

**KALACC RE Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs -
Public hearing 8 June 2023 - questions on notice**

24 June 2023

1. Do you think the current UNDRIP bill before parliament should be supported by the government?

KALACC is supportive of the Bill and we are also supportive of the Amendment moved by Senator Dodson on behalf the Labor Party.

The Bill, and the amendment proposed by Senator Dodson, are modest in nature and are very worthy of support.

KALACC has provided significant material to the Committee, in the form of written submissions, associated documents [such as the repatriation letter attached today] and verbal testimony. Why did we bother and why did we go to this trouble? KALACC has provided this material to the Committee because the fact remains that since the abolition of ATSIC in 2005 First Nations Culture has been entirely peripheral to the First Nations policies and programs of Government. In our written submissions to the Committee KALACC has outlined the various articles of the UNDRIP that relate to the rights of First Nations peoples to be able to uphold their cultural identity and their cultural practices. But notwithstanding the Closing the Gap National Partnership Agreement and other policy documents such as the January 2023 National Cultural Policy, it remains the case that First Nations Culture has been entirely peripheral to the First Nations policies and programs of Government. As we have noted previously in our submissions to the Committee:

- Australia has no First Nations Cultural Policy
- Australia has no commissioning pathways for programs that operate in the First Nations social and cultural determinants of health domain
- Australia's Indigenous repatriations policy is woefully antiquated – as per the attached letter
- The Close the Gap National Partnership Agreement has Implementation Plans relating to the domains of Health, Justice, Housing and Disability Services. There is nothing remotely resembling an Implementation Plan for First Nations Culture.

In the context in which First Nations Culture remains to entirely peripheral to the interests of Government, the quite modest measures outlined in the Bill are to be commended and supported.

2. In addition to the steps you have outlined in your written and verbal testimonies, are there any other immediate steps should the federal government take to address their failures in protecting and strengthening First Peoples culture and implementing articles 5, 8, 9, 11 and 12 of UNDRIP?

No, not really ie KALACC has provided significant material to the Committee, in the form of written submissions, associated documents [such as the repatriation letter attached today] and verbal testimony. So, to reiterate, some of the urgent actions that need to be taken by Government to ensure that Australia addresses its obligations to protect and strengthen First Peoples culture and to implement articles 5, 8, 9, 11 and 12 of the UNDRIP are as follows:

- Develop a First Nations Cultural Policy
- Develop commissioning pathways for programs that operate in the First Nations social and cultural determinants of health domain
- Completely rewrite and develop an entirely new Indigenous repatriations policy- at least start with the request from the three ACCOs in the attached letter, seeking to meet with Commonwealth Ministers to discuss these matters
- Within the Close the Gap processes, develop an Implementation Plan to support First Nations Culture.

3. You spoke about cultural governance and how native title and the establishment of PBC's has assisted governments in undermining First Nations cultural governance protocols. Can you please expand on how the colonial laws might change to better align with and uphold the first law of this land, particularly cultural governance?

Whilst we acknowledge that this remains largely unknown and unrecognised by Government, it should not be the case. The points that KALACC makes are well documented across a host of documents that have been available to Government for a very long time, including:

- Human Rights and Equal Opportunities Social Justice Reports – particularly the 2011 and 2012 Social Justice Reports
- Australia Council for the Arts 2013 Discussion Paper ***Standing Our Ground Cultural vibrancy: a discussion paper for the Aboriginal and Torres Strait Islander Arts sector***
- Indigenous Governance Toolkit - <https://aigi.org.au/toolkit>

As these three documents, along with many others, state that there are three forms of Governance in the Indigenous context:

- 1) The Governance of Government
- 2) Corporate Governance [and this firmly includes the likes of PBCs]
- 3) Cultural Governance.

Along with many others, Professor Patrick Sullivan of ANU has written on how the focus of Government on #1 and #2 serve to undermine the interests of #3.

Attached is a 2021 KALACC Document ie The Importance of Our Elders, the Living Libraries. We applaud Government for having programs and processes for engaging with First Nations corporate leaders, whether that be through PBCs or through mechanisms like the Coalition of Peaks. KALACC applauds and supports the Referendum to establish a First Nations Voice to Parliament. But, and here is the irony, the Committee has written to KALACC in these terms:

We would like to have as much input into this inquiry from Elders as possible. If there are any comments from Elders that you work with that you would be willing to share, we would be very grateful to hear from them.

Where, anywhere, are there programs or policies or strategies for hearing the voice of the elders, especially the cultural bosses, the living libraries that tether the present moment to 60,000 or 70,000 year old traditions? If you want to understand how to hear from the elders, from the cultural bosses, then read the 2011 and 2012 Social Justice Reports. Study the online Indigenous Governance Toolkit. Carefully study the 2013 Australia Council Discussion Paper. And in the spirit of the Closing the Gap National Partnership Agreement, Build the Capacity of ACCOs. Commonwealth Treasury is working to build a partnership with KALACC around Indigenous Evaluation. KALACC invites the Commonwealth to partner with KALACC to understand how to engage with the voices of the cultural bosses. KALACC would happily partner with the Commonwealth to guide government on how to hear the voices of the cultural custodians. Government has long had a predilection to buy- in specialist knowledge and services, principally from the big 4 Accounting firms. Why won't Government buy-in specialist knowledge from ACCOs who represent the interests of our national living libraries?

Once again, many thanks for the opportunity for KALACC to bring these matters to the attention of the Committee of Inquiry.

Kind regards



KALACC
Wes Morris KALACC Coordinator
Phone: [REDACTED]
Email: [REDACTED]

"To assist and promote the ceremonies, songs and dance of Kimberley Aboriginal people, to encourage and strengthen their social, cultural and legal values and ensure their traditions a place in Australian society."

OUR ELDERS ARE OUR LIVING LIBRARIES

Culture is central to Aboriginal identity. This has been stated and restated by many Aboriginal organisations, including the Kimberley Aboriginal Law & Cultural Centre (KALACC):

Culture is an intrinsic part of our identity as Aboriginal people – it is the foundation of who we are and how we make sense of the world. This is why Aboriginal organisations across a spectrum of service areas in the Kimberley embed culture within everything from governance structures to programs. Simply put, culture drives us¹.

Djambawa Marawili AM, Chairperson of the Arnhem, Northern and Kimberley Artists Aboriginal Corporation (ANKA) adds the following insights when discussing Indigenous cultural heritage:

This ceremony, with its rich and complex song and dance cycles, and inherited patterns, designs and objects, passed down from our ancestors, is **Australia's first high culture. Our opera as well as our law.**

It is time that Australia recognises that caring for this high culture in remote Australia is every bit as important as looking after mainstream high culture in the cities.

[...]

To continue the important work of looking after Australia's first high culture, we need more respect and understanding. We need wider Australia to properly understand that in the homelands, in our communities on country, we are caring for the oldest living culture on earth; and we are the only people qualified to look after this global inheritance. These are not just words about a distant imagined past; this is reality. We need support for our self-determination to care for the seeds of a shared future for all Australians².

In turn, our Elders are central to our culture. They are our cultural custodians – living libraries who tether the present moment to 60,000 years of tradition. They are in the best position to determine our cultural priorities. In the words of Professor Pat Dudgeon, Director of the Aboriginal and Torres Strait Islander Suicide Prevention Evaluation Project (ATSISPEP) and the Centre of Best Practice in Aboriginal and Torres Strait Islander Suicide Prevention:

In my time, I have been privileged to witness what I see as a cultural renaissance of Aboriginal Australia. Culture has become life-giving medicine for our people, closing the wounds of the past and standing us strong to face the future.

Our Elders have been fundamental in this process. They are our wisdom keepers. They have seen the changes, so dramatically incurred in their lifetime. They are the vital bridge between the modern world and Aboriginal culture. They are the leaders of our communities, to whom we continue to rely on for guidance and counselling. There is no more urgent time to sit down and listen to our Elders than now. For any solution to be effective, their guidance must form the foundation of how Governments and service providers work with Aboriginal people³.

¹ *Kimberley Aboriginal Caring for Culture Consultation Report*, 2020, p6

² *ANKA Arts Backbone Magazine: Cultural Legacy Edition*, August 2018 (Volume 17), p2 [new emphasis]

³ Introduction to *The Elders' Report into Preventing Indigenous Self-harm and Youth Suicide*, 2014, p6–7

NIACA & THE IMPORTANT ROLE OF OUR ELDERS

Since 2007 it has been envisaged that interdisciplinary delegates from all over Australia, including representatives from KALACC, will come together for a national summit on First Nations arts and culture. Such a gathering has not occurred since 1973. It is long overdue.

Senior cultural men and women have long advocated for a united voice – a cultural authority – to ensure meaningful outcomes for Indigenous people. This long – overdue national summit must proceed in a timely manner, but mindful of broad community engagement and bringing the sector along on the journey.

This significant undertaking could help develop a peak body – the National Indigenous Arts and Cultural Authority (NIACA). Governments are at present engaging meaningfully with the Coalition of Peaks. Without a peak body for Indigenous Arts and Culture we are left out of these important national discussions.

What is cultural authority?

It is important to distinguish here the idea of Aboriginal ‘cultural authority’, which is very different from Western understandings of an ‘authority’. As explained by Lydia Miller, the Australia Council’s former Executive Director of Aboriginal and Torres Strait Islander Arts:

...the term ‘cultural authority’ pertains to the body of knowledge exercised by Senior Lawmen and Lawwomen, Cultural Custodians, Traditional Owners and Knowledge Keepers in the context of Indigenous cultural and intellectual property (ICIP), intangible cultural heritage (ICH), traditional knowledge (TK) and traditional cultural expression (TCE), it is knowledge that is in direct reference to song, dance, story, music, symbols, iconography, ceremony and creation narratives. It does not reference the notion of an administrative structure such as a ‘statutory authority’, brought into effect by statute.

This could be what First Nations self-determination, agency and leadership could look like. And the National Summit obviously will have the room to discuss these concepts and aspirations⁴.

Who puts the authority in NIACA if not our Elders?

The authority for culture is founded on the authority of our Elders. Every time one of our Elders passes away, we lose a whole living library of knowledge and heritage that spans over 60,000 years.

It is crucial that our Elders are central to the process of forming NIACA, based on the leadership and governance of our cultural custodians. They are the key to preserving our cultural heritage for future generations. They are foundational to our culture, and must be foundational to the governance of NIACA.

In order to undertake this important work, we must ask ourselves:

- How do we put senior cultural authority – our Elders – at the centre of NIACA?
- How can we be guided by our Elders?
- How can we empower our Elders and provide the necessary platform and voice to safeguard the world’s longest continuing living culture?

⁴ Posted to the National Summit on First Nations Art and Culture Facebook Group by Lydia Miller on 13 March 2021

CULTIVATING CULTURAL AUTHORITY: KALACC'S TRADE ROUTES PROJECT

The Trade Routes Cultural Governance Project is a great example of the ways in which KALACC is empowering our Elders and providing them with a vital platform to safeguard Aboriginal culture.

Before colonisation, both secret-sacred and mundane items were freely traded throughout Australia via vibrant, complex networks that crossed Aboriginal nation states, traversing many songlines. The practice of trading included not only physical materials but also a rich tapestry of songs, dances, art, stories, rituals and ceremonies from diverse language groups.

The Trade Routes Cultural Governance Project aims to reinvigorate these traditional trade routes across Western Australia (WA), the Northern Territory (NT) and South Australia (SA). Rather than seeking to replicate them, this collaborative multi-year project will rekindle and rejuvenate the social and cultural significance of these systems of interconnection.

Travelling between communities throughout the three states, Indigenous researchers and cultural custodians – in partnership with other scholars – will digitally record local oral histories, stories and contemporary practices. Creating new connections between the living and archival knowledge of Indigenous trade within the Kimberley and Desert regions, the material will form the basis for a podcast and a major exhibition at the South Australian Museum.

This project seeks to fill knowledge gaps and revive fundamental and foundational cultural governance systems. Central to this, Elders will attend a series of bush camp workshops in Central Australia for the intergenerational transfer of important cultural knowledge and heritage.

Ultimately, for the first time, the Trade Routes Governance Project will unite and empower the current and emerging Elders from WA, NT and SA – recognising their crucial standing as living libraries who tether the present moment to 60,000 years of tradition. It will strengthen Indigenous cultural authority, with a strong cohort of men and women being developed as the next generation of senior cultural custodians for the world's oldest living culture into the future.



Cultural leaders Gordon Marshall and Moogy Sumner standing together on Ngarrindjeri country at the Coorong, March 2021



One of our new generation of Indigenous leaders and cultural custodians

The Hon Tony Burke,
Minister for Arts and Culture

CC:

- The Hon Linda Burnie MP, Minister for Indigenous Australians
- The Hon Tanya Plibersek MP, Minister for the Environment and Water

13 July 2023

Building the Capacity of Aboriginal and Torres Strait Islander Communities in the repatriation of ancestral remains and material culture

Outcome Sought:

Indigenous Repatriation Leaders Seek A Meeting With Minister Tony Burke and Minister Linda Burnie

Dear Ministers

We write to you seeking an opportunity to meet with you to share directly with you our joint and collective expertise and knowledge in regard to Indigenous Repatriations.

Our three organisations, each have long histories of involvement in the important work of repatriating Indigenous ancestors and repatriating cultural heritage items back to the communities from which they were originally stolen. We jointly and collectively write to you today seeking clarification of how certain policy settings apply in reality to the work which we each undertake in regards to repatriations.

On 30 January 2023 the Australian Government released ***Revive Australia's Cultural Policy for the next five years***. The ***National Cultural Policy*** makes extensive reference to the importance of the work of repatriations.

The Australian Government's policy on Repatriations was developed in 2011 and in 2016 <https://www.arts.gov.au/publications/australian-government-policy-indigenous-repatriation>. Our three organisations respectfully submit to you that the current Australian Government Policy on Indigenous Repatriation, developed some eleven years ago requires an urgent review and update to reflect the main principles and priorities of the Australian Government's Indigenous Affairs policies and developments in the repatriation space, including the development of a National Resting Place for limited provenanced Ancestral Remains and the Return of Culture Heritage Program delivered by AIATSIS.

Each of our organisations are national leaders in regard to Indigenous Repatriations. We are well familiar with the current suite of existing programs, including the work of the Advisory Committee of Indigenous Repatriation, the Return of Cultural Heritage Program, along with new commitments, including the establishment and development of the Ngurra Ngurra: The National Aboriginal and Torres Strait Islander Cultural Precinct incorporating the National Resting Place.

Our concerns relate to how the principles and priorities espoused in the ***Closing the Gap National Partnership Agreement*** are currently not being applied in the context of Indigenous Repatriations.

The ***Closing the Gap National Partnership Agreement*** is underpinned by four Priority Reforms, being:

- Strengthen and establish formal partnerships and shared decision-making
- Build the Aboriginal and Torres Strait Islander community-controlled sector
- Transform government organisations so they work better for Aboriginal and Torres Strait Islander people
- Improve and share access to data and information to enable Aboriginal and Torres Strait Islander communities make informed decisions.

Our three organisations are not only experts in repatriations, we are also experts in:

- Partnership development
- Co Design
- Community Development
- Research evaluation and data development
- Working collaboratively with Government.

Our three organisations have coalesced and have worked in a collaborative framework known as *Return, Reconcile, Renew* for over ten years <https://chms.cass.anu.edu.au/research/projects/restoring-dignity-networked-knowledge-repatriation-communities>. This important project has built our knowledge and capacity around repatriations research work. This work provides us with a solid foundation to undertake repatriations in a professional manner.

However, the broader Government policy contexts around repatriations are not based on models of community empowerment or community capacity building. These are the issues we would like to discuss in person with you.

In the full knowledge of these existing structures and mechanisms we hold that the principles of establishing formal partnerships and building the Aboriginal and Torres Strait Islander community-controlled sector are not currently being applied in regard to the context of Indigenous Repatriations.

Our three organisations would greatly appreciate the opportunity of meeting with you in order to directly put to you our proposals around new and different ways of engagement around Indigenous Repatriations. The proposals we seek to put to you directly relate to the principles of the ***Closing the Gap National Partnership Agreement***. And our proposals directly relate to ***Dhawura Ngilan: A vision for Aboriginal and Torres Strait Islander heritage in Australia and the Best Practice Standards in Indigenous cultural heritage management and legislation***. We wish to discuss a way new forward for the Commonwealth in not only updating the current Commonwealth Repatriation policy to reflect updated programs and policies, but in a way that will empowering the work of local communities in the repatriation process.

Please address return correspondence to Mr Wes Morris, Coordinator, Kimberley Aboriginal Law and Culture Centre, via email – [REDACTED]

Yours sincerely,

Grant Rigney,
Chairman
Ngarrindjeri Regional Authority



Gordon Marshall,
Chairman
Kimberley Aboriginal Law & Cultural Centre



Ned David,
Chair
Gur A Baradharaw Kod Torres Strait Sea and Land Council



Briefing Notes to Accompany the Letter to the Ministers

Revive Australia's Cultural Policy for the next five years.

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Repatriating First Nations ancestral remains and cultural heritage material

Since British colonisation more than 200 years ago, scientists, anthropologists and collectors removed ancestral remains (ancestors) and cultural heritage material belonging to First Nations peoples which are now held in collecting institutions and with private holders in Australia and overseas. The repatriation of ancestors and cultural heritage material offers healing to First Nations peoples and allows communities to carry out their cultural obligations by returning them to Country. The support of this work is also a vital part of the process of truth-telling and cross-cultural reconciliation.

The Government acknowledges the importance of respecting and promoting the rights of First Nations peoples to repatriate their ancestors and cultural heritage material. The return of ancestors is a basic human right, as recognised by Article 12 of the *United Nations Declaration on the Rights of Indigenous Peoples*. This Article also recognises First Nations peoples' right to the use and control of their ceremonial objects and provides that States will seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with First Nations peoples. Australia adopted the Declaration in 2009.

The Government has supported the repatriation of ancestors from overseas for over thirty years and the repatriation of cultural heritage material from overseas since 2019. This has resulted in the return of over 1,650 ancestors and over 1,960 cultural heritage items from overseas. Domestically, the Government has supported the return of over 3,200 ancestors and 2,300 secret sacred objects to Traditional Custodians held in Australia's eight major museums.

Repatriation requires an approach that is self-determined by First Nations people. The Government is currently working with First Nations peoples to bring home ancestors from more than twenty countries and cultural heritage material from more than twenty-seven countries, and is raising awareness of the importance of repatriation for First Nations peoples to drive global change in collection ethics and practice. The planned Ngurra Cultural Precinct, to be located within the Parliamentary Triangle in Canberra, will support truth-telling and healing, and will be a place for First Nations storytelling and ceremony. The Precinct will include a National Resting Place to house and care for ancestors repatriated from overseas with limited provenance, in a culturally appropriate way. To date more than 330 ancestors have been returned from overseas collections who currently have provenance only to Australia, as their Traditional Custodians are unknown, and this number is expected to grow as more repatriations are completed.

KALACC 2022 Submission to the United Nations

‘States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession.’

UNDRIP Articles

In this present Supplementary Submission KALACC refer specifically to UNDRIP Article 11, paragraph 2, as follows:

2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.; and

UNDRIP Article 12, paragraph 2, being as follows:

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

The October 2022 ***Interim report of the Special Rapporteur on freedom of religion or belief - Indigenous peoples and the right to freedom of religion or belief*** states as follows in paragraph #39:

Many indigenous peoples regard these objects, and human remains as physical representations or homes of spirit, respectively, treating them as sentient beings. Removing these items from indigenous communities, land, and spiritual leaders may break their relationship with attached spirits or risk "spiritually-caused illnesses" that persist through future generations.

The Report from the Special Rapporteur then recommends that States act in the following manner:

- (iii) Deliver effective and appropriate remedies for indigenous survivors of rights violations, developed in consultation with them, consistent with international principles and guidelines, such as reparations, restitution, and supporting recommendations of truth and reconciliation commissions.

KALACC contends in this present submission that the Australian State is currently not meeting its obligations under Articles 11 and 12 to enable and facilitate the access and/or repatriation of ceremonial objects and human remains in their possession. The key words underpinning this contention from KALACC are the words ‘enable’ and ‘facilitate.’ How are we to understand these words? We are to understand these words in the way that the Australian Government has described its current macro Indigenous agenda:

There is a strong and sustainable Aboriginal and Torres Strait Islander community-controlled sector delivering high quality services to meet the needs of Aboriginal and Torres Strait Islander people across the country.

<https://www.closingthegap.gov.au/national-agreement/priority-reforms>

It is KALACC’s contention that when it comes to the domain of repatriating cultural heritage, the Australian Government has thus far failed to implement its stated outcomes and targets. This view is expanded upon within this document. It is KALACC’s contention that this manifest and incontestable shortcoming represents a failure of the Australian nation to comply with UNDRIP Articles 11 and 12.

Closing the Gap Implementation Plan – as it Relates to Cultural Heritage and Repatriations

1. Closing the Gap Implementation Plan

The Australian Government's *Closing the Gap Implementation Plan* is dated 05 August 2021

<https://www.niaa.gov.au/resource-centre/indigenous-affairs/closing-gap-implementation-plan>. There are four priority action areas within the plan:

- Priority Reform One: Partnership and shared decision-making
- Priority Reform Two: Building the community-controlled sector
- Priority Reform Three: Transforming government organisations
- Priority Reform Four: Sharing access to data and information at a regional level

In regards to Priority Reform Two: Building the community-controlled sector, we note as follows from page 13 of the *Implementation Plan*:

Outcome: There is a strong and sustainable Aboriginal and Torres Strait Islander community-controlled sector delivering high quality services to meet the needs of Aboriginal and Torres Strait Islander people across the country.

Target: Increase the amount of government funding for Aboriginal and Torres Strait Islander programs and services going through Aboriginal and Torres Strait Islander community-controlled organisations.

The reality for now is that in the Kimberley region alone there are well in excess of 300 people employed by Aboriginal Community Controlled Health Organisations. In contrast, there is not one single person in the Kimberley employed to undertake the work of Indigenous heritage and repatriations.

It is manifestly self-evident that at the present time there are currently no government investments in to developing a strong and sustainable Aboriginal and Torres Strait Islander community-controlled cultural heritage and repatriations sector.

2. Closing the Gap Implementation Plan [WA Jurisdiction]

Accompanying the national *Closing the Gap Implementation Plan* each State has its own Jurisdictional Plan.

The *WA Jurisdiction Closing the Gap Implementation Plan* runs to some 203 pages

<https://www.wa.gov.au/government/publications/closing-the-gap-wa-implementation-plan>. The word 'repatriation' appears not once across those 203 pages. Indigenous repatriation is still, sadly, considered by Government to be a fringe issue. The more amorphous, nebulous, motherhood term of 'heritage' appears some 45 times, including in the following context:

Supporting and promoting culture

This element of the draft Strategy requires government agencies to:

1. Value, recognise and celebrate Aboriginal peoples' cultures, languages, relationships to country, knowledge, and heritage
2. Invest in initiatives that support Aboriginal cultural identity, cultural continuity and community leadership
3. Use agreements with Traditional Owner groups to recognise and support Aboriginal peoples' connection to culture, country and heritage

The history of colonisation and subsequent government policies in Western Australia produced significant, and in many cases deliberate, barriers to the continuity of Aboriginal cultures. Central aspects of Aboriginal cultures were, at different times, either disrupted, controlled, devalued or prohibited.

This has had profound and lasting negative impacts, evident across a range of social, health, educational and economic outcomes. Recent reports on suicide by young Aboriginal people have identified cultural continuity and identity as critical protective factors that contribute to resilience and wellbeing.

Because of this history and its ongoing effects, the government has an important role to play in supporting Aboriginal people's cultural identities, cultural continuity, community leadership and cultural authority.

The **Western Australia State Budget 2023** predicts a budget surplus of \$5.7Billion

<https://www.mediastatements.wa.gov.au/Pages/McGowan/2022/05/Another-strong-surplus-to-benefit-Western-Australian-households.aspx> This exceptionally strong State balance sheet is underpinned by royalties paid by Iron Ore and Gas producers operating within WA. In 2021 the WA Government introduced the controversial new **Aboriginal Cultural Heritage Act 2021**. <https://www.wa.gov.au/government/document-collections/aboriginal-cultural-heritage-act-2021>

In response to this legislation the Kimberley Land Council on 15th December 2021 released a Media Statement with the title "The eyes of the world are on you". That KLC Media Statement includes these following words: KLC CEO Tyrone Garstone said the legislation reform was historic, but not for the right reasons. "The McGowan Government's reform of the heritage legislation, which they referred to as the most progressive in the country, will be remembered as a disastrous moment for Aboriginal heritage protection. This is not progress. Calling it progressive is a reflection of how bad the previous legislation was." "The McGowan Government has wasted an opportunity to create legislation that strikes a balance between development and heritage protection. This Bill continues to expose Aboriginal heritage to destruction and disempowers Traditional Owners to speak for their country." "In a state where the economy is driven by the mining and resource sector, once again, the needs of industry trump everyone else."

<https://www.klc.org.au/media-releases>

What we note from the above is that the term 'heritage' is an amorphous and nebulous term that carries with it contradictory meanings depending on who is uttering the words. What is clear is that the WA Government has a **WA Jurisdiction Closing the Gap Implementation**, running to some 203 pages, and the word 'repatriation' appears not once across those 203 pages.

On this basis one can safely hold that the Commonwealth Government manifestly has no strategy for building community capacity building around repatriations and the State Government doesn't even mention the word 'repatriations' in its key Indigenous planning and policy documents.

3. Dhawura Ngilan: A vision for Aboriginal and Torres Strait Islander heritage in Australia and the Best Practice Standards in Indigenous cultural heritage management and legislation

In September 2020 the Department of Agriculture, Water and the Environment published **Dhawura Ngilan: A vision for Aboriginal and Torres Strait Islander heritage in Australia and the Best Practice Standards in Indigenous cultural heritage management and legislation-**

<https://www.environment.gov.au/heritage/publications/dhawura-ngilan-vision-atsi-heritage> This document is not a repatriation policy per se, but it does include a number of relevant and related recommendations to Government, including the following:

- 1.3. Prioritise the recording and digitisation of place-based traditional knowledge, including Songlines and place names, which underpins Aboriginal and Torres Strait Islander heritage
- 2.2. Australia embraces truth - telling about our heritage and our heritage lists reflect this truth
- 3.3. Heritage Councils support the establishment of a National Resting Place for unprovenanced Remains of Ancestors
- 3.4. The Australian Government should amend its policy on Indigenous Repatriation of cultural materials to align with current activity

- 3.5. Jurisdictions work with Australian collecting institutions to return ancestors to Aboriginal and Torres Strait Islander communities in a coordinated way
- 3.6. The rights of Aboriginal and Torres Strait Islander people to access and repatriate secret sacred materials held in Australia, both by institutions and private collectors, must be recognised and prioritised
- 4.1. Heritage Chairs support increased focus on identifying and taking forward Aboriginal and Torres Strait Islander heritage places for inscription on the World Heritage List
- 4.3. Australian heritage should be a global leader in the preservation, protection, celebration and promotion of Aboriginal and Torres Strait Islander heritage and the development of international partnerships to tell the rich global heritage narrative

Dhawura Ngilan was published in September 2020. If there has been material progress towards the implementation of the recommendations contained in that report, then KALACC currently has no visibility around any such progress. On Saturday, 21 May 2022 a new Commonwealth Government was elected. As of October 2022 KALACC is currently unaware of the detail of the new Government's policies and priorities around Indigenous heritage and repatriation issues. But what we can say, from 37 years of community-based work in this field, is that building the capacity of the communities themselves, and of the Aboriginal Community Controlled Organisations that operate in this space, have historically been the very lowest priority of successive Governments. Repatriation issues are so completely peripheral that there are no references at all to them in the key Indigenous policy and program documents from both the Commonwealth and the WA State Governments.

As of May 2022 Australia has a new Commonwealth Government, the first Labor Government in a decade.

Dhawura Ngilan provides the vision for Indigenous heritage and repatriations. In the decades – long macro policy cycle terms the *Closing the Gap Framework* and *Implementation Plan* are just moving beyond their infancy and are progressing in to their formative stages. The hope remains that moving forward we will see material and significant changes that will empower Aboriginal people, and the Aboriginal owned and controlled organisations which serve them, to take ownership of their spiritual, religious and ceremonial practices, including the restorative practices of repatriating ancestors and repatriating ceremonial items.

KALACC understands that there is associated activity that takes place in regards to moveable cultural heritage and in regards to repatriations in Australia. KALACC has some level of understanding around the following areas of activity:

- South Australian State Government has committed to undertaking repatriation activities of considerable and significant size and scale
- AIATSIS runs a program called the Return of Material Cultural Heritage program
<https://aiatsis.gov.au/about/what-we-do/return-cultural-heritage>
- There is a long – established Repatriations Research network
<https://chms.cass.anu.edu.au/research/projects/restoring-dignity-networked-knowledge-repatriation-communities>
- Through incidental and largely one- off processes and activities, repatriation activities do take place with the involvement of local Indigenous groups, and these activities increasingly include the involvement of local Indigenous Ranger groups
- In regards to Commonwealth Heritage legislation, national standards & legislative reform is taking place with the involvement of the National Native Title Council <https://nntc.com.au/our-agenda/cultural-heritage/>

- The Commonwealth Arts Office has long run a small repatriations program which continues to operate to this day <https://www.arts.gov.au/what-we-do/cultural-heritage/indigenous-repatriation>

KALACC acknowledges all of the above. But with all due respect to the above activities and programs, there is not within Australia today a coherent, cohesive and coordinated approach to Indigenous repatriation matters. Dhawura Ngilan provides clear guidance as to the pathway forward for the creation of a coordinated approach to repatriations, including through the following recommendations:

- 3.4. The Australian Government should amend its policy on Indigenous Repatriation of cultural materials to align with current activity
- 3.5. Jurisdictions work with Australian collecting institutions to return ancestors to Aboriginal and Torres Strait Islander communities in a coordinated way
- 3.6. The rights of Aboriginal and Torres Strait Islander people to access and repatriate secret sacred materials held in Australia, both by institutions and private collectors, must be recognised and prioritised

KALACC contends that if the Australian Government, supported by State jurisdictions, committed to implementing these three recommendations from Dhawura Ngilan then Australia would make considerable progress towards meeting its obligations under Articles 11 and 12 of the UNDRIP in regards to the repatriation of ceremonial items and ancestral remains.

4. The Australian Repatriation Policy and Programs Do Not Reflect the Australian Government's Current Macro Indigenous Policy Priorities

The Australian Government Policy on Indigenous Repatriation, December 2019, can be found here - <https://www.arts.gov.au/documents/australian-government-policy-indigenous-repatriation> On page eight of this policy one can read as follows:

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

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

Across the preceding pages we have referenced the current macro policy settings relating to Indigenous policy in Australia. The Australian Government's Closing the Gap Implementation Plan is dated 05 August 2021 ie it was published some eighteen months after the Australian Government Policy on Indigenous Repatriation. There is an urgent need for the Repatriation Policy and Programs to be revisited so that they accord with and align with the Government's own macro policy settings in regards to Indigenous Affairs. This urgent need is reflected in the following recommendations from **Dhawura Ngilan**:

- 3.4. The Australian Government should amend its policy on Indigenous Repatriation of cultural materials to align with current activity
- 3.5. Jurisdictions work with Australian collecting institutions to return ancestors to Aboriginal and Torres Strait Islander communities in a coordinated way
- 3.6. The rights of Aboriginal and Torres Strait Islander people to access and repatriate secret sacred materials held in Australia, both by institutions and private collectors, must be recognised and prioritised

In Australia there are some 144 Aboriginal Community Controlled Health Organisations. In the Kimberley region alone there is well in excess of 300 people employed by Aboriginal Community Controlled Health Organisations. In contrast, there is not one single person in the Kimberley who is specifically employed to undertake the work of Indigenous heritage and repatriations.

KALACC contends that if the Australian Government, supported by State jurisdictions, committed to implementing these three recommendations from ***Dhawura Ngilan*** then Australia would make considerable progress towards meeting its obligations under Articles 11 and 12 of the UNDRIP in regards to the repatriation of cultural items and of ancestral remains.