

**GENERAL BUSINESS
RECORD RETENTION REQUIREMENTS**

AS AT JANUARY 2010

KEY BUSINESS RECORDS

- Constitution of the Company including all amendments
- ABN Registration
- Certificate of Incorporation
- Licences (eg Australian Financial Services Licence) including any variations
- Certificate of Registration of trade marks, patents, business and domain names
- Minutes of Meetings: General Meetings / Directors / Committees
- Annual Financial Report and Auditors' Reports
- Registers of Directors, Company Secretaries, Members and Shares

KEY FEDERAL LAWS AND CODES

1. Corporations Act 2001
2. Taxation Laws
3. Privacy Laws
4. Anti-Money Laundering and Counter-Terrorism Financing Act 2006
5. Electronic Transactions Act (Cth and States)
6. Consumer Credit Code
7. Fair Work Act

NOTE: *There are many more Acts, regulations and rules specifying document retention requirements applicable to companies under Australian Commonwealth and State laws.*

***SEE NOTES AT END OF THIS DOCUMENT ON METHODS OF DOCUMENT RETENTION**

Page - 1

Langes: This is a general summary only and does not constitute legal advice.

Documents	Section	Minimum Time	Form of Retention	Section
1. (A) Corporations Act				
Financial Records (invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes, vouchers and other documents of prime entry; and such working papers and other documents as are necessary to explain the methods and calculations by which accounts are made up) that correctly record and explain the transactions and (including any transactions as trustee) and would enable true and fair financial statements to be prepared.	s 9 and s 286	7 years after the completion of the transactions to which they relate	The financial records may be kept in any language. An English translation must be made available to a person who is entitled to inspect the records and asks for a translation.	s 287
			If financial records are kept in electronic form, they must be convertible into hard copy. Hard copy must be available within a reasonable time.	s 288
			A company, registered scheme or disclosing entity can decide where to keep their records. If it is outside Australia, sufficient written information (or <i>readily accessible</i> electronic information –see Note A, page 24) must be kept in Australia to allow true and fair financial statements to be prepared	s289
A register of members (giving details of their names and addresses,	s 169 and s 1270	5 years after the last entry in the register.	At the registered office or principal place of business and open for inspection. (Note there	s 172 and 1302

Page - 2

Langes: This is a general summary only and does not constitute legal advice.

Documents	Section	Minimum Time	Form of Retention	Section
shares/stocks, the date at which each person was entered into the register, the date of which any person who ceased to be a member during the previous seven years so cease to be a member)			are some exceptions).	
An index of the members enabling the account of each member to be found readily.	s 169(2) and s 1270	5 years after the last entry in the register.	At the registered office principal place of business and open for inspection.	s 172 and 1302
A register of options granted to persons to take up unissued shares (giving details of the name and address of the holder of the option, the date on which the option was granted, the number and description of the shares in respect of which the option was granted, the period during which the option may be exercised, the consideration for the grant of the option, the consideration for the exercise of the option or the manner for which the consideration is to be ascertained or determined, and such other particulars as are prescribed).	s 170 and s 1270	5 years after the last entry in the register.	At the registered office principal place of business and open for inspection.	s 172 and 1302

Documents	Section	Minimum Time	Form of Retention	Section
A copy of every instrument by which an option to take up unissued shares is granted.	s 170 and s 1270	5 years after the last entry in the register.	At the registered office principal place of business and open for inspection.	s 172 and s 1302
A director of a listed public company must notify the relevant securities exchange of the following interests of the director: interests in securities of the company or a related body corporate, contracts to which the director is a party or under which the director is entitled to a benefit; and that confer a right to call for or deliver shares in, debentures of, or interests in a collective investment scheme made available by, the company or a related body corporate.	s 205G and s 1469 item 12	within 14 days after each of the following occasions: (a) appointment as a director of the company (b) the listing of the company		
A company must lodge with ASIC a notice of the personal details of a director or secretary	s 205B-D	within 14 days after they are appointed		
A copy of every document relating to	s271 and	7 years after the last	At the registered office principal place of	s 242 and

Page - 4

Langes: This is a general summary only and does not constitute legal advice.

Documents	Section	Minimum Time	Form of Retention	Section
a charge on the property of the society.	1270	entry in the register.	business and open for inspection.	s 1302
A register of charges (giving details of the date of creation or date when the charge property was acquired, a short description of the liabilities secured by the charge, a short description of the property charged, the name of the trustee for debenture holders, the name of the chargee if there is no trustee, and the name of the person whom the company believes to be the holder of the charge).	s 271 and s 1270	5 years after the last entry in the register.	At the registered office principal place of business and open for inspection.	s 271 and s 1302
A register of members or substantial shareholders (giving details of name and address, particulars of the voting shares, prescribed particulars of each such interest, prescribed particulars of any agreement, and other such particulars as are prescribed).	s168 and s169 and s 1270	5 years after the last entry in the register.	At the registered office principal place of business and open for inspection.	s 1302

Documents	Section	Minimum Time	Form of Retention	Section
ASIC, a listed company or the responsible entity for a listed managed investment scheme, may direct a member of the company or scheme; or a person having a relevant interest in, or having given instructions about, voting shares in the company or interests in the scheme to make disclosure of interests and instructions.	s 672A-F			
A register of holders of debentures (giving details of names and addresses of the holders and the respective amounts of the debentures held by them).	s 168, 171 and s 1270	5 years after the last entry in the register.	At the registered office principal place of business and open for inspection.	s 172 and s 1302
Books containing the minutes or proceedings of any general meeting, or of a meeting of the directors.	s 251A and s 1270	5 years after the last entry in the register.	At the registered office principal place of business and open for inspection.	s 251A(5)
Buy Back procedure - the company must send out notices of meeting and lodge with ASIC the notice of meeting and any document relating to the buy-back that will accompany	s 257C-257F			

Documents	Section	Minimum Time	Form of Retention	Section
the notice sent to shareholders.				
1. (B) Corporations Act: Financial Services Licensees				
A person who is required by a provision of Part 7 to keep a register in relation to a business carried on by the person must preserve it.	s1101C(1)	5 years after the last entry in the register.	At the registered office or principal place of business and open for inspection. (Note there are some exceptions).	s1302
			Failure to comply with this subsection is an offence	s1311(1)
A person who is required by a provision of Part 7 to keep any financial record in relation to a business carried on must preserve it.	s1101C(2)	7 years after the completion of the transactions to which they relate	A financial services licensee must	s988A(1)
			(a) keep financial records that correctly record and explain the transactions and financial position of the financial services business carried on by the licensee; and	
			(b) keep those records in accordance with the requirements of this Subdivision; and	s988B
			(c) comply with the requirements of this Subdivision in relation to conversion of records into the English Language.	
			The records must be kept in a way that:	s988C(1)

Documents	Section	Minimum Time	Form of Retention	Section
			(a) enables true and fair profit and loss statements, and balance sheets, of the financial services business of the licensee to be prepared from time to time (b) allows those statements and balance sheets to be conveniently and properly audited.	s988D
			The records must be kept in writing in the English language, or in a manner that enables them to be readily accessible and readily converted into writing in the English language.	
			If any of the records are kept outside this jurisdiction, the licensee must:	
			(a) cause to be sent to and kept at a place in this jurisdiction such particulars with respect to the business dealt with in those records as will enable true and fair profit and loss statements and balance sheets to be prepared; and	s988E
			(b) if required by ASIC to produce those	s1311(1)

Documents	Section	Minimum Time	Form of Retention	Section
			records at a place in this jurisdiction, comply with the requirement not later than 28 days after the requirement is made.	
			The records must be kept in sufficient detail to show particulars of certain information as listed in this section.	
			Failure to comply with this subsection is an offence	
Retention requirement for Product Disclosure Statement (PDS) that does not need to be lodged with ASIC	s1015D(3)	The responsible person for the PDS must keep a copy of the PDS for the period of 7 years after the date of the Statement.	During that period the responsible person: (a) must make a copy of the PDS available to ASIC if asked to do so by ASIC; and (b) must comply with any reasonable request from any other person for a copy of the PDS.	s1015D(4)
			Failure to comply with this subsection is an offence.	s1311(1)
The relevant authority in relation to Part 7.5 arrangements (Compensation Regimes for Financial Markets) must , in relation to each regulated fund established in	s892H	7 years after the transactions covered by the records are completed.	Failure to comply with this subsection is an offence	s1311(1)

Documents	Section	Minimum Time	Form of Retention	Section
<p>connection with the arrangements, keep written financial records that:</p> <p>(a) correctly record and explain the fund's transactions and financial position and performance; and</p> <p>(b) would enable true and fair financial statements to be prepared and audited.</p>				
<p>2. Privacy Legislation</p> <p>a) Privacy Act 1988</p>				
<p>An organisation must take reasonable steps to destroy or permanently de-identify personal information if it is no longer needed for any purpose for which the information may be used or disclosed under NPP 2.</p>	NPP 4.2	No specification.		
<p>If an organisation collects health information about an individual in accordance with NPP 10.3, the organisation must take reasonable steps to permanently de-identify the information before the organisation</p>	NPP 10.4	No specification.		

Documents	Section	Minimum Time	Form of Retention	Section
discloses it.				
<i>Prohibited Information to be deleted</i> A credit reporting agency must delete from an individual's credit information file maintained by the credit reporting agency any personal information of a kind referred to in para 18E(1)(b) or (ba) within 1 month after the end of the maximum permissible period for the keeping of personal information of that kind.	s18F(1)			
<i>Maximum Permissible Periods for Information</i> For the purposes of ss(1), the maximum permissible periods for the keeping of personal information of the kind referred to in s18E(1)(b) are as set out opposite;	s18F(2)		in the case of information referred to in (i), (ia), (ii), (iii) or (iv) - the period of 5 years commencing on the day on which the credit report concerned was sought;	s18F(2)(a)
			in the case of information referred to in (v) - the period of 14 days commencing on the day on which the credit reporting agency is notified under s18F(5) that the credit provider concerned is no longer a current credit provider in relation to the individual concerned;	s18F(2)(b)
			in the case of information referred to in (vi) -	s18F(2)(c)

Documents	Section	Minimum Time	Form of Retention	Section
			the period of 5 years commencing on the day on which the credit reporting agency was informed of the overdue payment concerned;	
			in the case of information referred to in (vii) - the period of 5 years commencing on the day on which the second dishonouring of the cheque occurred;	s18F(2)(d)
			in the case of information referred to in (viii) - the period of 5 years commencing on the day on which the court judgment concerned was made;	s18F(2)(e)
			in the case of information referred to in (ix) - the period of 7 years commencing on the day on which the bankruptcy order concerned was made; and	s18F(2)(f)
			in the case of information referred to in (x) - the period of 7 years commencing on the day on which the information was included in the credit information file concerned.	

Maximum Permissible Period
For the purposes of ss(1), the

S18F(2A)

Documents	Section	Minimum Time	Form of Retention	Section
maximum permissible period for the keeping of personal information of the kind referred to in s18E(1)(ba) is the period of 5 years beginning on the day when the credit reporting agency is informed of the overdue payment concerned.				
3. Taxation Laws				
a) Income Tax Assessment Act 1936				
Documents relevant to income and expenditure, and documents containing particulars of any election, estimate, determination or calculation (and the basis on which they were made) made under the Act.	s 262A	5 years, or the end of the assessment period if so extended by the Commissioner, whichever is the later.	In the English language or, if not in written form (eg. in an electronic medium such as magnetic tape or computer disk), in a form which is readily accessible* and convertible into writing in English.	s 262A TR 97/21
			To retain CD, microfilm or microfiche records, application must be made to the Taxation Department. If retained, they must describe in detail, and provide an audit trail of, all individual transactions; be clear; be suitably indexed; be available for inspection.	TR96/7
			Original records from which microfiches are produced by photographic process will be	TR96/7

Documents	Section	Minimum Time	Form of Retention	Section
			retained to the extent required by the Taxation Office. Legal documents cannot be in microfiche.	
			The ATO must be given the encryption key for encrypted documents.	TD 2001/D4
b) Capital Gains Tax Requirements				
All documents relevant to an asset.	s 160ZZU	5 years after the completion of the transactions to which they relate.	Commissioner to have full and free access and may take extracts or make copies.	s 263,264
c) GST Requirements				
The Taxation Administration Act requires an entity which enables a taxable supply or creditable acquisition to keep records that identify and explain all transactions relevant to that supply.	s 70	At least 5 years after the completion of the transactions to which the records relate	In English or in a form readily accessible* and readily convertible into English (eg a computer disk)and in a form that enables the entity's GST liability to be readily ascertained.	
d) Fringe Benefits Tax Assessment Act 1986				
A general requirement for employers to keep sufficient records to enable		5 years from the date they are prepared,		

Documents	Section	Minimum Time	Form of Retention	Section
<p>your FBT liability to be assessed.</p> <p>Records must show:</p> <ul style="list-style-type: none"> - Taxable value of each fringe benefit provided to each employee e.g. invoices, employee declarations - Method of allocated the taxable value of a fringe benefit provided to two or more employees - That 100% of the taxable value of the benefits has been allocated to employees 		obtained or the transactions completed.		

4. Fair Work Act 2009 (Cth)

<p>Records relating to employees and pay slips including name, date of birth, ABN, classification, full-time or part-time, permanent, temporary or casual, date employment began, pay details, leave details, superannuation contributions, any individual flexibility arrangement, any guarantee of annual earnings. Employers must also keep termination details. Employers must provide access for</p>	Section 535, Ch 3 Regs	7 years after employment is terminated	In a legible form in the English language and readily accessible to an inspector	
---	------------------------	--	--	--

Documents	Section	Minimum Time	Form of Retention	Section
<p>inspection of records or post a copy of the records to an employee on request.</p> <p>Also note statutory obligations relating to:</p> <ul style="list-style-type: none"> (a) workers compensation and rehabilitation; (b) equal opportunity and sexual harassment; (c) unfair dismissal; (d) employment and independent contracts; (e) applicable awards and enterprise agreements; and (f) remuneration, benefit and entitlements obligations. 				
5. Anti-Money Laundering and Counter Financing Act (Cth)				
<p>Keep records of the following:</p> <ul style="list-style-type: none"> - All records of the provision of designated services, transaction records and customer-provided documents; 	Part 10 of the AML/CTF Act	The legislation requires these records and documents to be retained for 7 years after the making of the record.	Retain a copy of these records or an extract of the records showing the prescribed information (e.g. electronic storage of information)	

Documents	Section	Minimum Time	Form of Retention	Section
<ul style="list-style-type: none"> - All documents obtained in the course of carrying out a customer identification procedure; and - All records regarding the AML/CTF program must be also be maintained. <p>For details see Austrac Guidance Note 08/04</p>		<p>Transaction records are required to be kept for seven years after the record is made.</p> <p>Records of customer identification procedures are kept for the life of the customer relationship and an additional seven years after the reporting entity ceases to provide any designated services to the customer.</p> <p>Part 10 of the AML/CTF Act is not intended to override the credit reporting provisions in Part IIIA of the Privacy Act 1988 (Privacy Act). This means that records retained in compliance with the AML/CTF Act for longer than the maximum period permitted under</p>		

Documents	Section	Minimum Time	Form of Retention	Section
		the Privacy Act should only be used by reporting entities for the purposes associated with fulfilling the record-keeping requirements of Part 10 of the AML/CTF Act and for no other purpose.		

6. Financial Transaction Reports Act 1988

Any record made or obtained of any information by a financial institution in the course of obtaining account information or signatory information.	s 23(1)	7 years after the day on which the relevant account is closed.	Keep the record or a copy of it in a way that makes retrieval of it reasonably practical (this includes reasonably accessible* electronic form).	s 23(5)
Where a document is required to be released by law, a complete copy of it must be kept.	s 23(7)	Keep until the 7 year period has ended or the document is returned, whichever occurs first.	Retain and store in a way that makes retrieval of the document reasonably practical (this includes reasonably accessible* electronic form).	s 23(5)
A register of documents released.	s 23(8)	Keep indefinitely	Keep in a way that makes retrieval reasonably practical (this includes reasonably accessible* electronic form).	s 23(5)
Any account or signatory information	s 20(1)	7 years after the day on	In a way that can be audited (this includes	s 20(1)

Documents	Section	Minimum Time	Form of Retention	Section
obtained in relation to each account since 1992.		which the relevant account is closed	reasonably accessible* electronic form).	
A register for entering transactions and classes of transactions which are exempt significant cash transactions (see sections 9, 10, 11). The register is to include prescribed details which are:- 1. For each person conducting the transaction with the financial institution (a) the name of the person; and (b) the business or residential address of the person; and (c) the occupation, business or principal activity of the person. 2. A statement whether the exemption covers deposits, withdrawals or both. 3. The total amount of currently involved in the transaction or the range of amounts of currency	s 12	Keep indefinitely	In a manner and form approved by the Director so that an authorised officer may inspect the register and make a copy of, or take extracts from the register, together with any other information relating to the register. The Director must give notice in order to do this.	s 13

Documents	Section	Minimum Time	Form of Retention	Section
involved in the class of transactions.				
3A. The total monetary amount of the transaction or the range of monetary amounts of the class of transactions.				
3B. The amounts and types of any foreign currency involved in a transaction.				
4. The date of the transaction or the period during which the class of transactions is to be exempt.				
5. The name of, and the office held by, the person making the decision to grant or amend the exemption.				
7. Proceeds of Crime Act 1987 (Cwth)				
"Customer generated financial transaction document", in relation to a financial institution, means a	s76		A financial institution required to retain documents under these provisions shall retain and store them in a way that makes	s77(5)

Documents	Section	Minimum Time	Form of Retention	Section
financial transaction document of the institution:			retrieval of the documents reasonably practicable.	
(a) that relates to:				
(i) the opening or closing by a person of an account with the institution;		7 years after the day on which the account is closed		
(ii) the operation by a person of an account with the institution;		7 years after the day on which the deposit box ceases to be used by the person		
(iii) the opening or use by a person of a deposit box held by the institution;		7 years after the day on which the transaction takes place		
(iv) the telegraphic or electronic transfer of funds by the institution on behalf of a person to another person;				
(v) the transmission of funds between Australia and a foreign country or between foreign countries				

Documents	Section	Minimum Time	Form of Retention	Section
------------------	----------------	---------------------	--------------------------	----------------

on behalf of a person; or

(vi) an application by a person for a loan from the institution (where a loan is made to the person pursuant to the application); and

(b) that is given to the institution by or on behalf of the person (whether or not the document is signed by or on behalf of the person);

"Essential customer-generated financial transaction document", in relation to a financial institution, means a customer generated financial transaction document other than a document that relates to the operation of an account held with the institution;

"Financial transaction document" in relation to a financial institution, means any document that relates to a financial transaction carried out by the institution in its capacity as a financial institution and, without

Documents	Section	Minimum Time	Form of Retention	Section
-----------	---------	--------------	-------------------	---------

limiting the generality of this, includes a document relating to:

(a) the opening, operating or closing of an account held with the institution; and

(b) the opening or use of a deposit box held by the institution but does not include a cheque or payment order.

8. Consumer Credit Code

Credit Providers are obliged to provide copies of loan contracts, guarantees, mortgages, insurance contracts and notices during the life of the contract and for two years after it is ended.

s 163 (1)

A copy may be provided in the form of a computer generated facsimile

s 163(3)

NOTE: The **National Consumer Credit Protection Act** will commence on 1 July 2010. In addition to the obligations in the Consumer Credit Code there is an obligation to provide borrowers with a

Documents	Section	Minimum Time	Form of Retention	Section
copy of any quote, preliminary assessment and suitability assessment.				
Credit licensees are obliged to retain financial records for 7 years (Section 95)				

Notes: A. For any information kept in electronic form, the method of generating the information must provide a reliable way of maintaining the *integrity* of the information, unless a specific storage device is provided for by the relevant legislation.

“*Readily accessible*” means that it is reasonable to expect that:

1. The information stored in electronic form is readable and capable of being interpreted for subsequent use
2. Any software necessary to allow the information to be read has been retained

See the Commonwealth and *State Evidence Acts* and *Electronic Transactions Acts* for the legal requirements for electronic transactions.

Archiving procedures for electronic records must allow for changes in technology eg data recorded on a 5 ¼ inch disk cannot be retrieved if you do not have the appropriate size disk drive.

NOTE: In deciding whether to destroy paper records and retain electronic copies only, consider the possibility of legal action especially if the documents have original signatures.

All records must be kept secure, so it can be proved they have not been altered.

The electronic copies must be convertible into hard copy.

- B.** See AS 4390 Australian Standards for Records Management and Australian Standard (AS ISO 15489) Systems for electronic records. What is your policy for deletion of emails?
- C.** The admissibility of documents (whether paper or electronic) as evidence in a court is subject to the provisions of the Commonwealth and State Evidence Acts. Generally, the production of a print out of an electronic record is admissible evidence in court.

Page - 25

Langes: This is a general summary only and does not constitute legal advice.

- D.** Statutory limitation periods limit the time in which an action may be brought against a person or entity. A statutory limitation period is typically six years from the cause of action arising (eg breach of contract) but this may vary in certain cases. In most cases, a corporation should keep records for at least six years to defend or bring legal action.
- E.** If you are a manufacturer, note that any product liability action must be commenced within ten years of the time the defective goods were supplied by the manufacturer.
- F.** If you have intellectual property rights, you should keep records for the following periods:
- Standard patents: 20 years
 - Trade marks: Initial registration is for 10 years from the filing date
 - Copyright: 70 years after the end of the year of the creator's death
- G.** This table does not address any records retention requirement that results from document discovery requests, subpoenas, or court orders in any specific litigation or that would relate to any pending or anticipated claim. In any court proceedings, emails may be relevant. If there are possible proceedings, records must be kept even if the statutory retention period has expired.
- H.** In Victoria, note *The Crimes (Document Destruction) Act 2006* commenced on 1 September 2006. The Act creates an offence of destruction of evidence which is, or is likely to be, required in legal proceedings that are in progress or are to be, or may be, commenced in the future.
- I.** This table does not include State legislation relating to state taxes, limitation of actions time periods, property transactions, workers compensation, motor vehicles and other issues.
- J.** When a category of documents is not specifically legally required to be retained for a particular term, the documents need only be kept for a reasonable period, appropriate to that category's likely business use.