



Australian Government

National Archives of Australia

Records Authority

2022/00665084

Australian Competition and Consumer

Commission

Australian Energy Regulator

Access Regulation

2023



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INTRODUCTION

The Australian Competition and Consumer Commission (ACCC) and the Australian Energy Regulator (AER) have jointly developed this records authority with the National Archives of Australia to set out the requirements for keeping or destroying records for the core business area of Access Regulation. It represents a significant commitment on behalf of the ACCC and the AER to understand, create and manage the records of their activities.

This records authority is based on the identification and analysis of the business of the ACCC and the AER. It takes into account the agencies' legal and organisational information management requirements, and the interests of stakeholders, the agencies 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 ACCC and the AER 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 the core business function of Access Regulation in records authority 2003/00349230 and its amending RA 2007/00493159. The core business function cannot be used to sentence records after the date of issue of this authority.
2. The Commission Administration and International Relations core business functions in RA 2003/00349230 are now superseded respectively by General Records Authority 27 – Governing Bodies and AFDA Express Version 2 – External Relations.
3. 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.
 - Records that are identified as 'retain as national archives' are to be transferred to the National Archives for preservation.
4. This authority should be used in conjunction with general records authorities such as:
 - *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).
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 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.

6. 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.
7. 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.
8. 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 ACCC and AER 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.
9. In general, retention requirements indicate a minimum period for retention. The ACCC and AER may extend minimum retention periods if there is an administrative need to do so, without further reference to the National Archives. Where it is believed that agency accountability will be substantially compromised because a retention period or periods are not adequate, contact the National Archives for a review of the retention period.
10. Records identified as '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*.
11. 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.
12. 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.
13. Advice on how to use this authority is available from the agency information manager(s). 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 Authorities 2022/00665084

Notice of authorisation

Persons to whom notice of authorisation is given:

Gina Cass-Gottlieb
Chair
Australian Competition and Consumer Commission
23 Marcus Clarke Street
Canberra ACT 2601

Clare Savage
Chair
Australian Energy Regulator
23 Marcus Clarke Street
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 records relating to Access Regulation.

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.

This document has been authorised through a digital workflow (R89362023).

Authorising Officer	Date of issue
Yaso Arumugam Assistant Director-General, Data and Digital National Archives of Australia	7 th of March 2023

ACCESS REGULATION

The core business of regulating infrastructure markets and services for the benefit of all Australians. Includes ensuring that consumers or businesses have access to essential infrastructure facilities (e.g. gas pipelines, electricity networks, rail networks) and services (e.g. communications, bulk water, energy, fuel, postal services); and promoting transparency in services or markets with little or no competition (e.g. airports and aviation services).

The **core activities** include:

- regulating and determining access codes and regimes to infrastructure facilities and services by issuing determinations, maintaining public registers, conducting arbitration proceedings, registering contracts, undertakings and agreements, and handling complaints;
- regulating the energy markets and networks under legislation and rules by issuing determinations, maintaining public registers, developing policies, and monitoring, investigating, and enforcing compliance with the national energy laws;
- monitoring and enforcing compliance with industry-specific legislation and market rules by undertaking investigations and inquiries to support regulatory outcomes;
- examining price notifications (locality notices) and monitoring prices, costs, and profits of declared firms or specific sectors including: airports and aviation services, postal/postage services, container stevedoring industry, and fuel;
- educating and providing access regulation information to consumers, industry, and other stakeholders by developing and publishing guidance and general information and delivering presentations and training sessions; and
- setting the rules for Consumer Data Right accreditation, developing guidelines and assessing applications for accreditation.

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

- providing and receiving advice;
- establishing, managing, and participating in internal and external committees, working groups, and meetings;
- planning, reviewing, evaluating, and reporting;
- general enquiries and referrals handling;
- developing and implementing policies, procedures, strategies, and frameworks in relation to the core business;
- arranging and attending conferences and forums;
- undertaking research and analysis;
- planning, conducting, and facilitating audits;
- managing programs and projects; and
- identifying, assessing, and managing operational risks.

Cross references to AFDA Express Version 2

For speeches, presentations and addresses made by the portfolio Minister, agency head or senior agency staff, use EXTERNAL RELATIONS.

For advice, briefs and submissions to Ministers, and Cabinet submissions, use EXTERNAL RELATIONS.

ACCESS REGULATION

For activities associated with providing assistance to economies in transition in the development of access regulation regimes, use *EXTERNAL RELATIONS*.

For exchange programs and internships, use *EXTERNAL RELATIONS*.

For master set of media releases, use *EXTERNAL RELATIONS*.

For formal reports prepared and submitted to the Minister or government on the performance of the agency's functions, use *EXTERNAL RELATIONS*.

For visits or tours to the agency by international visitors and visits by staff to international agencies, use *EXTERNAL RELATIONS*.

For legal advice, use *LEGAL SERVICES*.

For the acquisition of goods and services, such as contractors or consultants, use *PROCUREMENT*.

For the publication of proceedings held by the agency, use *PUBLICATION*.

Cross references to other records authorities

For governing bodies supporting the access regulation function, use General Records Authority 27 - *GOVERNING BODIES*.

Class no	Description of records	Disposal action
63071	<p>Records documenting:</p> <ul style="list-style-type: none"> public registers of access codes. Includes access code development and reviews, public submissions, standards, terms and conditions and rules for access to essential infrastructure facilities, and supporting records such as consultation documentation and discussion papers; access determinations for access disputes that become part of a public register. Includes reasons, terms and conditions relating to providers and to third parties, draft determination variations, revocations, and withdrawals; revenue and pricing determinations for the electricity and gas sectors. Includes reasons, terms and conditions relating to providers and to third parties, models, draft determination variations, revocations, and withdrawals; appeal briefings prepared to support cases before higher authorities, such as against a decision or order where the agency is a major participant or a party in negotiations where precedents are set; arbitration proceedings that become part of a public register. Includes records of constitution of the commission, dispute notifications, expert advice, directions not to divulge information, evidence, 	Retain as national archives

ACCESS REGULATION

	<p>findings and recommendations, decisions to terminate a hearing, and supporting records such as proceedings arrangements and requests for the acquisition of documents and evidence;</p> <ul style="list-style-type: none"> • provision and receipt of advice on matters that are controversial or attract considerable official or public interest; will potentially have substantial social, economic, political, environmental, national, or international implications relating to the access regulation function; or, result in major changes to agency programs or procedures, or changes to legislation or subordinate legislation (e.g. regulations and standards). Includes position papers, briefs, opinions, reports, stakeholder submissions, and supporting records; • significant agreements and contracts that relate to substantial funding agreements or the establishment of major partnerships and cooperative arrangements with other governments, agencies or organisations; are controversial, of public interest or ground-breaking in nature; or have substantial implications for the conduct of agency business. Includes memorandums of understanding; joint venture agreements; and records of negotiation, establishment, maintenance, and review of agreements; • high-level internal or external inter-governmental (domestic and overseas) or inter-agency committees, meetings, working groups and other bodies where matters are considered that are controversial or attract considerable official or public interest; will potentially have substantial social, economic, political, environmental, national, or international implications; or, result in major changes to agency programs or procedures, or changes to legislation or subordinate legislation (e.g. regulations and standards); or the agency provides the secretariat, is the Australian Government's main representative, or plays a prominent, central, or significant role. Includes establishment documents, agenda, minutes, reports, recommendations, and supporting documents such as tabled, briefing, and discussion papers; • compliance monitoring resulting in enforcement or litigation and that: sets legal precedent; <ul style="list-style-type: none"> • involves matters that are controversial or of major public interest; 	
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ACCESS REGULATION

	<ul style="list-style-type: none"> • results in significant penalties or findings; results in major changes to agency or government policies, processes, or programs; • results in substantial changes to industry practices; or changes to legislation. <p>Includes complaints, referrals, or claims, investigation plans, enforcement notices, intelligence reports, referrals for legal assistance, subpoenas, discovery orders, court documents, court orders, advice received or provided, final settlement of matters, and supporting documents, such as records of site visits and inspections, interviews, statements, and requests for legal advice, and supporting datasets;</p> <ul style="list-style-type: none"> • monitoring or examining price notifications (locality notices), prices, costs, or profits of declared firms or selected goods and services as directed by the Minister, or in sectors with little or no competition or providing essential services (e.g. postal, fuel, airports and aviation services, container stevedoring industry). Includes public register of price notification decisions, consultations, assessments, issues papers, guidelines, recommendations to the Minister, and associated records such as reports and supporting datasets; • conferences that form part of a public register to allow interested parties to put their case on a matter that is before the agency's governing body for resolution (e.g. a conference held before the governing body revokes a notification). Includes directions requiring parties to attend, proceedings, outcomes, and directions, and supporting documents; • Consumer Data Right accreditation rules, e.g. permitting the use of accredited persons to collect data. Includes amendments, consultations, and supporting documentation; • successful Consumer Data Right accreditation applications. Includes applications and amendments, records of interviews or statements, submissions, accreditation decision including reasons, conditions, material granted confidentiality and excluded from the public register, and supporting records such as letters to applicants; • public register of contracts relating to access regulation. Includes assessment of contracts, receipt of applications, and publication of decisions; 	
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ACCESS REGULATION

	<ul style="list-style-type: none"> • public register of declared services including declarations no longer in use. Includes proposals, assessments, authorisations and supporting records; • register of agreements for access to declared services. Includes names of parties to the agreement, the declared service to which it relates, agreement date, applications for removal of agreements from the register, revocations, and supporting records; • public register of applications for orders exempting specified conduct from action for being in breach of legislation, regulations or rules. Includes applications, submissions and related documents, records of conferences, exemption orders and statements of reasons, decisions, revocations of orders, and supporting records; • public register of infringement notices. Includes notices, records of interviews, statements, submissions, summary of reasons, variations and revocations, and supporting records; • planning and conduct of access regulation investigation hearings that are controversial or attract considerable official or public interest; will potentially have substantial social, economic, political, environmental, national or international implications; or, result in major changes to agency programs or procedures, or changes to legislation or subordinate legislation (e.g. regulations and standards). Includes notification of participants, evidence, decisions to obtain documentation, including drafting and notification of requirements, planning and conduct of investigations of premises, including requests and authorisations to carry out investigation and the collection of evidence, reports and recommendations, and supporting records; • findings and opinions resulting from the legal assessment of access regulation matters that form part of a public register; • developing, implementing and reviewing high-level access regulation policies, that are controversial or attract considerable official or public interest; will potentially have substantial social, economic, political, environmental, national, or international implications relating to the access regulation function; or, result in major changes to agency programs or procedures, or changes to legislation or subordinate legislation (e.g. regulations and standards). Includes policy proposals, 	
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ACCESS REGULATION

	<p>research papers, national policy statements, and supporting records such as consultations and reports;</p> <ul style="list-style-type: none"> • access regulation pricing determinations. Includes public registers of ministerial pricing determinations setting out principles which deal with price-related terms and conditions relating to standard access obligations, recommendations to the Minister, formal notification of pricing determination principles which deal with price-related terms and conditions relating to standard access obligations, and supporting records; • research projects or reports undertaken or commissioned by the agency that result in major changes to agency or industry policy or procedures, or relate to matters that are controversial or of major public interest. Includes research and analysis, supporting datasets, cumulative summary reports, and supporting records such as literature searches; • high-level reviews of access regulation matters, including programs, services, products, processes, procedures, standards, and systems, that result in major changes to agency or industry policy or procedures, or relate to matters that are controversial or of major public interest. Includes records establishing review, reports, recommendations, action plans, submissions, supporting research and datasets, and supporting records such as those documenting stakeholder consultations; • public register of undertakings. Includes undertaking withdrawals and variations, assessments, negotiations, pre-lodgement discussions, industry consultation, draft and final decisions, and supporting records; and • whistle-blower information provided through confidential or anonymous informant sources that leads to enforcement action. 	
63072	<p>Records documenting:</p> <ul style="list-style-type: none"> • access determinations for access disputes that do not become part of the public register. Includes reasons, terms and conditions relating to providers and to third parties, draft determination variations, revocations, and withdrawals; • agreements for access to declared services relating to access regulation that are withdrawn before registration; 	Destroy 15 years after action completed

ACCESS REGULATION

	<ul style="list-style-type: none"> • appeal briefings prepared to support cases before higher authorities such as ... against a decision or order where the agency is a participant or party, and which do not set precedents; • arbitration proceedings that do not become part of a public register. Includes dispute notifications, expert advice, directions not to divulge information, evidence, findings and recommendations, decisions to terminate a hearing, and supporting records such as those documenting proceedings arrangements and requests for the acquisition of documents and evidence; • complaints, alerts, or inquiries in relation to business practices that allegedly breach access regulation legislation, regulations, or rules that results in enforcement action, including monitoring and surveillance resulting in enforcement. Includes receiving, recording, and assessing the information received, and making decisions regarding further action as appropriate; • compliance monitoring resulting from undertakings, enforcement, or litigation, other than those covered in class 63071. Includes complaints, referrals, or claims, investigation plans, enforcement notices, intelligence reports, referrals for legal assistance, subpoenas, discovery orders, court documents, court orders, advice received or provided, final settlement of matters, and supporting documents such as records of site visits and inspections, interviews, statements, and requests for legal advice, and supporting datasets; • conferences that do not form part of a public register to allow interested parties to put their case on a matter that is before the agency's governing body for resolution, e.g. a conference held before the governing body revokes a notification or a conference relating to unsafe and banned goods. Includes directions requiring parties to attend, proceedings, outcomes and directions, working papers, and supporting documentation; • unsuccessful Consumer Data Right accreditation applications. Includes applications and amendments, letters to applicants, interviews or statements, submissions, accreditation decision including reasons, partially completed applications, and working papers; 	
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ACCESS REGULATION

	<ul style="list-style-type: none"> • guidelines and associated documentation developed to assist the Consumer Data Right accreditation process; • applications for orders exempting specified conduct from action for being in breach of legislation which are withdrawn before registration; • findings and opinions resulting from the legal assessment of an access regulation matter that does not form part of a public register; and • briefings and other material prepared for the handling of access regulation litigation. 	
63073	<p>Records documenting:</p> <ul style="list-style-type: none"> • receipt and provision of advice other than that covered in class 63071. Includes briefs, reports, stakeholder submissions, and supporting documents; • advice to complainants on civil or private legal action; • agreements and contracts other than those covered in class 63071. Includes memorandums of understanding, joint venture agreements, and negotiations, establishment, maintenance, and review of agreements; • external inter-governmental and inter-agency committees, working groups and other bodies other than those covered by class 63071. Includes establishment documents, agenda, minutes, reports, recommendations, and supporting documents such as tabled, briefing, and discussion papers; • planning and conduct of access regulation investigation hearings other than those covered in class 63071. Includes notification of participants, evidence, decisions to obtain documentation, including drafting and notification of requirements, planning and conduct of investigations of premises, including requests and authorisations to carry out investigation and the collection of evidence, reports, recommendations, and supporting documents; and • reports and recommendations resulting from consultations seeking stakeholders' views other than those covered in classes 63071 and 63072. Includes the promotion and distribution of proposals for comment, submissions and responses to submissions received, and oral input from public forums and the holding of public inquiries, such as those held in relation to a declared service under the telecommunications legislation. 	Destroy 10 years after action completed

ACCESS REGULATION

63074	Records documenting: <ul style="list-style-type: none">• routine operational administrative tasks supporting the core business; and• access regulation activities, other than those covered in classes 63071 to 63073.	Destroy 7 years after action completed
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