

Resetting relationships: archives and Indigenous human rights in Australia

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This paper provides an analysis of the Indigenous human rights agenda and identifies its relevance to Australian archivists.¹ Based on this analysis and exploration of how far existing archival programs address archives-related Indigenous human rights issues, it presents a road map and action agenda for realising Indigenous cultural rights in records and archives, and embedding Indigenous human rights in the professional responsibilities, culture and practices of the Australian archival and records community. The analysis, road map and action agenda provide guidance for the Australian archival and records community working in partnership with Aboriginal and Torres Strait Islander peoples. The paper is based in part on the findings of the 2004–08 Trust and Technology Project, a collaborative research partnership funded by the Australian Research Council and involving Public Record Office Victoria, Koorie Heritage Trust Inc., Koorie Records Task Force, the Indigenous Issues Special Interest Group of the Australian Society of Archivists, and Monash University. It also draws on analysis and synthesis of the main themes and issues presented and discussed at a pre-conference workshop at the 2010 Australian Society of Archivists Conference in Melbourne, Archives and Indigenous Human Rights (AIHR): Towards an understanding of the archival and recordkeeping implications of Australian and international human rights for Indigenous Australians.² The paper also references relevant sections of an Australian guide to implementing the 2007 United Nations (UN) Declaration on the Rights of Indigenous Peoples recently issued by the Australian Human Rights Commission (AHRC).³ Implementation of an Indigenous human rights action agenda by the Australian archival

community would represent a fitting response to Aboriginal and Torres Strait Islander Social Justice Commissioner Mick Gooda's rallying call for a resetting of relationships between archival and Indigenous communities, involving the active participation of Aboriginal and Torres Strait Islander peoples in archive and recordkeeping systems.

Introduction

I want to tell a different story. It's about how Aboriginal people can be the authors of our stories and not the passive and powerless subjects of stories told and written by others. It is the role of government and others, including archivists and recordkeepers, to position themselves to enable Aboriginal and Torres Strait Islanders to move from passive and powerless subjects to active participatory agents. I hope my insights assist in pushing towards an archive and recordkeeping system that facilitates the active participation of Aboriginal and Torres Strait Island peoples [Mick Gooda, 2010].⁴

On the basis of international human rights instruments, including the UN Declaration on the Rights of Indigenous Peoples, Indigenous communities are globally recognised as having inherent individual and collective rights to preserve their identity and culture while participating to the fullest in the mainstream culture.⁵ Rights of self-determination and the principles of non-discrimination and free, prior, informed consent provide the foundation for the exercise of cultural rights as human rights.

Although Australia has been a signatory to most of the core UN human rights declarations and treaties, it initially opposed the 2007 UN Declaration on the Rights of Indigenous Peoples, and was one of only four countries in the General Assembly which were not signatories to the UN Declaration (the others being the United States of America, Canada and New Zealand). All four countries have recently endorsed the UN Declaration which means that it now influences how Australia's human rights obligations under other generic human rights declarations and treaties apply to Aboriginal and Torres Strait Islander peoples. Of most relevance to records and archives are the 1984 *United*

Nations Universal Declaration of Human Rights, the 1965 *Convention on the Elimination of Racial Discrimination* ("CERD"), the 1966 *International Covenant on Civil and Political Rights* (ICCPR), the 1966 *International Covenant on Economic, Social and Cultural Rights* (ICESCR), and the 1997 and 2005 *Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity* (Joinet-Orentlicher Principles) issued by the United Nations Human Rights Council.⁶

Although the Australian Government has rejected an Australian Human Rights Act or Charter, recommended by the National Human Rights Consultation Committee (NHRCC), it has committed to the development of an Australian Human Rights Framework and the establishment of a Parliamentary Joint Committee on Human Rights to scrutinise new legislation for compliance with Australia's international human rights obligations under the seven core UN human rights treaties to which Australia is now a party, including the 2007 UN Declaration on the Rights of Indigenous Peoples.⁷

Victoria and the Australian Capital Territory (ACT) are the only state and territory to have passed human rights law, with laws in South Australia and Tasmania under development. In Victoria, the *Charter of Human Rights and Responsibilities Act 2006* requires that Victorian public bodies take into account Australia's international obligations when developing, interpreting and applying Victorian law and policy.⁸ It explicitly recognises Indigenous cultural rights as human rights.

Specifically in relation to Indigenous human rights, during his visit to Australia in August 2009 the UN Special Rapporteur found that in spite of some recent advances, Australia's laws, policies and programs were in urgent need of reform in consultation with Indigenous peoples. His report called for the Commonwealth and state governments to review and reform all legislation, policies and programs that affect Aboriginal and Torres Strait Islander peoples, in light of the 2007 UN Declaration on the Rights of Indigenous Peoples.⁹

Given the imperative for action in relation to Indigenous human rights in archives, the AIHR workshop brought together Indigenous and non-Indigenous international and national experts in Indigenous studies, human rights and archives; archives, library and museum professionals; and researchers and students. It aimed at exploring

Indigenous human rights internationally and in Australia, with particular reference to archival issues, current archival practice and future directions. Keynote speaker Terri Janke focused on international human rights frameworks relevant to Indigenous cultural and intellectual property rights. International speakers discussed their experience of asserting human rights to Indigenous knowledge in archival records, with international law expert Professor Bradford Morse speaking on Canadian First Nation and Maori historical and legal frameworks, and Allison Krebs, a member of the Sault Ste Marie Tribe of Chippewa Indians, speaking on Native American knowledge rights, recent initiatives in the archives, library and museum fields, and the role of the Native American Protocols.¹⁰

Aboriginal and Torres Strait Islander Social Justice Commissioner Mick Gooda spoke about the human rights agenda in Australia, related international instruments, Indigenous cultural rights, and the role of archival institutions and the profession in implementing Indigenous human rights. Phyllis Williams, Director of the Northern Territory office of the National Archives of Australia, provided an overview of the engagement of Australian archival institutions and the profession with Indigenous communities, past, present and future, and the impact of human rights agendas and Australian government policies relating to human rights on archival practice. Dr Julie Debeljak and Melissa Castan, Deputy Directors of the Castan Centre spoke on the Victorian Charter, how far it can provide a model for Australia as a whole, and relevant case law. Lyndon Ormond-Parker, a PhD candidate in the Centre for Cultural Materials Conservation and Centre for Health and Society at the University of Melbourne, and Fellow at the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS), highlighted the role that digital and data archives play in enabling Indigenous communities to recover their knowledge and records from institutional collections, and the possible impact of human rights instruments on future models for digital archives and digital repatriation.

Through the discussions at the end of each session, and the final panel-led discussion, the AIHR workshop aimed at contributing to the development of an action agenda for Indigenous and archival

communities to work together to embed Indigenous human rights into the professional responsibilities, culture and practices of the Australian archival and records community.

The following sections of this paper present the findings of an extensive analysis of the 2007 UN Declaration of the Rights of Indigenous Peoples, and other relevant UN and Australian instruments, undertaken by Livia Iacovino and Eric Ketelaar, to identify obligations that should guide archival practice, and an exploration of the extent to which current Australian archival programs cover Indigenous cultural rights. The analysis and exploration were conducted as part of the Trust and Technology Project. The analysis identified the articles and sections of instruments and laws of most relevance to records and archives as detailed in the appendix at the end of this article. The findings of the Trust and Technology Project are complemented by an analysis and synthesis of the AIHR workshop outcomes to provide a road map and action agenda to guide the Australian archival and records community working in partnership with Aboriginal and Torres Strait Islander peoples. One of the outcomes of the Trust and Technology Research Project was an exposure draft of a Position Statement on Archives and Indigenous Human Rights in Australia.¹¹ The analyses, road map and action agenda presented in this paper will be used to revise the Position Statement with a view to seeking endorsement from the archival and records community.

Archives and Indigenous human rights in Australia

We do this in the spirit of resetting the relationship between Indigenous and non-Indigenous Australians and building trust ... The Declaration gives us new impetus to work together in trust and good faith to advance human rights ... [Jenny Macklin, 2009].¹²

At its core the Declaration is based on the principles of self-determination, good faith and participation in decision-making ... [W]e need to harness the practical power of human rights. In exercising our right to participate in decision-making, Aboriginal and Torres Strait Islander peoples can demonstrate this practical power. It is critical

that Aboriginal and Torres Strait Islander peoples are substantive and major stakeholders in determining appropriate archival and record keeping processes for Indigenous culture, cultural property and knowledge systems [Mick Gooda, 2010].¹³

The Australian Government has committed to resetting the relationship with our peoples. Active participation in decision-making that affects our peoples is a key part of resetting the relationship. In practice, our participation in decision-making is limited. To meet human rights standards we should be involved in all major decisions affecting us, including on issues around land, development, culture, housing, health, education, employment, child welfare, social services and criminal justice [AHRC, 2010].¹⁴

Archives can support human rights but have in the past been instruments of human rights abuse and oppressive regimes. Today they can, and indeed do, play a critical role in the recovery of Indigenous knowledge and language, and provide evidence for establishing identity, family link-ups, community regeneration, land claims and redress of human rights abuse. Archives can thereby underpin Indigenous human rights, self-determination, and the exercise of cultural rights as human rights. They can support the rights highlighted in a recently published AHRC guide – namely, rights to language, culture, cultural and spiritual identity, rights to and relationships with country, and the dissemination of information which ‘reflects the dignity and diversity of ATSI peoples’ cultures, histories, experiences, and hopes’.¹⁵

In 2004–08 the Australian Research Council funded the Trust and Technology Project, a collaborative research partnership involving Public Record Office Victoria, Koorie Heritage Trust Inc., Koorie Records Task Force, the Indigenous Issues Special Interest Group of the Australian Society of Archivists, and Monash University.¹⁶ The Trust and Technology Project found that a major obstacle to the implementation of Indigenous human rights in archives has been that Australian legal and archival frameworks have not considered archives-related Indigenous human rights issues, or provided for the

exercise of cultural rights in records for Indigenous peoples who are considered to be the subjects of records. The project's findings support Terri Janke's statement at the AIHR workshop:

Many Indigenous people feel that it is unjust that records of great sensitivity and importance to them should be owned by non Indigenous organisations and people. The records are often held far away from the communities to which they relate.¹⁷

Archivists and records managers are often unaware of the individual and collective archives and records-related rights which are essential to Indigenous self-determination, and preservation of culture and identity as recognised in the 2007 UN Declaration on the Rights of Indigenous Peoples, and supported by the Victorian Charter of Human Rights and Responsibilities 2006, and the ACT's human rights law.

The gathering momentum in the field of human rights – locally and internationally – make it imperative for archival and related professions to become aware of the relevance of the human rights agenda to their work. Policies and practices in archival institutions in Australia are currently not fully in line with international conventions relating to Indigenous human rights. The Trust and Technology Project found that acknowledgement by archival institutions of Indigenous rights of self-determination, and facilitation of the exercise of cultural rights as human rights, linked to the principle of non-discrimination, involve moving beyond the current focus on individual access rights to involve individuals and communities in decisions about appraisal, access and management of records relating to them, including non-Indigenous archival sources of Indigenous knowledge. Speakers at the AIHR workshop emphasised that free, prior and informed consent, which is an essential component of self-determination, means that Aboriginal and Torres Strait Islander peoples need to be involved in the design, development, implementation, monitoring and evaluation of all programs, policies and legislation that affect them, including archives and Indigenous human rights initiatives themselves. Supporting the related right to know and enabling the right of reply involve archival institutions disclosing to Indigenous people and communities that they hold records relating to them, and developing

systems to allow Indigenous people to add their perspectives and stories to 'set the official record straight'. In line with the human rights agenda, during the Trust and Technology Project issues relating to the disclosure of the existence of records relating to Indigenous people by archival institutions and the need for mechanisms for 'setting the record straight' were highlighted by many Koorie participants in an extensive series of interviews with Koorie people across Victoria (Koorie is a term used to describe the Indigenous peoples of south-east Australia). The interviews explored the archival needs of Indigenous communities in Victoria.

Foundation rights of self-determination and equality

The foundation rights embodied in the 2007 UN Declaration on the Rights of Indigenous Peoples are the right of self-determination and the right to be treated equally.¹⁸ Indigenous participation, linked to self-determination, lies at the heart of human rights. Self-determination is defined as the right of peoples to a system that respects and facilitates their political, social, economic and cultural participation and development as specified in the 1966 *International Covenant on Civil and Political Rights* and the 1966 *International Covenant on Economic, Social and Cultural Rights*. The principle of free, prior and informed consent, discussed in more detail below, is an integral part of self determination.

Around Australia, archival institutions have begun to build long-term trusted relationships with Indigenous communities as users of archival services. Elsewhere in this issue of *Archives and manuscripts*, Narissa Timbery evaluates the consultation model used in a number of recent initiatives. Providing better access to archival and records collections for Aboriginal and Torres Strait Islander peoples has been a major focus, such as the Bringing Them Home Index developed by the National Archives of Australia and the Koorie Index of Names developed by Public Record Office Victoria. Papers by Williams and Ormond-Parker at the AIHR workshop reported a number of initiatives in the Northern Territory and Queensland, including digital repatriation programs. Aboriginal and Torres Strait Islander Social Justice Commissioner Mick Gooda and other speakers highlighted how the 2007 UN

Declaration on the Rights of Indigenous Peoples can provide a framework for extending and resetting existing relationships between Indigenous peoples, archival institutions and the archival profession, based on equal partnership, and building trust and mutual respect through participatory rather than consultative models. Active participation in the design, development, implementation, monitoring and evaluation of archival laws, policies and programs is a crucial aspect of building new archival relationships in line with the recommendations of the AHRC guide.¹⁹ It is based on the principle of free, prior, informed consent rather than consultation. Archival law, policy and program reforms, based on respecting Indigenous knowledge systems, can provide frameworks and guidelines for the exercise of Indigenous cultural rights in records and archives compliant with the UN Declaration. At the AIHR workshop, Commissioner Mick Gooda and other speakers stressed that archival partnerships cannot be based on consultation alone. They need to be built on dialogue, conversations, education, exchange of knowledge, working through things together in a negotiated space with the process being as important as the ends, and recognition of rights and ways of knowing as central.

Full realisation by Indigenous peoples of their human rights, including the exercise of cultural rights, also requires eliminating racism:

to promote full and equal enjoyment of civil, political, economic, social and cultural rights, as well as the benefits of sustainable development, while fully respecting their distinctive characteristics and their own initiatives.²⁰

Archival action agenda: resetting relationships

As highlighted in the AIHR workshop, a foundation component of an action agenda for resetting relationships would involve the Australian archival and records community working in partnership with Indigenous communities to develop coherent national frameworks for the active participation of Indigenous peoples in the governance and operation of archival services using the 2007 UN Declaration on the Rights of Indigenous Peoples, the 2010 AHRC guide, and the analyses presented here as 'road maps'. Another critical component

identified in the findings of the Trust and Technology Project is reform of Australian archival law and policy to recognise Indigenous cultural rights in records, including individual and collective rights, and consequent extension of existing international and national laws and protocols relating to Indigenous human rights and heritage to archival sources of Indigenous knowledge.²¹ Review of existing archival laws, policies, and programs is also needed to ensure compliance with the 2007 UN Declaration on the Rights of Indigenous Peoples and relevant federal, state and territory Indigenous human rights frameworks and laws. The Australian Society of Archivists (ASA) endorsed statements of professional ethics, and archival values should also come under scrutiny. In particular, the AIHR workshop identified a pressing need for the outdated ASA's 1996 *Policy Statement on Archival Services and Aboriginal and Torres Strait Islander Peoples* to be reviewed and revised, using the language of human rights, and with reference to the 2005 *ATSI (Aboriginal and Torres Strait Islander) Library and Information Resources Network Protocols for Libraries, Archives and Information Services (ATSILIRN)*; best practice protocols such as the Native American Protocols; and protocols issued by AIATSIS, the State Library of South Australia, State Records New South Wales (SRNSW), the National and State Libraries of Australasia, and the Australian Heritage Commission.²² Last but not least, initiatives to diversify the archival profession to achieve appropriate representation of Indigenous peoples are essential.

Rights of indigenous peoples as a collective

Human rights standards were developed from non-Indigenous thinking and have historically focused on the individual. For example an individual has the right to own property. Indigenous peoples often organise societies as a group (that is, clan, nation, family or community) and individual rights are not always suitable. The Declaration confirms that we have group or collective rights. For example, it acknowledges that we have the right to own country and hold cultural knowledge as a group, and the right to determine what that group looks like [AHRC, 2010].²³

The 2007 UN Declaration on the Rights of Indigenous Peoples establishes the right of Indigenous peoples as a *collective or as individuals* to the full enjoyment of all human rights and fundamental freedoms as recognised in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law, although the latter instruments and related conventions are framed in the language of individual not communal rights, as are the critically relevant intellectual property, freedom of information, privacy and archival laws of Australia. The Trust and Technology analysis found that the general effect of these laws is that the organisations which create or receive and maintain records relating to Indigenous peoples exercise almost all control over them. In relation to government records, privacy, freedom of information and public records laws do give records subjects some rights over the collection, use and disclosure of information about themselves. However, these rights apply only to individual records subjects; they cannot be exercised by Indigenous peoples as a collective or by individuals in relation to deceased family members.²⁴

Archival action agenda: collective rights

High priority action items relating to collective rights include taking into account on an ongoing basis the rights of Indigenous peoples and communities as a collective in the development and reform of archival laws, policies and programs; recognising the moral rights of the collective author in archival documentation; and recognising collective rights relating to access and privacy, and developing strategies for their realisation.

Free, prior and informed consent

The standard of free, prior and informed consent is to be met before any of the following actions are taken:

- projects or decisions that affect our country including mining, development and the use of sacred sites
- the use of biological materials, traditional medicines and knowledge, including artwork, dance and song

- making agreements or treaties between government and our peoples
- the creation of laws or policies that affect our peoples
- actions that could lead to the forced removal of our children or from country [AHRC, 2010].²⁵

The AHRC guide recommends that governments and other organisations should negotiate with relevant Indigenous organisations, communities and individuals when making policies or laws, or undertaking activities that affect them, with the aim of obtaining consent. It emphasises that this is a much stronger obligation than merely providing information or consulting, involving an honest and open process of negotiation between parties on an equal footing and reaching a solution or agreement acceptable to all (see the appendix for an extended definition of free, prior, informed consent). As discussed above, this issue was the focus of much discussion at the AIHR workshop. A major issue identified for archival institutions and programs with respect to the principle of free, prior and informed consent relates to its possible retrospective application to archival records relating to Indigenous communities which have been accumulated and managed in the past without such consent.

Archival action agenda: free, prior and informed consent

Two action items flow from this consideration of free, prior and informed consent. Firstly there is a need to negotiate with relevant Indigenous organisations, communities and individuals when making policies or laws, or undertaking activities that affects them, with the aim of obtaining such consent. Secondly, there is a need to investigate with relevant Indigenous organisations, communities and individuals the retrospective application of the principle of free, prior and informed consent to past archival actions.

Self-determination, non-discrimination and the exercise of cultural rights as human rights

Under Australian law, our cultural heritage and traditional knowledge are partly protected by various

legal regimes including intellectual property, native title, cultural heritage and environmental laws. These regimes try to fit our systems of knowledge and understanding into Western legal concepts. This results in a partial and inadequate protection of our cultural heritage and traditional knowledge. We can lobby governments to work with us to develop a legal framework that adequately protects our heritage and knowledge. These laws should protect and control the use of our heritage and knowledge and be consistent with the principle of free, prior and informed consent [AHRC, 2010].²⁶

We have the right to revitalise, use, develop and pass on to future generations our ways of being and knowing. This includes:

- our histories and our oral traditions
- our languages and ways of communicating
- our ways of thinking about the world
- our names for communities, people and places [AHRC, 2010].²⁷

In relation to identity, culture, language and relationship with country, the principle of self-determination supports the rights of Indigenous peoples to their distinctive identities, and to identify themselves as Indigenous, as well as rights and duties to maintain and develop their own cultures and knowledge systems. It includes the right to be recognised as the primary guardians and interpreters of their cultures, and to exercise their cultural rights as human rights. Protecting Indigenous cultural and intellectual property is based on the principle of self-determination.²⁸ In her AIHR workshop presentation, Terri Janke stressed the challenges this presents for archival practice:

Indigenous Cultural and Intellectual Property rights are seen as important rights for Indigenous people to be managed with reference to Indigenous cultural laws and protocols. The growing international human rights law, and copyright developments domestically set new challenges for archival practices.²⁹

Specifically in respect to the exercise of individual and collective cultural rights, Article 31 of the 2007 UN Declaration on the Rights of Indigenous Peoples states:

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.

At the AIHR workshop, Morse highlighted how this article is a 'response to Western Intellectual Property law's inadequacy to protect Indigenous intellectual property'.³⁰ With respect to Indigenous peoples, the principle of non-discrimination, as supported by the 2007 UN Declaration on the Rights of Indigenous Peoples, the 1965 *Convention on the Elimination of Racial Discrimination*, the *Australian Racial Discrimination Act 1975*, and state anti-discrimination law highlights the need for nations to ensure that Indigenous communities can exercise their rights to practise and revitalise their cultural traditions and customs, and to preserve and practise their languages, based on recognition of and respect for the distinct cultures, histories, languages and ways of life of Indigenous peoples as an enrichment of a nation's cultural identity.³¹

Indigenous cultural rights are also recognised in UNESCO's *Convention on the Protection and Promotion of the Diversity of Cultural Expressions 2005*; the *Convention for the Safeguarding of the Intangible Cultural Heritage 2003* which relates to Article 31 in the 2007 UN Declaration on the Rights of Indigenous Peoples; and the *Universal Declaration on Cultural Diversity 2001* (paragraph 14) which deals with respecting and protecting traditional knowledge, in particular that of Indigenous peoples.³² Article 8(j) of the UN's *Convention on Biological Diversity*

(1993) is also directed to preserving and maintaining the knowledge of Indigenous and local communities.

Archival action agenda: self-determination, non-discrimination and the exercise of cultural rights

Various action items were identified as critical. AIHR workshop participants emphasised the importance of appropriately resourcing archives to play their role as sources of knowledge for identity, culture, language and relationships with country and to underpin the right to identify as Indigenous, related rights to distinctive identities, cultures and knowledge systems, and 'the right to revitalise, use, develop and pass on to future generations ... ways of being and knowing'.³⁵ Appropriate levels of funding would support a shift from project-based initiatives, integrating ongoing engagement with Indigenous communities in the capture, appraisal, management, preservation and provision of access to records, to the core business of archival and records programs. Australian archival institutions and records authorities could use a combination of information technology, and legal and policy initiatives to extend the existing legal and moral rights of Indigenous individuals and communities relating to the control, disclosure, access and use of records, for example in the development of digital repatriation strategies and programs, and digital archives. An essential piece of infrastructure for the negotiation of rights in records would be registers of interested persons (descendants of the relevant community) for ongoing management of relevant sets of records. Recognition and implementation of the right of Indigenous communities and individuals to determine third-party access to records held by archival organisations could redress past discrimination. In the ACT and Victoria, actions also flow from recently passed human rights laws. For example, the provisions of the *Victorian Charter of Human Rights and Responsibilities Act 2006* require review and revision of the *Public Records Act 1973* (Vic) and the policies and actions of Public Record Office Victoria in terms of compatibility with the charter and the special provisions of international conventions.³⁴

The right to know the truth and the right of reply

The United Nations Commission on Human Rights (UNHRC) adopted the *Joinet–Orentlicher Principles* to guide member states in dealing with human rights violations.³⁵ They deal, among other things, with the inalienable individual and collective right of individuals and communities to know the truth about past events, the duty of the state to preserve and make accessible archives of repression and abuse as part of the collective memory, and the entitlement of individuals to know that there is a record about them, and to challenge its validity by exercising a right of reply. The findings of the Trust and Technology Project highlighted the relevance of these principles to Indigenous communities in Australia.

Archival action agenda: right to know and right of reply

To support the right to know and the right of reply, mechanisms need to be put in place to identify Indigenous communities or individuals documented in records; to contact them via appropriate representative bodies; to disclose that there are records relating to them; and to develop procedures to enable them to exercise a right of reply. This could involve recording comments on the inaccuracies or limitations of institutional records, contributing family narratives which expand on or give context to institutional records, and presenting alternative versions of events. An example would be a system, like the Koorie Archiving System (specified by the Trust and Technology Project, and currently being implemented in Victoria), that enabled use of annotations as a right of reply, and the extension of this right to descendants, which also enabled annotators to retain ownership of the annotations.

Social media and human rights

Digital technologies, participatory models and postmodern concepts like co-creatorship and records as social entities have the potential to support the ‘decolonisation’ of the archive, and the exercise of cultural rights in archives as human rights, repositioning Indigenous peoples who have hitherto been the ‘captives of the archives’, the subjects of

records, and the objects of the archival gaze as active participatory agents in archival and recordkeeping program and system design and implementation.³⁶

Emerging research and theory-building in archival science have cleared the way for a refiguring of recordkeeping structures and values, and subsequently for developing, testing and implementing methods and tools for new recordkeeping and archival policies and practices which accord with modern societal needs and expectations. This may be summarised by citing Tom Nesmith's formulation of the new concept of provenance of a record: 'The social and technical processes of the records' inscription, transmission, contextualization, and interpretation which account for its existence, characteristics, and continuing history'.³⁷

The paradigm shift in archival theory, methodology and practice is to a large extent due to new technologies and their adoption and adaptation in society. Social software, including annotation systems, wikis, blogs, social networks, social recommender systems and a host of other Web 2.0-based applications are drastically changing cultural practices of record creation and recordkeeping. Government 2.0 implies that records are created in an interactive dialogue between the government organisation and the citizen, requiring the customer or citizen to become a party to the business function which created the record, a co-creator. In our digital world, interactive and hyperlinked, 'Texts become "hypertexts" which are reconstructed in the act of reading, rendering the reader an author'.³⁸

This social and cultural phenomenon of co-creatorship entails a shift of the traditional paradigm that locates the agency of a record solely in its author. This is not to say that records subjects participating in the creation of records should be given ownership rights; there are other ways by which archival policies and practices in a Government 2.0 environment can accommodate the phenomenon of co-creatorship. However, it may involve an extension of existing rights to be involved in decision-making about the management of records, their access and use. And, in some circumstances, it might warrant inclusion of ownership rights for all parties to the transaction documented in the records.

Archival action agenda: refiguring the archive

The Australian archival profession and institutions could adopt a participant model which involves repositioning records subjects as records agents – participants in the act of records creation (in a fully implemented participant model, every contributor, including the person who is the subject of the document, has legal and moral rights and responsibilities in relation to ownership, access and privacy). Expansion of the definition of record creators in archival science to include everyone who has contributed to a record's creative process and has been affected by its action would also support the enforcement of a broader spectrum of rights and obligations.

Conclusion

It is hoped that the analyses, road map and action agenda presented in this paper contribute to the realisation of Indigenous cultural rights in records and archives by the Australian archival and records community working in partnership with Aboriginal and Torres Strait Islander peoples. Speakers and participants in the AIHR workshop called on the Australian Society of Archivists and leading archival institutions to provide leadership in embedding Indigenous human rights in archival law, policy, culture and practice in Australia. As Jimerson reminds us:

Responding effectively to the challenges of using the power of archives for the public good will require a broad commitment by the archival profession to reflect on underlying assumptions and biases, and to overcome these through a renewed commitment to democratic values.³⁹

Appendix: Human rights provisions relevant to Indigenous rights in records and archives

Prepared by Livia Iacovino based on research undertaken for a Jean Whyte Bequest, 'Rethinking Archival and Legal Frameworks for Records of Indigenous Australian Communities of Memory: a participatory model of rights and responsibilities', available at <http://www.infotech.monash.edu.au/research/centres/cosi/jeanwhyte-funded-projects.html>.

The appendix is arranged under the following headings:

- Free, prior and informed consent
- Self-determination
- Non-discrimination
- Rights of indigenous peoples as a collective
 - Implications for principle of privacy: extension to indigenous family, community and deceased person's community as a human right
- Self-determination, non-discrimination and the exercise of cultural rights as human rights
- The right to know the truth and the right of reply

Free, prior and informed consent

Domestic warrants

Australian Human Rights Commission 2010, The Community Guide to the UN Declaration on the Rights of Indigenous Peoples

The standard of free, prior and informed consent is to be met before any of the following actions are taken:

- projects or decisions that affect our country including mining, development and the use of sacred sites

- the use of biological materials, traditional medicines and knowledge, including artwork, dance and song
- making agreements or treaties between government and our peoples
- the creation of laws or policies that affect our peoples
- actions that could lead to the forced removal of our children or from country (AHRC 2010, Part 4, p. 25).

Free means no force, bullying or pressure.

Prior means that we have been consulted before the activity begins.

Informed means we are given all of the available information and informed when that information changes or when there is new information. If our peoples don't understand this information then we have not been informed. An interpreter might need to be provided to assist.

Consent means we must be consulted and participate in an honest and open process of negotiation that ensures:

- all parties are equal, neither having more power or strength
- our group decision-making processes are allowed to operate
- our right to choose how we want to live is respected.

... The greater the impact and damage that a decision or project will have on our peoples' lives, cultural integrity and country, the greater the need to reach an outcome that we can agree to. If an action is a direct threat to our survival or cultural integrity then we should be entitled to say 'no' to that action (AHRC 2010, Part 4, p. 25).

International warrants

The ILO Convention 169 Indigenous and Tribal Peoples in Independent Countries, 1989 [Not ratified by Australia]

The International Labour Organization Indigenous and Tribal Peoples Convention, 1989 (No. 169) refers to the principle of free and informed

consent in the context of relocation of indigenous peoples from their land in its article 16. Article 7 recognises indigenous peoples' 'right to decide their own priorities for the process of development' and 'to exercise control, to the extent possible, over their own economic, social and cultural development.' In articles 2, 6 and 15, the Convention requires that states fully consult with indigenous peoples and ensure their informed participation in the context of development, national institutions and programs, and lands and resources. As a general principle, article 6 requires that consultation must be undertaken in good faith, in a form appropriate to the circumstances and with the objective of achieving consent (Working Group on Indigenous Populations, *Standard-setting: legal commentary on the concept of free, prior and informed consent. Expanded working paper submitted by Mrs Antoanella-Iulia Motoc and the Tebtebba Foundation offering guidelines to govern the practice of implementation of the principle of free, prior and informed consent of indigenous peoples in relation to development affecting their lands and natural resources*, UN Doc E/CN.4/Sub.2/AC.4/2005/WP.1 (2005), paragraph 11).

United Nations Declaration on the Rights of Indigenous Peoples, 2007 [Ratified by Australia]

Article 10

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

Article 11

1. Indigenous peoples have the right to practise 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 19

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Article 28

1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

Article 29

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.

2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.

Self-determination

International warrants

The International Covenant on Civil and Political Rights (ICCPR), 1966 [Ratified by Australia]

International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966 [Ratified by Australia]

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

United Nations Declaration on the Rights of Indigenous Peoples, 2007 [Ratified by Australia]

Preamble

Acknowledging that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, as well as the Vienna Declaration and Programme of Action, affirm the fundamental importance of the right to self-determination of all peoples, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development.

Indigenous peoples:

- have the right of self-determination and can choose their political status and the way they want to develop (article 3)
- have the right to keep and develop their distinct characteristics and systems of law; they also have the right, if they want, to take part in the life of the rest of the country (article 4)
- shall be free from cultural genocide; governments shall prevent: actions which take away their distinct cultures and identities; the taking of their land and resources; their removal from their land; measures of assimilation; propaganda against them (article 7)
- have the right to their distinct identities; this includes the right to identify themselves as Indigenous (article 8). (<http://www.ohchr.org/english/issues/indigenous/docs/declaration.doc>)

The ILO Convention 169 Indigenous and Tribal Peoples in Independent Countries, 1989

[A legally binding convention on economic rights which has not been ratified by Australia]

Article 2

1. Governments shall have the responsibility for developing, with the participation of the peoples concerned, co-ordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity.
2. Such action shall include measures for:
 - (a) ensuring that members of these peoples benefit on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population;
 - (b) promoting the full realisation of the social, economic and cultural rights of these peoples with respect for their social and cultural identity, their customs and traditions and their institutions.

Domestic warrants

There is no direct reference to self-determination for Indigenous Australians in the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (see reference to section 19(2) below under 'cultural rights'), but section 19(1) recognises that 'Cultural rights' for 'All persons with a particular cultural, religious, racial or linguistic background must not be denied the right, in community with other persons of that background, to enjoy his or her culture, to declare and practise his or her religion and to use his or her language'. This provision would be interpreted in the light of ICCPR article 27 (see below) which includes Indigenous peoples as minorities through case law, rather than the United Nations Declaration on the Rights of Indigenous Peoples 2007.

Human Rights Act 2004 (ACT) does not include self-determination rights for Indigenous Australians, although section 27 which is closely worded to ICCPR section 27 could defer to international law.

Non-discrimination

International warrants

UN Charter 1945

Article 1(3)

To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.

The International Covenant on Civil and Political Rights (ICCPR), 1966 [Ratified by Australia]

International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966 [Ratified by Australia]

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

The International Covenant on Civil and Political Rights (ICCPR), 1966

Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

Convention on the Elimination of Racial Discrimination ('CERD'), 1965 [Ratified by Australia]

Under CERD, the Office of the United Nations High Commissioner for Human Rights, General Recommendation No. 23: Indigenous Peoples. 18/08/97.

Gen. Rec. No. 23. (General Comments)

4. The Committee calls in particular upon States parties to:
 - (a) Recognize and respect indigenous distinct culture, history,

language and way of life as an enrichment of the State's cultural identity and to promote its preservation;

(b) Ensure that members of indigenous peoples are free and equal in dignity and rights and free from any discrimination, in particular that based on indigenous origin or identity;

(c) Provide indigenous peoples with conditions allowing for a sustainable economic and social development compatible with their cultural characteristics;

(d) Ensure that members of indigenous peoples have equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent;

(e) Ensure that indigenous communities can exercise their rights to practise and revitalize their cultural traditions and customs and to preserve and to practise their languages.

United Nations Declaration on the Rights of Indigenous Peoples, 2007 [Ratified by Australia]

Article 2

Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

Domestic warrants

Racial Discrimination Act 1975 (Cwlth); Human Rights and Equal Opportunity Commission Act 1986 (Cwlth); Discrimination Act 1991 (ACT); Anti-Discrimination Act 1977 (NSW); Anti-Discrimination Act 1996 (NT); Anti-Discrimination Act 1991 (QLD); Equal Opportunity Act 1984 (SA); Anti-Discrimination Act 1998 (Tas); Equal Opportunity Act 1995 (Vic); Equal Opportunity Act 1984 (WA)

Rights of indigenous peoples as a collective

International warrants

ILO Convention 169, 1989 [Not ratified by Australia]

Several provisions for Indigenous collective rights, for example:

Article 5

In applying the provisions of this Convention:

- (a) the social, cultural, religious and spiritual values and practices of these peoples shall be recognised and protected, and due account shall be taken of the nature of the problems which face them both as groups and as individuals;
- (b) the integrity of the values, practices and institutions of these peoples shall be respected;
- (c) policies aimed at mitigating the difficulties experienced by these peoples in facing new conditions of life and work shall be adopted, with the participation and co-operation of the peoples affected.

United Nations Declaration on the Rights of Indigenous Peoples, 2007 [Ratified by Australia]

Article 1

Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law.

Family, community and collective rights

ICCPR Articles 1 and 27 recognise community and minority rights and ICCPR Article 23 and ICESCR Article 10 relate to family which could be used for collective rights.

Privacy as a collective right

International and domestic privacy warrants do not as yet include

provisions for a communal right of privacy but international instruments do cover family which, in some instances, could extend to collective or cultural rights, as follows.

United Nations Universal Declaration of Human Rights, 1948
[Ratified by Australia]

Article 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

The *International Covenant on Civil and Political Rights, 1966*, gives legal effect to the Declaration of Human Rights. Article 17 (1) states: 'No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation'.

Domestic warrants

There is no general right in Australian law that corresponds to ICCPR right to privacy. In Australia, there are privacy Acts at Commonwealth level and in most states but none includes communal privacy rights. However, the *Charter of Human Rights and Responsibilities Act 2006* (Vic) section 13 provides for family but not communal rights to privacy, because it uses the wording of ICCPR: 'No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks'.

Implications for principle of privacy: extension to indigenous family, community and family or community of deceased persons as a human right

For Indigenous people, the right to privacy may extend to deceased persons and this is not covered in international conventions. Note: while a deceased person's right to privacy cannot be violated, living members of the deceased's family, and for Indigenous peoples, their

kin and communities' privacy may be violated, if access is given to and use is made of personal information about a deceased person without the consent of the family or community.

Authorship as a collective right

International warrants

Indigenous collective authorship implied in:

United Nations Declaration on the Rights of Indigenous Peoples, 2007 [Ratified by Australia]

Article 12 (1) Cultural rights and Article 1 together with Article 31 Traditional knowledge.

Self-determination, non-discrimination and the exercise of cultural rights as human rights

International warrants

United Nations Declaration on the Rights of Indigenous Peoples, 2007 [Ratified by Australia]

Article 12(1)

Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains (United Nations, General Assembly 2007).

Article 15(1)

Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.

Article 31

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.

UNESCO Universal Declaration on Cultural Diversity, 2001

14. Respecting and protecting traditional knowledge, in particular that of indigenous peoples; recognizing the contribution of traditional knowledge, particularly with regard to environmental protection and the management of natural resources, and fostering synergies between modern science and local knowledge.

UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage, 2003 [Not Ratified by Australia]

Recognizing that communities, in particular indigenous communities, groups and, in some cases, individuals, play an important role in the production, safeguarding, maintenance and re-creation of the intangible cultural heritage, thus helping to enrich cultural diversity and human creativity.

UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, 2005 [Accession by Australia 2009]

Recognizing the importance of traditional knowledge as a source of intangible and material wealth, and in particular the knowledge systems of indigenous peoples, and its positive

contribution to sustainable development, as well as the need for its adequate protection and promotion.

United Nations Convention on Biological Diversity, 1992 [Australia is a party to Convention]

Traditional Knowledge, Innovations and Practices, Introduction, Article 8(j):

Each contracting Party shall, as far as possible and as appropriate: Subject to national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge innovations and practices

Domestic warrants

Charter of Human Rights and Responsibilities Act 2006 (Vic)

Preamble: rights have a special importance for the Aboriginal people of Victoria, as descendants of Australia's first people, with their diverse spiritual, social, cultural and economic relationship with their traditional lands and waters.

Section 19 Cultural Rights:

(2) Aboriginal persons hold distinct cultural rights and must not be denied the right, with other members of their community –

(a) to enjoy their identity and culture; and (b) to maintain and use their language; and (c) to maintain their kinship ties; and (d) to maintain their distinctive spiritual, material and economic relationship with the land and waters and other resources with which they have a connection under traditional laws and customs.

Human Rights Act 2004 (ACT)

27 Rights of minorities

Anyone who belongs to an ethnic, religious or linguistic minority must not be denied the right, with other members of the minority, to enjoy his or her culture, to declare and practise his or her religion, or to use his or her language.

The right to know the truth and the right of reply

International warrants

United Nations, Economic and Social Council, Commission on Human Rights, *Promotion and protection of human rights: impunity report of the independent expert to update the set of principles to combat impunity*, Diane Orentlicher, E/CN.4/2005/102/Add.1 8 February 2005:

All persons shall be entitled to know whether their name appears in State archives and, if it does, by virtue of their right of access, to challenge the validity of the information concerning them by exercising a right of reply. The challenged document should include a cross-reference to the document challenging its validity and both must be made available together whenever the former is requested. (Principle 17(b))

UN, Human Rights Council, Twelfth session, Agenda item 3, Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development, A/HRC/RES/12/12, 12 October 2009, Resolution adopted by the Human Rights Council, 12/12, Right to the truth, Agenda item 3.

Emphasizing that the public and individuals are entitled to have access, to the fullest extent practicable, to information regarding the actions and decision-making processes of their Government, within the framework of each State's domestic legal system, Recognizing the importance of preserving historic memory related to gross human rights violations and serious violations of international humanitarian law through the conservation of

archives and other documents related to those violations,

Convinced that States should preserve archives and other evidence concerning gross violations of human rights and serious violations of international humanitarian law to facilitate knowledge of such violations, to investigate allegations and to provide victims with access to an effective remedy in accordance with international law ...

Domestic warrants

Individual rights relating to correction which are not as wide as the right to the truth are included in domestic freedom of information and health records legislation, for example *Freedom of Information Act 1982* (Cwlth), Part V Amendment and Annotation of Personal Records; *Freedom of Information Act 1982* (Vic), Part V Amendment of Personal Records; *Health Records Act 2001* (Vic), Schedule 1.6. However, they do not extend to collective rights.

Endnotes

¹ The analysis of Indigenous human rights law and instruments undertaken by Dr Livia Iacovino and Professor Eric Ketelaar was funded by the Jean Whyte Bequest, <<http://www.infotech.monash.edu.au/research/centres/cosi/jeanwhyte-funded-projects.html>>. An invaluable contribution was made to this paper by the speakers and participants in the 2010 Australian Society of Archivists Conference in Melbourne, *Archives and indigenous human rights: towards an understanding of the archival and recordkeeping implications of Australian and international human rights for Indigenous Australians*, available at <<http://infotech.monash.edu.au/noncms/about/news/conferences/aihr/program.html>>. The Australian Research Council Linkage Project, 'Trust and Technology: Building an Archival System for Indigenous Oral Memory', brought together about one hundred Koorie and other Indigenous Australian people along with researchers from Public Record Office Victoria, the Koorie Heritage Trust Inc., the Victorian Koorie Records Taskforce, the Indigenous Issues Special Interest Group of the Australian Society of Archivists, and Monash University. Monash University was represented through a unique multidisciplinary partnership involving researchers from the Centre of Organisational and Social Informatics in the Faculty of Information Technology and the Centre for Australian Indigenous Studies. The main findings of the project highlight the need for the Australian archival profession to understand the priorities of Indigenous communities and embrace Indigenous frameworks of knowledge, memory and evidence, including knowledge that is stored and transmitted orally, available at <<http://www.infotech.monash.edu.au/research/centres/cosi/projects/trust/>>. The authors acknowledge the 81 participants from the Koorie communities of Victoria who agreed to be interviewed as part of the project, along with 13 archival service providers, managers and mediators who participated in stage 2, and members of the project's Advisory and

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² The Archives and Indigenous Human Rights (AIHR) workshop was sponsored by the Centre of Australian Indigenous Studies, Castan Centre for Human Rights Law, and Centre for Organisational and Social Informatics at Monash University and the National Archives of Australia, available at <<http://infotech.monash.edu.au/noncms/about/news/conferences/aihr/index.html>>. Participants came from all over Australia and engaged in vigorous debate and dialogue. Papers based on the AIHR workshop will be published in a forthcoming special issue of *Archival science, Keeping cultures alive: archives and Indigenous human rights*. A panel discussion at the ASA conference reported on the outcomes of the AIHR Workshop.

³ Australian Human Rights Commission, 'The Community Guide to the UN Declaration on the Rights of Indigenous Peoples', Canberra, AHRC, 2010, available at <http://www.humanrights.gov.au/declaration_indigenous/downloads/declaration_guide2010.pdf>.

⁴ Aboriginal and Torres Strait Islander Social Justice Commissioner Mick Gooda speaking at the AIHR workshop, 12 October 2010. The text of Commissioner Gooda's presentation is available at <http://www.hreoc.gov.au/about/media/speeches/social_justice/2010/20101012_interdisciplinary.html>.

⁵ United Nations General Assembly, *Declaration on the Rights of Indigenous Peoples*, 2007, available at <<http://www.un.org/esa/socdev/unpfi/en/drip.html>>, accessed October 2009.

⁶ United Nations, *Universal Declaration of Human Rights*, 1947, available at <<http://www.un.org/en/documents/udhr/index.shtml>>, accessed October 2009; United Nations, *Convention on the Elimination of Racial Discrimination* ('CERD'), 1965, available at <<http://www2.ohchr.org/english/law/cerd.htm>>, accessed October 2009; United Nations, *International Covenant on Civil and Political Rights* (ICCPR), 1966, available at <<http://www.austlii.edu.au/au/other/dfat/treaties/1980/23.html>>, accessed October 2009; United Nations, *International Covenant on Economic, Social and Cultural Rights* (ICESCR), 1966, available at <http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtsg_no=IV3&chapter=4&lang=en>, accessed October 2009; United Nations Human Rights Council, *Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity*, 1997 & 2005 (Joinet-Orentlicher Principles), available at <<http://daccessdds.un.org/doc/UNDOC/GEN/G05/109/00/PDF/G0510900.pdf?>>, accessed October 2009.

⁷ National Human Rights Consultation Committee, National Human Rights Consultation Report, September 2009, Commonwealth of Australia, available at <<http://www.humanrightsconsultation.gov.au/www/nhrcc/nhrcc.nsf/Page/Report>>. Both the Human Rights (Parliamentary Scrutiny) Bill 2010 and the Human Rights (Parliamentary Scrutiny) (Consequential Provisions) Bill 2010 are in their second reading, available at <http://www.lawcouncil.asn.au/shadomx/apps/fms/fmsdownload.cfm?file_uid=3D41F1E4-F32E-8495-F123-0D67BAAA589E&siteName=lca>.

⁸ Victoria, *Charter of Human Rights and Responsibilities Act 2006* (Vic), available at <http://www.austlii.edu.au/au/legis/vic/consol_act/cohrara2006433/>, accessed October 2009.

⁹ United Nations Human Rights Commission, Report of the Special Rapporteur on the situation of human rights and fundamental freedoms, Addendum, 'The situation of indigenous peoples in Australia', James Anaya, UN Doc A/HRC/15/37Add.4, 2010, available at <<http://unsr.jamesanaya.org/PDFs/Australia3.pdf>>, accessed July 2010.

¹⁰ First Archivists Circle, *Protocols for Native American Archival Materials*, 2007, available at <<http://www2.nau.edu/libnap-p/protocols.html>>, accessed April 2011.

- ¹¹ S McKemmish, S Faulkhead, L Iacovino, and K Thorpe, 'Australian Indigenous knowledge and the archives: embracing multiple ways of knowing and keeping', *Archives and manuscripts*, vol. 38, no. 1, 2010, pp. 27–50; Monash University Centre for Organisational and Social Informatics and Centre for Australian Indigenous Studies, Public Record Office Victoria, the Koorie Heritage Trust Inc., the Victorian Koorie Records Taskforce, and the Australian Society of Archivists Indigenous Issues Special Interest Group, 'Trust and Technology: Building an Archival System for Indigenous Oral Memory', Final Report of the Australian Research Council Project, 2009, available at <<http://www.infotech.monash.edu.au/research/centres/cosi/projects/trust/final-report/>>, accessed April 2011; *ibid.*, Statement of principles relating to Australian Indigenous knowledge and the archives, 2009, available at <<http://www.infotech.monash.edu.au/research/centres/cosi/projects/trust/deliverables/principles.html>>, accessed April 2011.
- ¹² Australian Minister for Indigenous Affairs, Jenny Macklin, announcing Australia's change of position on the Declaration on 3 April 2009, quoted in Australian Human Rights Commission, 2010, p. 12.
- ¹³ Aboriginal and Torres Strait Islander Social Justice Commissioner Mick Gooda, speaking at the AIHR workshop, 12 October 2010.
- ¹⁴ Australian Human Rights Commission, 2010, p. 40.
- ¹⁵ *ibid.*, Part 6 and p. 36.
- ¹⁶ S McKemmish, S Faulkhead, L Iacovino, and K Thorpe, pp. 27–50; Monash University Centre for Organisational and Social Informatics and Centre for Australian Indigenous Studies et al., 2009.
- ¹⁷ Terri Janke, AIHR workshop, 12 October 2010.
- ¹⁸ Australian Human Rights Commission, 2010, Part 3.
- ¹⁹ *ibid.*, p. 41.
- ²⁰ Tom Calma, Indigenous Issues in the Durban Review, Castan Centre Public Forum, *Can the UN combat racism? A preview of the Durban Review*, Melbourne, 2009, available at <<http://www.law.monash.edu.au/castancentre/events/2009/calma-paper.pdf>>, accessed 20 February 2009.
- ²¹ Monash University Centre for Organisational and Social Informatics and Centre for Australian Indigenous Studies et al., 2009.
- ²² Australian Society of Archivists, 'Policy statement on archival services and Aboriginal and Torres Strait Islander peoples', 1996, available at <<http://www.archivists.org.au/sitebuilder/about/knowledge/asset/files/4/policystatementonarchivalservice&a&tsipeoples.pdf>>; ATSI Library and Information Resources Network Protocols, updated version of 1995 'ATSI protocols for libraries, archives and information services', 2005, available at <<http://www.1.aiatsis.gov.au/atsilirn/home/index.html>>, accessed October 2009; First Archivists Circle; Australian Institute of Aboriginal and Torres Strait Islander Studies, 'Guidelines for ethical research in Indigenous studies', 2010, available at <<http://www.aiatsis.gov.au/research/docs/ethics.pdf>>; State Library of South Australia, 'Indigenous protocols and policy: digital repatriation policy', 2010, available at <<http://www.slsa.sa.gov.au/site/page.cfm?u=243>>; State Records New South Wales, 'Protocols for staff working with Indigenous people', 2008, available at <<http://www.records.nsw.gov.au/state-archives/resources-for/indigenous-people/files/Protocols%20for%20Staff%20Working%20with%20Indigenous%20People.pdf/view>>, accessed 30 October 2010; National and State Libraries Australasia, 'National policy framework for Aboriginal and Torres Strait Islander Library Services and Collections', 2007, NSLA, available at <<http://www.nsla.org.au/publications/policies/>>; Australian Heritage Commission, 'Ask first: a guide to respecting Indigenous heritage places and values', Australian Heritage Commission, Canberra,

2002, available at <<http://www.environment.gov.au/heritage/ahc/publications/commission/books/pubs/ask-first.pdf>>. The statement reads: 'The ASA endorses the principles and guidelines set out in the Aboriginal and Torres Strait Islander Protocols for Libraries, Archives and Information Services which were developed by the Aboriginal and Torres Strait Islander Library and Information Resource Network and published in 1995. ASA members are encouraged to become familiar with these Protocols and to support their implementation in the archives in which they are employed'. The 1995 Aboriginal and Torres Strait Islander Protocols for Libraries, Archives and Information Services were updated in 2005, but the ASA was not involved and has not endorsed the updated version.

²³ Australian Human Rights Commission, 2010, p. 20.

²⁴ Livia Iacovino, 'Rethinking archival, ethical and legal frameworks for records of Indigenous Australian communities: a participant relationship model of rights and responsibilities', *Archival science*, vol. 10, 2010, pp. 353–72.

²⁵ Australian Human Rights Commission, 2010, p. 25.

²⁶ *ibid.*, p. 50.

²⁷ *ibid.*, p. 33.

²⁸ Terri Janke, *Our culture: our future – report on Australian Indigenous cultural and intellectual property rights*, Michael Frankel and Company, Sydney, 1999, available at <<http://www.frankellawyers.com.au/media/report/culture.pdf>>; T Janke & Company, Indigenous Communal Moral Rights Bill 2003, 2007, available at <http://www.terrijanke.com.au/fs_topics.htm>.

²⁹ Terri Janke, AIHR workshop, 12 October 2010.

³⁰ Brad Morse, AIHR workshop, 12 October 2010.

³¹ Commonwealth of Australia, *Racial Discrimination Act 1975* (Cwlth), available at <http://www.austlii.edu.au/au/legis/cth/consol_act/rda1975202/index.html>, accessed October 2009.

³² UNESCO, Convention on the Protection and Promotion of the Diversity of Cultural Expression, available at <<http://www.unesco.org/new/en/culture>>; Convention for Safeguarding the Intangible Cultural Heritage, 2003, available at <<http://unesdoc.unesco.org/images/0013/001325/132540e.pdf>>.

³³ Australian Human Rights Commission, 2010, p. 33.

³⁴ G Williams, 'The Victorian Charter of Human Rights and Responsibilities' in H Sykes (ed.), *Future justice*, Sydney, NSW, 2010, pp. 136–50.

³⁵ United Nations Human Rights Council 1997 and 2005.

³⁶ H Fourmile, 'Who owns the past? – Aborigines as captives of the archives', *Aboriginal history*, vol. 13, 1989, pp. 1–2.

³⁷ Tom Nesmith, 'Still fuzzy, but more accurate: some thoughts on the "ghosts" of archival theory', *Archivaria*, no. 47, 1999, pp. 137–49; see also Jennifer Douglas, 'Origins: evolving ideas about the principle of provenance', in Terry Eastwood and Heather MacNeil (eds), *Currents of archival thinking*, Libraries Unlimited, Santa Barbara, 2010, pp. 23–43.

³⁸ Mark Poster, *What's the matter with the Internet?*, University of Minnesota Press, Minneapolis, 2001, p. 188.

³⁹ Randall C Jimerson, *Archives power: memory, accountability, and social justice*, Society of American Archivists, Chicago, 2009, p. 262.