



**Australian Government**

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**National Archives of Australia**

**Records Authority**

2020/00426412

**Fair Work Ombudsman**

*WORKPLACE RELATIONS ADVICE,  
COMPLIANCE MONITORING, AND  
ENFORCEMENT*

2020



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## Introduction

Fair Work Ombudsman (FWO) 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 WORKPLACE RELATIONS ADVICE, COMPLIANCE MONITORING, AND ENFORCEMENT. It represents a significant commitment on behalf of FWO to understand, create and manage the records of its activities.

This authority is based on the identification and analysis of the business of FWO. 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 FWO 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 supersedes records authority (RA) 2010/00031012. The superseded records authority cannot be used by FWO to sentence records after the date of issue of this authority.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 FWO 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:
  - the Administrative Functions Disposal Authority (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 and AFDA Express. 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](http://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](http://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 FWO 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 FWO 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 FWO 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' class 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 FWO 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 2020/00426412

### Notice of authorisation

Person to whom notice of authorisation is given:

Ms Sandra Parker  
Fair Work Ombudsman  
Level 10/224 Bunda St, Canberra ACT 2601

### 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 WORKPLACE RELATIONS ADVICE, COMPLIANCE MONITORING, AND ENFORCEMENT.

### Authority

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.

<b>Authorising Officer</b>	<b>Date of issue</b>
Tatiana Antsoupova Assistant Director-General, Government Data & Policy (A/g) National Archives of Australia	23 December 2020

## WORKPLACE RELATIONS ADVICE, COMPLIANCE MONITORING, AND ENFORCEMENT

The core business of promoting harmonious, productive and cooperative workplace relations by ensuring compliance with Australia's workplace laws by employees and employers. This is achieved through providing advice and education on the requirements of the workplace laws to foster voluntary compliance, monitoring compliance with workplace laws, inquiring into and investigating alleged breaches of workplace laws, enforcing compliance with workplace laws and, where necessary, commencing legal proceedings.

The **core activities** include:

- providing advice and education on workplace relations issues to industries, organisations, associations, and individuals;
- delivering a legal advice referral program funded as part of the COVID-19 budget response package;
- undertaking compliance and enforcement activities relating to temporary JobKeeper provisions in the *Fair Work Act 2009*, as amended by the *Coronavirus Economic Response Package (Payments and Benefits) Act 2020* and the *Coronavirus Economic Response Package Omnibus (Measures No. 2) Act 2020*;
- monitoring compliance with the relevant legislation (currently the *Fair Work Act 2009*) and fair work instruments;
- undertaking dispute resolution activities to resolve workplace disputes;
- conducting inquiries into specific sectors or employment arrangements;
- investigating complaints and claims of alleged breaches of workplace laws;
- undertaking targeted monitoring activities, including intelligence and evidence gathering, and data matching and analysis activities;
- using statutory compliance powers, such as entering premises and issuing notices to produce records or documents, and using enforcement mechanisms to deal with possible contraventions of the workplace laws, such as issuing compliance notices, accepting enforceable undertakings, issuing assessment and contravention letters and infringement notices;
- commencing civil penalty proceedings for contraventions of Australia's workplace laws;
- funding employer and employee groups to supplement existing industrial relations advice services;
- referring matters to other relevant authorities (e.g. Department of Home Affairs, Australian Federal Police) where appropriate; and
- developing the compliance and enforcement policy outlining the strategic direction for all compliance and enforcement activities undertaken by the agency.

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

- establishing agreements and memoranda of understanding (MoUs);
- undertaking organisational audits;
- delegating powers and authorising actions;
- establishing, managing and participating in committees, working groups and other bodies;
- engaging with stakeholders (e.g. Australian Government agencies, multi-agency taskforces, employer and employee organisations, community organisations, academia, the public) to promote compliance with workplace laws;
- developing and reviewing operational policies, plans, procedures, guides etc. in relation to core business;
- managing projects and programs;

- providing internal and external reports (e.g. reports on workplace relation matters, customer service quality assurance reports) and reviews;
- undertaking research and analysis; and
- identifying, assessing, and managing operational risks.

## Cross references to AFDA Express Version 2 Records Authority

*For master set of media releases, and addresses and speeches made by the Fair Work Ombudsman Chief Counsel and Deputy Fair Work Ombudsmen, use EXTERNAL RELATIONS.*

*For consulting with targeted groups in relation to agency's current and future activities and priorities, use EXTERNAL RELATIONS.*

*For developing of high-level reports (e.g. annual reports, formal reports) submitted to the Minister or government, use EXTERNAL RELATIONS.*

*For providing submissions to inquiries/policy reviews and reports to Government, including contributions and responses to Senate orders, briefing notes etc., use EXTERNAL RELATIONS.*

*For managing the agency's financial resources in the performance of its functions, including undertaking financial audits use FINANCIAL MANAGEMENT.*

*For managing unclaimed recovered money on behalf of the Australian Government as the result of orders made by a court, use FINANCIAL MANAGEMENT.*

*For internal legal advice provided to support the implementation of changes to, or interpretation of, authorising legislation (currently the Fair Work Act 2009), new Schemes, Programs and Taskforces, use LEGAL SERVICES.*

*For engaging the services of contractors and/or external consultants, and purchasing specialist services, use PROCUREMENT.*

*For design, production and distribution of publications, pay rate guides, declaration forms, information statements, newsletters etc., use PUBLICATIONS.*

*For undertaking internal or external audits relating to the overall management planning of the agency, and for planning, developing and reviewing agency-wide strategic and corporate plans, use STRATEGIC MANAGEMENT.*

*For the management of the agency's information holdings, including handling freedom of information (FOI) requests and applications, and the technical maintenance and management of the agency's website, use TECHNOLOGY AND INFORMATION MANAGEMENT.*

## Cross references to other records authorities

*For dealing with national employment issues, such as unlawful termination claims and unfair dismissal applications, see Fair Work Commission's Records Authority 2009/00439481.*

*For the management of grants, including grants to community groups and grants to organisations impacted by COVID-19 pandemic, use General Records Authority 28 – GRANT MANAGEMENT.*

## Classes

Class no	Description of records	Disposal action
62852	<p><u>Records documenting:</u></p> <ul style="list-style-type: none"> <li>• legal advice referral program funded as part of the COVID-19 budget response package. Includes</li> </ul>	Retain as national archives

Class no	Description of records	Disposal action
	<p>records of the program establishment, high-level status reports, and audit and evaluation reports;  <i>[For advice provided in support of educational activities, and legal advice provided to employers, in the normal course of business, use class 62855].</i></p> <ul style="list-style-type: none"> <li>• compliance monitoring activities, inquiries, and investigations into alleged breaches of workplace relations laws that result in litigation and: <ul style="list-style-type: none"> <li>- set legal precedents, or</li> <li>- involve matters that are controversial or of major public interest, or</li> <li>- result in significant penalties or findings, or in major changes to agency or government policies, processes or programs, in substantial changes to industry practices or changes to legislation, or</li> <li>- relate to the implementation of JobKeeper provisions under the legislation.</li> </ul> </li> </ul> <p>Includes:</p> <ul style="list-style-type: none"> <li>○ records relating to complaints, referrals and/or claims;</li> <li>○ investigation plans;</li> <li>○ correspondence with, and advice to, the claimant and employer;</li> <li>○ records of site visits and inspections, interviews, statements, and requests for legal advice;</li> <li>○ enforcement notices;</li> <li>○ intelligence reports created from data matching and analytics activities;</li> <li>○ referrals for legal assistance, subpoenas, discovery orders, court documents, court orders;</li> <li>○ legal advice provided; and</li> <li>○ final settlement of matters.</li> </ul> <p><i>[For all other compliance monitoring activities, inquiries, and investigations into alleged breaches of workplace relations laws that may or may not result in litigation, use class 62855].</i></p> <ul style="list-style-type: none"> <li>• governance process of undertaking data matching and analytics activities to support core business. Includes: <ul style="list-style-type: none"> <li>○ protocols and procedures, either internal or as part of the agency's role within the Australian Government taskforces; and</li> <li>○ strategies, reports and submissions documenting analytical methodologies, technologies and governance frameworks put in place to support data matching and analytics activities.</li> </ul> </li> </ul> <p><i>[For external and internal data sources used for the purpose of conducting data matching and analytics activities, use class 62855].</i></p>	

Class no	Description of records	Disposal action
	<p><i>[For intelligence reports created from data matching and analytics activities, use class 62852 or 62855, as appropriate].</i></p> <ul style="list-style-type: none"> <li>• compliance and enforcement policy. Includes final version and supporting documentation;</li> <li>• final versions of high-level reports (e.g. relationship reports with other organisations, either conducted or commissioned by the agency or undertaken in collaboration with other organisations relating to core business, which result in major changes to industry policy or procedures, relate to matters that are controversial or of major public interest or where longitudinal studies show labour market trends;</li> </ul> <p><i>[For internal and external reports on agency's performance, use AFDA Express Version 2, STRATEGIC MANAGEMENT].</i></p> <ul style="list-style-type: none"> <li>• formal research projects conducted or commissioned by the agency, or undertaken in collaboration with other organisations, relating to workplace relations matters that result in major changes to industry policy or procedures, or where longitudinal studies show labour market trends. Includes final research documents, analysis and interpretation of findings;</li> </ul> <p><i>[For all other formal research projects on core business, use class 62855].</i></p> <ul style="list-style-type: none"> <li>• final versions of high-level reviews of workplace relation matters (e.g. review of the national workplace relations award system);</li> <li>• high-level agreements, strategic partnerships, joint ventures, or memoranda of understanding (MoUs) with stakeholders (e.g. multi-agency taskforces) related to the core business. Includes signed versions, records of negotiations, establishment, participation (correspondence, reports, etc.), monitoring, and review.</li> </ul> <p><i>[For agreements entered into with other organisations to allow for data sharing and/or compliance partnerships, use 62853].</i></p> <ul style="list-style-type: none"> <li>• high-level, internal or external, committees, working groups, and other bodies relating to the core business, where the agency provides the secretariat, is the Australian Government's main representative or plays a prominent or central role. Includes records of establishment agenda, final version of minutes, associated reports, and supporting documentation such as briefing notes and discussion papers; and</li> </ul>	

Class no	Description of records	Disposal action
	<ul style="list-style-type: none"> <li>• high-level meetings on core business. Includes agenda, minutes, draft reports, final reports, and supporting documentation.</li> </ul>	
62853	Records documenting agreements (i.e. information sharing protocols) entered into with other organisations to allow for data sharing and/or compliance partnerships. Includes signed versions, records of negotiations, establishment, participation (correspondence, reports, etc.), monitoring, and review.	Destroy 10 years after last action
62854	<p>Personal information supplied as part of a subscription to an information service, or captured as part of consultation activities or research surveys.</p> <p>Records submitted by the enquirer or complainant which are unsolicited, received in error or do not relate to agency's statutory obligations under the legislation (currently, <i>Fair Work Act 2009</i>).</p>	Destroy 3 months after last action
62855	<p>Records documenting:</p> <ul style="list-style-type: none"> <li>• educational activities delivered through online resources, industry-specific templates, specific programs (e.g. partnership programs, ambassador programs, industry partnership programs, employer advisory programs, community programs, etc), set up to provide workplace relations advice, guidance, and assistance to industries, organisations, associations and individuals, and specific strategies targeted towards areas of non-compliance. Includes: <ul style="list-style-type: none"> <li>○ advice provided on general enquiries about workplace issues, such as entitlements and wages;</li> <li>○ records relating to the provision of information, guidance and assistance to specific client groups and associations as part of a targeted program;</li> <li>○ records documenting the creation, update, and management of 'My Account' online portal accounts; and</li> <li>○ marketing plans, advertising campaigns, promotional products (excluding publications), and market research surveys to support programs and educational activities.</li> </ul> </li> <li>• handling of complaints and claims in relation to workplace relations matters, and the provision of dispute resolution and mediation services;</li> </ul>	Destroy 7 years after last action

Class no	Description of records	Disposal action
	<ul style="list-style-type: none"> <li data-bbox="464 264 1098 383">• legal advice provided to employers, in the normal course of business. Includes legal advice provided in relation to JobKeeper payment scheme;</li> <li data-bbox="464 421 1098 719">• compliance monitoring activities, planned compliance programs, and/or targeted inquiries into alleged breaches of workplace laws, other than those covered in class 62852. Includes activities undertaken as the result of self-reporting, media statements, statements to shareholders, or other means (may or may not result in litigation). Also includes intelligence reports created from data matching and analytics activities;</li> <li data-bbox="464 757 1098 965">• small claims assistance provided by the agency with lodging matters in the small claims court, where disputes cannot be resolved through early intervention and mediation. Includes pre-claim letter, calculations, correspondence, court forms and court documents and correspondence throughout and after the court proceedings;</li> <li data-bbox="464 1003 1098 1088">• investigations into alleged breaches of workplace relations laws that may or may not result in litigation, other than those covered in class 62852;</li> <li data-bbox="464 1126 1098 1245">• external and internal data sources used for the purpose of conducting data matching and analytics activities, which may or may not result in a match;</li> <li data-bbox="464 1283 1098 1341">• routine operational administrative tasks supporting the core business; and</li> <li data-bbox="464 1379 1098 1464">• workplace relations advice, compliance monitoring, and enforcement activities, other than those covered in classes 62852 to 62854.</li> </ul>	