

TASMANIAN ABORIGINAL CENTRE INC.

HEAD OFFICE:

198 ELIZABETH STREET,
P.O. BOX 569F,
HOBART TAS. 7001

Phone: (03) 6234 8311
Fax: (03) 6231 1348

182 CHARLES STREET,
P.O. BOX 531,
LAUNCESTON TAS. 7250

Phone: (03) 6331 6966
Fax: (03) 6331 4258

53 ALEXANDER STREET,
P.O. BOX 536,
BURNIE TAS. 7320

Phone: (03) 6431 3289
Fax: (03) 6431 8363

**Submission to the Department for Culture,
Media and Sport**

Working Group on Human Remains

December 2001

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Tasmanian Aboriginal Centre Inc
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Working Group on Human Remains

Introduction

The Tasmanian Aboriginal Centre Inc. (TAC) is a non-profit community based organisation established in 1973 providing legal, health, educational, cultural and welfare services to Aborigines throughout Tasmania. We are incorporated pursuant to the laws of Tasmania and have received operating grant funding from both the Australian Commonwealth and Tasmanian State governments for over twenty years.

The Tasmanian Aboriginal Centre has campaigned for over 25 years on behalf of Tasmanian Aborigines to have Aboriginal human remains and cultural property returned from museums both within Australia and overseas (see Attachment A). The TAC is recognised by both national and international governments as the appropriate body to which Tasmanian Aboriginal skeletal remains and cultural property are returned for disposition. The Tasmanian Museum and Art Gallery also acknowledges our status as the appropriate body, and has given testimonials on our behalf to international museums. In 1997 we worked closely with the Australian Department of Foreign Affairs and Trade (DFAT) and Australian Embassies abroad to repatriate remains from Stockholm and to arrange meetings with museums throughout the United Kingdom and Europe. We are continuing this cooperative liason with Australian agencies such as DFAT and ATSIC (Aboriginal and Torres Strait Islander Commission) as part of the process of securing returns from Britain directly to Tasmania.

We welcome this opportunity to recommend to the Working Party on Human Remains courses of action to ensure that Aboriginal human remains in British museums are repatriated to their communities in Australia, in line with the joint commitment made by British and Australian Prime Ministers in June 2000.

Our recommendations derive generally from our perspective and experiences and relate specifically to Tasmanian Aboriginal remains. However, our involvement with other Aboriginal groups within Australia shows our views are representative of the concerns and problems faced by other Aboriginal communities and indigenous people worldwide and are relevant to the British government's policies affecting all indigenous human remains.

Recommendations:

We recommend that the British government:

1. adopt a policy for unconditional repatriation of all Aboriginal human remains to Aboriginal people,
2. implement that policy through mandatory legislation that immediately imposes a legal duty on institutions both public and private to give up remains in collections,
3. include in the definition of human remains, other human tissue, burial artefacts and significant religious and cultural objects,
4. return remains directly to the Aboriginal communities where requested,

5. prevent further research on human remains and religious or ceremonial objects, without prior approval from traditional owners.

Implementing the British Prime Minister's intentions

The public statement of the British Prime Minister of the willingness of his government to repatriate Aboriginal human remains to Australia is welcomed and supported. Mr Blair's statement establishes the moral basis for this Working Group's recommendations as to how such repatriation will proceed.

Assuming the Prime Minister's intentions are to be followed, we submit our views on how policy, laws and practices can accommodate the British Government's encouraging position.

We look forward to this Working Group's final report recommending the practical steps that can ensure the spirit of the Prime Minister's statement is implemented.

Part 1 Addressing the Terms of Reference of the Working Group

(a) *'To examine the current legal status of human remains within the collections of publicly funded Museums and Galleries in the United Kingdom'.*

1. Museums in the United Kingdom with Tasmanian Aboriginal human remains:

Our most recent records show that Tasmanian Aboriginal human remains are held in the following Museums within the United Kingdom. There may be more remains than we have identified, and in other museums; museums have been on the whole uncooperative in providing information about their collections until as recently as this year.

- 1.1 British Museum
- 1.2 British Museum (Natural History).
- 1.3 Royal College of Surgeons, Osteological Museum and Historical Collection
- 1.4 Oxford University:
 - 1.4.1 Oxford University, Museum of Natural History
 - 1.4.2 Oxford University, Institute of Biological Anthropology
 - 1.4.3 Oxford University, Department of Human Anatomy & Genetics
- 1.5 Cambridge University, Department of Biological Anthropology, Duckworth Collection
- 1.6 National Museums of Scotland, Edinburgh.

Museums which may have Tasmanian Aboriginal remains are:

- 1.7 University College, London University
- 1.8 Royal College of Surgeons, Dublin

2. There is not one single human remain of a Tasmanian Aboriginal in any of the collections throughout the United Kingdom that was taken from Aboriginal people with the consent of Aboriginal people. In fact, most remains were gathered by grave robbing or through the outright slaughter of our people in the illicit trade of the period. The collections of remains of our people held in the UK are tainted with illegality and the worst forms of abuse of the right to life. For examples of how body parts came to leave the possession of Aboriginal people see our Attachment B.

3. The spirits of our dead await the return to the traditional areas of the body parts, so the traditional ceremony that takes body and spirit back to the land can take place. Until then the spirit remains in a stage of torment, lost from the human individual of which it was always a part.

4. From a legal perspective we respectfully endorse the excellent summary of the lack of property rights in the dead as outlined by the Chair of the Working Group, Professor Norman Palmer.¹ There being no property in the Aboriginal dead, institutions in the UK could not validly acquire a property right in the remains. This is unaffected by the manner in which the remains were received by the institution.

¹ Rights in Human Material Under English Law. in *World Archaeological Bulletin*. Vol 6. 1992:76-8.

5. The collections of remains held by institutions are not held as property - the institutions merely hold them in their possession. Once in the possession of institutions governed by statute, those statutes often curtail or prevent the giving up of possession.

6. Statutes such as the British Museum Act 1963, under which the British Museum exists, enable institutions to administer its possession of human remains. Where provisions of statutes do not allow for the institution to part with its collection, or severely limits its ability to do so, legislative amendment can direct the institutions to give up possession of its collection. To the extent legislative change required statute based institutions to part with Aboriginal remains, the amendment would only address the compulsory surrender of a right to administer a collection. There has been no acquisition of a private property interest. This position would be the same with a private institution not set up by statute.

(b) *'to examine the powers of museums and galleries governed by statute to de-accession, or otherwise release from their possession, human remains within their collections and to consider the desirability and possible form of legislative changes in this area.'*

7. There appears to be two express parts to this Term of Reference. The first is whether existing legislation imposes restrictions on institutions from whom remains are to be removed and the second the form of the legislative amendments needed to bring about the result. There may be a third issue implied in the reference - should legislative change properly be restricted to public bodies only when the subject matter of Aboriginal remains are also held at private institutions.

(i) Existing legislation

8. We have already pointed out that current statutes merely enable public museums to operate and, of most relevance to us, restricts their ability to return Aboriginal remains to Aboriginal people. Or at least that is often the argument relied on by some institutions.

9. In the case of private bodies they presumably are limited only by the terms of the grant of collections or their own decisions.

(ii) The form of legislation - permissive or mandatory

10. In the case of publicly funded bodies, amendments altering any restrictions on their lawful ability to surrender their collections to Aboriginal people is necessary. It would not be satisfactory to simply enable these institutions to decide one way or the other to give up their collections. The legislation must guarantee the mischief it is meant to address is in fact dealt with. Enabling museums to decide the ultimate fate of Aboriginal remains guarantees nothing.

11. By the account of many institutions there is doubt about the ability of these institutions to deaccession Aboriginal human remains to enable repatriation. On that basis it seems common ground that legislation must be introduced to deal with the issues.

12. That permissive legislation is not enough to ensure that museums will return contested material was clearly pointed out in a statement by the Department of National Heritage of the then Conservative Government of Britain in September 1996, with reference to the Parthenon marbles (cited on Parthenon Marbles web page 22/08/00 : "The Marbles belong to Britain - Conservative Party):

13. *'The British Museum is a body corporate established by statute. In law it is wholly independent of the Government. The powers of the British Museum are limited to those given in their creating statute. That statute severely limits the circumstances in which the British Museum may dispose of any object in the collection and it is quite clear that it would be illegal for the Museum to dispose of the Sculptures under the law as it is at the moment.*

It follows that primary legislation would be necessary merely to permit the Museum to return the Sculptures to Greece. In purely legal terms such permissive legislation would be possible. Fundamental problems would, however, arise if, notwithstanding such permissive legislation, the Museum were not prepared to return the Sculptures. It is clear beyond doubt that the British Museum is the lawful owner of the Sculptures....the Museum is wholly independent of Government and any attempt at compulsion would need to be founded on

further primary legislation. To be effective, such legislation would need to empower the Government to deprive the British Museum of its lawful possessions. Such confiscatory legislation would be contrary to Article 1 of the First Protocol to the European Convention on Human Rights unless the confiscation was in the public interest and unless compensation was paid. The jurisprudence of the European Court of Human Rights suggests that such compensation must bear some relation to the market value of the possessions which are confiscated.'

14. Our experience with each of those museums in the United Kingdom which hold Tasmanian Aboriginal remains is outlined in paragraphs 34 to 94. These experiences have led us to conclude that we have no confidence that any legislation which gives a discretion would result in the repatriation of Aboriginal remains from the major museums to their community of origin.

15. We believe that some major museums will argue that any legislation allowing deaccessioning of remains is '*not desirable*' (as per the Terms of Reference). If permissive legislation is nonetheless enacted, those museums will still refuse to deaccession remains, offering instead 'collaborative arrangements' whereby the community has some involvement, necessarily at a distance, in management of the material.

16. Other museums will agree to repatriate Aboriginal remains, as long as the conditions they set for the fate of the remains on return - their disposal, storage, guaranteed continued access by scientists - are first met. We understand that the Royal College of Surgeons is among a small number of museums currently making such a proposal. If these conditions are not met, permissive legislation will enable these museums also to refuse repatriation, while offering 'partnership arrangements' to Aborigines, the effect of which does not achieve the desired result.

17. Conditional returns, or collaborative arrangements which leave museums retaining remains are unacceptable to Aborigines.

18. These options do not embody the spirit of Prime Minister Blair's commitment to restore human remains to Australian Aborigines.

19. Such institutional control is at odds with the unanimous agreement of the Museums and Galleries Commission in 1991 which stated that, '*with regard to human remains, "restitution to a place or people of origin should be recognised as an acceptable method of disposal. In such cases the normal regulations governing the disposition of deaccessioned material should be waived."*' [Letter to Moira Simpson from Peter Longman, Director of the Museums and Galleries Commission; London. 7/1/1994. Cited in Simpson: 1997:53-4]

20. Offers of conditional returns completely misses the point of what repatriation of remains are all about. It is about the unconditional return of Aboriginal remains to Aboriginal people who will dispose of them as they see fit within the appropriate communities. No longer is indigenous culture the playground of scientists. This change is reflected in Australian law in the Aboriginal and Torres Strait Islanders Heritage Protection Act 1984. There must surely be no need to argue that indigenous people have different mores with relation to their dead. It is a basic human right to have one's dead treated with respect and to have the freedom to dispose of one's own dead according to one's own tradition and practices.

21. Despite all the gloss put on conditional handovers and collaborative arrangements by museums, the bargaining power in these situations remains firmly with the museums. The

onus is on the requesting community to accept the conditions imposed by the museum. In all cases the museum's control deprives Aboriginal people of their spiritual and cultural rights.

22. Indigenous groups are well aware that such dialogue where the terms for the discussion have been set by the dominant party usually fails to produce a positive result for indigenous claimant groups. In our experience it has not always been possible to engage in any dialogue, since many museums have answered our letters with extreme terseness or not at all. In the United States, the Native American Grave Protection and Repatriation Act 1990 (NAGPRA) overcomes these problems by providing enforceable, rather than voluntary legislation. NAGPRA requires museums be responsive to repatriation requests from Indian groups for narrowly defined categories of cultural items, including remains, and '*expeditiously return*' these materials to the appropriate claimant. (Moira Simpson 1977:64-66;76-77)

(iii) The legislation needs to be broader than one dealing only with public bodies

23. A general law acquiring the collections on behalf of the crown for the express purpose of repatriation to Aborigines is preferred. Private bodies have no greater or more legitimate claim to the property of Aboriginal remains than do public bodies.

24. Although the terms of reference only relate to publicly funded institutions the same issues also apply to private bodies. While the terms of reference restricts the Working Group's ability to recommend how private bodies should deal with Aboriginal remains it does not prevent comment. Requiring the handing over of Aboriginal remains from one category of museums while saying nothing about another is to fail to address the underlying basis for the Working Groups' activity, namely putting an end to an abhorrent saga. Why should scientists at one museum be forced to answer to the reasonable demands of contemporary public values but not scientists elsewhere?

(iv) Should mandatory acquisition of remains and associated items be subject to compensation

25. There can be no property right in human remains. The collections of remains held by institutions are not held as property - the institutions merely hold them in their possession. Once in the possession of institutions, statutes often curtail or prevent the giving up of possession.

26. Statutes such as the British Museum Act 1963 (UK), under which the British Museum exists, enable institutions to administer its possession of human remains. Where provisions of statutes do not allow for the institution to part with its collection, or severely limits its ability to do so, legislative amendment can direct the institutions to give up possession of its collection. As the institution had only an administrative function but not a property interest, there is nothing to compensate. There would only be compulsory surrender of a right to administer a collection. There has been no acquisition of a private property interest. This position would be the same with a private institution set up under a trust or otherwise.

27. It is near impossible to see claims for financial loss being made anyway. The interest in the remains held by the institutions are scientific, not financial. The Natural History Museum has 68 million objects in its collection (Dr Chalmers evidence to Culture, Media and Sport Committee Cultural Property Enquiry.108:352). The loss of such a comparatively small amount of Aboriginal remains is not likely to adversely affect the Museum's overall collections standing.

28. Argument that the value of the Aboriginal remains is quantified by their importance to science has to be matched against the public interest in preservation of Aboriginal people's human rights to practice their spiritual and cultural beliefs. Further, there are remains of Aboriginal people still being uncovered in situ by environmental factors almost annually so that the giving up of the collections does not permanently deprive the world of Aboriginal remains.

29. The power of Trustees to sell is prohibited so no financial value can be added to any collection where any rights to it are not disposable on the open market. Given the public is paying the costs of administration of the collections, no basis exists for claims for the loss of that right.

30. There may be arguments about the validity of laws having the nature of compulsory acquisition but not providing for compensation. Even where such compensatory provisions were to be included in necessary legislation, on whose behalf would the institution claim compensation, assuming it could validly do so? The British Museum, for instance, is funded from the public purse. Of the twenty five Trustees only five are appointed by the Trustees themselves. The Queen appoints one, the Prime Minister fifteen and four are appointed by the Secretary of State.

31. The public interest is served in forcing the hand of 'unsympathetic' institutions to give back the dead to Aborigines and, as best can be done, helps repair relationships between Aborigines and scientists operating in this field. The enhancing of good relations between the governments of Britain and Australia justifies the mandatory approach to legislating.

1.3 *'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.'*

32. Any legislative change to allow the repatriation of Aboriginal human remains should cover not only body parts but also other human tissue, burial artefacts and significant religious and cultural objects.

Part 2

Museums in the UK holding Tasmanian Aboriginal remains - their human remains repatriation policies and responses to TAC repatriation requests

33. Our experience with each of those museums in the United Kingdom which hold Tasmanian Aboriginal remains is outlined below. These experiences have led us to conclude that we have no confidence that any legislation which gives a discretion would result in the repatriation of Aboriginal remains from the major museums to their community of origin.

Throughout Part 2, all emphases by underlining are ours.

1. The British Museum

34. The British Museum has 2 bags made of animal skin which contain cremation ash. These are believed to be the only two such bags to still exist. The museum's catalogue names George Augustus Robinson as their collector and also gives the name of the Aboriginal owner of one bag. Robinson's Tasmanian journals document the Aboriginal practice of making and wearing such bags containing cremation ashes of close family. His journals also recount the last days and death of the named owner, during which time he asked her to give him a human bone which she wore as well as the skin bag as a talisman against her pain.

35. The Museum operates under the British Museum Act 1963.

36. Director Robert Anderson's letter to us of 28 July 1994 reiterated what Dr Ball, Keeper of Palaeontology, had told our delegate in 1985:

'As you will know from your representatives' earlier visit to this Museum, our collections are held under Act of Parliament which does not permit us to deaccession them: nor would we want to do so, since we are an international museum and resource devoted to preserving mankind's cultural heritage....we treat [human remains] which especially great care, do not display them where we know this would be inappropriate, and make them available only to accredited scholars.'

37. Administrator Geoffrey House, Curator Mike O'Halloran and Public Relations Officer Andrew Hamilton told our visiting delegation in 1997 that the Museum would not repatriate, and was bound by the British Museum Act 1963 adding that the British Museum did not want to set a precedent for repatriations.[5 November 1997.L Lowery, J James & C Spotswood: Report of Tasmanian Aboriginal Centre Repatriation Delegation to UK & Europe. Nov 1997.TAC]

38. In response to our latest letter of request for these remains (August 2001), referring to the Prime Ministers commitment to return remains and the setting up of the Working Group, Director Robert Anderson wrote: *'The objectives for the group include, as you mention: "to consider the desirability and possible form of legislative changes in this area". The British Museum is presently not at liberty to return the human remains in our collection....We would be pleased to consider scope for collaborating with the Tasmanian Aboriginal Centre in ways that are open to us in the future.'* (1 November 2001)

2. British Museum, Natural History

40. The Natural History Museum of the British Museum, London holds 1 skeleton; at least 9 skulls; a fragment of another skull; 'imperfect mandibles' (lower jaw bones) and 7 teeth.

41. The Museum operates under the British Museum Act 1963.

42. In summary, the pivotal concern for this museum in considering any repatriations or disposal is not ultimately the legal constraints, since there are opportunities within the existing Act for repatriations to be made if the conditions set by the Museum are met. A crucial consideration in assessing claims for return is the perceived scientific value of the material. Tasmanian Aboriginal remains are perceived to be of great scientific value. They will only be returned if they are conserved according to the museums directions and still available to scientists.

43. The only repatriation option the Museum will entertain is the transfer of remains from a British Museum to a corresponding institution in Australia. The primary obligation as expressed by the Museum is to the international scientific community, not to the Aboriginal community from which the remains have come.

44. The Museum's Policy on disposal is explained in the Museum's memorandum to the House of Commons Enquiry into Cultural Property 2000.

The Museums policy has two strands:

'There are specific legal constraints on disposal of objects from the collection, coupled with a strong presumption by the Museum against disposal. [Natural History Museum memorandum 296:15]

1. 'specific legal constraints

45. The British Museums Act prevents any de-accessioning of objects, except under some conditions:

'The Museum's position on disposal of objects in the collection is defined by the terms of the British Museum Act 1963, paragraph 5, which gives precise and limited conditions under which disposal is permitted. The Act states:

5.- (1) The Trustees of British Museum may sell, exchange, give away or otherwise dispose of any object vested in them and comprised in their collections if:

- (a) the object is a duplicate of another such object, or*
- (b) the object appears to the Trustees to have been made not earlier than the year 1850, and substantially consists of printed matter of which a copy made by photography or a process akin to photography is held by Trustees, or*
- (c) in the opinion of the Trustees the object is unfit to be retained in the collection of the Museum and can be disposed of without detriment to the interests of students:*
- (d) Provided that where an object has become vested in the Trustees by virtue of a gift or bequest the powers conferred by this subsection shall not be exercisable as respects that object in a manner inconsistent with any condition attached to the gift or bequest.*

(2) The Trustees may destroy or otherwise dispose of any object vested in them and comprised in their collection if satisfied that it has become useless for the purposes of the Museum by reason of damage, physical deterioration, or infestation by destructive organism.[296:16]

46. We have argued in our submission to the House of Commons Cultural Property Enquiry and elsewhere that sub-section (a) could allow duplicate objects to replace originally artefacts, if the Trustees so wished. [Tasmanian Aboriginal Centre memorandum 369: 43-45]

47. We there also argued that subsection (c) could allow the Trustees to deem human remains to be materials *'unfit to be retained'* on moral and ethical grounds. [Tasmanian Aboriginal Centre memorandum 369: 38-42; & cf Greenfield: 1989:113-5] Pitt Rivers Museum showed the way in such a shift of attitude when they returned skeletal material to Aborigines in 1991 because it was not *'properly held by this museum'*. [The Pitt Rivers Museum *A Souvenir Guide to the Collections*. 1993. p28]

48. But subsection (c) adds the further prescription that *'unfit'* objects *'can only be disposed of without detriment to the interests of students.'*

2. 'a strong presumption against disposal'

49. The Museum's policy on disposal also allows objects to be gifted or transferred to other suitable institutions:

'...Section 6 of the Museums and Galleries Act 1992 permits the Trustees to dispose of an object, by way of sale, gift or exchange, to the other national institutions listed in Schedule 5 to the Act (see Appendix 10) "[of Curatorial Policies and Collections Management Procedures 1998]" However, there is a strong presumption against disposal of specimens, other than by transfer as gift or in exchange to another suitable institution (that is, not restricted to those listed in the 1992 Act), or by destructive investigation for research purposes.' (Curatorial Policies and Collection Management Procedures 1998 paragraph 5.4.1)

'The Museum will assess all material considered for disposal in terms of its scientific, historical and cultural importance, the needs of both present and future users; and legal and ethical issues as they relate to that material.' Curatorial Policies and Collection Management Procedures 1998 paragraph 5.4.4) [Natural History Museum memorandum 296:17]

50. The Museum replied to the TAC in August 1986:

'In considering your previous request for the Aboriginal remains to be transferred permanently to Tasmania, the Board of Trustees made it clear that it is right and proper, from its point of view, for the human skeletons to remain in this Museum. It follows that the Board would not approve a 'permanent loan' or any other form of transfer. The Board expressed no wish to put your request to Parliament for consideration, or to suggest to Parliament changes to its present responsibilities and duties in the British Museum Act, 1963 which would permit a release of the skeletons without legal hindrance.' (R Saunders, Secretary)

51. Yet they are entitled to destroy the remains in the name of research - *'by destructive investigation for research purposes'* (see paragraph 49).

Scientific, historical and cultural importance of the remains:

52. In March 1990 Tasmanian Aboriginal delegate Mr Michael Mansell spoke with John Peate, the then Acting Director, and Chris Stringer, Department of Palaeontology. Repatriation was again refused. At this time Mr Mansell was given a document, titled 'The Natural History Museum, London. Policy on Aboriginal Collections', which states:

' 2. The Museum is at present constrained by the The British Museum Act of 1963, which prevents it from disposing of items in its collections. However, it supports moves to change this legislation to widen its powers of disposal.'

3. *If the Museum were to have such wider powers, it would consider sympathetically claims to repatriate human items from its collection, in cases where they possessed no scientific value.*

4. *The Museum emphasizes that most, but not all, of the human items currently in its collection, are of great scientific value.*

53. On a previous visit to the Museum in September 1985, TAC delegate Mr Mansell met with Dr Ball, The Keeper of Palaeontology. Dr Ball gave Mr Mansell a document entitled 'Tasmanian Aboriginals' which described Tasmanian remains in the collection, and stated:

All of the specimens were legally and properly acquired, and as the property of the Museum are vested in the Museum's Trustees, who are not empowered under the British Museum Act of 1963 to dispose of them. Moreover, the race of pure-blooded Tasmanian aboriginals is now extinct, and so this small amount of skeletal material is an important reference source for physical anthropologists throughout the world. Thus the Museum sees it as its duty to secure and conserve them, and to make them available to visiting scientists.

54. In August 1994, the Museum replied to TAC's letter of July 1994:

I regret to inform you that by the terms of the British Museum Act under which we operate, we are not able to pass on or otherwise dispose of material from our collections, and thus we are not able to accede to your request. (Dr L Cocks, Keeper of Palaeontology)

55. In December 1997 Dr Cocks again refused repatriation with reference to the Museum Act in a meeting with Alex Comfort of the Australian High Commission on behalf of our delegates who had visited London a few weeks earlier but had been unable to secure a meeting with the Natural History Museum. Cocks said some research had been done on the remains.

[L Lowery, J James & C Spotswood: Report of Tasmanian Aboriginal Centre Repatriation Delegation to UK & Europe. TAC. Nov 1997]

The Natural History Museum can and will repatriate, if its conditions are met:

56. That the Museum is able to repatriate if it so wishes is clearly demonstrated by the Museum's press announcement in May 2000, that *'The British Museum of Natural History announced yesterday it might return some Aboriginal human remains if they were properly conserved and accessible to scientists.*' [The Advocate newspaper, 20 May 2000]

57. However such repatriation is conditional upon guaranteed continued access to the remains. The press announcement continued: *"We would want to make sure that they would remain available as an international scientific resource, and be properly conserved and looked after, and be accessible to scientists"* said [Museum Director Neil Chalmers]. *"We feel we have an obligation to the international scientific community to retain the ability to study them and that is very important to us"*. [The Advocate newspaper, 20 May 2000]

58. The Museum's perspective on its collection of human remains and the function of that collection is outlined in its Memorandum to the House of Commons Enquiry into Cultural Property March 2000:

'...research on human remains. ...enables investigation of human origins and evolution, and explains variations in form over time and by geographical area... Human skeletal material is essential evidence if we are to gain fuller understanding of particular

societies at certain times in our past. At one end of the time scale, the research is related to palaeontological research on our hominid ancestors: at the other, research is complementary to forensic anthropology and medical osteology. [Natural History Museum memorandum 298:25,26]

'The Museum is firmly convinced that there is continuing scientific value in such a collection, and that it should continue to be the focus of active research. However, the Museum also recognizes that the discourse on human remains in museums is framed more widely than scientific research, in terms of cultural property. The Museum agrees that there is a need to work with institutions and organisations in those countries where there is community demand for the return of human remains from collections, and demands for a role for indigenous peoples in determining the use of remains in museums. The aim of such collaboration is to provide better information on what the Museum does, to learn from the experience of others in this context, and to develop mutually acceptable solutions in areas where there are conflicting views. [Natural History Museum memorandum 298:29]

'Paragraphs 15-17 above discuss the barriers to return: the Museum is however willing to discuss alternatives to return with appropriate institutions and organisations. In particular we are willing to discuss: the development of information resources; systems of care for remains in the museum; and access for non-scientists to the remains. We are also willing to discuss other issues as they may be raised by others.' [Natural History Museum memorandum 298:32]

59. The Museum's response 28 August 2001 to our most recent repatriation request again cites the British Museum Act *'which only allows material to be removed from the Museum's collections in very specific circumstances, which do not apply in the case of these remains.*

However, one issue that is being addressed by the Working Group is, as you note, the introduction of enabling legislation over human remains. A change of law could allow the Museum to consider requests for return to countries of origin and we would be willing to discuss the matter with you should such a change take place. (Paul Henderson)

3. **Royal College of Surgeons, Odontological Museum** has three skulls (A54.2; A54.22; Paget's 2085); and the **Historical Collection** has seven bones and mandibles and a slide of hair and skin of Truganini.

60. Published records show that Tasmanian Aboriginal remains originally held by the Royal College of Surgeons in its various collections comprised at least: three skeletons; thirty six skulls; one, possibly two, preserved heads; seven teeth; seven mandibles; and various individual bones.

61. The College operates as a private museum.

62. From 1986 onwards we have received differing and even conflicting information from College staff about Tasmanian remains in their collections.

63. *'The College did have some Tasmanian Aboriginal remains but it was all destroyed in 1941 when the College was bombed... the osteological remains were so badly burnt ...they could not be identified...*

'I can assure you that, had the skeletal remains been in the College your request would have received the most careful consideration.' (Letter to TAC from E. Allen. Qvist)

Curator. Royal College of Surgeons Hunterian Museum, 27 May 1986.

64. In March 1990 Professor Craig Duncan and Elizabeth Allen advised our visiting delegates that the Odontological Museum had about 50 Aboriginal skulls, and no remains on loan elsewhere. The College's power of disposal is limited by terms of trust eg *'for purpose of scientific study'*. [TAC File note. M Mansell. 16 March 1990]

65. The Odontological Museum's letter of reply to us of 19 July 1994 confirmed they held 2 skulls from Tasmania, adding that *'The skull is certainly not of a Tasmanian and the cranium is of unknown provenance.'*

66. The Museum informed us in the same letter of their newly developed policy, under which our repatriation request was refused.

'The following policy regarding the release of human material has recently been agreed by the governing body (that is the Council) of the Royal College of Surgeons: So far as human material derived from named individuals is concerned, the Museums will consider requests for its return received from close relatives sympathetically, provided that (i) they can furnish legal evidence of the relationship, (ii) the wishes of the named individual are not contravened and (iii) provided that return does not involve contravention of any relevant British or international regulation. Any decision to return such material can be taken only after due consideration by the Council of the Royal College of Surgeons of England.

As you can see none of our extant Tasmanian remains fall into this category so I am afraid that we cannot agree to your request.' [Caroline Grigson, Assistant Conservator]

67. At a meeting with our delegates in 1997, College representatives Stella Mason, Keeper of the Collections, Jan Pickering and Craig Duncan acknowledged the same two skulls were of Tasmanian Aborigines and invaluable to scientific research on traditional diet before white contact. Our delegates were shown one of the skulls, the jaw of which had been cut into as part of dental research and told it was over 1000 years old. [L Lowery, J James & C Spotswood: Report of Tasmanian Aboriginal Centre Repatriation Delegation to UK & Europe. TAC. Nov 1997]

68. Royal College of Surgeons, Heritage Department wrote to TAC in July 1998) that *'Members [of the Heritage Committee] were impressed by the arguments put forward in your paper and were sympathetic to the concerns of the T.A.C. They felt that current College policy was still sufficient to cover all the human material in the collections. However they agreed that the matter should be regularly reviewed.'*

The letter repeated the same policy as Grigson's letter of 1994

69. In July 2001 we received advice from the Australian Department of Foreign Affairs and Trade that the Royal College of Surgeons and some other private institutions are willing to proceed with repatriation. *'They will wish to know whether the delegation will be in a position to negotiate specific terms for such issues as fate of remains on return (eg for disposal, collection, scientific access etc)'* [Australian High Commission fax 2 August 2001] ??

70. From this document we learned for the first time that the College's Historical Collection holds seven Tasmanian Aboriginal bones 'decorated for ritual use', and a slide with skin and hair of Truganini.

71. The College's faxed letter of October 2001 expressed great willingness to cooperate fully with our two requests in our letter of September 2001 for an inventory of any possible

Tasmanian remains and for any further information about two missing skulls. There was no reference at all in the letter to our two other requests for the remains to be repatriated, and for forensic data on three skulls which we could have analysed by physical anthropologists in Australia to resolve uncertainty about the skulls' provenance. (Simon Chaplin, Senior Curator)

4. Oxford University

72. Oxford University advised TAC's delegate in 1985 in a phone conversation that any Tasmanian Aboriginal human remains they may have once had had been transferred to the British Museum [TAC File note 10 Sept 1985. M Mansell]. The TAC wrote to the University in 1985 and 1986, seeking to confirm this.

73. In 1994 we wrote twice to the Departments of Human and Comparative Anatomy requesting the repatriation of 4 Tasmanian Aboriginal skulls which research indicated were held in the Department's collections, and information about any Tasmanian remains in the collections.

74. We received no reply to any of our letters to the University.

75. Information from researchers in recent years has confirmed that the 4 Tasmanian skulls are currently held in both the Oxford University Museum of Natural History (1 skull) and the Oxford University Institute of Biological Anthropology (3 skulls).

76. We have no information on the Oxford University's policy on deaccessioning human remains from its museums and institutes. However we note that Oxford University Council endorsed the recommendation by the Pitt Rivers Museum Committee that Aboriginal human remains in Pitt Rivers Museum be repatriated to Australia in 1991. [House of Commons Enquiry into Cultural Property. Pitt Rivers Museum memorandum. 353:9]

4.1 Oxford University Museum of Natural History

1 skull

77. In 1997, through the intervention of the Australian High Commission who arranged the meeting, our delegates were able to meet with Dr Tom Kemp and Dr Chris Norris at the Museum of Natural History. They were shown a skull and given a report titled 'Report on OUM 17713: Skull of Tasmanian Aborigine' which compiles documentation for the skull provenancing it to Tasmania. [L Lowery, J James & C Spotswood: Report of Tasmanian Aboriginal Centre Repatriation Delegation to UK & Europe. TAC. Nov 1997]

A repatriation claim for this skull is being prepared.

4.2 Oxford University Institute of Biological Anthropology

3 skulls

78. We have learnt that a researcher had sighted and identified 3 Tasmanian skulls in the Biochemistry Lab of the Institute in June 1993. A student from an outside university was coming to take measurements of their temporal lobes. These were 3 of the skulls formerly in the Department of Human Anatomy.

A repatriation claim for these skulls is being prepared.

4.3 Oxford University Department of Human Anatomy & Genetics - possibly 1 skull

79. Pitt Rivers Museum returned remains to Australian Aborigines in 1991 and have since repeatedly told us there are no Aboriginal remains in the museum. However in 1997 Chris Goodsen, then Acting Director of Pitt Rivers, told our delegates that skull AUS 80 1021, said to have been collected by Captain James Cook, is still on loan from the Oxford University Department of Human Anatomy to Pitt Rivers Museum. Goodsen said it is still not known whether this skull is that of a Tasmanian or a Maori and that requests should be directed to the Department of Human Anatomy. [L Lowery, J James & C Spotswood: Report of Tasmanian Aboriginal Centre Repatriation Delegation to UK & Europe. TAC. Nov 1997]

80. In October 2001 we wrote to the Department of Anatomy asking for all data from any research on the skull which we can have analysed by physical anthropologists in Australia to resolve uncertainty about the skulls' provenance. To date we have had no response to this letter either.

5. Cambridge University Department of Biological Anthropology, Duckworth Collection

4 skulls

81. The University operates under the Cambridge University Trust.

82. In 1990, Dr Jim Garlich, the retiring head of Biological Anthropology met with TAC delegates. Garlich advised that the Australian Aboriginal remains numbered '*about 100 individuals*' (including Tasmanian remains) and that the Department's policy is 'that the collection will not be retained where it can be shown that the remains were "*illegitimately or illegally*" obtained. [The Department] would support efforts of "*close kin*" seeking to recover remains of known, named individuals.' [M Mansell: Human Remains Trip journal May/June 1990 TAC.7&8 June 1990]

83. Dr Garlich acknowledged that little research had been done on the Aboriginal collection recently. [M Mansell: Human Remains Trip journal May/June 1990 TAC. 7 & 8 June 1990]

84. '*...the Duckworth Collection [is] an international resource.... kept solely as a resource for scientific research. The Duckworth Laboratory is not part of a Museum...The material is available to bona fide research workers to carry out osteological-based research into human and non-human primate evolution and variation.*' [R A Foley: The Duckworth Osteological Collection at The University of Cambridge, in *World Archaeological Bulletin* 1992 No 6:54,56]

85. In response to the TAC's letter of request (11 July 1994) the University's Department of Anatomy (Professor Lund, 19 July 1994) advised that all anthropological remains in the department had been transferred to the Department of Biological Anthropology, and referred us to Dr RA Foley, Director of the Duckworth Collections.

86. TAC wrote to Dr Foley in October 1994 to request Tasmanian Aboriginal remains and full details of all Tasmanian Aboriginal material in their collection. We have not had yet any response.

87. In 1999 the Foundation for Aboriginal and Islander Research Action (FAIRA), an Australian Aboriginal organisation researching Aboriginal material in British institutions on behalf of Aboriginal communities, reported that the head of the Cambridge Biological Anthropology department had refused FAIRA's researchers access to the Department's records. (Lyndon Ormond-Parker, fax, 11 March 1999)

6. **National Museums of Scotland, Edinburgh** 1 skull

88. The Museum operates under the National Heritage (Scotland) Act 1985.

89. Dr Mark Shaw, Keeper of Natural History, told TAC's delegate visiting the Museum in 1990 that seven Aboriginal skulls including one from Tasmania were kept in the Natural History section of the Museum with the birds and mammals. Shaw told our delegate that the Tasmanian material was an 'irreplaceable' part of the collection because Tasmanian Aborigines are 'extinct'. He was not able to give an example of the value to the museum of having the remains. [M Mansell: Human Remains Trip journal May/June 1990 TAC.14 June 1990]

90. In response to our letters of request of July and August 1994, the Museum replied:

'The Act of Parliament under which we operate does not permit the National Museums to deaccession material of cultural or scientific importance; nor would we wish to do so since this museum is an international resource preserving material from every part of the globe.'
The Museum undertook to not display the skull and to make it available 'only to accredited scholars. (9 December 1994. Mark Jones, Director)

91. In reply we objected to any use of the remains of our ancestors for research; 'this practice is very offensive to us', and asked what considerations had influenced their refusal.

National Museums replied:

'We believe that information derived from material of this kind may be of real importance to humanity in the future and that this is one of the reasons why it should be preserved.' (10 February 1995. Mark Jones, Director)

Museums possibly holding Tasmanian Aboriginal remains:

7. **University College, London University**

92. We have yet to contact the **University College, London** about the possibility of them still having a sample of mummified scalp which was taken in the early 1960s from a head preserved in whiskey in a bottle in the Dublin University collections. Our delegates repatriated the head to Tasmania in 1991.

8. **Royal College of Surgeons, Dublin**

93. We intend also to confirm with **Royal College of Surgeons, Dublin** whether there are Tasmanian remains still in their collections of Aboriginal remains.

94. We thank you for the opportunity today to present our submission. We would welcome the opportunity to put our case to you in person if that would be helpful.

Michael Mansell
Legal Manager

7 December 2001

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