



# InterPARES 2 Project

International Research on Permanent Authentic Records in Electronic Systems

## Policy Cross-domain

# Archival Legislation in Australia

Compiled by Greg Kozak  
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### Australia

The following legislative acts were consulted in compiling this report:

- Freedom of Information Act 1982 (FOI)
- Archives Act 1983 (AA)
- Privacy Act 1988 (PA)
- Evidence Act 1995 (EA)
- Electronic Transactions Act 1999 (ETA)
- Copyright Act 1968 (CA)

### Definition of Record

*Record*: a document (including any written or printed material) or object (including a sound recording, coded storage device, magnetic tape or disc, microform, photograph, film, map, plan or model or a painting or other pictorial or graphic work) that is, or has been, kept by reason of any information or matter that it contains or can be obtained from it or by reason of its connection with any event, person, circumstance or thing. (AA, 1.3)

*Record* means:

(a) a document; or

(b) a database (however kept); or

(c) a photograph or other pictorial representation of a person;

but does not include:

(d) a generally available publication; or

(e) anything kept in a library, art gallery or museum for the purposes of reference, study or exhibition; or

(f) Commonwealth records as defined by subsection 3(1) of the *Archives Act 1983* that are in the open access period for the purposes of that Act; or

(fa) records (as defined in the *Archives Act 1983*) in the custody of the Archives (as defined in that Act) in relation to which the Archives has entered into arrangements with a person other than a Commonwealth institution (as defined in that Act) providing for the extent to which the Archives or other persons are to have access to the records; or

- (g) documents placed by or on behalf of a person (other than an agency) in the memorial collection within the meaning of the *Australian War Memorial Act 1980*; or
- (h) letters or other articles in the course of transmission by post. (PA)

*Archival Resources* refers to records of national significance. This includes records that pertain to:

- The history or government of Australia;
- The legal basis, origin, development, organisation or activities of the Commonwealth (i.e., an authority, body, tribunal, whether incorporated or unincorporated, established for a public purpose; with some exceptions- courts, the Capital Territory, the Northern Territory, and the administration of an external territory) or of a Commonwealth institution. (AA, Part 1.3.2a-j)

*Document* is any of, or any part of any of, the following things:

- (i) any paper or other material on which there is writing;
- (ii) a map, plan, drawing or photograph;
- (iii) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;
- (iv) any article or material from which sounds, images or writings are capable of being reproduced with or without the aid of any other article or device;
- (v) *any article on which information has been stored or recorded, either mechanically or electronically*;
- (vi) any other record of information; or
- (b) any copy, reproduction or duplicate of such a thing; or
- (c) any part of such a copy, reproduction or duplicate;  
but does not include:
- (d) library material maintained for reference purposes; or
- (e) Cabinet notebooks. (FOI)

*Document*: means any record of information, and includes:

- (a) anything on which there is writing; or
- (b) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; or
- (c) anything from which sounds, images or writings can be reproduced with or without the aid of anything else; or
- (d) a map, plan, drawing or photograph. (EA)

*Public Document*: means a document that:

- (a) forms part of the records of the Crown in any of its capacities; or
- (b) forms part of the records of the government of a foreign country; or
- (c) forms part of the records of a person or body holding office or exercising a function under or because of the Constitution, an Australian law or a law of a foreign country; or

- (d) is being kept by or on behalf of the Crown, such a government or such a person or body;
- and includes the records of the proceedings of, and papers presented to:
- (e) an Australian Parliament, a House of an Australian Parliament, a committee of such a House or a committee of an Australian Parliament; and
  - (f) a legislature of a foreign country, including a House or committee (however described) of such a legislature (EA)

*Information*: means information in the form of data, text, images or speech. (ETA, 5)

*Information System*: means a system for generating, sending, receiving, storing or otherwise processing electronic communications. (ETA, 5)

*Archives*: archival material in the custody of the Australian Archives or in the Archives/Record State of New South Wales, State of Victoria, or the State of Tasmania. (CA, Section 10)

### **Assignment of Responsibility for Preservation**

The National Archives of Australia is charged with preserving the records of the Commonwealth (i.e., of the Australian government). It can also preserve private records deemed to be of national or historical significance. Under the Copyright Act, the archives is permitted to make preservation reproduction, but only for an artistic work. (CA, 51A.6) Under the “General Disposal Authority,” the National Archives would prefer that encrypted records be given to the archives in an unencrypted form. However, they will deal with encrypted records if necessary.

### **Governance Structure**

The National Archives of Australia is governed by the Archives of Australia Advisory Council. This council consists of one senator, one member of the House of Representatives, and 11 other appointees. The Council advises the Minister and the Director-General of the Archives. (AA, 17)

### **Scope**

The National Archives acquires both public and private. A private donor can place access restriction on the records they donate. (AA, 6.2) A public body is responsible for keeping their current records. (AA, 5.3) In addition to records, the National Archives must also keep the technology required to read machine-readable records. (36.2c)

### **Life Cycle**

Unless lawfully destroyed, the National Archives acquires records from government bodies when the records are 25 years old. (AA, 27.1-2) I would assume that, as with all governments, a full retention schedule has been created for the government.

### **Standards**

The Electronic Transaction Act uses record management language, in that retained electronic records must be reliably stored in a way so that the information contained in the document has integrity. (ETA, 12 & 13) In essence, the ETA can be seen as type of standard.