

State Records Authority of New South Wales

Functional Retention and Disposal Authority: FA352

This authority covers records documenting the function of investigation of legal practitioners

Issued to Office of the Legal Services Commissioner

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.

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Functional Retention and Disposal Authority

Authority no FA352

SR file no 09/0379

Scope This functional retention and disposal authority covers records documenting the function of investigation of legal practitioners.

Public office Office of the Legal Services Commissioner

Approval date

Geoff Hinchcliffe
Director
State Records Authority of New South Wales

24/06/2014
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.

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

State Records
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Kingswood NSW 2747
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E-mail: govrec@records.nsw.gov.au

Functional Retention and Disposal Authority
Investigation of legal practitioners (Office of the Legal Services Commissioner)

Authority number: FA352

Dates of coverage: Open

List of Functions and Activities covered

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| No | Function/Activity | Description | Disposal Action |
|-------|--|---|--|
| 1.0.0 | LEGAL SERVICES REGULATION | The function of regulating legal practitioners to resolve disputes, investigate complaints regarding ethical and professional conduct, and monitor compliance with legal profession rules, standards and legislation. | |
| 1.1.0 | Audits and support | The activity associated with monitoring legal practices. | |
| 1.1.1 | | Documentation related to contact with, visits to and inspection of law firms and legal practices to ensure compliance with legal profession rules, standards and legislation. Includes self assessments conducted by practices and the provision of support in complying with legislative requirements. | Retain minimum of 10 years after cessation of practice or minimum of 2 years after death of legal practitioner, whichever is shorter, then destroy |
| 1.2.0 | Community education and awareness | The activities relating to the provision of information for legal practitioners, the community and individuals. See LEGAL SERVICES REGULATION - Research for final reports of research conducted to inform practitioners, such as Practice Guidelines. | |
| 1.2.1 | | Records relating to the provision of information to assist legal practitioners, students, consumers of legal services and broader community in understanding the role and work of the organisation, complaints processes and other consumer issues. Includes the development and delivery of seminars and the production of fact sheets, brochures, newsletters, etc. | Retain minimum of 7 years after action completed, then destroy |
| 1.3.0 | Complaints | The activities relating to the management of complaints about alleged misconduct by legal practitioners. Includes reviews of determinations. | |

Investigation of legal practitioners

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| No | Function/Activity | Description | Disposal Action |
|---|------------------------------|--|--|
| <i>LEGAL SERVICES REGULATION - Complaints</i> | | | |
| 1.3.1 | | Summary records of disciplinary actions involving legal practitioners that are handled by the Commission, the Law Society or the Bar Association. Includes practitioner identification details, findings and determinations. | Required as State archives |
| 1.3.2 | | Records relating to the management of formal complaints about legal practitioners. Records include complaint, assessment notes, correspondence, investigation reports, results and analysis, reports from the Law Society or Bar Association, decisions by Administrative Decisions Tribunal, internal memoranda, requests and applications for review, investigation, copies of original report, reviewer recommendation and summary complaint records. | Retain minimum of 5 years after acknowledged death or retirement of legal practitioner, then destroy |
| 1.4.0 | Enquiries | Activities associated with the management of enquiries. Includes the provision of information, advice, assistance to resolve complaints. See LEGAL SERVICES REGULATION - Complaints for records relating to the management of formal written complaints. | |
| 1.4.1 | | Records relating to the management of enquiries and complaints received by the inquiry line. Information recorded includes nature of complaint, action taken and resolution. | Retain minimum of 10 years after action completed, then destroy |
| 1.5.0 | Policy and procedures | Activities associated with developing and establishing decisions, directions and precedents which act as a reference for future decision making, as the basis from which the organisation's operating procedures are determined. | |
| 1.5.1 | | Records relating to the development and review of policies and procedures for managing complaints, investigations & implementation of decisions. Includes manuals, handbooks, and directives. | Required as State archives |
| 1.6.0 | Research | The activities relating to the management of research projects. | |

Investigation of legal practitioners

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| No | Function/Activity | Description | Disposal Action |
|---|-------------------|---|--|
| <i>LEGAL SERVICES REGULATION - Research</i> | | | |
| 1.6.1 | | Final reports of original research into the legal profession and related regulatory issues conducted or commissioned by the organisation. Includes reports of surveys conducted and practice guidelines developed to assist the legal profession e.g. Practice Guidelines on Outsourcing and Cloud Computing. | Required as State archives |
| 1.6.2 | | Records relating to the management of research projects undertaken or commissioned by the organisation and the provision of operational support to external research projects. Includes the appointment of researchers, conduct of surveys, correspondence, notes of meetings, agreements, etc. | Retain minimum of 7 years after action completed, then destroy |