

State Archives and Records Authority of New South Wales

Functional Retention and Disposal Authority: FA389

This authority covers records documenting the function of criminal prosecutions

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

State Archives and Records Authority of New South Wales
Functional Retention and Disposal Authority

Authority no FA389

SR file no 14/0058

Scope This functional retention and disposal authority covers records documenting the function of criminal prosecutions.

Public office Office of Director of Public Prosecutions

Approval date

	23/10/2017
Geoff Hinchcliffe Executive Director State Archives and Records Authority of New South Wales	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 Archives and Records Authority (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 the assessment or 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 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 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 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 Archives and 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

State Archives and Records NSW
PO Box 516
Kingswood NSW 2747
Telephone: (02) 9673 1788 E-mail: govrec@records.nsw.gov.au

Functional Retention and Disposal Authority Criminal prosecutions

Authority number: FA389

Dates of coverage: Open

List of Functions and Activities covered

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No.	Description of records	Disposal action
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1.0.0 LAW REFORM

The function of participating in and responding to law reform proposals or debates for changes to legislation. Includes making submissions to inquiring bodies.

See General Retention and Disposal Authority *Administrative records* **COMMITTEES** for records relating to committees and forums.

See General Retention and Disposal Authority *Administrative records* **GOVERNMENT RELATIONS - Advice** for records relating to the provision of advice to Cabinet, the portfolio Minister and other government organisations concerning substantive aspects of the organisation's policies and procedures, functions, obligations, legislation or liabilities.

See General Retention and Disposal Authority *Administrative records* **GOVERNMENT RELATIONS - Legislation** for records relating to the preparation and passage of legislation through Parliament.

See General Retention and Disposal Authority *Administrative records* **GOVERNMENT RELATIONS - Reporting** for records relating to annual and other periodic reports submitted to government organisations.

1.1.0 Research

The activities involved in investigating or enquiring into matters or issues with respect to potential or proposed reform of the law.

See **LAW REFORM - Submissions** for reports and background research that supports submissions to law reform agencies.

1.1.1	Reports consolidating the outcomes of research collected with respect to potential or proposed law reform matters.	Retain minimum of 10 years after action completed, then destroy
1.1.2	Research data collected or collated for law reform purposes, including literature searches and reviews, statistics, surveys of other jurisdictions and other raw data.	Retain until administrative or reference use ceases, then destroy

1.2.0 Submissions

The preparation and submission of a formal statement (eg report, statistics etc) supporting a case or opinion held by the organisation which is submitted to another organisation for the purpose of either gain or support.

See General Retention and Disposal Authority *Administrative records* **GOVERNMENT RELATIONS - Submissions** for records relating to submissions to Cabinet or the Minister concerning the core functions, obligations, liabilities, etc.

1.2.1	Records relating to submissions to law and justice reform agencies or other external bodies on matters relating to reform of the law. Records include final submissions and associated reports or analyses	Required as State archives
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LAW REFORM - Submissions

	supporting the submission.	
1.2.2	Copies of other organisations' submissions to external bodies which are commented upon or impact on operations.	Retain minimum of 5 years after action completed, then destroy

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LAW REFORM - Submissions

2.0.0 PROSECUTION SERVICES

The function of managing the ongoing legal case work of public prosecutions.

See **WITNESS ASSISTANCE SERVICES** for records relating to providing witness support services.

See General Retention and Disposal Authority *Administrative records* **COMMITTEES** for records relating to committees and forums.

See General Retention and Disposal Authority *Administrative records* **GOVERNMENT RELATIONS - Reporting** for records relating to annual and other periodic reports submitted to government organisations.

See General Retention and Disposal Authority *Administrative records* **GOVERNMENT RELATIONS - Representations** for records relating to responses to correspondence received from the Minister or Members of Parliament on behalf of their constituents.

See General Retention and Disposal Authority *Administrative records* **INFORMATION MANAGEMENT - Cases** for records relating to requests to access or alter information under relevant legislation, eg Freedom of Information (FOI), GIPAA, privacy or legislation specific to the organisation.

See General Retention and Disposal Authority *Administrative records* **INFORMATION MANAGEMENT - Control** for records relating to control mechanisms for recordkeeping and other business information systems.

See General Retention and Disposal Authority *Administrative records* **LEGAL SERVICES - Litigation** for records relating to the management of subpoenas and discovery orders where the organisation is not a party to the proceedings.

See General Retention and Disposal Authority *Administrative records* **STAFF DEVELOPMENT - Training** for records relating to professional development and training of the organisation's staff.

See General Retention and Disposal Authority *Administrative records* **STRATEGIC MANAGEMENT** for records relating to corporate planning and reporting activities and developing corporate policies.

See General Retention and Disposal Authority *Administrative records* **STRATEGIC MANAGEMENT - Authorisation** for records relating to delegations of authority of employees.

See General Retention and Disposal Authority *Administrative records* **STRATEGIC MANAGEMENT - Implementation** for records relating to the implementation and evaluation of programs, pilots and projects to support the prosecution services function.

2.1.0 Advice

The activities associated with offering opinions by or to the organisation as to an action or judgement. Includes the process of advising.

See General Retention and Disposal Authority *Administrative records* **GOVERNMENT RELATIONS - Advice** for records relating to the provision of advice to Cabinet, the portfolio Minister and other government organisations concerning substantive aspects of the organisation's policies and procedures, functions, obligations, legislation or liabilities.

See General Retention and Disposal Authority *Administrative records* **COMMUNITY RELATIONS - Enquiries & Public reaction** for records relating to routine advice and the handling of complaints from the community.

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PROSECUTION SERVICES - Advice

2.1.1	<p>Records relating to the decisions made in the course of prosecutions or advice given to or by the Director or Deputy Directors on matters that are of a serious nature or are precedent setting or of widespread public interest. Includes:</p> <ul style="list-style-type: none"> • discontinuance reports • special interest reports • correspondence (memos, email messages, notifications of decisions etc). <p>Note: This disposal class covers advice on matters of a serious nature including for example: murder, manslaughter, attempted murder and other special public interest matters, such as corruption committed by public officials.</p>	Required as State archives
2.1.2	<p>Records relating to the decisions made in the course of prosecutions or advice given to or by the Director or Deputy Directors on matters that are not precedent setting or of widespread public interest. Includes:</p> <ul style="list-style-type: none"> • discontinuance reports • correspondence (memos, email messages etc). <p>Note: This disposal class applies to advice on all other matters not covered in classes 2.1.1 or 2.1.3, and includes for example: assault, drug, fraud, robbery, sexual assault (adult), theft and traffic offences.</p>	Retain minimum of 50 years after matter registered or minimum of 7 years after action completed, whichever is longer, then destroy
2.1.3	<p>Records relating to the decisions made in the course of prosecutions or advice given to or by the Director or Deputy Directors on child sexual assault matters. Includes:</p> <ul style="list-style-type: none"> • discontinuance reports • notifications of decisions • correspondence (memos, email messages etc). 	Retain minimum of 99 years after date of birth of offender or minimum of 7 years after action completed, whichever is longer, then destroy

2.2.0 Cases

The activities associated with conducting criminal trials and associated appeals.

See **WITNESS ASSISTANCE SERVICES - Cases** for records relating to support services provided to victims and witnesses.

2.2.1	Records relating to criminal proceedings in the Supreme Court, Court of Criminal Appeal and High Court that are of a serious nature or are precedent setting or of widespread public interest. Includes:	Required as State archives
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No.	Description of records	Disposal action
<i>PROSECUTION SERVICES - Cases</i>		
	<ul style="list-style-type: none"> • case notes • copies of Court held materials such as transcripts and judgements • copies of evidentiary material • correspondence • court documents • submissions etc. <p>Note: This disposal class covers matters of a serious nature including for example: murder, manslaughter, attempted murder and other Special Interest matters.</p>	
2.2.2	<p>Records relating to criminal proceedings in the Local Court, Drug Court, District Court, Supreme Court, Court of Criminal Appeal and High Court that are not precedent setting or of widespread public interest. Includes:</p> <ul style="list-style-type: none"> • case notes • copies of Court held materials such as transcripts and judgements • copies of evidentiary material • correspondence • court documents • submissions etc. <p>Note: This disposal class applies to all other matters not covered in classes 2.2.1 or 2.2.3, and includes for example: assault, drug, fraud, robbery, sexual assault (adult), theft and traffic offences.</p>	<p>Retain minimum of 50 years after matter registered or minimum of 7 years after action completed, whichever is longer, then destroy</p>
2.2.3	<p>Records relating to criminal proceedings for child sexual assault offences. Includes:</p> <ul style="list-style-type: none"> • case notes • copies of Court held materials such as transcripts and judgements • copies of evidentiary material • correspondence • court documents • submissions etc. 	<p>Retain minimum of 99 years after date of birth of offender or minimum of 7 years after action completed, whichever is longer, then destroy</p>

2.3.0 Policies, Procedures and Guidelines

The activities associated with the development of directions or guidelines for carrying out processes or activities. Includes providing information services to internal legal practitioners.

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PROSECUTION SERVICES - Policies, Procedures and Guidelines

2.3.1	Final versions of standard operating policies, procedures and guidelines supporting the management or provision of prosecution services.	Required as State archives
2.3.2	Records relating to the development and implementation of standard operating policies, procedures and guidelines.	Retain minimum of 5 years after superseded, then destroy

2.4.0 Witness Informers

The activities associated with proposing and approving a person as a witness informer.

An informer is a person (not being a victim in the matter) who has given assistance to police or investigators as consequence of knowledge that has come into his or her possession through direct personal contact with an alleged offender; and is a co-offender, prisoner, civilian undercover operative, or a person bargaining such knowledge for advantage of himself or herself or another person.

2.4.1	Records documenting the inclusion of a person as a witness informer. Includes: <ul style="list-style-type: none">witness informer reportsinformer recommendationstatement of factswitness statementscriminal historyevaluations of the performance of witness informercorrespondence (eg email messages, memos, notification of decision on inclusion to the index or not, etc).	Retain minimum of 50 years after matter registered or minimum of 7 years after action completed, whichever is longer, then destroy
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WITNESS ASSISTANCE SERVICES - Cases

3.0.0 WITNESS ASSISTANCE SERVICES

The function of providing information, referral, assessment and case management for victims of crime and witnesses.

See **PROSECUTION SERVICES** for records relating to legal case work.

See **PROSECUTION SERVICES - Cases** for records relating to the conduct of criminal trials and associated appeals.

See General Retention and Disposal Authority *Administrative records* **COMMITTEES** for records relating to advisory, inter-agency, internal committees, etc.

See General Retention and Disposal Authority *Administrative records* **GOVERNMENT RELATIONS - Reporting** for records relating to annual and other periodic reports submitted to government organisations.

See General Retention and Disposal Authority *Administrative records* **STAFF DEVELOPMENT - Training** for records relating to professional development and training of the organisation's staff.

See General Retention and Disposal Authority *Administrative records* **STRATEGIC MANAGEMENT** for corporate planning and reporting activities and developing corporate policies.

3.1.0 Cases

The activities associated with providing witness support services.

See **PROSECUTION SERVICES - Cases** for records relating to the conduct of criminal trials and associated appeals

3.1.1	Records relating to the provision of witness support services. Includes: <ul style="list-style-type: none">the witness's name and date of birthcaregiver detailscontact detailsdate and type of charge against the suspecthealth information relevant to supporting the witnesscase notes. Also includes records of referrals to support providers and/or external agencies.	Retain minimum of 50 years after matter registered or minimum of 7 years after action completed, whichever is longer, then destroy
3.1.2	Records relating to a person receiving witness support services and who is a victim of child sexual assault. Includes: <ul style="list-style-type: none">the witness's name and date of birthcaregiver detailscontact details	Retain minimum of 99 years after date of birth of victim or minimum of 7 years after action completed, whichever is longer, then destroy

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WITNESS ASSISTANCE SERVICES - Policies, Procedures and Guidelines

	<ul style="list-style-type: none"> • date and type of charge against the suspect • health information relevant to supporting the witness • case notes. <p>Also includes records of referrals to support providers and/or external agencies.</p>	
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3.2.0 Policies, Procedures and Guidelines

The activities associated with the development of directions or guidelines for carrying out processes or activities.

3.2.1	Final versions of standard operating policies, procedures and guidelines that support the witness services function.	Required as State archives
3.2.2	Records relating to the development and implementation of standard operating policies, procedures and guidelines that support the witness services function.	Retain minimum of 5 years after superseded, then destroy

Information Resources

The preparation of information resources, eg brochures, toolkits etc, explaining the organisation's services and legal processes, as well as a person's rights on a range of legal topics.

See General Retention and Disposal Authority *Administrative records* **PUBLICATION - Production** for records relating to the design, layout, production and distribution of publications.

3.3.1	Master set of information resources (eg brochures, booklets, fact and information sheets, toolkits etc) developed to educate or inform victims or witnesses about legal processes and/or rights.	Required as State archives
3.3.2	Records relating to the development and review of published information resources relating to the witness assistance function.	Retain minimum of 5 years after action completed, then destroy

3.4.0 Training

The activities associated with the development of training materials and arrangements for training.

3.4.1	Final, approved versions of training materials for non-government and charity organisations on witness	Retain minimum of 7 years after
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No.	Description of records	Disposal action
<i>WITNESS ASSISTANCE SERVICES - Training</i>		
	support services and legal processes, as well as rights on a range of legal topics.	superseded, then destroy
3.4.2	Records relating to the development of training materials and administrative arrangements for training. Includes: <ul style="list-style-type: none">• training needs analysis• trainer manual, participant workbooks and handouts• lecture notes, presentations• applications and confirmation of attendance• venue bookings, equipment hire, catering arrangements.	Retain until administrative or reference use ceases, then destroy