

# MAAS Acquisition and Accession Policy

**Draft Policy for comment:** 27 June 2016

**Date Approved:** 21 July 2016

**Date for Review:** July 2018

## **1. Policy Statement**

The power to acquire by Donation, Bequest or devise Objects for the MAAS Collection is vested in the Board of Trustees of the Museum of Applied Arts and Sciences (MAAS) by virtue of the *Museum of Applied Arts and Sciences Act 1945* (NSW) (the MAAS Act). The Board of Trustees acknowledges its obligations under the MAAS Act to acquire, maintain, conserve, develop and display the MAAS Collection.

## **2. Application**

This Policy relates only to the Acquisition and Accession of Objects into the MAAS Collection. MAAS acquires Objects into the MAAS Collection according to the criteria and priorities outlined in the Collection Development Policy. While acknowledging that Acquisitions will be made across the whole MAAS Collection as significant opportunities arise, collecting will be actively focussed according to the MAAS Collecting Plan and Strategic Vision 2020.

## **3. Background**

MAAS will ensure that all Acquisitions are negotiated and managed on terms that are ethical, responsible and visible to public scrutiny and will maintain the Museum's standing and reputation for collecting excellence in the public and the museum community, both nationally and internationally. In developing its Collection, MAAS will seek to ensure that it acquires Objects with valid Title, established Provenance and authenticity and that have not been identified as having been looted or illegally obtained or exported.

## **4. Approval of Acquisitions**

- 4.1 Acquisitions to the Collection are approved by the Board of Trustees or their delegate. The Director has delegated authority to approve Acquisitions within established delegation limits.
- 4.2 All proposed Acquisitions with a Purchase price over the Director's delegation must be approved by the Board of Trustees.
- 4.3 All Acquisitions will be considered on their merit, taking into account the principles and terms of this Policy and the details of the proposed Acquisition, outlined in the Acquisition proposal. Acquisition proposals are prepared by the relevant curator and presented for consideration and endorsement by the Collection Development Committee.

## **5. Acquisition and Accession into the Collection**

- 5.1 MAAS employs a template Deed of Gift. As a rule, Title in a Donation passes when the Deed of Gift is executed by the Donor. Exceptions will be considered and assessed on a case-by-case basis and approved by the Director or her/his delegate and the decision will be documented.
- 5.2 MAAS employs a Purchase Agreement. In the case of Acquisition by Purchase (other than Purchases at auction), Title passes in accordance with the terms of the Purchase Agreement.
- 5.3 For Objects purchased at auction, Title passes in accordance with the terms and conditions of sale established by individual auction houses, including online auction houses and entities.
- 5.4 For Acquisition by Commission, Title passes when the parties intend it to pass, as agreed and documented in the Commissioning contract.

## **6. Methods of Acquisition**

MAAS acquires Objects by donation, Purchase, Bequest, Commission or any other transaction by which legal Title to an Object passes to MAAS. To safeguard the integrity of the Collection and guard against misrepresentation, it is critical that, prior to Acquisition, regardless of method, the Object ownership be thoroughly researched and Due Diligence undertaken as outlined in section 7.1 Provenance and Authenticity.

### **6.1 Donations**

### 6.1.1 *Outright Donation*

6.1.1.1 Any Donation of Objects by an individual or organisation to the MAAS Collection is categorised as a Donation. To make a valid Donation to MAAS, there must be clear intention on the part of the Donor to transfer Title and possession of the Object. It is essential to the validity of a Donation that the transfer of both possession and Title shall be absolute and unencumbered. The Donor is required to sign a standard Deed of Gift, evidencing the Donor's full transfer of Title and possession of the Object, and providing MAAS with a range of warranties and indemnities.

6.1.1.2 MAAS accepts Donations under the Commonwealth Cultural Gifts Program in accordance with the program's procedures.

### 6.1.2 *Promised Donation*

6.1.2.1 A Donor may promise a Donation to MAAS for the MAAS Collection during their lifetime. A promised Donation is a commitment by the Donor to give an Object to MAAS wherein part or all of the receipt of the Donation is deferred until an agreed date(s) in the future.

6.1.2.2 After approval of the promised Donation in accordance with the approval processes outlined in this Policy, the intended transfer of Title and possession will be formalised with the completion by the Donor and MAAS of an agreement outlining the terms of the promised Donation. Title is retained in the Object by the Donor until such time as the Donation is realised. The Donor may retain physical possession of the Object until the Donation is realised or may enter into loan arrangements with MAAS.

6.1.2.3 Should the Object not be in an acceptable condition, or in the event that other factors relating to the authenticity, Provenance or attribution of the Object are not as understood at the time the agreement for the promised Donation was entered into, MAAS reserves the right to not proceed with the Acquisition of the Object.

## 6.2 **Purchases from dealers, private individuals and companies**

Objects may be purchased for the MAAS Collection. Although the transfer of Title is implied in every sale of an Object, a Purchase Agreement must be entered into. The Purchase Agreement sets out the various warranties that the vendor gives to MAAS including the conveyance of Title in the Object, free from encumbrances.

## 6.3 **Purchases at auction**

Objects may be purchased at auction for the MAAS Collection. Purchases at auction are made on the auction house's terms and are not formalised through a MAAS Purchase Agreement. MAAS must undertake Due Diligence as outlined in section 7.1 Provenance and Authenticity, and the auction house's terms of sale must be evaluated for warranty of Title and authenticity in accordance with this Policy.

## 6.4 **Bequest**

Objects may be bequeathed to MAAS. The decision whether to Accession bequeathed Objects is determined according to the Collection Development Policy. Bequests do not have to be accepted. All, some or none of the bequeathed Objects may be Accessioned. MAAS may decide to dispose of bequeathed material in accordance with the Disposal Policy.

## 6.5 **Commission**

MAAS may Commission a person to produce an Object for the MAAS Collection. The terms and conditions of the Commission will be stipulated in the Commissioning contract. The contract must contain clauses to ensure that the execution of the contract affects the transfer of both possession and Title to MAAS and that this transfer is absolute, unencumbered and free of restrictions.

## 6.6 **Other forms of Acquisitions**

Other forms of Acquisition may be considered by MAAS on a case by case basis.

## 7. **Considerations in the Acceptance of Acquisitions**

MAAS undertakes to be open and transparent in its decision making processes and procedures and will practice and demonstrate appropriate standards of Due Diligence when acquiring Objects for the MAAS Collection.

## **7.1 Provenance and Authenticity**

- 7.1.1 MAAS fully supports the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (*UNESCO Convention 1970*) and acknowledges that Australia has ratified the Convention. MAAS also recognises and is bound by the terms of the *Protection of Moveable Cultural Heritage Act 1986* (Cth) and the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth).
- 7.1.2 MAAS will undertake thorough research and Due Diligence before proposing an Object for Acquisition in order to establish Provenance and authenticity, in accordance with established procedures, the Provenance Research at MAAS guidelines and the Due Diligence Checklist for Curators. MAAS adheres to Australian and international best practice, including the Ministry for the Arts *Australian Best Practice Guide to Collecting Cultural Material*, Museum Australia's *Code of Ethics* and the ICOM *Code of Ethics for Museums*.
- 7.1.3 MAAS recognises that the *Protection of Moveable Cultural Heritage Act 1986* (Cth) enacts Australia's obligations under the *UNESCO Convention 1970*. No Objects will be acquired that were unlawfully imported into Australia, or if not yet imported, that would not be eligible to be lawfully imported into Australia.
- 7.1.4 No Object/s will be acquired that has been collected through unauthorised or unscientific excavation of archaeological sites, the destruction or defacing of ancient monuments, historic places or buildings, or the theft from individuals, museums or other repositories.

## **7.2 Consultation**

- 7.2.1 MAAS recognises the importance of consultation in the fulfillment of its obligations under the MAAS Act and MAAS Regulation. MAAS aims to establish relationships of recognition and reciprocity with individuals, groups and communities that retain a connection to Objects acquired for the MAAS Collection. Consultation assists in ensuring the historical, social, spiritual and intellectual property significance of the Objects in the MAAS Collection are considered and acknowledged.
- 7.2.2 Where relevant, MAAS will undertake consultation with appropriate individuals, groups, communities or statutory bodies within Australia as part of Acquisition Proposal and assessment of an Object considered for Acquisition. Consultations will inform whether MAAS will proceed with a proposed Acquisition.
- 7.2.3 MAAS will undertake consultation where the Object was created by an Aboriginal or Torres Strait Islander artist, designer, individual or group, or contains Aboriginal or Torres Strait Islander themes, representations or content, relates to an Aboriginal or Torres Strait Islander community or to the traditional knowledge, cultural expressions or beliefs of Aboriginal or Torres Strait Islander peoples.
- 7.2.4 MAAS acknowledges that Objects may hold special value, significance and meaning for Aboriginal and Torres Strait Islander individuals, groups and communities and MAAS will adhere to the *United Nations Declaration of the Rights of Indigenous Peoples*, including in regards to consultation, participation and prior informed consent in relation to Acquisitions of Objects or activities of any kind undertaken by MAAS that may impact on Aboriginal and Torres Strait Islander peoples.
- 7.2.5 Consultations in relation to Objects considered for Acquisition will be in accordance with this Policy, and the Indigenous Cultural and Intellectual Property (ICIP) Protocol.

## **7.3 Condition and Care**

MAAS acquires Objects for the MAAS Collection where it has the capacity to store, manage, document and preserve those Objects, including the management of any risk to health and safety posed by the Object.

## **7.4 Conditional Acquisitions**

Conditional Donations or Bequests encumbered by conditions or restrictions will be discouraged. Donors will relinquish all rights, excepting copyright, to the Objects they donate, except in exceptional circumstances in which an exemption is granted by the Director.

## **7.5 Conflict of Interest**

All Acquisitions of Objects by any method from MAAS Trustees, employees and related parties must be disclosed and documented at all stages of the process of endorsement and approval of the Acquisition. MAAS Trustees and employees must exclude themselves from any discussion or decision by the Collection Development Committee, MAAS Executive or Board of Trustees in relation to Acquisitions in which they or related parties are involved. Any such exclusion will be documented.

## 8. Record Keeping

In accordance with the Records Management Policy and associated procedures, MAAS will maintain records for each new Acquisition, including proposed Acquisitions that are not approved. These records will include information on approval processes, key decisions, consultations, transactions, negotiations, Provenance, Due Diligence undertaken including copies of all research and documentation compiled, and signed Deeds of Gift, Purchase Agreements and any other agreements in relation to the relevant Acquisition. All records will be kept securely and permanently by MAAS.

## 9. Compliance

MAAS staff involved with Acquisitions and Accessions will be informed of all relevant MAAS policies and procedures and conform to those policies and procedures at all times.

## 10. Roles and Responsibilities

**Board of Trustees:** Formally approves new MAAS Acquisitions, in accordance with the MAAS Act.

**Director:** Formally approves new MAAS Acquisitions on behalf of the Board of Trustees within established financial delegation.

**Collection Development Committee:** Reviews and endorses Acquisition Proposals, including Due Diligence assessments.

**Head of Strategic Collections:** Has overall responsibility for ensuring that MAAS Collection Acquisition and Accession is undertaken in accordance with this policy and related plans, policies and procedures.

**Head of Curatorial:** Has overall responsibility for ensuring that MAAS acquires Objects into its Collection according to the collecting criteria and collecting priorities in the Collection Development Policy, undertakes thorough research and Due Diligence for proposed Acquisitions and provides endorsement for Acquisition approval.

**Curators:** Undertakes thorough research and Due Diligence for proposed Objects in order to establish Provenance and authenticity during the Acquisition process and prepare Acquisition documentation for approval by the Collection Development Review Committee.

**Registrars:** Manages formal Accession of new Acquisitions into the MAAS Collection.

## 11. Definitions

**Aboriginal and Torres Strait Islander Collection Management Reference Group:** A committee that advises MAAS on matters relating to Aboriginal and Torres Strait Islander issues of relevance to MAAS, including Objects of cultural significance held in the MAAS Collection or loaned to MAAS.

**Accession:** The act of processing and documenting an Object into the Collection.

**Acquisition:** The process of obtaining legal Title to Objects. Objects can be acquired through various methods including but not limited to Donation, Purchase, Bequest or Commission.

**Bequest:** A Donation or pledge made to MAAS, forming part of a Donor's will, to be received after the Donor's death.

**Board of Trustees:** Comprising nine Trustees, the Board is established and its powers, authorities, duties and functions defined under the MAAS Act.

**Commission:** The process whereby MAAS contracts a creator to create an Object or work. Not all Commissioned Objects must be acquired.

**Deed of Gift:** A formal, legally binding agreement that establishes transfer of Title to an Object when given to MAAS as a Donation and outlines the terms and conditions of the Donation and its acceptance.

**Donation:** The gratuitous transfer of property and Title in an Object.

**Donor:** An individual, organisation or group who has made or is proposing to make a Donation to MAAS.

**Due Diligence:** Due Diligence means the thorough assessment of an Object to evaluate its authenticity, ownership and Provenance and to identify and assess any gaps.

**MAAS Collection or Collection:** The acquired Collection of material and Objects owned by MAAS.

**Provenance:** The history and ownership of an Object from the time of its discovery or creation to the present day, which assists in the assessment of authenticity and ownership.

**Purchase:** The Acquisition of property and Title in an Object through the exchange of money or consideration.

**Purchase Agreement:** A legally binding contract which outlines the rights, obligations and undertakings of a seller of an Object and outlines the terms and conditions of the sale and the transfer of both property and Title.

**Title:** The legal right to ownership of property.

**Trustee:** A person appointed as a member of the Board of Trustees in accordance with the MAAS Act.

## **12. Related Museum plans, policies and/or procedures**

- Aboriginal and Torres Strait Islander Repatriation Policy
- Archives Policy
- Australian Indigenous Cultural and Intellectual Property (ICIP) Protocol
- Collection Development Policy
- Collection Information Management and Access Policy
- Collection Management Policy
- Collection Management of High Significance Objects Policy
- Conflict of Interest Policy
- Conservation Policy
- Deaccession Policy
- Disposal Policy
- Outgoing Loans Policy
- Records Management Policy
- Restitution Policy
- Stocktaking Policy
- Storage and Access Policy
- Third Party Copyright Policy
- MAAS Reconciliation Action Plan
- Provenance Research at MAAS guidelines

The latest version of any Policy or legislation referred to will apply.

### 13. Relevant legislation and external context

This Policy should be read in conjunction with the following:

- *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth)
- Pacific Islands Museums Association – *Code of Ethics for Pacific Museums and Cultural Centres 2006*
- Australian Government, Attorney General’s Department, Ministry for the Arts – *Australian Best Practice Guide to Collecting Cultural Material 2014*
- *Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (Amendment) 1979*
- *Environment Protection and Biodiversity Conservation Act 1999* (Cth)
- *Income Tax Assessment Act 1997* (Cth)
- International Council of Museums (ICOM) – [Code of Ethics for Museums](#) 2013
- Museum of Applied Arts and Sciences – *MAAS Strategic Vision 2020* 2014
- *Museum of Applied Arts and Sciences Act 1945* (NSW)
- *Museum of Applied Arts and Sciences Regulation 2012* (NSW)
- Museums Australia Incorporated – [Code of Ethics](#) 1999
- Museums Australia – *Continuous Cultures Ongoing Responsibilities: A Comprehensive Policy Document and Guidelines for Australian Museums Working with Aboriginal and Torres Strait Islander Cultural Heritage*, Museums Australia 2005
- *Personal Properties Securities Act 2009* (Cth)
- *Protection of Movable Cultural Heritage Act 1986* (Cth)
- *Public Authorities (Financial Arrangements) Act 1987* (NSW)
- *Public Finance and Audit Regulation 2010* (NSW)
- *Public Finance and Audit Act 1983* (NSW)
- *State Records Act 1998* (NSW)
- UNESCO – *Convention for the Safeguarding of the Intangible Cultural Heritage* 2003
- UNESCO – *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property* 1970
- UNESCO Red List
- UNIDROIT – *Convention on Stolen or Illegally Exported Cultural Objects* 1995
- United Nations – *United Nations Declaration on the Rights of Indigenous Peoples* 2007

The latest version of any Policy or legislation referred to will apply.

### 14. Responsible Officer

Registration Manager

### 15. Responsible Department & Unit

Curatorial, Collections & Exhibitions department, Strategic Collections team

### 16. Amendment history

Version	Date issued	Notes	By
1	21/07/2016		Executive