# Museums Victoria Policy Statement

# Repatriation of First Peoples Cultural Property Policy

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| Policy Register Number | DOC/16/7841 |
| Date of Board approval | 27 June 2022 |
| Responsible Executive  Policy Owner | Director, Research and Collections  Head, First Peoples |
| Review Cycle  Date of Next Review | Five-yearly  27 June 2027 |

## 1 Policy Objective/Intent

Museums Victoria has moved beyond the concept of ‘owning’ First Peoples Cultural Property that was taken during invasion and colonisation of Australia and cared for in the State collections. Our role is now as custodians to facilitate in the Repatriation of this Cultural Property back to Country, Traditional Owners, Communities of Origin and/or Cultural Authority.

The policy confirms Museums Victoria’s commitment to the Repatriation of First Peoples Cultural Property from the State collections and sets a framework of principles and protocols within which this will occur.

## 2 Policy Statement

The Repatriation of First Peoples Cultural Property will comply with state, national, and international legislations, policies and agreements and is underpinned by the United Nations Declaration on the Rights of Indigenous Peoples (2007) and Museums Victoria’s First Peoples Strategy (2021).

Museums Victoria is committed to Repatriating First Peoples Cultural Property in the State collections to its Country through Traditional Owners, Communities of Origin and/or Cultural Authority.

First Peoples individuals and communities continue to experience intergenerational pain and suffering from the loss of their Ancestors taken from their resting places and removal of Cultural Property during invasion and colonisation. Museums Victoria will build meaningful relationships to facilitate healing and self-determination in the return of First Peoples Cultural Property made by their Ancestors to their Country and People.

## 3 Key Policy Principles

## General Principles

3.1 Museums Victoria will consider all enquiries and requests regarding the Repatriation of First Peoples Cultural Property in accordance with Principles 3.7 to 3.13.

3.2 Museums Victoria will comply with relevant legislation, conventions and statutory obligations relating to the Repatriation of Cultural Property.

3.3 Museums Victoria will refer all enquiries and requests regarding First Peoples of Australia Ancestral Remains and Grave Goods and Secret–Sacred Objects to the Victorian Aboriginal Heritage Council in accordance with the Aboriginal Heritage Act 2006 (Vic).

3.4 Museums Victoria will consider all enquiries and requests regarding the Repatriation of international First Peoples Ancestral Remains that are not part of 3.3.

3.5 Museums Victoria will consider the following aspects for each Repatriation request:

* legal and ethical rights of the claimant/s
* legal and ethical rights of multiple claimant/s
* guidance from Museums Victoria’s First Peoples Strategy and the United Nations Declaration on the Rights of Indigenous Peoples.

3.6 Museums Victoria will care for digitised or printed copies of Cultural Property as an archive under instruction from Traditional Owners, Communities of Origin and/or the Cultural Authority.

## Principles of Consultation and Assessment

3.7 Museums Victoria requires all requests for the Repatriation of First Peoples Cultural Property in writing.

3.8 Museums Victoria will work with relevant communities and agencies to determine the Traditional Owners, Communities of Origin and/or Cultural Authority.

3.9 Museums Victoria recognises that more than one individual, family group or community may have shared rights in their Cultural Property.

3.10 Museums Victoria will assess each request for Repatriation to determine connection to the Cultural Property as family, Traditional Owners, Communities of Origin and/or Cultural Authority.

3.11 Museums Victoria will undertake Due diligence research to assess the Repatriation request based on all relevant information and knowledge available at the time of the assessment.

3.12 Museums Victoria will assess the circumstances in which the Cultural Property was taken from Traditional Owners, Communities of Origin and/or Cultural Authority and are now in the State collections, referencing article 11 of the United Nations Declaration on the Rights of Indigenous Peoples, as to whether the material was taken without free, prior and informed consent or in violation of their laws, traditions and customs.

3.13 Museums Victoria will enable Repatriation of Cultural Property for which provenance is not known, by working collaboratively with relevant communities, organisations and government agencies.

## Principles of Endorsement and Approval

3.14 The Museums Board of Victoria will consult and seek the endorsement of the Aboriginal Cultural Heritage Advisory Committee and from other stakeholders where appropriate.

3.15 The Museums Board of Victoria will provide the authority and approval to Repatriate First Peoples Cultural Property through a formal process of Deaccessioning from the State collections.

3.16 The Museums Board of Victoria will, except where the case for exceptional circumstances has been made, not provide a twelve-month deferral of its decision to approve Repatriation recommendations.

3.17 Museums Victoria will maintain care and custody of Deaccessioned Cultural Property at the request of the Traditional Owners, Communities of Origin and/or Cultural Authority until they are ready to receive the material.

3.18 Museums Victoria will provide all associated data and images in electronic and/or hard copy to the Traditional Owners, Communities of Origin and/or Cultural Authority.

3.19 Museums Victoria will, where requested by the Traditional Owners, Communities of Origin and/or Cultural Authority, keep electronic and/or hard copies as a backup archive.

3.20 Museums Victoria will retain complete Documentation of all Repatriation decisions and associated processes in line with the Public Records Act 1973 (Vic).

## Principles of Working with External Stakeholders

3.21 Museums Victoria will work collaboratively to facilitate national and international Repatriation programs and may share information about First Peoples Cultural Property with other institutions and agencies to aid in this process.

3.22 Museums Victoria will refer requests for Repatriation of Cultural Property on loan to Museums Victoria to the lender.

## 4 Key Definitions

4.1 ‘Aboriginal Cultural Heritage Advisory Committee’ or ‘ACHAC’ is a sub-committee of the Museums Board of Victoria and provides advice and advocacy for the protection and continuation of cultural heritage material and knowledge, and on matters referred to it by the Board.

4.2 ‘Deaccession’ is to formally, conceptually remove an Item from the State collections at the point of the Museums Board of Victoria’s approval to do so.

4.4 ‘Documentation’ consists of records in any form, (written, electronic, graphic, audio etc) that relate to museum collections in any way. These will include primary, (often original) registration records of legal title, source, provenance, condition, physical description, standards of care required by the community of origin, etc. as well as secondary records relating to changes, events, and research concerning museum collections.

4.5 ‘Due diligence’ describes the steps involved in conducting a comprehensive assessment of an Item in order to verify and document its Legal title and ethical Provenance, including identification of any gaps and uncertainties. Due diligence steps are undertaken before deciding on a course of action—for example the decision to acquire, deaccession or lend an Item.

4.6 ‘First Peoples Ancestral Remains’ are the whole or part of the bodily remains identified as First Peoples. Cultural Property made from human hair or from any other bodily material that is not readily recognisable as being bodily material, does not fall within this definition.

4.7 ‘First Peoples Cultural Property’ includes national and international Cultural Property, images, archives, traditional knowledge, language and forms of cultural expression in the cultural and scientific collections that form part of the State collections or on loan to Museums Victoria.

4.8 ‘Grave Goods’ or funerary objects are First Peoples Cultural Property associated with the burial of First Peoples Ancestral Remains.

4.9 ‘Repatriation’ is the unconditional return of First Peoples Cultural Property to Traditional Owners, Communities of Origin or Cultural Authority.

4.10 ‘Secret–Sacred Objects’ refers to restricted First Peoples Cultural Property significant to First Peoples’ groups, communities or individuals and that were not made for the purpose of exchange/sale.

4.11 ‘State collections’ are Items formally acquired by Legal title (or usage rights for Items) under the *Museums Act 1983* (Vic) Section 26 (1), including specimens, voucher specimens, three-dimensional Items, images, moving images, sound, documents, and digital formats, along with their associated data. The State collections include the Legacy collections, and registered and unregistered Items.

4.12 ‘Traditional Owners, Communities of Origin and/or Cultural Authority’ are the identified owners connected through family, Country, language, knowledge and cultural practice.

4.13 ‘Victorian Aboriginal Heritage Council’ or ‘VAHC’ was created under the Aboriginal Heritage Act 2006 and is unique in Victoria as a statutory body with membership comprised only of Traditional Owners. The VAHC act as the co-ordinating body responsible for the overseeing, monitoring, managing, reporting and returning of First Peoples Ancestral Remains currently residing in Victoria. The VAHC also oversee and monitor the system of reporting and return of Secret–Sacred Objects.

## 5 Related Policies

Collection Care and Preservation Policy

Collection Development and Deaccession Policy

Information Security Policy

Information, Records and Archives Management Policy

Intellectual Property Policy

Open Access Policy

Privacy Policy

Research Policy

## 6 Associated Documents, Guidelines and Procedures

## 6.1 Museums Victoria Documents

Aboriginal Cultural Heritage Advisory Committee (ACHAC) Terms of Reference

Code for the Responsible Conduct of Research 2010

Collection Acquisition Procedure 2016

Collection Deaccession Plan, August 2021

Collection Deaccession Procedure 2016

Collection Development Committee (CDC) Acquisition and Deaccession Proposal Forms

Collection Development Committee (CDC) Terms of Reference

Collection Repatriation Procedure 2016

First Peoples Strategy August 2021

Museums Board of Victoria Financial, Human Resources and Operating Delegations 2021

Overview for Working Safely with Collections Containing Hazardous Substances (and relevant Safe Handling Procedures), 2021

Procedures and Protocols for Managing and Providing Research Access to the State Collections

Provenance Investigation Form

Provenance Risk Checklist

Research and Collections Strategy 2019–2025

Sustainable Collection Storage Strategy 2020–2040

## 6.2 External Documents

Australia Council for the Arts, Protocols for Using First Nations Cultural and Intellectual Property in the Arts (2019)

Australian Government Indigenous Repatriation Policy (2016)

Australian Library and Information Association, The Aboriginal and Torres Strait Islander Protocols for Libraries, Archives and Information Services (1995)

Australian Museums and Galleries Association (AMaGA), Continuing Cultures Ongoing Responsibilities: Principles and guidelines for Australian museums working with Aboriginal and Torres Strait Islander cultural heritage (2005)

Australian Museums and Galleries Association (AMaGA), National Standards for Australian Museums and Galleries (2016)

Australian Museums and Galleries Association (AMaGA; formerly Museums Australia), Code of Ethics for Art, History and Science Museums (1999) (currently in review 2021)

Australian Museums and Galleries Association (AMaGA; formerly Museums Australia), Museums and Sustainability: Guidelines for policy and practice in museums and galleries, Museum Australia (2003)

Berne Convention for the Protection of Literary and Artistic Works (Amendment) (1979)

Commonwealth of Australia, Australian Best Practice Guide to Collecting Cultural Material, (2019)

International Council of Museums (ICOM), Code of Ethics for Museums, 2013

Janke, Terri, First Peoples: A Roadmap for Enhancing Indigenous Engagement in Museums and Galleries, Australian Museums and Galleries Association (2018)

Museums Australia, Code of Ethics, , 1999

Museums Australia, Continuing Cultures Ongoing Responsibilities: Principles and guidelines for Australian museums working with Aboriginal and Torres Strait Islander cultural heritage, 2005

Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (ABS) to the Convention on Biological Diversity (2014)

Pacific Islands Museums Association, Code of Ethics for Pacific Museums and Cultural Centres (2006)

UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, 2005

UNESCO, Convention for the Protection of Cultural Property in the Event of Armed Conflict ‘The Hague Convention’ First Protocol (1954) and Second Protocol (1999)

UNESCO, Convention for the Safeguarding of the Intangible Cultural Heritage (2003)

UNESCO, Convention on Biological Diversity (1992)

UNESCO, Convention on Stolen or Illegally Exported Cultural Objects--‘Unidroit’ (1995)

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

UNESCO, Convention on the Protection of the Underwater Cultural Heritage (2001)

United Nations, Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 1970

United Nations. [Declaration on the Rights of Indigenous Peoples, (2007)](https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf)

[Victorian Aboriginal Heritage Council Strategic Plan 2021–2026 (2021)](https://content.vic.gov.au/sites/default/files/2021-09/Victorian%20Aboriginal%20Heritage%20Council%20Strategic%20Plan%202021-26_web.pdf)

Victorian Government, Information Management Framework for the Victorian Public Service (2020)

Victorian Public Sector Commission, Code of Conduct for Victorian Public Sector Employees (2015)

## 7 Legislation

Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cth)

Aboriginal Heritage Act 2006 (Vic)

Charter of Human Rights and Responsibilities Act 2006 (Vic)

Heritage Act 2017 (Vic)

Human Tissue Act 1982 (Vic)

Human Tissue Act 1982 (Vic)Traditional Owner Settlement Act 2010 (Vic)

Museums Act 1983 (Vic)

Native American Graves Protection and Repatriation Act 1990 (USA)

Native Title Act 1993 (Cth)

Occupational Health and Safety Act 2004 (Vic)

Occupational Health and Safety Regulations 2017 (Vic)

Privacy Act 1988 (Cth)

Privacy and Data Protection Act 2014 (Vic)

Protection of Cultural Objects on Loan Act 2013 (Cth)

Protection of Cultural Objects on Loan Regulation 2014 (Cth)

Protection of Movable Cultural Heritage Act 1986 (Cth)

Public Records Act 1973 (Vic)