

**Retention and Disposal Authority for Records of the Legal Aid
Function**

Authority number: PROS 22/05



PROS 22/05

**Retention and Disposal
Authority for Records of the
Legal Aid Function**

Status Date: 10/06/2022

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INTRODUCTION

Context

Victoria Legal Aid (VLA) is an independent statutory body established under the *Legal Aid Act 1978* (the Act). Its function is to provide access to legal representation, information and education to all Victorians. These services are delivered within the framework set out in the Act and the *Legal Profession Uniform Law Application Act 2014*.

Independent of government, VLA receives funding from the Commonwealth and Victorian Governments to facilitate access to legal services by those in need. The services are provided through in-house staff and partnerships with private legal practitioners. Legal assistance is dispensed in the areas of civil, administrative, family, youth and children's, and criminal law. Non-legal mental health advocacy services can also be accessed.

With a focus on the prevention and early resolution of legal problems, priority is given to more intensive legal services such as legal advice and representation for people who meet eligibility criteria, based on their financial situation, the nature and seriousness of their problem and their individual circumstances

VLA manages the Independent Mental Health Advocacy service which provides non-legal support for people on compulsory treatment orders and is also responsible for the financial oversight and monitoring (not management) of Community Legal Centres across the state of Victoria.

Access to legal services is provided in person through VLA offices in metropolitan Melbourne and 15 regional offices, hospital and correctional facility visits, representation at selected court premises, over the phone in multiple languages, and through community education, private practitioner partnerships and advocacy

VLA also conducts strategic litigation to change policies and processes and remedy legal problems for individuals and the broader community.

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| Retention and Disposal Authority No | PROS 22/05 |
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| Scope | This RDA authorises the disposal of records of the Legal Aid function including the functions performed by Victoria Legal Aid. |
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| Status | Issued by Keeper |
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| Issue Date | 10 June 2022 |
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| List of Functions and Activities covered |
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| 1 | Provision and Management of Aid | | 10 |
| 2 | Provision and Management of Financial Assistance | | 15 |

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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. 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.

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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.

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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 records must be managed and transferred in accordance with PROV Standards.

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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 Victoria Legal Aid. This standard as varied or amended from time to time, shall have effect from the date of issue unless revoked.

[Approved]

Justine Heazlewood, Keeper of Public Records
Date of Issue: 10/06/2022

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| No | Function/Description | Status | Disposal Action |
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| 1.0 | <p>Provision and Management of Aid</p> <p>The function of providing and managing legal assistance and non-legal advocacy services to clients.</p> <p>These services may be provided by Victoria Legal Aid (VLA) staff or assigned private practitioners. Private practitioners are external legal entities (individuals or firms) who are approved members of practitioner panels. Practitioner panels are lists of lawyers who are approved to act for clients.</p> <p>Legal assistance includes the provision of advice, information and/or representation to clients in the areas of civil, administrative, criminal, family, youth and children's law. Such assistance may be provided through courts or in non-court environments such as VLA offices, tribunals, correctional facilities, hospitals, and other outreach environments, on-line or via telephone.</p> <p>Non-legal assistance is provided to support clients to empower them to have a greater say in the management and outcome of their matters. Increased self-management is promoted by working with clients and external services to embed supported decision making through the provision of information, referral to assistance services, coaching for self-advocacy and non-legal advocacy. Independent Mental Health Advocacy is a non-legal service provided by VLA to assist clients receiving, or at risk of receiving, compulsory treatment orders or who have a disability.</p> <p>Aid provision may be:</p> <ul style="list-style-type: none"> • continuing - where the client's matter (the generic term used to refer to the issue about which the client is seeking assistance) requires ongoing management. Continuing services to clients are managed as cases. A client may have multiple matters. Each matter is a separate case • limited - services, advice, referral or information provided to clients on a particular date that do not lead to on-going support • denied (as ineligible) - as the matter was assessed as out of scope for VLA services, subject to VLA conflict of service, or referred to an external provider. <p>Continuing assistance may be:</p> <ul style="list-style-type: none"> • financed through a grant of aid • provided at no cost to the client - where a matter is assessed as being of low complexity and able to be finalised quickly. | | |

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| <i>Provision and Management of Aid</i> | | | |
| | <p>Clients who are socially and/or economically disadvantaged are prioritised. Priority clients are people experiencing one or more of the following indicators of disadvantage:</p> <ul style="list-style-type: none"> • living on a low income • in custody, detention or involuntary psychiatric settings • experienced or used family violence in relationships • indigenous Australians • experience language or cultural barriers • have a disability (physical, intellectual or cognitive) or who experience mental illness • are children. <p>VLA lawyers represent child clients directly in criminal, civil and family law (child protection and Independent Children's Lawyer) matters and indirectly through participation in family dispute resolution practices.</p> <p>In the areas of civil or family law and advocacy a child client is one who has not reached the age of 18 years. In the area of criminal law, a child client:</p> <ul style="list-style-type: none"> • needs to be under 18 at the time of the offence, and • court proceedings need to commence before their 19th birthday. <p>For records of selection, review and ongoing management of the private practitioners (individuals or firms) who are selected to be members of VLA practitioner panels, see RDA for Records of Common Administrative Functions - CONTRACTING OUT.</p> <p>For records of determining indicators of disadvantage and priorities for legal assistance, see RDA for Records of Common Administrative Functions - POLICY.</p> <p>For records of community education not resulting in a professional accreditation, see RDA for records of Non-Accredited Training.</p> | | |
| 1.1 | <p>Child Sexual Abuse allegations, incidents or disclosures</p> <p>Records documenting allegations, incidents or disclosure of child sexual abuse involving non-VLA staff or non-panel members.</p> <p>Includes records of:</p> | Temporary | Destroy 99 years after action completed. |

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| <i>Provision and Management of Aid</i> | | | |
| | <ul style="list-style-type: none"> • allegations • disclosures • any referral for investigation. <p>For records documenting allegations of child sexual abuse involving a VLA staff member or panel practitioner, see RDA for Records of Organisational Response to Child Sexual Abuse Incidents and Allegations.</p> | | |
| 1.2 | <p>Client and Case Register</p> <p>Summary records that uniquely identify each client and matter where assistance has been provided by VLA.</p> <p>Includes records of:</p> <ul style="list-style-type: none"> • continuing assistance • limited assistance. <p>Does not include services where only basic information is provided.</p> <p>Records include unique client identifier, client name and personal details, as well as summary details for assisted matters including unique case identifier, assigned practitioner, managing office, case status, date of service (or commencement of service), type of assistance, grant of aid identifier (if applicable) and file disposition.</p> | Temporary | Destroy 75 years after action completed. |
| 1.3 | <p>Child Representation, Mental Health or Disability Advocacy and Complex Litigation</p> <p>Records documenting the management of any criminal, civil or family matters including:</p> <ul style="list-style-type: none"> • any matter where the client is a child • non-legal assistance in the area of client disability or mental health advocacy such as non-legal advocacy for clients subject to treatment orders • serious, complex or protracted matters. <p>Family matters include:</p> <ul style="list-style-type: none"> • child protection matters • Independent Children's Lawyer matters • family dispute resolution where a child has participated. <p>Serious, complex or protracted matters include:</p> | Temporary | Destroy 25 years after action completed provided the client has reached 25 years of age. |

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| <i>Provision and Management of Aid</i> | | | |
| | <ul style="list-style-type: none"> • matters heard in the County and higher courts • matters which are widely reported in the public media • indictable offences which commence in the Magistrates' Court but are ultimately dealt with in the County or Supreme Court • legal matters sentenced under legislation imposing orders and subsequent reviews. <p>Records include communications between VLA staff, client, client family, outside bodies and courts, file notes, exhibits, expert reports, charge sheets (if applicable), financial records, court records, back-sheets and all documentation or information required to conduct and conclude the review or case.</p> | | |
| 1.4 | <p>Non-Indictable, Routine Litigation or Non-Legal Assistance</p> <p>Records documenting the management of client legal matters not heard before a jury and the provision of non-legal assistance not related to treatment orders, including the promotion of client empowerment to self-manage.</p> <p>Includes representation in:</p> <ul style="list-style-type: none"> • criminal law matters • civil law matters • family law matters • family dispute resolution where there is no child participation • instances where there is no grant of aid (minor work) • mental health reviews. <p>Records include communications between VLA staff, client, client family, outside bodies and courts, file notes, exhibits, expert reports and all documentation or information required to conduct and conclude the matter.</p> | Temporary | Destroy 7 years after action completed. |
| 1.5 | <p>Limited Assistance</p> <p>Records documenting services, advice, referral or information provided to adult and child clients on a particular date that do not lead to ongoing support.</p> <p>Includes services provided:</p> <ul style="list-style-type: none"> • by a duty lawyer at a court or tribunal for a legal | Temporary | Destroy 7 years after action completed provided the client has reached 25 |

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| <i>Provision and Management of Aid</i> | | | |
| | <p>matter - duty lawyers are provided to the Magistrates', Children's, Federal Circuit, Family Violence and Family Courts, Mildura Koori Court, Victorian Civil and Administrative Tribunal and Mental Health Tribunal locations across the state</p> <ul style="list-style-type: none"> • by a lawyer in a non-court environment for a legal matter such as when a client attends a VLA office or outreach service such as a hospital, correctional facility or community centre • via telephone • via internet / online interactions • by referrals across practice areas within VLA • by referrals to services external to VLA. <p>Includes records registered with a unique numerical identifier and containing client information (personal and relating to the matter), court and practitioner information and interview notes (including details of the advice given).</p> | | years of age. |
| 1.6 | <p>Assistance Denied (Ineligible)</p> <p>Records documenting approaches for assistance which are assessed as being out of scope for VLA services, ineligible due to a conflict of interest (VLA is acting for or has acted for an associated party and is unable to represent) or referred to an external assistance service.</p> <p>Includes:</p> <ul style="list-style-type: none"> • session records (created when a person approaches VLA for assistance via telephone or over the internet) • client information sheets. <p>Session records document:</p> <ul style="list-style-type: none"> • unique session identifier • demographic information • matter information • referral details. <p>Client information sheets document:</p> <ul style="list-style-type: none"> • personal client details and the details of close family and associates • background information • conflict check outcome • matter(s). | Temporary | Destroy 1 year after administrative use has concluded. |

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Provision and Management of Financial Assistance

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| 2.0 | <p>Provision and Management of Financial Assistance</p> <p>The function of providing and administering financial assistance to clients in the management of their continuing legal matter, from receipt of application for aid through to finalisation.</p> <p>Clients may apply for a grant of aid to assist in the funding of their legal matter in the areas of civil, criminal and family law. Financial assistance is subject to meeting VLA guidelines, means test and merits test with client circumstances taken into consideration. Clients who are socially and/or economically disadvantaged are prioritised.</p> <p>Applications for grants of aid may be:</p> <ul style="list-style-type: none"> • approved unconditionally - where there is no charge to the client • approved conditionally - where the client is required to pay a contribution towards VLA's costs of providing the assistance and/or pays VLA's out-of-pocket expenses. The conditions of the grant of aid may be met through regular client payments or the registration of an equitable charge over client property • refused at time of application assessment • terminated due to failure to meet any conditions • withdrawn before assessment process is completed or legal work has commenced. <p>Approved grants of aid may be allocated to either VLA staff or to external private legal practitioners who are members of a VLA practitioner panel (a list of lawyers who are approved to act for clients).</p> <p>A grant of aid is associated with one matter only and remains active until the associated litigation is finalised and all conditions are met, or the grant is terminated or withdrawn.</p> | | |
| 2.1 | <p>Provision and Management of Grants of Aid</p> <p>Records that uniquely identify each client application for a grant of aid and document the administration of the application from receipt to closure, including:</p> <ul style="list-style-type: none"> • the grants register • grant case files. <p>Applications included are:</p> | Temporary | Destroy 7 years after action completed. |

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Provision and Management of Financial Assistance

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| | <ul style="list-style-type: none"> • approved for a grant of aid • refused • terminated • withdrawn. <p>The grants register is a summary of the information held within a grant case file. This includes:</p> <ul style="list-style-type: none"> • unique application identifier • client identifier • date of receipt of application • assessment decision • proof of accountability • conditions of aid (if any) • practitioner allocation • client communications • grant status. <p>Grant case files include:</p> <ul style="list-style-type: none"> • initiating application and consent form • history of client communications while active • detailed assessment decisions • correspondence regarding the progressive management of the client's matter from the assigned practitioner • evidence of the use of grant funds • reconciliation of costs incurred during the management of the grant. | | |
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