



Australian Government

Australian Best Practice Guide to Collecting Cultural Material

**Ministry
for the
Arts**



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Ministry for the Arts
Department of Communications and the Arts
GPO Box 2154
Canberra ACT 2601
Email: CollectionsDevelopment@arts.gov.au

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1. Introduction

Australia's public collecting institutions enrich public life by displaying, interpreting, making accessible and preserving the world's shared cultural, scientific and historic heritage.

Acquisitions to collections and loans to institutions play a vital role in increasing our society's understanding of culture. They also increase education and outreach activities and are an important impetus for research.

Australian institutions safeguard and protect the cultural property of Australia and other nations. They also develop their collections according to the highest ethical standards and legal requirements. To uphold this commitment, institutions should undertake due diligence to ensure they only acquire or borrow cultural material that has legal title, established provenance, is authentic and not identified as having been looted or illegally obtained or exported.

The Australian Best Practice Guide to Collecting Cultural Material outlines principles and standards to assist Australia's institutions when considering acquiring cultural material, whether through purchase, gift, bequest or exchange. This guide can be used by collecting institutions when developing their policies and setting out their principles for due diligence research and other processes required when considering an acquisition. Sections of this guide may also apply to cultural material being considered for inward loan.

The Australian Best Practice Guide to Collecting Cultural Material is, as its name implies, a guide. It is not a mandatory code. It acknowledges the responsibility of institutions to undertake due diligence to identify, mitigate and manage risks that may be associated with acquiring or borrowing cultural material.



2. Scope of this guide

The *Australian Best Practice Guide to Collecting Cultural Material* is intended for the broad range of Australia's public collecting institutions, including galleries, libraries, archives and museums. It refers to cultural material as objects of all types.¹ It also refers to individual objects, collections or groups of objects and includes gifts made through the Australian Government's Cultural Gifts Program.

The nature and scope of Australia's institutions varies widely. This guide reflects this and acknowledges the flexibility individual institutions need when processing acquisitions and loans, including through risk-management approaches. This guide also recognises the broad professional expertise available across Australia's institutions, which ensures best judgement and decision making in each situation.

Institutions should be committed to the principles in Section 3 of this guide, which outline the legal and best practice ethical standards for acquiring or borrowing objects. Institutions should undertake appropriate due diligence and ensure that cultural material is clear of known impediments to use. Institutions should also consider the extent to which further research into the provenance of cultural material is needed. The following sections of the guide outline procedures that may be considered.

Where this guide refers to a policy or procedure, it is intended that institutions determine how best to administer or reflect requirements for their own purposes. This may mean having one policy to address the principles of this guide or multiple stand-alone policies and procedures.

The Australian Best Practice Guide to Collecting Cultural Material is not a full and authoritative statement and does not constitute professional or legal advice. A list of resources is at Appendix B.

¹ A definition of cultural material is at Appendix A.



3. Statement of principles

In acquiring or borrowing cultural material, Australian public collecting institutions should:

- I. be committed to the principle that acquisitions whether by purchase, gift, bequest or exchange, and loans be made according to the highest standards of due diligence, including ethical and professional practice, and in accordance with applicable law
- II. not seek to acquire or knowingly borrow Aboriginal or Torres Strait Islander secret/sacred or culturally restricted materials but acknowledge legal and ethical responsibility to accept or hold such material on occasion
- III. not acquire or knowingly borrow cultural material unless satisfied that it has not been acquired in, or exported from, the country of origin (and intermediate countries) in violation of that country's laws
- IV. not acquire or knowingly borrow cultural material where there are suspicions it was obtained through unauthorised or unscientific excavation of archaeological sites, the destruction or defacing of ancient monuments, historic places or buildings, or the theft from individuals, museums or other repositories
- V. not acquire or knowingly borrow biological or geological material that has been collected, sold or otherwise transferred in contravention of applicable national or international laws, regulations or treaties
- VI. be committed to review new information about an object in the institution's collection and undertake further investigations, including reviewing previous decisions about the object
- VII. be committed to transparency and accountability in relevant policies and procedures and in making information on new acquisitions available to the public.

Australian institutions should ensure these principles are embodied in the policies and procedures relating to acquisition, collection management and loans.

Despite best efforts, provenance information or chain of ownership for some cultural material may be incomplete or unobtainable. Nevertheless, institutions, having assessed associated risks, may determine that this material should be publicly displayed, preserved, studied and published.



4. National and international agreements and legal considerations

Public collecting institutions must be familiar and comply with legal obligations relating to the acquisition and loan of cultural material. Many countries are party to international conventions regarding the import, export and transfer of ownership of cultural material. As a result many countries, including Australia, have laws regulating these activities. Institutions should ensure their collection acquisition and borrowing policies are consistent with national legislation and international treaties and conventions.

4.1 Protection of Movable Cultural Heritage Act 1986 and UNESCO Convention on the Means of Prohibiting and Preventing Illicit Import, Export and Transfer of Ownership of Cultural Property, 1970

The Protection of Movable Cultural Heritage Act 1986 (PMCH Act) implements Australia's obligations under the UNESCO Convention on the Means of Prohibiting and Preventing Illicit Import, Export and Transfer of Ownership of Cultural Property, 1970 (1970 UNESCO Convention) to which Australia is a State Party. The 1970 UNESCO Convention requires State Parties to ensure that no collecting institution accepts illegally exported items.

The Australian Government administers the PMCH Act through the Ministry for the Arts. The PMCH Act regulates the export of Australia's most significant cultural heritage objects by implementing export controls for objects defined as 'Australian Protected Objects'. It also includes provisions that allow Australia to respond to an official request from a foreign government to return movable cultural heritage objects that were illegally exported from their country of origin.

Under the PMCH Act, an object may be liable for return if it:

- is considered to be a protected object of a foreign country; and
- was exported in contravention of that country's cultural property law; and
- was imported into Australia after 1987 (when the PMCH Act came into force).

Importantly, the terms of the PMCH Act are understood to mean that provided a request from a foreign government meets the above requirements, the date of export of the object from the country of origin can precede the 1970 date of the 1970 UNESCO Convention if the laws protecting the export of cultural heritage were in force in that country at the time the object



was exported. In addition the PMCH Act does not limit the request being made to countries that are party to the 1970 UNESCO Convention.

4.2 Environment Protection and Biodiversity Conservation Act 1999 and Convention on International Trade in Endangered Species of Wild Fauna and Flora 1975

Institutions must comply with the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) to ensure Australia meets its obligations under the Convention on International Trade in Endangered Species of Wild Fauna and Flora 1975 (CITES Convention). The CITES Convention is an international agreement between governments which controls imports, exports and re-exports of wildlife endangered due to trade. CITES was ratified by Australia and implemented through national legislation in 1976.

The EPBC Act establishes a permit system to allow the import and export of specimens listed by the CITES Convention, including for non-commercial purposes. It also provides the framework for domestic measures regulating trade in particular species, which is stricter than that required by the CITES Convention. Institutions should not acquire or borrow objects or material made of, or including parts or derivatives of, flora and fauna included in any appendix to the CITES Convention if the object or material has been traded without appropriate permits or in contravention of the Convention.

4.3 Other heritage legislation and international agreements

Institutions are responsible for ensuring they are familiar with other legislation that may affect the type of collections or activities they undertake. Some cultural heritage is protected by other Commonwealth legislation, including:

- Historic Shipwrecks Act 1976, which protects historic wrecks and associated relics more than 75 years old that are in Commonwealth waters
- Aboriginal and Torres Strait Islander Heritage Protection Act 1984, which can protect areas and objects of significance to Aboriginal and Torres Strait Islander peoples
- Protection of Cultural Objects on Loan Act 2013, which protects the cultural heritage of Australia and other countries from seizure when on loan from overseas to an approved Australian collecting institution
- other Commonwealth legislation regulating the ownership of government records.



Australian cultural heritage is also protected by state and territory legislation which varies between jurisdictions but must also be adhered to.

Institutions are also responsible for being familiar with the ethics and principles established by other international conventions,² including:

- UNIDROIT Convention on Stolen and Illegally Exported Cultural Objects 1995 which supplements the 1970 UNESCO Convention
- UNESCO Convention on the Protection of the Underwater Cultural Heritage, 2001, which aims to assist countries in managing and preserving their unique underwater cultural heritage
- UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage, 2003, which requires State Parties to safeguard the intangible cultural heritage present in its territory
- UNESCO Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention 1954 (The Hague Convention, First Protocol, 1954 and Second Protocol, 1999), which require State Parties to protect cultural property during war
- UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage, 1972, in which State Parties agree to identify, protect, conserve, and present World Heritage properties within their territory
- UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expression, 2005, which recognises the rights of State Parties to take measures to protect and promote the diversity of cultural expression
- UN Declaration on the Rights of Indigenous Peoples, 2007, which highlights the requirements for prior and informed consultation, participation and consent in activities which impact on Indigenous peoples, their property or territories.

² Further information on these conventions, including whether Australia is a State Party, is in Appendix B.



5. Provenance and due diligence information and research

Provenance includes the full history and chain of ownership of an object from the time of its discovery or creation to the present day, through which authenticity and legal title are determined. In addition to questions of ownership and legal title, public collecting institutions must be able to establish, as far as practicable, where cultural material came from and when and how it left its country of origin and intermediate countries before acquisition.

Due diligence requires that every endeavour is made to verify the accuracy of information before deciding a course of action, particularly in identifying the source and history of cultural material considered for acquisition. Due diligence may include verifying the authenticity of an object, legal title, condition, value for money, integrity of its history, source and vendor. If provenance cannot be determined and/or the institution has doubts about any information then further due diligence must be undertaken to identify and mitigate risks before deciding to acquire or borrow the cultural material. If, following additional research, the institution still has doubt then it should not acquire or borrow the cultural material.

Institutions must make every effort to ensure they only acquire objects for which provenance has been established or, through presence in the public domain, are judged to have a history that is considered secure. Importantly, institutions should be aware that acquiring or borrowing objects with uncertain provenance may risk supporting trade in looted objects and destruction of cultural sites through illegal excavations. It may also lead to a claim on that object.

An ideal provenance history provides a verifiable documentary record of owners' names; dates of ownership; means of transference, for instance, inheritance or sale through a dealer or auction; and locations where the object has been kept, from when it was created or discovered to the present day. Verifiable documentary records may include: export certificates or approvals; publication and exhibition history; receipts, notes and certificates. However, such complete, unbroken records of ownership are rare and it is recognised there are gaps in provenance for many objects.



5.1 Levels of research

Institutions make professional judgements on the extent of due diligence required. Sometimes detailed research, analysis and careful scrutiny are required, but not all collection activities warrant this level of extensive research. Each institution is responsible for creating and maintaining an organisational culture that identifies risks and ensures frameworks and strategies are in place to document, consider, manage and mitigate those risks. This may include assessing the level of risk and the resources required to mitigate risks.

In assessing risks institutions must:

- evaluate documentary evidence, identify and understand limitations or gaps in information and take into consideration ethical and legal matters
- identify and document risks, consider critical aspects and inform decision makers of the risks
- acknowledge where professional judgement has been exercised and expert opinion relied upon to assess available information and reach a balanced conclusion
- be accountable and transparent in decision making.

5.2 What to consider when undertaking research

Institutions should develop written procedures to guide staff when undertaking due diligence research. Procedures should ensure staff are familiar with legal obligations and current best practice standards. All staff, including those making decisions about acquisitions, should be trained in due diligence obligations. Acquisition proposals to committees and boards should detail the due diligence underpinning recommendations. They should also outline how the acquisition or acceptance of a loan, gift, bequest or exchange, conforms to the institution's collection, acquisition and loans policies.

When conducting research on cultural material, institutions may need to consider these points.

5.2.1 Legal title/authority to lend

- Examine the nature and reputation of the vendor, donor or lender and evidence that they hold legal title to retain and transfer the cultural material or the legal authority to lend it



- note that this should not be a replacement for undertaking due diligence.

5.2.2 Provenance

- Examine documentary evidence of the ownership and history of the cultural material, including secondary documentation, archival material and images, specifically to:
 - evaluate and research the provenance information provided by the vendor, donor or lender and the legitimacy or authenticity of documents and other evidence
 - assess where research should be extended to clarify the history of the cultural material and document gaps in information
 - determine if there are outstanding title or ownership claims or judgements relating to the material and if checks are required on whether claims to ownership have previously been made.
- Check the cultural material against international databases or registers of stolen art, such as the Art Loss Register, the INTERPOL Stolen Works of Art database and national databases within the relevant countries.
- Give extra scrutiny and consider specific types of objects and the provenance for cultural material known to be at risk of illicit trade including:
 - art and antiquities acquired during and shortly after times of conflict,³ social upheaval or natural disasters
 - art, antiquities, archaeological and palaeontological objects and architectural sculpture that may have been stolen from historic sites, for example risk regions in Africa, Asia and Latin America or from a category listed on the ICOM Red Lists database
 - objects that may have been stolen from museums, private collections, religious buildings (such as churches, temples, mosques) and historic buildings.
- Examine the exhibition and publication history of the cultural material.
- Consult with experts on the cultural material, the country of origin or the circumstances of export and/or on the reputation of the owner, donor or lender.
- Consider the need to seek specialist legal advice.

³ Some cultural material may be of ancient origin and associated with conflicts that occurred thousands of years ago. Therefore, it may not be possible to obtain documentation on the legality of transfer.



5.2.3 Legal export

- Seek evidence that the vendor, donor or lender holds, or can obtain, a valid export licence or permit for the cultural material from the country in which it is currently held, or if sufficient appropriate information is available from that country's government or relevant authority about the legality of export.
- Seek evidence and information demonstrating when the object left its country of origin and what laws were in place at that time regulating the export of cultural objects.⁴
- Consider whether to make enquiries of foreign authorities through diplomatic channels on the legality of export from the country of origin.
- Consider whether research is required to extend to intermediate countries where the cultural material may have been located.

5.2.4 Physical examination

- Conduct physical examination of the object or inspect detailed descriptions and photos to assess its physical condition and authenticity,⁵ including consideration of:
 - detailed conservation assessment and condition reports
 - scientific examinations and testing of the materials, age and other relevant aspects of the object
 - inscriptions, labels and other marks.

5.2.5 Consultation

- Consider whether to consult with individuals, groups or communities, where the cultural material may relate to them.
- Consider whether to consult with communities in foreign countries and whether contact should be made with embassies, consulates or diplomatic posts.
- Determine whether consultation is needed by considering factors such as whether the object:
 - is of historical significance to a particular person, group, event, place or activity (for example, if it is associated with an important historical event or if ownership changed hands during a conflict)

⁴ A compilation of UNESCO member state cultural heritage law is at:
http://portal.unesco.org/culture/en/ev.phpURL_ID=33928&URL_DO=DO_TOPIC&URL_SECTION=201.html

⁵ This guide does not cover all factors that apply to determining authenticity.



- has specific family associations
 - has social or spiritual significance to specific communities and demonstrated contemporary attachment between object and community
 - embodies beliefs, ideas, customs, traditions, practices or stories that are important for a community.
- Ensure that consultation policies and procedures demonstrate:
 - the creation of genuine relationships of recognition and reciprocity between individuals, groups or communities and the collecting institution
 - the institution's recognition of the historical, social or spiritual significance of objects to an individual or group and associated intellectual property rights
 - that multiple avenues of consultation (in person, verbal, virtual, written) may be used
 - the institution is committed to dealing with concerns raised, including through ongoing communication and investigation to reach an appropriate outcome.

5.2.6 Aboriginal and Torres Strait Islander cultural heritage

Institutions working with Aboriginal and Torres Strait Islander cultural heritage should ensure close consultation and collaboration with Traditional Owners or, where applicable, authorised custodians or their representatives, or academic experts in the field.

- Issues that may be considered include:
 - evidence that the vendor has consulted the authorised representatives of relevant communities and that the principles of fair and ethical trade in cultural material have been upheld
 - whether the principles of the Indigenous Australian Art Charter of Principles for Publicly Funded Collecting Institutions have been followed
 - whether the principles established in Continuous Cultures, Ongoing Responsibilities (Museums Australia 2005) and, where applicable, the Protocols for Producing Indigenous Australian Visual Arts, 2nd edition (Australia Council 2010) have been followed.
- Principles that should be reflected in the institution's policies on consultation with Aboriginal and Torres Strait Islander peoples include:



- creation of genuine relationships of recognition and reciprocity between traditional custodians and the collecting institution
- recognition of the value of stories and intangibles associated with objects and associated intellectual property rights
- acknowledgement by the institution, where appropriate, that it has a custodianship or caretaker role rather than ownership
- creation of opportunities for Aboriginal and Torres Strait Islander people to have informed input into decisions affecting how institutions store, conserve, research, display or in any other way use their cultural heritage
- acknowledgement by the institution of contemporary Aboriginal and Torres Strait Islander cultural practices and the need to promote cultural respect and understanding
- research on Aboriginal and Torres Strait Islander cultural heritage objects is undertaken using recognised ethical research practices, including sharing research outcomes with relevant Aboriginal and Torres Strait Islander communities
- access by Aboriginal and Torres Strait Islander people to their cultural heritage is facilitated.

5.2.7 Scientific research and natural history collections

Institutions involved in scientific research activities or with natural history collections, including those with living specimens, need to abide by the principles established by this guide, including that specimens have been obtained legitimately and have been imported in compliance with applicable laws and conventions, including the CITES Convention. However some specimens or collection activities will be subject to differing considerations. For example, where the institution acquires a large collection of material, it needs to assess if it is necessary to undertake due diligence on each item and, in doing so, identify and mitigate possible risks.

This guide does not cover all factors applying to institutions with scientific research or natural history collections. These institutions should refer to the ICOM *Code of Ethics for Natural History Museums 2013*, *Environmental Protection and Biodiversity Conservation Act 1999*, *United Nations Convention on Biological Diversity 1992*, and *Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization 2010*.



5.3 Due diligence when undertaking loans

Decisions on the level of due diligence when borrowing cultural material should be based on identifying and mitigating potential risks. Borrowing some types of cultural material may involve higher levels of risk and the borrower should be satisfied they have acceptable legal and provenance information with which to make an informed decision on whether to proceed with the loan.

Institutions borrowing specimens for research should abide by the principles established in this guide, noting that it does not cover all situations that will apply to these institutions.

In regard to short-term loans it is acknowledged that due diligence is the owner's responsibility. However, if the borrower is concerned about an object proposed for loan, they should consider further research to identify and mitigate risks.

Importantly where institutions are seeking to hold an object on long-term loan it does not obviate their responsibilities to establish provenance or undertake due diligence on the legal and ethical standing of the object or the lender.

5.4 Where there are difficulties in establishing provenance

Decisions relating to the acquisition or loan of some material can be legally and ethically complex and require weighing a number of legitimate and sometimes competing interests and priorities. Provenance is often incomplete however if a vendor or donor cannot provide acceptable documentary evidence of an object's provenance, then the collecting institution must consider undertaking further due diligence. Institutions should make every effort to ensure they only acquire or borrow objects for which provenance has been reasonably established.

In deciding whether to acquire cultural material when provenance is uncertain, institutions should consider if:

- research provides evidence or enough information to make an informed judgement on how the object left the custody of the creator or original owner or, where applicable, transfers during a time of conflict



- research provides evidence or enough information to make an informed judgement that the object was legally exported from its country of origin and its importation into Australia was, or will be, in accordance with the PMCH Act
- risks are balanced with the decision to proceed and if the reputational harm of acquiring or exhibiting the object is greater than the benefits it may bring
- acquisition is in the best interests of the culture the material represents.

Where an object is known to be, or is suspected to have been, stolen or illegally removed, it must be reported to local state or territory police in the first instance and to the INTERPOL Stolen Works of Art database and other relevant national and international lists such as the Art Loss Register.

5.5 Repository of last resort

If after undertaking due diligence suspicions exist about an object, its history or the vendor, lender or donor, the institution should not proceed with the acquisition or loan. In some circumstances however, an institution may act as a custodian for Australian or foreign cultural material.

5.5.1 Custodianship of Australian cultural material

In some circumstances institutions may accept the custody and control of Australian objects without acquiring legal title. This may occur when objects are transferred as a consequence of statutory requirements, for example, where state heritage legislation dictates that an institution is a statutory repository for historic shipwreck or archaeological material. Where this is the case, procedures required under law take priority over those outlined in this guide.

Institutions may hold cultural material at the request of Traditional Owners or their representatives. Legal title is not transferred in these cases, although custody and control may be temporarily transferred. With secret/sacred or culturally restricted material the institution should consider other cultural controls and sensitivities, including the need for separate storage, whether objects are managed by male or female staff and the need for culturally appropriate access mechanisms.

5.5.2 Custodianship of foreign cultural material

On occasion an Australian institution may hold foreign cultural material as an 'emergency loan' for safekeeping where it is not safe in its own country. For example, where a country is



experiencing conflict, social upheaval or has been affected by a natural disaster a collection may be moved to an Australian institution for short-term safekeeping.

Institutions should perform this role only with the authority and/or agreement of the international community, for example, UNESCO, ICOM or the government of the country from which the object has been removed. These activities may be governed by the principles of the Hague Convention.

In holding foreign cultural material, institutions must not use it for commercial use. They should properly preserve the material, and when safe to do so must return it to the country from which it was removed.



6. Following due diligence

Following the due diligence process, public collecting institutions and their governing bodies must exercise professional judgement in determining if an object's authenticity, legal and ethical status is sound and substantially free of risk and if it is appropriate to acquire or borrow the object.

6.1 Decision making

Institutions must establish clear lines of authority and responsibility for approving acquisitions and confirming inward loans through staff, management, executive and, if applicable, their governing body. Institutions should reflect this in their policies and procedures.

Provenance information and the terms and conditions of an acquisition or loan must be disclosed at each step so those approving the acquisition or finalisation of loan negotiations can make a fully informed decision. The institution should disclose to decision makers where donations or other acquisitions from the same source are being considered. This is to reduce the risk of fraud or collusion.

Final acquisition approvals may be the responsibility of the institution's governing body although this authority may be delegated. All acquisitions made under delegated authority should be reported, in a timely manner, to the ultimate authority in line with established legislation or the institution's policies and/or procedures.

6.2 Legal transfer

An agreement should be signed with the vendor or donor to confirm they can transfer legal title and ensure ownership is not encumbered. In the agreement for legal transfer, institutions should consider additional promises or warranties they wish the vendor or donor to confirm, such as that:

- they are the sole owner of the object and/or have the right to transfer ownership
- they have received no notice of claims on the object
- the object and its provenance is what it is stated to be and is authentic
- the object was or will be exported from the country of origin and any intermediate country in compliance with the laws of those countries, and that there is documentary evidence to support this



- if they are in breach of any representation, that they agree to return the purchase price
- they will, if in breach of any representation, indemnify against any awards, expenses, costs or other losses incurred as a result of the breach.

Signed agreements are important but they do not replace the need to undertake due diligence in establishing provenance to confirm information about an object and its history.

Conflicts of interest, fraud and collusion are possible factors in transactions involving cultural material. Institutions should be aware of these factors concerning the vendor or other external and internal parties and have mechanisms in place to manage them.

6.3 Authority to lend

A signed agreement should be developed with the lender to confirm their authority to lend the object and outline the terms and conditions of the loan and return of the object.

Institutions may consider requiring the lender to guarantee that they have not provided false or misleading information about the object and have exercised reasonable care and expertise when providing information relating to the object. This may include asking the lender to:

- acknowledge legal title and confirm their lawful right to lend the object
- confirm there are no outstanding or current third-party claims on the object and if applicable provide information on past or potential claims by a third-party
- confirm the known provenance of the object and that due diligence has been completed.



7. Information revealed subsequent to acquisition

On occasion new information comes to light that raises questions about the provenance or authenticity of an object acquired by a public collecting institution. In these situations, institutions should, as soon as possible, undertake additional research into the history of the cultural material and consider all new evidence and information.

Where this information has been provided by an individual, group or organisation seeking to claim the object, institutions should follow their claims-handling policy or procedure and seek to obtain an equitable resolution. This may include negotiating to return, borrow or exchange the object, but will be governed by the institution's policies and applicable Commonwealth, state and territory legislation and international laws and conventions.

Should culturally restricted material be discovered in the institution, including restricted or sensitive Aboriginal and Torres Strait Islander cultural material, its staff and governing body must take appropriate action as soon as possible. Immediate action may include removing the object from display and public access and ensuring appropriate restricted storage. Following this, consultation may take place with relevant community groups or their representatives to consider repatriation or discuss appropriate care.

7.1 Considering enquiries or claims

Enquiries or claims about objects may be made to public collecting institutions by individuals, groups, organisations or governments. Institutions may also be involved in disputes over objects in their collections. These may concern the provenance, restitution, return, custodianship and ownership, as well as intellectual property issues and claims concerning intangible cultural heritage.

Institutions should have a policy or procedure for handling enquiries or claims relating to cultural material. The institution is responsible for dealing with these in a professional, sensitive and timely manner.

Upon receipt of an enquiry or claim, institutions should, if possible, seek a written statement from the claimant. This should include:

- the claimant's name, address and contact details



- where a claim or enquiry is being made on behalf of another person, that person's name, contact details and their relationship to the claimant
- a short summary of the claim to the object
- copies of documents or other evidence that may be relevant to substantiating the enquiry or claim.

Institutions should promptly investigate each enquiry or claim to determine if it is justified. In determining this, the institution should:

- review documentation from the enquirer or claimant
- review evidence of the legal and/or cultural standing of the claimant, which may include evidence such as genealogical and kinship records, government records, anthropological research, traditional and oral history, and photographic evidence
- closely examine, in the case of Australian cultural material (including Aboriginal and Torres Strait Islander material), the object's provenance and history including how it left the custody of the individual or community in Australia
- determine if the claim has been made in another jurisdiction.

In investigating a claim, institutions should:

- do so in accordance with their relevant policies and/or procedures
- where a claim relates to Aboriginal and Torres Strait Islander cultural material, take into account the principles established in Continuous Cultures, Ongoing Responsibilities (Museums Australia 2005)
- consider ethical concerns
- consider if the potential return is subject to Commonwealth, state or territory legislation.

Where an institution is satisfied that the enquiry or claim is reasonable then it should provide a full report on the object and the enquiry or claim for the governing body to make a decision.

The report may include:

- background on the object, such as its acquisition, provenance or history or other research and commitments the institution has made regarding the object
- detailed information on the claim as well as legal and ethical considerations



- the significance of the object to the requesting party, institution and wider national and international significance.

Having regard to the nature and circumstance of the claim and unless there is a contractual or legislative impediment to do so, the institution should provide the enquirer or claimant with a written summary of the research into provenance, ownership and history of the object or other information it holds.

Institutions may also consider using a mediation service to attempt to resolve disputed claims to property within their collections. For example, ICOM in partnership with the World Intellectual Property Organization offers an Art and Cultural Heritage Mediation program that encourages alternative ownership dispute resolution for institutions to settle disputes out of court.

7.2 Restitution and return

After investigating a claim, a governing body may determine that the object of the claim be returned.

While management of the return will differ depending on the institution or situation, the decision should be based on sound research. It should also be based on collaboration with the requesting party, experts in the relevant field and, if applicable, the Australian Government, state or territory government and possibly authorities from the country of origin.

Ahead of a return, institutions must also consider the disposal, deaccessioning, any restitution or repatriation policies and applicable legislation.

7.3 Requests from foreign governments

An institution should communicate a request or claim from a foreign government to the Australian Government without delay. The Ministry for the Arts and Department of Foreign Affairs and Trade would usually be involved in government-to-government discussion on the request or claim.

A request to return cultural material from a foreign government may trigger action to be taken under the Protection of Movable Cultural Heritage Act 1986. Formal processes for considering such a request are established by this Act, which is administered by the Ministry for the Arts. Requests under this Act may include the requesting country claiming return of cultural



material removed in contravention of its cultural property laws. If an object is seized under the Act by the Australian Government the institution involved has a statutory period during which to contest the seizure.

8. Transparency and accountability

8.1 Record keeping

Public collecting institutions should have a record keeping or documentation policy to ensure transparency and accountability to the public.

Institutions should keep clear, accurate records of all information relating to cultural material acquired or borrowed. This includes key decisions and considerations as well as transactions. It also includes information on transaction negotiations, values and payments involved, provenance, due diligence undertaken and compliance with procedures and policies. Clear, detailed policies, processes and records provide public transparency and accountability and ensure the institution can respond to requests for information about cultural material.

Records of information may include:

- results from checks for authenticity and attribution
- steps undertaken and checks made into the cultural material's provenance, citing the information source
- documentary proof of ownership or statements confirming provenance or advice received about the object from the vendor, donor or lender
- checks made to ensure the cultural material falls within relevant legislation of the country of origin or an intermediate country
- condition and scientific testing reports and conclusions drawn from physical examination of the object
- information about factors specific to the origin or type of object
- expert advice requested and received and assessment made of that advice.

Where documentary evidence or a statutory declaration is not available, institutions should record the checks undertaken, including who undertook them and when. Deficiencies in available documentation should be recorded. Records should set out the case for exception and confirm that no suspicion was found about the object's legal or ethical status.



8.2 Publication of policies, procedures and acquisitions and loans

Publication of policies and procedures relating to the acquisition of objects, and information on acquisitions and loans, is an important transparency measure for institutions. Each institution should adopt and publish a written statement of its acquisitions, collection management and/or provenance and due diligence policies that conform to international and national codes of ethics and relate to the nature of the institution's activities. These documents should be periodically reviewed to ensure they continue to meet current standards.

Information on new acquisitions should be made available to the public or published in accordance with the institution's policies and/or procedures ensuring maximum transparency.⁶ For example, this may be through the creation of online collection records and publication in the collecting institution's annual report. Institutions should consider, where appropriate and with consideration of third-party privacy issues, publishing provenance information on objects acquired by the institution. In addition, publishing provenance information may allow for further research or information to be made available to the institution.

8.3 Institutional and staff obligations

The institution is responsible for ensuring staff and members of governing bodies involved in acquiring cultural material are made aware of and comply with the institution's relevant policies and procedures. These may include acquisition, collection management, due diligence and provenance checking procedures and relevant Australian legislation. Staff and members of the governing body must also abide by the institution's professional codes of conduct and other policies including conflict of interest, gift and bequest policies. Conflicts of interest should be actively managed.

⁶ Subject to third-party privacy considerations and resource constraints.



Appendix A—Definitions

Acquisition

The collection of material whether by purchase, gift, bequest, exchange, discovery, fieldwork or other method. In the usual understanding of the word, acquisition into an institution's collection results in the transfer of the legal ownership, custody or control of material to the institution.

Authentic

Of undisputed origin and supported by evidence. Not a copy. Genuine.

Collecting institutions

Collecting institutions collect, preserve, make accessible and interpret cultural, scientific and historic heritage. They include Australia's public galleries, libraries, museums and archives.

Cultural material

Includes objects of all types and is not limited to: antiquities; material from archaeological excavations; objects of ethnological interest; objects of artistic interest; palaeontological objects, digital born objects and multimedia creations; archives including written, sound, photographic and cinematographic; and specimens of fauna, flora, minerals and anatomy.

Due diligence

The requirement that every endeavour is made to verify the accuracy of information before deciding on a course of action, particularly in identifying the source and history of cultural material considered for acquisition.

Governing body

The persons or organisations defined in the enabling legislation of the institution as responsible for its strategic development and financial management.

Legal title

Legal right to ownership of property. This may be supported by full evidence of every transaction subsequent to the first owner's title.



Loan

The loan of an object involves arrangements for the:

- temporary transfer of the physical possession, custody or control of the object directly or indirectly from one entity to another entity, whether or not any consideration payment is provided for the transfer, and
- transfer of the physical possession, custody or control of the object directly or indirectly from the other entity back to the first entity.

Provenance

Includes the full history and chain of ownership of an object from the time of its discovery or creation to the present day, through which authenticity and legal title are determined.

Repository of last resort

Occasionally an institution will act as a custodian for cultural material, for which a full provenance history is not available or to protect it from destruction or deterioration. In most cases Australian institutions will only be a repository of last resort for Australian cultural material. For example, the institution may act as a custodian for sensitive and significant cultural material such as secret/sacred objects where requested by Traditional Owners.



Appendix B—Resources

National resources

Aboriginal and Torres Strait Islander Heritage Protection Act 1984

<http://www.environment.gov.au/topics/heritage/laws-and-notices/indigenous-heritage-laws>

<http://www.comlaw.gov.au/Series/C2004A02943>

This Commonwealth Act can protect areas and objects of significance to Aboriginal people. It allows the Australian Government Environment Minister, on the application of an Aboriginal person or group of Aboriginal persons, to make a declaration to protect an area, object or class of objects from threat of injury or desecration.

Aboriginal and Torres Strait Islander Library, Information and Resource Network—Protocols for Libraries, Archives and Information Services (revised 2012)

<http://aiatsis.gov.au/atsilirn/protocols.php>

These protocols guide libraries, archives and information services in appropriate ways to interact with Aboriginal and Torres Strait Islander people in the communities in which they serve and handle materials with Aboriginal and Torres Strait Islander content.

Collections Law—Legal Issues for Australian Archives, Galleries, Libraries, and Museums

www.collectionslaw.com.au

A privately authored, online publication on the business and law of public collecting institutions in Australia.

Continuous Cultures, Ongoing Responsibilities, Museums Australia Incorporated (2005)

http://museumsaustralia.org.au/userfiles/file/Policies/ccor_final_feb_05.pdf

This publication outlines principles and guidelines for Australian cultural institutions to use when working with Aboriginal and Torres Strait Islander cultural heritage.

Council of Australasian Archives and Records Authorities—Policy 2—Recovery of Estrays (2008)

<http://www.caara.org.au/index.php/policy-statements/recovery-of-estrays/>

This statement of intent deals with the return of estrays into archival custody.



Environmental Protection and Biodiversity Conservation Act 1999

<http://www.environment.gov.au/topics/about-us/legislation/environment-protection-and-biodiversity-conservation-act-1999>

<http://www.comlaw.gov.au/Series/C2004A00485>

This Act provides a legal framework to protect and manage nationally and internationally important flora, fauna, ecological communities and heritage places. These are defined in the Act as matters of national environmental significance.

Historic Shipwrecks Act 1976

<http://www.environment.gov.au/topics/heritage/historic-shipwrecks/historic-shipwrecks-laws>

<http://www.comlaw.gov.au/Series/C2004A01619>

This Act protects historic wrecks and associated relics more than 75 years old that are in Commonwealth waters. It also regulates the transfer, possession and custody of material such as relics, including coins, from historic shipwrecks.

The Act is administered by the Australian Government in conjunction with delegates in each state, in the Northern Territory and on Norfolk Island. Each state and the Northern Territory have complementary legislation protecting historic shipwrecks in state or territory waters, such as bays, harbours and rivers.

International Council of Museums Australia

<http://icom.org.au/site/>

ICOM Australia is part of the global network of museum and heritage professionals committed to the world's natural and cultural heritage. It represents the international interests of its member museums and museum professionals across Australia and nearby regions.

Indigenous Australian Art Charter of Principles for Publicly Funded Collecting Institutions

www.indigenouartcode.org

This charter affirms the minimum ethical principles for all dealings between publicly funded collecting institutions and Indigenous artists, their representatives and communities. It is an agreed minimum standard to apply in acquiring, commissioning, displaying and deaccessioning Indigenous works of art.



Museums Australia

www.museumsaustralia.org.au

<http://museumsaustralia.org.au/userfiles/file/Governance/maethics.pdf>

This organisation is committed to the conservation, continuation and communication of Australia's heritage. The Museums Australia Code of Ethics (1999) is to be used as a reference by Australian collecting institutions and individuals, including staff. It includes benchmarks against which current museum policy and practice can be tested for ethical content.

National Standards for Australian Museums and Galleries (Version 1.3, 2013), Museums Australia

http://www.museumsaustralia.org.au/site/whatwedo_nationalstandards.php

These standards are developed around nine guiding principles, each supported by standards and benchmarks. These up-to-date agreed standards are broad in scope and designed to be an accessible tool for museums nationwide.

Protection of Cultural Objects on Loan Scheme

www.arts.gov.au/collections

The Protection of Cultural Objects on Loan Act 2013 establishes a scheme to protect objects on loan from overseas for temporary exhibition in Australia. This website provides information about the scheme and how to apply for approval under the Act.

Protection of Movable Cultural Heritage Act 1986

<http://www.comlaw.gov.au/Series/C2004A03252>

This Act protects Australia's cultural heritage by regulating the export of Australia's most significant cultural heritage objects. The Act also allows Australia to return cultural heritage objects to other countries that have been illegally exported from their country of origin.

Protocols for producing Indigenous Australian visual arts (2nd edition, 2010)

http://www.australiacouncil.gov.au/_data/assets/pdf_file/0004/32368/Visual_arts_protocol_guide.pdf

These protocols outline principles and provide case studies to assist artists and people working with Indigenous heritage and culture, on an artist's rights and ethical conduct.



Significance 2.0: A Guide to Assessing the Significance of Collections

<http://www.environment.gov.au/heritage/publications/significance2-0/index.html>

This guide outlines the theory, practice and applications of the concept of significance in collection management.

International resources

The Art Loss Register

www.artloss.com

This register is a database of reported lost or stolen artwork or cultural items.

Combating Illicit Trade: Due diligence guidelines for museums, libraries and archives on collecting and borrowing cultural material (2005)

<http://www.circulation-biens.culture.gouv.fr/pdf2/Combating.pdf>

This United Kingdom document aims to assist museums, libraries and archives when considering acquiring cultural material, whether by purchase, gift or bequest.

Convention on International Trade in Endangered Species of Wild Fauna and Flora 1975

<http://www.cites.org>

This Convention provides information on the endangered status of many species and details on the strict regulation of trade in these species and their products. Australia is a party to this Convention.

Guidelines on the Acquisition of Archaeological Material and Ancient Art (2013)

<https://aamd.org/standards-and-practices>

These guidelines, by the American Association of Art Museum Directors, provide information on the responsible acquisition of archaeological material and ancient art.



International Council of Museums

<http://icom.museum>

This website hosts the ICOM Code of Ethics for Museums (2004), the ICOM Code of Ethics for Natural History Museums (2013) and ICOM Red Lists database. It also details cultural objects at risk around the world. The website also has links to other sources of information and publications.

International Council of Museums—World Intellectual Property Organization Art and Cultural Heritage Mediation

<http://www.wipo.int/amc/en/center/specific-sectors/art/icom/>

This website provides information on a mediation process for art and cultural heritage disputes.

ICOM International Observatory on Illicit Traffic in Cultural Goods

<http://obs-traffic.museum/>

This collaborative platform aims to improve monitoring methods, data gathering and scientific research for international organisations, law enforcement agencies, research institutions and other external export stakeholders, to prevent looting and trafficking of cultural property.

International Foundation for Art Research

<http://www.ifar.org/>

This not-for-profit educational and research foundation is dedicated to integrity in the visual arts. It offers information on authenticity, ownership, theft, and other artistic, legal, and ethical issues concerning art objects.

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

<http://www.cbd.int/abs/>

This protocol aims at sharing the benefits arising from the utilisation of genetic resources in a fair and equitable way.



United Nations Educational, Scientific and Cultural Organization

www.unesco.org

This website contains information on safeguarding cultural heritage.

**UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage
1972**

[http://portal.unesco.org/en/ev.php-
URL_ID=13055&URL_DO=DO_TOPIC&URL_SECTION=201.html](http://portal.unesco.org/en/ev.php-URL_ID=13055&URL_DO=DO_TOPIC&URL_SECTION=201.html)

This Convention defines the natural or cultural sites that can be considered for inscription on the [World Heritage List](#). It sets out the duties of [State](#) Parties in identifying potential sites and their role in protecting and preserving them. Australia is party to this Convention.

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

[http://portal.unesco.org/en/ev.php-
URL_ID=13039&URL_DO=DO_TOPIC&URL_SECTION=201.html](http://portal.unesco.org/en/ev.php-URL_ID=13039&URL_DO=DO_TOPIC&URL_SECTION=201.html)

This Convention aims to protect cultural heritage and ensure cooperation between State Parties against the illicit import, export of transfer of ownership of protected heritage. It requires State Parties to ensure that no collecting institution accepts illegally exported items. Australia is party to this Convention.

**UNESCO Convention for the Protection of Cultural Property in the Event of Armed Conflict
with Regulations for the Execution of the Convention 1954 (The Hague Convention, First
Protocol 1954 and Second Protocol 1999)**

[http://portal.unesco.org/en/ev.php-
URL_ID=13637&URL_DO=DO_TOPIC&URL_SECTION=201.html](http://portal.unesco.org/en/ev.php-URL_ID=13637&URL_DO=DO_TOPIC&URL_SECTION=201.html)

This Convention requires State Parties to protect cultural property during conflict. Australia is a state party to the Convention but not to its protocols.



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

http://portal.unesco.org/en/ev.php-URL_ID=31038&URL_DO=DO_TOPIC&URL_SECTION=201.html

This Convention recognises the rights of State Parties to take measures to protect and promote the diversity of cultural expressions. Australia is party to this Convention.

UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage 2003

http://portal.unesco.org/en/ev.php-URL_ID=17716&URL_DO=DO_TOPIC&URL_SECTION=201.html

This Convention requires that State Parties take necessary measures to safeguard the intangible cultural heritage present in their territory. It also promotes international cooperation through the exchange of information and experience, joint initiatives, and the establishment of a mechanism of assistance to other State Parties. Australia is not party to this Convention.

UNESCO Convention on the Protection of the Underwater Cultural Heritage 2001

http://portal.unesco.org/en/ev.php-URL_ID=13520&URL_DO=DO_TOPIC&URL_SECTION=201.html

This Convention aims to assist countries in managing and preserving their unique underwater cultural heritage. Australia's agreement to this Convention is under consideration by the Australian Government.

UNESCO Database of National Cultural Heritage Laws

http://portal.unesco.org/culture/en/ev.phpURL_ID=33928&URL_DO=DO_TOPIC&URL_SECTION=201.html

This database is a compilation of UNESCO member state cultural heritage laws.

UN Convention on Biological Diversity 1992

<http://www.cbd.int/convention/text/default.shtml>

This Convention aims to assist countries in conserving their biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilisation of genetic resources.



UN Declaration on the Rights of Indigenous Peoples 2007

<http://undesadspd.org/IndigenousPeoples.aspx>

This Declaration recognises the wide range of basic human rights and fundamental freedoms of Indigenous peoples and highlights the requirement for prior and informed consultation, participation and consent in activities of any kind that impact on them, their property or territories. Australia has adopted this Declaration.

UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects 1995

<http://www.unidroit.org/instruments/cultural-property/1995-convention>

This Convention supplements the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Cultural Property 1970 and provides rules on the restitution and return of cultural objects. Australia is not party to this Convention.

World intellectual property organisation—traditional cultural expressions

<http://www.wipo.int/tk/en/folklore/>

This website provides information on the protection of traditional cultural expressions and intellectual property against their misuse or misappropriation, such as their copying, adaptation or use by unauthorised third parties.



Appendix C—Summary flowchart for acquiring cultural material

References to applicable principles and sections of this guide are included in brackets.

