

MAAS Restitution 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 Restitution of Cultural Property within the MAAS Collection to be returned to the Rightful Owners. MAAS complies with Australian legal requirements and ethical standards in relation to the Restitution of Cultural Property.

2. Application

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

3. Ethics and Governance

- 3.1 MAAS acknowledges and recognises that objects and materials stolen from people, communities and countries can degrade and erode that person's, community's and country's cultural identity or otherwise deprive them of their rightful property.
- 3.2 MAAS is committed to the Restitution of Cultural Property where possible, once it is established that the claimant is the Rightful Owner.
- 3.3 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 terms of the *Protection of Movable Cultural Heritage Act 1986* (Cth) and the *Protection of Cultural Objects on Loan Act 2013* (Cth).
- 3.4 MAAS will not seek to acquire or knowingly borrow any 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 laws to ensure all MAAS acquisitions are legitimate and legal.
- 3.5 If Cultural Property held or collected by MAAS in good faith is subsequently determined to have been unlawfully appropriated or illicitly traded prior to being housed in the MAAS Collection, MAAS will undertake prudent and necessary steps to resolve the status of the Cultural Property, in consultation with legal counsel. This may involve making the information public and, if practicable, notifying potential claimants.
- 3.6 MAAS Board of Trustees has the authority to return Cultural Property through the MAAS Deaccession Policy.

4. Requests

- 4.1 Any Cultural Property in the MAAS Collection may potentially be returned to the Rightful Owners.
- 4.2 Requests for Restitution of Cultural Property will be managed and negotiated by the Director or her/his delegate.
- 4.3 MAAS will manage Restitution requests promptly and in an equitable, appropriate and sensitive manner, and with respect for the dignity of all parties involved. The circumstances of each request for Restitution 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.
- 4.4 In making a determination about a Restitution request, MAAS will consider, amongst other things:
 - 4.4.1 the significance of the Cultural Property;
 - 4.4.2 the circumstances of the Cultural Property's Collection;
 - 4.4.3 the interests of actual and cultural descendants, if applicable;
 - 4.4.4 the strengths of the claimant's relationship to the Cultural Property;
 - 4.4.5 the future treatment of the Cultural Property.
- 4.5 MAAS is obliged to ascertain the validity of the claimant's request and to identify the interests of all the stakeholders involved.

- 4.5.1 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 claimant's name, address and contact details;
 - b. for claims on behalf of another person, that person's name, contact details, and their relationship to the person submitting the claim;
 - c. a short summary of the details of their claim to the Cultural Property;
 - d. copies of any documentation or other evidence relevant to the claim.
- 4.5.2 MAAS will allow appropriate consultation time in relation to the request and will provide systems for stakeholders to engage and express their views.
- 4.6 Where appropriate and reasonably practical, MAAS will seek methods other than litigation to resolve requests (e.g. mediation).
- 4.7 Final approval for the Restitution of 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.

5. Compliance

- 5.1 MAAS will determine legal title to the Cultural Property requested for return as well as the legal, ethical and cultural rights of the claimant.
- 5.2 MAAS will consider its responsibilities under the *Museum of Applied Arts and Sciences Act 1945* (NSW) and will comply with all relevant legislation, conventions and statutory commitments.
- 5.3 MAAS will comply with all relevant legislation, conventions and statutes when restituting Cultural Property.
- 5.4 If MAAS has reason to doubt the provenance of the Cultural Property that is subject of the Restitution request, it will contact relevant experts and government agencies to investigate further, as appropriate. MAAS will advise the claimant on the status of the investigation on a regular basis.

6. Restitution Process

- 6.1 Restitution is a collaborative process that respects the interests of the Rightful Owners. MAAS undertakes to engage in respectful and productive consultation with the claimant and will endeavour to foster an ongoing relationship that is mutually beneficial and ensures that the Cultural Property is appropriately managed.
- 6.2 MAAS will make every effort to maximise consultation and involvement of any other stakeholders in the Restitution process.
- 6.3 Restitution of Cultural Property will be managed by the Director or her/his delegate.
- 6.4 Possible negotiated outcomes from the collaborative process include, but are not limited to:
- 6.4.1 return of the Cultural Property to the Rightful Owners;
 - 6.4.2 MAAS retains legal title to the Cultural Property and recognises the claim of the Rightful Owners. In such circumstances, MAAS will ensure the Cultural Property will be accessible to the Rightful Owners and may/may not be accessible to the public as directed by the Rightful Owners.
 - 6.4.3 MAAS retains possession of the Cultural Property on behalf of the Rightful Owners on request through a loan arrangement. In such circumstances, MAAS will recognise that it does not retain legal title to the Cultural Property and will ensure the Cultural Property is accessible to the Rightful Owners and may/may not be accessible to the public as directed by the Rightful Owners.
 - 6.4.4 Joint-responsibility for the care and management of the Cultural Property, including but not limited to access, outgoing loan, display and storage of the Cultural Property by MAAS and the Rightful Owners.
- 6.5 Where Cultural Property is to be returned to the Rightful Owners, MAAS will maintain care and custody until the Rightful Owners are able to take delivery of the Cultural Property.
- 6.6 MAAS will ensure that Rightful Owners are advised on the care requirements of the Cultural Property.

7. Documentation

- 7.1 MAAS will maintain full records of any request and Restitution process in relation to Cultural Property and retain such records in perpetuity. The claimant and/or Rightful Owners and any stakeholders may request copies of these records.
- 7.2 All records will be held in confidence during the Restitution process.
- 7.3 MAAS will discuss with Rightful Owners the retention and accessibility, including exhibition, of records pertaining to returned Cultural Property.

8. Conflicting Claims

- 8.1 Where conflicting Restitution claims for Cultural Property exist, MAAS will be informed by the Claims Handling Procedures and will:
 - 8.1.1 inform the relevant parties of the conflict;
 - 8.1.2 encourage the parties to resolve the conflict;
 - 8.1.3 investigate options for providing access to the Cultural Property that is acceptable to all parties.
- 8.2 MAAS will not finalise a Restitution claim for Cultural Property in the MAAS Collection where a conflict under clause 8.1 exists until such time as the conflict is resolved.

9. Claims Handling

- 9.1 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.
- 9.2 In responding to a claim, MAAS will be guided by the principles and terms of this Restitution 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 Act and Regulation* in responding to claims for objects on incoming loan.
- 9.3 To enable MAAS to investigate and respond to inquiries or claims, claimants will be asked to provide the following information:
 - a. the claimant's name, address and best contact details;
 - b. where the claimant is acting on behalf of another party, that person's name, contact details and relationship to the claimant. MAAS acknowledges that the claimant or other party may wish to remain anonymous and will undertake to keep their identity confidential, within the limits of its legal and ethical obligations;
 - c. a summary of the inquiry or claim; and
 - d. copies of any supporting documentation or evidence relating to the claim or inquiry.
- 9.4 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.
- 9.5 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.
- 9.6 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 objects and MAAS consideration of the claim.

10. Roles and Responsibilities

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 Cultural Property to be returned to Rightful Owners.

Director: Manages and negotiates requests for Restitution of Cultural Property within the MAAS Collection to the Rightful Owners.

Head of Strategic Collections: Ensures that Restitution is undertaken in accordance with this policy and related legislation, policies, plans and procedures; oversees any requests for the Restitution or return of Cultural Property within the MAAS Collection to the Rightful Owners.

Head of Curatorial: Oversees any requests for the Restitution or return of Cultural Property within the MAAS Collection to the Rightful Owners.

Curators: Support and facilitate collaboration and the Restitution process where necessary.

Registrars: Ensure that the Restitution process is appropriately documented and recorded.

11. Definitions

Cultural Property: Refers to objects and associated material contained in the MAAS Collection that have artistic, ethnographic, spiritual, scientific, archaeological or historic value, including but not limited to films, sound recordings, artworks, manuscripts, images and objects.

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

Restitution: Return to the Rightful Owners of cultural objects that have been obtained through illicit dealings, pillaged in times of war or stolen, or that may have been otherwise illegally obtained.

Rightful Owners: Person or people entitled by heredity, custom, tradition or legal transfer of title to determine appropriate control and management of their Cultural Property.

12. Related Museum plans, policies and/or procedures

- Aboriginal and Torres Strait Islander Repatriation Policy
- Acquisition and Accession Policy
- Collection Management Policy
- Conservation Policy
- Copyright Policy
- Deaccession Policy
- Disposal Policy
- Incoming Loans Policy
- Outgoing Loans Policy
- Claims Handling Procedures
- Incoming Loans Procedures
- 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.

13. Relevant legislation and external context

This Policy should be read in conjunction with the following:

- Australian Government, Attorney General's Department, Ministry for the Arts – *Protection of Cultural Objects on Loan Scheme Guidelines* 2014

- Museums Australia – *Continuous Cultures Ongoing Responsibilities: A Comprehensive Policy Document and Guidelines for Australian Museums Working with Aboriginal and Torres Strait Islander Cultural Heritage* 2004
- *Museum of Applied Arts and Sciences Act 1945* (NSW)
- *Protection of Movable Cultural Heritage Act 1986* (Cth)
- *Protection of Cultural Objects on Loan Act 2013* (Cth)
- *UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property* 1970

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