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## National Gallery Amendment Bill 2002

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I N F O R M A T I O N   A N D   R E S E A R C H   S E R V I C E S

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National Gallery Amendment Bill 2002

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# National Gallery Amendment Bill 2002

**Date Introduced:** 25 September 2002

**House:** Senate

**Portfolio:** Arts and Sport

**Commencement:** The day after Royal Assent

## Purpose

To amend the *National Gallery Act 1975* to enable the National Gallery of Australia to make a gift of a work of art, whether or not it has a saleable value, with the approval of the Gallery Council and the Minister.

## Background

Section 9 of the *National Gallery Act 1975* (the Act) provides for the disposal of a work of art that is unfit for, or no longer required as part of the national collection. Disposal is to be by way of sale, gift, or destruction. However, the Act also states that the Gallery shall not make a gift of a work of art unless the work has no saleable value.

This Bill proposes to amend the Act to allow for the gift of works with a saleable value. According to the second reading speech of the Parliamentary Secretary to the Treasurer, Senator the Hon Ian Campbell, this measure is expected to broaden the scope for making gifts of works to other institutions, including regional galleries within Australia.<sup>1</sup>

## Disposal of works of art by the National Gallery of Australia (NGA)

The Council of the NGA approved a Disposal Policy in April 1995.<sup>2</sup> The objectives of the NGA Disposal Policy are to:

- dispose of works of art by exchange or transfer in order to refine and improve the Gallery's collections<sup>3</sup>
- transfer works that may be better placed in another gallery or similar public collecting institution, and

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- de-accession works of art, using the financial proceeds, if any, for collection development and improvement.<sup>4</sup>

The purpose of review and disposal is to improve the quality of the collection. The decision to dispose of a work is made by the Gallery Council and approved by the Minister. When considering a work for disposal the Council must consider, among other things, whether:

- the significance or aesthetic merits of the work fall below the general level of the collection
- the work lowers the overall level of quality or representation of an artist or any area of the collection
- the work has deteriorated to such an extent that it is no longer able to be exhibited and is beyond restoration to an acceptable standard
- the work has been found to have been falsely documented, described or attributed, or is a forgery
- the work is duplicated in the collection where duplication serves no scholarly or educational purpose. A duplicate means a work produced as a multiple or in an edition, for example a work struck from the same die or printed from the same block or plate
- the work is one that is no longer representative of the collection as characterised by the Gallery's Acquisition Policy at the time of disposal.

The Gallery does not dispose of a work by a living artist except with the written permission of the artist. A work which was the subject of a gift or a bequest is not disposed of without first obtaining the consent of the donor, the relevant trustee or the personal representative of the donor's estate, where this is possible. Details of the disposal of any works of art are included in the Gallery's annual report which is tabled in Parliament.

In 1998 the Australian National Audit Office (ANAO) conducted a performance audit of the country's major collecting institutions, the National Library of Australia, the National Gallery of Australia, the National Museum of Australia, and the Australian War Memorial. In its report entitled *Safeguarding Our National Collections*,<sup>5</sup> the ANAO found that disposal was not a high priority activity of any of the institutions it examined.<sup>6</sup> It reported that since 1990 the Gallery had disposed of only one work of art<sup>7</sup> which was returned to its previous owner.<sup>8</sup> The ANAO recommended that in order to ensure the continuing quality of its collections, the Gallery along with the other collecting institutions, should allocate a higher priority to identifying items for possible disposal.<sup>9</sup>

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The latest annual report of the NGA records that Ministerial approval was obtained to dispose of 670 objects during the financial year 2001-2002. Items disposed of comprised a group of 20 photographs by an unknown artist of the 19<sup>th</sup> century and an archive of 285 glass and 365 film negatives.<sup>10</sup>

### NGA's programs of co-operation with other Australian galleries

The NGA has an extended program of loans of works of art to other galleries and through touring exhibitions. The latest annual report of the Gallery states that during 2001-2002 the Gallery lent more than 2000 works for exhibition, including travelling exhibitions and works lent to Commonwealth official residences.<sup>11</sup>

In October 2002 the NGA announced that as part of the celebration of its twentieth anniversary, the Gallery would be sending some of its most treasured works to 20 galleries around the country over the next twelve months. The program was given the name 20/20 after the NGA asked the directors of 20 state and regional galleries to choose their top three works from a list of 20 possibilities. The works available include some of the Gallery's most valuable and most popular works. Galleries to be lent a major work from the NGA's collection include the State galleries and regional galleries in Kalgoorlie, Bunbury, Darwin, Alice Springs, Cairns, Rockhampton, Mount Gambier, Albury, Broken Hill and Launceston.<sup>12</sup>

In November 2001 the NGA jointly purchased with the Tasmanian Museum and Art Gallery an early Australian colonial painting by John Glover. This was the first joint acquisition made by the NGA and the two galleries will share the painting for six months each year.<sup>13</sup> The purchase of the painting at auction was investigated by the Australian Competition and Consumer Commission (ACCC) for possible collusion and price fixing between the galleries. In December 2002 the Chairman of the ACCC, Professor Alan Fels, stated that 'whilst it [the ACCC] will not be taking any further action at this stage, it may do so in the future should new information come to light'. The ACCC's legal advice was that the NGA was subject to the Trade Practices Act 'like any other business'. He is reported as saying that '[i]f museums get together and make agreements about buying, they have to be extraordinarily careful to avoid breaching the law. They would be well advised to have good legal advice before collaborating on buying decisions'.<sup>14</sup>

## Main Provisions

**Item 1** amends subsection 9(4) of the *National Gallery Act 1975* to allow the National Gallery of Australia to dispose of works by gift, even if those works have a saleable value. The Bill does not affect the requirement that the NGA must still have the approval of the Gallery Council and the Minister before it makes any gifts of works of art.

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## Endnotes

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- 1 Sen the Hon Ian Campbell, 'Second Reading Speech', National Gallery Amendment Bill 2002, Senate, *Debates*, 25 September 2002, p. 4800.
- 2 Amended by the Council at its meeting in December 1995.
- 3 Section 10 of the Act enables the NGA to exchange a work of art in the national collection for another work of art, with the approval of the Gallery Council.
- 4 National Gallery of Australia, *Into the new millennium: Corporate Plan 1999-2001*.
- 5 Australian National Audit Office, 'Safeguarding our national collections', *Audit Report* No. 8, 1998-99.
- 6 *ibid.*, p. 49.
- 7 *ibid.*, p. 49.
- 8 *ibid.*, p. 51.
- 9 *ibid.*, p. 50.
- 10 National Gallery of Australia, *Annual Report 2001-2002*, p. 22.
- 11 National Gallery of Australia, *Annual Report 2001-2002*, p.4. Details of loans to other galleries are listed in the Annual Report on pages 124-127.
- 12 'NGA art works to be shown around the nation', by David Meagher, *Australian Financial Review*, 3 October 2002; 'Nerves on edge as Ned Kelly crosses the Nullarbor', by Sophie Douez, *The Age*, 10 December 2002; 'Elvis joins Kelly gang and goes bush', by Misha Schubert, *Australian*, 10 December 2002.
- 13 'Galleries club together for a \$1.78m slice of history', by Geoff Maslen, *Sydney Morning Herald*, 28 November 2001. The painting was John Glover's *Mount Wellington and Hobart Town from Kangaroo Point* (1831-1833).
- 14 'Gallery in clear on Glover buy', by Penny Brown. *Australian*, 11 December 2002.

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