

THE DISCOVERY, HANDLING AND MANAGEMENT OF HUMAN REMAINS UNDER PROVISIONS OF THE ABORIGINAL CULTURAL HERITAGE ACT 2003 AND TORRES STRAIT ISLANDER CULTURAL HERITAGE ACT 2003

If you find bones and suspect that they are human it is **essential that you do not disturb the material. You must report the findings to the Queensland Police Service.** The Police will determine if the remains represent a crime scene. If it is established that the remains are not a crime scene and the Coroner is satisfied that the remains are Aboriginal or Torres Strait Islander the Department of Environment and Resource Management procedure on *The Discovery, Handling and Management of Human Remains under Provisions of the Aboriginal Cultural Heritage Act 2003 and Torres Strait Cultural Heritage Act 2003* will apply.

1 General Guiding Principles

Death in all human societies is a significant event. It occurs on a regular but unpredictable basis, removing individuals from family, close relations and friends. Death is often associated with complex rituals. This was and is still the case with Aboriginal and Torres Strait Islander people. Disturbance to burials and human remains is therefore of major concern to them, as it is for all members of Australian society.

Aboriginal and Torres Strait Islander people have been in Australia for more than 40,000 years. In that time they have buried hundreds of thousands of their ancestors in a variety of ways. In some cases people were cremated; in others their bones were placed in hollowed-out logs or trees or wrapped in bark cylinders and placed in rock shelters. Many were also buried in the ground with grave goods. Burials commonly occurred in sand dunes and alluvial deposits, which were easy to dig. However, wind and water easily erode such locations and frequently these natural processes expose remains. Other common burial locations are rock shelters, rocky overhangs and hollow trees. All are vulnerable to human disturbance. The close proximity of scarred or carved trees and stone arrangements and the remains of fireplaces, stone artefacts and food refuse may be suggestive of an Aboriginal or Torres Strait Islander burial.

In view of possible natural or human disturbance to Aboriginal or Torres Strait Islander places the Queensland Government has in place a legislative framework that will ensure such burials are treated in a manner consistent with legal requirements and Aboriginal and Torres Strait Islander traditions.

There is also provision for Aboriginal or Torres Strait Islander people who have traditional or familial links with human remains to seek ownership of these remains regardless of who claimed previous ownership.

2 Desired Outcomes

This procedure has a number of general desired outcomes:-

- While natural or human processes can inadvertently expose Aboriginal or Torres Strait Islander human remains, all attempts will be made to limit further disturbance.
- If further investigation and disturbance is required, procedures are in place for the proper handling of such remains.
- All such procedures are sensitive to the wishes of the Aboriginal or Torres Strait Islander owners of the remains.
- That Aboriginal or Torres Strait Islanders who have traditional or familial links with human remains are able to claim ownership of those remains.

3 Legislative Framework

Criminal Code Act 1899

All persons **must** be aware that under the ***Criminal Code Act 1899*** (s236) it is an offence to improperly or indecently interfere with a human body or human remains, whether buried or not. An offence under this provision can result in imprisonment for up to two years.

Coroners Act 2003

Provisions of the ***Coroners Act 2003*** provide that when a person becomes aware of a reportable death it is the duty of the person finding the reportable death to report the findings to a police officer or coroner (Part 2 s7). A reportable death is defined in Part 2 s8 and would include Aboriginal and Torres Strait Islander human remains (**NB** Part 4, Division 4 Section 82 (1) defines every magistrate as a coroner (a “local Coroner”).

The Coroner starts having control of human remains when the Coroner starts investigating the deceased person’s death (Part 3 s26 (1)). The Coroner must stop investigating a death if the Coroner’s investigation shows that the body is Aboriginal or Torres Strait Islander traditional burial remains (Part 3 s12(2)(a)). Where this occurs, a Coroner will authorise for the remains to be released to the Minister responsible for administering the ***Aboriginal Cultural Heritage Act 2003*** and ***Torres Strait Islander Heritage Act 2003*** (See Part 3 s26(2) (a)) and Form 12 version 2- Order for release of Traditional remains. Published Queensland Government Gazette 23 October 2009 p586.

To ensure best practice in the coronial system, the State Coroner must develop guidelines in respect to certain matters, including those dealing with investigations of deaths involving human remains found in a suspected traditional burial site, and in particular, must provide for the early notification and involvement of the Aboriginal or Torres Strait Islander community having a connection with the burial site (Part 3 s14 (3) (b)).

Aboriginal Cultural Heritage Act 2003 and Torres Strait Islander Cultural Heritage Act 2003

The basic intent of the ***Aboriginal Cultural Heritage Act 2003*** and ***Torres Strait Islander Cultural Heritage Act 2003*** (‘the Acts’) is that Aboriginal and Torres Strait cultural heritage should be protected.

It is also the intent of the Acts that (as far as practicable) Aboriginal and Torres Strait cultural heritage should be owned and protected by Aboriginal and Torres Strait Islander people with traditional or familial links to the cultural heritage if it is comprised of any of the following-

- (a) Aboriginal human remains;
- (b) Secret or sacred objects; or
- (c) Aboriginal heritage lawfully taken away from an area.

It is a further intent of the Acts that Aboriginal and Torres Strait Islander cultural heritage that is in the custody of the State, including the Queensland Museum, should continue to be protected by the State until it can be transferred into the protection of its Aboriginal or Torres Strait Islander owners (Part 2 Division 1 s14 (1-4)).

Under the Acts, Aboriginal or Torres Strait Islander people who have a traditional or familial link with Aboriginal human remains are the owners of those remains regardless of who may have owned the Aboriginal or Torres Strait Islander human remains before commencement of the Act (Part 2 Division 2 s15 (1-2)).

An Aboriginal or Torres Strait Islander person who owns human remains may at any time ask the State (or an entity that represents the State) who holds custody of the remains to continue to be the custodian of the human remains or return the human remains to them (Part 2 Division 2 s16 (1-4)).

If a person, other than the State has in their possession Aboriginal or Torres Strait human remains to which they do not have traditional or familial links then the person must take all reasonable steps to ensure that the human remains are taken into the custody of the chief executive as soon as practicable. Penalties apply if a person fails to do this (Part 2 Division 2 s17 (1-2)).

If a person knows of the existence and location of Aboriginal human remains and is not the owner of those remains, or knows or ought reasonably to know the human remains are Aboriginal or Torres Strait Islander human remains or knows or suspects the chief executive does not know of the remains, the person must as soon as practicable (and after advising the Police or Coroner) advise the chief executive of the extent of the human remains and provide all the details about the nature and location of the human remains the chief executive reasonably requires. Penalties apply if a person fails to do this (Part 2 Division 2 s18).

Procedures for dealing with Aboriginal and Torres Strait Islander human remains

In all cases when human remains are located it is important to remember that:

- **The discovery of any human remains must as soon as possible be reported to the nearest police.**
- **It is an offence to interfere with human remains, whether buried or not.**

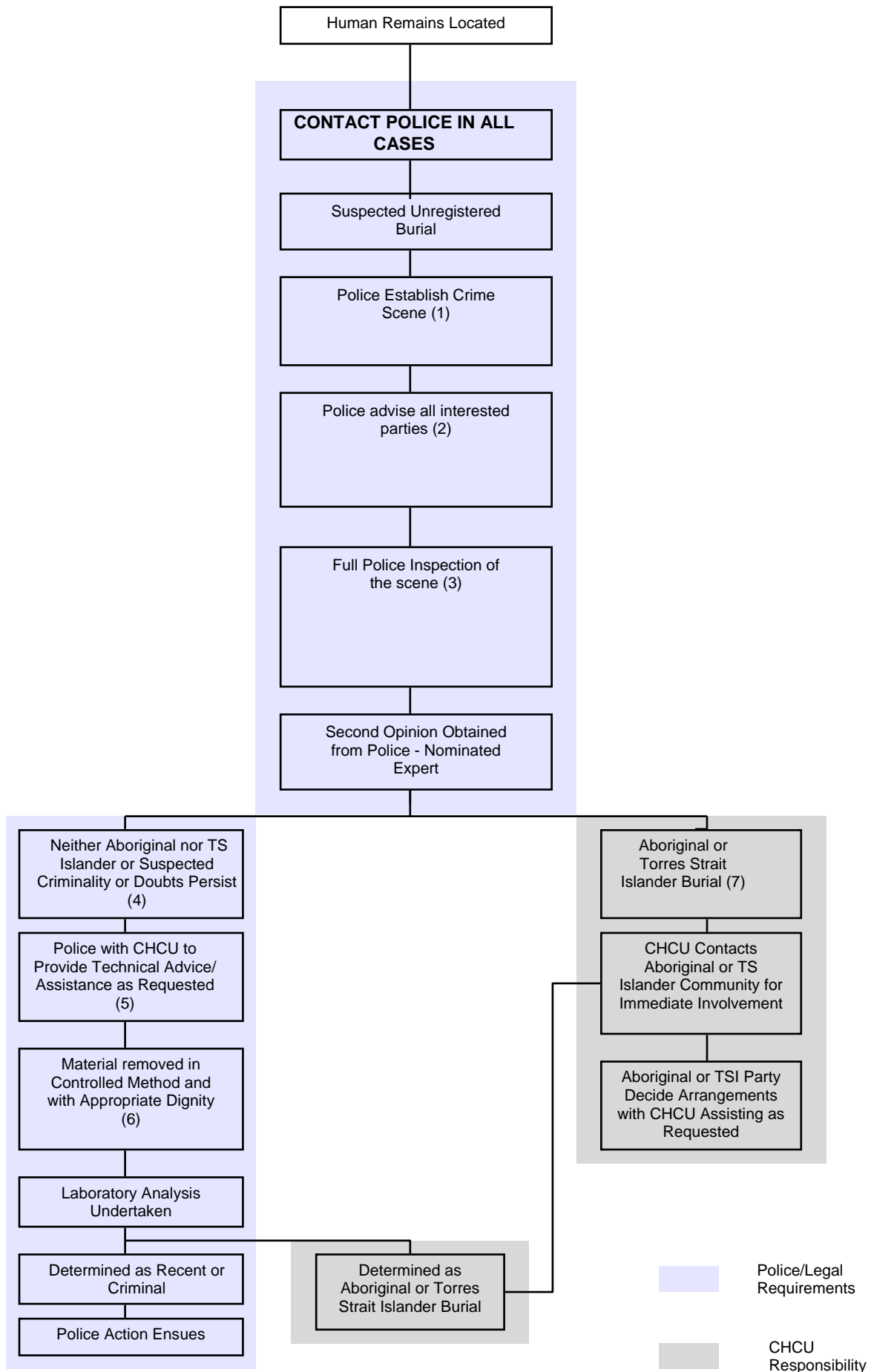
The Police or Coroner must be advised of the presence of any human remains. An appropriate officer or officers will then establish the area of discovery as a potential crime scene and are responsible for preserving and securing the area.

If a determination is made that satisfies the Coroner that the remains are not a crime scene and that the remains could constitute an Aboriginal or Torres Strait Islander burial site, Police will contact the Cultural Heritage Coordination Unit of the Department of Environment and Resource Management. Officers of the Cultural Heritage Coordination Unit (or their representatives) may attend the scene and along with the Police and Scenes of Crime Officers collect appropriate data on ethnicity, antiquity and evidence of criminal activity or otherwise for submission to the Coroner. Further advice might be sought from forensic osteologists/pathologists or physical anthropologists.

If the remains are thought to be neither Aboriginal nor Torres Strait Islander, related to criminal activity or are of doubtful determination, Officers of the Department of Environment and Resource Management (or their representatives) may assist the Police in further determinations. This may require controlled removal and analysis by a suitable forensic expert as ordered by the Coroner. In all cases of possible criminal activity the requirements of the Police and Coroner for data collection and site security will have priority. If the remains are determined, to the satisfaction of the Police and Coroner, to be Aboriginal or Torres Strait Islander, Officers of the Department of Environment and Resource Management will then take responsibility for liaison and reburial with the appropriate Aboriginal or Torres Strait Islander community.

At all stages minimal disturbance to the remains will be a priority and they will be dealt with in a sensitive and caring manner. Advice and guidance from Aboriginal or Torres Strait Islander elders will be taken as soon as the possibility of criminal activity is dismissed.

Where an offence under provisions of the *Aboriginal Cultural Heritage Act 2003* or *Torres Strait Islander Heritage Act 2003* is suspected to have occurred then the Regional Compliance Team of the Department of Environment and Resource Management must be advised. Where an offence is suspected the scene must be kept secure until handed over to Department of Environment and Resource Management compliance officers.



Explanation of procedures

- (1) Police Officers maintain authority and responsibility for a potential crime scene at all times.
- (2) Cultural Heritage Coordination Unit Officers (or their representatives) may attend the scene and provide advice as required by Police and Scenes of Crime Officers.
- (3) Police will nominate a person to provide a second opinion if appropriate. Such opinion may be available on-site if a suitable forensic expert is available. However, if a suitable forensic expert is unavailable to travel to the site, digital images may be sent to them to provide an opinion. All data required for first and second opinions is to be collected on site.
- (4) Final decision on this rests with Police, on advice from the Coroner.
- (5) Officers of the Cultural Heritage Coordination Unit will, on request, assist Police in technical aspects of evidence retrieval.
- (6) Advice on handling may be sought from appropriate sources where this does not compromise integrity of crime scene or quality of evidence.

Additional procedures and information

Where the remains are determined to be Aboriginal or Torres Strait Islander the Coroner will authorise for the remains to be released and will complete *Form 12 Order for the Release of Traditional Remains*. This provides for the release of the remains to the Minister responsible for administering the *Aboriginal Cultural Heritage Act 2003* and the *Torres Strait Islander Heritage Act 2003*.

Should any Police Officer or Officer of the Department of Environment and Resource Management (or their representative) be in any doubt as to the requirements of the relevant Coroner for their region, then it is essential that the Coroner be directly consulted. Alternatively, as the State Coroner is responsible for all Coroners any perceived difficulties in implementing the policy/procedure should be referred to him/her.

The excavation of human burial remains for whatever reason is not encouraged. However, this may occur if directed by the Coroner or if requested in writing by an Aboriginal or Torres Strait Islander Body.

If a researcher acting under an authority or agreement from the Cultural Heritage Coordination Unit and with the Aboriginal or Torres Strait Islander Body for an area discovers burial remains in the process of excavating a site, they shall immediately stop excavation, cover the remains and contact an Officer of the Cultural Heritage Coordination Unit, who will then follow the procedures set out in this document.

The Queensland Museum acquired human remains from the 1870's to 1972 including some legally recovered under the *Aboriginal Relics Preservation Act 1967*. However, by 1972 it was no longer considered appropriate to deposit human remains with the Queensland Museum except in exceptional circumstances and with the permission of the relevant Aboriginal or Torres Strait Islander community. The Museum has now developed a repatriation policy for human remains still in its collection (see – *Queensland Museum Policy on Ancestral Remains and Burial Goods* – May 2004, Queensland Museum Policy on Secret Sacred Objects – May 2004). These policies commit the Queensland Museum to returning to Aboriginal and Torres Strait Islander communities, family groups, and individuals, ancestral remains and burial goods, and secret sacred objects held in Museum collections.