



Record Retention Checklist for Financial Service Providers

PERMANENT RECORDS

- Constitution of the company including all amendments
- Certificate of Company Incorporation
- Australian Financial Services Licence and Australian Credit Licence including any variations.
- Certificate of Business Names Registration
- Trade Mark, Domain name, Patent Registrations and copyright information
- Minutes of Meetings: General Meetings / Directors / Committees
- Original Annual Financial Report and Auditors' Reports
- Registers of Directors, Company Secretaries, Members and Shares

BUSINESS RECORDS

- Financial and operational records
- Records necessary to ensure business continuity after a disaster (including contracts)
- Insurance documents
- Proof of ownership of assets
- Records relevant to legal proceedings

STATUTORY SOURCES

Summary of Laws

1. Corporations Act 2001 including FSR and FOFA requirements
2. Personal Property Securities Act 2009
3. AML/CTF Act 2006
4. Electronic Transactions Act (Cth and State Acts)
5. Privacy Laws (including the Credit Reporting Privacy Code)
6. National Consumer Credit Protection Act and National Credit Code
7. Limitation Act (eg NSW 1969)
8. Taxation Laws
9. Fair Work Act (Cth)
10. Self regulation – eg Banking Code of Practice and ePayments Code

Records	Sections	Retention Period	Form of Retention	Y/N Comments
1. Corporations Act				
(a) Financial Records - Must keep written records that a) correctly record and explain its transactions and financial position and performance; and b) would make true and fair financial statements able to be prepared and audited. - Includes invoices, cheques, financial statements, receipts, orders for the payment of money, vouchers and other records 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.	s9 s286	7 years after the end of the transactions to which the documents relates (not 7 years from document was created)	- All written records to be kept at the registered office or principal place of business and open for inspection (note there are exceptions). - If financial records are kept in electronic form, they must be convertible into hard copy. Hard copy must be available within a reasonable time. (s288) - The company can decide where to keep their records (or readily accessible electronic information). (s289)	<input type="checkbox"/>
(b) Register of members - An index of members enabling the account of each member to be found readily	s169 s1270	5 years after last entry into register	- At the registered office or principal place of business and open for inspection (note there are exceptions) - Giving details of names, addresses, shares, date of each person was entered into the register, the date of which any person who ceased to be a member during the previous 7 years.	<input type="checkbox"/>
(c) Records electronically lodged with ASIC	S205B-D	7 years	At the registered office or principal place of business.	<input type="checkbox"/>
2. Corporations Act - Part 7 (FSR Act)				
(a) Registers required under the FSR Act A person who is required by a provision of this Chapter to keep a register in relation to a business carried on by the person must preserve it. e.g. complaints, disputes, breach registers, training register, authorised representatives, financial advisers	S1101C(1)	5 years after the last entry in the register.	- To be kept at the registered office or principal place of business and open for inspection - AFS licensees must keep records in a way that enables true and fair profit and loss statements and balance sheets of financial services business of the licensee to be prepared from time to time. (ss988C(1) and 988D).	<input type="checkbox"/>

Records	Sections	Retention Period	Form of Retention	Y/N Comments
			<ul style="list-style-type: none"> - The record must be kept in sufficient detail to show particular of certain information as listed in Section 988E. 	
<p>(b) Financial records under the FSR Act A person who is required by the provision of this Chapter to keep any financial record in relation to a business carried on must preserve it. (ss988A and 988B) e.g. records in relation to the development of financial products and services.</p>	S1101C(2)	7 years after the completion of the transactions to which they relate.	<ul style="list-style-type: none"> - To be kept at the registered office or principal place of business and open for inspection - AFS licensees must keep financial records that correctly record and explain the transactions and financial position of the financial service business carried on by the licensee. (s988B) - AFS licensees must keep financial records in a way that enables true and fair profit and loss statements and balance sheets of financial services business of the licensee to be prepared from time to time. (ss988C(1) and 988D). - The record must be kept in sufficient detail to show particular of certain information as listed in Section 988E. 	<input type="checkbox"/>
<p>(c) Disclosure documents (PDS, FSG and SOAs)</p>	Part 7 Corps Act	The responsible person must keep a copy of each version of the PDS for 7 years after the date of the statement.	<p>During that period, the responsible person</p> <ul style="list-style-type: none"> (a) must make a copy of the PDS available to ASIC when requested (b) must comply with any reasonable requests from customers or any other persons for a copy of the PDS <p><i>Note: Failure to comply is an offence under s1311(1).</i></p>	<input type="checkbox"/>
<p>(d) Compensation arrangements</p>	s892H	7 years after the transactions covered by the records are complete	<p>The company must keep written financial records that</p> <ul style="list-style-type: none"> a) correctly record and explain the fund's transactions and financial position and performance; and b) would enable true and fair financial statements to be prepared and audited. <p>Failure to comply with this subsection is an offence under Section 1311(1)</p>	<input type="checkbox"/>

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<p>(e) ASIC Forms (FS forms) All signed copies of documents lodged electronically with ASIC.</p>	cl. 8 ASIC Electronic Lodgement Protocol	7 years	At the registered office or principal place of business.	<input type="checkbox"/>
Corporations Act- Financial Advice (FOFA) Pt 7.7A of the Corporations Act				
<p>AFS licensees who provide personal advice to retail clients must ensure that they keep records of the following:</p> <ul style="list-style-type: none"> (a) the client’s relevant personal circumstances; (b) the inquiries made in relation to those personal circumstances; (c) the consideration and investigation conducted in relation to the subject matter of the advice; and (d) the advice, including reasons why advice was considered to be ‘appropriate’ <p>Note: For further details on these record-keeping obligations, see PF 209, condition 57(b). This licence condition does not apply where an SOA does not need to be provided to the retail client, or where a record of advice is kept in accordance with s964B(3A).</p>	Corps Act s912G Class order [CO 14/923].	7 years from the date that the personal advice was provided	To be kept at the registered office or principal place of business and open for inspection	
<p>Also note record-keeping obligations relating to:</p> <ul style="list-style-type: none"> (a) personal advice provided to retail clients in accordance with FOFA conduct obligations in Divs 2 and 3 of Pt 7.7A, such as the best interests duty and related obligations; (b) financial product advice provided to retail clients in accordance with the conflicted remuneration provisions in Divs 4 and 5 of Pt 7.7A; (c) personal advice for which superannuation trustees are not permitted to collectively charge members as intra-fund advice in accordance with s99F of the SIS Act; (d) conflicted remuneration. <p>Records include fee arrangements, disclosure statements and renewal notices.</p>			To be kept at the registered office or principal place of business and open for inspection	

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3. Electronic Transactions Act				
Electronic forms of documents	s12(2) – Cth s11 - NSW	Allows recording and retention of information in electronic forms.	<p>If under the laws of the Commonwealth, a person is required to retain a document for a certain period, that requirement will be met if the person retains an electronic form of the document.</p> <p>There is a counterpart in the NSW Act for NSW based laws. (Commonwealth laws: National Credit Act and Code; APRA reports, Privacy Act, ASIC Act, AML/CTF Act; State laws: Conveyancing Act (mortgages, transfers, discharges))</p> <p>The company can retain an electronic form of the document throughout the period, providing that there is a reliable mean of assuring the maintenance of the integrity of the information contained in the document and that the information can be readily accessible so as to be useable for subsequent reference.</p>	<input type="checkbox"/>
Australian Standard (AS ISO 15489) Systems for electronic records			Systems for electronic records should be designed so that records will remain accessible, authentic, reliable and useable through any kind of system change, for the entire period of retention. This includes	<input type="checkbox"/>

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			<p>migration to different software and hardware.</p> <p>If changes in the documentation system occur, evidence of change should be kept along with details of any variation in record design and format.</p>	
4. Anti-Money Laundering and Counter Financing Act (Cth)				
<p>Record keeping for transaction records and the provision of designated services is required under the AML/CTF Act.</p> <p>The company must 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; - 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. 	Part 10 of the AML/CTF	<p>The legislation requires these records and documents to be retained for 7 years after the making of the record.</p> <p>Transaction records are required to be kept for seven years after the record is made.</p>	<p>The company can retain a copy of these records or an extract of the records showing the prescribed information (e.g. electronic storage of information)</p>	<input type="checkbox"/>
5. Financial Transactions Reports Act 1988 (Cth)				
Any record made or obtained of any information by a financial institution in the course of obtaining account information or signatory information.	S23(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).	<input type="checkbox"/>
Where a document is required to be released by law, a complete copy of it must be kept.	S23(7)	Keep until the 7 year period has ended or the	Retain and store in a way that makes retrieval of the document reasonably	<input type="checkbox"/>

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		document is returned, whichever occurs first.	practical (this includes reasonably accessible electronic form).	
A register of documents released.	S23(8)	Keep indefinitely	Keep in a way that makes retrieval reasonably practical (this includes reasonably accessible electronic form).	<input type="checkbox"/>
Any account or signatory information obtained in relation to each account since 1992.	S20(1) See also s76 Proceeds of Crime Act (Cth)	7 years after the day on which the relevant account is closed	In a way that can be audited (this includes reasonably accessible electronic form).	<input type="checkbox"/>
<p>A register for entering transactions and classes of transactions which are exempt significant cash transactions (ss 9, 10, 11).</p> <p>The register is to include prescribed details which are:-</p> <ol style="list-style-type: none"> 1. For each person conducting the transaction with the financial institution: <ol style="list-style-type: none"> (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 involved in the class of transactions. 		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.	<input type="checkbox"/>

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<p>(iii) a brief description of the type of information disclosed; and (iv) the evidence relied upon that the consent requirements have been met; (c) for each disclosure that a CP makes of credit reporting information or credit eligibility information (as applicable): (i) the date of the disclosure; (ii) a brief description of the type of information disclosed; (iii) the CP, affected information recipient or other person to whom the disclosure was made; and (iv) evidence that the disclosure was permitted under Part IIIA, the Regulations or the CR code; (d) records of any consent provided by an individual for the purposes of Part IIIA, the Regulations or the CR code; (e) in the case of a CP – records of any written notice given to an individual stating that a consumer credit application has been refused within 90 days of disclosure by a CRB to the CP of credit reporting information in relation to that individual; and (f) records of correspondence and actions taken in relation to: (i) requests to establish or extend a ban period; (ii) requests for, or notifications of, corrections; (iii) complaints; (iv) pre-screening requests by a CP; and (v) monitoring and auditing of CPs in accordance with Part IIIA, the Regulations and the CR code.</p>				
<p>7. National Consumer Credit Protection Act and National Credit Code</p>				
<p>1. Credit providers are obliged to provide copies of loan contracts, guarantees, mortgages, insurance contracts and notices during the life of the contract. 2. A credit provider must, at the request of a debtor or guarantor, provide a statement of all or any of the following: (a) the current balance of the debtor’s account;</p>	<p>S185 NCC S36 NCC</p>	<p>2 years after the end of contract period.</p>	<p>A statement under section 36 may be given orally but if the request for the statement is made in writing the statement must be given in writing.</p>	<p><input type="checkbox"/></p>

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<p>(b) any amounts credited or debited during a period specified in the request; (c) any amounts currently overdue and the dates they became due; (d) any amount currently payable and the date it becomes due.</p> <p>3. Credit licensees are obliged to retain financial records for 7 years</p> <p>4. A licensee must keep a copy of all quotes, preliminary and full suitability assessments for funded loans and <u>a record of all material that forms the basis of an assessment</u> of whether a credit contract or consumer lease will be unsuitable for a consumer in a form that will enable the licensee to give the consumer a written copy of the assessment if a request is made under section 120, 132, 143 or 155 of the National Credit Act</p> <p>NOTES: A. Information received in support of loan applications may also be required to be retained for review by third parties such as APRA, ASIC, mortgage insurers and internal and external auditors B There is no obligation on a credit provider to provide a copy of the assessment or the reasons if the credit contract is not entered into or the credit limit is not increased. A credit assistance provider is not required to give the consumer a copy of the assessment if it does not provide credit assistance to the consumer. C Keep records to demonstrate that you are meeting your responsible lending obligations. D Keep records to demonstrate compliance of your representatives. E Keep records to demonstrate compliance with your Australian Credit Licence conditions eg . complaints, disputes, breach registers, training register</p>	S 95 NCCPA	7 years		

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F. Keep records of all communications with debtors to show no undue harassment and to evidence repayment arrangements				
8. Limitation Act 1969 (NSW)	s14	At least 6 years from creation of document.	Documents relating to a possible action in contract or torts e.g. loan contracts	<input type="checkbox"/>
9. ePayments Code of Conduct				
Electronic transaction made over the internet or using EFTPOS facilities.	Voluntary		<p>A financial institution must ensure where possible that a receipt is issued for every electronic transaction whether made over the internet or using EFTPOS facilities.</p> <p>The receipt must indicate the amount, date (and time, if practicable), place, transaction type, an indication of the facility or facilities being debited or credited, and information to enable the financial institution to identify the holder and the transaction (such as a reference code or number and if practicable, type, and general location, of equipment used to perform the transaction.</p> <p>The financial institution must also provide periodic statements to their customers.</p>	<input type="checkbox"/>
10. Personal Property Securities Act 2009				
<p>An interested person may request a secured party who holds a security interest in collateral to send or make available to the interested person, or any other person a copy of the security agreement that provides for the security interest.</p> <p>A person required to respond to a request under section 275 or 276 must respond before the end of 10 business days after the day the request is received.</p>	S275, 276, 277	For term of security	Not specified. The Personal Property Securities Register (PPSR) is a noticeboard of security interests. The PPSR doesn't store the documents that underpins a security interest. It is the secured party's responsibility to keep documentation relating to a security interest in a safe and accessible place. It will be required in the event of default.	

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11. Banking Code of Practice or Customer Owned Banking Code of Practice				
Financial institutions must keep records of all disputes and processes	Self regulation			<input type="checkbox"/>
12. Taxation Laws				
(a) Income Tax Assessment Act 1936 Records relevant to income and expenditure (including substantiation for work, car and business travel expenses), and records containing particulars of any election, estimate, determination or calculation (and the basis on which they were made) made under the Act.	S262A Ruling TR 96/7	5 years after the records were prepared or obtained or 5 years following completion of the transactions or acts to which those records relate, whichever is 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. 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. Original records from which microfiches are produced by photographic process will be 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.	<input type="checkbox"/>
(b) Capital Gains Tax Requirements All records relevant to an asset.	s160ZZU	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.	<input type="checkbox"/>
(c) GST Requirements The Taxation Administration Act requires an entity which enables a taxable supply or creditable acquisition to keep	s70	At least 5 years after the completion of the	In English or in a form readily accessible and readily convertible into English (eg a computer disk) and in a form that enables	<input type="checkbox"/>

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records that identify and explain all transactions relevant to that supply.		transactions to which the records relate	the entity's GST liability to be readily ascertained.	
<p>(d) Fringe Benefits Tax Assessment Act 1986 A general requirement for employers to keep sufficient records to enable 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 		5 years from the date they are prepared, obtained or the transactions completed.		<input type="checkbox"/>
<p>(e) State Taxes Records that identify and explain all transactions where the following state taxes were relevant:</p> <ul style="list-style-type: none"> - Payroll Tax - Land Tax - Stamp Duties 		5 years		<input type="checkbox"/>
13. Employment Law				
<p>Employment Records</p> <ul style="list-style-type: none"> - Retain records of current staff members from the commencement of employment 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 inspection of records or post a copy of the records to an employee on request. - Retain records of past staff from the end of the financial year in which they ceased employment. 	S535 Fair Work Act (Cth)	7 years after employment terminated		<input type="checkbox"/>

Records	Sections	Retention Period	Form of Retention	Y/N Comments
14. Superannuation Guarantee (Administration) Act 1992				
Employer must keep records that record and explain all transactions and other acts engaged in by the employer or required to be engaged in by the employer, under this Act. Records must include documents relevant to ascertaining the individual superannuation guarantee shortfalls of the employer for a quarter. (s79(2))	S79	5 years after those records were prepared or obtained or the completion of the transactions	Records must be kept in writing in the English language or as to enable the records to be readily accessible and convertible into writing in the English language.	<input type="checkbox"/>
15. Trade promotions and lotteries				
Varies from State to State:		Under the NSW Lotteries and Art Unions Act 1901, all records, including entries, must be kept for a minimum of 3 months from the completion of the lottery.		

NOTES

1. You should add any records required to be kept under any other regulatory obligations particular to your business.
2. You must have a system for record-keeping and a person in charge of that system.
3. This table does not include all State legislation relating to state taxes, limitation of actions time periods, property transactions, workers compensation, motor vehicles, lotteries and other issues.
4. 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.
5. Whilst the law is "technology neutral" (it does not require that documents be retained in hard copy), obtain advice from your lawyers and auditors when setting up an electronic archiving system. Record retention provisions apply to the electronic delivery of disclosure
6. documents and notices to the same extent required for non-electronic delivery of information.
7. Marketing, advertising and website content should be kept for a reasonable period to track version and date changes.
8. This table does not include records required to be kept under contractual obligations or to satisfy the requirements of licences you hold.

9. A Document Retention Policy includes a Destruction Policy which sets out how records (other than those which must be retained by law or ought to be retained for business purposes) are destroyed on a timely basis. Your Destruction Policy will explain how you decide which records should be destroyed and when they are destroyed.
10. Establish “litigation hold” procedures to ensure that potentially relevant documents are not destroyed once litigation and/or government investigation is reasonably anticipated.
11. Records must be kept in English or in a form that can be easily translated to English.
12. Records must be easily accessible (easy to find).
13. You need to have a process to retrieve records.
14. Sensitive records must be secure.
15. Electronic records must be backed up.
16. A knowledge management system ensures:
 - a smoother transition and easier maintenance of document management when there is staff turnover
 - easy identification and access to information on a regulator’s request, and
 - simpler retrieval of knowledge valuable to the company’s business activities.