



TASMANIAN  
ABORIGINAL  
CENTRE INC.



Marrawah Law Pty Ltd

# SEVENTEEN LOST SOULS

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# THE REPATRIATION OF OUR OLD PEOPLE FROM OVERSEAS INSTITUTIONS

NATIONAL NATIVE TITLE CONFERENCE 2015

Greg Brown and Leah Cameron, Repatriation Representatives  
for the Tasmanian Aboriginal Centre

# The Position of the National History Museum

- The powerful British Natural History Museum ('NHM') had consistently bucked the trend in repatriating Old People.
- When they announced they would repatriate the remains of 17 Tasmanian Aboriginal Old People this signalled a massive shift in repatriation policy by a prominent institution.
- In our mind, the decision would undoubtedly influence other UK institutions who held sizeable collections of our Old People.
- True to form the NHM were not going down without a fight. The museum stated they would conduct invasive tests on the remains before handing them over.

# The Position of the National History Museum (continued)

- This was despite the fact that the Tasmanian Aboriginal Centre ('TAC') had repeatedly advised that testing was prohibited.
- At the heart of disputes between scientists and museums on the one hand, and indigenous peoples on the other, is whether the Old People are to be treated as mere 'objects' or as people.
- The NHM stated that:
  - *the decision to return the Tasmanian remains, following a short period of data collection, is a commonsense one that balances the requirements of all those with an interest in the remains.*

# The Position at Law

- Section 21 of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth) provides:  
*[T]he Minister ... shall:*
  - (a) *return the remains to an Aboriginal or Aborigines entitled to, and willing to accept, possession, custody or control of the remains in accordance with Aboriginal tradition...*
- In the UK, the *British Human Tissue Act 2004* (UK) was amended to provide museums with discretion to de-accession any of its human remains collections.
- This coupled with the ‘Guidance for the Care of Human Remains in Museums’ (‘the Guidance’) provided the means by which all institutions (public and private) could legally repatriate.

# Commencement of Legal Proceedings in Tasmania

- *Re Estate of Tupuna Maori* (Unreported High Court of New Zealand, 19 May 1988) - Justice Greig granted Letters of Administration relating to remains in favour of the applicant Maori.
- *Re An Application by the Tasmanian Aboriginal Centre Inc* [2007] TASSC 5- Chief Justice Underwood granted Letters of Administration to the TAC, effectively granting rights over the estate of the 17 Old People.
- At common law there is no property in the dead (*Doodeward v Spence* (1908) 6 CLR 406), however the Chief Justice found that there is a form of property in remains (such as a licence to bury) and that a grant of administration may be made to ascertain the estate.
- The discretion was exercisable in favour of the Aboriginal applicants in this particular case because there was evidence that the remains, ie the subject of the estate, were under threat by NHM, and that the TAC intended to launch proceedings concerning the Old People in the British High Court.
- As there were no assets to speak of, the remains became the whole of the estate.

# Commencement of Legal Proceedings in the UK

- The London legal team including ex-pat Geoffrey Robertson QC, obtained urgent interim injunctions. The matter was set down for trial but was first sent to mediation.
- The mediation was conducted jointly by Sir Laurence Street QC and Lord Woolf. It was agreed in the mediation that the NHM would repatriate all the remains. However, some of the genetic material previously extracted without the TAC's consent would be held at Forensic Science Service Tasmania under the joint control of the TAC and the NHM.

# Government Involvement in Process

- Government-to-government negotiations on repatriation can be integral to returning remains, but are only helpful where they are at the behest of the Aboriginal claimants.
- In the case of the NHM and in our dealings with other institutions we were informed that the involvement and visitation of Australian Government officials separately to us were considered as a conflicting claim to the remains.
- By maintaining a tight hold on the reigns, the TAC was able to benefit from the 'appropriate' help from the Australian Government.

# Moving Forward

- The TAC was unable to establish a legal precedent that other indigenous groups could rely on however, the change in position by this NHM may cause others to follow.
- The lessons we have learnt from our battle from the NHM include that:
  - 1. Aboriginal groups need to press their case for repatriation and should apply for an external grant of aid to do so from the Federal Government;
  - 2. The application for administration of an estate is not straight forward and may depend on the relationship between the applicants and the deceased. Importantly, the court will require evidence about the deceased and an explanation as to why the discretion to make the grant should be exercised.
  - 3. The terms of any grant made should be framed to enable the Aboriginal or Torres Strait Islander group to seek possession of the remains without any physical interference, and prevent actions that may infringe cultural sensitivities.



# QUESTIONS?



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Feel free to contact Greg or Leah after this session if you have further questions.

