



Records Authority

2016/00286150

Australian Financial Security Authority

*Insolvency Practitioner Regulation, Personal Insolvency
and Common Fund Management, Personal Property
Securities Administration and Special Trustee Service*

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2017



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INTRODUCTION

The Australian Financial Security Authority (AFSA) and the National Archives of Australia have developed this records authority to set out the requirements for keeping or destroying records for the core business areas of Insolvency Practitioner Regulation, Personal Insolvency and Common Fund Management, Personal Property Securities Administration and Special Trustee Services. It represents a significant commitment on behalf of AFSA to understand, create and manage the records of its activities.

This records authority is based on the identification and analysis of the business of AFSA. It takes into account the agency's legal and organisational information management requirements, and the interests of stakeholders, the agency and the National Archives of Australia.

The records authority sets out those records that need to be retained as national archives and specifies the minimum length of time that temporary records need to be kept. This records authority gives AFSA permission under the *Archives Act 1983*, for the destruction of the temporary records described after the minimum retention period has expired. Retention periods for these temporary records are based on: an assessment of business needs; broader organisational accountability requirements; and community expectations, and are approved by the National Archives of Australia on the basis of information provided by the agency.

As changes in circumstances may affect future information management requirements, the periodic review of this authority is recommended. All amendments must be approved by the National Archives.

APPLICATION OF THIS AUTHORITY

1. This records authority supersedes records authority 2006/435306 (2007). The superseded records authority cannot be used by AFSA after the date of issue of this authority.
2. This records authority is to be used to determine how long records must be kept. Records are matched to the relevant core business and records class in the authority:
 - Where the minimum retention period has expired and the records are not needed for business purposes they should be destroyed as authorised in this records authority;
 - Records that have not reached the minimum retention period must be kept until they do; and
 - Records that are identified as 'retain as national archives' are to be transferred to the National Archives of Australia for preservation.
3. This records authority should be used in conjunction with general records authorities such as:
 - The Administrative Functions Disposal Authority (AFDA) and/or AFDA Express issued by the National Archives to cover business processes and records common to Australian Government agencies;
 - General Records Authority 24 – Records Relating to Data Matching Exercises; and
 - General Records Authority (31) for source or original records after digitisation, conversion or migration (2015).
4. The normal administrative practice (NAP) provision of the Archives Act 1983 gives agencies permission to destroy certain records without formal authorisation. This usually occurs where records are duplicated, facilitative or for short-term use only. NAP does not replace arrangements agreed to in this authority but can be used as a tool to assist in identifying records for destruction together with an agency's records authority or authorities, and with AFDA and AFDA Express. The National Archives recommends that agencies develop and implement a NAP policy. Advice and guidance on destroying records as a normal administrative practice and on how to develop a NAP policy is available from the National Archives' website at www.naa.gov.au.
5. Records that are reasonably likely to be needed as evidence in a current or future judicial proceeding or are subject to a request for access under the *Archives Act 1983*, the *Freedom of Information Act 1982* or any other relevant Act must not be destroyed until the action has been completed.
6. Records subject to a disposal freeze must not be destroyed until the freeze has been lifted. Further information about disposal freezes and whether they affect the application of this records authority is available from the National Archives website at www.naa.gov.au.
7. Where the method of recording information changes (for example from a manual system to an electronic system, or when information is migrated from one system to a new system) this authority can still be applied, providing the records document the same core business. The information must be accessible for

the period of time prescribed in this records authority. The agency will need to maintain continuing access to the information, including digital information, for the periods prescribed in this records authority or until the information is transferred into the custody of the National Archives.

8. In general, retention requirements indicate a minimum period for retention. AFSA may extend minimum retention periods if it considers that there is an administrative need to do so, without further reference to the National Archives. Where AFSA believes that its accountability will be substantially compromised because a retention period or periods are not adequate, it should contact the National Archives for review of the retention period.
9. Records coming within 'retain as national archives' classes in this records authority have been determined to be part of the archival resources of the Commonwealth under Section 3C of the *Archives Act 1983*. The determination of Commonwealth records as archival resources of the Commonwealth obliges agencies to transfer the records to the National Archives when they cease to be current and, in any event, within 15 years of the records coming into existence, under Section 27 of the *Archives Act 1983*.
10. Records in the care of agencies should be appropriately stored, managed and preserved. Agencies need to meet this obligation to ensure that the records remain authentic and accessible over time. Under Section 31 of the *Archives Act 1983*, access arrangements are required for records that become available for public access including those records that remain in agency custody.
11. Appropriate arrangements should be made with the National Archives when records are to be transferred into custody. The National Archives accepts for transfer only those records designated as national archives. Records created digitally after 1 January 2016 can be transferred in digital formats only.
12. Advice on how to use this records authority is available from AFSA's records manager. If there are problems with the application of the records authority that cannot be resolved, please contact the National Archives.

CONTACT INFORMATION

For assistance with this authority or for advice on other information management matters, please contact National Archives' Agency Service Centre.

Queen Victoria Terrace
Parkes ACT 2600
PO Box 7425
Canberra Business Centre ACT 2610

Email: recordkeeping@naa.gov.au
Website: www.naa.gov.au

AUTHORISATION

RECORDS AUTHORITY 2016/00286150

Person to whom notice of authorisation is given:

Veronique Ingram
Chief Executive and Inspector-General
Australian Financial Security Authority
GPO Box 821
Canberra ACT 2601

Purpose:

Authorises arrangements for the disposal of records in accordance with Section 24(2)(b) of the *Archives Act 1983*

Determines records classed as 'retain as national archives' in this Records Authority to be part of the archival resources of the Commonwealth under section 3C of the *Archives Act 1983*.

Application:

All core business records relating to Insolvency Practitioner Regulation, Personal Insolvency and Common Fund Management, Personal Properties Securities Administration, Special Trustee Service.

This authority gives permission for the destruction, retention or transfer to the National Archives of Australia of the records described. This authority will apply only with the consent of the agency currently responsible for the business documented in the records described.

Authorised by

Anne Lyons
Assistant Director-General
National Archives of Australia

Date of issue:

6 March 2017

INSOLVENCY PRACTITIONER REGULATION

The core business of regulating insolvency practitioners to ensure the integrity of the Australian personal insolvency system. Practitioners include private trustees, debt agreement administrators, solicitors who act as controlling trustees, and the government's Official Trustee.

The **core activities** include:

- developing, implementing and reviewing policies, plans, strategies and frameworks;
- providing and receiving advice and other forms of information;
- developing, implementing and reviewing standards and guidelines for practitioners including practice statements and practice directions;
- registration of insolvency practitioners including conditional registration, de-registration and maintenance of register of private trustees;
- managing appeals against decisions and conducting reviews of practitioner decisions and charges;
- liaison with law enforcement bodies and insolvency professionals on disciplinary matters;
- investigating complaints and allegations made by debtors, creditors and members of the public including compliance and complex offences;
- negotiating, establishing, implementing agreements and contracts, including memorandums of understanding;
- monitoring compliance including annual inspections, attendance at creditors' meetings, issuing infringement notices and referrals to other bodies;
- developing, implementing and reviewing education and information programs; and
- managing and participating in internal and external committees and meetings.

The performance of the core business is supported by **general activities** such as:

- planning, conducting and facilitating inspections;
- delegating powers and authorising actions;
- preparing and presenting speeches and information sessions;
- handling enquiries;
- identifying, assessing and managing risks;
- developing, implementing and reviewing operational procedures;
- reporting and reviewing; and
- conducting research.

Cross references to AFDA Express records authority

For advice, briefs, and submissions to the portfolio Minister, cabinet submissions and participation in formal inquiries, use GOVERNMENT RELATIONS.

For processing payment of practitioner registration fees, charges and infringement notices, use FINANCIAL MANAGEMENT.

For complaints about the agency's services, use COMMUNITY RELATIONS.

For internal legal advice, use LEGAL SERVICES.

For development of new legislation and amendments to existing legislation, use GOVERNMENT RELATIONS or STRATEGIC MANAGEMENT.

For media releases, use COMMUNITY RELATIONS and/or GOVERNMENT RELATIONS.

For the procurement of goods and services, such as contractors or consultants, use PROCUREMENT.

Cross references to other areas of this records authority

INSOLVENCY PRACTITIONER REGULATION

For maintaining a statutory register of personal insolvencies, use PERSONAL INSOLVENCY AND COMMON FUND MANAGEMENT.

For maintaining a statutory register of personal property securities, use PROPERTY SECURITIES ADMINISTRATION.

For exercising statutory trustee powers on behalf of other government agencies, use SPECIAL TRUSTEE SERVICES.

Class no	Description of records	Disposal action
62039	<p>The following significant records documenting:</p> <ul style="list-style-type: none"> • developing and reviewing high-level policies, plans, strategies, and frameworks. Includes final versions, major drafts, submissions, stakeholder consultation and supporting research; • providing and receiving high-level advice. Includes final version of formal advice, position papers, briefs, opinions, reports and stakeholder consultations; • high-level internal and external committees, taskforces, working groups and other bodies, where the agency provides secretariat support, is the Australian Government's main representative, or plays a prominent or central role. Includes establishment documentation, agenda, final versions of minutes, reports, briefing notes and tabled papers; • developing and reviewing standards and guidelines such as practice statements, practice directions, and standards used to regulate the practices and systems of registered insolvency practitioners. Includes final versions, stakeholder consultation and supporting research; • complex investigations resulting from complaints and allegations against registered private trustees and solicitors who act as controlling trustees, and who have breached the law, acted dishonestly or fraudulently and where the investigation results in enforcement action. Includes reports, referrals and supporting documentation, briefs of evidence containing witness statements, register of exhibits, case notes and statement of findings; • appeals or reviews of decisions that are precedent setting, controversial or of significant public interest; • developing and reviewing major information campaigns. Includes final versions of educational material, reports and supporting research; • summary records created to support the core business such as the Register of Trustees. Includes final published versions and datasets and associated information about the data fields (eg data dictionaries and data repositories); • high-level consultations and liaison with major stakeholders; • developing national and high-level reports. Includes final versions, major drafts, stakeholder consultation, and supporting research; • high-level reviews of the core business. Includes final review reports, major drafts, recommendations, stakeholder consultations, submissions and supporting research; • final versions of significant agreements and contracts and supporting documents, that relate to the establishment of partnerships and cooperative arrangements with other governments, agencies or 	Retain as national archives

INSOLVENCY PRACTITIONER REGULATION

Class no	Description of records	Disposal action
	<p>organisations: are controversial, of public interest or ground-breaking in nature; or have substantial implications for the conduct of business. Includes joint ventures, memorandums of understanding and bilateral agreements;</p> <ul style="list-style-type: none">• master versions of publications produced to support the core business. Includes newsletters and educational and information material; and• final versions of speeches presented by the portfolio Minister, the agency head or senior staff in support of the core business.	
62040	<p>Records documenting:</p> <ul style="list-style-type: none">• routine operational administrative tasks supporting the core business; and• insolvency practitioner regulation activities, other than those covered in class 62039.	Destroy 10 years after action completed

PERSONAL INSOLVENCY AND COMMON FUND MANAGEMENT

The core business of managing processed and administered matters of debtors who have entered a personal insolvency proceeding, and assisting trustees discharge their responsibilities. Includes administering bankruptcies and other personal insolvency arrangements as the government's trustee when a private sector practitioner is not appointed; transferring bankrupt estates to registered trustees, and administering debt agreement voting activities. Also includes exercising official trustee powers by managing moneys on behalf of administered estates in a common investment fund.

The **core activities** include:

- developing, implementing and reviewing policies, plans, strategies, frameworks, standards and guidelines;
- providing and receiving advice and other forms of information;
- managing appeals against decisions by bankruptcy trustees and debt agreement administrators;
- managing and participating in internal and external committees and meetings including convening creditors meetings;
- handling pre-bankruptcy and post-bankruptcy enquiries. Includes processing requests for public inspection of statement of affairs documentation;
- allocation of estates to private sector trustees. Includes maintaining trustees panel;
- recovery of assets and executing seizure warrants, for the conduct and examinable affairs of respondents;
- investigating examinable affairs, allegations of fraud and misconduct referred from creditors and insolvency practitioners. Includes enforcement of bankruptcy-related breaches;
- collecting, monitoring and analysing data;
- liaising with law enforcement agencies;
- registration of processed and administered matters, and issuing statutory notices. Includes maintaining the national index of personal insolvencies;
- negotiating, establishing and implementing agreements and contracts including memorandums of understanding;
- liaising with stakeholders and hosting international delegations;
- establishing and maintaining common investment fund accounts.
- undertaking transactions to and from the common investment fund accounts. Includes undertaking loans for and making payments from the fund, documenting receipt of moneys and reconciling accounts; and
- investing surplus funds. Includes monitoring investment accounts and redeeming funds upon maturity.

The performance of the core business is supported by **general activities** such as:

- planning, conducting and facilitating audits;
- preparing and presenting speeches;
- arranging and attending conferences;
- delegating powers and authorising actions;
- identifying, assessing and managing risks;
- developing, implementing and reviewing operational procedures;
- reporting and reviewing; and
- conducting research.

Cross references to AFDA Express records authority

For public reaction to agency services, fees and charges, use COMMUNITY RELATIONS.

For financial management activities other than those relating to the common fund management, use FINANCIAL MANAGEMENT.

PERSONAL INSOLVENCY AND COMMON FUND MANAGEMENT

For submissions to reviews of government legislation, use GOVERNMENT RELATIONS.

For internal legal advice, use LEGAL SERVICES.

Cross references to other areas of this authority

For investigations into complaints against an insolvency practitioner, use INSOLVENCY PRACTITIONER REGULATION.

For reviewing insolvency practitioners charges, use INSOLVENCY PRACTITIONER REGULATION.

For security interests in personal property, use PROPERTY SECURITIES ADMINISTRATION.

For taking possession of, and selling non-bankrupt property on behalf of other government agencies in accordance with court orders, use SPECIAL TRUSTEE SERVICES.

Class no	Description of records	Disposal action
62041	<p>The follow significant records documenting:</p> <ul style="list-style-type: none"> • developing and reviewing high-level policies, plans, strategies, frameworks, standards and guidelines. Includes final versions, major drafts, submissions, stakeholder consultation and supporting research; • personal insolvency administrations where enforcement action is recommended and that result in controversy, intense media or public interest, major changes to bankruptcy legislation, policy and procedures or major cases which set a precedent regarding legislative interpretation. Includes registration, de-registration, assessment, debt agreements, annulment, finalisation and discharge; • providing and receiving high-level advice. Includes final version of formal advice, position papers, briefs, opinions, reports and stakeholder consultations; • developing national and high-level reports. Includes final versions, major drafts, stakeholder consultations and supporting research; • national and high-level reviews, including sector-wide and major internal reviews. Includes final review reports, major drafts, recommendations, stakeholder consultations, submissions and supporting research; • final versions of significant agreements and contracts and supporting documents, that relate to the establishment of partnerships and cooperative arrangements with other governments, agencies or organisations: are controversial, of public interest or ground-breaking in nature; or have substantial implications for the conduct of agency business. Includes joint ventures, memorandums of understanding and bilateral agreements; • summary records and data sets created to support the core business such as the national public index of all personal insolvency proceedings and administrations, practitioner risk register and annual estate returns. Includes final published versions and datasets and associated information about the data fields (eg data dictionaries and data repositories); • master versions of publications produced to support the core business. Includes newsletters and information sheets; and • final versions of speeches presented by the portfolio Minister, the agency head or senior staff in support of the core business. 	Retain as national archives

PERSONAL INSOLVENCY AND COMMON FUND MANAGEMENT

Class no	Description of records	Disposal action
62042	Records documenting: <ul style="list-style-type: none">• personal insolvency administrations not covered in class 62041;• maintenance of the personal insolvency registry including declarations of intention, debtor's and creditor's petitions, sequestration orders, personal insolvency agreements, statements of affairs, bankruptcy notices, debt agreement proposals, creditor voting activities and outcomes and debt agreements; and• delegations of powers to personnel to authorise statutory actions.	Destroy 10 years from last action to make the matter inactive
62043	Records documenting: <ul style="list-style-type: none">• routine operational administrative tasks supporting the core business; and• personal insolvency and common fund management activities, other than those covered in classes 62041 and 62042.	Destroy 7 years after action completed

PERSONAL PROPERTIES SECURITIES ADMINISTRATION

The core business of administering the national scheme for personal property securities, supported by a public register of registrations by external secured parties who give notice of actual or prospective collateral that is subject to a security interest in personal property. Includes non-security interests such as hoon liens and orders of a court or tribunal made under proceeds of crime legislation registered by state and territory governments as a consumer protection measure. Personal property includes all forms of tangible and intangible property other than land, buildings, fixtures and fittings.

The **core activities** include:

- developing, implementing and reviewing policies, plans, strategies and frameworks;
- providing and receiving advice and other forms of information;
- creating and maintaining registers such as the Personal Property Securities Register;
- negotiating, establishing, implementing agreements and contracts, including memorandums of understanding;
- managing reviews and appeals against decisions;
- developing, implementing and reviewing education programs;
- investigations, referrals to enforcement for investigation and issuing statutory notices; and
- managing and participating in internal and external committees and meetings.

The performance of the core business is supported by **general activities** such as:

- managing internal and external audits;
- handling enquiries and complaints;
- preparing and presenting speeches;
- delegating powers and authorising actions;
- developing, implementing and reviewing operational procedures; and
- reporting and reviewing.

Cross references to AFDA Express records authority

For processing payment of registrations and search fees relating to the Register of Personal Property Securities, use FINANCIAL MANAGEMENT.

For development of new legislation and amendments to existing legislation, use GOVERNMENT RELATIONS or STRATEGIC MANAGEMENT.

For internal legal advice, use LEGAL SERVICES.

For marketing and promotion, use COMMUNITY RELATIONS.

For the procurement of goods and services, such as contractors or consultants, use PROCUREMENT.

Cross references to other areas of this records authority

For the administration of bankrupt estates, use PERSONAL INSOLVENCY AND COMMON FUND MANAGEMENT.

PERSONAL PROPERTIES SECURITIES ADMINISTRATION

Class no	Description of records	Disposal action
62044	<p>The following significant records documenting:</p> <ul style="list-style-type: none"> • developing and reviewing high-level policies, plans, strategies, and frameworks. Includes final versions, major drafts, submissions, stakeholder consultation and supporting research; • summary records supporting the personal property securities scheme such as the register of security interests in personal property. Includes final published versions and datasets and associated information about the data fields (eg data dictionaries and data repositories); • registrar notices; • investigations that are controversial, precedent setting or impact on legislative change. Includes enforcement referrals and investigations, external liaison, statutory notices, research, recommendations and final report; • appeals or reviews of decisions that are precedent setting, controversial or of significant public interest; • providing and receiving high-level advice. Includes final version of formal advice, position papers, briefs, opinions, reports and stakeholder consultations; • developing national and high-level reports. Includes final versions, major drafts, stakeholder consultations and supporting research; • high-level internal and external committees, taskforces, working groups and other bodies, where the agency provides secretariat support, is the Australian Government's main representative, or plays a prominent or central role. Includes establishment documentation, agenda, final versions of minutes, reports, briefing notes and tabled papers; • master versions of publications produced to support the core business; and • final versions of speeches presented by the Minister, the agency head, or senior staff. 	Retain as national archives
62045	<p>Records documenting the process of registration services for the public register of personal property securities. Includes registered data that has been removed from the register in certain situations such as, if the retention of data is contrary to the public interest, or a registration has been ineffective for seven years or more. Also includes:</p> <ul style="list-style-type: none"> • business rules; • court or tribunal orders; and • notifications to remove or correct data. 	Destroy 10 years after registration has become ineffective

PERSONAL PROPERTIES SECURITIES ADMINISTRATION

Class no	Description of records	Disposal action
62046	Records documenting: <ul style="list-style-type: none">• routine operational administrative tasks supporting the core business; and• personal property securities administration activities, other than those covered in classes 62044 and 62045.	Destroy 7 years after action completed

SPECIAL TRUSTEE SERVICE

The core business of acting as the government's trustee and as trustee for other Commonwealth agencies to enforce court orders, the recovery and disposal of property (including real property) associated with proceeds of crime and non-payment of child support debt.

The **core activities** include:

- developing, and reviewing policies, plans, standards and guidelines;
- receiving and providing advice and other forms of information;
- negotiating, establishing and implementing agreements and contracts including memorandums of understanding;
- gathering information relating to the property of respondents including executing warrants;
- liaison with law enforcement and other government agencies;
- recovery and control of restrained and forfeited property. Includes maintain, secure, sale, disposal, realisation and/or return of property;
- acting under court orders obtained by other agencies for the seizure and sale of real property;
- consultation with stakeholders both nationally and internationally in support of core business; and
- managing and participating in internal and external committees and meetings.

The performance of the core business is supported by **general activities** such as:

- obtaining and giving advice;
- managing audits;
- delegating powers and authorising actions;
- fulfilling compliance requirements;
- identifying, assessing and managing risks;
- developing, implementing and reviewing operational procedures; and
- reporting and reviewing.

Cross references to AFDA Express Records Authority

For processing payments from government agencies for special trustee services, use FINANCIAL MANAGEMENT.

For the provision and receipt of legal advice, use LEGAL SERVICES.

Cross references to other areas of this records authority

For security interests in personal property, use PROPERTY SECURITIES ADMINISTRATION.

For recovery of bankrupt estates associated with proceeds of crime and unpaid child support debts, use PERSONAL INSOLVENCY AND COMMON FUND MANAGEMENT.

Class no	Description of records	Disposal action
62047	<p>The following significant records documenting:</p> <ul style="list-style-type: none"> • developing and reviewing high-level policies, plans, standards and guidelines. Includes final versions, major drafts, submissions, stakeholder consultation and supporting research; • providing and receiving high-level advice. Includes final version of formal advice, position papers, briefs, opinions, reports and stakeholder consultations; • investigation case files for example arising from proceeds of crime 	Retain as national archives

SPECIAL TRUSTEE SERVICE

Class no	Description of records	Disposal action
	<p>investigations or child support administration matters that are controversial, have considerable public interest or are precedent setting. Includes reports, referrals and supporting documentation, briefs, case notes and statement of findings;</p> <ul style="list-style-type: none"> • developing national and high-level reports. Includes final versions, major drafts, stakeholder consultations and supporting research; • national and high-level reviews, including sector-wide and major internal reviews. Includes final review reports, major drafts, recommendations, stakeholder consultations, submissions and supporting research; • final versions of significant agreements and contracts and supporting documents, that relate to the establishment of partnerships and cooperative arrangements with other governments, agencies or organisations: are controversial, of public interest or ground-breaking in nature; or have substantial implications for the conduct of agency business. Includes joint ventures, memorandums of understanding and bilateral agreements; • high-level internal and external committees, taskforces, working groups and other bodies, where the agency provides secretariat support, is the Australian Government's main representative, or plays a prominent or central role. Includes establishment documentation, agenda, final versions of minutes, reports, briefing notes and tabled papers; • registers and summary records created to support the core business; • high-level consultations and liaison with major stakeholders both nationally and internationally in support of core business. Includes minutes of meetings and briefings; • master versions of publications produced to support the core business. Includes newsletters and information sheets; and • final versions of speeches presented by the portfolio Minister, the agency head or senior staff in support of the core business. 	
62048	<p>Records documenting special trustee services not covered in class 62047:</p> <ul style="list-style-type: none"> • delegations of powers; • investigations of respondent's property. Includes information gathering; • recovery of restrained and forfeited property. Includes court orders, declarations, plans, statements, affidavits, property appraisals, valuations and inventory; and • court orders to seize and sell real property. Includes letters of instructions, signed consent to act, reports, copies of sealed orders, title searches and property appraisals. 	Destroy 10 years from end of administered case

SPECIAL TRUSTEE SERVICE

Class no	Description of records	Disposal action
62049	Records documenting: <ul style="list-style-type: none">• routine operational administrative tasks supporting the core business; and• special trustee service activities, other than those covered in classes 62047 and 62048.	Destroy 7 years after action completed