

Fair Trading Retention and Disposal Schedule Authorised on 28 March 2017

An authorisation under s.26 of the *Public Records Act 2002* for the disposal of records of the Office of Fair Trading created by Department of Justice and Attorney-General.

Where printed, this reproduction is only accurate at the time of printing.

Queensland Government (For Government) website should always be referred to for the current, authorised version.



Using this schedule

The Fair Trading retention and disposal schedule authorises the disposal of records relating to delivering a fair and safe marketplace for Queensland consumers and businesses including compliance, enforcement and investigation activities, industry licensing and registration, claims and recoveries created by Department of Justice and Attorney-General. It applies to records created in any format, unless otherwise specified in the class description.

The Fair Trading retention and disposal schedule can be used in conjunction with the <u>General retention and disposal schedule</u> (GRDS). Record classes in the Common Activities section of the GRDS can be applied to any function undertaken by the agency, provided the retention period meets all of the agency's specific regulatory requirements and there are no exclusions listed. Schedules should be reviewed at least every 5 years.

Any references to repealed legislation may be taken as a reference to current legislation if the context permits.

Any previously authorised retention and disposal schedule covering record classes described in this schedule is now superseded and previous versions should be removed from use. The Office of Fair Trading (OFT) should take measures to withdraw revoked authorities from circulation and maintain this current approved schedule within their business practices and systems. Revoked schedules include:

 QDAN 586 v2 – Department of Employment, Economic Development and Innovation (OFT related activities covered under functions 2 Product Safety and Quality and 3 Regulatory Compliance)

When this schedule should not be used

It is an offence under the Criminal Code Act 1899 (s.129) 'for a person, who knowing something is or may be needed in evidence in a judicial proceeding, damages it with intent to stop it being used in evidence'. A duty of care exists for agencies to ensure records that may be needed in evidence in a judicial proceeding, including any legal action or a Commission of Inquiry, are not disposed of. Internal processes should be implemented to meet this obligation, which may include consultation with your legal or Right to Information area or issuing an internal records disposal freeze if it is reasonably expected that a judicial proceeding may occur e.g. retaining property files that may contain information on the use of asbestos in buildings.

Additionally, any group of records covered by a disposal freeze issued by the State Archivist cannot be disposed of while the freeze is in place. Disposal freezes generally relate to a particular topic or event which has gained prominence or provokes controversy. Further information about current disposal freezes and whether they affect the use of this schedule is available from the Queensland Government (For Government) website.

Records which are subject to a request for access under the *Right to Information Act 2009*, the *Information Privacy Act 2009* or any other relevant Act must not be destroyed until the action, and any applicable appeal period, has been completed.

Schedule layout

Each class has been allocated a unique number to aid with the disposal of records. Further implementation information is available on the <u>Queensland</u> <u>Government</u> (For Government) website.

Disposal

No further authorisation is required from the State Archivist for the records disposed of under this schedule. However, disposal must be appropriately documented in accordance with *Information Standard 31: Retention and Disposal of Public Records*. Approval from your CEO or authorised delegate is also required prior to disposal.

Any disposal of public records without authorisation from the State Archivist may be a breach of the *Public Records Act 2002 (s.13)*.

How we can help?

More information on implementing schedules is available on the <u>Queensland Government (For Government) website</u>. Any enquiries about this schedule or recordkeeping should be directed in the first instance to your Records Manager. If further information is required, please contact Queensland State Archives on (07) 3037 6630 or via the <u>Queensland Government (For Government) website</u>.

Approved by State Archivist: Mike Summerell Date: 28/03/2017

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COMPLIANCE

The function of monitoring and enforcing compliance with legislation administered by the Office of Fair Trading for market and industry trading and community organisations through registration and licensing requirements, complaint handling, conciliation, investigation and pro-active and educational compliance operations and enforcement options. The compliance function includes breaches falling under repealed legislation.

Disposal	Description of records	Retention period & trigger
Authorisation		

COMPLAINT ASSESSMENT

The activity of assessing complaints received by the agency for alleged breaches of legislation administered by OFT by market and industry traders, licensed individuals and community organisations such as charities and associations. Where no breach of OFT legislation is evident, advice can be provided or conciliation conducted in an effort to resolve matters.

See General Retention and Disposal Schedule for all other complaints, enquiries and advice. (Includes enquiries via Smart Service Queensland)

1671 Complaints received

Records relating to the assessment and/or conciliation of complaints received via all communication mediums including social media for alleged breaches of legislation administered by the agency that are not referred for investigation.

Includes assistance offered i.e. advice and conciliation for complaints received where there were no breaches of legislation.

Records may include, but are not limited to:

- complaint information
- research information
- assessment outcome
- conciliation outcome
- referral of the complaint to another agency or public authority
- referral for agency product safety check, trader spot check, trader visit or investigation

See classes in this schedule for records relating to complaints that are referred for investigation.

7 years after finalisation of assessment and/or conciliation of complaints, whichever is latest.

INVESTIGATION AND ENFORCEMENT

The activity of investigating and managing alleged breaches of legislation administered by the agency (including Fair Trading Act 1989 incorporating the Australian Consumer Law) initiated by complaint and/or intelligence received by, or referred to the agency or as a result of pro-active compliance operations. Activities also include investigation and/or referral of complaints about unsafe goods and services and non-compliance with mandatory safety

Disposal Authorisation	Description of records	Retention period & trigger
	on standards. Enforcement activities involve administering appropriate enforcement action or initiating disciplina determined. Investigations are categorised by risk factor according to set criteria noted in the agency's Compli s (CEPS).	
1672	Investigations – significant	Permanent.
	Records relating to investigation of complaints for alleged or proven breaches of legislation administered by the agency which are deemed significant.	Transfer to QSA after business action completed.
	Significant investigations are those which set a precedent where the outcome of the investigation results in the:	
	 development of, or changes to, legislation administered by the agency 	
	 development of, or changes to, the agency's policies and standards 	
	Includes issues that have resulted in significant public interest, controversy, or caused significant consumer detriment.	
1673	Investigations – major	15 years from the completion of the investigation.
	Records relating to investigation of alleged breaches of legislation administered by the agency ranging from serious misconduct, multi-jurisdictional matters and proven product safety issues to misleading and deceptive conduct and undermining licensing requirements, and which are not covered under record classes 1672 and 1674.	
	Investigation records include but are not limited to:	
	 correspondence and submissions from complainants and respondents 	
	research information	
	interview and/or discussion records	
	witness statements	
	search warrants	
	receivership appointments and reports	
	audit reports	
	claim payment advice or information	
	risk assessment reports	
	product testing reports	

Disposal Authorisation	Description of records	Retention period & trigger
	officers reports and recommendations	
	Enforcement records include but are not limited to:	
	enforceable undertaking	
	public naming or public warning	
	disciplinary action	
	prosecution action	
	civil proceedings	
	criminal proceedings.	
	temporary or permanent banning of products	
	mandatory safety standards	
	recall notices	
1674	Investigations – other	10 years after business action
	Records relating to investigations of alleged breaches of legislation administered by the agency where contraventions are unlikely to impact on the marketplace and where minor issues may evolve into larger issues if not addressed by investigative action and which are not covered under record classes 1672 and 1673.	completed.
	Investigation records include but are not limited to:	
	 correspondence and submissions from complainants and respondents 	
	research information	
	interview and/or discussion records	
	officers reports and recommendations	
	Enforcement records include but are not limited to:	
	compliance advice letter	
	warning notice	
	safety warning notices	
	infringement notice	
	civil penalty notice	

Disposal Authorisation	Description of records	Retention period & trigger
	See class <u>1671</u> for records relating to complaints that are not referred to investigation. See class <u>1275</u> in the General Retention and Disposal Schedule for records relating to anonymous or unidentifiable complainants.	
1675	Evidence (exhibit) register Register of evidence collected during investigations undertaken by the agency. See the agencies internal policy and procedures for handling evidence collected during an investigation.	10 years after business action completed.

FINE ADMINISTRATION

The activity of processing and monitoring payment of infringement and civil penalty notices issued by the agency and Office of Liquor and Gaming Regulation (OLGR) Officers and/or the Queensland Police Service (QPS) as authorised under legislation administered by the agency.

See the General Retention and Disposal Schedule for records relating to the payment or receipt of money (1099)

1676	Infringement and civil penalty notices Records relating to the details, registration, monitoring payment progress and withdrawal or cancellation of infringement and civil penalty notices issued for non-compliance of legislation administered by the agency.	7 years from date penalty issued.
	Records may include, but are not limited to:	
	offence notice documents and related correspondence	
	payment advice from OFT finance	
	cancellation or withdrawal documentation	
	 referral notices to State Penalty and Enforcement Register (SPER) 	
	SPER enforcement reports	
	QPS and OLGR documented advice	

TRUST ACCOUNTS

The activity of opening, closing and auditing of trust accounts required by licensed operators under legislation administered by OFT. Includes the activities of appointing and invoicing receivers as needed and maintaining a public register of registered trust accounts.

See the General Retention and Disposal Schedule for records relating to negotiating agreements between individual banking institutions and the Office of State Revenue (OSR) for recovery of agreed amount of interest earned from trust accounts (consolidated revenue) (1027).

1677	Trust account maintenance	7 years after the last financial
	Records relating to the opening, closing and auditing of trust accounts required by licensed operators	year to which the record

Disposal Authorisation	Description of records	Retention period & trigger
	under legislation administered by the agency.	relates.
	Records may include, but not limited to:	
	opening and closing of trust accounts	
	reporting or surveying of trust accounts	
	 reconciliation of trust account bank reports including exception reports 	
	audit reports on trust accounts	
	appointment of Manager Trust Accounts as a special investigator	
	auditing and overseeing of trust accounts	
	tracing funds	
	public register of trust accounts	

CONSUMER COMPENSATION

The function of assessing and determining consumer compensation payment from the Claim Fund set up under the Agents Financial Administration Act 2014 to consumers who have suffered a financial loss due to a trader breaching specific sections of particular legislation administered by OFT.

Disposal Authorisation	Description of records	Retention period & trigger
CLAIMS AND	RECOVERIES	
	rde but are not limited to claim assessment, claim determination and recovery of monies from liable entities ng to consumer claims created and held by the Queensland Civil and Administrative Tribunal.	. This schedule does not include
See the Gene	ral Retention and Disposal Schedule for records relating to claims (<u>1159</u>).	
1678	Claim determination and recovery processes	7 years from date of claim
	Records relating to claim applications made against the Claim Fund, the agency's attempt to recover monies from liable traders and the agency's decision to write off a claim.	payment, recovery of debt or when debt is written off.
	Records include but are not limited to:	
	claim applications lodged	
	claim settlement	
	claim withdrawal by the claimant	
	claim rejection	
	 records relating to a potential claim where no claim application has been lodged 	
	financial pay-out information	
	recovery of financial pay-outs from liable entities	
	requests to write off outstanding debts	

INDUSTRY LICENSING

The function of considering licence applications to perform specific business activities subject to legislation administered by OFT.

Disposal Authorisation	Description of records	Retention period & trigger
ASSESSMEN	T	
Licence applic	assessing licence applications received by the agency from individuals and corporations for specific busines cations include, but are not limited to, Motor Dealers, Real Estate Agents, Field Agents, Security Providers, Ir awnbrokers, Tattoo Parlour and individual Tattoo licences and other relevant licences under previously repea	ntroduction Agents, Second Hand
1679	Applications Records received by the agency that relate to the processing of licence applications and renewals. Records may include but are not limited to:	7 years from date of lodgement into register.
1680	Criminal history Records relating to criminal history applications or requests made by the agency and the subsequent results.	Until suitability to hold a licence has been considered and the appeal period has expired.

REGISTRATION SERVICES

The function of considering registration applications from organisations subject to legislation administered by the agency

Disposal Authorisation	Description of records	Retention period & trigger
REGISTRATIO	N OF ENTITIES	
Associations, Cancellations, cancellations, cancellations, cancellations	egistering entities and maintaining information regarding organisations regulated by the agency. Application harities, Cooperatives, Limited Partnerships and Funeral Benefit Businesses. Activities include, but are not ertification and renewal or revocation of registrations.	
See section on	Compliance for investigations of complaints and suspected braches of legislation by a registered entity.	
1681	Registration of a cooperative	15 years after deregistration of
	Records relating to the registration of a cooperative by the agency for suitability, probity and adherence with relevant legislation.	entity.
	Includes providing ongoing advice, information and support to entity management on meeting regulatory requirements.	
	Records may include, but are not limited to:	
	certificates of registration	
	constitution documents	
	changes to the rules and limited partnerships	
	application for registration including amalgamation	
	application approvals	
	 cancellations and deregistration including vesting of property 	
	transfer to company or corporation	
	revocations	
	reinstatement.	
	See record class <u>1685</u> for records relating to funeral benefit businesses and <u>1682</u> for records relating to the registration of all other entities.	
1682	Registration of an entity	7 years after deregistration of
	Records relating to the registration of an entity, other than a cooperative, by the agency for suitability,	entity.

probity and adherence with relevant legislation that may include but not limited to:

- incorporated association
- charity
- limited partnerships

Includes providing ongoing advice, information and support to entity management on meeting regulatory requirements.

Records may include, but are not limited to:

- · certificates of registration
- · constitution documents
- changes to the rules and limited partnerships
- application for registration including amalgamation
- · application approvals
- cancellations and deregistration including vesting of property
- transfer to company or corporation
- revocations
- reinstatement.

See record class 1685 for records relating to funeral benefit businesses.

1683 Regulatory reporting - registration renewals and updates

Records relating to lodgement of updates, financial reports and details of changes by a registered entity. Records may include but are not limited to:

- requirement to give notice of application and objections
- unsuitable name and exemption applications
- application rejections
- approved agreements and advertising
- change or variation notifications including, but not limited to:
 - name
 - address
 - rules including proposed rules
 - management

7 years after business action completed.

1684	Withdrawals (withdrawn or lapsed applications) Records relating to applications withdrawn by applicant or lapsed due to incompleteness.	1 year after date of withdrawa or lapse.
1604		1 year often data of withdraws
	See record class 1671 for records relating to complaints and enquiries.	
	request for extension of time.	
	searchable and non-searchable register information	
	memorandums of satisfaction	
	• notices	
	review of decision	
	disclosure statements	
	director reports	
	assignments	
	 variations to schemes 	
	liquidators reports	
	annual returns including financial statements	
	 variations to limit of liability 	
	partners	

FUNERAL BENEFIT BUSINESSES AND FUNERAL BENEFIT TRUST FUNDS

The activity of ensuring appropriate processes are followed by Queensland funeral benefit providers under the Funeral Benefit Business Act 1982 (FBBA) and maintaining a public register of funeral benefit businesses. Activities include but are not limited to considering rules, annual returns, claim decisions and appeals.

1685	Funeral benefit businesses Records relating to the management of funeral benefit matters in accordance with the Funeral Benefit Business Act 1982.	20 years after closure of fund or cancellation of registration, whichever relates.
	Records relating to:	
	 funeral benefits businesses include but not limited to: 	
	 applications before 1 December 2003 	
	– rules	
	- changes	

	annual returns	
	audit reports	
	 valuations made by the State Actuary of the Funeral Benefits Trust Fund including letters to directors of Funeral Benefit businesses detailing: 	
	directions	
	various claims	
	benefits payable	
	 businesses registered before the Funeral Benefit Business Act 1982. Records include but are not limited to: 	
	copies of contracts	
	 minutes of meetings 	
	 financial statements 	
	 claim summaries 	
	 trustee instructions 	
	precedent examples	
1686	Claim determination	7 years after the financial year
	Records relating to the processing and payment of claims under the Funeral Benefit Trust Fund by the agency.	to which the records relate.
	Records may include but are not limited to:	
	funeral benefit claim determination	
	 funeral benefit claim determination appeals which do not set a precedent in decision making (relates to decisions made by the former Board of Trustees and the agency). 	
	See <u>1687</u> for records relating to appeals against claim determination decisions that are not significant.	
1687	Claim determination - Significant appeals	Permanent.
	Records relating to appeals made against a claim determination decision made by the agency and/or Board of Trustees that are significant.	Transfer to QSA after business action completed.
	Significant appeals are those which:	
	 result in changes and/or have major impact on the agency's policies and standards 	
	 result in changes to legislation administered by the agency 	

Department of Science, Information Technology and Innovation				
	result in major public interest or controversy			
	sets a precedent			
	See 1686 for records relating to determination appeals that do set a precedent.			

LEGACY RECORDS

Disposal	Description of records	Date range	Retention period & trigger
Authorisation			

BUSINESS NAMES

The registration of Business Names was transferred to the Australian Securities and Investments Commission (ASIC) on 28 May 2012. The Queensland Business Names (Commonwealth Powers) Act 2011 (the BNCP Act) is administered by the OFT, and was enacted to:

- cease the existing Queensland business names register by repealing the Business Names Act 1962;
- transfer data from the Queensland register to the new Commonwealth register; and
- provide transitional arrangements after the cessation of the Queensland register.

The BNCP Act provides for OFT to transfer information to ASIC electronically or in an approved form but does not provide for the physical documents to be transferred to ASIC. Therefore, OFT will retain them as noted below.

OFT continued to deal with applications for renewal until 28 August 2012 and the information was provided to ASIC.

1688	Business name registration Records include:	Up to and including 28 August 2012	7 years after business name information is transferred to ASIC (Destruction date
	applications		September 2019)
	 approvals 		
	certification		
	• renewals		
	rejections and revocations		

PERSONAL PROPERTY SECURITIES

On 30 January 2012, Personal Property Securities (PPS) reform brought the different Commonwealth, State and Territory laws and registers regarding security interests in personal property under one national system. PPS reform introduced the Personal Property Securities Act 2009 (Cth) and a single national online PPS Register was created. The PPS (Ancillary Provisions) Act 2010 contains transitional provisions which require the Chief Executive under Queensland's repealed Acts to keep a copy of the information contained in the former register, as it existed immediately before the repeals, for 7 years after the repeals.

1689	Registration of encumbered vehicles and property securities	Up to and including 30 January 2012	7 years after legislation repealed (Destruction date February 2019)
	Records and registered details relating to:		
	 encumbered vehicles, boat and outboard motors under 		

the Motor Vehicles and Boats Securities Act 1986. (Repealed on 30 January 2012)	
 security instruments, including bills of sale, stock mortgages, wool liens, crop liens and sugar cane liens and state securities under the Bills of Sale and Other Instruments Act 1955 and the Liens on Crops of Sugar Cane Act 1931. (Repealed on 30 January 2012). 	

LAND SALES

In September 2014, the Land Sales and Other Legislation Amendment Bill 2014 was passed by the Queensland Parliament. The Bill included the following two significant administrative changes for the Department:

- the chief executive will no longer be required to process applications for exemptions from the Land Sales Act 1984 for particular off the plan sales. The application process will be replaced by an automatic exemption.
- a regulation will no longer be required to be made to extend the timeframe for when a seller of a proposed lot in a community titles scheme must give a buyer the title transfer. Instead, buyers and sellers of these proposed lots will be able to contractually agree to the timeframe (up to a maximum of 5 ½ years).
- The amendments to the Land Sales Act 1984 commenced on 1 December 2014.

1690	Exemptions (approved applications) Records relating to applications for exemption under former section 19 of the Land Sales Act 1984 relating to the subdivision and development of land.	Records up to and including November 2014	10 years after business action completed.
1691	Extension of time (approved applications) Records relating to applications for extension of time requests under former section 28 of the Land Sales Act 1984 to enable the land vendor to provide the purchaser with a registrable instrument.	Records up to and including November 2014	7 years after expiry of the extension of time
1692	Withdrawals (lapsed/removed applications)/rejections (refused applications) Records relating to withdrawn or rejected applications for exemptions and extensions of time under former sections 19 and 28 of the Land Sales Act 1984.	Records up to and including November 2014	1 year after business action completed.