

**Category:** Engagement

**Version:** 5

**Document Type:** Policy

**Document Status:** Published

**Approved On:** 06 October, 2021

**Audience:** Staff, Students, Research, Academic, Affiliate

**Effective Date:** 01 November, 2021

**Review due by:** 01 November, 2024

**Policy Approver:** Council

**Policy Steward:** Chair, Aboriginal And Torres Strait Islander Cultural Heritage Oversight Committee

# Aboriginal and Torres Strait Islander Cultural Heritage Policy (MPF1289)

## 1. Objective

1.1. The objective of this policy is to articulate the University's responsibilities for managing Aboriginal and Torres Strait Islander cultural heritage.

## 2. Scope

2.1. This policy applies to all areas and divisions in the University involved in the creation, management, engagement with and use of *Aboriginal and Torres Strait Islander cultural heritage*, including for teaching, research and collection purposes.

2.2. The University respects *Aboriginal and Torres Strait Islander cultural heritage* and demonstrates this by fostering relationships of reciprocity, and engaging with *traditional owners*, Elders and Indigenous organisations on projects affecting the management, access, display and use of *cultural heritage* material. This extends to intellectual property, *Indigenous Cultural and Intellectual Property*, and the University's built and natural environment.

2.3. The University acknowledges that the *Aboriginal Heritage Act 2006 (Vic)* defines the word "*Aboriginal*" to include all Indigenous peoples of Australia. In this policy the University will use the term "*Aboriginal and Torres Strait Islander*" and intends this term to have the same scope.

2.4. Definitions are set out in section 7 of this policy and are italicised throughout this policy.

## 3. Authority

3.1. This policy is made under the *University of Melbourne Act 2009 (Vic)* and *Council Regulation*, and supports compliance with the:

(a) *Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cth)*;

(b) *Aboriginal Heritage Act 2006 (Vic)*, incorporating the *Aboriginal Heritage Amendment Act 2016 (Vic)*;

(c) *Aboriginal Heritage Regulations 2018 (see Aboriginal Heritage Regulations 2018)*;

(d) *Protection of Moveable Cultural Heritage Act 1986 (Cth)*;

(e) *Protection of Moveable Cultural Heritage Regulations 2018 (Cth)*; and

(f) *Gender Equality Act 2020* (Vic).

3.2. This policy aligns with and supports compliance with the [Intellectual Property Policy](#) (MPF 1320).

3.3. This policy is informed by:

(a) *International Council of Museums Code of Ethics (2004)*; and

(b) *United Nations Declaration of the Rights of Indigenous Peoples (2007)*.

## 4. Policy

4.1. The University manages *Aboriginal and Torres Strait Islander cultural heritage* in a way that recognises the relevant *Aboriginal and Torres Strait Islander people* as primary guardians, keepers and knowledge holders of *Aboriginal and Torres Strait Islander cultural heritage*, and respects Aboriginal and Torres Strait Islander knowledge, and cultural and traditional practices.

4.2. In particular, the University manages *Aboriginal and Torres Strait Islander cultural heritage* in ways compatible with relevant *Aboriginal and Torres Strait Islander traditions* including any gender specific traditions, where these traditions can be ascertained, and according to agreed University protocols.

4.3. The University underpins custodianship and management of *Aboriginal and Torres Strait Islander cultural heritage* by genuine and effective reciprocal partnerships with the relevant *Aboriginal and Torres Strait Islander people*, recognising their *Aboriginal and Torres Strait Islander traditions*, including any gender specific traditions, where these *traditions* can be ascertained, and according to agreed University protocols.

4.4. The University reports all *Aboriginal and Torres Strait Islander ancestral remains* as soon as practicable and transfers them to the Victorian Aboriginal Heritage Council (VAHC). The University assists the VAHC to repatriate *Aboriginal and Torres Strait Islander ancestral remains* as a priority to recognise *traditional owners* as protectors of their *cultural heritage* and support the empowerment of *Aboriginal and Torres Strait Islander peoples* to meet their cultural obligations and address the injustice of Australia's shared past in removing such remains.

4.5. The University takes all reasonable steps to document and transfer *Aboriginal and Torres Strait Islander secret or sacred objects* as soon as practicable to the *traditional owners* or the VAHC as appropriate under sections 21A and 23 of the *Aboriginal Heritage Act 2006* (Vic).

4.6. The University will identify all *Aboriginal and Torres Strait Islander objects* and representations of *Indigenous Cultural and Intellectual Property* in the University collections and (where required) will facilitate registration of this material by the Victorian Aboriginal Heritage Register managed by the Secretary of the Department Premier and Cabinet under sections 144A & 145 of the *Aboriginal Heritage Act 2006* (Vic).

4.7. The University will manage *Aboriginal and Torres Strait Islander cultural heritage* to promote Aboriginal and Torres Strait Islander cultures across all its campuses, and to further understanding and respect between *Aboriginal and Torres Strait Islander people* and non-Indigenous Australians.

4.8. The University recognises the value of *Aboriginal and Torres Strait Islander cultural heritage* and Indigenous culture and the deep connections to the physical *place* held by traditional owners and other relevant *Aboriginal and Torres Strait Islander people* and is committed to consultation as appropriate.

4.9. The University recognises and respects Indigenous Cultural and Intellectual Property rights, including ensuring appropriate benefit-sharing arrangements in respect to any commercialisation of Indigenous Cultural and Intellectual Property rights. This is further stipulated in paragraph 4.30 of the Intellectual Property Policy ([MPF1320](#)).

## 5. Procedural principles

5.1. The Chair, Aboriginal and Torres Strait Islander Cultural Heritage Oversight Committee or nominee provides for the overall management of *Aboriginal and Torres Strait Islander cultural heritage* in conformity with the principles of this policy, specifically:

(a) advising the VAHC (or an equivalent authority) of *Aboriginal and Torres Strait Islander ancestral remains* and *secret or sacred objects* held by the University;

(b) advising the Secretary of the Department of Premier and Cabinet or equivalent authority of *Aboriginal and Torres Strait Islander objects* held by the University;

(c) facilitating the transfer of *Aboriginal and Torres Strait Islander ancestral remains* held by the University to VAHC;

(d) facilitating the transfer of *Aboriginal and Torres Strait Islander secret or sacred objects* held by the University to the *traditional owners* or the VAHC;

(e) whenever practicable, entering into agreements with *Aboriginal and Torres Strait Islander people* for the management and protection of *Aboriginal and Torres Strait Islander objects* and other *Aboriginal and Torres Strait Islander cultural heritage* ;

(f) providing practical guidance to members of the University community of their responsibilities, and the University's responsibilities, for *Aboriginal and Torres Strait Islander cultural heritage* , including legal obligations and appropriate cultural requirements including the recognition and management of *Indigenous Cultural and Intellectual Property rights* , including in accordance with paragraph 4.30 of the Intellectual Property Policy ([MPF1320](#) );

(g) developing strategies for the inclusion of tangible and intangible *Aboriginal and Torres Strait Islander cultural heritage* in the University built and natural environment;

(h) developing strategies for the use of *Aboriginal and Torres Strait Islander cultural heritage* in the University collections to engage with and promote Aboriginal and Torres Strait Islander people, *traditions* and customs, including any gender specific traditions, where these traditions and customs can be ascertained, and according to agreed University protocols.

(i) facilitating access and developing strategies to improve identification of *Aboriginal and Torres Strait Islander cultural heritage* in the University collections;

(j) engaging in consultation with *traditional owners* and other relevant *Aboriginal and Torres Strait Islander people* who may be impacted by major capital works projects across the built and natural environment through the auspices of the VAHC or relevant authority; and

(k) developing and implementing processes and protocols to support this Policy in accordance with the University's governance framework.

5.2. Any record created as a result of this policy will be managed in accordance with the University's Records Management Policy ([MPF1106](#) ).

## **Controlled activities**

5.3. The legislative authorities of this policy and other similar laws control certain activities in relation to *Aboriginal and Torres Strait Islander cultural heritage* . Controlled activities include the following (and any similar controlled activity in other Australian jurisdictions):

(a) possessing, harming or selling *Aboriginal and Torres Strait Islander cultural heritage*

(b) carrying out scientific research on an *Aboriginal and Torres Strait Islander place* or removal of an *Aboriginal and Torres Strait Islander object* from that place for scientific research;

(c) removing *Aboriginal and Torres Strait Islander cultural heritage* from an *Aboriginal and Torres Strait Islander place* or surveying, disturbing or excavating any land for the purposes of uncovering

such heritage;

(d) removing nominated categories of *Aboriginal and Torres Strait Islander objects* from Victoria; and

(e) exporting nominated categories of *Aboriginal and Torres Strait Islander cultural heritage* from Australia.

5.4. The University and its staff must not initiate, undertake, allow or participate in any controlled activities, except with the approval of the Chair, Aboriginal and Torres Strait Islander Cultural Heritage Oversight Committee or nominee.

5.5. The Chair, Aboriginal and Torres Strait Islander Cultural Heritage Oversight Committee or nominee shall ensure compliance with the legislative regime affecting controlled activities by taking the steps necessary to ensure that the University and its staff initiate, undertake, allow and participate in such activities only in accordance with the legislative regime that controls these activities, and where required by the legislation:

(a) notify the VAHC of any *Aboriginal and Torres Strait Islander ancestral remains* held by the University, as soon as practicable;

(b) transfer any *Aboriginal and Torres Strait Islander ancestral remains* in the possession of the University to the VAHC;

(c) notify the VAHC of any identified *Aboriginal and Torres Strait Islander secret or sacred objects* held by the University;

(d) transfer *Aboriginal and Torres Strait Islander secret or sacred objects* in the possession of the University to the VAHC as soon as practicable; or

(e) on the initiation of the *traditional owner*, return any *Aboriginal and Torres Strait Islander secret or sacred objects* in the possession of the University to the relevant *traditional owner*.

## 6. Roles and responsibilities

<i>Role/Decision/Action</i>	<i>Responsibility</i>	<i>Conditions and limitations</i>
Provide for the overall management of Aboriginal and Torres Strait Islander cultural heritage	Chair, Aboriginal and Torres Strait Islander Cultural Heritage Oversight Committee	In line with the principles of this policy
Ensure compliance with legislative instruments specified in section 3, Authority, and with any other legislative instruments that may apply	Chair, Aboriginal and Torres Strait Islander Cultural Heritage Oversight Committee	
Approve the initiation or undertaking of any controlled activity	Chair, Aboriginal and Torres Strait Islander Cultural Heritage Oversight Committee	In accordance with this policy and the legislative authorities

## 7. Definitions

**Aboriginal and Torres Strait Islander person** means a person belonging to the Indigenous peoples of Australia and any descendant of those peoples.

**Aboriginal and Torres Strait Islander cultural heritage** means:

- (a) Aboriginal and Torres Strait Islander places, objects and ancestral remains within the meaning of the Aboriginal Heritage Act 2006 (Vic); and
- (b) an expression of the ways of living developed by Aboriginal and Torres Strait Islander people which may be passed on from generation to generation (including knowledge, customs, practices, languages, places, objects, artistic expressions and values) which may be expressed as either intangible or tangible cultural heritage and includes Indigenous Cultural and Intellectual Property.

**Aboriginal and Torres Strait Islander ancestral remains** means the whole or part of the bodily remains of an *Aboriginal or Torres Strait Islander person* but does not include:

- (a) a body, or the remains of a body, buried in a public cemetery that is still used for the internment of human remains,
- (b) an object made from bodily hair or from any other bodily material that is not readily recognisable as being bodily material, or
- (c) any human tissue:
  - (i) dealt with or to be dealt with in accordance with the *Human Tissue Act 1982* (Vic) or any other law of a State, a Territory or the Commonwealth relating to medical treatment or the use of human tissue; or
  - (ii) otherwise lawfully removed from an *Aboriginal and Torres Strait Islander person*

**Aboriginal and Torres Strait Islander object** means:

- (a) an object in Victoria or the coastal waters of Victoria that:
  - (i) relates to the Aboriginal and Torres Strait Islander occupation of any part of Australia whether or not the object existed prior to the occupation of that part of Australia by people of non-Aboriginal descent; and
  - (ii) is of *cultural heritage significance* to *Aboriginal and Torres Strait Islander people* generally or of a particular community or group of *Aboriginal and Torres Strait Islander people* in Victoria; or
- (b) an object, material or thing in Victoria or the coastal waters of Victoria:
  - (i) that is removed or excavated from an *Aboriginal and Torres Strait Islander place* ; and
  - (ii) is of *cultural heritage significance* to *Aboriginal and Torres Strait Islander people* generally or of a particular community or group of *Aboriginal and Torres Strait Islander people* in Victoria,

but does not include:

- (a) an object that has been made, or is likely to be made, for the purpose of sale (other than an object made for barter or exchange in accordance with *Aboriginal and Torres Strait Islander tradition* ); or
- (b) *Aboriginal and Torres Strait Islander ancestral remains* .

**Aboriginal and Torres Strait Islander place** means:

- (a) in respect of Victoria, an area that is of cultural heritage significance to Aboriginal and Torres Strait Islander people in accordance with the meaning of 'Aboriginal place' in section 5 of the Aboriginal Heritage Act 2006 (Vic); or

(b) (where relevant) a 'significant Aboriginal area' within the meaning of section 3(1) of the Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cth).

**Aboriginal and Torres Strait Islander tradition** means:

(a) the body of traditions, knowledge, observances, customs and beliefs of *Aboriginal and Torres Strait Islander people* generally or of a particular community or group of *Aboriginal and Torres Strait Islander people*; and

(b) such traditions, knowledge, observances, customs and beliefs relating to particular persons, areas, objects or relationships.

**Built environment** means buildings, townscapes and archaeological remains.

**Cultural heritage significance** includes:

(a) archaeological, anthropological, contemporary, historical, scientific, social or spiritual significance; and

(b) significance in accordance with *Aboriginal and Torres Strait Islander tradition*.

**Indigenous Cultural and Intellectual Property** means the rights of indigenous peoples, including but not limited to Aboriginal and Torres Strait Islander Peoples, to their heritage. This heritage includes tangible cultural property (e.g. sacred sites, burial grounds), intangible cultural property (e.g. languages, stories passed on orally), and documentation of indigenous peoples' heritage in all forms of media (e.g. reports, films, sound recordings).

**Natural environment** means landscapes, coasts and shorelines and agricultural heritage.

**Sacred** means sacred according to *Aboriginal and Torres Strait Islander tradition*.

**Secret** means secret according to *Aboriginal and Torres Strait Islander tradition*.

**Secret or sacred object** includes an *Aboriginal and Torres Strait Islander object* directly associated with a traditional Aboriginal burial.

**Traditional Owner:** A person is a traditional owner of an area if:

(a) the person is an *Aboriginal and Torres Strait Islander person* with particular knowledge about traditions, observances, customs or beliefs associated with the area; and

(b) the person:

(i) has responsibility under *Aboriginal and Torres Strait Islander tradition* for significant *Aboriginal and Torres Strait Islander places* located in, or significant *Aboriginal and Torres Strait Islander objects* originating from, the area; or

(ii) is a member of a family or clan group that is recognised as having responsibility under *Aboriginal and Torres Strait Islander tradition* for significant *Aboriginal and Torres Strait Islander places* located in, or significant *Aboriginal and Torres Strait Islander objects* originating from, the area.

**Traditional Owner, for Aboriginal and Torres Strait Islander Ancestral Remains** : A person is a traditional owner of *Aboriginal and Torres Strait Islander ancestral remains* if the person is *Aboriginal and Torres Strait Islander person* who:

(a) has responsibility under *Aboriginal and Torres Strait Islander tradition* for the *Aboriginal and Torres Strait Islander ancestral remains*; and

(b) is a member of a family or clan group that is recognised as having responsibility under *Aboriginal and Torres Strait Islander tradition* for the *Aboriginal and Torres Strait Islander ancestral remains* .

**Traditional Owner, for Aboriginal and Torres Strait Islander sacred or secret objects** : A person is a *traditional owner* of an *Aboriginal and Torres Strait Islander secret or sacred object* if the person is an *Aboriginal and Torres Strait Islander person* who:

(a) has responsibility under *Aboriginal and Torres Strait Islander tradition* for the object, and

(b) is a member of a family or clan group that is recognised as having responsibility under *Aboriginal and Torres Strait Islander tradition* for the objects.

## POLICY APPROVER

Council

## POLICY STEWARD

Chair, Aboriginal and Torres Strait Islander Cultural Heritage Oversight Committee

## REVIEW

This policy is to be reviewed by 1 November 2024.

## VERSION HISTORY

Version	Authorised by	Approval Date	Effective Date	Sections modified
1	Council	25 August 2014	25 August 2014	New policy
2	Governance and Nominations Committee authorised by Council	23 June 2016	21 July 2016	New version arising from the Policy Consolidation Project.
3	Council	24 August 2017	28 August 2017	Amendments to reflect changes in the <i>Aboriginal Heritage Act 2006</i> (Vic).
4	University Secretary	24 May 2019	3 June 2019	Changed Policy Steward to Associate Provost (previously Vice-Principal, Engagement).

5	Council	6 October 2021	1 November 2021	Amendments to reflect incorporation of Aboriginal and Torres Strait Islander cultural heritage representation in the built and natural environment and intangible cultural heritage. Further changes made to Definitions for consistency with the <i>Aboriginal Heritage Act 2006</i> (Vic) and change of Policy Steward and to section 6 Roles and Responsibilities (formerly Associate Provost).
---	---------	----------------	-----------------	--