

State Records Authority of New South Wales

Functional Retention and Disposal Authority: FA269

This authority covers case records, control records and judgments

Issued to Supreme Court of New South Wales

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 FA269

SR file no 04/0366

Scope

This functional retention and disposal authority covers case records of the Court of Appeal, the Court of Criminal Appeal, the Full Court, and the Common Law and Equity divisions. It also covers control records and judgments.

Public office

Supreme Court of New South Wales

Approval date

Alan Ventress
Director
State Records Authority of New South Wales

4/12/2008
Date

About the Functional Retention and Disposal Authority

Purpose of the authority

The purpose of this functional 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 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.

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. The State Records Authority ('State Records') reviews and approves organisations' retention and disposal authorities under the State Records Act.

This authority is the product of an appraisal process conducted in accordance with State Records' *Standard on the appraisal and disposal of State records*. 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.

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. One of State Records' 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 and of public offices in undertaking appraisal processes and disposal activities.

Implementing 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 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. 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 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 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 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 Records 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 Records regarding the management of State archives.

Transferring records identified as State archives and no longer in use for official purposes to State Records' control 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, 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.

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 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.

Custody

The custody column in the functional retention and disposal authority is designed to assist public offices in identifying storage requirements 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 organisation 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 approved for use by 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 should be made and approved.

Contact Information

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Functional Retention and Disposal Authority
Case records, control records and judgments (Supreme Court of New South Wales)

Authority no: FA269

Dates of coverage: Various

List of Functions and Activities covered
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Function	Activity	Reference
APPEAL CASES		1.0.0
	Court of Appeal cases, c.1966+	1.1.0
	Court of Criminal Appeal cases, c. 1912+	1.2.0
	Full Court cases, c.1930-1965	1.3.0
COMMON LAW		2.0.0
	Administrative law cases, c.1973+	2.1.0
	Civil cases	2.2.0
	Civil cases, Pre-1929	2.3.0
	Civil cases, 1929+	2.4.0
	Civil cases, 1929+	2.5.0
EQUITY DIVISION		3.0.0
	Admiralty cases, c.1962+	3.1.0
	Commercial cases, c.1987+	3.2.0
	Equity cases, c.1914+	3.3.0
	Protective cases, c.1960+	3.4.0

Functional Retention and Disposal Authority
Case records, control records and judgments (Supreme Court of New South Wales)

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List of Functions and Activities covered

Function	Activity	Reference
	Technology and construction cases, c.1980+	3.5.0
REGISTRY		4.0.0
	Control records, 1823+	4.1.0
	Judgments, 1823+	4.2.0

Functional Retention and Disposal Authority
Case records, control records and judgments (Supreme Court of New South Wales)

Authority no: FA269

Dates of coverage: Various

No	Function/Activity	Description	Disposal Action	Custody*
1.0.0	APPEAL CASES			
1.1.0	Court of Appeal cases, c.1966+	The Court of Appeal is responsible for hearing appeals in civil matters against the decisions of the judicial officers of the Supreme Court, other courts, commissions and tribunals within the State, as prescribed in the <i>Supreme Court Act 1970</i> .		
1.1.1		Records relating to the commencement and hearing of Court of Appeal cases. Includes documents filed by the parties, such as the notice of appeal, notices of cross appeal, affidavits, etc., and documents generated by the Court in relation to the case, such as judgments and signed orders. Also includes records that are copies of first instance Supreme Court and lower court files and exhibits, such as appeal books.	Required as State archives	Transfer 10 years after finalisation of matter
1.2.0	Court of Criminal Appeal cases, c. 1912+	The Court of Criminal Appeal hears appeals from criminal proceedings in the Supreme Court, the Industrial Court, the Land and Environment Court, the District Court and the Drug Court. Appeals may challenge convictions and sentences imposed upon indictment or in the trial court's summary jurisdiction, or interlocutory orders made by the trial court. Appeals from committal proceedings in the Local Court may also be heard in certain circumstances.		
1.2.1		Records relating to the commencement and hearing of Court of Criminal Appeal cases. Includes documents filed by the parties, and documents generated by the Court in relation to the case, such as judgments and signed orders. Also includes records that are copies of first instance Supreme Court and lower court files and exhibits, such as appeal	Required as State archives	Transfer 10 years after finalisation of matter

* see *About the functional retention and disposal authority*

Case records, control records and judgments

Authority no: FA269

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No	Function/Activity	Description	Disposal Action	Custody*
		books.		
1.3.0	Full Court cases, c.1930-1965	Primarily an appellate body, the Full Court also handled a range of other matters, including applications for extensions of time to bring actions under a variety of acts, the service of documents and other processes performed on behalf of foreign courts, applications under s. 22 of the <i>Married Women's Property Act</i> , applications under the <i>Legal Practitioners Act</i> , applications for bail, etc. From 1966, the Full Court's functions were carried on by the Court of Appeal.		
1.3.1		Records relating to the commencement and hearing of Full Court matters (term papers). Includes documents filed by the parties, such as notices of appeal, summonses, notices of cross appeal, affidavits, etc., and documents generated by the Court in relation to the case, such as judgments and signed orders. Includes files labelled with 'term' numbers.	Required as State archives	Transfer 10 years after finalisation of matter
2.0.0	COMMON LAW	<p>The Common Law Division handles civil, criminal and administrative law matters.</p> <p><i>See Functional Retention and Disposal Authority - Supreme Court of New South Wales – Case records relating to cost assessments, matrimonial causes, adoptions and criminal matters and Judges' notebooks (DA178) for records relating to criminal matters.</i></p> <p><i>See Functional Retention and Disposal Authority - Supreme Court of New South Wales - Bail applications (DA208) for records relating to bail applications.</i></p>		

* see *About the functional retention and disposal authority*

Case records, control records and judgments

Authority no: FA269

Dates of coverage: Various

No	Function/Activity	Description	Disposal Action	Custody*
2.1.0	Administrative law cases, c.1973+	The Administrative Law List reviews decisions of government, public officials and administrative tribunals such as the Fair Trading Tribunal and the Residential Tribunal.		
2.1.1		Records relating to the commencement and hearing of administrative law matters. Includes 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.	Required as State archives	Transfer 10 years after finalisation of matter
2.2.0	Civil cases	The civil business of the Common Law Division comprises personal injury and contractual actions, claims for damages, claims of professional negligence, claims relating to the possession of land, and claims of defamation. See APPEAL CASES - Full Court cases, c.1930-1965 for matters commenced and heard before the Full Court.		
2.2.1	Civil cases, Pre-1929	Records relating to the commencement and hearing of civil matters. Includes 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.	Required as State archives	Transfer 10 years after finalisation of matter
2.2.2	Civil cases, 1929+	A sample of records relating to the commencement and hearing of civil matters selected in accordance with an implementation plan agreed between State Records NSW and the Court. The sample will comprise a representative, annual sample of a fixed number of matters and additional cases selected as being particularly notable either for their contribution in developing the law, their factual complexity	Required as State archives	Transfer 10 years after finalisation of matter

* see *About the functional retention and disposal authority*

Case records, control records and judgments

Authority no: FA269

Dates of coverage: Various

No	Function/Activity	Description	Disposal Action	Custody*
		<p>or the level of public interest they generated.</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>		
2.2.4	Civil cases, 1929+	Records relating to the commencement and hearing of civil matters that are not included in the sample. Includes 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.	Retain 15 years after matter finalised, then destroy	
3.0.0	EQUITY DIVISION	<p>The Equity Division exercises the traditional Equity jurisdiction dealing with claims for remedies other than damages and recovery of debts, including contractual claims, rights of property, and disputes relating to partnerships, trusts, and deceased estates. The Division hears applications brought under numerous statutes, including the <i>Corporations Act 2001 (Commonwealth)</i>, the <i>Family Provision Act 1982</i>, and the <i>Property (Relationships) Act 1984</i>. The Division also handles a diverse range of applications in the areas of Admiralty law, Commercial law, Technology and Construction, Probate and the Court's Adoption and Protective jurisdictions.</p> <p><i>See Functional Retention and Disposal Authority - Supreme Court of New South Wales - Registers, process books, probate packets and adoption files (DA43) for records relating to probate matters (including records of the former Ecclesiastical List) and to adoption matters.</i></p>		

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Case records, control records and judgments

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Dates of coverage: Various

No	Function/Activity	Description	Disposal Action	Custody*
3.1.0	Admiralty cases, c.1962+	The Admiralty List deals with maritime and shipping disputes.		
3.1.1		<p>A sample of records relating to the commencement and hearing of Admiralty matters selected in accordance with an implementation plan agreed between State Records NSW and the Court. The sample will comprise a representative, annual sample of a fixed number of matters and additional cases selected as being particularly notable either for their contribution in developing the law, their factual complexity or the level of public interest they generated.</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>	Required as State archives	
3.1.2		Records relating to the commencement and hearing of Admiralty matters that are not included in the sample. Includes 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.	Retain 15 years after matter finalised, then destroy	
3.2.0	Commercial cases, c.1987+	The Commercial List is concerned with cases arising out of transactions in trade or commerce.		
3.2.1		A sample of records relating to the commencement and hearing of commercial matters selected in accordance with an implementation plan agreed between State Records NSW and the Court. The sample will comprise a representative, annual sample of a fixed number of matters and additional cases selected as being particularly notable either for their	Required as State archives	

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Case records, control records and judgments

Authority no: FA269

Dates of coverage: Various

No	Function/Activity	Description	Disposal Action	Custody*
		<p>contribution in developing the law, their factual complexity or the level of public interest they generated.</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>		
3.2.2		<p>Records relating to the commencement and hearing of commercial matters that are not included in the sample. Includes 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>Retain 15 years after matter finalised, then destroy</p>	
3.3.0	<p>Equity cases, c.1914+</p>			
3.3.1		<p>A sample of records relating to the commencement and hearing of matters in the general lists of the Equity Division selected in accordance with an implementation plan agreed between State Records NSW and the Court. The sample will comprise a representative, annual sample of a fixed number of matters and additional cases selected as being particularly notable either for their contribution in developing the law, their factual complexity or the level of public interest they generated.</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>Required as State archives</p>	
3.3.2		<p>Records relating to matters commenced and heard in the</p>	<p>Retain 15 years</p>	

* see *About the functional retention and disposal authority*

Case records, control records and judgments

Authority no: FA269

Dates of coverage: Various

No	Function/Activity	Description	Disposal Action	Custody*
		general lists of the Equity Division that are not included in the sample. Includes 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.	after matter finalised, then destroy	
3.4.0	Protective cases, c.1960+	The work of this List is to ensure that the affairs of people deemed incapable of looking after their property, or themselves, are properly managed. The List also deals with appeals from the Guardianship Tribunal of NSW, along with applications in chambers by the Protective Commissioner for advice regarding the administration of estates. The Court also considers applications regarding missing persons' estates and, in certain circumstances, may order that their estate be managed under the <i>Protected Estates Act 1983</i> .		
3.4.1		Records relating to the commencement and hearing of protective matters. Includes documents filed by the parties, such as the originating process, affidavits concerning the fitness of managers, medical affidavits concerning the protected person, etc., and documents generated by the Court in relation to the case, such as judgments and signed orders.	Required as State archives	Transfer 10 years after finalisation of matter
3.5.0	Technology and construction cases, c.1980+	This list deals with disputes arising out of building or engineering contracts. It also deals with matters involving complex technological issues.		
3.5.1		A sample of records relating to the commencement and hearing of technology and construction matters selected in accordance with an implementation plan agreed between State Records NSW and the Court. The sample will comprise a representative, annual sample of a fixed number of	Required as State archives	Transfer 10 years after finalisation of matter

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Case records, control records and judgments

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Dates of coverage: Various

No	Function/Activity	Description	Disposal Action	Custody*
		<p>matters and additional cases selected as being particularly notable either for their contribution in developing the law, their factual complexity or the level of public interest they generated.</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>		
3.5.2		Records relating to the commencement and hearing of technology and construction matters that are not included in the sample. Includes 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.	Retain 15 years after matter finalised, then destroy	
4.0.0	REGISTRY			
4.1.0	Control records, 1823+	<i>See Functional Retention and Disposal Authority - Supreme Court of New South Wales - Registers, process books, probate packets and adoption files (DA43) for control records previously required as State archives.</i>		
4.1.0		Summary records of matters commenced and heard before the Supreme Court. Records include indexes, registers and process books. Includes summary information maintained in Courtnet.	Required as State archives	Transfer after administrative and reference use ceases
4.2.0	Judgments, 1823+			
4.2.1		Supreme Court judgments and decisions maintained separately from the case papers to which they relate.	Required as State archives	Transfer after administrative and

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No	Function/Activity	Description	Disposal Action	Custody*
		Includes judgment rolls, judgment papers, and judgments and decisions stored in digital formats.		reference use ceases

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