



Queensland  
**Law Society**

# Client Document Retention Guidance

Version 2  
March 2024

# Why is this important

Premature destruction of client documents (including safe custody documents) can be a disciplinary issue<sup>1</sup> yet keeping them indefinitely is expensive and exposes your firm and clients to the risk of data loss, cyber-attacks, privacy infringements and the unlawful disclosure of confidential information.

Adopting good document management and destruction policies is beneficial to both the practitioner and the client.

## Summary

- Generally, client documents must be kept intact and usable for a minimum of seven years.
- Some classes of documents (especially safe custody) should be kept longer.
- Suggested minimum retention periods for client documents are noted in **Annexure A**. *This is a matter of judgment for each firm and is not mandatory. E.g. in some situations, a law practice may choose to retain documents for its own risk management purposes.*<sup>2</sup>
- Records must be kept secure and confidentially.
- Records which are no longer required should be disposed of / deleted promptly and securely.
- Digital storage is permissible, but careful thought is required to ensure electronic records remain confidential and viable. Appropriate choice of storage media and format is important. Please also see [Guidance Statement No. 6 Form of Delivery for Client Documents](#).
- Documents may only be destroyed:
  - a) with informed client instructions (unless destruction is otherwise unlawful);<sup>3</sup> or
  - b) in accordance with s 713A of the *Legal Profession Act 2007* (Qld) ('LPA').

## What and how long to keep it?

### Client files

The starting point is Rule 14.1 of the *Australian Solicitors' Conduct Rules 2012* ('ASCR'), which requires the law firm to provide client documents to clients on request at the conclusion of the matter. Where this does not occur, Rule 14.2 requires that client documents be kept for at least seven (7) years, unless legislation provides otherwise.<sup>4</sup>

Many firms choose to keep select classes of material for longer than the minimum period. This decision will be informed by various legislation including but not limited to the *Limitations of Actions Act 1974* (Qld). Numerous potential issues can arise if a firm destroys client documents before the effective limitation has expired, especially without replacing them with an electronic record (where permissible).

Where a limitation does not run from the date of the transaction but may be triggered by a later event, it may be prudent to retain the underlying documents for a substantially longer period than the seven year minimum e.g. a personal injury claim for a minor.

**Annexure A** contains a table setting out periods for which a document could remain legally relevant. Retaining documents for these periods is *not* mandatory, is subject to client instructions and Section 713A of the LPA, and each firm is free to determine the appropriate risk balance.

Your file closing procedures should ensure important original documents are returned and an accurate record of this is maintained. Material should not go to safe custody unless there is good reason to retain it.

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<sup>1</sup> *Legal Profession Act 2007* (Qld) s 713A ('LPA').

<sup>2</sup> Copies of these documents kept for this purpose may belong to the law practice.

<sup>3</sup> In limited cases, it may be unlawful or unreasonable to destroy a document even with client instructions. These limitations are discussed further in this guidance.

<sup>4</sup> LPA (n 1) s 713A(1)(a).

## Systematic record management

A well-run firm will have a record retention and file closure policy which:

1. identifies and protects records which should be retained beyond the minimum seven years;
2. identifies and disposes of records which are no longer needed;
3. carefully records what has been destroyed, by whom and when;
4. ensures essential original physical documents are moved either to safe custody or returned to the client; and
5. communicates to the client what you propose to retain, how long for and what will happen at the conclusion of that period.

This policy should be considered and signed off by firm management. All staff should receive annual awareness training and those who are to apply the process need to be trained upon their employment.

Depending on the nature of the material and likely issues for future dispute it may not be essential to preserve the entire file beyond the regulated minimum. Routine correspondence, administrative material, drafts or accounts may not be needed. However, the context of critical material may be important. It is not difficult to construct a scenario in which a partial record devoid of context is – for the solicitor - worse than complete absence.

## Instructions to destroy documents

Expiry of the seven-year minimum retention period does not alter the fact that many of the records held are client documents.<sup>5</sup> To destroy client documents, which are client property, after the expiry of the minimum period the firm must have:

- a) client instructions to do so, **where such destruction is otherwise lawful; or**
- b) complied with s 713A of the LPA.

Client instructions is the easiest route. This could be contained in your client agreement and should be sought at the completion of the matter.<sup>6</sup>

Historically, most clients had little interest in what happened to older records. As information security gains importance, sophisticated clients will become more involved in ensuring sensitive information held by third parties is destroyed once it is no longer required. Clients may therefore request a secure destruction certificate once a record is condemned, and your system should be configured to produce this easily. The firm is generally entitled to maintain records that are needed for risk or legal purposes even if the client prefers that they are destroyed. This must be balanced against the confidentiality risk created by large archives of historical records.

Even where your firm holds client instructions to destroy documents, in limited circumstances doing so may still be unlawful if the records are likely to be required as evidence in a judicial proceeding (see below). You should have a system for flagging records that fall into this category, including where the firm becomes aware of this after the matter is closed.

## Section 713A of the LPA

Section 713A of the LPA permits destruction of client documents (including files or safe custody documents) if;

- a) it is at least 7 years since completion of the matter;<sup>7</sup> **and**
- b) the law practice has been unable, despite making reasonable efforts, to obtain instructions from the client about the destruction of the document;<sup>8</sup> **and**

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<sup>5</sup> Not all of the file is client property; see Queensland Law Society, *Guidance Statement No. 30 – Transfer of Files* (Guide, May 2022).

<sup>6</sup> See Queensland Law Society, *Disclosure Notice and Engagement Precedent* (Precedent, February 2024) 2; copyright and file retention clause.

<sup>7</sup> LPA (n 1) s 713A(1)(a).

<sup>8</sup> Ibid s 713A(1)(b).

- c) it is reasonable in the circumstances, having regard to the nature and content of the document, to destroy the document.<sup>9</sup>

“Client document” means a document to which a client is entitled and “law practice” includes a community legal service.<sup>10</sup>

## What are “reasonable efforts” to obtain client instructions?

The Queensland Law Society is of the view<sup>11</sup> that reasonable efforts to obtain client instructions include:

- 1) That the law practice has sent notice to the client (either electronically or by post):
  - i) reminding them that documents are held; and
  - ii) informing them that the documents will be destroyed in four (4) weeks if no arrangements are made to collect them.
- 2) Such correspondence may be sent to the last address or communication method for that client known to the law practice.
- 3) If individually addressed correspondence is not reasonably feasible, notice in an appropriate newspaper or website advising at large that files closed (from a particular firm which should be named) prior to a particular date may be destroyed. Client or matter details should not be disclosed in the advertising.
- 4) Sending notice in accordance with Steps 1-3 is considered sufficient even if the correspondence is returned or a non-delivery notice generated with respect to electronic communication.
- 5) In the case of returned communication, it would be prudent to check firm records to ensure that the correspondence was not misaddressed but searches or enquiries concerning the client's location are not required.

*Client files:* the correspondence should not list the documents to be destroyed due to the confidential nature of the past instructions.

*Safe custody documents:* a brief general description should be given. The objective is that the client have some understanding of the general class of document held in order that any decision to abandon them is informed, but without being too specific in case the client is no longer at the correspondence address. Examples include:

- “your Will signed in March 1970”;
- “your Lease made in April 1995”.

- 6) The firm should retain evidence of all steps taken to notify the former client.

The identity of a person who responds with a request for further information should be verified to the satisfaction of the firm. Whether the ARNECC Verification of Identity Standard<sup>12</sup> process is followed would be at the discretion of the firm.

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<sup>9</sup> Ibid s 713A(1)(c).

<sup>10</sup> Ibid s 713A(4).

<sup>11</sup> Note that this interpretation of s 713A of the LPA is not binding upon the Courts or Tribunals.

<sup>12</sup> See ‘Verification of Identity’, *Queensland Law Society* (Web Page, 2023) <<https://www.qls.com.au/Practice-Support-Tips/Verification-of-client-identity>>.

## When is destruction “reasonable in the circumstances”?

### Client files

In most cases, destroying client documents (other than safe custody documents) after seven years would be reasonable if s713A has been complied with. An exception might be if there was some reason to believe that the particular document is relevant to an investigation or dispute which is either on foot or reasonably anticipated.

It should be noted that this consideration is separate to the length of time that a firm might consider retaining specific files for the purpose of its own risk management.

### Safe custody

The reason for depositing documents to safe custody is usually for long term storage, so in the absence of specific instructions a law practice should be hesitant to conclude that the documents have been abandoned. Annexure B contains some guidance about safe custody documents when the client cannot be found and where the reasonable effort process in Section 713A of the LPA is not being relied upon. These periods are deliberately conservative and are only suggestions, not a binding requirement.

If the firm thinks safe custody documents are unlikely to be needed but is not sure, consider:

- keeping them in boxes in your general document storage rather than the more expensive secure storage if appropriate to do so (practitioners should consider sensitivity of documents and likelihood of damage); and / or
- replacing the paper document with an electronic copy. A certificate noting when the paper document was destroyed, who did so and that the scan is a complete copy would reduce risk by (for example) displacing the presumption of revocation should a will be required many years after execution.<sup>13</sup>

### Electronic records

It is commonly assumed that electronic retention is essentially free, but this is not so – especially once the cost of securing data and maintaining access to legacy systems is factored in. In addition, even if your firm is not an entity regulated by the *Privacy Act 1988* (Cth),<sup>14</sup> sensitive records should not be retained beyond their necessary life. The larger the volume of electronic information the greater the liability if it is compromised.

You should not assume that data you have saved in cloud storage will be deleted once you decommission the account. Depending on the terms of service, archived data might be available to the cloud provider for various purposes. See the [QLS Guide to choosing and using cloud services](#) for more information.<sup>15</sup>

It may be convenient to retain electronic records for longer than paper files, however eventually the point is reached where it is time to delete them. Just like paper files, systematic destruction is much easier if the storage system makes it easy to search and separate records by destruction date.

As electronic files are likely to contain confidential information, it would be prudent to obtain specific authority in the same way as paper files.

## Can clients be charged for storage and retrieval?

No, unless the client has given *informed* consent<sup>16</sup> in writing and the cost is reasonable. Re-badging the cost as a “handling” or similar charge does not alter that position.<sup>17</sup> Costs should relate to the work done for the

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<sup>13</sup> A long term record noting the provenance of the electronic copy may be important for documents other than wills. Although electronic documents are now broadly accepted, a clear record showing where an image came from, when it was made and for what purpose greatly simplifies the task of authenticating the contents as evidence.

<sup>14</sup> The Commonwealth Government is considering a proposal to extend the *Privacy Act 1988* (Cth) to all businesses.

<sup>15</sup> Queensland Law Society, *QLS Guide to Choosing & Using Cloud Services* (Guide, November 2022).

<sup>16</sup> Queensland Law Society, *Australian Solicitors Conduct Rules 2012* (at 1 June 2012) r 16; *Legal Services Commissioner v Rose* [2007] VCAT 2180.

<sup>17</sup> *Legal Services Commissioner v Rose* [2007] VCAT 2180.

client (e.g. retrieving the file and arranging urgent transfer to a new firm) rather than for the firm (e.g., perusing the file to identify and remove the firm's documents).

Informed consent goes beyond whether the clause is in the contract. To be informed consent, the client needs to be given any relevant underlying information. The more unusual or onerous a clause is the more the firm must do to bring it to the client's actual attention.

If the firm proposes to charge for file storage or handling the client should be advised – quite clearly – that if they wish to uplift the file at the conclusion of the retainer the solicitor must provide it without cost, and that paying for subsequent storage is optional. Nb: [Guidance Statement No. 6 - Form of Delivery for Client Documents](#).<sup>18</sup>

The common law requires bailed property to be re-delivered at the place of business of the bailee. The cost of delivery elsewhere can be properly charged to the client.

## Destruction of evidence

It is a criminal offence to destroy evidence that may be needed in “upcoming” judicial proceedings. *R v Ensbeby* (*'Ensbeby'*)<sup>19</sup> shows that this can extend beyond matters that are criminal proceedings.

Even documents generated by the firm – e.g. a third party witness statement, or records of instructions to transfer property could fall within s 129 of the *Criminal Code 1899* (Qld) as interpreted in *Ensbeby* if it were reasonably foreseeable that such document may be required as evidence in future proceedings. There are similar Commonwealth provisions.<sup>20</sup>

A significant factor will be whether the firm (or client) is motivated by the desire to conceal the documents by destroying them. Such an inference would be considerably less likely where:

- a file is destroyed pursuant to an established policy; and
- there had been no particular indication that the records may be required.

A firm needs a robust process by which files which look like they might lead to trouble are flagged and taken out of the usual record destruction cycle. This process should be easy to activate even after the file has been closed.

## Receivership

Section 525 of the LPA prohibits the destruction of “regulated property” (which includes client documents) where it is reasonably anticipated that a receiver will be appointed for the firm.

## What steps do we suggest be taken in finalising your policy?

Your firm's file destruction policy should be determined at partner level with input from each subject matter expert.

The file closing checklist should prompt the solicitor with carriage to consider which “standard” retention period should apply and whether extended storage is appropriate. Solicitors need to be trained so this is a considered decision, not just applying the default or automatically assigning longer term retention to avoid a proper cost / risk analysis.

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<sup>18</sup> Queensland Law Society, *Guidance Statement No. 6 Form of Delivery for Client Documents* (Guide, 16 June 2023).

<sup>19</sup> [2004] QCA 335 (*'Ensbeby'*).

<sup>20</sup> *Crimes Act 1914* (Cth), s 39. Although a stricter definition of “knowledge” in s 5 of the *Crimes Act 1914* (Cth) will be noted.

# Annexure A

## Client documents

Matter type	Type of material	Minimum of relevance
<b>General client file records other than those classes listed below</b>		7 years from completion of the work.
Construction or project related matters		7 years from the conclusion of the construction or project.
Criminal files	Information that may be relevant on appeal.	Conclusion of any period of imprisonment or corrective supervision plus 7 years.
Wills, Powers of Attorney	<p>File/additional material (not the original documents).</p> <p>E.g. drafts, notes about initial meetings, initial meeting steps, initial instructions, notes or observations about the client can be destroyed 21 years (administrative and template documents).</p> <p>Final draft, verification of ID and capacity test – keep for the same period as the will.</p>	21 years after the date of the Will (ideally, witnessing notes and explanatory documents, medical reports will be retained for the same period as the will).
Trusts		7 years after the vesting date for critical documents, seven years after the trust was settled for correspondence and ephemera such as invoices and identification documents.
Substantial gifts, life interests		<p>21 years after the date of the gift (the steps you took to confirm absence of undue influence, capacity and the intention of the gift).</p> <p>7 years for administrative and template documents.</p>
Matters relating to minors	E.g. civil matters relating to minors, in particular PI litigation and guardianship matters, litigation for and on behalf of minors (excludes juvenile justice matters and family).	<p>Generally until after the child's 25<sup>th</sup> birthday</p> <p>Nb: Where the matter relates to alleged sexual abuse, 112 years from the child's birth.</p>
Loan transactions and guarantees	E.g. original loan documents, offer & acceptance documents, legal advice certificates, documents	Final repayment date plus 7 years.



# Annexure B

## Abandoned safe custody

Class of document	Indicia
Historical wills that aren't the last will, testator deceased Notes concerning the execution of a will Testator's statement of wishes or declaration	Another will has been proved or firm advised a later will has been located; and 7 years elapsed thereafter.
Will, testator location and status unknown	112 years has elapsed since the Testator's date of birth or 35 years from creation of the will, whichever date is later in time.
Enduring power of attorney, Donor deceased	7 years from date of death
Enduring power of attorney, Donor location & status unknown	112 years has elapsed since the Donor's date of birth
Trust deed and associated documents	The trust vested 7 or more years ago.
Corporate register	The Company has been deregistered for at least 7 years
Property Title Deeds (distinction between Queensland deeds and other jurisdictions).	Other title deeds - the property is no longer registered in the depositor's name and 14 years has elapsed since it was deposited. Queensland land title deeds – 7 years after the end of the matter.
Lease	7 years from the expiry of the final option date provided for in the document
Loan agreements and guarantees	14 years from the date final payment was due
Bearer bonds or other indicia of title by possession	These documents should not be destroyed. Bearer bonds, cryptocurrency - treat as abandoned, regulated property and may be provided to the Public Trustee, depending on PT's policies.
Cryptocurrency wallet, keys, Non Fungible Token or other digital asset.	These documents should not be destroyed.
Other	The final date upon which obligations under the document may fall due plus 14 years.