

# Access to and use of connection material Policy

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## 1. Policy Statement

- 1.1 This policy relates to access to and use of material generated by expenditure of QSNTS funding during the claim process after an initial favourable determination of native title.

## 2. Scope

- 2.1 This document relates to documents or research generated for a claim group (or claimant) under the s 203BB *Native Title Act 1993* (Cth.) (NTA) facilitation and assistance function.
- 2.2 This document does not apply to research materials prepared by QSNTS in the exercise of its s 203BJ(b) NTA function. Access to s 203BJ(b) material may be possible but does not occur as of right.

## 3. Endorsements

Endorsed By	Position	Date
Kevin Smith	Chief Executive Officer	August 2020

## 4. Document History and Revisions

This policy supersedes **previous policy's title** and is to be reviewed every two years or as required.

Version	Author and Position	HPECM Record Number	Date
1	Felicity Thiessen, Chief Operating Officer		August 2020
2	Tim Wishart, Principal Legal Officer		August 2020
1	Felicity Thiessen, Chief Operating Officer		April 2021
2	Tim Wishart, Principal Legal Officer		April 2021

## 5. Policy Custodian/s

The Chief Operating Officer or Principal Legal Officer may initiate the review or revision of this policy as necessary.

## 6. Definitions

### 'Favourable Determination'

A positive decision by the Federal Court, High Court or a recognised body in relation to native title rights and interests that reflects an agreement reached by the parties under the *Native Title Act 1993* (Cth).

**‘Claim Group or Claimant’**

A native title claim group, who assert they hold rights and interests in an area of land and/or water according to their traditional laws and customs.

**‘Applicant’**

The person or persons authorised by the native title claim group to represent the group in matters arising under the NTA in relation to the native title determination application.

**‘Research Material’**

Historical Reports, Connection Reports, Genealogical Reports, Dossiers and Linguistic Reports. Research Material **does not** include Community and Personal History (CPH) Material.

**‘Community and Personal History (CPH) Material’**

Queensland State Government records about Aboriginal and Torres Strait Islander individuals and families compiled by the Community and Personal History Unit of the Department of Aboriginal and Torres Strait Islander Partnerships at the request of family or a member of a family.

**‘Prescribed Body Corporate’**

A prescribed body corporate (PBC) for the purposes of native title is a corporation required to be nominated by the claim group to hold and manage their native title rights and interests upon receiving a positive native title determination.

**‘Registered Native Title Body Corporate’**

Following a positive determination, PBCs are entered onto the National Native Title Register. At this point, the corporation becomes a registered native title body corporate (RNTBC).

**‘s 203BB of the *Native Title Act 1993* (Cth)’**

Research and preparation of native title applications, that both represents and facilitates native title-related proceedings. These include consultations, mediation, negotiations and proceedings relating to native title applications, future acts, ILUAs and any other matter related to native title.

**‘s 203BJ(b) of the *Native Title Act 1993* (Cth)’**

*“as far as is reasonably practicable, identify persons who may hold native title in the area for which the body is the representative body”*

## 7. Applicable Legislation, Policies and Procedures

- *Native Title Act 1993* (Cth)

## 8. Policy

8.1 It has been held by Mortimer J in *Tommy on behalf of the Yinhawangka Gobawarra v State of Western Australia (No 2)* [\[2019\] FCA 1551](#) that in the post-determination context it is the determined Prescribed Body Corporate (PBC) that succeeds the Applicant as the person who can make decisions about the waiver of legal professional privilege that may attach to documents. It follows that a PBC can also request to be provided with research material generated during the prosecution of the native title claim.

8.2 As a general approach, a PBC (or Applicant during the life of a native title determination application (NTDA)) should be cautious in seeking access to and delivery of research material or, if the material is provided to the RNTBC, making the material available broadly (even within the native title holding group). Greater caution is required if there is a prospect of a further NTDA or a compensation claim being made. This is because a reader of the material may take on elements of the research and through that lose weight, reliability, or credibility as a witness providing evidence of the existence of native title rights and interests in the later proceedings. It is QSNTS's position that the requestor should be confident that no further litigation relating to native title is likely before requesting that it have access to or copies of anything other than specific parts of research reports.

8.3 An Aboriginal person may submit a request for Community and Personal History (CPH) Materials to the Department of Aboriginal and Torres Strait Islander Partnerships (DATSIP), or consent to QSNTS submitting a request on their behalf, for the purpose of research in relation to an NTDA. The provision of CPH material is on the basis that it will only be used for the purpose for which it is sought, that is, research in relation to an NTDA. Copies of the CPH Material are provided to the individual requestor and QSNTS.

8.4 Subject to the above, access may be given to research materials and copies made of that material (or copies provided) as set out in the following table:

Type of material / report	Availability to PBC	Availability to individual / family	Comment
<b>Historical reports</b>	No restriction	No restriction	Historical reports are generally compiled from public sources and are generally not restricted.
<b>Connection reports</b>	No restriction	May access those parts of the report relevant to their family or descent group. Where access to family related material is sought beyond the individual's immediate family, consent should be provided from the senior members of the extended family grouping.	Issues of personal confidentiality and privacy mean that individuals should not have unfettered access to, or be given copies of, complete reports.
<b>Genealogical reports</b>	May receive those parts of the reports and charts that contain publicly available material (generally this material relates to upper generations). Additionally, a list of contemporary family names associated with the relevant ancestor will be provided.	May receive those parts of the reports and charts that demonstrably relate to their family or descent group.	Issues of privacy and confidentiality must be considered.
<b>Community and Personal History (CPH) Material</b>	Not available unless QSNTS is furnished with the written consent to provide the CPH material to the PBC from the person who authorised QSNTS to receive the material or that person's personal	Only with the consent of the person who authorised QSNTS to receive the report or that person's personal representative or trustee.	QSNTS is able to receive reports / dossiers from CPH only with the consent of the senior member of the requesting family (usually the person requesting CPH to prepare the report). Use of the CPH material by QSNTS is only for the purpose for which it was requested

	representative or trustee.		Only the person originally requesting the CPH material, or their personal representative, may make decisions about how the material may be accessed and by whom (including post-determination of native title claims)
<b>Linguistic reports</b>	No restriction	No restriction	

8.5 If there is little probability of further litigation under the NTA occurring with respect to the determination area or claim group the PBC may access and be provided with reports as set out in the table above (other than CPH material which will require the express permission of the relevant persons). There will be less concern about providing historical reports that do not contain elements of restricted material but are based wholly on public available records.