



Australian Government

National Archives of Australia

Records Authority

2019/00345170

Department of Defence

Military Justice and Legal Services

2020



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INTRODUCTION

The Department of Defence (Defence) and the National Archives of Australia have developed this records authority to set out the requirements for keeping or destroying records for the core business area of MILITARY JUSTICE AND LEGAL SERVICES. It represents a significant commitment on behalf of the Department to understand, create and manage the records of its activities.

This authority is based on the identification and analysis of the business of the Department. It takes into account the agency's legal and organisational information management requirements, and the interests of stakeholders, the agency and the National Archives.

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 the Department 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, and are approved by the National Archives on the basis of information provided by the agency.

As changes in circumstances may affect future information management requirements, the periodic review of this authority is recommended. All amendments must be approved by the National Archives.

APPLICATION OF THIS AUTHORITY

1. This authority partially supersedes the following records authorities; RDS 506 (1988); RDS 508 (1988); RDAs 568 (1989), 630 (1990); 647 (1990); 1013 (1993); 1121 (1994); 1122 (1994); 1157 (1994); 1176 (1995); 1222 (1995); 1227 (1996); 1242 (1996) and 1357 (1998). Precise information on the superseded sections of these records authorities can be obtained from the Defence information and records manager. The superseded records authorities cannot be used by Defence to sentence records after the date of issue of this authority.
2. 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 Departmental 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.
 - Records that are identified as 'retain as national archives' are to be transferred to the National Archives for preservation.
3. This authority should be used in conjunction with general records authorities such as:
 - AFDA Express Version 2 issued by the National Archives to cover business processes and records common to Australian Government agencies; and
 - General Records Authority (31) - Destruction of source or original records after digitisation, conversion or migration (2015).
4. 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 Express Version 2. The National Archives recommends that agencies develop and implement a NAP policy. Advice and guidance on destroying records as a normal administrative practice and on how to develop a NAP policy is available from the National Archives' website at www.naa.gov.au.

5. 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.
6. 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.
7. Where the method of recording information changes (for example from an analogue system to a digital 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 Department 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.
8. In general, retention requirements indicate a minimum period for retention. The Department may extend minimum retention periods if it considers that there is an administrative need to do so, without further reference to the National Archives. Where the Department 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 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*.
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. Records created digitally after 1 January 2016 can be transferred in digital formats only.
12. Advice on how to use this authority is available from the Department information 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 information management matters, please contact National Archives' [Agency Service Centre](#).

AUTHORISATION

RECORDS AUTHORITY 2019/00345170

Person to whom notice of authorisation is given:

Greg Moriarty
Secretary
Department of Defence
Russell Offices
Canberra ACT 2600

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 1983*.

Application:

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

Authorising Officer



Jason McGuire
A/g Assistant Director-General, Government Data and Policy
National Archives of Australia

Date of Issue: 19 August 2020

MILITARY JUSTICE AND LEGAL SERVICES

The core business of Defence military justice and legal services encompasses all actions taken by Defence legal organisations, military justice independent statutory office holders and their support directorates with the management of the military justice system, as well as the provision of legal advice, support and services to the Australian Defence Force (ADF).

The military justice system is the body of law and procedures governing Defence personnel and comprises the military discipline system and the military administrative system. The military discipline system deals with the investigation and prosecution of offences under military law, designed to maintain and enforce military discipline. The military administrative system deals with command decisions concerning administrative inquiries, administrative sanctions and complaint handling.

Defence legal services and support typically involves the provision of activities including legal advice, drafting of legal documentation, legal representation of Defence individuals or the department regarding such matters as claims or litigation, as well as providing other legal services in the course of day to day business. Defence Legal Officers and legal specialists, commercially sourced legal service providers, and appointed and authorised military officers are involved in the military justice system, and the provision of legal services to Defence.

The **core activities** include:

- military discipline system activities, including summary authority proceedings, Defence Force Magistrate proceedings, courts martial, appeals, and investigations into ADF personnel fatalities or serious injury;
- military administrative system activities, including administrative inquiries and Defence Officer proceedings;
- the provision of legal advice across a broad range of areas of specialisation, including high level legal policy, international, discipline, administrative and commercial law; and
- the provision of legal services and support, including legal assistance to ADF members, special financial claims, commercial matters, litigation and external legal services.

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

- providing and receiving advice;
- appointing (authorisations);
- auditing;
- managing committees, groups, boards and forums;
- undertaking compliance activities;
- developing handbooks, manuals and procedures;
- handling complaints;
- liaison and coordination;
- developing policies and directives;
- planning;
- reporting;
- responding to requests for information and research; and
- evaluation and review.

Cross references to other Defence records authorities

For Military Police investigations and incident management, including all evidence supporting a decision to proceed with a trial, use MILITARY POLICING.

For conduct of the investigation into a fatality or serious injury to Defence personnel whilst not on operations but on Defence duty, including procedures for conducting a complex or major investigation, use MILITARY POLICING.

For Defence military justice and legal services advice provided to Government ministers, use STRATEGY AND ADVICE.

For reporting to Government on military justice and legal services matters, use STRATEGY AND ADVICE.

For core and general military justice and legal services activities supporting Defence operations, use DEFENCE OPERATIONS.

For Defence training, including Defence-specific military justice and legal services training, use DEFENCE TRAINING.

For legal support to commercial matters specific to capability development, acquisition and disposal, use CAPABILITY DEVELOPMENT, ACQUISITION AND DISPOSAL.

For management of the sourcing and managing external legal services by Defence specific to capability development, acquisition and disposal, use CAPABILITY DEVELOPMENT, ACQUISITION AND DISPOSAL.

For the sourcing and management of external legal services by Defence specific to materiel sustainment and logistics support, including for commercial matters, use MATERIEL SUSTAINMENT AND LOGISTICS SUPPORT.

For name identified administrative system advice, use MILITARY PERSONNEL, HEALTH AND WELFARE.

For claims from Defence ADF personnel, use MILITARY PERSONNEL, HEALTH AND WELFARE.

Cross references to other records authorities

For records kept by the Parliamentary Inquiry, use General Records Authority 29: PUBLIC OR OFFICIAL INQUIRIES.

Cross references to AFDA Express Version 2

For claims from Defence APS staff, use COMPENSATION.

For finance audit records which relate to common administrative records and are not directly related to military justice and legal services, use FINANCIAL MANAGEMENT.

For legal support to general Defence business and usual commercial matters, use LEGAL SERVICES.

For sourcing and management of external legal services by Defence, use LEGAL SERVICES.

For the development of new legislation enabling military justice and legal services in the ADF, use STRATEGIC MANAGEMENT.

CLASSES

| Class no | Description of records | Disposal action |
|-----------------|--|-----------------------------|
| 62685 | Records documenting: <ul style="list-style-type: none"> • developing, establishing and implementing Military Police policies and directives, including interim policies and directives; • agreements with other policing jurisdictions; • authorisation or termination of significant formal appointments to undertake specified military justice and legal services responsibilities; • management of formal Defence committees, groups, boards and forums; | Retain as national archives |

| Class no | Description of records | Disposal action |
|----------|---|---|
| | <ul style="list-style-type: none"> • developing, establishing and implementing military justice and legal services policies and directives, including interim policies and directives; • conduct of Summary Authority proceedings, including: <ul style="list-style-type: none"> ○ Superior Summary Authority; ○ Commanding Officer Summary Authority; and ○ Subordinate Summary Authority. • conduct of Defence Force Magistrate hearings or court martial hearings, including appeals; • conduct of Inquiry Officer inquiries into incidents leading to precedent setting or high-profile decisions; • Defence Legal officer support for parliamentary inquiries into Defence matters; • conduct of Inspector-General of the Australian Defence Force inquiries leading to precedent setting or high-profile decisions; • conduct of an Inspector-General of the Australian Defence Force inquiry into a Service death; • advice provided by Defence Legal on: <ul style="list-style-type: none"> ○ international law; and ○ relating to high level legal and related legal policy. • advice provided by Defence Legal on military discipline law and military administrative law; • legal support and advice required to establish and implement international agreements and arrangements; • managing litigation and related activities for Defence in respect of high profile matters, such as civil claims against the Commonwealth, including administrative law challenges and judicial review of decisions where legal precedents are set, and • high-level review of legal services. | |
| 62686 | <p>Records documenting:</p> <ul style="list-style-type: none"> • litigation and related activities for Defence in respect of civil claims against the Commonwealth, including administrative law challenges and judicial review of decisions involving a named Defence member; and • management of legal aid applications and other legal advice provided to entitled Defence personnel. | Destroy 130 years after the date of birth of member |

| Class no | Description of records | Disposal action |
|----------|---|---|
| 62687 | Records documenting: <ul style="list-style-type: none"> • Defence Legal Officer support to external coronial inquiries into fatalities related to Defence activities; and • Defence Legal Officer support to a Defence Ombudsman inquiry into Defence matters. | Destroy 75 years after action completed |
| 62688 | Records documenting: <ul style="list-style-type: none"> • final external audit reports (e.g. conducted by an external authority such as the Australian National Audit Office) where the audit report is qualified by the Auditor-General; • non-compliant audit reports and supporting documentation of an internal or external financial audit where: <ul style="list-style-type: none"> ○ the audit report is qualified by the Auditor-General, and ○ there are changes to current practices; • specified compliance activities, including: <ul style="list-style-type: none"> ○ certification of the operating method or practice as complying with required standards; and ○ certification of the practice competency; • procedures; • conduct of a court of inquiry into any matter concerning the Australian Defence Force not leading to a precedent setting or high-profile decision; • conduct of an Inspector-General of the Australian Defence Force inquiry not leading to a precedent setting or high-profile decision; and • conduct or review of a redress of grievance by the Inspector-General of the Australian Defence Force. | Destroy 25 years after action completed |
| 62689 | Records documenting: <ul style="list-style-type: none"> • Defence Legal Officer input and advice to the military planning process in preparation for major exercises, events and Defence business as usual tasks [Excludes operational planning]. | Destroy 20 years after action completed |
| 62690 | Records documenting: <ul style="list-style-type: none"> • significant liaison and coordination, including Direct Liaison Authorisations; and liaison with organisations such as legal representatives of other agencies; service police of other nations; and INTERPOL. | Destroy 15 years after action completed |
| 62691 | Records documenting: <ul style="list-style-type: none"> • authorisation or termination of routine formal appointments to undertake specified military justice and legal services responsibilities; • final reports of internal audits, including those conducted by contracted external commercial auditing bodies; | Destroy 10 years after action completed |

| Class no | Description of records | Disposal action |
|----------|--|--|
| | <ul style="list-style-type: none"> • all internal level reporting applicable to military justice and legal services used to develop and inform higher level reports [Excludes reporting to government]; • conduct of an Inquiry Officer inquiry into an incident not leading to a precedent setting or high-profile decision; • advice provided by Defence Legal on commercial law; and • provision of legal assistance case management not relating to the military justice system to Defence personnel. | |
| 62692 | <p>Records documenting:</p> <ul style="list-style-type: none"> • compliant audit reports and supporting documentation of an internal or external financial audit where: <ul style="list-style-type: none"> ○ the audit report has been accepted by the Auditor-General, and ○ there are no changes or only minor or routine changes to current practices. • general compliance activities, including compliance certificates and requirements information; • manuals and handbooks; • administration of: <ul style="list-style-type: none"> ○ Summary Authority proceedings; ○ Defence Force magistrate or court martial hearings; ○ Defence Force Discipline Appeal Tribunal into a Defence Force magistrate hearing or a court martial hearing; ○ Defence Legal Officer support to a coronial inquiry into a fatality related to Defence activities; ○ Defence Legal officer support to a Defence Ombudsman inquiry into Defence matters; ○ Defence Legal officer support to a parliamentary inquiry into Defence matters; ○ Inspector-General of the Australian Defence Force inquiries; and ○ litigation (including the management of legal aid applications and other legal advice provided to entitled Defence personnel) and related activities for Defence in respect of civil claims against the Commonwealth, including administrative law challenges and judicial review of decisions. • special financial claims for compensation and debt waiver requests by any public individual, company or other organisation, including: <ul style="list-style-type: none"> ○ compensation for Detriment caused by defective administration; ○ act of grace payments; and ○ ad hoc payment requests. • litigation and related activities for Defence in respect of civil claims against the Commonwealth, including administrative law challenges and judicial review of decisions where legal precedents are not set. | Destroy 7 years after action completed |

| Class no | Description of records | Disposal action |
|-----------------|---|--|
| 62693 | Records documenting: <ul style="list-style-type: none">managing and implementing the Discipline Officer process | Destroy 1 year after action completed |
| 62694 | Records documenting: <ul style="list-style-type: none">routine administration supporting the core business; andDefence military justice and legal services activities, other than those covered in classes 62685 to 62693. | Destroy 3 years after action completed |