



Records Advice

No 60

Managing Aboriginal and Torres Strait Islander Records

Introduction

This Records Advice explains that agencies must conservatively manage any records that contain information that may allow people to establish links with their Aboriginal or Torres Strait Islander heritage. The legal source for this approach is the *Territory Records Act 2002* and this includes any subordinate legislation, Notifiable instrument or Disallowable instrument.

The Act

The *Territory Records Act 2002* mentions specifically the roles in this process and the people involved, including all ACT Government employees, the agency records manager, the agency principal officer, the Director of Territory Records and the Territory Records Advisory Council. The relevant sections of the Act are:

16 Approved records management programs

- (1) An agency must have an approved records management program.
- (2) The approved records management program must include arrangements—
 - (i) for preserving records containing information that may allow people to establish links with their Aboriginal or Torres Strait Islander heritage;

17 Procedure for approving records management programs

- (1) The principal officer of an agency may, in writing, approve a records management program for the agency if satisfied that—
 - (d) for records of an agency containing information that may allow people to establish links with their Aboriginal or Torres Strait Islander heritage—the agency has consulted with the council;

33 Functions

- (1) The director has the following functions:
 - (j) to develop measures for the preservation of records about Aboriginal and Torres Strait Islander heritage;

42 Functions of council

The functions of the council are to advise the director about—

- (c) the preservation of agency records about Aboriginal and Torres Strait Islander heritage;

44 Appointed members of council

- (1) The Minister must appoint as a member at least 1 person to represent each of the following:
 - (d) entities interested in Aboriginal and Torres Strait Islander heritage;
- (2) The person appointed to represent entities mentioned in subsection (1) (d) must be an Aboriginal or Torres Strait Islander.

The Records Disposal Schedule

A specific *Records Disposal Schedule (RDS)* has been made to assist agencies in undertaking these responsibilities. This RDS is a Notifiable instrument and therefore places a legal obligation on all ACT public servants to follow it.

The Records Disposal Schedule for preserving records containing information that may allow people to establish links with their Aboriginal or Torres Strait Islander heritage may affect the operation of other Records Disposal Schedules.

This RDS takes precedence when information that may allow people to establish links with their Aboriginal or Torres Strait Islander heritage is found during sentencing using another RDS.

An agency must not dispose of any records where it is aware of possible legal action for which the records may be required as evidence or if there is a current records disposal freeze in effect. This includes cases pending or already lodged at the National Native Title Tribunal, the Ngambra Circle Sentencing Court or the Jervis Bay Court.