



Australian Government

National Archives of Australia

Records Authority

2022/00665106

Australian Competition and Consumer

Commission

Australian Energy Regulator

Competition and Consumer Protection

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 areas of Competition and Consumer Protection. 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 Competition and Consumer Protection 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 The Commission Administration and International Relations core business functions in RA 2003/00349230 are now superseded respectively by General Records Authority 27 – Governing Bodies and AFDA Express Version 2 – External Relations.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 2022/00665106

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 Competition Consumer Protection.

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 (R89372023).

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

COMPETITION AND CONSUMER PROTECTION

The core business of maintaining and promoting competition, protecting the safety of consumers, and protecting household and business consumers from anti-competitive and unfair market practice. Includes ensuring industry compliance with competition and consumer and other legislation, regulations, industry codes, and associated state or territory legislation by using compliance powers, conducting inquiries and investigations, and commencing, where necessary, legal proceedings. Also includes providing competition and consumer education and guidance.

The **core activities** include:

- maintaining and promoting competition by undertaking inquiries, investigations and preventative activities towards anti-competitive conduct (includes mergers, and cartels, competition in markets, market transparency, monitoring markets and prices of certain goods and services, market activities and pricing approval, undertakings, holding conferences that form part of a public register, certification for the use of Certification Trade Marks, and implementing the Consumer Data Right);
- enforcing legislation and regulations by monitoring compliance, handling complaints or inquiries, conducting inquiries and investigations into market competitiveness and alleged breaches of legislation, conduct, or undertakings, issuing notices, undertaking legal proceedings and briefing counsel;
- protecting the interest and safety of consumers by addressing non-compliance with Australian consumer law, other legislation and rules, industry codes, and associated state or territory legislation, regulations, or rules (includes monitoring prices, unfair contracts, consumer guarantees, misleading advertising, and scams, compliance with product safety standards, conduct safety market studies, and product recalls and bans); and
- educating and providing competition and consumer information to consumers, industry, and other stakeholders by increasing awareness of competition and consumer protection law, rights and obligations, regulations or rules through developing, publishing or delivering guidance and general information on matters affecting the interest of consumers and business.

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, monitoring, 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.

COMPETITION AND CONSUMER PROTECTION

Cross references to AFDA Express Version 2d

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.

For activities associated with provision of assistance to economies in transition in the development of competition and consumer protection regimes, use EXTERNAL RELATIONS.

For exchange programs and internships, use EXTERNAL RELATIONS.

For legal advice, use LEGAL SERVICES.

For master set of media releases, use EXTERNAL RELATIONS.

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.

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.

Cross references to other records authorities

For governing bodies that support the competition and consumer protection function, use General Records Authority 27 - GOVERNING BODIES.

Class no	Description of records	Disposal action
63076	Records documenting: <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; 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; • final versions of significant agreements and contracts and supporting records that relate to substantial funding agreements or the establishment of major partnerships and cooperative arrangements with other governments, agencies, and organisations; are controversial, of public interest or ground-breaking in nature; or have substantial implications for the conduct of agency business. 	Retain as national archives

COMPETITION AND CONSUMER PROTECTION

	<p>Includes memorandums of understanding and joint venture agreements;</p> <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 major participant or a party in negotiations where precedents are set; • public register for applications for authorisations or authorisations of merger and non-merger conduct that provide exemption from action for being in breach of competition legislation, regulations, or rules, including minor variations, revocations, and substitutions. Includes applications or pre-lodgement drafts, guidance to applicants, conferences and any related certificates, determinations and statement of reasons, undertakings relating to the making of determinations, material excluded from the public register, and supporting records such as letters to interested parties inviting submissions and submissions; • public register of exemption orders in relation to anti-competitive conduct; • high-level internal or external, inter-governmental (both 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 where the agency provides the secretariat, is the Australian Government's main representative, or plays a prominent, central, or significant role. Includes establishment records, agenda, minutes, reports, recommendations, and supporting records such as tabled, briefing, and discussion papers; • consumer complaints, allegations, alerts, or inquiries concerning breaches of competition and consumer protection and other legislation that concern vulnerable consumers (e.g. people with disabilities, people who are homeless, youth under the age of 18, or Aboriginal and Torres Strait Islander peoples) that results in enforcement action, including monitoring and surveillance. Includes receiving, recording, and assessing the information 	
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COMPETITION AND CONSUMER PROTECTION

	<p>received and making decisions regarding further action as appropriate;</p> <ul style="list-style-type: none"> • consumer complaints, allegations, alerts, or inquiries that allegedly breach competition and consumer protection and other legislation resulting in enforcement or litigation, and sets legal precedents, or involves matters that are controversial or of major public interest, or results in significant penalties or findings, or results in major changes to agency or government policies, processes or programs, or in substantial changes to industry practices, or changes to legislation, regulations or rules; <p><i>[For all other consumer complaints, alerts, or inquiries, use 63077 and 63079.]</i></p> <ul style="list-style-type: none"> • compliance monitoring resulting in enforcement or litigation, and sets legal precedents, or involves matters that are controversial or of major public interest, or results in significant penalties or findings, or results in major changes to agency or government policies, processes, or programs, or in substantial changes to industry practices, or changes to legislation, regulations or rules. Includes complaints, referrals and/or claims, investigation plans, correspondence and advice, records of site visits and inspections, interviews, statements, and requests for legal advice, enforcement notices, intelligence reports created from analytics activities, referrals for legal assistance, subpoenas, discovery orders, court documents, court orders, recommendations for further action, appeal briefings, final settlement of matters, and supporting records; • 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 or a conference relating to unsafe and banned goods. Includes directions requiring parties to attend, proceedings, outcomes, and directions, and supporting records; • exemptions for agreements that relate exclusively to the export of goods or services outside Australia. Includes applications, export agreements, applicant letters, investigation or recommendation reports, exemption certificate register, decisions, and supporting records; 	
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COMPETITION AND CONSUMER PROTECTION

	<ul style="list-style-type: none"> • public register for successful applications that exempt participants from particular obligations under the Consumer Data Right rules. 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; • competition and consumer protection investigations 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, regulations, or rules. Includes investigation planning and conduct, participant notifications, evidence gathering, hearings, and supporting records such as reports and authorisations; • notices relating to anti-competitive conduct, including advisory notices, price exploitation notices, and infringement notices. Includes public register; issuing, varying and revoking notices; summary of reasons; and supporting documentation such as records of interviews or statements, submissions and related documentation, and assessments of issues; • findings and opinions resulting from the legal assessment of a competition and consumer protection matter that forms part of a public register; • mergers (including joint ventures) which generate litigation, legislative or regulatory amendment or significant public controversy or interest. Includes assessment of proposals to ensure that organisations comply with legislation, regulations or rules, policy and standards, and the issuing of authorisations; • public register of mergers (including joint ventures) and acquisitions; • agency's involvement in the consideration of applications for merger authorisations before higher authorities (e.g. the Australian Competition Tribunal) which generate litigation, legislative or regulatory amendment, or significant public controversy or interest. Includes reports on statements of fact, agency submissions, and records received by the agency from higher 	
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COMPETITION AND CONSUMER PROTECTION

	<p>authorities;</p> <ul style="list-style-type: none"> • monitoring or examining prices of selected goods and services in cases that form part of a public inquiry. Includes government directed inquiries, national price surveys, public compliance commitments, price index statistical series, and industry price monitoring; • public register of notifications that provide exemptions from action for being in breach of agency policy or competition and consumer legislation, regulations, or rules. Includes applications, notices given by the agency, notices and records given to the agency, records of conferences, submissions, decisions, permits, and recommendations made by the agency, advice to applicant; published correspondence, material granted confidentiality and excluded from the register, and supporting records; • developing, implementing and reviewing high-level competition and consumer protection policies, such as are controversial or attract considerable official or public interest; will potentially have substantial social, economic, political, environmental, national, or international implications relating to the competition and consumer protection 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, research papers, national policy statements, and supporting records such as consultations and reports; • developing, implementing and reviewing high-level product safety policies, that are controversial or attract considerable official or public interest; will potentially have substantial social, economic, environmental, national, or international implications; or result in changes to legislation or subordinate legislation (e.g. regulations and standards). Includes policy proposals, national policy statements, prioritisation, and supporting records such as consultations and reports; • compulsory recalls. Includes product bans, investigations and negotiations, recall notifications, assessing recall performance and effectiveness, guiding recall monitoring actions, and supporting records such as assessing supplier progress reports; 	
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COMPETITION AND CONSUMER PROTECTION

	<ul style="list-style-type: none"> • voluntary recalls that set legal precedents or involve matters that are controversial or of major public interest, or 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, regulations, or rules. Includes investigations and negotiations, recall notifications, assessing recall performance and effectiveness, guiding recall monitoring actions, and supporting records such as assessing supplier progress reports; • unsafe goods and compulsory recall orders and notifications made to the Minister and placed on the public register; • unsafe goods and recall orders and notifications made to the Minister and not placed on the public register. Includes recommendations; • investigations of allegedly hazardous or potentially unsafe products from internal assessments, consumer complaints, or supplier injury reports that relate to fatalities or serious injury, or lead to major policy changes, and results in enforcement or litigation. Includes assessments, research, results of consultations, supporting reports and correspondence; <i>[For all other investigations of allegedly hazardous or potentially unsafe products, use 63077 and 63079.]</i> • 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; • reviews of competition and consumer protection matters, including programs, services, products, processes, procedures, standards, and systems, that result in 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 those documenting stakeholder consultations; 	
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	<ul style="list-style-type: none"> • statutory directions placed on a public register. Includes variations and revocations; • service charges information received in response to a tariff filing direction such as charges information from carriage service providers. Includes reports and recommendations made in response to proposed charges; • public register of undertakings such as acquisitions and mergers. Includes undertaking withdrawals and variations, assessments, negotiations, pre-lodgement discussions, industry consultation, draft and final decisions, and other supporting records; and • whistle-blower information provided through confidential or anonymous informant sources that leads to enforcement action. 	
63077	<p>Records documenting:</p> <ul style="list-style-type: none"> • approval, registration, and assignment of certification trade marks. Includes rules governing the use of certification trade marks, and amendments to the rules; • consumer complaints, alerts, or inquiries other than those covered in class 63076 that allegedly breach competition and consumer protection and other legislation, regulations, or rules that results in enforcement action, including monitoring and surveillance. Includes receiving, recording, and assessing the information received and making decisions regarding further action as appropriate; <i>[For consumer complaints, alerts, or inquiries that do not result in enforcement use class 63079.]</i> • compliance monitoring related to the competition and consumer protection function, other than those covered in class 63076. Includes recommendations for further action; • conferences other than those covered in class 63076 held in compliance with competition and consumer protection requirements, 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, and supporting records; 	Destroy 15 years after action completed

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	<ul style="list-style-type: none"> • findings and opinions resulting from the legal assessment of a competition and consumer protection matter other than those covered in class 63076; • briefings and other material prepared for the handling of litigation other than those covered in class 63076; • mergers (including joint ventures) investigated and not permitted to proceed as a result of adverse findings, or permitted to proceed or to proceed with conditions, other than those covered in class 63076. Includes assessment of proposals; • agency's involvement in the consideration of applications for merger authorisations before higher authorities (e.g. the Australian Competition Tribunal), other than those covered in class 63076. Includes reports on statements of fact, submissions made by the agency, documents received by the agency from higher authorities; • investigations of allegedly hazardous or potentially unsafe products from internal assessments, consumer complaints, or supplier injury reports that results in enforcement or litigation, other than those covered by class 63076. Includes assessments, research, results of consultations, supporting reports, and correspondence; <i>[For investigations of allegedly hazardous or potentially unsafe products that does not result in enforcement or litigation use class 63079].</i> • statutory directions related to the competition and consumer protection function not placed on a public register. Includes variations and revocations; and • monitoring of requirements of directions related to the competition and consumer protection function. 	
63078	<p>Records documenting:</p> <ul style="list-style-type: none"> • provision and receipt of advice other than instances covered by class 63076. Includes position papers, briefs, opinions, reports, stakeholder submissions, and supporting records; • advice to complainants on civil or private legal action; • agreements and contracts other than those covered by class 63076; 	Destroy 10 years after action completed

COMPETITION AND CONSUMER PROTECTION

	<ul style="list-style-type: none"> external inter-governmental and inter-agency committees, working groups, and other bodies other than those covered by class 63076. Includes establishment documents, agenda, minutes, reports, recommendations, and supporting records such as tabled, briefing, and discussion papers; reports and recommendations resulting from consultations seeking stakeholders' views other than those covered in classes 63076 and 63077. 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 (e.g. those held in relation to a declared service under the telecommunications legislation); planning and conduct of competition and consumer protection investigation hearings other than those covered in class 63076; mergers (including joint ventures) which do not proceed and which are not covered in class 63077 or where the outcome is unknown. Includes assessment of proposals; and monitoring or examining prices of selected goods and services in cases other than those covered in class 63076. 	
63079	<p>Records documenting:</p> <ul style="list-style-type: none"> routine operational administrative tasks supporting the core business; and competition and consumer protection activities, other than those covered in classes 63076 to 63078. 	Destroy 7 years after action completed