



COUNCIL OF AUSTRALASIAN ARCHIVES
AND RECORDS AUTHORITIES

CAARA Policy 10

CAARA Policy 10 – Management of Records Relating to Native Title Claims

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CAARA acknowledges the traditional custodians of Country and their continuing connection to land, sea and community.

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Introduction

All Federal, State and Territory governments are likely to find themselves involved, to varying degrees, as parties to native title claims. This involvement results, in part, from the operation of past policies of these governments in regard to the affairs and territory of Indigenous populations.

The implementation of these policies will be reflected in the records of the government agencies. The official archival authorities of the Commonwealth, the States and Territories may be asked to assist their respective governments in the resolution of native title claims. This will occur either as a result of their role as custodians of official records documenting the policies of government, or as a consequence of their role as the records management experts for their relevant jurisdictions.

A significant part of the work of archival authorities will be the identification of records that may be relevant to the support or defence of native title claims. Due to the potential extent of the records that may be relevant, it is appropriate for guidelines to be developed to help identify possible records. With this in mind the former Council of Federal, State and Territory Archives (COFSTA) requested that the former Current Records Issues Working Group examine this matter and prepare a guideline to help member institutions identify records relevant to native title claims.

Purpose of this guideline

This guideline has been developed to help the Council of Australasian Archives and Records Authorities (CAARA) member institutions identify records that establish an ongoing connection to the land and/or sea by Indigenous peoples, or breaks in that ongoing connection.

It should be noted that records that may be relevant to native title claims may also, by virtue of the information they contain, be relevant to Indigenous peoples trying to re-establish family links that may have been broken under the previous separation policies of relevant governments. CAARA member institutions may have already identified some records relating to this latter purpose. Any such exercises may help contribute to the development of jurisdiction-specific guidelines on records relating to native title claims.

Scope of this guideline

It is not possible for this guideline to identify all the relevant record types and categories that may relate to native title claims due to the wide range of records that may be relevant. Rather the guideline attempts to provide some pointers to the relevant government functions and past business activities that may be relevant to native title claims.

It is important to note that native title claims are not limited to claims over land. Native title may also be claimed over maritime areas of significance to Indigenous peoples. This guideline therefore includes references to government functions and activities involving some maritime matters.

Sources for this guideline

The following institutions were consulted during the development of the 2002 guideline:

- National Archives of Australia
- Archives New Zealand
- National Archives of South Africa
- National Archives and Records Administration (USA)
- National Archives of Canada

These national archival authorities were consulted in the expectation that they would have addressed the issue of identifying relevant records – in response to native title claims that have been completed, or are, currently under way within their jurisdictions. This was not the case in 2002 and it appears that these authorities are yet to produce any formal guidelines that assist research into native title claims in their jurisdictions.

Locally, archival authorities in Queensland and South Australia have attempted to address the record issues inherent in native title claims. The following documents, developed for these jurisdictions, were also consulted during the preparation of these guidelines:

- *General Disposal Schedule 16*, State Records of South Australia (available at <http://www.archives.sa.gov.au/publications/index.html>)

- *Guidelines for the retention of records relevant to native title claims*, Queensland State Archives (available at http://www.archives.qld.gov.au/index_publications.html)

Appraisal of records for native title purposes

CAARA member institutions are unlikely to be involved with the actual research into specific records relating to native title claims. Rather they will be involved with the appraisal and management of records for legal discovery purposes. To this end, it is recommended that CAARA member institutions adopt the following criterion to assess records of possible relevance:

- Records that contain information that will help to establish an ongoing connection with the land and/or sea according to traditional laws and customs, going back to the claiming of sovereignty over that section of land or sea by the British government.

Such records may be of temporary or archival value.

It is also recommended that this criterion be applied, in the first instance, to those records that fall within the broad functional areas of government activity that are most likely to be relevant to native title claims.

Government functions likely to be relevant to native title claims

It is difficult to provide a definitive list of all the record types and categories that are likely to be relevant to native title claims given the breadth of material that may help to prove an ongoing connection. However, a number of functions performed by governments are more likely than others to contain documentation that will support a claim. These functional areas are as follows:

- Indigenous affairs administration
- Social welfare
- Land and marine management
- Land tenure
- Land and marine usage
- Land surveying
- Anthropological research

- Genealogy
- Justice administration
- Employment

In Australia many of these functions were carried out as part of a broader “colonial administration” function prior to Federation.

The listed functions include a number of activities that are likely to be pertinent to native title claims. These activities are expanded in greater detail in the Appendix to this guideline.

Record formats

Paper-based records (such as files, cards, volumes, maps, photographs, plans and charts) are likely to be the most common record format that will be identified during native title discovery exercises. This is certainly the case for most nineteenth century records. However, records created during the twentieth century that are relevant to native title research may be more varied and may include the following formats:

- Sound recordings (including audio cassettes, reel-to-reel tapes and gramophone discs)
- Paper-based photographic prints
- Photographic transparencies and slides
- Photographic negatives (including glass plate and film-based)
- Video tapes
- Cine film (including newsreels and other documentary footage)
- Computer tapes and disks
- Microfiche
- Microfilm
- Digital images

Disposal of records relevant to native title claims

Current disposal authorities may cover records relating to the functions and activities outlined in this guideline. Such instruments may have been approved before native title research needs were known. To ensure that relevant records are not unwittingly destroyed, archival authorities should provide appropriate guidance to agencies and ensure that mechanisms are in place to prevent inappropriate destruction. This will help to ensure that records that may be relevant to native title claims are identified and managed appropriately. Archival authorities may choose a variety of mechanisms, including disposal freezes, to safeguard the destruction of relevant records pending re-appraisal.

Another issue that warrants attention concerns the disposal of records that are identified as having actual relevance at the completion of claim proceedings. Archival authorities should consider whether legal proceedings relating to native title merit keeping such records for greater periods of time than records relating to other types of legal proceedings.

Records in privatised organizations

The increasing devolution of government functions to the private sector may impact upon native title claims. Archival authorities should ensure that any existing records that may be relevant to native title claims and which are also subject to transfer to private organizations, are specifically mentioned in the access and disposal provisions of the contractual agreements with the new custodians.

Access to records relevant to native title claims

The issue of access to records relevant to native title claims raises a number of concerns, some of which differ from access where native title is not involved.

It is likely that parties to a claim may wish to have access to the same record, but for different reasons. Archival authorities that are custodians of records of potential interest should ensure that they provide assistance on equitable terms to all parties to a claim. Failure to do so may create, or exaggerate, concerns among claimants regarding bias.

Archival authorities should also ensure that ongoing access to records for discovery or research purposes does not result in damage. While this issue

arises when providing access to records for other reasons, there may be an increased risk of damage to records accessed for native title purposes due to the duration of proceedings and potential number of claimants. Where possible, alternative forms of access should be provided (for example, the production of certified copies of records).

Appendix – Identification of records for native title claims

Activities found under the relevant functions

Due to the vast number of records that could be relevant to native title claims it is not possible for this guideline to contain a detailed listing of all possible record types and categories. Rather this Appendix attempts to flesh out relevant activities under the broad functional headings that are included in the guideline. It is possible that additional government functions and business activities, and their related records, will be identified, as claims are resolved. Accordingly, CAARA member institutions should maintain close working relationships with their respective government solicitors to monitor changing patterns in record discovery and research.

1. Indigenous Affairs Administration

(Activities under this function may deal with the administration by relevant governments of all aspects of the lives and affairs of Indigenous peoples prior to the abandonment of such policies.)

The activities under this function that are likely to be relevant to native title claims include, but are not limited to, the following:

- Family separations due to welfare issues (including adoption and fostering arrangements)
- Financial management for Indigenous peoples
- Management of Indigenous missions/reserves
- Rations distribution to Indigenous peoples
- Formal and other inquiries into Indigenous affairs administration
- Education programs
- Public housing programs

- Health programs for Indigenous peoples (including preventative health programs)
- Sanitation programs

2. Social Welfare

(Activities under this function may deal with the administration of health and welfare programs by relevant governments that included Indigenous peoples in the scope of the programs.)

The activities under this function that are likely to be relevant to native title claims include, but are not limited to, the following:

- Education programs
- Public housing programs
- Sanitation programs

3. Land and Marine Management

(Activities under this function may contain information about proposals, plans, studies about potential alienation and use of land and marine areas for various purposes.)

The activities under this function that are likely to be relevant to native title claims include, but are not limited to, the following:

- Environmental impact assessment
- Development planning
- Town planning
- Regional planning
- Land valuation
- Indigenous flora and fauna management

4. Land Tenure

(Activities under this function may deal with the ownership or control of land of various types of landholder.)

The activities under this function that are likely to be relevant to native title claims include, but are not limited to, the following:

- Land acquisition
- Land alienation
- Land easements and rights of way
- Land exchanges
- Freehold title and grants to land
- Land leases, and the surrender of such leases
- Land licences
- National parks
- Land reserves
- Land resumption
- Land transfers

5. Land and Marine Usage

(Activities under this function may deal with how and by whom land and marine areas are used, and for what purposes.)

The activities under this function that are likely to be relevant to native title claims include, but are not limited to, the following:

- Agriculture
- Aquaculture
- Car parks
- Fishing (including pearling)
- Forestry
- Harvesting (and use of indigenous flora and fauna)
- Housing
- Industry

- Irrigation
- Land for special purposes (including schools, hospitals, cemeteries and reserves for Indigenous peoples)
- Mining
- National parks
- Pastoral activities
- Public works and maintenance of the same
- Railways, roads and highways
- Telecommunications facilities
- Zonings for development and land use purposes

6. Land Surveying

(Activities under this function may deal with the early colonial exploration.)

The activities under this function that are likely to be relevant to native title claims include, but are not limited to, the following:

- Assistance provided to surveyors by Indigenous peoples
- Engagement of Indigenous peoples as guides
- Identification of edible flora and fauna
- Ration allocations
- Survey reporting that refers to the Indigenous peoples encountered by surveyor

7. Anthropological Research

(Activities under this function may deal with the identification and documentation of Indigenous tribal groups and the documentation of the tribal practices and social structures.)

The activities under this function that are likely to be relevant to native title claims include, but are not limited to, the following:

- Establishment and mapping of tribal boundaries by museum and anthropological experts
- Identification and documentation (including oral forms) by anthropological and museum experts of the following:
 - the language of tribal groupings
 - the social and religious practices of tribal groupings
 - the artefacts produced by tribal groupings
 - histories of tribal groupings and their surroundings
 - genealogies of tribal groupings
 - artworks of tribal groupings

8. Genealogy

(Activities under this function may deal with the registration of births, deaths and marriages.)

The activities under this function which are likely to be relevant to native title claims include, but are not limited to, the following:

- Registration of births
- Registration of deaths
- Registration of marriages

9. Justice Administration

(Activities under this function may deal with the application and the administration of justice that impact upon Indigenous peoples.)

The activities under this function that are likely to be relevant to native title claims include, but are not limited to, the following:

- Police station records
- Police patrol records
- Court records
- Prison records

10. Employment

(Activities under this function may deal with the direct employment of Indigenous peoples or the development of programs designed to improve or expand employment opportunities for Indigenous peoples.)

The activities under this function that are likely to be relevant to native title claims include, but are not limited to, the following:

- Employment programs (including training programs)
- Police service of Indigenous peoples (e.g. trackers)
- Military service of Indigenous peoples