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Aboriginal Land Claims in the Northern Territory: Documenting and preserving the records and memories

Report of a Focus Group Meeting

1-2 October 2019, Canberra



*Participants at the focus group meeting, University House,
Australian National University*

November 2019

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Cover photo: From back left: Participants at the focus group meeting: Dennis McDermott, David Trigger, Melissa Thomas, Robert Blowes, Averil Ginn, David Ross, David Avery, Ross Howie, Tamara Cole, David Nash, Sophie Creighton, Jeffrey Paul, David Parsons, Jasmine Tearle, Jenny Green, Ian Keen, Petronella Vaarzon-Morel, Timothy Rowse, Francesca Merlan, Matt Lyons, Stephen Johnson, Nic Peterson, Michael Walsh, Geoff Eames, Lisa Smith, Jane Simpson, Phyllis Williams, Yvonne Forrest, Mick Dodson, Helen Wright, Toni Bauman, Anna Gilfillan, Peter Sutton, Cindy Patterson.

Absent: Leonard Hill, Charlotte Craw, David Ritchie.

Photo credit: Saskia Roberts

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EXECUTIVE SUMMARY

A substantial amount of anthropological, linguistic, historical, archaeological, legal and other research has been undertaken from the late 1970s in the preparation and hearing of claims by the Aboriginal Land Commissioner (ALC) under the Aboriginal Land Rights Act (Northern Territory) 1976 (Cth) (ALRA).

Many practitioners hold documents, photographs, audio and video recordings and other records that are highly significant for the cultural heritage of Aboriginal peoples and the national heritage of Australia. Claimants and practitioners also have memories that inform a rich history of land claims and land rights in the Northern Territory and that provide valuable data to establish the provenance of the materials.

Over 40 years of collections are in danger of becoming damaged and indecipherable. Memories are diminished and ultimately extinguished with the passing of time.

The Project

In 2019, the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) and Latrobe University entered into a research partnership for Stage 1 of a project titled 'Aboriginal Land Rights in the Northern Territory: Documenting the Records and Memories' (the Project).¹

A Project Advisory Committee chaired by Australian National University (ANU) Emeritus Professor and Northern Territory Treaty Commissioner, Michael Dodson was established (see Appendix 1 for a list of members of the Committee).

The objective of Stage 1 is to encourage practitioners to 'get into their garages and sheds and boxes' and document their records for preservation and storage.

Without this documentation, the records will be meaningless including for future generations of Indigenous peoples who will be denied a part of their history and their rights under the United Nations Declaration of Indigenous Peoples (UNDRIP).

¹ This project is part of a broader AIATSIS research project called The Return of Native Title Materials <https://aiatsis.gov.au/research/research-themes/native-title-and-traditional-ownership/returning-native-title-materials>

The Focus Group Meeting

A focus group met on 1 and 2 October 2019 to explore related issues including how to build and manage these collections, so that they constitute a searchable and responsibly managed Northern Territory Land Rights Archive (see Appendix 2 for the Agenda).

The focus group was a conversation between two kinds of participants:

1. **Researchers (anthropologists and linguists for example) and lawyers** who have worked on Northern Territory land claims (particularly in the late 1970s through to the 1990s) and who have deposited or are considering depositing to some public collecting authority.
2. **Archivists** from the National Archives of Australia (NAA), the Northern and Central Land Councils (NLC and CLC), the Office of the Aboriginal Land Commissioner (ALC) in the Northern Territory, AIATSIS, and the Aboriginal Areas Protection Authority in the Northern Territory (AAPA) (see Appendix 3 for a list of participants).

Overview of Focus Group discussion

Two pieces of legislation provided the context for the focus group discussion:

- the *Archives Act 1983* (Cth) (Archives Act) which is administered by the NAA and to which Land Councils and the ALC as Commonwealth statutory bodies, are subject
- the ALRA which determines the work of the Land Councils which hold extensive archives.

Formal records submitted to a land claim hearing under the ALRA are mostly available in the archives of the Land Councils and the Office of the ALC and increasingly available in the NAA archives.

However, these records are only a fraction of the research materials produced in the preparation of a land claim. The 'back story' of a claim is comprised of many other precious records stored in the 'garages' of those involved, for example: field notes, sequential drafts of maps or genealogies, notes taken by lawyers when proofing witnesses, briefs to other lawyers, oral histories, a range of historical and ethnographic materials identified through archival research, photographs, audio cassettes and video recordings of oral histories, songs and languages.

The NLC and CLC may already hold some of these 'back story' materials. But many others remain undocumented in the 'garages' of collectors, their ownership and status as 'Commonwealth records' uncertain.

The focus group:

Explored some of the ways that this knowledge is of great value, in different ways, to various constituencies:

- the Traditional Owners whose heritage is represented in land claim processes
- the Land Councils whose statutory duty is to complete the land claim process, maintain registries of Traditional Owner interests, and assist Traditional Owners in realising their rights
- the NAA, which has statutory responsibility for Commonwealth records
- other archives like AIATSIS and the AAPA which hold land claim materials
- those who have interests in preserving these valuable records to inform Australia's history, its truth telling and Indigenous issues generally.

Reviewed the existing practices of collecting and managing this knowledge, revealing an array of collecting authorities with overlapping but different procedures and policies.

Elicited the perspectives of past and potential depositors of materials.

Discussed the possibility of a Distributed Northern Territory Land Claims Archive as a resource for Traditional Owners, researchers and others including in ongoing work on native title claims under the *Native Title Act 1993* (Cth) (NTA) and under the ALRA.

Identified the urgent need to attract funding for Stage 2 of the Project.

The discussion revolved around:

- documenting and archiving records and deciding what to deposit
- managing access to the existing collections according to protocols that respect Indigenous interests and those of the wider public
- identifying and filling gaps in these collections – particularly those of the Land Councils – by facilitating further deposits of relevant materials from private holdings
- clarifying the opportunities for private collectors to dispose of and/or share in a responsible way the materials they hold.

Potential Activities for Stage 2 of the Project

The priority for Stage 2, to be considered by the Project Advisory Committee will be to attract funding for the salary and administration expenses for a co-ordinator in order to progress:

- (a) the concept of a Distributed Northern Territory Land Claims Archive
- (b) pilot projects for documenting and preserving materials and building the meta data of collections
- (c) publications of memories and land claim stories

Conclusion

The value and priority of the records under discussion cannot be underestimated. The memories, stories and anecdotes that illuminate a unique historical period are priceless.

There is an urgent need for funding for this project to continue into Stage 2. Time is of the essence.

Aboriginal Land Rights in the Northern Territory: Documenting and Preserving the Records and Memories

Whilst other countries entered into treaties with First Nation peoples, Australia insisted on a regime of proof of First Nation entitlements to land and waters in courts and tribunals. The litigation that ensued was typically contested and exhaustive. The records and materials produced as a consequence are extensive.

A substantial amount of anthropological, linguistic, historical, archaeological and legal and other research has thus been undertaken in the Northern Territory from the late 1970s in the preparation of land claims to be heard by the Aboriginal Land Commissioner (ALC) under the *Aboriginal Land Rights Act (Northern Territory) 1976* (Cth) (ALRA).

Many practitioners hold documents, photographs, audio and video recordings and other records that are highly significant for the cultural heritage of Aboriginal peoples and the national heritage of Australia. Claimants and practitioners also have memories and recollections that inform a rich history of land claims in the Northern Territory and provide valuable data to establish the provenance of the materials.

Of concern is that these materials and recollections are vulnerable to the passing of time as it has now been more than 40 years since these collections began. The records are in danger of becoming damaged and indecipherable. Many practitioners who hold the records have retired and some are deceased. The records may be lost to posterity, and in some cases already have been, as they are discarded by relatives who do not understand their value.

Recollections, which are needed to establish the provenance of these materials and the documentation of an era, will be diminished and ultimately extinguished with the passing of time. Even if those involved do not hold relevant records, when provided with a transcript or a photograph, they may be able to provide important detail and relevant anecdotes about contemporaneous events. In another 10 years or so the opportunity to identify and preserve the materials and recollections may have been lost forever.

Land claim records open a window onto the wider society: they are a significant part not only of Aboriginal heritage, but also of broader Australian history and its legacies of colonialism; they are of public interest.

The Project

In 2019, the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) and Latrobe University entered into a research partnership for Stage 1 of a project titled 'Aboriginal Land Rights in the Northern Territory: Documenting the Records and Memories' (the Project).²

A Project Advisory Committee was formed chaired by Australian National University (ANU) Emeritus Professor and Northern Territory Treaty Commissioner, Michael Dodson AO (see Appendix 1 for a list of members of the Committee).

The Project keeps Aboriginal peoples' access to and return of materials firmly in its sights and works towards new approaches to cataloguing, digitising and access. Its ultimate aim is to put control of appropriate materials back in the hands of the relevant Indigenous communities recognising the rights of Indigenous peoples to their knowledges, cultures and stories under the United Nations Declaration of the Rights of Indigenous peoples (UNDRIP). The Project is also mindful of the rights of those who hold materials in their collections and who played significant roles in their production.

The objective of Stage 1 of the Project is to encourage collectors to prepare their records in their private collections for archiving and preservation and to provide their provenance.

Without such documentation, many records will be meaningless including for future generations of Indigenous peoples who will be denied their histories.

The success of the Project depends on identifying and acting upon a number of risk factors and complexities many of which are highlighted in this report as well as in a recent publication concerning archives.³

² This project is part of a broader AIATSIS research project called The Return of Native Title Materials <https://aiatsis.gov.au/research/research-themes/native-title-and-traditional-ownership/returning-native-title-materials>

³ Barwick, L., Green, J., Vaarzon-Morel, P., Zisserman, K., 'Conundrums and consequences: doing digital archival returns in Australia'. In Barwick, L., Green, J., & Vaarzon-Morel, P. (2019). *Archival returns: Central Australia and beyond*. Language Documentation & Conservation Special Publication No. 18. Honolulu and Sydney: University of Hawai'i and Sydney University Press.

The Focus Group Meeting

On 1 and 2 October 2019, as part of Stage 1, a focus group meeting, the first of its kind, was held at University House at the Australian National University (ANU) in Canberra to identify issues associated with archiving, preserving and safely storing land claim materials (see Appendix 2 for the Agenda).

There were 40 participants with numbers limited by space and funding and an emphasis on inviting participants who lived in Canberra who have relevant archives (See Appendix 3).

A number of documents were distributed to participants prior to the meeting including draft templates for deposit and guidelines for preparing archives for deposit (see Appendix 4).

The focus group was a free flowing conversation between two kinds of participants:

1. **Researchers (anthropologists, linguists and historians for example) and lawyers** who have worked on Northern Territory land claims (particularly in the late 1970s through to the 1990s) who hold the records under discussion, have interest, passion, and knowledge from those times, and who have deposited or are considering depositing their records in archives;
2. **Archivists** operating under various legal regimes including the National Archives of Australia (NAA), the Northern and Central Land Councils (NLC and CLC), the Office of the ALC in the Northern Territory, AIATSIS, and the Northern Territory Aboriginal Areas Protection Authority (AAPA).

The meeting, facilitated by AIATSIS Visiting Research Fellow Toni Bauman and Adjunct Professor David Parsons SC from LaTrobe University, was also designed to identify possible activities for a proposed Stage 2 of the Project if funds become available.⁴

In opening the meeting Professor Dodson noted the value of the records under discussion and commented:

The memories and documents are more valuable while we are alive than after we have gone, adding narrative makes it much more valuable than if someone looks at it afterwards without the narrative...We as a generation were privileged to hear stories from people who hadn't written stories down for 60,000 years...In 5-10 years it won't be available anymore, coz we [may not] won't be here'.

⁴ Consent was obtained at the meeting to include the names of participants and to publish photographs of the meeting.

The conversation was highly rated by participants in post meeting evaluation sheets. Participants commented on the opportunity to share researcher and archivist perspectives and practices as well as catching up with old friends.

The discussion was dynamic, highlighting how the issues are located at the intersection of Indigenous and collectors' rights and other legal, political, ethical, moral, historical, anthropological and linguistic considerations.

This Report

This report, [available [here on the AIATSIS website](#)], relies on a draft summary discussion of the meeting that was prepared by Dr Timothy Rowse who was the primary scribe at the meeting (Appendix 5). The Report is also informed by participant comments on drafts and some clarifying information which became available after the meeting.

The focus group meeting:

Explored some of the ways that land claim records and memories are of significant value, sometimes in different ways, to particular constituencies:

- the Traditional Owners whose heritage is represented in land claim processes
- the Land Councils whose statutory duty is to complete the land claim process, maintain registries of Traditional Owner interests, and assist Traditional Owners in realising their rights
- the NAA which has statutory responsibility for Commonwealth records
- other archives like AIATSIS and the AAPA which hold land claim materials
- those who have interests in preserving these valuable records to inform Australia's history, its truth telling and Indigenous issues generally.

Reviewed the existing practices of collecting and managing land claim records, revealing an array of collecting authorities with overlapping but different procedures and policies.

Elicited the perspectives and concerns of past and potential depositors of land claim materials.

Discussed the possibility of a distributed Northern Territory Land Rights Archive as a resource for Traditional Owners, researchers and others including in ongoing work on native title claims under the *Native Title Act 1993* (Cth) (NTA) and under the ALRA).

Identified the urgent need to attract funding for Stage 2 of the Project.

Part A consists of a discussion of relevant legislation and its implications for potential depositors and the collecting institutions most directly involved (the Land Councils, the NAA and the ALC). The status of 'Commonwealth records' and the possibility of a Distributed Northern Territory Land Claims Archive are also discussed.

Part B identifies a number of concerns raised by participants at the meeting and offers some potential solutions in describing the current practices of collecting agencies.

Part C highlights the importance of documenting and publishing the memories and stories and struggles of the land claims era as an important part of our national heritage.

Part D provides a pathway, subject to funding, to progress into Stage 2 of the Project.

Part A The Legislative Context and its Implications

A number of presentations describing the legislative regime in which the archiving of land claim records are located were made at the meeting by representatives of the NLC, CLC, ALC and the NAA.

Two pieces of legislation are directly relevant:

- the ALRA which determines the work of the Land Councils
- the Archives Act which is administered by the NAA and to which Land Councils and the ALC, as Commonwealth statutory bodies, are subject.

The Northern Territory Land Councils, the ALC and the ALRA

Under Section 23 of the ALRA, the CLC and NLC are given the functions of assisting Traditional Owners in making claims to areas of land within their jurisdictions including in the preparation and hearings of claims before the ALC who administers the ALRA. This often involves the employment of consultant researchers and the briefing of barristers mostly by Land Councils but also by other NT and Commonwealth government agencies and organisations.⁵

Land Council researchers are required to write land claim books setting out the bases of claims according to the definition of Traditional Owner in the ALRA.

Section 3 of the ALRA requires proof that the claimants constitute a local descent group with common spiritual affiliations to a site on the land that place the group under a primary spiritual responsibility for the land. It also requires proof that claimants have the right according to Aboriginal tradition to forage over the land.

The work has involved the recording of many claimant interviews about a broad range of topics, the mapping of sites of significance, the preparation of genealogies and a range of other documents. Documents prepared for tender as final submissions usually go through a number of drafts and are listed as exhibits in the ALC's reports to the Commonwealth Minister for Indigenous Affairs (previously Aboriginal Affairs).

⁵ Like the Central Land Council and the Northern Land Council, the Tiwi Land Council and the Anindilyakwa Land Council are subject to Records Authority 2010/00643150. However, these Land Councils administer only Aboriginal Trust Land and have not had the need to participate in land claims.

Land Councils are also required under Section 24 of the ALRA to keep a register of Traditional Owners and maps of significant sites. Over the years the information that the Land Councils hold in their archives has grown to be extensive. It constitutes a unique record. It provides Traditional Owners with family histories. It informs researchers who are working on contemporary land and native title claims under the NTA in identifying Traditional Owners and native title holders and provides invaluable documentation of the significance of country. It also informs other projects such as those related to cultural heritage and caring for country.

The Archives Act, the NAA and Land Councils

'Records Authority/ies' issued by the NAA under Section 24 of the Archives Act govern the transfer of 'Commonwealth records' from statutory agencies of the Commonwealth including the Land Councils and the ALC.

Commonwealth records are produced by Commonwealth agencies in performing their functions. Usually, a contracted deliverable is the property of the contracting agency and a 'Commonwealth record' would be those materials that are the completed products of consultancies.

What counts as a Commonwealth record for Land Councils is described in NAA Records Authority 2010/00643150: 'All core business records relating to: Advocacy management; Economic development and commercial services management; Land and sea claims and acquisitions management; Land Council management; Land, sea and natural resources management; Land trust administration; Native Title management.'

Land Councils are required to transfer a record to the NAA if it ceases to be a 'current Commonwealth record' ('a Commonwealth record that is required to be readily available for the purposes of a Commonwealth institution') or 'within 15 years of the record coming into existence' (Section 27). However, Section 29 of the Archives Act sets out exemptions to this requirement, allowing the Land Councils to withhold records from transfer with the agreement of the Director-General.

Some preliminary discussions have taken place between Land Councils (particularly the CLC) and the NAA towards developing Memorandums of Understandings about the transfers of records.

The NAA and the ALC

The NAA's work with the ALC is governed by Records Authority 2017/00413096, which recognises the ALC's core activities under two headings: 'managing land claims' and 'advising the Minister and the Administrator of the Northern Territory'.⁶

Since 2017, records have been 'sentenced' as 'Retain as National Archives' (RNA) in perpetuity and transferred to the NAA consistent with the Records Authority.

To date around 3000 land claim records have been transferred to the NAA, listed according to the land claim to which they are relevant, not by the authors of documents. They include:

anthropology reports, genealogies, site/dreaming maps and site registers, list of claimants and their personal particulars....written and oral evidence and submissions produced for land claims inquiries, for example, transcripts, maps, reports, witness statements and audio recordings, including records relating to traditional ownership and detriment issues....records relating to site and country visits, aerial viewings and on-country hearings of land claim inquiries.⁷

The ALC still holds about 500 records, and the hearings of outstanding land claims will give rise to more records and eventually more transfers.

Would-be depositors are likely to have worked on these documents under contract to the Land Councils or other government agencies and organisations, and to have copies in their personal collections. Many will also be held in Land Council archives.

The NAA, the Land Councils and the 'back story'

Commonwealth records submitted to the ALC in a land claim hearing are, however, only a fraction of the records produced in preparing land claims. Much research precedes a hearing, providing the 'back story' to these final materials.

⁶ There have been 249 land claim applications made under the ALRA. Of those, 73 land claims have been heard and reported on by the ALC. A large number of claims have been settled by negotiation or disposed of by other means, and were therefore not the subject of an inquiry and report by the Commissioner. Additionally, 41 land claim applications are not yet finalised including 18 currently in the Commissioner's jurisdiction. A number of these are likely to be settled by negotiation.

⁷ NAA Records Authority 2017/00413096. Low level administrative documents like flight itineraries, for example, are marked to be destroyed in 3-5 years.

Records in private collections may also include, for example: field notes, sequential drafts of maps or genealogies, notes taken by lawyers when proofing witnesses, briefs to other lawyers, oral histories, a range of historical and ethnographic materials identified through archival research, photographs, audio cassettes and video recordings of oral histories, songs and languages. These records provide rich provenance information, often demonstrating how the land claims process worked and how submissions to hearings were prepared.

The status of at least some of these records as 'Commonwealth records' is not clear, though a number would be the property of the Land Councils (see below). The Archives Act requires the NAA to decide whether an item is or is not a Commonwealth record.⁸ While the NAA is able to accept personal records, this is not its current practice. An NAA representative commented that the NAA accepts personal records (which often contain Commonwealth records) only from those who have current depositor agreements with the NAA. The only new personal records they accept are from Prime Ministers and Governors-Generals.

Notwithstanding, the NAA document 'What we keep' (issued May 2015) specifies three ways that material could be significant enough to archive. As well as 'government authority, action and accountability', the statement mentions:

Identity, interaction and rights and entitlements... information that for individuals and communities: reflects identity and the condition and status of Australia and its people; provides evidence of ongoing rights and entitlements; or shows the impact of Australian government activities on individuals and communities as well as their interaction with the government....*Knowledge and community memory...* information that has substantial capacity to enrich knowledge and understanding of Australia's history, society, culture and people....⁹

⁸ If a record is judged by the NAA not to be Commonwealth record, then Section 6(2) applies:

Where the Archives enters into an arrangement to accept the care of records from a person other than a Commonwealth institution, those arrangements may provide for the extent (if any) to which the Archives or other persons are to have access to those records and any such arrangements have effect notwithstanding anything contained in Division 3 of Part V [parts of the Act dealing with public access and exemptions].

⁹ <https://www.naa.gov.au/information-management/dispose-information/transferring-information/transferring-information-national-archives/how-we-select-national-archives>

This broad definition of what may be worth keeping means that the NAA could be open to approaches from private depositors of land claim materials in the future should its current practices change, particularly if they mingle Commonwealth records with the ‘back story’ materials discussed above. The NAA may also already hold or will eventually hold records judged as Commonwealth records via the ALC’s transfers.

A Northern Territory Land Claims Distributed Archive

Land claim records are already dispersed across a number of collecting agencies and are unlikely ever to be within a single archive. Section 64 of the Archives Act allows for distributed custody of Commonwealth records, and the NAA has obligations under other sections of the Act to make records accessible to the public and to make them safe and secure.

It thus makes sense to think of land claim records as a Distributed Northern Territory Land Claims Archive, primarily distributed across the agencies represented at the meeting:

- the NLC and CLC
- the NAA
- the ALC
- the AAPA
- AIATSIS, particularly early land claim records when AIATSIS provided consultants to the Land Councils.

Other collecting institutions holding land claim materials which were mentioned include:

- the National Library of Australia
- the State Library of Victoria
- the South Australian Museum
- the Northern Territory Library, recently combined with the Northern Territory Archives Service, which will eventually receive all the land claim records held by the Northern Territory Crown Solicitor.

The benefits of a distributed archive become apparent when considering, for example, the dispersed locations of the transcripts that are the primary record of land claim hearings. The only complete set appears to be with the office of the NT Government Solicitor, eventually to be deposited in the NT Archives.¹⁰

¹⁰ Since 2013, electronic copies of transcripts have been made and these will eventually go into the NT Archives. But there is no complete audio record for each land claim in part as a result of past practices of recording over the tapes of transcripts for reuse.

Digitisation of materials, cloud storage, and a password protected gateway website were suggested as ways of identifying where materials are held and of providing access to unrestricted materials over the long-term, including for local archives.

A distributed archive would require an agreed host organisation with a clear mandate responsible for the ongoing management of data. An ALC representative notified the meeting of the possibility of the ALC's office having an appointed administrative role to deal with access requests for its records in the future. Guidelines would have to be identified in discussion with the Land Councils.¹¹ The idea of an agreement between the NAA and the Land Councils that places materials held by other entities under the protection of the NAA was also raised.

¹¹ There were some concerns about records being stored in Northern Territory collecting institutions given the often conflictual nature of the relationship between the NT government and Land Councils. One participant was reminded of the Queensland government's mass destruction of records relating to the Stolen Wages case.

Part B Concerns of potential depositors

A number of participants had been unaware of the legal context of land claim records described above, in particular the roles and responsibilities of the NAA and the relevance of 'Commonwealth records'.

In considering future deposits of their materials, they identified a number of concerns. These included: ownership, intellectual property and copyright, storage options, land claim relevance, secrecy, confidentiality and changing sensitivities, Indigenous access, researcher and teacher access, the priorities of records, work effort and time, digitisation, and how to sort through their collections efficiently and effectively.

Ownership, copyright and intellectual property

The Land Councils already hold many 'back story' research materials, such as field notes, deposit with the Land Councils having been a contractual requirement of the researcher. Today, Land Council contracts with researchers address issues of ownership, intellectual property and copyright as a matter of course.

However, in the 1970s and 1980s, consultants may have been contracted by Universities or AIATSIS rather than by Land Councils. Contracts may have been silent on issues of ownership, copyright and intellectual property, and about where materials generated in the land claim research process should be held.

Ownership, intellectual property and copyright may have been attributed to the researcher or shared by researchers and the Land Councils.

Some materials may give rise to a three party interest between Land Councils, Traditional Owners and researchers. The field notes of linguists were discussed in these terms where 'the verbatim writing down of a sound recording' was described as 'the [Indigenous] cultural data', but the 'grammatical analyses' as 'the product of the researcher working with data'.¹²

¹² In this example, 'joint copyright' might be understood as the copyright and intellectual property of the sound recording lying with the person who was recorded, and the intellectual property of the analysis as sitting with the researcher. Copyright might also be with a Land Council. That is, ownership could potentially be with three parties.

Ownership of materials produced by lawyers acting on behalf of claimants and barristers retained by Land Councils may also not be straightforward. While these materials are subject to the usual requirement of return of the brief on completion of work, it is not always clear what constitutes a brief – for example personal photos and recordings made during the preparation of the claim.

Unless stated in contracts, the legal status of some ‘back story’ materials may be determined only on a case by case basis by considering specific contracts and the circumstances in which materials were produced. If contracts are silent, negotiation in good faith is required in a risk management approach involving all who have a claim to materials including Land Councils, Traditional Owners and producers of the materials, with the aim of ensuring that records are not destroyed.

The ALC has obtained similar legal advice in that ownership of copyright in ALC records should be dealt with on a case by case basis with reference to Parts 3 and 7 of the *Copyright Act*.

A representative of AIATSIS Collections advised that AIATSIS is not empowered to administer access to Commonwealth records in most circumstances. Any decision to accession ‘back story’ material produced for the purposes of land claims would have to be carefully considered to ensure that AIATSIS, in discussion with the relevant Land Council could establish a legal right to hold the material and provide access.

Storage concerns

Since collection institutions will manage deposits and access requirements according to their own policies, it seems important for collectors to know where materials are to be deposited before beginning to document them.

The Land Councils are keen to fill gaps in their records. They also have a long history of managing records according to the wishes of the Traditional Owners who derive much pleasure from viewing photos and videos, listening to tapes and perusing documents such as genealogies and maps. Over the years, the Land Councils have built the familiarity, relationships and trust with Traditional Owners who are essential to cultural expertise in dealing with issues that arise.

NAA representatives acknowledged that NAA expertise has been generally applied to formal Commonwealth records rather than the ‘back story’ materials which the Land Councils deal with on a regular basis. The NAA and ALC often refer materials to the Land Councils for advice.

At the same time, the Land Councils may not have the technical expertise to deal with preserving and migrating primary records such as slides, negatives, cassette tapes, and videos to current reading technologies. NLC representatives also advised that they lack resources to provide safe storage and efficient archiving.

The possibility was raised of Land Councils and the NAA arriving at an agreement for the NAA to apply its technical expertise to records of concern, while materials remain with the Land Councils.

Land claim relevance

Researchers were employed to work on land claims often because of their pre-existing knowledge and understandings of a group of Traditional Owners or local area. While providing valuable information in the preparation of claims, many of the 'backstory' materials under discussion may not have been specifically produced for land claim purposes.

One researcher observed that various items in a collection could be classified as both 'land claim' research and part of wider research programs in linguistics, history and anthropology. Notebooks can be relevant to different projects with the same Traditional Owner group sometimes relating to projects undertaken for agencies other than Land Councils.

A number of questions arose at the meeting such as: How can materials gathered for other purposes but used in land claims be classified? Can and should deposited materials (such as field notes) be classified according to whether they were (i) instrumental to the land claim process or (ii) part of a researcher's continuing interest in the language, customs and history of the claimants?

Distinguishing materials produced specifically for land claims from other materials in a private collection would require considerable work by depositors, including in dealing with sensitive and restricted materials. The Land Councils welcomed approaches from private collectors, whether or not the materials were used for land claim purposes.

Secrecy, confidentiality and changing sensitivities

Managing restricted records that are secret or confidential (in particular, restricted according to the gender, age and identity of a potential viewer) is a complex task for archivists.

Some early ALC land claim reports do not identify restrictions in their lists of exhibits and the ALC often refers to the Land Councils for expert assistance. It can also be difficult to understand from land claim transcripts why restrictions were put on certain materials in the first place. Waiving legal privilege or identifying restrictions is a particular problem when the individuals concerned are deceased or are unable to communicate. In the native title context, affidavits have to be provided setting out reasons for restrictions, and it can be extraordinarily difficult to have restrictions maintained in the legal processes.

The process of managing records is also ongoing as sensitivities and judgments about what should be restricted change over time. In processing access requests, Land Councils often have to reconfirm restrictions and sensitivities to account for changing Traditional Owner and researcher perspectives and transformed contexts.

Photographs of the recently deceased, which were once restricted, may now be in demand by Traditional Owners. Earlier permissions given by Traditional Owners to access records may be withdrawn; others may want records destroyed when the records appear to challenge the veracity of their contemporary perspectives of land ownership often in native title and other land related disputes.

Documents such as 'Land Claim books' once freely distributed to claimants and others and deposited in a range of archives and libraries, are today considered 'restricted' by Land Councils and are not readily accessible by Traditional Owners. Some of these 'books' have been transferred from the ALC to the NAA which handles the secrecy and potential disruption and 'harm' issues by the authority conferred in Section 33 of the Archives Act. When the NAA receives a public request for access to a document after the 20 year 'closed' period, NAA staff respond according to a subject guideline 'Indigenous cultural sensitivities in written records'. Staff may invoke Sections 33(1)(d) or 33(1)(g) of the Archives Act to prepare a 'statement of reasons to support exemption [from public access] because of cultural sensitivity'. To date, authorisations of access to such materials have not included authorisation to reproduce or publish.

In preparing a 'sensitivity statement', the NAA seeks advice from the ALC, who in turn, usually consults the Land Councils. This can be an administrative burden for all, though each agency assured the meeting that they handle sensitive material in a way that honours their longstanding commitment to Northern Territory Aboriginal people. Their default position is that records are restricted until access requirements are confirmed. While collecting institutions may not accept documents under legal privilege, the Land Councils noted that these documents could be deposited by a researcher for internal use.

Of concern to participants was that private collectors might put secret and other restricted documents in the 'too hard basket' in sorting through their collections. This could mean that such documents end up on the rubbish tip on the death of a researcher, from where they may be accessible to others. One participant noted that 'even the shredding of such documents would be preferable'.

Indigenous access

Issues of Indigenous data sovereignty and Indigenous access including via community archives were raised a number of times at the meeting. While the ultimate aim of this project is to provide such access, it was not this meeting's primary focus.

Nevertheless some participants thought that Indigenous access should be at the forefront of decisions that depositors make about where to deposit materials and how to establish their provenance. Describing an item in a way that is useful for a Traditional Owner and that considers the future implications of the information to a Traditional Owner may require a different approach from standard academic documentation.

The ways in which a record is documented can also do harm to Traditional Owners and their families. An AAPA participant noted that AAPA staff spend significant time counselling Aboriginal members of the public about how to interpret the records they have accessed. Access to certain records can cause the 're-traumatisation' of those who have suffered loss, and it may re-open or exacerbate disputes. Knowledge acquired through a deposit can also be disruptive of previous land claim settlements and adjudications.

Of particular concern were the uses to which records might be put when misunderstood and misinterpreted, and taken out of context from the full body of relevant information and provenance of a record. Transcripts, often seen as definitive records of land claim hearings, were given as an example. Aboriginal English and other Aboriginal language words are often incorrectly transcribed and transcripts have rarely been proofed. Transcription errors, such as omitting the word, 'not', can change the meaning of an Aboriginal witnesses' response completely.

Where Indigenous people have been traumatised in accessing records, they are entitled to professional support. Indigenous expectations of finding relevant materials in archives also need to be managed as archives may hold few if any records of interest. Some suggested that a 'template' or workshop 'guide' could be developed for Traditional Owners and native title holders and researchers, to guide their interpretation of records.

The Land Councils see it as part of their ongoing, daily business to deal with conflict between Aboriginal people, to seek appropriate access advice and to manage restrictions.

Researcher and teacher access

Researchers, teachers and Traditional Owners alike have experienced difficulties in accessing records including those they may have deposited themselves. This is of particular concern to University lecturers in law, anthropology, history and linguistics who rely on land claim materials to teach students, as well as to native title researchers who are often under time pressures from the court to produce reports.

If the expected consequence to a depositor is complications in gaining permission to re-access materials, he or she may be less likely to deposit them. Some complications may relate to the original access conditions that researchers themselves identified. Years later these conditions can be difficult to fulfil particularly when they require significant time and resources to locate the Traditional Owners nominated to be consulted or in the event of the deaths of these custodians, those who now have the relevant authority.

There was a general view at the meeting that whatever is deposited should be made as accessible as possible, subject to the comments about restrictions and sensitivities raised above. However, some of the lawyers present were not convinced of this, noting how previous research can prejudice and contradict contemporary claims.

Whatever the case, meaningful access requires informative metadata and documentation. Producing these in a timely fashion will require depositors to make assessments about the priorities of preparing particular records.

Priority

Focus group discussions demonstrated that there are no uncontroversial answers to questions such as: Important to who? Who is material for? What is it for? What state it is in? How urgent is access and by whom? Should items be classified in terms of the urgency of a depositor who may be downsizing their home, or whose estate is being administered? And, if so, what kinds of items should take priority?

A number of reasons for classifying a deposit as a priority were identified at the meeting, including that the material is:

- unique and important
- of primary interest to Aboriginal people (genealogies, photographs with captions, audio-visual records including of ceremonies, sound recordings of deceased elders singing or speaking traditional languages and oral histories, which are often needed to ensure the transmission of knowledge over time, and the reintegration of knowledges and practices as part of community life)
- in a fragile and/or deteriorated state
- embodied in a technology that has been superseded, so that records are at risk of becoming unreadable — for example, photos on deteriorating stock and audio tapes, old videos and floppy disks
- needed for the preparation of native title and other land claims.

Ultimately the priority and value of a collection as a whole or of a specific record requires assessment by an archivist who, with the assistance of the depositor, carefully considers the balance between public, Land Council and Traditional Owner interests and rights.

Drafts

Assessment by archivists should also include consideration of the priority of draft materials, including whether drafts should be kept or destroyed.

From some legal perspectives, drafts of reports or genealogies may contradict finally submitted documents and should be destroyed. In contrast, researchers often see multiple drafts as signalling growing understandings of a claim and as containing information that may be edited out in final documents. Errors in genealogies and maps may also be corrected in subsequent drafts.

One participant commented that the raw data, often contained in greater detail in drafts, can be more valuable to Traditional Owners than the analysis in a final report.

Duplicate records

Depositors also need the assistance of an archivist to assess whether records which are duplicated elsewhere should be kept. The Land Councils offered to assist this process by providing relevant catalogues of their holdings.

While it may seem unnecessary to keep duplicates, duplicates can fill important gaps in collections. The CLC continues to find replacements for documents destroyed in its 1983 fire; documents can go missing from collections or be lost within a collection when incorrectly filed. NLC welcomes duplicates, particularly when annotated, to supplement well-used documents that have become damaged from overuse.

It was suggested that unrestricted duplicate records that are already part of Land Council, ALC or NAA archives could be given to local community libraries, particularly those with significant Indigenous clientele.

Splitting collections

The assessment of a collection by an archivist also needs to take into account whether any documents should be removed from a collection. The NAA does not recommend this until it has assessed a collection as a whole.

Even when materials are digitised there was a view that originals should be archived. This related to what some participants saw as the 'intrinsic value' in the 'spiritual' relationship between those who created the record, the record itself and those who may be the subject of the record, making it almost morally impossible to dispose of originals. In this view, photographic negatives should be kept if only because the researcher was 'there': the physical light on a negative, for example, cannot be reproduced. Audio visual recordings are in a slightly different category since the record was seen as 'the recording itself'.

Work effort and time

Assessing collections, deciding priorities and documenting and preparing materials for archiving can be labour and time intensive. Participants discussed 'return on investment' of time spent on managing the deposit of their collections. Among the questions they discussed were: What should a depositor do to maximise the value of his/her records, and how time-consuming and costly is it likely to be for the depositor? What are the limits of roles of depositors: what can they do that would be most useful to a receiving institution? What do they not need to take responsibility for? What can receiving collections do to assist?

Much of the work to be done requires the involvement of the researcher. Documenting metadata and provenance (for example, place, equipment, people, relations, skin names, whether people are deceased, relationships to others where something was recorded, the politics of the time, interaction around particular issues and so on) requires a significant investment in time and energy.

Field notebooks often contain a mix of restricted and non-restricted materials as well as private conversations, which need to be separated out. Notebooks are fragmentary narratives that start and stop without annotation and reference to context. Handwriting may be un-intelligible. Field notes may be in Aboriginal languages only known to the researcher, needing English translations to be useful to an archive. Sentences and notes may have to be redacted and cross references made between records in different media (photographs, notes, maps and audio, for example).

There are important roles for trained archivists and researchers who are familiar with the land claim context in assisting private collectors in 'getting into their garages'. Archivists can advise on priorities and how to document a collection. They can ask insightful questions that speak to the history and politics of the time, drawing attention to key areas and people, building metadata and provenance. Researchers can also assist in describing the content of boxes and filling out templates, videoing the procedure, leading to a meta-commentary of the social, political and legal contexts and the human dimensions of a particular record.

A depositor's work effort can significantly add value to a collection. According to some archivists, a collection can be 10 times more valuable when the depositor is available to make comments about the materials. Ultimately the return on investment is about making materials accessible to the Aboriginal peoples whose heritage it is.

Advice, assistance and support from archivists and researchers in the relevant collecting institutions, particularly the Land Councils, will be essential to getting private collections ready for deposit.

Digitisation

Digitisation could make records readily accessible to a number of collections across a distributed Land Claims Archive including to local Indigenous community based collections. Digitisation can also enable the ongoing migration of materials from one technological format to the next.

Expert advice is required for the researcher in preparing materials to meet the high digitisation standards, protocols and practices of many receiving institutions. Documents can be altered in poor digitisation processes. In order to make sense of a digital version of field notes, page numbers might be needed and annotations required.

Land Councils have invested in staff and premises to upgrade their archives and made significant investments in digitisation. The CLC in particular has made a major investment in a state of the art electronic database management system (EDMS). However, many records have not yet been digitised in the Land Council and resources and expertise are limited.

Digitisation can be costly and labour intensive and collecting agencies continue to grapple with a range of digitisation issues. Digital literacy is unevenly distributed amongst the users of local archives. Factors such as age, remoteness, weather, and resources also impact accessibility.

Sorting through collections

Participants were issued with a number of documents to assist in sorting through their collections. Throughout the meeting, archivists also provided a number of suggestions and advice for depositors (see Appendix 4).

Appendix 4 contains:

- a sample provenance questionnaire prepared by AIATSIS: 'What is your land claim story?' (4A)
- a five-page document titled 'Guidelines for preparing archives for deposit' prepared by the University of Melbourne (4B (i))
- practical tips for sorting through and documenting collections from archivists at the meeting (4B (ii))
- a sample 'Template Spreadsheet for Garages Project' (University of Melbourne) (4C)
- a sample 'Box List Template and Guide' (AIATSIS) (4D).

Part C Memories and Publications

Land claim records are not the only treasures from the ongoing land claim era. There is a significant and unique resource of anecdotes, stories and memories, including from surviving claimants and broader Aboriginal communities, which document the land claim era and its struggles. These are of national significance and public interest.

A number of publishing projects were identified in various stages of progress at the meeting including:

- A draft legal manuscript, which honours the memories of Traditional Owners with whom the author worked and documents the legal battles with the NT government over land rights and developing jurisprudence, which is currently with the Land Councils for comment.
- A book proposal concerning the histories and memories of CLC land claims.
- A book proposal highlighting women's early involvement in land claims, and their sometimes marginalisation.
- A series of small vignettes which have been deposited with the Victorian State Library by one of the legal participants.

Other publication and research activities that were identified at the meeting to form Stage 2 of this Project included:

- Producing 'case studies' from land claim materials to inform Treaty negotiations and truth telling towards the NT Treaty Commissioner's report to the Northern Territory government in 2022.
- Publishing the memories and anecdotes surrounding the preparation and hearings of a range of land claims.
- Compiling the history of the land rights struggle in the Northern Territory leading to the ALRA.

Part D Potential Activities for Stage 2 of the Project

The Project Advisory Committee will meet in early 2020 to consider this report and whether and how to advance into Stage 2.

The priority for the proposed Stage 2 will be to attract funding for the salary and administration expenses for a co-ordinator in order to progress:

- (a) the concept of a Distributed Northern Territory Land Claims Archive
- (b) pilot projects for documenting and preserving and building the meta data of collections
- (c) the publication of memories and land claim stories.

a) Progressing the Distributed Northern Territory Land Claims Archive

Grasping the scattered holdings under discussion in this report as a single Distributed Northern Territory Land Claims Archive will require work by researchers and archivists.

Initial outputs that could form part of the proposed Stage 2 of this project include:

1. a list of land claims, with a catalogue of materials relating to each claim, the institution where each item can be accessed, and other relevant metadata
2. lists of researchers, lawyers and Land Council staff who worked on land claims (building on a document prepared by Frances Claffey at CLC)
3. ongoing discussions with the relevant collecting institutions about the Archive's mandate, who would host it, and its ongoing management.

b) Pilot Project: getting into the garages

Two potential pilots are listed below:

1. Selected individuals assessing and documenting their collections with an agreed template, videoing metadata and provenance, and making decisions about where to deposit with the assistance of a researcher and archivist, and the advice of Land Councils and the NAA.
2. A group of researchers compiling a complete archival record of one or two specific claims, referencing each other's collections and those of other researchers who participated in the claims, and videoing provenance and metadata information with the assistance of a researcher and archivist and advice of Land Councils and the NAA.

Both processes would result in:

- a guide for researchers and lawyers in 'getting into their garages'
- a guide to video recording metadata
- a standard based on United Nations frameworks.

c) The publication of memories and land claim stories

Each of the proposals identified in Part C towards publications of land claim 'stories' will require funding and the development of grant applications.

A number of land claims were discussed as potential 'exemplars' for collectors to either sort through their materials in the pilots or publish memories and land claim stories including:

- Amanbidji, Robinson River, Jawoyn, Kenbi, and Alligator Rivers Land Claims in the Northern Land Council region
- Kaytej, Warlpiri and Warlmanpa, Barrow Creek, McLaren Creek, Warlpiri and Kartangarurru-Kurintji and Tanami Downs in the CLC region

Funding for Stage 2

Funding is required for:

- a salary, office and administration expenses for a co-ordinator to undertake:
 - operational and strategic planning exercises
 - project planning and management for the pilots and the distributed archive
 - engagement with stakeholders including governments, philanthropic organisations and universities
 - entering into new partnerships and renewing the AIATSIS and Latrobe partnerships as required
 - identifying funding sources and submission writing including for possible publications
 - developing promotional materials, web resources and other communications
 - identifying possible regional and national assistance from the NAA, Land Councils, and AIATSIS to facilitate deposits
- clarification of legal issues including advice about copyright and intellectual property issues around a sample of materials
- advancing elements of the pilots and a Distributed Northern Territory Land Claims Archive.

Conclusion

In summary, the focus group discussed:

- managing access to the existing collections according to protocols that respect Indigenous interest and the wider public interest
- identifying and filling gaps in these collections — particularly the Land Councils — by facilitating further deposits of relevant materials from private holdings;
- opportunities for private collectors to dispose of and/or share in a responsible way material that they hold
- the concerns of potential depositors in documenting and preserving records including developing metadata.

In opening the meeting, Professor Mick Dodson noted the leverage of the group provided that the value of the records is recognised and understood. Depositors also need to be able to gauge the worth of the materials they hold in their archives.

There is clearly important work to be done, which is of national significance. Archives are a continuation of the life of records, each stage having a different context and purpose and working life. To assess the value of a record, to put it into some kind of order, to weed out the trivia and — most of all — to explain the provenance of each item, is labour intensive and needs to be supported by resourcing, expertise and infrastructure.

The value to the nation of many of the records under discussion cannot be underestimated. And the records are even more valuable when they have provenance. The memories, the stories and anecdotes that illuminate a unique historical period are priceless.

There is an urgent need for funding for the Project to continue into Stage 2.

The materials are in some cases already around 40 years old and those who produced them are not getting any younger! The opportunity to undertake this work will have passed in 15 or so years.

Time is of the essence.

Appendix 1 Project Advisory Committee Members

Chair: Emeritus Professor Mick Dodson AM, Yawuru (Broome WA), Northern Territory Treaty Commissioner.

Mr David Ross, Kaytetye/Arrernte (Alice Springs central region), Director Central Land Council.

Ms Tamara Cole, Legal Practice Manager/Native Title, Northern Land Council.

Dr Ben Scambary, Director, Aboriginal Areas Protection Authority.

Mr Leonard Hill, Ngemba/Murawar (north-western NSW), Executive Director, Collections, AIATSIS.

Ms Helen Wright, Buddawang/Yuin, Director, Native Title Research Unit, AIATSIS.

Frances Claffey, Senior Anthropologist, Central Land Council.

Stephen Johnson, Senior Anthropologist, Northern Land Council.

Research Professor Patrick Keyzer, Chair of Law and Public Policy, Head of Latrobe Law School, Archivist from CLC.

Professor Dennis McDermott, Pro Vice Chancellor Indigenous, LaTrobe University Gadigal (inner Sydney) with connections to Gomeroi (north-west NSW).

National Archives of Australia

Office of the Aboriginal Land Commissioner, Hon. John Mansfield AM QC and/or Executive Officer

Contacts

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David Parsons: dp420107@bigpond.net.au mobile 0419 858975

Appendix 2 Focus Group Meeting Agenda



AIATSIS

AUSTRALIAN INSTITUTE OF ABORIGINAL
AND TORRES STRAIT ISLANDER STUDIES



LA TROBE

UNIVERSITY · AUSTRALIA

Aboriginal Land Rights in the Northern Territory Documenting and Preserving the Records Memories

Focus Group Meeting Agenda

1 – 2 October 2019, University House Drawing Room, Canberra

Chair Emeritus Professor Mick Dodson

Facilitators Toni Bauman and David Parsons

Day 1

Time	Topic	Activity/Presenter
9:00am	<i>Tea and coffee and fruit pastries on arrival</i>	
9:30am	Acknowledgement of Country and Welcome	Mick Dodson
9:35am	The big picture	Mick Dodson
9:45am	Introduction of Advisory Committee members	Mick Dodson
9:50am	Participant introductions	Mick Dodson

Time	Topic	Activity/Presenter
10:05am	History and project rationale	David Parsons
10:15am	Contextualising the project	Toni Bauman
	Documenting and storing your archives: What have you done so far?	
10:25am	<p>Focus Questions</p> <p><i>What's in the room?</i></p> <p><i>Where are you at?</i></p> <p><i>What issues have you encountered?</i></p> <p><i>Where have you deposited materials if at all?</i></p> <p><i>What format or template for documentation are you using?</i></p> <p><i>What else is happening?</i></p>	General plenary discussion involving all participants including Petronella Vaarzon-Morel, Jennifer Green, and Jane Simpson and others
11:30am	<i>Morning Tea</i>	
12:00pm	National Archives of Australia: What you need to know	Matt Lyons
12:20pm	Questions from the floor	
12:30pm	NT Land Councils Legal Perspectives	Tamara Cole (NLC) David Avery (CLC)
12:55pm	Questions from the floor	
1:10pm	<i>Lunch</i>	
2:00pm	Aboriginal Land Commissioner's approach	Anna Gilfillan
2:20pm	Questions from the floor	

Time	Topic	Activity/Presenter
2:30pm	NLC and CLC Archiving Processes, Approaches and Issues	Cindy Patterson (NLC Land Interest Registry) Teresa McCarthy, Peri Stewart and Frances Claffey by Zoom (CLC Archives)
3:05pm	Questions from the floor	
3:30pm	<i>Afternoon tea</i>	
3:50pm	Your thinking so far Focus questions <i>What were the 3 most significant issues for you to come out of today's discussions?</i> <i>Why? What issues are raised for each?</i> <i>How might each of these issues be followed up?</i>	Break out groups
4:20pm	Report back	Plenary discussion
5:00pm	Pre-dinner drinks, Common Room, University House	
6:00pm	Dinner, Common Room University House	

Day 2

Time	Topic	Activity/Presenter
8:45am	Tea and coffee	
9:00am	Overnight thoughts	Mick Dodson
	Getting into your 'shed'! Documenting your records	
	Focus Questions <i>What do archives need from land claim researchers and lawyers? What categories of materials are we looking at? Grey literature, for example)? What's the most difficult material to manage? What don't archives want? What not to keep? What's meta data? How might it be useful? How can duplication be avoided?</i>	Panel Discussion and questions from the floor: Melissa Thomas (Australian Archives); Cindy Patterson (NLC); Teresa McCarthy, Peri Stewart and Frances Claffey by Zoom (CLC); Charlotte Craw and Lisa Smith (AIATSIS)
9:15am		
	Contextualising and categorising land claim records Focus Questions <i>What are the 2 most significant issues you heard from the panel and why? How might each be addressed? What kinds of provenance or 'land claim stories' or contexts in which documents were produced might arise? What documents are you most worried about? What's in your too hard basket? Why? What do you need to get started? Any volunteers for a pilot project on a particular land claim/s?</i>	Break out groups
10:00am		
10:30am	Working Morning tea	
11:00am	Report back	Plenary discussion

Time	Topic	Activity/Presenter
	Memories and Publications	
11:45am	Focus questions <i>What's happening at the moment?</i> <i>Any other ideas?</i> <i>Possible research projects?</i>	David Parsons Toni Bauman
12:15pm	Lunch	
	Identifying challenges and addressing priorities	
1:15pm	Focus questions <i>Your 4 biggest challenges and/or priorities?</i> <i>What assistance do you need?</i> <i>Where might this assistance come from?</i>	Plenary
	Parked Issues	
1:45pm	<i>How might we move these forward?</i>	Plenary
	Next Steps	
2:00pm	Focus Questions <i>What might a Stage 2 of this project look like?</i> <i>What recommendations do we want to make?</i>	
2:30pm	Meeting close	

Appendix 3 List of participants of the focus group meeting

1 – 2 October 2019, University House Drawing Room, Canberra

Advisory Committee Members

Name	Title
Chair Mick Dodson AM	Emeritus Professor, Yawuru (Broome WA), Northern Territory Treaty Commissioner
David Ross	Kaytetye/Arrernte (Alice Springs central region), Director Central Land Council
Dennis McDermott	Professor, Pro Vice Chancellor Indigenous, LaTrobe University, Gadigal (inner Sydney) with connections to Gomeroi (north-west NSW).
Helen Wright	Buddawang/Yuin, Director Native Title Research Unit AIATSIS
Leonard Hill	Ngemba/Murawar (north-western NSW), Executive Director, Collections AIATSIS
Stephen Johnson	Senior Anthropologist Northern Land Council
Tamara Cole	Legal Practice Manager Native Title Northern Land Council

General Participants

Anna Gilfillan	Executive Officer to the Aboriginal Land Commissioner
Averil Ginn	Consultant Archaeologist
Charlotte Crow	Collection Development Manager, AIATSIS
Cindy Patterson	NLC Land Interest Registry
David Avery	Lawyer, CLC
David Nash	David Nash, BA(Hons), MA (ANU), PhD (MIT) 1980
David Ritchie	Capricornia Consulting, Chairman of the Northern Territory Planning Commission and Grants Commission
David Trigger	Emeritus Professor, University of Qld, Adjunct Professor, University of Western Australia
Francesca Merlan	Professor of Anthropology, ANU
Geoff Eames	Retired judge of the Supreme Court Victoria; now adjunct professor of law at LaTrobe uni
Ian Keen	Honorary Associate Professor, member of Emeritus Faculty
Jane Simpson	Linguist, Australian National University

Jenny Green	Linguist, University of Melbourne
Lisa Smith	Senior Archivist, Manuscript Collection, AIATSIS
Matt Lyons	Assistant-Director, Agency Engagement, National Archives of Australia
Melissa Thomas	Assistant Director Reference Services National Archives of Australia
Michael Walsh	Visiting Scholar, AIATSIS; consultant, linguistics and anthropology
Nic Peterson	Emeritus Professor of Anthropology, School of Archaeology & Anthropology ANU
Peter Sutton	Affiliate Professor at the University of Adelaide and the South Australian Museum
Petronella Vaarzon-Morel	Consultant Anthropologist
Phyllis Williams	Director Northern Territory, Regional Manager North (QLD & NT), National Archives of Australia
Rob Blowes	Barrister
Ross Howie	SC
Saskia Roberts	Research Officer, RegNet, School of History, ANU
Sophie Creighton	Director Research & Land Information, Aboriginal Areas Protection Authority
Yvonne Forrest	Librarian, Aboriginal Areas Protection Authority

Participants via Zoom

Frances Claffey	Senior Anthropologist Central Land Council
Teresa McCarthy	Archives Officer, Central Land Council
Peri Stewart	Information Services Coordinator, Central Land Council

Project Team

Belinda Burbidge	Research Fellow, AIATSIS
David Parsons	SC Adjunct Professor Latrobe University
Jasmine Tearle	Access and Collections Officer, AIATSIS
Jeffrey Paul	Access and Collections Officer, AIATSIS
Toni Bauman	Visiting Research Fellow, AIATSIS; Consultant Anthropologist, facilitator & trainer

Appendix 4 Documents to assist in sorting through and documenting collections

- A. Sample Provenance Questionnaire: What is your land claim story? (AIATSIS)
- B. (i) Garage Project: Guidelines for Preparing Archives for Deposit (University of Melbourne)
- C. (ii) Getting into the garages: Practical Tips from the focus group meeting
- D. Template Spreadsheet for Garages Project (University of Melbourne)
- E. Sample Box List Template and Guide (AIATSIS)

A. What is your Land Claim story? Identifying the provenance of your Land Claim collection (AIATSIS)

Provenance means the history and ownership of an item from the time of its discovery or creation to the present day, from which authenticity and ownership is determined. Maintaining the provenance includes preserving the integrity of the records of a person or an organisation by not mingling records from one person or organisation with those from another.

The questions below help to document the provenance of your collection/s, and will help to determine where and how the materials should be archived.

Think about the origins of your land claim records as a whole collection, or if you worked on multiple claims, it may be useful to consider each claim as a separate collection (use multiple forms if necessary).

1. Which Land Rights case do your papers relate to?

2. What was your role in the claim? Which organisation/s did you work for?

3. Who created or authored the works in the collection?

4. Was the material commissioned?

5. If you are not the author or creator of the material, how was it acquired?
What is the origin of the material offered? How did you come into possession of the item(s)?

6. When were the materials created and where? (e.g between 1982-88 in Tennant Creek)

7. What was the purpose of these records? (Why were they created? E.g. did you work for the claimants, lawyers, Judge, independently, or other?)

8. Why do you think the material is significant? (culturally, scientifically, historically, other)

9. Are these records working documents or official final versions (or a mix of both)?

10. Are these records originals or copies (or a mix of both)? Do other people hold similar copies?

11. Who may have the Indigenous Cultural and Intellectual Property (ICIP) Rights in the collection material?

ICIP Rights refer to all aspects of Indigenous peoples' cultural heritage.

Please list the names of relevant Aboriginal and Torres Strait Islander individual(s), their community(ies) or groups who may have communal rights to material on this offer. Please list in order of preferred contact. Please provide contact details (including phone and email where possible).

Please state your understanding of the willingness of the people you have referred to above, to this material being archived and made accessible to other people.

12. Are there other related materials already held in institutional collections/archives?

You can read more about "Provenance" in the guide *Significance 2.0: a guide to*

GARAGES PROJECT GUIDELINES AND TEMPLATE

starting on page 15.

Bi. Guidelines for preparing archives for deposit

(University of Melbourne)

This guideline is to assist you prepare to transfer your records to an archive which is yet to be chosen.

It covers the way archival records need to be described before transfer so that they can be efficiently incorporated once in the archive. It also ensures that records you have described can be found again once boxed.

An Excel Template has been prepared in which you can describe your records (Appendix 4 (iii)). It collects the data in several columns which can be used within the standard fields in most archival databases.

As the records which you hold are very significant, we anticipate that you will not wish to cull them. However, because most archives must be careful with space, not everything will eventually be accepted. You know best what the value is of your records as evidence of proceedings. In general, however, the following records can be considered for secure disposal. Publications can be offered to willing libraries.

Examples of material repositories are not likely to be interested in

- Duplicate copies of material (unless they are meaningfully annotated)
- Administrative or financial records of short-term value
- Unsorted bundles of loose papers (sort and file them if they are important)
- Unidentifiable material
- Unmarked/unannotated publications that are commonly held in library collections

How to store material

If your records are stored in boxes at home please inspect them to see if they are structurally sound: have a lid, are not ripped or damp, are unlikely to collapse if moved.

If they are unsuitable, consider replacing them with Arki boxes available from stationery stores [tape the bottom for extra security], or even with acid free archival boxes.

If storing physical records at home, ensure that potential hazards such as water or insect damage are avoided, for example by not storing boxes on the floor of a garage or shed, and ensuring that they are kept free from cobwebs.

If they contain insects or are damp and mouldy, please indicate this on the outside of the box and the Notes filed of the Template (Appendix 4(iii)) so that they can be treated by the archive.

Make sure that any identifying information you have written on the outside of the old box is transferred to the new box if you must replace it.

Sensitive content

Ensure any material that includes sensitive content is clearly marked so that physical access to the material can be controlled. For this project, sensitive content might include records which contain cultural information that Aboriginal and Torres Strait Islander Communities have submitted in evidence and asked to be confidential or controlled in some way [secret, sacred, accessible only to one gender, images or voices of deceased persons].

Information about any restrictions on cultural knowledge will be captured in the Template in Appendix, but if information within a file is particularly sensitive consider wrapping it in tissue and writing the sensitivity in pencil on the wrapping [e.g., gender specific material] Otherwise write Sensitive etc on the outside of the file in pencil.

Records might also have private information from anyone which should be restricted in some way.

In describing these records, you will be asked to record any sensitivities that you know of so that these rights and sensitivities can be respected and managed.

How to document material

Number each box and list the contents of each box item by item. The list should provide enough context for people to understand what the material is, and to help future researchers to discover items in the collection. Useful information will be gathered in the Template provided: if you think anything important needs to be added, please provide it in the **Extra Comments** column.

As well as listing the contents of the boxes, it is also important to capture information about the history, or provenance, of these records and where they came from, for example which person or organisation created the records. This can apply to the whole collection or be documented for individual items. The Template has an Events field in which to record this.

The Template provided includes more guidance on how to describe the contents of the boxes in the most useful way to avoid double or triple handling.

How to physically process material

It is a good idea to set up a table, chairs, laptop, manila folders, 2B pencils, some erasers and a thick black marker pen in advance. Marker pens are for numbering boxes, pencils are for relabelling files and volumes with numbers and titles if they need it. Plastic gloves, overalls and a face mask are good too if the material is dusty [or vacuum outside of boxes first]. Good lighting is essential.

If you have only a small number of boxes which you have stored and labelled, they can be moved into useful order and described sequentially if it is possible to do so.

For large numbers of boxes which cannot practically be moved around, start with the first box to hand, decide whether you are going to replace it, label it Box 1 (and all other boxes sequentially) without worrying about whether boxes with similar content are adjacent. They can be reordered when deposited in an archive.

Records are best stored in archival quality acid free boxes and folders, with metal fastenings such as paper clips replaced with plastic paper clips. Replacing rusty clips takes a long time, so consider leaving them and recording their condition in the Template Notes column.

Lever-arch files, ring binders, volumes and spiral bound items can be boxed as they are but ensure boxes are not too heavy.

Ensure files and folders are clearly labelled with their contents. If they aren't, give them a title [in pencil] that makes their content and purpose clear.

As a rule, keep material in the order it was filed, e.g., order within filing cabinets, or order within your own classification/filing scheme.

Where papers stored in cabinets with hanging files are being transferred into boxes, remove the papers from the file and rehouse them in a Manilla folder before boxing. Be sure to transfer the title on the original file to the new one.

Record details of each item in the Template as you physically process them.

The Template

Most records come in a format which aggregates documents together because they are from the same transaction or event. Files or volumes are typical: publications, photograph albums, audio or video recordings are other formats. Describe aggregated formats/items only: describing every piece of correspondence in a file, for example, is unnecessary as you can describe the transaction or event – usually indicated by the existing **Title**. This saves time.

Transfer a copy of the Template to the device you will be using and retitle it to include your name as custodian of the records. Back up the Template to a separate device or USB at the end of every session for security.

The columns/fields in the Template are:

Column A. Item Format:

Record whether a Volume, File or other format/item: Photograph packet; photograph album; Audiovisual item.

Column B. Unique Number:

Start by recording 1 in this Column and write this number on the first file or volume which you describe. Write in pencil on a discrete but visible part of the item — on top edge for file, or inside cover for volume.

Column C: Event

Write details of the event for which the file or volume was created. E.g., a particular court case. Copy and paste this first event entry for each other item from the same event. This will enable archivists to sort so that all items from the same event are together.

Column D: Title

Write the Title of the volume or file as given at the time. If it has no title, add one which briefly describes the activity/transaction documented in the file.

Column E: Date Range

Put the date range covered by the activity documented in the file. E.g., 10/06/1999-11/12/2002. Use the DD/MM/YYYY format so that it can be easily converted if necessary. Use YYYY-YYYY if this is all that is possible. Record Undated if no dates are evident.

Column F: Description

Description is a free text field in which you can add brief details of anything significant within the file which is not evident from its title. For example: the names of people giving significant evidence, especially Aboriginal and Torres Strait Islander peoples and the name of the places they are from. This detail will ensure that in future all references to them are discoverable in a database.

Mention only people or places that you know to be the most significant: the archives can elaborate if necessary.

This field does not always have to be filled out if the title makes its content clear, especially Indigenous content.

Column G: Rights

There are a multitude of rights associated with records: ownership rights of the organisation for which they were created; copyright of the author; rights within court cases.

Indigenous Cultural IP (ICIP) and Intangible Heritage must also be recognised, as in the Aboriginal Heritage Act 2006 Vic. and amendments or other Commonwealth or State appropriate legislation.

Most rights within the Western legal system are understood by archivists, and those rights do not always clearly include ICIP. Record ICIP if there is Indigenous material so that rights can be clarified by the archives.

Column H: Restrictions

All records should be closed until an appropriate restriction for their content is established by the archive with your recommendation.

Use this field to record whether there is any reason to restrict or close the file from the public in the longer term. Use: secret, sacred, sensitive, private, gender specific et cetera for Indigenous content. More generally use: private, health information or the like.

Column I: Notes

Optional: Note the condition of the file: Mould, Insect damage, Rusty clips

Column J: Box Number

Record the number of the box that this item is in. Record box number for each item placed within it.

Column K: Extra Comments

Optional. Record any further comments re the importance of this item.

Useful links

National Library of Australia: <http://www.nla.gov.au/depositing-personal-or-family-papers>

State Library of New South Wales: <http://www.sl.nsw.gov.au/research-collections-building-our-collections/acquisitions-and-donations>

State Library of Victoria: <https://www.slv.vic.gov.au/help/donating-items-collection>

State Library of South Australia: <http://www.slsa.sa.gov.au/site/page.cfm?u=1093>

State Library of Western Australia: <https://www.slwa.wa.gov.au/explore-discover/collecting-wa/donations-purchases>

State Library of Queensland: <http://www.slq.qld.gov.au/about-us/collections/donations-to-the-collection>

LINC Tasmania: <https://www.linc.tas.gov.au/how-to/Pages/Add-collection.aspx>

Northern Territory Library: <https://dnc.nt.gov.au/arts-and-museums/northern-territory-library/library-collections/donating-to-the-library>

ACT Heritage Library: <https://www.library.act.gov.au/find/history/what-do-we-collect/donate#Original%20Materials>

B ii. Getting into the garages: Practical tips from the focus group meeting

- box up the records, then using the templates, open up a conversation with an archivist
- start by broadly listing the land claims for which material is held, and then what's in it
- keep records in the order in which they have been used no matter how idiosyncratic and 'chaotic' the collection is; the original order is important
- don't split archives until the collection is assessed as a whole (where photographs and slides and tapes may have already been separated, keep them separate)
- remove items which might be already held in land claim archives elsewhere and often online such as transcripts and ALC reports and other official documents (though note archival advice not to split archives until an archive is assessed)
- don't keep five copies of a particular item just because you consulted in a land claim: it's more useful to have one or two good copies on a shelf and a record of the listing
- provide reasons for why a duplicate may be significantly different and valuable to a claim
- leave judgements about what is too old and fallen apart to an archivist since it might be possible to repair
- remove obvious 'administrivia' (such as receipts used for expenses claims or tax returns), though it was noted that these items can provide valuable information about location and activities
- add contextualising notes to items (for example: giving names of people, dates and places in photos)
- provide metadata and provenance
- include a resume that can assist archivists in seeing at a glance where you have worked and the contexts in which materials have been gathered
- provide a bibliography which can show the process of a claim and allow for the easy elimination of grey literature including already published materials or materials on line such as journal articles and books
- photograph storage containers such as boxes, brown paper bags, hanging files, filing cabinets and shelves
- photograph labels on tapes and other audio-visual items such as cameras, including labels identifying the make and brand of cassettes
- wrap fragile material and add labels with restrictions
- note the original placement and data information if you remove vulnerable items like floppy discs from their original place
- focus on quality control (dating, spelling, names etc): accuracy leads to searchability

- note any restrictions on the records and provide details of Traditional Owners and others who might need to be consulted
- bequeath your collection in your will to a responsible organisation

C. Template Spreadsheet for Garages Project (University of Melbourne)

Unique Number - Start with 1 and write this number on the file or volume to which it corresponds. Write in pencil on a discrete part of the item - on top edge for file, or inside cover for volume.	Event Write details of the event for which the file or volume was created. E.g., a particular court case. Copy and past this first event entry for other items from the same event	Title Write the title of the volume or file as given at the time. If it has no title, add one which briefly describes the activity documented in the file.	Date Range put the date range covered by the file's contents. E.g., 10/06/1999-11/12/2002	Description Description is a free text field in which you can add brief details of anything significant within the file which is not evident from its title. For example: the names of people giving significant evidence, especially Aboriginal and Torres Strait Islander peoples and the name of the places they are from.
1			10/06/1999-11/12/1999	
2			10/06/1999	
3			11/07/1985	
4				

Template Spreadsheet for Garages Project cont.

Rights Record ICIP if any material with Indigenous content is included	Restrictions Use: secret, sacred, sensitive, gender specific. More generally: private, health information or so on.	Notes Note anything important about this item. E.g.,	Box number Number the box that this item is placed into. Used this box number for each item placed within it. Box 1 Box 2 and so on consecutively	Extra comments
ICIP	Sensitive	Incomplete copy. Silverfish damage	Box 1	
		Rusty clips	Box 1	
			Box 1	

D. Sample Box list template and guide (AIATSIS)

Box number	File / bundle / item number	Title or basic description	Type (e.g.: bundle of loose papers, file, folder, photos, CD, USB, maps, album, etc)	Date or date range	Brief content description	Is there sensitive or secret content, knowledge, themes, or other access conditions to be managed? Who should be consulted about access?	Physical condition — <u>good</u> or <u>poor</u> (please describe if poor, e.g. mouldy, large tears, brittle/crumbling, etc.)
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Guide to filling out the sample box template

Box number – Number the boxes as you intend to transfer them to the archive or as you will be storing the items in the long term.

File/bundle/item number – Record items as files or bundles where possible. A broad approach means you can easily summarise the contents, without spending too much time describing individual items. (If your items are not in files, think about putting documents that have been stored together or relate to one another into bundles.) Write the item number in 2B pencil on a discrete part of the item, such as the top edge or file, or inside for a volume.

Title or basic description – This is the basic title that describes your file/bundle. Avoid repeating information that you'll also put in the scope/content field. Provide a basic description of the activity documented in the file/bundle if the item has no obvious title.

Type – Some types include: bundle of loose papers, file/folder, photographs, slides, CD, USB, maps, books, reports, film, album, scrapbook. (If you find you have several files or bundles relating to the same thing, put it all as one entry and simply change the extent to how many files/bundles you have.)

Date or date range – Include the dates which cover the items in your file/bundle. Display dates as follows:

25 April 2014 — 30 May 2014

Sep 2013 — Oct 2014

2013-2014

c.2013

Brief content description – Give a very brief overview of what is being described in the file/bundle – try to keep this section to a maximum of 5 lines. Include details of what kinds of records are included, such as correspondence, reports or photographs. Also describe the event for which the content was created, names of people giving evidence etc.

Is there sensitive/secret content or other access conditions to be managed? Who should be consulted about access? – Make a note of anything in your file/bundle that contains secret/sacred/sensitive content or knowledge, or personal information about individuals, or anything else you consider should be closed access. It is helpful to place items or bundles of gender specific materials into envelopes or wrap with paper so that these restrictions can be respected by the people who process the collection.

Physical Condition – If any of your items are fragile or in poor condition you can make a note of it here

Appendix 5 Rowse, T. 2019. Towards a national land rights archive

TOWARDS A NATIONAL LAND RIGHTS ARCHIVE

Report of a Focus Group Meeting convened by AIATSIS and Latrobe University,

University House 1 and 2 October, 2019, Canberra

Prepared by Dr Timothy Rowse for AIATSIS.

Introduction

Implementing the *Aboriginal Land Rights Act* (Cth) 1976 (ALRA) has resulted not only in the transfer of title but also the production of a lot of knowledge that is now being collected by various institutions. A focus group met on 1 and 2 October 2019 to explore how to build and manage these collections, so that they constitute a searchable and responsibly managed Northern Territory Land Rights Archive. In particular, the focus group:

1. **Explored** some of the ways that this knowledge is of great value, in different ways, to certain constituencies: the Traditional Owners whose heritage is represented in the land claim process; all Indigenous Australians who are not TOs but who value an honest account of Australia's colonial history; the Land Councils whose statutory duty is to complete the land claim process and then help title holders to use their rights as they fit; the wider Australian public interested in 'Indigenous affairs' – past, present and future.
2. **Reviewed** the existing practices of collecting and managing this knowledge, revealing an array of collecting authorities with overlapping but different procedures and policies.
3. **Elicited** the perspective of past and future private depositors of materials that they have stored 'in the garage'.

The focus group was a conversation between two kinds of participants:

Professionals (lawyers, anthropologists, linguists) who have worked on Northern Territory land claims and who have deposited and or are considering depositing to some public collecting authority papers and audio-visual recordings that they have accumulated from that activity.

Archivists - from various institutions, operating under various mandates – who are interested in receiving such materials and who are keen to advise depositors of their collection and management policies in order to encourage deposits.

This 'issues paper' summarises the results of their conversation under two headings:

1. What the National Archives of Australia (NAA) and the Central and Northern Land Councils (CLC, NLC) are doing already as collecting agencies, and what they could do in future to facilitate deposits from private collectors such as those who attended the workshop.
2. The possibility of forming a Northern Territory Land Rights Archive as a resource for historians, for governments, for statutory authorities and for anyone interested in the ongoing implementation of the *Aboriginal Land Rights Act (Cth) 1976 (ALRA)*.
3. Before addressing those two themes, it is important to note seven concerns expressed in the focus group – usually by the putative depositors - about the deposit process.

Seven issues raised by potential depositors

The focus group was based on the shared understanding that there is much potential for further private deposit. This potential can be realised, to the extent that:

Depositors are able to gauge the worth of what they hold to some collector.

Depositors can get a clear idea of the limits of their roles as depositors: what can they do that would be useful to the receiving institution? What do they not need to take responsibility for?

Depositors can be assured that material that is sensitive will be handled in a way that honours their longstanding commitment to Northern Territory Aboriginal peoples.

Depositors can be sure that fragile material or material stored in superseded digital formats will be managed according to professional technical standards.

In this report, we refer to these concerns as 'the seven depositor issues'. They are:

- (a) OWNERHIP. How can the ownership of items held in private collections be determined?
- (b) SECRECY. Are some items secret (in particular, restricted according to the sex, age and identity of the potential viewer), and has the boundary between secret and public items changed over time, according to the owners? Some old land claim reports list exhibits without saying which are secret, and depositors of such material need advice.
- (c) DISRUPTION. Is the availability of some deposited items likely to re-open or to exacerbate disputes among Northern Territory Aboriginal people? Disputes about rights to country and knowledge? The 're-traumatisation' of people who have suffered loss? Staff at AAPA find that they spend much time counselling Aboriginal members of the public about how to interpret what they are allowed to access at AAPA. As well, Native Title is giving new relevance to materials generated by the land claim process.

- (d) CONTINUING ACCESS. To what extent will the policies of collecting institutions enable depositors to have continuing access to deposited items? Teachers of law, anthropology and linguistics were particularly concerned about this.
- (e) LAND CLAIM RELEVANCE. Can and should deposited materials (such a field notes) be classified according to whether they were (i) instrumental to the land claim process or (ii) merely part of a researcher's continuing interest in the language, customs and history of the claimants? One consultant observed that many items in her collection could be classified both as 'land claim' research and as part of her wider research programs in linguistics and anthropology.
- (f) PRIORITY. Should items available for depositing be classified in terms of the urgency of the deposit? And, if so, what kinds of items should take priority? Several participants said that priority should be given to items that are materially fragile and/or in forms that are likely to become unreadable - for example photos on deteriorating stock and audio tapes, videos and floppy disks on superseded formats. Another way of seeing 'priority' is to consider what is of greatest interest to older Aboriginal people.
- (g) DEPOSITOR WORK EFFORT. What should a depositor do to maximise the value of his/her deposit, and how time-consuming is that likely to be for the depositor?

As we review the work of the three main collectors of the Land Rights Archive – the National Archives of Australia, and the Northern and Central Land Councils - we will comment on how each agency addresses the seven depositor issues.

CURRENT COLLECTING PRACTICES

What we will call in this report 'the Land Rights Archive' is already accumulating across more than one site. The Land Rights Archive is unlikely ever to be within one collection or to be on one site. The Land Rights Archive is best considered as a 'distributed archive' – distributed across several collecting agencies that were represented in the focus group: the National Archives of Australia (NAA); the Aboriginal Areas Protection Authority (AAPA) Library; the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS); the Central Land Council (CLC); and the Northern Land Council (NLC). Other collecting agencies which hold land claim materials were mentioned in the discussion, but were not represented in the focus group: the State Library of Victoria (which has received a large and ongoing deposit from Geoff Eames); the South Australian Museum (which has received a large deposit from Peter Sutton); the Northern Territory Library (which has recently been joined to the Northern Territory Archives Service and which eventually will receive all the land claim records currently held by the Northern Territory Crown Solicitor.

In this report we will describe what the focus group discussion and documents revealed about the current collecting practices of three collectors – the NAA and two of the Northern Territory Land Councils.

The NAA and the ALC

Pursuant to the *Archives Act* 1983, the NAA is already collecting paper and audio-visual items which have been created through the implementation of the ALRA and which are classed as ‘Commonwealth Records’. A ‘Records Authority’ issued by the NAA governs the transfer of material from statutory agencies of the Commonwealth: the Aboriginal Land Commissioner (ALC) and the Northern Territory Land Councils. We will deal first with the NAA’s work with the ALC and then with the NAA’s work with the Central and Northern Land Councils.¹

The NAA’s work with the ALC is governed by Records Authority 2017/00413096 which recognises the ALC’s core activities under two headings: ‘managing land claims’ and ‘advising the Minister and the Administrator of the Northern Territory’. In recent years, staff of the ALC have been assisting the transfer to the NAA of the kinds of materials that would-be depositors are likely to have worked on and to have in their personal collections, including:

anthropology reports, genealogies, site/dreaming maps and site registers, list of claimants and their personal particulars....written and oral evidence and submissions produced for land claims inquiries, for example, transcripts, maps, reports, witness statements and audio recordings, including records relating to traditional ownership and detriment issues....records relating to site and country visits, aerial viewings and on-country hearings of land claim inquiries.²

Such materials are ‘sentenced’ as ‘retain as national archives’ in perpetuity. They are listed according to the land claim to which they were relevant, not by document author. The focus group learned that about 3000 items have been transferred from the ALC to the NAA. The ALC still holds about 500 records, and the ongoing work of the ALC will give rise to more records and eventually to more transfers to the NAA.

The significance of this for would-be private depositors is that as an effect of this continuing transfer of items from the ALC to the NAA, many items produced by professionals under contract to the Northern and Central Land Councils have already been gathered, or will eventually be gathered, as Commonwealth Records. **That is, it is highly likely that the NAA has already collected or will eventually collect many items that are also in depositors’ garages and are considered by depositors to be of value** – for example, the transcripts of land claim hearings and all items listed as ‘exhibits’ in the Land Commissioner’s advice to the Minister.

However, there may be materials in depositors' garages that fall outside the list of items quoted above and that are the property of the consultant – for example, drafts of maps or genealogies, and notes taken by lawyers when proofing a claim that are not stipulated in consultant contracts or legal briefs as the property of Land Councils. Putative depositors who possess such material need to know that the NAA can collect land rights material from private persons and not only from Commonwealth agencies. The *Archives Act* enables the Director-General of the NAA to designate almost any record as an archival resource of the Commonwealth. The NAA document 'What we keep' (issued May 2015) specifies three ways that material could be significant enough to archive. As well as 'government authority, action and accountability', the statement mentions:

Identity, interaction and rights and entitlements... information that for individuals and communities: reflects identity and the condition and status of Australia and its people; provides evidence of ongoing rights and entitlements; or shows the impact of Australian government activities on individuals and communities as well as their interaction with the government....*Knowledge and community memory...* information that has substantial capacity to enrich knowledge and understanding of Australia's history, society, culture and people....

How the seven 'depositor issues' are handled by the NAA and ALC

The OWNERSHIP issue is resolved by the terms under which a Commonwealth agency contracts an outsider to deliver a product. In the early days of the Land Councils some contracts did not necessarily cover the question of ownership. Where contracts were silent, the NAA makes a case by case judgment about who owns the deliverable.

The NAA handles the SECRECY and potential DISRUPTION issues by the authority conferred in Section 33 of the *Archives Act* which sets out the grounds for exempting 'sensitive' records from public view. Commonwealth records are open to the public twenty years after their creation, subject to assessment by NAA staff. When the NAA receives a public request for access to a document in the 'open' period, NAA staff respond according to a subject guideline 'Indigenous cultural sensitivities in written records'. Staff may invoke Sections 33(1)(d) or 33(1)(g) of the *Archives Act* to prepare a 'statement of reasons to support exemption [from public access] because of cultural sensitivity'. NAA staff told the focus group that they do not see themselves as competent to judge what records generated under ALRA are 'sensitive': in preparing a 'sensitivity statement' they seek advice from the Aboriginal Land Commissioner. The ALC staff find this an administrative burden and turn to the Land Councils for advice.

The depositor's CONTINUING ACCESS and LAND CLAIM RELEVANCE issues can be considered together. Much depends on whether a privately deposited

item is treated as a Commonwealth record. It is possible for the Archives to receive a deposited item that is not a Commonwealth record (as defined by the Record Authorities issued by the NAA for the ALC and for the Land Councils). Material produced by a researcher working with a claimant group will include but will probably not be limited to an item listed as a land claim exhibit.

In spelling out the NAA's ability to receive deposits from private collectors in which land claim and non-land claim materials are mingled, the *Archives Act* requires the NAA to decide whether an item is or is not a Commonwealth record. If a deposited item is judged not to be Commonwealth record, then S.6(2) applies.

Where the Archives enters into an arrangement to accept the care of records from a person other than a Commonwealth institution, those arrangements may provide for the extent (if any) to which the Archives or other persons are to have access to those records and any such arrangements have effect notwithstanding anything contained in Division 3 of Part V [parts of the Act dealing with public access and exemptions].

If a privately deposited item is judged by the NAA to be a Commonwealth record then public access to it is governed by Part V of the Act – that is 'open' period material is available subject to the 'sensitivity' assessment.

The depositor's concern to give PRIORITY to some materials that are deteriorating and/or in superseded formats is answered by the NAA's technical expertise. The NAA is experienced in the conservation of many kinds of material and in the migration of data from superseded to current reading technologies. The NAA would assess on a case by case basis the intrinsic worth of a deposited item and it has the technical capacity to accession decaying (in any sense) materials.

The NAA agrees that a DEPOSITOR'S WORK EFFORT on his/her collection, at the moment of deposit, may greatly add to the value of the deposited materials. Indeed, the NAA staff attending the focus group gave pointed advice on what depositors should and should not do when organising their deposit. For example, they should **not** reorder the materials but deposit them in the order in which the depositor had used them – no matter how idiosyncratic and 'chaotic' the depositor's 'archive' may have been. Depositors should delete obvious 'administrivia' (such as receipts used for expenses claims or tax returns). The NAA encourages depositors to add contextualising notes to items (for example: giving names of people, dates and places in photos). The focus group participants were issued with a five-page 'Guidelines for preparing archives for deposit', prepared by the University of Melbourne, but more help may be need to encourage deposits.

The Land Councils as archives

Northern and Central Land Council staff at the focus group made it clear that they see Land Councils as collecting institutions; the two Land Councils have invested in staff and premises to bring their archive practices to a high standard. Under the *Archives Act*, it is possible for the Land Councils to hold onto Commonwealth records, so it makes sense to consider the Land Councils as branches of a national, distributed Land Rights Archive.

In the Land Council context, what counts as a Commonwealth record is spelled out in NAA Records Authority 2010/00643150.

All core business records relating to: Advocacy management; Economic development and commercial services management; Land and sea claims and acquisitions management; Land Council management; Land, sea and natural resources management; Land trust administration; Native Title management.

Land Councils must transfer a record to the NAA if it ceases to be a 'current Commonwealth record' ('a Commonwealth record that is required to be readily available for the purposes of a Commonwealth institution') or 'within 15 years of the record coming into existence' (S.27). However, in S.29 the Act sets out exemptions to this requirement, and with the concurrence of the Director-General the Land Councils have been allowed to withhold many records from transfer. Both Land Councils have digitised much of what they hold. There is a need for ongoing discussions between the Land Councils and the NAA about what records might remain permanently at the Land Councils.

Private collectors should therefore consider depositing material to the Central or the Northern Land Councils – to either or to both.

For at least three reasons, the Land Councils welcome approaches from those who hold private collections of documents, tapes and images, whether or not they were used in land claims. First, the Land Councils are keen to fill gaps in the stock of knowledge relevant to their work. For example, the NLC says that its collection of claim transcripts is patchy: the gaps could be filled by deposits. Second, the Land Councils seek to control the circulation of knowledge; while the Land Councils may exercise control through ownership of materials produced for land claims under contract, they also seek assurances that material held by depositors does not circulate beyond limits set by Land Councils. Third, the Land Councils are in daily contact with Aboriginal people who get much pleasure from viewing photos and videos, listening to tapes and reading documents (such as genealogies and maps) generated in the course of their land claim. Land Councils' collecting will, of course, be selective, in order to make efficient use of space and staff.

How the seven 'depositor issues' are handled by the Land Councils

The question of OWNERSHIP can be answered by inspecting the depositor's consultancy contract. If any contracts are silent on that question, negotiation with good will should clear the matter up.

Whether or not a donated item should be treated as SECRET will be determined by the Land Council, in consultation with Traditional Owners and researchers, if it has not already been determined by the Aboriginal Land Commissioner's advice to the Minister.

Land Council staff at the focus group acknowledged that knowledge acquired by a consultant's deposits could be DISRUPTIVE of previous settlements and adjudications. The Land Councils see it as part of their ongoing, normal business to manage conflict among Aboriginal people that they serve. Depositors should defer to Land Council judgment about the best way to handle a deposit of potentially disruptive knowledge.

The depositor's CONTINUING ACCESS to what is deposited can be assured by copying (and Land Councils' digitisation programs mean that they are much more likely to want to keep a digital copy than a paper original).

Depositors who are uncertain about the LAND CLAIM RELEVANCE of what they could deposit can be assured that Land Councils will select what they need from what is offered to them.

The question of whether perishable items or items in superseded formats should be PRIORITY for depositing is for discussion between Land Councils and putative depositors. However, compared with the NAA, Land Councils have very limited in-house resources for conservation and for migration of digital data to contemporary formats.

The DEPOSITOR WORK issue could be addressed better if putative depositors have access to Land Council catalogues, so that they can check whether a Land Council already has what they could donate. These catalogues are not online, but they can be sent as hard copy to putative depositors on request. Improving liaison between the Land Councils and putative depositors is discussed further below where a possible research project is outlined.

A collection project that could be initiated as a sequel to the focus group:

Much can be done to facilitate the organised formation of the Northern Territory Land Rights Archive. This archive will continue to be distributed – albeit with the NAA and the two Land Councils as major collections. Other collectors - such as the AAPA, the Northern Territory Library and Archive Service, AIATSIS and such State institutions as the State Library of Victoria (receiver of the Eames deposit) and the South Australian Museum (receiver of the Sutton deposit) – are doing valuable

work. Depositors have the right to choose the collector in which they wish to deposit. Each institution that houses portions of the Northern Territory Land Rights Archive will manage collection and access according to its own policies.

To be able to grasp these scattered holdings as a single Northern Territory Land Rights Archive it would be necessary to compile an inventory of all materials in these collections that could be considered as the Northern Territory Land Rights Archive. The inventory should be structured by land claim.

A future collection project could have two strands: to consolidate knowledge of what items relating to a particular land claim are already held and in what collection they are held; and to encourage consultants and Land Council staff who worked on particular claims to consider depositing material (currently in their 'garages') that is relevant to a land claim.

Two outputs would issue from this research project:

(1) a list of land claims, with a catalogue of materials relating to each claim, the institution where each item can be accessed, and other relevant metadata;

(2) an ongoing series of deposits, encouraged and facilitated by the appointed researcher. To expand on how we imagine this second output, we can begin by emphasising what our focus group made very clear: that depositors see the deposit process as continuing – albeit on a voluntary basis - the work that they did as employees and/or consultants of the Land Councils. To assess what one has collected, to put it into some kind of order, to weed out the trivia and – most of all – to explain the provenance of each donated item – all this is **work**. There are owners of private collections willing to do this work, but as depositors they will appreciate all the help that they can get from a collecting institution or from a researcher working under the direction of the Project Committee.

There was much support in the focus group for mounting a 'pilot' project by selecting a small number of land claims. A researcher would then be employed to contact all the researchers who participated in the presentation of the selected claims (using lists of staff and consultants supplied by the Land Councils). As a result of this contact, the researcher would work with each person who wished to deposit from their collection; a large part of this work would be to get 'provenance' information from the depositor and to apply some version of the 'guidelines for preparing archives for deposit'.

The results of this pilot could be considered by the Project Advisory Committee. The sequel might then be to design a longer program of work encompassing all Northern Territory land claims.

In developing this research proposal there are a number of issues for the Project Advisory Committee to consider.

- (1) How to finance the employment of a research officer in a pilot project (ABA? A university? the NAA? A philanthropic law firm?)
- (2) Which agency should employ him or her? (La Trobe University? AIATSIS? one of the Land Councils? the NAA?, the National Indigenous Agency?)
- (3) Should voluntary labour (e.g. by retired archivists) be solicited at the pilot stage, or should such engagement be attempted only if and when the research project enters a long-term phase?
- (4) How big should the pilot project be (how many land claims, how many months of work, how many depositors)?
- (5) Which land claims ('simple' and 'easy' ones? Complex ones? Land claims whose documents exemplify colonial injustice)?
- (6) Would the Project encourage deposit to **any** public collection, or should the project adopt a policy that favours one, or a selected few public collections?

Conclusion

In the project description issued to the focus group, the Project Steering Committee states that 'This project aims to ultimately put control of materials back in the hands of the relevant Indigenous communities.' While the focus group discussion sometimes mentioned this idea, participants were notably cautious, voicing fears about how land claim information could be misread and misused. There were also conservation issues to consider. The focus group's caution is consistent with the Committee's use of the word 'ultimately'. The focus group did not grapple with the questions of how community-based 'keeping places' could be stocked and by which authority they could be regulated.

What the focus group paid more attention to was the need for putative depositors to decide how best to dispose of the material that they hold in their garages. Indeed, the focus group was a conversation between putative depositors and collection managers. The interests of 'relevant Indigenous communities' were in the thoughts of all present, but the practicalities of depositing and receiving were the real focus of attention. In particular, the focus group discussed:

- managing access to the existing collections according to protocols that respect Indigenous interest and the wider public interest
- identifying and filling gaps in these collections – particularly the Land Councils' - by facilitating further deposits of relevant materials from private holdings;
- clarifying the opportunities for private collectors to dispose of and/or share in a responsible way material that they hold. This includes addressing the seven concerns voiced by many at the focus group who possess material that could be deposited.

Accordingly, this 'issues paper' has attempted to bring out two sets of 'issues': the seven kinds of concern about deposit expressed by possible depositors (and how the NAA and the Land Councils address these concerns); and the issues that the Project Steering Committee must ponder if it is to mount an action-research project on the emergence of a Northern Territory Land Rights Archive.

¹ Like the Central Land Council and the Northern Land Council, the Tiwi Land Council and the Anindilyakwa Land Council are subject to Records Authority 2010/00643150. However the land administered by the latter two Land Councils administer Is all Aboriginal Land Trust and they have not needed to participate in land claims.

² NAA Records Authority 2017/00413096