



Australian Government



**NATIONAL
ARCHIVES
OF AUSTRALIA**

AFDA Express Version 2

2017/00491822

Legal Services

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INTRODUCTION

The National Archives of Australia (National Archives) has developed this records authority to set out the requirements for keeping or destroying records for the general administrative function of Legal Services.

This records authority is based on the identification and analysis of the Legal Services function. 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 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 1569-1571, 1573, 1576-1579, 1581-1607, 21021, 21022 and 20957-20961 in the LEGAL SERVICES function of the *Administrative Functions Disposal Authority* (2010) and classes 20449-20455 in the LEGAL SERVICES function of *AFDA Express* (March 2010). The superseded records classes cannot be used to sentence records after 1 July 2019 – with the exception of superseded records classes 1586 and 21022 which cannot be used after the date of issue of this authority (see point 3 below).
3. Records relating to the receipt or provision of legal advice and records of litigation matters previously covered by classes 1586, 21022 or 20455 must be resentenced upon issue of this authority. These classes potentially contain records to be retained as national archives that were previously identified as being of temporary value.
4. 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.
5. 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.
6. 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.

7. 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.
8. 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.
9. 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.
10. 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.
11. 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*.
12. 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.
13. 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.
14. 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 2017/00491822

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: Legal Services.

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

Teresa Ward
Assistant Director-General
National Archives of Australia

Date of issue:

21 February 2018

LEGAL SERVICES

The function of providing legal services to the organisation. Includes interpretation and advice regarding legal matters, and the handling of legal actions and disputes. Also includes legal advice received from in-house consultants and external sources.

Note: Where the provision of legal services is a core business of an agency, specific coverage will be required within an agency's own records authority.

The **core activities** include:

- providing and receiving advice, including legal advice;
- providing legal representations relating to claims, including those that result in litigation or settlement by agreement;
- managing litigation, including preparing briefs for counsel, initiating and responding to discovery and other coercive information gathering activities, appealing decisions, and complying with court or tribunal instructions;
- supporting conduct of, or participation in, inquiries;
- establishing and managing intellectual property, including attempts to establish intellectual property rights and managing infringements of an agency's intellectual property; and
- managing infringements or breaches of mandatory standards, rules or statutory requirements.

The performance of the function is supported by **general activities** such as:

- developing and implementing policies and procedures;
- negotiating, establishing, managing and reviewing agreements and contracts supporting the legal services function;
- establishing, managing and participating in committees and meetings;
- fulfilling compliance requirements, including fiscal, legal, regulatory and quality standards and requirements;
- delegating powers and authorising actions;
- undertaking research and analysis;
- planning and reporting;
- evaluating and reviewing; and
- managing risks.

Cross references to the AFDA Express records authority

For managing the acquisition of goods and services to support the legal services function, including tendering and contracting-out arrangements, use PROCUREMENT.

For managing financial transactions supporting legal services activities, including payments made to legal providers, use FINANCIAL MANAGEMENT.

For agency submissions to government, including the consolidated record of an agency's involvement in an inquiry, use EXTERNAL RELATIONS.

For vehicle operator or traffic infringement notices that do not proceed to litigation or where legal support is not required, use ASSET MANAGEMENT.

For disciplinary actions arising from infringements by employees (including breaches of the law), use PERSONNEL MANAGEMENT.

For industrial relations infringements incurred by the agency, use INDUSTRIAL RELATIONS.

For complying with subpoenas and discovery orders requiring the agency to locate information, use TECHNOLOGY & INFORMATION MANAGEMENT.

Cross references to other records authorities

For developing and executing contracts under seal or deeds, including signed joint venture contracts under seal, deeds of release and deeds of indemnity, use CONTRACTS UNDER SEAL/DEEDS.

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 a general records authority.

Class no	Description of records	Disposal action
62411	<p>Records documenting:</p> <ul style="list-style-type: none"> • receipt or provision of legal advice by an internal or external legal service provider relating to: <ul style="list-style-type: none"> ○ Cabinet matters; ○ international law; ○ national security; ○ agency-wide industrial issues; ○ interpretation of an agency's own legislation; ○ proposals for new or amended agency legislation; ○ matters that are controversial or of major public interest; ○ matters that are precedent setting; or ○ matters which result in major changes to agency or Government policies, process or programs. <p>Includes final advice, major drafts, instructions to the provider, records of ongoing discussions, and revisions of instructions; and</p> <p><i>[For legal advice received in relation to individual compensation cases, use COMPENSATION.]</i></p> <ul style="list-style-type: none"> • litigation matters that: <ul style="list-style-type: none"> ○ result in the setting of legal precedents; ○ involve matters that are controversial or of major public interest; ○ result in convictions for significant wrongdoing (eg fraud, theft); or, ○ result in major changes to agency or Government policies, processes or programs, substantial changes to industry practices, or changes to legislation. <p><i>[For the provision of legal representation relating to claims that do not result in legal proceedings or settlement by an agreement, use 62414.</i></p> <p><i>For case records of the settlement of compensation claims, including claims settled without legal intervention, use COMPENSATION.</i></p> <p><i>For all litigation records concerning asbestos-related claims relating to the Asbestos-related Claims (Management of Commonwealth Liabilities) Act 2005, transfer records to the central agency with legislative responsibility for the management of the asbestos liability in the Commonwealth (currently Comcare).]</i></p>	Retain as national archives

LEGAL SERVICES

62412	<p>Records documenting:</p> <ul style="list-style-type: none"> establishment and general management of an agency's intellectual property. Includes patents, trademarks, designs, trade secrets, and all forms of copyright. <p><i>[For managing applications to reproduce material in which the agency holds copyright, or applications made by the agency to reproduce material held under copyright by other parties, use PUBLICATION.</i></p> <p><i>For the payment and receipt of royalties in relation to intellectual property, use FINANCIAL MANAGEMENT.</i></p> <p><i>For legal actions relating to managing infringements of an agency's intellectual property, use class 62411 or 62414.</i></p> <p><i>For unsuccessful or abandoned attempts to establish intellectual property, use class 62414.]</i></p>	Destroy 3 years after intellectual property rights lapse
62413	<p>Records documenting:</p> <ul style="list-style-type: none"> legal support given to an agency either conducting an inquiry or participating in an inquiry; <p><i>[For a consolidated record of an agency's involvement in an inquiry, including agency submissions, use EXTERNAL RELATIONS.]</i></p> <ul style="list-style-type: none"> developing section or business unit legal services plans, including those of state, regional or overseas offices. Includes final versions; and working papers documenting the development of agency procedures and reports supporting the legal services function. Includes drafts and stakeholder feedback. <p><i>[For final versions of agency procedures and reports supporting the legal services function, use 62414.]</i></p>	Destroy 3 years after action completed
62414	<p>Records documenting:</p> <ul style="list-style-type: none"> routine operational administrative tasks supporting the function; and legal services activities, other than those covered in classes 62411 to 62413. 	Destroy 7 years after action completed