Access and Use Policy

AIATSIS Collection

Table of Contents

1.0 Background and purpose

This policy sets out the conditions under which materials in the Australian Institute of Aboriginal and Torres Strait Islander Studies' (AIATSIS) collection may be accessed and used, with a particular focus on unpublished research materials.

AIATSIS is home to one of the world's premier collections of materials pertaining to Australian Indigenous Studies, including written works, photographs, sound recordings, moving image recordings, artworks and artefacts. In keeping with our purpose—building pathways for the knowledge of Aboriginal and Torres Strait Islander peoples to grow and be shared—AIATSIS is committed to making its collections as accessible as possible, whilst respecting relevant laws and cultural protocols.

1.1 Policy review

The AIATSIS Collection Access and Use Policy will be reviewed twelve months after its implementation and every two years thereafter.

2.0 About the AIATSIS Collection

The AIATSIS collection is immense and covers all aspects of Australian Indigenous studies. Our published holdings bring together items that are otherwise distributed across a multitude of collections worldwide that are often difficult to find and access, particularly by Indigenous communities. Our archival collection comprises mainly unique or rare materials, including well over 630,000 pictorial images, 12,000 manuscript titles, 40,000 hours of recorded sound, 16,000 film cans, 8,000 video titles and a small number of artworks and artefacts. The AIATSIS collection is of national and international importance, and is especially valued by Aboriginal and Torres Strait Islander peoples whose cultural and intellectual property it embodies.

A large number of unpublished and unique materials held by AIATSIS were created by its own research grantees. Very few of these items were created with public access in mind and as a result, access to approximately a quarter of our unpublished audiovisual holdings is restricted in some way, often due to secret/sacred or personal content. Just over 10% of manuscript materials are restricted on the same basis.

Figure 1: Approximate proportion of categories of access and use of audiovisual materials in the AIATSIS Collections
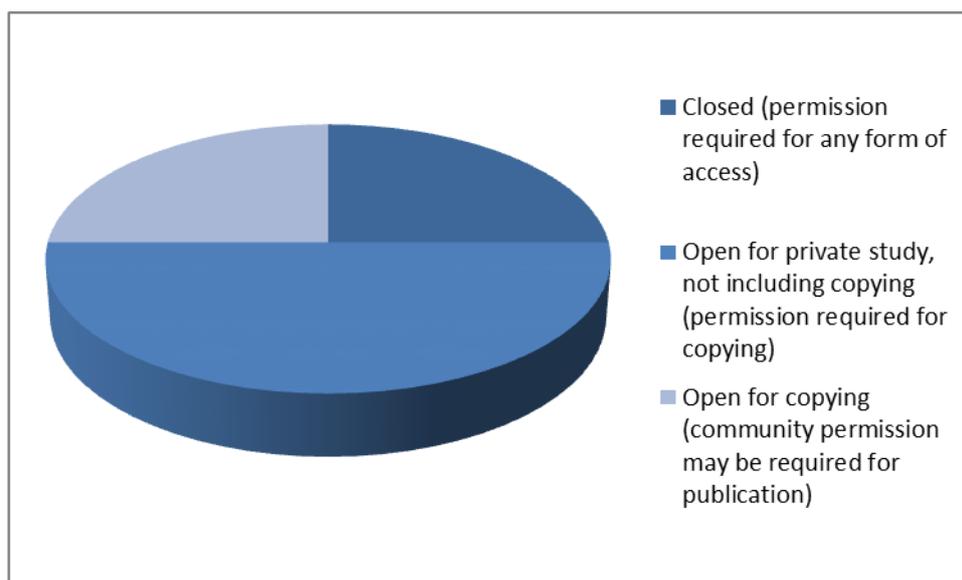
Figure 2: Approximate proportion of categories of access and use of unpublished print materials in the AIATSIS Collections
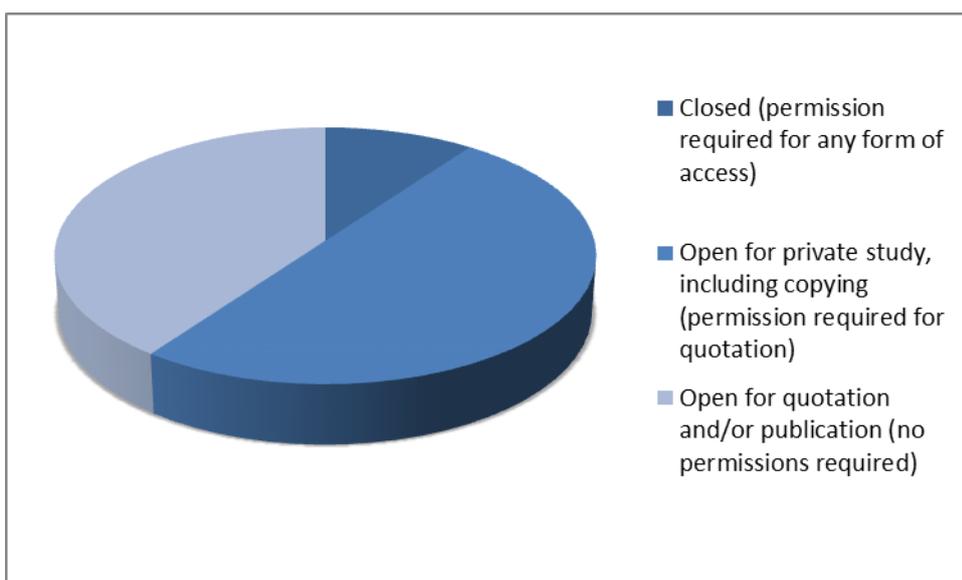
3.0 Access and Use of the AIATSIS Collection

3.1 Regulatory and Best Practice Framework

The AIATSIS Collection Access and Use Policy is underpinned by legislation, common law, case law and best practice protocols, namely:

- personal property law
- the law of bailment
- contract law
- the law of confidential information
- *Copyright Act 1968*

- *Australian Institute of Aboriginal and Torres Strait Islander Studies Act 1989*
- defamation law
- Bulun Bulun v R & T Textiles Pty Ltd
- *Guidelines for Ethical Research in Australian Indigenous Studies* (Australian Institute of Aboriginal and Torres Strait Islander Studies)
- *ATSILIRN Protocols for Libraries, Archives and Information Services* (Aboriginal and Torres Strait Islander Library, Information and Resource Network Inc.)
- Government 2.0

Access and use of published materials is limited by the Copyright Act. Access and use of unpublished material is commonly determined by deposit agreements, grant agreements, the Copyright Act and/or section 41 of the AIATSIS Act, which prohibits the disclosure of certain information or matter:

1. "Where information or other matter has been deposited with the Institute under conditions of restricted access, the Institute or the Council shall not disclose that information or other matter except in accordance with those conditions."
2. "The Institute or the Council shall not disclose information or other matter held by it (including information or other matter covered by subsection (1)) if that disclosure would be inconsistent with the views or sensitivities of relevant Aboriginal persons or Torres Strait Islanders."

Section 41 of the Act was designed to protect culturally sensitive material and the rights of Aboriginal and Torres Strait Islander peoples over their intellectual and cultural property, a right more recently recognised in the *United Nations Declaration on the Rights of Indigenous Peoples*, of which Australia is a signatory. Article 31 of the declaration recognises Indigenous peoples' rights to "maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions". The need to protect information and matter on this basis has been recognised since the inception of the Australian Institute of Aboriginal Studies (AIAS) and is reflected in the wording of research grant conditions across time and in the *Guidelines for Ethical Research in Australian Indigenous Studies.*

However, the AIATSIS Act was prepared at a time when very few of its clients were Indigenous. Strict adherence to Section 41(1) has on occasion made it difficult for Aboriginal and Torres Strait Islander clients to gain access to material of direct relevance to their family or cultural heritage. Section 41(1) does not recognise that sensitivities change over time or that individual donors and depositors—whilst often being well placed to convey the feelings of the people they worked with at the time the material was created—are often unable to speak for communities or even individuals in the long-term. These factors coupled with the inevitability that depositors lose contact with AIATSIS or pass away, has seen the introduction of a risk management approach based on the principles outlined below (section 3.1.1).

3.1.1 Primary principles of access and use

The administration of access and use will be based on two primary principles of purpose and capacity:

1. The AIATSIS Collections document the cultural heritage of Aboriginal and Torres Strait Islander peoples and are preserved primarily for their benefit and for the wider research community.
2. In accordance with its Act, AIATSIS retains the primary capacity of administering access to the collections.

And two principles of access and use:

1. Where access or use of material in the AIATSIS Collections is consistent with the above primary principles it is administrable under section 41 of the AIATSIS Act.
2. Where access or use is not consistent with one or both primary principles it becomes unadministrable under section 41 of the AIATSIS Act.

Where access or use of an item becomes unadministrable under section 41 of the AIATSIS Act the two primary principles of collection purpose and administrative capacity will be used to determine the appropriate access and use conditions.

3.2 Sensitive Content

As a repository for research data concerning Aboriginal and Torres Strait Islander peoples, AIATSIS regularly receives material featuring sensitive information. The information (including visual and aural information) may be culturally sensitive, including secret or sacred information, or it may be personal or defamatory in nature. It is likely that some of the material was collected with an obligation of confidence. AIATSIS may restrict access to sensitive content in accordance with section 41(2) of its Act or other relevant laws, even if the material is donated or deposited with no limitations on access and use.

Depositors, donors and AIATSIS grantees are required to inform AIATSIS when lodging unpublished materials containing sensitive information. This has not always happened in practice. Donors and depositors are often unsure of the content or its meaning, particularly in the case of obsolete audiovisual items or inherited material. Occasionally, a researcher will accrue a vast collection of materials but not have the time or equipment to document it adequately. It is therefore necessary for AIATSIS staff to review holdings for sensitive content during the process of describing and cataloguing items. We also receive advice from third parties on occasion.

Unpublished print materials flagged as sensitive are described on the AIATSIS online catalogue, Mura, as "closed access – reading" or, in the case of pictorial, audio or moving image materials, "restricted". Some materials that are closed or restricted do not feature sensitive content. In the past depositors sometimes restricted access to their materials with no explanation as to why. In other instances

the material was lodged without a deposit agreement or any explanatory information. In such cases AIATSIS treats the material as sensitive until the content has been reviewed by staff. Published materials may also contain sensitive information, particularly historical print publications. Depending on the nature of the sensitivity these items are sometimes removed from open stacks to reduce the chance of them being accessed unknowingly and causing upset or offence.

3.2.1 Accessing sensitive content

Sensitive unpublished materials that are closed due to deposit conditions may be accessed in accordance with those conditions. In most cases written permission must be obtained from the depositor.

3.2.1.1 Indigenous client requests to view sensitive material while visiting AIATSIS

Aboriginal or Torres Strait Islander clients may ask to view or listen to sensitive material with which they have a demonstrable connection, even if the depositor is unavailable to provide permission. In such cases a conflict between the primary principles of access and use (see section 3.1.2) arises and the material becomes unadministrable under section 41 of the AIATSIS Act. In these circumstances a staff member will first explain the nature of the sensitivity to ensure the client wishes to proceed. They will then complete an access and use decision form seeking permission from the Principal to provide access.

A demonstrable connection to the sensitive material must be indicated by the client in each request for access. This connection is measured both in terms of the client's relationship to the sensitive information in the material, and an examination of whether the access is appropriate given the nature of the sensitivity.

If access is approved, the client will be asked to sign an indemnity form to indemnify AIATSIS for any cost, liability, loss, damage, claim or expense incurred as a result of, or arising out of, accessing the materials. Please note this provision only applies to onsite access, not to use (copying). Section 4.3 provides general guidelines for accessing and using materials when depositors or copyright owners are not contactable.

3.2.1.2 Access and use of sensitive material owned or controlled by AIATSIS

Clients wishing to access or use unpublished sensitive materials owned or controlled by AIATSIS, including orphan works (see section 4.3) must first obtain permission from the relevant Aboriginal or Torres Strait Islander community, or in the case of personal or defamatory material, the relevant individual(s).

AIATSIS will supply a permission form to clients for this purpose, and upon request provide advice on how to seek the permission, including where possible, details of the relevant stakeholders in the sensitive material.

The client must return a signed copy of the permission form to AIATSIS before access and use of the relevant material is considered. If AIATSIS considers that the

form does not contain sufficient information to make the material available, it may request the client provide additional details before a decision is made.

If AIATSIS is satisfied with the details provided in the permission form, a staff member will complete an access and use decision form, seeking permission from the Director of Collections to provide access. The Director of Collections will make a decision on the request at his or her discretion, based on the information provided in the Permission Form and the Access and Use Decision Form and any other relevant information supplied.

If AIATSIS grants permission to use the material, the client will be advised of the decision and instructed to complete an indemnity form. Once this form is completed, AIATSIS will provide copies of the material to the client.

3.2.2 Handling and processing of sensitive material

Sensitive material is handled carefully by staff, and in the case of print and photographic material is stored separately. Other materials, including audio and moving image recordings, are not readily accessible by the public or non-Collections staff and while they may be handled by staff members, they are not played unless access conditions have been checked. Clients who are approved to view or listen to sensitive material will be warned that the staff member facilitating access may inadvertently see or hear part of the material. Male staff members facilitate access to restricted men's material and female staff members facilitate access to restricted women's material, but will not stay with the client unless requested. Clients viewing or listening to sensitive material do so in specially appointed areas, where they can view or listen to material without interruption.

It is often necessary for staff to view or monitor sensitive materials during the process of digitisation or documentation. This work is done in private and secure areas for visually sensitive material, or with headphones or in enclosed booths in the case of audio material. Every effort is made to ensure men's restricted materials are processed by male staff members and women's restricted materials are processed by female staff.

3.3 Traditional Knowledge and cultural expressions

The *United Nations Declaration on the Rights of Indigenous Peoples* recognises the right of Indigenous peoples to "maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions". These rights are captured in numerous longstanding protocols and reports providing guidance for best-practice management of Aboriginal and Torres Strait Islander collections, including the ATSILIRN Protocols and landmark works in the field of Australian Indigenous property management, such as *Our Culture: Our Future*. The AIATSIS *Guidelines for Ethical Research in Australian Indigenous Studies* includes several matching principles, for example "respecting, protecting and maintaining rights in the traditional knowledge and traditional cultural expressions of Indigenous peoples".

Many unpublished materials in the AIATSIS Collection embody traditional knowledge or cultural expressions, particularly photographs and audiovisual recordings. In many cases the knowledge or culture captured in an item is not in the public domain or may have been collected under obligations of confidence. Traditional knowledge and cultural expressions include, but are not limited to, records of communally owned ceremonies, science, technology, oral traditions, sports, games, designs and visual art.

3.3.1 Access and use of traditional knowledge and cultural expressions
Unpublished items featuring traditional knowledge and/or cultural expressions can be accessed for research or study in accordance with deposit agreements. Items not covered by deposit agreements, including those owned by AIATSIS, will be made available at AIATSIS's discretion.

Clients intending to publish an unpublished item or part of an item from the AIATSIS Collection which features traditional knowledge or cultural expressions must obtain permission from the relevant Aboriginal or Torres Strait Islander community prior to publication.

3.4 Categories of access and use

3.4.1 Research or study
Research or study encompasses materials accessed on-site or through document supply, as well as items copied for remote clients, which are not to be used publicly or reproduced further by the client.

Published print materials may be copied for research or study in accordance with the Copyright Act.

Unpublished materials may be copied for research or study in accordance with deposit agreements. If no deposit agreement is in place or if the item is owned by AIATSIS, it will be made available at AIATSIS's discretion. Please note that sensitive material is handled differently (see section 3.2.1). All clients are required to complete an indemnity form before access to unpublished materials is given.

3.4.2. Publication

3.4.2.1 Published collection materials
Publication of published collection materials, in whole or part, may be undertaken in accordance with the Copyright Act.

AIATSIS discourages clients from disseminating sensitive information, even if this information is already in the public domain.

3.4.2.2 unpublished collection materials
All clients must sign an indemnity form before accessing or using unpublished material in the AIATSIS collection. If a client wishes to publish material, in whole or

part, this must be clearly stated on the indemnity form. Where a client has already obtained copies of material for the purposes of research or study but their intended use changes, they should complete a separate indemnity form covering the new use.

AIATSIS will not release copies of unpublished material for publication purposes until all the necessary permissions have been obtained. AIATSIS will provide advice on whose permission must be sought in accordance with deposit agreements, the Copyright Act, and sections 3.2.1 and 3.3.1 of this policy. Permission may be required from depositors, copyright owners and Indigenous cultural owners. The material must be attributed or cited in accordance with section 3.6 of this policy.

Publication of AIATSIS-controlled unpublished material may be approved by the Manager of Access and Client Services but it is generally contingent on prior community approval as per section 3.3.1.

AIATSIS discourages clients from disseminating sensitive information, even if this information is already in the public domain.

3.4.3 Copying for other collecting organisations
AIATSIS recognises the rights of Aboriginal and Torres Strait Islander peoples to control their cultural heritage and intellectual property. We also acknowledge that government agencies and cultural institutions, including AIATSIS, are in the early stages of attaining cultural proficiency, including the development of policies and protocols respecting the rights of Indigenous peoples over their cultural and intellectual property. As such, AIATSIS does not provide copies of its unique unpublished holdings to other organisations for the purpose of collection-building, with the exception of local and regional Indigenous-run organisations whose primary constituents have cultural or family affiliations to the material. Such organisations include land councils, language centres, cultural centres, knowledge centres, keeping places and smaller organisations engaged in cultural heritage-related activities.

Depositor or copyright permissions may need to be obtained before material is copied and released. The permission form must describe the extent to which the material will be made available to others. Wherever possible, AIATSIS prefers to establish reciprocal relationships with Aboriginal and Torres Strait Islander organisations, whereby AIATSIS secures the long-term accessibility of items and the organisation provides local access, improved descriptions of material and up-to-date advice concerning sensitive content.

3.4.4 Principal's discretion
The Principal of AIATSIS may from time to time approve access and use of collection material in certain urgent circumstances where such access or use would support the aims of AIATSIS in a manner consistent with the views or sensitivities of relevant Aboriginal or Torres Strait Islander people. In these instances, an access and use decision form must be completed.

The Principal will make a decision on the request at his or her discretion, based on the information provided on the access and use decision form and any other relevant information supplied.

The Principal's permission must only be sought in exceptional circumstances. Wherever possible, public use of material must be consistent with section 3.4.2 of the Policy.

3.4.5 Depositor copies
Donors and depositors may obtain copies of their materials free of charge if available in digital form. Standard fees and waiting times apply to materials that are not yet available in digital form. AIATSIS reserves the right to decide when items will be digitised, based on preservation needs, content and demand. Donors and depositors should obtain permission from the relevant Aboriginal or Torres Strait Islander community if they intend to use the materials publicly.

3.4.6 Return of Materials to Indigenous Communities (ROMTIC) Program
AIATSIS encourages Aboriginal and Torres Strait Islander clients and community organisations to access its collection. All Indigenous clients are entitled to obtain digital copies of up to twenty photographic, audio or moving image items relating to their family or culture free of charge each calendar year through the Return of Materials to Indigenous Communities (ROMTIC) Program. We are currently exploring ways to deliver copies of digitised manuscript materials on the same basis. Clients may photocopy manuscript material onsite free of charge.

3.5 Copyright and sensitivity notices
Copyright and sensitivity notices are displayed close to all publicly accessible desks, computers, photocopiers and printers at AIATSIS. Clients must ensure that copies of materials from the AIATSIS collection are managed in accordance with these notices.

3.6 Attribution and citations

3.6.1 Citation of manuscript material
Manuscripts from the AIATSIS collection should be cited in the following way:

Title [or description] of Item, [manuscript title], Australian Institute of Aboriginal and Torres Strait Islander Studies, MS [number], Series [number], Folder or item [number].

For example:

Diary, Papers of Ann Curthoys, Australian Institute of Aboriginal and Torres Strait Islander Studies, MS 4186, Series 1, Item 1.

3.6.2 Citation of audiovisual material, including photographs

Audio, moving image and photographic material from the AIATSIS collection should be cited in the following way:

[Creator], Australian Institute of Aboriginal and Torres Strait Islander Studies, archive [recording/ image] [item number].

For example:

Luise Hercus, Australian Institute of Aboriginal and Torres Strait Islander Studies, archive recording HERCUS_L02-001122.

Or

Jeremy Beckett, Australian Institute of Aboriginal and Torres Strait Islander Studies, archive image BECKETT.J1.BW-N1234.12.

3.6.3 Attribution of audiovisual material, including photographs

Audio, moving image and photographic material from the AIATSIS collection used in public ways must be accompanied by an accurate and culturally sensitive form of attribution. This includes but is not limited to captions, announcements and "lower third" text in print and online publications (including social media), broadcasts and presentations.

Attribution of audio, moving image and photographic material form the AIATSIS collection should include the following:

Courtesy of AIATSIS, [creator] Collection, item [collection item number].

For example:

Courtesy of AIATSIS, Luise Hercus Collection, item HERCUS_L02-001122.

The attribution should also include accurate information about the content. Descriptions of items featuring Indigenous traditional knowledge or cultural expressions should be approved as part of the process of obtaining permission to publish from the relevant Aboriginal or Torres Strait Islander community. Please note that AIATSIS cannot guarantee that the information it holds on a given item is correct or culturally appropriate, for example captions for historical photographs.

4.0 Negotiating Access and Use

4.1 Permissions

Many unpublished items in the AIATSIS collection may only be accessed or used with permission from the depositor or copyright owner. AIATSIS supplies its clients with a standard permission form for this purpose, on which they must record their name and contact details, details of the requested material and—if the item is to be published—details of the proposed use. Sufficient information must be provided to

enable the depositor or copyright owner to make an informed decision. It is the client's responsibility to get the permission form signed. If AIATSIS is unable to release the owner's contact details, we will send the Permission Form on behalf of the client. If the owner has passed away or cannot be located, AIATSIS will undertake steps to establish the item's new status (see section 4.4).

Clients wishing to publish unpublished material from the AIATSIS collection which feature traditional knowledge or cultural expressions, including material owned or controlled by AIATSIS, must also obtain permission from the relevant Aboriginal or Torres Strait Islander community (see section 3.3). AIATSIS will provide a permission form for this purpose and guidance on how to seek community clearance.

4.2 Re-negotiating ownership or copyright

AIATSIS will contact depositors from time to time to renegotiate ownership and copyright of materials. We ask that ownership of the tangible property be transferred to AIATSIS via a Deed of Gift. If the donor is also the copyright owner of the material, they may also choose to transfer copyright or provide AIATSIS with a licence to use the material in ways ordinarily reserved by the copyright owner, via a Copyright Deed.

4.2.1 Transferring copyright to a third party
If copyright is to be transferred to a third party, it must be arranged by the depositor and evidence forwarded to AIATSIS.

4.3 Depositors and copyright owners who cannot be located

4.3.1 Grantee material and results
Grantee material has been deposited with the AIATSIS over many years and a variety of different terms and conditions. Grant agreements from 1997 onwards provided AIATSIS with a non-exclusive royalty-free perpetual license to use research materials and results for public access and research purposes; copying including to other formats; and reproduction. Grantees were required to provide advice concerning sensitive content. Grant conditions before 1997 varied greatly and in some cases copyright over grant material is owned by AIATSIS. Earlier grant conditions included the following clause: "after a period of five years the Institute shall have the discretionary right to use and authorise the use of all material except that classified as Closed and Confidential".

When an AIAS or AIATSIS grantee passes away and AIATSIS has not been informed of any beneficiaries, decisions around access and use of grant materials and results will be made by AIATSIS.

The first time an item is requested following the death of a grantee, staff will complete an access and use decision form seeking the Principal's permission for AIATSIS to make decisions regarding access and use. Unless an item features

sensitive content, it will made freely available for research or study. Grantee materials and results may be published in accordance with section 3.4.2.

Where AIATSIS becomes aware or is advised that a deceased grantee may have a beneficiary with an interest in the grantee materials, the AIATSIS will consult with that beneficiary to determine the continuing management of the materials.

4.3.2 Access and use of orphan works

The AIATSIS collection consists of a large volume of orphan works. In order to fulfil its statutory obligations, AIATSIS has developed the following policy to assist in making orphan works accessible and available to clients.

Where the copyright owner of collection material held by AIATSIS is unknown or cannot be located, AIATSIS may declare the material an orphan work where a reasonably diligent search has been undertaken to find the copyright owner, using available databases, records and knowledge, and the copyright owner cannot be identified. In conducting this search the AIATSIS will be guided by existing industry practices on orphan work collection management in Australia from similar cultural institutions or those in related industries. AIATSIS will record and archive all attempts to identify the copyright owner. Where the copyright owner cannot be identified or located, the material will be declared to be an orphan work for the purposes of this policy. Note that material whose copyright owners are unwilling to negotiate the use of their material (but whose identities and contact details are known) are not considered orphan works.

AIATSIS will follow the procedures set out in sections 4.3.2.1, 4.3.2.2 and 4.3.2.3 in declaring collection material to be an orphan work. Special procedures relating to different types of material and uses is also set out in those sections.

Generally, once an item of collection material has been declared to be an orphan work, AIATSIS will make decisions regarding its ongoing access and use. Unless an item features sensitive content, it will be made freely available for research or study. Clients wishing to publish orphan works must first obtain permission from AIATSIS and the relevant Indigenous community, as per section 3.4.2. All uses of orphan works must attribute the creator of the material, where possible. Where the AIATSIS authorises the use of orphan works, attribution will be made in accordance with section 3.6 of this policy. No exclusive use of orphan work material will be permitted.

If the copyright owner contacts AIATSIS at any stage, decisions regarding access and use will revert to the owner unless they decide to renegotiate ownership and/or copyright (see section 4.3).

4.3.2.1 Identifying orphan works - known copyright owner, owner not deceased
Staff will record all attempts to contact the copyright owner, where the rights holder is known. If the owner is known and there is no evidence they are deceased, the date and result of the following will be recorded:

- Contacting the depositor or copyright owner using their last registered address, email address and phone number
- Researching the AIATSIS collection, collection documentation and institutional records
- An online search
- An all staff email (only necessary the first time the item is requested)
- A search of the White Pages.

If the owner is not located, an access and use decision form may be completed and signed by the Principal authorising one-off access and use of the item. A signed permission form from the relevant Aboriginal or Torres Strait Islander community must be attached if the client wishes to publish the item. The item is not yet classified as an orphan work.

For an item to be classified as an orphan work, the following additional steps must be completed. Please note AIATSIS does not currently undertake these steps due to staffing constraints. The date and result of the following should be recorded:

- Electoral roll search
- Contacting relevant professional associations (if applicable)

An access and use decision form should be completed for the Principal's signature, detailing the results of the above steps and recommending the item be formally recognised as an orphan work.

4.3.2.2 Identifying orphan works - known copyright owner, original owner deceased
Staff will record all attempts to find and contact the owner's beneficiaries or next of kin. The date and result of the following will be recorded:

- Evidence of the owner's passing, for example a death notice, obituary or email advice from a third party
- Researching the AIATSIS collection, collection documentation and institutional records
- Contacting at least one person who knew the depositor
- An online search
- An all staff email
- A search of the electoral roll

If the owner's beneficiary is not identified, an access and use decision form may be completed and signed by the Principal authorising the item's formal recognition as an orphan work.

4.3.2.3 Identifying orphan works – unknown copyright owner
The following procedures apply to the use of an orphan work where the copyright owner of a collection item is unknown, and AIATSIS has conducted a reasonably

diligent search for the owner, with no success, using available resources and industry guidelines.

If a copyright owner is unknown, the item of collection material is considered an orphan work. An access and use decision form may be completed and signed by the Principal authorising the item's formal recognition as an orphan work. Details of how the material came into the collection should be included as well as any attempts to identify the owner. If the provenance of the item is known, attempts will be made to consult the donor, relevant Indigenous stakeholders and other cultural institutions with similar holdings.

4.4 Requests to change conditions of access

Depositors, donors and members of the public, particularly Aboriginal and Torres Strait Islander people, are encouraged to provide advice and information about materials in the AIATSIS collection by completing a collections information form. AIATSIS uses this information to determine whether an item features sensitive content and should be managed accordingly (see section 3.2.1). The information may also be used to determine which individuals or organisations may be consulted for public use of material (see section 3.4.2).

Formal requests to change ownership or copyright status must be negotiated directly with the depositor or copyright owner (see sections 4.2).

4.5 Decision register

The Access and Use Decision Register records all decisions made against this policy. It is a central file for access and use decisions forms, indemnity forms and permission forms.

Appendices

(A) Glossary

Access
Access means reading, viewing or listening to an item. It does not mean copying, quotation or publication.

AIAS
The Australian Institute of Aboriginal Studies (AIAS) commenced operations in 1961 with an interim council. It was formally established by the AIAS Act in 1964. In 1989, the AIAS Act was replaced by the AIATSIS Act.

Copyright Act
Copyright Act refers to the *Copyright Act 1968* (Commonwealth), including all subsequent revisions and updates and all associated regulations, or any legislation which supersedes or replaces that Act.

Copyright Deed
A Copyright Deed is used to transfer copyright to AIATSIS; bequeath copyright to AIATSIS; or grant AIATSIS a non-exclusive, royalty-free, worldwide, perpetual licence to exercise all of the exclusive copyright rights set out in the *Copyright Act 1968*.

Deed of Gift
A Deed of Gift is used to transfer ownership of tangible property to AIATSIS. It does not transfer copyright. It is AIATSIS' preferred means of acquiring unpublished materials.

Deposit agreement
A deposit agreement is a contract between AIATSIS and a depositor, which specifies how an item or collection of items may be accessed and used by others.

Depositor
A depositor is a person or group who has lodged unpublished material at AIATSIS to ensure its ongoing accessibility but has not transferred ownership or copyright. Conditions of access for deposited materials are set out in deposit agreements. AIATSIS depositors include researchers, authors, photographers, film makers and the general public.

Donor
A donor is a person or group who has donated material to AIATSIS using a *Deed of Gift* or a *Transfer of Ownership form*.

Grantee

A grantee is an AIAS or AIATSIS funded researcher (1964-2011) contracted to undertake a research project. Grantees were required to lodge their materials and results with AIATSIS/AIAS, as detailed in grant conditions and/or Deeds of Grant.

Grantee Research material

Grantee research materials are those created by AIAS and AIATSIS grantees while undertaking fieldwork, including but not limited to photographs, sound recordings, moving image recordings and field notes.

Grantee research results

Grantee research results are items created to fulfil grant requirements, not created while undertaking fieldwork. They include but are not limited to field work reports and other written works.

Orphan work

An orphan work is an item whose copyright owner is unknown and/or cannot be located. The author or creator of an orphan work is not necessarily the copyright owner of the work – the author may be identifiable and locatable, but the work may still be an orphan work if the rights holder cannot be identified or found. Identification of the author or creator of a work does not preclude a work from being an orphan work.

Publication

For the purposes of this policy, publication refers to any form of public use, including but not limited to print publication, e-publication, web use, social media, broadcast and telecast, internet distribution including social media, exhibitions, seminars, and conference presentations.

Research or study

Research or study refers to non-public use of material. A person who has obtained a copy of an item for research or study may not make further copies or share the item with other people.

Sensitive content

Material is considered sensitive if it is defamatory, personal in nature or culturally restricted, including secret or sacred material.

Traditional cultural expressions

Traditional cultural expressions are items which embody communally owned identity and heritage, including but not limited to music, dance, language, art, designs, names, signs and symbols, performances, ceremonies, handicrafts and narratives.

Traditional Knowledge

Traditional knowledge includes proficiency, practices, skills, and innovations developed, sustained and passed on from generation to generation within an

Aboriginal or Torres Strait Islander community. It may include but is not limited to knowledge relating to agriculture, science, technology, ecology or medicine.

Transfer of ownership form

The Transfer of Ownership form was used by AIATSIS in the past to transfer ownership of tangible property to AIATSIS. It has been superseded by the [Deed of Gift](#).

Use

Use includes copying (even for private study), quotation and publication.

(B) Forms

The following forms are used to support the obligations in this policy.

Permission Form

The Permission Form is issued to clients who need to obtain permissions from depositors, copyright owners or Indigenous communities prior to accessing or using items in the AIATSIS collection.

Indemnity Form

An Indemnity Form must be completed by all clients wishing to:

- obtain access to sensitive Indigenous collections (section 3.2.1); or
- obtain copies of unpublished materials from the AIATSIS collection (section 3.4.1).

This form sets out the purposes or intention of the access or use being granted. The client must make a legal declaration that he or she will only use the collection material for the purposes and in the ways set out in the form itself. The indemnity form is a legally binding document.

Access and Use Decision Form

The Access and Use Decision Form is an internal form used for seeking permission from the Principal or delegate for access and use in certain situations outlined in the AIATSIS Collection Access and Use Policy.

Collections Information Form

The Collections Information Form is used by anybody wishing to provide information about items in the collection. It is not an agreement. Collection Managers may however decide to identify material as "sensitive" based on the information provided.

(C) AIATSIS permissions

The following table sets out whose approval must be sought when internal AIATSIS permissions are required in accordance with the AIATSIS Collection Access and Use Policy. The primary (preferred) approver must always be consulted if available. If the primary approver is unavailable, the person acting in their position or the substitute approver may grant permission. All decisions must be recorded on an access and use decision form, filed in the access and use decision register.

Section	Description	Preferred or primary approver	Substitute approver
3.2.1.1	Onsite access to sensitive material by Indigenous clients with a connection to the material, in cases where the depositor cannot be contacted for permission.	Principal	Deputy Principal
3.2.1.2	Access or use of sensitive material owned or controlled by AIATSIS with permission from the relevant Indigenous community	Director of Collections	Manager of Access and Client Services
3.4.2	Use (publication) of non-sensitive material owned or controlled by AIATSIS with permission from the relevant Indigenous community.	Manager of Access and Client Services	Director of Collections *or* the relevant Collection Manager
3.4.4	Principal's discretion for access and use in certain urgent circumstances.	Principal	Deputy Principal
4.3	Permission for AIATSIS to make decisions about access and use of materials when the depositor or copyright owner cannot be identified or located.	Principal	Deputy Principal