

**Retention and Disposal Authority for Records of Mental Health
Tribunal**

Authority number: PROS 23/05



PROS 23/05

**Retention and Disposal
Authority for Records of Mental
Health Tribunal**

Issued Date: 01/09/2023

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Retention and Disposal Authority for Records of Mental Health Tribunal

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Retention and Disposal Authority for Records of Mental Health Tribunal

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| Retention and Disposal Authority No | PROS 23/05 |
| Scope | <p>This RDA applies to records of the Mental Health Tribunal, established under the <i>Mental Health and Wellbeing Act 2022</i>.</p> <p>It also applies to records of predecessor agencies established under the <i>Mental Health Act 2014</i> and the <i>Mental Health Act 1986</i>.</p> |
| Status | Issued by Keeper |
| Issue Date | 01/09/2023 |

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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*.

Under PROS 22/04 Disposal Standard, authorisation to destroy public records is WITHDRAWN and NOT GIVEN (even if specified in an RDA or other authorised disposal instrument) if:

- it is reasonably likely that they will be needed in a current or future legal proceeding. This includes any civil or criminal proceeding or an inquiry where evidence may be given before a court or person acting judicially such as a Royal Commission or Board of Inquiry
- they are required for meeting any Freedom of Information (FOI) applications which are not finalised
- they are required for audits or investigations which are not yet finalised; and/or
- they are subject to disposal freezes applied by government or by the organisation.

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

PROS 22/04 Disposal Standard authorises the destruction of some public records under Normal Administrative Practice (NAP) principles. Low value facilitative records described below are authorised for destruction by *PROS 22/04* under 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 Mental Health Tribunal. This standard as varied or amended from time to time, shall have effect from the date of issue unless revoked.

[Approved]

Justine Heazlewood, Keeper of Public Records

Date of Issue: 01/09/2023

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| No | Function/Description | Status | Disposal Action |
|-----|--|--------|-----------------|
| 1.0 | <p>Mental Health Hearings</p> <p>The function of holding hearings into and making determinations of whether the criteria for compulsory mental health treatment as set out in mental health legislation apply to a person.</p> <p>The Tribunal makes a Treatment Order for a person if all the criteria in the legislation apply to that person. A Treatment Order enables an authorised psychiatrist to provide compulsory treatment to the person, who will be treated either in the community or as an inpatient in a designated mental health service for a specified period determined during the hearing.</p> <p>The Tribunal also reviews variations in Treatment Orders and hears applications for the revocation of an Order.</p> <p>The Tribunal also determines:</p> <ul style="list-style-type: none"> • whether electroconvulsive treatment (ECT) can be used in the treatment of an adult who does not have capacity to give informed consent to ECT, or any person under the age of 18 • a variety of matters relating to security patients (prisoners with mental illness who have been transferred to a designated mental health service) • applications to review the transfer of a patient's treatment to another mental health service • applications to perform neurosurgery for mental illness (NMI). <p>This function includes scheduling hearings, providing notice of hearings to the patient, their parent if under 16, and the authorised psychiatrist, and case management activities for priority or complex cases.</p> <p>A hearing consists of three members of the Tribunal sitting as a division. Hearings can occur either in person at health facilities, or via videoconference. Each division of three is made up of a legal member, a psychiatrist member or registered medical practitioner member, and a community member. A general division of the Tribunal can hear and determine all matters within the jurisdiction of the Tribunal except those relating to ECT or NMI. A special division of the Tribunal must hear and determine applications for the performance of ECT or</p> | | |

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| <i>Mental Health Hearings</i> | | | |
| | <p>NMI, and a psychiatrist must be part of the division.</p> <p>The Tribunal delivers its decision orally at the conclusion of the hearing and completes a determination/order reflecting its decision.</p> <p><i>See Records of Common Administrative Functions for records of complaints and enquiries</i></p> <p><i>See Records of Common Administrative Functions for records of privacy and data breaches</i></p> <p><i>See Records of Common Administrative Functions for records of Freedom of Information (FOI) requests</i></p> <p><i>See Records of Common Administrative Functions for records of publications and information products</i></p> <p><i>See Records of Common Administrative Functions for records of personnel management and staff development</i></p> <p><i>See Records of Common Administrative Functions for records of legal advice</i></p> | | |
| 1.1 | <p>Records of permanent value documenting the register of proceedings of the Mental Health Tribunal.</p> <p>The register records the particulars of proceedings at the Mental Health Tribunal. The creation of this register is required under mental health legislation.</p> <p>The register of proceedings is described in the Mental Health Tribunal Rules as amended from time to time.</p> <p>This class includes the equivalent record of preceding bodies such as the register as required by the <i>Mental Health Act 1986</i> comprising the particulars of applications lodged with the Executive Officer, determinations of the Mental Health Review and the Psychosurgery Review Boards, and the reasons for each determination.</p> | Permanent | Retain as State Archives, Transfer to PROV |
| 1.2 | <p>Administrative records of short term value created and received in relation to a hearing. Includes:</p> <ul style="list-style-type: none"> • Notice of hearing | Temporary | Destroy 2 years after final determination of |

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| <i>Mental Health Hearings</i> | | | |
| | <ul style="list-style-type: none"> • Notification of cancelled hearing • Letters regarding a missed hearing • Rejections of applications. <p>This class also includes records that are used to inform case management activities for a hearing, such as:</p> <ul style="list-style-type: none"> • Case Management Briefing Note • Case/Hearing Sheet. | | proceedings |
| 1.3 | <p>Evidence and background materials provided to members of the Tribunal as described in the Mental Health Tribunal Rules to inform decision making. Includes:</p> <ul style="list-style-type: none"> • Duplicates of patient treatment records • Clinical reports, including those relating to neurosurgery for mental illness • Letters and written submissions from the patient, their carers or family, or an advocate including their legal representative. <p>This class includes correspondence with the patient, their health service, their family/carers, and/or their representative, in relation to the organisation of hearings.</p> <p>It also includes routine internal communications between Tribunal staff and/or members regarding hearings, administrative processes, and the drafting of documents such as the Statement of Reasons. Includes:</p> <ul style="list-style-type: none"> • Queries about the application of legislation, guidance, policies and procedures • Communications about the drafting of any documents produced by the Tribunal. | Temporary | Destroy or return to submitting hearing participant after final determination of proceedings |