

## Native Title

### 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 information assets that are of relevance to re-establishing family links. Native Title and the Separation of Families must be considered in relation to the disposal of any information asset.

Information assets that shed light on these two issues should not be disposed of, even if they are contained within a series or information assets that otherwise have only temporary value.

The term 'information asset' incorporates the definition of official record as defined by section 3(1) of the *State Records Act 1997* (SR Act), and includes information, data and records, in any format (whether digital or hardcopy), where it is created or received through the conduct of government business.

Such information assets 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.
- » police reports, the minutes of shire meetings, and medical records where these have relevance to the removal of children from their parents.

Any information assets relevant to the patterns of removal of children must 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 information assets relevant to native title claims.

Agencies must ensure that they are taking measures to retain those information assets that may help to support or defend a claim, as destruction of such information assets may expose their agency, and the government in general, to large financial and legal penalties.

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## Which information assets 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* (GDS 16), to assess whether information assets are potentially relevant to a native title claim. This guideline discusses and gives examples of four categories of information assets which may be relevant, that is, information assets relating to:

- » land tenure
- » land use
- » land management, and
- » Aboriginal occupation or use of the land.

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

- » correspondence and journals
- » indexes and registers
- » maps, charts and plans
- » audio tapes and sound recordings, and
- » diagrams, photographs, sketches and slides.

Such information assets 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 information assets relating to Native Title.

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

South Australian agencies as defined in section 3 of the SR Act which includes State Government agencies, Local Government authorities and Universities, are authorised to determine that information assets 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 information assets will remain in force, resulting in the immediate destruction of some information assets, and the temporary and permanent retention of others.

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## How to determine an information asset's relevance

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

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

Should the Crown Solicitor's Office determine that the information assets are relevant to Native Title then the agency must sentence the information assets using GDS 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 information assets shall come into force.

The Native Title Section of the Crown Solicitor's Office is the final authority to determine relevance of information assets to a claim. The Native Title Section can be contacted on (08) 7322 7000. Unless the Native Title Section of the Crown Solicitor's Office indicates otherwise, agencies must preserve information assets relevant to Native Title until 31 December 2024.

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

## What about permanent information assets and Native Title?

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

### The sentencing of information assets

Agency operational Records Disposal Schedules may be used for the sentencing of information assets with relevance to the Separation of Families; GDS 16 for information assets with relevance to Native Title.

### The transfer of information assets

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

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

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<sup>1</sup> Please note that the record retention timeframe in GDS 16 is confined to information assets that have already been sentenced as temporary value information assets. Information assets that have been sentenced as permanent value information assets 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** an information asset has been sentenced, and in all such cases the **longer** retention period applies.

### 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 information assets or the information assets of Aboriginal or Torres Strait people as separate information assets

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 information asset as relevant.

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

The capture of, ongoing management and access to information assets 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 information assets are managed in accordance with the *Information Management Standard* and the *Information Governance Guideline*.

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

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

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

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