

# COUNCIL OF AUSTRALASIAN MUSEUM DIRECTORS

## Submission to the Department of the Environment, Water, Heritage and the Arts in response to the *Indigenous Heritage Law Reform* discussion paper

### Introduction

The Council of Australasian Museum Directors (CAMD) brings together the leaders of the major national, state and regional museums in Australia and New Zealand (see *Attachment 1*). Australia's major museums occupy a unique role in relation to the protection of Indigenous cultural objects. A number of CAMD members have extensive collections of indigenous heritage items and, in some cases, incorporate Keeping Places within their institutions. They undertake research on Indigenous culture and associated objects, are frequently consulted in relation to the management of traditional Indigenous objects, actively engage in programs for the protection of movable cultural heritage including Indigenous objects, run employment programs for Indigenous museum officers and facilitate the repatriation of traditional objects and remains from within Australia and from abroad.

Since the 1990s, the major museums have worked extensively with Indigenous communities in their regions to develop detailed protocols and policies. The principles underlying this practice have been codified in Museums Australia's *Continuous Cultures, Ongoing Responsibilities: Principles and guidelines for Australian museums working with Aboriginal and Torres Strait Islander cultural heritage (2005)*. Central to this work has been an acknowledgement that Indigenous collections are a significant part of the cultural traditions of Aboriginal and Torres Strait Island communities and that museums must consult closely with these communities when considering the display, collection, care and return of cultural materials. A number of successful relationships have been forged over time between museums and Indigenous communities.

### INDIGENOUS HERITAGE LAW REFORM

CAMD has considered the Discussion Paper provided in association with the 2009 review of the Commonwealth *Aboriginal and Torres Strait Island Heritage Protection Act 1984 (ATSIHP Act)* and would like to make comment on a number of its proposals. Certain other proposals, while clearly significant, fall outside the responsibilities of museums and therefore have not been addressed in this submission.

CAMD applauds the fact that the Australian Government is attempting to strengthen measures to protect and preserve the traditional heritage of Aboriginal and Torres Strait Islander people. It

also welcomes the attention given by the discussion paper to the need for best practice in heritage protection and close consultation with Indigenous people as a basis for ongoing practice.

### **State/Territory Accreditation**

The suggested process of State/Territory accreditation is a significant aspect of the proposed changes to the *ATSHIP Act* which seeks to eliminate duplication while introducing best standard practice. The establishment of national standards for the protection of Indigenous heritage is supported in principle.

CAMD notes, however, that some States and Territories already have effective legal measures in place that protect Indigenous heritage in terms of places and objects. In addition, there is pre-existing legislation at this level which relates to the collections of major museums. For example, certain elements of the *Aboriginal Heritage Act 2006* (Vic) require quite specific actions and responsibilities from Museum Victoria with regard to Indigenous ancestral remains and secret-sacred objects. The proposed new Commonwealth standards will need to be developed in close consultation with these jurisdictions to ensure that they do not conflict unnecessarily with State/Territory laws, particularly those which are already working within the spirit of the proposed reforms, or clash with legislation which governs the specific actions and general business of collecting institutions.

A further dimension to this issue has not been clearly delineated in the discussion paper. CAMD believes that there is a need to consider an approach and guidelines which cover a situation where protection is required for objects which have originated within one State/Territory but which surface, and are in need of assessment and protection, in another.

### **Legal context for reforms**

The proposal to recognise the primary rights and responsibilities of traditional owners/custodians in Indigenous heritage protection is a real improvement on the current legislation. However, the proposal pays particular attention to native title and land rights as the principal legal mechanisms by which traditional owners might be recognised. The new legislation must acknowledge that other legally mandated mechanisms exist, such as the Registered Aboriginal Party process in Victoria under the *Aboriginal Heritage Act 2006* (Vic) and Community Consultation requirements in NSW. Most importantly, it should be recognised that Indigenous peoples with responsibility for or knowledge of traditional objects and practices are not always picked up by existing statutes relating to development approval processes or land

rights legislation. Alternative consultation mechanisms need to be developed to ensure that Indigenous people are not disenfranchised by the use of an inappropriate legal framework.

### **Proposal 2: Terminology**

The definitions used and responsibilities assigned under the proposed legislative reforms should give close consideration to the historical removal of Indigenous people from their traditional areas and separation from their culture since white contact. These historical impacts may make it difficult to meet the second criteria used to determine ‘traditional objects’ ie that ‘the object continues to be protected or regulated under traditional laws and customs’. Where representatives of the area are no longer available to maintain this continuity of protection, provision needs to be made to allow for other recognised Indigenous authorities and researchers with knowledge of the object and its origins to assist with assessment.

It would be more sensitive and appropriate to replace the reference to ‘race’ in the definition of an Indigenous person with ‘people’.

### **Proposal 5: Traditional Custodians**

As the discussion paper recognises (on pp.23-24), the issue of identifying ‘traditional custodians’ is difficult but also critical when people need to be consulted as part of decision-making. Limiting ‘traditional custodians’ to those recognised by native title and land rights law alone will empower only a small number of those with knowledge and connection with traditional objects and land. CAMD would suggest that an alternative approach would be to recognise those with relevant cultural knowledge. This would also allow for a contribution from Indigenous and non-Indigenous knowledge holders and researchers who may be able to provide critical information for the identification and assessment of traditional objects.

### **Proposal 7: Indigenous Remains**

This proposal seeks to remove unnecessary duplication of reporting responsibilities when Indigenous remains are discovered, subject to State and Territory reporting requirements meeting the Australian Government’s standards. This is a reasonable provision, however, it should be enacted with due recognition of existing effective mechanisms for notification. For example, the intention to retain an obligation to report such a discovery directly to the Australian Government if the remains are found in Australian Government areas is unnecessary – in Victoria for example, all such discoveries must be reported to the relevant departmental Secretary, and in the case of unidentified remains, to the Victoria Police and to the State

Coroner as well, irrespective of where they are found. Either a single report to the State or Territory authorities should be sufficient, or the separate obligation to report to the Australian Government should rest with the relevant State or Territory body responsible for Indigenous heritage protection, rather than with the individual who made the initial discovery.

### **Proposal 8: Display of secret/sacred material**

Strict guidelines emphasising the importance of sensitive handling, and generally prohibiting the display of secret/sacred material, have been observed by CAMD's member museums for some years. One outcome of the work done by museums in this area has been a heightened recognition that the concept of secret/sacred is dynamic - differing across time and from community to community. Museums have dealt with these differences as they arise by ensuring that the community of origin or other relevant cultural authorities are contacted and involved in discussions about display.

The differences between communities about what is 'secret sacred' will make it difficult for a precise definition to be determined. For instance, the proposed definitions relating to public display exempts objects relating to art. However, art material painted for sale with the encouragement of missionaries may today be considered secret/sacred following a revival of local culture. There may also be material which can be displayed in one area but which will need to be restricted in another area. It should also be noted that museum collections include recordings, films of ceremonies, written descriptions etc which may be subject to restrictions on access as well as display.

When human remains are talked about it should also include grave goods. These are objects or items that are buried with the deceased person/s and amulets that are made from the human bones of deceased relatives and worn by Indigenous people. It should also be noted that materials containing teeth and other body parts may be even more confronting for Indigenous people as they may be the result of conflict situations.

Care should be taken to ensure that the comprehensive ban on display does not prevent Indigenous people 'displaying' the material themselves for their own ceremonial or other purposes on their own terms. Traditional custodians should have the right to act as they see fit, even if their position is not covered by traditional practice.

The objective of the prohibition of display of this material is strongly supported by CAMD but clearly needs to be underpinned by consultation and discussion with Indigenous communities

and, at times, substantial research by historians, archaeologists and anthropologists. Due to the complexities of this material it is difficult to see how legislation on this point will be implemented. For example, how will the actions of sellers at auction or on e-bay, and overseas sellers be controlled? Further consideration might be given to an education program rather than legislation on this issue.

### **Object Seizure**

CAMD believes that there is insufficient protection against the seizure of objects on loan to public museums under the current proposal. The section on secret sacred objects exempts an 'object imported into Australia for exhibition by a public museum or gallery' but this exemption is not included in the criteria for 'traditional objects', which may cause confusion. Without clear protection, this legislation may be used to stop or delay the return of objects lent by overseas or interstate bodies in accordance with loan agreements.

### **Recommendations**

CAMD and the major museums it represents would welcome further opportunities to discuss the development of a suitable Commonwealth framework for Indigenous heritage protection.

In summary, CAMD would recommend that the Government:

- introduce culturally appropriate and accessible **consultation mechanisms** to ensure the ongoing involvement of Indigenous community leaders and those with relevant cultural knowledge in developing the proposed indigenous heritage law reforms;
- **Protection across interstate borders:** give further consideration to developing an approach and guidelines which cover the situation where protection is required for material which has originated within one State/Territory but surfaces in another jurisdiction;
- **Proposal 2:** adopt a definition of 'traditional object' which allows for other recognised Indigenous authorities and researchers with relevant knowledge of the object and its origins to assist in assessment and protection, particularly where there is an absence of Indigenous people with direct traditional associations;
- **Proposal 5:** develop a concept for involvement in Indigenous heritage protection which covers those with direct connections to objects, recognised Indigenous authorities and

researchers with relevant knowledge of the object and its origins to assist with assessment. and protection;

- **Proposal 7:** Further rationalise reporting requirements for those discovering Indigenous human remains;
- **Proposal 8:** Reconsider the wording of this proposal in order to acknowledge and address the dynamic nature of 'secret sacred' objects and/or consider public education to deal with this issue;
- **Anti-seizure:** Include provisions to prevent the seizure of traditional or secret sacred objects which are lent by overseas or interstate bodies for public display.

*Meredith Foley*  
*CAMD Executive Officer*

*4 December 2009*

**Attachment 1**

**COUNCIL OF AUSTRALASIAN MUSEUM DIRECTORS**  
**Membership**

- **Ms Margaret Anderson**  
*Chair, CAMD*  
Director  
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- **Mr Bill Bleathman**  
Director  
Tasmanian Museum and Art Gallery
- **Mr Alan Brien**  
Chief Executive Officer  
Scitech Discovery Centre, Perth
- **Dr Dawn Casey**  
Director  
Powerhouse Museum
- **Ms Kate Clark**  
Director  
Historic Houses Trust of NSW
- **Professor Graham Durant**  
Director  
Questacon – National Science and Technology Centre
- **Mr Patrick Filmer-Sankey**  
Director  
Queen Victoria Museum and Gallery
- **Dr J Patrick Greene OBE**  
*CAMD Executive Member*  
Chief Executive Officer  
Museum Victoria
- **Major General Steve Gower AO AO MIL**  
Director  
Australian War Memorial  
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### MEMBERSHIP continued

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Museum of New Zealand Te Papa  
Tongarewa
  
- **Mr Frank Howarth**  
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- **Dr Ian Galloway**  
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Sovereign Hill Museums Association
  
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