



First Nations cultural rights and engagement policy

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Contact	National Museum of Australia GPO Box 1901 CANBERRA ACT 2601 Tel: (02) 6208 5000 Email: information@nma.gov.au Website: www.nma.gov.au

The National Museum of Australia acknowledges First Nations peoples as the first peoples of this land and recognises their continuous connection to Country, community and culture. We extend our respect and appreciation to the elders, ancestors and spirits of the custodians of the Countries on which we live and work around Australia. We are grateful for the opportunity to share and celebrate the stories of many First Nations peoples at the Museum's site on Acton Peninsula, on the lands of the Ngunnawal, Ngunawal and Ngambri peoples, the traditional owners of the Canberra region.

1. Title

First Nations cultural rights and engagement policy

2. Introduction

The National Museum of Australia (the Museum) is a major cultural institution charged with researching, collecting, preserving and displaying historical material of the Australian nation. The Museum focuses on the three interrelated areas of First Nations peoples' history and culture, Australia's history and society since European settlement in 1788 and the interaction of people with the environment.

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

3. Scope

The Museum undertakes a diverse range of engagements with First Nations peoples. This policy recognises that First Nations peoples have rights in their cultural heritage, also known as Indigenous Cultural and Intellectual Property (ICIP) rights. This policy sets out how the Museum engages with First Nations peoples about these rights in the course of Museum activities, including acquisitions, exhibitions, research, education and other programs.

3.1 Description

ICIP refers to the rights of First Nations peoples to access, control and maintain their cultural heritage, including traditional knowledge, language, traditional cultural expression and artefacts. It incorporates all aspects of knowledge (sciences, plant and animal knowledge, stories, designs and symbols, and ritual knowledge), artefacts (arts, crafts, weapons and tools), performances (ceremonies, dance and song) and ancestral human remains, including the secret and sacred.

Although this policy applies to all first nations peoples, the Museum's primary engagement with first nations peoples and cultures relate to Australian First Nations peoples.

3.2 Purpose

The Museum has developed principles as described in this policy to guide its engagement with First Nations peoples and their cultural heritage. Through its commitment to these principles, the Museum aims to:

- recognise and respect First Nations peoples' rights to access, maintain and control their cultural heritage
- meaningfully engage with First Nations peoples, their cultural heritage and its associated rights, including through appropriate interpretation of First Nations cultural heritage within the Museum
- publicly acknowledge the value of ICIP and reinforce support for the recognition of ICIP rights, and
- establish a transparent feedback and complaints process regarding engagement with First Nations peoples and dealings with ICIP.

3.3 Interaction with the AMaGA roadmap

The Australian Museums and Galleries Association's (AMaGA) 10-year Indigenous roadmap, *First Peoples: A Roadmap for Enhancing Indigenous Engagement in Museums and Galleries* (the AMaGA roadmap), outlines a plan for '5 Key Elements of Change' within the museums and galleries sector, with the purpose of re-invigorating engagement with First Nations peoples. This policy refers to, and is guided by, the AMaGA roadmap principles, and by associated updates and drafts implemented by AMaGA.

3.4 Interaction with the Reconciliation Action Plan

The Museum's Reconciliation Action Plan (RAP) implements recommendations from the AMaGA roadmap. This policy should be read in conjunction with the RAP.

3.5 First Nations collections

The Museum holds a diverse range of First Nations material in its collections, including historical records, artworks and cultural material, images, film and sound recordings and other objects. Our collections include historical and contemporary material representative of First Nations cultures. The Museum's collections also include material from other first nations peoples, including from Papua New Guinea and other Pacific Island nations. The Museum acquires First Nations material through donation, purchase, commission and through transfer from Australian government agencies. The Museum also borrows material for the purposes of temporary display.

First Australians is a permanent Museum gallery displaying and interpreting historical and contemporary material relating to First Nations peoples and cultures. First Nations peoples and cultural material are also represented in the Museum's other permanent galleries, and the Museum regularly develops temporary and travelling exhibitions and digital content with First Nations stories, objects and themes.

3.6 Acknowledging First Nations peoples' rights to their cultural heritage

ICIP rights refer to the rights that First Nations peoples have in their cultural heritage. Article 31 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), to which Australia is a signatory, affirms that:

Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

The Museum recognises that the right to control ICIP incorporates both the tangible and intangible – the object and associated knowledge, the artwork and the icons. These rights are perpetual and form a living heritage, reinterpreted by each new generation. ICIP is collectively owned by First Nations peoples, families, communities and nations of the past, present and future.

The Museum also recognises First Nations peoples' rights in relation to cultural practice and repatriation of ancestral human remains and secret/sacred material. Article 12 of UNDRIP states:

Indigenous peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.

States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with Indigenous peoples concerned.

The Museum is committed to repatriating First Nations ancestral human remains and secret or sacred objects to their communities and places of origin. The Museum is guided in this work by the AMaGA roadmap principles, and the following Museum policies:

- Australian Aboriginal and Torres Strait Islander ancestral human remains management and repatriation policy (POL-C-011)
- Australian Aboriginal and Torres Strait Islander secret/sacred, sensitive and private material policy (POL-C-034)
- Non-Australian indigenous human remains policy (POL-G-024).

3.7 Data governance and recordkeeping

The Museum will ensure that records of consent to use cultural material and ICIP are safely kept by the Museum and that these records are adhered to in all use of the relevant material. The Museum will also ensure that it does not authorise any third party to use cultural material or ICIP in a way that is inconsistent with the consent given to the Museum.

The Museum keeps a number of different types of records. The core records relating to objects, related images and their custodians are held in the Museum's records management system, the collection database, and the digital asset management system which are updated as new information is discovered or provided to the Museum. Images of collection objects and their associated information are accessible to the public online via Collection Explorer. Restricted or private information is not publicly accessible. The Museum may choose to develop protocols for data governance within the Museum data systems, including on a case-by-case basis.

4. Principles

In recognising ICIP rights, the Museum uses 11 principles to guide its engagement with First Nations peoples and their cultural heritage.

These principles have been developed to support and expand on the Museum's RAP. The principles will be made publicly available on the Museum's website, will have an agreed review date, and will have a process for managing feedback, including complaints handling.

The principles are designed primarily for the use of Museum staff. However, the Museum recognises that many of its projects are collaborative and involve partners. It is anticipated that in some cases the principles may be referenced in the development of contract documentation to advise service providers about Museum expectations and guidelines about ICIP.

A practical guide has been developed to support the principles and appears at Attachment A. The guide may be separately updated from time to time.

Principle 1: Recognition and respect of First Nations cultural rights

As a custodian of significant Australian First Nations cultural material, and other global first nations cultural material, the Museum recognises and respects the rights of all first nations peoples in this material, in accordance with Articles 12 and 31 of UNDRIP.

Principle in practice

The Museum acknowledges that for the First Nations cultural material it acquires, interprets and displays, ICIP rights belong with the First Nations peoples, communities and nations that speak for that material.

The Museum interprets these rights as co-existing alongside other rights, such as legal and intellectual property rights.

The Museum's Indigenous Reference Group provides feedback about internal processes and procedures relating to First Nations programs.

The Indigenous Reference Group provides input to Museum projects in a range of ways, including on project methodology, identifying community connections and advising on consultation processes. The Indigenous Reference Group has contributed to the development of these principles and will have an ongoing role in reviewing and monitoring their implementation and use by the Museum.

Principle 2: Involving First Nations peoples

In recognising ICIP rights, the Museum seeks to involve First Nations peoples in the use of their cultural heritage by the Museum.

Principle in practice

The Museum engages with First Nations cultural material in a number of ways, including:

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- acquiring First Nations objects for its collections
 - displaying and interpreting First Nations objects from the Museum's collections and material borrowed from other institutions and individuals
 - researching, documenting and interpreting First Nations material
 - engaging with First Nations peoples and communities about cultural material
 - storing and conserving First Nations objects
 - creating online and other digital content
 - reproducing and distributing images
 - promoting First Nations material
 - repatriating ancestral remains and secret/sacred material
 - developing and hosting public programs and events
 - producing educational resources about First Nations history, culture and themes.

In all of these activities, the Museum recognises that First Nations peoples are central to how the Museum uses, understands and represents their cultural material. When engaging with First Nations peoples about these activities, the Museum seeks to work respectfully and ethically. In practice, the scale of a project or activity may influence the degree and type of stakeholder involvement.

The Museum also supports involvement of First Nations peoples in a variety of other ways. For example, the Museum encourages First Nations communities to visit the Museum and view and access their cultural objects. In making their objects accessible, the Museum seeks to foster an environment in which First Nations peoples feel culturally safe and can contribute to the way the cultural material is interpreted. The Museum will proactively provide information about its collection when working with or requested by First Nations peoples. The Museum also encourages online access to its collections via the web, including through online exhibitions and features, and the Collection Explorer database.

The Museum acknowledges and values the cultural knowledge and experience of its First Nations staff members. First Nations staff members are often involved in engagement with external First Nations peoples, and in providing assistance in culturally appropriate consultation. The Museum is committed to supporting its First Nations staff including by enabling a supportive, respectful and culturally safe workplace.

The Museum may also engage in broader community consultations, recognising that First Nations cultural heritage is communally owned. Records of engagements with First Nations peoples are kept, including contact information where appropriate, and where appropriate shared among Museum staff to allow for relationships with First Nations knowledge holders to be maintained and strengthened.

Principle 3: Consultation

First Nations peoples have the right to be consulted about the use of their ICIP. When consulting with First Nations peoples about their cultural heritage, the Museum commits to ensuring that such consultation is respectful, informed, ethical and meaningful.

Principle in practice

Consultation is a major way in which the Museum engages with First Nations peoples. The Museum understands consultation to be a two-way process involving the effective working together of interested people and groups and communicating clearly and respectfully about the topics and considerations at hand. Through consultation, the Museum works with First Nations peoples on its projects and use of cultural material so that both parties better understand the implications of that use.

The Museum employs a variety of consultation techniques, for example face-to-face meetings, telephone conversations and email, dependent on the nature and scale of the Museum's activity and the resources available.

Principle 4: Free, prior and informed consent

The Museum recognises the importance and value of engaging First Nations peoples in the ongoing use of their ICIP. Where possible, the Museum obtains the free, prior and informed consent of relevant First Nations peoples before using or authorising the use of ICIP in relation to cultural material held by the Museum.

Principle in practice

The Museum will create opportunities for First Nations peoples to give feedback about, and consent for, the use of their ICIP. The Museum recognises that there are legal, cultural and ethical aspects to consent for the use of cultural material. To the best of its ability, the Museum ensures consent covers all three aspects. This may include obtaining consent from, for example:

- the artist who created a painting (usually the copyright owner of an artwork)
- the traditional owner or custodian of a traditional story depicted in a painting
- the family of a deceased artist
- community organisations involved in decision-making for the local community.

In some situations, there may be a distinction between an artist and traditional owner, whereby an artist operates as an individual and may have their own agent, whereas a traditional owner represents the corporate rights of a body of people. In these situations, there may be tension between individuals and corporate groups that need to be recognised when negotiating copyright permissions and clearances or sale of objects.

In seeking the consent of First Nations peoples, the Museum acknowledges that there may not be a unanimous voice, but that each person or community may have a different view on the use of cultural material. Where possible, the Museum will engage with First Nations peoples to obtain the broadest support possible.

When seeking to obtain consent before a public use is made of cultural material, or before a formal decision is made regarding the presentation of ICIP, the Museum will engage in good faith consultations with First Nations peoples. It will provide clear and detailed information about the use of the cultural material and ICIP, including the:

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- proposed use of the cultural material or other ICIP
 - context of the presentation
 - intended and likely audience
 - size or scale of the project
 - medium or format of the project
 - third parties or partner organisations involved
 - intended or likely outcomes of the use.

The scale of such consultations will be influenced by the scale of the related project and the resources available. The Museum will ensure it allows the appropriate amount of time for First Nations peoples to consider the use of ICIP and to make a clear decision. If an agreed position cannot be reached between competing stakeholders, the matter will be referred to the Museum's Director for a decision on how to proceed. The Director may seek the advice of Indigenous Reference Group members in appropriate circumstances.

Principle 5: Interpretation, authenticity and integrity

The Museum supports the rights of First Nations peoples to be involved in the interpretation of their culture. The Museum also seeks to ensure that its interpretations of First Nations cultural material are respectful of the authenticity and integrity of that material.

Principle in practice

The Museum acknowledges that there are many different First Nations cultures across Australia, each with their own unique history, stories, cultural heritage and ICIP. The Museum is committed to identifying and consulting with First Nations peoples who can give the Museum advice on interpretation of culture and its authentic use. Stakeholders have the right to have their culture interpreted in an authentic and respectful way.

Staff members from the Museum's curatorial centres visit communities in the course of developing exhibitions and acquiring collections. The Museum also welcomes and hosts community visits on a regular basis and provides information on Museum activities through the Museum's website.

The Museum will consider and respond to any requests for changes to its use of First Nations cultural material by First Nations peoples in a timely manner. The Museum does acknowledge that there may be differing views, and that it may not be practical to act on some requests. In those instances, the Museum will advise the stakeholder of its decision and the reasons for making that decision in a respectful way. The Museum's Director may seek the advice of Indigenous Reference Group members or staff in appropriate circumstances.

Principle 6: Acknowledging cultural and customary laws for secret and sacred, privacy and representations of deceased people

The National Museum of Australia acknowledges that some parts of First Nations culture are secret or sacred and/or not for general viewing. The Museum commits to never knowingly making available cultural material that it is aware is private or secret or sacred, without the explicit consent from relevant First Nations peoples. The Museum also commits to providing appropriate warnings concerning privacy or material associated with deceased persons in its exhibitions and galleries, online and digital resources and other programs.

Principle in practice

The Museum commits to consultation to determine if the First Nations cultural material it holds is secret or sacred. Any material previously assigned secret/sacred status will remain this way until the relevant community deems it otherwise. The Museum has a facility for holding First Nations human remains and secret or sacred objects. This accommodates First Nations protocols for storage and handling, such as according to gender. The Museum follows directives from First Nations communities for culturally sensitive handling of objects and their placement in relation to other objects on display.

The Museum is also guided by its Australian Aboriginal and Torres Strait Islander secret/sacred, sensitive and private material policy in dealing with secret and sacred ICIP and cultural material.

The Museum recognises and upholds requests by First Nations communities for restrictions on viewing and/or handling of particular items. Access is provided to culturally authorised First Nations peoples or their representatives to view secret/sacred material to assist in the Museum repatriation program.

The Museum also holds digital images of secret and sacred cultural material, including digital images of human remains and images taken for repatriation purposes. These images are kept in our Digital Asset Management system and access is restricted to appropriate staff. These images are kept on behalf of community at their request.

The Museum recognises that there may be cultural material or ICIP that is restricted because of reasons other than that the material is secret or sacred. Reasons for restrictions can include gender specific knowledge, private information, the death of subjects or authors, nudity or offensive material.

The Museum may identify restricted or private information following:

- a consultation process with First Nations peoples
- formal or informal advice given to the Museum
- receipt of a complaint or other feedback.

The Museum undertakes to review and confirm any advice that material is restricted or private to determine what restrictions apply to the cultural material and its use. Any such reviews relating to culturally restricted material will take place in consultation with the relevant First Nations community and be performed promptly and efficiently to minimise potential harm.

Principle 7: Acknowledgment

Where possible, the Museum commits to acknowledging First Nations peoples for the use of their ICIP. This includes individual acknowledgements and, where appropriate, community or family acknowledgement.

Principle in practice

The Museum acknowledges known First Nations authors of cultural material on display at the Museum or through its website in accordance with that person's wishes. Where that person is deceased, the Museum consults with the known family and community of the author to determine the appropriate acknowledgement. The Museum also respects the right of relevant First Nations peoples to choose to opt out of public attribution.

In making acknowledgements, the Museum may credit one or more person/s or organisation/s as appropriate for each use. Each acknowledgement will consider factors, including:

- name/s of the author/s
- cultural affiliations of the author/s (where appropriate)
- name of the community or cultural affiliations of the author/s
- names of any traditional stories or characters
- names of any art centres, language centres or any other organisations involved in the cultural material
- known information about cultural material, where not identifiable with an author
- community of origin, place in which the item was found and known First Nations peoples.

To the best of its abilities, the Museum will keep accurate and up-to-date acknowledgement records for items in its collection. The Museum will keep records of all attempts to consult with First Nations peoples over these items.

Principle 8: Sharing benefits

The Museum supports the right of First Nations peoples to benefit from the use of their cultural heritage.

Principle in practice

The Museum works to achieve a wide range of benefits for First Nations peoples from the use of their cultural heritage. Benefits can include:

- facilitating access to cultural material and its associated information held in the Museum's collections (in accordance with the Australian Aboriginal and Torres Strait Islander secret/sacred, sensitive and private material policy, where applicable)
- special access to cultural events for First Nations peoples
- invitations to attend and speak at opening events or public programs
- promotion of First Nations works, culture and exhibitions on a national stage
- employment and training opportunities
- repatriation of First Nations human remains and secret/sacred cultural material
- financial benefits from the approved commercialisation of cultural material, such as merchandising
- provision of a retail outlet for community production during exhibitions and festival days
- an allocated portion of profits/revenue raised from exhibitions/programming that include First Nations content goes back into Indigenous-based projects.

The Museum will consider how benefits are shared on a case-by-case basis. The type of benefits available will depend on the scope of a project, the quantity or type of cultural material used, and the intended audience, scale or reach. The recipient of benefits will depend on the type of cultural material used, and the known First Nations peoples.

Principle 9: Recognising, maintaining and strengthening First Nations culture

The Museum recognises that First Nations cultures are varied, thriving and constantly evolving. As a national cultural institution, the Museum recognises its role in ensuring that First Nations cultures are recognised, maintained and strengthened for future generations.

Principle in practice

The Museum acts as a cultural custodian for cultural material and ICIP. It has obligations as a custodian of First Nations collections, to give current and future generations access to cultural records and cultural material of significance.

The Museum supports a diversity of First Nations cultural expression in its collections, exhibitions, programs and across the staff body. To achieve this, the Museum will continue to exhibit and diversify its collections to reflect growing and shifting First Nations cultures, giving opportunities for different authors and First Nations peoples to be represented. It will also actively involve the perspectives and ideas of its First Nations staff members as both community stakeholders and cultural knowledge holders themselves, and as employees committed to the goals and philosophy of the Museum.

The Museum seeks to uphold global best-practice storage, archiving, documentation and display conditions to ensure that its collections, including cultural material, are maintained in a safe and secure environment

Principle 10: Recognition of ongoing rights

The Museum recognises that the rights of First Nations peoples in regard to their cultural heritage are ongoing, and that the Museum has a duty to ensure it continues to engage with First Nations peoples to

implement and recognise these principles.

Principle in practice

The rights and obligations outlined under these principles are ongoing. The Museum recognises that ICIP rights are perpetual and do not stop upon the death of an individual author or expire when a term of copyright has passed. The Museum engages with First Nations peoples and communities, including individual authors and stakeholders, to maintain and strengthen its relationships, and to ensure that it meets its continuing obligations in accordance with these principles now and into the future.

The Museum aims to keep up-to-date contact information for First Nations peoples and ensures that its records are stored safely and securely. The Museum's collection database is protected using information technology assurance processes, including backup servers and administrative controls. The Museum works to mitigate the potential for knowledge loss resulting from staff changes to ensure the maintenance of relationships.

For practical reasons, the Museum works on the assumption that consent (Principle 4) once given, is ongoing unless it receives clear notice to the contrary. Where consent lapses or expires, or consent is explicitly withdrawn, the Museum seeks to renew consultations with First Nations peoples in the cultural material before making any further use of the ICIP or material.

Principle 11: A timely, transparent and respectful process for responding to feedback

The Museum will endeavour to act in an open and transparent manner in its relationships and interactions with ICIP and First Nations peoples. The Museum will respond to any enquiries, complaints or other feedback from First Nations peoples about the Museum's use of their cultural material in a timely, transparent and respectful way.

Principle in practice

The Museum welcomes feedback in relation to the operation of these principles. The Museum will work in a timely, transparent and respectful way to consider any enquiries, feedback or complaints made by individuals, communities or organisations who have been directly impacted by the Museum's dealings with First Nations peoples, or treatment of ICIP or cultural material. The Museum will assess all complaints in accordance with its complaints handling procedures.

The Museum also welcomes feedback from any person, organisation or institution who believes that an act or omission has occurred in relation to these principles that warrants the Museum's attention. In some circumstances, feedback or complaints may be referred to the Museum's Director for a decision on how to proceed, for example, if a First Nations stakeholder is not satisfied with the Museum's response to their enquiry, feedback or complaint. The Director may seek the advice of Indigenous Reference Group members or staff in appropriate circumstances.

5. Definition of terms

Author/s refers to the author/s, creator/s or artist/s of a tangible item of ICIP. For example, this could be the artist of a painting, the sculptor of a statue or the writer of a diary.

Cultural material refers to all objects, artefacts, artworks, films or any other tangible item that incorporates ICIP. For example, it may be a painting by a Gadigal artist, an historical weapon from the Pitjantjatjara community, or a basket woven by a group of women on Saibai Island.

First nations or **first nations peoples** refers to the world's first nations peoples, including Australian First Nations peoples, within the broader context of the UN Declaration on the Rights of Indigenous

Peoples. Although the Museum's primary engagement with first nations peoples and cultures relate to Australian First Nations peoples, the Museum's collections also include material from other first nations peoples, including from Papua New Guinea and other Pacific Island nations.

ICIP means Indigenous Cultural and Intellectual Property and refers to the rights of First Nations peoples to access, control and maintain their cultural heritage, including traditional knowledge, traditional cultural expression and artefacts. It incorporates all aspects of knowledge (sciences, plant and animal knowledge, stories, designs and symbols, and ritual knowledge), artefacts (arts, crafts, weapons and tools), performances (ceremonies, dance and song), human remains and includes the secret and sacred.

Secret/sacred ICIP refers to any tangible and intangible ICIP that was or is traditionally subject to restrictions and/or protocols regarding access to those materials.

6. Definition of responsibilities

Director

The Director is responsible for deciding the Museum's position in relation to disputes, or other matters dealt with under the policy or principles, where an agreed position cannot be reached among Museum staff and/or First Nations stakeholders. The Director may seek the advice of the Indigenous Reference Group in appropriate circumstances.

Assistant Director, Discovery and Collections

The Assistant Director, Discovery and Collections is responsible for maintaining and implementing this policy and its associated principles within the Museum, and for ensuring feedback, enquiries and complaints are managed in accordance with this policy and its associated procedures.

Indigenous Reference Group

The Indigenous Reference Group advises on issues arising out of the acquisition, interpretation and display of First Nations cultural material and ICIP. As part of its role, the IRG will review the Museum's application of this policy. In appropriate circumstances, the Director or other Museum staff may seek the advice of Indigenous Reference Group members, to assist in responding to feedback or resolving issues or complaints arising in relation to matters dealt with under the policy.

7. References

United Nations Declaration on the Rights of Indigenous Peoples(2007)

Australian Museums and Galleries Association (AMaGA) 10-year Indigenous roadmap, First Peoples: A Roadmap for Enhancing Indigenous Engagement in Museums and Galleries

Australia Council Protocols for Using First Nations Cultural and Intellectual Property in the Arts (2021)

Pathways and Protocols: A filmmaker's guide to working with Indigenous people, culture and concept (Screen Australia, 2009)

Indigenous Art Code (2009)

Australian First Nations Art Charter of Principles for Publicly Funded Collecting Institutions (2009)

Australian Best Practice Guide to Collecting Cultural Material (Ministry for the Arts, 2014)

8. Implementation

This policy will be implemented through the application of the principles in practice and the practical guide. The Museum will report to the Indigenous Reference Group on the operation of the policy.

8.1 Coverage

Museum staff will apply the First Nations cultural rights and engagement policy to all dealings with First Nations people, cultural material and ICIP rights.

8.2 Other related policies

Complaints handling procedures (PRO-021)

Intellectual property policy (POL-C-006)

8.3 Exclusions

The Museum's policy and practice in regard to ancestral human remains and dealing with secret/sacred material is not detailed in this policy, but is set out under the following policies:

- Australian Aboriginal and Torres Strait Islander ancestral human remains management and repatriation policy (POL-C-011)
- Australian Aboriginal and Torres Strait Islander secret/sacred, sensitive and private material policy (POL-C-034)
- Non-Australian indigenous human remains policy (POL-G-024)

8.4 Enquiries and feedback

Enquiries, feedback and/or complaints relating to the operation of these principles and the Museum's dealings with ICIP should be sent to:

Assistant Director, Discovery and Collections
National Museum of Australia
GPO Box 1901
Canberra City ACT 2601
Telephone: (02) 6208 5009
Email: information@nma.gov.au

Where a complaint is made about a matter relating to this policy, the Museum will deal with the complaint in accordance with its internal complaint handling mechanisms and investigate the issue in good faith and in a timely manner.

8.5 Monitoring

This policy will be reviewed in May 2025.

ATTACHMENT A – First Nations cultural rights and engagement practical guide

Purpose

The purpose of this document is to outline practical steps for implementing the First Nations cultural rights and engagement policy and principles.

Responding to enquiries

The Museum aims to respond to enquiries from First Nations peoples regarding collections and displays within 10 days.

Consultation

Best-practice consultation will involve the Museum and staff:

- beginning consultation at the start of a project and include it within project design and planning
- being aware of, and receiving training in, engaging with and consulting with First Nations peoples
- using the checklist attached to this policy document
- identifying the appropriate people to speak with to ensure that a relationship and trust is established.

Partnerships and collaboration

During the development of some exhibitions or projects, the Museum collaborates with other collecting and research institutions in Australia and internationally, and with First Nations peoples, to develop content and obtain consent. Where a multi-party project or partnership takes place, the Museum will review the checklist to ensure that appropriate consent processes are agreed upon with partners.

Sometimes the Museum's partners or collaborators will have an established relationship with a First Nations community or individuals, and an understanding of the appropriate protocols for engaging with that community. In these instances, the Museum may rely on its project partners to obtain consent for the Museum's use of the cultural material in a culturally sensitive and appropriate way.

Recording of consent

When First Nations peoples give the Museum consent to use cultural material or ICIP, the Museum will make a record of that consent which makes it clear exactly what was agreed to. This record may take a number of formats, depending on the use and the scope of the project or what is appropriate and acceptable in the circumstances.

The typical ways that the Museum will record its consent include:

- clearance forms or agreements which set out the terms of the use, and the consent of First Nations peoples
- a file note taken by the Museum or its agents of the consent (given in person or over the phone), and signed off by a First Nations stakeholder
- a video or sound recording of the consent being given by a First Nations stakeholder
- emails, facsimiles, letters or other documentation recording consent of First Nations peoples.

The Museum will ensure that consent is clearly demonstrated before accepting any of the above as records of consent. Records must be retained securely and be discoverable by staff who require access.

Ongoing consent

The Museum acknowledges that relationships with First Nations peoples of cultural material and ICIP should be maintained to ensure ongoing consent. Where any new use of cultural material or ICIP is considered by the Museum, it will use its best efforts to re-consult with the identified stakeholders to make sure that free, prior and informed consent is given for each new or future use.

Gift giving and consent

A more flexible approach to how the Museum records and documents consent is sometimes needed. This is especially the case where objects are gifted to the Museum under the parameters of First Nations cultural protocols. To ask for a legal agreement to be signed could indicate mistrust on the Museum's part and dissolve any positive relationship the Museum was establishing and maintaining. If the Museum insisted on a signed donation agreement or 'deed of gift' in these circumstances, it could be seen in various negative ways ranging from an insult to a perception of inadequate consideration of cross-cultural protocols by representatives of a national cultural institution.

Alternative means of recording acceptance of gifts include:

- filming the gift-giving process
- acknowledging the gift through written correspondence
- conducting interviews and associated events (including the gifting of personalised objects to represent stories) with full knowledge of the participant's family and friends
- keeping local councils up to date regarding the information
- allowing a right of reply.

Copyright

Where the Museum is dealing with an identifiable copyright interest, such as creator rights, moral rights and performers' rights, it will undertake due diligence to locate the relevant rights holder and record their consent (including through an agent) for the use of the copyright material.

Reflection and evaluation

The Museum will reflect on and engage in feedback processes to evaluate its past practices and

consider successes and improvements as part of its engagement with First Nations peoples.

Recordkeeping and data governance

Access restrictions

Where a gender restriction applies to the use of cultural material, the Museum will use its best efforts to ensure those restrictions are complied with and that the material is only handled by a person of the appropriate gender.

Confidentiality

Where the Museum wants or needs to share restricted cultural material with any other person or organisation, it will ensure that a confidentiality agreement is signed by that third party to protect the knowledge in the record and will obtain consent from the relevant First Nations community where ICIP or secret/sacred material is involved.

Public use of restricted or private information

The Museum will not knowingly make public use of restricted or private information without the consent of First Nations peoples.

If the Museum is advised at any stage that material made available by the Museum is secret/sacred or private, the Museum will act in a timely manner and consider removing any references to the item (where possible both practically and legally) until a formal decision can be made as to its use.

Material associated with deceased people

The Museum recognises that material associated with deceased people requires special arrangements. The Museum gives serious consideration to removing images or objects related to deceased First Nations peoples where requested. Where individuals have passed away, images or objects may be covered or removed from view while the Museum awaits instructions from the immediate family as to an appropriate course of action.

If the Museum is notified that a person has passed away, it will (where practical) remove public uses of that person's image in accordance with the family's wishes. In some cases the person's image may be impossible to withdraw, for example if a photograph has been published in a book, which has been made available for sale and distribution. The Museum does not automatically assume that the family's preference will be to remove the object/image in all cases and recognises the family's and community's right to determine what is appropriate.

Benefit sharing

The Museum acknowledges that in implementing the First Nations Cultural Rights and Engagement Principles it is committed to access and benefit sharing with First Nations peoples. Benefit sharing includes economic benefits, repatriation of material and ensuring access to data.

The Museum will also provide benefit-sharing opportunities through First Nations curatorship, leadership and employment roles, self-determination and through First Nations interpretation of collections.

Cultural competency training

The Museum commits to training staff in cultural safety and cultural awareness to ensure the implementation of the principles.

Checklist for ICIP protocols

Checklist to be used at the start of Museum projects involving First Nations engagement.

STAGE 1: PLANNING THE PROJECT	YES	NO	ACTION ITEMS/NOTES
RESPECT			
Have you considered why the project is being undertaken, why you are using First Nations subject matter, the perspectives you bring to it, and how it affects First Nations peoples and communities?			
Have you sought advice on the cultural issues that need to be addressed through consultation?			
INTERPRETATION, INTEGRITY AND AUTHENTICITY			
Have you conducted research on the project, including the First Nations subject matter or material proposed to be used?			
Is the project appropriate for the location or site?			
Does your project reflect the cultural value of the subject matter?			
Does your project empower First Nations peoples?			
Did you establish that any ICIP in the project is used in the correct cultural and historical context?			
Have you considered how First Nations languages could be incorporated into the project, e.g. in publications, object labels, place names or online information?			
FIRST NATIONS CONTROL, COMMUNICATION, CONSULTATION AND CONSENT			
Does your project deal with communally owned material (e.g. ritual knowledge, creation stories, songs or traditional or tribal communal designs)?			
If so, how will you consult with and seek consent from the traditional owners or other relevant First Nations peoples/groups?			
Have you identified the relevant First Nations stakeholders?			
Did you make sure that consent comes from the right persons or faction(s) within a community?			
Where more than one First Nations group is involved, did you seek consent from every group?			
Did you ask the relevant First Nations stakeholders whether they require an interpreter? If so, did you ask them to identify a suitable person to translate?			
Did you engage the services of an interpreter? If so, did you pay them for their services?			
Have you identified the staff members responsible for consultation and assigned responsibility?			
Have you checked with other Museum staff members if consultation relationships have been established?			
Have you engaged with the Indigenous Reference Group on consultation if required for a particular project?			
ONGOING CONSENT	YES	NO	ACTION ITEMS/NOTES

Are you prepared for the possibility that approval will be denied or conditional on substantial changes to your project?			
Have the suggestions of, and feedback from, relevant First Nations stakeholders been considered and incorporated?			
SECURITY AND CONFIDENTIALITY			
Is the subject matter or material culturally sensitive? Is it sacred or secret?			
Have you discussed any restrictions on use of subject matter or material with the relevant First Nations peoples who might be affected by the disclosure?			
Does your project contain any reference to personal or confidential information about individual First Nations people? If so, did you seek consent from anyone who might be affected by the disclosure (the individual themselves, their community/relatives) before using the information?			
Does your project feature any deceased First Nations person? If so, did you obtain clearance from their family/community prior to use?			
STAGE 2: THE PROJECT CONTRACT	YES	NO	ACTION ITEMS/NOTES
Is there a contract?			
INTELLECTUAL PROPERTY RIGHTS			
Does the contract clarify the project materials being created and who owns the IP rights in the material?			
Does the contract deal with any registered IP rights, e.g. trademarks and who will own those rights?			
RECOGNITION OF ONGOING RIGHTS			
Does the contract clarify that IP rights are owned by the First Nations artist(s) and ICIP rights are retained by the First Nations custodians?			
Has the scope of the licence sought by the Museum to use any resulting works been negotiated and clearly reflected in the contract?			
Has the Museum considered whether the inclusion of a style guide is appropriate for the project? If so, has the Museum considered (and does the contract reflect) whether the artist will be assisted with and/or be paid additional fees for the creation of a style guide?			
SECURITY AND CONFIDENTIALITY			
Where the project deals with sensitive matter, are the agreed uses and protocols reflected in the contract?			
ATTRIBUTION			
Does the contract clearly identify how the First Nations artist(s) (and if relevant, traditional custodians) will be credited in the project?			
BENEFIT SHARING			
Does the contract appropriately reflect the benefits (monetary or non-monetary) that the First Nations artist/creator(s) (and where possible or appropriate the community) will receive for their involvement in the project?			

Has there been the inclusion of benefits, such as economic benefit, employment or other opportunity? If so, how will this be documented?			
MAINTAINING FIRST NATIONS CULTURES			
Does the contract identify a next of kin?			
STAGE 3: AFTER THE PROJECT	YES	NO	ACTION ITEMS/NOTES
ATTRIBUTION			
Is the Museum complying with its ongoing obligations to attribute the artist?			
COMMUNICATION, CONSULTATION AND CONSENT			
Has the Museum considered whether its ongoing uses of the work are within the scope of the licence granted in the contract? If not, has the Museum renegotiated, and received the prior written consent from the artist, the new scope (and any additional fees)?			