

Archaeological Collections: Land and Maritime



HERITAGE
VICTORIA
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Heritage Curator

19 September 2017



Department of Environment,
Land, Water & Planning



Heritage Victoria

Administrators of the Heritage Act (1995) and the soon to be 2017 Act

- **Victorian Heritage Register** (for places of **state** significance)
- **Victorian Heritage Inventory** (for all **non-shipwreck archaeological sites** more than 50 years old)
- **Permits** for works on Registered places, and Consents for works on archaeological sites



Department of Environment,
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Maritime Archaeology: Shipwrecks and Shipwreck Artefacts

- 1981 Historic Shipwrecks Act - declared shipwrecks
- 1995 Heritage Act Part 5 - blanket protection to historic shipwrecks and relics
- 2017 Heritage Act Part 4 – historic or registered shipwrecks and artefacts





How does the Act protect?

- All artefacts associated with protected shipwrecks, including ones collected in the past and no longer on the site
- Creates protected zones (no entry without a permit for diving, fishing, boating)
- Without a permit, it is an offence to:
 - Take, destroy, damage, remove, disturb or otherwise interfere with historic shipwrecks and/or artefacts
 - buy, sell, barter, exchange or dispose of a historic shipwreck &/or artefact
 - possess a historic shipwreck and/or artefact
 - remove from the State

Penalties will increase under the 2017
Heritage Act



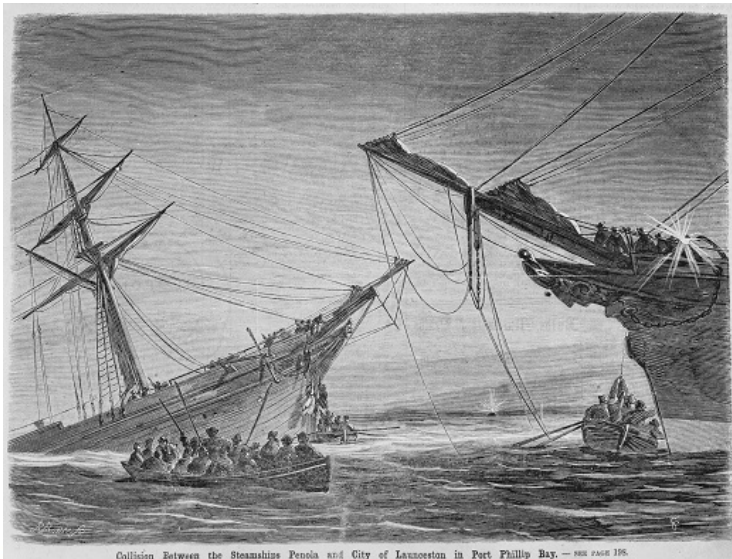
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Other legislation protecting underwater cultural heritage

- Historic Shipwrecks Act 1976
- Navigation Act 1912
- Petroleum (Submerged Lands) Act 1967
- Seas and Submerged Lands Act 1973
- Protection of Movable Cultural Heritage Act 1986



Collision Between the Steamships Penola and City of Launceston in Port Phillip Bay. — THE CAUSE 196.





Commonwealth Shipwrecks Act

Protects historic shipwrecks in Australian territorial waters

- Protects all shipwrecks after 75th anniversary of wrecking (blanket protection)
- Protects relics/ articles associated with historic shipwrecks
- Provides additional protection, where required, by declaring protected zones

Prohibited actions on historic shipwrecks and associated relics, without a permit:

- damage or destroy
- interfere with
- dispose of
- remove from Australia





1993 Commonwealth Amnesty

- 1976 Commonwealth Shipwrecks Act – shipwrecks individually declared
- 1993 Amendment provided blanket protection
- Amnesty allowed divers to declare artefacts already recovered
- Shipwreck artefacts in collections as a result of this
- Artefacts from historic shipwrecks in Commonwealth waters are the property of Commonwealth





Responsibilities



- Requirement to report a shipwreck or shipwreck
- Duty of care for shipwreck artefacts
- Report changes in custodianship or location of artefacts to HV
- If item/s are from overseas shipwrecks, be aware of the **UNESCO Convention on the Protection of the Underwater Cultural Heritage**, which recognises the value of shipwrecks and underwater cultural heritage, and protects shipwrecks in international waters

Minton Peacock retrieved from the Loch Ard at the time of the wreck and is therefore not subject to shipwreck legislation





Historical Archaeology

Archaeological sites and artefacts are also protected under the Heritage Act (2017).

archaeological site

- (a) contains an artefact, deposit or feature which is 75 or more years old; and
- (b) provides information of past activity in the State; and
- (c) requires archaeological methods to reveal information about the settlement, development or use of the place; and
- (d) is not associated only with Aboriginal occupation of the place;





Archaeological Artefacts

archaeological artefact means an object (other than a shipwreck artefact) which provides information of past activity in the State and—

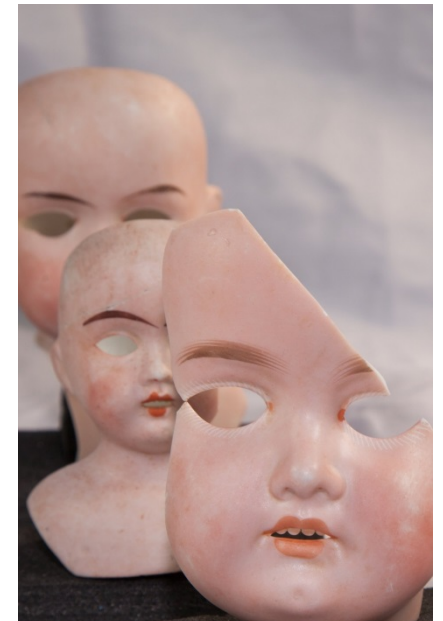
- (a) is associated with an archaeological site; or
- (b) is associated with a registered archaeological place; or
- (c) is associated with an approved site of archaeological value; or
- (d) is associated with a place that was an archaeological site, registered archaeological place or approved site of archaeological value;





Protection

- Heritage Inventory – list of all known sites
- Blanket Protection
- Can be protected by Heritage Register if the archaeology is of State significance
- Sites cannot be destroyed, damaged, removed or interfered with without permission from Heritage Victoria.
- An offence to damage or disturb unregistered artefacts or sites
- Consents are issued by heritage Victoria to excavate archaeological sites – always to qualified archaeologists.
- Artefacts retrieved as a result of this process must be treated in accordance with the conditions listed on the Consent
- It is an Offence to buy, sell or possess archaeological artefacts without consent





After Excavation

Artefacts from archaeological sites listed on the Heritage Register property of the Crown

Museum Victoria is the place of lodgement under the Act. However most archaeological material is held by Heritage Victoria.





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Department of Environment,
Land, Water & Planning



VICTORIA POLICE

LICENSING & REGULATION DIVISION

Exempt Museums

Senior Sergeant Andrew Armstrong

18 September 2017





The Role of LRD

- Licensing & Regulations Divisions (LRD) primary function is to regulate the Firearms, Private Security and Weapons industries in order to create a safer Victoria. This is achieved through appropriate licensing and registration of individuals and organisations and consequential compliance and enforcement activities.
- LRD works in partnership with a wide range of government organisations, user groups and other stakeholders.



Mission Statement

*"In partnership with the community create
a safer Victoria, through responsible
firearm, weapon and security industry
management and intervention"*



Firearms Regulation

- Ensure compliance with state and commonwealth legislation and regulations
- Identify criminal activity associated with the firearms industry
- Co-ordinate and strategically manage intelligence and information on the firearms industry in Victoria
- Identify emerging trends in shooting/firearms activities
- Develop strategies to address identified trends



Exemptions for Museums

Pursuant to Section 184 of the *Firearms Act 1996*:-

- (1) The Governor in Council, on the recommendation of the Minister, may grant an exemption to a museum from the provisions of Part 2 and Division 2 of Part 4.
- (2) The Chief Commissioner may recommend to the Minister that a museum be granted an exemption if the Chief Commissioner is satisfied that—
 - (a) the museum is a body corporate which is not run for profit and is publicly funded; and
 - (b) the premises of the museum are open to the public; and
 - (c) the museum is of an educational, historical or cultural nature.
- (3) An exemption is subject to any conditions specified in the exemption.
- (4) The holder of an exemption must comply with the exemption.



VICTORIA POLICE

Museum Exemption Application

The process:

- Apply to LRD for an application form.
- Provide copies of Body Corporate structure
- That the museum is open to the public and
- The museum is of an educational, historic or cultural nature



PUBLIC DOMAIN



Firearms

- **Exempt Firearms**

- (4) This Act does not apply to a firearm that was manufactured before 1900, if—
 - (a) in the case of any such firearm that is a longarm—
 - (i) it does not take cartridge ammunition; or
 - (ii) if it does take cartridge ammunition, the cartridge ammunition that it takes is not commercially available; or
 - (b) the firearm—
 - (i) is not a handgun of a type that uses percussion, or methods developed during or after the development of percussion, as a means of ignition; or
 - (ii) is a single shot antique handgun.
- ***Percussion*** means a means of ignition in a firearm in which metallic chemical compounds or fulminates are used to ignite the main powder charge





Storage

- All firearms must be stored separate to any ammunition.
- Firearms and weapons should be stored in a secure facility and in a safe or receptacle that is not easily penetrable or removable.
- If more than 15 firearms are being stored on site then an alarm should be installed.
- When on display, secure the firearms or weapons to the structure of the building (stud wall or similar). This can be done with metal cable, locks or any other measure.
- Always ensure firearms and weapons are not easily accessible to visitors or other persons entering the Museum.



Contact Details/Assistance Details



Licensing & Regulation Division	03 9247 3029
Senior Sergeant Andrew Armstrong	03 9247 3200



LRD – REGULATION SUPPORT UNIT - OIC





19 September 2017

Legal Requirements for Hazardous Substances in Collections

Maryanne McCubbin

Head, Strategic Collection Management

MUSEUMS
VICTORIA



What are the Legal Requirements?

1. Employers are obliged to provide a safe workplace for employees
2. Institutions that hold hazardous substances are obliged to comply with legal requirements for holding them



Source: Museums Victoria

What are Hazardous Substances?

- Substances which, following exposure, can have an adverse effect on health
- A substance is defined as hazardous if:
 - It is listed on the National Hazardous Substances Information System; or
 - It meets the criteria set out in the national Approved Criteria for Classifying Hazardous Substances
- Acute toxins (eg. cyanide)
- Substances harmful after repeated or prolonged exposure (eg. mercury)
- Corrosives (eg. sulphuric acid)
- Irritants (eg. ammonia)
- Sensitising agents (eg. isocyanates)
- Carcinogens (eg. benzene)



Source: Museums Victoria

Hazardous Substances in Museums Victoria's Collection



ST30419, Koola Food Safe
Source: Museums Victoria



C30349, *Panthera leo persica*
Source: Museums Victoria

What are Dangerous Goods?

- Substances which due to their physical, chemical or toxic properties pose an immediate risk to people, other collection items or the environment
- Classified into 9 categories



What are Dangerous Goods?

- DG1 - Explosives
- DG2 - Gases
- DG3 – Flammable liquids
- DG4 – Flammable solids
- DG5 – Oxidising Substances and Organic Peroxides
- DG6 – Toxic and Infectious substances
- DG7 – Radioactive materials
- DG8 – Corrosive substances
- DG9 – Miscellaneous dangerous substances

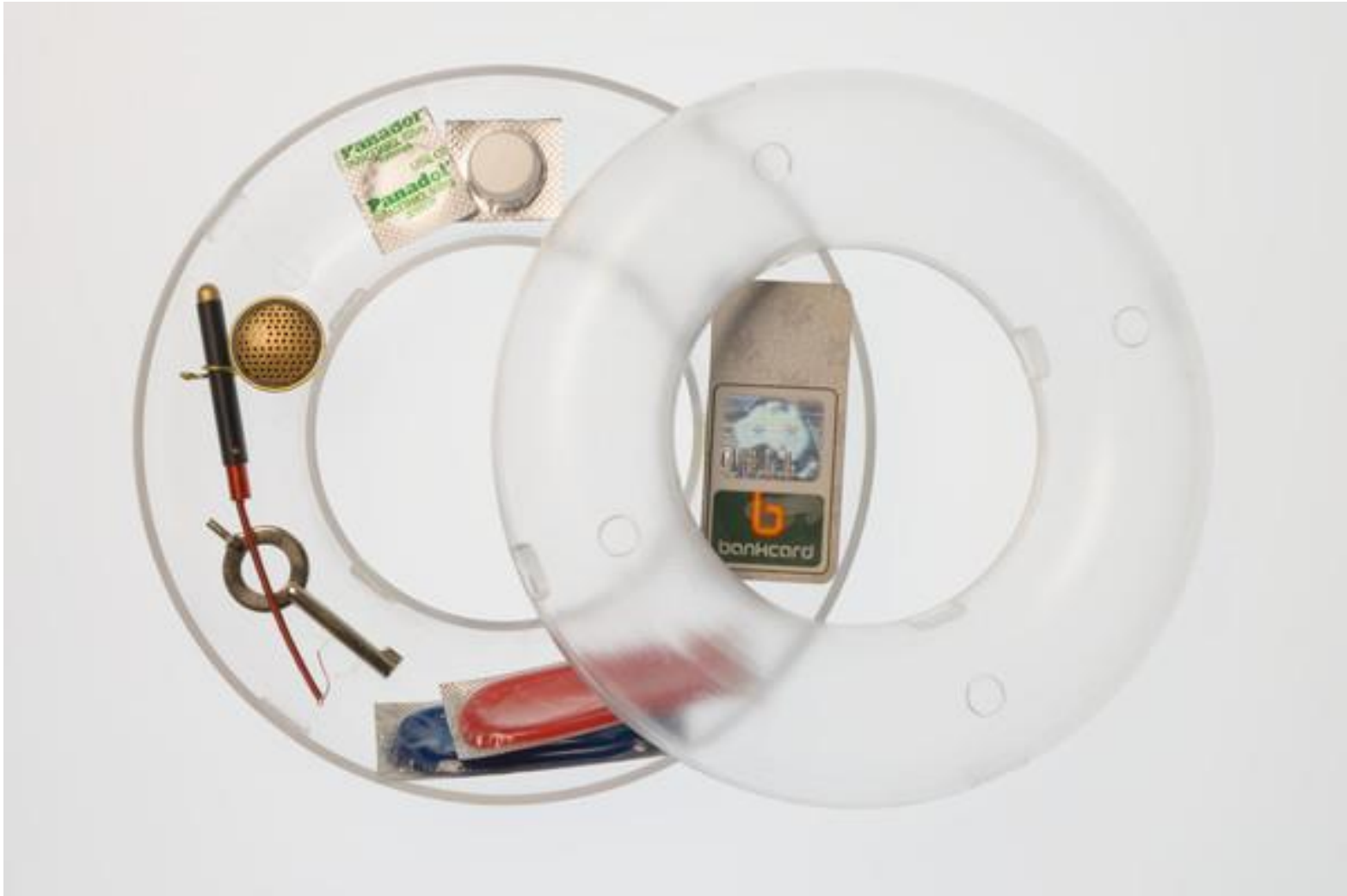
What are Medicines and Poisons?

- Substances that are controlled under the Standard for Uniform Scheduling of Medicines and Poisons or ('Poisons Standard')
- Scheduled into classes of medicines and poisons



Source: Rodney Start, Museums Victoria

Schedule 2



Copyright: Susan Cohn and Shannon McGarth

Schedule 3



Source: www.towers.net.au

Schedule 4



HT3307, Source: Benjamin Healley, Museums Victoria

Schedule 5



Source: www.bannerhardware.com.au

Schedule 6



Source: www.Bunnings.com.au

Schedule 7



ST43543, Hypodermic Drug Tablets, 1930s, Source: Rodney Start, Museums Victoria

Schedule 8



HT22452, Source: Rodney Start, Museums Victoria

Schedule 9



ST44088, Source: Benjamin Healley, Museums Victoria



Source: Museums Victoria

Keeping People Safe

Occupational Health and Safety Act (Victoria)
2004 and Regulations 2007

Section 25

Employer's duty is:

- to eliminate risks to health and safety so far as is reasonably practicable; and
- if it is not reasonably practicable to eliminate risks to health and safety, to reduce those risks so far as is reasonably practicable.
- (\$20)

Employee's duty is:

- Take reasonable care for safety of self and other employees; and
- Cooperate with lawful and reasonable employer health and safety requirements



Source: Museums Victoria

Keeping People Safe

Occupational Health and Safety Act (Victoria) 2004
- Section 20

Reasonably practicable

- (a) the likelihood of the hazard or risk concerned eventuating;
- (b) the degree of harm that would result if the hazard or risk eventuated;
- (c) what the person concerned knows, or ought reasonably to know, about the hazard or risk and any ways of eliminating or reducing the hazard or risk;
- (d) the availability and suitability of ways to eliminate or reduce the hazard or risk; and
- (e) the cost of eliminating or reducing the hazard or risk



Source: Museums Victoria

Keeping People Safe

Other law – health and safety requirements:

- Case and civil law: e.g. workers' compensation
- Work Health and Safety Act 2011 (except WA and Victoria)

Codes of Practice, including:

- Code of Practice for Hazardous Substances 2000
- National Code of Practice for the Control of Workplace Hazardous Substances, 2007 (1994)

Standards, Guides and Handbooks, including:

- OHS Risk Management Handbook HB 205-2004
- Controlling OHS hazards and risks: a handbook for workplaces
November 2007
- Risk Management – Principles and Guidelines AS/NZS 31000: 2009

AIC

AMERICAN
INSTITUTE FOR
CONSERVATION
OF HISTORIC AND
ARTISTIC WORKS



SPNHC

ADVANCING COLLECTIONS CARE

HEALTH & SAFETY FOR MUSEUM PROFESSIONALS

EDITORS

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MATERIAL SAFETY DATA SHEET - 9 SECTIONS

SECTION 1 - PRODUCT INFORMATION

Product Name
Product Use
Manufacturer's Name
Physical and Mailing Address
Emergency Contact Phone Number

WHMIS Classification (optional)

Supplier's Name
Physical and Mailing Address
Emergency Contact Phone Number

SECTION 2 - HAZARDOUS INGREDIENTS

Hazardous Ingredients (very specific)

SECTION 3 - PHYSICAL DATA

Physical State (What does it look like? Is it a liquid, gas, or solid?)
What happens to it under a variety of circumstances? (i.e. heat, freezing, dropping, etc.)
Flammability and how to extinguish. Includes a wide variety of details concerning how easily this product

SECTION 4 - FIRE AND EXPLOSION DATA

will ignite / explode and how to deal with it.
How stable is this product?

How it reacts under various conditions.

SECTION 5 - REACTIVITY DATA

Incompatibility with other substances.
Information about how the product affects and enters the body. Immediate affect. Long term toxic affect.

Hazardous Decomposition Products

SECTION 6 - TOXICOLOGICAL PROPERTIES

Exposure limits. In summery, immediate and long term affects to the human body.

SECTION 7 - PREVENTIVE MEASURES

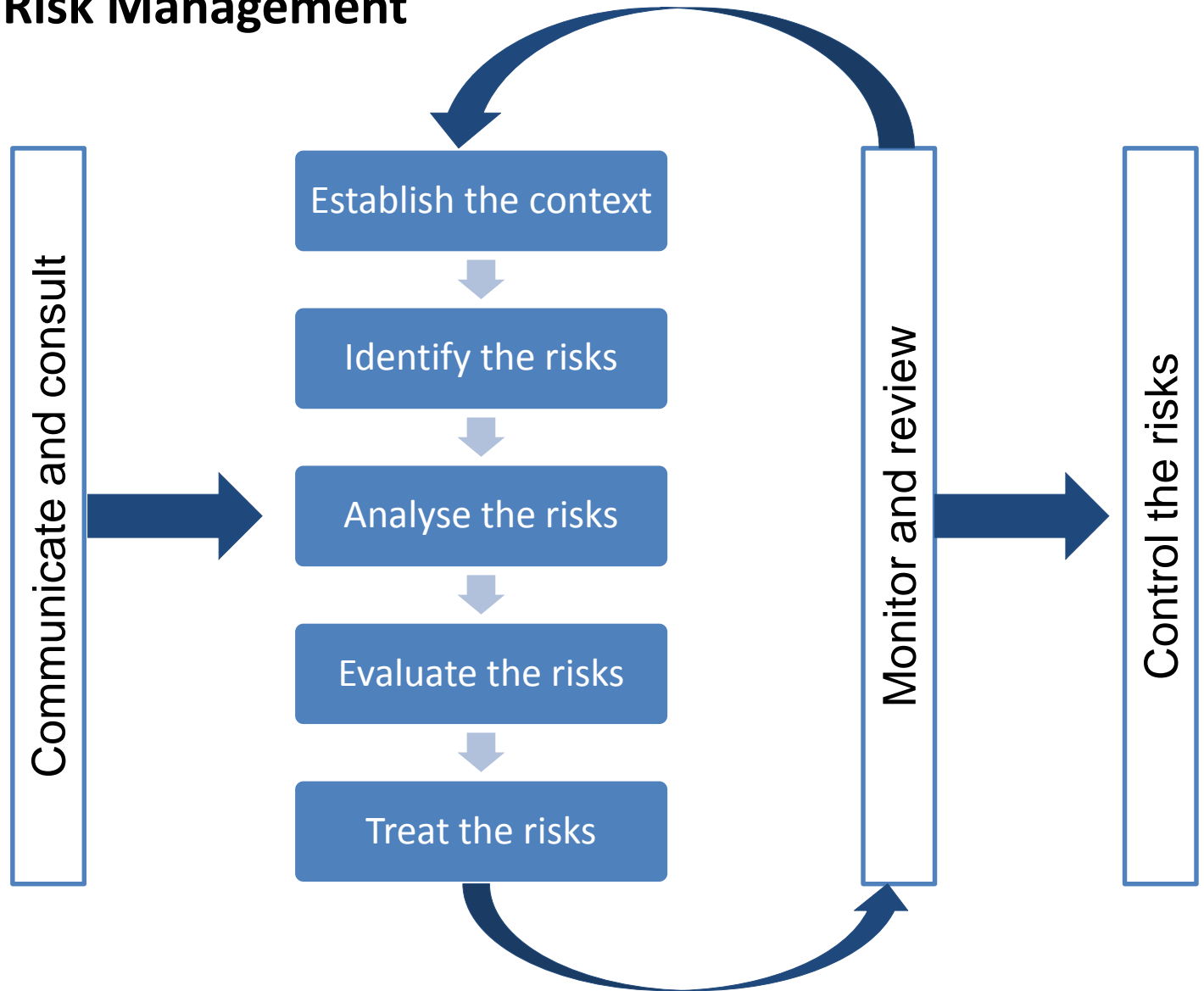
Personal Protective Gear; ventilation, etc.; leak and spill info; waste disposal; handling and storage; special shipping instructions

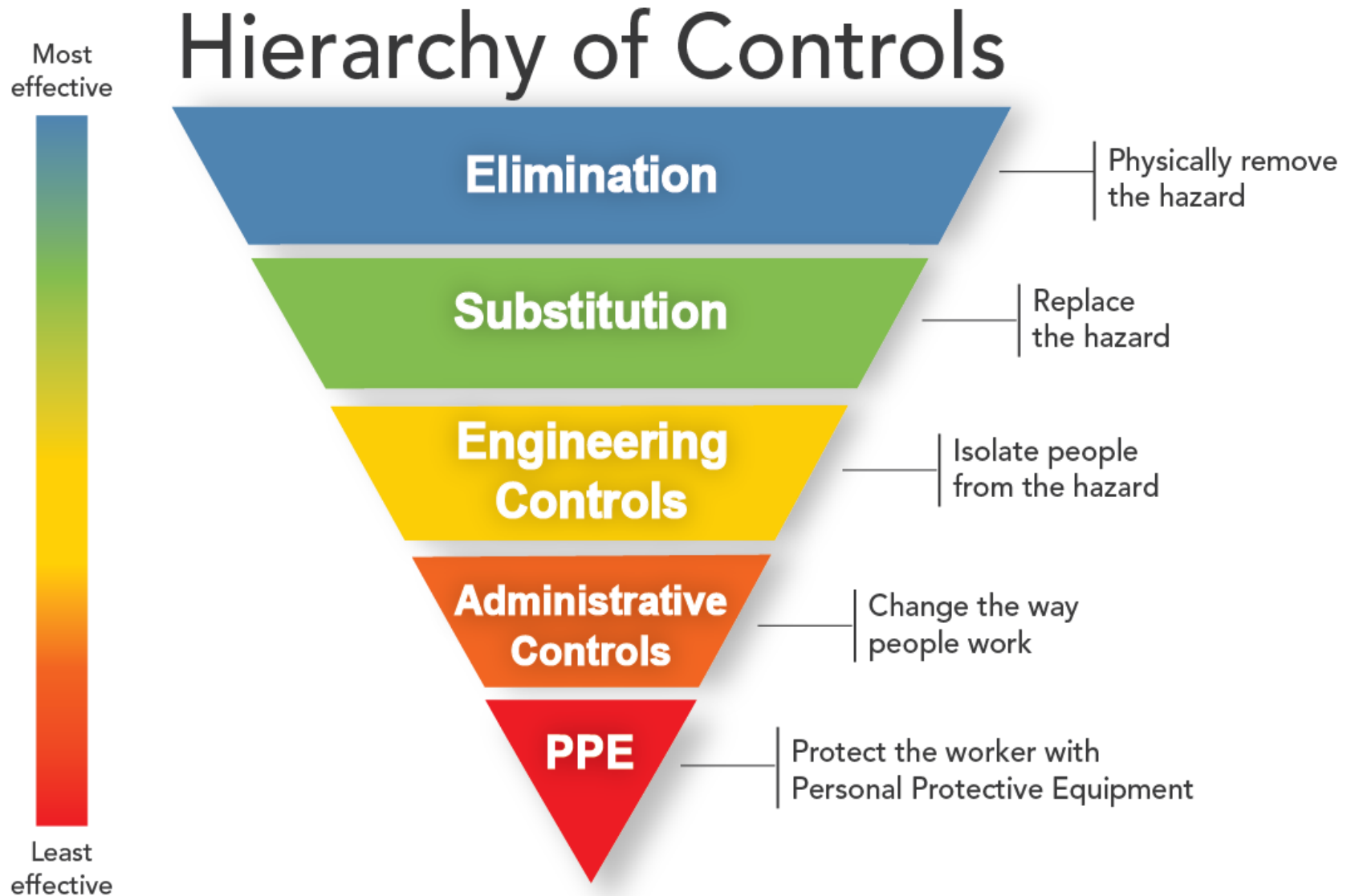
SECTION 8 - FIRST AID MEASURES

Information for immediate first aid treatment. Usually always ends with "contact a Doctor"

SECTION 9 - PREPARATION INFORMATION / Who prepared this and contact info

Method – Risk Management





Source: <http://www.cdc.gov/niosh/topics/noisecontrol/>, 17 September 2015

Elimination and Substitution



AntiFyre Fire Extinguisher

Source: Nick Crotty, Museums Victoria



Source: www.warstuff.com

Engineering



Source: Museums Victoria

Engineering



Source: Museums Victoria



Source: Museums Victoria

Administration



Source: Museums Victoria

Administration

Safe Handling Procedures		
Arsenic	Asbestos	Batteries
Cellulose Acetate and Cellulose Nitrate	Chemicals, Drugs, Poisons and Pharmaceuticals	Compressed and Liquefied Gasses
Corrosives	Ethanol – Dangerous Good	Formalin
Human Skeletal Remains and Human-based Biohazards	Lead	Mercury
Mould	Oxidising Substances	Paints, Plastics and Resins
Pesticides	Pigments and Dyes	Polychlorinated Biphenyls (PCBs)
Radiation	Soot	Venomous or Poisonous Animals
Zoonoses and Biological Hazards		

Administration

File Edit Select View Tools Tabs Parts Archives Multimedia Window Help



HT 4611, Floor Cleaner (DOMESTIC LIFE), Object, Registered



805593

Materials

	Primary	Secondary	Tertiary
1	METAL		
2	PLASTIC		
3	Colourant		
4	Chemical/Chemical Compound		
*			

Hazards

Category:	Corrosive hazard	Type:	Chemical/Chemical Compound
Status:	Suspected	Date:	24 Apr 2015
Name:	Privett, Helen - Museum Victoria, Collections, Research & Exhibitions - Melbourne		

Hazards Summary

	Category	Type	Status	Date	Name
1	Corrosive hazard	Chemical/Chemical Compound	Suspected	24 Apr 2015	Privett, Helen - Museum Victoria, Collections, R...
2	Toxin/Poison hazard	Chemical/Chemical Compound	Suspected	24 Apr 2015	Privett, Helen - Museum Victoria, Collections, R...
*					

OH&S and Risk Management Requirements

	Personal Protective Equipment	Details
*		

Collection Product ID Relationships Coll M'gmt Acquisition **Materials** Valuation Recommend Classification Description Supplementary Subjects

Display Object 6 of 14

hprivett grp Conservation Admin emu

Administration



Tested Hazardous Substances

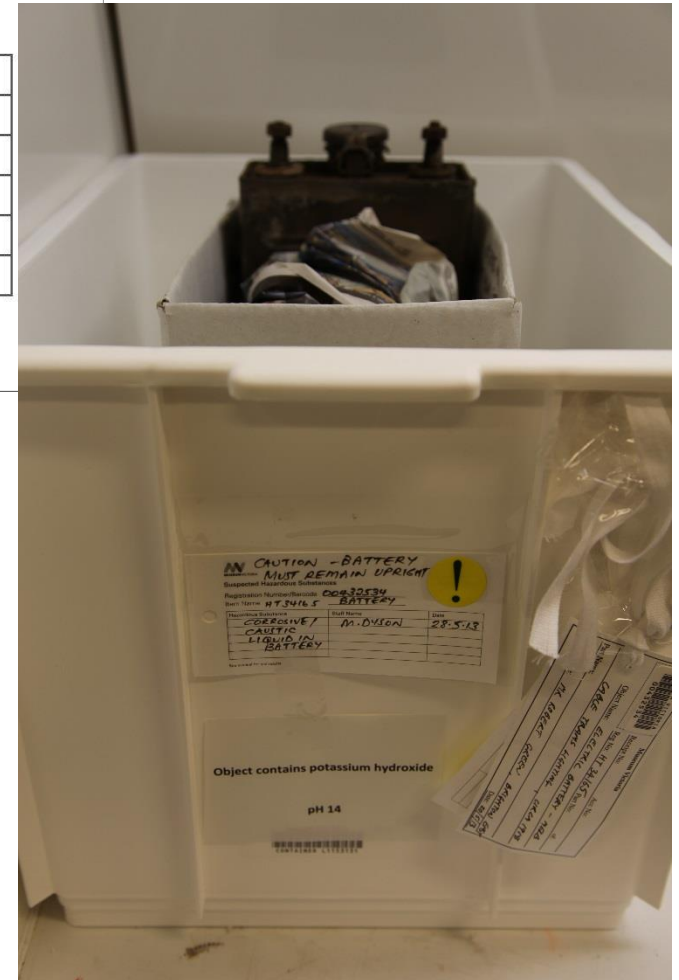
Registration Number/Barcode _____

Item Name _____

Test Type	Hazardous Substance	Staff Name	Date

Refer to EMu for further information

Apply
Sticker Here



Source: Helen Privett

Personal Protective Equipment



Source: Helen Privett

Holding Hazardous Substances

Asbestos – legal and compliance requirements

- Code of Practice for the Management and Control of Asbestos in Workplaces [NOHSC: 2018 (2005)], Australian Government – National Occupational Health and Safety Commission (see Safe Work Australia)
- Occupational Health and Safety Act 2004 (Vic)
- Occupational Health and Safety Regulations 2007 (Vic)
- Compliance Code – Managing asbestos in workplaces, Edition No.1 September 2008, WorkSafe Victoria

Includes requirements for:

- Asbestos register
- Asbestos Identification
- Asbestos storage



Holding Hazardous Substances

Radiation – legal and compliance requirements

- ARPANSA (Australian Radiation Protection and Nuclear Safety Agency), <http://www.arpansa.gov.au>. A useful guide is <http://www.arpansa.gov.au/radiationprotection/basics/index.cfm>
- Australian Radiation Protection and Nuclear Safety Act 1998 (Commonwealth)
- Australian Radiation Protection and Nuclear Safety Regulations 1999 (Commonwealth)
- Occupational Health and Safety Act 2004 (Vic)
- Occupational Health and Safety Regulations 2007 (Vic)
- Radiation Act 2005 (Vic)
- Radiation Amendment Bill 2013 (Vic)
- Radiation Regulations 2007 (Vic)

Includes requirements for:

- Licences for scientific measuring equipment containing ionising radiation
- Practices for complying with Occupational Exposure Limits



Holding Hazardous Substances

Medicines and Poisons – legal and compliance requirements

- Drugs, Poisons and Controlled Substances Act 1981 (Vic)
- Drugs, Poisons and Controlled Substances Regulations 2006 (Vic)
- Occupational Health and Safety Act 2004 (Vic)
- Occupational Health and Safety Regulations 2007 (Vic)
- Therapeutic Goods Act 1989 (and amendments) (Cwlth)
- Therapeutic Goods Regulations 1990 (Cwlth)

Includes requirements for:

- Under the Drugs, Poisons and Controlled Substances Act and in the Regulations 2006, the Department of Health will issue licences and permits for the manufacture, distribution and use of drugs and poisons. A permit is required for Schedule 2, 3, 4, 7 (listed regulated), 8, 9 or 10 for industrial, educational, advisory or research purposes



Source: Museums Victoria

Holding Hazardous Substances

Dangerous Goods – legal and compliance requirements

- Australian Code for the Transport of Dangerous Goods by Road & Rail, Seventh Edition, 2011
- Controlling OHS hazards and risks: a handbook for workplaces November 2007
- Dangerous Goods Act 1985 (incorporating amendments as at 1 January 2010) (Vic)
- Dangerous Goods (Storage and Handling) Regulations 2012 (Vic)
- Therapeutic Goods Act 1989 (and amendments) (Cwlth)
- Therapeutic Goods Regulations 1990 (Cwlth)

Includes requirements for:

- Register of Dangerous Goods
- Storing of Dangerous Goods (includes segregating specific classes of incompatible chemicals)
- Labelling Dangerous Goods
- Transporting Dangerous Goods



Source: Museums Victoria

Where do I find further information?

Acts, Regulations, Codes and Other Guidelines

- Australian Code for the Transport of Dangerous Goods by Road & Rail, Seventh Edition, 2011
- Australian Standard AS 2243.8:2006 Safety in laboratories - Fume cupboards
- Controlling OHS hazards and risks: a handbook for workplaces November 2007
- Dangerous Goods (Storage and Handling) Regulations 2012 (Vic)
- Dangerous Goods Act 1985 (incorporating amendments as at 1 January 2010) (Vic)
- Globally Harmonised System of Classification and Labelling of Chemicals, 2012
- Guidelines for Health Surveillance [NOHSC: 7039(1995)]
- Hazardous Substances Information System (HSIS), Safe Work Australia [the HSIS is an internet resource that allows you to find information on substances that have been classified in accordance with the Approved Criteria for Classifying Hazardous Substances [NOHSC:1008 (2004)] 3rd Edition and/or have National Exposure Standards declared under the Adopted National Exposure Standards for Atmospheric Contaminants in the Occupational Environment [NOHSC:1003 (1995)].
- Managing Risks of Hazardous Chemicals in the Workplace, Model Code of Practice, Safe Work Australia, July 2012
- Museums Act 1983 (Vic)
- National Code of Practice for the Control of Scheduled Carcinogenic Substances [NOHSC: 2014(1995)]
- National Code of Practice for the Control of Workplace Hazardous Substances [NOHSC: 2007(1994)]
- Occupational Health and Safety Act 2004 (Vic)
- Occupational Health and Safety Regulations 2007 (Vic)
- OHS Risk Management Handbook HB 205-2004
- Risk Management – Principles and Guidelines ISO 31000: 2009
- Therapeutic Goods Act 1989 (and amendments)
- Therapeutic Goods Regulations 1990

Conclusion



Source: Museums Victoria



Source: Museums Victoria

Acknowledgements

Exhibitions Collection Management

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Health and Safety

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Collection Management

Marita Dyson

Ruth Leveson

Nick Crotty

Melanie Raberts

Dermot Henry

Katie Date

Media Production

John Broomfield

Steven Dixon

Strategic Collection Management

Maryanne McCubbin

Conservation

Rosemary Goodall

Michelle Berry

Davina Hacklin

Catherine Lovelock

Collection Information Systems

Nancy Ladas

Jess Day

Further information and advice?

Maryanne McCubbin

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Museums Victoria

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Thank you

Aboriginal Heritage Act 2006

Amendments to the Act and the Aboriginal Heritage
Regulations 2007

Aboriginal Victoria

Amendments process

- Review of the *Aboriginal Heritage Act 2006* (the Act), conducted by the Aboriginal Victoria (AV), was completed in May 2012
- Parliamentary Inquiry into the Establishment and Effectiveness of Registered Aboriginal Parties (RAPs) took place alongside the review
- Victorian Government responses to the Parliamentary Inquiry and the Review of the Act were endorsed in mid-2013
- Amendment Bill for 2014 proposed by both Victorian Government responses to the review and Parliamentary Inquiry
- *Aboriginal Heritage Amendment Act 2016* commenced 1 August 2016

Key amendments to the Act

- **Preliminary Aboriginal Heritage Test** - An optional process for certifying when a CHMP is required
- **Activity Advisory Groups** - Establishing a clear consultation process in non-RAP areas
- **Amending approved CHMPs** - Eliminating the need to redo CHMPs
- **New offences and compliance measures** - Including strengthening harm provisions, role of RAPs in enforcement/compliance, 24 hour stop orders
- New protections for **Aboriginal intangible heritage** - A processes to enable registration on the Victorian Aboriginal Heritage Register, and new form of agreement to enable Traditional Owners to decide whether and how their traditional knowledge is used

Key amendments to the Act

- **Aboriginal Cultural Heritage Land Management Agreements (ACHLMAs)-** Enable public land managers and RAPs to negotiate and agree on how cultural heritage will be managed for low-medium impact works and management activities
- **Establishing Aboriginal Cultural Heritage Management Fund-** Better supports sustainable funding of RAPs and the Aboriginal cultural heritage system through collection and dispersal of fees and charges collected under the Act
- **New Aboriginal ancestral remains system-** making the Victorian Aboriginal Heritage Council (VAHC) the central coordinating body

New offences

New harm offence

- Mental culpability in harm offences reduced to apply only to act, rather than knowledge about heritage
- Section 28 - Harming Aboriginal cultural heritage, regardless of knowledge, recklessness or negligence as to whether the action was likely to harm Aboriginal cultural heritage (strict liability)
 - The defence of honest and reasonable mistake applies to this offence
 - 60 PU / 300 PU (\$9327.60 / \$46,638)

New offences

- knowingly or recklessly use VAHR information for purposes other than the purpose for which access was given
- knowingly or recklessly use registered Aboriginal intangible heritage for commercial purposes

Failure to:

- comply with a registered Aboriginal intangible heritage agreement
- comply with the conditions of an approved CHMP
- submit documentation relevant to an archaeological survey on the Register
- comply with a cultural heritage permit
- comply with an ACHLMA
- provide a copy of any relevant documentation produced as a result of carrying out a survey for Aboriginal cultural heritage to the Registry
- comply with a 24 hour stop order
- comply with an improvement notice
- report Aboriginal ancestral remains or transfer secret and sacred objects

Aboriginal intangible heritage

- Aboriginal intangible heritage is the knowledge or expression of tradition, including oral traditions, performing arts, stories, rituals, craft and social practices.
 - Extends to any intellectual creation or innovation based on or which derives from these
 - Does not include practices generic to the wider population
- Registration of Aboriginal Intangible Heritage
 - Applications can be made by RAPs, native title holders or Traditional Owner group entities (under the Traditional Owner Settlement Act 2010) to record details of Aboriginal intangible heritage on the VAHR
 - Applications for registration are made to the Secretary
 - The Secretary must make a determination on an application within 90 days

Aboriginal intangible heritage Agreements

- Can be made between RAPs, native title holders, Traditional Owner groups and any other person.
- Agreements to be registered by Secretary.
- Will have effect as agreements under seal.
- May deal with:
 - management protection and conservation of Aboriginal intangible heritage
 - research or publication of AIH
 - development of commercial uses for AIH
 - Traditional Owner's rights to use and commercially exploit anything produced from research and development of AIH
 - compensation
- May NOT deal with: any activity for which a CHP or CHMP is required.

Surveys for Aboriginal cultural heritage

- Surveys outside the CHMP process are now to be regulated. These include due diligence (PAHT) surveys and research surveys.
- Will require notification of the Secretary, the land owner, and any relevant RAP
- Relevant RAPs will be provided an opportunity to participate in any survey for Aboriginal cultural heritage
- Any documentation relevant to the survey must be provided to the Register within 30 days of completion of the documentation, or within 12 months of notification of the survey
- Penalty for non-compliance (10 / 50 PU - \$1554.60 / \$7773)

Aboriginal Cultural Heritage Fund

- To be managed by the VAHC
- Any fees paid to Council or Secretary under the Act, borrowed by the VAHC or received by the Council must be paid into the ACHF
- Interest earned on money in the ACHF will be credited to the ACHF
- Secretary responsible for money going out of the ACHF

Registered Aboriginal Party roles and functions

Additional responsibilities include:

- Advising Minister on repatriation of Aboriginal cultural heritage relating to the RAP area
- Determining CHP applications
- Entering into cultural heritage agreements with private land owners and ACHLMAs with public land managers
- Employing Aboriginal heritage officers with enforcement powers
- Participating in surveys
- Nominating intangible heritage to be included on the heritage register and entering into intangible heritage agreements

Aboriginal Heritage Officers

- Returning compliance and enforcement powers to Aboriginal people
- RAP employees
- Undergo same training as Authorised Officers with same accountability
- Entry, search and seizure powers commensurate with existing Inspectors
- Limited enforcement capabilities – will be able to apply improvement notices and 24 hour stop orders

Cultural Heritage Permits

- Permit applications to be evaluated within 30 days with 'stop the clock' provision
- Application to go to RAP, not Secretary
- New permits:
 - Permit for rehabilitating lands associated with Aboriginal places, including lands containing burial grounds for Aboriginal Ancestral Remains
 - Permit for interring discovered Aboriginal Ancestral Remains, including at an Aboriginal place
- Eliminated permits:
 - No longer a requirement to apply for a permit to buy an Aboriginal object

Changes to the Register

Purposes of the Register clearly detailed

The VAHR is a Government database created for the benefit of all Victorians, particularly in land use and planning decisions. It is a practical database, not a closed database.

The VAHR's purposes are clarified:

- A repository for Traditional Owners to securely store information for the use of all Victorians
- To hold information aiding the protection and management of Aboriginal cultural heritage
- To hold information to aid in sustainable land use and development
- To hold information to be actively used in land-use planning
- To be a research tool

Changes to the Register

Changes to access provisions

- While the VAHR is intended to be used actively, it is not intended to be freely available to everyone for any purpose. This recognises the sensitive nature of some of its information.

Access now extended to:

- Cultural heritage permit holders – for research and information related to that permit
- Heritage Victoria – to manage Aboriginal cultural heritage associated with a heritage place
- CMAs – to help them manage land
- NSW and SA – to manage Aboriginal places along the borders
- State Government planning staff – in exercising functions similar to local government planning staff
- Anyone – to see if an Aboriginal intangible heritage agreement exists or is required

Changes to the Register

Sensitive information

- The VAHC or a RAP may nominate VAHR information as sensitive.
- The Secretary may then classify that information as sensitive.
- Sensitive information cannot be accessed by anyone without RAP or VAHC permission, despite s 146 access.
- Conditions on access may be imposed.

Aboriginal Ancestral Remains

- Amendments introduce a comprehensive process for VAHC to centrally coordinate responses to the discovery, treatment and return for burial of Aboriginal Ancestral Remains
- What is the new process?
 - Obligations placed on individuals, institutions and agencies aware of their possession of Aboriginal Ancestral Remains to report them to VAHC, rather than the Secretary
 - Penalties apply for failure to report [ss 14, 17(3)]
 - Obligation to transfer Aboriginal Ancestral Remains to the custody of VAHC
 - Penalties apply for failure to take reasonable steps to transfer (s19)
 - The Coroner must first consider whether the remains are Aboriginal Ancestral Remains before deciding whether the remains relate to a 'reportable death'

Victorian Aboriginal Heritage Council roles

- In coordinating Aboriginal Ancestral Remains process the VAHC must:
 - Transfer remains to the Aboriginal person or RAP they are satisfied is entitled and willing to take possession, custody or control of the remains;
 - Transfer the remains to Museum for safekeeping; or
 - Otherwise deal with the remains as the Council sees appropriate
 - Within 90 days of receiving a report from a public entity or university, give notice of the report to any relevant Traditional Owner or RAP.

Secret and sacred objects

- Definitions:
 - Secret means secret according to Aboriginal tradition
 - Sacred means sacred according to Aboriginal tradition
 - Secret or sacred objects include an Aboriginal object directly associated with a traditional Aboriginal burial
- Ownership: Includes collective ownership
- A person who has custody of an Aboriginal secret or sacred object, but is not the owner of the object, must transfer the object to the VAHC
- Penalties apply for failure to do so

Responsibility of public entities and universities to report and transfer to Victorian Aboriginal Heritage Council

Aboriginal Heritage Act 2006

Presented by Dr Janine Major
Transition Project Manager, Office of the VAHC

Victorian Aboriginal Heritage Council



Outline

- The Victorian Aboriginal Heritage Council
- VAHC - key roles and functions
- Obligations of universities & public entities
 - Aboriginal Ancestral Remains
 - Secret or Sacred Objects
- Obligations of VAHC
 - Aboriginal Ancestral Remains
 - Secret or Sacred Objects
- Key Contacts

Victorian Aboriginal Heritage Council

Made up of up to 11 Victorian Traditional Owners who are appointed by the Minister for Aboriginal Affairs



- Set up as a specialist, skills-based body
- Members must be Traditional Owners, a resident of Victoria and hold relevant experience or knowledge

<http://www.dpc.vic.gov.au/index.php/aboriginal-affairs/victorian-aboriginal-heritage-council>



Council's Key Roles

Three key roles since 2006:

- Providing advice to the Minister and the Secretary of the Department of Premier and Cabinet about protection of Aboriginal cultural heritage
- Appointing Registered Aboriginal parties (RAPs)
- Promoting community awareness and understanding of Aboriginal cultural heritage

New Powers and Functions

1 August 2016

- Act as the central coordinating body for Aboriginal Ancestral Remains in Victoria
- Responsible for dealing with Ancestral Remains and Secret/Sacred objects transferred to Council
- Manage the newly established Aboriginal cultural heritage fund
- Attach conditions to RAP registrations
- Manage, oversee and supervise RAP operations
- Provide an annual report to the Minister
- Monitor and report on the state of Victoria's Aboriginal cultural heritage every 5 years

s.132 Functions of Council

s.132(1)(aa) & 132(2)(ca)-(cl) New Functions



Delegations and Advisory Committees

- New powers to establish Advisory Committees
 - Ancestral Remains Advisory Committees – immediate response committees
 - Council Members
 - Ancestral Remains Unit Staff
 - Office of the VAHC Staff
- New power to delegate

s.132A Power to delegate

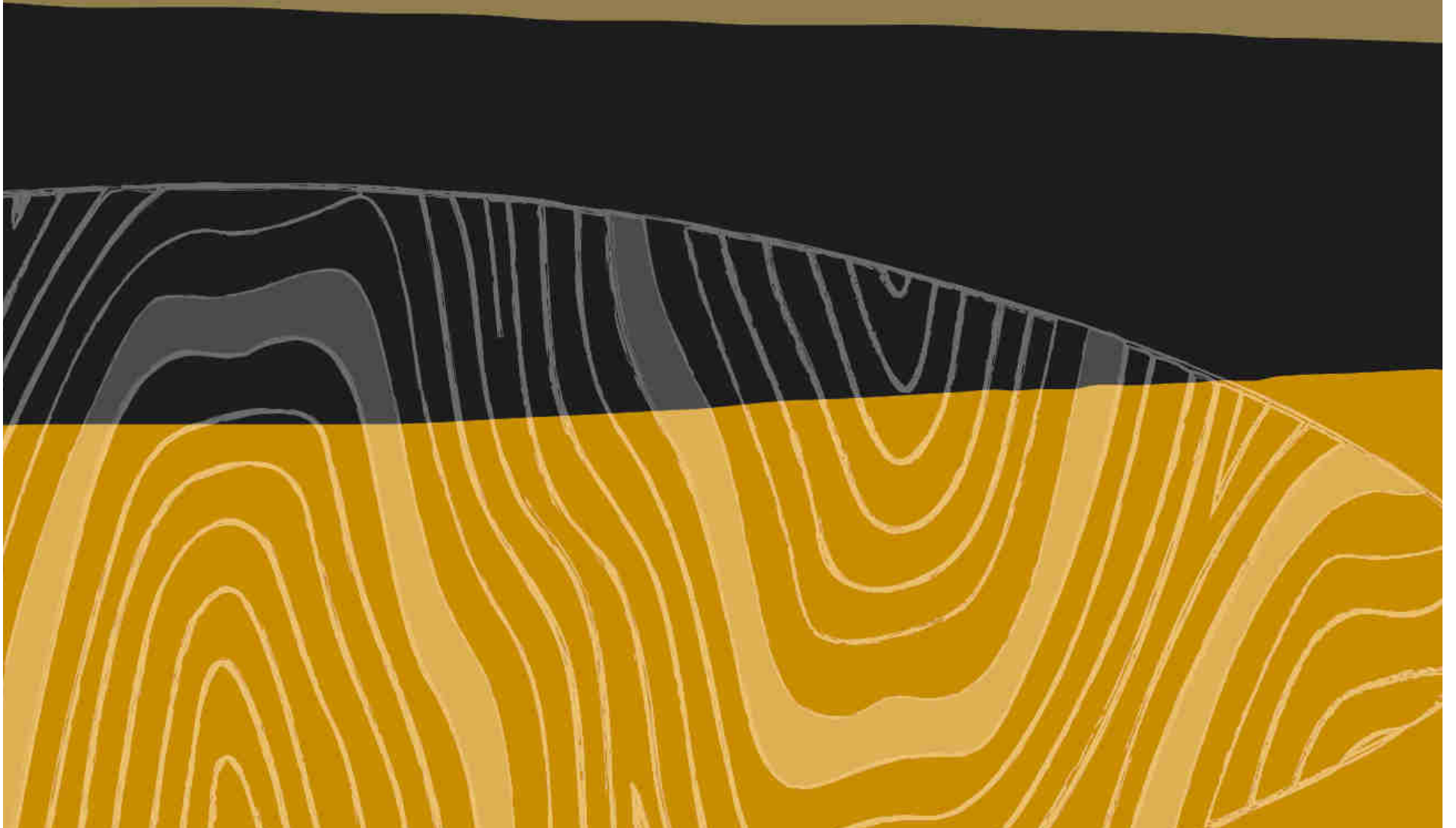
s.142A Power to establish Advisory Committees



Underlying Principle

- Underlying principles of the Act
 - As far as practicable Aboriginal cultural heritage should be owned by and returned to Traditional Owners of the area from which they are reasonably believed to have originated if it is:
 - Aboriginal Ancestral Remains
 - Secret or Sacred Aboriginal Objects

Ancestral Remains





Ancestral Remains

- The *Aboriginal Heritage Act 2006* requires all persons (section 17), and public entities and universities (section 14) to transfer remains to Council
- Public entities and universities have two years to comply
- Council sent letters to all university Vice Chancellors and the Secretaries of all Victorian Government Departments:
 - Department of Treasury & Finance
 - Department of Economic Development, Jobs, Transport & Resources
 - Department of Education & Training
 - Department of Environment, Land, Water & Planning
 - Department of Health & Human Services
 - Department of Justice & Regulation
 - Department of Premier and Cabinet



Ancestral Remains

- Within 2 years of 1 August 2018, a public entity or university must:
 - Notify Council in writing of any Aboriginal Ancestral Remains that are in its possession and
 - Give a written report in the prescribed form to the Council, including a list and details of the Aboriginal Ancestral Remains

Prescribed Form and Information Sheet can be downloaded:

<http://dpc.vic.gov.au/index.php/aboriginal-affairs/victorian-aboriginal-heritage-council/victorian-aboriginal-heritage-council-publications-and-fact-sheets#factsheets>

Penalty: 3000 penalty points

(as at 1 July 2017, a penalty point is \$158.57)



Ancestral Remains

- Ancestral Remains Unit – 3 Aboriginal staff
 - Assist in completing the report form
 - Provide the day-to-day operational support to Council
 - Are part of Ancestral Remains Advisory Committees (ARACs)
 - ARACs must be satisfied a report relates to Ancestral Remains
 - Verified by the Coroner





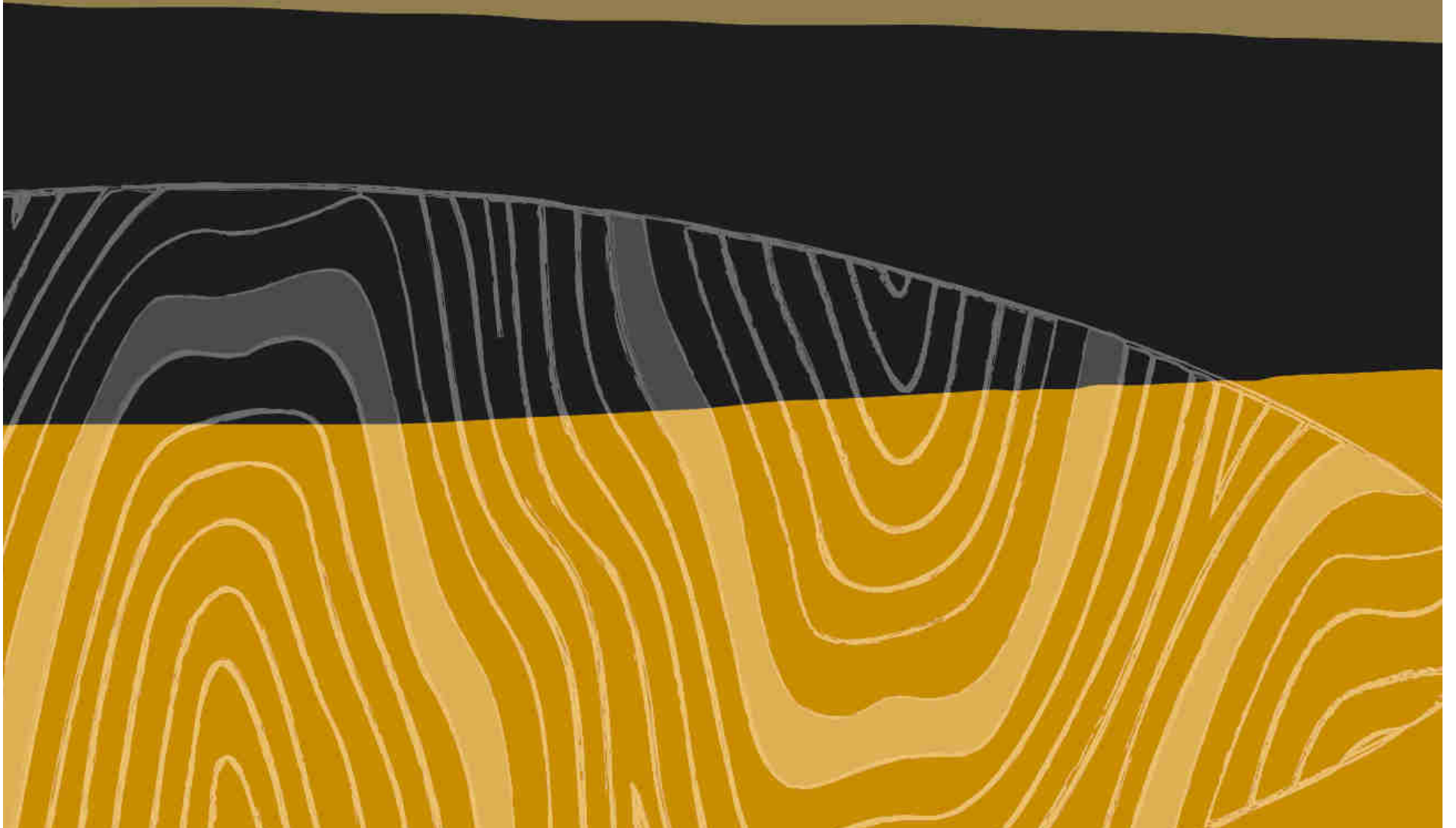
What must Council do with Ancestral Remains

Council must:

- Notify any relevant Traditional Owner named in the report or relevant RAP within 90 days of receipt of a report received from a university or public entity
- Transfer the Ancestral Remains to any relevant Traditional Owner or RAP
- Transfer the object to the Museum's Board
- Otherwise deal with the object

s.20 Council must transfer Ancestral Remains

Secret and Sacred Objects





Secret and Sacred Objects

- Legal change of ownership of secret and sacred objects from any person, organisation or state entity to Traditional Owners of the area in which the object originated
- Obligation on anyone who has custody to take all reasonable step to transfer object/s to Council
- Object defined as “of cultural significance to Aboriginal people generally or of a particular community or group of Aboriginal people in Victoria”
- Secret or Sacred defined as “secret/sacred according to Aboriginal tradition” and includes objects directly associated with traditional burials



Secret and Sacred Objects

- Excluded objects
 - Objects made for sale
 - Ancestral human remains
- Objects which appear to fall under the definition
 - Objects created for ceremonial, religious or burial purposes
 - Objects with restricted access
- Objects which might not fall within the definition
 - Objects from elsewhere in Australia
 - Objects created for everyday use
- Advise relevant RAP or Traditional Owner and seek their opinion
- Action taken should be consistent with their advice



What must Council do with Secret and Sacred Objects

An object determined to be secret or sacred should be transferred to Council

Council must:

- Transfer the object to an Aboriginal person or RAP
- Transfer the object to the Museum's Board
- Otherwise deal with the object

s.21B Council must transfer secret or sacred objects



Secret and Sacred Objects

- A Traditional Owner may negotiate directly with a university, museum or other institution for the return of a secret or sacred object.



Key Contacts

- Ancestral Remains

Odetta Moore

Acting Manager, Ancestral Remains Unit
Office of the VAHC

Telephone: 9651 6880 or 0437 956 520

Email: odetta.moore@dpc.vic.gov.au

- Secret or Sacred Objects

Janine Major

Transition Project Manager

Office of the VAHC

Telephone: 8392 5391

Email: janine.major@dpc.vic.gov.au

General enquiries: vahc@dpc.vic.gov.au

Copyright and the Public Record Office Victoria



What is a “public record” and what records does PROV hold?

- A **Public Record** is all information created, sent and received by a Victorian public sector employee in the course of carrying out the business of the agency including electronic documents, emails, websites, audio-visual records, databases and system-generated records, as well as physical documents and files.
- Records being preserved date from the establishment of Port Phillip District in the mid 1830's up until almost the present day. They include information produced by government such as the administration of justice, immigration, health and welfare, land, education, housing, planning, transport, and resource management, among many other important records.
- We do not hold all government records (permanent vs temporary)

Public Record Office Victoria, Website

Copyright

- Founded on a person's creative skill and labour
- Copyright does not protect ideas or information, it protects the form or way an idea or information is *expressed*
- PROV's IP Policy governs the use and management of a wide range of creative and intellectual works which are encountered by PROV users and staff

Types of Works protected

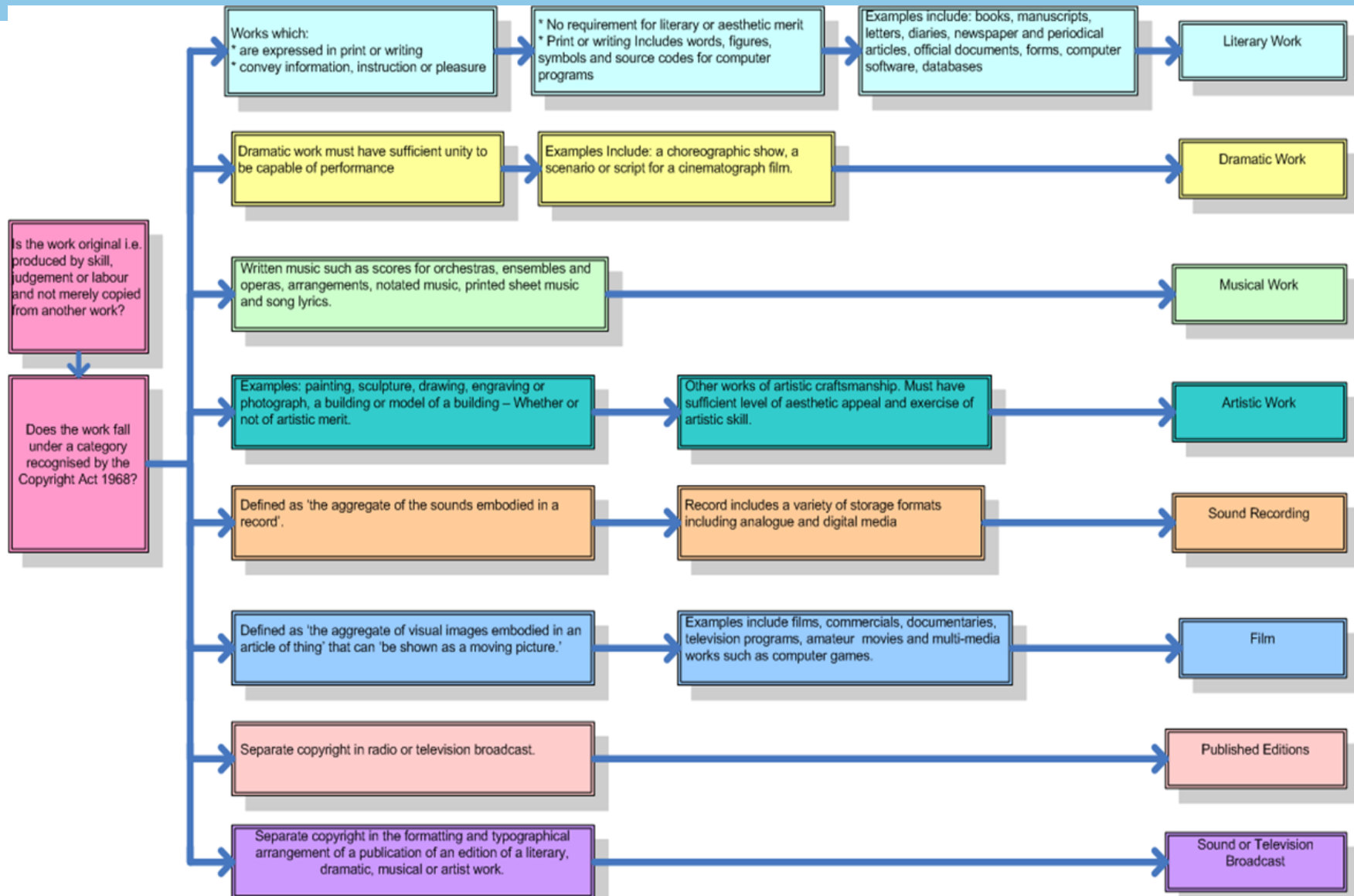
PROV's Collection:

- Primarily literary works, sound recordings, films and artistic works.

What is protected under Copyright laws?

- Literary works
- Artistic works: paintings, sculptures, engravings, works of artistic craftsmanship
- Dramatic works
- Musical works
- Sounds recordings (music, oral histories etc.)
- Films
- Broadcasts (signal, not the content)
- Published editions

TABLE OF THE TYPES OF WORK PROTECTED



Exceptions to the Creator owning copyright

- Private use
- Agreement
- Employment
- Government

Copyright works connected to PROV

- Records under the custody of the Keeper of Public Records (i.e. the Collection)
- Content produced by PROV or commissioned by PROV (i.e. PROV guides, Standards, Retention and Disposal Authorities).
- Private copyright licenced to PROV (e.g. Provenance Journal)

Crown Copyright

- Works which were made or created 'under the control or direction of the State' or first published by the State
- Government employees – owned by the State
- Contractors – implied right owned by State but this can be varied via agreement
- Not all government produced works are Crown copyright

WHAT IS THE CROWN?

- Ministers
- Departments
- Statutory authorities and corporations
- Police, emergency services

What is not included?

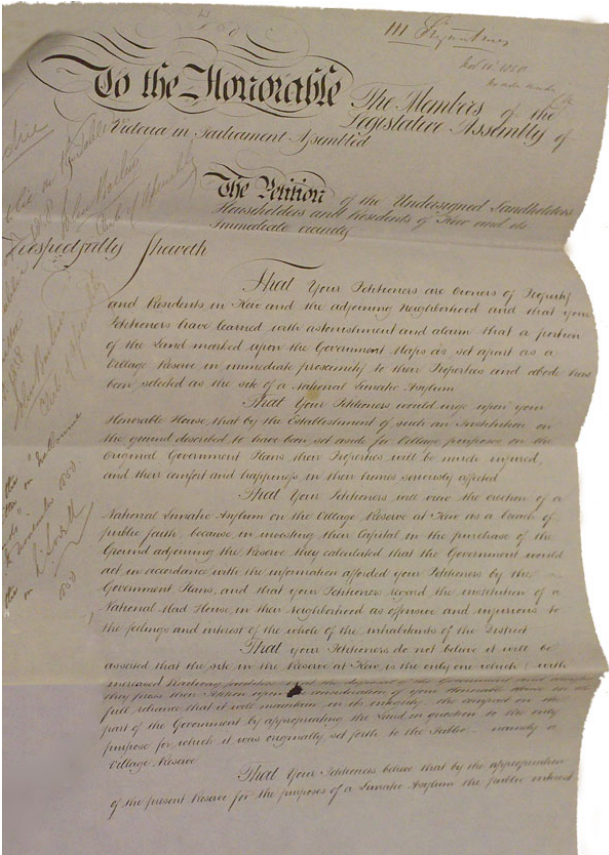
- Local government
- Schools, universities
- Hospitals and courts

Crown Copyright within PROV



YES: Records of officers of the Crown, records of Departments (e.g. Chief Secretary) , statutory authority, statutory corporation.

Crown Copyright within PROV

[illegible]

NO: Petitions and passenger lists

Orphan Works

- Many unpublished works in PROV's collection which are in private copyright and where author cannot be contacted or identified for permission
- The recent amendments ends the perpetual copyright for unpublished materials regardless of how old they are

What is a breach?

- When copyright material or a substantial part of copyright protected material it is reproduced without permission
- Communication of the material including it being made available online and being transmitted electronically
- Authorising copyright infringement

Exceptions under the Copyright Act

- Fair dealing- “Fair”- criterion of a fair minded and honest person
- Research or study, criticism, review, parody or satire, reporting the news
- Education purposes for educational institutions
- Statutory Licences
- Libraries and archives (museums are included).

Research or Study (published works)

- A “reasonable portion”
- Reproducing text or printed music from a hard copy edition of 10 or more pages:
- 10% of the number of pages
- One chapter, if the work is divided into chapters
- 10% number of words
- One chapter, if the work is divided into chapters

Research or Study (published works)

Archives may copy published written, artistic and musical works in its collection on behalf of people who have requested the material for their research or study

Exceptions for Archives (and libraries)

Statutory Exceptions within the *Copyright Act* 1968:

- **Published material (commercially unavailable)**

- Sections 49 & 50 - reproducing and communicating works for users
- Sections 51B and 110B – Preservation by cultural institutions created by an act of parliament

- **Original material for research**

- Manuscripts, 51A(1)(a)

- **Unpublished material for research (old material)**

- Sections 51 & 52 - reproducing and communicating the work for research and study

Permission to publish public records

- If a person or organisation wishes to publish a public record either in hardcopy or digital format permission must be sought from the copyright owner
- PROV can grant permission to publish Crown copyright material in its collection

Permission to Publish at PROV

Requests must be made online:

<http://prov.altarama.com/reft100.aspx?key=PermissionToPublish>

Re-use of a record:

- Publishing a record. E.g. In an article, book or online format
- Adapting, transforming or remixing a record - This could involve taking a part of a record and using it in another format

PROV does not give legal advice on copyright to individual researchers, but provides general information online, see [PROV Guide 25: Copyright for Researchers](#)

Permissions issued by PROV

- PROV cannot grant permission for records created by or where copyright is owned by:
 - Local government
 - Courts
 - Hospitals, schools, universities, TAFEs
 - Private individuals or organisations

Example: most of the artwork except where it is commissioned by the government

Procedures/Forms at PROV and the Researcher's Responsibilities

Policy

PROV Intellectual Property Policy

Procedures

Takedown Procedure

Guideline: Requests for copyright permission to use records in PROV collection

Responsibilities

- On the form the researcher must include the details of each record to be published and the government agency which created the record
- PROV: need to know who created the record to determine if we can give permission for it

Private copyright – unable to give permission

Responsibility of the researcher: Conduct a reasonable search for the copyright owner and assess the risks of publishing if the owner cannot be traced

If PROV can identify copyright is owned by a government agency which is not part of the “Crown”, we can provide contacts to the agency where possible so that the researcher can seek permission

Copyright Amendments

Copyright Amendment (Disability and Other Measures) Bill 2017

Other amendments to the Copyright Legislation

Part IVA outlines 4 situations where the use of copyright material will not result in an infringement:

- Replacement of current provisions for assisting people with a print disability. The fair dealing provides disability proper access
- Simplification of the educational statutory licences - these changes allow the inclusion of material in online exams for remote students
- Preservation exceptions for libraries and archives – broader and simple. Flexible arrangements for making copies
- End perpetual copyright for unpublished works. There will also be a fixed term for works whose authors are unknown

New duration of copyright for Orphan works

If the material is made public within 50 years of being made, then copyright subsists for 70 years from the date it was first made public

BUT

If the material is not made public within 50 years of being made, then copyright subsists for 70 years from the date it was made.

Material	General duration of copyright prior to amendments	Amended duration of copyright
<u>Works</u> made public	Life of author plus 70 years	Life of author plus 70 years
<u>Works</u> first made public after the death of the author	Date of first publication plus 70 years	Life of author plus 70 years
Anonymous or pseudonymous <u>works</u>	Date of first publication plus 70 years	If not made public: date made plus 70 years If made public within 50 years of making: date first made public plus 70 years
<u>Works</u> not made public	No expiry of copyright	Life of author plus 70 years
Sound recordings and cinematographic films	Date of first publication plus 70 years	If made public within 50 years of being made: date first made public plus 70 years If not made public within 50 years of being made: date made plus 70 years
Works, sound recordings and cinematographic films made or first published by a Commonwealth, State or Territory Government	Works made but not published: date made plus 50 years	Date made plus 50 years, regardless of whether the work is made public or not
	Published works: date first made public plus 50 years	
	Cinematographic films: year first published plus 50 years	
	Sound recordings: year first published plus 50 years	
Copyright material owned by international organisations	Date of first publication plus 70 years	Made public prior to 1 Jan 2019: date first made public plus 70 years Made after 1 Jan 2019, and made public within 50 years of being made: date first made public plus 70 years Made after 1 Jan 2019, and not made public within 50 years: date made plus 70 years

Amendments Continued

Section 113E - Broadens the scope of 'person with a disability'

Section 113F - organisations can provide copyright material in an accessible format to people with disabilities without copyright infringement

Section 113H - Preservation is not infringed by using material if that is to preserve a collection or:

- (i) the officer's library or archives holds the material in original form
- (ii) the authorised officer is satisfied that copy of the material cannot be obtained in a version or format that is required for that purpose, consistent with best practice for preserving such collections

PROV and Copyright

- See our website, www.prov.vic.gov.au
 - PROV Guidelines and Standards
- Australian Copyright Council Website

A General Overview of the Public Record Act 1973

Public Record Office Victoria (PROV) sets standards for the efficient management of public records under [Section 12](#) of the *Public Records Act 1973*. The standards apply to all records created by the Victorian Government and detail requirements for the creation, maintenance and use of these records.

For every recordkeeping function, PROV has set mandatory recordkeeping principles - these are contained in the Standards. All agencies must comply with each principle by implementing certain requirements. These requirements are detailed in the Specification/s.

A series of guidelines, factsheets and forms have been developed to help agencies to implement the requirements.

What you need to know!

All Victorian public sector (VPS) employees are responsible for managing the records they create and receive in their work.

Government Agencies have a responsibility under the *Public Records Act 1973* to carry out a programme of efficient management of public records and information.

Public Record Office Victoria (PROV) standards prescribe how the information and records you create and receive in your work can be efficiently managed.

Offence to remove etc. public record without authority

PUBLIC RECORDS ACT 1973 - SECT 19

Offence to remove etc. public record without authority

(1) A person who unlawfully removes sells damages or destroys a public record shall be guilty of an offence.

Penalty: 5 penalty units.

Protection against actions for defamation or breach of confidence

PUBLIC RECORDS ACT 1973 - SECT 20A

Protection against actions for defamation or breach of confidence

(1) If access has been given to a public record and the access was permitted by this Act to be given, no action for defamation or breach of confidence lies against the Crown, a Minister, the Keeper of Public Records or a person employed in the Public Record Office by reason of the giving of the access, and no action for defamation or breach of confidence in respect of any publication involved in, or resulting from, the giving of the access lies against the author of the document or any other person by reason of that author or other person having supplied the public record to the Public Record Office.

(2) The giving of access to a public document shall not be taken for the purpose of the law relating to defamation or breach of confidence to constitute an authorisation or approval of the publication of the public document or its contents by the person to whom access is given.

Legislation

Copyright Act 1968 (Cth)

Copyright Amendment (Disability Access and Other Measures) Bill 2017 (Cth)

Copyright Amendment (Disability Access and Other Measures) Bill 2017 (Cth) - Explanatory Memorandum

Copyright Regulations 1969

Public Record Act 1973 (Vic)

More Information

Website:

<https://www.prov.vic.gov.au/>

Email:

For questions regarding the presentation:

Bernadette.O'Farrell@prov.vic.gov.au

carly.godden@prov.vic.gov.au





19 September 2017

Copyright and Collections

Peter Waldie
Legal and Risk Manager

MUSEUMS
VICTORIA



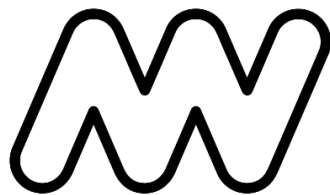
What we will briefly cover

- What is copyright and why it exists
- Preconceptions and notoriety – two perspectives
- A brief look at the *Australian Copyright Act*
- What this means for Museums?
- A brief look at how Copyright litigation works
- A strategy for how to navigate your obligations
- Recent changes
- Related and Outlier issues



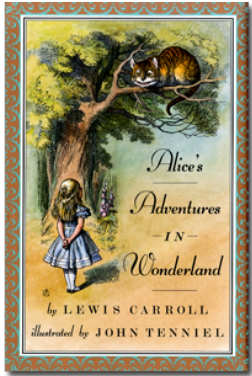
Disclaimer

This talk is for information only and should not be considered as legal advice

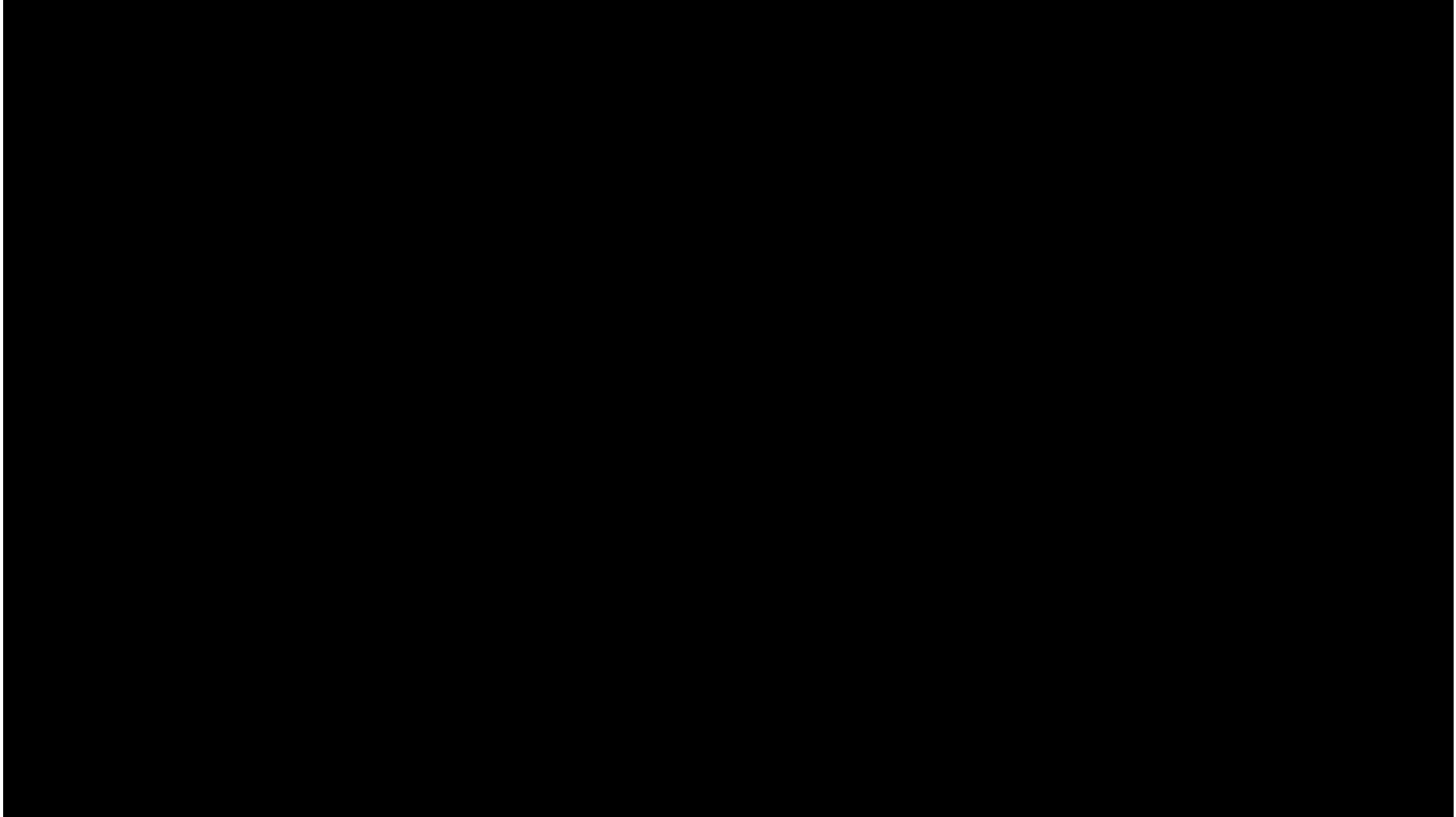


**MUSEUMS
VICTORIA**

Down the rabbit hole...



And in that spirit...



What is Copyright and why does it exist?

- Copyright laws exist to ensure that creators of works can:
 - control or restrict use by others of their works
 - and/or
 - financially benefit from their works
- And, if necessary, are able to legally enforce these rights.

Preconceptions and Notoriety

- At times copyright can either appear to be or actually is any and all of the following:
 - Frustrating
 - Contradictory
 - Intimidating
 - Constantly changing; and
 - a potential minefield
- And some the following cases don't help...

Notorious Copyright Cases



- ***A&M Records, Inc. v. Napster, Inc.***, 239 F.3d 1004 (2001)
 - In September 2001, Napster settled with songwriters and music publishers, agreeing to pay \$26 million

The KaZaA Case



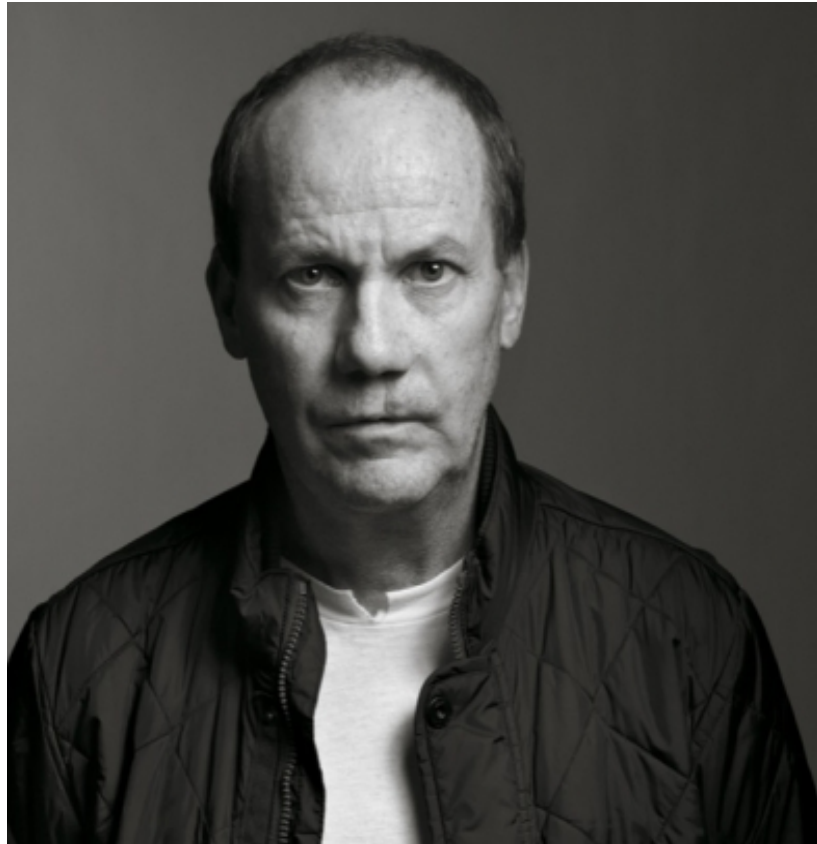
- In 2006 KaZaA settled with the music industry for approximately \$100 million
- Music industry went a step further targeting individuals for their infringement
 - Accused of sharing 1,702 songs
 - In 2007 ordered to pay \$9,250 for each of 24 songs found to have been infringed and legal costs of \$500,000.
 - Appealed and in 2009 a jury awarded a plaintiff judgment of \$80,000 per song or \$1.92 million
 - The Federal Court found that ‘monstrous and shocking’ and reduced it to \$54,000 per song.
 - The music industry offered a settlement of \$25,000 with money going to charity to support musicians
 - Undaunted, it was appealed again in 2010, this time with an order for \$62,500 per song at a total of \$1.5 million
 - At last reports this remains unpaid and may be subject to further legal action.

The Pirate Bay Case



- This was a website that provided links to facilitate peer to peer sharing using BitTorrents
- In 2009, the founders were put on trial in Sweden for facilitating illegal downloading of copyright material, found guilty, sentenced to 1 year in prison and fined USD \$3.5 million.

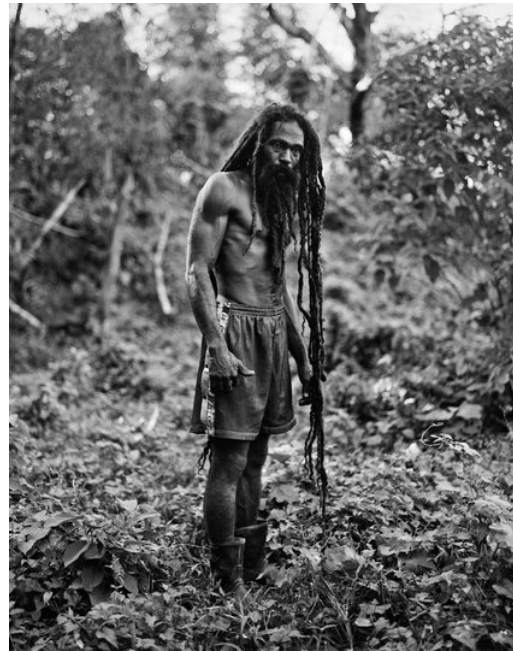
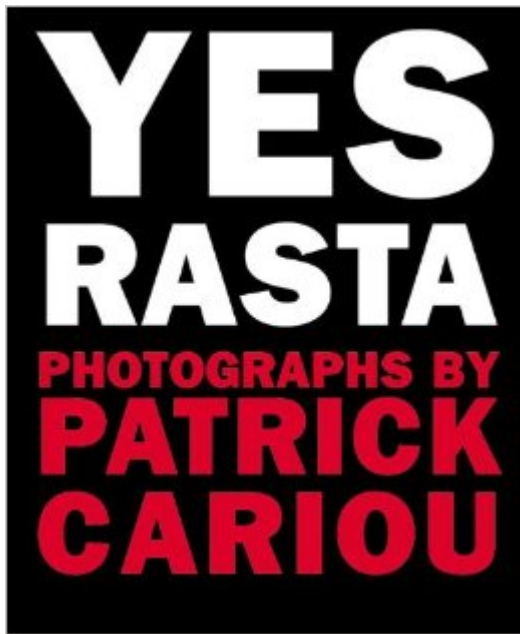
Copyright and Appropriation Art...



- This is Richard Prince – an appropriation artist

Appropriation Art – US Style...

- And this is Yes Rasta, by Patrick Cariou



- published in 2000, it's a book of photographs that Cariou took over the course of six years spent living among Rastafarians in Jamaica

Appropriation Art

- Patrick Cariou sold 5,791 copies of the book, over sixty percent of which sold below the suggested retail price of sixty dollars.
- Cariou, who holds the copyright to the *Yes Rasta* photographs, made just over \$8,000 from sales of the book.

Appropriation Art

- Prince took these photos and did this:



and this



Appropriation Art

- Prince exhibited his collection at the Gagosian Gallery where artworks sold for over \$100,000 a piece.
- Mr Cariou sued and won on first instance;
- and lost on appeal.
- 25 of the 30 works deemed transformative enough as to be protected by 'fair use'.
- The case over the 5 remaining works was sent back to the court of first instance and the settled – for an undisclosed sum.

Appropriation Art



- He then followed up in 2014 with 'New Portraits' a selection enlarged Instagram photos from other users with comments like richardprince1234 No Cure, No Pay...

Appropriation Art

- Prince provided a selection of 38 portraits with comments like, "Don't du anything. Just B Urself © ®"



- and sold them for \$90,000 - \$100,000 each...

Appropriation Art

- Some of the unwilling subjects of his art, notably members of SuicideGirls, have started selling their own derivative works based on his derivative works of their original works.
- Unsurprisingly this exhibition also attracted copyright infringement actions

Appropriation Art

- In July 2017, a federal judge in New York refused Prince's motion to dismiss a claim from photographer Donald Graham, whose photo was featured via a print from another user's Instagram account.



Appropriation Art or Art Appropriation?

- Mr. Prince has argued the work is ‘transformative’.
- And so far appears unrepentant and willing to fight.
- Following the refusal of motion responded on Twitter: “Phony fraud photographers keep mooching me. Why? I changed the game.”
- But before you think the worst of him...

Appropriate Art or Art Appropriation?

- At the same time he made headlines for returning a \$36,000 payment for a work that depicted Ivanka Trump. “It was just an honest way for me to protest”..



5162 likes

#Selfie on set! Big shoot today!
parke2013 Just FAB!
yvn111 Look on google Yvanka Nuse
richardprince4 Nurse Trump 🤪👩💊💕

But these are cases from the US, so what does it mean here?

- Preconceptions and fears of copyright may have been shaped by notorious cases from overseas which attract significant media coverage.
- There are many Australian copyright cases and notable decisions, but they tend to be less dramatic than those mentioned above.

Is this copyright infringement?



Jon Cambell v Wesfarmers

- Jon Cambell is a Melbourne Artist
- His work, which centres on Australian slang set out in graphic type, sells for between \$4,000 and \$50,000.
- He claimed Target ripped off his “YEAH” series for a \$14 wall hanging, sold online and in store as part of an “Affordable Art” homewares collection

Jon Cambell v Target

- He sued for \$200,000 in royalties
- Damages were also sought for the flagrancy of the infringement and the need for deterrence
- Target was also accused of relying on the cost of litigation to discourage the artist from enforcing his legal rights.
- Matter settled for a confidential sum in April 2017

The Australian Jurisdiction

- *The Copyright Act* (1968) is Australian Federal legislation which enshrines and protects the rights of those who create works that may be in any of the following formats;
 - Literary
 - Dramatic
 - Musical
 - Artistic

Copyright Act 1968 - SECT 36

Infringement by doing acts comprised in the copyright

- (1) Subject to this Act, the copyright in a literary, dramatic, musical or artistic work is infringed by a person who, not being the owner of the copyright, and without the licence of the owner of the copyright, does in Australia, or authorizes the doing in Australia of, any act comprised in the copyright.
- (1A) In determining, for the purposes of subsection (1), whether or not a person has authorised the doing in Australia of any act comprised in the copyright in a work, without the licence of the owner of the copyright, the matters that must be taken into account include the following:
 - a) the extent (if any) of the person's power to prevent the doing of the act concerned;
 - b) the nature of any relationship existing between the person and the person who did the act concerned;
 - c) whether the person took any reasonable steps to prevent or avoid the doing of the act, including whether the person complied with any relevant industry codes of practice.
- (2) The next three succeeding sections do not affect the generality of this section.

What does this mean?

Use

=

Infringement

Unless one the following fair dealing exceptions applies

- Sections 40-42 of the *Copyright Act* detail the following grounds of Fair Dealing Exceptions:
 - Research or study
 - Criticism or review
 - Parody or satire
 - Reporting news

So what does all this mean for Museums?

Q: Would the fair dealing provisions offer protection for a Museum seeking to make copyright material within its collection available to the public?

A: Probably not, as making a collection item available to the public would not fall into any of the exception criteria and would infringe the Copyright Act.

The trouble with Copyright law

- The Copyright Act makes two fundamental assumptions:
 - that there is an owner
 - that this owner will seek to exploit their rights in the work by controlling or restricting the use by others and/or will seek to financially benefit from the work

As we know, with many items in a Museum collection, this is often not the case, and it may never have been the intention of the creator of the work to assert ownership.

The trouble with the copyright law

- Game of Thrones seventh season was reportedly illegally downloaded more than a billion times in 2017
- Copyright law makes this illegal, but it hasn't stopped it happening



Copyright Litigation - Generally

- Copyright litigation is expensive (for both sides)
- A party which initiates Copyright litigation will need to be highly aggrieved and financially motivated
- The cost vs benefit is relevant
- Unless high levels of emotion are involved.

Copyright Litigation - Specifically

- In Australia, Copyright matters are heard by the Federal Magistrates Court or the Federal Court of Australia
- Litigation in these jurisdictions is expensive. A single day of proceedings will be thousands of dollars
- The initiating party needs to prove ownership of the work and infringement
- And indicate the legal remedy they are seeking.

Copyright Litigation - Remedies

- Licence / royalty fee calculation
- General damages
 - Compensation for lost sales
 - Compensation for lost reputation including lost value in the item
 - Compensation for costs of remedying damage caused by infringement
- Conversion
- Account of profits – see [Dart Industries Inc v Décor Corporation Pty Ltd (1993) 26 IPR 193]

Copyright litigation and Museums?

- Often the motivational elements of financial or emotional drive are not sufficient to result in litigation
- Cost v benefit make it irrational to litigate
- Confidential settlements are much more likely
- Only the most emotive cases are likely to progress
- When cases are initiated, often litigation fatigue occurs and matters then settle confidentially
- So there are very few cases of high relevance to Museums and Galleries that actually exist.

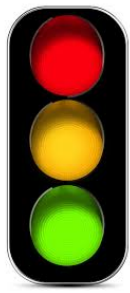
A practical example

- Potential copyright issues can often arise in unexpected ways
- Immigration Museum Brazilian Festival 2010 issue.

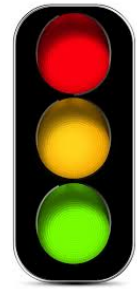


How can a Museum tackle Copyright issues regarding collection items?

- Decide primary motivations for making your collection items available to the public
- If for commercial reasons may to want to adopt a more conservative stance
- If this is to raise awareness of your collection and organisation, this may determine that a more open stance is possible.



Traffic Light System



- A method to assist in quickly sorting a large quantity of copyright material
- The size of a collection and the copyright issues associated with it can at times seem daunting
- When trying to manage a large collection, you don't have to find all the answers at once
- Don't be overawed and try to manage everything
- This can give you manageable starting point and can help you categorise your collection into manageable chunks
- Respect copyright laws, but don't be paralysed by a fear of them.

Green Light



- Where your organisation either:
 - Owns the copyright; or
 - Has an existing licence which permits the intended use; or
 - Your intended use is permitted under a Fair Dealing exception; or
 - your uses is for archival preservation/administration purposes; or
 - The material is out of copyright meaning the copyright act no longer applies.

Amber Light



- Where your organisation:
 - Does not own the copyright and cannot identify who the owner might be through reasonable investigations (sometimes called Orphan Works); and
 - Following a risk assessment of the intended use, you may determine based on your knowledge of the likelihood of there being litigation for copyright infringement to proceed with your intended use
 - Your risk assessment should strongly consider whether your intended use it for commercial purposes or to raise awareness of your collection and organisation.

Red Light



- Where your organisation:
 - Does not own the copyright; and
 - Knows who the copyright owner is; and
 - cannot obtain a licence for the intended use.

Take Down Policy

- It is an extremely good idea to have a publically available take down policy, especially if you will be dealing with Amber Light material
- This will greatly assist you if offended owners of material are revealed.
- You could also pre-declare you intention to make certain materials available and allow an objection period.

State Agencies

- Victorian Government State Agencies have an obligation to make their IP accessible to the public pursuant to the Intellectual Property Guidelines and the Whole of Victorian Government Intellectual Property Policy.
- <https://museumsvictoria.com.au/legals/>

Australian Law Reform Commission

- The ALRC was asked by the Attorney-General to investigate and report on Copyright and the Digital Economy
- They consulted extensively including with many cultural institutions
- The report was table in Parliament and released publically in February 2014.

ALRC Recommendations

- The ALRC made 30 recommendations including, most significantly:
 - the introduction of a "fair use" style exception or the broadening of "fair dealing" exceptions;
 - the repeal of s200AB;
 - the broadening of preservation copying exceptions;
 - limiting the remedies available for the infringement of orphan works where reasonably diligent searches were undertaken;
 - limiting the operation of contracts that purport to prevent reliance on libraries and archives exceptions and the fair use or fair dealing exception.

Copyright Amendment (Disability Access and Other Measures) Bill 2017

- The Bill proposes a number of amendments to the Copyright Act relating to:
 - use of copyright material by persons with a disability and anyone assisting them, and for organisations assisting persons with a disability;
 - preservation exceptions to copyright for libraries, archives and key cultural institutions;
 - amendments to statutory licensing for educational institutions; and
 - changes to duration of copyright in unpublished material.

Duration of copyright in unpublished material

- The Bill will amend the Copyright Act to change the rules for the duration of copyright material.
- At present, the Copyright Act has different rules for published and unpublished materials, wherein unpublished materials can theoretically remain in copyright indefinitely.

Duration of copyright in unpublished material

- The Bill will introduce a new standard term of protection of copyright materials: for the ‘life of the author plus 70 years’, which does not differentiate between published and unpublished works.
- The standard term will be effective for works created before 1 January 2019 that remain unpublished by that date.

Duration of copyright in unpublished material

- Where the creator of copyright material cannot be identified, the standard term of protection will be ‘date made plus 70 years’.
- However, if the material is made public within 50 years of its making, copyright subsists from the date the material was first made public plus 70 years.

Duration of copyright in unpublished material

- The amendments make a distinction between ‘making material public’ and ‘publishing’ material.
- ‘Make public’, means that the material has been ‘communicated’ (ie made available) to the public. A work may be communicated to the public when it is published, or when it is heard or seen in public, among other things.

Outlier Issues

- When dealing with copyright and in particular in a dispute many related legal terms and outlier issues can be raised by one side or another.
- These can include:
 - Privacy
 - Subject Consent
 - Acknowledgment
 - Moral rights
 - Trademark
 - Design
 - Title to a work or object
 - Licensing
 - Creative commons

Questions

