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# Native Title, the separation of families and official records

## Guideline

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## Table of Contents

**Introduction ..... 3**

**The separation of families ..... 4**

**Records relating to Native Title ..... 4**

**Which records are affected under Native Title?..... 4**

**Are agencies authorised to make determinations regarding Native Title relevancy? ..... 5**

**What if we are unsure of a record’s relevance?..... 5**

**What about permanent records and Native Title? ..... 6**

**The sentencing of records ..... 6**

**The transfer of records ..... 6**

**The impact on recordkeeping systems..... 6**

**Access to records relating to Native Title or separation of families ..... 7**

**Further Information ..... 7**

**Glossary ..... 7**

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# Native Title, the separation of families and official records

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## Introduction

This information sheet considers the disposal of records in relation to Native Title and Separation of Families issues. Records that shed light on these two issues should not be disposed of, even if they are contained within a series or records that otherwise have only temporary value. Native Title and the Separation of Families must be considered in relation to the disposal of **any** official record.

# Native Title, the separation of families and official records

Guideline - Valid 2003-01-01 / 2007-01-01

## The separation of families

State Records endorses *Bringing them Home: the Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*. Recommendation 21 of the Inquiry states:

"That no record relating to Indigenous individuals, families or communities or to any children, Indigenous or otherwise, removed from their families for any reason, whether held by government or non-government agencies, be destroyed".

State Records will not authorise the destruction of records that are of relevance to re-establishing family links.

Such records include those relating to the adoption and foster care of children; the admission of children to institutions such as Colebrook Home; and welfare officers' reports. They also include, less obviously, police reports, the minutes of shire meetings, and medical records where these have relevance to the removal of children from their parents. Some such records will be relevant to patterns of removal of children and should be retained even though no individuals are named.

## Records relating to Native Title

Government agencies in South Australia have a crucial role to play in relation to native title claims. As a party to native title claims, as well as holding the largest information source for indigenous claimants, it is vital that government agencies properly manage records relevant to native title claims. Agencies must ensure that they are taking measures to retain those records that may help to support or defend a claim, as destruction of such records may expose their agency, and the government in general, to large financial and legal penalties.

## Which records are affected under Native Title?

Agencies should use the guideline, *Identifying documents which may be relevant to Native Title*, attached to General Disposal Schedule 16, to assess whether records are potentially relevant to a native title claim. This guideline discusses and gives examples of four categories of records which may be relevant, that is, records relating to:

- ▶ land tenure;
- ▶ land use;
- ▶ land management; and
- ▶ Aboriginal occupation or use of the land.

The guideline also notes that such records may come in a variety of mediums including:

- ▶ correspondence and journals;
- ▶ indexes and registers;
- ▶ maps, charts and plans;
- ▶ audio tapes and sound recordings; and

# Native Title, the separation of families and official records

Guideline - Valid 2003-01-01 / 2007-01-01

- ▶ diagrams, photographs, sketches and slides.

Such records could include police station journals, certificates of title, licences, interviews with Aboriginal people, mining reports, surveyors' journals and note-books, records relating to the development of enterprises, court records, employment agreements, mission records, housing records, documentation of indigenous flora and fauna, and documentation of features of the landscape. This list is by no means exhaustive, and the information in GDS 16 should be used to inform the process of discovery of records relating to Native Title.

## Are agencies authorised to make determinations regarding Native Title relevancy?

South Australian agencies are authorised to determine that records do not have relevance to a claim, but this decision **must** be made through the use of the guideline *Identifying documents which may be relevant to Native Title*. In these instances the original sentence applied to the records will remain in force, resulting in the immediate destruction of some records, and the temporary and permanent retention of others.

## What if we are unsure of a record's relevance?

Where an agency is unsure of the potential relevance of records to Native Title, it must:

- ▶ Seek a legal opinion from the Crown Solicitor's Office, Native Title Section, as to the relevance of the records; and
- ▶ Retain the records until the opinion has been provided.

Should the Crown Solicitor's Office determine that the records are relevant to Native Title then the agency **must** sentence the records using General Disposal Schedule 16<sup>1</sup>. If, upon review by the Crown Solicitor's Office, no relevance to a claim is established, then the original disposal sentence applied to the records shall come into force.

The Native Title Section of the Crown Solicitor's Office is the final authority to determine relevance of records to a claim. The Native Title Section can be contacted on (08) 8207 1691. Unless the Native Title Section of the Crown Solicitor's Office indicates otherwise, agencies must preserve records relevant to Native Title until 31 December 2024. This retention advice is subject to further review in 2010.

Thus, it is possible that agencies will have to apply a longer retention period to the record than would otherwise be the case. Generally speaking, whenever it is possible to apply more than one disposal class to a record, the **longer** retention period must be applied.

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<sup>1</sup> Please note that the record retention timeframe in General Disposal Schedule 16 is confined to records that have already been sentenced as temporary value records. Records that have been sentenced as permanent value records retain their permanent status, even after they have been assessed as either relevant or irrelevant to a native title claim. Generally speaking, the guideline *Identifying documents that may be relevant to Native Title*, attached to GDS 16, and the record retention requirements of GDS 16 are only applied **after** a record has been sentenced, and in all such cases the **longer** retention period applies.

# Native Title, the separation of families and official records

Guideline - Valid 2003-01-01 / 2007-01-01

## What about permanent records and Native Title?

Should records of permanent value also be identified as being of relevance to Native Title, a detailed listing of those records must still be referred to the Native Title Section of the Crown Solicitor's Office.

## The sentencing of records

Agency operational Records Disposal Schedules may be used for the sentencing of records with relevance to the Separation of Families; General Disposal Schedule 16 for records with relevance to Native Title.

## The transfer of records

From time to time agencies may need to transfer certain records to another agency, to another level of government or, in the case of privatisation, to a private sector operator.

Records identified, as relevant to either native title or separated families must not be transferred without prior approval from Native Title Section.

## The impact on recordkeeping systems

Existing Records and Document Management systems in use in SA Government agencies and Local Government authorities are not generally established to identify native title records or the records of Aboriginal or Torres Strait people as separate records.

In most cases relevant information will be incorporated within a record title or subject. Care will need to be taken to ensure that only valid and reliable information should be included. The fact that a particular name, for example, is common in the Aboriginal community is not sufficient grounds for identifying and flagging the records as relevant.

Only named individuals that can be identified as people of Aboriginal or Torres Strait Islander descent should be identified in relevant records.

The capture of, ongoing management and access to records relevant to native title and separation of family records that contain information on named individuals, should comply with Information Privacy Principles.

Agencies which have established informal secondary records management tools such as spreadsheets or databases to document, manage and track relevant native title and separation of family records, must ensure that such records are managed in accordance with the *Adequate Records Management Standard and Guidelines (May 2002)*.

# Native Title, the separation of families and official records

Guideline - Valid 2003-01-01 / 2007-01-01

## Access to records relating to Native Title or separation of families

The records relating to Native Title and the Separation of Families can be especially sensitive. Access to relevant records needs to be managed with particular attention to privacy and the need to protect and respect records relating to Aboriginal tradition.

Advice on access to records relevant to Native Title and the Separation of families can be provided by the State Record's Aboriginal Services Team.

<http://www.archives.sa.gov.au/contact.html>

## Further Information

For further information visit the State Records website. <http://www.archives.sa.gov.au>

## Glossary

State Records has produced an extensive Glossary of Records Management Terms. This can be accessed and downloaded from the Adequate Records Management, publications section of the State Records website, <http://www.archives.sa.gov.au>.