

State Records Authority of New South Wales

**Functional Retention and Disposal  
Authority: DA178**

**Approved: 18 August 2004**

Supreme Court of New South Wales

This authority covers records documenting aspects of the function of the administration of justice.



## Functional Retention and Disposal Authority

DA no DA178

SR file no 04/0366

**Public office** Supreme Court of New South Wales

**Scope** This functional retention and disposal authority covers records documenting aspects of the function of the administration of justice.

**Authority** This functional retention and disposal authority is issued under section 21(2)(c) of the *State Records Act 1998*. It has been approved by the Board of the State Records Authority in accordance with section 21(3) of the State Records Act.

**Authorised**

David Roberts  
Director  
State Records Authority of New South Wales

18/8/2004  
Date

# How to use the Functional Retention and Disposal Authority

## The disposal process

Disposing of State records involves assessing the value of records for future use, identifying those State records that have continuing value as State archives and identifying how soon the remainder can be destroyed or otherwise disposed of. Disposal can also involve transfer of ownership or custody of records and the alteration of records.

This functional retention and disposal authority is issued 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 State Records 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 does not disapprove. Advice on the State Records Act can be obtained from State Records.

This authority has been prepared as part of the records disposal program of the agency. Two primary objectives of this program are to ensure that records are kept for as long as they are of value and to enable the destruction or other disposal of records once they are no longer of value. State Records' decisions take into account both the administrative requirements of the public office in discharging its functional responsibilities and the potential research use of the records by the NSW Government and the public. It is the duty of a public office, in submitting a draft functional retention and disposal authority for approval, to disclose to State Records any information which affects the retention of the records covered by the authority.

## Purpose of the authority

This functional retention and disposal authority authorises the destruction or other disposal of State records as required by the State Records Act.

## Using the authority

This functional 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 is to be used to sentence records. Sentencing is the examination of records in order to identify the disposal class to which they belong. This process enables the sentencing officer to determine the appropriate disposal action for the records. Advice on sentencing can be obtained from State Records.

Where the format of records has changed (for example, from paper-based to electronic) this does not prevent the disposal classes from being used to sentence records which perform the same function. The information 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 also the *General Disposal Authority – Records of short term value that have been imaged*). Public offices will need to ensure that any software, hardware or documentation required to gain continuing access to technologically dependent records is available for the periods prescribed.

## Disposal action

Records that are identified as being required as State archives should be stored in controlled environmental conditions. Control of these records should be transferred to State Records when they cease to be in use for official purposes.

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

In some cases State Records may withhold authorisation for the disposal of a particular disposal class or possibly a whole function or activity. This would be used where records have been identified as having some immediate short term requirements for retention such as pending legal action. These records will need to be re-appraised at the end of a designated period. This re-appraisal process is necessary as the circumstances which instigate the need for the records to be retained for a longer period may also affect the 'value' of the records.

Regardless of whether a record has been authorised 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 authorisation of State Records.

## **Custody**

The custody column in the functional retention and disposal authority is designed to assist public offices in identifying storage requirements for records prior to destruction or transfer. The directions in this column are recommendations only and are *not* mandatory. The type of information includes directions on how long records should be retained in the office and how long they should be kept in off-site/ secondary storage. A recommendation to retain records in the agency for more than 25 years does not imply that a *still in use determination* has been approved by State Records (see Part 4, Section 28 of the State Records Act 1998).

## **Administrative change**

This functional 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 functional 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 for approval. However, when functions move from one public office to another State Records should be notified. The public office that inherits the new function will need the approval of State Records to use any existing functional retention and disposal authority to sentence the records that document the function/s.

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

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

State Records recommends a review of this authority after five years to establish whether its provisions are still appropriate. Either the public office or State Records may propose a review of the authority at any other time, particularly in the case of change of administrative arrangements or procedures 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 and the public office. If the process of review reveals that this authority requires amendment, the necessary amendments will be made and authorised.

#### Contact Information

State Records

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**Functional Retention and Disposal Authority  
Supreme Court of New South Wales**

DA no: DA178

Dates of coverage: Open

No	Record series/type	Description	Disposal Action
1.0.0	<b>Chamber records</b>		
1.1.0	<b>Judges' notebooks</b> (c.1999+)		Retain until retirement of the judge, then destroy
2.0.0	<b>Case records</b>	Records relating to current or completed Court cases. The records include documents filed by the parties and documents generated by the Court in relation to the case.	
2.1.0	<b>Cost assessments</b> (c.1995+)	The process of determining the amount of costs and disbursements payable in respect of practitioner/client, practitioner/practitioner or party/party costs.	
2.1.1		Case files relating to applications and referrals for assessment of costs	Retain minimum of 7 years after last action, then destroy
2.2.0	<b>Matrimonial causes</b>		
2.2.1		Records relating to applications made and matters heard under the <i>Matrimonial Causes Act</i> . This includes:  - Case files  - Copies of final decrees  - Microfilms of case files/final decrees (master film and set of reference copies)  - Registers of applications, indexes and associated control records	Required as State archives

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No	Record series/type	Description	Disposal Action
2.3.0	<b>Criminal matters</b>		
2.3.1		Records relating to the hearing of criminal matters (excluding bail matters). This includes: <ul style="list-style-type: none"> <li>- Case files</li> <li>- Indexes and associated control records</li> </ul>	Required as State archives
2.4.0	<b>Adoptions</b>		
2.4.1		Records relating to applications and orders made for adoptions (including validations of overseas adoptions). This includes: <ul style="list-style-type: none"> <li>- Adoption case files</li> <li>- Orders for adoption</li> <li>- Indexes and associated control records</li> </ul>	Required as State archives