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1. Context

Several international instruments deal with cultural property that may have been collected illegally or unethically. These include:

- the UNESCO 1954 *Convention on the Protection of Cultural Property in the Event of Armed Conflict* () obligates States to prevent the export of heritage goods from occupied territory, or alternatively to return them after war has ceased;
- the UNESCO 1970 *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property* prevents museums from acquiring cultural property 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;
- the UNIDROIT 1995 *Convention on Stolen or Illegally Exported Cultural Objects* adopted in Rome, 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
- the *ICOM Code of Ethics for Museums* sets the minimum standards of professional practice and performance for museums and their staff.

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 and practice about the return of cultural objects.

2. Purpose

A modern museum in Australia is defined by the quality of its relationships, not simply the quality of its collections. The Museum's custodianship of cultural collections, therefore, is a form of possession that continues to sit in evolving and dynamic relationship to other custodians. The intention of this policy is not only to outline the mechanism by which materials can be returned, but also by which relationships can be restored, renewed, and reimagined.

Restitution is a concept that facilitates greater access for traditional custodians and their communities to their cultural heritage. It takes many forms including: physical return, exhibitions, loans, photographic and multimedia reproduction. It is anticipated that new forms of relationship, and new forms of custodianship, will emerge over time from the processes outlined in this policy.

3. Scope

The policy provides a process for assessment of claims for restitution of cultural objects held in the South Australian Museum State Collection in the Humanities discipline area, with the exception of Ancestral Remains and Secret Sacred Objects¹. This policy augments procedures detailed in the *South Australian Museum Collection Policy and Procedures*.

¹ See South Australian Museum policies: *Management and Repatriation of Ancestral Remains and Burial Goods* and *Management and Repatriation of Aboriginal and Torres Strait Islander Secret Sacred Objects*

4. Policy Detail/Statement

The Board acknowledges the cultural authority of traditional custodians of objects in the Museum's collections. It will work in partnership with custodians in ways that respect and include these individuals and their nations in the management of their cultural heritage.

The Head of Humanities is responsible for the conduct of appropriate and diligent research to identify the relevant traditional owners, custodians and representative bodies who have social, economic or spiritual affiliations with and responsibilities for cultural objects in the Museum's collection.

Circumstances for restitution

- The Board is responsible for restitution of cultural objects identified through its obligations under legal frameworks and international conventions for the return of illicitly trafficked antiquities and cultural property.
- The Board acknowledges the limits of the international conventions for the return of cultural objects and will therefore consider restitution that falls outside of its legal obligations, where it can be demonstrated the object falls into any of the following circumstances:
 1. objects taken in connection with acts of genocide;
 2. objects taken during armed conflict, including Australian frontier violence;
 3. objects of demonstrable cultural patrimony;
 4. objects acquired on the basis of fraudulent provenance documentation.
- The Board acknowledges that historical differentials in political and economic power have facilitated the dispossession of First Peoples of their cultural heritage and accepts that some of the Museum's historical acquisitions would most likely fail a 21st century test of fair trade. Objects acquired as a result of means that would now be regarded as dishonest or unconscionable may be assessed under point 4.

Managing restitution claims

- Where the Board has reason to suspect an object in the collection may require restitution under the legal frameworks or may fall into any of the four circumstances identified by this policy, it will fully inform itself through an Assessment process against criteria defined by this policy.
- An Assessment may also be triggered by a written claim from a current custodian or representative body of the custodians.
- The Head of Humanities will manage the Assessment and present the outcomes to the Board via the Cultural Objects Committee.
- All Assessments will be reviewed by the Cultural Objects Committee who will ensure each criterion has been sufficiently assessed. The Committee will progress completed Assessments to the Board, via the Aboriginal Advisory Committee for all Australian materials.
- The Aboriginal Advisory Committee will advise the Board and also recommend how information gained during the Assessment will be used. The Committee will consider both a desire for openness and the sharing of information while recognising the sensitivity of some information.
- Where the Aboriginal Advisory Committee recognises unresolved contestation associated with an object, the Board will consider deferring a decision until the contestation is resolved.

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- The Board must notify a claimant of its decision in writing and may give reasons in relation to the decision.
- The Board may review its decision if new and significant information is provided against any of the assessment criteria.
- The Board must maintain a register of all claims, assessments and decisions associated with restitution of cultural property.

Assessment Process

The purpose of an Assessment is to:

- confirm whether an object meets any of the circumstances identified for restitution,
- confirm the claimants as the rightful custodians and
- present the custodians' preferred form of restitution.

It is important that each case be considered on evidence presented under each of the five criteria at all stages of the Assessment.

Evidence may include documents, photographs, oral testimony or other evidence considered appropriate by either party.

Criteria:

1. *Identity of the object*

- Evidence to demonstrate with certainty the identity of the object under assessment.

2. *History of possession and/or ownership of the object*

- Evidence relating to the Museum's title in the object and/or rights of possession.
- Evidence about the provenance of the object prior to its acquisition by the Museum.
- A descriptive account of the use and treatment of the object since its acquisition by the Museum.

3. *Connection between the object and the claimant*

- Evidence to demonstrate the connection between the claimant and the object. This may include evidence for the continuity of practice or it may be evidence of connection in identity between the original creators/possessors and those making the request.
- If the claimant is acting on behalf of another person or group, evidence must be presented to demonstrate the right to be a representative.
- Where there is more than one group of claimants, the representatives submitting the request should demonstrate evidence of the full support of all the claimant groups.

4. *Significance of the object to the claimant and to the Museum*

- Evidence to demonstrate the significance of the object to the claimant.
- Evidence to demonstrate the significance of the object to the Museum.
- This may include information such as the religious, cultural, historical or scientific significance of the object. Claimants may present written or oral testimony to support this criterion.
- The value of an ongoing, enduring relationship between the claimant and the museum may be the determining factor in a decision to return.

- The financial or market value of an object should not form any part of the assessment of significance.

5. Options for restitution through mutually agreed arrangements

- The assessment process is an opportunity to explore, with the claimants, options about future management and uses of the object. For example, an object formally returned to the traditional custodians could be loaned back to the Museum under arrangements that articulate custodians' rights to control display, research, access and/or general management of the object into the future.
- Agreed suggestions such as the creation of a replica, the use of images and research opportunities may also be presented. These options should only be presented to the Board with evidence of the claimant's in-principle agreement.
- Notwithstanding these discussions, and the preference of the Museum to maintain custodianship wherever possible, restitution may also take the form of an unconditional return.
- Evidence relating to the broader implications of a decision to return or a decision not to return the object should also be presented.

5. Roles and Responsibilities

5.1 Museum Board

The Museum Board is responsible for ensuring obligations under Australian heritage protection laws, international cultural property laws and conventions to prevent the illicit trade of antiquities are reflected in Museum policy.

The Board will seek advice from the Aboriginal Advisory Committee prior to deciding a case for restitution. The Museum Board must consider all restitution assessments in an open, transparent and timely manner.

5.2 Aboriginal Advisory Committee

The Aboriginal Advisory Committee is responsible for providing advice to the Museum Board on how information gained during an assessment will be used. The Committee will consider both a desire for openness and the sharing of information while recognising the sensitivity of some information.

The Committee is responsible for recognising and advising the Board of unresolved contestation in a claim.

5.3 Cultural Objects Committee

The Cultural Objects Committee is responsible for reviewing each assessment and ensuring all claims for restitution are presented to the Board in a timely manner.

5.4 Museum Director

The Museum Director is responsible for compliance with this policy and ensuring the Museum Board and Museum staff are fully inducted into responsibilities under heritage protection legal frameworks, internal policy, cultural protocols and international conventions associated with cultural collections.

5.5 Museum Discipline Team and Responsible Senior Staff for this Policy

The Head of Humanities, in consultation with Humanities Team staff, is responsible for identifying cultural objects in the museum collections that may require restitution under legal obligations or which are likely to meet any of the criteria of this policy. The Head of Humanities is responsible for managing the assessment

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process outlined in this policy and presenting the assessment outcomes to the Board via the Cultural Objects Committee and Museum Director.

5.6 Museum Employees

All SA Museum employees are responsible for complying with all Australian heritage protection laws including the *Aboriginal Heritage Act 1988*, museum policy, public sector policy and *The Code of Ethics for the South Australian Public Sector* issued under the *Public Sector Act 2009*.

6. Approval and Review

The Board will review this policy every three (3) years in consultation with the SA Museum Aboriginal Advisory Committee.

Approval and Review	Details
Approval Authority	SA Museum Board
Advisory Committee to Approval Authority	SA Museum Aboriginal Advisory Committee
SA Museum – Responsible Executive Position	Director
SA Museum – Responsible Discipline Head	Head of Humanities
Approval/Effective Date	30 April 2020
Next Review Date	30 April 2023
Approved Amendment Date	Amendment Details

7. Supporting Documents

- [Convention on the Protection of Cultural Property in the Event of Armed Conflict \(UNESCO, 1954\)](#)
- [Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property \(UNESCO, 1970\)](#)
- [Convention on Stolen or Illegally Exported Cultural Objects \(UNIDROIT, 1995\)](#)
- [Protection of Moveable Cultural Heritage Act 1986 \(Cth\)](#)
- [Aboriginal and Torres Strait Islander Heritage Protection Act 1984 \(Cth\)](#)
- [Aboriginal Heritage Act 1988](#)
- [South Australian Museum Act 1976](#)
- [ICOM Code of Ethics for Museums](#)
- [South Australian Museum Collections Policy and Procedure 2018-2023](#)
- [South Australian Museum Cultural Rights and Consultation Policy](#)

Responsible Executive Position
Brian Oldman, Director

Restitution of Cultural Heritage Policy

Approval/Effective Date: 30 April 2020

Policy Contact
Professor John Carty, Head of Humanities

Approved by: SA Museum Board

Review date: April 2023 (3 year cycle)

8. Glossary of Terms and Definitions used in this Policy

Aboriginal Advisory Committee: means an advisory committee established by the Board under section 9 of the *South Australian Museum Act 1976*.

Aboriginal object: means an object of particular significance to Aboriginal or Torres Strait Islander people in accordance with Aboriginal tradition.

Aboriginal representative body: means a Recognised Aboriginal Representative Body as defined by the *Aboriginal Heritage Act 1988*, or a Registered Native Title Body Corporate defined by the *Native Title Act 1993* (Cth) or where neither are established, an incorporated Aboriginal organisation constituted to manage Aboriginal heritage in respect of a specified area of land or specified Aboriginal objects.

Aboriginal tradition: as defined by the *Aboriginal Heritage Act 1988*

Accession: as defined by *Museum Collections Policy and Procedure*

Board: means the Museum Board under the *South Australian Museum Act 1976*

Cultural Object: means an object made by humans for a practical and/or spiritual purpose.

Cultural Patrimony: means those objects which best represent a people's culture, which custodians feel are most vital and whose absence causes the greatest anguish².

Custodian: means a person entitled by cultural tradition to make decisions for, or have custody of, an object of cultural patrimony and includes Traditional Owners.

De-accession: as defined by *Museum Collections Policy and Procedure*.

Genocide: means acts that would now be described as genocide or as crimes against humanity.

Museum: means the South Australian Museum under the *South Australian Museum Act 1976*

Restitution: means the return of cultural objects under the conditions determined by the relevant traditional owners, custodians and representative bodies who have social, economic or spiritual affiliations with and responsibilities for their cultural objects.

Traditional Owner: as defined by the *Aboriginal Heritage Act 1988*

² 'A Plea for the return of an irreplaceable cultural heritage to those who created it; an appeal by Mr. Amadou-Mahtar M'Bow, Director-General of UNESCO' in *The UNESCO Courier: a window open on the world*, XXXI, 7, p. 4-5, illus. (<https://unesdoc.unesco.org/ark:/48223/pf0000046054>)

9. Management of Restitution of Cultural Objects Assessments Flow

