

PROS 16/04

**Retention and Disposal Authority for Secondary  
Electronic Records of Expunged Convictions**

Issued Date: 19/07/2016

# Copyright Statement

© State of Victoria 2016



Except for any logos, emblems, and trade marks, this work (PROS 16/04 Secondary Electronic Records of Expunged Convictions) is licensed under a Creative Commons Attribution 4.0 International license, to the extent that it is protected by copyright. Authorship of this work must be attributed to the Public Record Office Victoria. To view a copy of this license, visit <http://creativecommons.org/licenses/by/4.0>

## Disclaimer

The State of Victoria gives no warranty that the information in this version is correct or complete, error free or contains no omissions. The State of Victoria shall not be liable for any loss howsoever caused whether due to negligence or otherwise arising from the use of this Standard.

## Retention and Disposal Authority for Records of Secondary Electronic Records of Expunged Convictions

<b>Retention and Disposal Authority No</b>	PROS 16/04
<b>Scope</b>	Secondary electronic records of expunged historical homosexual convictions held or controlled by Victoria Police and Office of Public Prosecutions
<b>Status</b>	Issued by Keeper
<b>Issue Date</b>	19/07/2016

## Retention and Disposal Authority for Secondary Electronic Records of Expunged Convictions

**Authority number: PROS 16/04**

**List of Functions and Activities covered**

<b>Reference</b>	<b>Function</b>	<b>Activity</b>	<b>Page</b>
1	Expungement of Secondary Electronic Records of Historical Homosexual Offences		10

# Retention and Disposal Authority for Secondary Electronic Records of Expunged Convictions

Authority number: PROS 16/04

## Introduction

---

### Purpose of this Authority

The purpose of this Authority is to provide a mechanism for the disposal of public records in accordance with the *Public Records Act 1973*. The Authority:

- identifies records which are worth preserving permanently as part of Victoria's archival heritage
- prevents the premature destruction of records which need to be retained for a specified period to satisfy legal, financial and other requirements of public administration, and
- authorises the destruction of those records not required permanently.

### Context of this Authority

#### Public Record Office Victoria Standards

This Authority should be used in conjunction with the Standards issued by the Keeper of Public Records under Section 12 of the *Public Records Act 1973*. Copies of all relevant PROV standards, specifications and regulatory advice can be downloaded from [www.prov.vic.gov.au](http://www.prov.vic.gov.au). These documents set out the procedures that must be followed by Victorian public offices.

#### Disposal of records identified in the Authority

Disposal of public records identified in this Authority must be undertaken in accordance with the requirements of Public Record Office Standard PROS 10/13 *Disposal*.

It is a criminal offence to unlawfully destroy a public record under s 19(1) of the *Public Records Act 1973*.

The destruction of a public record is not unlawful if done in accordance with a Standard established under s 12 of the *Public Records Act 1973*.

This Standard (also known as an Authority) authorises the disposal of public records as described within its provisions. However, disposal is **not** authorised under this Standard if it is reasonably likely that the public record will be required in evidence in a current or future legal proceeding.

## **Retention and Disposal Authority for Secondary Electronic Records of Expunged Convictions**

### **Authority number: PROS 16/04**

For the purposes of this Retention and Disposal Authority, a 'legal proceeding' has the same meaning as the *Evidence (Miscellaneous Provisions) Act 1958*, and includes any civil, criminal or mixed proceeding and any inquiry in which evidence is or may be given before any court or person acting judicially, including a Royal Commission or Board of Inquiry under the *Inquiries Act 2014*.

If the public office identifies that public records must be retained under other applicable legislation for a period that exceeds the retention period specified under the Standards, then the longer retention period must apply.

### **Normal Administrative Practice**

The destruction of some public records is permitted without final authorisation under normal administrative practice (NAP). NAP covers the destruction of ephemeral material of a facilitative nature created, acquired or collected by public officers during the course of their duties.

The following material may be destroyed under NAP:

- working papers consisting of rough notes and calculations used solely to assist in the preparation of other records such as correspondence, reports and statistical tabulations
- drafts not intended for retention as part of the office's records, the content of which has been reproduced and incorporated in the public office's record keeping system
- extra copies of documents and published material preserved solely for reference.

## **Retention and Disposal Authority for Secondary Electronic Records of Expunged Convictions**

**Authority number: PROS 16/04**

### **Transfer of records to Public Record Office Victoria**

Contact Public Record Office Victoria for further information on procedures for transferring permanent records to archival custody.

### **Use of Other Authorities**

In applying the disposal sentences set out in this Authority, reference should be made to other current Authorities where applicable. Where there is a conflict between two Authorities (for instance this Authority and the General Retention and Disposal Authority for Records of Common Administrative Functions), consult the Public Record Office Victoria for advice.

### **Explanation of Authority Headings**

#### **Class Number**

The class number or entry reference number provides citation and ease of reference.

#### **Description**

The description of each record class is specified in this entry. A record class is a group of records that relate to the same activity, function or subject and require the same disposal action.

#### **Status**

This entry provides the archival status of each class - either permanent or temporary.

#### **Custody**

This entry specifies whether the records are to be retained by the public office or transferred to the Public Record Office Victoria. Permanent electronic records are to be transferred in VERS Encapsulated Object (VEO) format according to PROS 99/007 - Management of Electronic Records (Version 2). The storage of public records identified in this Authority must also be in accordance with the requirements of Public Record Office Standard PROS 11/01 *Storage*

## **Retention and Disposal Authority for Secondary Electronic Records of Expunged Convictions**

**Authority number: PROS 16/04**

### **Establishment of Standard**

Pursuant to Section 12 of the *Public Records Act 1973*, I hereby establish these provisions as a Standard (also known as a Retention and Disposal Authority) applying to Office of Public Prosecutions; Victoria Police (including Office of the Chief Commissioner of Police). This standard as varied or amended from time to time, shall have effect from the date of issue unless revoked prior to that date.

**Justine Heazlewood**, Keeper of Public Records

Date of Issue: 19/07/2016



# Retention and Disposal Authority for Secondary Electronic Records of Expunged Convictions

Authority number: PROS 16/04

## INTRODUCTION

### Administrative Context

#### Background

Amendments to a number of Acts, primarily the *Sentencing Act 1991*, came into operation on 1 September 2015 as a result of the *Sentencing Amendment (Historical Homosexual Conviction Expungement) Act 2014*. This established a scheme under which past convictions for sexual offences of a homosexual nature or public morality offences, which would not be considered an offence today, may be expunged. In Victoria, homosexual acts were decriminalised in 1981 with the commencement of the *Crimes (Sexual Offences) Act 1980*.

Under the expungement provisions of the *Sentencing Act 1991*, a person who has been convicted of a historic homosexual offence, or their appropriate representative, is entitled to apply to the Secretary to the Department of Justice and Regulation (the Secretary) for the conviction to be expunged. If the application is approved by the Secretary, then the historical homosexual conviction is taken to be expunged, effective from a period prescribed under the regulations. Once expunged, a conviction is to be treated as if it were never imposed. It cannot be released as part of a criminal history check and a person will be protected from having to reveal that conviction in court.

The *Sentencing Act 1991* prescribes that expungement of convictions applies to official records, which are defined as records held in any court, VCAT, Victoria Police or the Office of Public Prosecutions.

A secondary electronic record is an official record that is a copy, duplicate or reproduction of, or an extract from, another existing official record held by Victoria Police or the Office of Public Prosecutions. Section 105K(3)(b) of the *Sentencing Act 1991*(Vic) provides that secondary electronic records, of expunged convictions, must be destroyed within the prescribed period.

Original, official records relating to expunged homosexual offences must be expunged in accordance with s105K(3)(a). The action required is to annotate the entry with a statement to the effect it relates to an expunged conviction. For disposal actions in relation to these records, refer to the Retention and Disposal Authorities for Office of Public Prosecutions and Victoria Police.

## Retention and Disposal Authority for Secondary Electronic Records of Expunged Convictions

Authority number: PROS 16/04

No	Function/Activity	Description	Status	Disposal Action
1	<b>Expungement of Secondary Electronic Records of Historical Homosexual Offences</b>	<p>The expungement of secondary electronic records that relate to historical homosexual convictions in accordance with section 105 of the <i>Sentencing Act 1991 (Vic)</i>. Secondary electronic records are official records which are a copy, duplicate or extract from another existing record. An expunged conviction is a historical homosexual conviction which is expunged by force of 105I(3) of the <i>Sentencing Act 1991 (Vic)</i>.</p> <p>[For the original records of the convictions, refer to the Retention and Disposal Authorities for Office of Public Prosecutions and Victoria Police]</p>		
1.1		<p>Records of expunged historical homosexual convictions which are secondary electronic records under the <i>Sentencing Act 1991 (Vic)</i>. Secondary electronic records are official records which are a copy, duplicate or extract from another existing record. An expunged conviction is a historical homosexual conviction which is expunged by force of 105I(3) of the <i>Sentencing Act 1991</i>.</p> <p>The following actions taken under section 105K(3) of this Act are permissible disposal activities and constitute destruction:</p> <ul style="list-style-type: none"> <li>• Remove the entry</li> <li>• Make the entry incapable of being found</li> </ul>	Temporary	Destroy after direction received from the appropriate authority.

**Authority number: PROS 16/04**

No	Function/Activity	Description	Status	Disposal Action
----	-------------------	-------------	--------	-----------------

*Expungement of Secondary Electronic Records of Historical Homosexual Offences*

		<ul style="list-style-type: none"><li>• De-identify the information contained in the entry and destroy any link between it and the information that would identify the person to whom it referred</li></ul> <p>[For the original records of the convictions, refer to the Retention and Disposal Authorities for Office of Public Prosecutions and Victoria Police]</p>		
--	--	---	--	--