



ATSIC

CHAIRMAN

Professor Norman Palmer
c/o Cultural Property Unit
Department for Culture Media and Sport
2-4 Cockspur Street
London SW1Y 5DH
United Kingdom

Dear Professor Palmer

Thank you for your correspondence dated 23 August 2001 in relation to an invitation to contribute to the Working Group on Human Remains hearings process.

ATSIC accepts the invitation on the basis of its legislative duty under the *Aboriginal and Torres Strait Islander Commission Act 1989* which vests in it the responsibility of representing Aboriginal peoples and Torres Strait Islander peoples interests in such processes.

ATSIC has prepared a written submission to the Working Group, which will be forwarded electronically in the first instance and followed up by a hard copy including reference material.

In addition, ATSIC considers this issue as so important that it will send an Indigenous delegation to meet with the Working Group to provide an oral presentation to compliment the written submission.

It is understood that hearings will be heard on the 18 December with actual times to be finalised.

Once again thank you for the opportunity to provide input to this enquiry and I urge the Working Group to take note of the rights and sensitivities of Aboriginal peoples and Torres Strait Islanders in relation to this vitally important cultural issue when preparing its final advice on the outcome of the process to the Minister.

Geoff Clark

30 November 2001

**ABORIGINAL AND TORRES STRAIT ISLANDER
COMMISSION
(ATSIC)**

SUBMISSION

TO THE UK WORKING GROUP ON HUMAN REMAINS

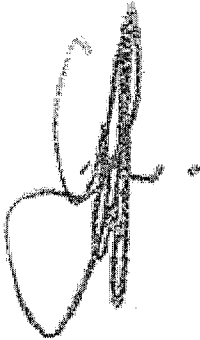
“Indigenous laws hold that the deceased will not enjoy spiritual rest until they are returned to their ancestral home and given the last rites in accordance with tradition. For this reason, Indigenous people feel a deep responsibility to their ancestors to respect their remains and to repatriate them, if necessary, to their rightful burial grounds.”

Aboriginal and Torres Strait Islander
Social Justice Commissioner as quoted in
*Our Culture: Our Future - Report on
Australian Indigenous Cultural and
Intellectual Property Rights*, p.27

November 2001

FOREWORD

This submission is made on behalf of Aboriginal peoples and Torres Strait Islanders by Mr Geoff Clarke, Chairperson of the Aboriginal and Torres Strait Islander Commission (ATSIC). It serves as the official response to an invitation from the UK based Working Group on Human Remains (WGHR) for ATSIC to contribute to the process.

A handwritten signature in black ink, appearing to read 'Geoff Clark', with a small dot at the end of the signature.

Geoff Clark
Chairperson
Aboriginal and Torres Strait Islander Commission
Australia

28 November 2001

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EXECUTIVE SUMMARY

1. Following a comprehensive consultation exercise with Aboriginal peoples and Torres Strait Islanders by ATSIC in 1994, ATSIC concluded that:

The issues of ownership and control by Aboriginal and Torres Strait Islander peoples of movable cultural material or property featured prominently in the consultations. Of particular concern was the issue of significant Indigenous cultural material held by institutions both in Australia and overseas.

2. The most prevailing viewpoint was that the cultural ownership rights of Aboriginal peoples and Torres Strait Islanders “encompass the right to make decisions concerning the protection, care and, where desired, the return of that cultural property to the possession of the relevant community”. This view particularly prevailed in relation to:

- Human skeletal remains, tissue material and burial artefacts;
 - Significant objects of religious and cultural property, in accord with Aboriginal peoples and Torres Strait Islanders tradition; and
 - Cultural objects which are of particular historical significance to Aboriginal peoples and Torres Strait Islanders.

Source: Recognition Rights & Reform

3. Taking account of these views ATSIC commends this submission to the WGHR. The submission aims to provide the WGHR with information that will enable it to address its Terms of Reference (TOR), in particularly TOR 2 to 5, which are:

2. *To examine the powers of deaccession or other types of release of the human remains held in museums and galleries that are governed by statute and to consider the desirability and possible forms of legislative change in this area.*

3. *To consider the circumstances in which material other than, but associated with, human remains might properly be included within any proposed legislative change in respect of human remains.*

2. *To take advice from interested parties.*

3. *To consider the desirability of a Statement of Principles (and supporting guidelines) relating to the care and safe-keeping of human remains and to the handling of requests for their return. Also, if the Panel considers it appropriate, to draw up the terms of such a Statement and guidelines. (The Group interprets “care and safe-keeping of human remains” as including all forms of treatment, including use and presentation).*

4. ATSIC acknowledges that other Indigenous stakeholder groups have also been invited to make contributions. In that context ATSIC does not make this

representation to devalue or undermine other Indigenous contributions. ATSIC does so to honour its legislative duty under the *Aboriginal and Torres Strait Islander Commission Act 1989*, Section 7 (1)(n), which states:

To take such reasonable action as it thinks necessary to protect Aboriginal and Torres Strait Islander cultural material and information, being material or information that is considered sacred or otherwise significant by Aboriginal persons or Torres Strait Islanders.

Source: *Aboriginal and Torres Strait Islander Commission Act 1989*

5. The preferences and aspirations of Aboriginal peoples and Torres Strait Islanders concerning principles and protocols for the storage, handling and return of human remains from the UK are documented under the heading "Statement of Principles and Guidelines". This Statement would need to be carefully considered by the WGHR and the British Parliament to ensure that the sensitivities of traditional owners / custodians are adequately taken into account in the repatriation process.
6. This submission provides a background on the role of ATSIC as the key authority for the international repatriation of Indigenous human remains and outlines ATSIC's current policy for the protection of human remains held in overseas collecting institutions and recommended procedures for their return to Australia, should legislation be amended accordingly for public funded institutions.
7. Further, the submission advocates for:
 - the need to have Indigenous human remains **unconditionally** returned to Indigenous communities in Australia;
 - changes to current UK legislation to allow the repatriation of Indigenous human remains from public funded collecting institutions;
 - access to information contained in collecting institutions in the UK for traditional owners / custodians; and
 - the development of cooperative arrangements to allow for uncomplicated processes for returns between the UK and Australia.
8. To assist the Working Group with their understanding of ATSIC and its role in the repatriation process, a collection of relevant attachments are provided for reference:
 - **Attachment A**, ATSIC's current *Policy on the Protection and Return of Significant Cultural Property*.
 - **Attachment B**, a flow chart illustrating a recommended process for repatriation, as endorsed by the ATSIC Board of Commissioners.
 - **Attachment C**, an extract from an extensive study of Indigenous cultural property held in overseas collecting institutions titled *Aboriginal and Torres Strait Islander Collections in Overseas*

Museums providing information on a number of collecting institutions around the world that hold Indigenous human remains.

- **Attachment D**, relevant United Nations instruments that should guide the process.
 - **Attachment E**, Prime Ministerial Joint Statement on Aboriginal Remains (4 July 2000).
9. In formulating this submission, ATSIC has also sought the advice of a number of peak Australian Government authorities including:
- Department of Foreign Affairs and Trade (DFAT);
 - Australian High Commission in London;
 - Department of Prime Minister and Cabinet (PM&C);
 - Department of Communication, Information Technology and the Arts (DoCITA); and
 - Department of Reconciliation and Aboriginal and Torres Strait Islander Affairs (DoRATSIA)
10. Representatives of these authorities formed an Inter-Departmental Committee (IDC), which has met twice to discuss the international repatriation issue and the requirements of the WGHR.
11. The Advisory Committee of Indigenous Experts set up by ATSIC under S.13 of the ATSIC Act has also discussed the contents of this submission. The views of all these parties have been given due consideration by ATSIC in the final analysis of compiling this submission.
12. The efforts of the WGHR and the co-operation of the British Government and the institutions involved are greatly appreciated by ATSIC. Primarily, because it provides a process for the effective resolution of yet another impediment to the achievement of true and lasting reconciliation between Aboriginal peoples and Torres Strait Islanders and the remaining population of Australia.
14. ATSIC thanks the British Government and collecting institutions for the cooperation they have shown to date in relation to the repatriation of Indigenous human remains back to Australia, and for the opportunity afforded by the WGHR to continue building on the foundations established by Prime Minister Tony Blair and Prime Minister John Howard of Australia as a result of their release of a *Prime Ministerial Joint Statement on Aboriginal Remains* (4 July 2000). The full statement appears at Attachment "E" to this submission.
15. Subject to available personnel and resources it is ATSIC's intention to support a delegation to attend at the scheduled hearing of the WGHR on 18 December 2001 for the purpose of elaborating on the contents of this submission and providing the WGHR with the opportunity to hear directly from ATSIC and key Indigenous community representatives why it is important to have remains and associated cultural materials returned to their rightful owners – Indigenous peoples throughout Australia.

RECOMMENDATIONS

16. It is recommended that the UK based Working Group on Indigenous Remains:
- **acknowledge that ATSIC has the legislative authority to make written and oral representations to the WGHR to protect the rights and interests of its constituency and that ATSIC is in the process of finalising a strategic approach with Indigenous stakeholders;**
 - **note the culturally sensitive nature that the repatriation of Indigenous human remains and associated cultural property has to Indigenous peoples;**
 - **commend the Commonwealth of Australia for its efforts to repatriate Indigenous human remains and associated cultural property at a domestic level and request it to support the strategic approach currently being devised by ATSIC to expedite the return of Indigenous human remains to their traditional owners / custodians;**
 - **recognise that any repatriation of Indigenous human remains or associated cultural material must be unconditional and that the wishes of relevant Indigenous stakeholders are taken into consideration;**
 - **note the goodwill shown by the British and Australian Governments in relation to repatriation, in particular the key intentions contained in the Joint Prime Ministerial Statement, and note that a number of private and public collecting institutions have indicated to the Australian Government and ATSIC a willingness to cooperate in the repatriation of Indigenous human remains held in their collections;**
 - **encourage the UK Government to act in the spirit of the 1970 UNESCO Convention in relation to the protection and return of Indigenous human remains and cultural property to ensure that no further illegal transfer or collection of Indigenous human remains and cultural property occurs in the future;**
 - **adopt an all encompassing approach, when providing the final advice to the Minister, to reflect more appropriately Indigenous peoples' beliefs and practices that all aspects of their culture and relationships is intrinsically interconnected for the purpose of maintaining balance, nurturing group harmony and protecting the collective identity.**

1. THE ABORIGINAL AND TORRES STRAIT ISLANDER COMMISSION

17. ATSIC is a statutory authority of the Commonwealth of Australia established under the provisions of the *Aboriginal and Torres Strait Islander Commission Act 1989* with a national network and central administration based in Canberra, Australia's national capital.
18. Under legislation ATSIC is Australia's principal democratically elected Indigenous organisation and is vested with the mandate to advocate the particular interests and values of Aboriginal peoples and Torres Strait Islanders within the processes of government at Commonwealth, State/Territory and local levels.
19. In 1995, ATSIC produced a comprehensive consultative report titled *Recognition, Rights & Reform*. This report was produced in response to a request dated 14 January 1994 from the then Acting Prime Minister, The Hon Paul Keating, seeking the formal views of ATSIC on further measures that the Government should consider to address the dispossession of Aboriginal and Torres Strait Islander peoples as part of its response to the 1992 High Court decision on native title.
20. After extensive consultation with Indigenous communities the RR&R Report recorded that:

Aboriginal and Torres Strait Islander peoples are increasingly insisting that the full range of their cultural and intellectual property rights be acknowledged and protected. These rights address the preservation and care, protection, management and control by Indigenous peoples of their cultural artefacts, human remains, archaeological, historical and significant traditional sites, traditional food resources and traditional and contemporary cultural expressions. They include rights to the understanding and knowledge of, and the ideas contained in culture and in many forms of cultural expression such as rituals, legends and designs¹

21. ATSIC's vision, as outlined in the 2001-2004 Corporate Plan is:

Aboriginal and Torres Strait Islander peoples freely exercising our legal, economic, social and cultural and political rights.

22. ATSIC is committed to securing recognition of the right of Aboriginal peoples and Torres Strait Islanders to exercise and enjoy all the rights that inhere to them as the Indigenous peoples and citizens of the country.
23. ATSIC has been accredited by the United Nations as a Non-Government Organisation (NGO) in Consultative Status with the Economic and Social

¹ Page 99 (Section 6.2) *Cultural Integrity and Heritage Protection, Recognition, Rights & Reform*

Council. This gives it independent access and an independent voice at UN forums. It participates in the annual sessions of the UN Working Group on Indigenous Populations (WGIP) and other international standard-setting activities.

24. Within Australia, ATSIC has played a major advocacy role on issues such as:
- Aboriginal Deaths in Custody and mandatory sentencing;
 - The Stolen Generations; and
 - Native Title.
25. In the 2000-01 financial year ATSIC administered a budget of approximately \$1.2 billion for the advancement of Indigenous Australians. This represents about half of the Commonwealth's allocation for Indigenous programs. However, even the combined allocation falls way short of the need to effectively improve the quality of life of Indigenous peoples within Australia. Consequently, ATSIC's funding role does not diminish the responsibility of other government agencies to provide services to their Indigenous citizens. ATSIC's capacity to fund is restricted to supplementing other funding arrangements where necessary or where a more culturally appropriate service is required.
26. Most of ATSIC's funding goes to Indigenous community organisations for them to provide services to local people such as:
- Community development and employment;
 - Housing and related infrastructure;
 - Legal aid;
 - Native title representation; and
 - Maintaining Indigenous cultural identity.
27. The WGHR is advised that ATSIC is in the process of finalising a draft strategy concentrating on a coordinated approach to the repatriation of Indigenous human remains from the UK. That strategy will encompass all the key intentions contained in the Prime Ministerial Joint Statement. This draft strategy will be provided to all relevant stakeholders for comment and refinement prior to being implemented in the near future. The preferred model for repatriation will also involve an Indigenous organisation, funded by ATSIC, to research and coordinate the return of Indigenous human remains from overseas.

It is recommended that the WGHR acknowledge that ATSIC has the legislative authority to make written and oral representation to the WGHR to protect the rights and interests of its constituency and that ATSIC is in the process of finalising a strategic approach with Indigenous stakeholders.

2. OTHER COMMONWEALTH OF AUSTRALIA LEGISLATION

28. ATSIC is guided not only by its own legislation but also by *The Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (ATSIHP) in relation to the care and protection of Indigenous human remains, and their repatriation from collecting institutions located within and outside of Australia.
29. The ATSIHP Act is the principal Commonwealth legislation protecting Indigenous heritage in Australia. Under this Act, the responsible Minister can make temporary or long-term declarations to protect areas and objects of significance under threat of injury or desecration. This Act also encourages heritage protection through mediated negotiation and agreement between land users, developers and Indigenous peoples.
30. The Section of this Act that is specifically related to this submission is Section 21 (1) (c) which states:

Where Aboriginal remains, other than remains discovered in Victoria, are delivered to the Minister, whether in pursuance of a declaration made under section 12 or otherwise, he or she shall if there is no such Aboriginal or Aboriginals – transfer the remains to a prescribed authority for safekeeping.

31. Under this Section of the Act, the Minister responsible has allocated this prescribed body status to the National Museum of Australia (NMA), located in Canberra.
32. It is important that the legislative context is reflected to clarify ATSIC's role as the Indigenous body with legislated key functional authority in relation to Indigenous issues, especially for the protection and subsequent repatriation of Indigenous human remains.
33. ATSIC is currently involved in intervention activity with Australian political parties in relation to proposed amendments to the relevant Acts that relate to the protection of Indigenous heritage and culture, such as:
- *Aboriginal and Torres Strait Islander Heritage Protection Act 1984;*
and
 - *Environment Protection and Biodiversity Conservation Act 1999.*

3. PRIME MINISTERIAL JOINT STATEMENT ON ABORIGINAL REMAINS

The statement

34. The *Prime Ministerial Joint Statement on Aboriginal Remains* issued on 4 July 2000 by Prime Minister Tony Blair and Prime Minister John Howard represents a landmark in international repatriation insofar as it marks a change from the first phase in the repatriation process characterised by agreements for institutions to return collections or parts thereof, to a new phase giving precedence to the development of a coordinated approach between the UK and Australia, build on a recognition of the importance of repatriation to Aboriginal peoples and Torres Strait Islanders.
35. The second phase in repatriation shifts the focus from single institutions and one-off returns to that of the likely amending of national legislation and policies that will encourage and assist publicly funded institutions to hand back human remains. This in turn is likely to have a positive snowball effect and facilitate repatriation of human remains also held in private UK institutions and perhaps also lead to the development of cooperative agreements between Australia and other European nations or even the European Economic Union (EEU).
36. The 'Prime Ministerial statement' stated that the UK and Australia "*agree to increase efforts to repatriate human remains to Australian indigenous communities*". This statement contains four key intentions:
- the development of a new cooperative arrangement between Australia and the UK in consultation with Indigenous organisations;
 - the development of protocols for the sharing of information between British and Australian institutions and Indigenous peoples;
 - further research to identify collections of Indigenous human remains held in Britain; and
 - extensive consultation to determine the traditional custodians, their aspirations regarding the treatment of remains and a means for addressing these issues.
37. The Principles and Guidelines outlined in the latter part of this submission provide building blocks for developing an agreed UK-Australian approach to returning human remains back to traditional owners / custodians and focus in particular on the four key intentions contained in the Prime Ministerial statement as well as the WGHR's TOR 2 to 5.

Development since release of prime ministerial statement

38. The British Government has responded positively to the recommendations made in the House of Commons Select Committee report concerning the repatriation of human remains, as reflected in the TOR for the WGHR.
39. The process instigated by the British Government to discuss in the public arena

possible changes to the existing museum legislation would appear to have been well received by the UK museum community. The process has fostered discussion amongst museum professionals to address the concerns that Indigenous peoples have about the handling and repatriation of their ancestral remains in particular.

40. Positive outcomes have already been derived from this process insofar as some collecting institutions not constrained by legislation to deaccession their holdings recently notified the Australian Government of their willingness to hand over several collections of human remains. In addition, other institutions have gone as far as providing lists of Indigenous human remains held in their collections and indicated they would be prepared to discuss the possibility of returning remains.

4. WHY APPROPRIATE HANDLING AND REPATRIATION OF HUMAN REMAINS MATTERS TO TRADITIONAL OWNERS / CUSTODIANS

The importance of repatriation to Indigenous peoples

41. The repatriation of Indigenous human remains is of paramount importance to the traditional owners / custodians and relatives who are seeking a sense of closure to this period of history.
42. There are personal and spiritual feelings of attachment to remains as well as their cultural and historical significance. This emotion underpins the sensitivity of this issue to Indigenous peoples. Once the human remains are returned, a community can satisfy its spiritual needs and cultural imperatives to see that the dead have been treated with due respect and ceremony. In many cases the human remains are buried according to customs in a place designated by the community.
43. Sacred objects hold the same meaning to Indigenous peoples that other religious artefacts hold for members of other religions. In addition, Aboriginal and Torres Strait Islander spirituality insists that some ceremonies, items and places be kept secret and viewed only by appropriate people. The idea of having these objects on display to the general public is therefore repugnant to Indigenous peoples.

The pre-eminent rights of Aboriginal and Torres Strait Islander communities over their human remains and cultural property is an essential pre-requisite for the exercise of basic human rights and fundamental freedoms. The rights to freedom of religious expression and practice and the importance of control over cultural heritage to the identity and future of indigenous communities are fundamental. The circumstances and implications of the dispossession of communities and the consequent study of indigenous human remains are contributory factors in a need for a resolution to the current attitude of some UK institutions which deny indigenous people their rightful heritage²

It is recommended that the Working Group note the culturally sensitive nature that the repatriation of Indigenous human remains and associated cultural property has to Indigenous peoples.

44. On the Australian mainland, Tasmania and the Torres Strait Islanders, deceased Indigenous people were, and are, treated with utmost respect. While there are regional variations in the way deceased persons were/are treated during and after the funerals, there are common beliefs shared by Indigenous peoples throughout Australia, including:

² Para 6. Minutes of Evidence by the Foundation of Aboriginal and Torres Strait Islander Advocacy to the Culture, Media and Sport Committee.

- Only traditional owners / custodians have the authority to make decisions about the treatment of their ancestors;
- Within each community or family group, only certain members of the group have the cultural authority to make those decisions;
- Handling of human remains must be done in an appropriate manner otherwise the person handling the remains becomes vulnerable and may be subjected to an unwelcome sanction;
- The remains of deceased people must be buried on land to which they have the strongest affinity otherwise their spirits will not be at rest.

45. It is not considered necessary here to go into details in relation to Indigenous peoples' beliefs and practices concerning the handling and burial of their ancestors as the information is contained in numerous anthropological records compiled since the colonisation of Australia.

46. Suffice to say that during the early colonial period of Australia's history, Indigenous human remains were obtained illegally from morgues, hospitals, massacre sites and cemeteries, often without the consent of the next of kin, and found their way into various collecting institutions around the world, including those in the UK.

47. It is recognised that these Indigenous human remains were:

...collected as objects of curiosity and for the purposes of scientific study, including past concerns about comparative anatomy³

48. The barbaric and inhumane nature in which some of these Indigenous human remains were collected is reflected in the following quotation:

Furthermore, as the people died in the camps, Robinson, who had been given the title "Protector of the Aborigines", cut up their bodies to distribute among his friends, military officers and representatives of the Crown. To give a few examples of his activities: Robinson reports that on his first meeting with Governor and Lady Franklin at Wybalenna in January 1838 they "... solicited me for curiosities, also the skull of an aboriginal." The Governor's secretary Captain Maconochie also asked him for a skull. The day after Mitaluraparitja died of pneumonia in February 1838 at Wybalenna, the surgeon cut off his head for Robinson to have it "masticated" and sent to Maconochie. Robinson later "etained" the cranium of Pintawtawa who died in August 1838 and sent it to Lady Franklin in February 1839. Skull No 94.1.20.1 in the Natural History Museum's Tasmanian collection is labelled "Lady

³ Para 158. Culture, Media and Sport Committee: *Seventh Report - Cultural Property: Return and Illicit Trade*.

⁴ Para 10. Appendix 58: Memorandum submitted by the Tasmanian Aboriginal Centre Inc. to the

*Franklin*⁴

49. The removal of Indigenous human remains strongly contributed towards an overall feeling of dispossession amongst Indigenous peoples of Australia. This along with the continuing unjust treatment of Indigenous people in Australia, up until the early 1970's, contributed towards the further alienation of the traditional owners / custodians of this land from the rest of the population. It is strongly felt that collecting institutions, which continue to hold onto these Indigenous human remains as part of their collections perpetuate this feeling of dispossession and unjust treatment and cause Indigenous peoples further spiritual torment and pain.
50. It has only been since 1967 under Constitutional Reform⁵, that Indigenous peoples attained a position of equality in Australia. Following this, successive federal governments have given due consideration to Indigenous issues, including that of the removal of Indigenous human remains and the practice has ceased. Legislation now exists at State; Territory and Federal levels that make it an offence to remove or interfere with human remains.

Sacred objects

51. The sacred objects acquired in the past by collecting institutions from Aboriginal and Torres Strait Islander communities hold a meaning to their traditional owners / custodians that is similar to the meaning that religious artefacts and edifices hold for members of other religious groups. The taking of these sacred artefacts away from traditional lands and their socio-cultural contexts has damaged the integrity of the spiritual and social fabric of these Indigenous communities, seriously contributing to their dispossession by the colonial authorities, and the socio-cultural, economic and health problems that have ensued and plagued the communities to this very day. Once again, the repatriation of these artefacts will significantly counter the socio-economic and cultural disadvantage experienced by Aboriginal and Torres Strait Islander communities.
52. Whilst these objects remain in the care of foreign collecting institutions, they should not be put in public display and subjected to academic research.

Previous success with repatriation from overseas

53. Aboriginal peoples and Torres Strait Islanders have been campaigning on the domestic and international stage for the repatriation of human remains for more than 30 years. There has been some success in the returning of both human remains and artefacts from foreign holding institutions, particularly from the UK. The organisation of these returns has generally been facilitated by ATSIC in collaboration with members of Indigenous community-based organisations.

Culture, Media and Sport Committee.

⁵ Chapter VII Section 127 – The Constitution

54. Successful repatriation exercises included:

- Skull held in Royal College of Surgeons Collection, Dublin. In March 1990, representatives of the Tasmanian Aboriginal Centre (TAC) and the Foundation for Aboriginal and Islander Research Action (FAIRA) took delivery of the head of a Tasmanian Aboriginal man, and brought these remains back home. These were the first human remains to be repatriated from the UK to Australia.
- Collections held in Pitt Rivers Museum (Oxford), University of Bradford and Peterborough Museum. The remains of several individuals were handed back by these institutions in June 1990.
- Remains held in the Kelvingrove Art Gallery and Museum (Glasgow). In October 1990 the remains of three individuals were returned by the above institution to the traditional owners / custodians.
- University of Edinburgh Collection. The remains of approximately 330 individuals held in the Anatomy Department of the University have been returned to Australia in two separate exercises. In 1991 so-called 'Part 1' of the collection of human remains (mainly skulls) was returned.

Further human remains were discovered at the University of Edinburgh in 1997. The Aboriginal Legal Rights Movement (ALRM) commissioned a consultant to catalogue the human remains through a grant from ATSIC. ATSIC then initiated the repatriation of 'Part 2' of the Edinburgh Collection, taking care to ensure that no details or sensitivities were overlooked in the planning of this complex task.

As part of the policy of the inclusion of traditional owners / custodians, Messrs Tauto Sansbury and Francis Lovegrove were nominated by the Kurna and Ngarringeri Cultural Heritage Committees as the two most appropriate South Australian Indigenous representatives to travel to Edinburgh to receive 'Part 2' of the collection in June 2000.

'Part 2' of the collection of human remains (mainly post-cranial remains) repatriated, along with several boxes containing artefacts, and deposited at the NMA for temporary storage. The NMA is currently conducting consultations with traditional owners / custodians to have human remains from 'Part 1' and 'Part 2' of the Edinburgh Collection returned to their relevant communities. Work is also continuing on the reunification of the skulls deposited in 1991 with the post-cranial remains returned in 2000.

Repatriation within Australia

55. Although the above information attests to significant achievements concerning the UK repatriation process, international repatriation is generally lagging behind domestic repatriation. Since 1990, museums and other holding

institutions in Australia have returned the majority of the provenanced human remains they originally held. This achievement was partly made possible through the establishment of the Repatriation of Indigenous Cultural Property (RICP) program administered by the Department of Communications, Information, Technology and the Arts (DoCITA) which is located in Canberra. The program provides funding totalling \$3m over three years to the eight state and territory museums to assist the return of Indigenous human remains and secret sacred objects to the traditional owners / custodians. The program is made up of funds from contributions from State, Territory and Commonwealth Governments.

56. The return of Indigenous human remains to communities is not new in Australia. The Australian Museum in Sydney and the Museum of Victoria in Melbourne have been returning human remains for 20 years. They have also returned Maori human remains and other cultural property to New Zealand. The Queensland Museum has also returned significant numbers of cultural items to Papua and New Guinea.
57. ATSIC can also provide funding to holding institutions such as museums and universities so that they may prepare the necessary documentation on the origin of the human remains. The research and field consultations are to be jointly administered by a representative Aboriginal or Torres Strait Islander community organisation and other parties so that their ownership of the documentation is shared or owned by the community. Funding is also provided for research on unprovenanced human remains and cultural material, especially objects of a religious or ceremonial nature.

It is recommended that the WGHR commend the Commonwealth of Australia's efforts to repatriate Indigenous human remains and associated cultural property at a domestic level and request WGHR to support the strategic approach currently being devised by ATSIC to expedite the return of Indigenous remains to their traditional owners / custodians.

What will happen to remains when they are returned to Australia?

58. There are two options for human remains once they arrive in Australia.
59. Firstly, Indigenous human remains that have already been identified as belonging to certain areas and communities can be forwarded directly to those groups for them to make appropriate ceremonial arrangements. It is anticipated that the majority of collections held in overseas institutions will be provenanced to a certain degree.
60. Secondly, Indigenous human remains that have not been provenanced will be temporarily stored in a keeping place until the appropriate anthropological and/or historical research identifies the traditional owners or custodians. At no stage will Indigenous human remains returned to Australia go on display in museums or be included in existing collections.

Present conditions

61. A number of collecting institutions have indicated their willingness to return Indigenous human remains to Australia on the proviso that they have continued access to these remains for 'further scientific research'. This is a case in point in relation to comprehensive database information provided to ATSIC by the Natural History Museum in London:

...the Director of the Museum also indicated that, subject to changes in legislation, it might return some Australian Indigenous human remains from its collection on the condition that they be properly conserved and remain accessible for scientific research⁶

62. ATSIC's position is that the repatriation of Indigenous human remains to their rightful communities should be **unconditional** and that the traditional owners / custodians have the final decision in the disposal of these remains and not collecting institutions.

It is recommended that the Working Group recognise that any repatriation of Indigenous human remains or associated cultural material must be unconditional and that the wishes of relevant Indigenous stakeholders are taken into consideration.

63. The Australian High Commission in London also forwarded to ATSIC extensive lists of Indigenous human remains held in the following United Kingdom collecting institutions:

- The Natural History Museum – Listing of Human Remains from Australia and the Torres Strait Islands;
- The Horniman Museum – Australian Aboriginal Remains; and
- Royal College of Surgeons – Australia and New Zealand Remains.

64. ATSIC has taken the information contained in these reports into consideration for future repatriation processes and discussions with Indigenous traditional owners / custodians.

Desirable changes to British legislation and museum policies

65. Although it is quite legal for privately run museums in the UK to dispose of their collections, the current legislation does not allow the repatriation of human remains from British Government funded institutions. The Australian Government is particularly appreciative of the British Government's willingness to review any legislative constraints on repatriation of Indigenous human remains and understands that it may take some time for amendments to be drafted and passed by the Government.

⁶ Para 20. Appendix 64: Memorandum submitted by the Australian Government

66. The Australian Government, ATSIC and Aboriginal peoples and Torres Strait Islanders are keen to work cooperatively with Britain in this process. The 'Statement of Principles and Guidelines' provided in this submission document, in simple terms, the preferences and aspirations of traditional owners / custodians concerning the return of their ancestral remains, as well as the process and protocols that would need to be followed between now and their return home to ensure the remains are treated with dignity and that traditional owners / custodians' customs and beliefs are respected through the process.
67. It is essential that amendments to the existing UK legislation address two key issues:
- enable museum trustees to deaccess Indigenous human remains; and
 - make it illegal for collecting institutions in the UK to acquire and/or retain Indigenous human remains and cultural items of significance (items of a secret/sacred nature).
68. Changes to the legislation under which government-funded collecting institutions operate will take some time to finalise. Pending this, it is important that Indigenous human remains and secret/sacred objects be removed from public viewing and stored in a manner that protects the cultural integrity of Indigenous peoples customs and beliefs relating to such matters. This may require museums and other holding institutions to amend their current policies and practices.
69. ATSIC will work cooperatively with Australia to assist the WGHR and the British Government develop a framework and process for repatriating Indigenous human remains, and provide necessary information required by the WGHR and the British Government to assist in the drafting of amendment to the existing museum legislation.
70. ATSIC understands that:

Britain has in place legislation and policies aimed to ensure the integrity of Britain's cultural property. It is understood that certain institutions directly funded by the British Government cannot legally de-accession items in their collection. This prohibition applies for example to the Museum of Natural History. This means that cultural items, including human remains, cannot be unconditionally returned to Australia from these institutions unless there is legislative change. The Australian Government understands that a long-term ("permanent") loan of the material or other conditional return might be permitted, but that such a process would be unacceptable to indigenous people because it acknowledges someone else as the "owner" and may limit their options for dealing with the remains. Other institutions are not subject to these legislative constraints. Many museums also have a policy that any items returned must be properly conserved and remain

accessible for research. Many institutions also only allow access to remains or information about remains in their collections to scientific researchers.⁷

It is recommended that the Working Group note the goodwill shown by the British and Australian Governments in relation to repatriation, in particular the key intentions contained in the Joint Prime Ministerial Statement, and note that a number of private and public collecting institutions have indicated to the Australian Government and ATSIC a willingness to cooperate in the repatriation of Indigenous human remains held in their collections.

1970 UNESCO Convention

71. The 1970 UNESCO Convention is based on the principle that:

...the unauthorised import, export and transfer of cultural property should be "illicit". It prescribes measures State Parties should take to protect their own cultural heritage and to prevent the wrongful import or acquisition of designated cultural property stolen in or illegally exported from other States Parties.⁸

72. The Australian Government is a party to this convention.

73. It is understood that at present the UK Government is not a party to the 1970 UNESCO Convention.

ATSIC strongly recommends that the UK Government act in the spirit of the 1970 UNESCO Convention in relation to the protection and return of Indigenous human remains and cultural property to ensure that no further illegal transfer or collection of Indigenous human remains and cultural property occurs in the future.

United Nations Instruments

74. The United Nations does not have a specific convention dealing with the return of Indigenous human remains or cultural objects from collecting institutions but there are a number of instruments that relate to the issues involved, notably:

- *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992);*
- *Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries (1989);*

⁷ Para 17. Appendix 64: Memorandum submitted by the Australian Government

⁸ Para 71. Culture, Media and Sport Committee: *Seventh Report - Cultural Property: Return and Illicit Trade.*

- *Declaration of the Principles of International Cultural Co-operation (1966); and*
- *Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (1949)*

75. Detailed reference to these United Nations conventions are given at **Attachment D** for further reference.