**Native Title Access Policy**

**1. Purpose of the Policy**

As a general rule, persons wishing to access information held or managed by the Department of Indigenous Affairs (DIA) that is culturally sensitive to Aboriginal people (Restricted Information) can only do so with the express written permission of the person who can be identified as informants for the information (or their descendants).

The Native Title Access Policy (the policy) creates a limited exception to the general rule to enable access to certain restricted information for purposes related to the resolution of native title claims pursuant to the *Native Title Act 1993* (NTA) under condition that are designed to protect the integrity of the restricted information.

**2. Parties to the Policy**

This Policy applies to:

1. The legal representative of an Aboriginal person or group who has filed a native title claim with the Federal Court of Australia pursuant to section 61 of the *Native Title Act 1993* in circumstances where the claim has been accepted be the court and posted on the courts website:

(<http://www.fedcourt.gov.au/ecourt_esearch_slide.html>)

1. An Aboriginal person or group who has filed a native title claim with the Federal Court of Australia pursuant to section 61 of the *Native Title Act 1993* in circumstances where the claim has been accepted by the court and posted on the court’s website: (<http://www.fedcourt.gov.au/ecourt_esearch_slide.html>) where that person or group is not legally represented;
2. The State of Western Australia through the State Solicitor’s Office and the Office of Native Title; and
3. The National Native Title Tribunal

In this policy, the above-named will be referred to individually as a “Party” and together as “the Parties”. A native title application lodged pursuant to section 61 of the *Native Title Act 1993* will be called a “Claim”.

The policy does not apply to other parties to native title applications under the *Native Title Act 1993*. Those persons and organisations must seek a

subpoena from the Federal Court of Australia if they wish to access the restricted information.

**3. Scope of the Policy**

1. The policy applies only to certain restricted information held or managed by DIA and set out below:
	* 1. Information relating to Aboriginal sites held by DIA in files that are classified as ‘closed’ or ‘open’ pursuant to DIA’s *Aboriginal Site Register Policy and Procedures*;
		2. Aboriginal Heritage Survey Reports held by DIA and classified as ‘closed’ or ‘open with exceptions’ pursuant to DIA’s Aboriginal Sites Register Policy and Procedures;
		3. Archived files from former state government departments relating to the administration of Aboriginal affairs held by the Western Australian State Records Office. This category does not include archived files that are classified as *personal files* held on individuals and families;
		4. Audio tapes held by the Western Australian State Records Office and containing information from the *1983* *Aboriginal Land Inquiry to* *Find the Most Suitable Form of Title Over Land in Western Australia, Reserved for the Use and Benefit of Aboriginal People or Leased for Aboriginal Communities* by Mr Paul Seaman (“the Seaman Inquiry”);
		5. Submissions made to the Seaman Inquiry held by DIA and the Western Australian State Records Office;
		6. Genealogical information held by DIA comprising part of the collection of anthropologist Norman Tindale 1935- 1968;
		7. Journals held by DIA comprising part of the collection of anthropologist Norman Tindale 1953-1968;
		8. Sociological, anthropological and ACER data cards held by DIA comprising part of the collection of anthropologists Norman Tindale and Joseph Birdsell 1953-1954;

* + 1. Genealogical information comprising part of the collection of anthropologist Joseph Birdsell 1953-1954;
		2. Station Files. Archived files relating to pastoral stations created by various state government departments that were responsible for Aboriginal people’s welfare; and
		3. *The Goodacre Collection*. A collection of materials from various sources by researcher Jan Goodacre on Aboriginal people in Western Australia.
1. The policy enables the Parties to access all or any of the above categories of restricted information in respect of each native title claim for which they are a party recognised by the Federal Court of Australia and identified on the courts website at [www.fedcout.gov.au/ecourt/ esearch](http://www.fedcout.gov.au/ecourt/%20esearch).
2. In respect of the categories of restricted information set out at Clause 3 (a) (i) and (ii) above, the policy only enables the Parties to access information relating to Aboriginal sites that lie wholly or partly within a boundary that is cohesive with the boundary of the native title claim for which the information is sought.
3. If a Party or any person or organisation wishes to access documents held within departmental corporate administration files held at DIA, an application can be lodged with DIA under the *Freedom of Information Act 1992*, together with a $30 application fee. Further information about FOI applications is available from the Corporate Information Coordinator.

**4. Process for seeking restricted information under the Policy**

1. Access to the restricted information the subject of the Policy will only be granted once the party has completed a Native Title Access Application Form (the Form) and lodged with DIA.

The Form can be lodged in person or by ordinary post to Level 1, 197 St Georges Terrace, Perth (DIA Perth) or by facsimile to 9235 8088.

1. The Form must be signed by a person with the authority to bind the Party, such as a Chief Executive Officer, Principal Legal Officer, Principle Researcher or Native Title Claims Manager. In the case of an unrepresented Aboriginal person as described in clause 2(b) above, it must be signed by that person.
2. DIA will check the information set out in the Form against information about the relevant native title claim set out on the website of the Federal Court of Australia. If DIA has any concerns about the

information provided it will contact the Party prior to commencing the processing of the Form.

1. If a Party seeks restricted information of the types described in clause 3(a) (i) and (ii) above, DIA will respond to the Party within 48 hours of the request being lodged. Where information is to be viewed in the consultants room located at DIA Perth, arrangements can be made for early viewing, subject only to prior appointments.
2. If a Party seeks restricted information of the type described in clause 3(a) (iii) (iv) (v) (vi) (vii) (viii) (ix) (x) (xi) and (xii) the Manager, Heritage & Family Information will write to the Party to make an appointment for the viewing and copying of the material.

**5. Process for access to Restricted Information under the Policy.**

1. Each party other than a Party who is an unrepresented Aboriginal person as described in clause 2(b) above must nominate a person or persons employed or engaged by the Party as the person or persons who will access the restricted information at DIA pursuant to this Policy (the party researchers).
2. Party Researchers can be nominated completing the *Form for the* *Nomination of Party Researches* attached to the Policy, or by writing an appropriately worded letter, and handing the form or the letter to the Manager, Heritage & Family Information in person or by ordinary post to Level 1, 197 St Georges Terrace, Perth (DIA Perth) or by facsimile to 9235 8088.
3. The Party Researchers must be persons with tertiary qualification in the fields of Anthropology, Archaeology, History or Law, or persons with research experience that will enable them to examine and deal with culturally sensitive information in an appropriate manner.

**It is up to each Party to ensure that their nominated party researchers fulfil these requirements. This is vitally important, as the Party Researchers will be responsible for ensuring that the**

**Party complies with the access conditions in respect of all and any restricted information obtained pursuant to the policy.**

**6. Conditions of access to restricted information under the policy.**

Restricted information provided pursuant to the policy is provided only in accordance with the following conditions.

1. The restricted information, or any part of it, will not be used for any purpose other than in preparation or in proceedings for the Claim.
2. The restricted information, or any part of it, will not be passed to or communicated in any manner whatsoever to any third party.
3. The restricted information, or any part of it, will only be copied for the purpose of the preparation or in proceedings for the Claim.
4. The Party will ensure that any gender restrictions over all or any part of the restricted information are strictly observed, including restricting the hearing, viewing and transcribing of the material to persons of the relevant gender.
5. The Party will seek an order from the presiding judicial officer during any proceeding for the claim protecting the confidentiality of the information as necessary (especially in relation to gender restrictions).
6. The Party will return all restricted information obtained in accordance with the policy at the completion of all proceedings for the claim (including any appeals).
7. The Party will pay all and any reasonable costs associated with obtaining the restricted information from DIA, such as costs to include (but not limited to) the costs of photocopying the restricted information.
8. The Party Researchers will perform all tasks related to copying the restricted information (DIA will provide assistance to the Party Researchers and photocopying facilities). Each document comprising restricted information copied pursuant to the policy will be copied onto paper, which shows the words “Native Title Only”

**Native Title Access Application Form**

**Party Details**

|  |  |
| --- | --- |
| Name of Claim |  |
|  |  |
| Federal Court Number (WAG/G/WAD) |  |
|  |  |
| Name of Party Seeking Access |  |
|  |  |

**Access Request**

Access is sought to (*please tick*)

* + Archived files from former state government departments relating to the administration of Aboriginal Affairs held by the Western Australian State Records Office.

**If so, please provide below the accession number, the year and the name of each archived file you require. An index to**

**the files can be obtained from the Western Australian State Records Office:** [**http://www.sro.wa.gov.au/collection/aboriginalrecords.asp**](http://www.sro.wa.gov.au/collection/aboriginalrecords.asp)

* + Archived ‘Personal’ files from the former Native Affairs and Native Welfare state government departments held by the Aboriginal History Research Unit (formerly held by Department Child Protection and Family Services).

**There is no publicly available index. Please contact AHRU for further information.**

* + Audio tapes held by the Western Australian State Records Office and containing information from the 1983 *Aboriginal Land Inquiry to Find the Most Suitable Form of Title Over Land in Western Australia, Reserved for the Use and Benefit of Aboriginal people or Leased for Aboriginal Communities* by Paul Seaman (the Seaman inquiry).
	+ Submissions made to the Seaman Inquiry and held by DIA and the Western Australian State Records Office.

**If so, please provide below the numbers of the submissions you require. Information about the submissions can be obtained from the Aboriginal History Research Unit at DIA.**

* + Journals held by DIA comprising part of the collection of anthropologist Norman Tindale.

**If so, please provide below the name of the journal and the year it was recorded, the communities to which it refers and relevant journal page numbers. An index to the Tindale journals is available at the Aboriginal History Research Unit at DIA.**

* + Genealogical information held by DIA comprising part of the collection of anthropologist Norman Tindale.

**If so, please provide below the names of the people on whom genealogical information is sought and/or the locations relevant to your native title claim on which genealogical information is sought. An index to the Tindale genealogies is available at the Aboriginal History Research Unit at DIA.**

* + Sociological, anthropological and ACER Data Cards held by DIA comprising part of the collection of anthropologists Norman Tindale and Joseph Birdsell.

**If so, please provide below the names of the people on whom information is sought and/or the locations relevant to your native title claim on which information is sought. These cards are not indexed. DIA Researchers will search**

**the information held on the Data Cards for the requested names and locations.**

* + Genealogical information held by DIA comprising part of the collection of anthropologist Joseph Birdsell.

**If so, please provide below the names of the people on whom information is sought and/or the locations relevant to**

**your native title claim on which genealogical information is sought.**

* + Station Files. Archived files relating to pastoral stations created by various state government departments that were responsible for Aboriginal people’s welfare.

**If so, please provide below the accession number, the year and the name of each archived station file you require. An index to the archived station files is available at the Aboriginal History Research Unit at DIA or from the Western Australian State Records Office:** [**http://www.sro.wa.gov.au/collection/aboriginalrecords.asp**](http://www.sro.wa.gov.au/collection/aboriginalrecords.asp)

* + *The Goodacre Collection*. A collection of materials from various sources by Jan Goodacre on Aboriginal people in Western Australia.

**If so, the *The Goodacre Collection Catalogue* is available at the Aboriginal History Research Unit at DIA.**

* + Pension Cards. Cards created in the 1960s that provide information on people in receipt of a Commonwealth pension. Information includes dates of birth, residence, employment, education, pensions and allowances.

**If so, please provide below the names of the people on whom information is sought.**

**Please detail below the information sought. Attach another page if required.**

|  |  |  |
| --- | --- | --- |
| **Material**  | **List by** | **Material sought** |
| **State archived files held at the SROWA** | Accession number/year/the name of each archived file |  |
| **State archived ‘Personal’ files held by AHRU (formerly held by DPCFS)** | Accession number/year/the name of each archived file |  |
| **Seaman audio tapes** | Names of locations |  |
| **Seaman submissions** | Numbers of the submissions required |  |
| **Tindale journals** | Name of the journal/ year/communities to which it refers/page numbers. An index to the journals is available at DIA. **NOTE**: Most of the Tindale journals record MEN ONLY information. |  |
| **Tindale genealogies** | Names of people/locations relevant to native title claim |  |
| **Tindale/Birdsell data cards** | Names of people/locations relevant to native title claim |  |
| **Birdsell genealogies** | Names of people/locations relevant to native title claim |  |
| **Archived station files** | Accession number/year/the name of each archived station file |  |
| **Pension cards** | Names of people relevant to native title claim. |  |

**Acknowledgment and Authorisation**

I [name] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, being the [position title] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of the [organisation]\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ make the above request for restricted information on behalf of staff of the above organisation nominated as party researches under this Native Title Access policy, and having read and agreeing to abide by all conditions, restrictions, process and requirements set out in this Native Title Access Application Form and the Native Title Access Policy.

Signed: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_\_\_\_\_\_

**Form for the Nomination of Party Researchers**

I [name] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, being the [position title] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_of the [organisation] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, nominate the below mentioned persons to be party researchers for the organisation, in accordance with the terms of clause 5 of the Native Title Access Policy. I confirm that I have read and agree to abide by all conditions, restrictions, processes and requirements set out in the Native Title Access Policy.

Signed: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_\_\_\_\_\_

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