

State Archives and Records Authority of New South Wales

Functional Retention and Disposal Authority: DA205

This authority covers records documenting the function of the NSW Ombudsman

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 Archives and Records Authority of New South Wales in accordance with section 21(3) of the Act.

Functional Retention and Disposal Authority

Authority no DA205

SR file no 18/0395

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

Public office NSW Ombudsman

Approval date 18 August 2005

Revised 16 January 2019
(Amended to include coverage for records relating to allegations of child sexual abuse (entry 1.5.3))

12 February 2021
(see footnotes in authority for details of changes)

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 Archives and Records Authority of New South Wales (State Archives and 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 Archives and Records NSW does not disapprove. Advice on the State Records Act can be obtained from State Archives and 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 Archives and 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 Archives and Records NSW any information which affects the retention of the records covered by the authority.

State Archives and 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 Archives and 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 Archives and 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 State Archives and Records 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 State Archives and Records NSW regarding the management of State archives.

Transferring records identified as State archives and no longer in use for official purposes to State Archives and Records NSW 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 Archives and 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 Archives and 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 Archives and 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 Archives and 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 Archives and Records NSW must approve any amendment to this authority. Public offices that use the authority should advise State Archives and Records NSW of any proposed changes or amendments to the authority.

State Archives and 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 Archives and 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 Archives 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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Functional Retention and Disposal Authority NSW Ombudsman

Authority number: DA205

Dates of coverage: Open

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No.	Description of records	Disposal action
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1.0.0 COMPLAINTS, AUDITING AND REVIEWS

The function of examining, monitoring, scrutinising and reviewing external agencies' procedural systems, policies and practices, levels of service or business processes from which complaints may arise. Includes monitoring and reviewing specific legislation. Also includes the investigation of and monitoring and reporting on complaints made about the conduct of public authorities and non-government service providers that fall within the Ombudsman's community services jurisdiction.

Includes preliminary inquiries and direct formal investigations by the Ombudsman.

Also includes facilitating dispute resolution between parties and other activities performed under legislation including the *Community Services Complaints, Reviews and Monitoring Act* (Inquiries, Reviews of persons, and death reviews) and supporting the Child Death Review Team.

See Functional Retention and Disposal Authority *Law enforcement misconduct prevention* (FA397) for records relating to monitoring of investigations undertaken by the Police in relation to complaints made against them.

See Functional Retention and Disposal Authority *Support and services for older people, people with a disability and their families and carers* (FA306) **SUPPORTED ACCOMMODATION** for legacy records relating to the official community visitor scheme.

1.1.0 Advice

The activities associated with advice the Ombudsman provides to NSW government agencies and non-government community service providers regarding their procedural systems, policies and practices.

See **COMPLAINTS, AUDITING AND REVIEWS - Complaint Cases** for records relating to advice to an agency concerning the handling of a complaint

1.1.1	Records relating to the provision of advice requested by, and in relation to external agencies policies, procedures, standards and practices. Includes requests for advice, responses, commentary etc documenting the Ombudsman's recommendations. Also includes research and copies of external agencies policies, procedures and/or standards.	Retain minimum of 5 years after action completed, then destroy
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COMPLAINTS, AUDITING AND REVIEWS - Agency Auditing & Systems Review

1.2.0 Agency Auditing & Systems Review

The activities associated with assessing the performance of an agency or its systems. Includes assessing compliance with statutory requirements, customer service standards, complaints handling systems, policies etc.

See **COMPLAINTS, AUDITING AND REVIEWS - Complaint Cases** for records relating to assessments and investigations into allegations and/or complaints concerning the conduct of an individual or agency

1.2.1	Records relating to the conduct of audits of agencies concerning controlled operations or telecommunications interception.	Required as State archives
1.2.2	Formal reports to Parliament relating to the conduct of audits or reviews of agency systems or practices	Required as State archives
1.2.3	Records relating to the conduct of audits or reviews of agency systems or practices. This includes records supporting the development of final audit and review reports including copies of external agencies policies, procedures and standards, research documentation and project papers.	Retain minimum of 10 years after action completed, then destroy

1.3.0 Agency Liaison¹

The activities related to ongoing liaison with external agencies within the Ombudsman's jurisdiction about matters relating to complaints, auditing and reviews.

See General Retention and Disposal Authority *Administrative records* **STRATEGIC MANAGEMENT - Joint ventures** for records relating to the maintenance of relations with public authorities, services providers, advocacy services and other agencies within the Ombudsman's jurisdiction to support the complaints, auditing and reviews function

See **COMPLAINTS, AUDITING AND REVIEWS - Review of Deaths** for correspondence with external agencies concerning death reviews

See General Retention and Disposal Authority *Administrative records* **COMMITTEES** for records of established committees

1.4.0 Agreements²

The processes associated with the establishment, maintenance, review and negotiation of agreements or determinations. Includes memorandum of understanding and class or kind determinations or agreements with other agencies concerning the reporting or referral of complaints.

¹ February 2020 Entry 1.3.1 removed. See GA28 STRATEGIC MANAGEMENT – Joint ventures.

² February 2020 Entries 1.4.1 and 1.4.2 removed. See GA28 STRATEGIC MANAGEMENT – Joint ventures

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COMPLAINTS, AUDITING AND REVIEWS - Complaint Cases

See General Retention and Disposal Authority *Administrative records* **STRATEGIC MANAGEMENT - Joint ventures** for records relating to agreements with other agencies to facilitate working relationships or the management of complaints handling, audits or review processes.

1.5.0 Complaint Cases

The activity of handling complaints, notifications, investigations, referrals and reviews.

1.5.1	Records relating to complaints and notifications where the Ombudsman has decided to make the conduct of a public authority the subject of an investigation under the Ombudsman Act, i.e. exercised formal powers (e.g. section 16 of the <i>Ombudsman Act</i>).	Required as State archives
1.5.2	Entry removed ³	
1.5.3	All other records (i.e. where the Ombudsman has not exercised formal powers under the Act) relating to complaints and notifications that have been acted on by the Ombudsman, or to complaints and allegations that involve a child or young person that have not been acted on by the Ombudsman. This includes requests for reviews where the initial decision is upheld.	<p>Retain minimum of 10 years after last action, or where the complaint, notification or allegation involved a child or young person, until the child or young person would have attained the age of 25 years, whichever is the longer, then destroy.</p> <p>For records relating to complaints and notifications involving allegations of child sexual abuse:</p> <p>Retain minimum of 45 years after action completed, then destroy.⁴</p>

³ February 2020 requirement to retain samples of case files (entry 1.5.2) removed

⁴ January 2019 Amended to include coverage for records relating to allegations of child sexual abuse

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COMPLAINTS, AUDITING AND REVIEWS - Complaint Cases

1.5.4	<p>Records relating to complaints or allegations where no action has been taken and the accusation has not involved a child or young person. Includes complaints and allegations which are:</p> <ul style="list-style-type: none"> • outside the Ombudsman's jurisdiction • referred to another agency for response • declined on outset • false, vexatious, misconceived or not proven. 	Retain minimum of 5 years after action completed, then destroy
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1.6.0 Inspections & Visits⁵

The activities involved in the regular inspection of correctional, youth justice, and other facilities to identify systematic procedures, improve their administration and address concerns of individuals.

See **COMPLAINTS, AUDITING AND REVIEWS - Complaint Cases** for records relating to complaints raised as part of the inspection and visit

See **COMPLAINTS, AUDITING AND REVIEWS - Review of Persons in care** for records relating to in-care reviews resulting from an inspection or visit

See Functional Retention and Disposal Authority *Support and services for older people, people with a disability and their families and carers* (FA306) **SUPPORTED ACCOMMODATION** for legacy records relating to the official community visitor scheme

1.6.1	<p>Records of inspections and visits to correctional institutions and detention facilities by Ombudsman personnel. Records include:</p> <ul style="list-style-type: none"> • reports • interview transcripts • liaison with agency representatives concerning matters raised during the inspection or visit 	Required as State archives
1.6.2	Records relating to arrangements and rosters for visits or inspections by Ombudsman personnel	Retain minimum of 10 years after action completed, then destroy

⁵ Entries 1.6.3 & 1.6.4 removed. See FA306 for legacy records of official community visitor scheme & GA28 STRATEGIC MANAGEMENT – Planning for planning for visits.

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COMPLAINTS, AUDITING AND REVIEWS - Legislative Reviews

1.7.0 Legislative Reviews

The activities associated with reporting on reviewing the implementation and application of legislative powers conferred on other government agencies.

1.7.1	Records relating to the development and review of reports to Parliament, the Minister and other government agencies documenting findings and outcomes of legislative reviews conducted by the Ombudsman. Includes final reports. ⁶	Required as State archives
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1.8.0 Policies & Procedures

Entries 1.8.1 and 1.8.2 covering policies and procedures supporting the conduct of audits, reviews or complaint handling processes superseded by entry 5.0.1.

1.9.0 Review of Deaths

The activities associated with systemic reviews of deaths of children at risk of harm, children in care or other persons in care as defined under legislation, e.g. the *Community Services Complaints, Reviews and Monitoring Act 1993*).

1.9.1	Records relating to inquiries and reports, including assessments and reviews, concerning the deaths of persons. Records include: <ul style="list-style-type: none">• death notifications and certificates• assessment, analysis and review documentation• reports• documentation from external agencies about deceased persons including registers of death.⁷	Required as State archives
1.9.2	Records relating to the routine administrative correspondence with external agencies relating to death reviews.	Retain minimum of 5 years after action completed, then destroy

⁶ February 2020 Scope of records required as State archives expanded to include developmental records and entry 1.7.2 removed.

⁷ February 2020 registers of death moved from entry 1.9.3 to entry 1.9.1 and entry 1.9.3 removed.

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COMPLAINTS, AUDITING AND REVIEWS - Review of Persons in care

1.10.0 Review of Persons in care

The activities associated with reviewing the situation of a child, young person or person with a disability or a group of such persons in care.

See **COMPLAINTS, AUDITING AND REVIEWS - Review of Deaths** for the register of deaths of certain children and persons with a disability in full-time residential care,

1.10.1	Records relating to reviews (individual or group) of people in care. Includes conduct of the review and preparation of both preliminary reports and final reports to the Minister. Also includes monitoring the implementation of review recommendations.	Required as State archives
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COMPLAINTS, AUDITING AND REVIEWS - Review of Persons in care

2.0.0 CONSULTANCY SERVICES⁸

The function of competing for and/or undertaking external consulting services. Includes the provision of services on a fees basis.

See General Retention and Disposal Authority *Higher & further education and research* **COMMERCIAL ACTIVITIES AND SERVICES** 6.0.0 for records relating to consultancy services.

⁸ February 2020 Entries under 2.0.0 removed

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COMPLAINTS, AUDITING AND REVIEWS - Review of Persons in care

3.0.0 EDUCATION & TRAINING⁹

The function of educating and training government agencies, non-government service providers, private organisations and individuals.

See General Retention and Disposal Authority *Higher & further education and research* **TEACHING - Course delivery** 2.3.1 for the development and delivery of education.

See General Retention and Disposal Authority *Administrative records* **COMMUNITY RELATIONS - Enquiries** for records relating to enquiries about training.

See General Retention and Disposal Authority *Administrative records* **COMMUNITY RELATIONS - Customer service** for bookings

⁹ February 2020 entries under 3.0.0 removed

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INTELLIGENCE - Analysis

4.0.0 INTELLIGENCE

The function of identifying, collecting, analysing, researching and value-adding to information derived from the complaints, reviews, visits and other business processes to support the Ombudsman's oversight and monitoring responsibilities.

4.1.0 Analysis¹⁰

The activities associated with the detailed examination of complaints, complaint histories, policy and procedural impacts on issues, other documentation such as statistics, research etc. to assist the identification of trends or issues potentially requiring further review or investigation.

See **COMPLAINTS, AUDITING AND REVIEWS - Agency Auditing & Systems Review** for intelligence analysis records which lead to further review and assessment in relation to the performance of an external agency or system

See **COMPLAINTS, AUDITING AND REVIEWS - Complaint Cases** for intelligence analysis records which lead to further investigation relating to complaints and allegations about an individual, external agency or system

4.1.1	Records relating to detailed analysis of individuals, external agencies, regions, locations and issues of interest or concern, in order to gather information to support the intelligence function. Records include: <ul style="list-style-type: none">• intelligence checklists• research and background material• lists of relevant cases or issues• risk assessments• trend analysis• interview transcripts• statistics.	Retain minimum of 10 years after action completed, then destroy
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¹⁰ February 2020 entries 4.2.1 and 4.2.2 covering policies and procedures supporting the intelligence function moved to 5.0.1

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POLICIES & PROCEDURES

5.0.0 POLICIES & PROCEDURES¹¹

The activity of developing rules and standard methods of operation.

5.0.1	Records relating to the development and review of policies and procedures for the conduct of audits, reviews, complaint handling, and the intelligence function. Includes final versions, research, summaries of consultation with stakeholders etc ¹²	Required as State archives
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¹¹ February 2020 Entry 5.1.1 covering appeals in relating to the witness protection program and child protection orders removed. See Functional Retention and Disposal Authority *Law enforcement misconduct prevention* (FA397).

¹² February 2020 scope of State archives class expanded to include developmental records (previously covered in 5.2.2)