



Public Record Office Standard

PROS 10/03

Authority

Retention & Disposal Authority for Records of the Victorian Government Solicitor's Office

Version 2010

10/03

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A Victorian Government initiative



Table of Contents

1	Introduction	4
1.1	Purpose of this Authority	4
1.2	Context of this Authority	4
1.2.1	Public Record Office Victoria Standards	4
1.2.2	Disposal of records identified in the Authority	3
1.2.3	Transfer of records to Public Record Office Victoria.....	3
1.2.4	The <i>Crimes (Document Destruction) Act 2006</i>	4
1.2.5	Normal Administrative Practice	5
1.3	Use of Other Authorities	5
1.4	Explanation of Authority Headings.....	6
2	Concurrence of Public Office	6
3	Establishment of Standard	6
4	Acknowledgments	6
5	Further Information	6
6	Retention & Disposal Authority	7

Under section 12 of the *Public Records Act 1973*, the Keeper of Public Records is responsible for the establishment of standards for the efficient management of public records and for assisting public offices to apply those standards to records under their control. Officers in charge of public offices are responsible under section 13 of the Act for carrying out, with the advice and assistance of the Keeper, a program of records management in accordance with the standards established under section 12 of the Act.

1 Introduction

1.1 Purpose of this Authority

The purpose of this Authority is to provide a mechanism for the disposal of public records in accordance with the *Public Records Act 1973*.

The Authority:

- identifies records which are worth preserving permanently as part of Victoria's archival heritage
- prevents the premature destruction of records which need to be retained for a specified period to satisfy legal, financial and other requirements of public administration, and
- authorises the destruction of those records not required permanently.

1.2 Context of this Authority

1.2.1 Public Record Office Victoria Standards

This Authority should be used in conjunction with the standards issued by the Keeper of Public Records under section 12 of the *Public Records Act 1973*. Copies of all relevant PROV standards, specifications and regulatory advice can be downloaded from www.prov.vic.gov.au. These documents set out the procedures that must be followed by Victorian public offices.

1.2.2 Disposal of records identified in the Authority

Disposal of public records identified in this Authority must also be in accordance with the requirements of Public Record Office Standard PROS 10/13 *Disposal*.

1.2.3 Transfer of records to Public Record Office Victoria

Contact Public Record Office Victoria for further information on procedures for transferring permanent records to archival custody.

1.2.4 The *Crimes (Document Destruction) Act 2006*

It is an offence under the *Crimes (Document Destruction) Act 2006* for individuals or organisations to destroy documents that they know are reasonably likely to be required in a future legal proceeding, with the intention of keeping the documents out of evidence. Destroying records however in accordance with a valid Authority is lawful as long as the requirements under the *Crimes (Document Destruction) Act 2006* are met.

PROV strongly advises that all agencies familiarise themselves with the requirements under the *Crimes (Document Destruction) Act 2006* and *Evidence (Document Unavailability) Act 2006*, and PROV Advice to Agencies 18: *Crimes (Document Destruction) Act 2006: Implications for government recordkeeping*.

1.2.5 Normal Administrative Practice

The destruction of some public records is permitted without final authorisation under normal administrative practice (NAP). NAP covers the destruction of ephemeral material of a facilitative nature created, acquired or collected by public officers during the course of their duties.

The following material may be destroyed under NAP:

- working papers consisting of rough notes and calculations used solely to assist in the preparation of other records such as correspondence, reports and statistical tabulations
- drafts not intended for retention as part of the office's records, the content of which has been reproduced and incorporated in the public office's record keeping system
- extra copies of documents and published material preserved solely for reference.

1.3 Use of Other Authorities

In applying the disposal sentences set out in this Authority, reference should be made to other current Authorities where applicable. Where there is a conflict between two Authorities (for instance this Authority and the General Retention and Disposal Authority for Records of Common Administrative Functions), consult the Public Record Office Victoria for advice.

1.4 Explanation of Authority Headings

CLASS NUMBER

The class number or entry reference number provides citation and ease of reference.

DESCRIPTION

The description of each record class is specified in this entry. A record class is a group of records that relate to the same activity, function or subject and require the same disposal action.

STATUS

This entry provides the archival status of each class - either permanent or temporary.

CUSTODY

This entry specifies whether the records are to be retained by the public office or transferred to the Public Record Office Victoria.

Permanent electronic records are to be transferred in VERS Encapsulated Object (VEO) format according to PROS 99/007 *Management of Electronic Records* (Version 2).

The storage of public records identified in this Authority must also be in accordance with the requirements of Public Record Office Standard PROS 11/01 *Storage*.

2 Concurrence of Public Office

This Authority has the concurrence of:

Signature: [Signed]

Name: JOHN CAIN

Date: 24/04/2010

Position: Victorian Government Solicitor

3 Establishment of Standard

Pursuant to Section 12 of the *Public Records Act* 1973, I hereby establish these provisions as a Standard (also known as a Retention and Disposal Authority) applying to the records of the Victorian Government Solicitor's Office.

This standard as varied or amended from time to time, shall have effect for a period of ten (10) years from the date of issue unless revoked prior to that date.

[Signed]

Justine Heazlewood
Director & Keeper of Public Records

Date of Issue: 08/04/2010

4 Acknowledgments

PROV would like to thank the following people for providing their knowledge and expertise and helping to create this Authority:

Daniel Furolo and David Eisenbise (VGSO)

5 Further Information

You can obtain relevant publications, supplies of relevant forms, and answers to any enquiries you may have by first contacting your agency's records manager or the Public Record Office Victoria:

Public Record Office Victoria

 (03) 9348 5600

e-mail: agency.queries@prov.vic.gov.au

web: www.prov.vic.gov.au

6. Retention & Disposal Authority

Retention & Disposal Authority			
CLASS NO.	DESCRIPTION	DISPOSAL ACTION	
		STATUS	CUSTODY
1.0.0	<p>Legal Advice and Opinions</p> <p>The management of providing legal advice to Victorian agencies and statutory authorities. Includes written and oral advice across all areas of law including administrative law, constitutional law, conveyancing law, litigation law, commercial law, planning and environmental law, resources law and on matters relating to policing for Victoria Police.</p> <p>[For advice in relation to Native Title matters, see 3.0.0 Native Title Claims Management].</p> <p>[For the engagement of personnel, see the <i>General Retention and Disposal Authority for Records of Common Administrative Functions</i>].</p> <p>[For financial records including records covering billing arrangements for advice, see the <i>General Retention and Disposal Authority for Records of Common Administrative Functions</i>].</p>		

Retention & Disposal Authority			
CLASS NO.	DESCRIPTION	DISPOSAL ACTION	
		STATUS	CUSTODY
1.1.0	<p>Registration of Legal Advice Matters</p> <p>The registration of a request for legal advice from a Victorian agency or statutory authority as a legal advice matter. A request for legal advice is registered as a matter when written advice is provided.</p>		
1.1.1	<p>Summary record of legal advice matters. Includes matter number, description, date and client information.</p> <p>[For the summary details of oral advice provided to Victoria Police, see 1.2.4].</p>	<p>Permanent</p> <p>Retain as State Archives.</p>	<p>Transfer hard copy or electronic copy to PROV when administrative use is concluded.</p> <p>Electronic records are to be transferred in VEO format.</p>
1.2.0	<p>Provision of Legal Advice</p> <p>The activities associated with the provision of legal advice to the Victorian Government.</p>		

<h2>Retention & Disposal Authority</h2>			
CLASS NO.	DESCRIPTION	DISPOSAL ACTION	
		STATUS	CUSTODY
1.2.1	<p>Records of written legal advice which is of an extraordinary nature because it meets one or more of the following criteria:</p> <ul style="list-style-type: none"> • sets a legal precedent; • is of a complex nature involving substantial research; • relates to a high profile issue that receives substantial media attention; • allows or prevents the Government from taking major action or making a major change including: <ul style="list-style-type: none"> ➤ privatising a government agency, ➤ outsourcing a function, ➤ exercising new powers, ➤ introducing new technologies e.g. genetically modified technologies, ➤ introducing new weapons for police, ➤ banning an activity e.g. alpine cattle grazing in national parks • relates or leads to the setting up of Royal Commissions or the establishment or abolition of new government agencies. 	<p>Permanent Retain as State Archives.</p>	<p>Transfer hard copy or electronic copy to PROV when administrative use is concluded. Electronic records are to be transferred in VEO format.</p>

Retention & Disposal Authority			
CLASS NO.	DESCRIPTION	DISPOSAL ACTION	
		STATUS	CUSTODY
1.2.2	Records of written legal advice which is of a routine nature because it: <ul style="list-style-type: none"> • does not set a legal precedent; • is not of a complex nature nor did it involve substantial research; • does not relate to a high profile issue that receives substantial media attention; • does not allow or prevent the Government from taking major actions or making major changes; • does not relate or lead to the setting up of Royal Commissions or the establishment or abolition of new government agencies. 	Temporary Destroy 10 years after matter concluded.	Hold in agency or APROSS pending destruction. Electronic records are to be maintained in readable format pending destruction.
1.2.3	Records that facilitate the provision of advice. Includes working papers, background information and minor drafts of documents.	Temporary Destroy when administrative use is concluded.	Hold in agency or APROSS pending destruction. Electronic records are to be maintained in readable format pending destruction.

Retention & Disposal Authority			
CLASS NO.	DESCRIPTION	DISPOSAL ACTION	
		STATUS	CUSTODY
1.2.4	Summary record of oral legal advice provided to Victoria Police. Includes summary details of the advice and the name and rank of the police officer it was provided to.	Temporary Destroy 7 years after date of advice.	Hold in agency or APROSS pending destruction. Electronic records are to be maintained in readable format pending destruction.
1.2.5	Records documenting the provision of oral legal advice to a Victorian government agency or statutory authority. [For summary record of oral legal advice to Victoria Police, see 1.2.4].	Temporary Destroy 2 years after date of advice.	Hold in agency or APROSS pending destruction. Electronic records are to be maintained in readable format pending destruction.

Retention & Disposal Authority			
CLASS NO.	DESCRIPTION	DISPOSAL ACTION	
		STATUS	CUSTODY
1.2.6	Records relating to requests for legal advice that are not proceeded with.	Temporary Destroy when administrative use is concluded.	Hold in agency or APROSS pending destruction. Electronic records are to be maintained in readable format pending destruction.
1.3.0	Opinions The activities associated with obtaining legal opinions from barristers engaged by VGSO about whether to take a legal matter to court.		
1.3.1	Records documenting a barrister's legal opinion on a matter. Includes the brief and associated records that were submitted to the barrister for their opinion on whether to take a matter to court.	Temporary Destroy 15 years after reference ceases.	Hold in agency or APROSS pending destruction. Electronic records are to be maintained in readable format pending destruction.

<h2>Retention & Disposal Authority</h2>			
CLASS NO.	DESCRIPTION	DISPOSAL ACTION	
		STATUS	CUSTODY
2.0.0	<p>Legal Representation</p> <p>The management of the provision of legal representation services to the Victorian Government. Includes the:</p> <ul style="list-style-type: none"> • representation at Royal Commissions, Boards of Inquiry, Courts and Tribunals; • conduct of summary prosecutions; • conduct and defence of litigation; • provision of conveyancing services; • drafting of legal documents including contracts and agreements; • registration of intellectual property; • development of policies for agencies and statutory authorities; and • negotiation of commercial, licensing and end of contract arrangements. <p>[For representation on Native Title matters, see 3.0.0 Native Titles Claims Management].</p> <p>[For financial records, including client billing records see the <i>General Retention and Disposal Authority for Records of Common Administrative Functions</i>].</p>		

Retention & Disposal Authority			
CLASS NO.	DESCRIPTION	DISPOSAL ACTION	
		STATUS	CUSTODY
2.1.0	<p>Registration of Representation Matters</p> <p>The registration of representations provided to Victorian Government. Excludes representations for native title matters.</p> <p>[For registration of native title representation matters, use 3.1.1].</p>		
2.1.1	<p>Summary record of legal representations excluding representations for native title matters.</p> <p>Includes matter number, description of representation, date and client information.</p> <p>Includes conveyancing registers and practice management systems.</p>	<p>Permanent</p> <p>Retain as State Archives.</p>	<p>Transfer hard copy or electronic copy to PROV when administrative use is concluded.</p> <p>Electronic records are to be transferred in VEO format.</p>
2.2.0	<p>Provision of Representation Services</p> <p>The activities associated with providing legal representation services to the Victorian Government.</p>		

<h2>Retention & Disposal Authority</h2>			
CLASS NO.	DESCRIPTION	DISPOSAL ACTION	
		STATUS	CUSTODY
2.2.1	<p>Records relating to the representation of the Victorian Government for:</p> <ul style="list-style-type: none"> • Royal Commissions and Boards of Inquiry; • matters which reach the High Court; • matters which set legal precedents; • matters which relate to high profile issues that receive substantial media attention; • matters which involve the Victorian Government taking major actions or making major changes such as privatising a Government agency, outsourcing a function, exercising new powers or introducing new technologies; and • matters with the potential to impact significantly on the operation of Government such as major challenges to polices, projects or transactions. 	<p>Permanent Retain as State Archives.</p>	<p>Transfer hard copy or electronic copy to PROV when administrative use is concluded. Electronic records are to be transferred in readable format pending destruction.</p>

Retention & Disposal Authority			
CLASS NO.	DESCRIPTION	DISPOSAL ACTION	
		STATUS	CUSTODY
2.2.2	<p>Records of representations that do <u>not</u> involve:</p> <ul style="list-style-type: none"> • Royal Commissions and Boards of Inquiry; • matters which reach the High Court; • matters which set legal precedents; • matters which relate to high profile issues that receive substantial media attention; • matters which involve the Victorian Government taking major actions or making major changes such as privatising a Government agency, outsourcing a function, exercising new powers or introducing new technologies; or • matters with the potential to impact significantly on the operation of Government such as major challenges to polices, projects or transactions. 	<p>Temporary Destroy 10 years after last action.</p>	<p>Hold in agency pending destruction. Electronic records are to be maintained in readable format pending destruction.</p>
2.2.3	<p>Records that facilitate the representation of the Victoria Government. Includes working papers, background information and minor drafts of documents.</p>	<p>Temporary Destroy when administrative use is concluded.</p>	<p>Hold in agency or APROSS pending destruction. Electronic records are to be maintained in readable format pending destruction.</p>

Retention & Disposal Authority			
CLASS NO.	DESCRIPTION	DISPOSAL ACTION	
		STATUS	CUSTODY
2.2.4	Records relating to requests for representation that are not proceeded with.	Temporary Destroy when administrative use is concluded.	Hold in agency or APROSS pending destruction. Electronic records are to be maintained in readable format pending destruction.

Retention & Disposal Authority			
CLASS NO.	DESCRIPTION	DISPOSAL ACTION	
		STATUS	CUSTODY
3.0.0	<p>Native Title Claims Management</p> <p>The provision of advice and representation of the Victorian Government on native title determination applications. Includes the assessment of applications; research into claims, claimants and land use; mediation processes; representation in courts and tribunals; and drafting of settlement documents.</p> <p>Includes the establishment of Indigenous Land Use Agreements (ILUA) which are voluntary agreements about the use and management of an area of land or waters, made between one or more native title groups, and others (such as miners, pastoralists, governments). A registered ILUA is legally binding on the people who are party to the agreement, and all native title holders for that area.</p> <p>[For advice and representation not connected with native title determination applications, see 1.0.0 and 2.2.0].</p> <p>[For financial records and all other agreements including confidentiality agreements, see the <i>General Retention and Disposal Authority for Records of Common Administrative Functions</i>].</p> <p>[For records of the engagement of personnel, see the <i>General Retention and Disposal Authority for Records of Common Administrative Functions</i>].</p>		

Retention & Disposal Authority			
CLASS NO.	DESCRIPTION	DISPOSAL ACTION	
		STATUS	CUSTODY
3.1.0	<p>Claim Assessment and Determination</p> <p>The activities associated with determining and resolving native title claims.</p> <p>Includes</p> <ul style="list-style-type: none"> • the receiving of a native title claimant application; • registering the matter as a representation; • investigating whether claimants have an on-going connection with the land and waters claimed. In order for the native title claims to succeed, claimants must demonstrate that the laws and customs observed by their ancestors at the time when sovereignty of the area was claimed by the British, have been acknowledged and observed in a substantially uninterrupted way since. Also includes investigating the history of the use of the land and waters subject to claim in order to determine whether native title rights have been extinguished by current or previous activities; • mediating native title claims; • litigating native title claims (where claims are settled by litigation); and • the drafting of all documents that comprise the final settlement of a native title determination application. 		

Retention & Disposal Authority			
CLASS NO.	DESCRIPTION	DISPOSAL ACTION	
		STATUS	CUSTODY
3.1.1	<p>Records of the management of native title determination applications.</p> <p>Includes:</p> <ul style="list-style-type: none"> • summary record of all native title claims and representations made; • the original Victorian Government copy of the application; • research into the claimant's connection with the land and research into the history of land tenure, including the master set of "connection" material (i.e. evidence of the claimant's connection to land) and summary record of all material submitted; • mediation records including minutes of meetings, correspondence between parties and with Government agencies, advice from counsel, independent expert reports and mediation progress reports; • records of the preparation for any court appearance; and • records on the drafting of all documents for the final settlement of a native title determination application. May include a minute of proposed consent determination (to be consented to by all parties to the application prior to being filed with the Federal Court), an Indigenous Land Use Agreement (ILUA) and ancillary agreements (ranging from funding agreements to co-operative management agreements). Include research, correspondence, meeting minutes & expert reports. <p>[For all other agreements including confidentiality agreements, use the General Retention and Disposal Authority for Records of Common Administrative Functions].</p>	<p>Permanent Retain as State Archives.</p>	<p>Transfer hard copy or electronic copy to PROV when administrative use is concluded. Electronic records are to be transferred in readable format pending destruction.</p>

Retention & Disposal Authority			
CLASS NO.	DESCRIPTION	DISPOSAL ACTION	
		STATUS	CUSTODY
3.1.2	Records that facilitate the investigation, mediation, litigation or settlement of native title matters. Includes records related to the making of arrangements for meetings or mediations, rough working papers and editorial drafts of reports where the contents have been reproduced in final documents.	Temporary Destroy 7 years after final settlement.	Hold in agency or APROSS pending destruction. Electronic records are to be maintained in readable format pending destruction.

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