



Department of Communications and the Arts Submission to the Consultation Process (Stage One) on the Review of Western Australian *Aboriginal Heritage Act 1972*

Introduction

The Australian Government recognises the value and importance of preserving, revitalizing and strengthening Indigenous culture and does so by providing funding for, among others, the return (or repatriation) of Indigenous ancestral remains and secret sacred objects.

The Government's support for Indigenous culture underpins Australia's accession to international agreements such as the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions and the United Nation's Declaration on the Rights of Indigenous Peoples.

The Department of Communications and the Arts (the Department) is the lead Australian Government agency for repatriation, with responsibility for:

- implementing the Australian Government Policy on Indigenous Repatriation (the Policy) ([Attachment A](#));
- administering the Indigenous Repatriation Program (the Program); and
- consulting with the all-Indigenous Advisory Committee on Indigenous Repatriation (ACIR).

Indigenous Repatriation Policy

The Policy outlines the Government's policy objectives in relation to repatriation. These include addressing the injustice of Australia's shared past as it relates to the removal of ancestral remains and secret sacred objects, to empower Aboriginal and Torres Strait Islander peoples to meet their cultural obligations and contribute to wider Australian society. Further information can be found at <https://www.arts.gov.au/what-we-do/cultural-heritage/indigenous-repatriation>.

Program Description

The Program includes two streams:

- International – the Department directly facilitates the unconditional return of Aboriginal and Torres Strait Islander ancestral remains held in overseas collections; and
- Domestic – support is provided to eight major Australian museums to facilitate the return of Aboriginal and Torres Strait Islander ancestral remains and secret sacred objects held in their collections.

Response to Questions

Question 1

Q: Is the long title an adequate description of what the amended Act should set out to do? If not, what changes should be made?

A: Yes

Question 2

Q: What do you think are the best ways to ensure that the appropriate people are consulted about what Aboriginal Heritage places should be protected and how a proposal may affect those places?

A: The Act should explicitly require that Aboriginal peoples with appropriate cultural knowledge are at the centre of decision making about their own heritage. Traditional Owners should be consulted to provide advice on whether an object or place has significance noting that the existing list should capture identification of appropriate community contacts for a specific area.

Question 3

Q: To what extent has the provision to appoint honorary wardens been effective and how can it be improved?

A: No comment.

Question 4

Q: Are the roles and functions assigned under the Act sufficiently clear and comprehensive to fulfil the objectives of the legislation to preserve Aboriginal heritage places and objects? If not, what changes in roles and functions would you suggest?

A: The roles and functions are clear, however, the composition of the Aboriginal Cultural Material Committee should include Indigenous representatives who can contribute to the discussion and provide cultural insight into the significance of cultural heritage material or a site.

Question 5

Q: Does Section 5 adequately describe the sorts of places or sites that should be protected under the amended Act? If not, how can it be improved?

A: No comment.

Question 6

Q: Do section 6 and Part VI adequately describe the sorts of objects that should be protected under the amended Act? If not, how can they be improved?

A: No comment.

Question 7

Q: Is the declaration of a Protected Area under the Act the best way to deal with Aboriginal sites of outstanding importance?

A: No comment.

Question 8

Q: Should the Act provide for the management of Aboriginal Ancestral (Skeletal) Remains? If so, what needs to be considered?

A: Yes, to ensure the ongoing protection and safety of the ancestor's remains. There should be clear and defined processes implemented to ensure appropriate care and safety of ancestral remains

accidentally disinterred during development of sites, through erosion, or as a result of vandalism to a burial site.

Consideration should also be given to who will pay for the:

- care (for example, temporary care at the Western Australian Museum or DAA's Ossuary) of disinterred remains or remains transferred from, for example the Coroner's office,
- repatriation of the ancestral remain to community and/or ongoing care of the ancestor (for example, if the community is unable to receive the ancestral remain for reburial),
- reburial site identification, allocation and site preparation, and ongoing protection of burial/reburial sites

Consideration should also be given to providing clarity around roles and responsibilities of different state government entities and how they will work together.

Question 9

Q: What sort of activities that may affect an Aboriginal site should require consent or authorisation?

A: No comment.

Question 10

Q: What should be the criteria against which to evaluate an activity that may affect a site (eg a proposal to use or develop land)?

A: No comment.

Question 11

Q: How can 'impact' arising from proposals for land use on sacred sites that do not have physical cultural heritage elements be assessed?

A: Traditional Owners should be consulted and help develop assessment protocols.

Question 12

Q: Who should provide consent or authorisation for proposals that will affect Aboriginal sites?

A: The Minister or Registrar, subject to a recommendation from the Committee.

Question 13

Q: To what extent is the current section 18 application process effective and how can it be improved?

A: No comment.

Question 14

Q: What provisions could be included in an amended Act to ensure the long-term protection of Aboriginal sites where alternative statutory arrangements do not apply?

A: No comment.

Question 15

Q: Are the enforcement provisions under the Act adequate to protect sites? If not, how can they be improved?

A: No comment.

Question 16

Q: Are the current penalties under the Act adequate? If not, how can they be improved?

A: No comment

Question 17

Q: Should a defence continue to be provided where the disclosure of information (section 15) is against customary laws/protocols?

A: No comment.

Question 18

Q: Are the criteria for assessing the significance of sites under section 39 (2) and (3) adequate to evaluate whether a site should be added to the Register? If not, what should the criteria be to assess the significance of a site?

A: No comment.

Question 19

Q: 19. What should be the steps to report, nominate, assess, enter, amend or remove an entry from the Register?

A: No comment.

Question 20

Q: What do you think is missing from the Act?

A: No comment.

Question 21

Q: What sections, if any, do you think should be removed from the amended Act, and why?

A: No comment.



Australian Government

Department of Communications and the Arts

AUSTRALIAN GOVERNMENT POLICY ON INDIGENOUS REPATRIATION

Contacts

For further information Australian-based callers can contact the Department of Communications and the Arts on 1800 006 992. See also www.arts.gov.au

In the event that an overseas institution needs to make contact with a specific Aboriginal or Torres Strait Islander community, the Arts Division can facilitate the contact.

Contents

Part I – Introduction

Part II – Objectives of the Policy

Part III – Implementing the Indigenous Repatriation Policy

Part IV – Protocols

Part I

Introduction

The rich and diverse cultures of Australia's Aboriginal and Torres Strait Islander peoples are among the oldest continuous living cultures in the world. They illustrate the intrinsic spiritual relationship of Aboriginal and Torres Strait Islander peoples with their country, and are central to Australia's identity.

The Australian Government recognises the value and importance of preserving, revitalising and strengthening Indigenous culture and does so by providing funding not only for the return of Indigenous ancestral remains and secret sacred objects (repatriation) but also to support Indigenous visual arts, languages and cultural activities.

The Australian Government's support for Indigenous culture underpins Australia's accession to international agreements such as the *UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions* and the *United Nation's Declaration on the Rights of Indigenous Peoples*.

The *Declaration on the Rights of Indigenous Peoples* states in Article 12 that "Indigenous peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains" <http://www.un.org/esa/socdev/unpfii/en/declaration.html>

Repatriation is also a vehicle for healing and justice in Australian society. For Aboriginal and Torres Strait Islander peoples, the return of ancestral remains back 'to country' is the first step towards recognising their dignity. It restores their rightful place as Elders, mothers, fathers, grandmothers, grandfathers, uncles, aunts, brothers and sisters. It acknowledges the wrong done to them and allows the ancestors to finally rest in peace in their homelands. It recognises the unbreakable bond, customary obligations and traditional practices between the living, the land and the dead.

Aboriginal and Torres Strait Islander peoples success in achieving the return of their ancestral remains and secret sacred objects can also help promote broader respect and understanding of Indigenous cultures and provides positive role models for younger generations. It boosts the capacity of Aboriginal and Torres Strait Islander peoples to keep their culture, families and communities strong in response to contemporary challenges and opportunities and, to have the confidence and self determination to look and move forward.

Part II

Objectives of the Policy

1: The Australian Government is committed to addressing the injustice of Australia's shared past as it relates to the removal of ancestral remains and secret sacred objects to empower Aboriginal and Torres Strait Islander peoples to meet their cultural obligations and contribute to the wider Australian society.

For more than 150 years Aboriginal and Torres Strait Islander ancestral remains and secret sacred objects were removed to museums, universities and private collections in Australia and overseas. During the 19th and 20th centuries, human remains were collected by medical officers, anatomists, ethnologists, anthropologists, and pastoralists, in some cases for the purposes of scientific research linked to explaining human biological differences.

Today we recognise that respect and responsibility towards the remains of our deceased is a universal norm.

The Australian Government recognises repatriation helps promote healing and reconciliation for Aboriginal and Torres Strait Islander peoples.

2: The Australian Government recognises the Aboriginal and Torres Strait Islander community as the focal point of Indigenous repatriation.

The Australian Government provides opportunities for Aboriginal and Torres Strait Islander communities to engage with collecting institutions and the wider scientific community through the repatriation process. This recognises the important contribution Aboriginal and Torres Strait Islander peoples' make to this issue and provides capacity building opportunities.

The appointment of an Advisory Committee for Indigenous Repatriation provides a further way for Aboriginal and Torres Strait Islander peoples to participate and lead the development and coordination of the policy and program framework.

3: Internationally, the Australian Government seeks, on behalf of Aboriginal and Torres Strait Islander communities, the voluntary and unconditional return of their ancestral remains and associated notes and data.

The communities of origin are the rightful custodians of their ancestral remains, and should be consulted prior to any return. They should determine when and how repatriation should be undertaken. Accordingly, except where otherwise determined by the local community, the Australian Government will seek the unconditional return of ancestral remains and associated notes and data.

In relation to overseas collections, the Australian Government seeks the unconditional return of Indigenous ancestral remains only.

The Australian Government sees repatriation as a decision to be made voluntarily by overseas governments and institutions in collaboration with the relevant Aboriginal and Torres Strait Islander community.

4: The Australian Government seeks the return of secret sacred objects only from within Australia.

The Australian Government will only seek the return of secret sacred objects to communities within Australia. This does not preclude Aboriginal and Torres Strait Islander communities engaging overseas institutions in the possible return of associated secret sacred objects and grave goods property with ancestral remains.

5. The Australian Government is committed to supporting Aboriginal and Torres Strait Islander peoples to develop the capacity to maintain their cultural rights, knowledge and practices.

The Australian Government seeks to ensure that Aboriginal and Torres Strait Islander communities are closely involved in all stages of the repatriation process, and that their rights and practices are always respected.

The provenance of ancestral remains is significant in determining returns to appropriate communities. Facilitating secondments of Aboriginal and/or Torres Strait Islander peoples to overseas collecting institutions to undertake provenance research should be considered. Resources can be made available to the communities and the collecting institutions to facilitate this type of engagement and to provide an opportunity for mutual outreach and exchange.

6: The Australian Government is committed to achieving a seamless, whole-of-government approach to repatriation.

Collaboration with other Australian Government agencies, state and territory governments, collecting institutions and overseas governments and institutions will continue as part of the repatriation process. The Australian Government facilitates timely and appropriate action by all stakeholders to ensure repatriation is achieved and new partnerships are developed.

Part III

Implementing the Indigenous Repatriation Policy

The Program

The Australian Government has been facilitating the return of Indigenous ancestral remains and secret sacred objects to their communities of origin for two decades.

The Australian Government acknowledges that repatriation requires a holistic approach. Accordingly, it seeks to work collaboratively with all stakeholders, including other Australian government agencies, Australian museums, state, territory and local governments, and with overseas stakeholders.

The Structure

The Arts Division is a division of the Department of Communications and the Arts, working to Senator The Hon Mitch Fifield, Minister for Communications and Minister for the Arts. The Arts Division is the lead agency on policy issues relating to repatriation of Indigenous ancestral remains from overseas and ancestral remains and secret sacred objects within Australia.

Funds are provided through the Indigenous Repatriation Program to major Australian museums and to Aboriginal and Torres Strait Islander organisations to facilitate returns of both ancestral remains and secret sacred objects to communities. Internationally, the cost of repatriating ancestral remains is met directly by the Australian Government.

Funds can be used for:

- inventory and provenance research;
- community visits within Australia by museum staff;
- consultants to assist communities in coordinating returns;
- museum visits by community representatives to identify ancestral remains and secret sacred objects;
- travel for community representatives to collect ancestral remains and secret sacred objects (in Australia only);
- travel for community representatives to collect ancestral remains from overseas; and
- preparation, packing, transportation and freight of ancestral remains and secret sacred objects for return.

In relation to overseas collections, the Australian Government works with communities and collecting institutions to identify the origins of ancestral remains; notify communities of ancestral remains; determine the community's wishes about storing ancestral remains; and arrange for repatriation where and when it is requested. Assistance is provided where necessary by the National Museum of Australia and/or the relevant major state or territory museum.

Aboriginal and Torres Strait Islander Communities and Organisations

Aboriginal and Torres Strait Islander communities are closely involved at all stages of the repatriation process. The major Australian museums and the Arts Division consult directly with the Traditional Owners or their representatives to achieve results. The Australian Government can assist overseas institutions to identify the appropriate community representatives and facilitate consultation. The Arts Division will, where possible, provide funds to enable Traditional Owners or their representatives to travel nationally and internationally to accompany the return of their ancestral remains to Australia.

To continue empowering Aboriginal and Torres Strait Islander peoples and to increase their role and capacity in managing the return and care of their ancestral remains (and within Australia secret sacred objects), the Australian Government is working in partnership with communities to provide funding and develop pathways in the following areas of repatriation:

- the employment of Aboriginal or Torres Strait Islander Liaison Officers in major Australian museums;
- establishing career pathways through workplace experience, placements and cadetships for Aboriginal and Torres Strait Islander peoples interested in a career in repatriation-related work;
- direct funding to Aboriginal or Torres Strait Islander organisations to undertake research or provide administrative or management support to local communities; and
- outreach and exchange between communities and collecting institutions to share information and promote mutual understanding.

The Advisory Committee for Indigenous Repatriation (ACIR)

An all-Indigenous advisory committee is appointed by the Minister for the Arts to advise on policy and program issues related to Indigenous repatriation from Australian and overseas collections.

The role of the ACIR is to provide strategic advice on cultural and management issues that affect all or many different communities including the long-term care of ancestral remains and secret sacred objects with no identified community of origin including remains and objects that are poorly, or have limited, provenance.

Governments and Museums in Australia

The Australian Government provides financial assistance, and can provide advice if requested.

Governance arrangements for repatriation in each jurisdiction are determined by the state and territory governments and they also provide specific funding direct to collecting institutions to assist with this responsibility.

Repatriation is managed by eight collecting institutions in Australia: the Australian Museum (Sydney); the Museum and Art Gallery of the Northern Territory; Museum Victoria; the National Museum of Australia; the Queensland Museum; the South Australian Museum; Tasmanian Museum and Art Gallery; and the Western Australian Museum.

The collecting institutions work directly with communities to identify the origins of ancestral remains and secret sacred objects. They then consult and arrange with communities to facilitate the storage or repatriation of the remains or objects as requested by the communities.

Ancestral remains and secret sacred objects are returned to the community unconditionally.

Non State and/or Non National Collecting Institutions

The Australian Government will consider funding, on a case by case basis, repatriation from non-government institutions such as universities and private collections in Australia.

International Governments and Institutions

In some countries it is necessary to seek governmental permission before a collecting institution can 'de-accession' ancestral remains. In other countries the decision can be made solely by the institution.

In order to maximise the effectiveness of the repatriation program, Australia's overseas missions and the Department of Foreign Affairs and Trade assist the Arts Division to facilitate and support Aboriginal and Torres Strait Islander peoples to negotiate the return of ancestral remains.

The Australian Head of Mission retains ultimate responsibility for the conduct of relations in the country/ies or accreditation. Thus representations to host governments will normally be made by senior Mission staff or the Head of a Mission.

The Arts Division in liaison with overseas missions will agree on the most effective arrangements for international negotiation and communications. Depending on the status of negotiation, it may be effective for the Arts Division to deal directly with an institution, while keeping the Australian mission, and the Aboriginal and Torres Strait Islander community, fully informed.

Part IV

Protocols

In managing its responsibilities for Indigenous repatriation, the Australian Government recognises the following protocols and encourages all stakeholders involved in Indigenous repatriation to do the same. Australia's major state and territory collecting institutions also adhere to their own principles in relation to the care of ancestral remains and secret sacred objects in their collection.

Cultural Protocols

- Aboriginal and Torres Strait Islander peoples have a responsibility to their ancestors to bring them back to country according to the Traditional Owners' customs and laws. The determination of who is involved in negotiations and consultations is made by the Traditional Owners.
- Traditional Owners should have access to and copies of all relevant documentation concerning their ancestral remains.
- Ancestral remains should be returned expeditiously and in accordance with the protocols of Traditional Owners.
- Ancestral remains should be treated with respect and dignity at all times by all involved.

Community Consultation

- Traditional Owners are the rightful custodians of their ancestral remains and are the rightful owners of associated grave goods and should be consulted prior to any such property being returned.
- Traditional Owners should determine when and how repatriation should be undertaken.
- A coordinated approach between all levels of government to facilitate the return of ancestral remains to Traditional Owners is undertaken.

Research and Study

- The Australian Government recommends all researchers should adhere to the ethical principles and research guidelines established by the Australian Institute of Aboriginal and Torres Strait Islander Studies. These guidelines incorporate the research practice guidelines set by the Australian Research Council and the National Health and Medical Research Council. Website: www.aiatsis.gov.au/research/docs/ethics.pdf.
- The study of ancestral remains should always be undertaken in consultation and with the informed consent of Aboriginal and Torres Strait Islander Traditional Owners or their identified representatives.
 - Research involving the non-invasive measuring of remains may assist in confirming that remains are in fact Aboriginal or Torres Strait Islander in origin. For that reason, consent for non-invasive research can be requested. If the written records indicate that remains may belong to a particular community, that community can be consulted (via the Arts Division).
 - Invasive physical research, such as the sampling of teeth, should not be undertaken.

- For poorly or limited provenanced remains the Australian Government would seek the advice and guidance from the Advisory Committee on Indigenous Repatriation.
 - A 'plain English' statement outlining what research and its implications will be involved is to be provided to Traditional Owners or their representatives prior to them making their decision to provide consent.
 - Outcomes of any agreed research should be made available to the relevant community or communities through 'plain English' reports or in any other form as requested by the community.
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