ASIC
Australian Securities & Investments Commission

Destruction of Records Under Normal Administrative Practice (NAP) Guideline

September 2015

About this guide

This guidance applies only to information identified as having little or no continuing value to the business operations and activities of ASIC, the Superannuation Complaints Tribunal (SCT) or the Companies and Liquidators Disciplinary Board (CALDB).

This guidance applies to information held in any format, including digital (electronic) or physical (hardcopy) in any system.

All Commission members, ASIC staff (ongoing, non-ongoing and temporary), members of the SCT and CALDB, and consultants and contractors are expected to comply with and follow this guidance.

Document history

This guide was issued in September 2015 and is based on legislation and regulations as at the date of issue.

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Purpose

ASIC business records are generally disposed of in accordance with general and core business records authorities that have been approved as legally enforceable by the National Archives of Australia (NAA). The *Archives Act 1983* states that Commonwealth records can be destroyed:

- as required by a specific law;
- with the permission of the NAA using an approved records authority; or
- in accordance with a normal administrative practice (NAP).

See Appendix 1 for the specific requirements under s24 of the Archives Act 1983.

The purpose of this guidance is to help staff to understand and meet their obligations with respect to the retention and disposal of records covered by NAP provisions. It outlines the NAP process as it applies to ASIC and provides examples of those records that can be destroyed using NAP.

This guidance complements ASIC's Information Management ECM Business Rules and has been developed based on an understanding of ASIC business processes, records created or received to support those business processes, as well as considerations of business risks.

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Acceptable NAP Processes

NAP allows for the disposal of ephemeral, facilitative or transitory information which is of a trivial nature or of such short term value that it does not support or contribute to ASIC business. NAP information is not usually saved within the corporate recordkeeping system.

In the course of carrying out ASIC core and administrative business activities, various iterative processes can occur that result in the creation or receipt of facilitative or transitory information, including:

- rough working papers and background notes to support the development of other documents;
- taking rough notes prior to and/or during hearings, visits or meetings which are later either formally transcribed or referenced only by the relevant staff member;
- routine/iterative drafts which do not substantiate subsequent major drafts or final documents;
- copies of case/matter records held for temporary reference;
- published material acquired for reference purposes;
- global email messages and notifications received regarding business activities and operations, or circulation copies of ASIC instructions, procedures, circulars or newsletters;
- informational material received from other agencies or organisations, including catalogues, price lists, promotional materials etc.;
- transitory messages giving minor instructions of a trivial nature only to further a more specific activity (e.g. telephone messages);
- documents created in error, or which do not proceed to become official ASIC records.

There is no need for information intended for temporary reference and retention to be captured into the corporate recordkeeping system. It can be destroyed when no longer required for reference.

Examples of NAP Records

Within ASIC, examples of records (non-exhaustive) that can be destroyed in accordance with NAP are outlined in Table 1 on the following page.

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Table 1: Examples of NAP Records

Item	Included	Excluded
Working & Background Information	• Information, background notes and reference materials that are used to prepare or complete other documents, but which have no further value once other documents are produced. • Rough notes taken prior to or during hearings, meetings, site visits, telephone discussions, investigations etc. that are not intended for further use by or circulation to others and/or where key decisions and outcomes of those discussions, meetings and hearings are captured as part of audio recordings or formally transcribed minutes/notes. • Spreadsheets used for calculations that form part of a final document where the decisions behind the calculation methodology are recorded elsewhere. **DESTROY** under NAP once subsequent documents are developed, notes and outcomes are formally documented or captured, or when reference ceases (as applicable).	• Working documents, background information and data that: ⇒ contain significant decisions, reasons and actions and/or contain significant information that is not contained in the final form of the document. ⇒ may need to be used to support or provide evidence of business processes and activities (i.e. hearing schedules and invitation responses, and investigation progress notes and file notes made in case management systems). **DO NOT** destroy under NAP.
Drafts	• Draft documents that are iterative/routine only and used to develop or complete subsequent documents for internal circulation or external release. • Drafts documents which do not contain significant comments and feedback from other parties. • Drafts of documents that do not proceed to become official records of ASIC business activities. **DESTROY** under NAP once subsequent documents have been developed and released, final decisions and outcomes are documented, or when reference ceases (as applicable).	• Major drafts formally circulated internally or released externally for review, comment and consultation and/or which incorporate substantial input from the legal advisers, senior management or external stakeholders, such as: ⇒ draft industry rules, policies, guides etc. released for consultation ⇒ draft versions of high-level plans, strategies or reports released for consultation ⇒ legislative drafting instructions ⇒ draft agreements incorporating legal advice, which form part of contractual negotiations ⇒ formal draft Cabinet submissions ⇒ drafts relating to the development of legislation or similar instruments and cabinet submissions ⇒ draft witness statements

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Item	Included	Excluded
		DO NOT destroy under NAP.
Informal Communications	• Informal and routine communications which do not relate to ASIC business activities, or which are transitory only and used to further a business activities, such as: ⇒ with compliments slips; ⇒ personal correspondence (including email messages) unrelated to ASIC work activities; ⇒ messages posted or downloaded from informal listservs by staff; ⇒ telephone message slips; ⇒ voice mail; ⇒ reminders to attend internal meetings/training or other events. **DESTROY** under NAP when reference ceases.	• Emails messages and correspondence documenting discussions with senior management, external agencies, businesses, industry professionals and other individuals that involve decisions and advice regarding financial or legal issues or other key work processes and courses of action. • Informal communications with businesses, financial professionals or other individuals and external bodies regarding compliance, surveillance, investigation and enforcement matters, including receipt acknowledgement letters (for evidence obtained), requests for information, hearing invitations, and routine enquiries (including progress enquiries on investigation matters). **DO NOT** destroy under NAP.
Duplicates/ Copies	• Duplicate copies of records held for reference/information purposes and/or where the master copy/original has been captured elsewhere in ASIC's authorised systems. Includes: ⇒ copies of ASIC instructions, newsletters, minutes of meetings, notices, and advice distributed widely to internal staff; ⇒ emails received by secondary recipients (cc'd) for reference, but which are required to be actioned by the primary recipient; ⇒ copies of call centre recordings held and used for training purposes; ⇒ copies of case/matter files where copies are made for the purpose of distribution and review by sitting panel members or specific investigation teams (including where copies contain minor annotations and notes for later discussion);	• The master copy/original of any ASIC business record. ⇒ The master copy should be kept as a record by the creator, the primary recipient within ASIC, or the individual responsible for processing/actioning (as applicable). • Copies of information obtained from external parties, where the copy is ASIC's only copy, such as copies of: ⇒ evidence obtained from external parties in the course of carrying out an investigation or enforcement actions, irrespective of whether it is considered duplicitous or irrelevant to the matter ⇒ copies of documents obtained from external parties such as company prospectuses, advertising, product disclosure statements etc. which support compliance monitoring and surveillance activities ⇒ copies of documents lodged with ASIC by external parties to support regulatory approvals, applications, forms, or regulatory

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Item	Included	Excluded
	⇒ rules, procedures, guides, reports, standards etc. which have been copied and saved locally for ease of access/reference; ⇒ copies of documents where the original has been sent to the relevant responsible ASIC business area for processing and management (e.g. copies of invoices or other financial records, staff leave applications etc.);* ⇒ duplicate copies of unused forms, such as licence, registration or legislative relief application forms; ⇒ copies of records held in email, personal or shared drives which have also been saved into the corporate recordkeeping system. **DESTROY** under NAP after reference user ceases. ***Note:*** *Ideally, the circulation of such information to all staff should occur via an electronic link to the record in the corporate recordkeeping system, rather than by sending electronic attachments or physical items.* * **IMPORTANT:** Where original documents are forwarded to relevant business areas for actioning and management which relate to ASIC investigations and enforcement actions (e.g. information obtained from overseas regulators and forwarded to relevant enforcement teams for actioning), or similar significant/high risk matters, staff should ensure that the original document has been captured in the corporate recordkeeping systems prior to destruction. If in doubt, do not destroy under NAP.	reporting requirements. • Copies of documents which contain substantial or significant annotations not recorded elsewhere. • Copies of records which have been de-identified or modified for publishing purposes (privacy/confidentiality etc.), such as de-identified superannuation complaints determinations. • Surplus, obsolete or damaged accountable forms, such as cheque books, receipt books, cabcharge vouchers etc. **DO NOT** destroy under NAP.
Promotional Material	• Junk email (SPAM), unsolicited advertising brochures, service provider business cards. • External promotional material that has no value to ASIC business. **DESTROY** under NAP as soon as possible.	• Promotional and advertising materials obtained by ASIC from external parties for the purposes of monitoring compliance. • Promotional material developed by ASIC. • External promotional material such as business profiles and brochures that support and validate the ASIC's purchasing

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Item	Included	Excluded
		decisions. **DO NOT** destroy under NAP.
Incomplete Transactions	• Incomplete/unfinished online transactions (e.g. online registry service transactions) where the external party does not proceed to finalising the transaction within the required timeframe (e.g. system time out or log out). • Incomplete/unfinished transactions where incorrect or insufficient detail or documentation has been provided to ASIC and (after ASIC attempted follow up with the external) no further action has been taken by the external party (e.g. applications for unclaimed monies). **DESTROY** under NAP **<u>three months</u>** after all reasonable attempts have been made by ASIC to complete the transaction (where possible and appropriate).	• None identified
Back-up Data	• Computer back-up tapes taken as part of a routine IT data recovery process. **DESTROY** under NAP by deletion/ overwriting in accordance with the IT usual back-up cycle.	• Backup logs maintained by backup software to report the status of backups performed and information such as devices and tapes used, errors encountered, systems and lists of files backed up etc. **DO NOT** destroy under NAP.
External Publications	• Material produced and published by an external party and held by ASIC for reference only (i.e. copies of research publications or standards). **DESTROY** under NAP.	• Master/original copy of publications produced by the ASIC. • External publications obtained by ASIC for the purposes of monitoring compliance. **DO NOT** destroy under NAP.
Diaries & Calendars	• Staff appointment diaries and calendars used to record routine day-to-day operations and activities, such as office or desk calendars.	• Diaries obtained by ASIC as evidence in investigation and enforcement matters. • Diaries used to record important matters and events,

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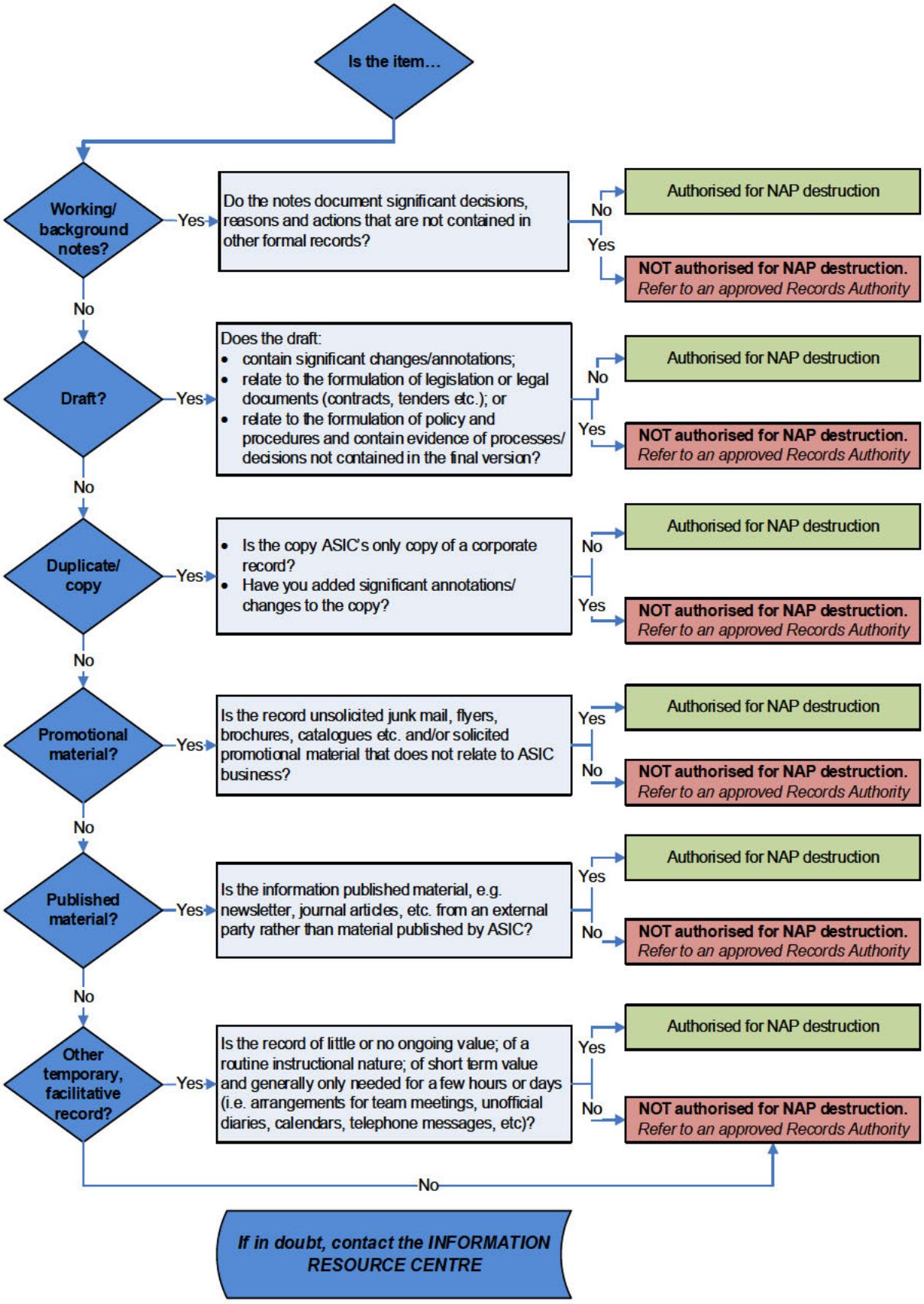
NAP Decision Process Flow



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NAP Exclusions

NAP must not be used to destroy records that:

- add value to an existing record;
- provide evidence of ASIC decisions, actions and outcomes;
- document significant operations, activities or events of ASIC; or
- document the rights and obligations of government, business, financial professionals, consumers or other private organisations and individuals.

Such information should only be disposed of in accordance with a current approved records authority issued by the NAA.

In addition, NAP must not be used to destroy records that are the subject of an outstanding Freedom of Information request, claim or appeal, are obtained in the course of managing investigation, surveillance or enforcement matters, or where ASIC knows that it is reasonably likely that the information may be used as evidence in current or future legal proceedings. In such instances, relevant NAP records can only be destroyed when the action and any subsequent reviews are completed.

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Appendix 1: Extract from Archives Act 1983

Division 2—Dealings with Commonwealth records

24 Disposal, destruction etc. of Commonwealth records

(1) Subject to this Part, a person must not engage in conduct that results in:

a) the destruction or other disposal of a Commonwealth record; or

b) the transfer of the custody or ownership of a Commonwealth record; or

c) damage to or alteration of a Commonwealth record.

Penalty: 20 penalty units.

(1A) For the purposes of an offence against subsection (1), strict liability applies to the physical element of circumstance of the offence, that the record is a Commonwealth record.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(2) Subsection (1) does not apply to anything done:

d) as required by any law;

e) with the permission of the Archives or in accordance with a practice or procedure approved by the Archives;

f) in accordance with a normal administrative practice, other than a practice of a Department or authority of the Commonwealth of which the Archives has notified the Department or authority that it disapproves; or

g) for the purpose of placing Commonwealth records that are not in the custody of the Commonwealth or of a Commonwealth institution in the custody of the Commonwealth or of a Commonwealth institution that is entitled to custody of the records.

(3) Subsection (1) does not apply to the destruction of a Commonwealth record, being a record to which subsection 47(1), 70(1) or 107(1) of the *Copyright Act 1968* applies, where the Director-General has declined to consent to the delivery of the record to the Archives.

(4) This section does not authorize the Archives to permit the destruction or other disposal of a Commonwealth record that is in the possession of, or has been transferred to the care of the Archives by, a Commonwealth institution, without the consent of that institution or of a Commonwealth institution that has succeeded to the relevant functions of that institution.

(5) For the purposes of the application of subsection (1) to a record of a kind used by means of any mechanical or electronic device or equipment, including a computer, any treatment or modification of the record that would prevent the obtaining from the record of information or matter that could previously have been obtained from the record shall be deemed to be destruction of the record.