



# Cultural Gifts Program—code of conduct for valuers

## Section 30-210 of the *Income Tax Assessment Act 1997*

### Background

The aim of the Cultural Gifts Program (the Program) is to encourage the transfer of ownership of culturally significant items from private collections to public institutions.

This Code of Conduct for Valuers will ensure the effective operation of the Program. The Code is consistent with, and supplements, the Cultural Gifts Program Guide issued by the Department that administers the Program, currently the Department of Communications and the Arts. This Code of Conduct for Valuers includes any attachments.

The Department acknowledges that valuers may already comply with existing codes of ethics developed by professional associations with which valuers may be affiliated. This Code is intended for the purposes of the Cultural Gifts Program. Where there is a conflict between provisions of this Code and any other codes of ethics, the provisions of this Code will prevail to the extent of any inconsistency for the purposes of valuations carried out for the Program.

### Attribution of status as an approved valuer for the Cultural Gifts Program

Valuers referring to their approval as an approved valuer under the Cultural Gifts Program must clearly state that the approval is only for certain specified classes of property in relation to this Program. Valuers must only use the wording 'Approved to value [class(es) of property] for the Australian Government's Cultural Gifts Program'. Any other wording may only be used with prior written approval of the Secretariat.

### What standard of conduct is expected of valuers?

1. Valuers must act in accordance with the highest ethical standards, any applicable professional standards and in a manner that will withstand public scrutiny in providing a valuation under the Program. Valuers should be familiar with the Program Guide and the relevant provisions of the *Income Tax Assessment Act 1997*.

## Conflicts of interest

A valuer who has been the agent of an artist or donor within the last three years should not provide a valuation unless prior approval has been given by the Department.

2. For the purposes of the Cultural Gifts Program, a conflict of interest includes a perceived conflict of interest. This occurs where a reasonable person looking at all the relevant facts and circumstances, would think that there was a real and sensible possibility of conflict between the valuer's personal or business interests and his or her obligations as a valuer under the Program.
3. Valuers should not engage in any behaviour or undertake any valuation where there is a risk of a conflict of interest.
4. Valuers must sign a Valuer Private Interests Assurance form to declare any circumstances involving an actual or perceived conflict of interest. If valuers become aware of any circumstances where a real or perceived conflict exists then they must bring the matter to the Secretariat's attention as soon as is practicable.
5. Valuers must advise the Department of any direct involvement in the previous purchase or sale of material they are valuing. In these circumstances the valuer should ensure that there is particular emphasis on providing evidence substantiating current valuations. Alternately you may prefer to decline to provide valuations of this material if the purchase or sale is recent and you feel that this may give rise to a perception of a conflict of interest.
6. If you feel that you may have a conflict of interest, you may feel it more appropriate to decline to undertake a valuation. Remember that a perception of a conflict of interest can be just as damaging to the reputation of the Cultural Gifts Program as an actual conflict of interest.
7. Valuers who are either members of the governing body or staff of a receiving institution (including permanent, contract or voluntary staff or who are related to such members) must not value gifts to the institutions with which they are associated.

## Valuations

8. Valuers are under no obligation to value a gift, however if a valuer agrees to undertake a valuation, the valuer should ensure that the valuation is completed in accordance with the requirements of the *Income Tax Assessment Act 1997* and that all documentation is accurately and correctly completed and provided to the institution within the times specified in the Act. Valuers should also address any further queries from institutions in a timely and expedient manner to ensure that donations are finalised as soon as possible.
9. Valuers must carry out valuation work expediently with diligence and competence, using their skill, judgment and expertise and should act at all times with honesty, integrity and impartiality.
10. Valuers must be objective in providing valuations and must undertake them independently and without collusion or the appearance of collusion. In particular, valuers must not accept instructions to undertake valuations that are contingent upon a predetermined result. Any valuations which suggest that the participants have acted in a collusive manner could be contrary to the *Trade Practices Act 1974*.
11. Valuers must not undertake valuations outside the strict boundaries of the classes of property for which they are approved unless prior written approval for the particular valuation has been given by the Secretariat.
12. Valuers must undertake valuations in accordance with the *Income Tax Assessment Act 1997*. Valuers must ensure that the value attributed is the GST inclusive market value of the property at the date of the gift, or the date of valuation (provided the valuation was done within 90 days before or after the date the gift was made).

13. Valuers must not use previous valuations for the Cultural Gifts Program as a basis for other valuations under the Program.

## How do I determine the 'value' of property for the purposes of the Cultural Gifts Program?

The Australian Taxation Office has determined that the 'value' of property will be taken to be 'what a willing, but not anxious, vendor and a willing, but not anxious, purchaser could reasonably be expected to agree for the transfer of the property. This assumes the existence of such a vendor and purchaser both uninfluenced by any consideration of sentiment or need' (Coppleson v FCT (1981) 11 ATR 472).

In some cases, property cannot be sold due to legal restrictions, so there is no 'market' as such. In those cases, the above definition does not provide an appropriate model. The Australian Valuation Office has advised that in cases where property cannot legally be sold, but where there is no impediment to the property being gifted under the Cultural Gifts Program, valuers should assume a 'hypothetical market'. This consists of making a hypothetical inquiry as to the point at which a desirous purchaser and a not unwilling vendor would come together and isolating the value of the [property] to be transferred from factors that are extraneous to the purpose for which such a value is to be ascertained, so that the value is the net benefit which the transaction confers on the purchaser (Cmr of State Revenue v Pioneer Concrete: HCA 2002).

The Administrative Appeals Tribunal has recognised that it is 'difficult to fix a value for cultural materials because of a lack of guidance from a market in such goods' and that the process of valuation 'necessitates converting the intrinsic qualities of property to an amount in monetary terms' (91 ATC 264).

## How do I make a valuation?

Valuers must determine a 'GST inclusive market value of the property' the valuer has been asked to value. This should be based on thorough and comprehensive research and available information, particularly recent sales information (note, you must use actual sales and not asking prices). It is extremely important to provide substantiation and justification to support your valuations.

In preparing your valuation, you should ensure that you undertake your own inquiries and assessments and do not rely on those of other valuers. It is particularly important that you act independently so that you cannot be taken to have colluded with other valuers. You should not be influenced by any desire or pressure from either donors or institutions to have a higher price attributed to the donation than you feel is warranted and supported by available evidence, as it is crucial that the valuer act and be seen to act in a manner independent from the interests of the institutions or donors commissioning valuations.

## How should I value a collection?

There are no categorical 'rules' for valuing collections. However, the valuation should be based on the collection as a whole. Valuers should use a clear methodology and provide an explanation to support the methodology used. Individual items valued at \$500 or more must be itemised. Additional guidance is provided at Attachment A.

## Should I value anything else in accordance with Guidelines?

Valuers must comply with any general valuation guidelines provided by the Department and any specific guidelines for valuing certain material provided by the Department, either or both of which will be notified by posting on the website at <https://www.arts.gov.au/what-we-do/cultural-heritage/cultural-gifts-program-overview/cultural-gifts-program-valuers>. In this regard, please note that specific Guidelines exist and should be referred to when valuing scientific journals, manuscripts and other paper-based documentary material, aircraft, film and video material, photographic material and new and multimedia material. These are in Appendix P of the Cultural Gifts Program Guide and should be used in conjunction with the definitions in Appendix O. They are reproduced in Attachment B.

## When should I make a valuation?

The valuation must be the amount that the valuer determines to be the market value of the property on the day the gift is made to the institution or on the day the valuation is made. However, if the value is stated as being on the day the valuation is made it must have been made within 90 days before or after the gift was made to the institution. This is a requirement of the *Income Tax Assessment Act 1997*.

## What should I bear in mind if I am asked to prepare a valuation?

Expediency! Institutions and donors want the Department to consider donations as soon as possible. If you will not be able to undertake the valuation within a reasonable time, advise the donor or institution of this. They may prefer to approach another valuer.

Also, you should be aware that the Department on occasion requests further information from valuers following consideration at their meetings. This occurs mainly when the Department feels that the valuer has not provided sufficient supporting evidence to substantiate a valuation. Adequate documentation is vital, particularly where valuers are relying on their own knowledge and experience in the absence of published and other documentary evidence.

Where valuers are using comparison evidence they should clearly state this and demonstrate how the comparison evidence relates to the item being valued. The more thorough and comprehensive your supporting documentation is, the less likely it is that you will be asked for further information about your valuation.

Both initial valuations and additional requested information from institutions on behalf of the Secretariat should be provided in a timely manner to ensure that donations are not unduly held up.

## Agreement to comply with Code of Conduct for Valuers

I have read and understood this Code of Conduct for Valuers. In applying to be an approved valuer for the purposes of the Cultural Gifts Program I agree to comply with the Code of Conduct for Valuers as in force from time to time.

Signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Date: \_\_\_\_\_

## Attachment A

### Guidelines for valuing Collections of donated material (not fine art items)

#### Valuation of collections

Valuations of collections should be based on the collection as a whole. Valuers should use a clear methodology and should provide an explanation to support the methodology used. Individual items valued at \$500 or more must be itemized.

Examples of sales cited to support the assigned value should be of comparable collections, where possible, rather than individual items.

Due to the unique nature of a collection, it is often not possible to cite examples of sales of that exact material and accordingly, comparable collections should be cited as examples. Valuers should provide justification supporting the use of these collections as being comparable to the collection being donated.

Valuations must not be based on speculation as to what the material might fetch if sold in the future but rather on hard evidence of what the collection, or a similar collection, has sold for in the recent past.

Supporting material included in a collection may impact on the overall value, eg letters and papers may support medals and trophies awarded for sporting achievements. Valuers should clearly state the impact that supporting material has on the overall value of the collection and cite examples where this has occurred in comparable collections.

#### Presentation of documentation for collections

The use of spreadsheets attached to forms is acceptable. It is important that a complete list of items being donated is attached to the Donation Summary/Certificate of Donation and a separate list attached to each Valuation Certificate with the valuer's valuation figures included. Valuers may wish to break items into categories and provide averages across the categories. Valuers should not complete separate Valuation Certificates for each item in a collection.

Institutions requesting valuations must provide a list of items to each valuer. Valuers must use the list provided and ensure that the items remain listed in the same order throughout the documentation so that the Secretariat can make a comparison of values assigned to particular items.

Sub-totals and totals of valuations must be included on all forms, spreadsheets and attachments.

Images of a representative selection of items in the collection must be provided to assist the Secretariat to understand the nature of the collection.

## Attachment B

### Guidelines for valuing certain kinds of property

[These guidelines are reproduced from the Appendix E of the Cultural Gifts Program Guide.]

The Secretariat is aware that difficulties exist with respect to the valuation of certain kinds of property because they have a limited commercial market. The following guidelines for valuing scientific journals, manuscript and other paper-based documentary material, aircraft, film and video material, photographic material and new and multimedia art material have therefore been developed in consultation with valuers and other experts. These guidelines should be referred to when valuing donations in these particular classes.

In all property areas, valuers should assess the GST inclusive market value in accordance with the guidance under 'How do I determine the value of property for the purposes of the Cultural Gifts Program', and should not take into account any special requirements of the donor or the recipient institution. Unless stated otherwise, valuations should be based, where possible, on prices paid by collectors or similar material. All valuations must be substantiated. Valuers of large collections, such as film and video material or manuscripts, should also include a breakdown of the various components and the extent to which factors have affected the monetary value (see 'Valuation of collections').

### Guidelines for the valuation of scientific journals

Specific guidelines for the valuation of scientific journals include the following.

Valuations should be based on current listings of second-hand journal sales in Australia where these are available. Wherever possible valuers must be able to substantiate values on the basis of sale prices.

In the absence of a second-hand market, valuations may take into account the cost of replacement issues or whole runs of journals.

Where the journals are available online, on CD-ROM or on microform, this should be taken into account. The replacement cost of hard copy would usually be higher and should not be taken into consideration where an alternative is available.

Complete runs of journals are more valuable than broken runs or odd issues and bound copies of sets are more valuable than unbound.

Scientific journals are valuable primarily for the information they contain, seldom for scarcity or curio reasons—except early publications, for example from 17th to 20th century—so a buyer would not expect to pay more than the current subscription price. The following factors should also be taken into account in valuing scientific journals:

- current listings of overseas second-hand sales (these are to be cited)
- original price modified up or down by rarity considerations, and
- current subscription price (in cases where several rates are available, the rate paid by the donor—that is, the individual subscription price—should be referred to).
- Guidelines for the valuation of manuscript and other paper-based documentary material

Specific guidelines for the valuation of manuscript and other paper-based documentary material include the following.

- When large collections are valued the Secretariat considers that comparisons with other sales of large collections are more relevant in establishing current market value than multiplying the sale prices for individual items by the number of items being donated.

For example, a collection of 500 letters might sell at auction for \$4000 but if the collection was to be broken down into smaller components for sale the average of the unit price might be a good deal higher than \$8. The Secretariat therefore requires examples of sales of comparable sales of large collections.

- The following factors should also be taken into consideration:
  - condition of the material
  - research value of the material, including its perceived relevance to scholars and students in the future
  - importance of the owner of the material (breadth and range of the person's career in their particular field)
  - richness and range of material, such as the extent that the material provides evidence of the creative process or is a comprehensive collection of the author's work and personal papers (documents covering the author's whole lifetime would have a higher value than material covering only the last few years)
  - whether the material is handwritten (as this is clear evidence of authorship and may also show amendments and the creative process)
  - whether the material is a first draft (which is deemed to have a higher value) or edited material
  - who holds the copyright, and
  - ease of access to material/restrictions on use.

## Guidelines for the valuation of aircraft

Specific guidelines for the valuation of aircraft include the following.

- Valuations should be based on recent published sales figures, both oral (suitably documented) and written, provided by reputable aircraft brokers. Insurance and replacement values may not serve as the basis for establishing valuations.
- Comparable values should relate to the preceding five years and should reflect the Consumer Price Index and market adjustments.
- Overseas market prices, quotations and sales figures should be quoted when domestic values are unavailable. In such instances (as with domestic market prices), they should be adequately referenced and reflect currency, regional and market variations. They should also reflect the remaining hours of certification of the principal components of the aircraft since its last inspection.
- As valuers are expected to authenticate material being valued it is preferred that they see the original object. Where difficulties of access arise, an aircraft may be valued 'sight unseen' provided the valuer can adequately substantiate authenticity, condition and provenance, and is satisfied with the veracity of the information supplied by the donor and/or recipient institution.

- The following factors should also be taken into consideration when valuing aircraft:
  - complete, original and/or serviceable aircraft can be more valuable than modified and unserviceable aircraft
  - operational and prototype aircraft can be more valuable than training, production and/or instructional variants, and
  - the commercial worth, rarity, scarcity and historicity of an aircraft may affect the valuation. For example, although a value would normally fall when an aircraft becomes obsolete and is no longer sought for commercial purposes, that value may increase if an aircraft becomes a rare example of historical or technological significance.

## Guidelines for the valuation of film and video material

Specific guidelines for the valuation of film and video material include the following.

- Valuations for incomplete films/excess footage/out-takes would be expected to be less than for complete works and will need more substantial justification.
- Cinema features (both documentary and drama) should be valued in terms of the physical material only and should not include an enhancement factor for the higher costs associated with their production.
- Release prints should be valued at cost price except in circumstances where the original/ master copy is no longer in existence.
- Valuers may apply a maximum rate derived from current royalty fees charged by stock shot libraries.
- Valuers should also take into account all of the following factors:
  - base material (for example, nitrate, video, acetate) and condition of the material (including potential for preservation)
  - age, rarity and cultural significance of the material
  - origin of the material (Australian or other)
  - image only (sound track missing) or image not synchronised accurately (this does not relate to silent film)
  - in the case of collections of film material, the extent to which the collection is complete (that is, are there missing components or episodes?)
  - extent and quality of accompanying documentation (for example, includes shot-by-shot scene descriptions with footages)
  - historical and research value, including its perceived relevance to scholars and film-makers in the future
  - who holds the copyright and whether copyright is included in the donation
  - ease of access to material/restrictions on use, and
  - additional complementary material such as publicity documents/production correspondence.

## Guidelines for the valuation of photographic material

Specific guidelines for the valuation of photographic material include the following factors:

- condition of the material
- physical nature of the material—for example, prints or negatives
- date prints were made from the negatives
- provenance
- primary inscriptions (work that is signed in the photographer's own hand)
- whether the photographic material forms part of a collection/part of a portfolio (noting that in some instances the overall market value of a large volume of material may be less than the sum total of the established value for individual components)
- significance of the subject matter (an identified person, place or event)
- rarity of subject
- age of material (for example, a vintage or modern print)
- nature of material (for example, documentary/social history collection)
- importance of photographer (breadth and range of the person's career in their particular field)
- quality of material, including technical skill of photographer
- historical and research value
- degree of accompanying documentation
- suitability for reproduction
- copyright status (if copyright is not transferred, this may reduce the value), and
- ease of access to material; any restrictions on use.

## Guidelines for the valuation of new and multimedia art material

As the field of contemporary art expands, it is clear that the existing categories of possible donations under the Cultural Gifts Program do not adequately address the range of media and materials with which artists currently work.

To better reflect contemporary practices the following information has been included. However, it is acknowledged that these guidelines will need to continue to evolve so that they reflect contemporary art practices.

For example, requirements relating to the documentary evidence of limitations and licences were being clarified at the time of this guide going to print. Once these requirements have been clarified they will be published and distributed on the Cultural Gifts Program website at: [www.arts.gov.au/cgp](http://www.arts.gov.au/cgp).

Please note the material that has been assembled below has been developed taking into account the publication *In Repertoire, A guide to Australian new media art* (Australia Council for the Arts, 2003).

Incorporated into the Glossary of Terms in the Program Guide (Appendix O) are some new terms to assist valuers and collecting institutions to ensure that there is consistent and, for the purposes of the Cultural Gifts Program, agreed use of terminology to describe the works of art being gifted.

The Secretariat would appreciate any comments valuers, artists, donors and institutions may provide with a view to better adapting these guidelines and terminology to this new and emerging field of artistic endeavour.

Two general considerations should be taken into account in the valuation of new and multimedia art material:

1. the Cultural Gifts Program should not be used as a vehicle for creating a de facto market for an artist, and
2. valuers must define the terms they use.

The following should also be taken into account when valuing new media art materials:

- cultural significance of the material
- origin of the material (Australian or other)
- evidence of authenticity and history of ownership of the material
- whether the copyright is being donated with the material
- physical nature and age of the material
- condition of the material, including its potential for long term preservation
- extent and quality of accompanying documentation (for example, floor plan, photographs, operating manual, wiring diagram)
- equipment required to display the work and whether this restricts its use
- scope of the recipient institution's rights of usage of the item (for example, whether the institution can duplicate it freely or use the material without restriction to display it in an exhibition environment, or whether the institution has the rights to reproduce the contents for sale)
- whether the original work is able and permitted to be reinstalled or reassembled in places other than the original site
- format, especially for electronically or digitally stored works (for example—master, submaster, exhibition copy), and
- rarity/exclusivity (for example limited edition works)—indicate how many other copies exist.