Politics of the Dead:
A comparative analysis of legislative options for the reburial of repatriated Indigenous human remains in southeastern Australia

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DECLARATION OF CANDIDATE

I certify that this thesis does not incorporate without acknowledgement any material previously submitted for degree or diploma in any university; and that to the best of my knowledge and belief it does not contain any material previously published or written by another person except where due reference is made in the text.

This thesis has not been submitted for the award of any other degree or diploma in any other tertiary institution.

Signed…………………………………………………………………………………

Tamarind A. Meara
This thesis examines the current options for reburial in legislation and administrative policy of collecting institutions and government departments for reburial of Indigenous remains, set within a mainland southeast context consisting of South Australia, New South Wales and Victoria. The *Aboriginal Heritage Act 1988* (SA), *Aboriginal Heritage Act 2006* (VIC) and *National Parks and Wildlife Act 1974* (NSW) are examined in combination with the ‘Policy and Procedures for Aboriginal Heritage Unit and Related Unit’ (Australia Museum NSW), ‘Policy on Human Skeletal Remains Collection 1987’ (SA Museum), ‘Repatriation of Aboriginal and Torres Strait Islander Cultural Property’ (Museum VIC), ‘Repatriation of Aboriginal Cultural Material Policy: Principles and direction for repatriation’ (AARD, SA) and ‘Repatriation of Aboriginal Cultural Material Policy’ (DECC, NSW).

The past collection of Indigenous skeletal remains for scientific research by various parties has resulted in the current ‘reburial issue’. With the successful repatriation of remains, deciding whether, where, how and when remains will be reburied is a complex process confronting Indigenous communities. Utilising a qualitative research methodology, this study explores the reburial options of remains within public policy and state heritage legislation. This research contributes to the sparse discourse regarding this complex contemporary issue, discussing several key issues confronting Indigenous communities, notably: the access to useable land for reburial; provisions for resources (both financial and logistical) within legislation and policy and the future protection of these remains.

Owing to the independent development of legislation and policy of each state in the study region, the study explores the effectiveness of each state model in providing provisions for the reburial of remains. In doing so, the study illustrates that there is a serious deficiency in SA legislation and policy in comparison with those of its’ other southeast counterparts, NSW and VIC. The research concludes that Although some significant steps have been made towards establishing an effective response to this complex issue, in general the collecting institutions and government departments within the southeast region have been ‘slow’ in creating ‘real’ assistance to Indigenous communities in the complex process of deciding how, when, where and whether to reburry their Old People.
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<thead>
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<th>Description</th>
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<tbody>
<tr>
<td>AAA</td>
<td>Australian Archaeological Association</td>
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<tr>
<td>AARD</td>
<td>Aboriginal Affairs and Reconciliation Division</td>
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<tr>
<td>AARPA</td>
<td><em>Aboriginal and Archaeological Relics Preservation Act 1972 (VIC)</em></td>
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<tr>
<td>AHA 1988</td>
<td><em>Aboriginal Heritage Act 1988 (SA)</em></td>
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<td>AHA 2006</td>
<td><em>Aboriginal Heritage Act 2006 (Vic)</em></td>
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<tr>
<td>AHRPA</td>
<td><em>Aboriginal Heritage Relics Preservation Act 1965 (SA)</em></td>
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<tr>
<td>AIAS</td>
<td>Australian Institute of Aboriginal Studies</td>
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<tr>
<td>AIATSIS</td>
<td>Australian Institute of Aboriginal and Torres Strait Islander Studies</td>
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<tr>
<td>ATSIHPA</td>
<td><em>Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cth)</em></td>
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<tr>
<td>ATSIHPAA</td>
<td><em>Aboriginal and Torres Strait Islander Heritage Protection Amendment Act 1987 (Cth)</em></td>
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<tr>
<td>DECC</td>
<td>Department of Environment and Climate Change (NSW)</td>
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<tr>
<td>NHC</td>
<td>Ngarrindjeri Heritage Committee</td>
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<td>NMA</td>
<td>National Museum of Australia</td>
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<tr>
<td>NPWA</td>
<td><em>National Parks and Wildlife Act 1974 (NSW)</em></td>
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<tr>
<td>NPWS</td>
<td>NSW National Parks and Wildlife Service</td>
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<tr>
<td>NSW</td>
<td>New South Wales, Australian State</td>
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<tr>
<td>PHSRC</td>
<td>Policy on Human Skeletal Remains Collection (SA)</td>
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<tr>
<td>RACMP(NSW)</td>
<td>Repatriation of Aboriginal Cultural Material Policy (NSW)</td>
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<td>RACMP(SA)</td>
<td>Repatriation of Aboriginal Cultural Material Policy (SA)</td>
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<tr>
<td>RATSICP</td>
<td>Repatriation of Aboriginal and Torres Strait Islander Cultural Property (Vic)</td>
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<tr>
<td>RICP</td>
<td>Return of Indigenous Cultural Property Program (Cth)</td>
</tr>
<tr>
<td>SA</td>
<td>South Australia, Australian State</td>
</tr>
<tr>
<td>SMH</td>
<td><em>Sydney Morning Herald</em></td>
</tr>
<tr>
<td>VIC</td>
<td>Victoria, Australian State</td>
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</table>
This thesis was developed through several discussions in 2006 with Lynley Wallis, Steve Hemming and Chris Wilson. Following the completion of Wilson's (2005) thesis, which documented and explored the repatriation of Ngarrindjeri Old People\(^1\) from Museum Victoria, members of the Ngarrindjeri Heritage Committee were supportive of pursuance of a project which would explore options for reburial within South Australia and outline what was happening elsewhere in Australia. As such this thesis forms part of a broader research initiative of the NHC under their Federal Indigenous Heritage Program funded Cultural Heritage Project.

I entered this issue as a non-Indigenous student with a Bachelor of Archaeology. Having relatively limited experience in Indigenous archaeology, I was unaware of the complexities of the repatriation and reburial process for Indigenous communities. However, through the research process I became intensely interested in the contentious issue, in particular the blatant unethical and oftentimes illegal collection of Indigenous ancestors by researchers and private collectors.

From the outset it is important to note this thesis is not about the reburial debate per se, nor does it intend to represent Indigenous concerns regarding the reburial of their Old People. Rather, it attempts to identify the legislative history and reburial options of repatriated Old People, through an examination of State and Commonwealth legislation as well as the administrative policies of selected collecting institutions and government departments.

\(^1\) A preferred term of respect for Indigenous human remains.
TERMINOLOGY

The terminology used in this thesis has been adopted from multiple sources. In accordance with the legislative component of this research where appropriate I have integrated definitions from the legislative acts under discussion. Owing to the sensitive nature of the research, where possible I have attempted to incorporate Indigenous terms of respect.

**Indigenous:** A person belonging to the Indigenous peoples of Australia, including inhabitants of Torres Strait Islands, and any descendants of those people.

**Burial:** The act of burying an object (including a person) in the earth, tree or cave.

**Cremation:** To dispose of a deceased person or object by burning, and then releasing the cremains either on the land or at sea.

**Human Remains:** A body or part of a body of a deceased person, including cremated human remains.

**Old People:** A preferred term of respect for Indigenous human remains.

**Repatriation:** ‘The return of someone or something (includes intangible items such as ownership) to its country, place or community of origin’ (Pickering 2001:2).

**Reburial:** The re-interment of an object or person back into the earth, tree or cave.
CHAPTER ONE: INTRODUCTION

Human remains are no longer objects of science, but once more as ‘the dead’ who must be accorded appropriate treatment. Deciding which procedures are appropriate can confront communities with a number of complex issues, not the least the question of where and how to bury returned remains. (Fforde 2004:157)

The questions of whether, when, where and how to rebury repatriated remains are issues many Indigenous communities around Australia are currently confronting. Locating appropriate reburial places is an exercise entwined with difficulties, including issues of land rights, access to financial resources and the potential of disturbing existing burials. Exacerbating the situation is the fact that in many instances the traditional burial grounds from whence the Old People were originally taken have either been redeveloped or otherwise destroyed in the intervening period. This thesis explores options for the reburial and future protection and repatriated Indigenous skeletal remains within a southeastern Australia context.

1.1 SIGNIFICANCE OF THE ISSUE

In order to understand the significance of the ‘reburial issue’, one needs only to look in the daily newspaper or watch the evening news. The growing importance of the issue, both politically and socially, has escalated within Australia and abroad during the past 20 years. Within Australia the focus has largely been on the return of remains from Australian and British institutions, notably the Edinburgh collection, which consisted of skeletal remains and body parts removed from the Adelaide Morgue and University of Adelaide dissecting rooms and donated to the University of Edinburgh by William Ramsey Smith2, Chairman of the Central Board of Health (Fforde 2002:41; Turnbull 1993). The 2003 repatriation of the Edinburgh collection was particularly poignant for Indigenous communities as it symbolised a significant shift in the issue and recognised the past abuse and indignities inflicted on Aboriginal communities from southeastern Australia.

2 In addition to his position as Chairman of the Central Board of Health, Ramsey Smith was also the City Coroner, Inspector of Anatomy and a doctor at the Adelaide Hospital and a prolific collector of remains on behalf of the Anatomy Department at his old university in Edinburgh (Fforde 2004:41).
Reburial has widely been represented through both academic writings and the popular press as an Indigenous issue. However, some non-Indigenous supporters stand with Indigenous people in their calls for repatriation, though others contest the return of human remains; in any case, the issue affects a broader audience than just Indigenous people, with much wider implications. Australian Indigenous communities along with indigenous peoples from other parts of the world have campaigned for the right to ‘control’ the future of the remains of their ancestors (Fforde and Hubert 2002). They have contested the ‘ownership’ of items including human remains and cultural artefacts currently housed in various institutions for display and scientific research purposes in various institutions around the world. The demands of Indigenous peoples largely centre around the return of items to their place of origin for some form of culturally appropriate disposal, but also are being voiced to ensure that further remains found today or in the future through processes such as archaeological excavation and development projects are returned to their affiliated cultural group (Hubert and Fforde 2002:1).

The research reported herein explores one aspect of the repatriation process, focusing on the reburial and continued protection of repatriated humans remains. For many the physical return of the remains is only one small part of a much larger process; closure can only be truly achieved once the Old People have been put to rest in their rightful country (Wilson 2005). In attempting to attain closure communities are often faced with many complex issues. Human remains were often appropriated via unethical and illegal means with limited records made or retained of their traditional resting place or the individuals’ identities (Fforde 2004; Hubert 1994; Hubert and Fforde 2002; *National Indigenous Times* 2005; Pearson 2003; Turnbull 1993). Even where their place of origin is known, it is often the case that since collection many traditional burial grounds have either been redeveloped or otherwise destroyed. In addition, many communities have limited resources to cope with the financial expenses of reburial. The task of locating appropriate, new reburial places is entwined with difficulties, as many communities do not currently have access to appropriate land under local or state legislation.
1.2 ORIGINS OF INDIGENOUS HUMAN REMAIN COLLECTIONS

It is beyond the scope of this thesis to discuss the history of procurement and scientific uses of human remains in depth; however, it is important to understand the origin of such collections in order to comprehend the context for the creation and foundation of museum attitudes and policy regarding repatriation and reburial.

The circumstances of colonisation of Australia are inextricably linked to the contemporary reburial issue. The strategic declaration of Australia as *Terra Nullius* or ‘unoccupied territory’ has had far reaching consequences for Indigenous Australians. The period of colonisation of South Australia coincided with the emergence of Darwinist theories of social hierarchy between ‘races’ of peoples, with Europeans viewed as ‘superior’ and Indigenous peoples’ as ‘inferior’ or the ‘Other’ (McNiven and Russell 2005:39; Said 1994). This colonial creation of ‘Aboriginal’ identity as ‘savages’ or ‘natives’ perpetuated and legalised the procurement of their skeletal remains for scientific purposes. Because Indigenous Australians were frequently perceived as the ‘lowest’ or ‘missing link’ of humankind their remains were highly valued and much sought after within scientific circles (Turnbull 1993, 2002). By the late nineteenth century Indigenous Australian remains were housed in most of the major collecting institutions throughout Europe and America, as well as local universities and museums, notably the SA Museum, Australian Museum, Museum Victoria and University of Adelaide (Fforde 2002:25).

The scientific demand for skeletal remains raised little moral concern over the method(s) used for their acquisition with many remains deliberately stolen from burial site, hospital mortuary tables and university dissecting rooms, as well as fortuitously being ‘discovered’ during settlement activities (Fforde 2002, 2004; Hubert 1994; Hubert and Fforde 2002; Simpson 2002:202; Turnbull 1993). Many collecting institutions maintain the viewpoint that their collections were amassed via legally sanctioned means such as purchase, trade or ‘gifts’ presented to the government or individuals (eg SA Museum 1987). This standpoint has been strongly contested by repatriation advocates, who argue that as there is no evidence of permission ever being provided for the removal of the remains, such activities can only be construed as ‘grave-robbing’ and thus can not have been legally acquired (Bowdler 1992:3).
The recorded procurement of Indigenous Australian remains by collecting institutions commenced as early as 1793 (Fforde 2002:26); however the most prolific collection occurred in the latter-half of the nineteenth century with the likes of William Ramsey-Smith (SA), George Murray Black (VIC) and Ramsey Smith (NSW), continuing through to the late 1970s with archaeological excavations of Roonka Flat endorsed by the SA Museum (Fforde 2004; Pretty 1977). During this period it is estimated that several thousands of remains were removed for ‘scientific research’, largely from the southeastern region though collections were also made from the north such as by the Australian-American Expedition to Arnhem Land (May et al. 2005). The ‘legal’, although ethically immoral, procurement of the remains by collecting institutions has created not only intense debate amongst and pressure on the institutions themselves, but has also created complex issues for communities coping with the re-interment and future protection of their ancestors.

1.3 AIMS AND OBJECTIVES

The members of the Ngarrindjeri Heritage Committee with whom Wilson (2005) collaborated highlighted the lack of support from collecting institutions and government departments regarding the reburial of repatriated remains, as well as the legal status of such reburials. The aims and objectives of this thesis are developed directly from the experiences of the Ngarrindjeri people in this regard, broadly examining current administrative practices concerning reburial within the southeastern Australia context. This is achieved through a comparative analysis of selected state legislation (New South Wales, South Australia and Victoria) relating to the protection, preservation and reburial of Indigenous skeletal remains. In doing so, the following Acts are examined: *Aboriginal Heritage Act 1988* (SA), *Aboriginal Heritage Act 2006* (Vic), and the *National Parks and Wildlife Act 1974* (NSW). In addition to state legislation, relevant commonwealth legislation is also considered, particularly the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*. As a corollary to this, the administrative policies of several prominent collecting institutions and relevant government departments in each state are also examined.

Within the broad research issue of reburial, five specific questions are explored:

1. How much repatriation and reburial has occurred to date in the region?
2. What are the legislative options/framework for reburial within each of the study states?
3. How do these compare?
4. What are the major collecting institution policies within each of the study states for reburial?
5. How effective are these policies in addressing reburial issues?

The first question examines the extent of the issue in the study region. Compilation of repatriation and reburial newspaper articles from a national indigenous newspaper (Koori Mail) and a mainstream paper (Sydney Morning Herald) was conducted. Exploring the extent of media coverage (albeit in a restricted fashion) provides insight into the depth of the issue in the southeast and the people currently affected by the legislation and administrative policies of the collecting institutions. Questions two to five are the main thrust of the research and are explored through the analysis of discourse available in textual documentation, archival sources and questionnaires distributed to government heritage agencies and collecting institutions.

1.4 RESEARCH TOPIC DEVELOPMENT

The research topic and design utilised in this thesis was devised following multiple discussions with Lynley Wallis, Steve Hemming, Chris Wilson and members of the NHC. In order to explore the aims of this thesis the research was principally concerned with collecting a qualitative data set, which incorporated the legislative and administrative options for the reburial of repatriated Indigenous remains in Australia (see Chapter Two).

1.4.1 COMMUNITY COLLABORATION

The research presented in this thesis is part of a larger collaborative research agenda and builds upon earlier research conducted between members of the Ngarrindjeri Nation and Finders University (eg Baric 2006; Harris 1999; Wallis et al. 2006, 2007; Wilson 2005; Wiltshire 2006). The broad research topic area was drawn from conclusions made by Wilson (2005:96-7) highlighting the complexities of repatriation for Indigenous communities:

[Ngarrindjeri] are one Indigenous nation who are now faced with many issues arising from the repatriation and reburial process…. [repatriation] is only the beginning of a long and tiring battle to appropriately rebury the Old People.

In light of the large numbers of repatriated Old People to the Ngarrindjeri Nation (currently >400), the community are currently exploring reburial options, as well as dealing with of the
ongoing management and protection of reburial and existing burial sites. Consequently, the NHC supported the initiation of a research project designed to explore the framework within which reburial occurs in the southeastern states, and to examine the various policies and processes guiding reburial both within SA and interstate. Support of the project by the Ngarrindjeri Nation through the NHC was fundamental to this research being undertaken and this thesis is considered an output of the Ngarrindjeri Cultural Heritage Project funded through the Federal Dept of Environment and Water Resources (2007-08). While it had originally been planned to conduct formal interviews with members of the NHC involved directly in reburial planning it was ultimately decided this would place an unnecessary burden on the already over-worked leadership. Nevertheless, the research was conducted under the continued guidance of Lynley Wallis and Steve Hemming with regular informal reports being made to the NHC on progress. Upon completion, the findings of the research will be presented to the Ngarrindjeri community in a plain English report (as well as providing them with copies of this thesis) for their use.

1.5 THESIS OUTLINE

Chapter Two describes the methods utilised in this research project. The chapter justifies the adoption of a qualitative approach and establishes the theoretical foundation for assembling information, as well as the choice and limitation of sources utilised.

Chapter Three presents a review of reburial discourse in Australia, examining past examples of repatriation from both state and overseas institutions to communities within the southeast.

Chapter Four discusses the development of Indigenous heritage legislation in each state (SA, VIC and NSW) with particular attention given to the development of provisions relating to the protection, preservation, repatriation and reburial of Indigenous human remains. In doing so the chapter also explores the shifts in power and language regarding Indigenous remains within legislation in recent decades.

Chapter Five presents the provisions of reburial within collecting institutions and government department policies, highlighting potential issues for further discussion in Chapter Six.
Chapter Six is a discussion of the results presented earlier. It is organised in a series of key emergent themes, including the effectiveness of administrative policies, access to resources (primarily financial assistance), as well as the future protection of reburial sites.

Finally, Chapter Seven concludes this research by redressing the aims and objectives outlined in Chapter One. This final chapter also discusses future potential research into this complex issue.
In order to extract information from Parliamentary Acts and administrative policies, this thesis adopted a qualitative research technique of textual documentation. This chapter discusses the limitations and choices of data sources, as well as the theoretical foundation utilised to interpret and extract data.

2.1 QUALITATIVE RESEARCH

Owing to its research aims and objectives, the information presented in this thesis has been collected, analysed and interpreted utilising a qualitative research methodology. Such methodologies have become increasingly important modes of inquiry for the social sciences and applied fields of research such as anthropology and archaeology (Berg 1998:2; Marshall and Rossman 1999:1). Traditionally, archaeological methods were dominated by quantitative ‘scientific’ techniques. With the emergence of post-processual archaeology in the 1980s, many within the discipline advocated for the adoption of qualitative research (Hodder 1999:80).

In essence, qualitative research is pragmatic, interpretive and grounded in the ‘lived’ experiences of people (Marshall and Rossman 1999:2). It refers to the meanings, concepts, definitions, characteristics, metaphors, symbols and description of things (Berg 1998:3). Qualitative research utilises many forms of data collection, including: photographic techniques (including video-taping); literature review (document and textual analysis); experimental natural setting; interviewing; focus groups; ethnography; sociometry; socio-drama; historiography (historical analysis) and a number of other ‘unobtrusive techniques’.

Fundamentally, qualitative research provides researchers with the ability and technique to assemble interpret and analyse texts in a subtle manner.

2.1.1 TEXTUAL REVIEW OF DOCUMENTS

As a principal method of qualitative research, the textual analyses of documents provides researchers with a method of understanding and analysing shifts in discourse regard to value,
power and ultimately change. One of the greatest advantages of this approach is that it is non-destructive: it can be conducted without disturbing the ‘setting’ in any way. Essentially the ‘data or raw material’ is extracted through interpretation and can therefore be checked and re-interpreted continuously by other researchers. Documents may include: newspapers; journals; free writing; press releases; photographs; textbooks; speeches; music; poetry; film and interviews (oral histories, etc), as well as archival data, such as laws and policies.

A qualitative analysis of documents and texts (legislation, policies, newspaper articles and secondary sources) was considered appropriate for this thesis owing to the principal objectives of the research (see Chapter One) as well as the scarcity of secondary and primary sources documenting reburial in southeastern Australia.

2.2 RESTRICTING THE STUDY AREA

During the initial phase of project development it was recognised that attempting to incorporate the whole of Australia in the analysis would not be feasible given the logistical constraints of an Honours thesis. Therefore, the study area was limited to NSW, SA and VIC, which collectively constitute the mainland southeastern region of Australia. The southeast was decided as being most suitable for the purpose of the project owing to several factors uniting these states as a single region. Tasmania was excluded since it has had a different legislative and settlement history to the rest of the southeast.

Firstly, southeastern Indigenous communities differ from many elsewhere in that the fertility of their country allowed them to pursue a much more sedentary way of life (Builth 2002:87; Pascoe 2007; Turnbull 2002:75). Secondly, perhaps more so than their brethren in the north, Indigenous communities of the southeast witnessed large-scale removal of their ancestors from burial grounds, caves, trees and hospital morgues driven by the demand for ‘specimens’ for European museums and collecting institutions. The close proximity of large Indigenous communities to urban settlements in this region provided a large and easy source of skeletal remains for collectors. As a consequence, thousands of skeletal remains were removed from the southeast for ‘scientific’ study and ‘preservation’ (Fforde 2002), leading to the current situation. Thirdly, despite considerable evidence to the contrary, many non-Indigenous people maintained–and continue to do so–the perception that ‘full blooded’ or ‘traditional’ Aboriginals
had died out in each of these three states (for discussion of this see Fforde 2004; Hemming 2005, 2006; Hubert 1994; Hubert and Fforde 2002; Turnbull 1993, 2002). Finally, each of the study states developed legislation based upon the same historical foundation; however, the subsequent amendments to and assent of new legislation have created vastly different approaches to the protection, preservation and ownership of Indigenous skeletal remains in each jurisdiction. In addition, each state has adopted substantially different methods and approaches to the administration of their legislation, thereby creating unique alternative solutions to the same complex issue worthy of exploration.

These reasons meant that the study region of southeastern Australia provided a unique space to explore the development and enforcement of Indigenous heritage legislation and institutional policies, as well as public consciousness in regards to reburial.

2.3 DOCUMENT COMPILATION AND ANALYSIS

The document compilation and analysis utilised in this thesis consisted of a staged process; each of which is discussed in further detail below.

2.3.1 NEWSPAPER ARTICLES

Owing to the scarcity of academic or official reports documenting reburial events in Australia, the review of newspaper articles provided an important source of data relating to the administration of legislation, location and number of reburials occurring within the study region. A preliminary search of each major newspaper archive in each study state was initially revealing a large quantity of articles which had to be reduced to a more manageable level owing to logistical considerations. Compilation of articles was subsequently restricted to only two national newspapers (Sydney Morning Herald and The Koori Mail) for the years of 2002 to June 2007 inclusive, chosen on several grounds. Firstly, both newspapers demonstrated a history of publishing articles about repatriation and reburial. Secondly, they are effectively national (Australia-wide) publications though both are published in the southeast. Finally, the Sydney Morning Herald represented a mainstream ‘European’ perspective, whereas the Koori Mail provided an Indigenous perspective. Newspaper issues were initially searched using an online archive, followed by a ‘hard-copy’ manual search for articles, conducted at the State Library of South Australia and Flinders University.
The articles were then analysed to extract relevant information, which is presented in Chapter Three. It is acknowledged that the data collected in this fashion does not provide a comprehensive representation of the reburial issue within the Australian media, but rather a small sample of the complex issue in the southeastern region; nevertheless it was considered sufficient to highlight patterns for the purposes of this research.

2.3.2 LEGISLATION: Current and repealed

A core aim of this thesis is to examine legislative acts to determine how they deal(t) with the protection, preservation, collection and disposal of Indigenous skeletal remains. Initially the relevant legislation relating to burial and skeletal remains was identified for each study state. Current versions of state Acts were obtained through State Government Parliament website archives, as well as the Flinders University Library and the State Library of South Australia.

In order to better understand the current legislation, repealed legislative acts within each state were also acquired and reviewed. Historical versions of Acts and Bills were again available through the Flinders University Library and State Government Parliament website archives. Parliamentary debate papers were also consulted to gather background information relating to the development of each Act and Bill in the region.

The legislation examined in this thesis includes:

- *Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cth)*
- *Aboriginal Heritage Act 1988 (SA)*
- *Aboriginal Heritage Act 2006 (Vic)*
- *Archaeological and Aboriginal Relics Preservation Act 1972 (Vic)*
- *National Parks and Wildlife Act 1974 (NSW)*.

2.3.3 MUSEUM AND GOVERNMENTAL POLICIES

A principal aspect of the data compilation involved contacting collecting institutions and government departments to obtain copies of their repatriation policies as well as additional background information relating to the development of their policy. The institutions selected for inclusion in this manner were the Australian Museum, SA Museum, Museum Victoria, Aboriginal Affairs and Reconciliation Division (SA), Department of Aboriginal Affairs Victoria
and the NSW National Parks and Wildlife Service. Museums were chosen on the basis of their current membership of the Federal Return of Indigenous Cultural Property program (RICP), as well as their active role in the past collection and current repatriation of Indigenous skeletal remains to communities around Australia. The government departments chosen for inclusion in this research were selected owing to their role in administrating Indigenous heritage within each state.

The administrative policies examined in this thesis include the:

- Policy and Procedures for Aboriginal Heritage Unit and Related Unit (Australia Museum NSW);
- Policy on Human Skeletal Remains Collection 1987 (SA Museum);
- Repatriation of Aboriginal and Torres Strait Islander Cultural Property (Museum VIC);
- Repatriation of Aboriginal Cultural Material Policy: Principles and direction for repatriation (AARD, SA); and
- Repatriation of Aboriginal Cultural Material Policy (DECC, NSW).

Owing to the confidential nature of such documents only a public pamphlet regarding their policy was provided by DECC NSW for this research. Similarly, AARD (SA) currently do not have an approved policy, therefore their draft policy was used. A copy of each policy utilised in this thesis is attached in Appendix 2.

2.4 DECONSTRUCTING THE TEXTS

The process of deconstructing and assembling relevant information from the newspaper articles, legislation and policies is not self-evident. It required a complex process of reading and re-reading the text in order to deconstruct concealed layers or meaning represented through words. Adopting Attwood’s (1992), Murray’s (1992, 1996) and Smith’s (1994, 2000, 2004) concepts of knowledge, power and Aboriginal identity, this thesis deconstruct texts in order to examine shifts within legislation, policies and secondary sources. Furthermore, in adopting Attwood and Murray’s assumptions of knowledge as a construct, reflective of circumstances and time, an analysis of discursive style can be examined in relation to the development of reburial discourse in the region.
2.5 LIMITATIONS OF THE STUDY

It is acknowledged that as a non-Indigenous person I am incapable of addressing the repatriation and reburial issues in the same style or perspective as an Indigenous person. The research presented in this thesis, although designed in a collaborative fashion with members of the Ngarrindjeri Nation, does not reflect all Indigenous people’s opinions, concerns and experiences relating to reburial. Furthermore, it is acknowledged that consultation with Indigenous people, communities and organisation would have been beneficial to this research. However, their involvement within the research process was restricted owing to logistical constraints as well as the often saturation of academic research interest in Indigenous peoples’ and Indigenous issues. For similar reasons it was not possible to extend this research to an Australia-wide study.
CHAPTER THREE: REPATRIATION AND REBURIAL IN SOUTHEASTERN AUSTRALIA

In some societies, if appropriate rituals are not carried out, a person’s spirit is believed to be doomed to wander in limbo for eternity, or will return to the community bringing sickness or death. (Hubert and Fforde 2002:2)

3.1 INTRODUCTION

The ‘reburial issue’ of Indigenous human remains is not simply an Australian phenomenon but rather a global issue. Developing as a result of the colonisation of Indigenous nations, the issue escalated towards the end of the twentieth century (Hubert and Fforde 2002). In Australia the development of the issue coincided with the acknowledgement of Indigenous rights in the 1960s. To date there has been extensive literature published on the repatriation of remains to communities (eg Bowdler 1992; Fforde 2002, 2004; Hemming 2005, 2006; Hemming and Wilson in press; Hubert 1994; Hubert and Fforde 2002; Lahn 1996; McBryde 1992; May et al. 2005; Meehan 1984; Meighan 1985, 1992; Mulvaney 1991, 1999; Murray 1992, 1996; Onsman 2004; Ormond-Parker 1997; Pardoe 1992; Pickering 2001; Simpson 2002; Truscott 2006; Turnbull 1993, 2002; Ucko 1989; Webb 1987; Wilson 2005; Zimmerman 1994, 2002); however, reburial of such remains and the complex issues associated with this are yet to be explored in contemporary literature. The following chapter provides an overview of the development of Indigenous heritage discourse in southeastern Australia as well as provide an examination of the ‘reburial’ discourse and extent of reburial occurring within the region.

3.2 DEVELOPMENT OF HERITAGE LEGISLATION IN AUSTRALIA

Indigenous heritage policy discourse commenced in the 1930s with McCarthy and Shellshear after concerns had been raised in relation to the fate of Aboriginal artefacts and sites (Smith 2000:110). However, these concerns went unheeded until the 1960s when they coincided with wider public debate and expressions of concern over environmental issues. Progress in heritage legislation truly commenced following a constitutional amendment for Indigenous civil rights in Australia in 1967 (Mulvaney 1991:14; Pickering 2001:4; Smith 2000; Sullivan
Although the Commonwealth Government assumed responsibility for Aboriginal Affairs at this time, the administration of heritage policies was left to state governments. Legislation was first proposed by SA and NSW in the mid-1960s to protect ‘Aboriginal places and sites of significance’; by 1975 each state had developed their own Acts, albeit heavily focused on archaeological sites and ‘relics’ rather than broader concepts and forms of Indigenous heritage (Batten 2006; Mulvaney and Kamminga 1999:5; Murray 1996:729).

A feature of the early legislation was the definition of Indigenous heritage within a European context focusing on tangible objects such as stone tools, skeletal remains and rock art, rather than taking a holistic view of heritage (Bird 1996:101). Thus, the early policies created a ‘cultural terra nullus’ (see Smith 2002:112; Sullivan 1985:141).

In retrospective analysis, the timing of the first heritage legislation has been attributed to many factors, including the development of environmentalism and the worldwide conservation movement, as well as lobbying by several specialist groups (Murray 1996:729; Smith 2000:109). However, these explanations do not consider why Australia was one of the last settler societies to adopt even basic legislation in this area, nor why Aboriginal sites and objects were preserved in preference to ‘historic’ places (Murray 1996:729). Sullivan (1985:141) attributed the successful implementation of early legislation to the recent advances in the discipline of archaeology, an argument supported by Smith (2000:115):

The development of legislation had very little to do with the preservation of Aboriginal heritage as such, and more to do with the preservation of archaeological access to data.

Within this archaeological framework, Lydon (2004:86) argued the past was ‘understood to be something tangible, which could be souvenired or preserved’ through material objects. As such the legislative promoted the collection of Indigenous human remains, creating the complex issue currently confronting many communities in this region – reburial.

Furthermore, many concerns have retrospectively been raised regarding the ‘true’ aims of the Acts, with commentators being critical of the dominant archaeological approach. Hemming (2006:316) argued that during this period:

Indigenous communities were seen as ‘de-tribalised’, lacking culture and traditions. Their ‘fringe-camps’, holiday camps, ‘natural resources’, in short
their post-contact cultural landscapes where not viewed as properly Aboriginal and therefore not in need of preservation. Furthermore, Hemming (2006:316) argued that ‘Aboriginal’ heritage was perceived to be ‘part of the past and separate from the present’. This misperception was particularly evident in the use of the term ‘relic’ and ‘antiquities’ by southeastern legislators, and emphasised what was ultimately being protected – archaeological data rather than the cultural heritage of living Indigenous people.

Coinciding with the development of legislation was the concept of identity and ‘Aboriginality’ (Attwood 1992; Fourmile 1989; Langford 1983). Smith (2000:109) proposed that cultural heritage was critical in symbolising and providing material links with ‘Aboriginal’ identity. Thus, through legislation, governments were able to politically control Indigenous identity within Australian history.

Recently, several state governments have responded to Indigenous concerns regarding the various Acts by repealing their previous heritage legislation and proclaiming new Acts (see for example the ACT, VIC and Queensland statutes). The recent amendments to legislation reflect a growing awareness of reburial and repatriation within the public consciousness as well as shift in control and power over Indigenous heritage, including human remains and cultural property housed in collecting institutions as well as culturally significant sites and places. The development of heritage legislation in regards to the return and protection of Indigenous remains within each state of the study region is discussed further in the following chapter.

3.3 HISTORY OF REPATRIATION IN AUSTRALIA

The reburial issue confronting Indigenous communities today emerged from the systematic ‘looting’ and collecting of Indigenous remains in the late nineteenth and early twentieth centuries by Europeans, ‘justified’ through the belief that Indigenous people were ‘dying out’ and their remains provided vital information regarding the evolution of humankind (see Fforde 2002, 2004; Hubert and Fforde 2002; Hemming and Wilson in press; Hubert 1994; Markus 1990; Turnbull 1993, 2002). As state earlier, the competition to acquire these remains was unprecedented, with many individuals obtained via unscrupulous means (Fforde 2002, 2004; Turnbull 2002). To date, it is estimated that several thousand remains from the southeast
region alone were sent to collecting institutions, including the SA Museum, Museum Victoria and the Australian Museum. It is indisputable that the treatment of Indigenous people through these processes was inhumane. It is only just, therefore, that Indigenous communities whose Old People were collected, studied and displayed across the world want their ancestors remains to be returned. These requests for the repatriation of remains from collecting institutions across Australia and overseas have been largely referred to in public press and academic literature as the ‘reburial issue’ (Hubert and Fforde 2002:1).

In Australia, the beginnings of the reburial issue and related discourse emerged in the 1960s. However, requests for the repatriation are documented as early as 1900 (Fforde 2004:42). The emergence of the issue is often associated with the development of Indigenous land rights movement and coincides with the emergence of Indigenous heritage legislation whereby, in response to these political developments Australian museums, archaeologists and physical anthropologists began to consider Aboriginal concerns regarding the curation and scientific use of ‘sensitive cultural material’.

The 1970s and 1980s witnessed some changes in museum policies regarding the return of remains and culturally sensitive material to communities, this was particularly evident in Tasmania where Truganini’s remains were repatriated after a protracted battle (Onsman 2004; Rae Ellis 1981). However, the repatriation of remains was usually restricted to known individuals, or those collected in what was widely viewed as ‘unethical circumstances’ (such as the Crowther and Murray Black Collections). However, in light of the ‘loss’ of collections, notably ‘ancient and fossil’ remains (eg Kow Swamp and Lady Mungo), scientists began to publicly and forcefully oppose Aboriginal claims to the remains (Fforde 2002:34). As a result of the successful reburial of the Kow Swamp remains an intense debate developed regarding Indigenous claims to such remains and the loss of ‘vital scientific data’ (see Allen 1983; Gough 1996; Harris and Jones 1998:253; Lahn 1996; Meighan 1985,1992; Mulvaney 1991,1999). Others have worked collaboratively with Indigenous communities questioned their fellow academics rights claims to the remains (eg Pardoe 1992; Webb 1987; Zimmerman 1994, 2002). For Indigenous peoples, requests for the return of their ancestors are complex, though they principally stem from the need for their ancestors to be accorded appropriate funerary rituals in accordance to their cultural beliefs (Hubert and Fforde 2002:2). Furthermore, Hubert and Fforde (2002:2) stated that:
some consider the retention of remains in museums as spiritually dangerous, as it is well known that all societies have some kind of death rituals, through they vary in form and function…some of these for these are for the spirit of the dead – to disentangle the soul from the body, to enable the spirit to be free. For the living these rituals serve to formalize the death.

Such rituals also serve as a mechanism for people to ‘reaffirm cultural beliefs and customs’ (Hubert and Fforde 2002:2). This is particularly evident for dispossessed Indigenous peoples, whereby the reburial and associated ceremonies provide a mechanism to ‘revive’ past traditions.

The true extent of the number of Indigenous remains stolen in the name of science is still unknown, with many museums declining to release information regarding their collections. However, based solely on the situation in SA, thousands of remains are still missing, presumably collected and distributed to various collecting institutions around the world as well as private collectors (Hemming and Trevorrow 2006). While, some remains have been repatriated the reburial of these remains has not been widely documented, this may be attributed to the complexity of the issue or a lack of perceived public interest. Hemming and Wilson (in press) have highlighted some of the keys issues of reburial within the SA context, discussing the need for greater resources, protection of sites and questioning the legal status of the remains. However, to date the provision within legislation and administrative policy in regards to reburial remain are yet to be discussed in any detail with the discourse. This thesis draws strongly upon the work of Hemming (2006), Hemming and Trevorrow (2006) and Wilson (2005) as a foundation for discussing one of the facets of the complex reburial process confronting communities - legislative and policy provisions.

3.4 EXTENT OF REBURIAL IN SOUTHEASTERN AUSTRALIA

Owing to the relative absence of reburial discourse regarding the true extent of the problem in the southeast region is unknown. For this thesis the extent of the issue was explored through media coverage of the issue within the Koori Mail and SMH. In exploring the estimated extent of the problem, several key issues emerged.

 Principally, if media coverage is taken as a measure of public awareness and/or interest in the issue of repatriation and reburial there is a significant discrepancy in the reporting of the issue between the two papers. Over the five-year study period the Koori Mail reported 46
articles on the topic, while the SMH only reported 16 (see Tables 3.1 and 3.2). More importantly, of the articles reported, the SMH focused on repatriation from overseas collections, while the Koori Mail also documented events repatriation events occurring from institutions within Australia.

Secondly, if media coverage is taken as an indicator of the minimum numbers of Old People being repatriated to Indigenous communities in Australia (bearing in mind that the media are not reporting all such events and therefore figures will be grossly underestimated), 682 remains were recorded to be repatriated by Koori Mail and 356 by SMH across Australia within the study period. However, according to the same sources only 111 (26 by the SMH) repatriated individuals were reported as being reburied (see Tables 3.1 and 3.2). This discrepancy numbers of repatriated and reburied individuals highlights the complexities of the reburial process and the immediate need for ‘real’ provisions by governments and institutions to support communities in such endeavours.

The extent of reburial on a state-by-state basis indicates SA communities recovered the largest number of remains (n= 437), followed by the Northern Territory (with 88 individuals to a single community). NSW recorded the repatriation of 66 individuals, VIC 34 individuals and Tasmania 40 individuals over the five-year study period. Only NSW was recorded as reburying a significant proportion of the repatriated remains within the five year study period (65 recorded). This gap in the numbers of Old People repatriated versus those reburied reveals that in the southeast alone currently there are in excess of 400 Old People awaiting reburial or disposal of in accordance with community traditions. Clearly, within this region there is an urgent need for effective reburial policy and government and institutional assistance in supporting Indigenous communities with this complex issue.

Finally, in exploring the issue through the Koori Mail and SMH, if media coverage is taken as an indicator, the vast majority of the reburials occurred in either National Parks or Council reserves, highlighting the lack of useable land and more importantly the collaboration required between government agencies and communities in order to carry out reburials. Should strong policies to support such collaboration not be in place, reburial is likely to prove difficult to achieve; this issue is explored further in the following chapter.
3.5 SUMMARY

The looting and collection of Indigenous remains in the nineteenth and twentieth centuries for scientific enquiry resulted in the removal of several thousand remains from the southeast region, many of which are still housed in collecting museum archives. Owing to this the provisions for reburial by the collecting institutions and their respective governments is a significant issue which is currently confronts-and will continue to confront-communities until all their Old People are returned to their resting places. Chapters Four, Five and Six explore and discuss the provisions for reburial within state legislation and administrative policy in order to provide insight into this complex process.
CHAPTER FOUR: REBURIAL AND INDIGENOUS HERITAGE LEGISLATION IN SOUTHEASTERN AUSTRALIA

This chapter provides an overview of the legislative provisions for repatriation and reburial within Indigenous heritage Acts, specifically the: *Aboriginal Heritage Act 1988 (SA)*, *Aboriginal Heritage Act 2006 (VIC)* and *National Parks and Wildlife Act 1974 (NSW)*. In particular it focuses on the development of provisions for the collection, reporting, protecting, repatriation and re-interment or disposal of human remains within these statutes, rather than providing a history and summary of each Act.

4.1 SOUTH AUSTRALIA

Indigenous property rights (including burial grounds) were originally recognised and afforded legal protection during the colonisation of SA by the British Crown through the Letters Patent, a directive from King George to the South Australia Company (SA Government Gazette 1837):

> If on becoming acquainted with the habits and customs of the Aborigines, you [ie the Protector of Aborigines] should find that in any part of the country they are in the practice of making use of land for cultivation of any kind, or if they have a fixed residence on any particular spot, or if they should be found to appropriate any piece of land to funeral purposes, you are required to report such fact to the Colonial Government without loss of time, in order that means may be taken to prevent its being included in the survey for sale. [emphasis my own]

Despite this edict, protection of Aboriginal places and burial grounds was ignored for the sake of scientific inquiry and land acquisition (Rigney et al. in press). From early in the twentieth century major excavations of burials occurred under the auspices of the SA Museum at places on the River Murray such as Swanport, Devon Downs, Fromm’s Landing and Roonka (Stirling 1911; Hale and Tindale 1930; Pretty 1977). Although Indigenous burials were theoretically protected under Colonial law, excavations of Indigenous burial grounds continued without the approval of the Indigenous communities concerned.
It was not until 1964 that the first Indigenous heritage bill—the *Aboriginal and Historic Relics Preservation Bill*—was submitted to the Lower House, raising intense debate. Although it was proposed so as to protect Indigenous heritage, the legislators did not want to sacrifice the rights of landowners, particularly if they failed to report burial sites (SAPD 15 Sept 1964:734). Nevertheless, in 1965, the Bill was passed and proclaimed the *Aboriginal and Historic Relics Protection Act (AHRPA)*.

The primary objective of *AHRPA* was to preserve and protect Aboriginal culture, specifically including rock engravings and cave paintings. A key amendment to the initial Bill was the inclusion of the term ‘relics’, defined in the Act as:

> Any trace, remains or handiwork of an Aboriginal but does not include any handiwork made by an Aboriginal for the purpose of sale.

Notably, the term not only defined inanimate objects, such as stone tools, but also importantly, it incorporated the human remains of Indigenous people.

In the newly enforced *AHRPA*, the government created a register to record all known sites of Indigenous burials, relics and sites in the state. Items recorded on the register were to be maintained by the ‘Protector of the Relics’ (in this case the SA Museum Director). In doing so, the Act invested powers within the Museum for the ‘active search for new discoveries of remains’ and arrange ‘adequate protection of any new discovery’\(^3\). As a result, the Act endorsed the collection of remains by the Museum and associated professionals\(^4\).

The archaeological focus of the Act was acutely demonstrated three years later, with ‘rescue excavations’ of Indigenous burials at Roonka (Pretty 1977; see Hemming and Wilson in press). Excavations at Roonka, conducted under the direction of the SA Museum, recovered over 200 ‘prehistoric’ individuals between 1968 and 1977 on the grounds of their requiring protection; the Roonka remains were lodged with the museum and subjected to scientific research (eg Pate 1998, 2000; Pretty 1977). To date, the remains are yet to be returned to their rightful community and are currently the subject of an ongoing PhD thesis being undertaken by a student at the University of Adelaide.

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\(^3\) Section 10 (2)
\(^4\) Section 10
Fundamentally, the protection of Indigenous remains within the early Act was restricted to prohibiting of ‘acts of destruction, damage and private collection’ (museums were considered to be public institutions and hence their collections activities were supposedly ‘legal’). Furthermore the protection of burial sites was limited to only those sites recorded on the Register. Importantly, the early statute did not entirely prohibit the excavation or removal of remains from the land, but rather restricted their removal to ‘professionals’, i.e. archaeologists. In terms of ownership, the early Act protected collecting institutions by including a exception to ‘collections prior to it’s commencement’ from its provisions; furthermore, all the remains recovered (i.e remains which were confiscated, donated, removed, discovered or excavated) after its inception were to be deemed Crown property and as such were protected as the Crown saw fit. In doing so, the government created itself as the legal owners of the remains, a critical point in considering the method(s) of appropriation of such remains.

In the late 1980s in response to a changing political scene, SA repealed the AHRPA and introduced the Aboriginal Heritage Act 1988 (AHA 1988). The Act removed the use of offensive terms such as ‘relics’, signalling a dramatic shift in legal recognition and control for Aboriginal people in and over their cultural property. The Act’s recognition of traditional ownership of Aboriginal objects and sites was significant in relation to the Indigenous peoples’ right to protect burial sites and remains in accordance with their traditions. The introduction of AHA 1988 came at a time of increased national consciousness and recognition of Indigenous issues, most significantly land rights issues as well as the recent proclamation of the federal Aboriginal and Torres Strait Islander Heritage Protection Act 1984. In combination with the growth in political awareness regarding Indigenous heritage, the issue of repatriation was intensely occurring within academic and Indigenous circles following the successful repatriation of prominent cases from international collections.

The principle objective of the AHA 1988 was to ‘give genuine protection to genuine Aboriginal heritage’. This Act made significant changes from its predecessor (AHRPA 1965) in its provisions for the protection, ownership and control over Indigenous burial sites and Indigenous remains on the land. Unlike the AHRPA a heavy penalty was to be issued to persons who failed to report recovered remains, the excavation and removal of remains from burial sites, as well as access to known burial sites and remains without a permit from the
Minister\(^5\). Furthermore, the Act included provisions to acquire land where burial(s) are discovered and more importantly it allows for the provision of provided financial assistance and support for the future protection of remains and the burial sites on private land as well as Crown land, though it does not provide financial assistance specifically for the re-interment process\(^6\). Despite these improvements, it neglected to address issue surrounding the ‘legal’ collections of Indigenous remains within government departments and collecting institutions. Additionally no specific provisions were included for access to, or acquisition of land for the purpose of reburial of repatriated remains, thereby severely restricting options for reburial within the state.

Although on paper the Act was ‘pioneering, within in a short time it became apparent that it’s administration of the Act was problematic (Wiltshire 2006:56). In 2002, the AHA 1988 was heavily scrutinised after its failure to protect Indigenous culture and traditions with the Kumarangk (Hindmarsh) affair and the discovery of Ngarrindjeri Old People at the Goolwa wharf re-development site (Hemming 2006). Despite its failings no amendments have since been made to the Act in relation to Indigenous burial protection. The lack of provisions in SA, in comparison to its southeastern counterparts, further complicates the process of reburial for Indigenous communities within the state.

4.2 NEW SOUTH WALES

As stated earlier, the earliest attempts to encourage the NSW State Government to legislate to protect Aboriginal heritage occurred in the 1920s and 40s. In 1938, Fred McCarthy put forward a legislative proposal based on the American Antiquities Act 1906, which provided ‘blanket’ protection for sites, arguing:

\[\text{[That]} \text{ the development of legislation was required to protect Aboriginal sites and artefacts, not only to advance scientific study and educate people as to the significance of ‘our’ archaeological deposits, but also because cultural information was vanishing with the ‘disappearance’ of Aboriginal people and customs. (as cited in Smith 2002:144)}\]

The following year, McCarthy and Shellshear (Professor of Anatomy, University of Sydney) submitted a draft Bill based on McCarthy’s early proposal (Smith 2002:145); it was unsuccessful. It was some decades later in 1966 that the government decided to revisit the

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\(^5\) Section 20, 21, and 22.  
\(^6\) Section 30
issue of Indigenous heritage protection legislation owing to continuing pressure from
academics, the Australian Museum and Australian Institute of Aboriginal Studies (Smith
2002:145). In 1969 the amended Act was proclaimed, making limited provisions for the
protection of what were termed ‘archaeological, anthropological and Aboriginal ‘relics’ (a term
‘relics’ and remains was within a paternalistic European framework, with all remains
recovered regarded as Crown property and subsequently stored in the Australia Museum
(and later the NMA).

In 1974, the Act was revised, although minimal changes were made regarding the protection
and management of burial sites and/or human remains. Amendments included extensive
protection for remains discovered within the land, including provisions to protect remains from
private collection, damage, destruction and removal. Of significance to the topic under
consideration, this improved protection included the possibility of the Crown reserving
reported sites as ‘Aboriginal areas’ or, in the event of private land, the acquisition of land for
the purpose of protecting the remains from damage7. Remains collected during this period
become the responsibility of the NPWS, rather than the Australian Museum. More importantly,
the Act was also amended to enable the transfer of human remains collected by the NPWS
(as well as those already in storage at the AM) to Indigenous communities, whereby
ownership of the remains could also be returned to the Indigenous communities8. These
amendments signalled a significant shift in the recognition by the State of Indigenous rights to
control what would happen to their ancestors within NSW.

In 1992 the National Parks and Wildlife (Aboriginal Ownership) Amendment Bill was
introduced. The Bill, which proposed provisions for Indigenous people to access parks for
‘ceremonial and religious purposes’, also provided the possibility to access land for the
reburial of Old People in accompaniment with traditional funeral ceremonies. However, the
Bill was criticised for its failure to provide real control to Indigenous people—the proposed
rights were still subject to restrictions and overall control by the Minister—and ultimately
languished (Bird 1996:111).

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7 Section 30K, 62, 71C and 84
8 Section 85A
In response to the failure of the *National Parks and Wildlife (Aboriginal Ownership) Amendment Bill*, further amendments to the *NPWA* were introduced in the late 1990s. In particular, extensive amendments were proposed to Part 4A, entitled ‘Aboriginal Land’. These included provisions to recognise the cultural significance of certain lands to Aboriginal people in terms of their ‘traditions, observances, customs, beliefs and history’. Under the amendments, the Minister is able to reserve an ‘Aboriginal area’ for the purpose of ‘preserving, protecting and preventing damage to Aboriginal objects or places therein’, thereby providing a mechanism for communities to rebury their Old People. Furthermore, the management of the areas must be conducted with the involvement of the ‘Aboriginal owners of the land’, defined as:

> Indigenous persons named as having a cultural association with the land in the Register of Aboriginal owners under the *Aboriginal Land Rights Act 1983 (NSW)*.  

Through these amendments, NSW Government provided the framework for further protection and access to Indigenous burial grounds.

In 2001, a further significant amendment to the *NPWA* occurred with the removal of the culturally offensive term ‘relics’ replacing it with ‘objects’:

> Any deposit, object or material evidence (not being a handicraft for sale) relating to the Aboriginal habitation of the area that comprises NSW, being habitation before or concurrent with the occupation of that area by person of non-Aboriginal extraction, and includes Aboriginal remains.

The removal of the term signalled an important shift away from scientific discourse in defining Indigenous heritage.

In 2005, the NSW Government responded to the needs of Indigenous communities in relation to the growing numbers of repatriated remains by reserving seven protected Aboriginal areas for the reburial of Old People within Sydney’s national parks (a list of publicly known areas is included in Appendix A). More than 80 individuals have since been reburied in these areas. The following statement provides a useful summary of the NSW Government’s position in the reburial debate:

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9 Section 71D  
10 Section 30K  
11 Section 71B  
12 Section 5
This Government believes that the remains of Aboriginal people should be buried in their ancestral soil and not left on the shelves of museums. It is clear that they deserve to be buried with dignity by their own people. It is important for the remains to be reunited with their country rather than be in museums… [NSW Government] recognises the importance of the repatriation process for Aboriginal communities. (Sartor, n.d:14487)

4.3 VICTORIA

In 1972 Victoria proclaimed the *Archaeological and Aboriginal Relics Preservation Act* (AARPA). The Act was intended to provide legal protection to all Aboriginal ‘relics’ whether they were located on private or Crown land or were held in ‘private collections’; museum collections were considered to be public and therefore exempt from the Act. Like its contemporaries in NSW and SA, the AARPA utilised the term ‘relic’ in defining Indigenous human remains. However, unlike the other states, the AARPA also made specific mention of Aboriginal ‘skeletal remains’ older than 1834, the date of European settlement of the state. Archaeologists working in VIC at this time argued that not only was Aboriginal culture ‘extinct’ in the state, but that skeletal remains ‘should be valued and scientifically collected with all possible data’ (Smith 2002:147). The inclusion of 1834 as the cut-off point for the inclusion of human remains under this Act implied that contemporary Aboriginal identity and culture had been effectively colonized and could thus be ‘divorced’ from its past (Smith 2002:147).

The AARPA provided for the protection of Indigenous human remains by implementing a permit system that restricted access to burial sites, excavation and removal of Indigenous remains, limiting access to archaeologists or professional persons. In doing so it effectively legalised and ensured the future collection and scientific study of such remains within VIC. All remains collected after the commencement of the Act were considered to be the property of the Crown; this ensured that the Victorian Museum could continue to collect human remains under the provision of their ‘protection and preservation’ statute. Additionally, the ownership of the remains by the Crown implied that Indigenous people had no legal concern in the remains.

In 1984, in response to intense lobbying the Victorian Cain Labor government amended the AARPA which was later incorporated into the Commonwealth’s *ATSIIHPA* through the

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13 Section 22
14 Section 20
15 Section 20A
Aboriginal and Torres Strait Islander Heritage Protection Amendment Act 1987 (ATSIHPAA 1987). Under this arrangement VIC was a unique example of legislation administration and arguably allowed the Aboriginal people in this state to have greater control over their heritage than people elsewhere (Smith 2002:153). This recognition of Indigenous ownership enabled the Aboriginal Legal Service to challenge the University of Melbourne to transfer the Murray Black Collection to Museum Victoria whereby the remains could be repatriated to their rightful owners for their reburial along the Murray-Darling River (Boer and Wiffen 2006:300; Smith 2002:153; Wettenhall 1988).

In 2005, the Brack Government introduced the Aboriginal Heritage Bill, which intended to repeal the AARPA. The Bill was initially proposed to ‘tighten up’ processes relating to Indigenous cultural heritage (Atkinson 2006:18). During the subsequent parliamentary debates serious concerns were raised relating to both the content of the new Bill and the extent of consultation that had occurred with Indigenous communities during its development. According to Anderson et al. (2006), a key concern was that the Bill would decrease the authority of traditional owners to make decisions regarding their heritage. The Yorta-Yorta people criticised the Government for moving backwards rather than forwards:

[It would] be a step back to a time where the traditional owners were denied the right to care for their country and their culture. It is a step back to the mission days; a step back to assimilation…it seems to be taking away the rights of Indigenous peoples and the power to protect their cultural heritage. (Atkinson 2006:18)

Despite the opposition, in late 2006, the Aboriginal Heritage Act 2006 (AHA 2006) was proclaimed, effective as of 28 May 2007. Importantly, within the new Act significant amendments regarding Indigenous remains were made including the recognising Aboriginal people with ‘traditional and familiar’ links as the rightful owners of their heritage and more specifically all human remains within private and public collections\(^\text{16}\). Furthermore, the Act enforces the repatriation of all remains from collecting institutions to their rightful owners\(^\text{17}\), thereby, enabling unconditional repatriation of human remains, whether on-loan or permanently stored within Museum Victoria. Hence, this Act marks a significant shift in Indigenous ownership and power over their Old People in collections. The Act continues to

\(^{16}\) Section 13
\(^{17}\) Section 16
prohibit the collection, excavation, damage, destruction and removal of Indigenous remains, while restricting access to them by removing permits for the excavation and removal remains.

In relation to the reburial of remains, re-interment is incorporated within the definition of an Aboriginal area and thus provided for in the reservation and acquisition of land (see Table 4.1 and 4.3):

An Aboriginal place is an area in Victoria or the coastal waters of Victoria that is of cultural significance to the Aboriginal people of Victoria. An area includes land set aside for the purpose of enabling Aboriginal human remains to be re-interred or otherwise deposited on a permanent basis.18

Thereby, remains may currently be reburied in Victoria in existing ‘Aboriginal Areas’ on Crown land, or alternatively an ‘authorised Aboriginal party’ may propose a different site of cultural significance for the reburial of remains whereby under the provisions of the Act the land may be acquired by the Minister19. Similarly to NSW and SA, no financial assistance is specifically provided for the re-interment of remains whether they be repatriated or recently discovered.

4.4 COMMONWEALTH: Aboriginal and Torres Strait Islander Heritage Protection Act 1984

For the past 30 years, the Commonwealth has had the Constitutional authority to introduce national Indigenous heritage legislation. Despite this, Australia remained without federal heritage legislation until 1984. Bird (1996:124) has argued that the passage of the Aboriginal and Torres Strait Islander Heritage Protection Act in 1984 can be seen, in part, as a response to international pressure in the cultural heritage field and its obligations to international law. The Act became the primary federal legislation for the protection of Indigenous heritage, whose purpose was:

The preservation and protection from injury or desecration of areas and objects in Australia and in Australian waters, being areas and objects that are of particular significance to Aboriginals in accordance with Aboriginal tradition.20

As the sole act for the protection of Indigenous heritage at the federal level, the definition and inclusion of provisions for the protection of remains is of particular importance to this study. Interestingly, the Act which, defines ‘Aboriginal remains’ as

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18 Section 5 (1) and (2)(f)
19 Section 5 (e), 31 and 32
20 Section 4
the whole or part of the bodily remains of an Aboriginal\textsuperscript{21}, though, this does not include:

\begin{quote}
\textit{a body or the remains of a body buried: in accordance with the law of a State or Territory; or in land that is, in accordance with Aboriginal tradition, used or recognised as a burial ground}\textsuperscript{22}.
\end{quote}

This exclusion of remains buried in accordance with Indigenous traditions, essentially denies protection to both Indigenous remains at the federal level. Furthermore, the provisions regarding remains within the Act are limited to reporting, the return of reported remains and consultation with relevant Indigenous communities in relation to the disposal of such remains\textsuperscript{23}. Rather than providing federal provisions to protect human remains, the \textit{ATSIHPA} operates in tandem with state legislation relying on the provisions within the latter to provide for the protection, preservation, transfer, disposal and ownership. Furthermore, the Act is considered to be an option of ‘final resort’ in instances when state provisions fail to provide protection to Indigenous heritage.

The failure of the Act to provide ‘real’ protection for Indigenous remains is illustrated by the Hindmarsh Island Bridge or Kumarangk Affair (Evatt 1997; Hemming 2005, 2006; Hemming and Trevorrow 2006). As a result of the controversy the federal legislation was reviewed by Hon Justice E. Evatt, who found that the \textit{ATSIHPA}, although initially considered to be ‘good’, was ‘practically unworkable’ (Evatt 1997:433), with three fundamental flaws:

\begin{enumerate}
\item The requirement that an applicant for protection had to show that it was in the ‘national interest’ was incompatible with maintaining the Commonwealth procedures as a last resort mechanism;
\item The bill provided for the accreditation of State and Territory heritage protection regimes without ensuring they met the minimum standards detailed in the review of the Act; and
\item There was no provision for Aboriginal people to exercise any control over the process, nor any provision for Aboriginal Cultural Heritage Advisory Council, as per review.
\end{enumerate}

\textsuperscript{21} Section 3
\textsuperscript{22} Section 3
\textsuperscript{23} Section 20 and 21
According to Evatt (1997:433) the Act assesses Indigenous heritage within a non-Indigenous context through the concept of ‘national interest’ and fundamentally fails to incorporate Indigenous concerns regarding Indigenous heritage concepts and ideology. Despite the Act's prior failings, it has yet to be amended to improve protection for Indigenous remains and burial sites, despite the Howard Government having introduced a Bill to do so; this Bill currently still languishes.

4.5 COMPARISON OF SOUTHEASTERN HERITAGE LEGISLATION

In comparing the current heritage acts operating in NSW, SA and VIC it is apparent that each state has developed statutes in response to both regional and national pressures, reflecting the general growth in a public consciousness toward Indigenous heritage and more particularly repatriation and reburial.

VIC, which most recently proclaimed a new Act, has perhaps most effectively responded to the growth in public consciousness and support for the repatriation of Indigenous remains. The AHA 2006 (VIC)–which acknowledges Indigenous ownerships of heritage–symbolises a significant shift in power and control in the region. Furthermore, in recognising Indigenous ownership of their heritage, the state acknowledges Indigenous connection to the pre-colonial state and attempts to move away from past ‘scientific’ approaches to defining and controlling Indigenous heritage and people.

While none of the three states specifically refer to the reburial of repatriated remains, VIC provides the greatest legislative provisions for the reburial of remains, with specific sections to protect and acquire land for re-interment of remains. Furthermore, in VIC ‘registered Aboriginal parties’ can propose new or alternate sites for reservation as sites of traditional significance and therefore create new potential reburial sites. Moreover, unlike its southeastern counterparts, the VIC Act also prohibits the excavation and removal of remains, a marked difference from its predecessors and counterparts interstate.

Rather than introducing entirely new legislation as was the case in VIC, NSW has chosen to make amendments to its original 1964 Act—the NPWA—to reflect changing attitudes towards concepts of heritage and power within the state. Currently the Act provides simply for the...
'transfer of remains' from its collection. However, the Director General retains the power to prevent the transfer of particular remains, a reflection of past attitudes for the need to preserve 'prehistoric' or 'relics' for scientific and 'national' history. Most importantly, the Act does not provide for the repatriation of remains collected pre-1965.

In terms of legislative options for reburial of the repatriated remains, like its SA and VIC counterparts the NPWA is limited; communities are in essence restricted to conducting reburials in 'Aboriginal areas' or Crown reserved land, commonly national parks. However, similarly to VIC, recently in NSW land has been specifically reserved within national parks for use as reburial sites. In utilising land within national parks in this manner, such sites are thereafter protected under strict provisions within the NPWA which outlaws access to these sites, and the excavation, removal, disturbance or desecration of the 'objects' within them; this is a similar situation to that espoused under Victoria’s AHA 2006.

In contrast to its southeastern counterparts, the SA AHA 1988 does not incorporate any provisions for repatriation and reburial. The SA Act does not require public collections of skeletal remains to be returned to Indigenous people. The Act, which is principally concerned with the recovery or discovery, reporting and return of reported remains, still allows (with Ministerial approval) non-Indigenous access to and removal of remains for their 'protection and preservation'. In many ways the Act is a reflection of attitudes and priorities of the time of its inception, rather than the present. Although minor amendments to the Act have occurred, it can be argued that SA has failed to respond to contemporary Indigenous issues. The absence of provisions for repatriation and reburial in the SA AHA 1988 has consequences for state government, local councils and other institutional policies and fundamentally causes further complications to communities involved in the complex process of reburial. In SA the absence of provisions for the reburial of remains has left communities to rely more strongly on their being effective administrative policies and practice to ensure the reburial of their Old People; whether such policies and practice actually exist is an issue explored in the following chapter.
CHAPTER FIVE:  
REBURIAL AND COLLECTING INSTITUTIONS

Collecting institutions themselves, be they universities, museums or governmental departments, are one of the major players in the repatriation and reburial issue. The administrative policies of these institutions provide working document which describe processes for the transition of ownership, authority, control and reburial over Indigenous remains from the institutions to the rightful and traditional owners, but which are generally not legally binding, unlike the legislative acts described in the previous chapter. Tables 5.1 and 5.2 (see Appendix 1) provide a summary of the most pertinent aspects of each major museum and government heritage departments’ repatriation policies. This chapter presents the key provisions of the policies in further detail in order to highlight the effectiveness of these policies in addressing the complexities of the reburial of repatriated remains.

5.1 NEW SOUTH WALES: National Parks and Wildlife Repatriation Program

The Department of Environment and Climate Change (DECC) is responsible for the repatriation of remains discovered, recovered or donated since the commencement of the *NPWA 1974*. In order to meet their statutory requirements, DECC implemented the Repatriation of Aboriginal Cultural Material Policy (see Appendix 2) as well as engaging a Repatriation Co-ordinator at the end of the 1990s to facilitate repatriation and reburial. The program was initially established as a result of the growing number of requests for the repatriation of Old People from DECC (DECC 2002:2). An informal program was deemed unsatisfactory owing to the large collection of remains held by DECC, therefore a formal policy with a strategic and community-focused approach to repatriation was recognised by the agencies as fundamental in addressing the complexities of the issue (DECC 2002:2). This pioneering program provides assistance to Indigenous communities in a variety of ways, notably in their negotiations with collecting institutions, private landholders and land management agencies, and by providing financial assistance to support the recovery, transportation and reburial or remains, negotiate with private landholders and land management agencies for the reburial of remains.
According to the Repatriation Co-ordinator a significant number of remains have been repatriated, all of which have since been reburied (Adrienne Howe-Piening, pers.comm.). In a recent reburial of remains involving DECC, an Aboriginal member involved in the experience praised them for their success in achieving a mutually “workable” outcome:

We can’t fault the modern approach of DECC and the two Museums [Australian Museum and NMA]. Their vision and hard work has meant that today we will not only be burying the remains of our ancestors, but also some of the bitterness and misunderstandings of the past. (Welsh 2005)

5.2 NEW SOUTH WALES: Australian Museum

In conjunction with the DECC NPWS repatriation program, the Australian Museum (AM) Aboriginal Heritage Unit has developed an Aboriginal Human Remains policy, which covers statements relating to repatriation (see Table 5.2). The AM recognises in its policy, that ‘the acquisition, use of and access to human remains held by the AM will take into account the ongoing feelings of the communities of origin concerning their appropriate use, storage and disposal’ (AM n.d:11). However, the policy also states that the remains within the AM collection should not be regarded as ‘solely local interest’ but rather, they represent the biological evolution and diversification of the human species, therefore, studies on this material is necessary (AM n.d:11). The AM justification within the policy for scientific research on remains within its collection, is in keeping with the SAM policy, however both are in contradiction to the MV position on the issue.

While the policy supports the return of the remains to relevant communities this action is restricted to those ‘obtained by the Museum via illegal or unethical means’. In accordance with the Australian Museum Trust Act 1975, all remains slated for repatriation require the consent of the Governor24 (Australian Museum n.d:12), who may impose further conditions on the repatriation event(s). The policy is further restricted to remains within the museums custodianship, primarily obtained prior to the commencement of the NPWA, or through other collection institutions from Australia or overseas.

Unlike the DECC NPWS repatriation policy, the AM policy does not provide assistance to communities for the recovery or reburial of repatriated remains, although the assumption is made that repatriated remains will indeed be reburied (Table 5.2). This lack of consideration

24 Section 10 (3)(d)
of the logistical requirements of reburial provides no direct options or assistance for the reburial of Indigenous remains from the AM collection. Rather the AM relies upon the federal RICP funding to compensate communities for the financial costs of the reburial process.

5.3 SOUTH AUSTRALIA: Aboriginal Affairs and Reconciliation Division

To date (November 2007), AARD is yet to finalise a policy regarding the repatriation and reburial of Indigenous human remains, though a draft policy was drawn up in 2005 (see Table 5.1). This document, entitled *Repatriation of Aboriginal Cultural Material Policy: Principles and direction for repatriation*, is currently waiting to be ‘signed off at Executive Director level’ (David Baker, pers. comm.). The draft policy provides in theory for the repatriation of Indigenous human remains held by AARD, and states that, if required, AARD will also facilitate negotiations with other collecting institutions and organisations who hold Old People (AARD 2005:2).

The policy requires the community to request assistance with the reburial, rather than it being offered as a matter of process in repatriation events from AARD. If assistance is provided, the conditions stipulate that a site card must be completed as well as a record of ‘who transported the remains and the names of the person conducting any ceremonies associated with the reburial’ (AARD 2005:3). In situations where assistance is requested, under the terms of the policy AARD may also provide help in negotiating with ‘land holding authorities’ in securing a reburial site (AARD 2005:3).

In respect to the issue of whether the policy includes mechanisms financial assistance for reburial, the policy in its current form provides support for (upon request in writing by the involved person/s) the reburial, collection, site protection work as well as the use of a keeping place of Indigenous remains. However, a recent request for financial assistance to carry out salvage excavation and reburial was met by only partial commitment from AARD, who advised they had insufficient funds to cover the basic expenses (Lynley Walls pers. comm.).

5.4 SOUTH AUSTRALIA: South Australian Museum

The SA Museum *Policy on Human Skeletal Remains Collection* was initially developed in 1987 prior to the commencement of the current *AHA 1988*. According to the Museum, the
policy is regularly reviewed to reflect ‘contemporary issues’ including repatriation and reburial, and was last re-endorsed by the Museum’s Board in 2006 (Phillip Clarke, pers. comm.). However, although the policy was apparently re-endorsed in 2006, there is no evidence of amendments to it; it is still dated as 1987, the date of its initial inception. The SAM policy specifically guides the collection, curation and disposal of the anthropology collection at SAM, which constitutes over 2,000 ‘specimens’ of Indigenous and non-Indigenous human remains. Although, the policy recognises that Indigenous people have a ‘special relationship’ with the remains in the collection. Despite their ‘special relationship’, the SAM advocates the scientific research on such remains (SAM 1987:2). SAM (1987:1) stated that the research conducted under the policy has ‘provided important information about Indigenous ancestors and their way of life’. Fundamentally, although the policy does recognise and support Indigenous requests for a ‘greater say in access, storage location and arrangements as well as that certain types of remains should be returned’, it is fundamentally directed at the benefits of scientific research and the continued curation of its collection (SAM 1987:8).

In respect to the return of remains, the SAM policy is similar to that of the AM in NSW, considering only the repatriation of ‘certain material’, namely, remains which are of known or named persons, those which are ‘post-contact in nature’ and/or where it can be show that the remains were obtained by ‘illegal or unethical means’ (see Table 5.2) (SAM 1987:7). As is the case with the AM, the SA Museum Act 1976 requires that prior to the disposal of any remains the Museum Board must first approve their disposal25.

In respect to reburial the SAM policy makes no direct reference to such events, and provides no direct assistance for the reburial of repatriated remains return from its collections; the clear implication is that once materials have been repatriated all moral obligations of the museum are met. As a member of the RICP, SAM relies on the program’s funding to cover any costs associated with the reburial process (Phillip Clarke, pers. comm.).

Attempts to determine how many Old People have been repatriated from SAM have not met with success. The Museum has only stated that a ‘significant number’ (numerical figure

25 Section 13 (3)(b)
subsequently requested but not provided) of remains have been successfully repatriated to communities from its collection (Phillip Clarke, pers. comm.).

5.5 VICTORIA: Museum Victoria

The current Repatriation of Aboriginal and Torres Strait Islander Cultural Property Program in Victoria is in its final year prior to review (see Table 5.2). The policy was developed under the now repealed AARPA and is the responsibility of the Indigenous Culture Department of the MV. The intent of the policy was to establish a framework by which MV could manage the repatriation of Aboriginal and Torres Strait Islander cultural property in the State collections (MV 2003:1). The MV policy recognises that ‘repatriation is one part of an ongoing relationship with Indigenous people’, therefore a specific policy is required to address the complexities of repatriation (MV 2003:1). The principal objective of the MV policy is to create guidelines whereby the MV works ‘collaboratively with Indigenous peoples to ensure that the cultural materials it houses are appropriately managed. In doing so, the MV policy intends to create ‘mutually beneficial relationships’ between the museum and Indigenous peoples’ (MV 2003:1).

The policy requires the repatriation of remains both within the collection of the Museum and those remains on loan to the Museum, stating, ‘all property is potentially subject to repatriation’ (MV 2003:2). The Museum Act 1983 (VIC) requires that prior to the disposal of these remains approval must be given by the Museum’s Board and the Governor, owing to the fact that the Museum if the ‘official lodgement of the states human remains collection’.26

To date the MV has been successful in the repatriation of thousands of Indigenous human remains to their descendants (Simon Greenwood, pers. comm.). However, although the MV supports the repatriation of remains to communities within its policy, the policy does not state as a matter of course that assistance will be provided for the collection, transportation or importantly the reburial of the remains. Despite this oversight, during the recorded repatriation of remains to the Ngarrindjeri the MV provided reasonable costs for community members to travel to and from Melbourne (Wilson 2005:62).

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26 Section 26
The policy does not state that assistance or support will be provided in accessing sites for reburial, nor will it aid in the financial burden of any ensuring reburials following repatriation events, on the basis that:

The museum regards the ultimate disposition of repatriated people and objects to be entirely the business of relevant traditional owners. (Simon Greenwood, pers. comm.)

Rather, financial support is provided under the Commonwealth’s RICP Program (see below); in the case of the repatriation of Ngarrindjeri remains the RICP provided $175 per individual towards the cost of reburial; this figure is insubstantial when compared to the costs of a contemporary burials (Wilson 2005:62).

5.6 COMMONWEALTH: Return of Cultural Property Program

The Return of Indigenous Cultural Property Program (RICP) was created in 1993. The program was an initiative of the Cultural Ministers Council (CMC), which comprises of Australian and New Zealand ministers (DCITA n.d:1). The program was initially due to end in December 2005, however it was extended to June 2007. To date advise regarding a further extension of the program has not been released by Department of Communications, Information Technology and the Arts. The program focused on government funded museums and did not apply to holding overseas, including the AM, MV and SAM.

The primary aim of the RICP Program was to repatriate all ancestral remains and secret/sacred objects from the eligible museums to their communities of origin. Under this aim the program had four specific objectives:

- identify the origins of all ancestral remains and secret sacred objects held in museums;
- notify all communities who have ancestral remains and secret sacred objects held in museums;
- appropriately store ancestral remains and secret sacred objects at the ‘request of the relevant community’; and
- to arrange for repatriation where and when it is requested (DCITA n.d:2).

The $4.3 million funding for the RICP Program consisted of two funding sub-categories, firstly on the grounds of museum support, to assist in the preparation of collections for repatriation
and secondly, the community support program (DCITA n.d:2). Museums would be allocated funds to prepare collections, including identification of remains, for return to Indigenous communities. Communities could access funding under the community support program for the repatriation process, these funds would be accessed through the respective museum.

5.7 SUMMARY

A review of the policies of state museums and government heritage agencies suggests that, on the basis of the lack of provisions for reburial, institutions consider the handing over of Indigenous remains the ‘conclusion’ of their responsibilities. However, for communities the repatriation is only the beginning of complex process culminating in the reburial in the remains (Wilson 2005). While collecting institutions’ ultimately caused the need for repatriation and reburial, there seems to be little willingness on their behalf to financially support reburial programs once they have handed over remains. Indigenous communities, who had not wanted their Old People taken in the first place, are therefore left holding their Old People in temporary keeping places, such as Camp Coorong just outside Meningie, seeking ways and means to conduct the necessary reburials.

After examining the various policies, several critical issues have arisen; firstly, the ‘legal’ collection and ‘ownership’ of Indigenous Old People by the Crown and collecting institutions. Secondly, the restrictive conditions imposed upon the ‘types’ of remains considered for de-accession by the AM and SAM, in contrast to this, the MV imposes no such conditions. Thirdly, and significantly, none of the museums provide financial or logistical support for the reburial of these remains, relying instead, on the Federal RICP Program to fund the repatriation of Indigenous remains from these institutions. In regards to the government agencies, only DECC (NSW) provides both financial and logistical support in an aim to foster beneficial relationships. In contrast AARD (SA) to date (November 2007) has not finalised a policy to provide provisions for the repatriation of remains. These critical issues will be discussed if further detail in the following chapter.
CHAPTER SIX: DISCUSSION

In the past five years more than 1000 Old People have been returned from collecting institutions (both locally and from overseas) and government departments to Indigenous communities across Australia (see Chapter Three). Of those, more than 500 were returned to communities in the southeastern region alone. However, of those, only ca 100 were reported as having being reburied. These figures allude to the difficulties confronting communities in locating appropriate places for reburial, accessing resources to support them in carrying out such events and ensuring the continued protection of their Old People. This chapter aims to explore the issues raised in the preceding chapters, specifically: a summary of the current options for reburial; the effectiveness of current governmental policy in regarding reburial; the availability of resources for reburial and the ongoing protection of reburial sites.

6.1 LEGISLATIVE OPTIONS FOR REBURIAL

A key issue apparent from comparing the three states is the absence of specific provisions for the reburial of remains within existing Indigenous heritage legislation. This absence might be attributed to the ‘slow response’ of legislation to ‘reasonably modern concepts’ (Adrienne Howe-Piening, pers. comm.). However, repatriation and reburial are not ‘modern concepts’, having been steadily occurring since the 1970s owing to increased recognition for Indigenous rights to their heritage. Yet, despite this, governments have continued to protect the practice of collecting of remains by public institutions, legislating only for the reporting and reburial of remains discovered after the mid-1980s with the passing of ATSIHPA. The absence of provisions for the reburial of repatriated remains has created a complicated situation for many communities who have successfully recovered their ancestors from collecting institutions. Furthermore, owing to the lack of specific legislative provisions for the reburial of repatriated remains within legislation Indigenous communities in NSW, SA and VIC are left with limited options if they do decide to proceed with reburial.

Only VIC provides a provision to reserve land specifically for the re-interment of remains, although NSW NPWA allows remains to be reburied within reserved Aboriginal areas in National Parks. Despite these examples, SA has not amended its AHA 1988 to incorporate
similar provisions regarding reburial, contributing to the complexities of reburial facing Indigenous communities within this particular state.

Owing to the current failure of legislation in provide provisions for the reburial of remains, the question is raised as to whether states should pursue a legislative model in regards to reburial? Owing to the complex nature of the reburial of repatriated remains, it is unlikely a legislative model would be able to address the individual needs of each community in regards to this issue. From a legal perspective, one might suggest that basic provisions do need to be incorporated within state and federal legislation, such as access to burial sites, acquisition of land for reburial, protection of burial sites and future management from disturbance and erosion. However, whether reburial should be included in legislation is open to further debate and extensive consultation with Indigenous communities. Communities may want to care for the Old People in other ways and these should all be considered and incorporated if legislation is to be endorsed.

6.2 ADMINISTRATIVE POLICY: Is it effective?

As policy is generally developed subsequent to legislation, different government agencies and collecting institutions within each state have implemented highly variable policies regarding reburial; these different policies have proven to have different levels of effectiveness.

6.2.1 NEW SOUTH WALES

NSW provides a unique example whereby although the legislation is ‘weak’ in its provisions for the reburial of Indigenous remains, strong governmental and institutional policies are actively enforced. As such NSW provides one of the most ‘effective’ examples of reburial administrative policy in the southeastern region. This can be largely attributed to the Governmental recognition of the importance of reburial for Indigenous communities as stated by the Minister for Energy, Senor Sartor in 2002:

This Government [NSW] believes that the remains of Aboriginal people should be buried in their ancestral soil and not left on the shelves of museums. It is clear that they deserve to be buried with dignity by their own people. It is important for the remains to be reunited with their country rather than then be in museums. It demonstrates that the NSW Government recognises the importance of the repatriation process for many Aboriginal communities. It has been working with Aborigines across the State to return remains. We are also
urge other government agencies and research institutions to follow this example.

Through the creation of the repatriation program, the NSW State government not only provided an avenue for Indigenous communities to reclaim their ancestors from collecting institutions, but also actively supported, both logistically and financially, the repatriation and reburial of Indigenous remains within protected areas of NPW lands:

This event demonstrates [reburial of remains at North Head] the museums commitment in working in partnership with Indigenous communities in recognition of the cultural importance of repatriation to Indigenous people. (Howarth n.d.)

In 2005, NSW further backed up its support for the reburial of Indigenous remains through the enforcement of their right to reserve land for the purpose of an Aboriginal area. Seven new reserves were dedicated for the future reburial of Indigenous remains from institutions and private land:

By formally declaring these Aboriginal places today – and by giving them the full protection of the law – I am saying on behalf of the NSW Government that we are committed to forever protecting these sites and respecting their significance…. Up to 80 remains of Aboriginal people from Sydney have now been returned to their rightful resting places and more will follow. (Minister for Environment n.d.)

In formally declaring places specifically for reburial, NSW is progressively working towards recognising Indigenous traditions regarding their connection to the land. Furthermore, in doing so the NSW Government is acknowledging its role in the past barbaric acts conducted by NSW colonists and later by government officials and professionals.

6.2.2 VICTORIA

In comparison to NSW, VIC presents a model of potentially strong legislation combined with strong institutional policies allowing for Indigenous ownership, control, protection and return of their remains. The recognition of Indigenous ownership through a legally binding legislative Act demonstrates a genuine shift in power and a progressive step forward in developing a ‘workable’ relationship with Indigenous people regarding their heritage within the state.
As custodians of Indigenous remains recovered and previously collected in the state, the MV policy provisions for reburial is of critical importance. In examining the policy, the provisions relating to repatriation are as progressive as the *AHA 2006* (VIC). Unlike its counterparts, the MV policy is currently the only policy that endorses the ‘unconditional’ repatriation of Indigenous cultural property, including human remains. The success of the policy in its provision for unconditional repatriation is reflected in the number of reported repatriated remain, with estimated excess of 1000 individuals to date (Simon Greenwood, pers. comm.).

However, despite the MV’s progressive policy towards repatriation, it does not incorporate provisions for the reburial of these remains. Rather the MV states that the ‘disposition of the repatriated remains is the business of the traditional owners’ and therefore not included within the MV’s policy (Simon Greenwood, pers. comm.). In transferring the responsibility of the ‘disposition’ of repatriated remains, the Museum effectively separates itself from its involvement in creating the contemporary issue. Furthermore, the lack of provisions for reburial and the reliance by the Museum upon RICP Program funding to support their repatriation program raises concerns as to what assistance will be provided now the RICP has concluded (eg Truscott 2006).

**6.2.3 SOUTH AUSTRALIA**

To date the largest numbers of repatriated remains have been given back to communities in SA. However, despite the enormity of the issue locally, SA is the only southeastern state yet to formalise a governmental policy relating to the repatriation and reburial of Indigenous remains (see Chapter Five). This tardiness in addressing the issue at a governmental level has serious ramifications for Indigenous communities attempting to deal with reburial and repatriation issues.

In examining the correspondence from AARD, several key points emerged regarding its policy. Primarily, after two years after its initiation the policy is still in a ‘draft’ format. According to AARD this is owing to the ‘complex and individual nature of repatriation’ (David Baker, pers. comm.). However, this delay in installing a policy means that currently the government has no public document to direct government practices relating to the issue of reburial in SA. This is in direct contrast to the NSW state government, who have not only recognised reburial as a contemporary issue, but have also provided provisions for it within a
strong policy document. Owing to the lack of governmental provisions regarding the issue, communities such as the Ngarrindjeri have directly appealed to Minister Weatherill for funds for the reburial of the 400 Old people recently returned to their community (Steve Hemming, pers. comm.).

Furthermore, under the AHA1988 AARD is not a legal repository for discovered Indigenous remains (according to the Act Indigenous remains discovered must not be removed and reburied at the location of their discovery); however, it does currently hold Indigenous remains. The legality of the AARD collections might thus be questioned.

In combination with lack of Governmental policy, the SA Museum has not aided in Indigenous-institutional relations. As the official repository for remains discovered under the AAHRPA and avid collectors of remains for scientific research (ie Roonka and Swanport) the SAM policy for Indigenous remains is of particular importance within the state. Their current policy on human remains was initially developed in 1987, however is regularly re-endorsed by the Museum Board, most recently in 2006 (Philip Clarke, pers. comm.). In spite of the SAM ‘reviewing and re-endorsing’ the policy in 2006, in its current form the policy does not provide for the reburial of repatriated remains or strongly advocate for repatriation of item in its collections. Furthermore, upon examining the discourse of the document, the policy is heavily aimed towards the ‘importance and protection of scientific analysis of the remains’ and the legal origins of its collection, rather than provisions for the de-accession and disposal of its collections (SA Museum 1987). The lack of provisions for reburial within the policy as well as the restrictions regarding the ‘type’ of remains available for repatriation (Chapter Four) raises questions as to the Museum’s commitment towards these contemporary issues.

Representatives of the Museum do claim to have repatriated a ‘significant number’\(^{27}\) of Indigenous Old People in recent years (Philip Clarke, pers. comm.), though this claim is not substantiated in the recorded repatriation and reburial events of the past five years in the public space. Furthermore, according to Ngarrindjeri Elder Tom Trevorrow (Koori Mail 2006e) the SA Museum still has thousands of Old People within its collection.

\(^{27}\) A figure could not be provided by the Museum as to what a “significant number” constituted.
A key factor in the effectiveness of any state policy is first and foremost, the states’ willingness to collaborate and more importantly, listen to Indigenous communities needs in relation to reburial and provide adequate assistance. As representatives of past governmental and institutional decisions, current governments and institutions need to recognise that it is their responsibility to provide adequate resources for Indigenous communities to return ‘stolen’ remains back to their rightful country, as would be done for non-Indigenous remains.

6.3 AVAILABILITY OF FINANCIAL RESOURCES

The availability of financial resources for the reburial is a critical issue for communities (cf. Wilson 2005). Of the collecting institutions included in this study, none directly provide financial resources for the reburial of Indigenous remains, relying instead on the Federal RICP Program. The program, which was extended to June of this year (2007), was allocated $4.3 million in funds over eight years (1999-2007) to support repatriation (Truscott 2006:2). The fact that the federal government has not provided for the continuation of a program that provides financial assistance for the repatriation or in particular reburial of Indigenous remains highlights a lack of awareness of the ongoing nature of this issue. Furthermore, it raises questions as to whether museums will provide financial assistance for the reburial of remains in the future as this issue stems from their past collection of remains.

Although the museums discussed herein relied upon the RICP Program to provide financial assistance for reburial, the program was not initially created to support such a complex and drawn out process; funding is clearly inadequate. Wilson (2005:62) has noted that the costs of a contemporary funeral ceremony are at least twenty times the funds made available to Indigenous communities through the RICP Program. The lack of financial assistance not only complicates the process for communities but also delays reburial, making it significantly harder for communities to fulfil their cultural obligations to their ancestors, a situation not of their own making. The amount of financial support for repatriation provided from the federal government is disproportionate to the funds spent on the repatriation and reburial of non-Indigenous remains, such as military personnel returning from theatres of war.

As a government department, NSW DECC is excluded from the RICP Program, and as such has established their own independent fund for both the repatriation and reburial of remains.
In doing so, NSW is the only study state to provide communities with such assistance. However, unlike the RICP Program whose funding has since ceased, DECC continues to provide much needed financial assistance to Indigenous communities with the reburial of remains. Why the states of SA and VIC have not followed the example of NSW by providing financial assistance for the reburial remains open to interpretation; one might ask whether the SA and VIC heritage agencies consider the reburial of remains an issue of immediate concern for heritage protection and management?

6.4 REBURIAL PROTECTION

Despite directives for the protection of Indigenous burial sites as early as 1836 in SA, the protection of such sites in the southeast has a history of being overlooked in comparison to their non-Indigenous counterparts. In the context of the reburial issue there are various provisions for site protection within the region. In NSW, the NPWA provides considerable protection to reburial sites, though this is limited to reburials that occur in existing National Parks, reserved ‘Aboriginal areas’ or other areas of land acquired for the purpose of ‘protecting and preserving Indigenous heritage’. Under the aforementioned Act, reburial sites are protected from unauthorised access, excavation, removal, collection, destruction or damage. These provisions are further supported with a well-enacted policy by DECC. Through this combination of legislation and policy the NSW government provides considerable protection to Indigenous reburial sites.

Similar to NSW, VIC has recently included considerable provisions within the AHA 2006, for the protection of Indigenous burial sites. The new provisions include strict restrictions concerning access to Indigenous burials, excavation, removal, collection, destruction and damage. However, the practice of these provisions is yet to be tested.

SA provides limited protection for Indigenous burial sites within its AHA 1988. This was publicly demonstrated though the Hindmarsh Island Bridge Affair. The case involved the proposal for a bridge to be built between mainland Goolwa and Hindmarsh Island near the mouth of the Murray River in SA. The Ngarrindjeri community strongly opposed the proposed development owing to the cultural significance of the land set aside for the development. The community reported the existence of their Old People burials:
We warned them they would be digging into our [burial] site. But what happened, they kept digging until they dug into a burial ground and they uncovered a woman and a child. Well, when they did that they had to stop under the AHA (SA) 1988. So we had to stop development and they had realised then that they had been caught out and it put them in an embarrassing situation. (Hemming and Trevorrow 2006:301)

Despite these warnings during the Hindmarsh Bridge development, the government approved a later development of the Goolwa wharf at the base of the new bridge. As a result, two Ngarrindjeri Old People were uncovered. The failing of the SA Government to listen to Indigenous communities and provide protection to their burial sites at Goolwa illustrates that Indigenous burial sites are still not afforded ‘real’ protection today.

In light of the past failings of the SA Government in providing protection to Indigenous burial sites, and the lack of provisions both within legislation and policy for the reburial of remains, the future protection of reburial sites within this state is considerably lacking in comparison to both NSW and VIC. Furthermore, unlike its southeast counterparts, SA still provides permit access to Indigenous burial sites whereby they may be excavated and removed for their protection and preservation. As such, the protection of Indigenous burial and therefore reburial sites is not guaranteed whilst the permit system allows for the removal of Indigenous remains.

The protection of reburial sites is a critical issue confronting Indigenous communities. To date the protection of such sites is met with varied responses from state governments within the southeast region. The effectiveness of the legislative provisions for protection of Indigenous burial sites is dependent upon state practice, rather than strong legislative provisions.

6.5 SUMMARY

This discussion presented in this chapter explored several of the key issues raised in Chapters Three, Four and Five regarding the reburial of Old People in the southeast region. In particular, the discussion outlined the current legislative provisions for reburial, the effectiveness of current policy and practice, the availability of financial provisions as well as the future protection of reburial sites within the southeast region. In exploring these critical issues, this chapter highlighted the overall lack of support for the reburial of repatriated Old People within both policy and legislation. The following final chapter re-addresses the aims of
this study, highlighting the limitations and discusses the future potential research into the complexities of reburial for Indigenous communities in Australia in light of the issues raised in this discussion.
CHAPTER SEVEN:

CONCLUSION

This study examined the provisions for reburial across the mainland southeastern region of Australia in an attempt to demonstrate the issues currently confronting Indigenous communities who are involved in this process. The reburial of repatriated remains is a complex process that has been and will continue to be further complicated by the absence of provisions within State and Federal legislation, as well as most administrative policies. This chapter returns to the aims and objectives of this thesis as set out in Chapter One to summarise how they have been addressed throughout this thesis, as well as exploring the limitations and future research of this study.

7.1 RE-ADDRESSING THE AIMS

7.1.1 How much repatriation and reburial is occurring in the region?

Understanding the extent of the repatriation and reburial issue was achieved through a compilation of newspaper articles from the SMH and Koori Mail as well as contacting collecting institutions for figures, although not all institutions chose to participate in this study (Chapters Two and Four). Furthermore, the extent of the issue presented in this thesis is a small estimate of the actual number of repatriation and reburial occurring in the region.

From the sources examined, the extent of repatriation was concluded to be in the vicinity of over 500 individuals within the southeast region alone in the past five years; seemingly less than 120 individuals were reburied in the same time period. This discrepancy in figures highlights issues in the reporting of reburial within the public space, the accessibility to useable land for reburial, financial and logistical support for the reburial process, as well as effective practice (discussed in Chapter Six).

7.1.2 What are the legislative options/framework for reburial within each of the study states?

The legislative options and framework for the reburial of repatriated Indigenous remains within each state were examined in Chapters Four and Six through State and Commonwealth

To date the current legislative options for the reburial of repatriated remains are considerably limited. Only VIC provides for the reservation of land for the purpose of re-interment, although, NSW recently amended its *NPWA* to incorporate greater provisions for the reservation of Aboriginal areas within National Parks wherein remains may be reburied. Both states also provide considerable protection to reburial sites, with the removal of permits in VIC for Indigenous remains completely and in NSW the excavation and removal of remains is prohibited within National Parks. Unlike NSW and VIC, SA provides no provisions within its Act for the reburial of remains, or for the acquisition of land for that purpose. As such, the current legislative options for Indigenous communities are for remains to either be reburied in National Parks (in NSW), reserved Aboriginal areas (NSW and VIC) or other Crown lands.

### 7.1.3 How do they compare?

In comparing the provisions for reburial at a legislative level, VIC provides the greatest provisions for the access to land and site protection, While NSW does provide access to useable land and provides protect to reburial within national parks, Indigenous communities are restricted to only using these sites, as the Act does provide for acquisition of land on the grounds of re-interment. SA presents the weakest provisions for reburial and the protection of reburial sites, with no provisions for complex processes within the Act.

### 7.1.4 What are the major collecting institution policies within each of the study states for reburial?

7.1.5 How effective are these policies in addressing reburial issues?

The effectiveness of collecting institutions and government department policies is seemingly varied within the region. Currently NSW appears to be the only state to effectively implement their reburial policy, initiating an independent repatriation program that has successfully aided in several reburial events in the state, providing Indigenous communities with protected reburial sites and financial resources to support the complex process. Unlike NSW, both SA and VIC collecting institutions and government departments are yet to implement effective reburial policies, with reburial as an option remaining difficult to achieve.

7.2 LIMITATIONS OF THE STUDY AND FURTHER AVENUES OF RESEARCH

There are several limitations inherent to the study presented in this thesis. Principally, owing to existing community commitments, a decision was made early in the research process not to burden communities further by requesting their direct input into the research process. Therefore this thesis does not incorporate an Indigenous position or concerns regarding existing provisions for reburial in the various study states. If this research was to be elaborated upon extensive consultation and collaboration with communities should be conducted to obtain firsthand accounts of reburial and to voice their experiences with current legislation and policy regarding the issue.

Secondly, owing to the logistical constraints of this thesis a comprehensive examination of the inter-relationship between legislation, policy and practice could not be achieved. In order to ascertain whether the practical application of the policy is effective within each state, interviews with professional in the field of Indigenous heritage management and repatriation could be conducted as an avenue of further research.

In addition, once again owing to the logistical constraints of this thesis, the study region was restricted to the mainland southeast region. This provided a small insight into this complex issue, however, as this is an issue that affects Indigenous communities across Australia, another possible future direction for this study would be to explore each state and territories response to the issue. In doing so, a broader understanding of the issue could be examined.
7.3 CONCLUSION

Although some significant steps have been made towards establishing an effective response to the complex issue (see NSW), in general the collecting institutions and government departments within the southeast region have been ‘slow’ in creating ‘real’ assistance to Indigenous communities in the complex process of deciding how, when, where and whether to rebury their Old People. Although it is imperative that the Indigenous communities control these decisions, it is the responsibility of the collecting institutions and governments who created this contemporary issue to support and assist the communities in providing not only financial support but also, ensuring future protection and providing usable land for the reburial. Ultimately, if effective practice is to occur within the region regarding reburial, the collecting institutions and governments need to consult and really listen to Indigenous communities ‘real’ needs to create workable provisions and more importantly diligently practice such provisions.
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DECC – See Department of Environment and Climate Change


Evatt, Hon. E. 1996. Review of the *Aboriginal and Torres Strait Islander Heritage Protection Act* 1984. Minister for Aboriginal and Torres Strait Islander Affairs, Canberra.


Parliamentary Debates South Australia, 15th September, 1964, pg 734


RICP – See DCITA (Department of Culture, Information Technology and the Arts)


NEWSPAPER ARTICLES


Gibson, J. 2007. Bitterness finally laid to rest as remains are buried, Sydney Morning Herald. May 31st.


Koori Mail. 2002g. Tasmanians’ remains to be returned. June 12th, pg 3.


Koori Mail. 2003e. Beach find investigated. April 9th, pg 10.
Koori Mail. 2003h. ‘Old People’ back home. May 21st, pg 3.
Koori Mail. 2004e. Ngarrindjeri back home, SA. September 8th.
Koori Mail. 2004f. British put on notice – Sweden to return remains, September 22nd.
Koori Mail. 2004h. Ancestors returned – Emotional return of remains, October 20th.
Koori Mail. 2005a. Show us respect – Return of remains is put on hold, April 6th.
Koori Mail. 2005c. Skull finds its way home, November 2nd.
Koori Mail. 2006a. WA remains are reburied, February 1st.
Koori Mail. 2006b. Why the resting place means so much, March 15th.
Koori Mail. 2006c. UK Museums to return remains, March 29th.

Koori Mail. 2006d. Remains to come home, March 29th.

Koori Mail. 2006e. Reburial for Stolen Bodies, September 27th, pg 7.

Koori Mail. 2006f. Remains to come home, November 22nd.


LEGISLATION

Aboriginal and Historic Relics Act 1965 (SA)

Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cth)

Aboriginal and Torres Strait Islander Heritage Protection Amendment Act 1987 (Cth)

Aboriginal Heritage Act 1988 (SA)

Aboriginal Heritage Act 2006 (Vic)

Archaeological and Aboriginal Relics Preservation Act 1972 (Vic)

Australian Museum Trust Act 1975 (NSW)
Lands Compensation Act 1958 (Vic)

Museum Act 1976 (SA)

Museums Act 1983 (VIC)

National Parks and Wildlife Act 1967 (NSW)

National Parks and Wildlife Act 1974 (NSW)
### APPENDIX 1:

**TABLES AND FIGURES**

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#### Table 3.1

Number of remains repatriated and reburied recorded in *Sydney Morning Herald* articles from 2002 to 2007.

<table>
<thead>
<tr>
<th>LOCATION</th>
<th>NUMBER OF REMAINS REPATRIATED</th>
<th>NUMBER OF REMAINS REBURIED</th>
<th>REBURIAL LOCATION</th>
<th>COMMUNITIES INVOLVED</th>
<th>INSTITUTIONS INVOLVED</th>
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<td>TBD</td>
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</tr>
<tr>
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<td>-</td>
<td>-</td>
<td>British Museums</td>
</tr>
<tr>
<td>Australia#</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>British Museums</td>
<td></td>
</tr>
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<td>-</td>
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</tr>
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<td>Gunditjmarra/ Kirrae Wurrong</td>
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<td>North Head Sydney Harbour</td>
<td>Ku-ring-gai</td>
<td>Sydney University Shellshear Museum, DECC</td>
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<td>Australia</td>
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<td>(Taken from Murray region?)</td>
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**Note:**

* Not included in the total figures are either unnumbered or are a double up.

#General article on the debate of repatriation of remains from overseas collections
### Table 3.2 Number of remains repatriated and reburied recorded in *Koori Mail* articles from 2002 to 2007.

<table>
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<th>LOCATION</th>
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<th>NUMBER OF REMAINS REBURIED</th>
<th>REBURIAL LOCATION</th>
<th>COMMUNITIES INVOLVED</th>
<th>INSTITUTIONS INVOLVED</th>
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<td>Gladstone, Curtis Island</td>
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<td>2 (included in above article)*</td>
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<td>1</td>
<td>-</td>
<td>TBD Gamilaroi, AM</td>
<td>Sweden Museum of Ethnography</td>
<td></td>
</tr>
<tr>
<td>Australia</td>
<td>16 Boxes*</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>Australia</td>
<td>18*</td>
<td>-</td>
<td>-</td>
<td>Sweden, NMA</td>
<td></td>
</tr>
<tr>
<td>SA</td>
<td>74</td>
<td>-</td>
<td>TBD Ngarrindjeri</td>
<td>VIC Museum, RICP, Uni of Melbourne</td>
<td></td>
</tr>
<tr>
<td>VIC</td>
<td>Unknown</td>
<td>-</td>
<td>TBD – most probably on a riverside property acquired by the community</td>
<td>Northwest Vic Wamba Wamba Community</td>
<td></td>
</tr>
<tr>
<td>TOTAL</td>
<td>682</td>
<td>111</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Note:
* Not included in the total figures are either unnumbered or are a double up.
#General article on the debate of repatriation of remains from overseas collections.
Table 3.3 Number of remains repatriated and reburied recorded in each state, from 2002 to 2007.

<table>
<thead>
<tr>
<th></th>
<th>WA</th>
<th>NSW</th>
<th>SA</th>
<th>VIC</th>
<th>QLD</th>
<th>NT</th>
<th>TAS</th>
<th>TS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>remains</td>
<td>18</td>
<td>66</td>
<td>437</td>
<td>34</td>
<td>13</td>
<td>88</td>
<td>40</td>
<td>6</td>
</tr>
<tr>
<td>repatriated</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of</td>
<td>2</td>
<td>65</td>
<td>48</td>
<td>2</td>
<td>11</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>remains</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>reburied</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Table 3.4 Number of remains repatriated from the NMA under their Repatriation Policy since 1996 to present.

<table>
<thead>
<tr>
<th>State returned to</th>
<th>SA</th>
<th>NT</th>
<th>VIC</th>
<th>WA</th>
<th>QLD</th>
<th>NSW</th>
<th>TAS</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of remains repatriated</td>
<td>443</td>
<td>101</td>
<td>413</td>
<td>9</td>
<td>6</td>
<td>194</td>
<td>0</td>
<td>1166</td>
</tr>
</tbody>
</table>

*Approximately 750 of these individuals have been returned since 2001 (Pickering, pers.comm.).
<table>
<thead>
<tr>
<th>Table 4.1 Development of South Australian Aboriginal heritage legislation relating to protection, preservation, repatriation and reburial of Indigenous human remains.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Aboriginal and Historic Relics Act 1965</strong></td>
</tr>
<tr>
<td>Key Terminology used in the Act</td>
</tr>
<tr>
<td>Definition of aboriginal human remains</td>
</tr>
<tr>
<td>Administered by</td>
</tr>
<tr>
<td>Access to Aboriginal human remains</td>
</tr>
<tr>
<td>Acquisition of land to protect/preserve human remains</td>
</tr>
<tr>
<td><strong>“Ownership” of the remains</strong></td>
</tr>
<tr>
<td>-------------------------------</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td><strong>Collection of human remains</strong></td>
</tr>
<tr>
<td><strong>Repatriation/return of human remains</strong></td>
</tr>
<tr>
<td><strong>Disposal of human remains</strong></td>
</tr>
<tr>
<td><strong>Financial assistance for the preservation/protection/disposal of remains</strong></td>
</tr>
</tbody>
</table>
Table 4.2 Development of Victorian Aboriginal heritage legislation regarding the protection, preservation, repatriation and reburial of Indigenous human remains.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1972 – 2006 (Repealed, last re-print used)</td>
<td>2006 - Present</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Key terminology used in legislation</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Aborigine – “inhabitant of Australia in pre-historic ages or a descendant from any such person”.</td>
<td>Aboriginal person – “a person belonging to the indigenous peoples of Australia, including the indigenous inhabitants of Torres Strait Islands, and any descendants of those people”.</td>
<td></td>
</tr>
<tr>
<td>Archaeological area – any area proclaimed under this Act as an archaeological area. Archaeological area is principally land reserved for the preservation of relics. Includes area containing skeletal remains or “relics”.</td>
<td>Aboriginal Place – includes “land set aside for the purpose of enabling Aboriginal human remains to be re-interred or otherwise deposited on a permanent basis” (5f)</td>
<td></td>
</tr>
<tr>
<td>Definition of aboriginal human remains</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Remains defined as archaeological relic or relic – “a relic pertaining to the past occupation by the Aboriginal people of any part of Australia, whether or not the relic existed prior to the occupation of that part of Australia by people of European descent, and without affecting the generality of the foregoing, includes skeletal remains”.</td>
<td>Aboriginal Human Remains – “Whole or part of the bodily remains of an Aboriginal person, not including person buried or cremated in a public cemetery, any object made from bodily material or human tissue”.</td>
<td></td>
</tr>
<tr>
<td>Administered by</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Minister and Relics Advisory Committee (RAC)</td>
<td>Minister of Aboriginal Affairs, Vic Museum, Aboriginal heritage committee</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Minister may direct excavation and removal of relics for “safe storage”.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Acquisition of land to protect/preserve human remains</th>
<th>Minister may compulsory acquire land when informed by the RAC that there is a unique and irreplaceable relic on, in or under the land. Owner of land my repeal acquisition, on the grounds that the relic is not that unique and irreplaceable (s18).</th>
<th>Minister may compulsory acquire land any land that contains an Aboriginal place if the Minister is satisfied that the Aboriginal place is of such cultural or historic significance to Aboriginal people that it is irreplaceable and no other practicable arrangements can be made to ensure the proper protection and maintenance of the Aboriginal place.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minister may purchase and upon which immovable relics may be present (s26)</td>
<td>All land acquired is vested in the Crown, whereby the Governor in council on behalf of the Crown may grant land acquired to an Aboriginal person or group for an estate in</td>
<td></td>
</tr>
</tbody>
</table>
| “Ownership” of the remains | All relics within an archaeological area shall be the property of the Crown (s20).
All portable relics are property of the Crown to be entrusted in the care of the Museum of Victoria (s20A) | Aboriginal people who have a traditional or familial link to Aboriginal human remains become the owners of the human remains, if they are already not the owners of the remains (s13).
Aboriginal ownership applies regardless of who previously owned the remains prior to the commencement of the Act. |
| Collection of human remains | Private collection not allowed, discovery of remains must be reported to the Secretary, inspector or warden (s23).
However, a person shall not be guilty of an offence against this Act if they pick up or collects a portable relic exposed in or upon the surface of land in Victoria (s27A)
Minister may for the purpose of preserving “relics” purchase or otherwise acquire a relic on behalf of the crown (s26). | Private collection by the public not allowed. Remains reported to the secretary are given to the appropriate registered Aboriginal group or person.
Previously collected remains are in the custodianship of the museum until they are returned to the appropriate Aboriginal group or person. |
| Repatriation/return of human remains | Not Included | (s16) An Aboriginal person with traditional or familial links to human remains held or controlled by a university, museum or other institution may negotiate directly or ask the minister to negotiate for the return of the remains. |
| Disposal of human remains | Not Included | Not directly stated, although ‘Aboriginal Place’ definition does include places reserved for the re-interment of remains. |
| Assistance (financial, etc) for the preservation/protection/disposal of remains | Not Included | Not Included |
Table 4.3 Comparison of current state legislative provisions for the repatriation and reburial of Indigenous remains

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Definition of Aboriginal human remains</strong></td>
<td>Remains included in definition of Aboriginal Objects – “any deposit, object or material evidence (not being a handicraft made for sale) relating to the Aboriginal habitation of the area that comprises New South Wales, being habitation before or concurrent with (or both) the occupation of that area by persons of non-Aboriginal extraction, and includes Aboriginal remains”.</td>
<td>Defined as Aboriginal remains – “the whole or part of the skeletal remains of an Aboriginal person” not buried in accordance with state law. (Persons not buried in cemeteries)</td>
<td>Aboriginal Human Remains – “Whole or part of the bodily remains of an Aboriginal person, not including person buried or cremated in a public cemetery, any object made from bodily material or human tissue”.</td>
</tr>
<tr>
<td><strong>Administered by</strong></td>
<td>Minister, Director General, Aboriginal Cultural Heritage Advisory Committee (ACHAC).</td>
<td>AARD and Aboriginal Heritage Committee.</td>
<td>Minister of Aboriginal Affairs, Vic Museum, Aboriginal Heritage Committee</td>
</tr>
<tr>
<td><strong>Access to Aboriginal human remains</strong></td>
<td>Restricted Access. Permits required to access aboriginal heritage objects, with no access to objects in national parks, reserves, historic sites or aboriginal areas. Remains removed are to be in the custody and control of the Australian Museum Trust.</td>
<td>Access restricted, permits required to excavate, display, etc. Private and public collections exempt from access restrictions under s24 and 25. The Minister may grant permission to excavate remains on or under land (Crown or private) if the Minister is satisfied that it is necessary to do so for the protection or preservation of remains (s22).</td>
<td>Access restricted, no permits provided for the excavation and removal of remains</td>
</tr>
<tr>
<td><strong>Acquisition of land to protect/preserve human remains</strong></td>
<td>The Minister may declare any place specified or described in the order, being a place that, in the opinion of the Minister, is or was of special significance with respect to Aboriginal culture, to be an Aboriginal place for the purposes of protecting and preserving Aboriginal remains (s30, refer to Land Acquisition Act 1969).</td>
<td>Minister may acquire land for the purposes of protecting and preserving Aboriginal remains (s30, refer to Land Acquisition Act 1969).</td>
<td>Minister may compulsory acquire any land that contains an Aboriginal place if the Minister is satisfied that the Aboriginal place is of such cultural or historic significance to Aboriginal people that it is irreplaceable and no other</td>
</tr>
<tr>
<td>Purpose</td>
<td>Action</td>
<td>Notes</td>
<td></td>
</tr>
<tr>
<td>-----------------------------------------------------------------------</td>
<td>----------------------------------------------------------------------------------------------</td>
<td>----------------------------------------------------------------------</td>
<td></td>
</tr>
<tr>
<td>The purposes of this Act (s84).</td>
<td>The Minister may, for the purposes of preserving, protecting and preventing damage to Aboriginal objects or Aboriginal places, acquire land by agreement or by compulsory process on behalf of Her Majesty.</td>
<td>Practicable arrangements can be made to ensure the proper protection and maintenance of the Aboriginal place. All land acquired is vested in the Crown. The Crown may grant land acquired to an Aboriginal person or group for an estate in “fee simple”.</td>
<td></td>
</tr>
<tr>
<td>&quot;Ownership of the remains&quot;</td>
<td>All remains before the commencement day are deemed to be the property of the Crown and any remains abandoned on or after that day by a person other than the Crown, shall be, and shall be deemed always to have been, the property of the Crown&quot; – (Part 6 s83).</td>
<td>Aboriginal people who have a traditional or familial link to Aboriginal human remains become the owners of the human remains if they are already not the owners of the remains (s13). No remains are Crown property.</td>
<td></td>
</tr>
<tr>
<td>Collection of human remains</td>
<td>Private collection not permitted. All remains found/discovered must be reported to the Police/Minister.</td>
<td>Not allowed, all remains held in collections are open to repatriation.</td>
<td></td>
</tr>
<tr>
<td>Repatriation/return of human remains</td>
<td>&quot;The Director-General may, despite any other provision of this Act, dispose of Aboriginal objects that are the property of the Crown, by returning the Aboriginal objects to an Aboriginal owner or Aboriginal owners entitled to, and willing to accept possession, custody or control of the Aboriginal objects in accordance with Aboriginal tradition&quot; (s85A).</td>
<td>(s16) An Aboriginal person with traditional or familial links to human remains held or controlled by a university, museum or other institution may negotiate directly or ask the minister to negotiate for the return of the remains.</td>
<td></td>
</tr>
<tr>
<td>Disposal of human remains</td>
<td>Not Included</td>
<td>Not Included</td>
<td></td>
</tr>
<tr>
<td>Assistance (financial, etc) for the preservation/protection/disposal of remains</td>
<td>May provide assistance for the protection and preservation of remains, on private land.</td>
<td>Not Included</td>
<td></td>
</tr>
<tr>
<td>Table 5.1 Government agencies policies for repatriation and reburial in NSW, SA and Vic</td>
<td>New South Wales</td>
<td>South Australia</td>
<td>Victoria</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>Department</td>
<td>DECC</td>
<td>AARD</td>
<td>Vic Aboriginal Affairs</td>
</tr>
<tr>
<td>Policy name</td>
<td>Repatriation of Aboriginal Cultural Material policy</td>
<td>Repatriation of Aboriginal Cultural Material Policy: Principles and direction for repatriation</td>
<td>-</td>
</tr>
<tr>
<td>Administered by</td>
<td>NPW Repatriation Coordinator</td>
<td>Not provided</td>
<td></td>
</tr>
<tr>
<td>Relevant legislation</td>
<td>NPW Act 1974</td>
<td>AH Act 1988</td>
<td>AH Act 2006, although developed under the AARP Act</td>
</tr>
<tr>
<td>Policy Status</td>
<td>Internal</td>
<td>Draft</td>
<td>Not provided</td>
</tr>
<tr>
<td>Date of adoption</td>
<td>2000?</td>
<td>Draft (2005)</td>
<td>Not provided</td>
</tr>
<tr>
<td>Human remains defined as</td>
<td>Ancestors</td>
<td>Ancestors</td>
<td>Not Provided</td>
</tr>
<tr>
<td>Human remains involved</td>
<td>Recovered/collection in NSW after 1970</td>
<td>Recovered, donated or collected in SA after 1988.</td>
<td>Not Provided</td>
</tr>
<tr>
<td>Financial and logistical assistance provided under the provisions of the policy</td>
<td>Negotiations with relevant museums, providing financial assistance to support the collection, transportation and reburial of remains, as well as negotiate with private landowners for reburial.</td>
<td>Negotiating with museums, organizations, individuals, institutions and land holding authorities (upon request), assistance in collecting the remains, financial assistance upon request and facilitate meeting between stakeholders.</td>
<td>Not Provided</td>
</tr>
<tr>
<td>Funding assistance provided for repatriation and/or reburial</td>
<td>Yes (upon request)</td>
<td>Yes (upon request, subject to available monies)</td>
<td>Not Provided</td>
</tr>
<tr>
<td>Eligibility/Assessment of Claimants</td>
<td>All groups or individuals with a historical or traditional link to a place where ancestral remains originate.</td>
<td>Persons must be associated culturally with the material, no competing claims, claiming persons must be the correct person under customary law.</td>
<td>Not Provided</td>
</tr>
<tr>
<td>Process of repatriation and reburial of remains</td>
<td>Involve all interested individuals, ensure that the return of ancestral remains proceeds in accordance with an agreed approach.</td>
<td>Not defined.</td>
<td>Not Provided</td>
</tr>
<tr>
<td>Remains repatriated under the policy to date</td>
<td>Significant number, exact figures not provided.</td>
<td>10 cases</td>
<td>Not Provided</td>
</tr>
<tr>
<td>Remains reburied under the policy to date</td>
<td>All remains repatriated have since been reburied.</td>
<td>All remains repatriated have since been reburied with the assistance of AARD</td>
<td>Not Provided</td>
</tr>
<tr>
<td>Is reburial assumed if remains repatriated</td>
<td>No</td>
<td>No</td>
<td>Not Provided</td>
</tr>
<tr>
<td>Are alternatives to reburial of remains provided in the policy</td>
<td>Final decision left with the interested parties, alternatives allowed.</td>
<td>Keeping places (possible funding also available)</td>
<td>Not Provided</td>
</tr>
<tr>
<td></td>
<td><strong>New South Wales</strong></td>
<td><strong>South Australia</strong></td>
<td><strong>Victoria</strong></td>
</tr>
<tr>
<td>----------------------</td>
<td>---------------------</td>
<td>---------------------</td>
<td>--------------</td>
</tr>
<tr>
<td><strong>Policy Name</strong></td>
<td>Policy and Procedures for Aboriginal Heritage Unit and Related Unit</td>
<td>Policy on human skeletal remains collection</td>
<td>Repatriation of Aboriginal and Torres Strait Islander Cultural Property</td>
</tr>
<tr>
<td>Administered By</td>
<td>Museum Aboriginal Heritage Unit</td>
<td>Not Provided</td>
<td>Vic Museum (Indigenous cultures department) and Aboriginal Cultural Heritage Advisory Committee (ACHAC)</td>
</tr>
<tr>
<td><strong>Policy Status</strong></td>
<td>Public</td>
<td>Public</td>
<td>Public</td>
</tr>
<tr>
<td>Date of Adoption</td>
<td>n.d</td>
<td>1987, continually revised by the museum.</td>
<td>30th June 2003, developed from existing policy statements created over the period of 1993-1995</td>
</tr>
<tr>
<td>Indigenous People consulted during the policy development</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Eligible for RICP</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Funding for the repatriation and care of remains</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Human remains referred to as</td>
<td>Human remains</td>
<td>Human remains</td>
<td>Remains incorporated in definition of “cultural property”.</td>
</tr>
<tr>
<td>Human Remains Involved</td>
<td>Remains collected prior to 1970 as well as remains recovered/collcted by DECC for temporary custodianship and protection. Applies to all remains within the Museum’s collection</td>
<td>Remains acquired from the SA Police and archaeological investigations.</td>
<td>All remains currently on loan and in the custody of the Museum.</td>
</tr>
<tr>
<td>Financial and logistical assistance provided under the provisions of the policy</td>
<td>Not Provided</td>
<td>Not provided</td>
<td>Not Provided</td>
</tr>
<tr>
<td>Assessment of Claims to the remains</td>
<td>Where it can be demonstrated that remains have been obtained illegally or unethical means.</td>
<td>Where material is the remains of known and named Aboriginal person whose lineal descendants are identified, material which is post-contact in nature and where it can be shown that the material was obtained by illegal or unethical means.</td>
<td>Significance of the ‘property’, relevant legislation. Validity of the claimants traditional and familiar links to the remains</td>
</tr>
<tr>
<td>Remains Repatriated under the Policy</td>
<td>Not Provided</td>
<td>‘Significant Number’</td>
<td>In excess of 1000 individuals</td>
</tr>
</tbody>
</table>
APPENDIX 2:
ADMINISTRATIVE POLICIES

DEPARTMENT OF ENVIRONMENT AND CLIMATE CHANGE:
REPATRIATION PROGRAM

REPATRIATION:
A Guide for Aboriginal Communities

What is repatriation?
Repatriation refers to the return of a person to their country of birth. In the case of the Department of Environment and Climate Change’s (DECC) Repatriation Program, the word refers to the return of Aboriginal ancestral remains from Australian museums to their Community of origin (or other place nominated by the Community or relevant Aboriginal custodians).

Why is DECC involved in the repatriation of ancestral remains?
Under the National Parks and Wildlife Act (to be referred to as the “NPW Act”), DECCC is legal custodian to any Aboriginal ‘object’, including Aboriginal remains unearthed or collected in NSW since 1970 (when the cultural heritage components of the NPW Act first came into practice).

Because in the past DECC and other organisations have viewed the collection of remains to be necessary to ensure their protection, many were removed from their original locations and sent to museums for safekeeping. The majority of these remains are held in the Australian Museum in Sydney, which is the official keeping place for NSW Aboriginal remains and other cultural material collected under the NPW Act.

Where do the remains come from?
The Australian Museum holds Aboriginal ancestral remains on behalf of DECC that originate from all over NSW. However the majority of remains come from western NSW and also around the Sydney metropolitan area. Smaller numbers of remains also originate from the north and south coasts of NSW.

How did the remains come to DECC?
The majority of ancestral remains have come to DECC either through donation, transfer (from the Department of Forensic Medicine, formerly known as the Sydney Morgue) or via impact assessment work (particularly through development).

Most of the Aboriginal remains held under the NPW Act were collected during the 1970s and early 1980s, when the removal and collection of Aboriginal material (including remains) was accepted practise. Today when remains are unearthed, the DECC will try to ensure that they are treated in accordance with community wishes, which in most cases means that they are not sent to museums and are reburied as soon as possible after discovery.

Why has DECC set up a Repatriation Program?
This Program has been set up for several reasons. Firstly as a result of the growing number of requests DECC has been receiving in recent years from Aboriginal communities interested in the return of Aboriginal remains.

Also while DECC has been returning Aboriginal remains on an informal basis for some years, the organisation now recognises that to address the return of its large collection of remains it needs to establish a formal program with a strategic and community-focussed approach to repatriation.
**How does the Repatriation Program work?**
The Repatriation Program works in partnership with Aboriginal Heritage Regions (AHRs) within DECC’s Cultural Heritage Division (CHD) to liaise between a number of stakeholder groups including Aboriginal community groups, DECC’s Region and Area-based staff and Australian museums. The return of remains will at all times be guided by the wishes of the relevant community Group/s.

An important function of the Repatriation Program is to liaise closely with Australian museums and where requested, work collaboratively to repatriate remains to requesting Aboriginal community groups.

**What assistance can DECC provide in the repatriation process?**
DECC’s Repatriation Program is able to assist Aboriginal communities who request the repatriation of ancestral remains held under the NPW Act in the following ways:

- By negotiating with museums holding ancestral remains on behalf of DECC for their return in accordance with the relevant Group/s wishes
- By providing some financial assistance to support the collection, transportation and reburial of remains (amount of financial assistance will vary on a case-by-case basis and will depend on existing Repatriation Program/AHR commitments and priorities)
- By negotiating with private landholders and land management agencies, such as Forests NSW, for the reburial of remains in accordance with community wishes.

Also:
- By negotiating with museums and where appropriate facilitating the return of remains not held under the NPW Act to Aboriginal communities in NSW.

**Who can apply for repatriation?**
DECC encourages applications from all groups or individuals with a historical link to a place where ancestral remains originate, however requests from those with a traditional connection to an area will be prioritised.

Applications that demonstrate broad support for repatriation amongst groups and individuals within an Aboriginal community (including Local Aboriginal Land Councils, Native Title Claimants, Elders Corporations and traditional owners groups), are encouraged by DECC.

**How do we apply for assistance?**
All requests for the repatriation of ancestral remains held under the NPW Act must be in writing and addressed to DECC’s Repatriation Program or the Aboriginal Heritage Region in your area.

All written requests must contain the following information:

- A request for the repatriation of ancestral remains originating from a particular area (Museum or Registration numbers should be included if known);
- Written demonstration that a decision regarding repatriation has been made at a meeting/s involving a broad cross-section of the Aboriginal community (if possible from organisations including: Native Title Claimants, Elders and traditional owners groups and Local Aboriginal Land Councils) – this should preferably be in the form of minutes and an attendance list from a community meeting/s where the issue was discussed;
- Indication of a date for collection of ancestral remains (allowing museums 2-3 months to prepare remains for repatriation).

All correspondence to DECC in relation to repatriation should be posted or faxed to the following addresses:

- Repatriation Program – Cultural Heritage Division
  Dept of Environment and Climate Change
  PO Box 1967
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Once correspondence has been received from Aboriginal organisations, the Repatriation Program and relevant CHD Region will commence a process of consultation. The consultation process will seek to involve all interested individuals and Aboriginal Groups to discuss and confirm arrangements for repatriation and reburial, and to ensure that the return of ancestral remains proceeds in accordance with an agreed approach.
MUSEUM VICTORIA:

REPATRIATION OF ABORIGINAL AND TORRES STRAIT ISLANDER CULTURAL PROPERTY

Date 6 May 2008
Policy register number IN2003/27-001
Predecessor Policy(ies) Museum Victoria Policy on Management of Aboriginal Skeletal Remains and other working drafts (TRIM hardcopy file CS/PL/02/001414)

1 POLICY OBJECTIVE/INTENT

The intent of this policy is to establish a framework within which Museum Victoria can manage the Repatriation of Aboriginal and Torres Strait Islander cultural property held in the State collections.

Museum Victoria believes that Repatriation is one part of an ongoing relationship with Indigenous Peoples and will endeavour to foster these relationships for mutual benefit. To this end Museum Victoria is committed to working collaboratively with Indigenous peoples to ensure that the cultural materials it houses are appropriately managed.

2 POLICY STATEMENT

Museum Victoria recognises the rights of Indigenous peoples with respect to their cultural property and is committed to the Repatriation of cultural property to the Traditional/Rightful Owners in accordance with the principles in this policy.

Human remains or Secret/Sacred Objects will be returned to Traditional/Rightful Owners once it is established that they are the rightful owners according to tradition and custom. Requests for return of other Indigenous Cultural Property will be considered on their merits on a case by case basis.

In considering claims for Repatriation, Museum Victoria will take into account the significance of the Indigenous Cultural Property and whether it was taken without free and informed consent or in violation of laws, traditions and customs.

Museum Victoria will continue to maintain and develop Indigenous collections for the benefit of future generations of Indigenous and non-Indigenous Australians.

3 KEY REPATRIATION PRINCIPLES

3.1 All Indigenous Cultural Property is potentially subject to Repatriation.

3.2 Museum Victoria’s principles and practices for Repatriation will be carefully considered, transparent and accountable.
3.3 The Museums Board of Victoria has the authority to repatriate materials through a process of deaccessioning from the collections. Before making a decision, the Board will seek the advice of its Aboriginal Cultural Heritage Advisory Committee (ACHAC) and other stakeholders as appropriate.

3.4 In repatriating cultural property, Museum Victoria will comply with all relevant legislation, conventions and statutory obligations. Indigenous property that is embodied in films, images, manuscripts and sound recordings will normally be repatriated in the form of copies but this is subject to negotiation.

3.5 Museum Victoria has a responsibility to establish the validity of Indigenous peoples requesting Repatriation and to identify all those peoples with interests in material subject to Repatriation.

3.6 Museum Victoria will work in good faith and in a timely fashion to respond to all requests for Repatriation. Museum Victoria will make every effort to maximise consultation and involvement with the peoples and/or individuals in the process of responding to any Repatriation request.

3.7 In the event of any conflicting claims, Museum Victoria will inform parties that a conflict exists and encourage parties to resolve the conflict. Museum Victoria may defer decisions about Repatriation until the conflict has been resolved by the parties.

3.8 Museum Victoria will maintain care and custody of repatriated property until such time as the Traditional/Rightful Owners are able to take delivery.

3.9 Where requests for Repatriation of any collections on loan to Museum Victoria occur, approval will be required from the lenders of the material. Museum Victoria will facilitate discussions between the relevant parties.

3.10 Museum Victoria will retain complete documentation of all Repatriation decisions and associated processes.

3.11 Museum Victoria will discuss the retention of collection documentation of repatriated material with the relevant communities.

3.12.1 Museum Victoria may facilitate information gathering about Indigenous cultural property which is held in other institutions, both in Australia and overseas.

4 KEY DEFINITIONS

Secret/Sacred Objects: This means restricted ceremonial objects of contemporary religious and ceremonial significance to Indigenous peoples.

Repatriation: Return of Indigenous Cultural Property to the people entitled by custom and tradition to be recognised as the Traditional/Rightful Owners of that material. This can mean negotiated return of objects and related cultural materials, and/or sharing authority and responsibility for care and interpretation by Museum Victoria.

Indigenous Cultural Property: objects and intellectual property, of or relating to Indigenous peoples in the collections of Museum Victoria, including but not limited to artworks, human remains, Secret/Sacred material, films, images, manuscripts and sound recordings.

Traditional/Rightful Owners: Indigenous People entitled as of custom and tradition to determine appropriate control and management of their cultural heritage. [Museum Victoria notes relevant definitions under the Native Title Act 1993.]

Aboriginal Cultural Heritage Advisory Committee (ACHAC): A sub-committee of the Board that advises Museum Victoria on matters relating to the Aboriginal and Torres Strait Islander issues relevant to Museum Victoria including cultural material held in Museum Victoria’s care.
5 RELATED POLICIES

Museum Victoria Collection Development and Management Policy
Museum Victoria Collection Deaccession Policy
Museum Victoria Draft Policy - Repatriation of Indigenous Cultural Property from the Pacific Islands and the Rest of the World
Museum Victoria Intellectual Property Policy

6 ASSOCIATED DOCUMENTS, GUIDELINES & PROCEDURES

6.1 Legislation and Conventions
Archaeological and Aboriginal Relics Preservation Act 1972
Museums Act 1983
Aboriginal and Torres Strait Islander Heritage Protection Act 1984
Archaeological and Aboriginal Relics Preservation (Amendment) Act 1984
Protection of Movable Cultural Heritage Act 1986
Native Title Act 1993

6.2 Other Museum Victoria Documents in development

Museum Victoria Policy on Management of Aboriginal Skeletal Remains (mainly procedures)
Procedures for Repatriation of Australian Indigenous Cultural Property (including Secret/Sacred materials and human remains) [in progress]
POLICY ON HUMAN SKELETAL REMAINS COLLECTION

SOUTH AUSTRALIAN MUSEUM

ENDORSED BY SOUTH AUSTRALIAN MUSEUM BOARD - JUNE 1987

Introduction: The S.A.M. Human Biology Collection

The South Australian Museum has human skeletal remains which form part of its Anthropology Collection. This Collection, the Human Biology Collection, contains some 2,000 specimens from all over the world, including European samples. In the main, it is made up of crania and skeletons from Australia. There are also casts of fossil material from elsewhere in the world.

The Collection is maintained solely because of its scientific significance. It has been the basis of important developments in human biology and particularly in medicine and dentistry and it continues to be studied by scholars from all over the world. Similar research is carried out in many countries on collections of remains from all human populations including Europeans.

For Aboriginal people, such research provides important information about their ancestors and their way of life. In addition, there are also direct medical and health benefits to Aborigines, including improved orthopedic procedures and discovery of significant data on diseases.

The Human Biology Collection is legally held in trust by the Museum on behalf of all South Australians including Aboriginal people. However, the
Museum recognizes that Aboriginal people have a special relationship with the Collection and that they are concerned about the issue of human remains and their treatment. It is for this reason that the Museum is currently initiating consultations with the relevant Aboriginal people and groups about the Collection so that we can find out their views on this important matter. The consultations will include discussion on issues of curation, access, acquisition and the return of reburial material. This document puts forward the Museum’s views on these issues.

The Origins of the Collection
In general, specimens in the Museum Collection were either purchased from reputable scientific sources, or were presented by government officers (e.g. police) or members of the public. A relatively small proportion was collected from archaeological sites by Museum staff. Much of the material came into the Museum in the period between the turn of the century and the 1930s. Since that time most deposits of human remains in the Museum have been the result of presentations. Apart from the Roonka project between 1962 and 1978, there has been no active programme to acquire new material. In general, the antiquity of the material in the Collection is unknown. However the large majority predates European arrival in Australia.

The majority of the Collection is made up of cranial material – that is, skulls or parts of skulls. More than 60% of this is South Australian in origin and in turn more than half of this is from within 100km of Adelaide.
Kinds of Research Done on the Collection and Its Benefits

The basic and most commonly used technique for studying skeletal remains is simple measurement. Many and varying dimensions are gathered for different elements of particular sets of remains. Comparison of these over a range of individuals in the same and in different sample populations provides the means for determining factors such as ethnic group, age and sex as well as providing information on more general things such as the way of life and culture of the group represented by particular individuals. Often human remains are the only source of information on the health, diet and lifestyle of precontact Aboriginal people. Thus it is a vitally important means of learning about many aspects of the prehistoric Aboriginal heritage.

The Collection's importance is reflected in the fact that it has been extensively and widely used by scientists, over many years. Government officers regularly use it for forensic and coronial work. It has been regularly used by anatomists in studying the morphological features of different populations. Paleontologists have learned a great deal about Aboriginal origins through research on the Collection, while archaeologists have used it to gain a picture of ancient Australian population structure.

Some of the most famous studies based on the SAM Collection have resulted in benefits of immediate practical relevance to Aboriginal people. For instance, Dr. P.R. Begg's examination of the Collection in the 1930's produced a revolutionary new orthodontic treatment which has been adopted throughout the world. Similarly, Dr Cecily Hackett's research on SAM material contributed to the development of a cure for yaws, a fatal
disease once widespread in much of Aboriginal Australia and around the world.

With the development of new techniques, components of human biology collections are often re-examined many times. Older conclusions have been or will be continually reassessed as new ideas and new methods emerge. This means that the full potential of the material can never be finally realised and specimens disposed of, without leaving many questions unanswered and unanswerable. There is hope that, for instance, new research methods will bring to light new and beneficial information on diseases particularly affecting Aboriginal people such as diabetes.

The Museum's view is that the heritage value and the scientific importance of the Human Biology Collection are inseparable. In other words, we recognise the Collection as part of the heritage of Aboriginal people. However, as trustees of this Collection, our view is that continued scientific work on it can add immeasurably to that heritage. Maintenance of the Collection and controlled research on it is in the best interests of all people, and perhaps especially Aboriginal people.

Curation and Access

Independent professional assessment has shown that curation of the Human Biology Collection has been done to the highest possible standard. The material in the Collection is never publicly displayed and is stored in a special restricted storeroom. All handling of items in the Collection is done with utmost care and respect for the material.
All access to the Collection must be approved by the Museum Board. In considering this, a balance is attempted between greatly limiting access out of respect for the origin of the material and limiting the possibility of damage to a very valuable resource, while at the same time providing sufficient access to ensure that maximum benefit is gained from the material.

Access is only given to qualified professional scholars or to Aboriginal people with particular relationships to the Collection. Further, investigators using the Collection have to agree not to publish or display material, such as photographs, which Aboriginal people may find offensive.

Destructive research is not carried out on the Collection under normal circumstances. A certain amount of analysis, as is normal in contemporary medicine, occasionally necessitates limited destructive analysis. This applies particularly to pathology and dating. The amounts used, however, rarely exceed the 1 - 2 grammes required by modern hospitals, for example, for a routine biopsy. Such analyses, as with loans of any material, are only carried out with the express permission of the Museum Board.

**Acquisition**

There are at present two main means by which the Museum may acquire further human remains: deposit by the South Australian Police and the unearthing of remains during the course of archaeological investigations.

The Museum has for many years been required by law to take into its collection human remains found by the police and determined to be
Aboriginal in nature. Our view is that this practice is discriminatory and should be discontinued. Until it is, the Museum, when given remains in this category, will endeavour to locate relatives of the deceased individuals or, at least members of a relevant Aboriginal community in order to discuss with them the future of the remains. The Museum has already returned for reburial the remains of a number of individuals which came into the Museum by this means.

Where human remains are discovered in the course of archaeological work the Museum, in so far as its staff are involved, will insist that researchers contact the relevant Aboriginal community for immediate discussions. The Museum would only agree to house within the Collection human remains from such work at the express wish of both the relevant Aboriginal people and the researcher.

**Consultation**

The Museum's view is that full and frank consultation with Aboriginal people over the Collection is essential. Only then can we let people know of its existence and convey to them the benefits of continuing scholarly research on it. This has already been done to some extent with the material in the Collection from Roonka.

The Museum intends to organise information on the Collection to determine the relevant contemporary communities. It will then enter into consultations with those communities firstly, to let people in those communities know what is in the Collection, how it got there, how it is cared for and the specific and general benefits of scholarly research on
the material. Secondly, we will aim to produce joint plans with respect to options for the future of the part of the Collection relevant to the community. With respect to access, one possible arrangement may be that research on parts of the Collection is only done following consultation by the investigator (in conjunction with Museum staff) with the relevant Aboriginal groups.

Return of Material

Aboriginal opinion and custom varies considerably on the matter of human remains. Given that we have material from all over Australia, it is difficult to produce a simple, blanket policy regarding return of material. We also seek policy input from those Aboriginal individuals and groups that have relationships with the Collection. However, in the meantime the Museum will consider requests for return of remains which are in certain categories:

1. Where material is the remains of a known and named Aboriginal person whose lineal descendants are identified, and make a request for the return of those remains;

2. Where the material is post-contact in nature;

3. Where it can be shown that the material was obtained by illegal or unethical means.

With respect to the first category, the Museum will, where possible, make attempts to locate descendants to let them know the material is in the
Collection and to engage them, should they so desire, in discussions on the future storage of the remains.

The Museum is also willing to discuss the future of other parts of the Collection - for example, remains from particular sites - with relevant Aboriginal communities.

**Conclusion**

The Museum's view is that its Human Biology Collection is an extremely important one, and that in general it should be available for research. We do, however, support Aboriginal requests for a greater say in access and storage location and arrangements. We also agree that certain types of remains should be returned.

We want to actively engage Aboriginal people who have relationships with parts of the Collection in consultation over the whole issue. We want to let them know what is in the Collection and argue the case of the benefits to Aboriginal people of continued research. We also want to hear Aboriginal views on the matter. In our consultations we would like to explore the possibilities of, for example, local 'keeping place' arrangements. Access could then only be gained through consultation with the relevant Aboriginal groups and the merits of research obtained by that access would have to be demonstrated and discussed at that stage. Some communities may choose to continue to store remains with which they are associated, in the S.A. Museum, while maintaining rights to control access. This is something the Museum would support and a similar arrangement for
SAM's Secret/Sacred Collection has proved most satisfactory to Aboriginal people with rights in that Collection.

The above plans have certain funding and staff implications. Ideally, the Collection needs its own curator who would be responsible for it and for coordinating the consultations with Aboriginal people. The Museum would also like to involve Aborigines directly, as staff, in dealing with this issue. Given the Collection's scientific importance and the urgent necessity to gain Aboriginal views on its future, we will seek State Government support for such positions.

In the interim, a full survey of the Collection should be undertaken prior to any further reburials of remains. This is something for which a strict time limit should be set, to allay Aboriginal fears of indefinite uncertainty over the Collection. Consultations, as outlined above, should proceed immediately. We will need to seek external funds to engage qualified biological anthropologists for both the survey and the consultations.
AUSTRALIAN MUSEUM:

POLICY AND PROCEDURES FOR ABORIGINAL HERITAGE UNIT AND RELATED UNIT

STATEMENT OF MISSION

The Aboriginal Heritage Unit’s mission is to assist Australian Indigenous communities in gaining access to their cultural heritage, creating a sufficient skill base to allow communities to manage their cultural heritage and educating the wider community, government agencies and departments on issues relating to the maintenance of Indigenous cultural heritage.

PRINCIPLES

The policies and procedures set out in this document have been drawn up on the basis of the Principles set out in "Previous Possessions, New Obligation" (Council of Australian Museum Associations, December 1993). These principles state that:

Self-Determination

- Museums support the right of Aboriginal and Torres Strait Islander people to self-determination in respect of cultural heritage matters.

Management and collections

- Aboriginal and Torres Strait Islander involvement in management of and information, and their use in the public programs and communication of museums, including exhibitions, education and publications, is essential.
- Objects of Aboriginal and Torres Strait Islander cultural property held by museums, and the information relevant to them, are of equal importance.
- The special needs and interests of Aboriginal and Torres Strait Islander women must be recognised by museums so that all activities and operations are culturally appropriate.

Access to collections and information

- Museums must provide relevant Aboriginal and Torres Strait Islander communities with information, in accessible forms, as to what is in their collections.
- Access to Aboriginal and Torres Strait Islander items and information must be appropriate as determined by Aboriginal and Torres Strait Islander peoples: access to some items must be restricted in accordance with tradition.

Assistance to Aboriginal and Torres Strait Islander communities

- Museums have a responsibility to assist Aboriginal and Torres Strait Islander communities in the management of cultural property and in providing training in research and documentation to people of those communities.
• Museums must assist Aboriginal and Torres Strait Islander community groups in the care and preservation of objects. Conservation practice must adapt to cultural requirements, most particularly in respect of secret/sacred items.

• It is appropriate for Aboriginal and Torres Strait Islander communities to obtain funds for special projects and in such cases they may then approach a museum to be involved in the project. Such an approach puts the major decisions as to what is important in the hands of the community. Museums should assist and be involved in the project if requested by Aboriginal and Torres Strait Islander people.

Employment and training

• The employment of Aboriginal and Torres Strait Islander people in museums must be dealt with by application of anti-discrimination and equal employment opportunity legislation relevant to the jurisdiction. Museums must encourage Aboriginal and Torres Strait Islander people to apply for employment.

• Training in museums and employment by them of Aboriginal and Torres Strait Islander people must start at as high a level as possible; in all cases training should lead to actual employment in meaningful jobs.

Policy formulation

• There must be meaningful participation of Aboriginal and Torres Strait Islander people at the highest policy levels of museums through such mechanisms as are appropriate in the local situation.

• All museums have the responsibility to strive to obtain adequate resources to fulfil their role in respect of collections and programs. Museums should play a role in helping to obtain adequate resources for Aboriginal and Torres Strait Islander people to fulfil their aspirations in respect of their material cultural heritage.

ABORIGINAL HERITAGE UNIT – HISTORY

In cultural heritage matters the Australian Museum is guided by principles of self-determination for Aboriginal and Torres Strait Islander (TSI) peoples. With this in mind, the museum established the Aboriginal Heritage Unit (A.H.U) in January 1996.

The main role of the A.H.U is to act as the intermediary between the Australian Museum and the Indigenous communities on issues of Indigenous cultural heritage management.

This involvement encompasses the following:

• The development and continual revision of Museum policy and procedures for dealing with Aboriginal and TSI cultural issues.

• Involvement in the development of Australian Indigenous public programs at the Museum.

• The repatriation of Aboriginal human remains, secret/sacred collections and significant cultural materials.

• Assisting Aboriginal and TSI communities to preserve and maintain their own cultural heritage materials through the delivery of the Aboriginal Museums Outreach Program.

INTERACTION BETWEEN ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLE AND THE MUSEUM

LIAISON AND COMMUNITY CONSULTATION

The Museum talks with Aboriginal and TSI communities in order to gain their opinion and their advice about the current and future protection and management items of Aboriginal and TSI heritage and culture in the Museum’s care.
The Museum has developed a framework that enables Aboriginal and TSI opinion to flow into the Museum's decision-making process. This framework is outlined below.

1. Communities will be provided with sufficient information on their cultural material stored at the Museum and offered every opportunity to give the Museum their opinion or advice on the management of these collections.

2. Consultation is an on-going process.

3. There are several positions designated within the Museum, encompassing the A.H.U, Aboriginal and TSI peoples Anthropological collections within the Anthropology Division, Education division and the Materials Conservation division.

**ABORIGINAL MUSEUMS OUTREACH PROGRAM**

The Museum views the establishment of Aboriginal and TSI Cultural Centres and Keeping Places as an important and positive action and recognition of the importance of maintaining and preserving indigenous culture.

To assist indigenous people in the achievement of their cultural objectives, the Museum has developed the Aboriginal Museums Outreach program. This program is provides Aboriginal and TSI communities access to professional museum training and advice in the planning and running of their own cultural centre and keeping places.

Aboriginal and TSI organisations requiring assistance to set up a Cultural Centre or Keeping Place should contact the A.H.U in writing, setting out the assistance needed.

The A.H.U then assesses the request, where necessary with the assistance of other Divisions in the Museum, decide on the nature and extent of the assistance that the Museum can offer, and then advise the applicant accordingly.

**SPECIALISED MUSEUM TRAINING PROGRAMS**

The Museum has a unique resource of talented professionals to provide a range of training from long term/intensive through to short familiarisation visits. In some cases, the Museum may charge a fee for training programs. Outlined below are some of the areas in which the Museum can offer training to Aboriginal and TSI peoples.

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The procedures outlined below are to be followed in all requests for training within the Museum.
1. The organisation must send a written request outlining the areas in which training is required and an indication of possible funding sources.

2. A training program is then drafted by Museum staff and discussed with the organisation. Once the program has been accepted by the organisation, the program will commence as soon as possible.

3. At the completion of training, an evaluation of the program is undertaken by Museum staff, the trainee and the organisation.

**MANAGEMENT OF ABORIGINAL AND TORRES STRAIT ISLANDER COLLECTIONS**

**VISITOR ACCESS AND USE OF ABORIGINAL AND TORRES STRAIT ISLANDER COLLECTIONS**

The term *visitor* covers the general public, students, researchers, other museum workers and persons from the societies that made the artefacts.

*Access* can be through exhibition (on-site and off-site), other public programs, and through individuals gaining access to storage areas.

*Use* includes research, display, educational and promotional activities, loans and hire by commercial enterprises.

The Museum is keen to make the collections more accessible provided that:

1. The purpose is consistent with the Museum's philosophy and policies and with Aboriginal and TSI peoples wishes.

2. Access to and use of the collections is not detrimental to the proper care and survival of the objects.

3. The Aboriginal Collection Manager and the Aboriginal Heritage Officer are available to supervise the visitor if necessary.

**LOAN OF ABORIGINAL AND TORRES STRAIT ISLANDER CULTURAL MATERIAL**

The A.H.U offers loans of Aboriginal and TSI cultural material to communities through the Division of Anthropology’s Aboriginal and TSI collections.

The Division uses a 'Loan Approval Form' designed specifically for its materials. Ideally at least three months' notice must be given when seeking material for loan. This is to allow all the necessary procedures to be undertaken.

All loan requests and approvals will normally be made on these forms and will be subject to the approval of the relevant Collection Manager and to a report from a Conservator. Loans extending longer than one year will be reviewed periodically by the A.H.U in the light of condition reports following inspection of the loaned items.

The Division reserves the right to refuse an application where it believes that the purpose of the loan would be contrary to the Museum's philosophy and/or conflicts with specific policies, or conflicts with the wishes of the community of origin or places the artifact in unsatisfactory conditions.

Loans for commercial purposes will be treated as hire and the borrower will pay fees to cover staff and other costs.

**SECRET SACRED AND PRIVATE MATERIAL**

Initially objects of a secret/sacred nature were collected by the Australian Museum as examples of exotic Australian Aboriginal material culture. In this sense they were viewed in much the same light as other objects and there were no special concerns about their storage, handling or display. Today, however, we take a
different view and regard the collection of secret/sacred objects as an important component of Aboriginal knowledge and culture that has significant religious value to Aboriginal people. Because of the unique and sensitive nature of this material, it has to be dealt with separately from the rest of the collections.

With this in mind, all material identified as secret/sacred has been removed from the main Aboriginal and TSI Collection and is now housed in a separate keeping place within the Museum. This area has restricted access and objects are stored in such a way that authorised Aboriginal visitors cannot accidentally view secret/sacred objects made by people from other communities.

The Australian Museum has a moral obligation to curate the secret/sacred collection in line with the wishes of the appropriate Aboriginal person or persons with proven rights of access/ownership. The collection may have immense scientific value but the wishes of Aboriginal people take precedence. One consequence is that the secret/sacred collection remains closed to researchers until such a time that appropriate Aboriginal owner/managers desire otherwise. Furthermore, objects will be stored, loaned or returned only according to the wishes of the appropriate Aboriginal person or persons from each community. In this sense, the policy is variable and flexible.

However, should requests for the return of objects be received, they must be approved by all appropriate Aboriginal people that have recognised rights of access to the objects, the A.H.U and the Museum Trust.

The Museum holds about 1,000 Aboriginal objects known to be of a secret/sacred nature. There is also an unidentified number of pieces that are categorised as (or are considered to be) material of a private nature (objects that are not for general viewing).

The Museum is presently trying to identify secret/sacred and private material and to deal with this material in an appropriate manner. Aboriginal people are employed as consultants to advise the Museum in this process.

**STORAGE OF SECRET/SACRED AND PRIVATE MATERIAL**

All secret/sacred material is stored in a manner that will not cause offence to Aboriginal people. It is separated from the rest of the collection within a special secret/sacred store.

Material that is deemed to be of a private nature, (material not secret or sacred or of a general, open nature) such as carved trees, etc, is stored in such a way as to avoid being seen by inappropriate people.

The process of identifying secret/sacred material within the broader collection involves extensive consultation with appropriate Aboriginal people.

The Museum undertakes research to determine the relevant Aboriginal people and communities for each item in the collection.

The Museum identifies the status of all items through consultation with appropriate Aboriginal informants or other sources.

The Museum stores identified secret/sacred and private material in a suitable manner reflecting traditional cultural objectives. In particular, the items are stored so that inappropriate people cannot handle or see them.

**REPATRIATION OF SECRET/SACRED AND PRIVATE MATERIAL**

The Australian Museum endorses repatriation of material of a secret or sacred nature to either the community of origin or to an appropriate person or persons in cases where traditional custodial rights can be substantiated.

Before the material can be physically returned a number of conditions and procedural issues have to be met by both the Museum and the community or people requesting the return of material. These include:

1. All requests for repatriation should be in writing and should describe the material requested, the name of the community, organisation or person/s requesting the return, and identify what Aboriginal traditional
custodial right they have to the material. The request should also indicate what community support there is for the return and where the material will be held.

2. Upon receipt of the written request, the AHU will commence procedures to validate the request and confirm community support for return of the material. This involves extensive community consultation to determine the rightful custodians according to Aboriginal and Torres Strait Islander custom. This process of consultation will vary from community to community due to differing circumstances.

3. Once the A.H.U has undertaken a thorough investigation of the request, the unit will make a recommendation to the Museum Trust.

4. If the Trust supports the recommendation for the return of the requested material, arrangements for its delivery are to be made as soon as possible.

**VIEWING OR STUDYING SECRET/SACRED AND PRIVATE MATERIAL**

Access to the secret/sacred and private collection is restricted to people with rights under Aboriginal customary law to the items and to specific museum personnel responsible for the care of the collection. The Museum believes it has a moral obligation to restrict access to this material.

The following procedures apply to all requests for viewing the material by people who have customary law rights. Under no circumstances will the collections be available for researchers unless approved by appropriate traditional community elders.

1. All requests for viewing should be in writing at least two months in advance and should describe the material to be viewed, the name of the organisation, community or person/s requesting the viewing, what community support there is and what their relationship is to the material under Aboriginal custom law.

2. Upon receipt of the written request, the A.H.U will commence procedures to authenticate the request and confirm community support for the viewing of the material. This will be carried out as soon as possible and involve extensive community consultation.

3. Once the A.H.U has undertaken thorough investigation, the community requesting the viewing will be informed of the decision.

4. If the request is approved, the material will be viewed in the Museum, in the special separate viewing area, adjacent to the secret/sacred storage area.

**DISPLAY OF SECRET/SACRED AND PRIVATE MATERIAL**

At no time will items of a secret/sacred or private nature or items believed to be of a secret/sacred or private nature, be displayed in the Museum.

This position is taken because of the sensitive nature of the items and the traditional constraints that are associated with certain items.

If a situation arises where an item is displayed and there is some dispute as to its secret/sacred or private nature, then the item will be removed until the situation is clarified using procedures outlined below.

The following are to be followed in all requests for removal of an item from displays or exhibitions:

1. Upon receipt of a written request the A.H.U will commence procedures to validate the request and confirm community support for the removal of an item from display. This will be carried out as soon as possible and involve extensive community consultation. While this is being completed the object is to be removed from display until a decision can be made.

2. Once the A.H.U has undertaken thorough investigation of the request, appropriate actions will be taken.
ACQUISITION OF SECRET/SACRED MATERIAL OR PRIVATE MATERIAL

The Museum will not knowingly acquire items or materials of a secret/sacred or private nature or suspected of being secret/sacred, or of a private nature.

CUSTODIAL ARRANGEMENTS OF SECRET/SACRED MATERIAL OR PRIVATE MATERIAL

In some cases the Museum will assist in the return of material from private collectors or other institutions to the appropriate Aboriginal custodians or communities.

The Museum will also receive from Aboriginal custodians or communities on the basis of being a safekeeping place under a signed custodial agreement.

The procedures outlined below are to be followed in all requests for the Museum to act as an intermediary or custodian of secret/sacred or private material.

1. All requests for the Museum to act as intermediary or as a custodian should be in writing and should describe the material as well as outline, who is requesting the action, what community support there is, and what action the Museum is requested to undertake.

Once the A.H.U has undertaken thorough investigation of the request, the unit will report to the Museum Trust recommending the action to be taken. If the Trust approves the custodial relationship then the A.H.U will commence appropriate measures.

4. Once secret/sacred is deposited in the Museum, access will only be granted after a written request has been received from the person, persons or community who deposited the item with the Museum.

5. The custodial relationship will be reviewed regularly.

ABORIGINAL HUMAN REMAINS

The CAMA document "Previous Possessions, New Obligations" states that:

Museums should not hold any items which are not of scientific or cultural importance. This most especially applies to human remains. Museums should adopt policies in respect of the human remains of all peoples irrespective of race. The utmost sensitivity must be observed in dealing with human remains. This policy applies to all human remains of Aboriginal and Torres Strait Islander people irrespective of age.

No conditions can be placed unilaterally by museums on the return of human remains.

Museums recognise the potential value that human remains may have to the scientific advance of knowledge. Where it is considered that there are valid scientific interests in some remains, claims to that effect must be established to the satisfaction of Aboriginal and Torres Strait Islander people. Age by itself does not establish scientific importance. Before scientific research of any kind is carried out on human remains the relevant community, having been able to consider all appropriate information available to the museum, must give permission for that research. The results of any scientific research must be communicated effectively to that community.

Special policies are required for human remains because of the sensitive ethical and legal issues, which must be considered with regard to their acquisition and use. number of remains that are received by the Museum through the Coroner's Court. An outline of these policies and procedures can be found in "The Skeletal Manual: A Handbook for the Identification of Aboriginal Skeletal Remains" by Alan Thorne and Anne Ross.

The Museum acknowledges that human remains may constitute part of general human history and should not be regarded as being solely of local interest. The remains may show the biological evolution and diversification of
the human species. Studies on this material are necessary for the appreciation of the human position in the history of our planet.

The issue of human remains and the appropriate policies and procedures are complex and diverse, and are broken down into major segments outlined below.

The Museum, NSW National Parks and Wildlife Service and the NSW Police Force, over a number of years, have maintained a policy of not disturbing human remains that are uncovered in the field. This procedure has led to a marked decrease in the

Acquisition, use of, and access to human remains held by the Museum will take into account (above and beyond the usual criteria) the ongoing feelings of the communities of origin concerning their appropriate use, storage, and disposal.

At all times, attempts will be made to avoid or to reconcile conflicts of interest between the Museum's scientific and educational role and its role as an aware and responsible custodian of such remains.

REPATRIATION OF HUMAN REMAINS FOR REBURIAL

The Museum supports the return of Aboriginal human remains to the relevant Aboriginal people or communities subject to consideration of both scientific value as well as cultural issues. The Aboriginal human remains held by the Museum fall into two categories: those acquired before the original National Parks and Wildlife Act of 1967, and those acquired after this Act came into force. The Museum Trust can authorise the return of remains acquired before 1967. For those acquired after the Act came into force, requests for return must be addressed to the Director-General of National Parks and Wildlife. A copy of the request should be sent to the Aboriginal Collection Manager or Aboriginal Heritage Officer at the Museum. The procedures below must be followed in all cases of request for the return of pre-1967 remains for reburial.

Where it can be shown that remains were obtained illegally or by unethical means, the remains will be returned to the relevant community for reburial.

1. All requests for the return and/or reburial of Aboriginal human remains must be in writing, to the A.H.U, outlining the place of reburial as well as the community support for the requested repatriation of the remains.

2. Remains will only be returned for reburial to appropriate Aboriginal people, community organisations or groups.

3. If the Trust approves the repatriation of the human remains for reburial, the A.H.U will undertake the repatriation as quickly as possible.

REQUESTS FOR CUSTODIANSHIP

The Australian Museum will act in the role of custodian of Aboriginal human remains on behalf of the relevant community if requested to do so by them and will abide by any reasonable conditions sought by the community. The procedures covering such custodianships will be the same as those outlined for the secret/sacred items.

DISPLAY OF ABORIGINAL HUMAN REMAINS

The Australian Museum will not display Aboriginal human remains to the public, except in special circumstances. These may include parts of remains are an integral part of other items, such as human teeth incorporated in an item of personal attire. In these cases, the display of which is agreed to by the relevant community, their descendants or those authorised by them.
APPENDIX 3:

RECORDED ABORIGINAL SITES

NEW SOUTH WALES: Listed Protected Sites
Listed Aboriginal Area in Schedule 14 of the NPW Act 1974:

1. Mt Yarrowyck Nature Reserve
2. Mt Grenfell Historic Site
3. Mootwingee Historic Site
4. Mootwingee National Park
5. Coturandee National Park
6. Mungo National Park
7. Jervis Bay National Park
8. Gulaga National Park
9. Biamanga National Park

Additional Reburial Sites proclaimed in 2005:

1. Coast Hospital, Botany Bay National Park
2. North Era Beach, Royal National Park
3. Costens Point, Royal National Park
4. Reef Beach, Sydney Harbour National Park
5. Quarantine Station, Sydney Harbour National Park
6. Towlers Bay, Ku-ring-gai Chase National Park
7. Bujwa Bay, Mougamarra Nature Reserve
8. Towra Point, Chase National Park

SOUTH AUSTRALIA: Aboriginal Objects and Sites Register
Not for public viewing, must be either registered employee of the department or relevant Indigenous person/s or community.

VICTORIA:
Not for public viewing, access restricted to authorised employees and registered Aboriginal parties.
### APPENDIX 4:

**ETHICS APPROVAL APPLICATION**

Note: The following application was *not* submitted for approval.

| FLINDERS UNIVERSITY ADELAIDE • AUSTRALIA | Office Use Only |
| Social and Behavioural Research Ethics Committee |

**APPLICATION FOR APPROVAL OF SOCIAL OR BEHAVIOURAL RESEARCH INVOLVING HUMAN SUBJECTS**

**RESEARCHER INFORMATION**

<table>
<thead>
<tr>
<th>A1. Name(s): List principal researcher first (Title, first name, last name)</th>
<th>Status: eg (Staff, Student, Associate)</th>
<th>School / Department / Organisation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ms Tamarind Meara</td>
<td>Honours student</td>
<td>Department of Archaeology</td>
</tr>
</tbody>
</table>

| A2. Students Only: |
| --- | --- | --- |
| Student Record Number (SRN) | Supervisor(s) | Supervisor’s School / Department / Organisation |
| 2010095 | Dr Lynley Wallis | Department of Archaeology |
| Degree enrolled for | Honours Archaeology |

| A3. Contact Details: Researchers, Associates, Supervisors |
| --- | --- | --- | --- |
| Name | Daytime phone number | Fax | Email |
| Ms Tamarind Meara | 85364737 | 85363628 | mear0009@flinders.edu.au |
| Postal Address: | Department of Archaeology |
| | | |
| Dr Lynley Wallis | 82013520 | 82012784 | Lynley.Wallis@flinders.edu.au |
| Postal Address: | Department of Archaeology |
| | Flinders University |
| | GPO Box 2100 |
| | Adelaide 5001 |
| | Australia |
PROJECT TITLE & TIMEFRAME

<table>
<thead>
<tr>
<th>B1. Project Title:</th>
<th>Politics of the Dead: A comparative analysis of state legislation regarding the care and reburial of repatriated remains</th>
</tr>
</thead>
<tbody>
<tr>
<td>B3. Period for which approval is sought.</td>
<td>Note that approval is valid for a maximum of 3 years.</td>
</tr>
<tr>
<td>Date data collection is to commence:</td>
<td>1st March 2007</td>
</tr>
<tr>
<td>Date data collection is expected to be completed:</td>
<td>October 2007</td>
</tr>
<tr>
<td>Date project is expected to be completed:</td>
<td>November 2007</td>
</tr>
</tbody>
</table>

C. PROJECT DETAILS

C1. Brief Outline of (a) project; (b) significance; (c) your research objectives.

a) The interview will form part of my honours research in archaeology. The thesis, entitled “Politics of the dead: A comparative analysis of current State legislation within Australia regarding the care and reburial of repatriated remains” aims to investigate current provisions in legislation within South Australia, Victoria and Tasmania regarding the return of ancestors to Indigenous communities.

b) To my knowledge there has been little research on the issue of reburial following repatriation in Australia. This thesis will amalgamate a reference list of published and unpublished documents. By bringing together State and Commonwealth legislation combined with case studies from South Australia, Victoria and Tasmania, the thesis will be a useful resource for understanding where future research needs to be done. The thesis will show the role of archaeology within the reburial process and the implications of current legislation upon the discipline. The research will be useful for many fields of study apart from Archaeology.

c) Identify what legislation currently exists in each of the case study areas that are relevant to the reburial of repatriated remains. Identify what limitations there are. Identify what lessons might Australia learn from other countries regarding approaches to reburial following repatriation.
C2. Medical or health research involving the *Privacy Act 1988* (s95 and s95A Guidelines)

*Is your research related to medical or health matters?* No

*If you answered ‘No’, please go to item C4.*

*If, ‘Yes’,*

(a) *Will personal information be sought from the records of a Commonwealth Agency?* Yes/No

*If Yes, please also complete Part A of the Appendix ‘Privacy legislation matters’ that relates to compliance with the Guidelines under Section 95 of the Privacy Act 1988.*

(b) *Will health information be sought from a Private Sector Organisation or a health service provider funded by the SA Department of Health?* Yes/No

*If Yes, please also complete Part B of the Appendix ‘Privacy legislation matters’ that relates to compliance with the Guidelines approved under Section 95A of the Privacy Act 1988.*


*If you answered ‘No’ to both (a) and (b) please continue to C3…*

C3. *Does your project comprise health research involving Aboriginal or Torres Strait Islander peoples?* If so, please read the NHMRC *Values and Ethics: Guidelines for Ethical Conduct in Aboriginal and Torres Strait Islander Health Research*, available from the NHMRC web site www.nhmrc.gov.au

No, the project will not comprise Aboriginal or Torres Strait Islander health research.

C4. *Data*  

*Please tick more than one box if appropriate*

- Are data to be obtained primarily [ ] quantitative  [ ] qualitative  [x]
  *(please tick)*

- Is information to be sought by  
  [ ] questionnaire  [x] interview  [x] 
  [ ] experiment  [ ] computer  [ ]
  [ ] focus group  [ ] other (please state) ……………

*Will participants be video- or tape-recorded?*  

[ ] video  [x] tape  [x]

C5. Outline of the *research method*, including what participants will be asked to do.

Participants who indicate a willingness to be interviewed will be contacted to arrange times and places to conduct interviews. A copy of the transcript will be provided to the participants for their review prior to publication in the thesis.

Participants who cannot be interviewed will be emailed a questionnaire comprising of yes/no answers with extended responses. A hard copy of the questionnaire can be supplied with full return postage upon request. A copy of the completed questionnaire can be supplied upon request to participants for review prior to publication in the thesis.
C6. Briefly describe how the information requested from participants addresses research objectives.

While there is a growing body of literature concerning the repatriation of remains, there remains a void of literature regarding the care and reburial of repatriation remains and the provisions of state legislation to perform these acts (burial, cremation and care). In order to provide an accurate research thesis I decided that interviews with person involved in the process of repatriation a reburial would be critical in providing a balanced thesis. The questions will be designed to obtain information regarding the process of repatriation, care and reburial of remains, views on current legislative limitations and possible future changes.

D. PARTICIPANT INFORMATION

*If the research involves or impacts upon indigenous Australians, staff of Yunggorendi must be consulted and their written advice about the appropriateness of the project in relation to ethical principles for research involving or impacting upon indigenous Australians must be included with this application.*
D1. (a) Who are the participants? What is the basis for their recruitment to the study?

Participants are Indigenous community members, Representatives from the Aboriginal Land Council (Tasmania), archaeologists and other people who have worked within the repatriation process at some stage in their careers. They have been selected to take part because of their first-hand experience with repatriation and the reburial process.

(b) How many people will be approached?
Approximately ten people, will be contacted to participate in an interview or alternatively complete a questionnaire.

(c) From what source?
A list of possible participants was gained from my supervisor. This list consisted of people known to Dr Lynley Wallis whose names are listed in professional journals and on their organisations' web pages and so, are in the public domain.

(d) What (if any) is the researcher's role with, or relation to, the source organisation? Comment on potential for conflict of interest.
There is no potential for conflict of interest regarding the selection of participants as I am not affiliated with any of the organizations or persons selected for participation in question.

(e) If under 18 years, what is the age range? Has the information been presented in a manner and format appropriate to the age group of participants?
To my knowledge there are no participants under 18 years of age. Approximately the age range of the participants will vary from early 20s to late 70s. All information has been presented in an easy to read and understand format.

(f) Do participants have the ability to give informed consent?
Yes. Prior to participation, participants will be advised that the information obtained will be used in my honours thesis. Participants will have the opportunity to advise me of how they want the information to be used in the research. Participants will be able to refuse the use of their answers to any question that they wish. Participants do not need to complete the questionnaire and can stop the interview at any time.

D2. Indicate whether the participant group comprises a specific cultural / religious background, for example Aboriginal or Torres Strait Islander, Indonesian, Catholic, Muslim etc..., or, if any such categories are likely to form a significant proportion of the population to be sampled. If the answer is yes and the group/sub-group is of Aboriginal or Torres Strait Islander background, a copy of this application must be submitted to the Director of Yunggorendi for advice and comment.

Yes, the participant group will primarily consist of Aboriginal or Torres Strait Islanders. A copy of this application will be submitted to the Director of Yunggorendi for advice and comment prior to approval of research.
D3. Are there particular issues with **language**? Do the forms or information need to be presented in a language other than English? If so, how will this be managed? If people other than the researcher will be involved in translating participants’ responses, how will anonymity / confidentiality matters be managed?

No, to my knowledge, there are no particular issues with language as all those to be contacted are known to speak English. No interpretation needs to be given and participants can contact me at any stage with queries.

D4. How are participants to be **contacted and recruited**? *If by advertisement, please provide a copy of the ad. If contact is made through an organisation, the Committee expects that the organisation will not provide researchers with contact details of potential participants. The organisation may make the initial approach and invite potential participants to contact the researcher.*

All participants will initially be contacted via email or telephone. A hard copy letter can be sent via post and faxed to participants upon request.

D5. What **information** will be given to **participants**? *Refer to statement of Guidelines and suggested templates for introduction letter, consent forms etc included in the application kit. Copies of relevant documents, questionnaires or list of interview questions, if applicable, must be attached. The objectives of the research and information about any relevant procedures, expected time commitment etc should be clearly stated for participants in language suitable for the lay person.*

Participants will be provided with an introductory letter from my supervisor, a consent form and the questionnaire itself, all are attached to this application for research.

D6. Indicate **confidentiality and anonymity assurances** to be given and procedures for obtaining the free and informed consent of participants. *Refer to Guidelines and suggested templates for introduction letter, consent forms etc included in the application kit. Copies of relevant documents must be attached. If anonymity is not able to be guaranteed due to the nature of the participant group, or because a participant may be identifiable in relation to their professional capacity or association with an organisation, there should be a clear statement to this effect for the participant.*

All participants will be informed via the Letter of Introduction that information provided which identifies an individual will not be published in my thesis. Confidentiality of information provided by participants will be respected. All completed questionnaires and tape recordings of interviews will be retained, but will not be available for general use. At any stage, the participants can request that information be used in selected ways, omitted or changed.

Consent, will be achieved by clearly stating that the participation in the interview or questionnaire is voluntary. In order to participate in the interview or questionnaire, a Consent Form (attached) will be supplied to participants prior to their participation to be completed and collected at the time of the interview or questionnaire. The Letter or Introduction and Consent Form state the purpose of the research, the requirements of participants and the rights of the participants to stop the interview or refrain from answering questions.
D7. Indicate any **permissions** required from or involvement of other people (employers, school principals, teachers, parents, guardians, carers, etc) and attach letters or other relevant documentation as applicable.

No permission for other people is required for this research as all potential participants are either academic researchers or community elders.

D8. Indicate any involvement of **incidental people** (eg in certain professional observation studies you might need to consider how you will inform such people about the research and gain their consent for their incidental involvement. An oral statement to the group incidental to the observation immediately prior to the commencement of the observation may be sufficient).

There is no known incidental people for this research thesis at this time.

D9. Indicate the expected **time commitment** by participants, and proposed location, if being interviewed or required to complete a survey (include this information in the Letter of Introduction to participants)

The interview is expected to last no longer than two hours. A mutual time will be arranged with all participants at a time that suits their commitments. A questionnaire, containing the interview questions will be provided to participants who cannot take part in an interview. The questionnaire can be completed by the participants at their leisure and returned at a time that suits them. The questionnaire is not expected to take more than one hour to complete.
## E. SPECIFIC ETHICAL MATTERS

<table>
<thead>
<tr>
<th>E1. Outline the value and benefits of the project (eg to the participants, your discipline, the community etc…)</th>
</tr>
</thead>
<tbody>
<tr>
<td>The benefits of this research will be to create an understanding of how State and Council Legislation affects the care and reburial of repatriated remains. To my knowledge this issue has not been extensively researched and as such it will provide the discipline with new information regarding the issue. This research will highlight where further research needs to be carried out and consequently it may lead to further research projects in the future.</td>
</tr>
<tr>
<td>Participants will be provided with a summary of the results of the study. Thus providing information on the experiences of other communities and academics in the field of repatriation.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>E2. Notwithstanding the value and benefits of the project, outline any burdens and/or risks of the project to your research participants and/or other people (eg issues of legal or moral responsibility; conflicts of interest; cultural sensitivities; power differentials; invasion of privacy; physical/mental stress; possible embarrassment).</th>
</tr>
</thead>
<tbody>
<tr>
<td>There are no burdens and/or risks of this research. Participants will not be identified in the thesis by name, confidentiality of any sensitive material will be respect and not published if the participant specifies. As all participants will be anonymous, possible embarrassment will not occur. The research will not cause any physical or mental stress by its participants. Similarly, no invasion of privacy will result through their participation in the research.</td>
</tr>
</tbody>
</table>

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<tr>
<th>E3. If any issues are raised in item E2, detail how the researcher will respond to such risks. If deemed necessary, researchers should be prepared to offer encouragement, advice and information about appropriate professional counselling that is available and/or to encourage participants to report negative experiences to appropriate authorities. If it is envisaged that professional counselling may be recommended, please nominate specific services.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not applicable to this research.</td>
</tr>
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</table>

<table>
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<tr>
<th>E4. Describe any feedback or debriefing to be provided to participants that may be relevant to the research.</th>
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<tbody>
<tr>
<td>All participants will be thanked for their involvement in the study via email or post. They will also be provided with a copy of their completed questionnaire or transcript of their interview for their record. Changes to the transcript or questionnaire will be offered in this email. They will be notified that a summary of the results of the study will be provided to all participants once the study is finalised.</td>
</tr>
</tbody>
</table>
E5. If participants are required to complete a questionnaire, indicate the arrangements for ensuring the secure and confidential return of the questionnaire to the researcher (e.g., sealable, addressed envelope; personal collection by the researcher; other). Also indicate how participants will be informed of the arrangement (e.g., verbal instruction; written instruction in Letter of Introduction or at the end of the questionnaire; other). If information is to be provided via electronic or web-based technology, participants should be reminded in the written documentation and in on-line material that this is not a secure medium.

For participants who complete a questionnaire, the questionnaire will be sent out electronically via email. If the participant's request a hard copy of the questionnaire, this will be sent via post in a sealed envelope. Participants will be reminded via email that if they choose to return the completed questionnaire via email that it is not a secure medium.

<table>
<thead>
<tr>
<th>E6. Indicate any relevant <strong>data transcription</strong> issues. If interview tapes are to be transcribed by persons other than the researcher, an assurance that such persons will be subject to the same requirements to respect and maintain confidentiality and anonymity of the participant should be included in the Letter of Introduction to the participant.</th>
</tr>
</thead>
<tbody>
<tr>
<td>All data transcriptions are to be performed by the researcher. Thus, no issues concerning the transcription are foreseen.</td>
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<tr>
<th>E7. Indicate any issues of <strong>participant control of data use</strong> (a) in the immediate reporting, and (b) in future use of the data; e.g., will participants have an opportunity to view transcripts of their interview and/or the final report for comment/amendment?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Participants will be given the opportunity to edit and amend any information provided in their transcripts or questionnaire prior to being published in the thesis. This will be outlined in the Letter of Introduction. All participants will be provided with a copy of the results of the interviews and questionnaires published in the thesis and the finalisation of the study.</td>
</tr>
</tbody>
</table>
E8. DATA STORAGE AND RETENTION

Note that data should be retained in accordance with the Joint NHMRC/AVCC Statement and Guidelines on Research Practice (available at the website http://www.health.gov.au/nhmrc/research/general/nhmrcavc.htm) which indicates storage of data in the department or research unit where it originated for at least 5 years after publication (15 years may be appropriate for clinical research).

Please tick all boxes that apply to your research.

On completion of the project, data will be stored:

- In writing  Y
- On computer disk  Y
- On audio tape  N
- On video tape  N
- Other (please indicate) All information will be stored on CD.

Data will be stored in a de-identified form  Yes

If No, explain (a) why and (b) how anonymity and confidentiality of participants will be ensured

Original questionnaires will be de-identified and will not be made available to anyone other than my Supervisors in order to protect the identities of the participants. Summaries of the results will be stored at the university and by myself both in written form and on CD.

Data will be stored in the Department/School of Flinders University  Yes

Data will be stored for a minimum of 5 years.  Yes

If you have not answered Yes to both the above two questions, please clarify ...

F. REMAINING MATTERS

F1. Indicate any other centres involved in the research and other Ethics Committee(s) being approached for approval of this project (if applicable), including the approval status at each. You must forward details of any amendments required by other Ethics Committees and copies of final approval letters received.

Not applicable to this research
F2. Indicate amounts and sources/potential sources of **funding** for the research. You must also declare any affiliation or financial interest.

There has been no funding acquired for this research. There is no financial interest or affiliation in this research or for this research.

F3. Identification Card Requirements for Research Assistants.

Indicate how many accredited interviewer cards will be required for this project (additional to current student or staff identification cards):

**Number = 0**

Note that enrolled students of the University should use their student identity cards supported by a Letter of Introduction from the responsible staff member/supervisor.


Copies of the following supporting documents, if applicable, must be attached to this application. Some sample template documents are included in the application kit. *Please mark the relevant circle.*

<table>
<thead>
<tr>
<th>Document</th>
<th>Attached</th>
<th>Not applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Letter of Introduction on University letterhead from the staff member</td>
<td>O</td>
<td></td>
</tr>
<tr>
<td>(from the Supervisor in the case of undergraduate and postgraduate</td>
<td></td>
<td></td>
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<tr>
<td>research projects)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Questionnaire or survey instruments</td>
<td>O</td>
<td></td>
</tr>
<tr>
<td>List of interview questions or description of topics/issues to be</td>
<td>O</td>
<td></td>
</tr>
<tr>
<td>discussed, as appropriate</td>
<td></td>
<td></td>
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<tr>
<td>Information sheets for participants at any stage of the project</td>
<td></td>
<td>O</td>
</tr>
<tr>
<td>Consent Form(s) for Participation in Research – by Interview</td>
<td>O</td>
<td></td>
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<tr>
<td>– by Focus Group</td>
<td></td>
<td>O</td>
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<tr>
<td>– by Experiment</td>
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<td>O</td>
</tr>
<tr>
<td>– other (by questionnaire)</td>
<td></td>
<td>O</td>
</tr>
<tr>
<td>Consent Form for Observation of Professional Activity</td>
<td></td>
<td>O</td>
</tr>
<tr>
<td>Advice from Yunggorendi for research involving or impacting upon</td>
<td></td>
<td>O</td>
</tr>
<tr>
<td>indigenous Australians</td>
<td></td>
<td></td>
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<tr>
<td>Appendix for recruitment of participants</td>
<td>O</td>
<td></td>
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<tr>
<td>----------------------------------------</td>
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<tr>
<td>Debriefing material</td>
<td>O</td>
<td></td>
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<tr>
<td>Appendix: Privacy legislation matters</td>
<td>O</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>F5. Research involving or impacting on Aboriginal or Torres Strait Islander peoples: N/A</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Has a copy of this application been forwarded to the Director of Yunggorendi?</td>
<td>O</td>
<td></td>
</tr>
</tbody>
</table>
G. CERTIFICATION & SIGNATURES

The Researcher and Supervisor whose signatures appear below certify that they have read *the Ethical Guidelines for Social and Behavioural Research*, and guidelines of any other relevant authority referred to therein, and accept responsibility for the conduct of this research in respect of those guidelines and any other conditions specified by the University’s Ethics Committees.

As a condition of subsequent approval of this protocol, I/we, whose signature(s) appear(s) below, undertake to

(i) inform the Social and Behavioural Research Ethics Committee, giving reasons, if the research project is discontinued before the expected date of completion.

(ii) report anything which might warrant review of ethical approval of the protocol, including:
- serious or unexpected adverse effects on participants;
- proposed changes in the protocol; and
- unforeseen events that might affect continued ethical acceptability of the project.

(iii) provide progress reports, annually, and/or a final report on completion of the study outlining
- progress to date, or outcome in the case of completed research;
- maintenance and security of data;
- compliance with approved protocol; and
- compliance with any conditions of approval.

<table>
<thead>
<tr>
<th>Principal Researcher’s Signature:</th>
<th>Date:</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Supervisor’s Signature:</th>
<th>Date:</th>
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<tr>
<td><em>(for undergraduate and postgraduate student projects)</em></td>
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APPENDIX 5:

EMAIL APPROACH: To collecting institutions and government departments

To,

I am currently completing my Honours degree in Archaeology at Flinders University (Adelaide) under the supervision of Dr Lynley Wallis. The topic of the thesis is Politics of the Dead: A comparative analysis of state legislation in southeastern Australia regarding the reburial of repatriated skeletal remains.

I am attempting to determine the legislation options for reburial within each state (New South Wales, South Australia and Victoria). The study will explore the current administration of the legislation and institutional policies relative to repatriation and reburial. In doing so, the study will examine differences between the selected states and provide basic information for Indigenous communities regarding current reburial policy in the region.

I would be very grateful if you could supply information or copies of your policies regarding the repatriation of Indigenous skeletal remains and some basic additional information regarding the development of the policy. All information provided is for research only.

If you wish to contact me regarding further details of this research, I am contactable via email at mear0009@flinders.edu.au. My supervisor, Dr Lynley Wallis is contactable via email at Lynley.Wallis@flinders.edu.au or alternatively via phone at (+61 8) 8201 3520 or fax at (+61 8) 82012784.

I have attached potential background questions, which would be helpful in understanding the context and administration of your policy.

Yours Sincerely,

Tamarind Meara
Student Number 2010095
APPENDIX 5:

EMAIL APPROACH: Potential policy background questions

Name of Department/Institution:

Name of Policy:

1. When was the policy developed (date):

2. Were Indigenous communities consulted in the policy development?

3. If No, Why?

4. Have skeletal remains been repatriated during the administration of the policy?

5. To your knowledge have the repatriated remains been reburied?

Thankyou.
APPENDIX 5:

EMAIL RESPONSES

Name of Respondent: Adrienne How-Piening, Repatriation Coordinator, Department of Environment and Climate Change (NSW).

Dear Tamarind,

Thank you for your email, your thesis topic sounds interesting, but I must admit that I wonder if you’ll struggle to form an argument, if your focus is on legislation, because legislation doesn’t change rapidly enough to respond to reasonably modern concepts such as reburial and therefore you won’t, for example, find reference to ‘reburial’ in NSW legislation covering the protection of NSW Aboriginal heritage (ie. the NSW National Parks and Wildlife Act 1974), however you will find the provision within the Act for the transfer of Aboriginal ‘objects’ to relevant Aboriginal custodians for the purposes of safekeeping (Care Agreements).

Policy is generally the organisational interface that seeks to address broader changes occurring in society affecting the business of government and vice versa, and DECC does have policy applying to repatriation (developed in 2002 out of a number of years of prior experience in conducting repatriation-focussed work with NSW Aboriginal communities), but it is an internal policy document only, which seeks to guide the work of the organization and its staff. However I have attached a document that we provide to Aboriginal communities to explain DECC’s role in repatriation and why the organization has inherited a collection of ancestral remains.

Just to answer your other questions:
1. 2002 (Internal policy document only)
2. Developed out of number of years of prior experience in conducting repatriation-focussed work with NSW Aboriginal communities.
3. Yes, a significant number of ancestral remains have been repatriated in the time since DECC’s Repatriation Policy was finalised;
4. I don’t know of any cases in NSW where ancestral remains haven’t been reburied.

Hope this is useful,

Don’t hesitate to contact me if you have further queries.

Cheerio,
Adrienne Howe-Piening
Dear Ms Meara,

Thankyou for your request for information about the Aboriginal Affairs and Reconciliation Division’s (AARD) policy on the repatriation of Aboriginal skeletal remains.

In relation to your honours thesis in archaeology at Flinders University you have requested:

- A copy of AARD’s draft repatriation policy (it is requested that as this policy is still in the draft stage that you do not disseminate the information to other parties)
- Background information as per your questionnaire.

I have attached our response to your questions. I hope this assists you research and wish you well in your thesis preparation. If you have any further enquiries, please contact Dr Kathryn Powell, Senior Project Manager (8226 8937).

Questionnaire Responses:


1. April 2005 (although various incarnations had been drafted before this). The current status of the policy is that it is draft only and has not been signed off at senior management or executive director level.

   The policy provides a set of guidelines from which each application for repatriation assistance or circumstance arising is considered individually. The extent to which assistance is provided is dependent on the resources AARD has to offer at that time.

2. No. The draft policy is not complete as the issues surrounding repatriation by AARD are complex and require considerable resources to enact. The matter will be discussed with the Aboriginal Heritage Committee before any final endorsement is considered.

3. There have been 10 cases of the repatriation of ancestral remains on AARD’s records. During this period, the policy was in various stages of development.

4. Yes, the ancestral remains were buried at the time of repatriation or shortly thereafter, usually with assistance from AARD heritage staff.
Name of Respondent: Simon Greenwood, Museum Victoria.

Name of Policy: Repatriation of Aboriginal and Torres Straight Islander Cultural Property.

1. Adopted 30 June 2003. The Museum’s current repatriation policy covers the return of all Indigenous cultural property held within its collections, although the focus is ancestral remains and secret/sacred objects. The policy was formally adopted mid-2003, but developed from an existing policy statement on management of Aboriginal skeletal remains originally developed over the period 1993-1995.

2. Yes. The Museum’s Aboriginal Cultural Heritage Advisory Committee oversaw the formulation of this policy, authorship of which resided with the Museum’s Indigenous Cultures Department.

3. Yes, during the life of the two policies in excess of 1000 individuals have been repatriated from the collection and reburied.

4. In most cases, yes, although there are on occasions a time lag between repatriation and reburial. The Museum regards the ultimate disposition of repatriated people and objects to be entirely the business of relevant traditional owners. Repatriations from Museum Victoria are unconditional.

Name of Respondent: Philip Clarke, South Australian Museum.

Dear Tamarind

Please find my answers attached. The relevant repatriation policies are available from our website. I also suggest you look at the Return of Indigenous Cultural Program (DCITA) which is why our museum is still very active in the repatriation arena.

Please let me know if you require anything else.

Regards,
Philip Clarke

Name of Policy: Human Skeletal Remains Collection Policy


2. YES. Extensively.

3. Yes. Within SA, interstate and overseas. Still ongoing under federal-funding (Return of Indigenous Cultural Property Program)

4. Yes for some returned collections, others in Indigenous control but awaiting community decisions.
Name of Respondent: Phil Gordon, Australian Museum (NSW).

Hi there
I have attached our policy document, you will see that it covers a whole range of issues this is because we don’t take repatriation as a one off we feel that it is the beginning of a relationship.
If there are any questions please don’t hesitate to contact me
Cheers
Phil

Note: No response to questionnaire questions was provided