

MACHINERY-OF-GOVERNMENT CHANGES:

Checklist of considerations to include in agreements¹

Security classification: Public

The written agreement should include the recordkeeping requirements of all parties involved. It also needs to be signed by representatives of all of the organisations involved and also have input from your agency's legal team.

This checklist identifies issues that should be considered during the development of the agreement and included where appropriate. See also [Sample Clauses](#) for examples.

Agreement Inclusion	Example clause	✓
Legislation		
Details of the relevant recordkeeping provisions in Acts, standards and policies that apply to records involved.	B	
Specific recordkeeping requirements for the service or function being outsourced that ensures legislative and regulatory obligations are met.	A, B	
A statement regarding privacy of personal information and the need to comply with privacy principles in the <i>Information Privacy Act 2009</i>	C	
Creation and Management of Records		
A listing of records that are required to be created or managed during the term of the agreement	A	
A listing of the records to be returned to your agency at the completion of the agreement	I	
Recordkeeping requirements specifically relating to the function and records in question		
Requirements around the level of control information or metadata that is created and maintained over the records to facilitate access and retrieval.		

¹ The Appendix A: Contract inclusions checklist in *Accountable Outsourcing, Recordkeeping considerations of outsourcing NSW Government business* was a valuable source document in developing this list.

Agreement Inclusion	Example clause	✓
For paper records: Any requirements about the type or quality of paper to be used in creating records	E	
For electronic records: Specification of formats that will be suitable for any electronic records being returned at the completion of the agreement.	E	
For electronic records: Requirements on how electronic public records controlled by digital rights management technologies will be managed		
For electronic records: any requirements relating to migration.	D, E	
Access		
A statement regarding the public authority's rights of access to the records during the duration of the agreement.	C	
The conditions for access to any records to a private entity or service provider	C, I	
A statement about who is able to access the records and under what circumstances.	C	
A requirement that basic control information is maintained over the records to facilitate access and retrieval.	A, B	
Details regarding the appropriate provision of access to records containing confidential information and the appropriate use of confidential information.	C	
Access to and information regarding the procedure to be followed when a Right to Information Act 2009 application is received in respect of the public records held by the other party.	C	
Access by other parties to any records in the custody of Queensland State Archives or off-site storage provider.		
Custody and Ownership		
Provisions around who has ownership of the records and who has custody		
Responsibilities of each party for the management of records		
List which records the custody and ownership arrangements apply to		
Conditions for lending and returning records within a specified time period and/or at the end of the agreement	C, I	
Ensure these clauses are constructed in such a way that they can and will still apply in the future even if other MOG changes occur		

Agreement Inclusion	Example clause	✓
Storage and handling		
Requirements for the secure and environmentally appropriate storage of all records.	E	
Any specific format requirements		
Responsibilities for the protection and recovery of public records in the event of a disaster		
Creation of disaster preparedness plan	F	
Controls and monitoring		
Details of a mechanism by which the public authority can measure the other party's compliance with the recordkeeping requirements of the agreement	G	
Dispute resolution procedures and penalties for breach of the agreement, such as failure to return records to the public authority at the completion of the agreement.	J	
Transfer		
A listing of the records to be transferred or loaned, including the formats		
The responsibility for the cost of the physical transfer of records		
Responsibilities and costs for transferring electronic records		
The timeframe and logistics for the transfer of records		
Provisions for any current or ongoing contractual issues (e.g. arrangements with offsite storage providers)		
The required metadata that will need to be transferred with the records		
Any required equipment that will need to be transferred with the records		
Destruction of records		
Any authority to destroy public records in the temporary custody of another agency, private entity, service provider.	H	
Responsibilities and requirements around the destruction of records		
Procedures and policy to be followed when destroying of records		
Which retention and disposal schedules can be used	H	

Agreement Inclusion	Example clause	✓
Specify the requirements around authorising destruction, including who can endorse the disposal and any delegation of this authority		
The records that these provisions apply to – if only certain record classes		
What information or metadata needs to be retained following destruction		
Completion of Agreements		
Identify which entity will have custody of the records at the completion of the agreement.		
Identify which records loaned to the other organisation at the start of the agreement will need to be returned at its completion		
A requirement that all public records created during the agreement are transferred to the responsible public authority unless legally destroyed		
Include timeframes for transfer of the public records		