

MAAS Restitution Policy

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POLICY SUMMARY	
POLICY DETAILS	Title: <i>MAAS Restitution Policy</i> Date: 19 May 2021 Review Date: May 2023
KEY MESSAGES	<ul style="list-style-type: none"> • The <i>MAAS Restitution Policy</i> provides a framework for managing and processing a claim for the restitution of cultural property. • MAAS is committed to high standards of due diligence when acquiring collection material or borrowing objects. The Museum is also committed to the restitution of cultural property where possible once it is established that the claimant is the rightful owner. • This policy outlines the following considerations and processes associated with the restitution of cultural property from the MAAS collection: <ul style="list-style-type: none"> ○ Ethics and governance ○ Receipt and management of requests ○ Compliance ○ Restitution process and negotiated outcomes ○ Documentation ○ Conflicting claims, claims handling and associated procedures • Every effort will be made to maximise consultation with relevant stakeholders in the restitution process. • MAAS Board of Trustees has the authority to return cultural property via the <i>MAAS Deaccession Policy</i>.
SCOPE	This policy applies to all MAAS employees (ongoing, temporary and casual) who are responsible for managing and processing requests for the restitution of cultural property.
USE	This policy should be used when the Museum receives a request for the restitution of cultural property held within the MAAS collection, and should be used in conjunction with the <i>MAAS Deaccession Policy</i> . Claims for the repatriation of Australian indigenous cultural material will be managed in accordance with the <i>Aboriginal and Torres Strait Islander Repatriation Policy</i> . Where claims for restitution are received for objects in MAAS custody or care as incoming loans, the terms of the <i>MAAS Incoming Loans Policy</i> will also apply.
COMPLIANCE	This policy should be read in conjunction with, but not limited to, the following: <ul style="list-style-type: none"> • <i>Protection of Movable Cultural Heritage Act 1986 (Cth)</i> • <i>Protection of Cultural Objects on Loan Act 2013 (Cth)</i> • <i>UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970</i> MAAS policies: <ul style="list-style-type: none"> • Aboriginal and Torres Strait Islander Repatriation Policy • Deaccession Policy • Incoming Loans Policy and Procedures • Claims Handling Procedures
POLICY OWNER	Strategic Collections team, Curatorial, Collections and Exhibitions department. This policy is for publication on the MAAS website.

1. Purpose

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.

2. Policy Statement

MAAS complies with Australian legal requirements and ethical standards in relation to the restitution of cultural property. 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. Scope

This policy applies to all MAAS employees (ongoing, temporary and casual) who are responsible for managing and processing requests for the restitution of cultural property.

The policy applies to the restitution of cultural property held within the MAAS collection to the rightful owner. It does not include Aboriginal and Torres Strait Islander cultural property for which repatriation claims are managed in accordance with the Aboriginal and Torres Strait Islander Repatriation Policy. Where claims for restitution 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.

4. Ethics and governance

- 4.1 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.
- 4.2 MAAS is committed to the restitution of cultural property where possible, once it is established that the claimant is the rightful owner.
- 4.3 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).
- 4.4 MAAS will not seek to acquire or knowingly borrow any cultural property that may have been unlawfully appropriated or illicitly traded and is committed to maintaining 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.
- 4.5 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.
- 4.6 MAAS Board of Trustees has the authority to return cultural property through the Deaccession Policy.

5. Requests

- 5.1 Any cultural property in the MAAS collection may potentially be returned to the rightful owners.
- 5.2 Requests for restitution of cultural property will be managed and negotiated by the Chief Executive or their delegate.
- 5.3 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.
- 5.4 In making a determination about a restitution request, MAAS will consider, amongst other things:

- 5.4.1 the significance of the cultural property;
- 5.4.2 the circumstances of the cultural property's collection;
- 5.4.3 the interests of actual and cultural descendants, if applicable;
- 5.4.4 the strengths of the claimant's relationship to the cultural property.
- 5.5 MAAS is obliged to ascertain the validity of the claimant's request and to identify the interests of all the 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 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/supporting the claim.
 - 5.5.2 MAAS will allow appropriate consultation time in relation to the request and will provide systems for stakeholders to engage and express their views.
- 5.6 Where appropriate and reasonably practical, MAAS will seek methods other than litigation to resolve requests (e.g. mediation).
- 5.7 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.

6. Compliance

- 6.1 MAAS will determine legal title to the cultural property requested for return as well as the legal, ethical and cultural rights of the claimant.
- 6.2 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.
- 6.3 MAAS will comply with all relevant legislation, conventions and statutes when restituting cultural property.
- 6.4 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.

7. Restitution process

- 7.1 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, where appropriate, will endeavour to foster an ongoing relationship that is mutually beneficial.
- 7.2 MAAS will make every effort to maximise consultation and involvement of any other stakeholders in the restitution process.
- 7.3 Restitution of cultural property will be managed by the Chief Executive or their delegate.
- 7.4 Possible negotiated outcomes from the collaborative process include, but are not limited to:
 - 7.4.1 return of the cultural property to the rightful owners;
 - 7.4.2 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.
 - 7.4.3 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.
 - 7.4.4 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.
- 7.5 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.

- 7.6 MAAS will ensure that rightful owners are advised on the history of care of the cultural property while in MAAS custody.

8. Documentation

- 8.1 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.
- 8.2 All records will be held in confidence during the restitution process.
- 8.3 MAAS will discuss with rightful owners the retention and accessibility, including exhibition, of records pertaining to returned cultural property.

9. Conflicting claims

- 9.1 Where conflicting restitution claims for cultural property exist, MAAS will be informed by the Claims Handling Procedures and will:
- 9.1.1 inform the relevant parties of the conflict;
 - 9.1.2 encourage the parties to resolve the conflict;
 - 9.1.3 investigate options for providing access to the cultural property that is acceptable to all parties.
- 9.2 MAAS will not finalise a restitution claim for cultural property in the MAAS collection where a conflict under clause 9.1 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 objects proposed for or that have entered MAAS care as incoming loans.
- 10.2 In responding to a claim, MAAS will be guided by the principles and terms of this 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.
- 10.3 MAAS will acknowledge receipt of a claim or inquiry promptly. The acknowledgement will be made by the Chief Executive or their 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 objects and MAAS consideration of the claim.

11. 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.

Chief Executive: Manages and negotiates requests for restitution of cultural property within the MAAS collection to the rightful owners.

Collection Development Review Committee: Assesses proposals for deaccession in accordance with the Deaccession Policy and related policies, plans and procedures.

Head of Collections: Coordinates advice to the Chief Executive and Board of Trustees regarding requests for the restitution or return of cultural property within the MAAS collection to the rightful owners and ensures

that the process is undertaken in accordance with this policy and related legislation, conventions, policies and procedures.

Head of Curatorial: Coordinates advice to the Chief Executive and Board of Trustees regarding 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. Prepare recommendations for deaccession where this is the agreed outcome of the restitution process.

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

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

12. 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.

13. 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.

14. 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.

15. Responsible Officer

Registration Manager

16. Responsible Department & Unit

Curatorial, Collections & Exhibitions department, Strategic Collections team

17. Amendment history

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