manager, Registration Coordinator
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1. SUMMARY

- 1.1. HOTA Gallery is committed to ensuring the negotiation and administration of loans and acquisitions and the development and management of the collection is undertaken on terms that are ethical, honourable, responsible and transparent to public scrutiny. In this manner, HOTA Gallery seeks to maintain its standing and reputation for excellence and integrity with the general public and museum community, both nationally and internationally.

This policy sets out the principles regarding provenance and due diligence research that informs and guides HOTA Gallery's decision-making when considering acquisitions, incoming loans and in relation to the collection. HOTA Gallery will make every effort to ensure it acquires and borrows works of art for which provenance has been established or which are judged to have a secure history. HOTA Gallery is committed to acting in a manner that does not directly or indirectly validate, endorse or provide an incentive for the illegal or unethical trade in cultural property. To do so, HOTA Gallery will undertake due diligence research for all proposed acquisitions and incoming loans as well as reviewing previous decisions and understandings about the collection. HOTA Gallery Collection and Curatorial team members discuss provenance issues which are reported to HOTA Gallery as a matter of priority. The findings and assessment of due diligence research will inform HOTA Gallery's decision-making processes in these matters and will be premised on professional judgement.

2. PURPOSE

- 2.1. The objectives of this policy are:
- 2.1.1. To ensure HOTA Gallery applies rigorous, accountable and transparent standards in the research, consideration and assessment of provenance and

- undertaking of due diligence in relation to acquisitions, the collection and incoming loans.
- 2.1.2. To ensure HOTA Gallery acquires and borrows works of art for which provenance has been established or which are assessed through sound professional judgement to have a secure history.
 - 2.1.3. To ensure that acquisitions, loans and the management of the collection is conducted in an ethical, responsible and accountable manner.
 - 2.1.4. To maintain HOTA Gallery's standing and reputation for excellence with the general public and the museum community, both nationally and internationally.
 - 2.1.5. To ensure HOTA Gallery does not directly or indirectly validate, endorse or provide an incentive for the illegal or unethical trade in cultural material.

3. SCOPE

- 3.1. This policy applies to all activities relating to the investigation of provenance in the conduct of collection development and management and in relation to incoming loans.

4. POLICY STATEMENT

4.1. Principles

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 Moveable Cultural Heritage Act 1986 and the Protection of Cultural Objects on Loan Act 2013, and is guided by the ICOM Code of Ethics, Australian Museums and Galleries Association Code of Ethics and the Australian Best Practice Guide to Collecting Cultural Material.

In the process of acquiring artworks, the development and management of the collection and when entering into incoming and outgoing loan arrangements, HOTA Gallery seeks to avoid any act or omission that may attract legal liability; involve HOTA Gallery in civil or criminal proceedings, or would otherwise compromise HOTA Gallery's position and reputation for probity in public administration; or serves to provide a direct incentive for, or validation of, the illegal or unethical trade in cultural material.

HOTA Gallery will make every effort to ensure it acquires and borrows works for which provenance has been established or which are judged to have a secure history through their presence in the public domain.

Artworks will be considered for acquisition or loan on the basis of the sound professional and ethical assessment of provenance and conduct of due diligence investigations, in accordance with the *Provenance and Due Diligence Research Procedures*.

HOTA Gallery will only acquire and borrow works where, in its professional judgement and on the basis of responsible levels of due diligence and the assessment of risk:

- Information about the provenance and authenticity of the artwork can reasonably be ascertained
- A critical evaluation has been undertaken of gaps and discontinuities in the provenance information
- HOTA Gallery is satisfied that:
 - i. the work was exported from its country of origin and any intermediary country in accordance with that country's laws and lawfully imported into Australia
 - ii. if not yet imported into Australia, is eligible to be or has been exported from its country of origin or any intermediary country in accordance with that country's laws and is eligible to be lawfully imported into Australia.
- Any pre-existing or prior disputes or wrong-doings have been assessed and evidence sought of the binding settlement, abandonment, or remission of liability, or that any claim has been otherwise extinguished on binding terms and in circumstances that do not compromise the contemporary ethical status of the work
- With regard to Aboriginal or Torres Strait Islander art, the origin and source of the artwork and the identity of any community or individual that may wish to assert a legal, and/or customary interest in the artwork has been identified and representatives of relevant Indigenous communities have been consulted in accordance with the *Aboriginal and Torres Strait Islander Engagement Policy* and *Community Consultation Procedures*.

HOTA Gallery recognises that complete and unbroken records of ownership are rare, and the provenance of works may contain gaps, or may not be able to be verified through documentary evidence. HOTA Gallery recognises that there are many reasons for such gaps ranging from a past owner's desire for anonymity to an absence of records of transactions arising from the nature of the trade in such material. Resolving provenance gaps, particularly during periods of war, conflict, political upheaval or natural disaster may be further complicated by the fact that records have been lost or destroyed. HOTA Gallery will evaluate gaps or discontinuities in provenance or undocumented transactions to ensure 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.

In order to gather further information, HOTA Gallery 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 an artwork. In acquisition and loan arrangements, HOTA Gallery will require the seller, donor or lender to provide warranties and indemnities as to their account of title or possession.

The insurance value or purchase price of a work is not a consideration in the evaluation of provenance findings.

In some circumstances works may be borrowed or held by HOTA Gallery in custody or trust in order to protect or preserve them, or in other arrangements under which HOTA Gallery is acting as a repository of last resort in accordance with the *Incoming*

Loans Policy. In such instances, HOTA Gallery recognises that title and the usual standards of provenance may not be able to be ascertained. In such circumstances, HOTA Gallery 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.

HOTA Gallery recognises that information may be obtained subsequent to acquisition or approval of a loan that establishes another party's claim to title or possession of a work. HOTA Gallery will take such information or claims very seriously and will investigate and respond in a timely, respectful and ethical manner in accordance with public interest, as guided by the *External Complaint Management Policy* and other established protocols.

4.2. Transparency and accountability

4.2.1. Record keeping

Staff will maintain records of provenance and due diligence research and findings electronically in the relevant SharePoint site, including the findings of research for acquisitions and incoming loans that are not approved to proceed, documenting relevant information and decision-making. Records relating to provenance and due diligence will be retained for a minimum of five years on the internal HOTA SharePoint system.

4.2.2. Internal audit and review cycle

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

4.2.3. Staff obligations

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

5. RESPONSIBILITIES

5.1. Gallery & Visual Arts Director

- 5.1.1. Responsible for monitoring and reporting on compliance with statutory and other requirements concerning provenance and the acquisition and loans process.
- 5.1.2. Responsible for ensuring that the process and documentation relating to provenance and due diligence research 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 provenance and due diligence processes of HOTA Gallery.

Supporting Information	
Commonwealth of Australia Legislation	<ul style="list-style-type: none"> • Aboriginal and Torres Strait Islander Heritage Protection Act 1984 • Customs Act 1901 • 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 2018 • Biosecurity Act 2015 • Environmental Protection and Biodiversity Conservation Act 1999
State Legislation	<ul style="list-style-type: none"> • Right to Information Act 2009 • Information Privacy Act 2009 • Financial Administration and Audit Act 1977 • Financial Accountability Act 2009 • Public Records Act 2002 • The Disposal of Uncollected Goods Act 1967
Related HOTA Documents	<ul style="list-style-type: none"> • <i>HOTA Gallery Collection Management Policy 2023-2026</i> • <i>HOTA Gallery Acquisition Strategy</i> • <i>HOTA Gallery Deaccessioning Strategy</i> • <i>HOTA Gallery Provenance and Due Diligence Policy</i> • <i>HOTA Gallery Inward Loans Policy</i> • <i>HOTA Gallery Outward Loans Policy</i> • <i>HOTA Gallery Exhibitions Policy</i> • <i>HOTA Gallery Community Consultation Policy</i> • <i>HOTA Gallery Inward Loans Claims Handling Procedures</i> • <i>HOTA Gallery Cultural and Sensitive Material Checklist</i> • <i>HOTA Gallery Community Consultation Procedures</i> • <i>Aboriginal and Torres Strait Islander Engagement Procedures</i> • <i>HOTA Gallery Incoming Loans Procedures</i> • <i>HOTA Gallery Provenance and Due Diligence Research Procedures</i> • <i>HOTA Gallery Acquisitions Procedure</i> • <i>HOTA External Complaint Management Policy</i> • <i>HOTA Gifts and Benefits Policy</i> • <i>HOTA ICT Policy</i> • <i>HOTA Non-current Asset Policy</i> • <i>HOTA Delegations of Authority Policy</i> • <i>HOTA Conflict of Interest Policy</i> • <i>HOTA Code of Conduct</i> • <i>HOTA Risk Management Policy</i>
Related Sector Documents	<ul style="list-style-type: none"> • American Association of Art Museum Directors, Guidelines on the acquisition of archaeological material and ancient art, 2013 • The Art Loss Register • Australian Government, Attorney General's Department, Ministry for the Arts, Australian best practice guide to collecting cultural material, 2015

	<ul style="list-style-type: none"> • Australian Government, Attorney General's Department, Ministry for the Arts, Protection of cultural objects on loan: scheme guidelines, 2014 • Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), 1973, as amended 1979 and 1983 • Department for Culture, Media and Sport, Cultural Property Unit, United Kingdom, <i>Combating illicit trade: due diligence guidelines for museums, libraries and archives on collecting and borrowing cultural material</i>, October 2005 • ICOM Code of Ethics for Museums, 2017 • ICOM, International Observatory on Illicit Traffic in Cultural Goods • ICOM Red Lists of cultural objects at risk • ICOM, World Intellectual Property Organisation Art and Cultural Heritage Mediation • International Foundation for Art Research • Museums Australia, <i>Code of Ethics</i>, 1999 (under review) • Museums Australia, <i>Continuing cultures, ongoing responsibilities</i>, 2005 • 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 • UNESCO, Database of National Cultural Heritage Laws • UNESCO, The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, 1954, First Protocol, 1954 and Second Protocol, 1999
Definitions and Acronyms	
Aboriginal or Torres Strait Islander art	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> .
Accession	The process undertaken that formally acknowledges an artwork to be part of the collection.
Acquisition	The acceptance, through gift or purchase, of a work of art into HOTA Gallery's Collection in accordance with HOTA Gallery's Acquisition Strategy.
Board	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 incoming exhibitions as per the <i>Exhibitions Policy</i> .

Collection	Works of art in various media that are HOTA Gallery property and have been formally accessioned.
Due diligence	The thorough assessment of an artwork to evaluate its authenticity, ownership and provenance and to identify and assess any gaps in the provenance.
Gallery Director	The Gallery & Visual Arts Director, Director of HOTA Gallery.
HOTA Gallery provenance group	Members of the HOTA Gallery curatorial and collection management staff.
Incoming loan	Any contracted arrangement for the transfer of possession of an artwork 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.
Incoming loan for temporary exhibition	An incoming loan made for a finite period for the primary purpose of display at HOTA Gallery or in a touring exhibition.
Incoming loan to the collection	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.
Outgoing loan	Any contracted arrangement for the transfer of possession of an artwork from HOTA Gallery to another party or parties on a temporary basis under which HOTA Gallery grants a temporary right of possession to the borrower. 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 receiving possession. For the purpose of this policy, outgoing loans encompasses touring exhibitions. The terms lender, borrower, lending and borrowing and loan are to be construed in the context of this definition and unless otherwise specified, references to outgoing loan or any related terms may apply to proposed, contemplated, potential, approved or realised loan arrangements.
Owner	The party or parties who lawfully possess title to the artwork.
PCOL	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.

Provenance	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.		
Title	The legal right to ownership of property.		
Revision History			
Version	Approved By	Approval Date	Modification
1.0	EGC Board	15 MAY 2024	New policy in line with current practice

[HOTA Home of the Arts](#)

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