

# Principles for nationally consistent approaches to accessing Stolen Generations records

## Historical Records Taskforce

The objective of the Stolen Generations Historical Records Taskforce (HRT) is to promote healing for Stolen Generations survivors and descendants by collaborating to improve access, and management and preservation of Stolen Generations records. This involves:

- advocating for records processes and decision-making that are:
  - nationally consistent
  - trauma-aware and healing-informed
  - informed by national and international practice
- building sector capacity/capability and cross-sectoral partnerships, and
- promoting and problem-solving in relation to particular types of records or records holders.

This paper identifies the principles and actions that the Historical Records Taskforce is seeking to incorporate into a nationally consistent, trauma-aware and healing-informed approach to accessing Stolen Generations records and providing them to survivors and descendants.

The aim is to inform ongoing discussions with Information and Privacy Commissioners and Registrars of Births Deaths and Marriages (BDM) about greater national consistency for accessing Stolen Generations records.

## Background

*'...access to records must be made easier and less hurtful. This involves improving access procedures, ensuring culturally appropriate access and involving the counselling and support assistance of Indigenous family tracing and reunion services...'*

*Bringing them home report, 1997*

Timely, compassionate and supported access to records is often a fundamental aspect of healing for Stolen Generations survivors and their families. While records may contain confronting and incorrect information and don't always tell the full story, they are a crucial part of finding out about and reconnecting with family, culture, and Country. Records are essential to truth-telling and sharing history, accessing redress, and reparations schemes, and advancing intergenerational healing.

The 1997 *Bringing them home (BTH) report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families* highlighted that access to individual and family Stolen Generations records was essential to locating and reunifying families.<sup>1</sup>

Some agencies responded to the recommendations of the BTH report by reviewing their access protocols and adopting protocols to assist survivors to access their records. Nonetheless, problems accessing Stolen Generations records have persisted (or re-emerged) despite government and non-government responses to the BTH report, and advocacy by Link-Up agencies for improved access to records to enable family reunions.

Urgent action is needed to improve access to records for Stolen Generations survivors and their families through establishing/adopting national principles. These principles will underpin consistent and permissive approaches to accessing records held by government agencies including Registries of Births, Deaths, and Marriages (BDM).

We acknowledge that some proposals may not be possible under current legislative arrangements. We also recognise that although Information and Privacy Commissioners and registrars do not have the power to alter current laws, they can be advocates and allies who work with their respective governments to bring about change. They may also be able to influence and provide guidance to non-government organisations.

This paper is based on the experience of Link-Ups and other family history and records services supporting Stolen Generations survivors and their families. It is also informed by previous work in this field including:

- Chapter 16 of the 1997 BTH report recommendations relating to access to personal and family records,<sup>2</sup>
- the Victorian Common Access principles, which reflect the BTH recommendations (see Victorian Koorie Records Taskforce final report, 2012<sup>3</sup>),
- the Best Practice Guidelines for Accessing Records for Forgotten Australians and Former Child Migrants.<sup>4</sup>

<sup>1</sup> See BTH Chapter 16, 'Access to personal and family records'. A significant number of BTH Recommendations relate to records preservation and access.

<sup>2</sup> <https://humanrights.gov.au/our-work/bringing-them-home-chapter-16#Heading130>

<sup>3</sup> <https://prov.vic.gov.au/sites/default/files/files/In%20The%20Community/Victorian%20Koorie%20Records%20Taskforce%20Final%20Report.pdf>

<sup>4</sup> <https://www.dss.gov.au/families-and-children/programmes-services/family-relationships/find-and-connect-services-and-projects/access-to-records-by-forgotten-australians-and-former-child-migrants-access-principles-for-records-holders-best-practice-guidelines-in-providing-access>

# Proposed principles for inclusion in nationally consistent approaches for improving access to Stolen Generations records

## 1. National consistency

Nationally consistent procedures and standards will provide greater certainty for both government and non-government organisations in managing access to Stolen Generations records.<sup>5</sup> They can also address the barriers that are inherent in obtaining access to records that are held by a wide range of agencies across Australia, each operating under their own individual rules and protocols.<sup>6</sup>

### Principle:

*Access to Stolen Generations records will be handled consistently within and across jurisdictions, and procedures will be mutually recognised in order to streamline processing, reduce delays, and avoid re-triggering trauma through retelling stories.*

### What does this look like in practice?

- One standard application form for all government and non-government records for Stolen Generations survivors.
- A single authority to act (where applicable) to be accepted for an authorised representative of a Stolen Generations applicant that applies for all jurisdictions.
- This application (and authority to act where applicable) to be accepted in all jurisdictions in recognition of the fact that the removal of First Nations children from their families and communities under past government policies has resulted in many Stolen Generations survivors residing away from the places where they were born or where their ancestors lived.
- Third party applications (by all Link-Ups) via this standard application form to be accepted in all jurisdictions.
- Flexibility about the forms of ID required depending on the client's individual circumstances with weight given to (or ability to rely on) the stringent ID checking process already completed by Link-Up services. For example, clients may not have photo ID or may have their Medicare card stored at their Aboriginal Medical Service.

## 2. Permissive access

Permissive access will ensure that record holders can provide as much information about family to Stolen Generations survivors as possible. As survivors were deprived of family connections through no fault of their own, the details in records may offer the only information available to survivors about identity, family, and community of origin and may be the only means to enable reunification.

### Principle:

*Every person has the right to receive all personal identifying information about himself or herself including information which is necessary to establish the identity of family members (for example, parent's identifying details such as name, community of origin, date of birth).<sup>7</sup> The preferred default decision in regard to accessing Stolen Generations records should be full release of records.*

<sup>5</sup> *Bringing them home* report, 1997 Recommendation 24

<sup>6</sup> *Bringing them home* report, 1997 Recommendation 23

<sup>7</sup> *Bringing them home* report, 1997 Recommendation 25. <sup>7</sup>

## What does this look like in practice?

- Administrative release of records to be the standard process rather than the requirement for applications to be made via freedom of information/right to information legislation.
- Records to be released to first generation survivors (or their descendants or family members in certain situations) regardless of restricted access periods.<sup>8</sup>
- Adherence to consistent Standard Access Protocols/Guidelines for the release of records to Stolen Generations survivors.
- Stolen Generations survivors, organisations, and Elders to be involved in the development of these protocols, which can be built upon existing best practice guidelines.<sup>9</sup>
- Standard Access Protocols/Guidelines to ensure that redaction is avoided wherever possible.
- If redaction is deemed unavoidable due to privacy concerns, decisions should follow Standard Access Protocols/Guidelines, which will favour permissive rather than risk-averse release<sup>10</sup> – for example, information about a person’s family members, such as parents and grandparents, is personal identifying information and should not be redacted.<sup>11</sup>
- Plain English, clear, and sensitive explanations to be provided on documents where any information has been redacted.
- Appeals against redaction and applications for discretionary access to the information to be permitted at any time and not restricted to being requested within a defined time period.
- An understanding that records were created by agencies for their own purposes and reflect the point of view of those agencies and their staff, rather than the experiences of the individuals the records concern – for this reason, applicants should be clearly informed of their Right of Reply and be encouraged to annotate records to reflect their experiences.
- Registries should correct mistakes in indexes where family history researchers notify the registry of a mistake.
- Annotations received from applicants should become part of the preserved record and available to descendants of the applicant and other permitted parties.
- Standard Access Protocols/Guidelines to be mandated across non-government as well as government agencies.<sup>12</sup>

### Principle:

*Every person with proof of identity has the right to view and receive a full copy of all records relating to them.*<sup>13</sup>

### Principle:

*Every applicant has the right to receive all personal identifying information about them, including information which is necessary to establish the identity of family members (e.g., parent’s identifying details such as name, community of origin, date of birth). This is subject to relevant legislation.*<sup>14</sup>

<sup>8</sup> *Bringing them home* report, 1997 Recommendation 25. 1

<sup>9</sup> <https://www.dss.gov.au/families-and-children/programmes-services/family-relationships/find-and-connect-services-and-projects/access-to-records-by-forgotten-australians-and-former-child-migrants-access-principles-for-records-holders-best-practice-guidelines-in-providing-access>

<sup>10</sup> *Bringing them home* report, 1997 Recommendation 25. 7

<sup>11</sup> In Queensland, any third-party information, including names of parents and other family members, is currently redacted.

<sup>12</sup> *Bringing them home* report, 1997 Recommendation 39 Application of minimum standards and common guidelines

<sup>13</sup> Reflects BTH Recommendation 25, minimum standard #1

<sup>14</sup> Reflects BTH Recommendation 25, minimum standard #7

## What does this look like in practice?

- Copies/transcripts of certificates on plain paper and in electronic form to be provided for all enquiries.
- Link-Up caseworkers and researchers in each state/territory to be permitted access to BDM records remotely.

or

- If a BDM registry has a research function, it could be via the registry prioritising and conducting searches and emailing a transcript or similar of certificate information.

and/or

- Accessing BDM offices to conduct research on agency computers and microfiche collections with permission to share information electronically with inter-state Link-Ups (least preferred).
- Authority for Link-Ups/other authorised Stolen Generations organisations to hold and to make available restricted information for permitted uses to meet our objectives for healing through understanding family histories and reconnecting with kin, Country and culture (recognising that data protection regulations may apply).<sup>15</sup> For example, restricted information can be relayed to clients for these purposes and stored on Link-Up electronic and paper-based files.
- Flexibility in search terms to allow for name changes and inconsistent spelling.

### Principle:

*Application or processing fees or any other charges will be waived.<sup>16</sup>*

## What does this look like in practice?

- Charges to be waived in full regardless of the state/jurisdiction that the applicant resides in.
- Charges to be waived for Link-Ups and other organisations applying on behalf of survivors/descendants.

The BDM legislation in all states and territories other than Queensland, specifically allows the registrar to remit all or part of any payable fees for an appropriate reason. In Queensland, fees are set by regulation, and the registrar has a policy that allows fee waivers. All jurisdictions including Queensland have legislative provisions that enable fees and charges to be waived for accessing and processing information under freedom of information and privacy legislation.

NSW BDM registry currently has a specific general policy to waive fees for Stolen Generations survivors. In some other jurisdictions Link-Up services have negotiated fee waivers.

In times of disaster (e.g., bushfires, floods etc.) BDM registries have cooperated to issue new documents to affected residents born in other jurisdictions.

Link-Up Queensland estimates that the current costs of BDM certificates amounts to \$7,000–\$10,000 per annum (in Queensland and interstate).

<sup>15</sup> For example, under section 48 of the Qld BDMR Act, the Queensland Registrar can enter into arrangements to provide registered information to an entity where the arrangement is in the public interest, provided entities meet key criteria in relation to good standing and are committed to appropriate information privacy and security standards. See Qld BDM Information Access Policy <https://www.qld.gov.au/law/births-deaths-marriages-and-divorces/data/enquiry>

<sup>16</sup> Reflects BTH Recommendation 25, minimum standard #2

**Other suggestions:**

- A fee remission (half the standard price) should be available for clients who wish to obtain certified copies of BDM certificates, regardless of what state/territory they currently live in.
- Many Aboriginal children who were removed and adopted or fostered were given alternative names. All BDMs should allow changes of name for each of these individuals (within the state/territory in which they reside), with fees waived in full.
- Clients can request that BDM records be amended to include traditional language names for themselves, and their antecedents and the certificate reissued at no cost.

**Principle:**

*Applicants will receive all relevant records within a 45-working day period from the date all access conditions are met, with any failure to comply subject to review and appeal.<sup>17</sup>*

**What does this look like in practice?**

- Applicants who are first-generation survivors of the Stolen Generations and/or elderly and unwell should receive urgent and priority service, within 28 working days.
- All other applicants should receive service within 45 working days.

**Principle:**

*A person denied the right of access or having any other grievance concerning their information is entitled to seek a review and, if still dissatisfied, to appeal the decision or other matter free of charge.<sup>18</sup>*

Births, deaths, and marriages and information/privacy legislation in all jurisdictions currently includes heads of power for decisions to be reviewed and/or complaints to be made. Arrangements for review vary from jurisdiction to jurisdiction.

Time periods to apply for decisions to be reviewed can be relatively short and can prevent organisations (and their clients) seeking review.

**What does this look like in practice?**

- Applicants should be clearly informed of their right of review and the process in which to lodge an appeal.
- Appeals against redaction, applications for discretionary access to the information, and other requests for reviews of decisions to be permitted at any time and not restricted to being requested within a defined time period.

### **3. Trauma-aware and healing-informed access and release**

Many Stolen Generations survivors have been traumatised through their childhood experiences. Accessing records can be part of their healing journey and needs to be done in a way that reduces the risk of re-triggering trauma.

**Principle:**

*Every person has the right to receive information, both orally and in writing, at the time of application about locally available Indigenous and other appropriate support and assistance services.<sup>19</sup>*

<sup>17</sup> Reflects BTH Recommendation 25, minimum standard #3

<sup>18</sup> Reflects BTH Recommendation 25, minimum standard #4

<sup>19</sup> Reflects BTH Recommendation 25, minimum standard #5

**Principle:**

*Every applicant will be advised of the nature and context of the information requested and the possibility of distress that may result from accessing their records. Applicants will be entitled to have their local Stolen Generations support network, e.g., service provider, counsellor, or case manager, involved in the process of locating and releasing records.<sup>20</sup>*

**Principle:**

*Training in trauma-aware and healing-informed access to records will be mandatory for all staff and managers.<sup>21</sup>*

### What does this look like in practice?

- Training in trauma-aware and healing-informed access to records as a requirement for all managers and staff involved in the release and redaction of records, as well as those dealing directly with people seeking information. Training should ensure that staff are aware of kinship structures and the importance of names, places and other terms mentioned in records to Stolen Generations survivors who are trying to reconnect with family, community, and Country.<sup>22</sup> Staff and managers also need to be able to navigate privacy considerations.
- *Better Access to Stolen Generations records* is an online learning module for records managers, commissioned by The Healing Foundation, that is freely available through the Australian Society of Archivists professional development site.<sup>23</sup> The module is a starting point, which should be augmented by more specific training in release and redaction with the input of local Link-Ups and Stolen Generations survivors and their families.
- Agency offices and processes to be more welcoming and culturally appropriate. Agencies to participate in/initiate outreach activities, including in conjunction with other agencies and organisations assisting Stolen Generations survivors.

## 4. Acknowledgement of intergenerational trauma

The children, grandchildren, and great-grandchildren of Stolen Generations survivors have been impacted and continue to be affected by intergenerational trauma. Descendants will increasingly become the primary applicants for records related to their ancestors who were removed from family, community, and Country.

**Principle:**

*The same principles and practices apply to descendants of Stolen Generations who are applying for family history records.*

### What does this look like in practice?

- Acknowledgement among record holders that records supplied to Stolen Generations descendants can provide healing and reconnection for people affected by intergenerational trauma.
- Records should be released under the same protocols as described in 1–6 above for descendants of Stolen Generations survivors.<sup>24</sup>
- To protect the privacy of ancestors who are still living, descendants who are seeking access to records will require third-party permission from the person concerned. If the ancestor is deceased, unable to be contacted, or is estranged from the applicant, records to be released on provision of proof of family connection.

<sup>20</sup> Reflects BTH Recommendation 25, minimum standard #6

<sup>21</sup> Reflects BTH Recommendation 9a Professional training

<sup>22</sup> For example, offensive terms such as 'half-caste' are sometimes redacted to minimise distress to clients. However, such terms can be important for research.

<sup>23</sup> <https://www.archivists.org.au/events/event/better-access-to-stolen-generations-records>

<sup>24</sup> For example, in Queensland no access is given to descendants at all. In addition, there is a closed access category, which means descendants are never permitted access, even after the death of the person to whom the record pertains or after the record is more than 100 years old, which applies in other states/territories.

## Appendix 1: Referenced BTH Recommendations

### 9a. Professional training

That all professionals who work with Indigenous children, families and communities receive in-service training about the history and effects of forced removal.

### 23. Joint records taskforces

That the Commonwealth and each State and Territory Government establish and fund a Records Taskforce constituted by representatives from government and church and other non-government record agencies and Indigenous user services, to:

- develop common access guidelines to Indigenous personal, family, and community records as appropriate to the jurisdiction and in accordance with established privacy principles
- advise the government whether any church or other non-government record-holding agency should be assisted to preserve and index its records and administer access
- advise government on memoranda of understanding for dealing with inter-state enquiries and for the inter-state transfer of files and other information
- advise government and churches generally on policy relating to access to and uses of Indigenous personal, family, and community information
- advise government on the need to introduce or amend legislation to put these policies and practices into place.

### 24. Inter-state enquiries

That each government, as advised by its Records Taskforce, enter into memoranda of understanding with other governments for dealing with inter-state enquiries and for the inter-state transfer of records and other information.

### 25. Minimum access standards

That all common access guidelines incorporate the following standards:

- The right of every person, upon proof of identity only, to view all information relating to himself or herself and to receive a full copy of the same.
- No application fee, copying fee or other charge of any kind to be imposed.
- A maximum application processing period to be agreed by the Records Taskforce and any failure to comply to be amenable to review and appeal.
- A person denied the right of access or having any other grievance concerning his or her information to be entitled to seek a review and, if still dissatisfied, to appeal the decision or other matter free of charge.
- The right of every person to receive advice, both orally and in writing, at the time of application about Indigenous support and assistance services available in his or her State or Territory of residence.
- The form of advice provided to applicants to be drafted in consultation with local Indigenous family tracing and reunion services and to contain information about the nature and form of the information to be disclosed and the possibility of distress.
- The right of every person to receive all personal identifying information about himself or herself including information that is necessary to establish the identity of family members (for example, parent's identifying details such as name, community of origin, date of birth).
- The right of every person who is the subject of a record, subject to the exception above, to determine to whom and to what extent that information is divulged to a third person.

### 39a Application of minimum standards and common guidelines

That church and other non-government record agencies implement the national minimum access standards (Recommendation 25) and apply the relevant State, Territory, or Commonwealth common access guidelines (Recommendation 23).

For further information, please contact The Healing Foundation  
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