

State Records Authority of New South Wales

Functional Retention and Disposal Authority: FA437

This authority covers records documenting the function of
Supreme Court 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 FA437

SR file no 22/0204

Scope This retention and disposal authority covers records documenting the function of Supreme Court of NSW.

Public office Supreme Court of NSW

Approval date 7 November 2023

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 NSW (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 dependant 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 Museums of History NSW 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 the Museums of History NSW regarding the management of State archives.

Transferring records identified as State archives and no longer in use for official purposes to the Museums of History NSW should be a routine and systematic part of a public office's records management program.

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

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Kingswood NSW 2747
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Functional Retention and Disposal Authority Supreme Court of NSW

Authority number: FA437

Dates of coverage: Open

| No. | Description of records | Disposal action |
|-----|------------------------|-----------------|
|-----|------------------------|-----------------|

1.0 SUPREME COURT OF NSW

The Supreme Court is the highest court and the superior court of record in NSW. It has unlimited civil jurisdiction and hears the most serious criminal matters. The Court has both appellate and trial jurisdictions. The appellate courts are the Court of Appeal and the Court of Criminal Appeal.

Note: State Records NSW does not compel destruction of records after the minimum retention period.

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|-----|--|----------------------------|
| 1.1 | <p>Records of certain matters and cases heard before the Supreme Court. Includes:</p> <ul style="list-style-type: none"> • appeal cases (Court of Appeal, Court of Criminal Appeal, legacy records of the Full Court) • administrative law matters • criminal matters (excluding bail matters) • probate and protective matters (including probate accounts) • divorce matters (legacy records) • adoption proceedings • family provision/succession matters • Corporation matters involving the winding up of a company • High Risk Offenders matters • matters relating to cases of institutional abuse of vulnerable members of the population, e.g. people with a disability, minors, elders. • summary records and indexes of matters commenced and heard before the Supreme Court • Supreme Court judgments and decisions maintained separately from the case papers to which they relate. | Required as State archives |
| 1.2 | <p>Records of all matters heard prior to 1989.</p> <p>Includes card indexes, registers of cases etc.</p> | Required as State archives |

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SUPREME COURT OF NSW

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| | <p>Note: this entry does not include the matters listed in entry 1 that are required as State archives regardless of the date.</p> | |
| 1.3 | <p>Records of the commencement and hearing of cases from 1989 where the matter is contested.</p> <p>Records include documents filed by the parties, such as the originating process, motions, affidavits, etc., and documents generated by the Court in relation to the case, such as judgments and proposed/signed orders.</p> <p>Note: this entry does not include the matters listed in entry 1 that are required as State archives regardless of the date.</p> | Required as State archives |
| 1.4 | <p>Records of the commencement and hearing of cases from 1989 where the matter is not contested.</p> <p>Records include documents filed by the parties, such as the originating process, motions, affidavits, etc., and documents generated by the Court in relation to the case, such as judgments and signed orders.</p> <p>Note: this entry does not include the matters listed in entry 1 that are required as State archives regardless of the date.</p> | Retain minimum of 15 years after matter finalised, then destroy |
| 1.5 | <p>Records relating to applications for bail or to review bail determinations. Includes refused bail matters.</p> | Retain minimum of 12 months after finalisation of any court proceedings/actions/refunds of securities or monies, then destroy |
| 1.6 | <p>Judges notebooks from 1999.</p> | Retain until retirement of judge, then destroy |
| 1.7 | <p>Records relating to determining the amount of costs and disbursements payable in respect of practitioner/client, practitioner/practitioner or party/party costs.</p> | Retain minimum of 7 years after action completed, then destroy |
| 1.8 | <p>The records documenting the scheduling of all cases heard in the Supreme Court, including the Court of Appeal. Includes diaries, case listings, courtroom</p> | Retain until administrative or reference use |

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SUPREME COURT OF NSW

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| | bookings and allocation of judicial officers to a particular case. | ceases, then destroy |
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