

COMMERCIAL IN CONFIDENCE



## Donald Thomson Collection Review 2018 – 2019

### Review Report

Review conducted 2018 – 2019  
Report prepared December 2019

Approved for distribution to key Review participants by The University of Melbourne  
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## Acknowledgements

We would like to acknowledge the following people for their contribution to the Donald Thomson Collection Review

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The Review would also like to acknowledge all those who participated in consultations, including members of communities from Arnhem Land, Cape York and the Western Desert region.

We would also like to thank Museums Victoria for the assistance provided to the Review in preparing for consultations and writing this report.

## Definitions

1973 Agreement	The Agreement which governs the management and ownership of the Donald Thomson Collection in its entirety
2007 Deed of Amendment	Deed of Amendment adding additional permissions processes and confirming original agreement dated 29 March 2007
2008 Deed of Gift	The 2008 Deed of Gift assigning rights from Professor Donald Thomson's widow, Mrs Dorita Thomson, to their daughters Ms Louise Officer-Thomson and Ms Elaine Thomson, dated 14 September 2008
AHA	<i>Aboriginal Heritage Act 2006</i> (Vic)
AIATSIS	Australian Institute of Aboriginal and Torres Strait Islander Studies
Aboriginal Ancestral Remains	As defined in s 4(1) of the <i>AHA</i>
Catalogue	Museums Victoria catalogue that documents contents and information regarding the Donald Thomson Collection
Charter	<i>Charter of Human Rights and Responsibilities Act 2006</i> (Vic)
Collection	The entire Donald Thomson Collection, including the manuscript, field note, photographic, audio-visual, natural history material and physical artefacts
Community of Origin	The Review interrogated the Collection Catalogue and identified all distinct localities as recorded by Donald Thomson and subsequent research. It then conducted primary and secondary research as well as consultations with Land Councils, individual Elders and other organisations to determine the corresponding communities as they exist in 2019. The details and composition of these Communities of Origin as identified by the Review may change over time.
DTCAC	Donald Thomson Collection Administration Committee
EMu	The collection management system used by Museums Victoria
Ethnographic Collection	The components of the Donald Thomson Collection currently owned by the University of Melbourne, being the anthropological artefacts (including stone tools)
Ethnohistory Collection	The components of the Donald Thomson Collection currently owned by the Thomson Family in accordance with the 1973 Agreement, being the audio-visual (still image, moving image, sound recordings) and manuscript/document/literary collection
GIS	Geographic Information System—is a framework for gathering, managing, and analysing data.
ICH	Intangible cultural heritage
ICIP	Indigenous Cultural and Intellectual Property
IP	Intellectual Property
Keeping Place	Usually refers to specially designed or chosen spaces in the Communities of Origin to store cultural material such as archives, recordings, images and artefacts
Museum	Museums Victoria
Natural Sciences Collection	The fauna (and flora) specimens in the Donald Thomson Collection
Professor Thomson	Emeritus Professor Donald Finlay Fergusson Thomson

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Secret or sacred item	As defined in s 4 of the <i>AHA</i>
TCE	Traditional Cultural Expression
Review	The Donald Thomson Collection Review
Thomson Family	Between 1970 and 14 September 2008: Dorita Thomson From 14 September 2008: Louise Officer-Thomson and Elaine Thomson (pursuant to the Deed of Gift assigning Dorita Thomson's right under Professor Thomson's will to her daughters Louise and Elaine)
TK	Traditional Knowledge
Traditional Owner	As defined in s 7 of the <i>AHA</i>
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNESCO	United Nations Educational, Scientific and Cultural Organization
University	The University of Melbourne
VAHC	The Victorian Aboriginal Heritage Council as established under part 9 of the <i>AHA</i>
WIPO	World Intellectual Property Organization

### Note on Terminology

In this Report the following terminology is used to refer to the three main components of the Donald Thomson Collection. It reflects the terminology currently used by Museums Victoria:

- 'Ethnographic Collection' refers to the anthropological artefacts (including stone tools);
- 'Natural Sciences Collection' refers to the fauna (and flora) specimens. These two sections of the Collection are owned by the University of Melbourne; and
- 'Ethnohistory Collection' refers to the audio-visual (still image, moving image, sound recordings) and manuscript/document/literary collection owned by Donald Thomson's family, represented by Louise Officer-Thomson and Elaine Thomson.

'Collection' refers to the entire Donald Thomson Collection.

## Executive Summary

The Donald Thomson Collection (**'Collection'**) represents a unique cultural resource, which is of national and international distinction. The Collection, compiled by Professor Thomson in expeditions to Cape York, Arnhem Land, Western Desert, West Papua and the Solomon Islands between 1932–1965, has significance to researchers and scholars. However, its greatest significance resides in its importance to Communities of Origin, and their descendant families.

The Collection has been held and curated by Museums Victoria since 1973, under the terms of a tripartite agreement (**'1973 Agreement'**) between Professor Thomson's widow, Dorita Thomson, and later her daughters Louise Officer-Thomson and Elaine Thomson (**'Thomson Family'**), Museums Victoria (**'Museum'**) and the University of Melbourne (**'University'**). The 1973 Agreement divides ownership of the Collection between the University and Dorita Thomson. Its management has been overseen by the Donald Thomson Collection Administration Committee (**'DTCAC'**) which has included representatives of the Thomson Family (at the invitation of the University), the Museum and the University. Indigenous Communities of Origin are not represented in the governance and management of the Collection.

The Donald Thomson Collection Review (**'Review'**) was established by the Council of the University of Melbourne in 2017 with agreement from Museums Board of Victoria, Elaine Thomson and Louise Officer-Thomson. The independent review, led by His Honour Ian Gray (referred to in the Report as Judge Gray), commenced in February 2018. The Review was prompted by the 2016 amendments to the *Aboriginal Heritage Act 2006* (Vic) (**'AHA'**), changes in international and national protocols, and increasingly problematic governance and access arrangements.

The Terms of Reference required the Review to consult with experts and stakeholders, and to consider the future of the Collection, with specific focus on: its strategic potential, its capacity for scholarly engagement, its relationship with current cultural heritage legislation, best practice in contemporary governance and management of cultural heritage collections, and best practice in engagement and consultation with Communities of Origin.

The findings and recommendations of the Review are informed by consultations with over 250 people and research into national and international legislation, policy, standards and practice related to the governance and management of cultural heritage collections, materials and associated knowledge.

The following key considerations were central to the findings of the Review, and underpin the recommendations:

1. Statutory obligations under the *AHA*;
2. The application of the principles of article 31 of the *United Nations Declaration on the Rights of Indigenous Peoples* (**'UNDRIP'**) to the custodianship and management of the Collection;
3. Recognition that acting to connect Communities of Origin with their cultural heritage in the Collection is time critical;
4. A response to the call by Communities of Origin for a new era of engagement with, and management of, the Collection;
5. Recognition of Professor Thomson and his relationship with Communities of Origin; and
6. Recognition of the unique qualities of the Collection and its unfulfilled potential.



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Practice in the custodianship of Indigenous cultural heritage has changed considerably over the almost fifty years since the 1973 Agreement was signed. Nationally and internationally, changes in statutory and regulatory requirements, as well as international instruments have set standards for the governance and management of Indigenous collections.

Globally, it is acknowledged that best practice requires the engagement of source communities in the management of their Traditional Knowledge, Traditional Cultural Expression and Intangible Cultural Heritage. The Review undertook extensive benchmarking, both through desktop analysis and consultations and was itself informed by and applied best practice methodology in community engagement and consultation.

Recommendations have been developed to respond to the statutory and regulatory environment, most notably in relation to the repatriation of Ancestral Remains and secret and sacred material under the terms of the *AHA*. The Report goes on to outline a number of recommendations to support the principles of UNDRIP in relation to the governance and management of the Collection. These principles are further supported by a series of best practice recommendations which reflect both current and future directions in practice and engagement strategies between Communities of Origin and Traditional Owners and collecting and exhibiting institutions. Best practice recommendations have been developed in relation to the custodianship, ownership and governance structures for the Collection and related copyright, as well as community engagement and consultation, repatriation and collections management, access, scholarly engagement and interpretation. The Report also articulates opportunities for advocacy and leadership in the management and custodianship of Indigenous collections, and the recognition of Indigenous Cultural and Intellectual Property rights.

It is the ambition of the Review that the Report play a role in leading the way to recognising the rights of Communities of Origin in relation to the custodianship and management of their cultural heritage, and to the recognition of Professor Thomson and this profound and important Collection.

## 1. Background

### 1.1 Donald Thomson and his Legacy

Professor Donald Finlay Fergusson Thomson had a long association with the University. Thomson's career with the University began as an undergraduate student, research fellow, and doctoral candidate. He obtained his PhD in 1950 from Cambridge University. Later he was Professor Emeritus of Anthropology at the University of Melbourne. During his lifetime, Professor Thomson carried out extensive field research with the Wik and Lama Lama peoples of Cape York Peninsula, Yolŋu people of Arnhem Land, and Pintupi people of the Western Desert in the Northern Territory, respectively, amassing a collection of artefacts, manuscripts, articles, fieldnotes, drawings, photographs and negatives, audio tapes and other materials relating to his research. He lived with the Pintupi people in the 1950s and 60s, and developed a deep respect for Aboriginal culture, religion, ceremony, tradition, and technology. In today's terms he was a polymath—a gifted linguist, an excellent photographer, a botanist and an antivenene expert. He was also a journalist and a life-long public champion of Aboriginal people.

Date	Event	Detail
1901	Professor Thomson born	
1925	BSc University of Melbourne	Majors in botany and zoology
1928	Diploma in Anthropology, University of Sydney	
1928–9	Two expeditions to Cape York Peninsula	First two of three expeditions
1930–1	Biologist, Walter and Eliza Hall Institute of Medical Research Bartlett Research Scholar, University of Melbourne	Investigation of Australian snakes and their venom for anti-venene
1932	Research Fellow, University of Melbourne	
1932–3	Third expedition to Cape York Peninsula	
1935	First expedition to Arnhem Land	Commissioned by Commonwealth Government following the murder of trepangers in Arnhem Land
1936–7	Second expedition to Arnhem Land	
1939–44	Field work during war service in New Guinea, Papua and British Solomon Islands, including Rennell Island (Polynesian) and Netherlands New Guinea during war service	Organised and commanded Advanced Operational Base in Tulagi, Solomon Islands
1941–43	Field work during war service in Arnhem Land	
1957	Organised and led expedition to Lake Mackay, Great Sandy Desert, Western Australia	
1963	Second expedition to the Great Sandy Desert	
12 May 1970	Professor Thomson passed away	

### 1.2 The Donald Thomson Collection

The Collection assembled by Professor Thomson comprises material from over 90 Communities of Origin.

In recognition of its value, the Ethnohistory component of the Collection was inscribed into the UNESCO Australian Memory of the World Register in 2008:

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*'This collection records the life's work of Professor Donald Thomson (1901-1970), who undertook extensive fieldwork in Arnhem Land, Cape York Peninsula, Central Australia, the Solomon Islands and West Papua between 1928 and 1963.*

*The material, of enormous breadth, covers anthropology, linguistics, botany, zoology, ornithology and ecology. Thomson lived in Aboriginal communities and meticulously recorded the cultural practices he observed...*

*A tireless campaigner for Aboriginal rights, Thomson used his material to write over forty scholarly publications and a large number of articles, lectures and reports. The collection is important to researchers, academics and filmmakers as it provides rare insights into Aboriginal people's lives and lands prior to government mission administration.*

*The acclaimed film, Ten Canoes, drew upon Donald Thomson's work, as represented in this collection. The material is also highly valuable to, and continually visited by, Indigenous communities; for some, it is the only record of their heritage.<sup>1</sup>*

Professor Thomson was very aware of the Indigenous cultural heritage value of the Collection and made lifelong friendships within the Indigenous communities in which he worked. His family, including his widow and his children have continued those friendships and that tradition of respect for Indigenous culture.

The Collection is the result of Professor Thomson's painstakingly meticulous research and observation as recorded in his fieldnotes, diaries and photographs and his careful gathering of botanical and other specimens. He was able to accumulate the contents of the Collection through the relationships he forged with the Indigenous peoples and communities he studied, supported by their trust and respect.

Judith Wiseman, Professor Thomson's secretary, transcribed 4,000 pages of Professor Thomson's handwritten notes into 7,000 typed pages. She also began the work of sorting, profiling and labeling the 1,100 photos from negatives and glass plates and listing 5,000 artefacts.<sup>2</sup> Her work now sits as part of the Collection. Wiseman's contribution has been widely acclaimed, and rightly so. The University of Melbourne ultimately recognised her with the award of an honorary Master of Philosophy.<sup>3</sup>

Professor Thomson understood, long before most others, the intensity of Indigenous connection to Country, the intertwined cultural traditions of making and storytelling as a mechanism for the intergenerational transfer of knowledge and the cultural significance of the objects he collected.

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<sup>1</sup> UNESCO Australian Memory of the World Committee and individual authors, 'Donald Thomson Ethnohistory Collection', *The Australian Register: UNESCO Memory of the World Program* (Web Page, 2008) <[https://www.amw.org.au/sites/default/files/memory\\_of\\_the\\_world/Indigenous-collections/donald-thomson-ethnohistory-collection.html](https://www.amw.org.au/sites/default/files/memory_of_the_world/Indigenous-collections/donald-thomson-ethnohistory-collection.html)>

<sup>2</sup> Alison Inglis, 'Retirement and Recollections: Dr Ray Marginson AM and the Donald Thomson Collection' (2013) 13 *University of Melbourne Collections* 35, 36.

<sup>3</sup> Ibid.

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The integral relationship between the objects, the fieldnotes, diaries, photographs, descriptive tags for objects and maps is perhaps obvious, but no less important for that. Professor Thomson's notes are, to a large degree, *about* the objects; they provide the *context* of his collecting and support an understanding of the meaning of the objects.

The Museum provided an overview of the Collection, summarised below. It is noted that there is further work to be done to complete digitisation and cataloguing of the Collection.

Type	Quantity	Detail	Status
Ethnographic collection	7190		
Stone artefacts	10,530 (estimate)		
Film	86	Pintupi, Central Australia	Digitised
Audio	17	Pintupi, Central Australia	Digitised
Photographs	10,700	Arnhem Land, Central Australia, Victoria, Papua New Guinea, Cape York	Arnhem Land and Central Desert digitised
Maps	212		Digitised
Illustrations	370		
Fieldnotes	4,600 pages (estimate)	Date range: 1928–1965	Transcribed, not digitised
Journals/notebooks	44	Date range c. 1928 –1940 Arnhem Land; Cape York.	Not transcribed, not digitised
Correspondence, ancillary documents	Unknown	Unknown	Not transcribed, not registered, not digitised
Natural sciences specimens	2000		

### 1.3 Ownership and Governance Arrangements

#### 1.3.1 Current arrangement: The 1973 Agreement and the DTCAC

Under the terms of his Will, Professor Thomson left his entire Collection to Dorita Thomson. After Professor Thomson's death in 1970, his widow negotiated an agreement with the University under the terms of which she donated the object-based collection (the Ethnographic and Natural Sciences collections) to the University, retaining ownership of the Ethnohistory Collection. These arrangements were reflected in the 1973 Agreement.

The 1973 Agreement between Dorita Thomson, the University and the Museum dated 28 March 1973, set out to deal with the title, possession and copyright ownership of all items in the Collection. For the purposes of the Review, the 1973 Agreement has been assumed to be a valid agreement between the parties to it and it is relevant to note here that, to date, the actions of the parties have implied that they accept the Agreement as binding. In 2007, the parties executed a Deed confirming the 1973 Agreement. The following chronology details legal agreements relating to the Collection:

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28 March 1973	Agreement entered into between the University, Museum and Dorita Thomson	
29 March 2007	Donald Thomson Collection Deed of Amendment	Amends original agreement to add additional permissions and a request process Confirms original agreement
27 June 2008	Enduring Power of Attorney	Elaine Thomson and Louise Officer-Thomson become Powers of Attorney for Dorita Thomson
14 September 2008	Deed of gift	Dorita Thomson gives and assigns absolutely all of her rights, title and interest in the Collection literary estate to Elaine Thomson and Louise Officer-Thomson jointly

The 1973 Agreement established a committee to administer the Collection. Known as the Donald Thomson Collection Administration Committee, the committee consisted of two members appointed by the Museum and three by the University. The DTCAC had the responsibility of administering the Collection including powers to sell or exchange items considered to be duplicates and authority to loan items to other institutions.<sup>4</sup> The following table outlines a brief chronology of the DTCAC.

4 October 1973	First meeting of DTCAC	
14 May 1993	Mrs Dorita Thomson first joins DTCAC as observer	DTCAC Minutes, Meeting 2, 1993
17 June 1999	Mrs Dorita Thomson appointed as member to DTCAC on behalf of University.	Approved by University Council
16 March 2009	Louise Officer-Thomson appointed as member of DTCAC by the University	DTCAC Agenda Meeting 2, 2009
10 October 2016	Most recent meeting of DTCAC	Louise Officer-Thomson and Elaine Thomson table letter expressing dissatisfaction with current Agreement

### 1.3.2 Parties to the 1973 Agreement

#### 1.3.2.1 Museums Victoria

The Museum has housed, cared for and curated the Collection since 1973. It has taken full responsibility for the conservation of the Collection and frequently reported to the DTCAC and the Thomson Family directly about engagement with the Collection. The conservation and curation of the Collection has been carried out to the highest standards. The Museum has hosted and provided tours for visitors from Communities of Origin throughout the time that the Collection has been in their possession and stored the Collection in line with cultural protocols and museum standards. The Museum have undertaken extensive research in connection with the Collection, including an Australian Research Council ('ARC') Linkage grant from 2003–2006, and supported access to the Collection for communities, anthropologists and researchers.

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<sup>4</sup> 1973 Agreement cls 10–11.

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### *1.3.2.2 University of Melbourne*

To date, the University's primary contribution has been to administer the DTCAC. Until recent times, the University has not taken an active role with the Collection. Through the *Awaken* exhibition, launched in October 2018, the University signaled its intention to more actively engage with the Collection. *Awaken* also marks the beginning of the University's efforts to build lasting and genuine relationships with Communities of Origin.

### *1.3.2.3 Thomson Family*

The Thomson Family was engaged in the work of the DTCAC from its inception through the active participation of Professor Thomson's widow, Dorita Thomson, then through Louise Officer-Thomson (first as an observer, later a member) and Elaine Thomson as an observer. The Thomson Family has a deep and enduring pride in and commitment to the work of Professor Thomson.

## 2. The Review

The Review was initiated by the University, at the recommendation of the Chair of the DTCAC, Professor Ian Anderson and approved by the University Council in 2017.

It was launched in response to a number of interrelated factors, most notably the changed statutory and regulatory context and developments in international and national practice in the management of Indigenous cultural heritage collections in the ensuing decades since 1973. This changed and changing environment was well captured by the Museum in its submission to the Review, which noted, ‘we now view First Peoples cultural heritage as belonging to individuals, families and communities, with Museums Victoria as the caretaker.’<sup>5</sup>

The current ownership and management arrangement for the Collection has strained the relationships between the parties to the 1973 Agreement. These arrangements have resulted in access delays for Communities of Origin and instances of frustration regarding scholarly engagement with the Collection. Elaine Thomson and Louise Officer-Thomson noted their unhappiness with the tripartite agreement in a statement tabled in a DTCAC meeting in 2016.<sup>6</sup> The DTCAC was suspended after its final meeting in 2016 and was reconvened in late 2019.

### 2.1 Terms of Reference

Vice-Principal (Engagement) Adrian Collette, advised by Professor Marcia Langton, set the Terms of Reference for the Review, and appointed the Chair in February 2018. The Review was asked to:

1. Consider the strategic potential of the Donald Thomson Collection on a national and international scale and recommend opportunities to leverage this potential to the mutual benefit of all parties (Communities of Origin and Traditional Owners, Museums Victoria, Thomson Family and University of Melbourne);
2. Provide advice on how scholarly engagement with the collection (teaching and learning and research) can further enhance the significance and impact of the collection for all parties (Communities of Origin and Traditional Owners, Museums Victoria, Thomson Family and University of Melbourne) and the broader community;
3. Review the current cultural heritage legislation and Museums Victoria and University of Melbourne institutional policies relevant to custodianship of the collection to ensure compliance and best practice;
4. Conduct interviews with experts and nominated representatives of all parties (Communities of Origin and Traditional Owners, Museums Victoria, Thomson Family and University of Melbourne);
5. Provide recommendations on best-practice consultation and collaboration with Communities of Origin and Traditional Owners to ensure they have access to, engagement with and agency in, the governance of the collection, including advice or repatriation;
6. Provide recommendations on best practice for the governance and management of the collection inclusive of both the University and Thomson-owned components, and the rights of Communities of Origin and Traditional Owners;

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<sup>5</sup> Museums Victoria, Submission no 1 to Judge Ian Gray, *Donald Thomson Collection Review* 13 September 2019, 1.

<sup>6</sup> Letter from Elaine Thomson and Louise Officer-Thomson to DTCAC, 10 Oct 2016.

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7. Provide advice on the rights, roles, responsibilities and obligations of all parties under a new Agreement (Communities of Origin and Traditional Owners, Museums Victoria, Thomson Family and University of Melbourne).

### 2.2 Exclusions

#### 2.2.1 Communities of Origin

Given the breadth and scale of the Collection, the Review was limited to a selection of Communities of Origin in the three areas in Australia where Professor Thomson spent most time and did his most extensive collecting and field work: Cape York, Arnhem Land and Western Desert; the Review does not cover his work in the Solomon Islands and West Papua although we note that some important collecting was done in each place.

#### 2.2.2 Copyright

The Review examined the broad categories of materials in the Collection and identified the applicable principles under Copyright law but did not examine the specific circumstances of each item and its consequent copyright status. Further, the Review questioned but was not able to determine the copyright ownership and status of Collection items not authored by Professor Thomson (such as the drawings made by his first wife Gladys Winifred Coleman).

The Review did not investigate whether any of the artefacts made by members of Indigenous communities may have copyright as 'works of artistic craftsmanship' and if so, the impact of that on the management of the Collection. These matters remain to be investigated by the University following its decisions in relation to the recommendations of this Review.

#### 2.2.3 Overall Management of the Collection

Further to Term of Reference 6, the Review has not examined the operational aspects of collection management beyond the issues of governance, community rights and access, stakeholder engagement and the strategic and scholarly value of the Collection. The Review recognised the professional expertise and standing of Museums Victoria in the areas of collection management and care and did not explore this question within its scope. It is assumed the Collection is managed consistently with best practice, as set out in the National Standards for Australian Museums and Galleries.<sup>7</sup>

#### 2.2.4 New Agreement

Further to Term of Reference 7, the Review concluded that, while a new agreement is recommended, it is premature to provide any specific legal framework, or to attempt to draft a template for a new agreement before all stakeholders have an opportunity to read the Report findings.

### 2.3 Review Methodology

The Review recognised that the complexity and depth of meaning in the Collection material necessitated a sophisticated and culturally sensitive methodology. The Review began as a

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<sup>7</sup> National Standards Taskforce, *National Standards for Australian Museums and Galleries* (Report v 1.5, September 2016) <[https://amagavic.org.au/assets/National\\_Standards\\_1\\_5.pdf](https://amagavic.org.au/assets/National_Standards_1_5.pdf).



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six-month project and was ultimately extended to 22 months, employing an iterative approach, actively incorporating input and feedback from Indigenous-led organisations, Communities of Origin, stakeholders and identified subject matter experts. The Review comprised three phases.

<b>2018</b>	
<b>Phase one</b>	<ol style="list-style-type: none"><li>1. Preliminary consultations with key stakeholders;</li><li>2. Preliminary research - cultural heritage management and governance, legislative and contractual environment</li><li>3. Appointment of Indigenous Research and Community Consultation Officer to facilitate Community of Origin consultations</li></ol>
<b>2019</b>	
<b>Phase two</b>	<ol style="list-style-type: none"><li>1. Secondary consultations, including Communities of Origin, Traditional Owners and other stakeholders</li><li>2. Formal Submissions received from parties to the 1973 Agreement</li><li>3. Research – policy, best practice, repatriation and management</li><li>4. Report drafting</li></ol>
<b>Phase three</b>	<ol style="list-style-type: none"><li>1. Report finalisation and submission to the University Council (December 2019)</li></ol>

### 3. Current Context

#### 3.1 Statutory and Regulatory Obligations

It is important to consider the statutory and regulatory regime in Australia, as it applies to the Collection. There are two primary sources of law applicable to the Collection: the *Aboriginal Heritage Act 2006* (Vic) and the *Copyright Act 1968* (Cth).<sup>8</sup>

##### 3.1.1 *Aboriginal Heritage Act 2006* (Vic)

The *AHA* lists the following objectives:

- to recognise, protect and conserve Aboriginal cultural heritage in Victoria in ways that are based on respect for Aboriginal knowledge and cultural and traditional practices;
- to recognise Aboriginal people as the primary guardians, keepers and knowledge holders of Aboriginal cultural heritage;
- to accord appropriate status to traditional owners, including a preference to appoint traditional owner bodies corporate as registered Aboriginal parties;
- to promote the management of Aboriginal cultural heritage as an integral part of land and natural resource management;
- to promote public awareness and understanding of Aboriginal cultural heritage in Victoria;
- to establish an Aboriginal cultural heritage register to record Aboriginal cultural heritage;
- to establish processes for the timely and efficient assessment of activities that have the potential to harm Aboriginal cultural heritage;
- to promote the use of agreements that provide for the management and protection of Aboriginal cultural heritage;
- to establish mechanisms that enable the resolution of disputes relating to the protection of Aboriginal cultural heritage;
- to provide appropriate sanctions and penalties to prevent harm to Aboriginal cultural heritage;
- to recognise, protect and conserve Aboriginal intangible heritage by recording it on the Victorian Aboriginal Heritage Register.

##### 3.1.1.1 *Aboriginal Ancestral Remains*

Division 2 of the *AHA* concerns Aboriginal Ancestral Remains. Aboriginal Ancestral Remains are defined as ‘the whole or part of bodily remains of an Aboriginal person’.<sup>9</sup> Section 12(1) provides that, as far as practicable, ownership and possession should be transferred to Traditional Owners (‘**TOs**’). For Aboriginal Ancestral Remains, only members of a family or clan group recognised as responsible under Aboriginal tradition can be Traditional Owners under the *AHA*.

Section 14 requires public entities and universities to notify the Victorian Aboriginal Heritage Council (‘**VAHC**’) of any such remains in their possession, and to take all reasonable steps to transfer those items into the custody of VAHC. VAHC is then obliged to consult with relevant Aboriginal persons or bodies, and s 20(1)(a) requires that VAHC transfer these remains to relevant TOs or registered Aboriginal parties. Notably, the *AHA* imposes obligations of repatriation on VAHC, not the institutions that initially possessed the remains.

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<sup>8</sup> Other relevant legislation: *Aboriginal and Torres Strait Islander Protection Act 1984* (Cth) and *Charter of Human Rights and Responsibilities Act 2006* (Vic) (‘Charter’).

<sup>9</sup> *Aboriginal Heritage Act 2006* (Vic) (‘*AHA*’) s 4(1) (definition of ‘Aboriginal Ancestral Remains’), note the exceptions.

### 3.1.1.2 *Aboriginal Secret or Sacred Objects*

Division 3 concerns secret or sacred Aboriginal objects. The *AHA* defines secret or sacred objects as objects that gain that status according to Aboriginal tradition or are directly associated with traditional Aboriginal burial. The Act defines Aboriginal tradition as ‘the body of traditions’ tied to communities and groups, as well as traditions based around specific persons, items or areas.

Section 21(2) confirms that Aboriginal people with traditional or familial links to the object have ownership of secret or sacred objects. This section applies to secret or sacred items currently located in Victoria. Section 23 empowers TOs to negotiate with museums or other institutions for the return of secret or sacred objects. Contrary to its definition for Ancestral Remains, ‘Traditional Owner’ here is more generally Aboriginal persons with ‘particular knowledge about traditions, observances, customs or beliefs’ who have responsibility under Aboriginal tradition.<sup>10</sup>

### 3.1.1.3 *Aboriginal Intangible Heritage*

Amendments made in 2016 allowed for the protection of Aboriginal intangible heritage. The *AHA* defines intangible as ‘any knowledge of or expression of Aboriginal tradition... and includes oral traditions, performing arts, stories, rituals, festivals, social practices, craft, visual arts, and environmental and ecological knowledge, but does not include anything that is widely known to the public.’<sup>11</sup> This includes ‘any intellectual creation or innovation based on or derived from’ any of the above.<sup>12</sup> Importantly, the *AHA* requires that a registered Aboriginal party, registered native title-holder or Traditional Owner group entity register particular intangible heritage before those provisions apply. Once registered, s 79G makes it an offence to knowingly or recklessly use that intangible heritage for commercial purposes without consent of the relevant party or entity.

### 3.1.2 *Copyright Act 1968 (Cth)*

Under Australian law, the ownership of copyright is independent of the ownership of the physical or material form of a work or subject matter. A detailed independent analysis of copyright legislation was undertaken and informed the Report. The following table summarises those items in the Collection in which copyright has expired and the estimated expiry dates of other items in which the copyright has been retained by the Thomson Family.

Duration of copyright in the Collection		
Photographs	Cape York Peninsula—expeditions between 1928 and 1933	Copyright expired
	Arnhem Land—expeditions between 1935 and 1943	Copyright expired
	Papua New Guinea and Solomon Islands—expedition 1940-1943	Copyright expired
	Central Desert—Pintupi—expeditions between 1957 and 1965	31 December 2040

<sup>10</sup> Ibid s 7.

<sup>11</sup> Ibid s 79B.

<sup>12</sup> Ibid.

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Audio Recordings	Audiotapes made in 1957 Audiotapes made in 1963	31 December 2027 31 December 2033
Films (protected as photographic series)	20,000 feet of film in Arnhem Land in 1936 3,600 feet of film of 1957 expedition 14,000 feet of film shot in 1963 <sup>13</sup>	Copyright expired 31 December 2040 31 December 2040
Literary Works	Fieldnotes, notebooks and diaries, language and dictionary records, genealogies, annotated maps and assorted correspondence	31 December 2040
Artistic Works	Illustrations and drawings made by: Professor Thomson  Joan E Clark  Gladys Winifred Coleman	31 December 2040  70 years from the year of her death 70 years from the year of her death

It is noted that there are a small number of items in which copyright may be held by third parties.

### 3.1.2.1 Moral Rights

Individual creators of copyright works have a personal legal right under the 1968 Act to be correctly attributed as creator as well as a right of integrity in relation to the manner in which their work is treated. Generally, moral rights last for the term of copyright and, after the death of a creator, are held by the personal representative of the creator who is generally the executor or next of kin and cannot be assigned or transferred.

In the context of the Collection respect for moral rights of Indigenous creators is essentially complementary with respect for the rights of Indigenous people as owners of their cultural heritage. It will be for the owners of cultural heritage to establish protocols of attribution and respect relating to the future management of such items within the Collection; we would fully anticipate these to be synonymous with respect for moral rights.

## 3.2 Principles

### 3.2.1 United Nation Declaration on the Rights of Indigenous Peoples

UNDRIP was adopted in 2007, with Australia becoming a signatory in 2009.

Although non-binding, UNDRIP establishes ‘a universal framework of minimum standards for the survival, dignity and wellbeing of the Indigenous peoples of the world and elaborates on existing standards and fundamental freedoms as they apply to the specific situation of Indigenous peoples.’<sup>14</sup> Most relevant to this Review are articles 11–13 which refer to rights of access, the right of repatriation, and the right of Indigenous people to the reclamation of their own cultural heritage.

<sup>13</sup> JP Wiseman Report in DTCAC Agenda (7 August 1974) 9 [document 3].

<sup>14</sup> United Nations Declaration on the Rights of Indigenous Peoples, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007, adopted 13 September 2007).

Of particular note, Article 31 provides that:

*'Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.'*

### 3.2.2 Indigenous Cultural and Intellectual Property (ICIP)

ICIP is generally understood to be 'all the rights that Indigenous people have, and want to have, to protect their arts and culture.'<sup>15</sup> ICIP includes tangible cultural heritage such as artefacts and objects, traditional knowledge, and traditional cultural expression. ICIP rights are generally communal rights, unlike traditional intellectual property rights like copyright, which are individual rights vested in an author or creator.

Australian law does not currently protect ICIP except incidentally such as where an individual creator has given material form to a traditional story or practice by expressing or depicting it in the form of an artwork, film or literary work. ICIP can also subsist in items for which legal rights are owned by other parties, for example legal rights in photographs, film or audio recording of sacred ceremony may be owned by a photographer, or anthropologist, while the Indigenous community retains enduring rights to the Cultural and Intellectual Property under ICIP protocols.<sup>16</sup> This situation exists in relation to parts of the Collection, wherein the Thomson Family is the owner of all legal rights under the Copyright Act in video footage and photos depicting matters of enormous cultural significance to Traditional Owners.

Dr Terri Janke, an international authority on ICIP, notes that while ICIP rights are nascent, and no protections currently exist in Australia, contracts are 'a means to negotiate ICIP rights and...assert the rights of cultural integrity and attribution.'<sup>17</sup> Another way of recognising ICIP is through protocols which are widely used by collecting institutions to express the principles and policy imperatives that will guide their collecting, deaccessioning and programming strategies.

### 3.3 Best Practice

Practice in the custodianship and care of Indigenous cultural heritage has changed considerably over the last fifty years. Nationally and internationally, changes in statutory and regulatory requirements, as well as international instruments have set standards for the governance and management of Indigenous collections.

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<sup>15</sup> 'Indigenous Cultural and Intellectual Property (ICIP) (AITB)', *Arts Law Centre of Australia* (Web Page, 2011).

<sup>16</sup> World Intellectual Property Organization, Jane Anderson and Molly Torsen *Intellectual Property and the Safeguarding of Traditional Cultures: Legal Issues and Practical Options for Museums, Libraries and Archives* (Report No 1023, December 2010) 10.

<sup>17</sup> Terri Janke 'Protecting Indigenous cultural expressions in Australia and New Zealand: Two decades after the 'Mataatua Declaration and our culture, our future' (2018) 114 *Intellectual Property Forum* 21, 25.

Globally, it is acknowledged that best practice requires the engagement of source communities in the management of their Traditional Knowledge ('TK'), Traditional Cultural Expression ('TCE') and Intangible Cultural Heritage ('ICH'). The Review undertook extensive benchmarking, both through desktop analysis and consultations. Further, the Review itself was informed by and applied best practice methodology in community engagement and consultation. An overview of international and national benchmarking provides an understanding of the current context in which the Collection is being managed. (See Appendices F and G for a full listing of best practice research references)

### 3.3.1 International Benchmarking

#### *3.3.1.1 Indigenous Representation in Decision-making Structures*

If the principle of Indigenous ownership and rights to control TK, TCE and ICH is accepted, then it follows logically that best practice must be a governance structure that reflects Indigenous ownership of cultural heritage and gives Indigenous stakeholders a voice in collection management. While many international collecting institutions have policies emphasising the importance of respect for other cultures and the traditional knowledge of source communities, such policies rarely elucidate how that principle of 'respect' operates in practice. However, there are a number of associations and institutions worldwide that have expressly provided for Indigenous representation in their collection governance.

The Museum of New Zealand, Te Papa Tongarewa is frequently cited as illustrative of best practice in the management of cultural heritage. While there is no legal requirement for Indigenous representation on the Museum's board, two of the current eight members of the board have Māori heritage. It is noteworthy that in New Zealand, all public institutions holding Māori heritage material do so in the context of the treaty of Waitangi. The treaty's principles of partnership, participation and protection require 'public institutions to make provision for the mutual recognition, continuity and consent of Hapu Māori within their governance structures and to ensure that their governance, management and operations actively protect the interests of Māori individuals and hapu.'<sup>18</sup>

#### *3.3.1.2 Community Consultation and Benefit Sharing*

If best practice is Indigenous participation in decision-making at a structural governance level, then minimum good practice is a requirement for consultation. A number of peak bodies internationally recommend consultation with Indigenous communities in relation to the management of publicly held heritage material.

It appears universally accepted that best practice requires the informed consent of the studied population. While it is not standard for best practice policies and protocols to include an obligation to share results with the source community, benefit sharing is recognised as an important consideration. It was noted by the Review that Te Papa's 2018-2023 Collections Strategy identifies a key outcome for the next five years as sharing research with Iwi-Māori communities and developing new ways of collaborating in order to share authority and empower them.

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<sup>18</sup> David James Butts, 'Maori and Museums: The Politics of Indigenous Recognition' (PhD Thesis, Massey University, 2003) 26.

### *3.3.1.3 Collection Management and Access*

The complexities of managing cultural heritage collections are such that most institutions will have several protocols, each addressing different aspects of collection management. Although falling short of comprehensive formal Indigenous participation in governance, many institutions have taken steps to engage with source communities in relation to particular aspects of cultural heritage collection management.

Examples of Indigenous inclusion were found commonly in areas of repatriation, physical and digital rights and access management, research protocols, and programming. Digital rights management ('**DRM**') is the technological means to control, track, provide or deny access to content in the digital environment. While digitisation of materials evidencing cultural traditions supports access to and preservation of the item, it falls short of achieving cultural preservation, which requires source communities to have ongoing access to this material for the practice of cultural traditions. In short, best practice suggests that digitisation is not an end in itself, and ongoing access to the cultural material by community is critical.

## 3.3.2 Australian Benchmarking

### *3.3.2.1 Models for Cultural Heritage Collection Governance and Management*

Australia has a demonstrated record of best practice in recognising and addressing the concerns of Indigenous peoples in relation to the management of their cultural heritage. In Australia, there is widespread acceptance of the use of cultural protocols for the engagement of Indigenous stakeholders in the management of their TK and TCE.

Many Australian institutions and agencies have confronted the reality that much of the ethnographic material held in public collecting institutions was assembled or created by non-Indigenous researchers following procedures which, to a contemporary understanding, were inadequate to obtain informed consent or otherwise comply with current standards of ethical research practice. Australian cultural institutions are now also generally recognising that 'as custodians of various embodiments of Indigenous cultural heritage and information...they have an obligation to implement policies and procedures that are culturally sensitive, and designed and implemented with ongoing input and cooperation with Indigenous creators, families, communities and representatives.'<sup>19</sup>

In Australia, while native title legislation provides limited protection for TK and TCE, as noted, there is no general legislative protection for ICIP. In the absence of clear legislative protection for ICIP, Australian agencies and collecting institutions have increasingly turned to policies and protocols to manage Indigenous cultural material. In Australia, protocols have become 'an important tool for changing attitudes and behaviour around Indigenous knowledge access, use and management.'<sup>20</sup> Many national, state and regional collecting institutions have implemented such protocols, emphasising the importance of Indigenous participation in decision-making and consultation, and addressing the governance of collections of significant cultural heritage.

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<sup>19</sup> Emily Hudson, 'Cultural Institutions, Law and Indigenous Knowledge: A Legal Primer on the Management of Australian Indigenous Collections' (Primer No 1, Intellectual Property Research Institute of Australia, 2006) 15.

<sup>20</sup> Jane Anderson, *Cultural Protocols: A Framework* (PDF Document, 2006) 3 (Originally published by AIATSIS).

The Aboriginal and Torres Strait Islander Library and Information Resources Network ('**ATSILIRN**') Protocols developed in the mid 1990s provide a best practice guide to libraries, archives and information services dealing with material with Aboriginal and Torres Strait Islander content. Their articulation of best practice governance is unambiguous—libraries, archives and information services which serve Aboriginal and Torres Strait Islander peoples or hold their content '*should ensure* the involvement and participation of Aboriginal and Torres Strait Islander peoples in governance, management and operation' (emphasis added).<sup>21</sup>

The earliest comprehensive examination of ICIP in Australia is the seminal 'Our Culture—Our Future' written for the Australian Institute of Aboriginal and Torres Strait Islander Studies ('**AIATSIS**') and published in 1998. It looked specifically at the question of the appropriate management of the large quantities of Indigenous cultural material held in universities, museums, galleries and other collecting institutions and the tendency of such institutions to focus on the academic and historical value of such material rather than its cultural value. It recommended a wholesale process of law reform as well as the development of policies and protocols by cultural institutions and recommended that ownership of important cultural material be vested in Indigenous owners.<sup>22</sup>

Many later policies and protocols cite 'Our Culture, Our Future' as authority for benchmark standards of best practice in Australia. AIATSIS has more recently published 'Guidelines for Ethical Research in Australian Indigenous Studies'.<sup>23</sup> These guidelines build on these principles in the specific context of research processes, projects and activities that focus or impact on Indigenous peoples and/or Indigenous cultural heritage. At the heart of this protocol are the rights of Indigenous peoples to self-determination, engagement and reciprocity in connection with research that affects them.

The University's own Intellectual Property Research Institute ('**IPRI**') articulated a useful approach in its 2006 Primer for Australian Indigenous collections suggesting that 'the ultimate aim is to improve the involvement of Indigenous people in the management of Indigenous collections'.<sup>24</sup>

Museums Australia's 2005 policy paper *Continuous Cultures, Ongoing Responsibilities* was designed as a best practice guide for Australian collecting institutions working with Aboriginal and Torres Strait Islander cultural heritage. The policy paper 'is informed by principles of self-determination; it encourages custodianship and caretaking as opposed to ownership; it recognises the value of both tangible and intangible culture; and, it supports relationships of reciprocity between Traditional Owners and collecting organisations'.<sup>25</sup>

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<sup>21</sup> 'Aboriginal and Torres Strait Islander Protocols for Libraries, Archives and Information Services', *Aboriginal and Torres Strait Islander Library and Information Resources Network Inc* (PDF Document 2012) s 1.

<sup>22</sup> Terri Janke, *Our Culture: Our Future* (AIATSIS, 1998) 26–27.

<sup>23</sup> Australian Institute of Aboriginal and Torres Strait Islander Studies *Guidelines for Ethical research in Australian Indigenous Studies* (Guidelines, 2nd rev ed, 2012).

<sup>24</sup> Hudson (n 72).

<sup>25</sup> Museums Australia, 'Continuous Cultures, Ongoing Responsibilities' (February 2005) 7 <[https://www.nma.gov.au/\\_\\_data/assets/pdf\\_file/0020/3296/ccor\\_final\\_feb\\_05.pdf](https://www.nma.gov.au/__data/assets/pdf_file/0020/3296/ccor_final_feb_05.pdf)>; Louise Murray and Robyn Sloggett,



The Museums Australia policy paper sets out 18 principles to guide collecting institutions. Principle 5 states, 'Aboriginal and Torres Strait Islander people must be given the opportunity to have informed input into decisions affecting how museums store, conserve, research, display or in any other way use collections of their cultural heritage and how such collections and information are presented, whether for exhibition, publication or educational purposes.'<sup>26</sup>

The most recent and detailed discussion developed by Terri Janke and Company for the Australian Museums and Galleries Association ('**AMaGA**,' formerly Museums Australia) was published in 2019. 'First Peoples: A Roadmap for Enhancing Indigenous Engagement in Museums and Galleries' is a tool to improve engagement and employment of Indigenous Australians in collecting institutions across Australia and has been used to set policy objectives for AMaGA. It focuses on five key elements to foster change in the relationship between museums and galleries and Indigenous peoples: reimagining representation, embedding indigenous values into museum and gallery business; increasing Indigenous opportunity; two-way caretaking of cultural material; and connecting with Indigenous communities.<sup>27</sup>

Best practice case studies were developed by the Review, finding both minimum and ambitious standards of practice in Indigenous collection governance, management, engagement, benefit sharing, and access practices and protocols across the GLAM sector.

### *3.3.2.2 Indigenous Representation in Decision-making Structures*

The Strehlow Research Centre ('**Strehlow Centre**') manages the Strehlow Collection assembled by Professor TGH Strehlow. Much like the Donald Thomson Collection, control of the Strehlow collection passed to Strehlow's widow upon Professor Strehlow's death. The Strehlow Centre was built as a condition of the permanent handover of the collection to the Northern Territory government, and it was formally opened in 1991.<sup>28</sup> The Centre is administered and governed under a constitution set by the *Strehlow Research Centre Act 1988* (NT). The Museum and Art Gallery of the Northern Territory ('**MAGNT**'), based in Darwin, is responsible for its administration. Access to the collection is governed by the Strehlow Centre Board.<sup>29</sup>

The Review identified the Strehlow Centre as a good example of an institution embracing Indigenous participation in the governance of its collection: the organisation of the Strehlow Collection reflects the cultural knowledge of senior Arrente men whose traditional status has been recognised and respected, and the Board includes Indigenous members, liaising

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*The University of Melbourne and Indigenous Cultural Heritage Material: Developing Procedures and Protocols for Community Consultation and Collection Management* (Report, 2019). We note that the recommendations of that report are where relevant, consistent with those of this Review.

<sup>26</sup> Museums Australia (n 25) 13–14.

<sup>27</sup> Terri Janke and Sarah Grant, 'First Peoples: A Roadmap for Enhancing Indigenous Engagement in Museums and Galleries' *Australian Museums and Galleries Association* (2018) 1.

<sup>28</sup> John Morton, The Strehlow collection of sacred objects, *Central Land Council* (Web Page).

<sup>29</sup> Interview with Strehlow Centre (Ian Gray, Donald Thomson Collection Review Consultation) 9 August.

with Indigenous staff on the ground. The Strehlow Collection is managed in a way that seeks to reflect and apply Aboriginal systems of governance and Aboriginal knowledge and law.<sup>30</sup>

Within the Australian collecting institution sector there are examples of formal inclusion of Indigenous representation in decision-making. The Queensland Museum, for example, has had an Aboriginal and Torres Strait Islander Advisory Committee and an Indigenous representative on its board since at least 1998, although there is no statutory requirement for either.<sup>31</sup>

The National Museum Australia ('NMA') has an Indigenous Reference Group of Aboriginal and Torres Strait Islander representatives providing feedback on internal processes and procedures relating to Aboriginal and Torres Strait Islander programs, project methodology, and consultation processes.<sup>32</sup> The NMA holds a collection of Indigenous historical records, artworks, artefacts, images, film, sound recordings and other objects. Its 'Indigenous Cultural Rights and Engagement Policy' affirms the right of Indigenous peoples to control their cultural heritage (consistently with article 31 of UNDRIP) and interprets those rights as co-existing with legal and intellectual property rights.<sup>33</sup>

Other institutions have developed detailed policies about Indigenous consultation. The National Film and Sound Archive is an independent statutory body with a collection of over 30,000 audio-visual items depicting the stories of Australia's Indigenous peoples, cultures and experiences and actively works to ensure that its management of those materials is 'aligned with the cultural directions and aspirations of traditional owners and communities.'<sup>34</sup> It has a board of between five and nine members appointed by the Minister. There is no statutory requirement for Indigenous representation, but it currently has one Indigenous member.<sup>35</sup> Its Indigenous Materials Policy has formal mechanisms to obtain an informed Indigenous viewpoint for the management of its collection depicting Indigenous Communities of Origin.

AIATSIS is also a statutory body governed by a Council of nine, four of whom are elected by the Institute's members (who are appointed by the Council on the basis of a demonstrated interest in Indigenous culture and heritage) and at least two of these must be Aboriginal persons or Torres Strait Islanders. The Chair has been Indigenous since the mid 1980s.<sup>36</sup> The composition of the whole Council must include at least five councillors of Aboriginal or Torres Strait Islander heritage and at least one Torres Strait Islander. In other words, a majority of the governing Council must be Indigenous. Currently six Council members are Indigenous.<sup>37</sup>

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<sup>30</sup> Ibid.

<sup>31</sup> Janke (n 22) 242. Wakka Wakka man David Williams has sat on the board since 2014, see <https://www.linkedin.com/in/davidwilliamsgilimbaa/>.

<sup>32</sup> National Museum Australia, *Indigenous Cultural Rights and Engagement Principles* (Principle Document, PRO-010, 30 April 2015) 24.

<sup>33</sup> National Museum Australia, *Indigenous Cultural Rights and Engagement Policy* (Policy Document, POL-C-054, 30 April 2015) 5.

<sup>34</sup> National Film and Sound Archive, *2017 Collection Policy* (Policy Document, 2017).

<sup>35</sup> 'NFA Board', *National Film and Sound Archive* (Web Page) <<https://www.nfsa.gov.au/about/corporate-information/governance/nfsa-board>>.

<sup>36</sup> Lyndon Ormond-Parker, 'Deadline 2025: AIATSIS and the Audiovisual Archive' (2019) 47(1) *Archives and Manuscripts* 3, 4.

<sup>37</sup> *Australian Institute of Aboriginal and Torres Strait Islander Studies Act 1989* (Cth) s 12 ('AIATSIS Act').

### 3.3.2.3 *Community Consultation and Benefit Sharing*

A number of collecting institutions recognise that effective engagement is not merely about the way that principles of Indigenous engagement are embedded in the institution's own governance systems, policies and procedures but moreover about how they contribute to the preservation of cultural heritage by supporting Communities of Origin to develop their own protocols and cultural heritage management systems. Best practice is collaboration and reciprocity to ensure the transmission of cultural heritage to future generations. There are various mechanisms for the development of Community of Origin capacity to exercise governance over their cultural heritage material – both that held within the community and that held or developed externally, including best practice examples outlined below.

#### 3.3.2.3.1 *Partnerships Between Community Governance Structures and Collecting Institutions*

The AMaGA Roadmap refers to 'leading museum and gallery practice' being the entry into agreements with source communities to set a pathway for long-term relationships and the mutual benefits of collaboration.<sup>38</sup> Examples of partnership agreements were cited between the Western Australian Museum and Kimberley Aboriginal Law and Cultural Centre ('KALACC'), and between the National Film and Sound Archive and the Martu communities of the Pilbara, as well as the State Library of Queensland which provides ongoing financial and resource support to keeping places and cultural centres maintained by that state's Indigenous Shire Councils.

#### 3.3.2.3.2 *Community Knowledge Centres and Digital Archives*

AMaGA policy states that collecting institutions 'should actively support the establishment and long-term sustainable operation of Aboriginal and Torres Strait Islander community museums, cultural centres and keeping places' through strategies including skills training, resourcing, knowledge and information sharing and transfer.<sup>39</sup> In considering the repatriation of copies of records, the ATSI LRN protocols observe that original records created by, about or with the input of Indigenous communities may have tremendous significance for that community and urge collecting organisations to 'facilitate the development of ATSI Knowledge centres.'<sup>40</sup>

In recognition of its status as a custodian of cultural heritage, the NMA has acknowledged an obligation to give current and future generations of source communities access to cultural records and artefacts of significance. To that end, it has established a program of indefinite loans which enable source communities to hold their secret-sacred artefacts with the museum continuing to exercise responsibility for maintaining them. This is a reciprocal partnership, facilitating the situation of important cultural material on Country in circumstances where the community might not otherwise have the resources to maintain those materials. Indigenous communities in New South Wales including Armidale and Moree also hold material from the Australian Museum's collection on this basis.

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<sup>38</sup> Janke (n 27) 30.

<sup>39</sup> Museums Australia (n 25) 24.

<sup>40</sup> ATSI LRN Protocols (n 21) [2.5].

Where cultural material cannot be physically held on Country, digital archives can provide ‘an important vehicle in providing access to Indigenous people and communities in regional and remoter locations. [In Australia] this has facilitated the inclusion of Indigenous people within walls of libraries and archives, rather than leaving them as marginalised participants’.<sup>41</sup> Managing such content in Communities of Origin is ‘fundamental to archival development, policy and preservation frameworks for Indigenous Australia.’<sup>42</sup> AIATSIS has produced a guide to assist communities to maintain their audio-visual archives.<sup>43</sup>

A number of models of community based digital access which function in a culturally sensitive manner are already operating in Art Centres, Community Centres or Keeping Places in remote Aboriginal communities and provide models for the Collection, and a number of these were explored by the Review. Examples include the Mulka Project and the Ara Irititja Project that provide digital access to archival and contemporary digital records for the Yolju peoples and for the Anangu Pitjantjatara and Yankunytjatjara peoples—enabling those communities to see material, make comments and provide histories.

The Museum is in the process of developing an EMu-based Community Access Portal for their EMu collection management system. EMu is a powerful collection management system capable of administering complex functions reflecting all areas of museum practice, including cataloguing, exhibitions, loans, location movements, research etc. The community version of EMu is designed to be used in the field and capable of accommodating community input. Communities can communicate directly with the Museum’s EMu catalogue through onsite access, and can update the catalogue with new information, with existing records remaining intact, and new information added to a separate field. As with Ara Irititja, the Community Portal would be a living, evolving database. Importantly, the Community Portal is only accessible with login credentials, which can be provided to relevant communities.

#### 3.3.2.3.3 Community Protocols

Commentators including Anderson have long argued that there is a need for local protocols in Indigenous communities (as well as in public institutions) to articulate local expectations for research and access and local knowledge management strategies including the maintenance of their own digital archives and knowledge centres.<sup>44</sup> Examples of community policies and protocols from the Kimberley Land Council and Galiwin’ku Indigenous Knowledge Centre were considered by the Review.

#### 3.3.2.4 Collection Management and Access

AIATSIS holds a collection that includes over 600,000 images, 12,000 manuscripts, 40,000 hours of audio tapes, 16,000 film cans as well as artworks and objects. Similar to the Thomson Collection, most of its holdings have tremendous Indigenous cultural significance. Many of its holdings have secret-sacred cultural significance where a level of restricted access is appropriate and much of it is sourced from collecting activities that occurred many

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<sup>41</sup> Jane Anderson, ‘Access and Control of Indigenous Knowledge in Libraries and Archives: Ownership and Future Use’ (Conference Paper, American Library Association and The MacArthur Foundation Conference, 5–7 May 2005) 21.

<sup>42</sup> Ormond-Parker (n 36) 11.

<sup>43</sup> AIATSIS, *Keeping Your History Alive: How to Establish and Maintain an Audiovisual Archive* (AIATSIS, 2006).

<sup>44</sup> Anderson (n 20) 4-5.

years ago and are unique. AIATSIS has a deeply considered and detailed collection access policy<sup>45</sup> premised on UNDRIP, the ATSILIRN Protocols, the AIATSIS Act, and its own research protocol, Guidelines for Ethical Research in Australian Indigenous Studies. Further, AIATSIS policy in relation to research that it supports financially has, since at least 1998, been based on principles of informed consent, shared benefits, and the acknowledgement of ongoing Indigenous ownership of cultural and intellectual property rights.<sup>46</sup>

While none of its trustees or Executive are Indigenous, the Museum of Applied Arts and Sciences ('MAAS') has established an Aboriginal and Torres Strait Islander Consultative Group and an Aboriginal and Torres Strait Islander Reference Group.<sup>47</sup> It has a formal ICIP protocol 'designed to encourage best practice in recognition and treatment of ICIP rights in relation to the MAAS Collection and objects in MAAS custody and care, including the Indigenous Cultural Material, and the programs, exhibitions, digital media, commissions, loans and other activities undertaken by MAAS'.<sup>48</sup>

The protocol cites article 31 of UNDRIP and recognises that Indigenous cultural heritage is communally owned and dynamic, that Indigenous peoples have the right to own and control their ICIP and control the recording of cultural customs and expressions and the language intrinsic to cultural identity, knowledge, skill and teaching of culture. The MAAS ATSI Repatriation Policy is not informed by any state-based repatriation obligations, and details both a repatriation and claims handling process.

### 3.3.2.5 Community Engagement

The methodology used by the Review to engage with Communities of Origin is considered illustrative of best practice. At the core, the approach recognises and seeks alternative ethically informed modes of engagement with Indigenous communities by non-Indigenous institutions. Key elements of the methodology are outlined below.

#### 3.3.2.5.1 Engaging an Indigenous Facilitator

Employing an Indigenous Facilitator able to build genuine and trusting association with communities through existing connections and networks was found by the Review to be integral to ensuring successful engagement. An Indigenous researcher/facilitator provides the close knowledge of and connection with communities, enabling the consultation methodology to be tailored to individual Communities of Origin, recognising that a 'one size fits all' approach is neither respectful nor conducive to genuine engagement.

#### 3.3.2.5.2 Research and Considerations for Communities of Origin

The methodology of planning and delivering consultations necessitated strict integrity and honesty. Whatever was said in meetings had to be backed up with factual data. Positive meetings that allowed for the most productive time for engagement were achieved by

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<sup>45</sup> Australian Institute of Aboriginal and Torres Strait Islander Studies, *Collections Access and Use Policy* (Policy Document).

<sup>46</sup> See discussion in World Intellectual Property Organization, Russell Taylor, *WIPO Indigenous Panel on Free, Prior and Informed Consent: Experiences in the Fields of Genetic Resources, Traditional Knowledge And Traditional Cultural Expressions: Experiences From Australia*, WIPO/GRTKF/IC/16/INF/5(f), 16th sess, 3–7 May 2010, 4–5.

<sup>47</sup> Museum of Applied Arts and Sciences, *MAAS Innovate Reconciliation Action Plan 2017-2019* (Policy Document, May 2017).

<sup>48</sup> Museum of Applied Arts and Sciences *MAAS Australian Indigenous Cultural and Intellectual Property Protocol* (Policy Document, 21 July 2016) 2.

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keeping the number of communities manageable; taking time to establish contact with key people; and maintaining relationships with those key people throughout. Existing kinship connections, friendships and positive relationships were drawn on, with community members spoken with directly and meetings planned collaboratively.

### Land Councils

Relationships with Land Councils are seen as vital to any ongoing work the University wishes to undertake in these regions: as a first step in consultations with communities, Land Councils must be consulted and their advice sought. Further, their knowledge of Country and Traditional Owners is both integral to the consultation process and to future work to map communities and collections.

It is noteworthy that all Land Councils consulted by the Review recognised the importance of the Collection and its significance to the people represented in the material. All strongly supported the Review process and terms of reference.

### Other Institutions

Informal consultations with collecting institutions provided an opportunity to benchmark and for the team to make professional connections.

### Other Considerations of Impacts that can Affect Remote Aboriginal Communities

A range of factors specific to work in remote Aboriginal Communities were seen as important:

- a. There are many other meetings going on at the same time across all these regions with demands put on people to attend and be involved;
- b. People work and have obligations to families, travel long distances, most are in the lowest socio-economic group;
- c. English is often a 2<sup>nd</sup> or 3<sup>rd</sup> language;
- d. Many people suffer poor health or chronic illnesses, overcrowding in homes and exposure to domestic violence is the unfortunate reality;
- e. Many face other debilitating social issues daily;
- f. Communities are bombarded with planned and unplanned meetings from internal and external agencies including Government departments.
- g. Timing must be precise so as not to clash with other issues especially those that are far more important and immediate to people.

#### 3.3.2.5.3 Planning and Logistics

Remote fieldwork requires a great deal of teamwork, planning, ingenuity, strategy and thinking on your feet by both field and support staff. The methodology reflected safe working practices and required close attention to the conditions of the environment when in remote areas.

Logistical considerations included credibility and authentication, with Land Councils critical to establishing credibility with community; permits; creating a network; responding to activities in communities, both planned and unplanned; and having ready access to maps.

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Above all, time is the most important factor to achieving genuine consultation. Time is an example of the cultural differences between those who traditionally carry out the consultations and those who are being consulted. Because of this difference it directly affects all other elements of consultations. Allowing for silence between talking, and time for people to digest information is essential for proper engagement in any community.

Photographs from the Collection are key to engaging with communities. Without copies of historic photographs of elders, relatives and other community members, the consultations could not have proceeded without damaging trust. In the words of Carol Christophersen, Researcher and Community Consultation Officer with the Review, 'turning up to all these Communities of Origin without photos and asking people to engage, would have been the worst first impression.' Each image had a space for people to write and add information such as place, dates, skin and names. In this way the images and collection were enhanced.

### 3.3.2.5.4 Presentations

The Review team created a consultation kit to take to each community for on Country consultations. The kit and presentations were modified for each trip, and tailored to each community, with a consistent story and themes. Presentations were prepared with appropriate language and delivered in a tailored manner according to the changing situation. Interpreters were used, and the team took advice from them on how to best utilise their skills.

Rooms were set up in the same way each time and a list of names of those attending was taken, confirmed by a local person to ensure correct spelling. A consistent running sheet was developed for each presentation.

Debriefing after the presentation was critical. The high premium placed on both authenticity and intimacy in communication during the consultations problematised conventional methods of documentation; in some cases, recording or taking notes during conversation is culturally inappropriate. To address this challenge a Debriefing Strategy was applied to record the themes of meetings. Debriefing occurred as soon as possible after the meeting.

### 3.3.2.5.5 Feedback

Feedback from community members who participated in the presentations and consultations was overwhelmingly positive, suggesting that the consultation methodology had been extremely successful. People engaged with the team because of the wholistic way the Review material was presented. On all occasions, participants showed their gratitude for the team for travelling so far, for spending time in the community and for showing them 'their' collection. A key indicator of success was that no one left a presentation after it had started and attendees gave it their full attention.

The consultation team used conversations to engage after the presentation. The questions raised in the presentation were asked again, sometimes in smaller groups or one-on-one. People spent various amounts of time after the presentation discussing their views.

### 3.4 Relevant Institutional Policies

#### 3.4.1 The University of Melbourne

The *Aboriginal and Torres Strait Islander Cultural Heritage Policy*<sup>49</sup> (effective 3 June 2019) applies to ‘all collection areas in the University which hold Aboriginal Ancestral Remains and secret or sacred objects.’

While it contains broad statements of principle about recognising Indigenous peoples as the primary guardians of their cultural heritage, its limited application to remains and secret-sacred objects (and other provisions), restricts its application to cultural heritage material within the scope of the *Aboriginal Heritage Act 2006* (Vic).

#### 3.4.2 Museums Victoria

The Museum is governed by the Museums Board of Victoria, a statutory body established under the *Museums Act 1983* (Vic) and is the successor to the National Museum of Victoria Council which was party to the 1973 Agreement. It has 11 members including Yuin man Tim Goodwin.

Museum Board’s Collection Access, Loans and Use Policy, dated 26 August 2016, states a key principle is to respect and acknowledge:

*‘that cultural and community sensitivities and protocols may apply to Indigenous Cultural Heritage and its use, and [the Board] will consult and collaborate with Traditional Owners, or their authorised representatives, as outlined in the Indigenous Cultural Heritage Policy’*<sup>50</sup>

Best practice starts from the recognition of Indigenous ownership and an assumption that all cultural heritage is subject to cultural and community sensitivities and protocols. The Policy refers to the Indigenous Cultural Heritage Policy, however this was not furnished to the Review. The only other policy available to the Review, the Repatriation of Indigenous Cultural Property Policy which, with a narrower focus, confirms that the Museum will repatriate Ancestral Remains, grave goods and secret-sacred objects and will also ‘consider requests for the repatriation of other cultural property to Traditional Owners.’<sup>51</sup> Considerations for assessing claims are detailed.

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<sup>49</sup> *Aboriginal and Torres Strait Islander Cultural Heritage Policy* (MPF1289), University of Melbourne, (at 24 May 2019).

<sup>50</sup> Museums Victoria, *Collection Access, Loans and Use Policy*, (Policy Document, DOC/16/7827, 25 August 2016) 2 [3.3] (emphasis added).

<sup>51</sup> Museums Victoria, *Repatriation of Indigenous Cultural Property Policy*, (Policy Document DOC/16/7841, 25 August 2016) 1 [3.3].



## 4. Submissions and Consultations

The Review invited all stakeholders to provide submissions. On Country consultations with Communities of Origin were deemed the most appropriate means of gathering the views or the ‘submissions’ of Indigenous traditional owners. The Museum and the University provided written submissions. The Thomson Family (represented by Elaine Thomson and Louise Officer-Thomson) made their contribution through discussions and an interview. The Review met with all parties to the 1973 Agreement a number of times throughout to provide updates and gather views on the Review. A full list of all individuals and Communities of Origin consulted is included in Appendix A.

### 4.1 University of Melbourne and Museums Victoria

The University and the Museum have articulated high-level aspirations and plans intended to position both institutions at the forefront of institutional leadership in this area.

The University notes the ‘great importance and potential’ of the Collection, and states that the Collection ‘does not currently enjoy the reputation or public awareness that it deserves as one of the world’s most important collections relating to Australian Aboriginal people.’<sup>52</sup> The submission goes on to say, ‘the University is proud of Donald Thomson’s legacy’ and ‘it is central to the University’s aspirations that Donald Thomson’s contribution and legacy is recognised and that the relationship he established with Communities of Origin be sustained for mutual and long lasting benefit.’<sup>53</sup>

In its submission, the Museum states that its 2017–2025 Strategic Plan includes a new transformational theme to, ‘place First People’s living cultures, histories and knowledge at the core of Museum Victoria’s practice.’<sup>54</sup> It invokes UNDRIP and states, ‘we recognise the leadership of Traditional Owners in directing how we should approach their cultural heritage that is in our care.’<sup>55</sup>

### 4.2 The Thomson Family

The Thomson Family provided a message, in the form of a statement, to take to communities. (See Appendix D) The message is a heartfelt reflection on their father’s bond with the Aboriginal people he lived and worked with, and recognises a new and different world, expressing an aspiration for a new approach by The University. It contains a commitment to honouring the wishes of Communities of Origin and recognises the importance of reconciliation and education.

Consistent with the message, the Thomson Family in all discussions emphasised their interest in a future for the Collection, featuring a focus on education and learning through community visits to the Collection, the availability of local online access and similar initiatives, and scholarships. Above all, they want to see their father and his work acknowledged and honoured for posterity.

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<sup>52</sup> The University of Melbourne, Submission no 2 to Judge Ian Gray, *Donald Thomson Collection Review*, 4.

<sup>53</sup> Ibid, 4-5.

<sup>54</sup> Museums Victoria (n 5) 4.

<sup>55</sup> Ibid.

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### 4.3 Communities of Origin

Due to constraints of time and location, and to optimise the efficacy of consultations with Communities of Origin, the number of communities consulted was kept to a manageable number. The Review focused on communities that have the most material objects in the Collection, as identified in the Museum Catalogue. The following summarises key themes emerging from community consultations.

#### 4.3.1 Community Response to the Collection

Overwhelmingly communities were positive about wanting to be involved in the future of the Collection. How this occurs requires further consideration over an agreed timeframe.

There was a clear and immediate emotional response to seeing community material and a desire from many for material to be on Country. Many communities noted that connections to photos and collection material are not abstract; they are real and immediate. This was especially so for the Pintupi, of whom Thomson's photos are more recent and, in some instances, the Review consulted with community members who are depicted in the photos as young children.

#### 4.3.2 Repatriation

There was general consensus that copies of photographs should be returned to community. Some also noted that photos of objects might be an alternative to returning all objects to Country.

There was a range of opinions about repatriating material to Country. While there was a strong desire for some objects to be returned, community members were generally cognisant of the risks involved in bringing less robust material on Country and a desire to keep the objects safe from damage. Community eagerness to repatriate material was qualified by the need for proper, museum-like facilities in which to store the items.

While community members expressed the desire to have the collection located closer to Country than Melbourne, this suggestion received a mixed response; any arrangements to move or relocate the Collections would need to be co-designed with Communities of Origin.

#### 4.3.3 Keeping Places and Plans

Communities generally had hopes, and some had concrete plans, for community museums or keeping places. Communities of Origin consistently had an active engagement with the concept of keeping places. Some had aspirations, others had blueprints, and others had existing locations that needed some improvement. Communities consistently expressed a desire to have their cultural heritage material, beyond just the Donald Thomson Collection, close to their Country for the primary purpose of educating young people.

#### 4.3.4 Governance

Communities of Origin were consistently clear that they did not want to, and should not, speak to governance of other communities' material in the Collection.

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### 4.3.5 Researching and enhancing the Collection by Community and Others

Communities of Origin were overwhelmingly interested in the information that is held with this collection. Every community wanted the ability to access this information in various ways and to use it with younger generations. Communities of Origin similarly had positive reactions to enhancing the Collection. Photographs were the key to engagement, and all communities would like to have images and the opportunity to enhance the Collection and Catalogue.

### 4.3.6 Technology

Communities were generally very engaged with and eager to see their own Country reflected through 3D technology. Consistently communities articulated the potential of such technologies for the dissemination of cultural knowledge and practice amongst the young and across the community. Some communities also noted that technology provides an opportunity for people who are elderly or unable to travel to experience the Collection. It was noted that a significant shortcoming of this new technology was the absence of the spiritual connection inherent in the cultural material. While virtual and augmented reality technology was a promising means of increasing community access and engagement, it remains a surrogate for access to the physical objects.

### 4.3.7 Memories of Professor Thomson

Most communities had some recollection of Thomson's trips on Country, passed down through families. Communities were also grateful for Thomson's work in collecting their cultural material so that it was preserved for future generations.

## 5. Findings and Recommendations

Informed by consultations and stakeholder engagement, benchmarking and analysis of the statutory and regulatory landscape, the Review was guided in reaching its findings and outcomes by a number of key considerations. The following were central to, and underpin the recommendations of the Review:

1. Statutory obligations under the *Aboriginal Heritage Act (Vic) 2016*
2. The application of the principles of article 31 of UNDRIP to the custodianship and management of the Collection.
3. Recognition that acting to connect Communities of Origin with their cultural heritage in the Collection is time critical.
4. A response to the call by Communities of Origin for a new era of engagement with, and management of, the Collection.
5. Recognition of Professor Thomson and his relationship with Communities of Origin.
6. Recognition of the unique qualities of the Collection and its unfulfilled potential.

### 5.1 Statutory and Regulatory Obligations

In light of statutory and regulatory obligations outlined earlier in the report, the fulfilment of statutory obligations under the AHA is a critical first recommendation, necessitating the development and implementation of associated policies and procedures to support this work across both the University and Museum. Also underpinning this recommendation is the need to foster and maintain strong and productive working relationships with relevant statutory bodies, including the Aboriginal Heritage Council, as well as employing best practice consultation and engagement strategies with community, as appropriate.

#### *Recommendation 1*

That the University and the Museum prioritise the fulfilment of their statutory repatriation obligations under the *AHA*.

### 5.2 Principles

UNDRIP sets an important international baseline for the analysis of appropriate principles and mechanisms to ensure that Communities of Origin and Traditional Owners 'have access to, and engagement with and agency in, the governance of the Collection'. At the heart of this is the recognition that communities of origin must have an influential seat at the table of governance and a key role in decision-making in relation to their cultural heritage.

The Collection is particularly rich in ICIP. The ICIP of the Communities of Origin visited by Donald Thomson is captured in his fieldnotes, manuscripts and recordings. During consultations the Review was told by Communities of Origin represented in the Collection that material objects contain stories, and these stories invigorate and inspire communities to engage with their history and future.

The challenge for the Review is that, apart from the *AHA*, there is no statutory or regulatory framework in Australia upon which to build a governance framework for a public institution reflecting the UNDRIP principle that Indigenous peoples are the owners of their cultural heritage and entitled to participate in its management. Accordingly, the Review needed to

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look beyond the Australian legal system. The results of analysis of international instruments and best practice responds directly to Terms of Reference 5 and 6.

### *Recommendation 2*

That the principle enunciated in article 31 of the *United Nations Declaration of the Rights of Indigenous Peoples* which states that Indigenous Peoples have the right to control their own cultural heritage be recognised as paramount, and this principle be applied to the future administration and management of the Collection.

### *Recommendation 3*

That the University exercise its rights over the Collection in a manner consistent with the principles of article 31, namely as its custodian on trust for the owners of the Indigenous cultural heritage embodied in the Collection.

### *Recommendation 4*

That the Indigenous Communities of Origin whose cultural heritage is contained in the Collection participate in its governance and management.

### *Recommendation 5*

That all new materials created and placed in the Collection since 1973, such as transcribed fieldnotes, be managed in a manner consistent with the principles of article 31 and recognition of ICIP rights.

## 5.3 Best Practice

Benchmarking, consultation and research informed a number of best practice recommendations, outlined below.

### 5.3.1 Governance Structures

While the Review conducted extensive research regarding the governance arrangements for collections of this nature, it did not identify any specific models for collections of this scale with connections to a large and diverse number of Communities of Origin. As such, recommendations on governance are informed by principles and related examples of best practice and seek to set exemplar practice.

As outlined, the existing governance for the Collection is the DTCAC, established pursuant to the 1973 Agreement. As discussed, it does not include representation from Communities of Origin, and its functioning has been identified by all parties as problematic. The conclusion of the Review is to enter into a two staged process to first reform and then replace the current governance model.

This staged and flexible approach will allow for immediate involvement of Communities of Origin in the management of the Collection, consistent with standards of best practice across the management of Indigenous collections in this country, and further work is undertaken to develop a best practice model for governance, which will necessitate the setting aside of the 1973 Agreement.

<p><b>Stage 1:</b></p>	<p>The re-established DTCAC be given new powers and duties under the 1973 Agreement cl 11(f) to:</p> <ul style="list-style-type: none"> <li>• Consult with and act upon advice by Communities of Origin re: management of their cultural material.</li> <li>• Oversee and facilitate the establishment of Community Reference Groups.</li> <li>• Consult with Community Reference Groups on their participation in the new governing body.</li> </ul>
	<p>Concurrently, the University to facilitate and resource the establishment of Community Reference Groups and the consultation over regional appointments to the new governing body.</p>
<p><b>Stage 2:</b></p>	<p>The University establishes a new governing body with Community of Origin appointments.</p>

#### *5.3.1.1 Stage 1 - Interim Governance Arrangements*

The Review recommends the University use the existing powers of the DTCAC to enable the participation of Communities of Origin in the management of their cultural materials within the Collection. The terms of the 1973 Agreement also provide opportunity for the appointment of an Indigenous Chair to the DTCAC and a majority of Indigenous members, as well as the power to request and receive advice from Communities of Origin regarding the management of their materials.

This strategy offers the potential to put in place an interim arrangement in the lead up to the establishment of a governing body which more fully reflects principles and best practice detailed in this Report, the realisation of which will require more time and development.

#### *Recommendation 6*

That the University use the existing powers of the DTCAC to enable the participation of Communities of Origin in management of their cultural materials in the Collection, until a new Governing Body is able to be established.

#### *5.3.1.2 Stage 2 - New Governance Structure*

The Review recommends that the 1973 Agreement be set aside, and a new committee be established to sit within the administrative structure of the University. The entity could be titled the 'The Thomson First Peoples' Collection Committee' (or similar). Its mandate would be the governance and management of the Collection.

The Review recommends that the first step, in line with international best practice, is to establish Community Reference Groups. These Community Reference Groups are to provide advice on the management of their cultural heritage materials in the Collection and determine their own processes for appointing community representatives to the committee.

#### *Recommendation 7*

That the 1973 Agreement, as amended by the 2007 Deed which establishes the existing governance structure for the Collection (which is a structure in which Communities of Origin do not participate), be set aside in its entirety and the DTCAC be replaced with a new governing body:

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- a. in which Communities of Origin are entitled to play a pivotal role;
  - b. with representatives appointed by the University, the Museum and Communities of Origin;
  - c. such that a majority of the governing body is Indigenous; and
  - d. with an Indigenous Chairperson
- and possessing the powers and legal structure set out in more detail in this report.

### *Recommendation 8*

That the University establish a Donald Thomson Subcommittee with representatives to be appointed by the Thomson Family, the University and the Museum to advise the Governing Body on how the legacy of Professor Thomson is represented in the activities of the Collection including:

- a. research;
- b. Professor Donald Thomson Indigenous scholarships program;
- c. programming; and
- d. exhibitions.

### *Recommendation 9*

That each Community of Origin be assisted to establish a reference group (**'Community Reference Group'**) which will operate as a subcommittee to the new board providing advice on:

- a. cultural protocols;
- b. exhibitions;
- c. general cultural advice re: projects/exhibitions that use their material; and
- d. each reference group would work with the DTCA Committee on protocols for their material

and to which all matters relating to access and research on that community's material will be referred for decision.

### *Recommendation 10*

That Communities of Origin select their representatives to the Governing Body through the Community Reference Groups, which may choose to use established network of Land Councils or Peak Aboriginal Organisations

### *Recommendation 11*

That the new Governing Body consult with the new Community Reference Groups (**Recommendation 9**) and proactively work to engage Communities of Origin in the management of the Collection.

### *Recommendation 12*

That the University facilitate and work with each Community Reference Group to establish research protocols by which the University will abide.

#### 5.3.2 Community Engagement and Consultation

Examination of best practice models for community engagement and consultation were undertaken by the Review. While both international and Australian collecting institutions

provided examples of good practice in community consultation and engagement, it was the methodology developed and adopted by the Review itself that is seen as demonstrating a suitably sophisticated, respectful and responsive model of community engagement.

*Recommendation 13*

That the methodology used in consultations for this Review be adopted by the University of Melbourne for future engagement with Indigenous communities.

5.3.3 Ownership of the Collection and associated copyright

As noted earlier, under the terms of the 1973 Agreement as amended by the 2007 Deed of Amendment, the University owns the Ethnographic Collection and the Thomson Family owns the Ethnohistory Collection and associated copyright.

The Review recommends consolidating the ownership of the Collection and associated copyright with one party, namely the University, so as to:

- a. recognise the manuscript and photographic material as providing context and connection to the objects, and as such requiring an integrated approach to the Collection as a whole;
- b. recognise the intangible cultural heritage and personal and familial connections through the photographs in particular;
- c. address issues in the current ownership arrangement, notably inconsistency with current statutory and best practice obligations; and
- d. extending c above, addressing the constraints on both the University and Museum to fulfil their obligations under Victorian legislation and international instruments due to the divided ownership.

The Museum in its submission to the Review considered of critical importance, the maintenance of ‘the physical and intellectual inter-connectedness of all the objects, specimens and archival documentation contained within the Donald Thomson Collection’.<sup>56</sup> In its submission, the University refers to the interdependency of the material objects in the Collection and the ‘literary estate,’ and argues that ‘the key to unlocking the strategic potential of the Collection is the unification of all materials into a single and accessible body.’<sup>57</sup> To many communities, it is irrelevant whether their cultural heritage is depicted in an ‘artefact’ or ‘photograph’; the important factor is the cultural heritage itself, not the form in which it is depicted.

Both the Museum and the University refer in their submissions to their legal obligations under the *AHA* to repatriate Ancestral Remains and secret and sacred items. Without access to the manuscript collection to establish provenance for items being repatriated, the two institutions are constrained in fulfilling those legal obligations.

Further, consolidating ownership of the Collection would enable a common approach to rights, permissions and access protocols to be introduced across the Collection that are consistent with UNDRIP Article 31. Copyright is short term and focused on individual

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<sup>56</sup> Museums Victoria (n 5) 2.

<sup>57</sup> University of Melbourne (n 52) 4.



creators who give material form to ideas and expression. In contrast, ICIP rights are enduring, and there is no recognition or conferral of rights for community owned traditional knowledge or forms of traditional cultural expression handed down through many generations of cultural practice.<sup>58</sup> Formal recognition of the rights of Indigenous source communities to control their own cultural heritage requires a much more creative and nuanced approach.

Through consolidation of ownership under a revised governance structure involving Communities of Origin in decision making, agreements with Communities of Origin will be able to be developed that respond to their diverse needs and interests, engaging and building trust with a view to developing long-term partnerships. This will provide the opportunity for the University, Museum, and the Thomson Family to bring the Collection into line with contemporary best practice in Indigenous collections management — practice that places Communities of Origin at the centre of decision making about their own cultural heritage.

To achieve that outcome, the Review recommends that the University and the Thomson Family make an agreement providing for the cancellation of the 1973 Agreement and the transfer to The University ownership of the Ethnohistory Collection and copyright in it.

*Recommendation 14*

That legal ownership of the Collection including any copyright subsisting in it be unified by the assignment of the rights of the Thomson Family to the University.

*Recommendation 15*

That the Museum continue to hold physical possession of the Collection with a new loan Agreement to be entered into between the Museum and the University, encompassing collection management policy, access protocols, digitisation, logistical and technical support, funding arrangements and resourcing, with a provision for regular reviews.

5.3.4 Repatriation (non-statutory)

Statutory repatriation obligations have been addressed earlier. Informed by best practice nationally and internationally and the principles outlined in UNDRIP Article 31, the Review also looked at the question of repatriation of materials where no statutory obligation applies.

In consultations, Communities of Origin reflected on the importance of not comprising the physical integrity and preservation of objects through repatriation of fragile or vulnerable

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<sup>58</sup> Australian courts have grappled with this issue. The groundbreaking decision of the High Court in *Mabo v Queensland (No 2)* (1992) 175 CLR 1 led to the enactment of the *Native Title Act 1993* (Cth) but this did not deal with Indigenous rights of ownership except in connection with land. The Federal Court decision in *Bulun Bulun v R & T Textiles* (1998) 86 FCR 244 found that an Aboriginal artist owed a fiduciary duty to his clan actively to protect the cultural heritage embodied in his artwork. The Judge rejected the argument that the Ganalbingu people had any equitable interest in the copyright but flagged the possibility that the nature of that fiduciary duty was such that if the copyright owner did not take action, the clan may be able to take court action. This falls a long way short of any finding of a communally owned legally enforceable right of protection for cultural heritage.

material. Simultaneously, communities emphasised the importance of objects as physical manifestations of cultural and traditional practices, and as teaching and learning resources, facilitating intergenerational transfer of cultural knowledge and as tangible evidence of traditional knowledge.

Communities have made repeated efforts to seek the return of items from the Collection through the DTCAC, and the Committee's records illustrate a history of grappling with the complexity of such requests. The implementation of a non-statutory repatriation policy would enable repatriation requests to be considered and managed in a way that both supports and secures the integrity of the Collection, while recognising and supporting the rights of Indigenous peoples to control and manage their own cultural heritage, in accordance with Article 31.

Community consultations revealed the importance placed by Communities of Origin on access, to significant cultural objects. The cultural value of objects is demonstrated by the resources invested by a number of communities over many years to send representatives to view and access the Collection, and the proliferation of Keeping Places within communities to store and display such objects. Further, there is worldwide interest in and focus on the preservation of Indigenous cultural knowledge, and what constitutes best practice in the institutional management of traditional cultural heritage materials.

Developing a considered repatriation policy informed by principles of cultural respect and best culturally appropriate museum practice would provide a sound framework for responding to repatriation requests through the Collection's governance body. Further, it would position the University as participating in ethical and responsible practice and enhance the reputation of the University and the Museum.

In addition, a repatriation policy would provide an opportunity to extend the legacy of Professor Thomson and his far-sighted recognition of the cultural significance of the objects he collected. Repatriation can be a catalyst for collaborative research and study between the University and those communities which will contribute to the embedding of Indigenous cultures and knowledges in the University's research, teaching and learning.

*Recommendation 16*

That the new Governing body in consultation with the Community Reference Groups establish a repatriation policy for cultural objects.

*Recommendation 17*

That, pending the establishment of a new Governing body and the establishment of a repatriation policy, the University adopt an interim policy, consistent with best practice terms.

### 5.3.5 Collections Management

The inclusion of Communities of Origin in the management of the Collection is recognised as time critical, as observed by the University in its submission when it noted that 'the cultural knowledge held in the Collection is vital to the cultural education of future generations in

these communities. When Elders able to interpret the knowledge and language in these materials pass away, many communities will have no-one through whom to understand the Collection and the knowledge and language within these materials will disappear with them'.<sup>59</sup>

#### *5.3.5.1 Catalogue Access*

Digitisation and the provision of catalogue details are an important first step in fostering community engagement and access. As noted by Dr Terri Janke, 'one of the Critical Pathways museums and galleries can introduce to support Indigenous engagement is the provision to communities of inventories of all cultural material'.<sup>60</sup> Access to an easily navigable online Catalogue would assist communities gain knowledge and understanding of what is in the Collection, and provide opportunities to enhance the understanding of, access to, and knowledge about the Collection.

#### *5.3.5.2 Digitisation*

For the purposes of this Report, digitisation is the capture, in electronic format, of media such as photographs, documents, films, audio recordings etc. It can also refer to the creation of digital derivatives of objects for the purposes of documentation, research and interpretation, as well as augmented and immersive digital experiences.

Digitisation of components of the Collection has the potential, where appropriate, to support access to representations of, and information regarding individual physical elements in the Collection. Furthermore, digitisation has the potential to preserve linkages across the Collection, ensuring the depth of information is discoverable by communities, and where appropriate, researchers and other interested parties.

For Communities of Origin, digitisation in its simplest form can result in the provision of digital copies of relevant sections of the collection. These files can then be shared and utilised according to each community's wishes. To maximise the potential of any digitisation strategy for both Communities of Origin and for scholarly engagement, consideration should be given to suitable collection management systems for centralised storage or access platforms. These can be enriched by the addition of existing catalogue information held by the Museum relevant to each community.

Careful planning will be required to ensure digitisation is informed and guided by community – both in terms of priorities and processes, particularly in relation to restricted material. Further, it is critical digitised material is accessible and maintained in forms of technology accessible to communities.

#### *5.3.5.3 Digital Access*

While digital access does not replicate or replace the experience of the physical material, digitisation can increase community knowledge of and access to the Collection, particularly where distance, age, health and costs are obstacles. Many interviewees noted that where photos have been printed and returned to community, these copies have been treasured

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<sup>59</sup> University of Melbourne (n 52) 4.

<sup>60</sup> Janke and Grant (n 27) 2.

and used for funerals and other ceremonies. For the Collection, the exchange of information can enhance the Catalogue, where appropriate enabling new insights and knowledge to be shared with the broader community.

Access to digitised collection material by Communities of Origin to support the sharing and copying of images holds particular significance for revitalising culture and identity. That significance is amplified when it enables elderly community members to identify individuals or provide further context to Thomson's photographs. As elderly community members age and pass away, knowledge and insight into the Donald Thomson collection will be lost.

It should be noted that while some communities are keen to share their images broadly, for others, publication of sensitive and revealing photographs of family has caused much distress. This highlights the imperative for individual communities to have influence over the governance, reproduction, release and publication of images.

Mention should be made here of the potential of new technologies to support access and engagement through immersive technologies such as augmented reality and virtual reality experiences. Such new technologies, with the capacity to bring a surrogate experience of the collection to larger numbers, have been noted as having liberating potential for communities.<sup>61</sup>

#### *5.3.5.4 Preserving the Collection*

The age and fragility of components of the Collection makes digitisation a priority before the condition of the Collection further deteriorates, with digitisation a means of preserving knowledge for future generations. Further, digitisation enables original materials to be stored according to best practice museum standards, with handling minimised to mitigate against further deterioration, while second generation copies can be distributed, shared, printed and handled.

While Communities of Origin were generally eager to repatriate material relevant to them, this desire was often qualified by a concern for the conservation of that material if brought on Country. Many communities noted the importance of having digital access while suitable facilities to house their community material were being developed.

Much of the technology used by Professor Thomson is now obsolete, with access to similarly obsolete equipment for viewing prohibitive. Digitisation to stable and transferrable file formats incorporating recognised preservation standards and digital preservation strategies is important for both preservation and access.<sup>62</sup>

Digital preservation is not an end in itself for communities; cultural preservation requires ongoing access to, and engagement with, representations of culture, history and community

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<sup>61</sup> For discussion, see Marcia Langton, 'Cultural Iconography, Memory and Sign: The New Technologies and Indigenous Australian Strategies for Cultural Survival' in Barbara Glowczewski, Laurence Pourchez, John Stanton and Joëlle Rotkowski (eds), *Cultural Diversity and Indigenous peoples: Oral Written Expressions and New Technologies* (UNESCO, 2004).

<sup>62</sup> Ormond-Parker (n 36) 6.

in order to preserve cultural knowledge and support the renewal of cultural practices and traditions for source communities. Digitisation is one stage in the process of achieving this.

*Recommendation 18*

That urgent priority be given to completing digitisation of the entire Collection to facilitate:

- a. providing each Community of Origin with digital copies of their cultural heritage;
- b. the contemporary use, engagement with and management of the Collection; and
- c. providing relevant digital copies to each Community Reference Group as it is established with authority for it to provide access to their community in accordance with their own protocols.

*Recommendation 19*

That the University establish a digital platform for the storage of all digital material that is:

- a. managed in accordance with the cultural access protocols established by each Community Reference Group;
- b. operated in accordance with a digital strategy for using digital technologies (e.g. Virtual Reality and Augmented Reality) to enable appropriate access to the collection by individual communities, academic researchers, students and the public; and
- c. used, with support from the University, to develop capacity within each community to utilise and understand digital technology.

*5.3.5.5 Scholarly Engagement, Exhibitions and Publications*

The Collection holds exceptional potential for scholarly engagement at a local, national and international level. Engagement with the Collection will enhance its significance and impact for the mutual benefit of the original families, Communities of Origin, Traditional Owners, the Museum, the Thomson family, the University and the wider community.

As it stands, the Collection holds unrealised potential for research within disciplines and areas of study at the University including linguistics, social anthropology, conservation, ecology, Indigenous studies, biomedicine, population and health, culture and communication, natural sciences, engineering, technology and specific areas within the University such as the Digital Studio. Academic programs could be developed more specifically in various study areas at both undergraduate and graduate level, and the Collection drawn on to inform multiple breadth subjects, and object-based learning.

In addition, funding opportunities such as PhD scholarships could be developed for scholars to work collaboratively with communities on areas of mutual interest. It is also noted that the Collection strongly aligns with the priorities of the University of Melbourne Indigenous Knowledge Institute, a Melbourne Interdisciplinary Research Institute for world-leading Aboriginal knowledge, research and education.<sup>63</sup>

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<sup>63</sup> University of Melbourne, 'University Launches Global Indigenous Knowledge Institute' (Media Release, 14 August 2019) <<https://about.unimelb.edu.au/newsroom/news/2019/august/university-of-melbourne-launches-global-indigenous-knowledge-institute>>.

The Collection has the capacity for different levels of scholarly engagement. Outreach education programs amongst other initiatives spring-boarding from the Collection, can support the new Indigenous Knowledge Curriculum for Australian Schools, thus helping to ensure the University provide leadership around truth-telling and cultural awareness through the primary and secondary curriculum. Led by Professor Marcia Langton and funded by the Department of Premier and Cabinet, the new Indigenous Knowledge Curriculum will involve resources for year 3 to 10 and have broad areas of application in the curriculum including Science, English, Maths, The Arts, Social Sciences, Technologies, Health and Physical Education.

#### 5.3.5.5.1 Exhibitions and Animation of the Collection

The Collection holds a wealth of cultural material with extraordinary potential for future exhibitions. These could be developed for local audiences in partnerships with Communities of Origin and TO's with a view to travelling both nationally and internationally. Travelling exhibitions, including smaller pop-up versions, back to community as well as larger more complex shows, intended for institutional spaces both locally and abroad, would also support the creation of new academic networks and relationships.

The *Awaken* exhibition, which opened in 2018 in Arts West, University of Melbourne, is the most recent exhibition from the Collection and followed the model of consultation and engagement outlined above to achieve community involvement at all levels. *Awaken* provided the opportunity for engagement for Communities of Origin, other Indigenous people, academics, staff and students of the University and the broader non-Aboriginal community.

#### 5.3.5.5.2 Scholarly Publications

Professor Thomson published a significant number of scholarly papers as well as articles for the popular press. Following his death, important volumes such as the *Bindibu Country*,<sup>64</sup> *Donald Thomson in Arnhem Land*<sup>65</sup> and *Children of the Wilderness*<sup>66</sup> were published. A subsequent ARC Linkage Grant between the Museum and ANU produced a publication and multiple exhibitions, and further scholarly articles have been produced over many years, most notably by Museum curatorial staff.

The Review noted that in recent years there has been less activity around the Collection in terms of exhibitions and publications, and that redressing this is a priority as the number of people with direct knowledge of Professor Thomson, and the capacity to speak with first-hand insight into the Collection declines over time.

#### *Recommendation 20*

That the University continue to work with the Thomson Family to recognise and honour Professor Thomson and his work and that the Collection be named the 'Thomson First Peoples Collection' or a name to that effect.

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<sup>64</sup> Donald F Thomson, *Bindibu Country* (Thomas Nelson, 1975).

<sup>65</sup> Donald Thomson, *Donald Thomson in Arnhem Land*, ed Nicolas Peterson (MUP, 1983).

<sup>66</sup> Donald Thomson, *Children of the Wilderness* (Currey O'Neil, 1983).

*Recommendation 21*

That the University work towards partnership agreements for reciprocal learning with Communities of Origin.

*Recommendation 22*

That, with the support of the University, the Community Reference Groups representing Communities of Origin, establish access protocols governing third party access to their cultural heritage materials in accordance with cultural tradition and these protocols be used:

- a. by those Community Reference Groups to make decisions approving or restricting access; and
- b. by the Governing Body to guide its own internal operations in relation to such materials and to manage third party access to the copies and originals in its possession.

*Recommendation 23*

That the University actively encourage all Communities of Origin to visit, inspect and understand what is in the Collection, through the creation of a dedicated fund to assist communities with travel.

*5.3.5.6 Administration*

In developing recommendations for best-practice models of collaboration with Communities of Origin and Traditional Owners (ToR 5), and governance and management of collections (ToR 6), the Review examined practical ways in which Communities of Origin can be engaged in the care and management of a cultural heritage collection. An Implementation Plan is envisaged as an Indigenous stakeholder communication and relationship strategy, as well as a mechanism to guide the work ahead to deliver on these best practice ambitions.

*Recommendation 24*

That the University develop and implement a best practice Implementation Plan with timeframes that addresses the following:

- a. governance, agreements etc. [future functioning]
- b. operational [team, budget, location]
- c. Community of Origin engagement [relationship building and community access]
- d. academic program of work [outreach]

Some or all of this work can operate concurrently.

*5.3.5.6.1 Resourcing*

Although not strictly a matter in the Terms of Reference, the Review noted resourcing is a crucial consideration in planning for the future of the Collection. The ambitions of both the University and the Museum, some of which are indicated above, will necessitate the development of detailed funding models to support and sustain proposed activities.

There are major financial implications for maintaining, curating, digitising, giving access to, and managing projects and research relating to the Collection. The University is beginning to

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plan its engagement with the communities; and both the University and the Museum are committed to better delivering on the immense potential of the Collection. When it comes to joint activities involving the Collection, agreement between the University and Museum about resourcing, responsibilities and obligations in relation to the Collection will be important.

One of the ways in which the Collection's potential could be enhanced is through a collection development plan, with new acquisitions from the original source communities augmenting the existing Collection. This has the capacity to engage communities in relation to their contemporary lives, expanding beyond a focus on the lives of their ancestors as documented by Professor Thomson. It would thus become a living and developing Collection, as well as an historic one.

### *Recommendation 25*

That the University appoint a team dedicated to the administration of the new governance and management of the Collection inclusive of Indigenous identified positions.

### *Recommendation 26*

That the University and the Museum collaborate on the development of models for shared resourcing of management, research, programs and activities related to the Collection.

### *Recommendation 27*

That, noting the enthusiasm of Communities for enhancing the Collection, the University consider funding new acquisitions from Communities of Origin.

## 5.4 Advocacy and Leadership

The Review has identified many ways in which the University can be a leader in the field of Indigenous cultural heritage management. There is an opportunity for the University to lead through modelling exemplar practice across the governance, management, access and engagement with the Collection.

Further, given its standing and reputation, there is a significant opportunity for the University to contribute to public debate and discussion, and be a leader in the international movement towards legal protection of ICIP, and to facilitate and support community Keeping Places for ICIP on Country. There were many examples of Communities engaging in a multitude of ways with the care and management of their repatriated cultural heritage, both nationally and internationally. The Review recommends the University advocate to the Commonwealth Government for a national capital grant program to establish and support Keeping Places.

### *Recommendation 28*

That the University use its influence to advocate to Commonwealth and State government for reform to bring about statutory recognition of ICIP.



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### *Recommendation 29*

That, acknowledging the diversity and unique cultural priorities of Communities of Origin, the University lead a national conversation about establishing and supporting appropriate Keeping Places.

## 5.5 Summary of Recommendations

### Statutory and Regulatory Obligations

#### *Recommendation 1*

That the University and the Museum prioritise the fulfilment of their statutory repatriation obligations under the *AHA*.

### Principles

#### *Recommendation 2*

That the principle enunciated in article 31 of the *United Nations Declaration of the Rights of Indigenous Peoples* which states that Indigenous Peoples have the right to control their own cultural heritage be recognised as paramount, and this principle be applied to the future administration and management of the Collection.

#### *Recommendation 3*

That the University exercise its rights over the Collection in a manner consistent with the principles of article 31, namely as its custodian on trust for the owners of the Indigenous cultural heritage embodied in the Collection.

#### *Recommendation 4*

That the Indigenous Communities of Origin whose cultural heritage is contained in the Collection participate in its governance and management.

#### *Recommendation 5*

That all new materials created and placed in the Collection since 1973, such as transcribed fieldnotes, be managed in a manner consistent with the principles of article 31 and recognition of ICIP rights.

### Best Practice

#### Governance Structures

##### Stage 1 - Interim Governance Arrangements

#### *Recommendation 6*

That the University use the existing powers of the DTCAC to enable the participation of Communities of Origin in management of their cultural materials in the Collection, until a new Governing Body is able to be established.

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### Stage 2 - New Governance Structure

#### *Recommendation 7*

That the 1973 Agreement, as amended by the 2007 Deed which establishes the existing governance structure for the Collection (which is a structure in which Communities of Origin do not participate), be set aside in its entirety and the DTCAC be replaced with a new governing body:

- e. in which Communities of Origin are entitled to play a pivotal role;
  - f. with representatives appointed by the University, the Museum and Communities of Origin;
  - g. such that a majority of the governing body is Indigenous; and
  - h. with an Indigenous Chairperson
- and possessing the powers and legal structure set out in more detail in this report.

#### *Recommendation 8*

That the University establish a Donald Thomson Subcommittee with representatives to be appointed by the Thomson Family, the University and the Museum to advise the Governing Body on how the legacy of Professor Thomson is represented in the activities of the Collection including:

- e. research;
- f. Professor Donald Thomson Indigenous scholarships program;
- g. programming; and
- h. exhibitions.

#### *Recommendation 9*

That each Community of Origin be assisted to establish a reference group (**'Community Reference Group'**) which will operate as a subcommittee to the new board providing advice on:

- e. cultural protocols;
- f. exhibitions;
- g. general cultural advice re: projects/exhibitions that use their material; and
- h. each reference group would work with the DTCA Committee on protocol for their material

and to which all matters relating to access and research on that community's material will be referred for decision.

#### *Recommendation 10*

That Communities of Origin select their representatives to the Governing Body through the Community Reference Groups, which may choose to use established network of Land Councils or Peak Aboriginal Organisations

#### *Recommendation 11*

That the new Governing Body consult with the new Community Reference Groups (**Recommendation 9**) and proactively work to engage Communities of Origin in the management of the Collection.

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### *Recommendation 12*

That the University facilitate and work with each Community Reference Group to establish research protocols by which the University will abide.

## Community Engagement and Consultation

### *Recommendation 13*

That the methodology used in consultations for this Review be adopted by the University of Melbourne for future engagement with Indigenous communities.

## Ownership of the Collection and associated copyright

### *Recommendation 14*

That legal ownership of the Collection including any copyright subsisting in it be unified by the assignment of the rights of the Thomson Family to the University.

### *Recommendation 15*

That the Museum continue to hold physical possession of the Collection with a new loan Agreement to be entered into between the Museum and the University, encompassing collection management policy, access protocols, digitisation, logistical and technical support, funding arrangements and resourcing, with a provision for regular reviews.

## Repatriation (non-statutory)

### *Recommendation 16*

That the new Governing body in consultation with the Community Reference Groups establish a repatriation policy for cultural objects.

### *Recommendation 17*

That, pending the establishment of a new Governing body and the establishment of a repatriation policy, the University adopt an interim policy, consistent with best practice terms.

## Collections Management

### *Recommendation 18*

That urgent priority be given to completing digitisation of the entire Collection to facilitate:

- d. providing each Community of Origin with digital copies of their cultural heritage;
- e. the contemporary use, engagement with and management of the Collection; and
- f. providing relevant digital copies to each Community Reference Group as it is established with authority for it to provide access to their community in accordance with their own protocols.

### *Recommendation 19*

That the University establish a digital platform for the storage of all digital material that is:

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- d. managed in accordance with the cultural access protocols established by each Community Reference Group;
- e. operated in accordance with a digital strategy for using digital technologies (e.g. Virtual Reality and Augmented Reality) to enable appropriate access to the collection by individual communities, academic researchers, students and the public; and
- f. used, with support from the University, to develop capacity within each community to utilise and understand digital technology.

### Scholarly Engagement, Exhibitions and Publications

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Some or all of this work can operate concurrently.

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### Resourcing

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#### *Recommendation 26*

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#### *Recommendation 27*

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### Advocacy and Leadership

#### *Recommendation 28*

That the University use its influence to advocate to Commonwealth and State government for reform to bring about statutory recognition of ICIP.

#### *Recommendation 29*

That, acknowledging the diversity and unique cultural priorities of Communities of Origin, the University lead a national conversation about establishing and supporting appropriate Keeping Places.

## 6. Concluding Remarks

Tasked to respond to a robust set of Terms of Reference, the Review considered the history of the Donald Thomson Collection, its governance and management, the current legislative context and best practice standards in the management of Indigenous cultural heritage material; its vision however was firmly focused on the future.

The Collection presents opportunities and strategic potential to engage scholarly and museological communities and importantly the public, with the Indigenous cultural heritage embodied in the artefacts, natural history material, photographs, illustrations, films, video and audio material that Donald Thomson collected so many years ago. Moreover, the Collection presents significant opportunities to genuinely engage with Communities of Origin and Traditional Owners and to collaborate on the stewardship, governance, management and engagement with the Collection into the future. This Report which details the findings of the Review provides a roadmap for the realisation of these potentialities.

The Review was asked to consider the strategic opportunities and potentialities, impacts and benefits for all parties to the governance, management and engagement with the Collection, in particular the Communities of Origin and Traditional Owners, Museums Victoria, Thomson Family and University of Melbourne. It is to these parties and other stakeholders and contributors that the Review gives its thanks and recognition. The culmination of almost two years of work, this Report reflects the generosity and commitment of a number of Communities of Origin and Traditional Owners, stakeholders and expert advisers, and the parties to the 1973 Agreement, members of the DTCAC, the University, Museum and the Thomson Family.

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151. Interview with Thomson Family (Ian Gray, Donald Thomson Collection Review Consultations)
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## Appendices

### Appendix A

#### Full List of Organisations Consulted

<b>Community/organisation</b>	<b>Name*</b>
University of Melbourne	Marcia Langton
	Su Baker
	Ian Anderson
	Kylie Gellatly
	Susie Shears
	Robyn Sloggett
Museums Victoria	Lynley Crosswell
	Nurin Veis
	Shannon Faulkhead
	Melanie Raberts x 3
	Robert McWilliams x 2
	Mary Morris
	Lindy Allen
	Philip Batty
	Rosemary Wrench
	Richard Gillespie
Thomson Family	Robin Hirst
	Louise Officer-Thomson
Other	Elaine Thomson
	Aaron Corn
	Nicolas Petersen
	Louise Hamby
<b>Land Councils*</b>	
Anindilyakwa Land Council	16 attendees
Cape York Land Council	17 attendees
Northern Land Council	Full Executive Council (attendance unavailable)
Central Desert Land Council	Full Executive Council (attendance unavailable)
<b>Communities of Origin*</b>	
Maningrida	18 attendees
Gapuwiyak	10 attendees
Ngukkur	21 attendees
Ramingining	9 attendees
Gunbalanya	9 attendees
Nhulunbuy	8 attendees
Milingimbi	19 attendees
Weipa	17 attendees
Yintjingga	3 attendees
Coen	32 attendees
Nyirripi	20 attendees
Kiwirrkurra	32 attendees

\* names of individuals from Communities of Origin have not been published, in accordance with undertakings made by the Review team during the consultations



## Appendix B

### List of Communities in Collection

The following list of 91 Communities of Origin are taken from the Donald Thomson 'Object' Catalogue. The list is incomplete, as further research is required.

#### **Victoria (1)**

Melbourne

#### **Cape York (20)**

Albatross Bay, Archer Bay, Archer River, Bare Hill, Batavia River, Cape Bedford, Cullen Point, Edward River, Embley River, Flinders Group, Kendall River, Lockhart River, Mapoon Mission, Mission River, Mitchel River, Port Stewart, Stewart River, Watson River, Yanko Creek, Cape Capricorn

#### **Arnhem Land (46)**

Arafura Swamp, Arnhem Bay, Bennet Bay, Blue Mud Bay, Blyth River, Buckingham Bay, Cadell Strait, Caledon Bay, Cape Arnhem, Cape Grindall, Cape Stewart, Cato River, Crocodile Islands, Darbilla Creek, Elcho Island, English Company's Islands, Glyde River, Goulburn Island, Goyder River, Groote Eylandt, Howard Island, Inglis Island, Jalboi River, Junction Bay, Katherine, Katji, Liverpool River, Lowrie Channel, Mainoru Melville Bay, Milingimbi, Mooroonga Island, North Goulburn Island, Port Bradshaw, Rabuma Island, Rolling Bay, Roper River, Rose River, Trial Bay, Walker River, Wessel Islands, Wilton River, Woodah Island, Woolen River, Yathalamarra, Yirrkala.

#### **Western Desert (15)**

Dovers Hills, Great Sandy Desert, Ilbalinja, Jupiter Well, Kimai Well, Kundjari Rockhole, Labbi Labbi Rockhole, Lake Hazlett, Lake Mackay, Lake Tyers, Pankoberi Rockhole, Waimbirngi, Walter James Range, Warburton Range, Wirrarigulong

#### **Irian Jaya (9)**

Digoel River, Upper Obaa River, Eilanden River, Bellona Island, Port Moresby, Reef Islands, Broso Island, Cape Capricorn, Eilanden River

Appendix C

Review Consultation Timetable

**Review Consultations**

<b>When</b>	<b>Consultation group</b>	<b>What</b>	<b>Organisation/community</b>	<b>Persons consulted*</b>
<b>2018</b>				
26 July	Other	Preliminary consultation/Ancestral Remains Audit handover to VAHC	Victorian Aboriginal Heritage Council ('VAHC')	Odetta Moore Dr Janine Major
			UoM Archives	Susie Shears Stella Marr Sue Fairbanks
27 July	Other	Preliminary consultation	Museums Victoria	Philip Batty
2 August	Community of origin (Arnhem Land)	Preliminary consultation	Yothu Yindi Foundation	Sean Bowden
4 August			Mulka project	3 attendees
6 August			Yolŋu Dilak	1 attendee
6 August			Yolŋu	4 attendees
7 August			Yolŋu	2 attendees
9 August	Community of origin (Central Desert)	Preliminary consultation	Strehlow Centre	Felicity Green Shaun Angeles
10 August			Pintupi	5 attendees
22 August	Thomson family	Update	Thomson Family	Louise Officer-Thomson Elaine Thomson

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23 August	Community of origin (Cape York)	Preliminary consultation	Yintjingga Aboriginal Corporation	3 attendees  Also present from MV: Dr Nurin Veis (A/Director Research and Collections) Tim Strang Melanie Raberts
22 August	Museums Victoria	Further Consultation	Former Museums Victoria senior curators	Dr Philip Batty
29 August		Preliminary		Lindy Allen
29 August	Expert consultants	Preliminary		Delwyn Everard
13 September	Thomson Family	Update	Thomson Family	Louise Officer-Thomson Elaine Thomson
26 September	(Ex) Museums Victoria	Preliminary	(Former) Museums Victoria	Richard Gillespie
17 September	Community of Origin (Cape York)	Preliminary (establishing Cape York connections)	Kaantju / University of Melbourne	Shonae Hobson
8–12 October	Community of origin	Preliminary/ further consultation ('Awaken' Launch)	Pintupi	3 attendees
			Lama Lama	2 attendees
			Wik Mungkan	2 attendees
			Dilak	2 attendees
			Mulka centre	2 attendees
12 October	<b>Awaken Exhibition Launch</b>			
24 October	Museums Victoria	Preliminary	Former Museums Victoria staff	Robin Hirst
24 October	Other	Update	VAHC	Dr Janine Major

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				Odetta Moore
29–30 October	Expert	Initial	N/A	Delwyn Everard
29 Oct to 9 Nov	Other	Initial	Northern Land Council	Carol Christophersen
9 November	Museums Victoria	Preliminary consultation	Museums Victoria	Robin Hirst
9 November	University of Melbourne	Preliminary consultation	University of Melbourne	Kelly Gellatly
14 November				Marcia Langton
29 Oct to 9 Nov	Expert	Initial	N/A	Carol Christophersen
20 November	University of Melbourne	Update	Chancellery Executive	Adrian Collette/Ian Gray
	Museums Victoria	Preliminary consultation	Museums Victoria	Nurin Veis
21 November	University of Melbourne	Preliminary consultation	University of Melbourne	Su Baker
				Susie Shears
26 Nov–1 Dec	Community of origin (Central Desert)	Further consultation	Pintupi	4 attendees
	Museums Victoria	Preliminary consultation	Museums Victoria	Rosemary Wrench
30 November	Museums Victoria	Preliminary consultation	Museums Victoria	Lynley Crosswell (CEO)
5 December	Museums Victoria	Preliminary consultation	Museums Victoria	Melanie Raberts

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6 December	Thomson Family	Update	Thomson Family	Louise Officer-Thomson Elaine Thomson
<b>2019</b>				
6 March	Community of origin (Arnhem Land)	Land Council meeting	Northern Land Council	See Appendix A
18–22 March	Community of origin (Cape York)	Further consultation/ repatriation request to MV	Lama Lama	5 attendees
6–11 May	Community of origin (Central Desert)	Repatriation of secret and sacred material	Pintupi	6 attendees
13 May		Further consultation	Strehlow Centre	Lyndon Ormond-Parker Shaun Angeles Felicity Green
15 May	Community of origin (Arnhem Land)	Land Council meeting	Anindilyakwa Land Council	See Appendix A
28 May	Community of origin (Cape York)	Land Council meeting	Cape York Land Council	
30 May	Community of origin (Central Desert)	Land Council meeting	Central Land Council	
17 June		MAGNT	Preliminary consultation	
18 July	Community of Origin (Arnhem Land)	On Country consultation	Ngukkur	
22 July	Community of Origin (Arnhem Land)	On Country consultation	Gunbalanya	

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24 July	Community of Origin (Arnhem Land)	On Country consultation	Ramingining
31 July	Community of Origin (Arnhem Land)	On Country consultation	Nhulunbuy
1 August	Community of Origin (Arnhem Land)	On Country consultation	Milingimbi
6 August	Community of Origin (Cape York)	On Country consultation	Weipa
7 August	Community of Origin (Cape York)	On Country consultation	Yintjingga (Port Stewart)
8 August	Community of Origin (Cape York)	On Country consultation	Coen
16 August	Community of Origin (Central Desert)	On Country consultation	Nyirripi
18 August	Community of Origin (Central Desert)	On Country consultation	Kiwirrkurra

*\* names of individuals from Communities of Origin have not been published, in accordance with undertakings made by the Review team during the consultations*

## Appendix D

### Thomson Family Statement to Communities

#### **To The First Peoples of Arnhem Land, Cape York and Central Australia**

Our father, Donald Thomson, worked with your peoples and their cultures for over forty years. During that time he formed a deep and abiding love for the peoples and cultures with which he worked. During this time Governments, academics and the general population overwhelmingly based their views in ignorance—an ignorance that manifested itself in racism. Our father's overriding aim during this time was to understand your communities' ways of life and the environments in which your ancestors lived and to share this knowledge with the wider Australian population. Through shared understanding he hoped would come the love and respect he felt for indigenous peoples and their cultures.

To advance further understanding, and with the support of your ancestors, our father learnt your languages, he collected objects, some ceremonial and others from everyday life. He collected the plants, rocks, clays and natural materials generally that were used to make these objects. He collected animals including snakes and birds and he made thousands of notes and took thousands of photographs of these beautiful objects and the making of them. He recorded your ancestors' ways of life from the inside as a member of these communities where he lived. He documented every aspect of your ancestors' lives with their help. In Arnhem Land they helped to build photographic dark houses for him so he could develop his films in the field. In war time he led indigenous soldiers who performed with honour and distinction. All communities he visited trusted him to look after and share the immense beauty and complexity of your cultures with the rest of Australia.

To educate the broader Australian community our father wrote many stories for newspapers and journals and constantly fought for a better understanding of First Peoples' issues describing your ways of life and the richness of your cultures. He fought the Government to stop atomic testing in central Australia and for the rights of the Victorian indigenous communities. In undertaking indigenous advocacy he made himself so unpopular with some Governments that he was unable to return to communities with whom he'd spent time in the past, being refused entry to WA reserves and to Cape York. Our father's life was a long and lonely battle against prejudice and ignorance and although he died after the 1969 referendum acknowledging indigenous citizenship, he never saw anything truly resembling reconciliation.

When our father died in 1970 he left the Thomson (First Peoples) Collection to our mother Dorita Thomson and she in turn passed custodianship of the objects in the collection (the material collection) to Melbourne University, trusting that they would continue his work to share the Collection and foster understanding of indigenous peoples. Our mother retained ownership of the photographs, sound recordings, films, field notes and all other documentation of the collection to ensure that all requests for access would further the understanding of and benefit the peoples represented by the collection. The University in turn housed the material collection at Museums Victoria. Under Museums Victoria and our mother's care, until 2008 when we (Louise and Elaine) took over our mother's role, the collection has been kept and cared for in the best possible conditions using world class curatorial techniques. The Thomson Collection, gathered by your ancestors and our father, is now regarded as the most complete and important collection of its kind in the world.

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Now, as things are changing for First Peoples, Australians, the Government and other institutions are starting to recognise their responsibilities and have decided that repatriation of indigenous objects and all secret and sacred objects need to be reviewed and many returned to communities.

The secret and sacred items in the Thomson Collection were either traded, or given in trust, to Donald Thomson by your ancestors to preserve them for you and future generations where they will be respected, preserved and always open to those entitled to see them.

In the last five years the Melbourne University has re-engaged with the Collection and is now working with us to enable better access, for both indigenous and non-indigenous communities.

There are many ways for this to happen. We hope that Melbourne University will fund much more access for indigenous communities to allow young people to visit Melbourne and the Collection and to encourage interactive learning with your peoples and the Australian community. In addition we are committed to allowing access to all appropriate first peoples communities to Thomson photographs as long as they are acknowledged and not reproduced without our permission just as you would wish your paintings and photographs recognised.

Ultimately we want to honour your wishes with regard to the Collection as it is a compilation of your cultures and we want your approval to keep the Collection, as much as possible, intact.

When Donald Thomson died in 1970 his ashes were scattered over Caledon Bay near Garrthalala where he had left his heart with the peoples of Arnhem Land and where he spent so much time living with his indigenous family and the soldiers of the Special Reconnaissance Unit.

All Donald Thomson's children and his widow Dorita send their utmost respect and love to all communities. We still continue Donald Thomson's and your ancestors' work to create a better understanding between black and white Australians through education.



## Appendix E

### International Institutions and Organisations Reviewed

- Alaska Library Association
- Alaska Native Knowledge Network
- Alutiiq Museum and Archeological Repository
- American Alliance of Museums
- American Anthropological Association
- American Library association
- Archives New Zealand
- Assembly of Alaska Native Educators
- Auckland War Memorial Museum
- Canadian Heritage Information Network
- Canadian Museums Association
- Canadian Museum of Civilization
- Canadian Museum of History
- Centre for Indigenous Arts, Mexico
- Colorado River Indian Tribes Library & Archive
- Dene Cultural Research
- Digital Cultural Content Forum
- Digital Library Federation, USA
- First Archivists Circle
- Hopi Cultural Preservation Office
- International Council of Archives
- International Council of Museums
- Institute of Fijian Language and Culture
- Inuit Tapirit Kanatami
- Library of Congress, USA
- Manawatu Museum, NZ
- Museum of the Cherokee Indian
- National Anthropological Archives, USA
- National Archives, United Kingdom
- National Information Standards Organization, USA
- National Library of New Zealand
- National Museum of the American Indian
- National Register of Archives and Manuscripts, NZ
- North East Document Conservation Centre
- Royal Ontario Museum
- Sealaska Heritage Institute, Alaska
- Secretariat of the Pacific Community
- Smithsonian Institute, National Anthropological Archives & Human Studies Film Archives
- Society of American Archivists
- South African Museums association
- Tairawhiti Museum, NZ
- Te Papa Museum, NZ
- Whanganui Museum, NZ

Appendix F

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