



Australian Government

National Archives of Australia

AFDA Express Version 2

2019/00026231

Contracts Under Seal/Deeds

This is an accurate reproduction of the authorised records authority content, created for accessibility purposes

2019



© Commonwealth of Australia (National Archives of Australia) 2019

Copyright

This product, excluding the National Archives of Australia logo, Commonwealth Coat of Arms or registered trademark, has been licensed under a Creative Commons Attribution-Non-Commercial (CC-BY-NC) Version 4.0 International Licence. You may share, copy, redistribute, remix, transform and build upon this work for non-commercial purposes only. However, you must attribute the National Archives of Australia as the copyright holder of the original work, include the attribution as set out below and indicate if changes were made. The full terms and conditions of this licence are available at www.creativecommons.org.

Attribution

This records authority is licenced by the Commonwealth of Australia (National Archives of Australia) under a Creative Commons Attribution-Non-Commercial (CC-BY-NC) Version 4.0 International Licence. The original version can be found [on our website](#).

Accessibility

This is an accurate reproduction of the authorised records authority content, created for accessibility purposes.

Contact Us

Enquiries relating to copyright or accessibility should be emailed to the [Agency Service Centre](#).

CONTENTS

INTRODUCTION	4
APPLICATION OF THIS AUTHORITY	4
CONTACT INFORMATION	5
AUTHORISATION	6
CONTRACTS UNDER SEAL/DEEDS	7

INTRODUCTION

The National Archives of Australia (National Archives) has developed this records authority to set out the requirements for keeping or destroying records relating to Contracts Under Seal/Deeds.

The records authority sets out those records that need to be retained as national archives and specifies the minimum length of time that temporary records need to be kept. This records authority gives agencies permission under the *Archives Act 1983* for the destruction of the temporary records described after the minimum retention period has expired. Retention periods for these temporary records are based on: an assessment of business needs; broader organisational accountability requirements; and community expectations.

As changes in circumstances may affect future records management requirements, this authority may occasionally be amended by the addition of new classes and the variation of existing classes. The National Archives will notify agencies of any such changes.

APPLICATION OF THIS AUTHORITY

1. The National Archives is progressively reviewing and retiring the *Administrative Functions Disposal Authority* (2010) and *AFDA Express* (March 2010) and will periodically issue revised functions that will ultimately comprise the revised version of *AFDA Express Version 2*. To aid agencies with implementation of the revised *AFDA Express Version 2* functions, the National Archives will generally permit agencies the option of using either the existing AFDA functions or the newly issued revised functions until 1 July 2019 (by which time all revised functions are expected to be have been issued).
2. This authority supersedes:
 - classes 61934-61938 in *General Records Authority 36 - Contracts Under Seal/Deeds*;
 - classes 1571-1573, 20957-20958 in the LEGAL SERVICES function of the *Administrative Functions Disposal Authority* (2010);
 - classes 20450-20453 in the LEGAL SERVICES function of *AFDA Express* (March 2010);
 - classes 19518-19521 in the PROCUREMENT function of the *Administrative Functions Disposal Authority* (2010); and,
 - classes 20314-20316 in the PROCUREMENT function of *AFDA Express* (March 2010).The superseded records classes cannot be used to sentence records after 1 July 2019.
3. This authority should be used in conjunction with record authorities issued to agencies for their core business and other General Records Authorities issued by the National Archives.
4. This records authority is to be used to determine how long records must be kept. Records are matched to the relevant core business and records class in the records authority:
 - Where the minimum retention period has expired and the records are not needed for agency business they should be destroyed as authorised in this records authority.
 - Records that have not reached the minimum retention period must be kept until they do.
 - Records that are identified as Retain as National Archives (RNA) are to be transferred to the National Archives for preservation.
5. The Normal Administrative Practice (NAP) provision of the *Archives Act 1983* gives agencies permission to destroy certain records without formal authorisation. This usually occurs where records are duplicated, facilitative or for short-term use only. NAP does not replace arrangements agreed to in this records authority but can be used as a tool to assist in identifying records for destruction together with this records authority and with records authorities specifically issued to an agency. The National Archives recommends that agencies develop and implement a Normal Administrative Practice policy. Advice and guidance on destroying records as a normal administrative practice and on how to develop an agency NAP policy is available from the National Archives' website at www.naa.gov.au.

6. Records that are reasonably likely to be needed as evidence in a current or future judicial proceeding or are subject to a request for access under the *Archives Act 1983*, the *Freedom of Information Act 1982* or any other relevant act must not be destroyed until the action has been completed.
7. Records subject to a disposal freeze must not be destroyed until the freeze has been lifted. Further information about disposal freezes and whether they affect the application of this records authority is available from the National Archives website at www.naa.gov.au.
8. Where the method of recording information changes (for example from a manual system to a digital system, or when information is migrated from one system to a new system) this records authority can still be applied, providing the records document the same core business. The information must be accessible for the period of time prescribed in this records authority. There is a need to maintain continuing access to the information, including digital information, for the periods prescribed in this records authority or until the information is transferred into the custody of the National Archives.
9. In general retention requirements indicate a minimum period for retention. Agencies may extend minimum retention periods if there is an administrative need to do so, without further reference to the National Archives. Where an agency believes that its accountability will be substantially compromised because a retention period is not adequate, please contact the National Archives for review of the retention period.
10. Records coming within 'retain as national archives' classes in this authority have been determined to be part of the archival resources of the Commonwealth under section 3C of the *Archives Act 1983*. The determination of Commonwealth records as archival resources of the Commonwealth obliges agencies to transfer the records to the National Archives when they cease to be current and, in any event, within 15 years of the records coming into existence, under section 27 of the *Archives Act 1983*.
11. Records in the care of agencies should be appropriately stored, managed and preserved. Agencies need to meet this obligation to ensure that the records remain authentic and accessible over time. Under Section 31 of the *Archives Act 1983*, access arrangements are required for records that become available for public access including those records that remain in agency custody.
12. Appropriate arrangements must be made with the National Archives when records are to be transferred into custody. The National Archives accepts for transfer only those records designated as national archives, and in line with an approved transfer schedule.
13. Advice on how to use this authority is available from your agency's records manager. If there are problems with the application of the authority that cannot be resolved, please contact the National Archives.

CONTACT INFORMATION

For assistance with this authority or for advice on other records management matters, please contact National Archives' [Agency Service Centre](#).

AUTHORISATION

RECORDS AUTHORITY 2019/00026231

Person to whom notice of authorisation is given:

Heads of Commonwealth institutions under the *Archives Act 1983*.

Purpose:

Authorises arrangements for the disposal of records in accordance with paragraph 24(2)(b) of the *Archives Act 1983*.

Determines records classed as 'retain as national archives' in this records authority to be part of the archival resources of the Commonwealth under section 3C of the *Archives Act 1983*.

Application:

All records relating to the following general administrative business area: Contracts Under Seal/Deeds.

This authority gives permission for the destruction, retention or transfer to the National Archives of Australia of the records described. This authority will apply only if these actions take place with the consent of the agency responsible for the administrative business documented in the records.

Authorised by

Linda Macfarlane
Assistant Director-General (Acting)
National Archives of Australia

Date of issue:

27 February 2019

CONTRACTS UNDER SEAL/DEEDS

The business activities related to developing and executing formal contracts under seal or deeds (also known as deeds under seal, speciality, speciality contracts) that set out a binding promise, commitment or obligation usually not involving a consideration (ie a payment of some kind), and state that it is executed or signed as a deed. Includes managing deeds (eg deeds of transfer, deeds of gift) relating to the acquisition and transfer of property. The making of the deed needs to follow certain formalities and is subject to specific time periods set down in State and Territory legislation. Excludes simple contracts, agreements and memoranda of understanding.

The **core activities** include:

- negotiating with parties on terms and conditions;
- identifying, assessing and managing risks;
- drawing up the contract under seal/deed;
- executing the document as legally required;
- registering the document with the relevant State or Territory authority;
- administering the deed;
- managing any variations or extensions;
- managing breaches; and
- managing the termination and discharge of the deed.

Cross references to the AFDA Express records authority

For all supporting general activities, including legal advice on the creation, management, termination and discharge of deeds, and litigation relating to breaches, use LEGAL SERVICES.

For managing the acquisition and disposal of land and buildings through means other than contracts under seal/deeds, use PROPERTY MANAGEMENT.

For managing the acquisition of goods and services (including moveable assets such as equipment, stores and vehicles) through means other than contracts under seal/deeds, use PROCUREMENT.

Cross references to other records authorities

For simple contracts, agreements and memoranda of understanding (other than contracts under seal or deeds), use the function relevant to the subject of the agreement under the agency's records authority or applicable general records authority.

Class no	Description of records	Disposal action
62546	<p>Signed contracts under seal/deeds and supporting documents, that:</p> <ul style="list-style-type: none"> • have or are reasonably likely to have a substantial social, economic, political, scientific, cultural or environmental impact, such as a long term impact on government activities or result in profound changes to public well-being; • have national or international implications; • relate to substantial funding arrangements or establish major partnerships, commercial or cooperative arrangements with other governments, agencies or organisations; • preserve, or substantially impact, the built and natural environment; • relate to major defence or national security considerations, including border control matters; • protect the nation's cultural heritage; 	Retain as national archives

CONTRACTS UNDER SEAL/DEEDS

Class no	Description of records	Disposal action
	<ul style="list-style-type: none"> • set a precedent; • are prominent, controversial or are likely to attract considerable official or public interest; • relate to matters that are ground-breaking or innovative in nature; • result in changes to legislation; or • result in major changes to, have considerable implications for, or are central to the establishment of, Government or agency policies, programs or operations. 	
62547	Signed contracts under seal/deeds made in Western Australia prior to 15 November 2005 and supporting records, other than those covered in class 62546.	Destroy 21 years after discharge or expiration of all obligations under the contract/deed
62548	Signed contracts under seal/deeds made in Victoria and South Australia and supporting records, other than those covered in class 62546.	Destroy 15 years after discharge or expiration of all obligations under the contract/deed
62549	Signed contracts under seal/deeds made in New South Wales, Western Australia (from 15 November 2005), Queensland, Australian Capital Territory, Northern Territory and Tasmania, other than those covered in class 62546.	Destroy 12 years after discharge or expiration of all obligations under the contract/deed
62550	Records documenting: <ul style="list-style-type: none"> • contracts under seal/deeds related activities, other than those covered in classes 62546 to 62549. 	Destroy 7 years after action completed