

A REPATRIATION HANDBOOK

A guide to repatriating Australian Aboriginal and Torres Strait Islander Ancestral Remains

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For more detailed information and advice on the repatriation of Aboriginal and Torres Strait Islander Ancestral Remains, visit the 'Return, Reconcile, Renew' website: www.returnreconcilerenew.info



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Caution: readers should be aware that this publication contains the names and images of deceased people.

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How to use this guide

This handbook is primarily intended for those people active in the repatriation of Ancestral Remains to Aboriginal and Torres Strait Islander communities – in particular, those who are newly engaged in such processes. To aid this aim, it is written in a format intended to allow the user to identify and look up certain topics or issues without having to read the handbook cover-to-cover each time.

It looks at repatriation of Ancestral Remains from both the museum side and the community side.

The practice of repatriation is developing rapidly. New information and improved processes develop with each meeting between claimants and collection managers, and with each repatriation project. This handbook is therefore just a starting point for repatriation practice. The suggestions it makes are a guide only, and not mandatory.

Users are encouraged to make notes regarding their own processes and to develop and edit the processes provided in this handbook to suit their particular situations. New developments and processes will inform updated future versions of this handbook, or used in new guides produced by others.¹

More detailed information on many of the topics raised in the handbook may be found at the 'Return, Reconcile, Renew' website at www.returnreconcilerenew.info.

Introduction

The handbook is intended to assist with pursuing the return of Aboriginal and/or Torres Strait Islander human Ancestral Remains. It is hoped it will be useful to anyone who may become involved in repatriation, including staff within Aboriginal and Torres Strait Islander community organisations, community museums, heritage agencies, universities, and relevant local, state and national governments.

It is also hoped this handbook will inform and assist international governments and collecting institutions seeking to return Ancestral Remains to Australia. The guide is mainly based upon Australian experiences; however, it will inform Australian institutions and individuals involved in repatriation about how to approach overseas institutions and brief international institutions about how Australian repatriation activities often proceed. It will also assist international repatriation advocates in pursuing the return of Ancestral Remains from Australian collecting institutions.

For many years, the domestic and international repatriation of Aboriginal and Torres Strait Islander human Ancestral Remains has been a major activity for Australian Indigenous communities and heritage agencies (for example, museums and state or national government departments). However, there are few resources to help those who are working towards a repatriation or who are engaging with repatriation for the first time. One aim of this handbook is to take away some of the mystery and provide an accessible guide that will help culturally authorised individuals, agencies and organisations to pursue the repatriation of Ancestral Remains themselves.

Repatriation practitioners from within communities, museums, or heritage agencies sometimes confront a variety of issues, ranging from how to locate and identify Ancestral Remains to securing funding – not to mention navigating what often seems to be a complex web of requirements, processes, policies and protocols in order to achieve successful repatriation.

The handbook takes the reader through all the stages of repatriation, introducing common issues that may arise and indicating how to manage them. Its chapters track the various stages of repatriation, highlighting possible issues that practitioners may face and providing ways to navigate through them. It provides assistance on such topics as:

- undertaking research to locate and identify Ancestral Remains
- understanding the cultural, legal and policy environments
- securing funding resources
- making (and receiving) repatriation claims
- liaising and consulting with museums and communities
- uncovering whatever information can be found in museum archives (and the reasons why it may be necessary to obtain this)
- arranging for the return of Ancestral Remains (domestically and internationally)
- working with museums
- caring for Ancestral Remains upon their return
- dealing with issues that may arise during the repatriation process
- organising the final disposition of Ancestral Remains.

The handbook also provides a listing of some useful websites to assist those involved in repatriation.

Many institutions hold Ancestral Remains of deceased people for the purposes of scientific or medical study. In many cases, the holdings are legitimate and comprise Ancestral Remains of people who have donated their bodies for scientific research purposes, or people from cultures where such disposition of Ancestral Remains is socially acceptable.

This handbook concentrates on the repatriation of Australian Indigenous Ancestral Remains. However, it may also assist others in their efforts at repatriation.

This handbook was developed as part of two projects funded by Australian Research Council and Partner Organisation contributions: Return, Reconcile, Renew: Understanding the history, effects and opportunities of repatriation and building an evidence base for the future (LP130100131 2014–2018) and Restoring Dignity: Networked knowledge for repatriation communities (LE170100017 2018–2020). A significant focus of these projects has been to build resources for repatriation practitioners.

You can find these resources and further information at the project's website: www.returnreconcilerenew.info.

The views expressed in this handbook are those of the author and are not necessarily those of the Australian Government or the Australian Research Council.

Glossary

The glossary provides explanations of key terms used in the text.

Ancestral Remains

There are many community-preferred terms for the Ancestral Remains of deceased people. Alternatives that are frequently encountered include:

- Ancestral Remains
- Old people
- Ancestors
- Human remains
- Remains.

Cultural Centre

A 'Cultural Centre' is typically a multi-function facility. Cultural Centres often house administrative offices that provide a variety of services to local Indigenous community members. They may also include small displays or museums. Cultural centres may include Keeping Places or Resting Places. Cultural Centres are likely to be places of high activity and visitation by all members of the community plus other visitors. Because of the high levels of public access Cultural Centres may not always be seen as suitable places to hold Ancestral Remains for any considerable period of time.

Digital repatriation/Restitution

The term 'digital repatriation' is increasingly in use, although 'digital restitution' is a more apt description of this type of activity. It refers to the providing of copies of documentation and/or images to communities of origin. It does not include the original materials. The handbook argues that use of the term repatriation only applies to the return of ownership of the original item, such as Ancestral Remains.

Final Resting Place

A 'Final Resting Place' is the final site where Ancestral Remains are placed. A resting place is defined by the Aboriginal and/or Torres Strait Islander custodians. A resting place may be a burial site, a grave, tree, cave, sacred house, a building, or any other site where Ancestral Remains are finally placed by the custodial Aboriginal and/or Torres Strait Islander community. The Final Resting Place can also be a Keeping Place.

The typical path of repatriation would see Ancestral Remains go from a Repository/Store (for example, non-Indigenous controlled museum), to a Keeping Place (secure community-managed facility), to a Final Resting Place (the place where the community finally puts Ancestral Remains). However, engagements with responsible communities have now improved to the point where Ancestral Remains may be returned directly to the community and the Final Resting Place.

Keeping Place

A 'Keeping Place' is a facility, such as a building or secure store, where Ancestral Remains and significant objects are kept. A Keeping Place should be under Aboriginal and/or Torres Strait Islander community control. A collecting institution should not identify as a Keeping Place unless management of that place is under community control. A Keeping Place can also be a Final Resting Place.

Provenance/Provenanced

The terms 'provenance' and 'provenanced' can refer to both the original location from where Ancestral Remains were taken, and the history of what has happened to the remains after they were collected. Provenance includes:

- The place from where the remains were removed. This is the most common use of the term 'provenanced'. Ancestral Remains that can be identified as belonging to a specific place and/or community are referred to as 'provenanced'.
- The identity of the individuals whose remains they are and what happened to them. Many individuals had their remains taken away before burial in a Resting Place. The removal of their remains and what happened to them are part of their 'provenance'.
- The record of what happened to the remains after they were taken. This includes their transfer between collectors, donors, museums and other collecting agencies.

Remains that cannot be linked to a place or community are known as 'unprovenanced'.

Repatriation

The term 'repatriation' refers to the return of physical Ancestral Remains. It also applies to the return of the authority for all decisions regarding the future disposition of the Ancestral Remains to the custodians entitled to care for them by tradition and/or customary law and/or Western law.

Repository/Store

A 'repository' or 'store' is a place where Ancestral Remains and significant objects are held, but which is not under Aboriginal and/or Torres Strait Islander community control. These are typically government departments and collecting institutions. A museum, for example, is a repository or store.



Handover of Kurna Ancestral Remains, National Museum of Australia, Canberra, 2018

The Ancestral Remains were returned from Vienna, Austria, where they had been held since the mid-1800s. (Left to right) Kurna Elders Jeffrey Newchurch, Tim Wilson and Waiata Telfer, and Dr Mathew Trinca, Director of the National Museum of Australia.

National Museum of Australia

Chapter 1

What is repatriation?

The definition of 'repatriation', as it applies to cultural heritage, is constantly expanding as more and more agencies engage with the social issues particular to their intellectual interests. For example, there is the repatriation of human Ancestral Remains and secret/sacred cultural objects; in such cases, the return of the original is the aspiration. Then there are such activities as 'digital repatriation', in which copies of images and documentation held by the agencies are provided to cultural custodians. 'Digital repatriation' is more aptly identified as 'digital restitution'.

The provision of images, copies of documents, or three-dimensional reproductions of Ancestral Remains alone would not truly constitute repatriation within the meaning or aims of this handbook. Nor would it necessarily be acceptable to the appropriate cultural custodians. In the context of human Ancestral Remains, repatriation requires *the return of the physical Ancestral Remains, and the delegating of authority to make all decisions regarding the future disposition of the Ancestral Remains, to the custodians entitled by tradition and/or customary law and/or Western law, to care for them.*

In the case of Australian Indigenous cultural heritage, the term 'repatriation' is normally reserved for human Ancestral Remains or objects of high sacred significance. For objects of a more secular or public nature, or for documents and media, the alternative term is 'restitution'. Restitution can encompass both the return of the original material and/or the provision of copies of materials, such as photographs, documents, and sound and film media.

Why repatriate?

There are many reasons why Ancestral Remains should be repatriated. As an opening statement, the preamble to the Australian Government's policy on repatriation succinctly presents a national and international acknowledgment about the benefits of repatriation, stating:

The Australian Government recognises repatriation [of Ancestral Remains and secret/sacred objects to their communities of origin] helps promote healing and reconciliation for Aboriginal and Torres Strait Islander peoples.²

In addition, the Australian Government recognises that communities of origin are the rightful custodians of their Ancestral Remains, and that they should determine when and how repatriation should be undertaken. To support this, the Australian Government, on behalf of Aboriginal and Torres Strait Islander communities, seeks the voluntary and unconditional return of Ancestral Remains and any associated notes and data.

The most straightforward and significant reason for the return of Ancestral Remains is that many Aboriginal and Torres Strait Islander communities and individuals, recognised by custom as the social, cultural, and/or biological descendants of the deceased, want them returned.

Other reasons include:

- Nearly all Ancestral Remains were collected unethically, through graverobbing, or other interference with the body that was illegal under customary law and British or Australian law at the time of collection.
- All human Ancestral Remains acquired without free and informed consent of the individuals concerned or of their families and descendants should be treated with respect. This includes the right of the deceased to be returned to families and to be part of respectful mortuary ceremonies.

- The Ancestral Remains of one culture should not be treated with any less respect than the Ancestral Remains of another culture.
- The families and biological or social descendants of the individuals may be found to have the legal right to act as executors of the estate of the deceased.
- The Ancestral Remains have rarely been subjected to the scientific investigation that holding institutions often advance as the reason they should be kept.
- Support for repatriation through the United Nations Declaration on the Rights of Indigenous People (2007).³

Return of authority and responsibility

Repatriation is not simply the return of Ancestral Remains. It is also the return of authority over those Ancestral Remains and responsibility for what happens to them in the future. True repatriation must be unconditional. There have been occurrences where overseas institutions have sought to return Ancestral Remains conditionally, or make long-term loans, with the conditions that the Ancestral Remains be stored in museum-quality conditions, that they be made available to researchers or that the returning institution be allowed to take biological samples of the Ancestral Remains for future research. There have also been demands that repatriation must only be made to demonstrated biological descendants, or that the community must be in complete agreement as to the final disposition of Ancestral Remains once they are back in their care.

Conditional returns are not complete repatriation; instead, they might be considered to be a form of off-site storage for the returning institution. In such a process, the custodians become responsible for the management and protection of the Ancestral Remains, but they are denied the authority to manage them according to their own preferred customs. Custodians may, of course, accept the return of Ancestral Remains with such conditions if they deem it appropriate. The important thing is that the custodians be fully informed of the risks and advantages and not be coerced into making decisions against their wishes.

Although unconditional returns are typically unproblematic, there are issues that can arise. These include managing accompanying information, practical management of remains, acquiring funding, appointing project managers, and identifying and preparing Final Resting Places. There may also be disputes within the community as to who should lead future events for placing Ancestral Remains in their Final Resting Place; there may also be those who desire further research on the Ancestral Remains and those who do not; and there may be conflicting opinions as to what ceremonies or procedures will be applied in the return of the Ancestral Remains to the community and to their Final Resting Place.

There is also always a risk that the Ancestral Remains may be stolen, go missing, be damaged or even be sold or traded. All these scenarios have happened in the past. Nonetheless, after repatriation, management of these risks becomes the responsibility of the community. With authority *over* Ancestral Remains comes responsibility *for* Ancestral Remains. When Ancestral Remains are returned with conditions from the collecting institution, then the authority of the community is reduced, but the responsibility for care remains.

Repatriation should therefore be unconditional. With the return of the Ancestral Remains also comes complete authority and full responsibility. There may be occasions where the custodians themselves initiate their own conditions – such as a particular partnership with researchers. However, such conditions should normally follow repatriation and not be a condition of it.

Respectful management

In the repatriation debate, the term 'reburial' is often used as administrative shorthand for community-acceptable disposal or final treatment of Ancestral Remains. This can lead to some confusion over the appropriate way to treat Ancestral Remains upon return, implying to communities that reburial is the only acceptable final treatment for Ancestral Remains, even when original funerary processes did not involve permanent or even temporary burial. The Indigenous community to which the Ancestral Remains are affiliated determines respectful management. There is no obligation on a community for all returned Ancestral Remains to be buried or reburied. Many Ancestral Remains were collected from open-air repositories, such as rock shelters, rock platforms, tree or wooden platform burials, or sacred houses and Keeping Places. Many Ancestral Remains, collected by Europeans from killing sites, ceremonial mortuary grounds, hospitals, asylums, and prisons, never underwent a complete culturally appropriate mortuary process or had a Final Resting Place. As noted above, returns should be unconditional, and the community must have the right to determine the processes of laying the Ancestral Remains to rest.

Successful repatriation

What is a successful repatriation? In the past, there have been incidents in which Ancestral Remains returned to Australia were unprovenanced; that is, their point of origin was not known. There are also cases where communities have been unable to receive Ancestral Remains owing to a lack of resourcing for respectful management. This has, in some cases, led to feelings of failure on the part of individuals and/or communities.

A successful repatriation event, therefore, does not only happen with the physical return of remains. It also occurs when the rights to respect and authority for the future care of the remains are acknowledged. The first stage alone – the return of Ancestral Remains to Australia – is in itself a success in that it recognises the rights and authority of a claimant or representative group (in such cases, usually an Indigenous representative body) by the Australian Government, foreign governments and collecting institutions. Once the Ancestral Remains are in Australia, even if held in a museum or heritage agency, they are increasingly under Aboriginal and/or Torres Strait Islander control.

This is a great achievement on the part of the advocates for return. It also applies to those Ancestral Remains returned to a state or region. The closer they get to their point of origin, the more they come under Indigenous control. For various reasons, some Ancestral Remains may continue to be held in Keeping Places on or near where they were taken from. Lack of certainty over location, or lack of access to a given location, may mean that they continue to be stored in such community-administered repositories for some years. This is not a failure on the part of the community or individual representatives. It is a success in that the Ancestral Remains are under local Indigenous control, one step closer to their place and community of origin, and that authority for their respectful management now rests with the community.



Disposal of the Dead, about 1963, by Ulambilam, Iwaidja

bark, pigment, wood, 82.5 x 71 x 3 cm

Ulambilam's painting describes the two-stage mortuary ceremonies of western Arnhem Land in northern Australia. Two forms of primary burial are shown at the bottom of the work: on the left, the body is laid on a platform to decompose; on the right, the body is placed in a grave. Both methods are practised in this region in ceremonies involving male and female participants.

The decomposed remains are later removed. The bones are cleaned and placed in bark containers. In a second funeral rite, shown in the middle of the painting, the remains are set in log coffins erected in the ceremony ground.

National Museum of Australia

Chapter 2

The historical context of collections of Aboriginal and Torres Strait Islander Ancestral Remains

Why were Ancestral Remains taken?

From the mid-eighteenth century, there was a growing interest in Europe in the natural and cultural worlds. This was encouraged by colonial expansion into other countries. Scientists looked to explain cultural differences between different peoples and nations; in particular, they were interested in whether foreign cultures were physically and intellectually superior or inferior to the dominant invading colonial culture. They undertook these investigations by examining peoples' cultures, arts, and physical biological attributes – their bodies.

The long-held belief that some cultures were more primitive than others, and that this difference would be reflected in the physical attributes of individuals, became increasingly popular throughout the eighteenth and nineteenth centuries, boosted by the development of evolutionary theory. Ancestral Remains were collected and examined to determine brain size, shape, and so-called 'primitive' features on the Ancestral Remains themselves. The approach was that by examining the features of these Ancestral Remains it would be possible to determine the intelligence of the individual and their culture's level of 'development'. Remains from all cultures were collected, and skulls were often displayed ranked alongside each other in order of presumed physical development and intelligence. Indigenous cultures were usually assessed as being 'primitive' and of limited intelligence, while the dominant Western European cultures were assessed to be the most intelligent and advanced. This was used as an excuse to impose Western control on Indigenous civilisations worldwide. Such an approach to classifying remains continued throughout the nineteenth and early twentieth centuries. The theory of evolution developed in the mid-1800s and provided further justification and frameworks for collecting, as remains were then used to argue for stages of human cultural evolution corresponding to presumed physical evolution. This belief that human remains reflected intellectual and cultural development has now been disproven.

Many Ancestral Remains were initially collected for the purpose of teaching anatomy and medicine. For example, the Australian Institute of Anatomy collected Indigenous and non-Indigenous Ancestral Remains with physical deformities or signs of disease or injury. These were used to teach medical students. Later, remains were used for comparative anatomy and studies of racial origins. With the increased interest in investigations of 'cultures', individuals and institutions, such as emerging museums, collected and traded remains extensively, in order to gather a set of cultures suitable for display alongside the technology and arts of those cultures. Finally, remains were collected as examples of 'primitive' art, especially when they had been decorated or modified.

From the late nineteenth century to the current day, as the disciplines of anthropology and archaeology developed, museums also became the official repositories for archaeological and anthropological collections, including human remains. In many Australian states and territories, for example, the government museum has been the government's repository for both artefacts and remains recovered through archaeological investigation. In the past, Ancestral Remains taken from archaeological sites were also often displayed as cultural artefacts alongside tools and other archaeological materials.

Private collectors also took Ancestral Remains. Sometimes these collectors had a scientific background and collected Ancestral Remains for some research purposes. Other times, however, Ancestral Remains were simply collected by mariners, settlers and travellers as souvenirs. The Ancestral Remains often lay in the homes of the collector until they were finally transferred to a museum. Over time, collections were moved between individuals and institutions, and museums often became the final repository, leading to large collections in some major museums. Even small local museums could have Ancestral Remains in their collections. There was a thriving commercial market in the sale and trade of Ancestral Remains for both public and private collections.

How were Ancestral Remains removed, and from where?

The ways in which Ancestral Remains were collected, and the places from which they came, are many and varied. Human remains of all cultures and social classes were collected anywhere the dead could be found. Typical sources included:

- gravesites
- burial platforms
- cultural repositories and storehouses (e.g., men's houses, skull houses)
- ceremony grounds
- caves
- killing sites
- hospitals and asylums
- prisons.

Non-Indigenous remains were also collected, according to both legal and cultural beliefs and practices of the time. Thus the general public were aware that their remains might be stolen from graves and sold to a medical institution against their wishes, or that an executed prisoner might be handed over to a medical establishment for dissection, or that the remains of a mortally wounded soldier might be used for teaching treatment for war wounds. In nineteenth-century England, in particular, there are examples of non-Indigenous remains being acquired illegally through graverobbing and occasionally murder — actions that were both illegal and considered immoral at the time. This led to public outrage over the desecration of graves and of lives, with the passing of laws to protect the remains of deceased people.

Across the world, however, Indigenous Ancestral Remains were not given the same protection or respect given to non-Indigenous remains. They were simply taken, at will, by colonial collectors. Often the collectors were aware they were taking the Ancestral Remains illegally under both Western law and Indigenous cultural law, or against the wishes of family and descendants. Even when such acts were illegal, the law was rarely enforced.

The rise of the 'reburial' movement

Aboriginal and Torres Strait Islander people had long resisted the desecration of Ancestral Remains and their removal, although until recently they had little or no power to prevent it happening. In the late 1970s and early 1980s, there were changes in the Australian heritage industry that led to more respect being shown towards archaeological Ancestral Remains — the main source of new collections of Indigenous Ancestral Remains entering museums. It was, however, still difficult for Indigenous advocates to get a reasonable hearing, either from government or through heritage-related professions such as archaeology or anthropology. In 1985 Victorian Aboriginal leader Jim Berg succeeded in a landmark case when he recovered Aboriginal Ancestral Remains held by the University of Melbourne.⁴ This event led to collecting

institutions and governments paying more attention to the appeals of Indigenous groups. In 1991 Ancestral Remains from Kow Swamp in northern Victoria were returned to the Yorta Yorta community and reburied. The significance of this return was that Western researchers considered the Ancestral Remains scientifically important, owing to their age and particular physical features, and yet they were still returned.

The 1990s also saw increasing Indigenous activism directed at the return of ancestors, with several successful, high-profile returns of Ancestral Remains from overseas institutions, such as the University of Edinburgh, as well as greater pressure being placed on Australian museums to explain why they had, and still kept, Ancestral Remains. Since 2000, there has been a dramatic rise in the number of Indigenous advocates, and also of professionals, institutions, and agencies committed to practices that limit the disturbance of Aboriginal and Torres Strait Islander Ancestral Remains against the wishes of custodial communities, and to the repatriation of those Ancestral Remains that have been collected in the past.

Arguments for and against repatriation

Over the years, debate about repatriation occasionally deteriorated into rhetoric, limiting discussion. Scientists would simply argue that Ancestral Remains were important to science, while Indigenous advocates would argue, based on spiritual and cultural reasons, that Ancestral Remains were important to them because they are family. There was little effort to understand each other's perspectives. Some of the arguments *for* repatriation have already been described; these include:

- recognition of Indigenous rights and authority to manage the Ancestral Remains of the dead of their cultures
- rectification for past illegal acts
- respect for the dead, their families and descendants
- healing
- greater insights into and between cultures
- addressing past wrongs and contributing to reconciliation.

Arguments *against* repatriation are similarly varied; they include statements such as:

- Ancestral Remains are scientifically important and new techniques for their investigation are developing all the time. Future research will produce new information.
- Ancestral Remains are no longer important to the community of origin.
- Ancient Ancestral Remains cannot be legitimately claimed by modern groups.
- Returning one group of Ancestral Remains diminishes the importance of a collection as a whole.
- Local concerns should not outweigh the importance of Ancestral Remains to knowledge for all humanity.
- No biological family exists for the Ancestral Remains and thus no one has the right to claim them.
- The return of Ancestral Remains equates with destruction of scientific data.
- The return of Ancestral Remains results in destruction of cultural information.
- The return of Ancestral Remains is a subjective religious act.
- Modified Ancestral Remains are no longer Ancestral Remains but have been transformed into artworks and artefacts.
- Some Ancestral Remains were acquired with free and informed consent of the family or descendants.
- Requests for repatriation are just political acts.

Both sides in the debate make legitimate points. Arguments against repatriation ultimately argue that the return of Ancestral Remains prevents future research and the acquisition of new scientific knowledge. However, for Indigenous people, the key point is that their dead do not belong in museums, and only they have the right to determine what should happen to them. Other arguments for repatriation acknowledge that social justice is important, and that new knowledge, which is of important and continuing value to wider society, is generated because of the closer engagement with other cultures and their worldviews that emerges from the repatriation process.

Changing ideas and practices in museums and professional organisations

The Australian museum industry, represented by the professional body Australian Museums and Galleries Association (AMAGA), actively supports repatriation and provides the industry with a 'Code of Ethics', as well as guidelines on appropriate museum practice in the area of Australian Indigenous cultures. The code acknowledges other Commonwealth, state and territory legislation, as well as its own policies for the care and management of Indigenous material, as outlined in its 2005 document 'Continuous Cultures, Ongoing Responsibilities'.⁵ AMAGA explicitly supports repatriation, stating:

Repatriation

1.4.3 The community from which the ancestral remains originated needs to be involved in deciding what will happen to ancestral remains repatriated by museums.

1.4.4 Museums are to seek out the rightful custodians of ancestral remains and ask them whether they wish the ancestral remains to be repatriated to the community or held by the museum on behalf of the community.

1.4.5 If rightful custodians ask for the return of ancestral remains museums should agree. All requests for the repatriation of Aboriginal and Torres Strait Islander ancestral remains should be promptly and sensitively dealt with by museums, who must at all times respect the materials' very sensitive nature.

1.4.6 Museums must not place conditions on communities with regard to the repatriation of ancestral remains.⁶

This is a very strong and unambiguous statement of support for repatriation by Australia's peak museums industry representative body.

There have also been changes in the heritage industry and associated disciplines, in particular those involved with Ancestral Remains recovered from an archaeological context. The professional organisations most relevant to repatriation in Australia are the Australian Archaeological Association (AAA) and the World Archaeological Congress (WAC). Both have codes of ethics. The AAA code of ethics states:

1.3 Members ... specifically acknowledge the rights and interests of Indigenous peoples. AAA endorses and directs members to the current guidelines for ethical research with Indigenous parties published by the Australian Institute of Aboriginal and Torres Strait Islander Studies ...

2.4 Members recognise the importance of repatriation of archaeological materials for both Indigenous and non-Indigenous communities of concern and they support and advocate the necessity to properly manage archaeological materials in accordance with agreements with communities of concern.⁷

...

3.2 Members acknowledge the special importance to Indigenous peoples of ancestral remains and objects and sites associated with such remains. Members will treat such remains with respect.

'The Vermillion Accord on Human Remains', developed by WAC in 1989, states:

- 1. Respect for the mortal remains of the dead shall be accorded to all, irrespective of origin, race, religion, nationality, custom and tradition.*
- 2. Respect for the wishes of the dead concerning disposition shall be accorded whenever possible, reasonable and lawful, when they are known or can be reasonably inferred.*
- 3. Respect for the wishes of the local community and of relatives or guardians of the dead shall be accorded whenever possible, reasonable and lawful.*
- 4. Respect for the scientific research value of ... human remains ... shall be accorded when such value is demonstrated to exist.*
- 5. Agreement on the disposition of ... remains shall be reached by negotiation on the basis of mutual respect for the legitimate concerns of communities for the proper disposition of their ancestors, as well as the legitimate concerns of science and education.*
- 6. The express recognition that the concerns of various ethnic groups, as well as those of science are legitimate and to be respected, will permit acceptable agreements to be reached and honoured.⁸*

The WAC's 'First Code of Ethics', adopted in 1990, states that members 'shall abide by the following principles':

- 1. To acknowledge the importance of indigenous cultural heritage, including ... human remains, to the survival of indigenous cultures*
- ...*
- 3. To acknowledge the special importance of indigenous ancestral human remains, and sites containing and/or associated with such remains, to indigenous peoples.⁹*

And, importantly, the code's rules include:

- 5. Members shall not interfere with and/or remove human remains of indigenous peoples without the express consent of those concerned.*

In a press release in 2003, the AAA stated:

The Australian Archaeological Association supports calls by Indigenous Australians for the immediate repatriation of Aboriginal skeletal remains from a British museum ... The Code of Ethics of the Association ... makes it clear that the primacy of ownership, curation and protection of skeletal remains must ultimately reside with Indigenous Australians.¹⁰

At the same time, the President of the WAC stated:

The World Archaeological Congress ... supported calls by Indigenous Australians for the repatriation of the bones of ancestors ...

Let me be quite clear on this. It is only a matter of time. These Ancestral Remains will be returned to the care of Indigenous Australians.¹¹

Other professional organisations that have ethical codes that may influence repatriation activities include the Australian Anthropological Society (AAS) and the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS). AIATSIS is Australia's pre-eminent

government-supported institution with regard to professional engagements and research with Aboriginal and Torres Strait Islander peoples. It maintains 'Guidelines for Ethical Research in Indigenous Studies', the principles of which are founded on respect for Indigenous peoples' inherent right to self-determination, and to control and maintain their culture and heritage.¹² Typically, most archaeologists and anthropologists working with Australian Indigenous peoples and heritage will defer to the guidelines of the AIATSIS over professional association codes.¹³

These statements recognise that Indigenous peoples find repatriation important, and this belief must be recognised and respected.

The importance of these codes is that any Australian heritage professional who impedes a repatriation activity is potentially working against the ethical codes of their profession and thus liable to professional criticism. Other countries may also have codes and guidelines that could be useful in pursuing the return of Ancestral Remains from overseas.



Bardi Jawi repatriation, One Arm Point, Western Australia, December 2015

In December 2015 the Bardi Jawi people of One Arm Point returned the Ancestral Remains of three people to their traditional Country, where they were finally interred in a cave.

Two sets of remains had been taken by Henry Hilliard, a pearling captain, in 1892. The third had been stolen by Father Ernst Worms, a Pallottine Catholic monk, in 1935 and sent to Limburg, Germany. Eventually, these remains went to the Natural History Museum in Vienna. Worms knew taking the remains was both illegal and unethical; he implored his colleagues:

Please avoid mention of my name and the location of my findings in any publications, in order to avoid that the West Australian Government hears about the export of my findings ... It is forbidden to export anthropological or ethnological findings without Government approval.

Kimberley Aboriginal Law and Culture Centre

Chapter 3

Conventions, policies, laws and professional codes

Legislation and policies have different origins, applications and force. A policy is a commitment by an agency, such as a political party, collecting institution, government agency, or business to support a particular principle or action. It is non-binding on anyone except people within the organisation. Legislation is law and applies to everyone within its jurisdiction, often with penalties for contravention. These distinctions are important, as policies, even those sympathetic to an issue, cannot be used to enforce compliance. The Australian Government's policy on repatriation, for example, is not enforceable outside of government.

Within Australia, despite a growing number of policies and principles put in place by governments and museums, there is actually little legislation, or even case law, to compel repatriation. This is not necessarily a bad thing, as legislation can sometimes make repatriation harder through the imposition of generic or specific criteria that may not suit each particular repatriation case. Most repatriations rely on institutional commitment, industry philosophy and good will. In Australia, these have often been sufficient to allow repatriation, though they have only developed after years of Indigenous advocacy.

Knowing what legislation does exist can help communities pursue the return of Ancestral Remains, even when it does not specifically cover repatriation. There are other laws that can be used to push the argument for repatriation. However, it must be recognised that legislation does change over time, and communities are advised to contact their local government heritage agency, museum, land council or community legal centre for up-to-date advice about relevant legislation.

The federal government's *Aboriginal and Torres Strait Islander Aboriginal Heritage Protection Act 1984* allows for the return of Ancestral Remains to communities, but only when 'discovered' remains are referred to the minister.¹⁴ This is a rare event as the return of newly discovered remains is well covered by legislation, policy and practices of the states and territories.

The Australian Government has progressively reinforced its support for repatriation since 2000. The joint declaration by the Australian and British Governments, signed in 2000, stated:

*The Australian and British governments agree to increase efforts to repatriate human remains to Australian indigenous communities. In doing this, the governments recognise the special connection that indigenous people have with ancestral remains, particularly where there are living descendants.*¹⁵

Through its departments, the federal government has also provided financial support to museums and communities for domestic and international repatriation activities since 2000.¹⁶ Its continued in-principle support for repatriation was ratified in 2011 by the announcement of a formal Australian Government policy:

*The Australian Government recognises repatriation helps promote healing and reconciliation for Aboriginal and Torres Strait Islander peoples.*¹⁷

The support of consecutive Australian federal governments for the repatriation of Ancestral Remains since 2000 reflects what was already happening within Australian museums and in other sectors of the heritage industry before that date. The guiding document entitled

'Continuous Cultures, Ongoing Responsibilities', released by AMAGA, long predates any statement or policy by the Australian Government.¹⁸ By the time governments became vocal, repatriation was already becoming a philosophy and practice within the museum sector and in national and state heritage agencies. National political support followed, rather than initiated, developments in the museums sector. Nonetheless, formal Australian Government support through policy – even though this is non-enforceable – provides an important degree of legitimisation.

There is state and territory heritage legislation that prevents private ownership of Aboriginal and Torres Strait Islander Ancestral Remains, and heritage legislation that commits to the prompt return of newly discovered Ancestral Remains to the relevant communities. There is also non-heritage medical legislation that prohibits ownership or trade in human tissue, such as state and territory Transplantation and Anatomy Acts. These can be used to prevent trade or collection of Ancestral Remains, though this was not their original intention.

What types of legislation and policies are relevant?

Domestic

Ideally, there should be little need for an Australian claimant group to resort to heritage legislation for the repatriation of Ancestral Remains from Australian institutions. The existing clear commitment by governments and many public collecting institutions to return Ancestral Remains means that any compelling legislation is currently not necessary. Furthermore, other changes to policies regarding Indigenous rights, such as the native title process, provide concurrent mechanisms by which claimants can assert rights to lands to which Ancestral Remains are associated.

There is no Australian legislation that prevents an Aboriginal or Torres Strait Islander person or community from making an independent claim for repatriation directly to a domestic or international holding institution (although some overseas institutions will only consider an approach made through an Australian government agency). As such, this handbook accommodates circumstances where applicants wish to pursue repatriation without intervention or assistance by other government or institutional agencies, unless such intervention or assistance is requested.

National, state and territory legislation and links¹⁹

The following instruments are active nationally and at state and territory levels. Anybody working in a state or territory comes under the relevant laws of that jurisdiction. This is important when considering how to transport Ancestral Remains between states and territories.

Commonwealth

- *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*
<https://www.legislation.gov.au/Series/C2004A02943>
- *Environment Protection and Biodiversity Conservation Act 1999*
<https://www.legislation.gov.au/Series/C2004A00485>
- *Protection of Movable Cultural Heritage Act 1986*
<https://www.legislation.gov.au/Series/C2004A03252>

New South Wales

- *National Parks and Wildlife Act 1974*
<https://www.legislation.nsw.gov.au/#/view/act/1974/80>
- *Heritage Act 1977*
<https://www.legislation.nsw.gov.au/#/view/act/1977/136>
- *Environmental Planning and Assessment Act 1979*
<https://www.legislation.nsw.gov.au/#/view/act/1979/203>

Queensland

- *Aboriginal Cultural Heritage Act 2003*
<https://www.legislation.qld.gov.au/view/html/inforce/2018-11-09/act-2003-079>
- *Torres Strait Islander Cultural Heritage Act 2003*
<https://www.legislation.qld.gov.au/view/html/inforce/current/act-2003-080>

Australian Capital Territory (Canberra)

- *Heritage Act 2004*
<https://www.legislation.act.gov.au/a/2004-57>

Victoria

- *Aboriginal Heritage Act 2006*
http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/PubLawToday.nsf/95c43dd4eac71a68ca256dde00056e7b/c97a2c77fe6ba6bbca2580d5001a1104!OpenDocument

Tasmania

- *Aboriginal Relics Act 1975*
<https://www.legislation.tas.gov.au/view/html/inforce/current/act-1975-081>

South Australia

- *Aboriginal Heritage Act 1988*
<https://www.legislation.sa.gov.au/LZ/C/A/ABORIGINAL%20HERITAGE%20ACT%2>

Western Australia

- *Aboriginal Heritage Act 1972*
https://www.legislation.wa.gov.au/legislation/statutes.nsf/main_mrtitle_3_homepage.html
- *Heritage of Western Australia Act 1990*
https://www.legislation.wa.gov.au/legislation/statutes.nsf/main_mrtitle_418_homepage.html

Northern Territory

- *Heritage Act 2011*
<https://legislation.nt.gov.au/en/Bills/Heritage-Bill-2011?format=assented>
- *Northern Territory Aboriginal Sacred Sites Act 1984*
<https://legislation.nt.gov.au/en/Legislation/NORTHERN-TERRITORY-ABORIGINAL-SACRED-SITES-ACT-1989>

International

Various countries have their own laws and institutional protocols regarding return of Ancestral Remains within that country. The United States of America, for example, has the *Native American Graves Protection and Repatriation Act 1990 (NAGPRA)*, which compels the return of Native American and Native Hawaiian Ancestral Remains and cultural items from federally funded US institutions.²⁰ This legislation does not apply to the Ancestral Remains or cultural property of other Indigenous peoples.

Unfortunately, no legislation in overseas countries compels them to return Ancestral Remains of Australian Indigenous peoples. Nor can any Australian legislation compel foreign museums and institutions to return Ancestral Remains.

The United Nations Declaration on the Rights of Indigenous People, which supports repatriation domestically and internationally, is voluntary and not legally binding, and many of the countries that have signed on to support the declaration still decline to introduce either policies or processes that would encourage repatriation outside of their own country. Even where supportive policies or legislation have been introduced they still leave a decision to repatriate with the holding institution. The result is that repatriation from foreign countries remains largely based on goodwill of governments and institutions rather than enforceable laws.



Major Sumner AM officiates at a Ngarrindjeri reburial ceremony in the Coorong, South Australia, April 2015

At the end of the nineteenth century the Ancestral Remains of the Ngarrindjeri and other people of the Coorong were looted and stolen from burial sites and hospitals. The remains of thousands of individuals are known to have been taken and subsequently held in museums and universities in Australia and overseas. The Ngarrindjeri have fought for the return of these ancestors.

Photo: Michael Diplock, Ngarrindjeri Regional Authority

Chapter 4

What to expect and how to prepare

This chapter describes some of the issues that can arise in preparing community/museum engagements. These issues may arise within (or between) communities themselves, or between a community and a collecting institution or heritage agency. All communities are different, with their own histories, cultures and, with particular regard to repatriations, sentiments. The fundamental rule is the principle of respect – for the Ancestral Remains, for community members and for other representatives. It should be noted, however, that not all repatriation activities have issues. The majority of returns occur smoothly and respectfully.

Receiving notification that Ancestral Remains are being held in a collecting institution can initiate a time of great shock for a community. It is best compared to hearing the news of a death in the family. Emotions can range from sadness to anger, and many questions arise, such as: ‘How did the Ancestral Remains get there?’; ‘Did we fail our ancestors in letting them be taken or in forgetting that they had been taken?’; ‘Who is responsible for their return?’; ‘What is the appropriate way to treat them?’; ‘Why did people take them?’; ‘How have they been treated?’; ‘What do we do now?’

At the same time, the person making the approach to the community will be subject to the rules and procedures of their own organisation or agency. While institutions are usually sympathetic to community requests for repatriation, there are still official procedures to be followed and paperwork to be done. This can impose some barriers between the community and the agency as the business side of repatriation intervenes. A repatriation manager will therefore need to respect the community’s circumstances and be prepared to allow adequate time for the community decision-making process. Communities will similarly need to respect the repatriation manager’s obligations to their employer.

Establishing your approach

The starting point is the knowledge that provenanced Ancestral Remains are, will be or have come under the care of a collecting institution or heritage agency in which a repatriation manager is employed, and that that agency now wishes to return the Ancestral Remains to the community.

Identifying the appropriate community is critical. This is dependent upon knowing the location of the place where the remains were collected or the lands to which the person was a traditional owner. There is no part of Australia that does not have an Aboriginal or Torres Strait Islander affiliated with it in some way. Often these groups are officially recognised by federal, state and territory governments as the appropriate people to make decisions or provide cultural advice about the cultural heritage of a particular area.

There is a chance that the identified community has not previously been told that Ancestral Remains from its homelands even exist in collections, and that they are available for repatriation, and this news may cause distress. The identified community needs to have the cultural authority to engage in the repatriation activity, not only to ensure that the Ancestral Remains are not returned to the wrong group, but also to ensure that no group is unnecessarily distressed by a repatriation activity.

While collection institutions can be concerned about upsetting communities, it is critical for an agency to understand that, while community members may express sadness or anger at the news that remains are in a museum, this is not a reason to keep such information from them.

A number of communities will already have engaged with repatriation, and may have their own preferences about which processes should be followed.

Who are appropriate representatives?

Each state and territory in Australia has agencies responsible for cultural heritage management in that jurisdiction. These may be government or non-government agencies (for example, land councils, native title representative bodies and Prescribed Body Corporates or Aboriginal legal services). There may be one or more agencies with shared services (for example, museums as legal repositories under federal or state laws). These agencies work daily with Aboriginal and Torres Strait Islander people within their administrative borders, and have accumulated knowledge and experience regarding the appropriate person or group to contact on any particular issues. These agencies can thus provide great assistance in identifying potential claimant groups and in assisting them to arrange the return of Ancestral Remains.

It is usually best to start repatriation engagement by working with authorised representative institutions. Such organisations will usually handle the engagement as a corporate group, or they will refer the museum to an authorised and empowered individual or group. It is important to be aware that while many people want the return of Ancestral Remains, and may enquire as to what Ancestral Remains are held, they may not necessarily be supported by the wider community in their efforts to pursue repatriation. Repatriation is an empowering act; it recognises a person's or a group's right to be the primary representatives for the dead, and indeed to act as experts in heritage issues. There is always the risk of accidentally 'empowering' someone who is not considered the appropriate person by the wider community.

Officially endorsed Indigenous agencies and representative organisations also typically have internal audit and reporting requirements. They are legally accountable to the Indigenous people they represent. Individuals, on the other hand, do not necessarily have such accountabilities, making it difficult to provide them with the sort of financial and in-kind services required, or to hold them accountable should issues arise.

For these reasons, early engagement with state agencies that have engaged in cultural heritage management, representation and perhaps previous repatriation experiences is a valuable way to begin the repatriation process. It is advisable to make use of local knowledge and the established history of engagement, and to work within state legislation and protocols. This will speed up the process of repatriation and help protect the repatriation manager, the relevant agency, the Indigenous community and individuals.

Community leadership, consultation and governance: 'right people, right way'

As described above, identifying the appropriate people or agencies to deal with is crucial. When dealing with human Ancestral Remains, mistakes are not only inconvenient, they can also be socially disruptive and destructive if Ancestral Remains are given to agents considered inappropriate or unauthorised by the majority of the community. This is further complicated by differences in social, or traditional, structures of authority, which can come into conflict with legislated or governmental authorities. For example, an Elder may have traditional authority in their community; however, another individual may be recognised or employed under a

government regulation as the preferred contact for heritage advice. The two may not always be in agreement.

On the rare occasions where there are disputes within a community, the museum officer, as an 'outsider', should not interfere. There will always be potential for dispute within community groups, or between individuals and those groups. This is a normal feature of all societies and cultures and must be respected as a part of the social process. For this reason, persons or agencies, such as museums, proposing to repatriate Ancestral Remains should not see themselves as the supreme judge over who should receive the Ancestral Remains, nor should they hurry the community into making decisions. The people appropriate to sorting out internal community issues always remain the members of the community itself.

Fortunately, the identification of appropriate communities and representatives is now rarely a problem. The combination of community recognition of delegates, along with the experiences of external heritage agencies, means that there has usually been a long period of testing and engagement with groups, and that structures for the management of heritage issues will already be in place. Local land councils, native title bodies, legal services, landowning groups and other Indigenous bodies are used to dealing with heritage issues and have recognised leaders in this field. These bodies are also often officially representatives of the community and are ultimately responsible to the community, and sometimes to the law, for their actions.

It must be acknowledged that not all repatriation exercises will be supported by all members of the community. Groups or individuals may argue that the Ancestral Remains were returned to the wrong people, or that other people were not consulted. The opinions of such people must be respected. However, ultimately a repatriation manager will be accountable to the laws and protocols of the wider community and of the state or territory in which they return Ancestral Remains, and to the processes of the organisation within which they operate. For this reason, group consensus, typically reflected through delegated and long-recognised individuals, usually proves to be the best approach.

It can also be problematic when, in identifying people to speak to, a researcher seeks out people who agree with their opinions, or who they think may be receptive to specific research proposals (in particular, involving invasive, and potentially destructive, scientific research). This is a particular issue when ambitious researchers have a personal research agenda that they give priority over the repatriation event itself. This bias by the researcher can lead to inappropriate people being empowered, as they gain an authority over the Ancestral Remains to which they may not be deemed to be entitled by the rest of the community, or place them in a difficult position later. Individual community members do have the right to hold different opinions over whether or not research on Ancestral Remains should be allowed. However, this can place these individuals in a difficult position when their authorisation runs counter to the preferences of the wider community. This is yet another reason why it is generally better to work through authorised community representatives or agencies.

Confronting histories: emotional, cultural and spiritual challenges

Not everybody is comfortable when confronted by Ancestral Remains. The reasons for this are many, and not specific to Aboriginal and Torres Strait Islander peoples. They include fear and/or dislike of being near human Ancestral Remains, fear of associated spirits or ghosts, distress that may arise when the story of how Ancestral Remains were acquired becomes known, and uncertainty as to whether or not it is appropriate for a person to handle them.

It is not unusual for Indigenous repatriation advocates, having secured the return of Ancestral Remains, to still be hesitant about handling them, approaching them or even entering the place in which they are stored. Non-Indigenous people, such as foreign curators, sometimes see this to be a sign of insincerity in the repatriation process – the assumption being that if people want Ancestral Remains they should be prepared to be near them and to handle them. This is wrong. It is common, and customary, for people from diverse cultures to prefer not to be in contact with human Ancestral Remains. It is particularly strong in Indigenous belief systems. This does not mean that the person does not respect the Ancestral Remains. To the contrary, preferring not to handle or be close to Ancestral Remains can also reflect profound respect for them, for the living people they once were, and for socially closer relatives or custodians, who usually have the exclusive right to touch them.

Recognition of a belief in the inherent sacred power of Ancestral Remains is also important. In many parts of Aboriginal and Torres Strait Islander Australia, some people are considered so closely related to a source of sacred power, such as a sacred site, that although they are recognised as the traditional owners of that site it is still considered too dangerous for them to enter its precincts owing to their extremely close spiritual association. Entry is usually done on their behalf by a less closely aligned family member, such as a mother's brother or other authorised individual. The same principle, regarding the danger of overly close affiliation, also occurs in the handling of human Ancestral Remains; just as a closely related person can be harmed by being too 'close' to the Ancestral Remains, an Indigenous person culturally unauthorised to manage them can also be in danger.

There is also a contrast to this where, despite the risks, control over Ancestral Remains is still seen as a way of empowerment, both politically and spiritually. A culturally unauthorised person can gain empowerment through access to, or ownership of, Ancestral Remains. This provides another reason why the repatriation manager must make sure repatriation is being made to an appropriate and recognised cultural authority.

There are, therefore, many sensitive cultural issues to be considered when engaging in repatriation activities. These issues affect both non-Indigenous and Indigenous workers. Being fully aware of the issues that will arise in managing the return and future control of Ancestral Remains is paramount.

Keeping Places, Cultural Centres and Final Resting Places

The terms Keeping Place and Cultural Centre have often been used interchangeably in discussions about where Ancestral Remains should be held upon their return. These are two very different types of facility. Generally, a Keeping Place is a smaller, lockable and private facility where Ancestral Remains may be safely stored prior to reaching their Final Resting Place. Such facilities are not for day-to-day access and are dedicated to the safekeeping of important cultural materials. A Cultural Centre, on the other hand, typically has the added services of providing office spaces and facilities for Indigenous cultural activities, possibly including a museum for community or public displays. Examples of Cultural Centres are much larger buildings, often with a small museum, administrative offices and a dedicated space for the private housing of Ancestral Remains. Access may be only for Indigenous people, or it may have wider access for non-Indigenous visitors. A Cultural Centre can contain a dedicated Keeping Place as part of its cultural facilities.

The major differences between Keeping Places and Cultural Centres are function and cost. A Keeping Place is usually meant to keep Ancestral Remains safe from interference, while a Cultural Centre provides extra community services. A Keeping Place is usually much more affordable for a resource-poor community, and strategies exist to make them cost-effective through passive environmental controls and pest management. A Cultural Centre, on the other hand, can be much more expensive, require much more time to secure resourcing for and take much more time to build, and have high ongoing running costs, such as staffing, lighting, air-conditioning and security. The community needs to be very clear about what it wants and about the ramifications of its choice. A Keeping Place, for example, could be a simple building, a steel container, or even a large-diameter gated concrete pipe, or it could be an annex to a larger cultural institution or museum. Its basic attributes are security and seclusion. Conservation of the Ancestral Remains or materials need not be the main aim. Ancestral Remains and some objects were fully intended to decay or be consumed by termites. That was their expected fate, and in some cases this was seen as a reflection and representation of the mortality of humans. Custodians are sometimes more concerned that the Ancestral Remains not be seen by unauthorised people, and that they lie in respectful surrounds, than that they be given over to long-term preservation as items of cultural heritage.

An excellent example of a Keeping Place is that managed by the Kimberley Aboriginal Law and Culture Centre (KALACC). KALACC is the peak organisation for law and culture in the Kimberley region. Incorporated in 1985, it has been supporting the repatriation activities of the more than 35 language groups in the Kimberley.²¹ These responsibilities include providing a central place that Ancestral Remains originally from the Kimberley can be returned to, and a Keeping Place for them while KALACC's repatriation officer undertakes consultation with relevant communities. KALACC has a Keeping Place, located at its main offices, consisting of two storage facilities (decommissioned insulated shipping containers), one for Ancestral Remains and one for sacred objects. Prior to the installation of these containers, KALACC worked with the Western Australian Museum to test whether this mode of Keeping Place was feasible; they were tested for temperature, humidity, pests and security. The store is located in an area experiencing high temperatures, seasonal heavy rainfall and high humidity, all enemies of preservation. The containers are made of heavy-duty steel, and raised off the ground — with an additional shade roof. The insulation provides a passive climate control, slowing down heating and cooling to a rate that the Ancestral Remains and objects can cope with without causing damage. Expensive lighting and air conditioning are not required. This provides a very simple, effective, and inexpensive Keeping Place. KALACC has installed two similar facilities at other locations in the Kimberley region of north-western Australia.

A Cultural Centre, or 'community museum', on the other hand, can be an expensive thing to both build and sustain. Costs are ongoing, with air-conditioning, electricity, staffing and security. The development and maintenance of exhibitions can be costly. A museum or Cultural Centre can maintain a Keeping Place within its walls. This Keeping Place may be subject to strict cultural protocols, while the remainder of the building or facility has freer access rules. However, it is likely this would place workers of all ages and sexes uncomfortably close to Ancestral Remains, and possibly to sacred objects, even if they were kept in securely locked stores. This may be stressful for some individuals, as well as flout cultural protocols.

The community should therefore be aware of the ongoing establishment and operational costs associated with the sorts of facilities they might prefer. A Keeping Place can be established relatively quickly, aiding in the prompt return of Ancestral Remains. (However, it is important to

choose the right sort of building materials: ideally, these should be ones capable of surviving local conditions for many years.) A Cultural Centre, on the other hand, can take much longer to build (up to several years) and be costly to run.

Museums as Keeping Places

A distinction should be drawn between a 'museum' and a 'Keeping Place'. In a museum, materials are stored to keep them safe, with appropriate conservation measures put in place. However, there is also usually a strong commitment to public display, education, research and access. The holdings of most major museums consist in the main of secular materials, those for which there are no strict cultural protocols of viewing. Holdings of culturally sensitive restricted materials, such as Ancestral Remains or secret/sacred objects, usually only form a small part of their total collections, although they may still be held in large numbers.

While national and state museums are repositories that may house Ancestral Remains, is it appropriate for them to label themselves, or be called, a Keeping Place? A Keeping Place is strictly a community-developed concept, referring to traditional practices of storing significant items, such as Ancestral Remains or sacred objects, in a place covered by Indigenous cultural sanctions. In light of this, a government-funded museum is not, strictly speaking, a Keeping Place, as it is administered under a different set of rules that do not reflect Indigenous ownership or authority. An exception would be when the museum is community-owned and -operated, or when protocols have been put in place, in conjunction with communities, under which the museum is endorsed as a Keeping Place.²² Ideally, a Keeping Place should be under Indigenous control, with Indigenous protocols taking precedence over the storage and management of materials.

The transfer of authority over collections can offend some museum advisers raised in a traditional professional culture bent on conserving collections for all time. Nonetheless, storing significant Indigenous collections through the model of a Keeping Place is in accordance with many Indigenous cultural protocols and reflects an operating cultural system. Museum professionals need to step back and understand the cultural context of such items.

Australian national, state and territory museums now usually offer to store Ancestral Remains and sacred objects at the request of custodians. In addition to the historic collections they have held for years, museums now house remains found recently or returned from overseas. This support is increasingly common where communities do not yet have access to the financial or infrastructure resources that would permit them to take Ancestral Remains back into the community. In such circumstances, the Ancestral Remains should be treated with respect and housed under museum-quality conditions.

It is important, however, that ownership of Ancestral Remains temporarily held in a museum be vested in the requesting community. As long as ownership lies with the museum, future changes in policy, resourcing or staffing can mean that repatriation ceases. If the community owns the Ancestral Remains, then any such changes do not affect their ownership, and it can take back the Ancestral Remains at any time.

The Final Resting Place: burial, reburial and other options

The governance arms of repatriating institutions or agencies can often be unaware of the specific cultural issues associated with the placement of Ancestral Remains in their Final Resting Place after their return. They assume that burial is the only legitimate form of final disposal. This is not usually a condition of repatriation required by Australian museums. As stated throughout this handbook, repatriation should be unconditional, with the processes, pace and circumstances of the final disposition of Ancestral Remains determined by the relevant community.

There should be no pressure on communities to give Ancestral Remains a final treatment of any sort, or under any timeframe, other than that decided by the communities themselves. The process of determining what the eventual final disposition of Ancestral Remains might be can require long discussion. Various community members may have differing ideas about what should happen, or communities may wish to research what other people have done in comparable circumstances.

Some questions to consider may include the following: what does historical documentation say about past ceremonies? What does the archaeological evidence of recently uncovered Ancestral Remains suggest regarding which burial practices might be followed? What are the options that a community might consider? The burial or reburial of Ancestral Remains is clearly one. For some Ancestral Remains — those taken from massacre sites, hospitals or institutions — this will be their first burial. They were never given full mortuary ceremonies. For others, excavated from burial sites, this will be their second burial, or ‘reburial’.

There are also many instances where remains were traditionally interred in caves or rock shelters, either as part of an ongoing mortuary ceremony or at the end of a longer mortuary ceremony process. It may be preferred that the remains receive a similar Final Resting Place — one that does not require burial.

Communities may wish to accord traditional funerary treatment to remains, or to accord them ceremonies associated with the religious beliefs they hold today, or a combination of both — all and any of these preferences are valid; it is wholly up to them. It is important to remember at all times that pre-contact Indigenous peoples did not have to have a ceremony to accord funerary treatment to remains that had been stored in museums — this is an entirely new requirement. Deciding on how to accord returned remains an appropriate funerary treatment can be a lengthy or a short process.

There are also traditions of Ancestral Remains being housed in special houses or displayed in ceremonial grounds. These Ancestral Remains may never have been buried, or, if they were, they were subsequently disinterred and then managed in accordance with traditional practices.

The decision as to the final mode of disposition belongs to the relevant community. Providing communities with assistance when asked, ranging from basic advice to research services, is usually appreciated.

Here are some examples of how some communities have treated Ancestral Remains once returned:

- A series of holes were dug in an established cemetery using a post-hole digger. The Ancestral Remains, which were mainly skulls, were respectfully wrapped and placed in each hole by a number of community members. The holes were filled in and a plaque finally erected along the line of small graves.
- A commercially produced concrete burial chamber was purchased and placed in the ground in a cemetery. Ancestral Remains that had been returned were placed in the lined grave. The grave can be reopened for the interment of other Ancestral Remains as they are returned or as they are uncovered elsewhere by town development.
- A cinder brick 'room' was built in the country town cemetery; its interior housed a number of shelves. Both interior and exterior were painted with local Aboriginal designs, and there were dedicatory plaques outside. The Ancestral Remains were placed in the room. Local Catholic and Anglican priests were invited to bless the site and the Ancestral Remains at the same time that a traditional smoking ceremony was held.
- Ancestral Remains were placed in a small cave and secured with concrete and steel bars. Only the Elders knew the location.
- The local parks agency provided National Parks land for the burial of Ancestral Remains. Large holes were dug, and Aboriginal custodians carried the paperbark-wrapped Ancestral Remains to the holes, where they were respectfully placed in rows before being buried. There was no official marker to identify the location.
- Ancestral Remains were reburied in a dedicated cemetery on Aboriginal land. Museum staff assisted in laying out the Ancestral Remains in correct anatomical order so that they could be carried to the gravesite and placed in the graves in their articulated form by Aboriginal custodians. A ceremony was held the next day, and to commemorate the event a plaque was erected in the cemetery.
- Ancestral Remains were placed in a hidden rock shelter.
- Ancestral remains were accorded a blend of old and new traditional ceremonies, with the remains placed on a tree platform similar to that from which they were originally stolen; they were later taken down for burial in a grave beside that of a respected Elder.

These examples illustrate how communities have created culturally appropriate ways of caring for their returned ancestors. Many people no longer live on their traditional lands or have access to them. Thus keeping ancestors close to the current community by burying them in the local cemetery is often the only option. Communities must weigh up many elements – for example, the requirement for ancestors to be buried near to where they were originally taken from versus how to do this if their original burial site is not known, or is not accessible, or is now very far away from their community. Should ceremony reflect the religious beliefs of people today, or those of the deceased, or both? These deliberations are very serious and can take a long time to resolve.

Logistics and funding: financial cost and workload

The work associated with repatriation takes both time and money. However, much can be achieved with limited resources, especially if the person seeking repatriation draws upon the knowledge of other groups or agencies with experience with repatriation. Such agencies include Indigenous Advocacy groups, Aboriginal legal services, land councils, native title representative bodies, national and state heritage agencies, museums and a growing number of experienced, high-profile individuals. Such agencies can advise on:

- the possible locations of Ancestral Remains domestically and overseas
- the contact details for individuals and agencies that may be able to assist
- information on legal issues
- the protocols of the states in which they are located
- the best way to make application for the return of Ancestral Remains
- the best way to physically handle and store Ancestral Remains to ensure they are not damaged
- workplace health and safety issues, to ensure the Ancestral Remains do not constitute a safety hazard
- the transportation of Ancestral Remains internationally or across state and territory borders
- the best ways to deal with media
- those who can best advise on recordkeeping.

Some agencies, such as museums and government heritage agencies, can also occasionally assist with either in-kind staffing or financial support. Alternatively, some agencies do have funding that they can use for their own repatriation activities but cannot distribute funding to interests outside of their organisations. In such cases, it may be possible to form a partnership in which the agency assists a community repatriation plan under its own wider activities ('piggy-backing').

Using existing resources and experience can bring costs and time down considerably. For example, cost-effective measures may be employed by reducing the need to employ a specialist researcher (or the time the researcher is required), or by providing information about economical storage techniques that will not require expensive climate control or pest management. Nonetheless, costs can still be high, and there are as yet minimal external funding opportunities for communities to draw upon. Costs may include the following: petrol and catering at community consultations and funerals; caskets or appropriate funerary 'containers' and other reburial equipment; staff time to undertake community consultation and liaison with external authorities, such as national parks, cemeteries, local councils and local landholders.

Repatriation activities can take some time. Initial research is needed to identify where Ancestral Remains are, or might be, kept; lengthy correspondence is often required; communities need to be consulted; and collecting institutions have governance processes they must follow. This means that periods where little happens will alternate with periods where much is happening. In some repatriation cases, the transfer of Ancestral Remains from a collecting institution to an applicant group has been completed within weeks. More commonly, however, repatriation can take months to years.

It is rare that an individual in a collecting institution will be able to work full-time for an extended period on repatriation, unless they are managing a large number of cases and are suitably resourced. This is important when considering what staffing resources to dedicate to the task. It may prove inefficient to get funding to engage someone for a short term (for example, six months) to work exclusively on a repatriation exercise when the case may take several months — or several years — to see through to completion.

Keeping records: information management techniques

Good recordkeeping is important. To some, this requirement might be considered culturally inappropriate or irrelevant. However, such recordkeeping does serve to protect both the Ancestral Remains and the community in future years. It has been shown that poor recordkeeping has caused problems for both museums and communities, resulting in the need to repeat research years later.

Records should preserve not only the history of the Ancestral Remains but also the history of the process of seeking their return, financial records, correspondence, meeting minutes, names of people participating and final outcomes. The records should be kept in a secure location to avoid loss or damage, or access by inappropriate readers. Much of the information contained in repatriation records may be distressing for people; this particularly applies to older photographs or scientific descriptions of Ancestral Remains, which are essential but which often use terms that can be seen as clinical, unsympathetic and offensive.

Most agencies currently involved in repatriation receive some funding from the Australian Government, either because they are themselves government agencies or because they have received funding through such an agency. They are thus required to keep records for official auditing purposes and to ensure that public money has been spent appropriately. The majority of community representative organisations are required to be officially established as a business or organisation under the relevant state legislation. Such agencies, whether Indigenous or non-Indigenous, will deal with each other. Each must therefore ensure not only that its resources are being used in line with government requirements, but also that any resources it provides to other agencies, such as an Indigenous community, are both given according to government requirements and spent by that community representative agency in accordance with particular laws of governance and reporting.

This need for ‘accounting’ — both financial and ethical — is the reason many agencies cannot deal with individuals unaffiliated with any formal Indigenous organisation. In such cases, it is harder to demonstrate that the resources were provided, or spent, appropriately. It is also harder to bring the person to account if laws are breached. Keeping good records helps protect all agencies against charges of poor management or inappropriate expenditure. It also helps protect individuals against charges of misuse of resources. These recordkeeping services can usually best be provided by an experienced Aboriginal or Torres Strait Islander organisation.

The keeping of comprehensive records of the Ancestral Remains is also important for all agencies involved. In years to come, it may be important for a community to be able to review the history of the collection and the return of Ancestral Remains; for example, in a future native title claim. It may also be necessary to demonstrate that the Ancestral Remains are indeed those of a deceased ancestor and not of a more recent murder victim or missing person. There is anecdotal evidence of a case in which Ancestral Remains were stolen from a community office, in a quick ‘grab-and-run’ theft where the box containing Ancestral Remains was likely to have been mistaken for containing money or some other valuables. Upon discovering the box contained Ancestral Remains, the thief abandoned it. It was necessary to consult the relevant records, including photographs, to prove that the Ancestral Remains in the box were actually the ones that had been repatriated.

There is also still a collector’s market for Ancestral Remains. They are sold through auction houses and online sale sites. While the sale of Australian Indigenous Ancestral Remains is rare, it is not unheard of, and there is always the chance that stolen Ancestral Remains may

turn up for sale. Often such sales are illegal, although the seller does not always know that. Again, it is important to preserve documentation that can ensure any such Ancestral Remains that may later turn up for sale or trade can be identified.

When Ancestral Remains are discovered, the police are often called in to investigate. If the remains prove to have been stolen, discarded and then recovered by police, they may be confused with victims of crime. Documentation that records characteristics of the Ancestral Remains can help in ensuring a quick return to the right communities.

Unfortunately, many communities do not have resources for preserving documentation over the long term. It is not unusual, with changes in staffing, for the memory of repatriation activities to be lost. Files are sometimes misplaced or destroyed. There have been instances in which a community has asked a collecting institution to send them through copies of previous correspondence several times over a number of years because the information keeps getting lost. Quite apart from the collecting institution's governance responsibility to keep detailed records of its activities, this possibility of loss of information by a community is yet another reason for the institution to keep complete records. The records should be kept in a secure store, with access and use to be under the community's control.

Community reports

Museums should be prepared to offer, on request, a community report written in plain English. Such reports would collate all the known history of the Ancestral Remains, describe the Ancestral Remains to be repatriated, identifying sex and possibly ages, and outlining any trauma (disease or injury) that the person may have suffered, plus any other relevant information. These reports help to establish a more personal individual identity for the Ancestral Remains. Scientific terms should be glossed using plain English terms.

It is important that the research on the history of the collection be provided. Many museums have returned remains with minimal associated historical information. While community reports can describe the remains as they are now, they may miss much important information regarding the earlier history of the collection of the remains, owing to poor research at the returning institution. This is a particular problem with remains returned from overseas.

Original reports should be considered the property of the community. The preparing institution will be required to hold copies of the reports, in line with normal governance requirements. Reports should not be supplied to external researchers without community approval.

Occupational health and safety issues

Management of Ancestral Remains also requires consideration of health and safety issues. These fall into two main classes: mental and physical.

Exposure to Ancestral Remains can be a traumatic experience for some, especially when the process of mortuary practices has changed so that people no longer have as much exposure to Ancestral Remains as they had in the past. Non-Indigenous officers from collecting institutions can often be personally and mentally removed from the Ancestral Remains in their care, seeing them as historic objects more than as Ancestral Remains of once living people. As a result, they can often be indiscreet when exposing those Ancestral Remains to Indigenous people, or in the terms they use to describe these remains. The first exposure to Ancestral Remains in a collection can therefore sometimes be a shock. It is, therefore, appropriate to prepare visitors for their proximity to, and the revealing of, Ancestral Remains.

Indigenous Australians usually see Ancestral Remains in a much more 'connected' way than do non-Indigenous collection managers. For them, the Ancestral Remains still embody aspects of the spirits of the ancestor. They can be spiritually benevolent or malevolent. Individuals may feel welcomed, or they may feel threatened or at risk, especially when the remains of other groups are held in a single repository. These responses are in accordance with traditional belief systems, and a refusal to see or handle Ancestral Remains should never be seen as a failing or weakness; rather it requires sympathy for the views of the Indigenous visitor.

Care should also be taken when expecting people to handle Ancestral Remains, particularly when the person may be unprepared for the experience. Once exposed to Ancestral Remains, the person cannot undo that experience, and unless they are prepared for the memory, through maturity or an acceptance of responsibility, it can cause nightmares. Young people, for example, might respond differently from older community members. It may cause them distress well into the future. What becomes known cannot become unknown.

This trauma can be avoided or managed by full disclosure of the experience people can expect when they enter a place with Ancestral Remains and allowing them to make personal decisions with how they would like to proceed. It is important to respect people's subsequent decisions. Do not create a situation in which people are caught unawares.

Ancestral Remains may also carry physical risks, although this is rare. In the past, Ancestral Remains have been treated with lead-based paints to make them whiter for display (more 'bone-coloured'). They may have been treated with toxic pesticides and arsenic. They may have been examined using liquid mercury to measure inaccessible cavities, with some mercury remaining behind. Soft-tissue Ancestral Remains may be stored in dangerous chemicals, such as formaldehyde, which are dangerous to touch or inhale. Mould or bacteria, which can trigger allergies or illness, may also be present. If unusual smells are noticed, and no information regarding the presence of possible hazards has been provided, then the Ancestral Remains should be isolated and contained, and the returning institution contacted for further information.

Ancestral Remains that have been chemically preserved may not always decay in the way unpreserved Ancestral Remains do. This means that, depending upon the nature of the Final Resting Place, the Ancestral Remains may be uncovered or exposed in the future. This could also cause distress, and the risk should be disclosed by the returning institution to the community.

Collecting institutions seeking to return Ancestral Remains are usually well aware of the risks and should do whatever they can to determine whether such risks exist and advise communities accordingly. However, it is always best to ask explicitly whether any such risks do exist, and, if they do, to develop suitable health and safety procedures.

Ancestral Remains should therefore be stored in a well-ventilated space, or in a space that can be easily ventilated when opened. If the space is not well-ventilated, then people should not spend long hours working in there. It is best to handle Ancestral Remains only in a well-ventilated environment, to use gloves and breathing masks wherever possible and to ensure hands are washed well afterwards. The risk is usually minimal, and communities may prefer to not use such 'barriers' when preparing Ancestral Remains; however, this must be their decision.



Larrakia people welcome Ancestral Remains at Mindil Beach, Darwin, Northern Territory, August 2002

The Ancestral Remains of over 80 Larrakia people were returned in a ceremony at Mindil Beach. The beach area, a traditional burial ground, is now home to a casino and popular markets.

The majority of the remains were stolen around the end of the nineteenth century, under the instructions of William Ramsay Smith, the South Australian State Coroner.

The remains of the Larrakia ancestors had been split up. Some went to the University of Edinburgh; others stayed in Australia — these were housed at the Australian Institute of Anatomy in Canberra before being transferred to the National Museum of Australia in 1985. In 2002 the collections were reunited and returned to the Larrakia people.

National Museum of Australia

Chapter 5

Museum groundwork

Ancestral Remains in museum care

This chapter describes some of the processes and protocols involved in the museum side of repatriation. It is intended to assist museum staff who are new to the task of repatriation, as well as to provide a background to any non-museum staff who will be dealing with museums.

Most major publicly funded Australian museums, and some universities, have holdings of Ancestral Remains. These have typically accumulated over a long period through various avenues, ranging from deliberate collection by early curators, collections having been transferred from other institutions (because they either closed or determined that they no longer wanted the collections), donations made by the general public, to an institution's compliance with a statutory obligation (such as state laws) to house Ancestral Remains when discovered.

Early collections of Ancestral Remains were often stored with natural history collections, and displayed at the whim of the relevant curator. Today, Australian museums are discouraged from displaying Australian Indigenous Ancestral Remains. The peak museums' industry body, the Australian Museums and Galleries Association (AMAGA, formerly Museums Australia) makes this quite clear, stating:

1.4.10 Ancestral remains should not be displayed in public, except in special circumstances where parts of the remains are an integral part of other items, such as human teeth incorporated in an item of personal attire. In such cases the traditional custodians or those authorised by them, must agree to the display of such items. Equally, images and replicas of ancestral remains held in museums must not be exhibited or in any other way made available to the public without the prior permission of the traditional custodians or those authorised by them.²³

Australian museums strongly adhere to this philosophy, accepting that Ancestral Remains are in their care temporarily and as a preliminary to their eventual repatriation.

Similar comprehensive industry-wide guidelines for overseas museums and collecting institutions are rare, though growing.²⁴ Many individual institutions have responded to requests for return, or have initiated returns themselves, in appreciation of the philosophy that it is appropriate that Ancestral Remains be returned. Indigenous Ancestral Remains may still be encountered on display, particularly in older exhibition contexts. Ancestral Remains can also be found in various collections, ranging from natural history and examples of human 'types' to art gallery collections, where modified or decorated Ancestral Remains are seen as objects of art rather than as the remains of ancestors.

Establishing your approach

Repatriation activities can take some time and frustration can occur with what may seem to be a drawn-out process. It is important for everyone involved in repatriation to understand the pressures, responsibilities, authority, obligations and powers that other participants face.

Australian public museums have a sector-wide commitment to unconditional repatriation. The museum repatriation officer must be fully aware of, and committed to, the principles of the policies and philosophies of the Australian Government, state governments, the museum

industry and individual museums in relation to repatriation, placing the act of repatriation before personal research interests.

Appreciation of this commitment is fundamental in planning your approach to repatriation. Repatriation is a service provided to Indigenous communities by the collecting institution. As noted previously, the principle of respect is the basis of all engagements. This is even likely to be enshrined in the institution's code of conduct or client service charter.

Museum governance and decision-making

The majority of holdings of Indigenous Ancestral Remains are with major museums. Many of these will be state-funded public institutions; others may be affiliated with universities. As public agencies, they have responsibilities, obligations and processes that cannot be bypassed, no matter how sympathetic an officer may be to a particular case. The institutions are open to regular review of their activities, to ensure they act appropriately and spend the public purse ethically.

These institutions are also subject to 'ways of doing business' both internally and externally developed and imposed. Repatriation is not the only role of an institution, and the business and governance protocols of each institution are typically designed to allow all of its business operations to be managed effectively through generic principles, whenever possible. Although certain officers, such as a repatriation officer, can strongly influence the development of repatriation policies and protocols, such policies must still follow corporate governance rules.

Development of museum policies

Most Australian museums now have policies, protocols or guidelines in place that facilitate the prompt return of Ancestral Remains. These emerged after years of effort by Indigenous advocates to secure the return of their ancestors brought pressure to bear on museums to explain such questions as:

- Why did they have Ancestral Remains?
- What had they used them for in the past?
- What were they going to use them for in the future?
- How were they acquired?
- Why shouldn't they be returned?

Museums were compelled to engage with Aboriginal interests that were previously often held at arm's length. With this closer engagement came a better understanding of each other, ultimately leading to greater collaboration, and to a formalised policy, in the representation of Indigenous cultures and a commitment to repatriation.

The development of museum policies is complex, and involves amalgamating not only the museum's preferred approach, but also mandatory reporting and governance requirements. All policies must be linked to the principles established in the institution's enabling legislation and regulations, which have an impact on the processes of deaccessioning and repatriation, as they impose strict controls over how items can be removed from a collection. For example, there may be a mandatory delay (a 'cooling-off' period) between an item being approved for deaccessioning and return and the final sign-off on the deaccessioning process. Policies must also be cross-linked to the institution's other policies. For example, the Indigenous repatriation policy may be subject to the generic principles in the institution's deaccessioning policy.

There is no excuse for an Australian institution not to be proactive in advising communities of its holdings of Ancestral Remains and the processes for making repatriation claims, and in ensuring the prompt return of Ancestral Remains once the appropriate Indigenous custodial group has been identified. The Australian domestic repatriation movement has been around for a long time and has been acknowledged and supported by institutions and governments for at least 20 years. This has provided sufficient time for institutions to take steps to deaccession Ancestral Remains in their official collections, in order to facilitate their prompt transfer to the appropriate communities.

Where the deaccessioning process is an extended one, there is often the possibility of an immediate 'loan' of the Ancestral Remains back into the care of the community until the deaccessioning processes have been completed. This is effectively repatriation in all but name.

Many international institutions have older and more restrictive founding legislation, as well as charters and policies that may strongly restrict them in their repatriation activities. Sometimes this can be used to their advantage; for example, where they blame local legislation for not allowing them to return remains. Nonetheless, more and more overseas institutions, and governments, are modifying their policies to allow for easier repatriation.

Policies can thus sometimes inadvertently impose barriers. But they can also provide opportunities. It is useful to be aware of an institution's policies when preparing a repatriation request or when acting as an intermediary in a return between an institution and traditional custodians. Many institutions make their policy or procedures available through their public websites.

Past requests

The actual processes of repatriation have developed over many years. Each experience leads to improvements in process and so to faster and less contentious repatriation events. However, it must be acknowledged that in some cases the process has been so unreasonably slow that there have been social changes during the life of the project. One outcome is that a group or person who made a claim to Ancestral Remains in the past may no longer be considered the appropriate group or person to deal with today, or indeed may no longer exist. The development of elected representative bodies, formally legislated cultural heritage offices and councils, native title bodies, land councils and other authorised groups has meant that, over time, museums have occasionally been required to shift their engagements with communities and representatives to conform to changes in state or territory legislation or protocols.

Such changes can lead to considerable discontent within a community, as well as uncertainty in a museum. Where Ancestral Remains have already been returned, there is little the institution can, or should, do to transfer the Ancestral Remains to a more recently recognised representative agency. Past returns were done in accordance with both cultural and institutional policies or protocols of the time, and so should be respected.

Where there is a potential contemporary dispute, it should be resolved at the community level and not by the institution.

Documentation

Whatever form of repository is decided upon, it is important that it include a dedicated recordkeeping store. As noted earlier, there will be extensive historical and governance material accompanying any repatriation, and it is necessary that this material be kept safe for future purposes. The information contained in these records is best considered as being as sensitive as the Ancestral Remains themselves, and so should be given similar security. Many institutions keep their human Ancestral Remains databases on separate, password-controlled computer drives, and paper records are kept in special locked cabinets, often with a fire rating.

Documentation can be expected to include electronic information, such as digital photographs, electronic documents, databases, paper documentation, historic reports and books, photographs, drawings, notes and tape recordings. It should specifically include copies of original museum catalogues, archives and any material that may relate to the Ancestral Remains in question. Unique and institution-specific information, such as the museum's numbering systems, should be explained.

Computer technology changes rapidly, and many devices and programs used in the past are no longer useable. For example, few places now have the capacity (or equipment) to play floppy discs; cassette recordings are both sensitive to deterioration and hard to find a player for, and old databases have become redundant. It is therefore important to establish a plan for maintaining electronic records over the long term. This can be done by using easily updatable 'off the shelf' systems. Specialised systems can be expensive and hard to maintain. They can also require specialised and ongoing training. If the responsible trained staff member leaves, then using the databases can be difficult.

It has already been noted that Australian public museums are required to keep records for governance and legal purposes. This requirement for them to store full records can work to community advantages, as they become off-site repositories. Their information should be regularly backed up and transferred to changing storage technologies. This information, along with advice as to the best technology for the purpose, can be provided to communities in the future.

Recordkeeping

Records should be well organised. As well as providing a historical trail, the information can be useful for future issues, such as native title claims. Another aspect of the institution's files is that they can be requested by corporate auditors for legal purposes. Records are a resource for the future, not just a record of the past.

A suggested approach to managing repatriation documents is to develop a file for each case. There can be a habit of having a general repatriation file, hard copy and digital, where all documents are saved. Breaking such files down into case files is more efficient for individual case management, and it also helps protect the organisation's records. A case file allows access to the information relevant to that case only, making it easier to get an understanding of where the case is at. Discrete files also help protect information. For example, in a legal case, someone from the opposing legal team can ask for file information on a specific issue. If they ask for information on a specific repatriation case and it is held on a large generic file, then they may get access to the full file and all of the organisation's other repatriation activities. With smaller case based files they are restricted to that particular file and case only.

Reporting

Competent reporting is an important part of repatriation. It is necessary for documenting the stages of a repatriation exercise, and for proving to external auditors, funding agencies or governance inspectors that all work has been above board and appropriately managed. It is a requirement that must be done if the organisation is to be able to sustain its external resourcing as well as satisfy its internal requirements.

Many agencies may have template style reporting, with selected criteria. Before commencing any project, it is important to identify what sort of reporting will be required and to maintain records relevant to this reporting throughout the project. Prior planning and information collection will streamline the final reporting process and reduce the human and financial resources required in delivery.

It is reasonable to expect that the sort of items that a repatriation project will be required to report on will include:

- the number of Ancestral Remains and an indication of how many individuals are represented in that number
- the amount of external funding (how much has been provided by government or industry sources)
- the sources of external funding (names of external funding agencies)
- internal funding allocations (how much has been allocated by an organisation)
- the basis of costing for projects (how the preliminary budget was determined)
- the actual expenditure
- the breakdown of expenditure (travel, catering, printing, etc.)
- staffing (people and hours worked)
- the outcomes.

Responsibilities and accountability in repatriation

Dealing with Ancestral Remains imposes many responsibilities. First, there is the responsibility of everyone to respect the deceased and the community; second, there is the responsibility to ensure correct governance is applied (for example, legal, financial and reporting requirements). Few individuals have the time or training to do all this work by themselves. This is a reason why many museums and government departments prefer to work through Indigenous representative organisations rather than through individuals working alone and largely unsupported. An individual becomes accountable for demonstrating appropriate use of funding and resources. If a project fails, if funding has been mismanaged or if reporting and acquittal are either not completed or done so insufficiently, then the individual can become legally accountable.

Representative organisations, such as legislated bodies, land councils, legal aid and native title bodies can provide a level of accountability necessary for comfortable museum–community engagements. However, sometimes this handing over of responsibility to a corporate authority can be a problem. The corporate power structures of the organisation may not reflect traditional power structures. Western governance and engagement processes may not always reflect Indigenous governance and engagement processes. An example is where an older local traditional owner or custodian, who traditionally would have had cultural authority and thus overriding authority in a particular area, may be put second to a younger council executive who enjoys authority to issue instructions as a result of having been appointed or elected to serve on Western governance bodies, such as local councils, boards or representative bodies. Both

museum officers and community members must be aware of the potential for conflict between Western and Indigenous governance and law systems and take care to manage them in all engagements.

Legal access

Records can be called by legal application at any time; for example, through auditing, 'Freedom of Information' requests or document discovery during legal cases, such as land claims or native title claims. This is actually rare, but all participants must be aware of the possibility. There are strategies to protect information; for example, as noted above, where it is recommended that individual case files be prepared rather than thick generic files. This helps to avoid the chance of sensitive information about an unrelated issue being shared with the wrong parties.

It is always in the best interests of the agency to cooperate. For example, in the 1980s, a land claim was in process in Australia's Northern Territory. The land commissioner expressed frustration with the quality of documentation provided in support of the case. At some stage, reference was made to the anthropologist's notebooks. This declaration, made during the court proceedings, meant that the notebooks could be called by the opposing parties as evidence to be considered. This caused distress within the anthropology community, whose members had always thought of their notebooks as private. Many threatened to destroy their notebooks or associated documentation. The land commissioner ruled that any such action would be in contempt of court and that any anthropologists who did this would be liable to prosecution.²⁵

Legal access to records is not to be feared. It is a normal requirement of all business, even if very rarely resorted to.

Freedom of Information

'Freedom of Information' requests are a constant risk for both Indigenous and non-Indigenous agencies, particularly when they are reliant on public — that is to say, government — funding. Ideally, all records will be kept up to date and all rules of ethical management and governance will be followed, and there is little to fear from such an application. Awareness of the processes as they apply to certain documents and to a particular agency is important, as is access to legal advice.

Media

Repatriation of Ancestral Remains is very popular in the media, such as newspapers, television, social media and the internet. Coverage is usually very positive and supportive of repatriation. The advantages of media coverage are that it promotes the repatriation activities of an institution, gives the receiving Indigenous community a far-reaching public voice, recognises the community's authority and raises the associated issues of recognising past histories and reconciliation.

There can also be negative reports, particularly when communities have internal disputes over the appropriate people or agencies to receive and manage the Ancestral Remains, or when researchers protest the return of Ancestral Remains that they would prefer to see used for scientific purposes. Such coverage is certainly destructive, and the damage persists long after the media interest has passed.

Not everyone wants media coverage of their repatriation activities. Media coverage is an option, not a requirement. It cannot be forced on communities. There is a desire, and sometimes an obligation, on the part of non-Indigenous organisations such as museums, universities and governments, to promote their activities as widely and as publicly as possible. Even so, the Ancestral Remains and the community are entitled to the respect and dignity normally accorded the dead and their families. The decision whether to have such coverage should be made by the receiving community.

If a community decides media coverage would be useful, then museums can provide services. Preparation of press releases, distribution, contacts, suggested guests (for example, government ministers) and sometimes a venue and catering for a media reception can often be provided. The museum can also collate reporting of the event for the community's records.

It is important to have a designated spokesperson if media do become interested. The media interest may not have been prompted by a deliberate disclosure that a repatriation event was happening. Despite the best efforts of a community to keep its activities private, the news can sometimes still get out. In addition, some museums, as publicly funded institutions, have an obligation to make some sort of comment if asked. Usually, such commentary will be confined to the very basics, but communities should be aware of this obligation. Both the museum and community should therefore be prepared to respond if the issue arises.

There are training courses available on how to deal with media, although most museum media officers would likely be willing to provide a useful briefing. Typically, these media officers advise spokespeople to stay 'on track' with the issue at hand and not to be distracted by questions on other issues that they consider irrelevant.



***Final Journey*, 2003, by Len Maynard**

wood, cloth, aluminium, 45 x 30 x 10 cm

Maynard created this work in response to the repatriation and reburial of Ancestral Remains from the University of Edinburgh's collection in 2002.

National Museum of Australia

Chapter 6

Locating Ancestral Remains in domestic or overseas institutions

Identifying where Ancestral Remains are held can be difficult. There are numerous institutions and agencies that may hold Ancestral Remains, or have held them in the past, including museums, universities, heritage agencies and professional and amateur societies or private companies and individuals.

Many agencies and individual researchers will try to be helpful. Even if not prepared or able to return Ancestral Remains they will usually provide advice or information, though with varying degrees of detail. There are others, however, who will refuse to provide information. Some individuals will cooperate as fully as possible, while others will refuse to do so, regardless of their own institutional policies.

The basis for engagement must always be mutual respect. All communication should be courteous. Many non-Indigenous individuals and institutions, inexperienced in dealing with Indigenous interests or representatives, will initially be reserved and sometimes appear hostile. Experience shows that honest and friendly engagements do promote a sense of trust and, while not always resulting in a successful repatriation at that time, they will help to develop mutual understanding and improve future communications that may result in repatriations in the future.

Community initiatives

There are no official obstacles to communities carrying out repatriation research and making direct requests themselves. However, some museums and institutions prefer to only deal with Australian Government representatives. Engaging with the various government agencies and museums that have an existing historical or administrative role in repatriation may seem intimidating at first. These agencies, whether governmental or museum-based, have often taken the role of approaching foreign institutions in search of Ancestral Remains to return. They also administer much of the funding. It can appear that they must be in charge of the repatriation process. However, Aboriginal and Torres Strait Islander people do have the right, both culturally and legally, to undertake repatriations, by dealing directly with collecting institutions, whether foreign or domestic, and to receive Ancestral Remains without reference to, or with the participation of, a government agency or a museum. The *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth), which applies across Australia, clearly states in Section 21:

*Nothing in this section shall be taken to derogate from the right of any Aboriginal or Aboriginals accepting possession, custody or control of any Aboriginal remains pursuant to this section to deal with the remains in accordance with Aboriginal tradition.*²⁶

What does the community already know?

Often, much information regarding the existence and history of Ancestral Remains already exists in communities. It can be found in community-owned copies of old historical records such as newspapers or books, in which the travels of colonial explorers and collectors are recorded. References can be found on old files. Community Elders will have memories of their own experiences or of stories they were told as children about Ancestral Remains having been taken, and who took them. Pulling what information exists together is a good way to start finding out the details of which Ancestral Remains might have been taken. It is possible that the evidence is

piecemeal, such as a remembered conversation, or a scrap from an old book. However, these fragments can help get the process started. Using what information is available already helps in identifying and approaching institutions that may have the Ancestral Remains or that may have information that can help track down the Ancestral Remains. It is worth copying and filing all the fragments of information, as they are found. Over time, such documents can become a very useful resource.

With the growth in repatriation activities in recent years, many communities already have some information about whether Ancestral Remains were taken from their regions and where these remains might be. They also have developed contacts with various state museums and heritage agencies through previous collaborative heritage projects. Many of these agencies will already have checked their files and approached communities after Ancestral Remains were identified. This correspondence can sometimes get misplaced and it is always worth asking again. These agencies can often provide communities with helpful information on other repositories of Ancestral Remains, based on the general experience and knowledge of their staff.

Follow the collector

Looking at old accounts, such as explorers' reports, newspapers, reminiscences and so on helps identify who might have been collecting Ancestral Remains. Sometimes the act of removing Ancestral Remains was described, sometimes it was not. It is important not just to track collections where it is said Ancestral Remains were removed, but also to examine whether other collections, such as of plants, animals and geology, included unreferenced remains. Questions that might be asked when searching reports include:

- When were they in the area? Was it a period when Ancestral Remains were known to have been taken?
- Who supported their travel? Were they an official exploration party? Were they supported by a government? Did they have orders to collect Ancestral Remains (for example, from police)?
- What was their occupation? (Doctors, scientists and explorers are more likely to collect Ancestral Remains than others.)
- Did they write any books or articles about their travels? Are these published or unpublished? If they did write books or articles, then it is likely that they used notebooks or journals to record collected information. Notebooks often contain a good deal more information than what is finally published. Do the notebooks or journals still exist somewhere?
- Were the collectors closely affiliated to a particular institution? People often donated materials to a favoured institution, such as a university they had attended or a museum they had been trained at.
- Where did the collections end up? Often collections were distributed to acquaintances and/or institutions close to the collector's place of residence at time of death. Often their families or friends donated inherited material to local museums and galleries.
- Who were the acquaintances of the collector? Some collectors commissioned other people to get remains on their behalf. Others distributed the Ancestral Remains they collected among other friends and acquaintances with whom they shared professional interests. Sir Joseph Banks, for example, sent some of the Ancestral Remains his agents had collected for him from the Sydney region to a colleague in Germany.

Using the web

The web is a useful tool for both identifying where Ancestral Remains might be held and finding out the history of those Ancestral Remains. Many historical documents, such as published explorers' books, describing the collection of remains are now available online. Many institutions either list their holdings of Ancestral Remains on their websites or give hints that they hold Ancestral Remains – such as a listing of relevant policies, or the names of collectors known to have collected Ancestral Remains. The web can also provide contact details for collecting institutions.

When searching for this information online, search terms should be broad to start with. The spellings and names of Aboriginal and Torres Strait Islander peoples, as written by historians, have often changed over time. There are misspellings and variant spellings, plus names that are made up, wrong or insulting when translated. Groups may be identified by their tribal names, or by the places with which they were associated.

The Australian Institute of Aboriginal and Torres Strait Islander Studies has a very useful library website that also accepts and searches alternative names and locations.²⁷

Geoscience Australia has a useful website that lists place names found on official Australian maps.²⁸ These include the names of old farms and historic towns that are no longer found on modern maps, web-based spatial search machines (such as Google Earth) or car global positioning systems (GPS), and so are very useful for locating places mentioned in old documents.

A number of collecting institutions are now beginning to list on their websites the Ancestral Remains they hold. Sometimes this information is minimal, either because the museum does not want to make the full information available to non-Indigenous audiences (out of respect for the privacy of traditional Indigenous custodians), or it does not have the resources to provide full information, or it has made a deliberate choice to restrict access to such information. Nonetheless, any reference to human Ancestral Remains holdings and repatriation on the website does bring to the world's attention that the institution holds Ancestral Remains and usually provides a link for further information.

It is important, however, to remember that just because a museum's online collection catalogue does not mention Ancestral Remains that does not mean that the museum does not hold or has not held them, or that the online catalogue will contain entries for all the Ancestral Remains in the museum.

Enlisting the help of others

As noted, there are many individuals and agencies, Indigenous and non-Indigenous, government and non-government, that have researched and engaged with Indigenous heritage issues, including repatriation, over many years. These individuals and agencies have distilled local best practice through their successes and failures, and can provide excellent advice on what processes to follow when engaging in repatriation in the state, territory or region in which they have jurisdiction.

State and territory government heritage agencies can suggest local contacts who should be approached. They are aware of appropriate contacts through years of dealing with them over heritage issues. In many cases, the organisations or individuals they deal with have been formally recognised as appropriate representatives over heritage issues by the state or territory

government. This recognition is a result of positive and productive engagements over many years. Such formal recognition not only recognises a group's authority, but also usually assigns a measure of responsibility, particularly in the areas of expected governance, that helps to protect a repatriating agency.

There are also a number of Indigenous agencies and organisations that have had successful repatriations. These groups can provide very useful advice on their experiences, with special emphasis on what cultural protocols they followed and how they identified appropriate protocols. For example, they can advise on:

- what government agencies they dealt with
- what paperwork they had to provide
- what forms of other evidence they were asked to provide (for example, oral accounts)
- what the agency was like to work with
- what issues arose in the engagement
- what resources the agency could provide.

They can also advise on more sensitive cultural issues, such as:

- how the Ancestral Remains were transported back to the community
- how the Ancestral Remains were prepared
- what sort of reburial or other cultural management process they used
- why they followed that particular process
- which people were involved.

Communities just embarking upon repatriation are often confronted by issues and questions they never had to deal with before; such as, is reburial suitable? What if the Ancestral Remains had never previously been through ceremony? What if the Ancestral Remains cannot go back to the exact place they were found? What is the appropriate ceremony for putting the Ancestral Remains at rest? What is the impact of Christian beliefs on the ceremony for someone who died under an older religious system? Talking with other communities can help address these issues. Knowing what someone else has done and what the overall results were can greatly assist a community in developing its own strategies for the future management of the Ancestral Remains.



Bardi Jawi reburial, Pender Bay, December 2015

In December 2015 the Bardi Jawi people returned the Ancestral Remains of one person to Pender Bay in northern Western Australia. The remains had been stolen from a tree platform, where they were undergoing the first stage of the complex funeral rites. In this stage, the body was exposed on the platform to allow it to decompose.

When the ancestor's remains were returned to Country, the Bardi Jawi decided that the first stage of the funeral rites should be completed. A future ceremony would be held to bury the remains nearby.

Kimberley Aboriginal Law and Culture Centre

Chapter 7

Museum-initiated repatriation: appreciating Aboriginal and Torres Strait Islander systems of affiliation

The major Australian state and territory museums have developed repatriation services, and work closely with Australian Indigenous communities to return Ancestral Remains. The guiding philosophy of these museums is that Ancestral Remains should be returned. As a result of this commitment, Australian museums try to be proactive, checking their collections and approaching communities directly. As with any project, the capacity of a museum to provide these services is dependent upon resourcing, but its desire is usually to assist communities to recover Ancestral Remains whenever possible.

The stages involved in a typical museum-initiated repatriation exercise are discussed here, starting with definitions. Australia has the advantage that the questions of what characterises an Indigenous custodian, and what their rights are, have been repeatedly explored through rigorous judicial and research processes, with a more culturally aware focus taking precedence over a simplistic biological focus based solely on direct descent. Overseas museums, however, particularly those in countries without recognised indigenous populations, tend to lean more towards property-based definitions, or definitions based on more restricted concepts of cultural rights and interests.

Who is an Indigenous custodian?

An Indigenous custodian of Ancestral Remains is someone entitled *by tradition* to be the caretaker of those Ancestral Remains and of the activities involved in their final disposition. There is often some dispute between museums, particularly international ones, and communities over what criteria define a custodian. Some institutions impose strict rules of biological descent.

What is meant by ‘tradition’ here? Museums, and other agencies, have often applied very conservative notions of tradition. Indigenous people are expected to adhere to the earliest documented histories of their practices, to live in the past in order to be ‘authentic’. Such strict definition is incorrect. Common definitions of tradition do not apply this qualification, acknowledging that historical conceptions of tradition are secondary to cultural ones. Section 3 of the *Aboriginal Land Rights (Northern Territory) Act 1976*, for instance, defines ‘Aboriginal tradition’ thus:

*the body of traditions, observances, customs and beliefs of Aboriginals or of a community or group of Aboriginals, and includes those traditions, observances, customs and beliefs as applied in relation to particular persons, sites, areas of land, things or relationships.*²⁹

Similarly, Section 3 of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth) defines ‘Aboriginal tradition’ in an almost identical manner.³⁰

Part 15, Division 1, of the *Native Title Act 1993* (Cth) defines 'native title' as:

the communal group or individual rights and interests of Aboriginal peoples or Torres Strait Islanders in relation to land or waters where:

(a) the rights and interests are possessed under the traditional laws acknowledged, and the traditional customs observed, by the Aboriginal peoples or Torres Strait Islanders; and

(b) the Aboriginal peoples or Torres Strait Islanders, by those laws and customs, have a connection with the land or waters; and

(c) the rights and interests are recognised by the common law of Australia ...³¹

In summary, 'tradition' is defined by the beliefs, customs and practices of the group. No definition imposes a time limit upon the concept of tradition, except that tradition is expected to be handed down from generation to generation. No definition prohibits change in traditions, or the emergence of 'new' traditions arising out of the operation of normal social processes. There is therefore little support for arguments based on the premise that, to be considered as having traditions, groups must conform to patterns, customs, values and beliefs of the distant past as captured and frozen in the historical literature.

Custodians

The mechanisms of Aboriginal and Torres Strait Islander peoples' affiliation to Country, and to Ancestral Remains that belong to that Country, are considerably complex. Some museums, particularly overseas institutions, have tried to impose strict criteria of demonstrable biological descent where applicants for a repatriation have been asked to prove they are biologically related to the Ancestral Remains under claim. This is not a reflection of traditional processes or culture.

Membership of a group is usually inherited through a direct genealogical connection, such as father/mother to child. This primary inheritance is strengthened by the individual satisfying other socially significant criteria that bestow affiliation, rights and authority, such as:

- patrilineal and/or matrilineal descent
- adoption
- socially recognised descent
- conception and/or birth
- marriage
- long-term residence
- permitted use of lands and resources
- ritual and religious knowledge
- burial places of family members
- historical knowledge of local culture
- fulfilment of social obligations and responsibilities
- socially recognised authority
- participation in territorial defence, including land claims
- acknowledgement of succession to Country.

As a general principle, the more criteria a person can satisfy, the stronger their claims to rights in Country.

Another argument that people may face in opposition to a repatriation claim is that they are not members of the same group as those who were historically recorded as being the traditional owners of a certain piece of Country. This ignores legitimate socially acknowledged rules of rights in Country being acquired through succession. In Aboriginal Australia, the incorporation of lands that historically belonged to one group into the lands of another group is usually achieved through culturally recognised processes of succession. That is where a group takes over the lands of another group by a process of inheritance that is recognised by the wider community and their neighbours. Succession, whether by local residents or immigrant Indigenous groups, is a legitimate, and legitimising, process following established and acknowledged principles, conventions or rules.

In the past, local landowning groups died out — either owing to their not having male children or through acts of colonial violence — leaving vacant lands. This is equivalent to a homeowner dying without immediate family to leave the house to. These vacant areas are eventually recolonised by other groups or families. Usually the colonising group is a close cultural, social and geographic neighbour of the original group and shares significant elements of social and religious organisation, such as being distant family members, as well as familiarity with the social, economic and spiritual topography and resources of the lands.

Legitimate succession must be acknowledged by the wider community and their neighbours, and comes through fulfilling the criteria described above. Peer acknowledgment — that is, the acceptance and support of territorial claims by others — is an essential component in legitimising claims to land. Ownership and/or succession, and the exercising of associated rights, cannot continue without peer recognition. There is therefore no act of succession without a complementary acknowledgment and legitimisation of that succession by neighbours. The pressure applied by neighbouring regional and local groups also assists in the long-term maintenance of boundaries. At the local level, territories are also defined by social and economic pressures from landowning groups of neighbouring estates. These groups would resist hostile or excessive incursion into their territories, as well as oversee the succession to neighbouring vacant estates.

Local landowning groups rarely disappeared suddenly; the decline in the membership of groups was usually evident to the wider community over a number of years, allowing time to prepare for succession. Residence in a territory, and the performance of rights and responsibilities appropriate to it, by likely successors usually overlaps with residence and performance of obligations by surviving members of the declining landowning group. There is thus very rarely any break in the occupation, or knowledge, of a territory. In the past, succession was often a slow, almost imperceptible process. Modern documentation, and the requirement to satisfy legal demands of Western land management, may both speed up the pace of succession and yet restrict the complete takeover of areas by the groups currently considered responsible for them.

In asserting proprietary land rights, it is not necessary for a group to acknowledge that its ownership of particular lands was achieved through the process of succession. Succession was, typically, a gradual, almost unconscious process, often taking two or more generations to complete. Memory of an act of succession is quickly forgotten by the corporate group.

In opposition to the formal and legitimate process of succession is usurpation, which is an illegitimate process following no socially acknowledged principles. Usurpation is usually marked by competing claims to those of the community-preferred successors.

The location and extent of the lands claimed by a contemporary group may therefore differ from the location and extent of lands once owned by that group's ancestors, as a result of legitimate cultural processes of succession. Acts of succession are ultimately confirmed in two ways: first, by a corporate group's claim that they are entitled to occupation, use and enjoyment of those lands; second, by the acknowledgment by adjoining groups of the occupying group's interests as they apply to the defined area.

The impact of gaining cultural rights to land by means other than direct biological descent is important in the area of repatriation. Even where historical evidence shows that other groups may have moved into areas that they did not previously occupy, this does not extinguish their rights and obligations to fight to protect and repatriate the items of cultural heritage, including Ancestral Remains, associated with those lands. The important thing is that their right to do so is acknowledged within the Indigenous communities of which they are a part. This is not such a surprising concept when it is acknowledged that governments make laws to protect Indigenous and non-Indigenous cultural heritage on much the same basis — as Australians, all non-Indigenous Australians have an obligation to respect the Indigenous and non-Indigenous cultural heritage of the lands they are on.

Identification of custodians

The practices at the National Museum of Australia largely reflect those of other state and territory museums. The National Museum's repatriation processes try to be proactive. The work begins with the identification and documentation of Ancestral Remains or objects by geographical association (place) or cultural origin (identified cultural group). The next stage is preliminary consultation with relevant state and territory heritage authorities to assist in the identification of formally recognised representative organisations and/or individuals.

Once a prospective custodian, custodial group, or representative body is identified, they are advised in writing of the nature of the Ancestral Remains or objects available for return to them. Correspondence includes a statement of 'Advice to Applicants' that details how to apply for the return of material. This statement asks prospective custodians for any information that may assist in supporting their application for repatriation, including:

- the identities of the persons, groups or community on whose behalf the application is being made
- the specific Ancestral Remains/objects requested
- letters of support for the application from local representative organisations, such as land councils, native title representative bodies, legal services, government Indigenous or heritage bodies, or other community organisations
- in instances where an organisation is making the application, a statement of support from members of the relevant group
- a statement that the applicants are entitled by the traditions and customs of their community to make application for the Ancestral Remains/objects
- the relationship of the applicants to the Ancestral Remains/objects requested
- contact addresses for other groups or organisations that support the application
- any other issues or information that may assist in the application (for example, specific geographic locations).

An officer of the National Museum's repatriation team then consults further with the applicants, their representatives and other parties with potential interests. The return of the Ancestral Remains, or the making of arrangements for alternative management, proceeds in accordance with instructions from the custodians. With the exception of a document confirming transfer of the Ancestral Remains from the National Museum to the custodians for Ancestral Remains, the return of Ancestral Remains is usually unconditional. Custodians may do with the returned Ancestral Remains as they see fit.

Why does a museum need this information?

As discussed previously, a museum spends from the 'public purse', and is expected to show evidence that due process has been observed and that its activities will accord with the laws of the state or territory jurisdictions in which the repatriation activities occur. A museum has no legal authority outside of its own state or territory. This responsibility encourages engagement with state and territory government Indigenous heritage management departments, and with Indigenous representative bodies such as land councils, native title representative bodies and community legal centres or legal aid services.

Indigenous representative bodies, established by legislation or supported by state, territory, or federal funding, have a responsibility to represent custodians, traditional owners and native title holders. The identification of such individuals and groups, based on cultural, anthropological and legislative criteria, is their day-to-day business. Their endorsement of a repatriation claimant assists a museum in fast-tracking the repatriation process, to the benefit of custodians. At the same time, such engagement provides some protection for museums when they are required to describe those individuals or groups they have dealt with, and the basis for their accepting them as being the appropriate custodians for repatriated items; for example, through government audits, 'Freedom of Information' requests, discovery of documents for other legal process (such as native title), enquiries by other Indigenous representatives or Senate inquiries.

Put simply, the museum recognises and uses the local knowledge that such organisations provide in order to assist with identification of prospective custodians or their representatives.

Despite what appears to be a rigorous list of criteria to be satisfied before engaging in a repatriation claim, the aim is not to make custodians sit an exam for the return of Ancestral Remains. The provision of such information is not mandatory and, in the majority of cases, a museum itself accepts the potential claimant group's rights of ownership based on information gained in the initial process of identification. For example, as discussed earlier, local Aboriginal land councils in New South Wales, regional Indigenous heritage organisations in South Australia and land councils in the Northern Territory are endorsed by federal, state and territory governments and by relevant heritage departments. In other cases, certain individuals and local community groups may have an extensive history of recognition, by government authorities, as the appropriate people to deal with over the care of Ancestral Remains.

Such organisations, groups and individuals are not required to provide extra information in support of their claim. Indeed, the rule of precedent facilitates future repatriations. What these basic criteria do is discourage frivolous or vexatious claims for repatriation by people who may not be acknowledged or authorised by the majority of the community to make such claims. This is clearly a critical issue when it is remembered that any repatriation is an empowering event.



Bark etching, 2015, by Jida Gulpilil, Dja Dja Wurrung

wood, bark, fibre, 74.5 x 58 x 9.8 cm

Gulpilil's bark etching represents aspects of Dja Dja Wurrung life. The three roughly circular patches represent the three lakes at Boort, a central place in their Country. The largest circle is a dry lake; the others are Lake Boort and Little Lake Boort. The emu represents ceremony, the snake represents the Law, and the nets represent family.

The bones and skulls symbolise burials of Dja Dja Wurrung people. Gulpilil was particularly thinking of a repatriation event that had happened not long before and the people laid to rest not far from where this etching was made.

Gulpilil created this work using the same methods employed in the production of the 1854 Dja Dja Wurrung bark etching in the British Museum's collection, which was the subject of an unsuccessful legal battle in 2004, when some community members attempted to prevent its return to Britain after it was displayed in Melbourne.

National Museum of Australia

Chapter 8

Community-initiated repatriation: locating and provenancing Ancestral Remains

Locating Ancestral Remains

How can a community find out where Ancestral Remains might be held? This is not always an easy process. Few institutions advertise what Ancestral Remains they hold. Many larger museums do have collections databases that can be searched online, but these are not always easily discoverable or up to date, nor do they always list all a museum's holdings.

Within Australia, the best way to start is simply by asking state, territory and federal public museums and heritage agencies whether they have any Ancestral Remains or if they know where Ancestral Remains from a particular locality might be held. Most agencies will also be aware of other institutions where the collectors and donors represented in their own collections sent objects and Ancestral Remains.

Many museums have online databases of other Indigenous cultural material (non-Ancestral Remains). If the museum does hold materials from a community's area of interest then it is worth approaching them to see if they have anything else that is not yet on their database. It is also useful to see who collected or donated the objects identified online. The collectors or donors may have a history of collecting and distributing Ancestral Remains, so when their names show up as donors of an object, there may be other items in the museum's collections, including Ancestral Remains.

When it is not possible to get direct advice from an agency, a useful way to proceed is through a search of libraries and archives for historical documents from a particular region. This way potential collectors can be identified. The Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS), for example, maintains an excellent online library referencing system, where publications, manuscripts, newspaper articles and other media can be searched by location, group, author, personal name and so on. Their library thesaurus has search terms for 'human Ancestral Remains' and 'repatriation' that will show catalogue records for any materials that refer to those subjects. The documents can then be researched to see whether the writer made, or knew of, any collections of Ancestral Remains or other cultural material. It is, however, important to remember that no system is complete. There are always gaps, and new information is constantly being discovered.

The National Library of Australia has an extensive online search catalogue, including 'Trove', and is a recommended point for beginning searches. For example, a simple test search for 'Aboriginal Skeletons' in the search box turned up 1891 results, with identification of written works on Ancestral Remains from many localities in Australia and where those works are held. The AIATSIS library is linked to Trove. Other state and territory libraries also have online searchable catalogues.

Many Aboriginal and Torres Strait Islander groups have been identified by different names and spellings over the years. Minor variations in spellings, or the use of a variant term, can affect the results of a search. Different spellings and names should be tried. The AUSTLANG database at AIATSIS can be helpful as it shows many variant spellings for languages. Sometimes it will be more useful to search under 'place', or 'subject' rather than Indigenous community, nation or group.

All states and territories also hold official government archives. These archives can hold valuable unpublished information, especially relating to asylum and mental hospital records, prison records, colonial office papers, death records and people living on reserves.

The archives: missing Ancestral Remains, lost collections and museum exchange programs

Information available through online collections searches, or attached to the items or Ancestral Remains in the collections, is typically the tip of the iceberg, often just being a summary of the main historical attributes of the item – collector, donor, date and description, for example. Much more information may be held in the archives of the institution. This information could include the history and location of a collection, the name and residence of the donor, the circumstances of acquisition – whether by discovery, trade, purchase or donation – plus a note of other associated Ancestral Remains or people. Even collecting institutions can fail to do the deeper detective work into their archives when a request for information is received. It is important to try to follow up on every lead provided in the institution's records.

Sometimes it will be necessary to research across institutions. Museums and other collecting institutions frequently exchanged Ancestral Remains as they tried to build up representative collections of 'types' of people, a practice now discredited. In such exchanges, the history of acquisition and the culture of origin was often considered irrelevant, and so minimal information was passed on. Similarly, a collector might not always have described the circumstances surrounding the removal of Ancestral Remains when donating or selling them to an institution. Some institutions, particularly anatomy departments in universities and natural science departments in museums, were only interested in such aspects as the biological characteristics of the Ancestral Remains: for example, signs of injury or disease. Cultural information was only used to identify local biological traits. The cultural history of the Ancestral Remains was irrelevant to them. Tracking the history of Ancestral Remains may therefore involve working with more than one institution.

What is provenance and why is it important?

'Provenance' refers both to the original source of an item and to its historical trail. The provenance of human Ancestral Remains encompasses the life of the living individual, the place and means of death and the location and cultural content of the burial. It then moves to include the history of the removal of the individual's body or remains; the history of the donation, sale or transfer to a collector or collecting institution; the use of the Ancestral Remains by the collector or institution; the history of identification and requests for repatriation; the actual repatriation; and the subsequent management of the repatriated remains by the community into the future.

Sometimes information will be lacking and unrecoverable. For example, the name of the individual or of the associated funeral ceremonies will be unknown.

The major aspect of provenance for the purpose of repatriation is, however, determining *place of origin*. When the place of origin of Ancestral Remains is known, other aspects of provenance become easier to research. Ancestral Remains that have a provenance are thus typically first associated with a place. This allows for the identification of a cultural group affiliated with that place. In some instances, the name of the cultural group then allows an identification of place to be made. As noted earlier, traditional systems of change in land tenure may mean that living individuals may have limited or no biological connection with Ancestral Remains. However,

they have the cultural, and often legal, rights to be recognised as the custodians of heritage and histories inherent in the lands that they now affiliate with and occupy. Place is important, as while populations and identities may fluctuate over time, the place of death or burial remains fixed.

The identification of place makes it possible to further refine research into historical documentation. It becomes possible to identify previous residents or explorers who may have taken Ancestral Remains, any other individuals and institutions these people may have been associated with and institutions or other organisations where their published and unpublished writings may be kept.

Sometimes research into provenance can reveal very detailed information, such as the name of the deceased individual and/or their place of interment. Sometimes provenance research can only reveal the region, or the state or territory, they were taken from. And sometimes it is not possible to unearth any information except that they come from 'Australia' — in such cases, these are known as 'unprovenanced remains'. Even if no information is available at the time of initial investigation, this status of being unprovenanced may not be final. On a number of occasions, unprovenanced Ancestral Remains have been the subject of further research and their place or group of affiliation has been identified. This potential for the discovery of new information is important. It encourages wider research than sometimes happens in repatriation exercises. The designation of some Ancestral Remains as unprovenanced may simply be the result of poor or insufficient research undertaken at or by the returning institution.

What resources are available to establish provenance: compiling evidence

Resources useful for determining provenance are diverse and widespread; they range from oral testimony to a wide variety of written records or scientific testing procedures. They are available both locally and in all corners of the world.

The most valuable material is the historical record, which can be found in oral testimony, archives containing collectors' journals, government records, museum collection records, newspapers, books and journals. Such archives sometimes even house the written or recorded experiences of living people with recollections of where Ancestral Remains were located, collected and subsequently stored, or who have worked with the cultural groups in the area of the Ancestral Remains. Land councils and heritage protection agencies have staff whose job it is, or has been, to identify, record and monitor sites of heritage significance, usually with the assistance of traditional owners and custodians. Asking these people whether they have any further information or relevant experiences can be a great help when it comes to establishing a provenance for Ancestral Remains.

Archival sources include libraries, state and territory archives, and institutional and museum records (see the Resources section at the end of this guide). It is important not to cease research simply at the most visible level of documentation. Ancestral Remains have been returned to Australia seemingly based only on the limited information stored with them; for example, with attached labels, storage boxes or the summary information in the collection register. Often more informative correspondence is held on older files not kept with the collections and rarely consulted by collection managers. Further research often locates more comprehensive documentation, leading to more precise provenancing. In general, experience has proven that more information can usually be located if the right research method is used.

As collections of human remains fell into disuse and were placed in store or transferred to other departments or institutions, so the danger of separation from their associated archives increased. This leads to a very common situation in which Ancestral Remains are divorced from their associated archive and very little is known about the archive, its location or even that it exists at all. Today's museum curators are rarely fully acquainted with nineteenth-century archives and may not think that any exist. This is particularly the case with university collections, which rarely have specific curators, and there is much corporate memory loss. Sometimes information to locate an archive has been forthcoming from retired departmental staff, including technicians, and it is always worth talking with older members of staff to see what they may recall.

Provenancing research also relies heavily on cross-referencing people and events. Small snippets of information can be compiled to round out a full story of the history of Ancestral Remains. For example, in 1816 there was a massacre of Aboriginal people by British military forces near Appin in New South Wales. Although not explicitly stated in the official account of the time, several heads of victims were collected, including one of a named individual. The fate of these Ancestral Remains was unknown. However, in 1820 one head was mentioned in a book by Sir George Mackenzie called *Illustrations of Phrenology*. This book documented that the University of Edinburgh's Anatomy Department had received the skull from a Royal Navy surgeon, who had earlier received it from one of the officers leading the massacre. The university numbered the skull of Carnimbeigle, the Aboriginal resistance leader, as 'G10'. There were two more Ancestral Remains returned from Edinburgh at the same time. One is simply provenanced to the 'Cow Pastures Tribe' and identified as the skull of a female, similarly given to Mackenzie by Mr Hill. This is numbered 'G11'. The third skull, identified as the 'Skull of a Chief', unprovenanced except to 'New South Wales' by the historical record, again has Mackenzie as donor. This skull was number 'G9'. The similarities in collection history – the donors, the locations, the sequential numbering – provide strong circumstantial evidence that the two 'unknown individuals' were victims of the same massacre.

What this example presents is a sequence from known to unknown, or from the known to the lost, ranging from detailed historical records of an event, a named victim and the existence of their well-labelled Ancestral Remains (with clear-cut marks where the head was severed), to unmarked remains identified by accompanying limited information on location and donors, through to an originally anonymous, unmarked and largely unprovenanced skull. In these cases, quite basic historical research has been able to bring the hidden history to the surface and has identified two extra nameless victims, even if not by name.

Archival research

It may not be possible for everyone hoping to have Ancestral Remains returned to undertake the requisite archival research themselves. Such research requires access to records, which may be held in far distant locations and may be in different languages. It is worth asking institutions for copies of any information they may have. Research also often requires experience and knowledge of how to locate and work with archival record systems. Professional archivists, historians, anthropologists or other research experts can assist. This can be expensive, though many experts will provide what information they already have, or be willing to do the work, for free.

Ideally, an institution such as a public museum should do as much work as possible to research Ancestral Remains on behalf of a claimant group. It is part of their normal professional duties to answer public enquiries and to make information available to the public. While an organisation may ultimately refuse to repatriate Ancestral Remains, there is no reason why it should

not pass on the historical information about the Ancestral Remains they hold; it can do this by either assisting in the research or providing community researchers with access to information, or both.

Within Australia, museums have acquired a body of expertise and knowledge through their repatriation experiences. The staff can often help, if not by doing the research themselves, then at least by providing recommendations and suggesting shortcuts to information they are aware of that could be relevant.

There are also a number of federal and state heritage agencies involved in repatriation. In some cases, these agencies have approached overseas institutions seeking the return of Ancestral Remains. When a government or representative agency takes on the authority and responsibility to make such approaches, it should also work to ensure that appropriate research is done into the provenance of Ancestral Remains. The agencies should encourage the holding institution to undertake thorough research into its files and documentation, or to allow access to appropriate researchers. However, there is a lot that can still be achieved independently using both online and local library references and books.

How did the removal of Ancestral Remains and their original shipment overseas occur, and what paper trail might this produce?

The motivations for removing Ancestral Remains were many and varied. Some were, and still are, simply collected as souvenirs. From the 1790s, in Europe, human remains began to be amassed from around the world for the purposes of studying human diversity, as understood through the now discredited notion of 'race'. These European collections increased in size throughout the first half of the nineteenth century. By the mid-1800s the concept of evolution had become popular in science and human studies, and Ancestral Remains were collected as samples of physical 'types'. Later studies began to consider that physical features on remains were also indicators of intelligence and cultural evolution, and Ancestral Remains of all cultures were collected and widely traded. This belief persisted until well into the twentieth century. The idea that Ancestral Remains were indicators of cultural development and intelligence has long since been discredited; nonetheless, the collections often still exist.

In Australia, museums began to amass collections of Indigenous Ancestral Remains from around the 1880s, and continued to do so sometimes until the 1980s, although the reasons for acquisition changed throughout this time. Some state museums still have the legal responsibility to store newly recovered remains until they can be returned to Country.

Ancestral Remains were also collected as objects of art. Where the Ancestral Remains were culturally modified — such as when they were painted with ceremonial designs, or where they had clay, shell, bone or wood attached — they are seen by museums as cultural artefacts. It is particularly difficult to persuade museums, and indeed private collectors, to part with these modified Ancestral Remains. Examples can still be found for sale as artworks by large and small auction houses and on online sales pages. Today the sale of Ancestral Remains in Australia is illegal, though it does occasionally occur. Trade persists overseas and online, in part because either laws prohibiting this trade don't exist in all countries or, where such laws do exist, many people are unaware of, or deliberately disregard, them, but also often because of the items' value as curios.

Most of the older collections of Ancestral Remains were made by people in the medical sciences for the purposes of comparative anatomical studies and for studies of racial differences. There was a particular focus on interesting pathologies that could be used to

teach medical students about injury and disease. Examples showing cultural and non-cultural damage were sought: for example, tooth evulsion, where a tooth was knocked out during initiation; broken bones that had healed, either well or badly; diseases that affected the bone; tuberculosis; sexually transmitted diseases; dental decay and abscesses; wounds and similar damage. Such items were incorporated into teaching collections. Typically, the collectors of Ancestral Remains for medical specimens were unconcerned by the cultural context or attributes of Ancestral Remains, and much useful information important for establishing a provenance has been lost.

With the exception of phrenological (the study of skull shape) and racial studies, the targeted anthropological and archaeological collection of Ancestral Remains did not really gain momentum until the mid-nineteenth century. At that time there was growing interest in the study of foreign cultures, and Ancestral Remains were among the cultural 'objects' often collected, particularly when they had been modified. Such collections normally accompanied colonialism, and pressure was placed on people to part with Ancestral Remains. While most Ancestral Remains were stolen from graves and cultural repositories, some institutions argue that at least some of the Indigenous Ancestral Remains in their collections were legitimately acquired through direct sale or trade with, and with the free and informed consent of, the Indigenous seller. However, it must be acknowledged that the status of buyer and seller at the time was not equal. Indigenous custodians were often at a great disadvantage, either because they had no formal rights to prevent the sale or exchange or, alternatively, because they were needy to the point of starvation, thereby creating a situation in which the 'sale' or 'trade' of remains was the only way to survive. There is rarely any documentary proof that a free and informed trade and/or exchange actually occurred.

Even if a legitimate trade or sale did occur at the time, this does not disqualify today's peoples from seeking the return of the Ancestral Remains.

Removal of remains by anthropologists and archaeologists

Anthropologists in Australia were acquiring Ancestral Remains from communities until well into the 1960s. And archaeologists were collecting them from excavations, with little regard for the opinions of local Aboriginal people, until well into the 1980s. By the 1990s, Australian archaeologists had recognised the rights of Aboriginal people to be consulted over archaeological work, including the discovery and treatment of Ancestral Remains.

Even though many archaeological and anthropological collections were acquired without Indigenous permission, they still have the advantage of being collected with a better process of documentation. (Site reports and professional publications provide much information.) This makes it far easier to return Ancestral Remains to their exact place of origin and, if required, to return them to their resting place in the same context and position as they were found.

Before the development of modern professional archaeological and anthropological recording and reporting obligations, some collections of Ancestral Remains were fairly well documented. Maps of locations of burial sites were made. Diaries describing the circumstances of the discovery, theft or purchase were kept. Details of the police engagement were also sometimes kept when the event in question was supported by law and committed by a judicial officer, not just a private atrocity committed by a private individual or mob. Newspapers would sometimes report on the death of individuals and the subsequent treatment of their Ancestral Remains. Documentation can include police reports, traveller's diaries, correspondence

between associates or donors and institutions, expedition accounts, museum catalogues and registers, receipts, unpublished or published reports, books, articles in professional journals and even the distribution of possessions in wills and estates.

Distributions, bias and the historical ages of Ancestral Remains

In arguments opposing repatriation, much is often made of the scientific importance of Ancestral Remains. While it is true that anything and everything has potential scientific importance, most collections are the result of long processes characterised by the destruction of evidence, and this severely compromises their value for science.

As we have seen, most of the larger Australian collections of Ancestral Remains were built up by anatomists, researchers into racial science or amateur collectors. In the process of collecting, whether by excavation of burials or by taking the bodies of the recently deceased, little regard was given to their cultural context. Ancestral Remains were stolen from graves, often without any documentation of how they were originally interred, what goods may have been associated with them, how deep they were, what soils they were buried in, how the Ancestral Remains were positioned in the grave, and so on. There was also the desire to procure 'good specimens', either strong and intact bones or ones exhibiting unusual pathologies. Bones prone to falling apart – either because they were very old and highly decayed, or because they were from young people and the bones had not yet fully formed – were often discarded. Often skulls were the only Ancestral Remains taken, with the rest of the body being left, discarded or destroyed. As a result, by the time the Ancestral Remains arrived in a collection their scientific value had been severely compromised. They were unrepresentative of either a biological or cultural population, either in time or in space. Rather they were biased towards the particular interests of the collectors.

The overall result is that many Ancestral Remains in older nineteenth- and twentieth-century collections are adult skulls, sometimes with an unusual pathology that can be seen in the bones or tissue, such as a healed or healing wound, a fatal injury, bacterial or viral bone infections, disease or dental problems such as abscesses. Alternatively, they will have features believed to show the racial characteristics the researcher had already decided they should have; for example, large teeth, thick eyebrow ridges or thicker bones interpreted as indicators of physical and mental primitivism. Few are likely to be any more than 500 years old, as the older Ancestral Remains are usually more fragile and break apart easily. Examining these collections, it would be easy to come to the conclusion that life was all hardship, injury and illness. However, it should be remembered that they were selectively collected and should not therefore be assumed to be representative of a population.

Archaeological evidence of mortuary practices

The development of greatly improved excavation and recording techniques in archaeology has gone some way towards ensuring that some cultural information has been preserved when Ancestral Remains have been excavated. Though even up to the 1980s, remains were often still excavated with little consideration of their importance to Aboriginal and Torres Strait Islander peoples.

Archaeological evidence can now be of great value in reconstructing the cultural histories of Ancestral Remains, even when the items under consideration were not collected through archaeological methods. What archaeology has shown is that it is possible there were a variety of different interment practices within the same region. People were buried in extended burials, whereby the body was laid in the grave longways, or in bundle burials, whereby the body was tightly wrapped in a crouching position for burial. Cremation may have been practised. Secondary burials may have occurred, whereby the Ancestral Remains have been exposed somewhere to decay and then later wrapped in a bundle for burial or placement in a hollow tree or rock shelter. All these different forms of burial may have occurred in one and the same area over time. This is helpful when a group is seeking to determine what form of reburial may be appropriate.

Ethnographic evidence of mortuary practices

Ethnographic reports can be similarly useful. An ethnographic report is simply an observation of the practices of a cultural group written down by a researcher. Many settlers, scientists, collectors, missionaries, anthropologists and administrators recorded what they observed or were told. Sometimes these reports are inaccurate, but often they can help build up a picture of traditional mortuary practices, especially when there are several examples that can be compared for common features.

Old terms for language groups and clans

Names assigned to language groups and local clans often vary. As well as the name a group might call itself, there are names the group may have been given by their neighbours. There are incorrect spellings by non-Indigenous observers; there are mistakes where names of other phenomena are recorded as names of a group; some groups will be referred to by the European name of a location — for example, the ‘Cow Pasture Tribes’, the people who lived south of Sydney in the early 1800s.

This makes it important to look for alternative spellings. As mentioned earlier, a very useful resource is the AUSTLANG website maintained by AIATSIS. AUSTLANG allows for searches of language names, alternative and variant names and locations, as well as providing other resources.³²

What about Ancestral Remains where archival information is poor or non-existent?

There are many Ancestral Remains that have no known associated information. They have either been collected without information about their location or cultural context having been recorded, or they have been passed on to others without including the original information. Sometimes a fragment of information may exist, such as a name of a collector or donor. It is possible to determine where those collectors/donors may have worked, though it may be difficult to narrow down a specific location or affiliated group. George Murray Black, for example, collected Ancestral Remains from along the Murray River region of Victoria and New South Wales in the 1920s and 1930s. While he often recorded the general locations from which he took crania, thus making them relatively easy to establish a provenance for, he often neglected to provide the same information on long bones (from arms and legs), which he also collected. We can make an educated guess that the large collection of unprovenanced Ancestral Remains Black is known to have collected came from one of the sites he excavated along the river, but cannot be sure as to which one, and thus cannot identify which specific groups should be consulted.

Most unprovenanced Ancestral Remains in Australian museum collections came from somewhere within the state or territory where that museum is situated. Ideally, those museums will also have an Indigenous Advisory Group that will have authority over the management of Ancestral Remains — at least until such time as the Ancestral Remains are returned to more appropriate custodians.

Who might these appropriate custodians be? Each repatriation event is a success in that it gets Ancestral Remains closer to home and increasingly under Indigenous authority. Even where Ancestral Remains are stored indefinitely, if they are under Indigenous control then their welfare is being safeguarded. That control might be exercised by a national, state, regional or local Indigenous agency with responsibilities for heritage issues within their regions. For example, in the Northern Territory, the land councils have elected boards, and each land council has a member of its board on the board of the Aboriginal Areas Protection Authority (AAPA), a territory agency responsible for the protection of sacred and significant sites. The AAPA Board is thus a progressively representative body for Northern Territory Aboriginal people. If the AAPA Board were to make a request for the return of Ancestral Remains provenanced only to the Northern Territory it is likely a museum would agree to that request. Where the provenance is better known, however, authorisation from the regional land council, local community, native title body or family would be required.

There is currently a debate as to what should happen to unprovenanced Aboriginal and Torres Strait Islander Ancestral Remains, those about which all that is known is that they come from Australia. The idea of a centralised Resting Place or Memorial in Canberra is being considered.³³ There have been suggestions in the past that such Ancestral Remains might be reburied in one place, or cremated and spread across the country, or distributed to various state and territory Keeping Places. However, it should be recognised that access to historical records, as well as to non-destructive techniques for provenancing, will likely continue to improve over the years, with information and identification techniques becoming easier to access and apply, more accurate and more affordable. This will assist in provenancing remains that are currently unprovenanced. It is to be hoped that authority over the application and use of the information acquired through these methods will be in the control of Indigenous managers.

Scientific techniques

There are a number of scientific techniques that can assist in establishing the provenance of Ancestral Remains. Many of these are non-destructive, while others require interference and the possibility of physical damage. Some can be done by, or under the direct supervision of, the community. They should be used with caution, however, as none are 100 per cent accurate. They are best used to correlate and corroborate other sources of information.

The Repatriation Unit of the Australian Government Department of the Arts provides useful information on the risks associated with invasive/destructive scientific techniques.³⁴

Revealing faded writing

Many Ancestral Remains were written on in ink or pencil at the time of collection. Typical information included the names of the collector or donor, the catalogue number or the name of the individual. These inscriptions can fade over time. Looking at Ancestral Remains under ultraviolet light or using infrared photographs can make faded or invisible writings visible. (NB Protective eyewear should always be worn when using ultraviolet or infrared lights.)

Metric analysis (craniometrics)

Metric analyses involve taking measurements of Ancestral Remains, and then comparing the measured characteristics with existing databases of Ancestral Remains. It is based on the premise that skull shape is related to ancestry, and thus can be used to identify what population that skull most closely 'belongs' to. However, much recent scholarship has questioned the ability of this technique to make such identifications. There are various issues associated with these techniques, and these should be understood before a choice is made to use them, or allow their use by others in the repatriation process. Perhaps the most important of these is the limited number of samples for cross-comparison. The techniques generally indicate what other collections of Ancestral Remains those Ancestral Remains under investigation look most similar to. However, there is no guarantee of direct biological or social linkage; it may just be an apparent one, based on physical similarities. For example, one Ancestral Remain was subjected to metrical analysis and provenanced to a specific group in south-eastern Australia. Subsequent independent research, undertaken by a researcher who was not aware of the metric provenancing work, discovered documentation that conclusively demonstrated the Ancestral Remains were from a named individual from northern Australia.

Non-metric analysis, which involves examining the anatomy and pathology of remains, also looks for particular traits that may be genetic. Usually, these are small features on the Ancestral Remains, such as a bump or crease in a bone that appears most frequently in one particular cultural group or population, or a characteristic of tooth development (such as 'shovel-shaped' incisors).³⁵ Hair samples were similarly often collected, in the belief that hair colour, thickness, cross-section and curliness were indicators of biological affiliation.³⁶

Isotopic analysis

Isotopic analyses involve analysing radioactive particles, minerals and chemicals in soils that may attach to Ancestral Remains (non-destructive) or, occasionally, get deposited in bones and teeth themselves (destructive). Samples are taken and analysed for their particular isotopic characteristics, then compared with the isotopic characteristics of certain places or foods found in certain places. While this testing is useful, the difficulty in Australia is that there are too few comparative samples. Parts of the landscape have different characteristics in their soil; a riverbank can differ from a swamp, which can differ from a hill or a desert. Even within local landscapes, there can be micro-environments. To provenance Ancestral Remains requires a match between the soil on the Ancestral Remains, or the Ancestral Remains themselves, and the soil at the suspected location. As can be imagined, this requires having thousands of samples for comparison. Isotopic analysis, therefore, has its best potential when other information has narrowed down the likely area of provenance. Even then, the collection and analyses of comparative samples is likely to be expensive.

Genetic (DNA) analysis

There are two common applications of genetic testing. The first is testing of modern samples, known as 'DNA' testing. The second is the testing of older Ancestral Remains, known as 'ancient DNA' testing or 'aDNA'.

DNA testing is probably the best known application. It focuses on taking DNA samples from living people and/or the recently deceased. Its usefulness has been exaggerated by television and movie shows in which the rapid identification of DNA leads to immediate answers to questions of identity.

Ancient DNA testing is the analysis of the genetics of Ancestral Remains, though it is not as accurate as modern DNA testing, owing to the tendency of DNA material in old remains to degrade and become lost. However, it can be used to test whether two sets of Ancestral Remains are related or linked biologically.

There is no denying the potential usefulness of DNA and aDNA analysis for identifying affiliations between deceased and deceased, living and living or deceased and living peoples, but, as yet, there has been very little work to understand the full impact of its application in the area of repatriation. It is certainly not the magic solution that some people think.

Genetic testing can be used to link Ancestral Remains either to other Ancestral Remains or to living people, and to link living people to Ancestral Remains. However, just because results may not show a connection between a living person and an ancestor does not mean that a person is not related to that ancestor or to other ancestors in the culture at the time that ancestor was alive.

Genetic testing brings with it the potential for social damage. Such testing provides a biological genealogy at the expense of the social genealogy. Social genealogies provide historical perceptions of parentage and origins and also allow for non-genetic social processes such as adoption, inheritance, bestowal of rights and succession.

On occasion, Aboriginal and Torres Strait Islander people have inquired about having genetic testing of Ancestral Remains so that affiliation can be identified, often for the purpose of resolution of disputes over Indigenous identity, such as in land claims, native title claims and community membership. The people making such requests are often unaware that genetic testing requires not only the testing of the Ancestral Remains, but also the cooperative testing of community members.

There is always the possibility that the Ancestral Remains come from a migrant or guest, rather than from a long-term member of the historical landowning group. Research in land and native title claims has identified circumstances of birth or parentage that were unknown to the particular claimant and their community. Such discoveries may be historically and biologically accurate, but they can also conflict with historical cultural processes, belief of one's own history and identity and a community's belief in its own family structures. Genetic testing can aggravate this distress through extending biological differences back through a greater period of time than that covered by documentary or memory-based records.

The age of Ancestral Remains is also an issue. The older the Ancestral Remains the more widespread, and hence reduced, is the genetic trail. Assuming people have two parents, four grandparents, eight great-grandparents and so on, by the time we go back 200 years we are looking only at who might be just a partial contributor to a person's genes, in a situation where the other contributors are effectively invisible. Furthermore, not all genetic information is

passed on, and some disappears through natural processes over time. Limited or lack of proof of genetic affiliation to one known set of Ancestral Remains does not, therefore, mean that a person does not have a stronger relationship to other people from the same area in the past whose remains may have not been discovered.

Caution should be taken when approaching commercial DNA testing companies. There are many commercial service providers available, with most based overseas. These service providers do not have any reliable or extensive databases on either modern or ancient Aboriginal and Torres Strait Islander genetics. Their databases and methods are unsuited to the analysis of ancient DNA. Most of their public customers are Europeans. They will test individual samples against a larger European or Asian database and provide affiliation with the nearest match. It is possible that testing of Indigenous Ancestral Remains, or modern living Indigenous people, will align the tested individual with Asian or European ancestry before Indigenous Australian ancestry, simply because the testing laboratory does not have enough Aboriginal or Torres Strait Islander genetic information on record.

Such testing will also be expensive; a 2017 price had standard over-the-counter testing at A\$149 per sample. Specialised testing between community members is likely to cost more, as is extraction of DNA from the bones of a deceased ancestor. It also requires the willing participation of the community members — always remembering that such testing will not only show relationships between individuals and the Ancestral Remains, but also those between living individuals. Popular commercial DNA laboratory services may not be suitable for repatriation.

The ownership of genetic information is also an important consideration. Most service providers will retain information in line with their desire to expand their comparative databases. Some researchers who endorse genetic analyses of Ancestral Remains for repatriation purposes are known to retain the information for other research purposes. Before any approvals or permissions for genetic testing are given, it should be determined who will own and possess the information and who will have rights over its use in the future. Remains should be under community control before any DNA testing is undertaken.

There are increasing efforts to provide ethical genetic investigation services to Aboriginal and Torres Strait Islander people interested in genetic testing. A 'National Centre for Indigenous Genomics' is now housed at the Australian National University.³⁷ The centre is overseen by the National Centre for Indigenous Genomics Governance Board, which has an Indigenous majority.



Walmajarri reburial ceremony, Kimberley region, north-western Australia, November 2009

The remains were originally stolen by Eric Mjöberg, a Swedish researcher, in 1910–11. They were returned to the Walmajarri in 2004.
Kimberley Aboriginal Law and Culture Centre

Chapter 9 Pursuing repatriation

Community initiatives

While nothing prevents concerned individuals from making enquiries or claims for repatriation directly from holding institutions, any engagement will get a better hearing if the institution is convinced that the applicant formally represents a community, and that any engagement with that person will not invite dispute with the majority of members of that community. For this reason, a decision to pursue a repatriation request should follow comprehensive community consultation and endorsement. Correspondence may then, implicitly or explicitly, assert a recognised cultural right to make a claim for information or repatriation.

No Australian legislation prohibits Aboriginal or Torres Strait Islander people from making a request for repatriation from either Australian or overseas institutions. Similarly, no Australian law prohibits Indigenous people from taking direct receipt of Ancestral Remains to which they are affiliated. This is important in cases where Australian agencies try to assert that they are the only ones permitted to make such claims, or when an agency is not acting fast enough in making applications or representations to institutions.

How to build a claim: key elements

The first step is to understand a museum's preferred claims procedures. The more support information that accompanies the initial claim the better. While many of the institutions to be approached may have national and international reputations as institutions of great standing, this does not mean their staff are fully aware of the cultural details and significance of all their holdings, or of the repatriation debate in general. The question of repatriation and Indigenous rights in countries other than their own may never have been an issue for the museum. This means that the museum workers receiving the claim may be hesitant or uncertain about how to respond or even how to frame their response. They may have a minimal knowledge, if any, of the cultures and histories of the people making the application. For these reasons, it is important to provide the museum's staff with as much supporting information as possible, to better inform them of the peoples and culture making the claim, as well as any other relevant administrative information.

It is also important that all correspondence be courteous and polite. Much resistance from individuals asked about repatriation arises from caution based on limited knowledge of repatriation and sometimes the strong language used in applications.

As a guide, information provided to holding institutions could include:

- the name of the person/group/community making the request
- the location of the community and the cultural area encompassed in the request (a map is useful)
- the status of the applicant as a recognised representative (of a land council, native title representative body or heritage legislation, legal aid or acknowledged representative body)
- a supporting letter from a representative agency
- the information or Ancestral Remains requested for return
- the basis of affiliation to the Ancestral Remains (biological, cultural, ceremonial, legal, etc.)
- a description of the history and culture of the applicant

- an indication of how the information about the existence, or possible existence, of Ancestral Remains was acquired (expert advice, mention in historical documents, oral history, etc.)
- the reasons for pursuing the return of the Ancestral Remains
- any precedents for repatriation of Ancestral Remains to the group
- key supporting documents (for example, photocopies of historical references, supporting letters, etc.)

Be aware of museum policies, protocols and practices

Being informed about museum policies and protocols helps in understanding the constraints imposed on the people you will be consulting with. Even the most pro-repatriation curator still has to work in accordance with their employer's rules.

Wherever possible, look at the museum's policies and/or protocols regarding both human Ancestral Remains in general and Indigenous human Ancestral Remains in particular. Sometimes these are readily available through a website search. At other times, it might require a request for information directly to the institution. Check to see whether other claims have been made to the institution and what the outcomes were. This may be obtainable by looking for media articles, and by checking the museum's website.

Most reputable museums are affiliated with larger internationally recognised professional bodies. The International Council of Museums (ICOM), for example, has ethical guidelines that it expects member institutions and individuals to follow, including:

4.4 Removal from Public Display

*Requests for removal from public display of human remains or material of sacred significance from the originating communities must be addressed expeditiously with respect and sensitivity. Requests for the return of such material should be addressed similarly. Museum policies should clearly define the process for responding to such requests.*³⁸

The *United Nations Declaration on the Rights of Indigenous Peoples* also states:

Article 12

1. 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.

*2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.*³⁹

Many of these statements are guidelines only, and so not necessarily binding on governments or institutions. They do, however, remind museums that there are issues with which they should engage.

It is also useful to check out a museum's media profile. Some organisations do not have online policies or guidelines, but may have returned Ancestral Remains upon request. These returns often get a mention in local news. A history of returns means that the institution may be prepared to accept further approaches for information or repatriation. A search for the name of the institution (plus 'repatriation', 'return' or 'human remains') is a good place to start. For example, the Charité – Universitätsmedizin Berlin in Germany is a large medical university. It is not a formal collecting institution like a museum. A website search on 'Charité + repatriation' brings up a number of reports on the Charité's return of Indigenous Ancestral Remains to Namibia and Australia.

Establish the history of museum responses: seek advice from others who have gone before you

The Australian Government, through the Department of Communications and the Arts, has been actively engaged with a number of institutions in the United Kingdom, the United States and Canada, and in many countries across Europe, including Germany and France. Similarly, repatriation officers in Australian museums have been building relationships with their overseas colleagues, whenever possible, to continue the conversation and do their best to support and encourage repatriation.

An increasing number of Aboriginal and Torres Strait Islander repatriation advocates now have extensive, and often different, experience in all aspects of domestic and international repatriation.

These agencies and individuals can often provide a lot of information about what Ancestral Remains are held by institutions, what policies apply in each of the countries, what has been done in the past and who the appropriate contact people are.

Domestic requests

There should be no issue with requests for the return of Ancestral Remains from within Australia, either from museums, other holding institutions or individuals. The Australian Government provides funding to the eight major state and territory museums to support domestic repatriation. The Australian Museums and Galleries Association (AMAGA), an industry group, also supports repatriation.

There are other agencies in Australia that may not be aware of the commitments of their overarching professional bodies, such as AMAGA, to repatriation. The full extent of collections of art galleries, for example, is largely unknown, but some are known to hold artefacts that incorporate the Ancestral Remains of non-Australian Indigenous people, or to hold secret/sacred objects in their collections as artworks. The National Gallery of Australia, for example, has recently displayed Ancestral Remains, including over-modelled skulls from Vanuatu and West Papua.

University archaeology and anatomy departments and medical schools have, on many occasions, identified Aboriginal and Torres Strait Islander Ancestral Remains in their holdings. In both 1985 and 2002 the University of Melbourne, for example, was found to have a number of Aboriginal Ancestral Remains in its Department of Anatomy. These were subsequently transferred to Museum Victoria for repatriation.

Ancestral Remains may also be found in private collections. In 2002 some Victorian branches of the Freemasons were found to have Aboriginal Ancestral Remains that they had used for ceremonies. These Ancestral Remains were also returned. While distressing, in both cases the University of Melbourne and the Freemasons were simply out of touch with the prevailing philosophies – and laws – regarding human Ancestral Remains and the repatriation of Indigenous Ancestral Remains. Once informed, they acted promptly to ensure their return.

Museum repatriation officers still get enquiries from the general public regarding the appropriate way to handover Ancestral Remains.

In summary, there is no reason for Australian collecting institutions, including museums, art galleries and universities, not to return Ancestral Remains on request. Nevertheless, this doesn't always happen.

International requests

International requests are more complicated than domestic ones. The laws, policies and philosophies guiding Australian repatriation do not apply overseas. Where laws or policies have been changed to enable overseas institutions to repatriate Ancestral Remains, those changes usually only allow the institution to return Ancestral Remains *if it wants to*. The institutions can only be encouraged, not compelled, to return Ancestral Remains.

As noted earlier, no laws prevent Australian Aboriginal and Torres Strait Islander people from approaching overseas institutions themselves. However, advice or assistance can be obtained from the International Repatriation Program of the Department of Communication and the Arts, or from major state and territory museums.⁴⁰

Museum governance

Public museums and institutions, both in Australia and overseas, are usually subject to strict rules of behavior, following government rules of management and governance. Sometimes the implementation of these rules in regard to a repatriation inquiry might be seen as deliberate obstruction by the organisation or associated individual. Sometimes it is. More often, however, it is simply an instance of an employee heeding the requirement that they work under their organisation's management and governance codes. No matter how sympathetic a government officer may be to a community's request for information, they have to follow rules. Because of this, it is crucial to be fully aware of the mechanisms of museum governance that may affect a repatriation request.

Ancestral Remains are often considered 'objects' by collecting institutions, forming a part of their wider collections. This is often because policies and definitions have not been reviewed for decades, and older, outmoded concepts and definitions remain in place. Under such policies and protocols, Ancestral Remains are documented and stored. To avoid corruption, such as illegal trade in museum objects or unauthorised research, rules apply to the accessioning and deaccessioning of those Ancestral Remains. Deaccessioning is the act of formally removing an object from the official collection so that it can be disposed of, either by destruction or transfer to another party. Deaccessioning can be a time-consuming and complicated process. First, the organisation must agree to the deaccessioning. This usually requires a review by one or more panels of the museum's experts and/or board or council. If approved, there is often a 'cooling off period', during which both the museum and the claimants have time to review and change their minds.

Many museums are very old, and have charters and governance frameworks to match. Sometimes these charters of establishment need to be changed to allow for deaccessioning and repatriation. This can also take time.

Many organisations do have their governance procedures and policies available on their websites. A search through the site can provide useful information of what behaviors the organisation will be expected to apply in any repatriation event. For example, the National Museum of Australia maintains an online policy register that includes the Aboriginal and Torres Strait Islander human remains policy, which details its repatriation processes as well as its management guidelines for the respectful treatment of Ancestral Remains.⁴¹



Skulled Figure behind a Desk, about 1975–77, by Wilfred W Wurrawlya, Yolngu, Dhupuma College, Nhulunbuy
crayon on paper, 56 x 38 cm

This is one of a series of 3383 drawings and paintings made in the 1970s by Aboriginal children from 70 schools across Australia.
National Museum of Australia

Chapter 10

Dialogue and communication: community and museum conversations

The need to communicate clearly

Clear communication between all parties involved in repatriation is essential. Miscommunication, through lost correspondence, language differences, broken lines of communication or unfamiliarity with cultural protocols – both Indigenous and non-Indigenous – can lead to delays and mistaken beliefs. Patience is an important prerequisite in all communication.

Building relationships

The process of building a relationship with a collecting institution begins from the very first engagement. It is important that the philosophy of both claimant and institution be one of respect and trust from the outset, regardless of the outcome of the first repatriation attempt. It often takes a long time, sometimes several years, for repatriation consultations to have an outcome. Over this time, the claimant and the institution can learn from each other. A long-term relationship will ultimately facilitate future repatriations.

As noted previously, many institutions and curators, unfamiliar with Indigenous concerns, will often take an overly cautious stance in response to approaches for repatriation. Experience has shown, however, that direct and amicable engagements between claimants and institutions, engagements where knowledge is shared, can lead to a successful repatriation. As institutional representatives become more familiar with the claimant's representatives, and as they learn more about the cultural and social backgrounds of the claimants and the Ancestral Remains, the more they are likely to become open to the concept of repatriation.

Similarly, institutions that collect cultural material need to appreciate the potential future benefits that may accrue from the relationships they are able to develop with Indigenous people. Experience has shown that consulting with the descendants of the makers can greatly enhance material culture collection information. Opportunities will also arise for new acquisitions. It needs to be remembered that today is tomorrow's history, and that opportunities for the creation and collection of new knowledge should not be sacrificed.

Those museums that have engaged with Indigenous communities in repatriation activities have generally found that by so doing they have established a long-term friendship and opportunities for new knowledge and objects that they can present to their audiences.

In 2004 Sweden returned a number of Aboriginal Ancestral Remains to communities in Australia. This followed meetings 'on Country' between the traditional custodians and representatives from Sweden. As an outcome, and an acknowledgement of this act of repatriation, in 2005 the King and Queen of Sweden visited Western Australia, where they were presented with gifts of artworks by the Western Australian Government. The Kimberley Aboriginal Law and Culture Centre also prepared a 'Thank you' DVD. The Swedish Museum of Ethnography now has an exhibition describing the history of the return.

Individual museum protocols

The protocols of each museum will vary according to its internal culture, its governance requirements, its previous experiences and the culture of the wider community it serves. It is important to be aware of how these may affect engagements.

All organisations develop an internal culture. Its philosophies, protocols, rules of behavior, and ways of dealing with inquiries evolve over the life of the organisation. By tradition, some will be conservative or progressive. Some background research into the previous responses by the institution to requests for repatriation is useful before meeting its representative. Similarly, a web search on the professional aspects of that representative will also help define likely attitudes and responses.⁴²

Every institution will also have its own procedures of governance, even where a larger overlying code of governance applies, such as with larger government agencies. Internal governance is informed by the previous practices, and ideals, of that institution and may differ considerably from those of an unaffiliated, but otherwise similar, institution. Difficulties in dealing with one organisation may not occur when dealing with another owing to different internal governance procedures. A good knowledge of procedures that have worked in the past can be useful when engaging with different agencies, as it allows alternatives to be suggested.

Many institutions will also have some form of affiliation to professional groups, even if they have deliverables such as exhibitions or publications that are ultimately designed for a general public audience. Examples include health and medical museums, which will primarily affiliate with, and represent the interests of, people in the health and medical professions; social history museums, which will respond to historians; ethnographic museums, which will respond to anthropologists; and science museums, which are primarily concerned with technologists. Such museums will reflect the culture and ambitions of their professional interests. Again, the responses of various organisations can be expected to differ according to the professional codes of conduct of the people it employs.

Museum policy, national policy

All museums will also have their own policies. Some policies will be similar, some will be very different. Where the museum is funded by a federal, state or territory government, it can be expected that codes of conduct and governance applied across the public service will apply to those museums. In such cases, a museum's internal policies must fit with the policies of its overseeing department and government. In some older institutions, particularly overseas ones, operating policies may have been established a long time before the current government took office, and they may still have flexibility in the development and implementation of their policies, in spite of the preferred current government governance guidelines. Alternatively, they may be more rigid, refusing to change their old policies and practices despite clear evidence of more progressive government policies and laws.

There are also a number of semi-autonomous and private organisations that have collections but do not rely on government funding, and hence are free from government or museum sector-imposed codes of behaviour. These organisations can develop policies to suit themselves. So long as the implementation of those policies does not break any relevant laws, then the institution is free to practise as it sees fit.

Recognising possible variations and differences in policy is important. It can be counter-productive to approach an institution and attempt to assert a government or industry policy position or legal requirement that is not applicable to it.

The role of Australian museums

The role of the major Australian museums is to work towards the repatriation of the Ancestral Remains in their care. This is asserted through the federal government, state government, industry representative bodies and individual institutional commitments. Museums can also provide advice on who to approach in other domestic and overseas institutions, as well as advice on how to prepare a repatriation claim.

While Australian museums are not officially endorsed by government to pursue overseas repatriation, they are not prohibited from doing so. In addition, museum staff will normally work informally to encourage repatriation when engaging with other institutions known to hold Ancestral Remains.

The role of Australian government agencies

There are a number of federal, state, territory and local agencies that can also assist communities to pursuing repatriation. Many of these are identified elsewhere in this handbook; they include the Repatriation Unit of the Australian Government's Department of Communications and the Arts, state and territory museums, and state and territory heritage protection agencies. These organisations can offer assistance and advice. Perhaps most importantly, they can often provide an acknowledgement of status, a statement that a particular Indigenous agency is officially recognised under that state or territory's heritage policies, laws or protocols and that it has a right, responsibility and authority to make representation for the return of Ancestral Remains. While nothing prevents any concerned person or group from making an application, evidence of government recognition and/or support can greatly facilitate the process.

Museum rights

Museums have a responsibility to return human Ancestral Remains, particularly where those Ancestral Remains have been acquired inappropriately, such as without free and informed consent, in violation of tradition or in breach of the law, among other reasons. However, museums also have corporate responsibilities to other charters, protocols and groups as well, not least to their audiences. An institution would be derelict in its duty if it did not consider how the activity serves the best interests of its wider client base. It is easy for repatriation advocates to see institutional delays in responding to requests as some sort of deliberate conspiracy. However, the obligation on the museum to practise ethical behaviour, based on considerations such as long-term, institutional and audience impacts, makes any museum's decision to engage in a discussion about repatriation, let alone return Ancestral Remains, all the more significant.

A museum has a responsibility to its clients, the foremost of whom make up its audience. This includes the general public, other institutions, amateur and professional scholars, future users of the facilities and knowledge, sponsors, funding agencies, governments and special interest groups such as Indigenous communities.

Clearly, applicants for repatriation are important museum clients. Whether local or international, they are seeking the advice and assistance of an institution. Accordingly, the museum has a right to a degree of 'self-interest' in ensuring that its capacity to deliver 'all things to all clients' can readily be maintained. Therefore, a museum will invariably consider its repatriation activities in the light of what tangible and intangible benefits the activity brings – not only to the group receiving the Ancestral Remains, but also to other groups affected by their return.

It is, therefore, not unexpected that a museum might ask 'How does repatriation benefit the museum?', where by 'the museum' is meant not only the institution itself, but its local, national and international audiences, its clients, its contributors, the ethics of the industry and the obligation to advance both knowledge and society. What a museum is receiving in return is considerable: respect, admiration, new knowledge and, sometimes, new objects, new community engagements and community endorsement.



Joe Brown and Neil Carter outside the Kimberley Aboriginal Law and Culture Centre Resting Place in Fitzroy Crossing, Western Australia, 2013

The Kimberley Aboriginal Law and Culture Centre has established a temporary Keeping Place — repurposed insulated shipping containers that provide secure, lockable storage — for Ancestral Remains and secret/sacred objects. The remains and objects are held there while plans are made for their return to their communities of origin in the Kimberley region. Brown is the Chair of the Kimberley Aboriginal Law and Culture Centre; Carter is the Repatriation Officer.

Kimberley Aboriginal Law and Culture Centre

Chapter 11

The physical return of Ancestral Remains

Packing of Ancestral Remains for repatriation

Museums have great experience in the safe transportation of cultural items. Human Ancestral Remains are no exception. Past returns of Ancestral Remains from overseas have been in museum quality packing, usually with boxed Ancestral Remains securely packed in larger padded crates. Upon arrival in Australia, they have either been temporarily deposited with an Australian holding institution or returned directly to custodians. Overseas organisations usually crate the Ancestral Remains of a number of individuals in larger boxes. Once here, they are removed from these larger boxes so that they can be allocated to the various groups represented. The smaller boxes are, again, of museum quality.

The method of packing Ancestral Remains can vary according to the extent, number and condition of the Ancestral Remains and whether they will be stored or immediately buried at the receiving end. Packing is designed to ensure that Ancestral Remains are not damaged by movement while in transport, and that they are protected from pests and any rapid changes in humidity and temperature. A museum will normally prepare Ancestral Remains in packaging that meets museum standards. This involves placing them in biodegradable and chemically inert boxes, padded with acid-free paper, bubble wrap or other harmless packing.

Ultimately, the final form of packing is up to the recipient custodians. Some examples of actions taken by Australian recipient groups include:

- taking the Ancestral Remains in the museum boxes and directly interring them
- unpacking Ancestral Remains from boxes on-site and rewrapping them in paperbark, prior to interment
- rewrapping Ancestral Remains in kangaroo skins or paperbark at the museum
- unpacking Ancestral Remains on-site
- rearticulating them as far as is possible, and laying the Ancestral Remains out on the floor of the grave without wrappings.

There are a number of industry publications providing advice on how to pack Ancestral Remains for transport.⁴³ These aim to satisfy institutional standards for protection of Ancestral Remains. There may be overriding cultural standards that would be preferred by Indigenous custodians. Institutions will usually do what they can to accommodate cultural protocols.

Who should travel to collect Ancestral Remains?

The decision as to who should travel to receive Ancestral Remains is made by the community. Typically, senior representatives are chosen, with preference going to those who are most closely affiliated with the Ancestral Remains being returned. The representatives will probably be required to travel long distances under trying conditions of travel (aircraft, climate changes, time changes, different food, and so on); accordingly, the health of the representatives and their ability to cope with travel should be an important consideration. On occasion, younger community members have participated, in part as a way for older community members to teach them future responsibilities.

Handover ceremonies

Handover ceremonies are usually negotiated activities. Most museums will respect the requirement to have a culturally appropriate handover ceremony. However, they may be limited in the level of support they can provide. For example, they may not be able to fund travel for all ceremonial participants. They may not be able to allow smoking ceremonies within the institution's interior. Most returning museums do take the opportunity to involve the media. This may not always be the preference of the recipient group.

Nonetheless, most museums will attempt to provide a respectful handover ceremony. In the process of engagement, they also learn more about the cultural significance of Ancestral Remains to custodians. Positive media also helps to promote repatriation more generally.

Preparing international transport: customs regulations and logistics

Australian Government officers will usually be able to assist with the logistics associated with the return of Ancestral Remains from overseas. The exception may be in cases where the repatriation event has been independently arranged between the returning institution and the future custodians, bypassing government engagement. Custodians are free to pursue independent repatriation activities if they so wish, and government involvement or assistance is not mandatory. Nevertheless, there are various international and national protocols that must be observed. If the claimant group engages a courier service, then most of the required paperwork and procedures will be handled by that company. Issues associated with the transport of Ancestral Remains can include: export permissions from the country, customs inspection prior to export and customs inspection and decontamination upon arrival. At all stages, it is likely there will be concerns over whether the Ancestral Remains constitute a health risk, whether the Ancestral Remains are legally in the possession of the carrier and, in the case of Ancestral Remains carried as hand luggage, whether the presence of the remains may distress other passengers.

There is no way of circumventing the requirement for a visible inspection of Ancestral Remains by customs and quarantine officers. With forewarning, the agents will usually treat the Ancestral Remains with all due respect, often with custodians in attendance. It is advisable to inform the carrier airline and the customs and quarantine officials at the point of departure and arrival as early as possible before the flight. If carried as hand luggage the Ancestral Remains will be required to undergo normal hand luggage screening, including X-rays.

It is also useful to have a letter (with copies) from the repatriating institution asserting that the Ancestral Remains derive from museum collections, that they have been appropriately managed with regard to pest, poisons and disease control, and that they therefore pose no risk to the public. These documents can be shown to security officers at airports should concerns arise.

There are a number of specialised art transport services experienced in the international shipping of Ancestral Remains. Australian museums can recommend these providers.

Most importantly, giving prior notice to airports and airline security people should prevent most issues from arising.

Preparing domestic transport: customs regulations and logistics

The domestic movement of Ancestral Remains is rarely a problem. Again, it is advisable to inform airlines and airport security when Ancestral Remains are being carried as hand luggage. Usually, when Ancestral Remains are too big to travel as hand or cabin luggage, the airlines will provide, on request, suitable labelling and special handling to ensure respectful management if the remains need to go into the cargo hold.

If travelling as cabin luggage, Ancestral Remains will normally have to go through X-ray security. Again, a letter of support from the repatriating institution will assist. It is also advisable to inform airport security early on.

Different states and territories have different laws regarding the possession of human remains. Most of these regulations allow for Indigenous people to be in possession of Ancestral Remains, and so interstate travel should not be a problem. It is advisable to inform the relevant state or territory heritage agencies when Ancestral Remains will be in transit between jurisdictions.

Large quantities of Ancestral Remains have been transported by road between states and territories, both in cars and trucks. Custodians have typically travelled with such vehicles to ensure respectful treatment. Dedicated art transport companies also have specialised vehicles, with environmental and other condition controls, that can be contracted to transport Ancestral Remains. Museums and government Indigenous heritage agencies may be able to assist with support funding for such transport.

There is no restriction on a community using its own vehicles to transport Ancestral Remains.

Information management after repatriation: communities

As previously noted, long-term recordkeeping is important. Communities should keep all information relevant to the repatriated Ancestral Remains. It is also useful to make sure a copy of documentation is kept with the remains themselves. If a community has a Keeping Place, this is the ideal place to keep a copy of the information. There must also be a record of what comes into, and out of, the Keeping Place. If this is not done, there may be confusion down the track as to which Ancestral Remains have been reburied and which are still present in the Keeping Place. Preservation of this history of returns provides a historical resource for future community members. It also provides a useful reference guide on how to proceed should more Ancestral Remains be returned in the future.

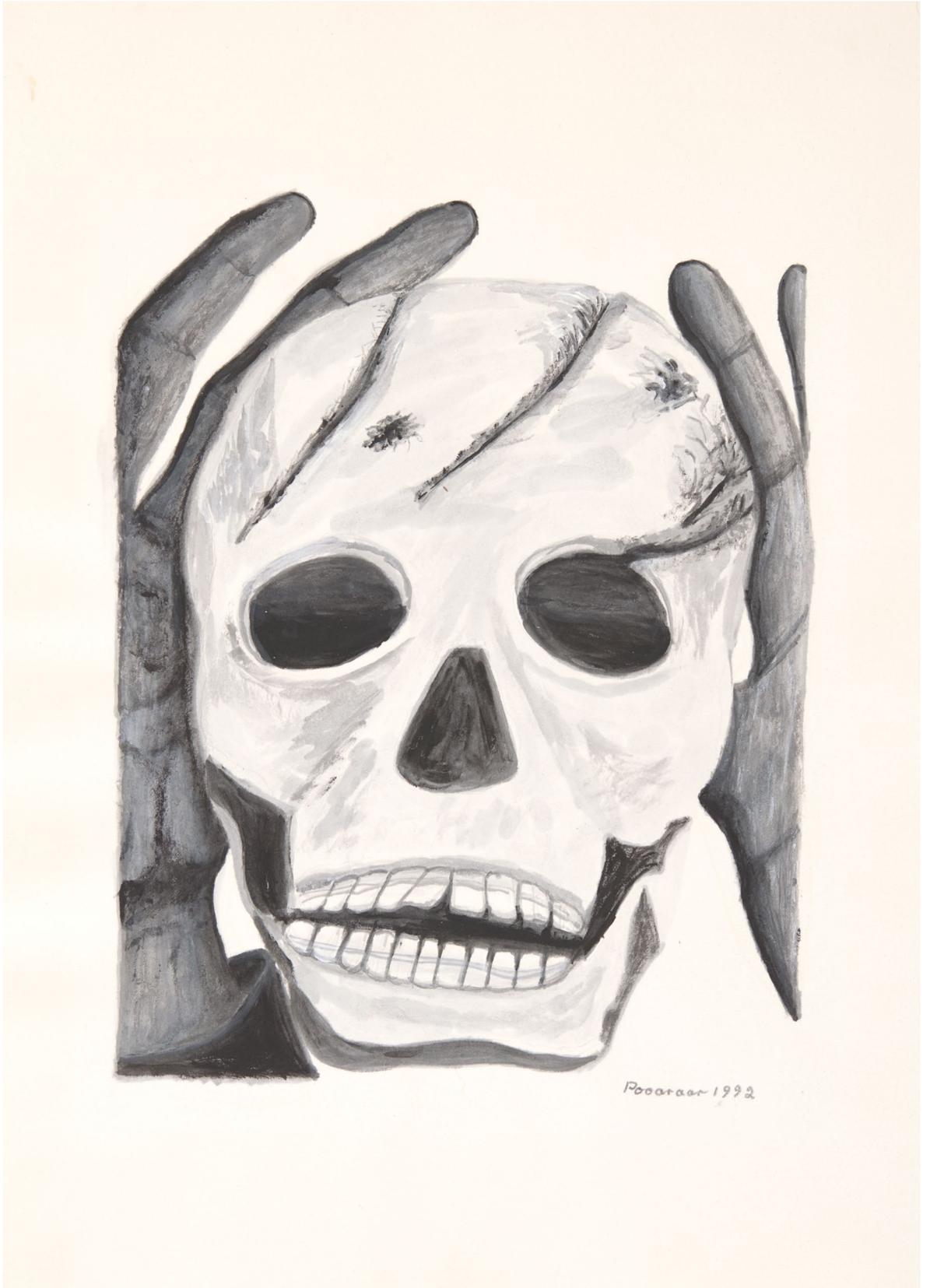
There have been issues surrounding the loss of information provided to communities over time. This has occurred through unexpected changes in staffing, periods of poor resourcing, management issues, changes in responsibilities of organisations or accidental destruction. Keeping a secure register of remains received and remains placed in a Final Resting Place is essential.

Appropriate storage of information is not difficult. If resources permit, then information should be stored electronically as well as in hard-copy format. Electronic copies allow for easy access. However, electronic formats change rapidly, and so provision should be made for the periodic review and 're-saving' of information. Hard copies are also subject to loss. This risk can be mitigated by installing lockable, fire-rated cabinets that will protect information under most conditions and threats. Keeping a basic filing system that holds information relating to each museum is also useful.

Information management after repatriation: museums

The participating museum or agency should also keep copies of all information relevant to each particular repatriation case. It should be expected that all Australian museums will respect the privacy and cultures of communities and will not provide access to community information without community approval. The preservation of information off-site can provide a valuable backup for communities in the event of information loss.

Museums, of course, are subject to government audit, and so cannot completely exclude access to information. However, such events are extremely rare and covered by legal accountability and confidentiality requirements to ensure that any information accessed is not used inappropriately.



***The Phrenologist*, 1992, by Pooaraar (Bevan Hayward), Goreng/Minang/Nyoongar**

black, grey and white pen and wash on paper, 38.5 x 28.5 cm

Aboriginal artist Pooaraar completed a series of pen and wash drawings for a volume of poetry entitled *The Great Forgetting*, which was published jointly by Aboriginal Studies Press and the National Museum of Australia in 1996.

National Museum of Australia

Chapter 12

Keeping Places, Final Resting Places and looking after sites

This chapter describes some strategies for the care and management of Ancestral Remains following repatriation. The act of repatriation by an institution should not be dependent upon a finalised outcome for the post-repatriation treatment of the Ancestral Remains. That is for the receiving community to decide, and there may be some time between the return and the final decision and action as to management. This period may involve storage of Ancestral Remains until reburial, or some other form of funerary treatment, is decided upon.

Community experiences of repatriation

As repatriation events have increased over the years, so too have community strategies for the management of Ancestral Remains. There has been concern over appropriate actions, as while all communities had a tradition of burial or other culturally appropriate disposal of Ancestral Remains, none had a cultural protocol specifically for Ancestral Remains that had been removed and then returned years later. For example, what ceremonies, if any, are most appropriate? Is a Christian ceremony appropriate for the Ancestral Remains of a pre-Christian individual? With some Ancestral Remains, such as those looted from graves, it could be presumed that, regardless of the later sacrilege of grave robbery, the initial burial was in accordance with cultural protocols and beliefs, and the spirit had, at least in part, been laid to rest. A future reburial or disposal may therefore be less complex in the forms of ceremonies that may be required. However, with others denied proper funerary ceremonies owing to their having been stolen immediately after death, such as those taken from medical institutions, massacre sites or those that had somehow been denied appropriate burial at the time of death, questions arise. For example, there can be concerns over whether the spirits still remain in the Ancestral Remains and over the type of ceremonies that would now be appropriate.

Over time, many communities have addressed these issues and have developed various strategies to receive, manage and rebury Ancestral Remains. Some are simple, but some are more complex. The main requirement is that they should satisfy the needs and beliefs of the community.

Groups new to repatriation can often feel confused about the appropriate actions to take. It can be a relief when they see what other communities have done. It is always worth contacting other groups that have received Ancestral Remains to discuss what their concerns were and how they dealt with the cultural issues. This provides options to consider, rather than imposing mandatory conditions. For example, some actions have included the simple reburial of Ancestral Remains in a safe place, aided by a few Elders and heavy machinery, burials in cemeteries and the housing of the Ancestral Remains in a dedicated Keeping Place. Ceremonies have ranged from private family groups through to inviting the local townspeople to attend and participate. Presiding dignitaries have ranged from just Elders through to representatives of the local churches and local, state and federal government agencies.

A museum, land council, heritage agency or other aid group should be able to provide contacts with other experienced communities.

Keeping Places prior to Final Resting Place

Once Ancestral Remains have been returned to a community, the question arises over where they should be held. Again, what is acceptable is the decision of the community. Ancestral Remains have been held in locked cupboards, filing cabinets and safes, or in Elders' homes, large rooms and warehouses. The holding place is often subject to an appropriate cleansing ceremony.

The main attribute of Keeping Places is that they are all to be treated with respect, regardless of appearance. They are all characterised by having a dedicated function – that of protecting Ancestral Remains – with access restricted to appropriate people, such as community Elders. Keeping Places may be incorporated into a larger cultural facility, or they may be independent secure sites.

Security

The biggest issues for a Keeping Place are security, including protection from theft, fire, floods and vandalism, and pest management. Some repositories have been subjected to acts of vandalism and/or theft. Theft is usually opportunistic, with the person expecting to find boxes of valuables, rather than a deliberate attempt to steal Ancestral Remains. There have also been repositories, usually holding sacred objects, and in remote unsupervised locations, that have been destroyed or damaged by deliberately lit fires.

There are options for the safe storage of Ancestral Remains. For example, lockable rooms, safes, fire-rated filing cabinets or lockable insulated shipping containers situated in an observable area. Simple security systems are available. Using non-inflammable building materials and shelving, and having convenient fire extinguishers, lowers risk. The Ancestral Remains, and accompanying records, should also be raised off the floor, away from pests and from any seasonal flooding levels. To avoid individual distress for those uncomfortable with being in the immediate presence of Ancestral Remains, records should be kept in a separate room whenever possible, as well as copies with the remains themselves.

Occupational health and safety

The health and safety of people who work with or around Ancestral Remains is important. Most Ancestral Remains are physically harmless. However, there are risks. For example, storage conditions can create issues. High humidity can encourage the growth of mould, or the regrowth of old mould. Moulds, whether alive and dead, can provoke allergic reactions in susceptible people. Some Ancestral Remains were painted white using lead paint, to make them more impressive when on display. Lead is hazardous. Chemicals such as the insecticide DDT and arsenic were used to preserve Ancestral Remains and to control pest damage. Mercury was used to measure the size of internal sinuses, and traces can sometimes remain inside or on Ancestral Remains. Where an individual died of, or with, a disease, there is a remote possibility of some residual biological hazard. Tissue specimens were often preserved in formaldehyde, which is a dangerous chemical. Residues of chemicals can persist for some time and can impose a risk, although cases are rare.

To reduce risk, general handling of Ancestral Remains should be done using gloves, a filter mask and a dustcoat. Hands should be thoroughly washed after handling any Ancestral Remains or associated materials, including packaging. No food should be eaten or taken near Ancestral Remains. Ancestral Remains should always be handled in a well-ventilated space.

The repatriating museum or agency should have some knowledge of what risks may be associated with particular Ancestral Remains. They should be asked to comment on possible risks, and to suggest management options, prior to return.

There have been a number of published studies into the risks that Ancestral Remains may contain. Many of these are written for professional conservators or collection managers and may be hard to access and hard to read. Nonetheless, it is expected that the repatriating officer will be aware of what issues might exist and will advise the community accordingly.

Mental distress

An often-neglected area of health and safety risk is the possibility for mental distress. Not everyone is comfortable working with Ancestral Remains for extended periods. A conscientious worker will always appreciate that they are working with Ancestral Remains, and that the stories behind the collection of many of those remains are often tragic and distressing. There are also social and cultural values and beliefs for both Indigenous and non-Indigenous workers that may affect how they perceive Ancestral Remains.

No-one should be forced to come into physical contact with Ancestral Remains, even when repatriation is one of their duties. A person may be highly competent in advocacy, community liaison and skills relevant to repatriation, and yet be uncomfortable working with the Ancestral Remains themselves. This should be respected. Other people can be found who will assist with physical handling.

Caution should be exercised in getting younger people to work with Ancestral Remains. They have often been less exposed to death, and the first experience of it can be traumatic. It is difficult to backtrack when harm has already been done. There is also the risk that exposure may lead to the trivialisation of Ancestral Remains. (Skeletons and skulls are now popular decorative icons on clothing, and real or replica skulls can be bought from some stores.)

Any person likely to be working with Ancestral Remains should be thoroughly assessed for their willingness and/or suitability to do the work. They should be thoroughly briefed as to what the work entails and what sort of issues they may be required to confront. If a person wishes to withdraw at any stage of the repatriation process, they should be permitted to do so without judgement.

Pest management

Pests are a potential problem. Rodents can chew through boxes and Ancestral Remains. Insect pests can also destroy packing and organic material. Museum conservators can provide advice on the best form of cost-effective, non-hazardous pest management. Simple techniques include using bait stations, natural insect sprays and insect traps, but also monitoring collections before any infestations take hold.

Options for the Final Resting Place

As noted, many communities have little experience in the reburial of repatriated Ancestral Remains. There can be uncertainty about the most culturally appropriate form of reburial or interment ceremonies. Information about how other communities have responded to the return of Ancestral Remains can be provided by experienced museum repatriation staff, and through direct contact with other communities.

A museum officer may not be prepared to describe fully the process used by a particular community owing to requests for confidentiality. The officer should, however, be able to refer an inquiry to a community that can help directly.

The final management of Ancestral Remains must be determined by the community itself. Options applied by communities have included reburial, interment in burial vaults or in Keeping Places and other Final Resting Places, deposition in rock shelters and caves, and housing in Cultural Centres. In some areas where a tradition of display of Ancestral Remains has occurred, there have been discussions over whether a viewing-based Keeping Place might be appropriate, with access restricted to qualified community members.

The important thing is that no community should be pressured by external agencies to conform to a process of final management. Returns should be unconditional, and control over the process of final treatment of the Ancestral Remains is the right and responsibility of the recipient community.

Negotiation with landholders

Rules regarding access to lands for the purposes of reburial vary between states and territories. There are four main categories of land tenure in Australia: 'Aboriginal Land', 'Crown Land', 'Leasehold Land' and 'Freehold Land'.

There are few difficulties in returning Ancestral Remains to places on Aboriginal Land. With land title invested in the community, it is the community's decision as to where Ancestral Remains might be placed. Crown Land is typically nature reserves, national or state parks, waterways and stream corridors. It is usually administered by a government department that often includes heritage within its responsibilities. There have been a number of cases, in various states, where the assisting government heritage agency has been able to facilitate the provision of dedicated burial places for the respectful interment of Ancestral Remains.

Government Leasehold Lands are more problematic, and can range from suburban house lots in Canberra through to major pastoral stations in the Northern Territory. There are sometimes state and territory laws applying to Leasehold Lands that assign some rights of traditional practice, including burial, to affiliated Indigenous groups. This can help in arranging reburial. Those leases that cover vast areas are also less likely to be problematic when it comes to obtaining approval from the leaseholder, as the impact of a gravesite on landholdings and pastoral activities is insignificant, and no new rights are granted beyond those that already apply to the lease.

Nonetheless, it is always worth checking the legislation relevant to Leasehold Lands in the state or territory of concern. It is also important to engage with the leaseholder over any such activities. Locations of any reburials may have to be planned so as to not interfere with the leaseholders business operations.

Freehold Land is more difficult to access. Access to these lands will usually depend on gaining approval from the landowner. When the doctrine of native title was first recognised, there was a tendency for landowners to panic. This was largely a response to misinformation. The attitude that allowing Indigenous access to Freehold Lands will invoke land claims still persists. But it has been proven through the courts and legislation that this is not the case. Allowing people to rebury Ancestral Remains on the lands of origin is more of a courtesy than an extinguishment of Freehold Land rights and property title. It is worth being prepared to address issues of what rights are, and are not, bestowed should reburials occur on Freehold Land prior to engaging with the landowner. This information, complemented by courteous approaches, will greatly assist in solving any possible issues.

Reburying Ancestral Remains can bring a heritage site into existence. The site of the burial becomes a site of significance in accordance with Indigenous tradition. This can cause some conflict with non-Indigenous interests. It does not, however, constitute a loss of legal, proprietary title for those interests. If properly managed, the reburial will occur in a place that will not conflict with the landowner's use, enjoyment or possession of the land,

Final Resting Place

A Final Resting Place can be a burial site or a safe store above or below ground. Regardless of whatever form the community decides the Final Resting Place will take, it still remains a grave, and hence it is entitled to the respect accorded to all graves. Reburial sites are, however, rarely marked. This is in accordance with Indigenous custom, as well as a means of preventing vandalism.

However, it is important that the location of all reburial sites should be recorded. This allows for the relocation of the site for ceremonial or respectful visits, and also assists in their future protection from disturbance through both legal acts, such as property development, and illegal acts, such as vandalism or other hazards, such as floods, erosion, stock damage or accidental disturbance.

Modern global positioning system (GPS) location equipment means that the location of a site can be recorded very accurately with little effort or training. This can be done by community members or by officers of heritage agencies. Most heritage agencies will, upon request, record sites as significant Aboriginal sites, though this should be the result of a decision of the community.

As well as GPS coordinates, there are other ways to protect sites while ensuring their anonymity. One practice has been to lay heavy metal reinforcing wire over a burial site and then to bury the wire under topsoil. The site quickly becomes invisible as plants grow. The heavy wire prevents deliberate and accidental digging, as well as provides a significant metal signature detectable by metal detectors.

Regular monitoring is important, particularly in early years when knowledge of a reburial event may be widely known.

Usually, nothing prevents a community from marking reburial sites with other features, such as fences, grave-markers, memorial stones and plaques, and so on.

The role of ranger groups

Rangers drawn from communities provide excellent management and monitoring resources. As well as having been trained in heritage and environmental management, such officers usually have a strong interest in, and respect for, their own cultural heritage, and so work hard to ensure its protection.

Memorials

Memorials, such as plaques describing the repatriation event or the history of those interred, and gravestones are subject to the community's choice. They can often be used to tell the story of a collection event and the subsequent repatriation, thus serving to educate visitors about the history of what happened. Memorials need not be located exactly at the site of a reburial. Memorial sites can also be places to which the actual location of the reburial site is linked. This information can be made known only to site managers, and the general public need not be aware of the exact location of Ancestral Remains in relation to the erected memorial.



Handover of Torres Strait Islander Ancestral Remains by the Charité – Universitätsmedizin Berlin, July 2014

Lui Ned David (right) and Cygnet Repu (left), representatives of the Gur A Baradharaw Kod Torres Strait Sea and Land Council, at the handover ceremony.

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Chapter 13

Issues associated with repatriation

Conflict between heritage laws and traditional laws

An issue with all cross-cultural engagements is that the laws and traditions of the various groups involved may not always agree or fit with one another. As noted throughout this volume, museums, as public bodies, must satisfy Western governance criteria for recordkeeping, reporting and acquittal, as well as adhere to the laws of the various states or territories within which they work. These laws rarely reflect Indigenous social authority, power structures or systems.

Western legislation tends to be more 'democratic', and encourages working with agencies, and people, empowered by a Western governance process. These can include land councils, native title representative bodies, local community councils, local heritage officers and committee representatives. The problem is that designated officers may not reflect traditional authority structures. The traditional responsibilities of a single Elder, for example, may now be asserted by a committee of younger people. The authority and responsibilities of a local traditional owner may now be managed by an employee or officer of the local council whose family was not traditionally resident on the site of the community.

Australian museums, however, are not at liberty to pick and choose which criteria of authority they will follow. Aboriginal and Torres Strait Islander people are full citizens of Australia, regardless of age or knowledge. Recognition of their heritage, and their claims to association with that heritage, are the same as apply to non-Indigenous Australians. This may conflict with traditional knowledge structures. Fortunately, such concerns usually resolve themselves within the community over time, aided by an appropriately long consultation period, which gives people the time needed to negotiate decisions internally.

Consultants

Valuable assistance with repatriation can be provided by professionals such as historians, archivists, anthropologists and archaeologists. These may be staff members at an Indigenous agency, or people available through consulting services. Many such heritage professionals will provide excellent advice and service, and can assist in the research into questions of background and provenance, and in preparing a claim for repatriation that addresses significant cultural issues and values.

As with any profession, however, researchers can have a personal scholastic or professional practice bias. There have been examples of researchers consulting with people who have opinions that reflect those of the researcher and who will give them the answers the researcher would like to hear.

The reputation of the researcher should be investigated. This can be done by asking other professionals in the field, as well as by examining the researcher's previous outputs. It is also important to be sure that the contract under which the researcher is engaged clearly lays out the terms and conditions of the consultancy, how the information gathered may be used, the ownership of the intellectual property and the conditions of subsequent use of the information. The Australian Government's Indigenous Repatriation Program provides an online document 'Information for Communities: Scientific Testing on Indigenous Ancestral Remains', which provides a description of the types of scientific testing that may be encouraged, but also includes some directions about which communities should request of the researcher.⁴⁴

Display of Ancestral Remains

Much has been written about the display of Ancestral Remains by museums. The display of non-Indigenous Western Ancestral Remains, particularly in medical exhibitions, is in accordance with Western traditions and is rarely an issue on cultural grounds. However, the display of Indigenous Ancestral Remains, without appropriate approval is now discouraged.

Today, most Australian museums will not display Indigenous Ancestral Remains without the total support of the Indigenous community associated with them. This is both industry and museum policy. However, there are exceptions. Sometimes a gallery may be quite old, and longstanding displays may still have Ancestral Remains. Some galleries have not kept up with debates and changes in the history museum industry. Art galleries, for example, tend to see objects with human tissue, such as decorated skulls, as somehow transformed from human Ancestral Remains into art objects, and will occasionally place them on display. This is particularly common in overseas galleries and museums.

Even when a museum displays Ancestral Remains with the approval of the community, there is always a risk that the display will distress members of other communities. This should be taken into consideration in any discussions with museums. If a person sees a display of Indigenous Ancestral Remains that causes them distress, then the institution should be advised of that distress and that the display may not be appropriate. Institutions should also use clear warning signs whenever Ancestral Remains are on display.

There is also the possibility that a community may seek to display Ancestral Remains within the community itself. This could take the form of a viewing for community members prior to burial, or a display of Ancestral Remains in accordance with tradition. Such displays are within the rights, and responsibilities, of the associated community. A decision by a community to display Ancestral Remains in a venue fully under their control should not be seen as a precedent for wider public display of Ancestral Remains by a museum.

Disputes

It is rare that all members of a community initially agree on the processes of repatriation. Museums will normally act on instructions from suitably empowered and endorsed community officers or representatives. Such officers have a personal and professional responsibility to operate in the best interests of the wider community. Mechanisms usually exist to call such officers to account should financial or cultural improprieties occur.

However, disputes will occur. Museum staff rarely have had exposure to the inner workings of the relevant community, nor will they have had any formal or cultural authority that might enable them to resolve disputes. Dispute resolution and management is therefore the responsibility of the requesting community. A museum will rarely seek total consensus in a community, but it will expect to see evidence that the interests of the majority are being represented.

Repatriation brings with it a large number of rights and responsibilities. A community, or its representatives, has a right to the return of Ancestral Remains. It also has to accept responsibility that the appropriate representatives receive the Ancestral Remains, and for their future dispensation. Museums are largely dependent upon community guidance.

Return as empowerment: frivolous or vexatious claims

Repatriation is an act of empowerment. In returning Ancestral Remains to a particular individual, group or agency, there is an explicit acknowledgement that they have been recognised by the returning institution as entitled to represent the community's interest in this, and future, events. Communities need to be aware of this responsibility.

Museums do have to be cautious of what are called frivolous or vexatious claims. A claim is regarded as being frivolous when the intention is more to mislead people, or interfere with or detract from some other purpose, than from a sincere claim to Ancestral Remains. Vexatious claims are made to cause inconvenience or distress, either to the holding institution or to the community. Such claims are typically made by disgruntled individuals, or by self-created representative bodies who may have no direct affiliation with the Ancestral Remains or communities involved. Such claims are rare, but the potential exists. Participating museums will need advice from the claimant community as to preferred approaches and responses. Similarly, the community should do what it can to identify and resolve issues internally.

Challenges

There are new and increasing challenges to repatriation worldwide. Many of these are historic, and include the arguments such as the following:

- Ancestral Remains have been removed from their traditional context and are no longer relevant to descendant cultures.
- No one is associated with the Ancestral Remains due to age and/or passing of time.
- Religious beliefs and ceremonies have changed.
- Modified Ancestral Remains have been transformed into art objects and are no longer Ancestral Remains.
- Some Ancestral Remains were acquired legally with the free and informed consent of the Indigenous seller/donor.
- Ancestral Remains are of scientific importance.
- Ancestral Remains are safer in this institution than they would be in the country of origin.

Other challenges include the transfer of authority over, and responsibility for, Ancestral Remains back to Indigenous management groups. This sometimes requires investments in resourcing and infrastructure, so that facilities can be built in the affected communities and operated over the long term. It also requires opportunities for education and training, for both community and museum staff, which incorporate cultural values and traditions.

There are also many different Aboriginal and Torres Strait Islander nations across Australia and, indeed, Indigenous First Nations peoples throughout the world. These groups have their own histories, cultures and opinions regarding the future of Ancestral Remains. There is no 'one-size-fits-all' strategy for repatriation management. Systems must therefore be developed that allow for differences.

The ultimate judge of the repatriation process will be the responses of people 100 years or more into the future. These cannot be predicted. Repatriation may be praised or condemned. Any person engaging in repatriation needs to be aware that the future may look upon their actions differently.



Portrait of Anthony Martin Fernando, 2007, by Raj Nagi

oil on canvas, 184 x 112 cm

He points to the penny skeletons and shouts as the people pass, 'This is all that Australia has left of my people'.

Maxwell Brown, referring to Anthony Martin Fernando

The Aboriginal activist Anthony Martin Fernando was born in Sydney in 1864. Around 1890 he moved to Europe, eventually arriving in Britain in 1923. While working as a toy maker and seller, he protested the treatment of Aboriginal people outside Australia House in London.

Nagi is a Sikh Australian immigrant who believes that all Australians should be aware of the life of this courageous activist. His own experience of racism led him to create this portrait.

National Museum of Australia

Resources

Return, Reconcile, Renew Project: further information

- Website: www.returnreconcilerenew.info
- Cressida Fforde, Timothy McKeown and Honor Keeler, *The Routledge Companion to Indigenous Repatriation: Return, Reconcile, Renew*, Routledge, London, 2020

Useful contacts

National

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Department of Communications and the Arts
GPO Box 2154
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Email: repatriation@arts.gov.au
Phone: 1800 006 992
<https://www.arts.gov.au/what-we-do/cultural-heritage/indigenous-repatriation>

Repatriation Program Manager
National Museum of Australia
GPO Box 1901
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Email: Curator@nma.gov.au
Phone: +61 2 6208 5019
<https://www.nma.gov.au/about/repatriation>

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New South Wales

Repatriation & Conservation Programs
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<http://www.environment.nsw.gov.au/conservation/Repatriation.htm>

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<http://australianmuseum.net.au/document/repatriation-policy>

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<http://www.alc.org.au/home.aspx>

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<http://www.qm.qld.gov.au/Find+out+about/Behind+the+Scenes/Repatriation>

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<http://www.nlc.org.au/>

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<http://museumvictoria.com.au/collections-research/humanities/repatriation-of-ancestral-remains/>

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<https://www.samuseum.sa.gov.au/learn/aboriginal-heritage-and-repatriation>

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<http://dpc.sa.gov.au/aboriginal-affairs-and-reconciliation-division>

Federal, state and territory legislation

Commonwealth

- Australian Government Policy on Indigenous Repatriation
<https://www.arts.gov.au/documents/australian-government-policy-indigenous-repatriation>
- *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*
<https://www.legislation.gov.au/Series/C2004A02943>
- *Environment Protection and Biodiversity Conservation Act 1999*
<https://www.legislation.gov.au/Series/C2004A00485>
- *Protection of Movable Cultural Heritage Act 1986*
<https://www.legislation.gov.au/Series/C2004A03252>

State

New South Wales

- *National Parks and Wildlife Act 1974*
<https://www.legislation.nsw.gov.au/#/view/act/1974/80>
- *Heritage Act 1977*
<https://www.legislation.nsw.gov.au/#/view/act/1977/136>
- *Environmental Planning and Assessment Act 1979*
<https://www.legislation.nsw.gov.au/#/view/act/1979/203>

Queensland

- *Aboriginal Cultural Heritage Act 2003*
<https://www.legislation.qld.gov.au/view/html/inforce/2018-11-09/act-2003-079>
- *Torres Strait Islander Cultural Heritage Act 2003*
<https://www.legislation.qld.gov.au/view/html/inforce/current/act-2003-080>

Australian Capital Territory (ACT)

- *Heritage Act 2004*
<https://www.legislation.act.gov.au/a/2004-57>

Victoria

- *Aboriginal Heritage Act 2006*
http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/PubLawToday.nsf/95c43dd4eac71a68ca256dde00056e7b/c97a2c77fe6ba6bbca2580d5001a1104!OpenDocument

Tasmania

- *Aboriginal Relics Act 1975*
<https://www.legislation.tas.gov.au/view/html/inforce/current/act-1975-081>

South Australia

- *Aboriginal Heritage Act 1988*
<https://www.legislation.sa.gov.au/LZ/C/A/ABORIGINAL%20HERITAGE%20ACT%2>

Western Australia

- *Aboriginal Heritage Act 1972*
https://www.legislation.wa.gov.au/legislation/statutes.nsf/main_mrtitle_3_homepage.html
(under review)
- *Heritage of Western Australia Act 1990*
https://www.legislation.wa.gov.au/legislation/statutes.nsf/main_mrtitle_418_homepage.html

Northern Territory

- *Heritage Act 2011*
<https://legislation.nt.gov.au/en/Bills/Heritage-Bill-2011?format=assented>
- *Northern Territory Aboriginal Sacred Sites Act 1984*
https://legislation.nt.gov.au/Search/~ /link.aspx?_id=91FF7B972F734400B639CC566328E870&_z=z

Archival resources

Australian Institute of Aboriginal and Torres Strait Islander Studies:

<http://aiatsis.gov.au/collections/using-collection/search-collection>

National Archives of Australia: <http://www.naa.gov.au/collection/search/>

National Library of Australia: <http://trove.nla.gov.au/>

New South Wales State Records Office: <https://www.records.nsw.gov.au/>

Northern Territory Archives Service: <http://artsandmuseums.nt.gov.au/ntas>

Northern Territory Library: <https://dtsc.nt.gov.au/arts-and-museums/northern-territory-library>

Public Records Office Victoria: <http://prov.vic.gov.au/>

Queensland State Archives: <http://www.archivessearch.qld.gov.au/Search/BasicSearch.aspx>

State Library of New South Wales: <http://www.sl.nsw.gov.au/>

State Library of Queensland: <http://www.slq.qld.gov.au/>

State Library of South Australia: <http://www.slsa.sa.gov.au/site/page.cfm>

State Library of Tasmania: <http://catalogue.statelibrary.tas.gov.au/>

State Library of Victoria: <http://www.slv.vic.gov.au/>

State Library of Western Australia: <http://www.slwa.wa.gov.au/>

State Records of South Australia: <http://www.archives.sa.gov.au/>

State Records Office of Western Australia: <http://www.sro.wa.gov.au/>

Tasmania State Archives: https://libriariestas.ent.sirsiidynix.net.au/client/en_AU/tas/

Museum policies

Australian Museum, *Repatriation of Indigenous Secret/Sacred and Aboriginal Ancestral Remains Collections*, 2012: <https://media.australianmuseum.net.au/media/dd/Uploads/Documents/7546/repatriation-2007.c37babd.pdf>

Museum Victoria, *Repatriation of Ancestral Remains: Repatriation of Indigenous Cultural Policy*, 2019: <http://museumvictoria.com.au/collections-research/humanities/repatriation-of-ancestral-remains/>

National Museum of Australia, *Aboriginal and Torres Strait Islander Human Remains Management and Repatriation Policy*, 2011: <https://www.nma.gov.au/about/corporate/plans-policies/policies/aboriginal-and-torres-strait-islander-human-remains>

Queensland Museum, *Repatriation of Aboriginal Peoples and Torres Strait Islanders Ancestral Remains*, 2019: <http://www.qm.qld.gov.au/Find+out+about/Behind+the+Scenes/Repatriation>

South Australian Museum, *Management and Repatriation of Ancestral Remains and Burial Goods Policy*, 2018: https://www.samuseum.sa.gov.au/upload/AR_Policy-no-watermark.pdf

Human anatomy guides

Much information on human skeletal structure is available on the internet. This is much cheaper than buying textbooks. Some online references include:

<http://www.innerbody.com/anatomy/skeletal-male>

<http://www.innerbody.com/image/skelfov.html>

Packing Ancestral Remains

Myra Giese (ed.), *Curating Human Remains: Caring for the Dead in the United Kingdom*, Boydell Press, Woodbridge, 2013

University of Bradford, n.d.: *Biological Anthropology Research Centre (BARC): Human Remains Policy* (Appendix 2): https://www.bradford.ac.uk/archaeological-forensic-sciences/facilities/barc/BARC_human_remains_policy.pdf

York Osteology, 2019: *How to Pack a Skeleton*: <http://www.yorkosteoarch.co.uk/guide.php>

Transport

Art Transport: <http://www.artworktransport.com.au/>

International Art Services: <http://www.iasdas.com.au/>

Importing Ancestral Remains

Responsibility now rests with Department of Health in consultation with the Department of Agriculture. Supporting legislation: *Biosecurity Act 2015*, No. 61, 2015, which took effect from 16 June 2016: <https://www.legislation.gov.au/Details/C2015A00061>

DNA testing

Australian Law Reform Commission 36: *Kinship and Identity: Genetic Testing and Aboriginality*: <http://www.alrc.gov.au/publications/36-kinship-and-identity/genetic-testing-and-aboriginality>

Australian National University, John Curtin School of Medical Research, National Centre for Indigenous Genomics: <http://ncig.anu.edu.au/>

Information for communities scientific testing on Indigenous ancestral remains: <https://www.arts.gov.au/documents/information-communities-scientific-testing-indigenous-ancestral-remains>

Monash University Faculty of Science: <https://www.monash.edu/science/future/study/genetics>

University of Western Australia, Centre for Genetic Epidemiology and Biostatistics, Centre for Genetic Origins of Health and Disease: <https://www.gohad.uwa.edu.au/>

Further reading

Advisory Committee for National Resting Place, *National Resting Place: 2014 Consultation Report*: <https://www.arts.gov.au/what-we-do/cultural-heritage/indigenous-repatriation/national-resting-place>

Australian Government statement: <http://arts.gov.au/indigenous/repatriation> (Accessed 12 August 2019)

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Endnotes

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Repatriation officer's notes



NATIVE TOMBS.

AND MODES OF DISPOSING OF THEIR DEAD.

Native Tombs and Modes of Disposing of Their Dead, 1847, by George French Angas

lithograph, 45 x 30.8 cm

Angas's *South Australia Illustrated* (1847) includes images of the first and second stages of the mortuary ceremonies of groups such as the Kaurna and Ngarrindjeri in southern South Australia. In these images, respect and care for the dead through appropriate ceremonies is clearly displayed.

National Museum of Australia



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