

Territory Records (Records Disposal Schedule – Solicitor & Legal Services Records) Approval 2017 (No 1)

Notifiable instrument NI2017—88

made under the

Territory Records Act 2002, s 19 (Approval of schedules for the disposal of records)

1 Name of instrument

This instrument is the Territory Records (Records Disposal Schedule – Solicitor & Legal Services Records) Approval 2017 (No 1).

2 Commencement

This instrument commences on 27 February 2017.

3 Approval

I approve the Records Disposal Schedule – Solicitor & Legal Services Records.

4 Revocation

This instrument revokes:

Territory Records (Records Disposal Schedule - ACT Government Solicitor Records) Approval 2006 (No 2) NI2006-447, and

Territory Records (Records Disposal Schedule - Territory Administrative Records Disposal Schedules - Legal Services Records) Approval 2009 (No 1) NI2009-443.

Danielle Wickman
Director of Territory Records
16 February 2017



Records Disposal Schedule

Solicitor & Legal Services Records

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INTRODUCTION

The *Records Disposal Schedule – Solicitor & Legal Services Records* is the official authority for the disposal of these ACT Government Records.

It is one of a series of Whole of Government Records Disposal Schedules authorised by the Director of Territory Records in accordance with the provisions of the *Territory Records Act 2002*. It is used in conjunction with other Territory Records Disposal Schedules.

PURPOSE

The purpose of this Records Disposal Schedule is to provide for the authorised disposal of records created or maintained by ACT Government Agencies.

SCOPE

This Records Disposal Schedule applies to records created or maintained by ACT Government Agencies. It applies to records in any format, including electronic records.

AUTHORITY

The Director of Territory Records, in consultation with stakeholders and the Territory Records Advisory Council, has approved this Records Disposal Schedule for use. The schedule does not take effect until it has been incorporated into an agency's Records Management Program that has been signed off by the Principal Officer of the agency.

Even so, officers using this Records Disposal Schedule should apply it with caution. They should be aware that the authorisations for disposal are given in terms of the *Territory Records Act 2002* only. Officers must not dispose of records in contravention of this Records Disposal Schedule or other requirements.

This Records Disposal Schedule will remain in force until a new schedule supersedes it or the Director of Territory Records withdraws it from use.

STRUCTURE AND RELATIONSHIP TO THE WHOLE OF GOVERNMENT THESAURUS

A Records Disposal Schedule generally specifies retention periods. That is, how long records are to be retained by the agency before being destroyed or retained as Territory Archives.

Retention periods set down in this schedule are minimum periods only and an agency may keep records for a longer period if considered necessary for business requirements. Reasons for longer retention could include legal requirements, administrative need or agency directives. **An agency must take all reasonable steps to ensure that no legal action is contemplated in relation to its records and must not dispose of any records where it is aware of possible legal action for which the records may be required as evidence or if there is a current records disposal freeze in effect.**

The *Records Disposal Schedule - Solicitor & Legal Services Records* has a hierarchical structure that reflects its arrangements according to functions and activities, rather than by subject, and this also reflects a close relationship to the Whole of Government Thesaurus. The Records Disposal Schedule is designed to be applicable to all records relating to the function described in this schedule regardless of titling conventions used, so that records, which have not been classified and titled using the terminology represented by this Records Disposal Schedule, may still be sentenced with relative ease.

Whole of Government Thesaurus

The Whole of Government Thesaurus is a controlled vocabulary of terms designed for use in the classifying, titling and indexing of records on creation.

The Whole of Government Thesaurus has been developed on the basis of the former Territory Version of Keyword AAA (TVKAAA) (2010). In the Whole of Government Thesaurus all functions are considered to be functions performed by the ACT Government and have been included following consultation with stakeholder agencies and after consideration by the Territory Records Office (TRO) via a formal approval process.

The Whole of Government Thesaurus is mandated by the Director of Territory Records for use by all ACT Government agencies as part of classifying and titling of their paper and electronic records. See also *Records Advice No.28 Functional directories on shared drives*.

The disposal actions listed in this Records Disposal Schedule were determined through the process of appraisal in accordance with *Territory Records (Records, Information and Data) Standard 2016*. Appraisal is based upon the same type of analysis of business activity employed in the classification scheme used in the Whole of Government Thesaurus. Essentially, appraisal involves attaching record retention periods and disposal decisions (and even records creation requirements and rules) to the same classification scheme.

GUIDELINES FOR USE

Coverage of authority

The *Records Disposal Schedule - Solicitor & Legal Services Records*:

- covers all records related to the function;
- is intended to be used in conjunction with other Territory Whole of Government Records Disposal Schedules;
- specifies the minimum period records should be kept (retention periods)
- specifies whether, upon the expiry of the retention periods, the records may be destroyed or are required as Territory Archives; and
- is applicable to records created and maintained in any format, including electronic or formats such as microfiche.

Layout of the schedule

This Records Disposal Schedule begins with an introduction incorporating definitions and the business classification scheme. Then each of the functions and activity disposal sets or 'disposal classes' relating to the functions are described. These are followed by a composite list of classes designated 'Retain as Territory Archives'. The functions and activity disposal sets show the following details:

Function.

This is the broad level business function and is displayed in bold capital letters at the top of each page. It is the highest level in the business classification scheme. It is followed by the scope note, which provides definitions of the function and a collective view of the business activities that make that function unique.

Activity.

Activities are the processes or operations that make up the business function. They are set in bold and italics below the function statement. This is the second level of the business classification scheme. The scope of the activity encompasses all of the transactions that take place in relation to the activity. Activities can relate to many functions with the scope notes covering all of these relationships (e.g., the activity 'Policy' is linked to all of the functions). However, each function and activity set represents a unique unit.

Entry No.

This is the disposal class number allocated based on the function and activity set and the class number of the record. The barcode is the same as the Entry No. and may be used in an automated recordkeeping system.

Description of Records.

This is the description of the records documenting the business function, activity and transactions. The descriptions can relate to one record such as a register or a group of records documenting a particular set of transactions.

Disposal Action.

This is the minimum period a record must be kept for and is the trigger event from which the disposal date can be calculated.

FORMAT OF RECORD

This Records Disposal Schedule is applicable to any record that performs the function prescribed, irrespective of format. Records may include:

- cards;
- registers;
- files;
- microfilm;
- COM (computer output microfiche);
- electronic records, including various electronic media, and
- any other formats.

Electronic records

Refers to records created, communicated and maintained by means of electronic equipment. Information could be maintained/stored in a number of ways - on the database (the main database, or a special archives database); on magnetic media; on optical disks; or on separate hardcopy (paper, COM).

Electronic records must be readily accessible for the length of the specified retention period. Routine treatment (such as wiping, updating, alterations or re-recording) does not constitute disposal.

DESTRUCTION OF RECORDS

When the approved disposal date for the destruction of records has been reached, appropriate arrangements for their destruction should be made. It is the responsibility of each agency to ensure that its records are destroyed in a secure and appropriate manner as indicated in the agency Records Management Program.

UPDATING THE RECORDS DISPOSAL SCHEDULE

Records Disposal Schedules are reviewed and updated from time to time. For suggested amendments or alterations to this schedule please contact the Director of Territory Records.

ASSISTANCE IN USING THE RECORDS DISPOSAL SCHEDULE

Agencies requiring any assistance in the interpretation or implementation of any Records Disposal Schedule are encouraged to contact the Director of Territory Records.

RELATED LEGISLATION

The following legislation is related to the records classes covered by this Records Disposal Schedule:

Criminal Code 2002

Evidence Act 2011

Financial Management Act 1996

Freedom of Information Act 1989

Government Procurement Act 2001

Information Privacy Act 2014

Limitations Act 1985

Privacy Act 1988 (Cwlth)

Public Interest Disclosure Act 2012

Public Sector Management Act 1994

Territory Records Act 2002

Workplace Privacy Act 2011

DEFINITIONS

Agency

The Executive, an ACT Court, the Legislative Assembly Secretariat, an administrative unit, a Board of Inquiry, a Judicial or Royal Commission, any other prescribed authority, or an entity declared under the regulations of the *Territory Records Act 2002* to be an agency.

Appraisal

The process of evaluating business activities to:

- determine which records need to be created and captured;
- determine how long the records need to be kept to meet business needs; and
- meet the requirements of organisational accountability and community expectations.

Business Classification Scheme

A hierarchical scheme for identifying and defining the functions, activities and transactions an agency performs in the conduct of its business, and the relationships between them.

Principal Officer

The Chief Executive of an administrative unit, or its equivalent in other types of agencies.

Records

Information created, received, and maintained as evidence and information by an organisation or person, in pursuance of legal obligations or in the transition of business. This recorded information must be maintained or managed by the agency to provide evidence of their business activities. Records can be in written, electronic or any other form.

Records of an Agency

Records, in writing, electronic or any other form, under the control of an agency or to which it is entitled to control, kept as a record of its activities, whether it was created or received by the agency.

Records Disposal Schedule

A document approved by the Director of Territory Records, which sets out the types of records an agency must make and how long they must be kept.

Records Management Program

A document that complies with Section 16 of the *Territory Records Act 2002* by setting out the means by which an agency will manage its records, and is approved by the agency's Principal Officer.

Recordkeeping Systems

Information systems that capture, maintain and provide access to records over time. While the term is often associated with computer software, Recordkeeping Systems also encompass policies, procedures, practices and resources that are applied within an agency to ensure that full and accurate records of business activity are made and kept.

Scope Note

An explanation of terms used in describing the records and the context in which they were made and used.

Sentencing

The process of applying appraisal decisions to individual records by determining the part of a Records Disposal Schedule that applies to the record and assigning a retention period consistent with that part.

Territory Archives

Records preserved for the benefit of present and future generations.

BUSINESS CLASSIFICATION SCHEME

SOLICITOR & LEGAL SERVICES

The function of providing solicitor and other legal services to the ACT Government, Ministers and organisations. Includes the interpretation and provision of advice to the government, ministers, organisations or other bodies or individuals regarding legal matters, the drawing up of legal agreements, the handling of legal actions and disputes and providing legal representation. Also includes legal advice provided to or received from in-house consultants and external sources.

Advice

The activities associated with offering formal opinions and advice as to an action, judgement or topic. Includes legal advice and formal advice required by legislation.

Compliance

The activities associated with complying with mandatory or optional accountability, fiscal, legal, regulatory or quality standards or requirements. Includes compliance with legislation and with national and international standards, such as the ISO 9000 series.

Conveyancing

The activities associated with the legal aspects of the purchase and sale of properties on behalf of the ACT Government and its organisations. Includes purchase and sale by auctions, ballots, tenders or direct grants.

Debt Recovery

The activities associated with managing the recovery of legally recoverable debts such as repayments of rental arrears, sundry debts, prosecution debts through the courts, vacated debts, third party debts, rental bond loans, tenant responsible maintenance, etc. Includes the provision and management of debt recovery services.

Litigation & Representation

The activities involved in managing lawsuits or legal proceedings between the organisation and other parties in a court or other tribunal. Includes briefs for counsel; copies of documents required by or lodged with a court; consultation with the Attorney-General and other agencies; and records documenting compliance with court instructions e.g. subpoenas and discovery orders.

Planning

The activities associated with carrying out systematic planning in order to meet strategic, business or operational goals and objectives.

Policies & Procedures

The activities associated with drafting, developing and implementing policies, procedures, guidelines and standards, and maintaining their currency over time.

Reporting & Statements

The activities associated with drafting, preparing and providing reports including in the form of informal or formal statements, statistics, returns, submissions or similar reports.

RECORDS DISPOSAL SCHEDULE

RETAIN AS TERRITORY ARCHIVES

