



Victorian **Aboriginal Heritage** Council

Bringing our Ancestors Home: We will not be well until this is done

Recommendations for change

June 2014

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Acronyms and abbreviations

Shortened form	In full
Act	<i>Aboriginal Heritage Act 2006 (Victoria)</i>
Coroners Court	Coroners Court of Victoria
Council	Victorian Aboriginal Heritage Council
Discussion Paper	<i>Bringing Our Ancestors Home; Managing and returning Ancestral Remains in Victoria since the commencement of the Aboriginal Heritage Act 2006</i>
Minister	The Minister for Aboriginal Affairs
OAAV	Office of Aboriginal Affairs Victoria
Options Paper	<i>Bringing our Ancestors Home; Responses to the Discussion Paper and Options for Change</i>
RAP	Registered Aboriginal Party, appointed under the Act to represent Traditional Owners of a specific geographical area
Register	Victorian Aboriginal Heritage Register

Introduction

This paper outlines the Victorian Aboriginal Heritage Council's (Council) advice to the Minister for Aboriginal Affairs (Minister) on how Victoria's *Aboriginal Heritage Act 2006* (the Act) should change in relation to Ancestral Remains.

Traditional Owners have always had responsibilities to their Ancestors and to burial sites. This paper recommends legislative responsibility be given to the Council to ensure the swift and respectful return and burial of Ancestral Remains.

In preparing these recommendations, Council has analysed the current legislation, taken account of members' own experiences and sought input from Traditional Owners and other stakeholders about how the Act should change.

Why changes are necessary

No change to an Act of law or policy can undo the wrongs of the past. Talking about this issue has been distressing and frustrating for all involved.

In preparing this paper, Council has:

- Investigated the past and current management of Ancestral Remains in Victoria.
- Published the Discussion Paper *Bringing Our Ancestors Home; Managing and returning Ancestral Remains in Victoria since the commencement of the Aboriginal Heritage Act 2006* (Discussion Paper) in February 2013.
- Sought feedback from Registered Aboriginal Parties (RAPs) and other Traditional Owners, universities, the Coroners Court of Victoria (Coroners Court), Museum Victoria, the Office of Aboriginal Affairs Victoria (OAAV) and other interested organisations and individuals, through written and verbal submissions, meetings and two workshops held in July and November 2013.
- Published a summary of the responses and proposed options for changing the Act in *Bringing our Ancestors Home; Responses to the Discussion Paper and Options for Change* (Options Paper) in November 2013.

These investigations and consultations have been carried out within a tight timeframe in order to meet the Government's deadline for proposed changes to the Act following the *Parliamentary Inquiry into the Establishment and Effectiveness of RAPs* and the Review of the Act.

As a result of the feedback, Council recommends change in four areas:

1. Managing and protecting burial places
2. Avoiding Ancestors being disturbed
3. Returning Ancestors to their people and their Country as respectfully as possible
4. Improving the understanding and awareness in the broader community of how important Ancestral Remains are to our people.

The rest of this paper explores these areas in more detail, including describing the information provided to Council by Traditional Owners and others.

In the words of Council member Eleanor Bourke, "We will not be well until this is done" (October 2013).



*The remains of 38 unprovenanced Aboriginal Ancestors were laid under this stone, King's Domain Reburial Place
(Photo: Office of Aboriginal Affairs Victoria).*

Rise from this grave

Rise from this grave
Release your anger and pain
As you soar with the winds
Back to your homelands.
There find peace with our
Spiritual Mother the Land
Before drifting off into the
"Dreamtime"

JIM BERG

1. Appropriate language and terminology for Ancestral Remains

Many Traditional Owners said the Act does not truly convey their role in caring for the remains of Ancestors. Traditional Owners said the language used needs to reflect the eternal relationship and responsibility Aboriginal and Torres Strait Islander people feel towards their Ancestors.

The overall effect of the changes proposed should clarify the importance of Ancestral Remains and result in materials associated with burials being given the same respect as the Ancestral Remains themselves. These items belong with our Ancestors and should not be considered as separate to the Ancestors.

Council recommends the Act:

- 1.1** Use the term 'Ancestral Remains' when describing the human or skeletal remains of Ancestors.
- 1.2** Define Traditional Owners' relationship to Ancestral Remains as one of 'custodian' or 'carer'.
- 1.3** Define secret and sacred objects as including objects buried with Ancestral Remains for ceremonial purposes.

Many Traditional Owners described the difficulty in finding English terms to adequately express their role in relation to Ancestral Remains.

Council recommends:

- 1.4** Policy and communications materials relating to Ancestral Remains use Victorian Aboriginal terminology, words and concepts wherever possible.

2. Legislating Council's role

Traditional Owners saw a need for one body to oversee what is happening with Ancestral Remains across Victoria and for returns from outside the state.

Key functions of a Victoria-wide body would be: communicating with all relevant parties; assisting with the timely response upon the discovery of Ancestral Remains; and, facilitating swift action for the return of Ancestral Remains and protecting Ancestral Remains buried on Country.

In some cases, where no progress is being made, Traditional Owners said such a body should be able to direct that steps be taken to return Ancestral Remains. Council, as a state-wide body of Traditional Owners, was identified as the most relevant and appropriate body to carry out this role.

Traditional Owners suggested that the Council could also support them in establishing a consistent approach across Victoria by articulating frameworks for caring for Ancestral Remains, and by coordinating training and access to expert help (such as in the form of physical anthropologists).

Sadly, the general community may be unaware of how Ancestral Remains have been dealt with and the outstanding issues Council continues to work through. Traditional Owners and Council need to have the resources to inform the public about what has happened and gain support from relevant authorities. This is necessary to avoid the delays that have occurred in the process of returning Ancestral Remains.

Council's working arrangements may also need to change to fulfill this new state-wide role. Delegation of additional work to the Council Secretariat or the creation of a subcommittee of Council may be necessary. Staffing and resources will also need to reflect additional workload and responsibilities with other specific expertise required within the Secretariat.

In short, changes are needed to enable Council to act as the body responsible for overseeing, monitoring and reporting on the management of Ancestral Remains across Victoria.

Council recommends the Act:

- 2.1** Enable the Council as the responsible body for overseeing, monitoring and reporting on the return and protection of Ancestral Remains in Victoria, with RAPs and other Traditional Owner groups retaining the primary responsibility for caring for Ancestral Remains.

Council's role should include:

- 2.2** Keeping track of efforts to return Ancestral Remains across Victoria through establishing a monitoring and reporting framework.
- 2.3** Having powers and resources to investigate organisations and individuals thought to be in possession of Ancestral Remains and to direct steps to be taken to return Ancestral Remains. This role would require Council to have access to investigators, lawyers and others (such as historians and physical anthropologists) who could work with Council to look into claims about Ancestral Remains.
- 2.4** Following up with Traditional Owners working with agencies in the process of returning Ancestral Remains and providing support or assistance that may be needed.
- 2.5** Providing facilitation or dispute resolution where Traditional Owners need to come to an agreement over Ancestral Remains.
- 2.6** Supporting Traditional Owners, as custodians of Ancestral Remains, by facilitating access to resources, coordinating training and facilitating counselling and other allied support mechanisms.
- 2.7** Liaising with key government departments and organisations involved in the management of Ancestral Remains, including facilitating key partnerships between government agencies and RAPs and other Traditional Owner groups.

3. Strengthening the role of Traditional Owners

RAPs expressed frustration that the current legislation and policy framework do not provide enough assistance to enable Traditional Owners to carry out all of their responsibilities. Some Traditional Owner individuals and groups expressed concern over exclusion arising from policies under the Act. This applies particularly to those groups who are not RAPs.

Council's ultimate goal is to have RAPs in place for all of Victoria. In the meantime, Traditional Owners wish to see inclusive frameworks for managing Ancestral Remains given our shared purpose to honour and respect our Ancestors by protecting Ancestors' resting places and reburying those who have been removed.

It is critical that we strengthen the role of Traditional Owners, by supporting local Traditional Owners in the care and custodianship of Ancestral Remains, coordinating specific training (for example in the identification of Ancestral Remains), providing access to expertise and resources and establishing better engagement and coordination with key agencies.

Council recommends:

- 3.1** The Act recognise the central, important role of Traditional Owners making decisions about, protecting, managing and returning the Ancestral Remains of their people.
- 3.2** The Government provide appropriate funding for Traditional Owners to manage responsibilities for Ancestral Remains.
- 3.3** The development of resources to support Traditional Owners, such as a clear process to follow when exploring options for reburial (identifying reburial sites, caring for and transporting Ancestral Remains, recording and organising ceremonial aspects).
- 3.4** Funding and support, such as access to counselling, is also needed to assist Traditional Owners dealing with the emotional fallout.
- 3.5** Specific, regular training for RAPs and Traditional Owners to assist with work, such as training on identifying Ancestral Remains, and building capacity to deal with all aspects of the repatriation process.



Burial protection works at Wallpolla Island. Photo by Darren Perry.

Where Are You My Children

Where are you my Children
Of this Land

As we lay exposed above
The ground

At the mercy of the rain
Wind and the sand

And the heat of the glaring sun
Bleaching our
Bones
Whiter than white

Children of this Land
Can you hear the whispers
Of your Ancestors

As you walk amongst
Their Bones

Asking you to bury them
Deep within the
Womb of our
Spiritual Mother the Land

Where they will find peace
Within themselves

As you will
As I did

Where are you my Children
Of this Land

JIM BERG

4. Leaving Ancestral Remains undisturbed and protecting burial places

Traditional Owners clearly articulated that wherever Remains are found, every option must be explored to leave these Ancestors undisturbed. This should almost always occur regardless of whether burials are located on private or public land, and regardless of proposed development in an area. However, we respect that there may be some unique circumstances where Traditional Owners wish to make different decisions in relation to burial places.

Where development is proposed in an area with known burials, or with potential burials, it is vital that Traditional Owners, the development sponsor and cultural heritage advisor have clear discussions upfront. These discussions should (as a minimum) deal with the potential of finding Ancestral Remains, and plan for how such discoveries will be dealt with. Ideally, flexibility will be built into such projects allowing impact on burial sites to be avoided.

Traditional Owners have raised serious concerns about the management of vast, ancient cemeteries in the north west of Victoria. These places are unique and fragile. They require careful planning and flexible responses, given the enormous challenges that must be confronted.

There are further complexities because Aboriginal owned and managed cemeteries, such as those at Weroona and Framlingham, are classified as private cemeteries. Under the *Cemeteries and Crematoria Act 2003*, this classification means Aboriginal organisations are unable to access funds either through the Department of Health (as these are not public cemeteries) or through the Department of Environment and Primary Industries (as they are not located on Crown land). Consequently many of the cemeteries are managed on an ad hoc basis. Maintenance, record keeping, protection of unmarked burials and significant headstones and markers are of ongoing concern.

In summary, changes should ensure we can better avoid Ancestral Remains being disturbed in the first place and we can better protect burial places, by:

- Developing a statewide framework for the protection, management and return of Ancestral Remains.
- Leaving Ancestral Remains undisturbed wherever possible and specifying the extremely limited circumstances when they may be removed.

Council recommends the Act:

- 4.1** Allow Ancestral Remains, wherever found, be left where they lie, regardless of whether this is on public or private land. This would include Ancestral Remains that are discovered as part of a cultural heritage investigation, permit or Cultural Heritage Management Plan process.
- 4.2** Be specific about when Ancestral Remains may be removed from their burial place.

Council recommends changes to supporting policy and frameworks, including:

- 4.3** Strategic management arrangements for areas with a high potential for burials, such as in the north west of Victoria, to ensure protection of these areas, particularly regarding development or infrastructure proposals in these areas.
- 4.4** Allocation of funding for Aboriginal-owned and managed private cemeteries to develop specific management plans, assist with the ongoing management of these cemeteries, and identify specific resource and support requirements.

5. Bringing the Ancestors home

Traditional Owners said there should be clear timeframes for the return of Ancestors and a straightforward process for all to follow.

Traditional Owners identified the need for tools and resources to support the return of Ancestors to Country. One example suggested was a straightforward flowchart showing steps to follow and standard conditions, including exploring and negotiating reburial options, transporting and looking after Ancestral Remains, and recording reburial sites. RAPs and other Traditional Owner groups could use such tools as a guide, and modify them to reflect the wishes and cultural practices of each group.

The proposed changes are therefore aimed at returning Ancestors to their people and their Country by establishing a clear process, timeframes and support measures for the return of Ancestral Remains.

Council recommends the Act:

- 5.1** Establish clear timeframes for returning Ancestral Remains.
- 5.2** Encourage institutions and individuals in possession of Ancestral Remains to come forward without fear of recrimination to commence the process of returning these Ancestors to Country within four years after the Act is amended.
- 5.3** Provide a straightforward process for institutions and individuals to follow to report Ancestral Remains, to identify the relevant Traditional Owner group and to return these Ancestors as seamlessly as possible.
- 5.4** Provide interim support measures, such as storage and short-term safekeeping of Ancestral Remains, while arrangements are made for their return.
- 5.5** Establish a process for formal agreements with landowners to designate land for the return of Ancestral Remains and funding for ongoing protection of burial places.

Council recommends changes to supporting policy and frameworks, including:

- 5.6** Developing tools and resources to provide clear guidance to institutions and individuals in possession of Ancestral Remains for reporting and returning these Ancestral Remains.
- 5.7** Allocation of appropriate funding to government departments, such as public land managers and emergency services, to manage government's responsibilities in relation to Ancestral Remains.

6. Clarifying roles and responsibilities

All Traditional Owners said they supported a process around discoveries designed to allow Ancestors to remain on Country and welcomed better working arrangements with the Coroner, Victorian Institute of Forensic Medicine, Victoria Police and others to ensure this occurs. Recent reviews of these arrangements have resulted in improvements and these gains should be reflected in, and supported by, changes to the Act.

The need for access to specific resources, such as physical anthropologists, was identified as a crucial component in providing information to the Coroners Court (and the Victorian Institute of Forensic Medicine which now undertakes initial investigatory stages of the Coroners process) so as to allow Ancestors to remain buried on Country.

The new framework proposed needs to clarify roles and responsibilities, including establishing protocols for communication and coordination.

Council recommends the Act:

- 6.1** Describe the role and specific responsibilities of each key party involved in the protection and repatriation of Ancestral Remains.
- 6.2** Establish protocols for coordination and communication between the Council, RAPs and Traditional Owners, OAAV, the Coroners Court and Victoria Police. The objective of these protocols must be to provide every possible opportunity for Ancestors to remain *in situ* if identified, uncovered or discovered.
- 6.3** Set specific response times for responding to reports of Ancestral Remains to ensure Ancestral Remains can be left *in situ* to the greatest extent possible.
- 6.4** Ensure Traditional Owners of an area are the decision-makers responsible for deciding what should happen with Ancestral Remains if discovered or uncovered during the Cultural Heritage Management Plan process or other cultural heritage investigations.

Council recommends changes to supporting policy and frameworks, including:

- 6.5** Engaging experts such as physical anthropologists to be available on-call to attend on site and provide expert input. This would require persons with a high level of expertise and experience, available for call-out every working day.
- 6.6** Developing consistent contingency plans and recommendations around Ancestral Remains for use in Cultural Heritage Management Plans and other heritage investigations to be applied across Victoria.

Skeletal

You are a point of interest,
Old bones in a museum case.
A card reads: THIS IS A SKELETON OF A
MEMBER OF THE ABORIGINAL RACE.
I wonder where you laid your head at night
When you roamed the banks of the Swan,
Perhaps you walked to Karla-munda
And on, and on,
By the marsh, by the reeds,
And gathered there your Jam and Wattle seeds.

You swam with reeds upon your head
And pulled the sleeping duck down under.
You knew the feel of rain on your face,
Lightning flash, the crack of thunder.

Yes, Old One, you knew how to live.
You had no need of white man's legislation.
What you could see was yours, supreme,
The earth and sky out of a dream
Was your Creation.

Fancy is gone, my dream of you is broken
By children rushing in the dim-lit room.
I touch the show-case gently as a token
And I hear him whisper: "Courage",
Through the darkness and the gloom.

BY JACK DAVIS

By arrangement with the Licensor, The Jack Davis Estate, c/- Curtis Brown (Aust) Pty Ltd.

7. Establishing respectful reporting and recording frameworks

Traditional Owners expressed fears about inappropriate access to information about burial and reburial locations, based on past experiences of these places being desecrated. Many cited concerns about the level of access by non-Traditional Owners to the current Victorian Aboriginal Heritage Register (the Register). Some Traditional Owners cited difficulties accessing the Register themselves.

Traditional Owners reasoned that any record or database of Ancestral Remains should be established and overseen by Traditional Owners and maintained separately with limited viewing. Such a database could be maintained by Council, and needs to be accessible by all Traditional Owners. Any record or database should allow for the addition of information, such as communications, reports received, and all actions in relation to Ancestral Remains, along the way.

Council supports the need for a system of record keeping without opening up this information to others. Sponsors and cultural heritage advisors would be able to seek necessary information through the RAP or Traditional Owner group.

In other words, changes are needed to establish respectful reporting and recording frameworks for monitoring the return of Ancestral Remains and ensuring burial and reburial places are protected.

Council recommends the Act:

- 7.1** Provide for Council to have a record keeping and reporting role on Ancestral Remains.
- 7.2** Provide for a confidential layer on the Register or a new database to be developed for recording burials, reburials and reports of Ancestral Remains. This should alert any land manager, cultural heritage advisor or other person permitted to access the Register to the potential presence of burials, and then require that further information only be obtained with the consent of the relevant RAP or Traditional Owner group.

Council also recommends:

- 7.3** Support and assistance for RAPs and Traditional Owners to record and protect burials and reburials.
- 7.4** Identifying and appropriately resourcing systems for keeping records up-to-date, and assisting Traditional Owners with entering details and accessing information.

8. Fostering understanding and respect in the broader community

Education about what happened in the past will help the broader community to understand Aboriginal and Torres Strait Islander peoples' desire and need to return Ancestors to Country.

Many of those consulted following the publication of the Discussion Paper emphasised the importance of promoting better understanding in the general community, as well as ensuring those with specific roles receive appropriate cultural and technical training.

This should be accompanied by clear penalties in relation to non-compliance by public agencies, land managers and individuals with respect to the management of burial places and the return of Ancestral Remains.

Council recommends:

- 8.1** A comprehensive public education campaign as a critical component of ensuring compliance with and enforcing amendments to the Act. This public education campaign would seek to inform the Victorian community of the history and importance of Ancestral Remains. The campaign would also reach out to institutions and individuals in possession of Ancestral Remains to encourage reporting and to outline steps in the repatriation process.
- 8.2** Targeted education programs, for example for those within the justice system, about the importance of Ancestral Remains to Aboriginal people and the history of their removal.
- 8.3** As well as education, Council believes clear penalties are now needed to support action on returning Ancestral Remains, and to protect burial sites into the future.

Council recommends the Act:

- 8.4** Establish clear penalties for organisations or individuals holding or possessing Ancestral Remains who do not report these to Council, who do not commence the process of repatriation, or who do not make demonstrable progress on repatriation.
- 8.5** Set penalties for removing or otherwise disturbing Ancestral Remains or secret/sacred objects from burial or reburial locations.
- 8.6** Establish a penalty mechanism for failing to protect burial and reburial places, where appropriate notification has been provided to the relevant land manager.

Conclusion



Council welcomes the positive changes that have been taking place in recent years. For example, we are seeing improvements in the way key government agencies, Traditional Owners, Council and landowners are engaging and working together to protect the burial places of Ancestors and to return others to Country. Museum Victoria is placing a strong emphasis on working with Traditional Owner groups to return the Ancestors it holds in safe-keeping. Council congratulates Museum Victoria on the progress it is making.

However, changes to the Act and its policy frameworks are still needed for the vital work of returning our Ancestors to Country to be advanced, and one day completed. Therefore, Council recommends the above changes to the Act and its supporting policies and frameworks.

We will not be well until all of our Ancestors are returned home.

