

Collections – return of cultural objects policy

POL-C-037

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1. Title

Return of cultural objects policy

2. Introduction

The National Museum of Australia (the Museum) is a major cultural institution charged with researching, collecting, preserving and exhibiting historical material of the Australian nation.

The Museum focuses on the three interrelated areas of Aboriginal and Torres Strait Islander history and culture, Australia's history and society since European settlement in 1788 and the interaction of people with the environment.

Established in 1980, the Museum is a publicly-funded institution governed as a statutory authority in the Commonwealth Arts portfolio. The Museum's building on Acton Peninsula, Canberra, opened in March 2001.

3. Scope

This policy applies to requests for the return of cultural objects.

The policy excludes Aboriginal and Torres Strait Islander human remains, secret/sacred and private material. These are covered by separate policies.

3.1 Description

The Museum believes that to the best of its knowledge the cultural objects in its possession were acquired ethically and in the belief that acquisition was in accordance with appropriate legal and cultural processes.

From time to time the National Museum of Australia will receive requests for the transfer of ownership of cultural objects. This policy describes the Museum's approach to considering the return of such objects.

The Museum's procedures for disposal of cultural objects are covered by the *National Museum of Australia Act* and by the Museum's Deaccessioning and Disposal Policy.

3.2 Purpose

This policy guides the considerations of Executive and Council regarding requests for the return of cultural objects.

3.3 Rationale

Policies and procedures for responding to and managing requests for the return of cultural objects are important for museums worldwide. Several international instruments have been developed which aim to deal with property which may have been collected illegally or unethically. These are:

- a) the Convention on the Protection of Cultural Property in the Event of Armed Conflict (UNESCO, 1954) in which States undertake to prevent the export of heritage goods from occupied territory, or alternatively to return them after war has ceased;
- b) the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (UNESCO, 1970), which prevents museums from acquiring cultural property which has been illegally exported or stolen from a museum or public institution, and provides a mechanism to allow States to request the return of any such cultural property;
- c) the Convention on Stolen or Illegally Exported Cultural Objects (UNIDROIT, 1995) adopted in Rome, which creates a private international law remedy for individual

owners to file a complaint, enlarges the definition of cultural property and imposes a requirement to return the object; and

- d) the *ICOM Code of Ethics for Museums*.

Australia has ratified the 1954 and 1970 UNESCO Conventions, but not the UNIDROIT Convention. While Australia is not bound to comply with international instruments it has not ratified, the Museum considers that its policies should reflect and build on current international thinking about the return of cultural objects.

The Museum has a strong focus on promoting access by all Australians to its collections. However, the Museum also recognises that from time to time competing claims for access to cultural objects will arise.

In assessing requests for the return of objects, the Museum must consider its responsibilities under its enabling legislation, the legal rights of donors, and the legal rights of the person requesting the return of the objects, and balance such requests for return against the rights of other Australians and future generations to access and enjoy these cultural objects. The circumstances of each request for return will vary and it is important that the Museum thoroughly considers each case on the evidence.

In negotiating competing claims to ownership of cultural objects, the Museum will investigate a range of ways to provide access to objects that may be acceptable to all parties. This may include development of exhibitions, loans, various forms of photographic or multimedia reproduction, and the copying of photographic material.

4. Principles or guidelines

4.1 The Museum recognises that from time to time it may be approached with requests for the return of cultural objects.

4.2 The Museum also recognises that from time-to-time circumstances may arise where a case may be advanced that demonstrates that an object was, at some stage in its history and prior to its acquisition by the Museum:

- a) acquired without the free and informed consent of the custodian at the time;
- b) acquired in contravention of tradition or custom;
- c) acquired through a person legally or culturally unauthorised to dispose of the object;
- d) acquired through an illegal act of war or aggression; and/or
- e) acquired through a process, or with a history, that renders it unfit for the Museum's collection.

In these circumstances the Museum will give due consideration to a request for return of the object, in accordance with this policy and its legal obligations (as applicable).

4.3 To facilitate resolution of a request for the return or transfer of ownership of a cultural object by the Museum:

- a) Council will reasonably and impartially consider each application on its merits in order to determine whether the object in question is fit or unfit for the collection based on the case advanced by the applicant;
- b) Council's decision shall have regard to whether the applicant has demonstrated that the object was acquired in one or more of the circumstances described in paragraph 4.2 and shall be informed by its legal obligations and prevailing industry best practice and ethics;

- c) the Museum will determine its legal title to the objects requested for return;
- d) the Museum will consider the legal and ethical rights of the applicant;
- e) any connection between the applicant and the object will be ascertained;
- f) the rights and opinions of other potential applicants for the return of the object will be assessed;
- g) where approval is given for the return of a cultural object, the Museum's normal legislative and policy procedures shall be followed; and
- h) the reasons for the Council's decision will be made public.

5. Definition of terms

Cultural objects

Cultural objects are objects that are produced by people or that have particular cultural significance to people. This can include both culturally modified and unmodified objects.

Transfer of ownership

Transfer of ownership refers to the practice of deaccessioning items from the Museum's collections in order for the Museum to relinquish legal ownership. Once the deaccessioning process is complete, the Museum is free to transfer ownership to another party.

Unfit

An object is determined as 'unfit' for the collection through reference to attributes including, but not limited to, ethical, moral, legal, social, religious and physical attributes of the object.

6. Definition of responsibilities

Council

Council is responsible for considering each application on its merits in order to determine whether the object in question is fit or unfit for the collection based on the case advanced by the applicant.

Assistant Director, Collections, Content and Exhibitions

The Assistant Director, Collections, Content and Exhibitions is responsible for assessing whether the case for return is suitable for submission to Council.

Senior curators

The appropriate Senior Curator is responsible for consultation, research, compiling and preparation of documentation and recommendations relevant to Council making an informed and impartial assessment of the application.

7. References

Return of Cultural Objects (Excluding Human Remains and Secret/Sacred Objects) Policy, National Museum of Australia, 1996

National Museum of Australia Act 1980

Convention on the Protection of Cultural Property in the Event of Armed Conflict, UNESCO (United Nations Educational, Scientific and Cultural Organization), 1954

Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, UNESCO (United Nations Educational, Scientific and Cultural Organization), 1970

Convention on Stolen or Illegally Exported Cultural Objects, UNIDROIT (International Institute for the Unification of Private Law), 1995

ICOM Code of Ethics for Museums, International Council of Museums (ICOM), 2004

8. Implementation

8.1 Other related policies

Aboriginal and Torres Strait Islander human remains policy

Aboriginal and Torres Strait Islander secret/sacred and private material policy

Deaccessioning and disposal policy

8.2 Exclusions

This policy excludes Aboriginal and Torres Strait Islander human remains, Aboriginal and Torres Strait Islander secret/sacred and private material, and other Indigenous human remains.

8.3 Superseded policies

This policy supersedes:

Former policy/ies title	Version no.	Version date	Council approval date
Return of cultural objects (excluding human remains and secret/sacred objects) policy	1.0	Dec 1996	Dec 1996
Collections – return of cultural objects policy	2.0	May 2006	May 2006

8.4 Monitoring

This policy will be reviewed in November 2013.