



Australian Government

National Archives of Australia

Records Authority

2022/00488938

Legal Services to Government

Attorney-General's Department

2023



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CONTENTS

INTRODUCTION.....	4
APPLICATION OF THIS AUTHORITY	4
CONTACT INFORMATION	5
AUTHORISATION	6
LEGAL SERVICES TO GOVERNMENT	7

INTRODUCTION

The Attorney-General's Department (the Department) 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 of Legal Services to Government. 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 supersedes the Legal Services to Government function in records authority (RA) 2005/00077921. The superseded function cannot be used by the Department to sentence records after the date of issue of this authority.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.
 - a. Where the minimum retention period has expired and the records are not needed for Department business they should be destroyed as authorised in this authority.
 - b. Records that have not reached the minimum retention period must be kept until they do.
 - c. 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:
 - a. [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
 - b. [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 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*.
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's 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 2022/00488938

Notice of authorisation

Person to whom notice of authorisation is given:

Katherine Jones PSM
Secretary
Attorney-General's Department
Robert Garran Offices
3-5 National Circuit
BARTON 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 records relating to Legal Services to Government

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 (R31422023).

Authorising Officer	Date of issue
Yaso Arumugam Assistant Director-General, Data and Digital National Archives of Australia	20 January 2023

LEGAL SERVICES TO GOVERNMENT

The function of providing legal services to Government, including those provided by the Australian Government Solicitor and the Solicitor-General, to:

- Commonwealth, State and Territory governments;
- government bodies;
- office holders;
- employees; and
- any bodies or persons so determined by the Attorney-General or the Secretary,

for any purpose for which the Commonwealth can make laws, including international treaties and obligations, consistent with the Department's role as law office for the Commonwealth. Includes legal advice and services procured or received from external sources.

The function also involves casework relating to international crime cooperation, federal offenders, international family law, private international law and complaints under the United Nations human rights conventions in order to support Australia's law and justice frameworks.

The **core activities** include:

- providing and receiving legal advice / opinions in response to client instructions or to government request, including research and assessing advice from other sources;
- providing legal representation in litigation, interventions in legal proceedings or settlement by agreement;
- managing litigation, including preparing briefs for counsel, initiating and responding to discovery and other information gathering activities, appealing decisions, and complying with court or tribunal directions, orders and instructions;
- supporting conduct of, or participation in, inquiries with legal advice or representation;
- establishing and registering intellectual property on behalf of a client; and
- advising on legal remedy and/or prosecution of infringements or breaches of mandatory standards, rules or statutory requirements.

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

- developing and implementing policies and procedures;
- 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;
- managing risks and
- developing and delivering training.

Cross references to AFDA Express Version 2

For provision of legal services to the Department for internal administrative purposes, use LEGAL SERVICES.

For providing and receiving advice, including advice provided to Cabinet, the portfolio Minister and other government agencies, including providing advice on the appointment, reappointment or termination of individuals to boards, committees and statutory positions administered by the Department, use EXTERNAL RELATIONS.

LEGAL SERVICES TO GOVERNMENT

For managing the preparation and passage of the Department's legislation through Parliament, including preliminary drafting instructions, proposed bills, consultation with relevant government agencies and stakeholders, preparation of the Explanatory Memorandum, regulatory impact statements and Second Reading speech, use EXTERNAL RELATIONS.

For making formal proposals and submissions, including to national and international bodies and forums, governments, Cabinet, the portfolio Minister, agencies and other organisations, use EXTERNAL RELATIONS.

For preparing and providing advice and briefs to a Minister, government or incoming government, use EXTERNAL RELATIONS.

For final versions of speeches presented by portfolio Ministers, members of the Government, agency heads, members of governing or advisory bodies, and senior agency staff, use EXTERNAL RELATIONS.

For development of high-level reports, including formal reports to government relating to this function and performance, including final approved versions, major drafts, stakeholder consultation and supporting research, use EXTERNAL RELATIONS.

For developing proposals for new legislation and amendments to existing legislation administered by the agency, including submissions prepared for the agency's executive or corporate management committee, use STRATEGIC MANAGEMENT.

For the production and distribution of publications, including public websites, except for researching, drafting and editing publication content, use PUBLICATION.

Class no	Description of records	Disposal action
63056	<p>Records documenting:</p> <p>the receipt or provision of legal advice or opinions from an internal or external service provider, including final advice, major drafts, instructions to the provider, consultation, revision of instructions and research. Includes all records relating to:</p> <ul style="list-style-type: none"> • Cabinet matters; • international law, treaties and other obligations; • national security; • constitutional matters; • Native Title; • proposals for new or major amendments to legislation; • matters that are precedent setting; • matters that establish or refine the scope of Government activity; • matters that result in major changes to Commonwealth functions, policies, processes or programs; 	Retain as national archives

LEGAL SERVICES TO GOVERNMENT

	<ul style="list-style-type: none"> • scope and coverage of legislation, including the performance of legislation and legislative instruments; • matters transferred to the High Court; • definition of civil liberties and establishment of legal protections, rights or other obligations; • major environmental, social, health, property or security issues; • matters providing detailed comment on the effect of major government functions and programs; and • other significant matters such as: <ul style="list-style-type: none"> ○ complex child abduction cases involving situations outside normal policy guidelines, or that are transferred to the High Court; ○ extradition or mutual assistance cases that attract public controversy, or set a precedent, or lead to a change in policy; ○ financial assistance applications that cause a review of the decision made by the agency or by a court, and consequently set a precedent or influence the development of policy; ○ investigations and responses to allegations of breaches of treaties and protocols lodged with United Nations Committees; ○ complaints to the United Nations Human Rights Commission; ○ advice on voluntary euthanasia cases or laws; and ○ advice on the scope of sections of the Migration Act to authorise lawful immigration detention of a person. <p>Records documenting:</p> <p>Litigation or intervention in legal proceedings, including matters settled through alternative dispute resolution, including legal advice, instructions to the provider, consultation, revision of instructions and research, that:</p> <ul style="list-style-type: none"> • result in the setting of legal precedents; • are controversial, of major public interest or of national importance, including significant, long-term legal, constitutional, political, economic, international, environmental, social, health, property, national security, industrial relations and other issues of national importance; • result in convictions for significant wrongdoing; • have national implications for changes to legislation or Commonwealth functions, policies, processes or programs; 	
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LEGAL SERVICES TO GOVERNMENT

	<ul style="list-style-type: none"> • are transferred to the High Court; and • relate to Native Title claims. <p>Records documenting:</p> <ul style="list-style-type: none"> • notifications to the Attorney-General or chief executive officer in relation to constitutional or issues of national importance; • determinations by the Attorney-General or chief executive officer on representation of non-government clients; • cases seeking pardon or remission through the Royal Prerogative of Mercy; • master records of procedures and guidelines for the provision of legal services to Government; • major reviews, evaluations and reports; • master records of training materials delivered to other agencies or stakeholders; and • negotiation and ratification of international instruments. <p>Summary, or consolidated information derived from original sources and collated in registers, databases or discrete information sets for:</p> <ul style="list-style-type: none"> • legal advice, opinions or precedents used as legal references and for research; and • curated reference materials used by legal practitioners such as knowledge bases and practice guides. <p><i>[For routine legal matters which rely on the settled interpretation of the law, including matters which did not proceed, use 63058]</i></p> <p><i>[For Native Title program and administration activities, use LEGAL AND INTEGRITY POLICIES AND PROGRAMS]</i></p>	
63057	<p>Records documenting the management and support of the following categories of legal cases, that do not meet the significance criteria of cases covered in 63056:</p> <ul style="list-style-type: none"> • international treaties and obligations; • legal interventions and representation; • extradition; • international mutual assistance; • international transfer of prisoners; • child abduction, custody, access and maintenance; and • federal offender cases. 	Destroy 20 years after action completed

LEGAL SERVICES TO GOVERNMENT

	<i>[For routine legal cases not covered by 63056 and 63057, use 63058]</i>	
63058	<p>Records documenting:</p> <ul style="list-style-type: none"> • routine operational administrative tasks supporting the core business; and • LEGAL SERVICES TO GOVERNMENT activities other than those covered in classes 63056 and 63057. 	Destroy 7 years after action completed