

5. STATEMENT OF PRINCIPLES AND GUIDELINES

76. The Principles and Guidelines provided below are distilled from documents developed within Australia to guide the repatriation of human remains and objects of significance, as well as their handling while still in the care of collecting institutions. In addition, they clearly state what the moral and cultural rights of traditional owners / custodians are in relation to the handling of their cultural property prior to the return of that property back to the relevant communities. The principal documents relied upon to develop the Principles and Guidelines are:

- *ATSIC Policy on the Protection and Return of Significant Cultural Property* as provided at **Attachment A**; and
- *The Return of Indigenous Cultural Property Program – National Principles and Policies* produced by the Department of Communication, Information Technology and the Arts, Commonwealth Government of Australia.

77. In addition, the development of the Principles and Guidelines has been guided by the outcomes of several consultation processes, in particular from comments provided by members of an Indigenous Advisory Committee established by the Board of ATSIC under Section 13 of the *ATSIC Act 1989* to advise ATSIC on the protection of Indigenous cultural property.

78. The eight principles documented below would need to be followed by UK holding institutions to ensure that the protection and the process of returning Indigenous human remains and objects of cultural significance to traditional owners / custodians are done in a culturally appropriate manner. The application of a number of these principles would require changes to the current UK legislation.

Principles

79. The principles are:

- the support of governments in acknowledging Indigenous ownership of remains and the role Indigenous peoples play in the decision making process for returning them to Australia;
- the primary say in relation to what happens to remains rests with the traditional owners / custodians;
- regardless of whether remains are provenanced or not, remains should be returned to Australia for decisions to be made at a domestic level;
- the application of this policy not only to Indigenous remains but also to other human tissue, burial artefacts and significant objects of religious and cultural representation;
- open access to information relating to remains held in overseas collecting institutions, for traditional owners / custodians, to allow them to make informed decisions about repatriation;

- support of collecting institutions that provide avenues for the repatriation of remains on a domestic and international level;
- the discontinuation of research on Indigenous remains and objects of a religious or ceremonial nature, without prior approval from traditional owners / custodians; and
- the support for traditional owners / custodians to accompany remains back to Australia.

80. The WGHR is referred to **Attachment A** for a broader insight into ATSIC's current Policy on the Protection and Return of Significant Cultural Property.

Guidelines

81. The guidelines provide recommendations to holding institutions in the UK on how to approach, in practical terms, a range of issues relating to the repatriation of the ancestral remains of, and items of cultural significance to, Aboriginal and Torres Strait Islander custodians. Some of the guidelines provided below are still subject to refinement through further consultation. The British Government, the WGHR and other relevant parties in the UK and Australia will be notified when the guidelines that are currently still in draft form have been agreed to by Aboriginal peoples and Torres Strait Islanders through a culturally relevant process.

i. Information sharing

82. One of the four key intentions of the Prime Ministerial statement was to develop protocols for the sharing of information between British and Australian institutions and Indigenous peoples. Another intention was for further research to be conducted in order to identify collections of Indigenous human remains held in Britain.
83. In keeping with the spirit of that statement, ATSIC compiled a database of collections of Australian Indigenous human remains known to be kept in UK institutions. The database made use of a report compiled in 1989 by Ms Carol Cooper for the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS), titled *Aboriginal and Torres Strait Islander Collections in Overseas Museums*. Additional information was also utilised, including knowledge of collections that have been returned from the UK since the Cooper Report was published. A copy of the current database is provided at Attachment C.
84. That database is likely to be incomplete given that Ms Cooper was unable to receive responses from all the holding institutions she contacted and, in some instances, institutions that provided her with information did not provide a detailed record of their holdings. It would be very helpful if all publicly funded institutions in the UK were to provide to ATSIC and the Australian government detailed lists of Australian Indigenous human remains they may hold. The British Government has the powers to make this a requirement by amending its current museum legislation.

ii. Consultation to identify traditional custodians and their aspirations regarding the treatment of remains

85. Consultation with Indigenous communities concerning repatriation issues is an essential but time consuming and complex process. ATSIC has been addressing this over the past 12 months in relation to the general process of repatriation from the UK and these Principles and Guidelines are largely a product of such a process.
86. The document *Restitution and Repatriation – Guidelines for good practice* issued by the UK Museum and Galleries Commission provides guidelines for handling requests for repatriation made by traditional owners / custodians. The guidelines are considered by many Australian Indigenous people and their representative organisations to be inadequate for the following reasons:
- the onus is on individuals to state their claims to a collection or particular items within a collection, a process that is cumbersome as it involves the filling out of forms requiring individuals to provide proof that they have traditional ownership of the remains or artefacts;
 - the process is humiliating to traditional owners / custodians and causes further grief to relatives of deceased who simply wish to have their ancestors returned in a simple and dignified manner;
 - it is a resource-intensive exercise for holding institutions;
 - museum staff processing the requests are unlikely to be suitably trained in the handling of cultural sensitivities; and
 - the individual application-based system can only enable the return to Australia of well-provenanced remains. In other words remains provenanced at the national level ('Australia'), state/territory level (eg 'New South Wales') or regional level (eg 'Riverina' or 'Arnhem Land') will never have an opportunity to be returned to Australia.
87. A more effective and culturally sensible approach is for the onus to be placed on collecting institutions to come forward and consent to hand over their collections of human remains. This approach enabled the successful return of approximately 330 individuals from the University of Edinburgh, including human remains that were only provenanced at the national, state/territory and regional levels. This 'whole-of-collection approach' has the benefits of repatriating all remains contained in a given collection with minimal handling while in the UK.
88. Once returned to Australia, the remains can be treated in accordance with processes currently applied. The processes involve going through documentary information attached to collections in order to identify the likely traditional owners / custodians, and making use of Indigenous liaison officers to approach relevant communities directly. These officers are fully aware of protocols and customs for consulting communities and dealing adequately with cultural sensitivities in relation to the storage, handling, transport and return of human remains to traditional custodians.

iii. Return of written, pictorial or other records

89. Documentary evidence forms an integral part of the repatriation process and is considered cultural property. Accordingly all the records relevant to human remains should also be returned.
90. Besides 'curators cards' filled out on each individual, relevant records may also include:
- x-rays, photographs, drawings etc.;
 - records of loans made from one to another research institution or museum;
 - details of any research, experiments and tests done on the remains (including DNA testing) and outcomes of these activities – whether or not results were published;
 - full documentation of the history and description of the remains, including for example information about the date of the collection, where the remains were obtained from and, if different, original provenance of the remains, who collected and procured the remains to the institution, who are the relatives of the deceased, the gender and age of the individual, and associated collections; and
 - reports, documents and consultancies completed by the collecting institution or those commissioned by ATSIC and Indigenous community organisations.

iv. Return of unprovenanced or poorly provenanced remains

91. It is advisable that Indigenous human remains that are poorly provenanced or not provenanced (apart from being identified as the remains of an Indigenous Australian individual), be returned to Australia for temporary storage, until such time as either the relevant communities can be identified or they are permanently put to rest in a common holding place, in accordance with the wishes of Aboriginal peoples / Torres Strait Islanders (eg not unlike 'unknown soldiers graves or memorials').

v. Care and safekeeping of human remains while held in Britain

92. Holding institutions in the UK have a moral duty to provide adequate care and safe keeping to Australian Indigenous human remains. The remains should be:
- treated with the utmost care and respect in recognition of their significance to traditional owners / custodians;
 - kept in secure storage and in a conditioned environment that meets internationally recognised standards for the storage and curation of human remains (eg adequate exposure to: light, temperature, moisture, ventilation and chemicals);
 - not handled unless absolutely necessary, with approval from traditional owners / custodians; if handled for the purpose of documenting, provenancing and repatriation of the remains, this ought to be done in a

considerate manner;

- not displayed;
- not subjected to educational activities or scientific research; and
- no access provided to the remains for the purpose of reunification (reassembling cranial and post-cranial remains) unless authorised by traditional owners / custodians or their representatives.

vi. The process of repatriation

93. When an Aboriginal / Torres Strait Islander group has identified material in a collecting institution and that institution is willing to return its collection to the Aboriginal / Torres Strait Islander group, then arrangements will remain in place. In all other cases the following process should be adhered to:

- When a collecting institution is ready to return remains, they are to notify, in the first instance, the Australian High Commission in London.
- The Australian High Commissioner will then notify the Australian Department of Foreign Affairs and Trade (DFAT) and the Chairperson of ATSIC of the institution's intention to have the human remains returned.
- ATSIC will then request the ATSIC approved Indigenous coordinating group to organise the return of the remains. This entails a range of tasks including: discussing with the institution and traditional owners / custodians details of the processes including undertaking further archival research if required, making suitable arrangements for the packaging and freight of remains, organising a handover ceremony if considered appropriate by custodians, liaising with DFAT, Australian Custom and Australian Quarantine and Inspection Service, and the travel of Indigenous representatives to officially receive the remains and escort them back to Australia for handing over to the appropriate individual, community or institution.

vii. What happens to remains when they are handed back

94. Upon arrival to Australia, human remains that have already been identified as belonging to certain areas and communities will be delivered directly to those groups for them to make appropriate arrangements for dealing with the remains of their ancestors.
95. Remains that have either not been provenanced or poorly provenanced will be temporarily stored in the Indigenous Repository at the National Museum of Australia (NMA) until the appropriate anthropological and/or historical research enables the NMA to identify the traditional owners / custodians. ATSIC is funding a Physical Anthropologist at the Museum for this purpose. If the designated custodians are willing and ready to take possession of the remains, arrangements are made between the NMA and traditional owners / custodians for them to receive the remains.

6. RELATED MATTERS

96. ATSIC understands that the British Government may be reluctant to include cultural material other than human remains in such legislative reforms as this may directly affect those historical artefacts currently held in British public funded institutions.
97. For example a decision was made by the British Parliament in 1816 to ensure that the Elgin Marbles would remain on public display at the British Museum.

Removal of these and other objects from the British Museum would discourage potential donors from making gifts to the British Museum⁹

98. ATSIC considers that Indigenous objects other than human remains should also be included as part of the repatriation process. The current *ATSIC Policy on the Protection and Return of Significant Cultural Property*, under Section 4, applies to:

*...human skeletal remains, other human tissue, burial artefacts, and significant objects of religious and cultural property as is listed under Chapter 1 of **Our Culture Our Future - What is Indigenous cultural and intellectual property**¹⁰. The policy applies also to historic cultural material including documentary, pictorial and otherwise recorded resources important to the contemporary culture of Aboriginal and Torres Strait Islander communities.*

99. Furthermore, funding is provided through ATSIC for research on unprovenanced human remains and cultural material, especially objects of a religious or ceremonial nature in order to identify traditional custodians, and for the purpose of informing Aboriginal and Torres Strait Islander communities and/or custodians of their existence and establishing protocols for the return.
100. While the repatriation of Indigenous human remains is the primary object of the process ATSIC is of the view that because of the intrinsic relationship that exists between the human, material and spiritual elements of Aboriginal and Torres Strait Islander beliefs, that the return of sacred objects should simultaneously be considered by the WGHR.

It is recommended that the WGHR 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

⁹ Para 150. Culture, Media and Sport Committee: *Seventh Report - Cultural Property: Return and Illicit Trade*.

¹⁰ Page 3. *Our Culture: Our Future* – Report on Australian Indigenous Cultural and Intellectual Property Rights.

balance, nurturing group harmony and protecting the collective identity.

7. SUMMARY

101. Certain British collecting institutions have recently indicated their willingness to return remains to Australia on the condition that continued access to the remains is made available for 'further scientific research'. The position of traditional owners / custodians and their representative organisations is that the repatriation of Indigenous human remains to the rightful traditional custodians should be **unconditional** and that traditional owners / custodians have the final say in the disposal of the remains.
102. The remains of thousands of Aboriginal and Torres Strait Islander individuals are presently kept in collecting institutions and private collections outside Australia. It is ATSIC's view that their remains need to be brought 'back to country' (i.e. back to their ancestral lands) so that their souls can be put to rest. Once the 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.
103. Repatriating Indigenous human remains from overseas collecting institutions is of paramount importance to the traditional owners / custodians who are seeking a sense of closure to a period of history characterised by dispossession and violation of their basic human rights. The collection of Indigenous human remains is a poignant reminder of instances of the general harsh treatment of Indigenous Australians throughout the colony. The return of these remains to their traditional custodians is extremely important to Indigenous peoples, as a means of addressing past injustices.
104. The repatriation would significantly contribute to the 'healing process' that Aboriginal and Torres Strait Islander persons and communities are currently undergoing as a result of the compounding effects of colonisation, dispossession and disempowerment that they had to endure for the greatest part of the last 213 years. Aboriginal peoples and Torres Strait Islanders are very keen to finalise the repatriation of the individuals who were taken away. In many instances the remains that are returned to Australia are treated with ceremony in accordance with ancient cultural practices, and buried in designated community areas.
105. Collecting institutions, which continue to hold these remains, are exacerbating ongoing problems generated by the desecration and dispossession of Indigenous peoples' land, resources and culture, thereby causing further torment and grief to Indigenous peoples.
106. In the meantime, it is important that the dignity of these deceased people and their descendants be preserved by treating them as humanely and sensitively as possible. Their classification as objects fit for display and as convenient research material must change.
107. The efforts of the WGHR and the co-operation of the British Government and the institutions involved in implementing the principles contained in the Prime Ministerial statement are welcomed by ATSIC and the Indigenous peoples of

Policy for the Protection and Return of Significant Cultural Property

Amended Version (November 2001)

1. ATSIC supports actions by governments which acknowledge the ownership rights and obligations of Aboriginal and Torres Strait Islander communities, individuals and organisations, over significant cultural property held by museums, galleries, universities, and other collecting institutions in Australia and overseas. ATSIC supports actions by governments which uphold the role of communities, individuals and organisations in the protection of their cultural property. ATSIC supports empowerment of traditional custodians of cultural property to make decisions about the protection and return of cultural property to their custody.

1. ATSIC supports recognition that the primary say on the protection, safekeeping and return of cultural property in collections lies with individuals whose custodianship, ownership rights and obligations have been affirmed by the relevant community according to Aboriginal and Torres Strait Islander tradition. It is up to Aboriginal and Torres Strait Islander communities as the holders of tradition and culture to determine who holds custodianship, cultural rights, or interests. Where there is dispute as to who holds cultural rights over property the community concerned has responsibility for resolving this matter.

1. Where ownership cannot be satisfactorily determined, ATSIC holds the position that sensitive cultural material should be resumed from collecting institutions to Australia for temporary safekeeping rather than leave it overseas indefinitely.

2. This policy applies to human skeletal remains, other human tissue, burial artefacts, and significant objects of religious and cultural property as is listed under

¹ "Indigenous Cultural and Intellectual Property Rights" refers to Indigenous Australians' rights to their heritage. Such rights are also known as "Indigenous Heritage Rights".

Heritage consists of the intangible and tangible aspects of the whole body of cultural practices, resources and knowledge systems developed, nurtured and refined by Indigenous people and passed on by them as part of expressing their cultural property

Heritage includes:

- Literary, performing and artistic works (including music, dance, song, ceremonies, symbols and designs, narratives and poetry)
- Languages
- Scientific, agricultural, technical and ecological knowledge (including cultigens, medicines and sustainable use of flora and fauna)
- Spiritual knowledge
- All items of moveable cultural property including burial artefacts
- Indigenous ancestral remains
- Indigenous human genetic material (including DNA and tissues)

Chapter 1 of *Our Culture Our Future*¹ - *What is Indigenous cultural and intellectual property*. The policy applies also to historic cultural material including documentary, pictorial and otherwise recorded resources important to the contemporary culture of Aboriginal and Torres Strait Islander communities.

1. ATSIC supports open access by Aboriginal and Torres Strait Islander people to historic cultural material which is not of a sensitive or restricted nature, and the provision by institutions of copies of such material. ATSIC supports also access to collections to enable Aboriginals and Torres Strait Islanders to make decisions on their display, protection and return. ATSIC believes that in the case of sensitive documentary material or cultural property retained in institutions, traditional custodians must be enabled to negotiate the terms of access to that material.
1. ATSIC will support the extension of work of museums, 'The Body'² and other State/Territory agencies intended to assist the protection and preservation of significant cultural property held by communities.
2. No research on human remains should be carried out without prior approval of the Aboriginal or Torres Strait Islander custodians. Where the research proposed relates to unprovenanced remains 'The Body', applying agreed criteria, will make the decision whether the research can be undertaken, if so, the form the research takes.
1. ATSIC will support research on unprovenanced cultural material, especially skeletal remains and objects of a religious or ceremonial nature in order to identify traditional custodians, and for the purpose of informing Aboriginal and Torres Strait Islander communities and/or custodians of its existence. In order to facilitate provenancing of remains ATSIC shall enter into consultations over an accessible central record of documentation relating to repatriated material.
1. ATSIC recognises that many Aboriginal and Torres Strait Islander people disapprove of the storage of repatriated objects in museums and supports a national Indigenous repository for unprovenanced cultural property.
1. The Commonwealth Government, through ATSIC, has a financial responsibility to assist in identification, notification of custodians, negotiation with collecting institutions, and the return of significant cultural property currently held overseas, and will continue its practice of funding the repatriation of significant cultural property, including skeletal remains from overseas collections.

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- Immovable cultural property (including Indigenous sites of significance, sacred sites and burials)
 - Documentation of Indigenous peoples' heritage in all forms of media (including scientific, ethnographic research reports, papers and books, films and sound recordings)

² 'The Body' refers to a recognised authority who will be responsible for the coordination of repatriating remains from overseas as well as research on unprovenanced material.

1. State and Territory governments must accept primary responsibility for the protection and return of significant cultural material and information held in collecting institutions within their jurisdictions. ATSIC supports the negotiation of Intergovernmental agreements, to ensure that cultural owners of significant cultural material who live in other states or territories are not disadvantaged.

1. Subject to budgeting considerations, ATSIC will fund delegations of two custodians to travel overseas to collect cultural property and accompany it to its area of origin. ATSIC will fund a maximum stay of 10 days in the country of destination. ATSIC will meet the costs of fares, accommodation, subsistence and reasonable expenses. In special circumstances the Chairman of the Board of Commissioners, in consultation with the Portfolio Commissioner with responsibility for Heritage, may authorise the funding of a delegation exceeding two persons to travel overseas to accept custody of cultural property.

