

FAQs re transfer of native title files

May 2022

1. Why is the Torres Strait Regional Authority (TSRA) speaking to its clients about the transfer of files?

- On 30 June 2022, the TSRA will cease being the native title representative body (NTRB) for the Torres Strait.
- From 1 July 2022, Gur A Baradharaw Kod Torres Strait Sea and Land Council (GBK) will be the new native title service provider for the Torres Strait, replacing TSRA.
- TSRA has created about 250 boxes of files (about half a million pieces of paper) for its native title clients over the past 26 years. Most of these files are kept in safe storage in Cairns.
- These files do not belong to the TSRA, they belong to its former and current native title clients.
- The TSRA is contacting clients to seek instructions about the transfer of the files to GBK.

2. What kind of documents are in the native title files that TSRA holds?

- The native title files include:
 - native title documents (including native title claims and determinations, correspondence, legal advice, research materials and expert reports, court documents and agreements such as Indigenous Land Use Agreements); and
 - PBC Support documents that relate to *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act) compliance (for example minutes for AGMs, General Reports, Rule Book changes, membership lists etc), financial assistance (banking, fee for service invoicing) and record keeping.

3. Who will TSRA contact about the transfer of the native title files?

- TSRA will contact the owner of the files. The owners are:
 - For active native title claimant applications - the applicant (on behalf of the claim group);
 - For determined native title claimant applications - the Registered Native Title Body Corporate (PBC) (on behalf of the native title holders); and
 - For unclaimed/underdetermined matters, including current intramural disputes - the person(s) who requested the assistance of the TSRA under s203BB of the *Native Title Act 1993* (facilitation and assistance functions) or the constituent(s) on whose behalf the TSRA is acting under s 203BF of the *Native Title Act 1993* (dispute resolution function).
- Note: where the owner of a file is deceased, ownership of the files may have passed to the persons' heirs. This will need to be assessed on a case-by-case basis to make sure legal requirements are met.

4. What happens if the owner does not agree to the transfer of the files to GBK?

- The TSRA can only transfer the native title files if the owner of the files instructs the TSRA to do so.
- If the owner does not instruct the TSRA to transfer the files, the TSRA will not transfer the files.
- The TSRA would advise the owner of the files that GBK may not be able to act for the owner without having access to the files.

5. What happens if the file documents belong to more than one owner and not all agree to the transfer of the files to GBK?

- An example of when a file has more than one owner is an intramural dispute matter between two or more parties.
- The TSRA can only transfer documents that are owned by more than one party (for example an anthropological report commissioned by TSRA to assist with the resolution of a dispute) if *all* of the owners of the documents instruct the TSRA to do so.
- If one or more of the owners do not instruct the TSRA to transfer the jointly owned documents, the TSRA will not transfer the files.
 - However, the TSRA can transfer documents received from a particular party if the documents are solely owned by the party and the party instructs the TSRA to do so.
 - For example, a report that was created on behalf of a particular family to assist the family with the resolution of a dispute.
 - Such a transfer would not require the agreement of the other parties because the other parties are not the owners of the document.
- Where the owners of a file do not instruct the TSRA to transfer their files to GBK, the TSRA would advise the owners that GBK may not be able to act for them without having access to their files.

6. What will happen to the file if the owner does not agree to the transfer of the file?

- If the TSRA does not receive instructions to transfer a file, the TSRA will offer the owner of the file a copy of the file.
- If the owner wishes to receive a copy of the file, the TSRA would either email a copy, send a copy in the mail or provide a copy on a USB stick.
- The TSRA will keep the original copy of the file for the owner, and to the extent required under the *Archives Act 1983*.

7. Why does the TSRA hold on to copies of its native title files?

- The TSRA is a Commonwealth Government Authority.
- Like all Commonwealth Government agencies, it has obligations under the *Archives Act 1983*.
- The TSRA has been in discussions with the National Archives of Australia (NAA) about the closure of the Native Title Office and the transfer of the files.
- The NAA has advised the TSRA not to destroy or dispose of files as they may be of intrinsic value to Aboriginal and Torres Strait Islander peoples. For that reason, TSRA proposes to transfer to GBK electronic copies of the files, rather than the originals.
- This is the first time that a government authority like the TSRA is transferring native title files to a non-government organisation.
- The TSRA will hold on to the original files until it receives further advice from the NAA.

8. Can individuals who are not owners of the native title files veto their transfer?

- No. The TSRA can only act on the instructions of the owners of the files (see 3 above on who is the owner of native title files).
- If the owner of the files instructs the TSRA to transfer the files, the TSRA must transfer the files.

9. Can individuals veto the transfer of connection reports which include their or their family member's information?

- No. If the owner of the report instructs the TSRA to transfer the connection report, the TSRA must act on the instructions.
- Individuals who have provided information to an expert (for example an anthropologist) cannot withdraw this information at a later stage if the information has already been used by the expert to form opinions and/or has been included fully or in part in a report.
 - This includes situations where the TSRA, when providing assistance to native title claim groups, engaged experts to formulate the groups' native title claim. For example, where an anthropologist spoke to individuals in order to
 - develop a list of apical ancestors to be included in the native title application to the Federal Court; and
 - draft a connection report for the State of Queensland to support a consent determination by the Federal Court of the native title claim.

10. Even though individual native title holders cannot veto the transfer of files, do they have rights in connection reports or genealogical reports that relate to their native title group?

- Individual native title holders who contributed to reports may
 - have a right to ensure that the information provided is used consistently with the purpose for which it was provided and consistent with other obligations that may apply; and
 - be entitled to the return of original documents provided by them to the TSRA or the expert, for example original photographs or objects.
- With the consent of the owner of the reports (for example the PBC), they may receive those parts of the reports that relate to their family or descent group.

11. Can PBCs request the return of native title materials to them once the materials have been transferred to GBK?

- Yes. The return of native title materials to PBCs (and to native title holders via the PBC) is an important part of the native title process.
- Native title materials often include information on genealogies, languages, laws and customs and areas of significance. Such materials may be significant to current and future members of native title groups and other Aboriginal and Torres Strait Islander communities because of their historical, cultural, personal and/or economic value.
- Returning native title materials is a long-term project that requires careful considerations to ensure that materials don't get misused or lost over time.
- AIATSIS, the Australian Government funded Australian Institute of Aboriginal and Torres Strait Islander Studies, is running a [project on Returning native title materials](#). As noted on their website, '[t]he materials developed in support of native title claims are large, complex and of historical, cultural and economic value to current and future members of native title groups, Aboriginal and Torres Strait Islander communities and to the nation more broadly. The management of these materials represents an ongoing challenge for native title groups and their representatives'.
- The AIATSIS Returning Native Title Materials project explores the use of materials collected through the native title process, including appropriate management, storage and return to native title groups. This project investigates existing efforts among Native Title Representative Bodies and Service Providers (NTRB/SPs), PBCs and others to manage, return, receive and use native title materials.

12. What is TSRA's process for transferring the native title files to GBK

- If instructed by the owner of the files, the TSRA will transfer an electronic copy of the files to GBK.
 - The TSRA has engaged a Cairns based company, Grace, to scan all hard copies of its files.
 - The scanning process is to a very high standard and will allow key word searches so that any relevant documents can be easily located.
 - Electronic copies will ensure that original documents are preserved for the future.
- TSRA will keep in storage the hard copy of the files transferred to GBK. It will also keep copies of electronic files created for its clients. This is so that TSRA meets its obligations under the Archives Act 1983 (see 7 above).

13. Who will have access to the files when TSRA stops being a NTRB?

- The TSRA will close its Native Title Office when its NTRB status ends on 30 June 2022.
- At the moment, the Native Title Office holds all its clients' native title files in secure storage. That includes hard copy files and electronic files. Only authorised staff in the Native Title Office can access the files.
- After the closure of the Native Title Office, a strict TSRA internal protocol will specify who within the TSRA can access the files. Access will be for very limited purposes only. For example, to comply with the requirements of the NAA or to comply with instructions from former clients.
- The electronic and hard copy files retained by the TSRA will remain subject to the rights of the owners.

Background to the transition of native title functions

14. Why will there be a transition of native title functions from TSRA to GBK?

- The upcoming changeover is not the result of a decision of the TSRA or its Chair.
- The need for the transition has arisen as a result of the following:
 - The statutory instrument by which the former Minister for Indigenous Australians, the Hon Ken Wyatt, appointed the TSRA as Native Title Representative Body (NTRB) for the Torres Strait will expire on 30 June 2022 and is not scheduled to be renewed or extended; and
 - The National Indigenous Australians Agency (NIAA) has indicated its intention to fund GBK to provide certain statutory native title functions for the Torres Strait from 1 July 2022 (as the Native Title Service Provider (NTSP)).
- From 1 July 2022, GBK as NTSP will carry out the same functions under section 203B of the *Native Title Act 1993* (Cth) and will be subject to the same privileges, obligations and responsibilities as were held or which bound the TSRA in its capacity as NTRB.
- As noted in the [joint media](#) release issued by the former Minister, TSRA and GBK, the NIAA is supporting GBK and TSRA in managing the native title service transition. The TSRA is committed to seeing that the transition is successfully implemented according to law.

15. Will the transition affect the native title rights of native title holders in the region?

- The change of the provider of native title services in the Torres Strait will not affect or involve any change to your or anyone else's Native Title Rights.
- The transition is a change of service provider. Rather than TSRA providing Native Title services, it will be GBK.

16. What are the services that GBK will provide from 1 July 2022?

Just like TSRA, GBK will have functions under the *Native Title Act 1993* to assist native title holders with their native title matters. These functions are:

Reference	Function	Detail
s203BB	Facilitation and assistance	NTRB-SPs provide assistance to native title interest holders in relation to native title applications, future acts, agreements, rights of access and other matters.
s203BF	Certification	NTRB-SPs certify applications for native title determinations and certify the registration of ILUAs.
s203BF	Dispute resolution	NTRB-SPs promote agreement and mediate disputes between native title groups.
s203BG	Notification	NTRB-SPs ensure that people with a possible native title interest are informed of other claims and of future acts and the time limits for responding to these.
s203BH	Agreement making	NTRB-SPs can be a party to ILUAs or other agreements.
s203BI	Internal review	NTRB-SPs have a process by which native title clients can seek a review of decisions and actions they have made and promote access to this process for clients.
s203BJ	Other functions conferred by the NTA or by any other law	These are largely concerned with cooperation between NTRB-SPs, consulting with Aboriginal and Torres Strait Islander communities and providing education to these communities on native title matters.