

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

Authority number: PROS 10/03 VAR 1



PROS 10/03 VAR 1

**Retention and Disposal Authority for Records of
Victorian Government Solicitor's Office**

Issued Date: 06/12/2019

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

Authority number: PROS 10/03 VAR 1

Variation 1

Public Records Act 1973 (Section 12)

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

Public Record Office Standard (PROS) 10/03

Variation 1:

In accordance with section 12 of the Public Records Act 1973 (as amended), I hereby vary the Standard applying to the records of the Victorian Government Solicitor's Office, issued as Public Record Office Standard (PROS) 10/03 on 08/04/2010, as follows:

Extension of the application of this Authority until varied or revoked.

This Variation shall have effect from its date of issue.

[signed]

Justine Heazlewood

Director and Keeper of Public Records

Date: 06 December 2019

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

Authority number: PROS 10/03 VAR 1

Copyright Statement

© State of Victoria 2019



Except for any logos, emblems, and trade marks, this work (PROS 10/03 VAR 1 Victorian Government Solicitor's Office) is licensed under a Creative Commons Attribution 4.0 International license, to the extent that it is protected by copyright. Authorship of this work must be attributed to the Public Record Office Victoria. To view a copy of this license, visit <http://creativecommons.org/licenses/by/4.0/>

Disclaimer

The State of Victoria gives no warranty that the information in this version is correct or complete, error free or contains no omissions. The State of Victoria shall not be liable for any loss howsoever caused whether due to negligence or otherwise arising from the use of this Standard.

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

Authority number: PROS 10/03 VAR 1

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

Retention and Disposal Authority No	PROS 10/03 VAR 1
Scope	
Status	Issued by Keeper
Issue Date	06 December 2019

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

Authority number: PROS 10/03 VAR 1

List of Functions and Activities covered

Reference	Function	Activity	Page
1	Legal Advice and Opinions		10
1.1		Registration of Legal Advice Matters	10
1.2		Provision of Legal Advice	10
1.3		Opinions	12
2	Legal Representation		13
2.1		Registration of Representation Matters	14
2.2		Provision of Representation Services	14
3	Native Title Claims Management		16
3.1		Claim Assessment and Determination	17

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

Authority number: PROS 10/03 VAR 1

Introduction

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.

Context of this Authority

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.

Disposal of records identified in the Authority

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

It is a criminal offence to unlawfully destroy a public record under s 19(1) of the *Public Records Act 1973*.

The destruction of a public record is not unlawful if done in accordance with a Standard established under s 12 of the *Public Records Act 1973*.

This Standard (also known as an Authority) authorises the disposal of public records as described within its provisions. However, disposal is **not** authorised under this Standard if it is reasonably likely that the public record will be required in evidence in a current or future legal proceeding.

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

Authority number: PROS 10/03 VAR 1

For the purposes of this Retention and Disposal Authority, a 'legal proceeding' has the same meaning as the *Evidence (Miscellaneous Provisions) Act 1958*, and includes any civil, criminal or mixed proceeding and any inquiry in which evidence is or may be given before any court or person acting judicially, including a Royal Commission or Board of Inquiry under the *Inquiries Act 2014*.

If the public office identifies that public records must be retained under other applicable legislation for a period that exceeds the retention period specified under the Standards, then the longer retention period must apply.

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.

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

Authority number: PROS 10/03 VAR 1

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.

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.

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*

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

Authority number: PROS 10/03 VAR 1

Concurrence of Public Office

This Authority has the concurrence of:

Signature: [signed]

Name: John Cain

Position: Victorian Government Solicitor

Date: 24/04/2010

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 Office of the Victorian Government Solicitor (previously known as the Office of the Crown Solicitor). This standard as varied or amended from time to time, shall have effect from the date of issue unless revoked.

[signed]

Justine Heazlewood, Keeper of Public Records

Date of Issue: 08/04/2010

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

Authority number: PROS 10/03 VAR 1

No	Function/Activity	Description	Status	Disposal Action
1	Legal Advice and Opinions	<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>		
1.1	Registration of Legal Advice Matters	<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>	Permanent	Retain as State archives
1.2	Provision of Legal	<p>The activities associated with the provision of legal</p>		

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

Authority number: PROS 10/03 VAR 1

No	Function/Activity	Description	Status	Disposal Action
----	-------------------	-------------	--------	-----------------

Legal Advice and Opinions - Provision of Legal Advice

	Advice	description		
1.2.1		advice to the Victorian Government. Records of written legal advice which is of an extraordinary nature because it meets one or more of the following criteria: <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: 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. 	Permanent	Retain as State archives
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 	Temporary	Destroy 10 years after matter concluded.

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

Authority number: PROS 10/03 VAR 1

No	Function/Activity	Description	Status	Disposal Action
<i>Legal Advice and Opinions - Provision of Legal Advice</i>				
		<p>receives substantial media attention;</p> <ul style="list-style-type: none"> • 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. 		
1.2.3		Records that facilitate the provision of advice. Includes working papers, background information and minor drafts of documents.	Temporary	Destroy after administrative use is concluded..
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.
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.
1.2.6		Records relating to requests for legal advice that are not proceeded with.	Temporary	Destroy after administrative use is concluded.
1.3	Opinions	The activities associated with obtaining legal opinions from barristers engaged by VGSO about whether to take a legal matter to court.		

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

Authority number: PROS 10/03 VAR 1

No	Function/Activity	Description	Status	Disposal Action
----	-------------------	-------------	--------	-----------------

Legal Advice and Opinions - Opinions

1.3.1		Records documenting a barristers 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.
2	Legal Representation	<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 and Disposal Authority for Records of Victorian Government Solicitor's Office

Authority number: PROS 10/03 VAR 1

No	Function/Activity	Description	Status	Disposal Action
----	-------------------	-------------	--------	-----------------

Legal Representation - Registration of Representation Matters

2.1	Registration of Representation Matters	The registration of representations provided to Victorian Government. Excludes representations for native title matters. [For registration of native title representation matters, use 3.1.1].		
2.1.1		Summary record of legal representations excluding representations for native title matters. Includes matter number, description of representation, date and client information. Includes conveyancing registers and practice management systems.	Permanent	Retain as State archives
2.2	Provision of Representation Services	The activities associated with providing legal representation services to the Victorian Government.		
2.2.1		Records relating to the representation of the Victorian Government for: Royal Commissions and Boards of Inquiry; <ul style="list-style-type: none"> • 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 	Permanent	Retain as State archives

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

Authority number: PROS 10/03 VAR 1

No	Function/Activity	Description	Status	Disposal Action
<i>Legal Representation - Provision of Representation Services</i>				
		<p>Government agency, outsourcing a function, exercising new powers or introducing new technologies; and</p> <ul style="list-style-type: none"> • matters with the potential to impact significantly on the operation of Government such as major challenges to polices, projects or transactions. 		
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. 	Temporary	Destroy 10 years after last action.
2.2.3		<p>Records that facilitate the representation of the Victoria Government. Includes working papers, background information and minor drafts of</p>	Temporary	Destroy after administrative use is concluded.

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

Authority number: PROS 10/03 VAR 1

No	Function/Activity	Description	Status	Disposal Action
----	-------------------	-------------	--------	-----------------

Legal Representation - Provision of Representation Services

		documents.		
2.2.4		Records relating to requests for representation that are not proceeded with.	Temporary	Destroy after administrative use is concluded.
3	Native Title Claims Management	<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</i></p>		

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

Authority number: PROS 10/03 VAR 1

No	Function/Activity	Description	Status	Disposal Action
----	-------------------	-------------	--------	-----------------

Native Title Claims Management - Claim Assessment and Determination

		<i>of Common Administrative Functions]</i> .		
3.1	Claim Assessment and Determination	<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 and Disposal Authority for Records of Victorian Government Solicitor's Office

Authority number: PROS 10/03 VAR 1

No	Function/Activity	Description	Status	Disposal Action
<i>Native Title Claims Management - Claim Assessment and Determination</i>				
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 claimants 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 	Permanent	Retain as State archives

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

Authority number: PROS 10/03 VAR 1

No	Function/Activity	Description	Status	Disposal Action
<i>Native Title Claims Management - Claim Assessment and Determination</i>				
		<p>(ranging from funding agreements to co-operative management agreements). Include research, correspondence, meeting minutes & expert reports.</p> <p>[For all other agreements including confidentiality agreements, use the <i>General Retention and Disposal Authority for Records of Common Administrative Functions</i>].</p>		
3.1.2		<p>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.</p>	Temporary	Destroy 7 years after final settlement.