



## **INCOMING LOANS POLICY**

**19 June 2017**

**Revised 15 August 2017**

### **1. CONTEXT**

#### *1.1 Objective*

The Museum borrows objects in order to fulfil its mission and vision.

This Policy is formulated to ensure that the Museum only borrows objects in accordance with its statutory charter, with its vision and mission statements and in compliance with the highest legal and ethical standards.

The legal and ethical frameworks against which this Policy has been formulated are listed at the end of the Policy.

#### *1.2 Application*

This Policy applies:

- to all objects borrowed by the Museum and across all departments; and
- whether the Museum is borrowing a single object or a range or collection of objects (including an entire exhibition).

#### *1.3 Procedures*

The procedures to be followed in implementing this Policy are set out in the document *Incoming Loans Procedures*.

Insofar as temporary loans from overseas for exhibitions are concerned, the Procedures will ensure compliance with obligations under the *Protection of Cultural Objects on Loan Regulations 2014* (Cth) and will include specific processes for:

- consultation;
- publication;
- claims handling; and
- reporting to the relevant Commonwealth government minister.

### **2. KEY PRINCIPLE**

**The Museum is committed to only borrowing objects in accordance with its statutory charter, with its mission and its vision statements and in compliance with the highest legal and ethical standards.**

### 3. COMPLIANCE WITH THE KEY PRINCIPLE

#### 3.1 *General issues*

##### (a) *Incoming loans for temporary exhibition*

The Museum will only borrow objects:

- where doing so accords with the laws, ethical codes and guidelines listed at 11. *Legal and ethical framework*;
- where doing so is in line with its statutory remit or its mission or vision statements; and
- where the Museum has the capacity to:
  - provide appropriate care of the object while the object is in its custody; and
  - abide by any terms and conditions agreed to with the lender in respect of the object.

##### (b) *Incoming loans for other purposes*

The Museum will apply the Key Principle not only when borrowing objects for temporary exhibitions, but also when borrowing objects for other purposes, including when borrowing objects for research purposes.

Where appropriate, and having regard to the nature of the object and the purposes for which the object is required, the *Incoming Loans Procedures* may set out a less rigorous set of procedures for loans for purposes other than exhibition than apply when the Museum borrows an object for temporary exhibition.

The *Incoming Loans Procedures* will also address other issues that may be relevant to such loans, including destructive sampling, which expose the Museum to reputational risk.

#### 3.2 *Capacity*

Further to 3.1(a) above, the Museum will only borrow objects where it is confident that:

- the Museum is able to meet all known associated costs;
- the Museum has the resources available to manage the loan process and all installation requirements and to meet all contractual obligations; and
- the object:
  - does not include or comprise secret/sacred or culturally sensitive material from Aboriginal, Torres Strait Islander or Pacific Islander communities that has not been cleared for exhibition by the relevant cultural custodians;
  - makes a significant contribution to the relevant exhibition narrative or theme;
  - has publicity and other marketing potential to assist in driving visitor numbers; and
  - can be properly accommodated and displayed at the Museum.

#### 3.3 *Care*

The Museum will afford the same level of care for objects on loan to it as it affords comparable objects in its own collections.

Objects on loan for research purposes must be kept separate from items that form part of the Museum collection.

#### 3.4 *Provenance & due diligence assessment*

While the Museum recognises that the full provenance of an object may often not be known, the Museum will only borrow an object where it is satisfied that, on balance, the provenance of the object is sound and that appropriate due diligence in relation to provenance has been carried out.

Generally, the issues to be addressed in assessing provenance will include:

- the reputation of the lender;
- the lender's legal right to lend the object;
- whether any third-party may have a claim to the object;
- whether any export licence or any other relevant permit was required in respect of the work and, if so, whether that licence or permit was obtained; and
- whether there are any factors suggesting that the object may have been illicitly obtained (either by the lender or by a predecessor in title).

The Museum recognises that, in many cases where it borrows an object, the lender may already have carried out substantial due diligence in relation to provenance and ownership issues. In such cases, the Museum may not have to repeat the research, but where the Museum is not convinced that the provenance information is adequate, it will undertake its own research, particularly when borrowing an object from overseas for temporary exhibition purposes.

The Museum will not proceed with borrowing an object if there are reasonable grounds for concluding that the provenance and/or ownership of the object are not sound.

### 3.5 *Consultation*

The Museum will consult with relevant communities – and particularly with Aboriginal, Torres Strait Islander and Pacific Islander communities – where the object that is subject to the loan comes from or is closely associated with those communities.

Such consultation will comprise consultation not only for provenance and ownership issues, but also (where the object is borrowed for temporary exhibition purposes) consultation in relation to the way the object is to be displayed and interpreted.

See below for the Museum's policy on the specific consultation requirements for compliance with PCOL when the Museum borrows from overseas for temporary exhibition purposes.

### 3.6 *Additional considerations when borrowing from overseas*

#### (a) General

Any decision to borrow an object from overseas will be informed by an assessment of:

- whether a comparable object is available for loan from within Australia;
- whether the quality of the object in light of the purposes for which it is required warrants the additional expense of borrowing from overseas (including any additional internal resources required for compliance with PCOL or to obtain relevant customs, CITES and/or export permits).

#### (b) Compliance with PCOL

Unless the lender has notified the Museum in writing that it is opting out of protection under PCOL, the Museum will comply with all applicable procedural obligations imposed by PCOL when borrowing from overseas for temporary exhibition purposes, including in relation to:

- the period of time the object is to be in Australia (generally, less than two years);
- publication obligations;
- consultation; and
- disputes and claims handling.

In respect of consultation, see particularly the Museum's separate *Consultation Policy (Loans from Overseas for Temporary Exhibition)* and the related *Consultation Procedures*.

See also the Museum's separate *Incoming Loans Claims Handling Procedures*.

(c) Compliance with other laws

When borrowing from overseas, the Museum will comply with all relevant export and import laws, including all relevant import restrictions and procedures.

(d) Lenders opting out of PCOL

The Museum will not seek to put undue pressure on overseas lenders to opt out of PCOL and the protection it gives to the object while it is in Australia.

However, given the procedural implications where an object is borrowed from overseas, in cases where neither the lender nor the Museum consider that the risk of a claim against or in relation to an object is likely, the Museum may explore the lender opting out of PCOL (and giving the relevant notice to the Minister or his or her delegate).

#### 4. CONFLICTS OF INTEREST

Other than for research purposes, the Museum will not borrow objects from members of staff, volunteers, Trustees or close relatives of these people, or from any business or company in which such people have a controlling interest or directorial role unless:

- the interest is fully disclosed and documented; and
- the person excludes themselves from any decision within the Museum that relates to the decision to borrow the object.

The Museum will otherwise manage conflicts of interest in accordance with the Museum's *Staff Code of Conduct* (2012) and the NSW Independent Commission Against Corruption document *Identifying and Managing Conflicts of Interest in the Public Sector* (2012).

#### 5. RISK MANAGEMENT

The Museum accepts that the full provenance of any particular object may never be known and that even the most thorough due diligence may fail to uncover all information about an object.

In such cases, the Museum will undertake a risk management assessment, based on the exercise of professional judgement and (where necessary) external advice from relevant experts (including lawyers) to ensure that, on balance, relevant legal and ethical risks have been considered and are acceptable.

Factors to be taken into account in relation to the management of risk in respect of incoming loans will be dealt with in the *Incoming Loans Procedures*.

Should any new information in relation to the object's provenance come to light during the period of a loan, the legal and ethical soundness of any decision to borrow an object will be re-assessed. If the legal and ethical risks are too great, the Museum will terminate the loan and return the object.

#### 6. ROLES & RESPONSIBILITIES

Roles and responsibilities in relation to incoming loans are as follows:

*Identification of objects available for loan:*

- relevant Collections Manager (in the case of objects borrowed for research purposes);
- branch Manager (Exhibitions & Design) and relevant Collections Manager (in the case of temporary exhibitions);

*Negotiation of loan conditions:*

- relevant Collections Manager (in the case of objects borrowed for research purposes);
- Registrar in consultation with the relevant Creative Producer (in the case of temporary exhibitions);

*Final sign-off on loan:*

- relevant branch Manager (in the case of objects borrowed for research purposes);
- Director, Engagement & Exhibitions (in the case of temporary exhibitions);

*Return of objects at the end of the loan period:*

- relevant Collections Manager (in the case of objects borrowed for research purposes);
- Registrar in consultation with the relevant Creative Producer (in the case of temporary exhibitions);

*Additional roles:*

- approvals where the borrowed object may be subject to destructive or transformative sampling: relevant branch Manager;
- managing the conservation of objects on loan, and pest management procedures for incoming loans: Materials Conservation Unit (in consultation with relevant Collections Manager) in accordance with the Museum's *Integrated Pest Management Plan* (2012) and *Collection Conservation Policy* (2007).

## **7. DOCUMENTATION & RECORD KEEPING**

All incoming loans will be fully documented in written agreements, in accordance with the *Incoming Loans Procedures*.

Where the lender's loan agreement forms the basis for loan negotiation, the Museum will ensure that relevant protective clauses (as further set out in the *Incoming Loans Procedures* and particularly in relation to warranties concerning provenance and title) are negotiated and agreed in writing.

Where the loan is negotiated through an agent or other third party, the identity of all legal and beneficial owners must be recorded in the loan agreement. The Museum may, however, otherwise agree to keep the identity of the owner confidential (including in exhibition cataloguing and labelling).

All records relating to incoming loans will be kept on file, also in accordance with the *Incoming Loans Procedures*.

Indefinite or "perpetual" loans will generally not be accepted unless the most compelling circumstances exist.

Where a lender has agreed that an object need not be covered by PCOL, the consent of a lender must be documented in writing (including in the written loan agreement).

All documents will be retained in accordance with the Museum's *Disposal Schedule* (DR55731998) and electronic copies filed in accordance with the *Australian Museum Records Management Policy* (2012).

## **8. AUDIT & REVIEW**

Compliance with this Policy and with the Procedures made under it will be audited by the Director & CEO or their delegated representative.

This Policy and the Procedures made under it will be reviewed at least once every five years or in the event of major legislative changes likely to have a major impact on it.

## **9. COMPLIANCE**

Breach of this Policy by staff may result in disciplinary action.

## 10. KEY TERMS & DEFINITIONS

### *Due diligence*

The requirement that every endeavour is made to verify the accuracy of information before deciding on a course of action, particularly in identifying the source and history of cultural material considered for acquisition.

### *Provenance*

Includes the full history and chain of ownership of an object from the time of its discovery or creation to the present day, through which authenticity and legal title are determined.

### *Pacific Islander communities*

Indigenous communities of the Pacific Region, including New Zealand, Papua New Guinea and West Papua.

## 11. LEGAL & ETHICAL FRAMEWORK

The legal framework within which this Policy is drafted includes (along with the related regulations):

- *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth)
- *Australian Museum Trust Act 1975* (NSW)
- *Biosecurity Act 2015* (Cth)
- *Customs Act 1901* (Cth)
- *Environment Protection and Biodiversity Conservation Act 1999* (Cth)
- *Historic Shipwrecks Act 1976* (Cth)
- *Protection of Cultural Objects on Loan Act 2013* (Cth)
- *Protection of Movable Cultural Heritage Act 1986* (Cth)
- *State Records Act 1998* (NSW)

This Policy has also been drafted with particular reference to the following ethical frameworks and international instruments:

- AIATSIS, *Guidelines for Ethical Research in Australian Indigenous Studies* (2012)
- Australian Museum, *Staff Code of Conduct* (2012)
- ICOM, *Code of Ethics*
- Museums Australia, *Code of Ethics* (1999)
- Museums Australia, *Continuous Cultures, Ongoing Responsibilities* (2005)
- Nagoya Protocol (2010) to the *Convention on Biological Diversity* (1993)
- *National Standards for Australian Museums and Galleries* Version 1.4 (October 2014)
- NSW Independent Commission against Corruption, *Identifying and Managing Conflicts of Interest in the Public Sector* (2012)
- UNESCO, *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property* (1970)

## 12. APPROVAL

Approved by the Executive Leadership Team on 19 June 2017.