### 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

### 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.

[For records relating to audits that result in legal action, (e.g. probity audits), use AUDIT SERVICES for audits conducted by the Auditor-General or STRATEGY & GOVERNANCE – Audit for agency involvement in audits.

### 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.

### **Entry No.** 195.005.001

### **Description of Records**

Records documenting advice provided to or received from an internal or external legal service provider or client relating to:

### **Disposal Action**

Retain as Territory Archives

- international or national law;
- security;
- agency-wide industrial issues;
- interpretation of an agency's own legislation;
- proposal for new or amended agency legislation;
- people with a legal disability;
- Cabinet matters held by the Cabinet Office.
- matters which are precedent setting in nature, including probity matters;
- matters which are of major public interest, including probity matters;
- matters which are of significance to the functions, jurisdiction and administrative powers of the Executive, Legislature, Judiciary, the Territory or its agencies.

### Includes:

- instructions to the provider;
- records of ongoing discussions;
- revisions of instructions and drafts.

### Advice (Continued)

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.

Entry No.	<b>Description of Records</b>	<b>Disposal Action</b>
195.005.002	Records documenting advice provided to or received from an internal or external legal service provider or client relating to Cabinet matters held by an agency or Minister.	Return to Cabinet Liaison Officers when Cabinet papers are no longer required and destroy
195.005.003	Records relating to advice on matters involving persons aged less than 18 years of age (other than those with a legal disability).	Destroy 25 years after date of birth of the youngest child involved in the matter
195.005.004	Records documenting advice provided to or received from an internal or external legal service provider or client, including advice on routine matters and probity matters that are <u>not</u> precedent setting in nature, of major public interest or of other significance or involves matters relating persons aged 18 years of age or older.	Destroy 7 years after last action

### **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.

Entry No.	Description of Records	Disposal Action
195.021.001	Records documenting agency compliance	Destroy 7 years after
	with mandatory or optional standards or	last action
	with statutory requirements relating to the	
	legal profession and the provision of legal	
	services.	

### **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.

Entry No.	Description of Records	Disposal Action
195.292.001	Records relating to the purchase and sale of property of significance to Territory, that are precedent setting in nature or of major public or political interest, including the provision of legal representation and agreements and matters of probity.	Retain as Territory Archives
195.292.002	Records relating to the development of deeds and mortgages, including matters of probity.	Destroy 12 years after expiry of the deed or after mortgage has been discharged
195.292.003	Records relating to the purchase and sale of property with <b>no</b> significance to the Territory, including the provision of legal representation and matters of probity.	Destroy 7 years after last action

### 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.

Entry No.	Description of Records	Disposal Action
195.293.001	Records relating to bankruptcy, debt recovery and winding up matters, including where the matter has been written-off without being finalised.	Destroy 7 years after last action

### Litigation & Representation

The activities associated with providing legal representation and services to agencies or others and managing lawsuits or legal proceedings involving the Territory 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; records documenting compliance with court instructions, (e.g. subpoenas and discovery orders), and preparing agreements/contracts.

Entry No. 195.294.001	Description of Records  Records relating to the provision of legal representation, the development of agreements or contracts and managing lawsuits or legal proceedings which are precedent setting in nature, of major public interest or of significance to the functions, jurisdiction and administrative powers of the Executive, Legislature and Judiciary, the Territory or its agencies, including matters involving people with a legal disability and significant probity matters.	Disposal Action Retain as Territory Archives
195.294.002	Records relating to the provision of legal representation and the handling of legal matters involving persons aged less than 18 years of age (other than those with a legal disability).	Destroy 25 years after date of birth of the youngest child involved in the matter
195.294.003	Records relating to lawsuits or legal proceedings, including the provision of legal representation, where judgment has been entered but not satisfied.	Destroy 12 years after last action
195.294.004	Records relating to the development of signed contracts under seal relating to the provision of legal representation or services. Includes probity plans and issues.	Destroy 12 years after completion or other termination of agreement or contract
195.294.005	Records relating to development of routine agency agreements, signed simple contracts and supporting records relating to the provision of legal representation or services that are not precedent setting in nature or of major public interest or other significance. Includes probity plans and issues.	termination of

### Litigation & Representation (Continued)

The activities associated with providing legal representation and services to agencies or others and managing lawsuits or legal proceedings involving the Territory 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; records documenting compliance with court instructions, (e.g. subpoenas and discovery orders), and preparing agreements/contracts.

Entry No.	Description of Records	Disposal Action
195.294.006	Records documenting the provision of legal services relating to leases or licences.	Destroy 7 years after expiry of the lease or licence
195.294.007	Records relating to routine legal matters, including probity matters that are <u>not</u> precedent setting, of major public interest or of other significance and do <u>not</u> involve persons aged less than 18 years of age or people with a legal disability.	Destroy 7 years after last action
195.294.008	Records relating to signed deeds of release and deeds of indemnity and other similar agreements and supporting documents.	Destroy 6 months after indemnity ceases

### **Planning**

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

[For the development of business and corporate plans which set the strategic agenda and direction for the organisation, use STRATEGY & GOVERNANCE – Planning.]

**Note:** Use the relevant activity where strategies and plans are developed to support a more specific process, (e.g. use Maintenance for maintenance plans, or Risk Management & Insurance for risk management plans and strategies).

Entry No.	Description of Records	Disposal Action
195.079.001	Records documenting the development of	Destroy 5 years after
	plans relating to the use or provision of legal services, including:	plan is superseded

- agency-wide plans;
- section or business unit's plans;
- draft plans;
- reports analysing issues;
- comments received from and input made by other areas of the agency;
- working papers.

### Policies & Procedures

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

[For policy proposals and standards and guidelines which form legislative instruments, use STRATEGY & GOVERNANCE – Legislation.]

Entry No. 195.080.001 

### Description of Records

### Disposal Action

Records documenting the development of Retain as Territory government-wide policies and procedures, Archives including, master sets of manuals, handbooks, directives, etc. detailing procedures supporting the use or provision of legal services, including comments on policies and procedures.

195.080.002  Records documenting the development and establishment of the agency's policies after policy or and procedures supporting the use or provision of legal services. Includes:

Destroy 5 years procedure is superseded

- policy proposals;
- research papers;
- results of consultations;
- comments;
- supporting reports;
- major drafts;
- final policy documents;
- working papers.

### 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.

**Note:** Where reports support a more specific activity, use the relevant classification, (e.g. use Borrowing & Investment, for reports on organisation investments, or use Budgeting for reporting on budget expenditure.

*Entry No.* 195.295.001

### Description of Records

Records relating to the development of formal internal reports and reports made to external agencies relating to the provision of legal representation or legal services, including periodic internal reports on general administrative matters used to monitor and document recurring activities, comments received and working papers.

### Disposal Action

Destroy 5 years after last action

## **RETAIN AS TERRITORY ARCHIVES**

### **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.

### **Entry No.** 195.005.001

### **Description of Records**

Records documenting advice provided to or received from an internal or external legal service provider or client relating to:

- international or national law;
- security;
- agency-wide industrial issues;
- interpretation of an agency's own legislation;
- proposal for new or amended agency legislation;
- people with a legal disability;
- Cabinet matters held by the Cabinet Office:
- matters which are precedent setting in nature, including probity matters;
- matters which are of major public interest, including probity matters;
- matters which are of significance to the functions, jurisdiction and administrative powers of the Executive, Legislature, Judiciary, the Territory or its agencies.

### Includes:

- instructions to the provider;
- records of ongoing discussions;
- revisions of instructions and drafts.

### **Disposal Action**

Retain as Territory Archives

### **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.

### Entry No. 195.292.001

### **Description of Records**

Records relating to the purchase and sale of property of significance to Territory, that are precedent setting in nature or of major public or political interest, including the provision of legal representation and agreements and matters of probity.

### Disposal Action

Retain as Territory Archives

### Litigation & Representation

The activities associated with providing legal representation and services to agencies or others and managing lawsuits or legal proceedings involving the Territory 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; records documenting compliance with court instructions, (e.g. subpoenas and discovery orders), and preparing agreements/contracts.

### Entry No. 195.294.001

### **Description of Records**

Records relating to the provision of legal representation, the development of agreements or contracts and managing lawsuits or legal proceedings which are precedent setting in nature, of major public interest or of significance to the functions, jurisdiction and administrative powers of the Executive, Legislature and Judiciary, the Territory or its agencies, including matters involving people with a legal disability and significant probity matters.

### Disposal Action

Retain as Territory Archives

### Policies & Procedures

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

[For policy proposals and standards and guidelines which form legislative instruments, use STRATEGY & GOVERNANCE – Legislation.]

*Entry No.* 195.080.001

### Description of Records

Records documenting the development of government-wide policies and procedures, including, master sets of manuals, handbooks, directives, etc. detailing procedures supporting the use or provision of legal services, including comments on policies and procedures.

### Disposal Action

Retain as Territory Archives