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18 Navigating Respectful Practice to Support Indigenous Cultural and Intellectual Property Rights in Australian Libraries

Abstract: Concerns for the appropriate protection and management of Indigenous people's heritage materials held in Australian cultural institutions is increasing. Across the galleries, libraries, archives and museums (GLAM) sector, many institutions are beginning to examine ways to redress and reconcile tensions that have resulted from the long histories of imperial and colonial expansion across the world. Libraries are reflecting on their roles in the dislocation and dispersal of cultural heritage materials from Indigenous peoples and communities. Indigenous peoples worldwide face an inability to control their cultural heritage materials held in collecting institutions, and the existing legal frameworks do not support Indigenous people's aspirations and self-determination. The inadequacy of existing legal frameworks relates to ownership, moral rights and copyright. This chapter discusses the protection of Indigenous Cultural and Intellectual Property (ICIP) rights in relation to libraries, focusing on Australia's current approaches to ICIP in the library sector. It outlines key literature concerning the protection of Indigenous people's rights to culture and heritage and provides a broad context to the challenges of working with cultural heritage materials and past collecting practices which lacked an ethical basis and informed consent. The gaps concerning the application of ICIP in the library sector are identified along with the need for further research. The chapter presents examples of good practice in building support for the use of appropriate ICIP rights in Australia and provides instances of how information professionals have navigated the protection of ICIP rights across the wide range of collecting institutions in Australia, including public, academic and special libraries, and galleries, archives and museums. Principles for navigating respectful practice in ICIP rights in Australian libraries are provided for use by information professionals. Four case studies on projects in the galleries, libraries, archives and museums sector are provided to demonstrate what can be achieved.

Keywords: Indigenous peoples – Material culture; Cultural property – Protection – Law and legislation; Aboriginal Australians – Material culture; Torres Strait Islanders – Material culture; Cultural appropriation – Indigenous Australians; Indigenous Archives

Introduction

Ongoing misappropriation of Aboriginal and Torres Strait Islander people's culture in Australia has significant and wide-reaching impacts on Aboriginal and Torres Strait Islander peoples. In a library context, concerns relate to the appropriation of Indigenous knowledges, languages, arts and cultural expressions without informed consent. In the landmark report *Our Culture, Our Future*, leading international authority on Indigenous Cultural and Intellectual Property (ICIP) Dr Terri Janke, a Wuthathi/Meriam woman, investigated the gaps in the protection of Indigenous knowledges and cultural heritage materials held in collecting institutions including galleries, libraries, archives and museums (Janke 1998). She notes, "Since impact with Europeans, Indigenous Australian cultural heritage material was seen as free for all, as part of the deserving bounty of the colonisers" (Janke 1998, 1). Significant documentary materials held in collecting institutions, both published and unpublished, hold important ICIP that may or may not have been documented and preserved with free, prior and informed consent. Janke's early research on ICIP highlighted Indigenous peoples' concerns that the use of materials was occurring without the permission of Indigenous communities and that in some cases, the use was not only inappropriate but also culturally offensive and derogatory because of knowledge being used out of context (Janke 1998, 19).

Twenty years later, in a report for IP Australia, Janke argued that the appropriation of Indigenous arts and knowledge continued to lack protection through Australian intellectual property laws and suggested that the recognition of ICIP rights might assist Indigenous people in achieving greater control over knowledges (Janke and Santini 2018). Janke's work has continued to draw attention to the numerous issues and concerns (Janke 2021). Indigenous people are pushing for changes to gain better control of their cultural heritage materials held in collecting institutions. Any change comes while recognising that the existing legal frameworks are inadequate in supporting Indigenous people's aspirations and self-determination as is clearly the case regarding Indigenous people's ownership and moral rights with copyright.

The significant gap in the literature on ICIP rights and library practice is a developing area of concern. The literature examined for this chapter has ranged across published scholarly journals and articles, submissions and reports, and institutional websites. The focus in examining ICIP and Indigenous knowledges is broad and the concerns of Indigenous people in Australia concerning ICIP are identified. A broad reach of major collecting institutions is examined. ICIP in and of itself is not bound by collecting institution boundaries. Instead, ICIP exists across the management of Indigenous knowledges and cultural heritage mate-

rials in a variety of settings. Engaging with examples of ICIP rights within allied museums and archives sectors helps fill the gaps of library-specific literature and provides examples for libraries to follow.

The chapter explores how libraries as part of the galleries, libraries, archives and museums sector (GLAM) are vital agents in promoting respect for Indigenous people's rights to manage their cultural heritage according to the principles stated in the [United Nations Declaration on the Rights of Indigenous Peoples](#) (UNDRIP) (United Nations 2008). Steps being taken by many Australian libraries and collecting institutions in attempting to redress and reconcile tensions that were brought to bear from the colonialisation of Australia are outlined. Libraries are not neutral in their role of supporting the dislocation and dispersal of cultural heritage materials that document Indigenous peoples and communities. The implications and concerns of current practice aligned to cultural heritage protection under Australian law are identified.

The focus is on Australia and four case studies are presented. Australia is the location of the authors and provides the parameters for their most relevant insights. Australia has been working for some years on improvement strategies. Much of the transformative work around ICIP happens in a place of praxis and many Indigenous library and information workers are leading the struggle. Their achievements are acknowledged, and wherever possible, highlighted and made visible. Emerging practices relating to adopting the protection of ICIP into institutional settings are described and provide some suggested pathways for future action. The chapter provides insights to practitioners on how they can navigate respectful practice to support ICIP rights in libraries and other cultural institutional settings. The past two decades have seen increased dialogue about the importance of developing institutional frameworks and methods, including articulating and implementing protocols and enabling Indigenous people's participation in decision-making processes.

Library and information workers are working in a period of considerable change, and there is a great demand for institutions to articulate policies, protocols and procedures for Indigenous engagement. Future work in libraries will need frameworks and guidance to focus on the intersecting nature of institutional policies and international mandates such as UNDRIP that support Indigenous ICIP rights. For instance, in developing dialogue around the provenance of collections to assess implementation of ICIP rights where materials have been collected without the informed consent of communities. Library and information workers will need to examine their collections with respect and understanding and be willing to challenge past collecting practices that dispossessed Indigenous peoples of agency and self-determination. ICIP rights, as outlined in the work of Terri Janke and many others, provide a framework to address Indigenous

people’s rights, including “free, prior informed consent, integrity, attribution and benefit sharing” (Janke 2019, v), that address the need for more adequate and culturally relevant support for ICIP in the Australian library sector.

Introducing the Authors

Before discussing the topic of navigating respectful practice to support Indigenous ICIP rights in Australian libraries, it is important to introduce the authors: first, to situate them by engaging with Indigenous women’s standpoint theory (Moreton-Robinson 2013) to ensure that readers understand the standpoint and perspective; and second, to situate the research undertaken in the context of ICIP rights in Australian libraries.

The authors are both academic researchers within the [Jumbunna Institute for Indigenous Education and Research at the University of Technology Sydney](#) (UTS) and work with a small team within the [Indigenous Archives and Data Stewardship Hub](#) to advocate for Indigenous rights in archives and data more broadly. The Hub develops research and engagement concerning refiguring libraries and archives to support the culturally appropriate ownership, management and ongoing preservation of Indigenous knowledges. The interests and focus broadly relate to Indigenous people’s self-determination related to the management of Indigenous cultural heritage materials held across libraries, archives and museums. Much of the content appearing in this chapter applies across the whole cultural heritage domain. The authors both come from Indigenous families in New South Wales and have worked with libraries and archives institutions on the development of protocols, policies and services for Aboriginal and Torres Strait Islander people and with communities seeking access to their cultural heritage and on related research projects.

What Is Indigenous Cultural Intellectual Property (ICIP)?

ICIP is a term that encompasses a wide range of Indigenous cultural and intellectual property, including both tangible and intangible Indigenous cultural heritage. The [Terri Janke Company website](#) defines ICIP as including:

- Artistic, literary and performance works (copyright)
- Indigenous Languages

- Different types of knowledge (e.g., plant and spiritual knowledge)
- Tangible and intangible cultural property
- Indigenous ancestral remains and genetic materials
- Cultural and environmental resources
- Sites of Indigenous significance, and
- Documentation of Indigenous heritage and histories.

The discussion paper *Indigenous Knowledge: Issues for Protection and Management* (Janke and Sentina 2018) explains that “the scope of ICIP is constantly evolving”, suggesting that it is a term widely used in Australia to include “intangible and tangible aspects of cultural heritage from cultural property, cultural sites to languages, human remains and documentation of Indigenous peoples” (Janke and Sentina 2018, 13). The World Intellectual Property Organization (WIPO) acknowledges the ever-changing and complex nature of Indigenous knowledges and the terminology used in the description. WIPO states: “No single definition would do justice fully to the diverse forms of knowledge and expressions that are held and created by Indigenous peoples and local communities throughout the world. Their living nature also means that they are not easy to define” (WIPO 2020).

WIPO notes that as there is no formal consensus across terminology used to describe “diverse forms of knowledge and expressions”, and uses working descriptions of multiple terms for ICIP, including “Indigenous Knowledges”, “Traditional Knowledge” and “Traditional Cultural Expression” (WIPO 2020). Another definition of Indigenous knowledge is provided by UNESCO as part of its Local and Indigenous Knowledge Systems ([LINKS](#)) programme:

Local and indigenous knowledge refers to the understandings, skills and philosophies developed by societies with long histories of interaction with their natural surroundings. For rural and Indigenous peoples, local knowledge informs decision-making about fundamental aspects of day-to-day life. This knowledge is integral to a cultural complex that also encompasses language, systems of classification, resource use practices, social interactions, ritual and spirituality (UNESCO n.d.).

The UN provides further understanding of the diversity and significance of Indigenous knowledges in [UNDRIP](#). Specifically, in Articles 11 and 31, UNDRIP mandates for Indigenous people’s self-determination over the maintenance, control, protection and development of their cultural and intellectual property, described in text as “cultural heritage, traditional knowledge and traditional cultural expressions”. The mandate includes ICIP collected previously and taken without free, prior and informed consent. Article 11 states:

1. Indigenous peoples have the right to practice and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.
2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

Article 31 states:

1. 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.
2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

Indigenous Cultural and Intellectual Property (ICIP) Rights

Ownership of information is one of the issues [...] It's a general thought out in the community now about different value systems and where people do own, or have responsibilities for their Ancestors and also protecting the knowledge of their language group or ... it's a difficult space that we reside in at this time and we're fighting all the time to maintain our cultural identity and cultural values. Maxine Briggs, State Library of Victoria (De Souza et al 2016, 19).

Broadly, ICIP rights enable self-determination for Indigenous peoples over culture, heritage and knowledge. Recognition and implementation of Indigenous people's self-determination is the key to the United Nations Declaration on the Rights of Indigenous People (UNDRIP). Attention has already been drawn to Articles 11 and 31. Article 3 states:

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

In Australia, legislated conceptualisations of intellectual property and the corresponding protection, which do not recognise Indigenous ways of knowing, being and doing can do irreversible damage to both the intergenerational knowledge transfer of Aboriginal and Torres Strait Islander ICIP and damage the cultural flows of information within Indigenous community contexts. Jane Anderson argues that on the most basic level, Indigenous people have no legal rights over their cultural heritage materials which means that “they must constantly negotiate with the copyright owner for future use, reproduction, and in some extreme instances, access” (Anderson 2005b, 348). In addition, there is a lack of timely responsiveness to the complexities involved in cross-cultural legal discourse, when Indigenous peoples point out issues, but minimal is done to appropriately and actively address gaps identified.

In recognition of unresolved gaps in legislation, Terri Janke formulated True Tracks protocols to assist Aboriginal and Torres Strait Islander peoples in protecting and sustaining their cultural heritage and knowledge. The work of Janke has been highly significant in the Australian GLAM sector, and resources and training continue to be developed to support change and the recognition of ICIP in institutional contexts and can be found on the website: <https://www.terrijanke.com.au/>. The ten True Tracks principles for protection of ICIP and for when working with Indigenous peoples were identified in Janke’s doctoral thesis (2019):

1. Respect
2. Self-Determination
3. Consent and Consultation
4. Interpretation
5. Cultural Integrity
6. Secrecy and Privacy
7. Attribution
8. Benefit Sharing
9. Maintaining Indigenous Culture
10. Recognition and Protection (Janke 2019, 330).

The principles provide a roadmap for guidance around respectful engagement with Indigenous cultural heritage and knowledges. At a various level, they stop the erasure of Indigenous people’s voices, allow people to be involved in deci-

sion-making about their materials, and offer pathways for people to provide advice and consent. The Australian arts sector has responded to calls for action by developing approaches to ensure that artists and creative practitioners build respect and recognition for ICIP rights. The Australia Council for Arts publication *Protocols for using First Nations Cultural and Intellectual Property in the Arts*, for example, provide guidelines and discussion on the importance of art practices maintaining “cultural integrity and authenticity” through ICIP protection, including obtaining resources and historical materials held in libraries and archives to support living cultural representations (Australia Council for the Arts 2019, 134).

It is unclear the extent to which Indigenous cultural knowledge has been, and continues to be, extracted from libraries and collecting institutions without appropriate Indigenous consultation and protection. The recognition of ICIP rights provides opportunities for implementing approaches that support the culturally appropriate management of Indigenous tangible and intangible knowledges, resources and materials that may be held within libraries and collecting institutions. Currently, approaches in Australian libraries to protect ICIP rights are ad hoc, and they are primarily dependent on the current strategic agendas of the government or library leadership. There exist, however, significant imperatives for libraries to modify practices to support ICIP rights. As Janke asserts,

The challenge is that Indigenous arts, songs, designs, stories and knowledge have been and continue to be exploited outside Indigenous peoples’ communities by people not entitled to do so. Such exploitation occurs without recognition of any Indigenous control or consultation and without benefits accruing back to Indigenous people. Even more critical, this important collective heritage is displaced, distorted and debased (Janke 2019, 1–2).

Notwithstanding the ad hoc approaches to recognising ICIP rights, the case studies provided in this chapter demonstrate that there has been movement in the Australian libraries and collecting institutions sector to recognise the importance of collections and to develop approaches which respect and protect ICIP.

However, as previously highlighted, there exists a significant gap in the literature on this important topic. Some articles, including that of Alana Garwood-Houng, discuss how many Indigenous people in Australia are unaware of material being held in collecting institutions because of the way it was created and collected “without consent or through deception” (Garwood-Houng 2005, 127). There has been limited research on ICIP and few reflections on the impacts of modifying current practices, particularly to support Indigenous community needs for self-determination. Rare insights include Bow and Hepworth’s exploration of the tensions of ICIP and copyright law in relation to managing collections of language materials in the *Living Archive of Aboriginal Languages* project in an academic library context (2019). Their research provides unique reflections into

how the project, funded through an Australian Research Council grant, enabled dialogue on tensions of ownership and recognition of Indigenous cultural heritage. Bow and Hepworth discuss an area of concern previously identified by Nakata et al (2005, 168) highlighting the need for libraries to retrospectively seek consent from communities before engaging in digitisation of materials to make content available online. Bow and Hepworth reflected on the approaches to navigating two systems, ICIP and Copyright, that were “largely incommensurable systems” (2019, 7). They argue,

While infringement of copyright, including moral rights, poses legal risk to the project, failure to respect ICIP, although not legally enforceable, is potentially more serious, indicating a lack of trust and a breakdown in working relationships with Indigenous communities (Bow and Hepworth 2019, 10).

In response to the tensions, the Australian library and information sector utilised the ATILIRN (Aboriginal and Torres Strait Islander Library, Information and Resource Network) Protocols (ATILIRN 2012) as a tool for dialogue and action. According to Garwood-Houng and Blackburn the ATILIRN Protocols “enable library staff to manage appropriately any issues regarding, for example, secret sacred or sensitive materials and intellectual property, separately from Western issues of copyright and reproduction permissions” (Garwood-Houng and Blackburn 2014, 8). The ATILIRN Protocols were published at a time when Indigenous concerns about access to information were being discussed by Indigenous people, the government and the information professions. Protocol 3, Intellectual Property, states: “The interests of the authors and publishers of records, books and other documentary material are protected by copyright law but the interests of those whose culture is described are not. The primary rights of the owners of a culture must be recognised” (ATILIRN 2012). Despite their promise, the ATILIRN Protocols require the support of appropriate institutional policies, a congruous organisational culture and cultural competencies to make them effective (Thorpe 2019a).

The digitisation of collections offers libraries and cultural institutions opportunities to enter into discussions with Aboriginal and Torres Strait Islander peoples about ICIP rights in the management and use of their cultural heritage collections. Unfortunately, because of the lack of protection of ICIP in Australian law, many institutions use copyright as the guideline for opening up and curating collections online. This approach has the potential risk that libraries and collecting institutions continue to operate on colonial paradigms that cause harm to Indigenous people and further dislocate communities from their cultural stories and resources. Library and information systems fail to meet Indigenous

peoples' communities' requirements in managing ICIP concerns at a granular level. The *Mukurtu Content Management System* described in the Case Studies shows that purpose-built systems offer potential tools to transform and dismantle past failures (Shepard 2014). Resourcing is a significant issue for cultural institutions and communities during the conduct of negotiations of ICIP concerns when building new collections and addressing past practices that lacked the informed consent of communities.

The Protection of Indigenous Cultural Heritage in Australia

UNDRIP makes clear the importance of ownership and self-determination for Indigenous peoples over ICIP and the protection of cultural heritage, both tangible and intangible. However, as Wiradjuri woman, Robynne Quiggin has argued:

The current legislative and policy matrix is generally disjointed and uncoordinated and provides minimal protection for the places of significance and cultural material, including objects, ancestral remains and knowledge that has belonged to this country and its people for thousands of years (Quiggin 2019, 184).

Quiggin asserts that there is an urgent need for innovation, legislation and policy to protect Indigenous cultural heritage, including materials in libraries and archives, as “Years of inaction and tinkering around the edges of cultural heritage laws has allowed much Aboriginal and Torres Strait Islander cultural heritage to be harmed and destroyed” (Quiggin 2019, 211). As it currently stands, UNDRIP is a not legally mandated in Australia. Australia was one of four settler colonial countries to vote against UNDRIP in 2007 and did not formally endorse it until 2009.

Ongoing inaction and lack of support in praxis for UNDRIP has broad impacts on Indigenous people and how communities can be involved in decision-making and priority setting to support the preservation and maintenance of cultural heritage. The importance of Australia ratifying UNDRIP in domestic law remains a priority for its Indigenous peoples. For example, in early 2021, media company [IndigenousX](#) began a campaign calling for the ratification of UNDRIP into Australian law. The campaign implored the Australian Government to discuss, reset and promote the 46 articles of UNDRIP and to move beyond good faith so that UNDRIP would be ratified and set into Australian law with full effect (IndigenousX 2021).

It is vital to understand the Australian landscape and context both in terms of library obligations in Australian law and international mandates such as UNDRIP. The support for UNDRIP and the associated protection of ICIP rest on the goodwill of decision makers in cultural institutions, including libraries, which are in themselves government bodies. The sector operates in the paradigm of good faith rather than within appropriate Australian legislative and policy frameworks. Without proper foundations in place and the visible “sustained will of legislators”, Quiggin points out that “Indigenous scholars, practitioners and bureaucrats have designed legal and non-legal mechanisms to address the inadequacies of the current system” (Quiggin 2019, 184).

Developing Approaches for Ethical Practice to Support Indigenous Cultural and Intellectual Property (ICIP) in Australian Libraries

In the absence of commitment to a broad framework, institutions in the GLAM sector in Australia have developed specific policy and protocol documents to directly address how they should engage with Aboriginal and Torres Strait Islander communities, collections and ICIP. Despite the lack of protection for Indigenous cultural heritage and ICIP in Australian law, libraries have responded to the leadership of Indigenous scholars, practitioners and government workers to build more appropriate and respectful engagement with their collections. Key documents include the previously mentioned [ATSILIRN Protocols](#) which were first published in 1995 by the [Australian Library and Information Association](#) (ALIA) and endorsed by the [Aboriginal and Torres Strait Islander Library, Information and Resource Network](#) (ATSILIRN), with the [latest version](#) available in 2012. Garwood-Young has written an overview of the development of the protocols (2014).

The peak body for state and national libraries in Australia and New Zealand, the [National and State Libraries of Australasia \(NSLA\)](#) provides various statements and policy documents and refers to international agreements, including UNDRIP, with a [Position Statement: Aboriginal and Torres Strait Islander Library Services and Collections](#) (NSLA 2014 revised 2021)) and a [Position Statement: Indigenous Cultural and Intellectual Property \(ICIP\)](#) (NSLA 2021). Also relevant is the ten-year roadmap for [Australian Museums and Galleries Association Incorporated \(AMaGA\)](#). [First Peoples: A Roadmap for Enhancing Indigenous Engagement](#)

in Museums and Galleries (Janke 2018) which includes a significant focus on the recognition and protection of ICIP.

Libraries and collecting institutions engage in research with communities and collections. Consequently, the research protocols and guidelines developed by the National Health and Medical Research Council (NHMRC) and the [Australian Institute of Aboriginal and Torres Strait Islander Studies](#) (AIATSIS) are critical documents for engagement. The NHMRC and AIATSIS documents directly refer to UNDRIP as the baseline from which the principles and guidelines are written and therefore implement UNDRIP at a sector level. The NHMRC publication *Ethical conduct in research with Aboriginal and Torres Strait Islander Peoples and communities: Guidelines for researchers and stakeholders* (2018a) outlines ethical research conduct by aligning with six core values: spirit and integrity, cultural continuity, equity, reciprocity, respect, and responsibility (NHMRC 2018a, 3). The NHMRC Guidelines align with UNDRIP by affirming the Declaration as the “minimum standards for the survival, dignity, security and wellbeing of Indigenous people world-wide” (NHMRC 2018a, 15). A companion volume provides further details (NHMRC 2018b).

In 2020, AIATSIS published its *Code of Ethics for Aboriginal and Torres Strait Islander Research* (AIATSIS 2020a) along with a guide to its application (AIATSIS 2020b) to supersede the previously published *Guidelines for Ethical Research in Australian Indigenous Studies* (GERAIS). AIATSIS states that the Code is to be read in conjunction with UNDRIP as the Code’s principles “are informed by the recognition of and respect for the rights of Indigenous peoples as articulated in the United Nations Declaration on the Rights of Indigenous Peoples” (AIATSIS 2020a, 3). Significantly, all three documents, UNDRIP, NHMRC and AIATSIS, refer directly to ICIP rights, identifying the space in which ICIP rights relate to the care, protection and maintenance of Indigenous cultural heritage.

In summary, there are problems with the lack of recognition of ICIP by Australian Law although there are some guidelines and statements developed at a national and international level to promote ethical practice in supporting the protection of Indigenous cultural heritage. Key library, museum and research guidelines mandate the protection of ICIP but there is a clear need for further work to be carried out in the library sector to support ICIP concerns. The next section of the chapter explores the question of the protection of ICIP against the backdrop of colonialism, briefly discussing the role of public libraries during the colonial period of Indigenous dispossession.

Colonialism and Libraries in Australia

The role of public archives and libraries in establishing and supporting the damaging effects of colonisation on Aboriginal and Torres Strait Islander peoples is often overlooked or underestimated. As institutions with an identity predicated on notions of public education, libraries are seen as neutral and generally as benign places and services (Anderson 2005b, 87). The sentimentality and wonder these institutions inspire have long overshadowed the historical complicity of the library sector in settler-colonial regimes dispossessing Indigenous peoples of their cultural materials and knowledge. Colonial collecting institutions were tasked with amassing collections representative of the nation state, and as such, they supported government operations, building national identity and civic education. The collecting approaches privileged certain groups of people over others and excluded many. Australia's colonial public libraries:

became richly symbolic of various types of proto-national cultural self-assertion, as well as providing an institutional framework for a range of intersecting ideological disputes, from debates about self-governance and citizenship, to racial hierarchies and the acculturation of Indigenous peoples, to questions of taste and cultural capital (Atkin et al 2019, 1–2).

In Australia, state public libraries are repositories of colonial and assimilation period records and ephemera from each state and territory. Manuscripts were created by colonisers, missionaries, travellers, and other government officials involved in documenting Indigenous people's lives and cultures (Thorpe and Galassi 2018, 182). In the continuing service of collecting, preserving and sharing national, state and local narratives, state public libraries can make critical decisions around ICIP and, in some collections, representations of Indigenous people's cultural and personal information. Due to the oppressive histories of Australia's colonisation, many library collections of ICIP and representations of Indigenous peoples are without clear attribution or rights attached, and much of the material has been appropriated and used without consent or knowledge. "Despite their advocacy of free universal access, the cultural and social politics of colonial public libraries therefore contributed to, and even consolidated, the structures of colonial racism..." (Atkin et al 2019, 67).

ICIP rights are increasingly becoming an area of concern for libraries, archives and museums to address as they grapple with past institutional roles played in the damaging period of colonialism. Many Australian public collecting institutions are built upon the collection and appropriation of Indigenous cultural knowledges now held in their collections. The increasing recognition of the inadequate support and protection provided by Australian intellectual property legis-

lation and conceptualisation, such as the individualistic nature of creation and ownership, presents the imperative for action needed to support ICIP protection, both with collections created today and with access to and use of historical collections (Janke 2019). To progress work with ICIP rights, the history of colonialism and its ongoing impacts must first be acknowledged. As Nakata and others have argued, positioning libraries as neutral or resorting to “the oftused argument that equality in services means the same services for all” denies recognition of libraries as capable of agenda and bias, as well as the impact of colonisation on the lives of Indigenous peoples in Australia. They note:

Despite the goodwill in the Australian LIS sector and the professions’ desire to do the right thing with respect to Indigenous knowledge and peoples, there is still in some places a perceptible undercurrent of apprehension that Indigenous concepts of knowledge management and intellectual property protection are restrictive in a way that is sometimes contradictory to or incompatible with liberal and democratic notions of free and universal access to information and knowledge (Nakata et al 2005, 19).

A major question is how the guidelines for ethical practice such as UNDRIP, the NHMRC and AIATSIS can be aligned to support ICIP rights against the backdrop of colonialism. A first step is for libraries to challenge the assumptions of library neutrality and seek to redress relationships with Indigenous peoples in Australia. While some institutions recognise the importance of their collections for language and cultural revitalisation (Thorpe and Galassi 2014; Nicholls et al 2016) there is still limited research and dialogue relating to truth-telling and the need for libraries to recognise their roles in supporting colonialism. In the case study section of the paper, examples of work undertaken in Australian libraries to support the incorporation of Indigenous languages and worldviews are provided. The examples highlight how libraries are beginning to modify practice to support reclassification processes that acknowledge ICIP rights.

Despite the progress, it is argued that there is a lack of explicit recognition from libraries and collecting institutions about their role in colonisation. Consequently, library systems and processes continue to perpetuate colonial collecting paradigms that position Indigenous peoples and cultures as the other. There are evident tensions apparent in libraries and collecting institutions in progressing support for ICIP without acknowledging historical institutional complicity in denying Indigenous people their sovereignty with ICIP. It is asserted that the recovery of Indigenous knowledges from major collecting institutions across libraries, archives and museums is part of a process of decolonisation and healing for Indigenous peoples with the engagement offering institutions with opportunities to reflect on present day relevance, values and ethics.

Case Studies – Indigenous Cultural and Intellectual Property (ICIP) In Action

Four case studies provide examples of projects that have addressed the proactive support of ICIP rights broadly across libraries and collecting institutions. The data from the case studies are drawn from publicly accessible websites and provide examples of where a library, archive or museum has a fully articulated ICIP protocol or principles in place, as well as examples where the practice itself demonstrates respect for ICIP rights.

Case Study 1. NSW Australian Mukurtu Hub

In late 2019, the Jumbunna Institute for Indigenous Education and Research at the University of Technology Sydney led the development of the [NSW Australian Mukurtu Hub](#) (The Hub) as a place of support for Aboriginal peoples and communities to manage, preserve and share their cultural heritage and knowledge (Thorpe 2019b). The Hub collaborates with the [Center for Digital Scholarship and Curation, Washington State University](#), the [State Library of NSW](#) and the [University of Technology Sydney \(UTS\)](#). The NSW Australian Mukurtu Hub has connected through a digital network and content management system to develop dialogue and a community of practice to support work related to the digital return, repatriation and circulation of cultural heritage materials (Christen, Merrill, and Wynne 2017).

ICIP considerations are embedded in the design of the Mukurtu Content Management System (CMS). Mukurtu (MOOK-oo-too), is a free, mobile, open-source platform built with Indigenous communities worldwide to manage and share digital cultural heritage. The open-source software's grassroots development included community requirements such as "customizable templates, adaptable user-access levels, and clear intellectual property management tools to make informed decisions about the circulation of their own materials" (Christen, Merrill, and Wynne 2017).

The Hub, along with that of the wider Mukurtu project, aims to support the disruption of colonial collecting paradigms where collections were extracted and separated from Aboriginal and Torres Strait Islander communities, and contribute to the further development and care of living archives (McKemmish, Chandler and Faulkhead 2019). In support of living archives, the Hub seeks to facilitate both the return of data from libraries and collecting institutions and assist communities with proactive collecting and documentation locally. In this way,

the Mukurtu approach to archiving is based on relationship building and active participation from all parties involved. The Mukurtu CMS and the relationships in the Hubs and Spokes model around which Mukurtu is built focusses on developing proactive collecting that is responsive and relevant to local community information and recordkeeping needs.

Specifically, the NSW Australian Mukurtu Hub was established to build partnerships with NSW Aboriginal communities to support digital curation and archiving training, while establishing community informed guidelines for returning and maintaining Indigenous collections locally and within collecting institutions. Key to this work is respect for ICIP rights in the care and management of digital cultural heritage materials. The Hub is working with a number of community Spokes to work through the development of protocols and principles for local archiving activity. In 2020, the Hub worked with Tranby Aboriginal College, the Wonnarua Nation Aboriginal Corporation and the Brewarrina Aboriginal Cultural Museum, to develop uses of the Mukurtu CMS to support local digital curation and collecting. The development is guided by Christen and Anderson's (2019) concept of slow archives where "Slowing down creates a necessary space for emphasizing how knowledge is produced, circulated, contextualized, and exchanged through a series of relationships. Slowing down is about focusing differently, listening carefully, and acting ethically" (Christen and Anderson 2019, 87).

For the NSW Australian Mukurtu Hub, ICIP rights are foundational in forming the relationships between Hub and Spokes to ensure information and cultural heritage materials are documented and managed through appropriate attribution and acknowledgment and informed consent. A related component of the Mukurtu CMS are the Traditional Knowledge Labels and Licences (TK Labels) developed by the project [Local Contexts](#). The TK Labels provide a space for negotiating rights, including tensions around Indigenous knowledges held in copyright and public domain materials, and to respect Indigenous ways of knowing, being and doing. Importantly, however:

These TK Licenses and Labels offer a set of new options for addressing issues of ownership, access, and control of traditional cultural expressions documented and recorded by non-Indigenous peoples and researchers that now reside in numerous cultural institutions worldwide. This is a key point: the Licenses and Labels are only designed for knowledge that has either already been made into a tangible form through recording and documenting, or that will be recorded and documented in the future. This initiative does not intend to create a legal framework for knowledges that are unrecorded or not ever to be documented (Anderson and Christen 2013, 112).

In 2019, the Mukurtu project in the US worked with the [Passamaquoddy](#) community to update metadata and contextual information from wax recordings held at

the Library of Congress which were transcribed. In a significant shift in practice, the TK Labels now attribute the Native American knowledge holders and the community for the recordings. In doing so, the library rightfully returned the ownership, authority and intellectual property to the community rather than it belonging to and remaining with the individual who created the recording (Kim 2019).

Case Study 2. National Film and Sound Archive of Australia (NFSA)

ICIP, or Indigenous Cultural Intellectual Property protocols is the ownership over our song, our dance, our language. But it goes beyond that. Working in cultural institutions, collecting institutions, the way ICIP is managed is something that I feel still needs a lot of development. It's about connecting the rightful cultural knowledge holders with ... Indigenous collections in the archives, in the libraries, in the museums and galleries to ... have the appropriate cultural management of this material. Because, for Aboriginal and Torres Islander people, the collection items aren't just tapes and video, these are the keepsakes and the extensions of our ancestors, of our song and our dance and our culture and our language.

These are the words of Tasha James, Manager Indigenous Connections, National Film and Sound Archive of Australia (NFSA), a Wiradjuri woman, as spoken in an Australian Society of Archivists, Indigenous Recordkeeping and Archiving Module in 2020 (Australian Society of Archivists 2020). The [National Film and Sound Archive of Australia \(NFSA\)](#) has the responsibility for collecting, preserving and making available the nation's film, television, sound and audiovisual heritage. It addresses ICIP concerns across several areas, including explicit statements regarding ICIP protection, collection ownership, copyright, the return of Indigenous cultural materials to communities, and conditions of use. Actions taken are guided by the NFSA's *Indigenous Cultural and Intellectual Property Guidelines* (NFSA n.d.), which relate to the use of Aboriginal and Torres Strait Islander Material from the NFSA collection, including the Film Australia Collection.

The Guidelines require that relevant Indigenous cultural authorities support use of the archive through a process of researchers gaining permissions for access and use. They also require that the user ensure that any footage used is not inadvertently and inaccurately associated with another Indigenous community in its reuse. A cultural warning and label must also be used to advise people of the existence of culturally sensitive materials, including the use of deceased people's images and voices, in any broadcasted or exhibited reproduction of materials.

A review of the NFSA website highlights ways in which the implementation of the ICIP policy is being incorporated into the collecting institution's policies and strategies to ensure, for example, that staff awareness is raised and competency built around engaging in dialogue on ICIP rights. The Strategic Vision, Mission and Priorities provide a high-level framework for the NFSA's activities. They are informed by a number of planning and policy documents, including the [Corporate Plan](#) (2021–22) and [Indigenous Strategy](#) (2020–2023).

The NFSA's Indigenous Strategy, *Keeping the Pathways to Ancestors Alive*, uses *The First Peoples: A Roadmap for Enhancing Indigenous Engagement in Museums and Galleries (the Indigenous Roadmap)* as a tool to structure key strategic priorities. Areas of focus include: Embedding Indigenous Values, Knowledges and Perspectives through a programme to embed ICIP protocols. Key outcomes are:

- ICIP Working Group established
- ICIP resources developed and training delivered for NFSA staff to apply ICIP
- NFSA Guidelines implemented, and
- NFSA Culturally Restricted Material Management Strategy implemented.

The NFSA approach emphasises the importance of ICIP, and the need for attention to policy development, organisational change and awareness building. It may appear straightforward to suggest that ICIP protocols be followed. However, there is a requirement that staff also build skills around negotiation, cross-cultural communication, and cultural competence to be effective in this space. The NFSA's current Corporate Plan, includes in its NFSA Strategic Risk Profile 2021–22 to 2024–25 a list of strategic priorities, identified risks, and key mitigation strategies. Through the theme *Engage and Celebrate*, the NFSA has identified a risk of Inadvertent or inappropriate sharing of collection material. The key strategy to mitigate this risk is to implement Indigenous Cultural and Intellectual Property Protocols.

The NFSA example of implementing ICIP protocols demonstrates the need for a holistic view around ICIP approaches. Similar approaches could be taken in library settings to promote a culture of respect for historical collections that document Indigenous peoples beyond merely looking at copyright considerations. The guidelines require that any people who may wish to access and use historical collections take responsibility for using materials ethically. This means that Indigenous people are actively involved in decisions about information and collections relating to their ancestors. As noted in Tasha James' comments, the materials are not considered mere "tapes and videos"; they represent "the extensions of our ancestors". The ICIP guidelines open up a space for recognising people's spiritual and emotional connections to collections. The awareness raising around

ICIP protocols at the NFSA has seen greater recognition of Indigenous people as the creators of materials.

As was the case with the Passamaquoddy wax cylinder recordings held at the Library of Congress in the United States (Kim 2019), the NFSA in 2017 ensured that the recordings of [Fanny Cochrane Smith](#) were inscribed into the [UNESCO Australian Memory of the World Register](#). The inscription recognised the vital role played by the recordings that “contain the only spoken records of any one of the original Tasmanian Aboriginal languages...” and “...are songs of survival and represent their ongoing struggle for rights and recognition” (UNESCO. National Committee of Australia 2020). This work highlighted the importance of the NFSA connecting with descendants of Fanny Cochrane Smith and acknowledged Indigenous culture as a living, dynamic culture, not merely one represented by the past.

Case Study 3. Galiwin’ku Community Library Classification System

The [Galiwin’ku Community Library](#) serves the Galiwin’ku community on Elcho Island, which is off the coast of East Arnhem Land in Northern Australia. In 2017, the Northern Territory Library partnered with the East Arnhem Regional Council to run a collaborative pilot project with Galiwin’ku Aboriginal Library Officers, local elders and community members to replace the Dewey Decimal Classification (Dewey) in the Galiwin’ku library with a [Galiwin’ku classification system](#) (NSLA n.d.). The Galiwin’ku specific classification system put in place uses the relevant community language Yolŋu Matha and is categorised using six Yolŋu cultural concepts (Masterson 2019).

The new programme is believed to be the first of its kind in Australia. The books have been organised according to key cultural aspects of Yolŋu life and are categorised in language. Loosely translated, one category encompasses art, language, culture and customs. Another covers the natural environment. One is for true stories, and a final category gives a home to everything else. Sections for youth and adult fiction have also been given new titles in Yolŋu language (Thompson and Trevaskis 2018).

NSLA includes the Galiwin’ku Community Library classification system as a case study in their online resources. In the NSLA case study, the Galiwin’ku classification system is connected to the ATSLIRN Protocols [2. Content and perspectives](#), [4. Accessibility and use](#) and [5. Description and classification](#). The definition of ICIP is inclusive of Indigenous languages and different types of knowledge and ICIP rights support the ability of Indigenous communities to self-determine,

control and benefit from ICIP. The removal of Dewey and the re-classification of Galiwin'ku Community Library not only implement the Yolŋu Matha language in library services, it is also led by the Galiwin'ku community. “Aboriginal Australians in remote Aboriginal community libraries should not be required to jump over the hurdle of navigating a Western, linear, hierarchical, compartmentalised classification system in order to access a library item” (Masterson et al 2019, 285).

Dominant library classification systems, like Dewey, have been criticised as inappropriate, misrepresentative and harmful for Indigenous knowledges by many communities, scholars and library professionals internationally (Duarte and Belarde-Lewis 2015; Masterson et al 2019; Thorpe 2019a). the Galiwin'ku Community Library recognised the inappropriateness of Dewey as a *balanda*/European system and created a culturally appropriate, relevant and empowering library space for the community of Galiwin'ku (Masterson et al 2019). As the new classification system is formulated on the basis of Yolŋu language, concepts and mathematics, the project, as already noted, addresses [ATSILIRN Protocol 3: Intellectual Property](#). NSLA discuss Protocol 3 in a library context as the “right of Aboriginal and Torres Strait Islander peoples to determine the use and access provisions for collection materials that reflect their own history, culture, language and traditions”. The project involving the Galiwin'ku Community Library is a strong example of supporting ICIP, self-determination and listening to the specific needs of community library stakeholders. Indigenous ways of knowing, being, and doing concern not only the collections, but are embedded in library services and systems. As Galiwin'ku Community Library Officer Amanda Gumbala says: “There is always a *balanda* way to do things, but this is our way” (NSLA n.d.).

Case Study 4. Museum of Applied Arts and Sciences

The [Museum of Applied Arts and Sciences \(MAAS\)](#), also known as the Powerhouse, is a major collecting institution in New South Wales for documenting national, state and local material arts and science heritage. The major museum branch of MAAS, also known as the Powerhouse Museum, focuses on material arts, science and technology exhibits, often aimed at school-aged children. MAAS has over 500,000 collection items, whose acquisitions span multiple institutional name changes since the Museum was established in 1879.

MAAS holds a substantial and growing collection of Aboriginal and Torres Strait Islander cultural material. In 2016, MAAS engaged Terri Janke and Company to establish the MAAS ICIP Protocol, specifically for the Museum. The Protocol that was developed follows the ten Principles outlined in Janke's True Tracks, with each principle addressing the specificities of MAAS and its collections.

The purpose of the MAAS Australian Indigenous Cultural and Intellectual Property Protocol is to:

- Recognise and respect Indigenous peoples’ rights to access, maintain, control and benefit their cultural heritage (also known as ICIP)
- Detail the principles that guide how MAAS meaningfully engages with Indigenous peoples in relation to their cultural heritage and ICIP, including through appropriate interpretation of Indigenous cultural heritage within MAAS and the Indigenous Cultural Material, and
- Publicly acknowledge MAAS support for and encourage the wider recognition of the value of ICIP and ICIP rights (MAAS 2016, 2).

Key to the MAAS ICIP protocol is its focus on self-determination and free, prior and informed consent across all elements of museum processes when engaging with Aboriginal and Torres Strait Islander cultural heritage material which is in MAAS custody and care (MAAS 2016, 5).

Significantly, the MAAS ICIP Protocol is not limited in its assertion to the protocol document only; it can be found asserted on the MAAS website in information on [Rights and Permissions](#), which is linked within the digitised Powerhouse collection. Through this assertion, the MAAS ICIP protocol must be understood as applicable for all Aboriginal and Torres Strait Islander cultural heritage held in the MAAS collection or at MAAS on loan. There are visible assertions of the MAAS ICIP Protocol; the Museum holds itself transparently accountable to the Protocol’s purpose and function. Significantly, the Protocol is more than aspirational, and has begun to be woven into the framework of institutional processes and discussed in combination with copyright. “In guarding the integrity and authentic representation of Australia’s first people, MAAS recognises its obligation to respectfully deal with Indigenous Cultural Material” (MAAS 2016, 2).

The MAAS ICIP protocol is discussed as an obligation of the Museum and is in line with Article 31 of UNDRIP. The connection elevates the MAAS ICIP Protocol to an international Indigenous rights obligation and provides an avenue for localised implementation of UNDRIP. Over time, the experience of MAAS has the capacity to provide significant insight into the practice of negotiating ICIP rights and copyright legislation and combining of ICIP rights protocols with existing institutional policies for the rest of the GLAM sector in Australia. Collaboration and transparency of processes, ensuring appropriate community privacy, would be very beneficial.

Conclusion

This chapter explored how libraries can navigate respectful practice in support of ICIP rights. It discussed the current incompatibility between western understandings of intellectual property and ownership and Indigenous ways of knowing, being and doing related to the management of cultural heritage held in libraries. Australian libraries and collecting institutions have played a role in supporting processes of colonialism that sought to dispossess Aboriginal and Torres Strait Islander people of their land and culture. The Australian library sector must recognise the role it has played and engage in dialogue to negotiate the tensions of western IP and ICIP.

The principles articulated in the statements produced through UNDRIP, the NHMRC, AIATSIS and others provide guidelines for ethical practice to support ICIP rights which can be adopted by libraries to support respectful practice. However, there is minimal scholarship regarding ICIP in the Australian libraries sector and gaps in the field. The case studies were drawn broadly from allied sectors across the GLAM sector to demonstrate the ways that institutions have taken up approaches to address the concerns of Indigenous people about access and control over their cultural heritage materials. The case studies provide a snapshot of the work being done with ICIP in Australia across libraries and collecting institutions.

There is an opportunity for the library sector, in Australia and beyond, to engage in further research and practice improvements. There is an opportunity for institutions and organisations engaging with ICIP to collaborate and share experiences to encourage further discourse and literature to communicate not only aspirations but also the experiences, problems and tensions in the process of ICIP rights implementation. Work is not as visible as it could be to inform the implementation of ICIP rights frameworks in praxis, specifically in the library and information sector. Further conversation and collaboration across the sector would provide significant insight into the practice of negotiating ICIP rights and copyright legislation and enhance the recognition of ICIP rights protocols within existing institutional policies.

Given the challenges in the sector's reliance on policies and processes which hinge on Western conceptualisations and frameworks, including ways of knowing, being and doing, and a destructive background of colonialism with its dispossession of Indigenous culture and knowledge, there is a critical need for further research and dialogue. Finally, it is asserted that the recovery of Indigenous knowledges from major collecting institutions across the GLAM sector is part of a process of recognising and implementing UNDRIP, and importantly, healing for Indigenous peoples internationally. Libraries and collecting

institutions progressing their support for ICIP rights must also acknowledge historical institutional complicity in denying Indigenous people their sovereignty regarding their cultural and intellectual property.

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