



# Consultation Policy and Procedure

## Section 1 – Purpose

TMAG is committed to the principle that consultation facilitates the establishment and strengthening of TMAG’s relationships with its various communities. TMAG will undertake consultation in respect of items from overseas that are proposed either for acquisition or for incoming loan.

While this Policy particularly applies to items specified under Regulation 9 of the Protection of Cultural Objects on Loan Regulations 2014 (Cth) (‘PCOL’), as described in Clause 1.1, it is not restricted to such items. TMAG may undertake consultation in respect of any item proposed for acquisition or incoming loan or in relation to any other matter that TMAG deems appropriate for consultation.

### 1.1 Scope

To align with PCOL requirements, TMAG will undertake consultation in relation to any acquisition or international incoming loan proposals, where the work proposed for loan or acquisition:

- a. Relates to or holds particular significance for an individual, group or community in Australia
- b. 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
- c. Relates to, or embodies the culture of, a First Nations community from a country other than Australia
- d. Is a document or record that may be relevant to a state, territory or national archive or government records office.

### 1.2 Authority

This Policy is established by the Director and approved by the Board of Trustees (the Board) pursuant to the *Tasmanian Museum and Art Gallery Act 2017* (the Act).

## Section 2 – Glossary / Definitions

**Consultation** – a process in which TMAG seeks the opinion and advice of communities, stakeholders or stakeholder groups, to clarify their views on a proposed course of action by TMAG

**Content Manager (CM)** - The Electronic Document Record Management System used by TMAG and the Department of State Growth.

**Delegate(s)** – a representative of TMAG who has delegated authority to make decisions regarding incoming loans and/or acquisitions, as per TMAG's Incoming Loans and Acquisitions Policies.

**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.

**Electronic Document Record Management System (EDRMS)** - A system for managing electronic records and files.

**Incoming loan** - any contracted arrangement for the transfer of possession of item to TMAG on a temporary basis under which the transferor grants a temporary right of possession to TMAG. It therefore includes loans in the strict legal sense of gratuitous bailments, bailments that arise from contracts that expressly benefit both TMAG 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 TMAG where the TMAG 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 TMAG venue 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 TMAG's collection, including but not exclusive to exhibition

**International (in relation to a loan)** - any loan arrangements pursuant to which an item 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 item(s) to TMAG for a specified period.

**Lender** - means the party or parties who lawfully possess title to the artwork.

**Loan agreement** - a formal, legally binding written contract between the lender, who may be the owner of the item(s) subject to the loan or their agent, and TMAG as borrower, specifying the item(s) and outlining the conditions and terms of the loan and the responsibilities of each party

**Owner** - means the party or parties who lawfully possess title to the artwork.

**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.

**Repository of Last Resort** - An occasion where an institution acts as a repository for unprovenanced, illicitly collected or recovered specimens and objects from the territory over which it has lawful responsibility in order to protect such objects from destruction or deterioration, in line with clause 2.11 of ICOM's Code of Ethics for Museums.

**Touring exhibition** - an exhibition that may include items drawn from the collection, incoming loans and/or commissions that TMAG tours to other venues.

## **Section 3 – Policy**

### **3.1 Respectful and appropriate consultations**

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 TMAG's *Incoming Loans Policy*, *Acquisitions Policy*, *Protocols for First Peoples Art and Culture Collections* and TMAG's *Tasmanian Aboriginal Advisory Group's Terms of Reference*.

### **3.2 Consultation outcomes to inform decision making**

Where consultation takes place in relation to an international incoming loan or acquisition proposal, the results of that consultation will be considered in the decision-making and assessment process for approval of the relevant proposal.

When an international incoming loan or acquisition is planned to be proposed TMAG will allow an appropriate amount of time for notification of people to be consulted, consultation, follow-up and outcomes reporting, prior to the proposal being assessed and a decision made on whether to proceed.

TMAG undertakes to keep all parties involved in the consultation informed of the proposal's progress through assessment, and the final outcome of the proposal.

### **3.3 Consultation Procedures**

TMAG's Consultation Procedure is as follows:

1. Items proposed for acquisition or for incoming loans are initially identified by the relevant Curator.
2. The Curator assesses the item against PCOL criteria as noted in Clause 1.1 of this Policy to determine if consultation is required.
3. Prior to arranging consultation, the Curator will seek approval and/or guidance from a senior Staff member:
  - a. For consultation regarding potential acquisitions, this will be the Deputy Director Collections & Research.

- b. For consultation regarding potential incoming loans, this will be the Exhibition Project Owner or delegate.

The Senior Staff Member will approve the consultation and determine the appropriate person to lead the consultation.

4. Consultation participants will receive advance notice at least 7 days prior to the consultation.
5. At the start of or prior to the Consultation, the person leading the Consultation will furnish consultation participants with as much relevant information as is available at that time in respect of the item that is the subject of consultation, using Clause 5.4 of TMAG's *Provenance and Due Diligence Research Policy* to determine relevant types of information.
6. Each consultation participant will have the opportunity to express their views.
7. Participants will have the opportunity to communicate their views to each other and to discuss those views.
8. The consultation will be documented. Participants should be asked if they are comfortable to be identified in any documentation. Participants may choose to remain anonymous.
9. The key points and outcomes of the consultation will be documented as part of the relevant acquisition or incoming loan proposal.
10. Acquisitions proposals are assessed and approved in accordance with TMAG's *Acquisitions Policy* and *Provenance and Due Diligence Research Policy*.
11. Incoming Loan Proposals are assessed and approved in accordance with TMAG's *Incoming Loans Policy* and *Provenance and Due Diligence Research Policy*.

## **Section 4 – Transparency and Accountability**

### **4.1 Transparency**

TMAG undertakes to keep all parties involved in consultation informed of the proposal's progress through assessment, and the final outcome of the proposal.

### **4.2 Record Keeping**

Full documentation of all consultations in respect to incoming loan proposals and acquisition proposals will form part of the relevant proposal and will be maintained in accordance with TMAG's Incoming Loans and Acquisitions Policies and the TMAG Records Management Policy.

The records that TMAG creates are State records and come under the jurisdiction of the *Archives Act 1983*. TMAG has both specific and implied requirements for record keeping under the terms of the Act.

### **4.3 Internal audit and review cycle**

The director will ensure that compliance with this policy is assessed as part of TMAG's audit program. The policy will be reviewed by the Registrar on a regular basis. Any proposed changes to the Policy will be presented to the Board of Trustees for approval and endorsement.

## **Section 5 - Responsibilities and Compliance**

### **5.1 Responsibilities**

#### **5.1.1 Board of Trustees**

The Board of Trustees is responsible for the care and development of the collections and for ensuring compliance with Board-approved collection policies and procedures.

#### **5.1.2 Director**

The Director is responsible for ensuring that employees under their management are aware of, understand, and implement the requirements of this policy.

The Director is responsible for any actions in this Policy that are noted as the responsibility of the Director. Such actions include decision making, approval of incoming loans within the limits of the Director's delegations, and other relevant actions.

#### **5.1.4 Registrar**

The Registrar will lead the review process for this Policy on a regular basis, as required.

#### **5.1.8 Other Employees**

TMAG Employees are responsible for:

1. Understanding and implementing this Policy and any procedures described therein;
2. Requesting assistance as required in the implementation of this policy; and escalating foreseeable issues to their manager;
3. Ensuring that all relevant documentation is completed and maintained.

### **5.2 Compliance**

All employees are required to comply with this policy. Disciplinary action may apply where an employee fails to comply with this policy without reasonable cause.

## Section 6 – References

### 6.1 Internal Reference Material

This policy should be read in conjunction with the following TMAG documents:

- Acquisitions Policy
- Deed of Gift
- Incomings Loan Policy and Procedures
- Manual of Authorities
- Protocols for First Peoples Art and Culture Collections
- Provenance and Due Diligence Research Policy
- Records Management Policy
- Tasmanian Aboriginal Advisory Board Terms of Reference

### 6.2 External Reference Material

- Aboriginal and Torres Strait Islander Heritage Protection Act 1984
- AIATSIS, Guidelines for Ethical Research in Australian Indigenous Studies (2012)
- American Association of Art Museum Directors, *Guidelines on the Acquisition of Archaeological Material and Ancient Art*, 2013
- Archives Act 1983
- Australia Council, *Protocols for Producing Indigenous Australian Visual Arts*, 2010
- Australian Government, Attorney General's Department, Ministry for the Arts
- Australian Best Practice Guide to Collecting Cultural Material, 2015
- Australian Government, Ministry for the Arts, *Cultural Gifts Program guide*, 2013
- Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) – March 1973 (and as amended 1979 and 1983)
- Convention on Biological Diversity (CBD) and the Nagoya Protocol (2010)
- Environmental Protection and Biodiversity Conservation Act 1999
- Historic Shipwrecks Act 1976
- ICOM Code of Ethics for Museums, 2017
- ICOM Code of Ethics for Natural History Museums
- ICOM, International Observatory on Illicit Traffic in Cultural Goods
- ICOM, Red Lists of cultural objects at risk (18 Lists as of 2021)
- Meteorites Act 1973
- Museums Australia *Code of Ethics*
- Museums Australia, *Continuing cultures, ongoing responsibilities*, 2005
- Pacific Islands Museums Association, *Code of Ethics for Pacific Museums and Cultural Centres*, 2006
- Protection of Moveable Cultural Heritage Act 1986
- Protection of Movable Cultural Heritage Regulation 2018
- Protection of cultural objects on loan: scheme guidelines, 2014
- Tasmanian Nature Conservation Act 2002
- Tasmanian Whales Protection Act 1988

- Tasmanian National Parks and Reserved Land Regulations 1999
- UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970 ('the Convention')
- Unidroit, *Convention on Stolen or Illegally Exported Cultural Objects*, 1995
- Wildlife (General) Regulations 2010

## Status and Details

Document Title	Consultation Policy
Document Category	Collection Management
Version	1.1
CM Reference	TM1489/2
Date Released for Consultation	
Approved by	Director
Date Approved (effective date)	June 2025
Review Date	June 2028
Responsible Officer / Team Head	Philippa Cox
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