



**Australian Government**



**NATIONAL  
ARCHIVES  
OF AUSTRALIA**

General Records Authority No 36  
2015/00364412

**Contracts Under Seal/Deeds**

2015

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Superseded

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## INTRODUCTION

The National Archives of Australia has developed this Records Authority to set out the requirements for keeping or destroying records relating to Contracts Under Seal/Deeds. This General Records Authority is intended to have broad application for agencies that create contracts under seal/deeds. It takes into account legal and organisational records management requirements, and the interests of stakeholders, including Commonwealth agencies and the National Archives of Australia to preserve the archival resources of the Commonwealth.

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. This 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 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 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 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 Authority;
  - records that have not reached the minimum retention period must be kept until they do; and
  - records that are identified as Retain as National Archives (RNA) are to be transferred to the National Archives of Australia for preservation.
2. This Authority should be used in conjunction with general records authorities such as:
  - the Administrative Functions Disposal Authority (AFDA) and/or AFDA Express issued by the National Archives to cover business processes and records common to Australian Government agencies; and
  - General Records Authority 31 for source (including original) records that have been copied, converted or migrated.
3. This authority should also be used in conjunction with record authorities that relate to agency-specific business. It does not supersede existing coverage in current records authorities and does not exclude coverage in future records authorities where an agency and the National Archives agree to the need for exceptions coverage.
4. This authority identifies some RNA records that are not currently identified in AFDA Express under Property management, Procurement and Legal Services. It also provides agencies with a sentencing choice for temporary contracts under seal/deeds because it streamlines the coverage existing under three functions in AFDA Express into a single core business.
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 Authority but can be used as a tool to assist in identifying records for destruction together with an agency's Records 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](http://www.naa.gov.au).

6. 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. The agency 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.
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. In general, retention requirements indicate a minimum period for retention. Agencies may extend minimum retention periods if they consider that there is an administrative need to do so, without further reference to the National Archives. Where a Commonwealth agency believes that its accountability will be substantially compromised because a retention period or periods are not adequate, it should contact the National Archives for review of the retention period.
9. 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 Authority is available from the National Archives website at [www.naa.gov.au](http://www.naa.gov.au).
10. 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.
11. 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.
12. 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.

Queen Victoria Terrace  
Parkes ACT 2600  
PO Box 7425  
Canberra Business Centre ACT 2610

Tel: (02) 6212 3610  
Fax: (02) 6212 3989  
Email: [recordkeeping@naa.gov.au](mailto:recordkeeping@naa.gov.au)  
Website: [www.naa.gov.au](http://www.naa.gov.au)

## AUTHORISATION

### GENERAL RECORDS AUTHORITY 2015/00364412

**Person to whom notice of authorisation is given:**

Heads of Commonwealth institutions under the *Archives Act 1983* responsible for Contracts Under Seal/Deeds.

**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 30 of the *Archives Act 1983*.

**Application:**

All core business records relating to 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 with the consent of the agency currently responsible for the business documented in the records described.

**Authorised by:****Date of issue:**

David Fricker

Director -General

National Archives of Australia

## CONTRACTS UNDER SEAL/DEEDS

The business of developing and executing formal contracts under seal or deeds (also known as deed under seal, speciality, speciality contract) that set out a binding promise, commitment or obligation usually not involving a consideration (ie a payment of some kind), and states 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;
- assessing 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 any 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 property through means other than contracts under seal/deeds, use PROPERTY MANAGEMENT.*

### Cross references to other records authorities

*For simple contracts, agreements and memoranda of understanding, use the agency's Records Authority or AFDA Express.*

Class no	Description of records	Disposal action
61934	<p>Signed contracts under seal/deeds and supporting documents, that:</p> <ul style="list-style-type: none"> <li>• potentially 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;</li> <li>• have national or international implications;</li> <li>• relate to substantial funding arrangements or establish major partnerships, commercial or cooperative arrangements with other governments, agencies and organisations;</li> <li>• preserve, or substantially impact, the built and natural environment;</li> <li>• relate to major defence or national security considerations, including border control matters;</li> <li>• protect the nation's cultural heritage;</li> </ul>	Retain as national archives

## CONTRACTS UNDER SEAL/DEEDS

	<ul style="list-style-type: none"> <li>• are prominent, controversial or are likely to attract considerable official or public interest;</li> <li>• set a precedent;</li> <li>• relate to matters that are ground-breaking or innovative in nature;</li> <li>• result in changes to legislation; or</li> <li>• result in major changes to, have considerable implications for, or are central to the establishment of, Government or agency policies, programs or operations.</li> </ul>	
61935	Signed contracts under seal/deeds made in Western Australia prior to 15 November 2005 and supporting records, other than those covered in class 61934.	Destroy 21 years after discharge or expiration of all obligations under the contract/deed
61936	Signed contracts under seal/deeds made in Victoria and South Australia and supporting records, other than those covered in class 61934.	Destroy 15 years after discharge or expiration of all obligations under the contract/deed
61937	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 61934.	Destroy 12 years after discharge or expiration of all obligations under the contract/deed
61938	Records documenting: <ul style="list-style-type: none"> <li>• routine operational administrative tasks supporting the core business; and</li> <li>• contracts under seal/deeds activities, other than those covered in classes 61934 to 61937.</li> </ul>	Destroy 7 years after action completed