

# MAAS Australian Indigenous Cultural and Intellectual Property Protocol

Draft policy for comment: 27 June 2016
Date Approved: 21 July 2016
Date for Review: July 2018

## 1. Introduction

The Museum of Applied Arts and Sciences (MAAS) is Australia's contemporary museum for excellence and innovation in applied arts and sciences. Established in 1879, MAAS venues include the Powerhouse Museum, Sydney Observatory and Museums Discovery Centre. MAAS is uniquely placed to demonstrate how technology, engineering, science and design impact Australia and the world.

Internationally, MAAS is acknowledged for the calibre of its Collection, scholarship and exhibitions. The MAAS Collection spans eight focus disciplines: technologies; health and medicine; physical sciences; engineering; architecture and the built environment; design and decorative arts; fashion; and contemporary culture. MAAS is home to the material heritage and stories of Australian culture, history and lifestyle, providing a comprehensive insight into this rich and diverse country. There is estimated to be well over 500,000 separate items in the MAAS Collection, which includes Australian Aboriginal and Torres Strait Islander (collectively **Indigenous**) objects and material.

A program of temporary exhibitions and programs complements a range of permanent galleries throughout MAAS venues. MAAS places a strong emphasis on learning and creativity and is committed to the integrity and authentic representation of all Australians in its displays, exhibitions and programs. In guarding the integrity and authentic representation of Australia's first people, MAAS recognises its obligation to respectfully deal with Indigenous Cultural Material. The MAAS Australian Indigenous Cultural and Intellectual Property (ICIP) Protocol has been prepared to guide MAAS in the acceptable use and acquisition of Indigenous Cultural Material.

MAAS has also developed a Reconciliation Action Plan (**RAP**) to acknowledge the deep connection and continuing practices in the arts and sciences of Indigenous peoples and in order to build a culture of respect and exchange between MAAS and traditional owners and cultural custodians. As a major custodian of a broad range of Indigenous Cultural Material, MAAS wishes to increase public access to this material and cultural programs and, wherever possible, to identify any associated economic opportunities for Indigenous stakeholders.

## 2. Purpose

The MAAS Collection contains a broad range of Indigenous Cultural Material, including artworks, artefacts, images and other objects of cultural significance that have been acquired by MAAS that MAAS may store and use in fulfilment of its mandate under the MAAS Act and MAAS Regulation. MAAS may also borrow Indigenous Cultural Material for temporary displays, exhibitions or programs. Collectively this material in the MAAS Collection or in MAAS custody or care will be known as **Indigenous Cultural Material**.

The purpose of the MAAS Australian Indigenous Cultural and Intellectual Property Protocol is to:

- recognise and respect Indigenous peoples' rights to access, maintain, control and benefit their cultural heritage (also known as ICIP);
- detail the principles that guide how MAAS meaningfully engages with Indigenous peoples in relation to their cultural heritage and ICIP, including through appropriate interpretation of Indigenous cultural heritage within MAAS and the Indigenous Cultural Material;
- publicly acknowledge MAAS support for and encourage the wider recognition of the value of ICIP and ICIP rights.

## 3. Scope

The MAAS ICIP Protocol is designed to encourage best practice in recognition and treatment of ICIP rights in relation to the MAAS Collection and objects in MAAS custody and care, including the Indigenous Cultural Material, and the programs, exhibitions, digital media, commissions, loans and other activities undertaken by MAAS.

MAAS engagement with Indigenous Cultural Material, whether tangible or intangible, includes the following:

- acquisition of Indigenous Cultural Material for the MAAS Collection;
- display, exhibition and loan of Indigenous Cultural Material;
- Incoming Loan of Indigenous Cultural Material;
- use of Indigenous Cultural Material in programs, including for educational purposes;
- reproducing and promotion of Indigenous Cultural Material;
- researching, documenting and interpreting Indigenous Cultural Material;
- storing and preserving Indigenous Cultural Material;
- allowing access by third parties to Indigenous Cultural Material including photographs, films, objects, images or reproductions and digital content;
- repatriating Indigenous Cultural Material.

The MAAS ICIP Protocol applies to all people and organisations involved in the activities of MAAS including:

- MAAS trustees, directors, executives, employees, agents, contractors and volunteers;
- Artists and creators commissioned by MAAS to create works, programs, exhibitions etc. for MAAS;
- Partners, affiliates and collaborators of MAAS.

#### 4. Introduction to ICIP rights

Indigenous Cultural and Intellectual Property (ICIP) rights refer to all aspects of Indigenous peoples' cultural heritage, including the tangible and intangible. This cultural heritage includes all traditional and cultural knowledge (sciences, plant and animal knowledge, stories, designs and symbols, ritual knowledge, literature and language), cultural objects (including, but not limited to arts, crafts, ceramics, jewellery, weapons, tools, visual arts, photographs, textiles, contemporary art practices), performances (ceremonies, dance and song), human remains, the secret and sacred (including sites) and documentation of Indigenous heritage.

The following diagram provides a general breakdown of ICIP rights:



Article 31 of the *United Nations Declaration on the Rights of Indigenous People*, which Australia has endorsed, 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.

MAAS recognises that the right to control ICIP incorporates both the tangible and intangible – the object and the knowledge, the artwork and the icons and the cultural practice. This heritage is a living heritage, transmitted from generation to generation and regarded as pertaining to a particular Indigenous group or its lands or seas. Many generations may contribute to the development of ICIP. In this way, Indigenous cultural heritage is communally owned.

MAAS also recognises Indigenous peoples' rights in relation to cultural practice and repatriation of Indigenous Cultural Material, including secret and sacred material. Article 12 of the *United Nations Declaration on the Rights of Indigenous People* 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.

MAAS is committed to the repatriation of Indigenous Cultural Material in the MAAS Collection to traditional owners and rightful custodians, in accordance with the *MAAS Aboriginal and Torres Strait Islander Repatriation Policy*.

In accordance with the *MAAS Aboriginal and Torres Strait Islander Repatriation Policy*, MAAS will not actively seek to acquire or retain Aboriginal and Torres Strait Islander human remains as part of the MAAS Collection; nor will MAAS knowingly disseminate or publish secret and sacred material without free prior informed consent in accordance with this ICIP Protocol.

In accordance with ICIP rights, Indigenous people have the right to:

- own and control their ICIP;
- ensure that any means of protecting ICIP is based on the principle of self-determination;
- be recognised as the primary guardians and interpreters of their cultures;
- authorise or refuse to authorise the commercial use of ICIP according to Indigenous customary laws;
- maintain the secrecy of Indigenous knowledge and other cultural practices;
- guard the cultural integrity of their ICIP;
- be given full and proper attribution for sharing their cultural heritage; and
- control the recording of cultural customs and expressions and the particular language which may be intrinsic to cultural identity, knowledge, skill and teaching of culture.

These rights form the basis of the following Principles.

## Principles

In recognising ICIP, MAAS uses the following principles to guide its engagement with Indigenous peoples and their cultural heritage:

### Principle 1 – Recognition and respect of Indigenous cultural rights

MAAS recognises and respects the right of Indigenous peoples, communities and custodians (collectively **Indigenous stakeholders**) to protect, maintain, control and benefit from their ICIP, in accordance with the United Nations Declaration on the Rights of Indigenous Peoples. MAAS acknowledges that ICIP in the Indigenous Cultural Material in the MAAS Collection or in MAAS custody or care remain with the Indigenous stakeholders that speak for that material. As such, MAAS will ensure that Indigenous perspectives are considered in any use or representation of ICIP by MAAS.

MAAS acknowledges that ICIP rights should be considered along with any legal or intellectual property (**IP**) rights that exist in the Indigenous Cultural Material and will seek to respect the rights of all parties in line with this ICIP Protocol and other relevant MAAS Policies.

#### Protocol:

To assist MAAS with the continued recognition and respect of ICIP rights and its fulfilment of its obligations under this ICIP Protocol and other relevant MAAS Policies, MAAS has established the Aboriginal and Torres Strait Islander Collection Management Reference Group (**Reference Group**). The Reference Group aid MAAS by providing advice and guidance regarding:

- acquisition and use of Indigenous Cultural Materials, including culturally appropriate interpretation and representation;
- the cultural appropriateness of the Incoming or Outgoing Loan of Indigenous Cultural Material, in accordance with the *Incoming Loans Policy* and *Outgoing Loans Policy*;
- the cultural appropriateness of acquisition of Indigenous Cultural Material in accordance with the *Acquisition and Accession Policy*;
- identification of and consultation and engagement with relevant Indigenous stakeholders in relation to the acquisition, use and storage of Indigenous Cultural Material;
- drafting and implementation of this ICIP Protocol and other related MAAS Policies.

### Principle 2 – Self-determination

MAAS recognises and respects the right of Indigenous stakeholders to be involved in decision-making concerning the use, acquisition or Incoming Loan of their ICIP and, where possible, MAAS seeks to work and collaborate with Indigenous stakeholders in the acquisition and use of Indigenous Cultural Material.

The right of self-determination of Indigenous stakeholders extends to maintenance of ongoing relationships concerning the use, acquisition or Incoming Loan of ICIP in Indigenous Cultural Material, including the context in which any ICIP is presented by MAAS.

#### Protocol:

In all MAAS engagement with Indigenous Cultural Material, MAAS recognises the interest Indigenous stakeholders maintain in the use and management of their ICIP and aims to engage with Indigenous stakeholders in a respectful, informed, ethical and meaningful way. MAAS works closely with Indigenous staff members, who are often involved in the process of engagement with Indigenous stakeholders, and the Reference Group to determine the relevant Indigenous stakeholders, Indigenous partners and wider community members to be consulted. The scale of the activity being undertaken by MAAS will influence the extent of Indigenous stakeholder involvement.

MAAS aims to develop displays, exhibitions and programs that create an environment for social and individual engagement by Indigenous and non-Indigenous audiences in a culturally appropriate manner. MAAS encourages Indigenous stakeholders to access by visiting and viewing the MAAS Collection, including Indigenous Cultural Material both online and in person and provides information about the Indigenous Cultural Material upon request.

### **Principle 3 – Consultation**

MAAS supports the right of Indigenous peoples to be consulted about the use, acquisition or Incoming Loan of their ICIP and recognises the importance and value of engaging Indigenous stakeholders in the ongoing use of their ICIP. MAAS commits to ensuring such consultation is respectful, informed and ethical and that adequate time is provided to enable meaningful dialogue and consideration by the Indigenous stakeholders.

#### **Protocol**

MAAS acknowledges that Indigenous peoples have their own protocols for the management of ICIP and that these protocols will be observed, understood, respected and engaged with as an essential, ongoing element of the use, collection and management of Indigenous Cultural Material by MAAS, in accordance with the *MAAS Strategic Collections Policy* framework, MAAS Policies, MAAS Act and MAAS Regulation.

Identification of the relevant Indigenous stakeholders in relation to particular Indigenous Cultural Material may be difficult to determine, especially if the original geographical source of the object or material is unknown. MAAS recognises that the right to speak for an object may be held by more than one person, community or custodian and may vary from time to time. Consensus may not be easily obtainable and there may be a range of views within an Indigenous community. Where necessary, MAAS will seek advice regarding who to consult and the extent of appropriate consultation from:

- where known, traditional owners or cultural or language custodians of the Indigenous Cultural Material (Indigenous stakeholders);
- cultural advisors, including individuals, communities and custodians MAAS has ongoing relationships with;
- recognised individuals and academics;
- Indigenous organisations such as representative bodies of particular communities and areas of practice (e.g. language centres or arts centres), land councils, prescribed bodies corporate (Torres Strait Islands) and the Australian Institute of Aboriginal and Torres Strait Islander Studies;
- relevant artist/artist's estate and art centres;
- state and national libraries, art galleries and museums;
- the Reference Group; and
- relevant MAAS staff.

Where multiple stakeholders are identified, consultation should be with all stakeholders.

Once identified, MAAS and the stakeholders will establish a dialogue allowing them to find appropriate solutions in an atmosphere of mutual respect in good faith, and full and equitable participation. Consultation requires time and an effective system for communicating among interest holders. Consultation with the relevant stakeholders may be in the form of face-to-face meetings in person or online, telephone conversations and/or email correspondence. Consultation is an interactive and multi-layered process that aims to deliver a range of outcomes for both stakeholders and MAAS. Consultation is a process of sharing and exchange and MAAS is receptive to the views and opinions of stakeholders.

Where Indigenous stakeholders cannot be located to consult with, MAAS will seek advice and assistance from relevant Curatorial, Collections and Exhibitions department staff and/or the Reference Group in determining the appropriateness of the use. Where multiple stakeholders are identified, consultation should be with all stakeholders. The Director will be responsible for making the final determination.

MAAS may engage Indigenous cultural advisors to be involved in advising on the use of Indigenous Cultural Material, for example, throughout the development and display of a particular exhibition or program to ensure the authenticity and cultural appropriateness of use of Indigenous Cultural Material.

## **Principle 4 – Free Prior Informed Consent**

MAAS is committed to obtaining the free prior informed consent of Indigenous stakeholders before using or authorising use, acquisition or Incoming Loan of ICIP in relation to Indigenous Cultural Material.

### **Protocol**

Free prior informed consent means providing full and relevant information to Indigenous stakeholders about the use, of Indigenous Cultural Material, or material containing ICIP prior to those activities occurring. This process should include explanation and negotiation with all Indigenous stakeholders concerning how ICIP and IP that emerges from the activity will be managed. The Indigenous stakeholders should be made aware how Indigenous Cultural Material containing ICIP will be stored, accessed and used by MAAS, including digitally and online. MAAS must endeavour to respect cultural protocols for using, reproducing and disseminating ICIP and IP materials containing ICIP.

### **Obtaining consent**

Consultation and participation are crucial components of a consent process. Consultation should be undertaken in good faith as discussed in Principle 3. MAAS recognises that there are legal and cultural aspects to consent for the use, acquisition or Incoming Loan of Indigenous Cultural Material and MAAS aims to ensure consent covers both of these aspects. This may include obtaining consent from, for example:

- the creator or family of a deceased creator of a copyright work (usually the copyright owner), in accordance with the *Third Party Copyright Policy*;
- the traditional owners or cultural or language custodians of a traditional story depicted in a copyright work;
- the person or family, or community, of the deceased Aboriginal or Torres Strait Islander person depicted in a copyright work;
- the community organisation involved in decision making for a local community who can speak for the country depicted in a copyright work.

Tension may arise where there are multiple rights-holders, and this will be recognised and addressed by MAAS when negotiating copyright licences in accordance with the *Third Party Copyright Policy*. Where possible, MAAS will engage with stakeholders to obtain the broadest support possible.

When seeking to obtain consent for use of Indigenous Cultural Material containing ICIP, MAAS will provide as much information as known at the time to the Indigenous stakeholders being consulted, including:

- Providing clear information about MAAS and any project partners;
- Providing clear information about the Indigenous Cultural Material and the nature of the use, including the intended aim and public exposure of the Indigenous Cultural Material;
- Providing clear details of the use including the scale of the project, the context of use, the intended audience, the medium of the project and the intended outcome, where relevant;
- Providing up-to-date provenance and due diligence research information concerning the particular Indigenous Cultural Material to be used;
- Providing information in an easily understandable format which may change depending on the Indigenous stakeholder, but could include written details, email, letters, phone discussions, face-to-face meetings (whether with individuals or groups). The priority is to ensure enough information has been given such that the Indigenous stakeholders consulted understand the implications of the particular use;
- Providing Indigenous stakeholders with appropriate access to and space for viewings of the relevant Indigenous Cultural Material;

- Allowing sufficient time for a determination to be made by the Indigenous stakeholders about the particular use. MAAS will build these consultation time allowances into its timeframes so that Indigenous stakeholders do not feel forced or pressured into making a decision without proper consideration of the material and the facts.

While use of Indigenous Cultural Material itself is one aspect, publishing Indigenous Cultural Material containing ICIP must be considered as well as to do so leaves that material open to being used by third parties. Copyright law does not stop people from using the underlying ideas, information or techniques that are detailed in the material. So long as third parties do not copy the material itself in whole or in part, they can re-use the ideas, information or techniques contained in the material without technically infringing copyright. This should be clearly explained to all Indigenous stakeholders as part of the consent process and prior to publication. Advice on the suitability of material for publication should be sought from the relevant Indigenous stakeholders, particularly if culturally or legally sensitive information is involved.

Where the consent MAAS is seeking deals with identifiable legal rights, such as copyright, moral rights or performers' rights, MAAS will undertake due diligence to locate the relevant rights-holder to obtain written consent for the proposed use of the relevant material.

- Where there are multiple rights-holders, consensus as to use of the Indigenous Cultural Material containing ICIP may not be reached by all. In such circumstances, MAAS will seek advice from relevant Curatorial, Collections and Exhibitions department staff and/or the Reference Group in making a determination as to the appropriateness of the use.

In some circumstances, MAAS may decide to use material where it has not been able to identify or locate the person, community or custodian who is able to speak for the material, or where MAAS has been unable to identify or contact the rights-holder of the Indigenous Cultural Material. In these circumstances, MAAS will endeavour to use such material in an ethical and responsible manner.

- Where consent is withheld by one or more Indigenous stakeholders, MAAS may determine after consultation with relevant Curatorial, Collections and Exhibitions department staff and/or the Reference Group to seek support rather than consent from other stakeholders listed in Principle 3 or otherwise identified. Where multiple stakeholders are identified, support should be sought from all stakeholders.

The Director will be responsible for making the final determination as to the use, acquisition or Incoming Loan of the Indigenous Cultural Material at issue. If MAAS is subsequently notified of concerns about use of material that is publicly accessible, it will undertake an investigation and, if necessary, remove the relevant material from public access.

## **Recording consent**

When an Indigenous stakeholder provides MAAS with consent to use, acquire or borrow Indigenous Cultural Material or ICIP, MAAS will obtain written consent or make a record of that consent that clearly outlines what has been agreed to. MAAS recognises that the use of written consent forms to obtain ICIP permissions may not be appropriate in all circumstances, in which case MAAS will seek to ensure that the intention to grant permission is clearly demonstrated. However, written consent should be obtained for wide dissemination of objects, commercial projects by third parties etc.

Where MAAS commissions an Indigenous artist or creator to create a work, exhibition, program or otherwise for MAAS, MAAS will enter into a commissioning agreement with the artist that addresses whether their work contains ICIP, and if so, confirms consent for use by MAAS of this ICIP. This consent is given on behalf of the community, and the artist should warrant that they are authorised to make this claim. Where the commission is for the purpose of acquisition into the MAAS Collection, the commission will also be informed by the terms of the Acquisition and Accession Policy. Where the commission will incorporate or draw on materials containing ICIP either from the Indigenous Cultural Material or Incoming Loans, MAAS and the artist will work together to undertake consultation and seek consent and/or support for the particular use. MAAS and the artist should consult with relevant Curatorial, Collections and Exhibitions department staff



and/or the Reference Group and any other relevant stakeholders listed in Principle 3 in determining the appropriateness of the use. Where multiple stakeholders are identified, support or consent should be sought from all stakeholders. The Director will be responsible for making the final determination as to the use.

Where MAAS engages an Indigenous cultural advisor in relation to a specific exhibition or program, MAAS will enter into a written contract with the cultural advisor to confirm consent for use by MAAS of any ICIP contained in the cultural advisors' contributions to the exhibition or program. This consent is given on behalf of the community, and the cultural advisor should warrant that they are authorised to make this claim.

The ways MAAS may record consent include, but are not limited to:

- written clearances, MoUs, commissioning agreements, consent forms or licence agreements setting out the terms of the consent;
- a written record made by MAAS or its agents of the consent (given verbally over the phone or in person) and signed off by the relevant Indigenous stakeholder;
- an audio or audio-visual recording of the consent being given by the relevant Indigenous stakeholder;
- letters, emails, facsimiles or other correspondence documenting the consent.

Where a representative is providing consent on behalf of a number of Indigenous stakeholders i.e. a community as a whole, the relevant representative should warrant that they are authorised to do so on behalf of the group.

MAAS will ensure that records of consent to use Indigenous Cultural Material and ICIP are kept securely and will be adhered to in relation to the relevant Indigenous Cultural Material or ICIP. MAAS will ensure that any third party use of the relevant Indigenous Cultural Material or ICIP does not conflict with the consent given to MAAS.

Once consent is granted, it is MAAS responsibility to ensure that the Indigenous Cultural Material or ICIP is stored in ways and places accessible to Indigenous stakeholders and in accordance with relevant cultural or community protocols i.e. restriction on access along gender lines.

MAAS recognises that consent in relation to Indigenous Cultural Material and ICIP is an ongoing obligation that requires MAAS to ensure it collects and regularly updates the details of appropriate Indigenous stakeholders for that material. This may include information concerning who to speak to if the person giving consent passes away. MAAS also recognises that consent for a certain use of Indigenous Cultural Material or ICIP does not necessarily extend to alternative uses of that material and thus consent for use may have to be sought for each separate use of the material. MAAS aims to build enduring relationships with Indigenous stakeholders to ensure ongoing consent.

## **Principle 5 – Interpretation and Cultural Integrity**

MAAS supports the right of Indigenous peoples to be involved in the interpretation of their culture as the primary guardians and interpreters of their cultural heritage. MAAS seeks to ensure that its interpretations of Indigenous Cultural Material are respectful of the cultural integrity of that material.

### **Protocol**

MAAS commits to engaging with Indigenous stakeholders and/or cultural advisors, about interpretation of Indigenous Cultural Material in its displays, exhibitions and programs and to provide ongoing feedback to MAAS to maintain the authenticity and cultural integrity of its use of Indigenous Cultural Material and ICIP.

MAAS curators regularly consult and collaborate with Indigenous stakeholders, cultural advisors and other members of the community in the development of the MAAS Collection, displays, exhibitions and programs involving ICIP. This includes communicating with or travelling to communities to engage directly with people

and inviting reciprocal visits to MAAS in order to build lasting relationships that ensure the ongoing interpretation and cultural integrity of the Indigenous Cultural Material.

MAAS may receive requests from interested parties to change the way it is using particular Indigenous Cultural Material. MAAS will carefully consider and respond to such requests and if it is appropriate to do so in the circumstances, accede to the request. There may, however, be differing opinions concerning the request or it may be impractical to act upon the request, in which case MAAS will advise the party of the reasons for this decision. MAAS may seek advice from the Reference Group in appropriate circumstances. The Director will be responsible for making the final determination.

## **Principle 6 – Secret, Sacred and Privacy**

MAAS acknowledges that some parts of Indigenous culture are not appropriate to be shared publicly or may be subject to customary laws or other restrictions. These restrictions may apply to:

- culturally restricted information (such as secret or sacred knowledge, or information which has a specific restriction such as gender specific knowledge; sacred sites and objects) which is subject to conditions under customary law;
- confidential information;
- personal or private information about individuals;
- images reflecting or representing culturally restricted information, confidential information or personal or private information about individuals.

## **Protocol**

MAAS respects the right of Indigenous peoples to maintain their cultural practices relating to secret and sacred information and knowledge. The privacy and confidentiality concerning aspects of Indigenous individuals' personal and cultural affairs must also be respected.

MAAS commits to not knowingly making private, confidential, secret or sacred material available without Indigenous stakeholder prior informed consent. MAAS also commits to providing appropriate warnings when displaying or exhibiting secret, sacred or private material.

MAAS may identify restricted or private information following:

- a consultation process with Indigenous stakeholders;
- formal or informal advice given to MAAS;
- feedback or complaint given to MAAS.

MAAS commits to consulting Indigenous stakeholders and/or cultural advisors to determine whether Indigenous Cultural Material it uses, acquires or borrows incorporates or refers to secret or sacred knowledge. MAAS will follow directives from Indigenous stakeholders for culturally sensitive handling, viewing and storage of Indigenous Cultural Material and their placement in relation to other objects on display. MAAS will also be guided by the *Aboriginal and Torres Strait Islander Repatriation Policy* in dealing with secret and sacred Indigenous Cultural Material.

MAAS will promptly investigate any advice, feedback or complaints that Indigenous Cultural Material should be restricted or private and will consider the removal of the material or references to the material from display where possible. There may be practical reasons why MAAS cannot remove the material from public display i.e. where an image of the material has been included in an exhibition program that has already been published and distributed or where MAAS is contractually bound to keep material on public display for a certain period of time. If MAAS becomes aware that Indigenous Cultural Material is restricted or private, it will record that information with the material and ensure that access to the material and records is limited as far as possible. Where a gender restriction applies, MAAS will use its best endeavours to ensure those restrictions are complied with.

MAAS acknowledges that the use of the image, likeness or name of a deceased person may be subject to cultural mourning practices in some Indigenous communities. Where MAAS becomes aware that an Indigenous person whose name or likeness is held in the MAAS Collection or is being displayed or exhibited by MAAS has passed away, MAAS will consult with the family or relevant Indigenous stakeholders, if known, to ensure protocols are upheld. Where such consultation is not possible or achievable, MAAS will seek advice from the Reference Group, in particular if the person's name or likeness is being displayed or exhibited. MAAS acknowledges that in some instances it will not be possible to remove all references to the deceased person, such as where a deceased person's name or likeness has been reproduced in an exhibition program, which has been published and distributed.

Where MAAS wishes to use the name or likeness of a deceased person (e.g. from the Tyrell Collection), MAAS will attempt to consult with the family or relevant Indigenous stakeholders, if known, to consent to this use. Where such consultation is not possible or achievable, MAAS will seek advice from the Reference Group as to the appropriateness of use of the name or likeness.

MAAS commits to providing appropriate warnings when displaying or exhibiting material featuring deceased persons.

## **Principle 7 – Attribution**

Indigenous stakeholders are custodians of their Cultural Material and thus have the right to be attributed in relation to any use of Indigenous Cultural Material. MAAS commits to acknowledging Indigenous stakeholders for the use of Indigenous Cultural Material, where possible, including individual, community and/or family acknowledgments as required.

### **Protocol**

MAAS acknowledges creators of Indigenous Cultural Material, where known, and with that creators approval. Where the creator is deceased, MAAS will consult with the family, estate or other relevant Indigenous stakeholders to determine the appropriate acknowledgement. Acknowledgement may also be made to the relevant Indigenous community of origin or custodians of the Indigenous Cultural Material as appropriate, especially if the material is historical and not identifiable to a particular author. MAAS respects the right of Indigenous stakeholders to request not to be acknowledged in any public use of the Indigenous Cultural Material.

Where possible, traditional knowledge or ICIP notices should be included in any use of Indigenous Cultural Material, including but not limited to programs, displays, exhibitions and published materials. Such notices put the public on notice that the material contains ICIP and cannot be used without the full prior informed consent of the relevant Indigenous stakeholders.

MAAS may photograph Indigenous people and locations or record, whether audio or audio-visual, Indigenous people speaking, performing and sharing ICIP, stories and other cultural information. In these circumstances, MAAS should enter into a written consent agreement with the subject, (where possible – see Recording Consent in Principle 4) the terms of which:

- ensure that photographs or recordings will only be made with the subject's written consent;
- ensure that consent for use of any ICIP or other cultural information included in the photographs or recordings is given by the subject;
- outline the correct attribution of the subject and other Indigenous stakeholders;
- specify a family or community contact that MAAS can contact in the event the subject passes away.

As far as possible, MAAS will keep accurate and up-to-date records of the correct stakeholders to acknowledge in relation to Indigenous Cultural Material and will maintain records of all consultation and attempts to consult with Indigenous stakeholders in relation to that material. Where MAAS does not retain information about the creator or community of origin of Indigenous Cultural Material, MAAS encourages feedback from potential Indigenous stakeholders.

## **Principle 8 – Benefit Sharing**

MAAS acknowledges the right of Indigenous peoples to benefit from the sharing of their ICIP and culture. MAAS acknowledges its responsibility to facilitate cultural exchange through the Collection, Incoming Loans, displays, exhibitions and programs. Also, Indigenous people who share ICIP at MAAS by performing, speaking or sharing culture have the right to be paid for their services.

### **Protocol**

As part of MAAS mandate under the MAAS Act and MAAS Regulation, MAAS will continue to research and develop Indigenous Cultural Material in the MAAS Collection for the benefit and education of future generations of Indigenous and non-Indigenous Australians. Facilitating the access of Indigenous peoples to Indigenous Cultural Material in the MAAS Collection and to Indigenous Cultural Material on loan to MAAS is a priority and allows MAAS to participate in the process of cultural regeneration.

From the use, acquisition and Incoming Loan of Indigenous Cultural Material, MAAS aims to develop an exchange of knowledge and skills with Indigenous stakeholders. Free prior informed consent regarding financial and non-financial benefits arising from the use of Indigenous Cultural Materials and ICIP should be sought from Indigenous stakeholders. For example, benefits may include:

- facilitating access to Indigenous Cultural Material in the MAAS Collection and on loan to MAAS, whether as part of a specific exhibition or otherwise;
- display, exhibition and promotion of ICIP, traditional knowledge and cultural expressions as embodied in objects, materials, performances and artistic works;
- facilitating skill-sharing and learning in relation to Indigenous Cultural Material and ICIP, its interpretation and the intergenerational transfer of knowledge, including through educational programs and workshops;
- facilitating the careers of emerging and leading Indigenous artists and creators, for example, commissioning and/or programming Indigenous artists and creators works;
- touring exhibitions and Outgoing Loans that extend the accessibility to Indigenous Cultural Material and information beyond MAAS;
- building best practice engagement methodology and protocols through consultation with Indigenous stakeholders;
- invitations to attend and speak at events and as part of programs;
- financial benefits from commercialisation of Indigenous Cultural Material, as approved by Indigenous stakeholders;
- employment, internship and training opportunities.

It is the responsibility of MAAS to create useful and relevant outcomes for Indigenous stakeholders based on their own priorities and methodologies on a case by case basis. Factors to consider in the determination of benefits are the scale of the project, the quantity or type of Indigenous Cultural Material used and the intended audience. Discussion of benefits will occur as part of the consultation process with relevant artists, creators and Indigenous stakeholders.

## **Principle 9 – Maintaining Indigenous culture**

MAAS acknowledges that Indigenous cultures are not static and that measures need to be taken so that Indigenous people can maintain, revitalise and advance their cultures.

### **Protocol**

MAAS recognises its responsibility as a public cultural institution in ensuring that Indigenous people can maintain, revitalise and advance their cultures for future generations. MAAS actively supports the transfer of knowledge and skills in the arts and sciences and has a history of fostering cultural exchange through workshops and educational programs for all age groups.

MAAS will ensure that current and future generations of Indigenous stakeholders are given the opportunity to access any Indigenous Cultural Material, including ICIP, data, research results and materials that are acquired as part of the MAAS Collection or created by MAAS.

MAAS encourages diversity of Indigenous cultural expression in the acquisition and use of Indigenous Cultural Material and will continue to provide opportunities for different artists, creators and Indigenous stakeholders to be represented.

MAAS will ensure that the management of the Collection and objects in MAAS care will be in accordance with the terms of the *MAAS Strategic Collections Policy Framework*, and national and international best practice.

## **Principle 10 – Recognition of ongoing rights**

MAAS acknowledges that Indigenous people and their communities should be recognised as the guardians of their culture and recognises the rights of Indigenous peoples in regard to their cultural heritage are ongoing.

### **Protocol**

MAAS recognises its responsibility as a cultural institution to ensure continued engagement with Indigenous artists, creators and stakeholders to implement and recognise the Principles listed in this ICIP Protocol.

MAAS acknowledges that ICIP rights are perpetual and do not cease upon the death of the individual or the expiry of copyright. MAAS aims to engage with Indigenous people, communities and custodians, including individual artists, creators and stakeholders, in order to establish and build long-standing relationships of mutual respect and cooperation such that it may continue to fulfil its obligations under this ICIP Protocol now and in the future.

Consent that has been given by Indigenous stakeholders for acquisition or use of Indigenous Cultural Material by MAAS is considered to be ongoing consent, unless otherwise specified by the Indigenous stakeholders. MAAS will however, seek to renew consultations with Indigenous stakeholders before any further use of Indigenous Cultural Material or ICIP where consent has expired or lapsed. MAAS holds, and will continue to maintain, up-to-date records concerning Indigenous stakeholders and relevant contacts and will keep such records securely in accordance with the *Collection Information Management and Access Policy* and the *Records Management Policy*.

MAAS recognises that consent for Indigenous Cultural Material borrowed under the terms of the *Protection of Cultural Objects on Loan Act 2013* (Cth) is not considered to be ongoing consent, and in accordance with the *Incoming Loans Procedures*, MAAS will seek consent on each instance of borrowing such Indigenous Cultural Material.

MAAS supports the use of legal measures such as copyright, trademarks and confidential information by Indigenous stakeholders to recognise and promote ICIP, where appropriate. Practical and simple measures, such as using traditional knowledge notices, are encouraged. Written licences, agreements and cultural consent forms for use of ICIP should be utilised in the same way that permissions for copyright works are required.

### **Feedback**

MAAS welcomes feedback in relation to the operation of the Principles in this ICIP Protocol. MAAS will respond to any inquiries, complaints or other feedback from Indigenous stakeholders in a timely, transparent and respectful way in accordance with MAAS complaints handling procedures.

## 5. Definitions

**Indigenous:** Aboriginal and Torres Strait Islander peoples of Australia.

**Indigenous Cultural Material:** Objects and associated material and intellectual property of or relating to Indigenous peoples contained in the MAAS Collection, on loan to MAAS in accordance with the *Incoming Loans Policy* or otherwise in MAAS custody or care in accordance with the *Strategic Collections Policy Framework* that have artistic, ethnographic, spiritual, scientific, archaeological or historic value, including but not limited to films, sound recordings, artworks, manuscripts, images and objects. The Indigenous Cultural Material may contain objects that are produced by Indigenous people or that have particular cultural significance to Indigenous people including natural objects and modified objects.

**MAAS Act:** The *Museum of Applied Arts and Sciences Act 1945* (NSW).

**MAAS Collection or Collection:** The acquired Collection of material and objects owned by MAAS.

**MAAS Policies:** The MAAS Policies governing the activities undertaken by MAAS as part of its mandate under the MAAS Act and MAAS Regulation.

**MAAS Procedures:** The internal MAAS Procedures and protocols governing the activities undertaken by MAAS, in enacting MAAS Policies.

**MAAS Regulation:** The *Museum of Applied Arts and Sciences Regulation 2012* (NSW).

**Incoming Loan:** Any contracted arrangement for the transfer of possession of an object(s) or other material to MAAS on a temporary basis under which the transfer grants a temporary right of possession to MAAS, as defined in the *Incoming Loans Policy*.

**Outgoing Loan:** Any contracted arrangement for the transfer of possession of an object(s) or non-collection material from MAAS to another party or parties on a temporary basis under which MAAS grants a temporary right of possession to the borrower, as defined in the *Outgoing Loans Policy*.

## 6. Related Museum plans, policies and/or procedures

- Aboriginal and Torres Strait Islander Repatriation Policy
- Acquisition and Accession Policy
- Archives Policy
- Collection Information Management and Access Policy
- Collection Management Policy
- Conservation Policy
- Deaccession Policy
- Disposal Policy
- Incoming Loans Policy
- Outgoing Loans Policy
- Records Management Policy
- Research Library Policy
- Restitution Policy
- Storage and Access Policy
- Third Party Copyright Policy
- Claims Handling Procedures
- Incoming Loans Procedures
- Reconciliation Action Plan

## **7. Acknowledgement**

Terri Janke and Company, in particular Terri Janke and Anika Valenti.

## **8. Responsible Officer**

Director

## **9. Responsible Department**

Curatorial, Collections and Exhibitions Department

## **10. Amendment history**

<b>Version</b>	<b>Date issued</b>	<b>Notes</b>	<b>By</b>
1	21/07/2016		Executive