

State Records Authority of New South Wales

Functional Retention and Disposal Authority: FA232

This authority covers records documenting the function of mental health care

Issued to Mental Health Review Tribunal

This functional 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 FA232

SR file no 04/0717

Scope

This functional retention and disposal authority covers records documenting the function of *mental health care*, in particular records relating to the conduct of the functional responsibilities of the Mental Review Health Tribunal and the Psychosurgery Review Board, from 1980 onwards.

Public office

Mental Health Review Tribunal

Approval date

	18/04/2007
David Roberts	Date
Director	
State Records Authority of New South Wales	

About 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 to the agency and its stakeholders 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 Retention and Disposal Authority – Imaged records*). 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 arrangements for records identified as State archives (ie with a Disposal action of 'Required as State archives'). The directions in this column are recommendations only and are *not* mandatory. The type of information may include directions on how long records should be retained in the office and how long they should be kept in off-site, off-line or secondary storage prior to their transfer as State archives. A recommendation to retain records in the agency for more than 25 years does not imply that a *still in use determination* (see Part 4, Section 28 of the State Records Act 1998) or that a distributed management agreement (see Part 4, Section 30 of the State Records Act 1998) has been approved by State Records. Advice on arrangements for managing and transferring State archives can be obtained from State Records.

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 the public office that inherits the new function should contact State Records to discuss use of any existing functional retention and disposal authority issued to a predecessor organisation.

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
PO Box 516 Kingswood NSW 2747
Telephone: (02) 8247 8627
Facsimile: (02) 8247 8626
E-mail: govrec@records.nsw.gov.au

Functional Retention and Disposal Authority Mental Health Review Tribunal

Authority no: FA232

Dates of coverage: 1986+

List of Functions and Activities covered

Function	Activity	Reference
CLIENT MANAGEMENT		1.0.0
	ADVICE	1.1.0
	HEARINGS	1.2.0
	POLICY AND PROCEDURES	1.3.0
	STATISTICS	1.4.0
LEGACY RECORDS OF THE PSYCHOSURGERY REVIEW BOARD		2.0.0

Functional Retention and Disposal Authority Mental Health Review Tribunal

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No	Function/Activity	Description	Disposal Action	Custody*
1.0.0	CLIENT MANAGEMENT	The function of managing all aspects of the Tribunal's interaction with clients. Includes the conduct of reviews and hearings, making orders, policy and procedures and keeping statistics and other client information.		
1.1.0	Advice	The activities associated with furnishing information regarding the Mental Health Act 1990 and associated procedures to a range of persons and bodies including government and non-government agencies, doctors, lawyers, members of the public and patients themselves.		
1.1.1		Final, approved versions of information prepared periodically to clarify or interpret different parts of the legislation and explain the procedures relating to it, eg procedural notes and kits (eg Civil Hearing Kits).	Required as State archives	Transfer one copy to State Records when advice has been published.
1.1.2		Records relating to the development or review of information prepared periodically to clarify or interpret different parts of the legislation and explain the procedures relating to it, eg procedural notes or kits (eg Civil Hearing Kits). Records include: -background research -records relating to the outcomes of consultation with stakeholders -draft versions of procedural notes containing significant	Retain minimum of 5 years after action completed, then destroy	

* SEE *HOW TO USE THE FUNCTIONAL RETENTION AND DISPOSAL AUTHORITY*

Mental Health Review Tribunal

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No	Function/Activity	Description	Disposal Action	Custody*
		changes/alterations or formally circulated for comment.		
1.2.0	Hearings	The activity of conducting reviews, appeals, hearings or making determinations for people detained under the Mental Health Act 1990 in psychiatric hospitals or the criminal justice system or who are living in the community but subject to an order under the Mental Health Act. Includes supporting orders made resulting from Tribunal decisions. Also includes orders made under the Protected Estates Act 1983 to appoint a financial manager for people detained in psychiatric hospitals.		
1.2.1		Records relating to the personal details and reviews or hearings of civil patients, 1990+. Records include: -correspondence and file notes relating to the client -records of applications made to the Tribunal for that client -details of the panels, legal representatives, professional and other witnesses present at each review -details of the patient's psychiatric history in the form of medical or other professional reports, and -signed Tribunal determinations made at each hearing.	Retain a minimum of 20 years after last hearing, then destroy	Retain in agency, then transfer to GRR after a minimum of 2 years of inactivity unless otherwise determined by the Registrar.
1.2.2		Records relating to the personal details and reviews of forensic patients, 1986+. Records include:	Required as State archives	Retain in agency, then transfer to GRR after a

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Mental Health Review Tribunal

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No	Function/Activity	Description	Disposal Action	Custody*
		<ul style="list-style-type: none"> -correspondence relating to that client -records of Tribunal panels, legal representative, professional and other witnesses present at each review -details of the patient's psychiatric history and criminal record in medical or other professional reports -recommendations/determinations by the Tribunal and referral to the Court or approval/decline by Minister. 		<p>minimum of 2 years of inactivity unless otherwise determined by the Registrar.</p> <p>Retain at GRR for 25 years, then transfer to State archives.</p>
1.2.3		Audio recordings of civil and forensic hearings, 1990+ and Monitor Records Sheets for recordings, 1990-c.2000.	Retain a minimum of 1 year after date of hearing, then destroy	Retain in agency until recording is erased, then destroy.
1.2.4		Computerised database known as the Client Management System (CMS), 1990+ that records all information about clients, hearings, tribunal members, Form 19s.	Required as State archives	Retain in agency, migrating data as necessary.
1.3.0	Policy and Procedures	The activities associated with developing and establishing decisions, directions, precedents and procedures for the operation of the Tribunal and management of its core functions.		
1.3.1		Final, approved versions of policies and procedures relating to the care and treatment of clients and the conduct of Tribunal processes, e.g. policy relating to forensic patients, medications in psychiatric institutions, community counselling orders and community treatment orders, mental	Required as State archives	Retain in agency until ceases to be of administrative use, then transfer to

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No	Function/Activity	Description	Disposal Action	Custody*
		hospital assaults etc.		State Records.
1.3.2		<p>Records relating to the development of policies and procedures for the care and treatment of clients and the conduct of Tribunal processes. Records include:</p> <ul style="list-style-type: none"> -policy proposals -background research -records of consultations or meetings -draft versions of policies containing significant changes/alterations or formally circulated for comment -reports analysing issues and the outcomes of consultation with stakeholders etc. 	Retain minimum of 5 years after action completed, then destroy	
1.4.0	Statistics	<p>The activity of collecting, analysing and reporting on statistical information about involuntary referrals and magistrates hearings under the Mental Health Act 1990.</p> <p><i>See General Retention and Disposal Authority – Administrative records, GOVERNMENT RELATIONS – REPORTING for records relating to reporting and providing statistics to the Minister.</i></p>		
1.4.1		<p>Forms completed on a weekly basis by all gazetted hospitals or units and forwarded to the Tribunal for collation and reporting.</p> <p>Note: These are currently known as Forms 19A and 19B</p>	Retain a minimum of 2 years after date of return then destroy	Retain in agency until disposal

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No	Function/Activity	Description	Disposal Action	Custody*
		(formerly form 29) and date from 1990.		
2.0.0	Legacy records of the Psychosurgery Review Board	Records relating to the functions of the Psychosurgery Review Board, an independent quasi-judicial statutory body established under s.152 of the Mental Health Act 1990 to examine and give consent to applications for the performance of psychosurgery. These records were inherited by the Mental Health Review Tribunal.		
2.1.1		Psychosurgery Review Board Patient Files 1986-c.2000. These files contain clinical details of psychosurgery patients.	Required as State archives	Maintain in GRR for 10 years, then transfer to State Records.
2.1.2		Audio recordings of the Psychosurgery Review Board and Monitor Records Sheets for recordings, 1986-c.2000.	Retain a minimum of 6 year after action completed, then destroy	

* SEE *HOW TO USE THE FUNCTIONAL RETENTION AND DISPOSAL AUTHORITY*