



Archives Regulations 2018

I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 15 March 2018

Peter Cosgrove
Governor-General

By His Excellency's Command

Christian Porter
Attorney-General

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Part 1—Preliminary

1 Name

This instrument is the *Archives Regulations 2018*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	22 March 2018

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Archives Act 1983*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

5 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) Archives;
- (b) Commonwealth institution;
- (c) Commonwealth record.

In this instrument:

Act means the *Archives Act 1983*.

memorial collection has the same meaning as in the *Australian War Memorial Act 1980*.

metre has the meaning given by subsection 15(3).

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official records means records that would be Commonwealth records if the records were not included in the memorial collection of the Australian War Memorial.

old regulations means the *Archives Regulations*.

relevant office has the meaning given by subsection 14(2).

sentence has the meaning given by subsection 15(4).

staff member means a member of the staff of the Archives.

Part 2—Application of the Act

6 Exempt material—custodial institutions

For the purposes of paragraph (e) of the definition of *exempt material* in subsection 3(1) of the Act, the Australian National Maritime Museum is a custodial institution.

Note: Material included in a collection maintained by a custodial institution is not exempt material if the material was included in the collection as a result of a contravention of section 24 of the Act (see the definition of *exempt material* in subsection 3(1) of the Act).

7 Certain records deemed to be Commonwealth records

- (1) For the purposes of subsection 3(6) of the Act, official records included in the memorial collection (other than a class of records specified in subsection (2)) are deemed to be Commonwealth records for the purposes of the following provisions of the Act:
- (a) sections 28 and 30;
 - (b) Division 3 (other than subsections 31(3) and 35(2)) of Part V;
 - (c) Divisions 4 and 5 (other than section 58) of Part V.
- (2) The following classes of records are specified:

Specified classes of records

Item	Control number of the class of records	Title or description of the class of records
1	AWM 91	Printed records
2	AWM 92	Private records
3	AWM 167	Art collection
4	AWM 195	Maps and aerial photographs
5	AWM 196	Special collections
6	AWM 197	Photographic collection
7	AWM 198	Film collection
8	AWM 199	Sound recordings

Part 3—Dealings with Commonwealth institutions

8 Purpose of this Part

The purpose of this Part is to carry out or give effect to:

- (a) the objects of the Act (see section 2A of the Act); and
- (b) the functions and powers of the Archives (see sections 5 and 6 of the Act).

9 Requesting information from Commonwealth institutions

- (1) The Archives may request a Commonwealth institution to give the Archives information relating to Commonwealth records in the institution's custody.
- (2) Without limiting subsection (1), the Archives may request the institution to provide information:
 - (a) relating to the creation, keeping and management of records in the institution's custody; or
 - (b) necessary or convenient for determining if records in the institution's custody are part of the archival resources of the Commonwealth; or
 - (c) relating to the disposal or destruction of records by the institution.
- (3) The institution must comply with a request made under subsection (1) as soon as is reasonably practicable.

10 Notice in relation to dealings with Commonwealth records

- (1) This section applies if, for the purposes of section 24 or 26 of the Act, the Archives:
 - (a) gives a permission to a person in relation to any dealings with Commonwealth records; or
 - (b) approves a practice or procedure in relation to any dealings with Commonwealth records; or
 - (c) notifies a Department or an authority of the Commonwealth that the Archives disapproves of a practice of the Department or the authority in relation to dealings with Commonwealth records.
- (2) The Archives must give the permission, approval or notification by written notice that:
 - (a) is signed by the Director-General or a person authorised by the Director-General under subsection (3) for the purposes of this paragraph; and
 - (b) specifies the date on which the notice is signed; and
 - (c) specifies the matter to which permission, approval or notification, relates, as the case may be; and
 - (d) specifies the name and address of the person, the Department or the authority, as the case may be, to whom the notice is to be given.
- (3) The Director-General may authorise, in writing, a person for the purposes of paragraph (2)(a).

11 Dealings with Commonwealth records by Commonwealth institutions

A Commonwealth institution must keep, in writing, information relating to:

- (a) the destruction or other disposal of a Commonwealth record in that institution's custody; or
- (b) the transfer of the custody or ownership of a Commonwealth record in that institution's custody; or
- (c) damage to or alteration of a Commonwealth record in that institution's custody.

12 Consent to destruction or disposal of certain Commonwealth records

- (1) This section applies if:
 - (a) Commonwealth records of a Commonwealth institution, or records included in a class of such records, are, in accordance with an arrangement approved by the Archives, being kept temporarily in the custody of the Archives for a period; and
 - (b) the Archives has requested, by written notice, the institution's consent to the destruction or other disposal of the records; and
 - (c) at the time the request was made, the period had expired or would expire within 90 days.
- (2) The institution must respond in writing to the request, as soon as is reasonably practicable, by:
 - (a) consenting to the proposed destruction or other disposal of the records; or
 - (b) requesting that the Archives retain the records for a further period for the reasons set out in the response.

Part 4—Access to Commonwealth records

13 Charges for access to records

- (1) For the purposes of paragraph 36(2)(b), (c) or (d) of the Act, the determined charge for access to a record by a person is an amount equal to, or less than, the cost of giving such access.

Waiver of charge

- (2) The Director-General may waive the whole or part of a charge under subsection (1) if the Director-General is satisfied that:
- (a) payment of the charge would cause the person financial hardship; or
 - (b) the cost of giving access to the record is low; or
 - (c) access to the record is for a charitable purpose; or
 - (d) it is appropriate to do so for the efficient and effective management of records; or
 - (e) it is in the interests of the Commonwealth's international relations or relations with a State or Territory; or
 - (f) it is in the public interest.
- (3) If the Director-General refuses to waive the whole or part of the charge, the Director-General must give the person written notice of the decision, including the reasons for the decision.

Review of refusal to waive charge

- (4) Applications may be made to the Administrative Appeals Tribunal for review of a decision of the Director-General to refuse to waive the whole or part of a charge under subsection (2).

14 Specified circumstances for access to restricted Commonwealth records

- (1) For the purposes of subsection 56(2) of the Act, the following table sets out the circumstances in which a Commonwealth record that is not otherwise available for public access under the Act may be made available to a person.

Access to restricted Commonwealth records		
Item	If the person ...	the person may have access to the records if ...
1	held a relevant office	(a) the records were, or could reasonably be presumed to have been, seen or used by the person because the person held the office; and (b) the person desires to refresh his or her memory about the records.
2	is preparing a publication about another person (the officeholder) who held a relevant office	(a) the publication has been authorised by the officeholder or the officeholder's personal representative; and (b) the records were, or could reasonably be presumed to have been, seen or used by the officeholder because the

Access to restricted Commonwealth records

Item	If the person ...	the person may have access to the records if ...
		officeholder held the office.
3	is not a Commonwealth institution	the Archives has custody of the records because of an arrangement entered into with the person.
4	is carrying out research for the purpose of preparing a work for publication	(a) the work has been declared under subsection (4) to be a work that is likely to make a substantial contribution to the recording and assessment of events in Australia's development; and (b) the records are relevant to the research being carried out by the person.

- (2) A **relevant office** is any of the following:
- (a) the office of Governor-General;
 - (b) an office of Minister;
 - (c) an office of Secretary (within the meaning of the *Public Service Act 1999*);
 - (d) another office in a Commonwealth institution declared under subsection (3) for the purposes of this paragraph.
- (3) The Prime Minister may, by legislative instrument, declare an office in a Commonwealth institution for the purposes of paragraph (d) of the definition of **relevant office** in subsection (2).
- (4) The Minister, or a person authorised by the Minister under subsection 56(2) of the Act, may, in writing, declare a work to be a work that is likely to make a substantial contribution to the recording and assessment of events in Australia's development.

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Part 5—Discretionary services**15 Discretionary services for persons other than Commonwealth institutions**

- (1) For the purposes of paragraph 71(e) of the Act, the following table prescribes discretionary services for a person other than a Commonwealth institution and sets out the amount or rate of charge for the provision of those services.

Discretionary services etc.		
Item	Discretionary service	Amount or rate of charge
1	The storage, control, access, preservation or disposal, by a staff member, of the records of the person under an arrangement between the Archives and the person	The amount of remuneration payable to the staff member for the period during which the service is provided, plus 160% of that amount
2	Sentencing of records	\$291.50 for each metre of records
3	Research conducted by a staff member ancillary to the sentencing of records	\$82.50 for each hour of research
4	Transporting records to the Archives	\$38.50 for each metre of records
5	Making shelf space available for the storage of records	\$11.50 for each metre of records per year of storage
6	Making shelf space available in an air-conditioned repository for the storage of records	\$19.50 for each metre of records per year of storage
7	Making shelf space available in an air-conditioned vault for the storage of records	\$20.50 for each metre of records per year of storage
8	Serviced storage of records that have been sentenced	(a) for the first year of storage—\$17.00 for each metre of records; and (b) for each later year of storage—\$11.50 for each metre of records
9	Serviced storage of records that have not been sentenced	(a) for the first year of storage—\$62.50 for each metre of records; and (b) for each later year of storage—\$57.00 for each metre of records
10	Serviced storage of records in an air-conditioned repository	(a) for the first year of storage—\$24.00 for each metre of records; and (b) for each later year of storage—\$19.50 for each metre of records
11	Serviced storage of records in an air-conditioned vault	(a) for the first year of storage—\$25.50 for each metre of records; and (b) for each later year of storage—\$20.50 for each metre of records
12	Supplying archival containers for the storage of records	an amount equal to or less than the cost to the Archives in supplying the containers
13	Searching in normal business hours for a record	\$7.00
14	Searching outside normal business hours for a	\$82.50 for each hour of searching

Section 15

Discretionary services etc.		
Item	Discretionary service	Amount or rate of charge
	record	
15	Destroying records	\$9.00 for each metre of records
16	Bulk withdrawal of records other than for sentencing of records	\$11.00 for each metre of records
17	Training course—full day	\$405.00 for each person attending the course
18	Training course—half day	\$220.00 for each person attending the course

- (2) If a charge for a service in the table in subsection (1) is worked out in relation to a period of time or a number of metres, the amount of charge must be proportionate to the actual time spent or the actual length of shelf space occupied.

Note: For example, if a search for a record outside of business hours (see item 14 of the table in subsection (1)) takes 1 hour and 30 minutes, the charge will be \$82.50 for the hour and \$41.25 for the 30 minutes.

- (3) A *metre* of records is a linear metre of shelf space occupied by the records.
- (4) Records to be kept at the Archives are *sentenced* by the process of identifying and classifying the records to determine:
- the value, or significance, of the records; and
 - the appropriate management of the records.

Part 6—Transitional provisions

16 Things done under the old regulations

- (1) If:
 - (a) a thing was done for a particular purpose under the old regulations as in force immediately before the commencement of this section; and
 - (b) the thing could be done for that purpose under this instrument;the thing has effect for the purposes of this instrument as if it had been done for that purpose under this instrument.
- (2) Without limiting subsection (1), a reference in that subsection to a thing being done includes a reference to a notice, application or other instrument being given or made.

17 Review by the Administrative Appeals Tribunal of certain decisions of the Director-General

- (1) This section applies if:
 - (a) the Director-General makes a decision under subregulation 11(6) of the old regulations before the commencement of this section; and
 - (b) immediately before that commencement, an application has not been made under subregulation 11(7) of the old regulations for review by the Administrative Appeals Tribunal of that decision; and
 - (c) immediately before that commencement, the time for a person to make such an application has not ended (including any extensions of that time under section 29 of the *Administrative Appeals Tribunal Act 1975*).
- (2) Despite the repeal of subregulation 11(7) of the old regulations, that subregulation, as in force immediately before the commencement of this section, continues to apply in relation to the Director-General's decision as if that repeal had not happened.

Schedule 1—Repeals

Archives Regulations

1 The whole of the instrument

Repeal the instrument.