

State Records Authority of New South Wales

Functional Retention and Disposal Authority: FA305

This authority covers records documenting the function of improving access to justice and the fairness and equity of the justice system

Issued to Law and Justice Foundation of NSW

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 FA305

SR file no 10/0082

Scope

This functional retention and disposal authority covers records documenting the function of improving access to justice and the fairness and equity of the justice system from c.1990 onwards.

Public office

Law and Justice Foundation of NSW

Approval date

Alan Ventress
Director

State Records Authority of New South Wales

27/04/2011

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 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' 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. 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 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, 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 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 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 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
Improving access to justice and the fairness and equity of the justice system (Law and Justice Foundation of NSW)

Authority number: FA305

Dates of coverage: c.1990+

No	Function/Activity	Description	Disposal Action	Custody*
1.0.0	ACCESS TO JUSTICE	The function of advancing the fairness and equity of the justice system, and of improving access to justice.		
1.1.0	Research	The activity of conducting research into the legal and access to justice needs of the community, the law, the justice system, alternative dispute resolution and the legal profession. Includes research conducted by the organisation and research conducted in partnership with other organisations.		
1.1.1		Records documenting the conduct and outcomes of research. Records include: <ul style="list-style-type: none"> • project proposals and agreements with project partners or funding bodies • project plans, outlines and timetables • correspondence • records of internal and external reviews • final and published reports and issues papers. 	Required as State archives	Retain minimum of 7 years after action completed, then transfer
1.1.2		Records documenting the gathering of information and data for use in research. Records include questionnaires, surveys, interview transcriptions and statistics.	Retain in accordance with conditions specified in project agreements	

* see *About the functional retention and disposal authority*

Improving access to justice and the fairness and equity of the justice system

Authority number: FA305

Dates of coverage: c.1990+

No	Function/Activity	Description	Disposal Action	Custody*
<i>ACCESS TO JUSTICE - Research</i>				
			If agreements do not specify conditions for retention of data, retain minimum of 7 years after report finalised/published, then destroy	
1.1.3		Records documenting enquiries from stakeholders about access to justice and related reforms and initiatives. Records include requests for statistics.	Retain minimum of 7 years after action completed, then destroy	
1.1.4		Records documenting internal policies and procedures for the collection, management, research and use of data. Includes: <ul style="list-style-type: none"> • research guidelines • protocols for the Data Digest project. 	Retain minimum of 7 years after superseded, then destroy	
1.2.0	Grants	The activity of administering the provision of financial support to projects aimed at improving access to justice. See General Retention and Disposal Authority <i>Administrative records</i> Financial management for records relating to financial transactions.		
1.2.1		Records documenting the development and review of information resources and guidance for applicants, including	Retain minimum of 7 years after action completed, then	

* see *About the functional retention and disposal authority*

Improving access to justice and the fairness and equity of the justice system

Authority number: FA305

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No	Function/Activity	Description	Disposal Action	Custody*
<i>ACCESS TO JUSTICE - Grants</i>				
		grant application support materials, guides and seminars.	destroy	
1.2.2		<p>Records documenting the assessment of applications for financial support and the monitoring of grant recipients. Records include:</p> <ul style="list-style-type: none"> • applications and supporting documentation • correspondence with applicants • minutes of internal assessment meetings • correspondence with external reviewers • correspondence with grant recipients, including grant agreements and approvals • project outlines, progress reports, final reports and project evaluation reports • copies of final products. 	Required as State archives	Retain minimum of 7 years after action completed, then transfer
1.2.3		Records documenting internal policies and procedures for administering the provision of financial support. Includes grant criteria and eligibility requirements.	Retain minimum of 7 years after superseded, then destroy	
1.3.0	Information and education	The activity of educating stakeholders about access to justice and related reforms and initiatives.		
1.3.1		Records documenting the distribution of information, updates etc about access to justice and related reforms and	Retain until administrative or	

* see *About the functional retention and disposal authority*

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No	Function/Activity	Description	Disposal Action	Custody*
<i>ACCESS TO JUSTICE - Awards</i>				
		initiatives. Includes: <ul style="list-style-type: none"> • factsheets on publishing plain language resources • bulletins regarding current initiatives • newsletters alerting readers to recently-published research and resources in the sector • lists of resources available regarding writing in plain language, e.g. guides, writers, editors and training provided by other organisations. 	reference use ceases, then destroy	
1.4.0	Awards	The activity of managing an awards program to recognise the contributions people make towards improving access to justice in NSW.		
1.4.1		Records documenting the provision of advice regarding the awards program. Records include: <ul style="list-style-type: none"> • published information for applicants • records documenting enquiries regarding awards, e.g. file notes and correspondence. 	Retain until administrative or reference use ceases, then destroy	
1.4.2		Records documenting the receipt and assessment of nominations for awards. Records include: <ul style="list-style-type: none"> • nomination forms • correspondence with referees 	Required as State archives	Retain minimum of 7 years after action completed, then transfer

* see *About the functional retention and disposal authority*

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No	Function/Activity	Description	Disposal Action	Custody*
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ACCESS TO JUSTICE - Awards

		<ul style="list-style-type: none"> • correspondence with successful nominees. 		
1.4.3		Records documenting internal policies and procedures for administering the awards program. Includes: <ul style="list-style-type: none"> • selection criteria for awards. 	Retain minimum of 7 years after superseded, then destroy	

* see *About the functional retention and disposal authority*