



MACHINERY-OF-GOVERNMENT CHANGES:

Sample clauses for agreements¹

Security classification: Public

These examples are indicators of the types of statements that will assist your organisation to adequately communicate recordkeeping requirements to other parties in an outsourcing, leasing or privatisation agreement.²

They can also be used as a basis for clauses to be included in any other type of MOG change agreement, particularly if records are in the custody of another organisation for any period of time.

These clauses are provided as a guide **only** and you should **seek legal advice** before finalising any agreement.

The following examples of recordkeeping clauses may not be need to be included in every agreement. See also the [checklist of issues to be included in agreements](#).

A. Records of (the outsourced business/function or partnership arrangement)

(Service provider/Partner) must create and keep records that fully document the operation and delivery of the service, including but not limited to:

(Specific recordkeeping requirements listed here).

This includes records created using electronic technologies, such as e-mail.

B. Records of (a NGO)

(NGO) must create and keep records that fully document the operation and delivery of the service, including but not limited to:

1. Records that provide evidence that the funded service has been provided

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.

² The Appendix B: Examples of records clauses for contracts in Accountable Outsourcing, Recordkeeping considerations of outsourcing NSW Government business was a valuable source document in developing this list.

2. Records that provide evidence of how grant funds have been expended
3. (Other specific recordkeeping requirements listed here) etc.

The records listed under 1 and 2 above are required for use by (name of public authority) to enable it to determine funds are being accountable, expended and to gather evidence of the acquittal of the funding for the purposes of determining future funding applications from (NGO). Access arrangements for these records are outlined in the Access to Records section below. Based on legal advice (Name of public authority) considers these records to be public records which (NGO) is required to manage in accordance with the provisions of the *Public Records Act 2002* and Records Governance Policy.

C. Access to Records

(Public authority) retains the right to access any records of (service provider) relevant to the delivery of (the outsourced business), for the purposes of monitoring compliance with this agreement.

(Service provider) must ensure that:

- data cannot be used for applications not specified in the contract (for example, to data match with databases owned by other clients of the contractor)
- personal information is to only be used for the purpose for which it was gathered, in accordance with the Privacy Principles identified in the *Information Privacy Act 2009*, and parties other than (Service provider) cannot access public records without the written agreement of (the responsible public authority)
- applications for access to public records created by (Service provider) must be processed in accordance with the *Right to Information Act 2009* and access must be provided when conditions of the Act are met.

(Service provider) must ensure that records are documented in manual or electronic control systems with basic identifying information, including (but not limited to) a unique identifier and location details.

D. Records format

(Service provider/Partner) must ensure that records of (function/service), if created and maintained in electronic format, are kept in a standard format that can be easily migrated to (the public authority)'s systems. In this case, the acceptable formats are:

(specific electronic / other formats listed here)

E. Records storage and handling

(Service provider/Partner) must ensure that records (of the outsourced business) are kept in a stable and

secure environment. Records to be retained temporarily (less than 30 years old) must be stored in an environment where the temperature does not exceed 27°C temperature and the relative humidity is less than 60%³.

(Service provider/Partner) must ensure

- that paper records are maintained on paper that is suitable for archiving and that will not fade or deteriorate during a long retention period
- areas for magnetic media are protected from magnetic fields
- records of (the outsourced business) that are in electronic format are backed up regularly, and back up copies are kept off-site for business continuity and disaster recovery purposes
- records of a sensitive or confidential nature are held in secure storage to which there is controlled access.

F. Disaster Preparedness

(Service provider/Partner) must create a Disaster Preparedness Plan that fully documents how the Service provider/Partner will carry out their responsibilities in relation to the protection and recovery of records in the event of a disaster.

G. Reporting

A report containing copies of records that document how (function/service) is being provided, is to be forwarded to (the public authority's contact person) at (specified intervals), starting (specified date) after the commencement of the agreement.

(Service provider) is to report every (name time period) to (public authority) on how the recordkeeping provisions of this agreement are being implemented.

H. Authorised disposal of records

(Service provider) is required to retain records of (function/service) in its office for a period specified in (Queensland Disposal Authority Number and title of an approved Retention and Disposal Schedule), and then return the records to (public authority) for disposal.

(Service provider) is required to send a list of records proposed for disposal under an approved Retention and Disposal Schedule to the public authority for confirmation prior to carrying out the transfer.

³ Records to be kept for longer than 25 years (long term temporary and permanent records) may have different storage requirements. Public authorities should seek specific advice from Queensland State Archives.

(Service provider) is not permitted to transfer records of (the outsourced function/service) to another party for any purpose unless authorised to do so by (public authority).

I. Return of records on completion of contract

The following records are to be returned to (public authority) within timeframe/date ranges) or at the completion of the contract:

- records of xyz activity;
- records of abc activity; and
- any control records used to manage the above.

All records (of the outsourced business) created in the performance of this agreement are to be returned to (the responsible public authority) in (an accessible) format. Nominated formats for electronic records are to be:

- (format / application X), or
- (format / application Y).

If (Service provider) fails to return all public records to (public authority) within (timeframe) penalties for breach of agreement will apply.

J. Dispute Resolution

Dispute resolution procedures may be initiated by (public authority) and penalties applied if (Service Provider) breaches any of the terms of the agreement.

More information

For more information on the various recordkeeping responsibilities, have a look at the [recordkeeping section](#) of the For Government website.