

## **State Records Authority of New South Wales**

### **Functional Retention and Disposal Authority: FA433**

This authority covers records documenting the function of  
the Judicial Commission of NSW

This retention and disposal authority is approved under section 21(2)c of the *State Records Act 1998* following prior approval by the Board of the State Records Authority of New South Wales in accordance with section 21(3) of the Act.



# State Records Authority of New South Wales

## Functional Retention and Disposal Authority

**Authority no** FA433

**SR file no** 22/0244

**Scope** This retention and disposal authority covers records documenting the function of Judicial Commission of NSW.

**Public office** Judicial Commission of NSW

**Approval date** 13 December 2022

## **About the Functional Retention and Disposal Authority**

### **Purpose of the authority**

The purpose of this retention and disposal authority is to identify those records created and maintained by NSW public offices which are required as State archives and to provide approval for the destruction of certain other records created and maintained by NSW public offices, after minimum retention periods have been met.

The approval for disposal given by this authority is given under the provisions of the *State Records Act 1998* only and does not override any other obligations of an organisation to retain records.

### **The retention and disposal of State records**

The records retention and disposal practices outlined in this authority are approved under section 21(2)(c) of the *State Records Act 1998 (NSW)*. Part 3 (Protection of State Records) of the Act provides that records are not to be disposed of without the consent of the State Records Authority of New South Wales (State Records NSW) with certain defined exceptions. These exceptions include an action of disposal which is positively required by law, or which takes place in accordance with a normal administrative practice (NAP) of which State Records NSW does not disapprove. Advice on the State Records Act can be obtained from State Records NSW.

The authority sets out how long the different classes of records generated by an organisation must be kept to meet its legal, operational and other requirements, and whether the records are to be kept as State archives. State Records NSW reviews and approves organisations' retention and disposal authorities under the *State Records Act*. It is the duty of a public office, in submitting a draft retention and disposal authority for approval, to disclose to State Records NSW any information which affects the retention of the records covered by the authority.

State Records NSW's decisions take into account both the administrative requirements of public offices in discharging their functional responsibilities and the potential research use of the records by the NSW Government and the public. One of State Records NSW's functions is to identify and preserve records as State archives. These are records which document the authority and functions of Government, its decision-making processes and the implementation and outcomes of those decisions, including the nature of their influence and effect on communities and individual lives. Criteria for the identification of State archives are listed in *Building the Archives: Policy on records appraisal and the identification of State archives*. The Policy also explains the roles and responsibilities of State Records NSW and of public offices in undertaking appraisal processes and disposal activities.

### **Implementing the authority**

This retention and disposal authority covers records controlled by the public office and applies only to the records or classes of records described in the authority. The authority should be implemented as part of the records management program of the organisation. Two primary objectives of this program are to ensure that records are kept for as long as they are of value to the organisation and its stakeholders and to enable the destruction or other disposal of records once they are no longer required for business or operational purposes.

The implementation process entails use of the authority to sentence records. Sentencing is the examination of records in order to identify the disposal class in the authority to

which they belong. This process enables the organisation to determine the appropriate retention period and disposal action for the records. For further advice see *Implementing a retention and disposal authority*.

Where the format of records has changed (for example, from paper-based to electronic) this does not prevent the disposal decisions in the authority from being applied to records which perform the same function. The information contained in non paper-based or technology dependent records must be accessible for the periods prescribed in the classes. Where a record is copied, either onto microform or digitally imaged, the original should not be disposed of without authorisation (see the *General Retention and Disposal Authority – Original or source records that have been copied*). Public offices will need to ensure that any software, hardware or documentation required to gain continuing access to technology dependent records is available for the periods prescribed.

## **Disposal action**

### ***Records required as State archives***

Records which are to be retained as State archives are identified with the disposal action 'Required as State archives'. Records that are identified as being required as State archives should be stored in controlled environmental conditions and control of these records should be transferred to the State archives collection managed by Museums of History NSW (MHNSW) when they are no longer in use for official purposes.

The transfer of control of records as State archives may, or may not, involve a change in custodial arrangements. Records can continue to be managed by the public office under a distributed management agreement. Public offices are encouraged to make arrangements with MHNSW regarding the management of State archives.

Transferring records identified as State archives and no longer in use for official purposes to MHNSW should be a routine and systematic part of a public office's records management program. If the records are more than 25 years old and are still in use for official purposes, then a 'still in use determination' should be made.

### ***Records approved for destruction***

Records that have been identified as being approved for destruction may only be destroyed once a public office has ensured that all other requirements for retaining the records are met. Retention periods set down in this authority are *minimum* periods only and a public office should keep records for a longer period if necessary. Reasons for longer retention can include legal requirements, administrative need, government directives and changing social or community expectations. A public office **must not** dispose of any records where the public office is aware of possible legal action (including legal discovery, court cases, formal applications for access) where the records may be required as evidence.

Once all requirements for retention have been met, destruction of records should be carried out in a secure and environmentally sound way. Relevant details of the destruction should be recorded. See *Destruction of records: a practical guide*.

Organisations should review functional retention and disposal authorities regularly to ensure that they remain relevant as the organisation's functions and activities, operating environment and requirements for records change. Retention requirements may change over time. This can occur when:

- business needs or practices change

- new laws, regulations or standards are introduced
- new technology is implemented
- government administration is restructured and functions are moved between entities, or
- unforeseen or new community expectations become apparent.

State Records NSW recommends that organisations check any functional retention and disposal authorities more than 5 years old to ensure that the retention periods and disposal actions remain relevant.

Regardless of whether a record has been approved for destruction or is required as a State archive, a public office or an officer of a public office **must not** permanently transfer possession or ownership of a State record to any person or organisation without the explicit approval of State Records NSW.

### **Administrative change**

This retention and disposal authority has been designed to link records to the functions they document rather than to organisational structure. This provides for a stable retention and disposal authority that is less affected by administrative change. The movement of specified functions between branches or units within the public office does not require the authority to be resubmitted to State Records NSW for approval. However, when functions move from one public office to another the public office that inherits the new function should contact State Records NSW to discuss use of any existing retention and disposal authority approved for use by a predecessor organisation.

### **Amendment and review of this authority**

State Records NSW must approve any amendment to this authority. Public offices that use the authority should advise State Records NSW of any proposed changes or amendments to the authority.

State Records NSW recommends a review of this authority after five years to establish whether its provisions are still appropriate. Either the public office or State Records NSW may propose a review of the authority at any other time, particularly in the case of change of administrative arrangements, procedures or to operating environments which are likely to affect the value of the records covered by this authority.

In all cases the process of review will involve consultation between State Records NSW and the public office. If the process of review reveals that this authority requires amendment, the necessary amendments should be made and approved.

#### Contact Information

State Records NSW  
PO Box 516  
Kingswood NSW 2747  
Telephone: (02) 9673 1788  
E-mail: [govrec@staterecords.nsw.gov.au](mailto:govrec@staterecords.nsw.gov.au)

## Functional Retention and Disposal Authority Judicial Commission of NSW

Authority number: FA433

Dates of coverage: Open

No.	Description of records	Disposal action
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### 1.0 COMPLAINTS

The function of examining complaints about current NSW judicial officers' ability or behaviour.

**Note:** A judicial officer means: a magistrate; a judge of the District Court, Supreme Court or Land and Environment Court; an associate judge of the Supreme Court; the President of the Children's Court; the President of the Civil and Administrative Tribunal; and a Commissioner of the Industrial Relations Commission.

See General Retention and Disposal Authority *Administrative records* **STRATEGIC MANAGEMENT - Policy** for records relating to policies governing the processes of reviewing the performance of judicial officers. Includes Conduct Division policies.

See General Retention and Disposal Authority *Administrative records* **STRATEGIC MANAGEMENT - Procedures** for records relating to internal guidelines used by decision makers in conducting reviews of judicial performance.

See General Retention and Disposal Authority *Administrative records* **PUBLICATION** for records relating to the publication of brochures, fact sheets and other forms of published advice and general information about the process of making complaints about the conduct of judicial officers.

1.1	<p>Records relating to:</p> <ul style="list-style-type: none"> <li>• the preliminary examination of a complaint, Ministerial reference or reference from a head of jurisdiction, whether or not further action is recommended, e.g. results of medical examinations, reports made to the Commission about the judicial officer, advice on the results of the investigation.</li> <li>• hearings into complaints, e.g. hearing directions, witness statements, transcripts, decisions (including any final reports), agenda and minutes of Commission meetings determining a complaint matter, reports for the Governor or heads of jurisdiction, records of advice and the notification of outcomes to complainants or referring agencies, courts, and the judicial officer under review, etc.</li> </ul> <p>Includes the register of complaints investigated.</p>	Required as State archives
1.2	Records relating to enquiries and to complaints not requiring investigation.	Retain minimum of 5 years after action completed, then destroy

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### COMPLAINTS

1.3	Records: <ul style="list-style-type: none"><li>relating to the formation of Conduct Division panels for the purpose of considering complaints against judicial officers</li><li>gathered by the Conduct Division while investigating complaints, e.g. copies of transcripts and sound recordings of judicial hearings, records of interviews of complainants, witnesses, and judicial officers.</li></ul>	Retain minimum of 7 years after action completed, then destroy
1.4	Records relating to vexatious complainant declarations. Includes revocation of declarations. Records include determination and registration of declarations and revocations, grounds for determinations, correspondence with complainants, and advice to complainants of their vexatious complainant status.	Retain minimum of 7 years after action completed, then destroy



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### JUDICIAL EDUCATION AND TRAINING

## 2.0 JUDICIAL EDUCATION AND TRAINING

The processes involved in providing professional development services to judicial officers through research, publications, conferences, seminars and visits.

See General Retention and Disposal Authority *Administrative records* **STRATEGIC MANAGEMENT - Joint ventures** for records relating to agreements to provide educational and professional development services to judicial officers

See General Retention and Disposal Authority *Administrative records* **COMMUNITY RELATIONS - Conferences** for proceedings, papers and addresses for conferences and seminars conducted as part of judicial education programs, registration of papers and administrative arrangements.

See General Retention and Disposal Authority *Administrative records* **COMMITTEES** for records relating to judicial education committees.

2.1	Records relating to final programs for the education and training of judicial officers including social and cultural awareness training programs.	Required as State archives
2.2	Records relating to course planning and evaluation. Records include the development of course evaluation benchmarks, the receipt, analysis and reporting of course feedback, and the measurement of performance against benchmarks developed externally.	Retain minimum of 10 years after action completed, then destroy
2.3	Records relating to the development of programs for the education and training of judicial officers. Records include surveys of educational needs and the engagement of course writers.	Retain minimum of 5 years after action completed, then destroy

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### PROVISION OF ADVICE & LEGAL INFORMATION

#### 3.0 PROVISION OF ADVICE & LEGAL INFORMATION

The process of providing frameworks to assist relevant authorities in attaining consistency in charging and sentencing.

Includes the publication of information (including sentencing statistics) about the criminal law to assist the courts and providing advice and information to judicial officers and/or external agencies on matters such as sentencing practices and trends in NSW, and the usage and interpretation of standards such as Lawcodes, or the operation of particular areas of the law in relation to specific community groups or social issues.

**Note:** Statistical databases and datasets maintained by the Commission that contain case law, legislation, sentencing principles, sentencing statistics and other reference material that is sourced by external agencies such as the Bureau of Crime Statistics and Research, can be managed under the Normal Administrative Practice provisions of the State Records Regulation.

See General Retention and Disposal Authority *Administrative records* **COMMITTEES** for records relating to the management of committees that develop Bench Books and other tools to support judicial decision making.

See General Retention and Disposal Authority *Administrative records* **STRATEGIC MANAGEMENT - Procedures** for records relating to guidelines for producing research products. Includes guidelines on how to produce case summaries.

See General Retention and Disposal Authority *Administrative records* **COMMUNITY RELATIONS - Enquiries** for enquiries about the organisation and its services.

See General Retention and Disposal Authority *Administrative records* **GOVERNMENT RELATIONS - Advice** for records relating to advice to the portfolio Minister.

3.1	<p>Key records relating to the provision of advice and information. Includes:</p> <ul style="list-style-type: none"><li>input to advisory committees convened by State and federal law reform groups and interagency and intergovernmental forums for consulting on the operation of the law</li><li>advice provided to the NSW Law Reform Commission and the NSW Sentencing Council, e.g. briefings, agenda papers, submissions and reports.</li><li>final versions of research publications and other material that provides guidance to judicial officers and others, such as meeting papers including minutes and agendas of Bench Book committee meetings; Bench Books, sentencing principles and practice, case summaries, Recent Law items, monographs, articles and videos.</li></ul>	Required as State archives
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*PROVISION OF ADVICE & LEGAL INFORMATION*

	<ul style="list-style-type: none"> <li>• records relating to the creation and maintenance of unique codes for describing offences.</li> </ul> <p>Note: Final versions of statistical datasets and databases (such as Judicial Information Research System) are not captured by this document.</p>	
3.2	<p>Records relating to:</p> <ul style="list-style-type: none"> <li>• the provision of fact sheets, brochures, presentations and other forms of published advice and general information about the process of making complaints about the conduct of judicial officers</li> <li>• advice provided to other jurisdictions regarding the development of their judicial education and oversight systems</li> <li>• advice provided to law enforcement agencies and courts on the application of common standards for describing offences. Includes enquiries relating to the Lawcodes database.</li> <li>• responses to research enquiries from judicial officers, legal practitioners, libraries, subscribers, government agencies, etc. regarding sentencing information.</li> <li>• the development of guidelines for assisting users of agency products</li> <li>• the development of research publications</li> <li>• investigations of breaches of the organisation's intellectual property</li> <li>• notification and publication of changes to common codes describing offences. Records include official notifications of changes and communications and correspondence with agencies to disseminate the updates.</li> </ul>	Retain minimum of 7 years after action completed, then destroy