

Retention and Disposal Authority for Records of Alternative Dispute Resolution Services

Authority number: PROS 15/04 VAR 1



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**Retention and Disposal Authority for Records of
Alternative Dispute Resolution Services**

Status Date: 23/11/2022

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INTRODUCTION

Context

Glossary Terms

Arbitration: Arbitration is a process in which the parties to a dispute present arguments and evidence to a neutral party (the arbitrator) who makes a binding determination.

Advisory processes: The dispute resolution practitioner consider and appraises the dispute and provides advice as to the facts of the dispute, the law and, in some cases, possible or desirable outcomes, and how these may be achieved.

Conciliation: Conciliation is a process in which the parties to a dispute, with the assistance of a neutral third party (the conciliator), identify the disputed issues, develop options, consider alternatives and endeavour to reach an agreement. The conciliator has an advisory role to the content of the dispute or the outcome of its resolution, and on occasion, a determinative role e.g. to refer a dispute to a Medical Panel, or dismiss a dispute. The conciliator may advise on or determine the process of conciliation whereby resolution is attempted, and may make suggestions for terms of settlement, give expert advice on likely settlement terms and may actively encourage the participants to reach an agreement.

Facilitative processes: The dispute resolution practitioner assists the parties to a dispute to identify the issues in dispute, develop options, consider alternatives and endeavour to reach an agreement about some issues of the whole of the dispute. Facilitative processes include negotiation, facilitation, conferencing and mediation.

Mediation: Mediation is the process in which the parties to a dispute, with the assistance of a neutral third party (the mediator) identify the disputed issues, develop options, consider alternatives and endeavour to reach an agreement. The mediator has no advisory or determinative role in regard to the content of the dispute or the outcome of its resolution, but may advise on or determine the process of mediation whereby resolution is attempted.

Neutral Evaluation: Neutral Evaluation is a process of assessing a dispute in which the evaluator seeks to identify and limit the issues of fact and law that are in dispute and, by that process, assist the parties to resolve the dispute.

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Overview

This is a general authority, intended to be used by those agencies identified in the scope that perform alternative dispute resolution services. It is not intended to cover complaints that are resolved through an investigation by an agency or through a tribunal or court system. The disposal coverage for these activities is to be covered by their relevant Retention and Disposal Authorities.

Alternative Dispute Resolution (ADR), as defined by the Resolution Institute is an umbrella for processes, other than judicial determination, in which an impartial person (an ADR practitioner) assists those in a dispute to resolve the issues between them. ADR is commonly used as an abbreviation for alternative dispute resolution, but can also mean assisted or appropriate dispute resolution.

The different types of ADR processes include mediation, conciliation, neutral evaluation, arbitration and expert determination. ADR processes may be facilitative, advisory, determinative or, in some cases, a combination of these. Determinative forms of ADR are legally binding on the parties. Non-determinative forms of ADR seek to reach an outcome which is acceptable to all parties.

The scope of this RDA was limited to ADR processes that are facilitative or advisory only such as mediation, conciliation and neutral evaluation when it was issued in 2015. Arbitration is included within scope by Variation 1 to cover records created through amendment to the *Workplace Injury Rehabilitation and Compensation Act 2013* in 2022.

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Variation

Variation 1

Public Records Act 1973 (Section 12)

Retention and Disposal Authority for Records of the Alternative Dispute Resolution Services, PROS 15/04.

In accordance with section 12 of the *Public Records Act 1973* (as amended), I hereby vary the Standard applying to the records of Alternative Dispute Resolution Services, issued as a Public Record Office Standard (PROS) 15/04 on 24/04/2015, as follows:

Class Number	Description of Change
1.0	Function title has changed to Conciliation Management from Alternative Dispute Resolution Management
1.1	Class expanded, it now comprises all conciliations cases whether accepted or not, previously in class 1.1 and 1.2. All records to be retained for 5 years
1.2	Class description altered, now covers facilitative records including confidential notes previously class 1.3.
1.3	Class deleted, see 1.2
2.0	New function, Arbitration Management
2.1	New class Precedents and technical points of law
2.2	New Class Arbitration Case Records
2.3	New Class Facilitative Records

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This Variation shall have effect from its date of issue.

[Approved]

Justine Heazlewood

Director and Keeper of Public Records

Date of issue: 23/11/2022

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Retention and Disposal Authority for Records of Alternative Dispute Resolution Services

Retention and Disposal Authority No	PROS 15/04 VAR 1
Scope	This RDA authorises the disposal of records created and held by the Accident Compensation Conciliation Service (ACCS). From 1 September 2022, ACCS became known as the Workplace Injury Commission and extended its service to include arbitration.
Status	Issued by Keeper
Issue Date	23/11/2022

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List of Functions and Activities covered

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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 - *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.

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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

Low value facilitative records described below are pre-authorized by the Keeper for destruction under Normal Administrative Practice (NAP) principles:

- working documents, such as notes or calculations, used to assist in the preparation of other records
- minor drafts and transitory documents, where the content is reproduced elsewhere, and the information will not be needed to show how the work has progressed or actions approved
- minor updates of content, such as those in databases, which will not be needed to show actions, decisions, or approvals
- communications for the purpose of making minor arrangements
- duplicate copies.

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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 records must be managed and transferred in accordance with PROV Standards.

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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 Workplace Injury Commission. 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: 24/04/2015

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No	Function/Activity	Description	Status	Disposal Action
1	CONCILIATION MANAGEMENT	<p>Conciliation services are a form of Alternative Dispute Resolution (ADR) that enable parties to resolve disputes by agreement. If no agreement is reached the dispute may then proceed to arbitration or court.</p> <p>The management of conciliation includes management of:</p> <ul style="list-style-type: none"> • how conciliation is governed • the receipt of applications by claimants for conciliation or mediation services • the rejection of applications for conciliation services that do not meet the necessary criteria, and notification of applicants of the reasons for the decision • who a claimant or party may bring to assist them at conciliation conferences (e.g. solicitors, union representative, employer association representative etc.) • the information provided, received, shared and presented at conciliation conferences • arrangements and conduct of conciliation conferences, including attendance requirements, settings (location) and access support provided to claimants e.g. interpreter services 		

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No	Function/Activity	Description	Status	Disposal Action
<i>CONCILIATION MANAGEMENT</i>				
		<ul style="list-style-type: none"> • the referral of a dispute to a Medical Panel for expert medical assessment/opinion • the documentation and presentation of the outcomes of conciliation, including decisions made and agreed to by the parties, progress certificates, notices to dismiss the dispute, outcome certificates, directions regarding payments e.g. of weekly payments for payment of medical expenses, and/or the issuing of certificates of genuine dispute which allow a claimant to take the dispute further e.g. to arbitration or to a court or tribunal • how complaints about conciliation services are made and resolved 		
1.1	Conciliation Case Records	Records documenting the conciliation process. Includes: <ul style="list-style-type: none"> • initial request for conciliation, whether accepted for conciliation or not • details of the Conciliation Officer appointed to hear the dispute • information collected from the parties regarding the dispute, 	Temporary	Destroy 5 years after action completed.

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No	Function/Activity	Description	Status	Disposal Action
<i>CONCILIATION MANAGEMENT</i>				
		<ul style="list-style-type: none"> • correspondence addressed to and received from parties, • copies of supporting documentation provided by either party, • records documenting the outcome of the conciliation process such as final agreements and outcome certificate • any other record that facilitated the conference 		
1.2	Facilitative Records	<p>Records that facilitate the conciliation management function, including:</p> <ul style="list-style-type: none"> • confidential notes taken when preparing for, or during a conference by a Conciliation Officer or supporting staff for the purposes of reference when conducting the conference, or documenting the outcome • facility bookings for conferences held in a physical location, including arrangements for parties to access the facility e.g. pro forma information about directions to the facility, notifications to building security regarding visitor security pass requirements etc. 	Temporary	Destroy after administrative use has concluded.

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No	Function/Activity	Description	Status	Disposal Action
<i>ARBITRATION MANAGEMENT</i>				
		<ul style="list-style-type: none"> • online conference arrangements and bookings, including the provision of login links and codes etc. to parties • access support service arrangements and bookings e.g. arranging for and booking an interpreter • administrative arrangements for the recording/transcribing of a conference • any other record produced to facilitate a conference that does not constitute a record of a referral, evidence, the proceedings or the outcome 		
2	ARBITRATION MANAGEMENT	<p>The management of arbitration services provided as a form of Alternative Dispute Resolution (ADR) to parties who wish to have a formal and binding determination made in regards to their dispute.</p> <p>The arbitration management function includes management of:</p> <ul style="list-style-type: none"> • how arbitration is governed • the selection and appointment of Arbitration Officers and other staff within the arbitration service 		

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<i>ARBITRATION MANAGEMENT</i>				
		<ul style="list-style-type: none"> • receipt of disputes referred by claimants for arbitration • referrals for arbitration that do not meet the necessary criteria and are rejected, and the notification to parties of the reasons for the decision • multiple referrals for arbitration lodged by a claimant • identification and removal of duplicate disputes from the arbitration process • late lodgement of referrals and/or extensions of time to lodge a referrals are considered • party representatives and support persons at arbitration, including legal representative and other representatives such as union representative, employer association representative etc. • evidence (including witness statements, submissions, recordings of arbitration hearings including the presentation of oral evidence and submissions, footage and other recordings, and Arbitration Books) lodged, received, shared and presented at arbitration 		

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No	Function/Activity	Description	Status	Disposal Action
<i>ARBITRATION MANAGEMENT</i>				
		<ul style="list-style-type: none"> • arrangements for arbitration hearings including attendance requirements, settings (location) and support provided to claimants e.g. interpreter services. Also includes transcripts of hearings • expert witnesses and their assessment/opinion • adjournments, dismissals and referrals for conciliation • referrals to Medical Panels for medical assessment and opinion • determination certificates, reasons for determinations and supporting correspondence • appeals to Supreme Court Trial Division on questions of law <p>Note: A reference to a 'claimant' includes their representative. Where both the claimant and the responding employer are referred to, the term 'party' or 'parties' is used.</p> <p><i>See Records of the Standard Setting and Organisational Performance Monitoring Functions</i> 1.DEVELOPMENT OF STANDARDS AND CODES for the development of codes of conduct for</p>		

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No	Function/Activity	Description	Status	Disposal Action
<i>ARBITRATION MANAGEMENT</i>				
		participants in the arbitration process, including parties, representatives, support persons and Arbitration Officers		
2.1	Arbitration Precedents and technical points of law	<p>Records of determinations including key aspects of the underlying dispute which directly influenced components of a determination, that:</p> <ul style="list-style-type: none"> • set a precedent, • demonstrate technical points of law, or • otherwise illuminate the arbitration process and its conduct, <p>in order that they remain available to the Workplace Injury Commission and its successors for education and awareness purposes with a view to helping parties determine the merits of a dispute or prospective dispute at conciliation or arbitration.</p>	Temporary	Destroy 20 years after administrative use has concluded.
2.2	Arbitration Case Records	<p>Records documenting the arbitration process.</p> <p>Includes:</p> <ul style="list-style-type: none"> • referrals for arbitration • approvals relating to a particular referral including late lodgement, permission for legal representation etc. 	Temporary	Destroy 5 years after action completed.

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No	Function/Activity	Description	Status	Disposal Action
<i>ARBITRATION MANAGEMENT</i>				
		<ul style="list-style-type: none"> • information collected from the parties regarding the dispute • correspondence addressed to and received from parties • copies of supporting documentation and/or evidence provided by either party before or during a hearing • notification of arrangements for hearings, including access support to be provided • recordings and transcripts of the hearings • records documenting the outcome of the arbitration process such as determinations and certificates issued • Supreme Court remittals and actions arising to address the requirements of these, and • any other record arising from the arbitration hearing and its supporting processes. 		
2.3	Facilitative Records	Records that facilitate the arbitration management function, including: <ul style="list-style-type: none"> • confidential notes taken when preparing for, or during a hearing by an Arbitration Officer or supporting staff for the purposes of 	Temporary	Destroy after administrative use has concluded.

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No	Function/Activity	Description	Status	Disposal Action
<i>ARBITRATION MANAGEMENT</i>				
		<p>reference when conducting the hearing, making a determination and/or compiling the reasons for the determination made</p> <ul style="list-style-type: none"> • facility bookings for hearings held in a physical location, including arrangements for parties to access the facility e.g. pro forma information about directions to the facility, notifications to building security regarding visitor security pass requirements etc. • online hearing arrangements and bookings, including the provision of login links and codes etc. to parties • access support service arrangements and bookings e.g. arranging for and booking an interpreter • administrative arrangements for the recording/transcribing of a hearing • any other record produced to facilitate a hearing that does not constitute a record of a referral, evidence, the proceedings or the outcome 		