

MAAS Aboriginal and Torres Strait Islander Repatriation Policy

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1. Policy Statement

This Policy provides a framework for the Museum of Applied Arts and Sciences (MAAS) to respectfully manage requests for the Repatriation of Aboriginal and Torres Strait Islander Cultural Property within the MAAS Collection to be returned to the Traditional Owners/Rightful Custodians. MAAS complies with Australian legal requirements and ethical standards in relation to the Repatriation of Aboriginal and Torres Strait Islander Cultural Property, including adherence to the principles outlined in the *Australian Government Indigenous Repatriation Policy 2013* recognising the value and importance of preserving, revitalising and strengthening Aboriginal and Torres Strait Islander culture. MAAS is committed to repatriating Aboriginal and Torres Strait Islander Cultural Property to the Traditional Owners/Rightful Custodians where possible.

2. Application

This Policy applies to the Repatriation of Aboriginal and Torres Strait Islander Cultural Property held within the MAAS Collection to the Traditional Owners/Rightful Custodians. Where claims for Repatriation are received for objects in MAAS custody or care as Incoming Loans, in addition to this Policy, the terms of the Incoming Loans Policy will also apply.

3. Preface

MAAS recognises that Aboriginal and Torres Strait Islander Cultural Property is of immense value to Aboriginal and Torres Strait Islander people and communities. The following principles are intended to afford respect and fairness to the processing of Repatriation claims and to strengthen and foster relationships with Aboriginal and Torres Strait Islander people and communities on an ongoing basis to ensure Aboriginal and Torres Strait Islander Cultural Property in the MAAS Collection is appropriately managed.

To the best of MAAS knowledge, all Aboriginal and Torres Strait Islander Cultural Property in the MAAS Collection has been acquired ethically and in accordance with legal and cultural processes. Where MAAS receives a request for Repatriation of Aboriginal and Torres Strait Islander Cultural Property, this Policy provides a framework for processing a claim.

4. Ethics and Governance

- 4.1 MAAS acknowledges and recognises the continuing connection that Aboriginal and Torres Strait Islander people have to Aboriginal and Torres Strait Islander Cultural Property held in the MAAS Collection.
- 4.2 MAAS also acknowledges and recognises that Aboriginal and Torres Strait Islander peoples have the right to maintain, control, protect and develop the cultural and intellectual property rights of their heritage as recognised in the *United Nations Declaration on the Rights of Indigenous Peoples 2007*.
- 4.3 MAAS is committed to the Repatriation of Aboriginal and Torres Strait Islander Cultural Property where possible, once it is established that the claimant is the Traditional/Rightful Owner.
- 4.4 MAAS fully supports the UNESCO *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970* and recognises that Australia has ratified the Convention. MAAS also acknowledges and is bound by the *Protection of Cultural Objects on Loan Act 2013* (Cth).
- 4.5 MAAS will not seek to acquire or knowingly borrow any Aboriginal and Torres Strait Islander Cultural Property that may have been unlawfully appropriated or illicitly traded and undertakes the highest standards of due diligence, including ethical and professional practice, and in accordance with applicable law to ensure all MAAS acquisitions and loans are legitimate and legal.
- 4.6 MAAS will strive to provide Aboriginal and Torres Strait Islander stakeholders with information about, access to and involvement with Aboriginal and Torres Strait Islander Cultural Property held in the MAAS Collection.
 - 4.6.1 Where the Provenance of the Aboriginal and Torres Strait Islander Cultural Property in the MAAS Collection is known, MAAS will work with the Traditional Owners/Rightful Custodians and the MAAS Aboriginal and Torres Strait Islander Collection Management Reference Group and relevant stakeholders to determine the appropriate procedures for access, loan, storage

and display of the Aboriginal and Torres Strait Islander Cultural Property. Access to Aboriginal and Torres Strait Islander Cultural Property in the MAAS Collection may be restricted if appropriate, in accordance with the Collection Storage and Access Policy.

4.6.2 Where the Provenance of Aboriginal and Torres Strait Islander Cultural Property held in the MAAS Collection is unknown, MAAS will work with the MAAS Aboriginal and Torres Strait Islander Collection Management Reference Group to undertake Provenance research to attempt to determine and locate the Traditional Owners/Rightful Custodians, where appropriate. This may involve making the Provenance of Aboriginal and Torres Strait Islander Cultural Property public and, where possible, notifying potential claimants. MAAS will work with the MAAS Aboriginal and Torres Strait Islander Collection Management Reference Group to formulate a culturally appropriate strategy for undertaking Provenance research.

4.7 MAAS Board of Trustees has the authority to repatriate Aboriginal and Torres Strait Islander Cultural Property through the MAAS Deaccession Policy.

4.8 MAAS will continue to research and develop its Collection of Aboriginal and Torres Strait Islander Cultural Property for the benefit and education of future generations of Aboriginal and Torres Strait Islander and non-Aboriginal and Torres Strait Islander peoples.

5. Requests

5.1 Any Aboriginal and Torres Strait Islander Cultural Property in the MAAS Collection may potentially be repatriated to the Traditional Owners/Rightful Custodians.

5.2 Requests for Repatriation of Aboriginal and Torres Strait Islander Cultural Property will be managed and negotiated by the Director.

5.3 MAAS will manage Repatriation requests promptly and in an equitable, appropriate and mutually agreeable manner, and with respect for the dignity of all parties involved. The circumstances of each Repatriation request will vary and MAAS will give due consideration to the merits of each request on an individual basis. Each claim will be thoroughly examined and the process will be transparent, accountable and treated within a reasonable timeframe.

5.4 In making a determination about a Repatriation request, MAAS will consider, amongst other things:

5.4.1 the significance of the Aboriginal and Torres Strait Islander Cultural Property;

5.4.2 the circumstances of the Aboriginal and Torres Strait Islander Cultural Property's Collection i.e. whether the Aboriginal and Torres Strait Islander Cultural Property was acquired with free and informed consent or in contravention of laws, traditions or customs;

5.4.3 the interests of actual and cultural descendants, if applicable;

5.4.4 the strengths of the claimant's relationship to the Aboriginal and Torres Strait Islander Cultural Property; and

5.4.5 the future treatment of the Aboriginal and Torres Strait Islander Cultural Property.

5.5 MAAS is obliged to ascertain the validity of the claimant's request and to identify the interests of all stakeholders involved.

5.5.1 In addition to conducting its own research, MAAS will request evidence of Ownership or custodianship from the claimant in order to assist in determining the Provenance and legitimacy of the request including the following:

a. the claimants name, address and contact details;

b. for claims on behalf of another person/community, that person/community's name, contact details, and their relationship to the person submitting the claim;

c. a short summary of the details of the claimant's claim to the Aboriginal and Torres Strait Islander Cultural Property; and

d. copies of any documentation or other evidence relevant to the claim.

5.5.2 In conducting research, MAAS will consult with the MAAS Aboriginal and Torres Strait Islander Collection Management Reference Group.

5.5.3 Extensive community consultation may be involved in the determination of the Traditional Owners/Rightful Custodians of the Aboriginal and Torres Strait Islander Cultural Property. Consultation will be tailored to the needs of individual communities and people.

5.5.4 MAAS will allow appropriate consultation time and will provide systems for stakeholders to a particular claim to engage and express their views.

- 5.6 Subject to clause 5.3, prior to Repatriation to the Traditional/Rightful Owner of the Aboriginal and Torres Strait Islander Cultural Property, certain conditions may be agreed upon by MAAS and the claimant.
- 5.7 MAAS will not place conditions on Traditional Owners/Rightful Custodians with regard to the Repatriation of Ancestral Remains or Secret/Sacred and Private Objects.
- 5.8 Final approval for the Repatriation of Aboriginal and Torres Strait Islander Cultural Property will be sought from the MAAS Board of Trustees and the reasons for the Board of Trustees' decision may be made public, where appropriate.

6. Compliance

- 6.1 MAAS will determine legal title to the Aboriginal and Torres Strait Islander Cultural Property requested for Repatriation as well as the legal, ethical and cultural rights of the claimant.
- 6.2 MAAS will consider its responsibilities under the *Museum of Applied Arts and Sciences Act 1945 (NSW)* and the rights of present and future Aboriginal and Torres Strait Islander and non-Aboriginal and Torres Strait Islander Australians to access and engage with the Aboriginal and Torres Strait Islander Cultural Property.
- 6.3 MAAS will comply with all relevant legislation, conventions and statutes when repatriating Aboriginal and Torres Strait Islander Cultural Property.
- 6.4 If MAAS has reason to doubt the Provenance of the Aboriginal and Torres Strait Islander Cultural Property which is the subject of a Repatriation request, it will contact relevant communities, experts and government agencies to investigate further, as appropriate. MAAS will advise the claimant on the status of the investigation on a regular basis.

7. Repatriation Process

- 7.1 Repatriation is a collaborative process that respects the interests of the Traditional Owners/Rightful Custodians. MAAS undertakes to engage in respectful and productive consultation with the claimant in a culturally appropriate manner and will endeavour to foster an ongoing relationship that is mutually beneficial and ensures that the Aboriginal and Torres Strait Islander Cultural Property is appropriately managed.
- 7.2 MAAS will make every effort to maximise consultation and involvement of any other stakeholders in the Repatriation process.
- 7.3 Repatriation of Aboriginal and Torres Strait Islander Cultural Property will be managed by the Director or her/his delegate.
- 7.4 Possible negotiated outcomes from the collaborative process include, but are not limited to:
 - 7.4.1 return of the Aboriginal and Torres Strait Islander Cultural Property to the Traditional Owners/Rightful Custodians;
 - 7.4.2 MAAS retains legal title to the Aboriginal and Torres Strait Islander Cultural Property and recognises the claim of the Traditional Owners/Rightful Custodians. In such circumstances, MAAS will ensure the Aboriginal and Torres Strait Islander Cultural Property will be accessible to the Traditional Owners/Rightful Custodians and may/may not be accessible to Aboriginal and Torres Strait Islander and non-Aboriginal and Torres Strait Islander people as directed by the Traditional Owners/Rightful Custodians. MAAS will acknowledge the Traditional Owners/Rightful Custodians and the history of the Aboriginal and Torres Strait Islander Cultural Property in any use of the Aboriginal and Torres Strait Islander Cultural Property;
 - 7.4.3 MAAS retains possession of the Aboriginal and Torres Strait Islander Cultural Property on behalf of the Traditional Owners/Rightful Custodians on request through a loan or custodial arrangement in accordance with the Incoming Loans Policy or Collection Management Policy. In such circumstances, MAAS will recognise that it does not retain legal title to the Aboriginal and Torres Strait Islander Cultural Property and will ensure the Aboriginal and Torres Strait Islander Cultural Property is accessible to the Traditional Owners/Rightful Custodians and may/may not be accessible to Aboriginal and Torres Strait Islander and non-Aboriginal and Torres Strait Islander people as directed by the Traditional Owners/Rightful Custodians. MAAS will acknowledge the Traditional Owners/Rightful Custodians and the

history of the Aboriginal and Torres Strait Islander Cultural Property in any use of the Aboriginal and Torres Strait Islander Cultural Property; or

- 7.4.4 joint-responsibility for the care and management of the Aboriginal and Torres Strait Islander Cultural Property, including but not limited to access, outgoing loan, display and storage of the Aboriginal and Torres Strait Islander Cultural Property by MAAS and the Traditional Owners/Rightful Custodians.

- 7.5 Where repatriated Aboriginal and Torres Strait Islander Cultural Property is to be returned to the Traditional Owners/Rightful Custodians, MAAS will maintain care and custody until the Traditional Owners/Rightful Custodians are able to take delivery of the Aboriginal and Torres Strait Islander Cultural Property.
- 7.6 MAAS will ensure that Traditional Owners/Rightful Custodians are advised on the care requirements of repatriated Aboriginal and Torres Strait Islander Cultural Property.
- 7.7 Aboriginal and Torres Strait Islander Cultural Property incorporated in audio or audio-visual material, images or manuscripts in the MAAS Collection may be repatriated in the form of copies, but this is subject to negotiation.

8. Documentation

- 8.1 MAAS will maintain full records of any request and Repatriation process in relation to Aboriginal and Torres Strait Islander Cultural Property and retain such records in perpetuity. The claimant and/or Traditional Owners/Rightful Custodians and any stakeholders may request copies of these records.
- 8.2 All records will be held in confidence during the Repatriation process.
- 8.3 MAAS will discuss with Traditional Owners/Rightful Custodians the retention and accessibility, including exhibition, of records pertaining to repatriated Aboriginal and Torres Strait Islander Cultural Property.

9. Conflicting Claims

- 9.1 Where conflicting Repatriation claims for Aboriginal and Torres Strait Islander Cultural Property exist, MAAS will be informed by the Claims Handling Procedures and Indigenous Cultural and Intellectual Property (ICIP) Protocol and will:
- 9.1.1 inform the relevant parties of the conflict;
 - 9.1.2 encourage the parties to resolve the conflict; and
 - 9.1.3 investigate options for providing access to the Aboriginal and Torres Strait Islander Cultural Property that is acceptable to all parties.
- 9.2 MAAS will not finalise a Repatriation claim for Aboriginal and Torres Strait Islander Cultural Property in the MAAS Collection where a conflict under clause 6.1 exists until such time as the conflict is resolved.

10. Claims Handling

- 10.1 MAAS will take very seriously and respond to all claims on objects proposed for, or acquired into the MAAS Collection or works proposed for or that have entered MAAS care as incoming loans. MAAS also recognises that information about an object may arise from a number of sources, including but not limited to inquiries and requests for further information about Provenance and title, information provided by an external source regarding Provenance, or claims from third parties.
- 10.2 In responding to a claim, MAAS will be guided by the principles and terms of this Aboriginal and Torres Strait Islander Repatriation Policy and the Claims Handling Procedures. MAAS will also be guided by the Incoming Loans Policy and Procedures and the *Protection of Cultural Objects on Loan Regulation* in responding to claims for objects on incoming loan.
- 10.3 MAAS will acknowledge receipt of a claim or inquiry promptly. The acknowledgement will be made by the Director or her/his delegate and will outline the process and indicative timeframe for further response. If sufficient information has not yet been provided by the claimant, the acknowledgement will include a request for further information to enable MAAS to assess the claim.
- 10.4 MAAS may require a reasonable period of time to undertake appropriate research and investigation and to determine its response to the claim. If progress of the investigation is outside the indicated timeframe, MAAS will notify the claimant of the status of their investigation and the revised date of response.

10.5 Unless otherwise restricted from doing so due to contractual or legislative requirements, MAAS may provide the claimant with a written summary of the known Provenance of the object and MAAS consideration of the claim.

11. Ancestral Remains and Secret/Sacred and Private Objects

11.1 MAAS will not actively seek to acquire Ancestral Remains or Secret/Sacred and Private Objects for the MAAS Collection.

11.2 If MAAS acquires Ancestral Remains or Secret/Sacred and Private Objects, it will be:

11.2.1 with the intention of repatriating the material to the relevant Traditional Owners/Rightful Custodians; or

11.2.2 at the request of the Traditional Owners/Rightful Custodians.

11.3 MAAS will conduct appropriate and diligent research in order to determine the Traditional Owners/Rightful Custodians of Ancestral Remains or Secret/Sacred and Private Objects. Identification of the Traditional Owners/Rightful Custodians should not be undertaken without prior consultation with the MAAS Aboriginal and Torres Strait Islander Collection Management Reference Group.

11.4 Where a Repatriation request for Ancestral Remains or Secret/Sacred and Private Objects is made, the claim will be handled in accordance with this Policy and the Claims Handling Procedures. MAAS will not place conditions on Traditional Owners/Rightful Custodians in relation to repatriated Ancestral Remains or Secret/Sacred and Private Objects.

11.5 MAAS may hold the Ancestral Remains or Secret/Sacred and Private Objects on behalf of the Traditional Owners/Rightful Custodians if requested to do so. If MAAS agrees to hold Ancestral Remains or Secret/Sacred and Private Objects on behalf of the Traditional Owners/Rightful Custodians, MAAS will abide by any reasonable conditions sought by the Traditional Owners/Rightful Custodians. The Traditional Owners/Rightful Custodians may, upon request, have Ancestral Remains or Secret/Sacred and Private Objects returned to them at any time.

11.6 MAAS will securely house Ancestral Remains or Secret/Sacred and Private Objects separately from the general Collection of Aboriginal and Torres Strait Islander Cultural Property, in accordance with the Collection Storage and Access Policy.

11.7 Traditional Owners/Rightful Custodians or their authorised representatives may access the Ancestral Remains or Secret/Sacred and Private Objects upon request and approval by the Director or her/his delegate.

11.8 MAAS will not display Ancestral Remains or Secret/Sacred and Private Objects without the free, prior informed consent of the Traditional Owners/Rightful Custodians.

12. Roles and Responsibilities

ATSI Collection Management Reference Group: Provides high level expertise, guidance and endorsement regarding the negotiation, consultation and conduct of Repatriation of Aboriginal and Torres Strait Islander Cultural Property.

Board of Trustees: Approves the disposal of property in accordance with the *Museum of Applied Arts and Sciences Act 1945* (NSW), including the deaccession of Aboriginal and Torres Strait Islander Cultural Property to be repatriated to the Traditional Owners/Rightful Custodians.

Director: Manages and negotiates requests for Repatriation of Aboriginal and Torres Strait Islander Cultural Property within the MAAS Collection to the Traditional Owners/Rightful Custodians.

Head of Curatorial: Coordinates advice to the Director and Board of Trustees regarding requests for the Repatriation of Aboriginal and Torres Strait Islander (ATSI) Cultural Property within the MAAS Collection to be returned to the Traditional/Rightful Owners.

Head of Strategic Collections: Coordinates advice to the Director and Board of Trustees regarding requests for the Repatriation of Aboriginal and Torres Strait Islander (ATSI) Cultural Property within the

MAAS Collection to be returned to the Traditional/Rightful Owners and ensures that the process is undertaken in accordance with this policy and related legislation, conventions, policies and procedures.

Program Producer (Indigenous): Advises on requests for Repatriation of Indigenous Cultural Property within the MAAS Collection to the Traditional/Rightful Owners and actively participates in the ATSI Collection Management Reference Group.

Registration Manager: Provides advice and ensures compliance with all relevant legislation, conventions, policies and procedures.

13. 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 Aboriginal and Torres Strait Islander Cultural Property held in the MAAS Collection.

Aboriginal and Torres Strait Islander Cultural Property: Refers to objects and associated material and intellectual property of or relating to Aboriginal and Torres Strait Islander peoples that have artistic, ethnographic, spiritual, scientific, archaeological or historic value, including but not limited to films, sound recordings, artworks, manuscripts, images and objects. Aboriginal and Torres Strait Islander Cultural Property may be objects that are produced by Aboriginal and Torres Strait Islander people or that have particular cultural significance to Aboriginal and Torres Strait Islander people including natural objects or modified objects.

Ancestral Remains: Whether an object is an Ancestral Remain or Secret/Sacred Object depends on the intended usage of the object. Ancestral Remains may include soft tissue (including organs), whole or partial skeletons or bones and teeth or hair samples. Ancestral Remains may not include objects made from human hair, bones or teeth used for ceremonial purposes or objects made from human hair that are intended for utilitarian use, such as human hair belts.

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.

Repatriation: Repatriation is the process whereby material or objects in a museum collection are returned to lineal descendants and culturally affiliated communities. Ancestral Remains, Secret/Sacred and Private Objects and other Aboriginal and Torres Strait Islander Cultural Property may be considered for Repatriation.

Secret/Sacred and Private Objects: Restricted objects and materials of spiritual and ceremonial significance and of a private nature to Aboriginal and Torres Strait Islander peoples.

Traditional Owners/Rightful Custodians: Aboriginal and Torres Strait Islander person or peoples entitled by custom, tradition and law to determine appropriate control and management of Aboriginal and Torres Strait Islander cultural heritage.

14. Related Museum plans, policies and/or procedures

- Acquisition and Accession Policy
- Australian Indigenous Cultural and Intellectual Property (ICIP) Protocol
- Collection Management Policy
- Collection Storage and Access Policy
- Conservation Policy
- Deaccession Policy
- Disposal Policy

- Incoming Loans Policy
- Outgoing Loans Policy
- Restitution Policy
- Claims Handling Procedures
- Incoming Loans Procedures
- MAAS Reconciliation Action Plan
- Provenance Research at MAAS
- Acquisition Due Diligence Checklist
- Incoming Loans Due Diligence Checklist
- Incoming Loans Further Investigation Due Diligence Checklist

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

15. Relevant legislation and external context

This Policy should be read in conjunction with the following:

- Australian Government, Department of Communications and the Arts, *Australian Government Indigenous Repatriation Policy 2013*
- Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) – *Guidelines for Ethical Research in Indigenous Studies 2000*
- [Repatriation – Returning Cultural Material to Country](#), NSW Office of Environment and Heritage website, as at 4 February 2016.
- Australian State of the Environment Committee, Department of the Environment and Heritage – *Return of Indigenous Cultural Property (RICP) Program National Principles 2006*
- United Nations – *United Nations Declaration of the Rights of Indigenous Peoples 2007*

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

16. Responsible Officer

Head of Strategic Collections

17. Responsible Department & Unit

Curatorial, Collections & Exhibitions department, Strategic Collections team

18. Amendment history

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