



Australian Government

National Archives of Australia

General Records Authority No. 29

2010/00643962

Public or Official Inquiries

23 November 2010

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INTRODUCTION

The National Archives of Australia has developed this Records Authority to set out the requirements for keeping or destroying the records of public or official inquiries.

The Authority applies to the records of a wide range of public or official inquiries. The inquiries concerned are temporary, independent inquiries established by federal government ministers to inquire into and report on matters of public importance or public interest, for example, the *Inquiry into the Case of Dr Mohamed Haneef* and the *Equine Influenza Inquiry*.

This Authority is based on the identification and analysis of the business of public or official inquiries. The 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. It 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 accountability requirements; and community expectations.

As changes in circumstances may affect future records management requirements, this Authority will occasionally require amendment by the addition of new classes or variation to existing classes. The National Archives will notify agencies of any changes and the information will also be published on the Archives website.

APPLICATION OF THIS AUTHORITY

1. This Authority supersedes Entry 37 of *General Disposal Authority No. 14 for General Administrative Records* in regard to records kept by or on behalf of Committees/Commissions of Inquiry or Review.
2. This Authority applies to the records of public or official inquiries established by a Minister or jointly by more than one Minister. It does not apply to: royal commissions, inquiries established under the *Defence (Inquiry) Regulations*, Parliamentary inquiries, or inquiries undertaken by permanent agencies whose core business involves conducting inquiries.
3. The Authority is intended to have broad application. The names given to inquiries vary. Some have the word *inquiry* in the title while others may be called board, panel, taskforce, review, committee or something else. The *Equine Influenza Inquiry* and the *Taskforce on Reducing the Regulatory Burden on Business* are examples of inquiries whose records are subject to this authority. A list of non-royal commission federal public inquiries established since March 1983 was published as an appendix to Australian Law Reform Commission Report ALRC 111 *Making Inquiries: A New Statutory Framework*, 2010 available online at <http://www.alrc.gov.au>.
4. A separate records authority for Royal Commission Administration applies to the records kept by royal commissions. Some royal commissions may not have the word *royal* in their titles. For the purposes of the Archives Act, *Royal Commission* means a Commissioner or Commissioners appointed by the Governor-General in the name of the Queen to make inquiry and report upon any matter. The Parliamentary Library maintains a list of royal commissions appointed under the *Royal Commissions Act, 1902* at: <http://www.aph.gov.au/library/intguide/law/royalcommissions.htm#1970>
5. Return of original documents to owners. Some commissions of inquiry are subject to legal provisions regarding the return of original documents to their owners. In such cases, agencies must ensure that the procedures developed by inquiries or inheriting agencies for the return of documents are followed. It is desirable for inquiries to establish processes at the start of the inquiry to ensure that the ownership of any documents submitted or obtained is clear and that, where necessary, documents are copied and returned to their owners when no longer needed for the purposes of the inquiry or other agencies.

6. Inquiries that obtain documents by summonses or notices to produce may find that they obtain a proportion of material that is of no use to the inquiry. Where a relevance assessment is carried out by the inquiry, material that is deemed to be not relevant may be returned to their owners without copying. Where original documents deemed relevant or potentially relevant to the inquiry need to be returned to their owners, copies are to be made and retained. Where no relevance assessment is made, or the relevance status is unknown, the material should be treated as relevant. It may not be practical to segregate copies based on their relevance if the inquiry made and kept copies of documents it obtained regardless of their relevance, or did not undertake relevance assessment. In such cases all the copies should be treated as relevant. Under class 21864, original evidence or material is not required to be retained as national archives if copies were made and retained for the purposes of the inquiry.

7. Unreturnable documents. This Authority permits the destruction of only specified unreturned documents that are deemed to be Commonwealth records by virtue of subsection 22(2) of the Archives Act. This permission is contingent on reasonable efforts being made to contact the owners. The Archives is able to permit destruction in this case because, at the end of the inquiry, the records are deemed to be Commonwealth records under the Archives Act. The permission does not extend to unreturned documents that do not become Commonwealth records. Agencies will need to make their own arrangements for these.

8. This Authority is to be used to sentence records. Sentencing involves the examination of records in order to identify the individual disposal class to which they belong. This process enables sentencers to determine how long records need to be kept. Advice on sentencing is available from the National Archives.

9. In general, retention requirements indicate a minimum period for retention. Agencies may extend minimum retention periods if they consider that there is a 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, it should contact the National Archives for review of the retention period.

10. Relationship to other authorities.

- GDA 14. The *General Records Authority No. 29 - Public or Official Inquiries* supersedes Entry 37 of *General Disposal Authority No. 14 for General Administrative Records* in regard to records kept by or on behalf of Committees/Commissions of Inquiry or Review. From the date of issue of this authority, GDA 14 Entry 37 must not be used to sentence records of inquiries. Inquiry records sentenced correctly under GDA 14 entries 37.1.2 and 37.2.1 immediately before the date of issue of this authority are taken to be sentenced under class 21862 of this authority. The Director-General may determine in writing that this provision does not apply to a Commonwealth record that is not required to be retained as national archives under this authority.
- Administrative Functions Disposal Authority (AFDA) and /or AFDA Express. The AFDA classes apply to records kept by agencies about their involvement or participation in the inquiry. AFDA Express or AFDA may also be used to sentence most general administrative records kept by or for inquiries, eg accommodation and personnel. However, some classes in this authority may impose longer retention periods than AFDA provides. In such cases this authority is to be applied.
- Other general authorities may be applied where relevant, including the *General Disposal Authority for Source Records that have been Copied, Converted or Migrated*.

11. The Normal Administrative Practice (NAP) provision of the Archives Act 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 authority but can be used as a tool to assist in identifying records for destruction together with an agency's record authority or authorities, and with AFDA and AFDA Express. 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.

12. Where the method of recording information changes (for example from a manual system to an electronic system, or when information is migrated from one system to a new system) this 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 authority. Agencies will 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.

13. 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. The determination of Commonwealth records as archival resources of the Commonwealth obliges agencies to transfer the records to the Archives, when they cease to be current, under section 27 of the Archives Act. There is an exception that affects some inquiries. The National Archives is not entitled to the care of any records of commissions of inquiry subject to section 22 of the Archives Act, except in accordance with a direction from the responsible minister or a regulation under section 9 of the *Royal Commissions Act 1902*.

14. From time to time the National Archives will place a freeze on some groups of records relating to a particular topic or event which has gained prominence or provokes controversy. While the freeze is in place no records relating to the topic or event may be destroyed. Further information about disposal freezes and whether they affect the application of this authority is available from the National Archives website at www.naa.gov.au

15. Records which relate to any current or pending legal action, or are subject to a request for access under the Archives Act 1983 or any other relevant Act must not be destroyed until the action has been completed.

16. 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 after this time.

17. Appropriate arrangements should 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.

18. Advice on how to use this authority is available from the records manager of the inquiry or the inheriting agency. 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.

Queen Victoria Terrace

Parkes ACT 2600

PO Box 7425

Canberra Mail Centre ACT 2610

Tel: (02) 6212 3610

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Email: recordkeeping@naa.gov.au

Website: www.naa.gov.au

AUTHORISATION

RECORDS AUTHORITY 2010/00643962

Person to whom notice of authorisation is given:

Heads of Commonwealth Institutions responsible for the records of public or official inquiries.

Purpose:

Authorises arrangements for the disposal of records in accordance with section 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.

Application:

Records of public or official inquiries

This authority will apply only with the consent of the agency currently responsible for the business documented in the records described.

Authorising Officer

Date of issue:



23 November 2010.

Ross Gibbs

Director-General

National Archives of Australia

PUBLIC OR OFFICIAL INQUIRIES

The core business of conducting an inquiry into and reporting on the matters in respect of which the inquiry was established by a Minister or jointly by more than one Minister. This includes establishing and planning the inquiry, delegating powers, liaising with other agencies or stakeholders, conducting investigations and research, receiving submissions, holding hearings and preparing and presenting reports. Excludes Royal Commissions, inquiries established under the *Defence (Inquiry) Regulations*, Parliamentary inquiries, and inquiries undertaken by permanent agencies whose core business involves conducting inquiries.

The core business includes activities undertaken in **setting up and administering the inquiry** such as:

- establishing and constituting the inquiry e.g. letters of commission, ministerial directions, terms of reference;
- appointing members;
- delegating powers to inquiry staff, members of a police force or other persons assisting;
- authorising warrants e.g. search or apprehension warrants or summonses;
- developing policies, directions, methods and rules and planning the inquiry at an operational and strategic level e.g. practice notes for investigations, directions and rules for hearings;
- establishing records management, security, custody, access and use procedures for records and for the disclosure or publication of information;
- registering receipt, control and movement of evidence and exhibits; and
- referring matters and documents to other bodies e.g. where a possible breach of law has occurred.

The core business includes activities undertaken in **liaising with stakeholders and conducting investigations and research** such as:

- liaising with stakeholders, including exchanging information, with Australian and foreign governments, agencies and other stakeholders and arranging and attending conferences, meetings, committees, public forums, focus groups;
- preparing and presenting addresses and liaising with the media;
- coordinating investigations and research e.g. producing investigation practice notes and consideration of inquiry powers, protections and legal issues;
- summoning witnesses and issuing notices to produce documents;
- investigating research and analysing results; and
- producing issue, discussion papers and reports.

The core business includes activities undertaken in **managing the submission process** such as:

- calling for and receiving submissions; and
- interviewing and taking and receiving witness statements.

The core business includes activities undertaken in **conducting hearings** such as:

- selecting witnesses and preparing witness statements;
- selecting documents to be tendered and scheduling the order of proceedings;
- managing evidence, exhibits, statements made and papers presented; and
- compiling and managing transcripts and audio-visual recordings of proceedings.

The core business includes activities undertaken in **finalising the inquiry** such as:

- preparing and submitting formal reports of the inquiry.

PUBLIC OR OFFICIAL INQUIRIES

For general administrative records such as those relating to finance, accommodation, personnel, information and communications technology, information and records management, procurement of goods and services, publication, security, tendering, travel and websites, use AFDA Express or AFDA unless there is specific provision in this authority. This applies to records kept by the inquiry or for the inquiry by the associated department.

For records of an agency's involvement in inquiries as a participant, use AFDA Express or AFDA: GOVERNMENT RELATIONS – Inquiries.

Class No	Description of records	Disposal action
21862	<p>Records setting up and administering the inquiry, including:</p> <ul style="list-style-type: none"> - establishment records; - records of members' appointments; - delegations, warrants and warrant registers; - policies, plans, procedures, rules and practice notes; - legal advice on inquiry powers and protections; - registers controlling handling of evidence and exhibits; - referrals of matters and documents to other bodies; and - managing compliance issues and breaches. <p>Records of liaison, investigation and research, including:</p> <ul style="list-style-type: none"> - final addresses by inquiry members and senior counsels; - media releases; - results of investigations, research reports, briefing papers; - issues papers or discussion papers; - documents obtained by summons or notice to produce that are deemed relevant to the inquiry (see note 6); - other relevant evidence or information obtained; - expert advice and legal assessments; and - records of liaison with stakeholders e.g. minutes and conference and forum reports. <p>Records of the submission process, including:</p> <ul style="list-style-type: none"> - submissions; and - witness statements and interview and meeting notes. <p>Records of hearings, including:</p> <ul style="list-style-type: none"> - schedule of order of proceedings and witnesses; - evidence presented, exhibits, papers, statements; and - best complete transcripts and audio visual recordings. <p>Records reporting on and finalising the inquiry, including:</p> <ul style="list-style-type: none"> - preparation and approval of interim and final reports and submission documents. 	Retain as national archives

PUBLIC OR OFFICIAL INQUIRIES

Class No	Description of records	Disposal action
21863	<p><i>Evidence and exhibits – measures to return.</i></p> <p>Records documenting the return, or attempted return, of evidence or exhibits to their owners.</p> <p>Note: This class may also be applied to relevant records created by an agency that inherits records of an inquiry.</p>	Destroy 10 years after last action
21864	<p><i>Evidence and exhibits – unreturnable items.</i></p> <p>Original evidence or material not required to be retained as national archives which is either:</p> <ul style="list-style-type: none"> not wanted by the owner; or unable to be returned to the owner after reasonable efforts have been made for their return. <p>Notes to class 21864:</p> <ol style="list-style-type: none"> This class applies to records that are deemed to be Commonwealth records under the Archives Act. The disposal action for this class assumes that the items are no longer required for the purposes of the inquiry or authorised use by other persons or bodies. Original evidence or material is not required to be retained as national archives if it was deemed to be not relevant to the inquiry during the course of the inquiry, or if copies were made and retained for the purposes of the inquiry. 'Reasonable efforts' will be determined by the Department responsible for the records of the completed inquiry and the National Archives. 	Destroy 3 months after it becomes evident that the material is not wanted by the owner, or not able to be returned to the owner after reasonable efforts
21865	<p>Other records kept by the inquiry such as those documenting:</p> <ul style="list-style-type: none"> routine operational administrative tasks supporting the business; or inquiry activities other than those covered in classes 21862, 21863 or 21864. 	Destroy 7 years after completion of the inquiry