

**CAMMD** | COUNCIL OF  
AUSTRALASIAN  
MUSEUM  
DIRECTORS

**Response to the  
Department of the Prime Minister and Cabinet  
Office for the Arts  
Immunity from Seizure for Cultural Objects on Loan  
Discussion Paper 2011**

**Submitted by  
Dr Meredith Foley CAMD Executive Officer on behalf of the  
COUNCIL OF AUSTRALASIAN MUSEUM DIRECTORS (CAMD)**

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# **COUNCIL OF AUSTRALASIAN MUSEUM DIRECTORS**

## **Response to the Immunity from Seizure for Cultural Objects on Loan Discussion Paper 2011**

### **Introduction**

The Council of Australasian Museum Directors (CAMD) would like to thank the Office for the Arts, Department of the Prime Minister and Cabinet Office, for its recognition of the concerns raised by cultural collections in relation to Australia's lack of comprehensive immunity from seizure of cultural objects on loan legislation. CAMD is keen to ensure that Australian audiences continue to have the opportunity to see significant cultural material from around the world and also material originating from Australia which now resides overseas.

As the discussion paper notes, the lack of immunity from seizure legislation in this area is increasingly impacting on negotiations underway for agreed and proposed exhibitions. The ban on museum loans to the United States of America by Russian museums, following a perceived threat to immunity for loaned objects, indicates the seriousness with which other countries take this issue<sup>1</sup>. Members of CAMD have liaised closely with the Council of Australian Art Museum Directors (CAAMD) over the last two years in developing a position on immunity from seizure legislation. A lack of action on this issue could result in Australia becoming an unattractive destination for loans, both for exhibitions and research, and for this to impact on access to world culture for the Australian community and also the opportunities for exchanges which currently exist between major Australian and overseas institutions.

### **CAMD**

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 appendix 1). The museums represented include Government-funded natural science and social history museums, combined museum/art galleries, industry, technology and design collections, science centres, heritage houses and outdoor museum sites. Many of our members have active programs of engagement with overseas museums to borrow (and also to loan) objects from cultural collections for major, international touring exhibitions. This interchange between museums here and in other countries makes an important contribution to Australian cultural life and to the more indirect aims of cultural diplomacy. Funds raised via major international touring exhibitions also generate funds

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<sup>1</sup> 'US-Russia cultural cold war continues', The Art Newspaper, 26 May 2011, published online at [www.theartnewspaper.com/articles/US-Russia-cultural-cold-war-continues/23801](http://www.theartnewspaper.com/articles/US-Russia-cultural-cold-war-continues/23801)

which can be in turn invested in home-grown exhibitions which may be specific to Australia or may indeed, in turn, be toured around the world. This cycle of cultural exchange is at risk if swift action is not taken to introduce immunity from seizure legislation to protect incoming cultural loans.

It should be emphasised at this juncture that CAMD supports the return of illegally acquired cultural property and the upholding of relevant international conventions to which Australia is a signatory. The following response addresses the questions raised in the Discussion Paper and also comments on the hypothetical immunity proposal contained therein. Numbering follows that provided in the discussion paper.

## **IMMUNITY FROM SEIZURE POLICY QUESTIONS**

### ***Do you generally support the implementation of legislation which should provide immunity from seizure and suit for cultural objects on loan to Australia?***

As has been set out in previous correspondence to the Minister, CAMD strongly supports the introduction of legislation which would provide immunity from seizure and suit for cultural objects on loan to Australia from international sources. A number of our members have noted that they have encountered or are anticipating problems in negotiating loans due to the lack of this type of legislative assurance; they will be responding directly to the Office with case studies demonstrating the impact and growing extent of these difficulties.

While CAMD notes that some of its members differ over detailed aspects of a proposal for immunity from seizure and suit legislation, in general those responding have indicated their strong support for a Commonwealth statutory scheme. In formulating the proposed characteristics of a successful scheme they have advised that it should:

- not be conferred 'object by object' due to the onerous and resource-intensive nature of this approach; but
- proceed through immunity conveyed on major, not-for-profit, Government-funded collecting institutions which have been approved and accredited for this purpose;
- not diminish the responsibility of the borrower to exercise due diligence including holding consultations where necessary and publishing details where possible according to standards set in consultation between the Government and the sector;
- encourage compliance with prohibitions or restrictions on import and exclude the loan of objects on the International Council of Museum's (ICOM) *Red List* or which are part of a pre-existing legal dispute; and
- include an exchange with legal, formal, signed loan agreements.

It should be noted that this proposed approach will be cost effective for the Government and will enable major museums to continue to exercise the expertise and duty of care already entrusted to them by Federal and State funding bodies.

**1. Should Australian Protected Objects be excluded from coverage under potential immunity from seizure legislation?**

There was support from a number of CAMD members for the inclusion of Australian Protected Objects within the immunity from seizure legislation and for the inclusion of Indigenous materials classified under this policy.

Concern was expressed by some members that exclusion of Indigenous material from immunity legislation would send a 'signal' to overseas museums that Australia was not able to guarantee loans of Indigenous material and that this would cut off opportunities for this material to be seen and appreciated here and for Aboriginal and Torres Strait Island people to be made aware of its existence. It was commented that protocols relating to engagement with relevant Aboriginal and Torres Strait Islander communities on loans might assist this process.

Other members were of the opinion that more discussion was required on the treatment of Indigenous material because of its sensitive and unique nature.

**2. What types of claims should be prevented or allowed under this type of legislation? Should Australia consider immunity from seizure with a return guarantee for the object, but not prevent other types of claims for damages, compensation, etc?**

The immunity provided should cover court action against a loaned object, the action of law enforcement outside the court system and include claims for damages and compensation. Some members suggested that it should not include immunity from the removal of objects from display for indecency or obscenity.

**3. If a publication requirement was to form part of an Australian model of immunity from seizure, what would be the best way to disseminate this information?**

The majority of CAMD respondents stressed that in respect of publication and other aspects of the scheme, accredited borrowers should continue to be given responsibility for ensuring due diligence in checking and/or publishing information and/or consulting about loans in proposed exhibitions and research. Members made a number of observations in relation to publication requirements including that:

- consideration needed to be given to questions of security and risk in matters relating to publication;

- some loan agreements and donors proscribe the release of detailed information;
- care should be taken in the publication of Indigenous material with regard for the sensitivities of its originating community; and
- lead-times for publication may need to be more flexible as the final list is often not available until shortly before exhibition opening dates.

Further discussion with the collecting sector on this issue and collaboration in the development of standards for accreditation would be appropriate.

**4. For what purposes should loans be undertaken to make them eligible for immunity protection?**

CAMD members indicated that immunity for loans should be provided to major, not-for-profit, collecting institutions for cultural, educational, research, digitisation, conservation and/or charitable purposes. It was noted by some members that there could be 'grey areas' in relation to 'blockbuster exhibitions' which have private sponsors but provide revenue for not-for-profit institutions. Issues arising from this observation could be dealt with more easily if immunity status was allocated to the borrowing institution rather to specific loans or loan purposes.

**5. Recognising the unique challenge faced by Indigenous communities in relation to their cultural material, should extra provisions be made to ensure appropriate protection?**

The major museums have, over several decades, developed detailed policies and protocols for working with ATSI people. As indicated earlier (see response to question 1), there were different opinions on this issue although all members agreed on the need for careful consultation with Indigenous communities in relation to relevant objects and observation of all relevant conventions on this matter in the development of legislation.

**6. Should immunity be provided for objects for which provenance gaps exist during known period of war, looting or theft?**

Some members opposed immunity for this category. Others, however, saw the confirmation of provenance, if reasonably possible, to be part of the due diligence to be exercised by accredited museums.

**7. If Australian objects, including Australian Protected Objects (APOs) were included as eligible for coverage under potential immunity from seizure legislation, should coverage also extend to loans between Australian states and territories which may not have an international element?**

Immunity should cover loans into Australia and between States.

**8. What assurances or guarantees should be requested of the lender?**

Members agreed that it was customary practice to seek evidence of legal title and provenance from loan bodies or individual donors as part of the existing exercise of due diligence. Evidence of legal title and provenance history would comprise a minimum which would be expanded through checks made by the borrower.

**9. What institutions or organisations should be eligible for immunity provisions?**

Approved and accredited major Government-funded, not-for-profit, collecting institutions. It is envisaged that, due to the current high level of governance and ethical professional practice of National, State/Territory and major regional museums and galleries, these institutions could be entrusted to carry out this process independently.

**10. Should standard loan forms be introduced for institutions wishing to access immunity guarantees from the Australian Government?**

CAMD members did not support the introduction of standard loan forms, noting that it would be difficult to draft a loan form which would cover all exigencies and which could be enforced on lenders. Many lenders insist on their own loan agreement. There is a potential for guidelines about the content of loan agreements to be developed as part of the process to establish accreditation.

**11. What information would you consider could form the basis of a legitimate claim?**

The exercise by accredited museums of due diligence should limit the potential for legitimate claims.

***Hypothetical Model***

The hypothetical proposal is seen to be unnecessarily labour intensive for both the Government and borrowing institutions. The elements of the model preferred by responding CAMD members is outlined on page 3.

CAMD would be pleased to provide further evidence to clarify or expand on the content in the above response and would welcome the opportunity to facilitate further consultation and collaboration between its members and the Office for the Arts. If further information is required please contact:

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## Attachment I

# COUNCIL OF AUSTRALASIAN MUSEUM DIRECTORS MEMBERSHIP 2011

### Mr Pierre Arpin

Director  
Museum and Art Gallery of the Northern Territory

### Professor Graham Durant

Director, Questacon – National Science and Technology Centre

### Ms Margaret Anderson

*Chair, CAMD*  
Director  
History SA

### Dr J. Patrick Greene OBE

*CAMD Executive Member*  
Chief Executive Officer  
Museum Victoria

### Mr Bill Bleathman

*CAMD Executive Member*  
Director  
Tasmanian Museum and Art Gallery

### Major General Steve Gower AO

AO MIL  
Director  
Australian War Memorial

### Mr Alan Brien

Chief Executive Officer  
Scitech Discovery Centre, Perth

### Mr Michael Houlihan

Chief Executive  
Museum of New Zealand Te Papa Tongarewa

### Dr Dawn Casey

*CAMD Executive Member*  
Director  
Museum of Applied Arts and Sciences  
(Powerhouse Museum)

### Mr Frank Howarth

*CAMD Executive Member*  
Director  
Australian Museum

### Mr Roy Clare (to be confirmed)

Director  
Auckland War Memorial Museum

### Mr Jeremy Johnson

*CAMD Treasurer*  
Chief Executive Officer,  
Sovereign Hill Museums Association

### Ms Kate Clark

Director  
Historic Houses Trust of NSW

### Dr Suzanne Miller

Director  
South Australian Museum

### Mr Alec Coles

Chief Executive Officer  
Western Australian Museum

### Mr Richard Mulvaney

Director  
Queen Victoria Museum and Gallery

**Dr Ian Galloway**  
Director  
Queensland Museum

**Mr Andrew Sayers**  
Director,  
National Museum of Australia

**Ms Mary-Louise Williams**  
Director  
Australian National Maritime Museum

**Mr Shimrath Paul**  
*CAMD Executive Member*  
Chief Executive  
Otago Museum and Discovery World

**Mr Tony Sweeney**  
**Chief Executive Officer**  
Australian Centre for the Moving Image

**Mr Anthony Wright**  
Director  
Canterbury Museum

Attachment 2.



## **CAMD Museum Sites**

- **Auckland War Memorial Museum**, Auckland
- **Australian Centre for the Moving Image**, Melbourne
- **Australian National Maritime Museum**, Sydney
  - Wharf 7 Maritime Heritage Centre, Sydney
- **Australian War Memorial**, Canberra
- **Australian Museum**, Sydney
- **Canterbury Museum**, Christchurch
- **Historic Houses Trust of NSW**
  - Elizabeth Bay House, Sydney
  - Elizabeth Farm, Sydney
  - Government House, Sydney
  - Hyde Park Barracks Museum, Sydney
  - Justice & Police Museum, Sydney
  - Meroogal, Nowra
  - Museum of Sydney, Sydney
  - Rose Seidler House, Sydney
  - Rouse Hill Estate, Sydney
  - Susannah Place Museum, Sydney
  - Vaucluse House, Sydney
  - The Mint, Sydney
- **History SA**
  - History Trust of South Australia, Adelaide
  - National Motor Museum, Birdwood
  - South Australian Maritime Museum, Port Adelaide
  - Migration Museum, Adelaide
  - Queen's Theatre, Adelaide

- **Museum of New Zealand Te Papa Tongarewa**
  - Museum of New Zealand Te Papa Tongarewa, Wellington
  - Te Papa Tory Street (Research facility & library), Wellington
  
- **Museums and Art Galleries of the Northern Territory**
  - Bullock Point, Darwin
  - Fannie Bay Gaol, Darwin
  - Lyons Cottage, Darwin
  - Australian Pearling Exhibition, Darwin
  - Museum of Central Australia, Alice Springs
  - Connellan Hangar, Alice Springs
  - Kookaburra Memorial, Alice Springs
  
- **Museum Victoria**
  - Melbourne Museum, Melbourne
  - Scienceworks Museum, Melbourne
  - Immigration Museum, Melbourne
  - Royal Exhibition Building, Melbourne
  
- **National Museum of Australia**, Canberra
  
- **Questacon – The National Science and Technology Centre** , Canberra
  
- **Otago Museum and Discovery World**, Dunedin
  
- **Museum of Applied Arts and Sciences**
  - Powerhouse Museum
  - Sydney Observatory
  
- **Queensland Museum**
  - Queensland Museum South Bank
  - Museum of Tropical Queensland, Townsville
  - Cobb & Co Museum, Toowoomba
  - Lands Mapping & Surveying Museum
  - The Workshops Rail Museum, Ipswich
  
- **Queen Victoria Museum and Art Gallery**
  - Inveresk
  - Royal Park, Launceston
  
- **Scitech Discovery Centre, Perth**
  
- **South Australian Museum**
  - South Australian Museum, Adelaide
  - South Australian Museum Science Centre, Adelaide

- **The Sovereign Hill Museums Association**
  - Sovereign Hill, Ballarat
  - Gold Museum, Ballarat
  - Narmbool, Elaine
- **Tasmanian Museum and Art Gallery**
  - Tasmanian Museum and Art Gallery, Hobart
  - Moonah Complex, Hobart
  - Tasmanian Herbarium, Hobart
  - Rosny Research and Collections Centre, Hobart
- **Western Australian Museum**
  - Western Australian Museum, Perth
  - Western Australian Museums Kalgoorlie-Boulder
  - Western Australian Museum Albany
  - Western Australian Museum Geraldton
  - Fremantle History Museum
  - Western Australian Maritime Museum, Fremantle
  - Western Australian Shipwreck Galleries
  - Samson House, Fremantle