

QMN PROCEDURE: Consideration of Claims Procedure (Cultures & Histories and Biodiversity & Geosciences Programs)

1.0 PURPOSE

The purpose of this procedure is to clarify the process which must be undertaken when the Museum receives an enquiry or claim in relation to restitution, return, custodianship or ownership, provenance or authenticity; and to ensure responses are dealt with in a professional, sensitive and timely manner.

2.0 SCOPE

This procedure applies to staff of the Cultures & Histories and Biodiversity & Geosciences Programs. It relates to enquiries or claims made by individuals, groups, organisations or governments.

3.0 DEFINITIONS

Ancestral remains refer to skeletal remains, soft tissue or hair samples of deceased Aboriginal People or Torres Strait Islanders. It also includes any plaster casts of Aboriginal People or Torres Strait Islanders remains.

Accessioned Items are Objects or Specimens or Specimen Lots that have been incorporated into the State Collection through the formal process of Registration (numbering), and Accessioning (recording locality and other contextual information in an electronic database).

An **archaeological specimen** is a product of manufacture, alteration or use that may have been modified by or deposited due to human activities. It is primarily of value for its prehistoric, historic, cultural or scientific significance, and discovered on or beneath land or submerged or partially submerged beneath the surface of any water course or permanent body of water. Such objects may derive from Indigenous, historical, maritime, prehistoric or classical contexts, including stone, plant, faunal, ceramic, glass, metal, charcoal, sedimentological or other materials.

Biological Material includes any living or dead specimens, biologically-derived material such as tissue samples, skeletal elements or parts of specimens, or material which contains biological agents including bacteria, viruses, micro-organisms, genetically modified organisms / micro-organisms which might pose a risk to health and safety of individuals or the environment.

Burial goods or **grave goods** refer to items found with Ancestral Remains such as bark coffins and other objects.



A **Collection item** is an Object or Specimen and associated data that has been formally acquired by QMN.

Cultural material is physical and documentary material that represents the intangible and tangible elements of individual cultures. Such material may be, may refer to, may represent or may be a component of specific practices or knowledge systems. It includes but is not limited to artistic works including visual, performing and literary works, moveable cultural property, Ancestral Remains and other sensitive materials, photographic, film, and sound recordings and all forms of documentation which include any elements of culture - past, present and future.

Documentation is supporting evidence, recorded in a permanent manner using a variety of media (paper, photographic, electronic etc.) of the identification, condition, history, or significance of an Object, Specimen or collection. This encompasses information that is inherent to the individual Object / Specimen and its associations in its environment as well as that which reflects processes and transactions affecting the Object / Specimen (e.g. Accessioning, documenting, loaning, analysis, treatment etc.). Documentation is an integral aspect of use, management and preservation of an Object, Specimen or collection. All digital and paper based documentation must be collected, maintained and stored in accordance with *QM318: Collection and Research Record Keeping Policy*.

Due diligence all the required endeavours to establish the facts of a case before deciding a course of action, particularly in identifying the source and history of an item offered for acquisition, use before acquiring it, or for inward and outward loans.

An **Item** is an interchangeable term used for an Object, record, Specimen or Specimen lot.

Legal Title is the legal right to ownership of property.

Lot is the term used to define a group of Specimens or Objects recovered from the same location at the same time, which are registered, accessioned, stored and documented together for efficiency reasons based on manageable quantities of Objects (e.g. multiple specimens of insects, fishes, small crustaceans).

An **Object** is a human-made item, often manufactured or created from naturally-occurring materials and made for use in a cultural context. This term differentiates human-made collection items from those acquired in nature (Specimens).

PCOL the *Protection of Cultural Objects on Loan Act 2013*; supports the future of international cultural exhibitions in Australia by providing a scheme (governed by the *Protection of Cultural Objects on Loan Regulation 2014*) to protect Australian and foreign cultural objects on loan from overseas for temporary public exhibition

'Pre-packaged' exhibition is an exhibition or display (touring or non-touring, local, national or international) developed by an external organising body such as a museum, gallery, commercial entity, community group or artist; governed by a specific contract.

Provenance an objects full history and ownership from the time of its discovery or creation to the present day, through which authenticity and ownership are determined.

QMN means the Queensland Museum Network

QMATSICC is the Queensland Museum Aboriginal and Torres Strait Islander Consultative Committee, a group of community representatives which has the responsibility of advising the QM Board of issues, and to consult with communities.

Repatriation refers to the return of an object of cultural significance to a party found to be the true owner or Traditional Owner, or their heirs and descendants.

Research Collection consists of Objects or Specimens for research or loan generally intended to be kept indefinitely, but not individually registered (see Lot). Specimens retained for destructive analysis are managed as part of the Research Collection.

Reserve Collection items are held by various programs and campuses of QMN specifically for the purpose of public display, teaching, public education and or interpretation, non-scientific loans, etc. The former group of items do not meet QMN criteria for state significance, are not accessioned into the State Collection, nor intended to be held in perpetuity.

Restitution refers to the return of an item from the Museum Collection to a party found to have a prior and continuing relationship with the object, which is seen to override the claims of the holding museum.

Restricted Collection pertains to a Collection Item, image, data or information, to which unrestricted access may cause offence or endanger the safety or sanctity of that item, image, data or information, or the survival of the population from which the material was collected. Restricted Collection Items may include rare and threatened species, species of significant commercial value, secret and sacred objects, etc.

Secret Sacred objects are objects with intrinsic cultural significance to Aboriginal Peoples and/or Torres Strait Islanders. This material is traditionally subject to restrictions and/or protocols regarding interpretation, storage, access and use.

Senior Decision Maker this will depend on which process is being undertaken and at what level approval is being sought. It could be the relevant Program Head, Director, CEO or QMATSICC, and will differ depending on the specific circumstances of the situation (for example, an issue may be elevated to a higher decision making level if necessary).

Sensitive Material is anything which requires special protection from disclosure or specific treatment. It is material which can potentially cause offense, distress, embarrassment or threat to members of the community. It can be political, medical, religious, social, cultural or sexual in nature and can be in the form of information, images, objects or activities.

Specimen means any animal or plant, or any part, product, egg, seed, or root of any animal or plant or geological sample.

State Collection is the official collection of Items registered by QMN through Acquisition or Transfer. It is the sum total of all Accessioned items of scientific or historical significance vested in the Board of QM.



Type Specimen is a zoological, paleontological or mineral Item that serves as the basis for the name of the taxon (i.e. for identification of unnamed material through comparison with the type). Primary Types (holotype, neotype, lectotype etc.) and secondary Types (paratype, paralectotypes etc.) underpin the concept of the species and its variability in nature. QMN Type Specimens are irreplaceable Items of vital national and international significance for scientific research and identification verification.

4.0 ACTIONS

4.1. Concerns raised about QMN Collection Items

Staff are required to undertake an appropriate degree of **due diligence** (in accordance with *QM305 Due Diligence Policy* and *QM306 Due Diligence Procedure*) to assess all objects proposed for inclusion in the Museum's Collection, whether through purchase, donation, collection, bequest, exchange or transfer. In all cases they are required to exercise the highest levels of ethical and professional practice in order to ensure that material has not been acquired illegally, or exported from the country of origin in violation of that country's laws; specifically they are required to adhere to all legislation and conventions outlined in the acquisition procedures (*QM45 Procedure for Acquisition (Cultures & Histories Program)* and *QM199 Procedure for Acquisition (Biodiversity & Geosciences Program)*). However, despite these measures, a situation may arise where an enquiry or claim is made where the Museum receives subsequent information which may cast doubt on the previously determined legal title, authenticity, provenance, or cultural sensitivity.

It is important at the first opportunity to appoint a designated staff member to conduct all necessary research and assist the enquirer or claimant, ensuring there is a single point of contact. This person then becomes responsible for ensuring regular communication with the enquirer or claimant regarding progress of the issue and for conveying the final outcome of the decision making process.

Upon receipt of an enquiry or claim, the designated staff member must seek a written statement from the enquirer or claimant which must include:

- Enquirer's / 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 or enquiry
- Copies of any supporting documentation

In all cases the process must be fully documented and all documentation associated with the enquiry or claim must be scanned and attached to the relevant record in Vernon (where one exists) and hard copies must be kept in the appropriate file located in the Collections and Research Records area (whether that is the designated CRRC located in the QM&S Library or a campus / Collection specific repository) in accordance with *QM319 Collections and Research Record Keeping Procedure*. In addition, to assist the **Senior Decision**



Maker, in some cases staff must also complete a *QM313 Claims Handling - Decision Making Template* as part of the process.

4.1.1 Enquiries or claims concerning legal title

In the case of an enquiry or claim in relation to legal title the research process must include:

- Review of documentation provided by claimant.
- Review of **due diligence** carried out by the Museum before and subsequent to inclusion in the collection.
- Review of evidence of legal ownership in relation to legitimate heirs such as genealogical and kinship records, Government records, photographic evidence, traditional and oral histories and so on.
- Further independent legal advice if necessary.

(In relation to Aboriginal or Torres Strait Islander material, the principles outlined in *Continuous Cultures, Ongoing Responsibilities (Museums Australia 2005)* must also be followed.)

The result of this process may determine that another party has legal claim to the item and not the party who originally 'transferred ownership'. In this situation, the designated staff member must compile all the documentation, complete a *QM313 Claims Handling - Decision Making Template* and then submit this to the appropriate **Senior Decision Maker**.

Based on this information the **Senior Decision Maker** must decide whether or not the item in question must be offered for return to the claimant. (As part of that process they may decide to initially enter into negotiations with the claimant in order to determine if they might be agreeable for the item to remain part of the collection or whether they wish to have the item returned.) If the item is to be returned the process of deaccessioning must be followed in accordance with *QM56 Procedure for Deaccessioning*. If the item is to remain part of the collection a new *Gift Agreement* must be signed by the true legal owner and the old agreement nullified.

4.1.2 Enquiries or claims concerning provenance or authenticity

In the case of an enquiry or claim in relation to provenance or authenticity, the result of the research process may determine that the information previously held as correct is actually incorrect in part or whole.

In this situation the designated staff member must again provide all information and recommendations for action or endorsement to the **Senior Decision Maker**; who may decide that information associated with the object needs to be modified or corrected. In this case the staff member may be directed to update the appropriate record in the Vernon CMS and associated documentation. It may even be determined that the object is no longer appropriate or relevant to remain part of the State Collection; in which case the

deaccessioning process must be followed in accordance with *QM56 Procedure for Deaccessioning*.

4.1.3 Culturally restricted material

If any previously unidentified culturally sensitive / restricted material is identified by an external party and brought to the attention of the Museum; staff must take appropriate action as soon as possible. This might include removing an item from display or public access and ensuring its appropriate temporary storage in the **Secret / Sacred Room**.

Following this action, consultations must take place between Museum staff and the relevant community or their representatives, to discuss appropriate identification of the item and the implementation of any cultural protocols deemed necessary by the community. Again, in this situation the entire process must be documented, with all information and recommendations for action or endorsement going forward to the **Senior Decision Maker**.

The result of this process may establish that information associated with the item needs to be modified or corrected. In this case the staff member may be directed to update the appropriate record in the Vernon CMS and associated documentation. It may also be determined that the item must be stored in a different way or in a different location and might need to be governed by specific cultural protocols. In which case the staff member must ensure these requirements are followed as soon as possible after the decision has been made.

4.2 Concerns raised regarding Loans

Staff are required to undertake an appropriate degree of **due diligence** (in accordance with *QM305 Due Diligence Policy* and *QM306 Due Diligence Procedure* to assess objects making up inward and outward loans, and in the case of incoming international loans for exhibition, they must also abide by the guidelines of the Protection of Cultural Objects on Loan (PCOL) Scheme under the *Protection of Cultural Objects on Loan Act 2013*. In all cases they are required to exercise the highest levels of ethical and professional practice in order to ensure that material has not been acquired illegally, or exported from the country of origin in violation of that country's laws; specifically they are required to adhere to all legislation and conventions outlined in the loan procedures. However, despite these measures, a situation may arise where an enquiry or claim is made with reference to an item which is being considered for loan or has been borrowed from an external source, or is being prepared for outward loan; where the Museum receives information subsequent to embarking on the loan process which may cast doubt on the previously determined legal title, authenticity, provenance, or cultural sensitivity.

In this situation staff must follow the same process as outlined above in *section 4.1* for addressing enquiries or claims in relation to QMN Collection items and for consideration of requests. In all cases the process must be fully documented and all documentation associated with the enquiry or claim must be scanned and attached to the relevant record

in Vernon (where one exists) and hard copies kept in the appropriate file located in the Collections and Research Records area (whether that is the designated CRRRC located in the QM&S Library or a campus / Collection specific repository) in accordance with *QM319 Collections and Research Record Keeping Procedure*.

If a claim or enquiry is made in regard to any object either proposed to be imported or protected under the *Protection of Cultural Objects on Loan Act 2013* (i.e. objects being borrowed from overseas), the Museum must notify the Ministry for the Arts in writing as soon as possible. If requested, the Museum must also provide a copy of the written claim and the Museum's initial response.

The result of this enquiry in relation to Outward Loans, may highlight that the Museum has insufficient documentation from a **due diligence** perspective to provide comprehensive assurances to the borrower. In this situation the appropriate **Senior Decision Maker** may decide it is necessary to decline a specific item from being loaned, but may recommend an alternative item which has more comprehensive documentation.

The result of this process in relation to Inward Loans, may highlight that the lender has insufficient documentation from a **due diligence** perspective to provide comprehensive assurances to the Museum. In this situation the appropriate **Senior Decision Maker** may decide that specific items will not be borrowed.

The result of this process in relation to an Inward Loan imported or protected under the *Protection of Cultural Objects on Loan Act 2013* (i.e. objects being borrowed from overseas) is that the **Senior Decision Maker** will work directly with the Ministry for the Arts to determine the most appropriate course of action.

4.3 Considering a request for repatriation / restitution

In some cases the enquiry is more significant, with the claimant seeking repatriation or restitution. This may come from an individual, group, organisation or government seeking to negotiate the return of an item. Such a request will be governed by the Museum's policies and procedures as well as applicable Commonwealth, State and Territory legislation and international law and conventions (as outlined in section 5.0 below); and in relation to Aboriginal Peoples and/or Torres Strait Islanders material in accordance with *QMN59: Repatriation and Management of Ancestral Remains, Burial Goods and Secret Sacred Objects*.

In this specific situation the museum must ensure that:

- a formal acknowledgment to the initial request is sent to the claimant within **4 weeks** of receipt
- a designated staff member is appointed to be the main point of contact for all communications and to prepare all responses to the requesting party



- the appropriate **Senior Decision Maker** is informed at each stage of the process (this will vary depending on the specific situation and may be the Program Head or the CEO for example)
- all correspondence is in writing (which includes email) and a record (both electronic and paper based) is kept of all contact
- the requesting party is kept informed of progress at each stage of the process, particularly if there are likely to be delays

Once the designated staff member has been selected they must initially seek a written statement from the claimant which must include:

- Claimant's name, address and contact details
- Where a claim 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
- Copies of any supporting documentation

The next step is to ensure that the claim is coming from a credible source with a valid basis for the request. To assist staff in this process the following examples outline methods of establishing verifiable information for the different sources of requests:

When the request is made by an individual

- Seek evidence of their right to request through genealogical and kinship records, Government records, anthropological research, traditional and oral history and photographic evidence.

When the request is made by a Cultural Group or organisation

- Seek evidence of the legal status of the group or organisation.
- Seek evidence of formal recognition by the appropriate State or Federal Government.
- Check the status of the group with museum authorities in their region.

When the request is made by another institution or Keeping Place

- Seek evidence of formal recognition by the relevant State or Federal Government and/or accreditation with a professional museum organisation.
- Check the status of the group with other museum authorities in their region.



When the request is made by a foreign government

- Such a request must be directed to the **Senior Decision Maker(S)** who in the first instance must refer the request to the Ministry for the Arts and Department of Foreign Affairs and Trade.

The next step is for the designated staff member to conduct research into the specifics of the claim in collaboration with the requesting party, other experts in the field and if applicable, Government authorities. Some of the issues for investigation include:

- How the object was originally acquired and any background history to that process.
- Whether the claim has been made in another jurisdiction
- In the case of Aboriginal People and/or Torres Strait Islanders material, examination of the circumstances around how the object left the custody of the individual or community.

The staff member must compile all available documentation and complete a *QM313 Claims Handling - Decision Making Template* to be submitted to the appropriate **Senior Decision Maker**. Based on the information and research supplied, the **Senior Decision Maker** may determine that the requesting party has a legal / moral / ethical claim to the item and it must be returned to the claimant; in which case the deaccessioning process must be followed in accordance with *QM56 Procedure for Deaccessioning*.

Alternatively the Museum may negotiate with the claimant to secure a long term loan or agreement to retain custodianship of the item. The final outcome of the decision making process will obviously be different in each case and will be determined based on the specific circumstances involved.

4.3 Responsibilities

The Code of Conduct prescribes standards for the ethical behaviour of QMN staff and volunteers. In all activities relating to the Collections an employee must not be in conflict of interest with the purposes of QMN. If a conflict develops, the interests of QMN will take precedence.

Responsible officers:

- Collection Managers / Curators – are responsible for implementation of QMN Procedures in relation to Inward and Outward Loans (and in regard to international loans for ensuring adherence to PCOL regulations) as well as acquisitions in accordance with **due diligence**.
- Program Head – is responsible for assessing potential risks and providing that information to the overall **Senior Decision Maker** who will ultimately decide whether a loan or acquisition goes ahead.



- Senior Creative Producer (or their delegate/equivalent at QMN campuses) – responsible for managing **‘pre-packaged’ exhibitions** including contractual requirements and all necessary permissions related to the loan of objects under such contracts.
- Manager, Online Services – is responsible for assisting in the process of publishing information on the QMN website in accordance with PCOL requirements.
- Director, Collections, Research and Lifelong Learning, CEO, QM Board – are all potential **Senior Decision Makers** depending on what level of approval is being sought.

5.0 POLICY BASE

This document was informed by the *Australian Best Practice Guide to Collecting Cultural Material* produced by the Ministry for the Arts. The Queensland Museum is compliant with the Australian Government’s *Protection of Movable Cultural Heritage Act 1986* and the *Environmental Protection and Biodiversity Conservation Act 1999* and adheres to all obligations under the *CITES Convention 1975 on International Trade in Endangered Species of Wild Fauna and Flora*.

In addition the [QM78 QMN Collection Policy \(Appendix 2\)](#) outlines all the underlying legislation and general requirements relevant to the application and interpretation of this procedure.

6.0 DOCUMENT HISTORY

| VERSION | DATE | AMENDMENT |
|---------|----------------|---|
| 0.1 | September 2015 | Original document circulated for comment |
| 1.1 | March 2016 | Updated to include comments supplied by the Ministry for the Arts |

7.0 AUTHORISATION

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|-----------------------|----------------------|
| Approved by: | Prof. Suzanne Miller |
| Title: | CEO, QMN |
| Date Approved: | December 2016 |
| Signature: | |

8.0 MORE INFORMATION

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|------------------------------|---------------------------|
| Policy owner/creator: | Head, Collection Services |
|------------------------------|---------------------------|

9.0 REVIEW PROCESS

This document will be reviewed every 2 years and at other times if any significant new information or legislative or organisational change warrants a change to this document.
Once printed this document is no longer a controlled document.