



New South Wales

State Records Regulation 2005

under the

State Records Act 1998

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *State Records Act 1998*.

ANDREW REFSHAUGE, M.P.,
for Minister for the Arts

Explanatory note

This Regulation repeals and replaces the *State Records Regulation 1999* (which would otherwise be repealed on 1 September 2005 by section 10 (2) of the *Subordinate Legislation Act 1989*) and deals with additional matters arising from the amendment of the *State Records Act 1998* (**the Act**) by the *State Records Amendment Act 2005*, which is to commence on the same date as this Regulation.

This Regulation does the following:

- (a) it prescribes certain public offices as State collecting institutions (and so exempts the private records in the collections of those offices from the operation of the Act),
- (b) it excepts actions that are authorised, or required to be done, by or under certain provisions of other Acts from the operation of section 21 of the Act (which prohibits certain actions in relation to State records, such as abandoning or disposing of State records, taking or sending State records out of the State and damaging or altering State records),
- (c) it prescribes guidelines as to what constitutes normal administrative practice in a public office. (Section 21 of the Act provides, among other things, that anything done in accordance with such practice in a public office is not a contravention of that section.)

This Regulation is made under the *State Records Act 1998*, (as amended by the *State Records Amendment Act 2005*) including the definition of **State collecting institution** in section 3 (1), section 21 (2) (b), section 22 (3) and section 81 (the general regulation-making power).

This Regulation comprises or relates to matters of a machinery nature and matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

Contents

	Page
1 Name of Regulation	3
2 Commencement	3
3 Definition	3
4 Prescribed State collecting institutions	3
5 Exception from operation of section 21	3
6 Guidelines on what constitutes normal administrative practice	3
7 Repeal	3
Schedule 1 Prescribed State collecting institutions	4
Schedule 2 Provisions excepted from operation of section 21	5
Schedule 3 Guidelines on what constitutes normal administrative practice	6

State Records Regulation 2005

under the

State Records Act 1998

1 Name of Regulation

This Regulation is the *State Records Regulation 2005*.

2 Commencement

This Regulation commences on 15 July 2005.

Note. This Regulation repeals and replaces the *State Records Regulation 1999* which would otherwise be repealed on 1 September 2005 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definition

(1) In this Regulation:

the Act means the *State Records Act 1998*.

(2) Notes included in this Regulation do not form part of this Regulation.

4 Prescribed State collecting institutions

For the purposes of the definition of *State collecting institution* in section 3 (1) of the Act, each institution specified in Schedule 1 is prescribed as a State collecting institution to the extent specified in the Schedule.

5 Exception from operation of section 21

For the purposes of section 21 (2) (b) of the Act, anything that is authorised or required to be done by or under a provision of an Act specified in Schedule 2 is prescribed as an exception to Part 3 of the Act.

6 Guidelines on what constitutes normal administrative practice

For the purposes of section 22 (3) of the Act, Schedule 3 prescribes guidelines on what constitutes normal administrative practice.

7 Repeal

The *State Records Regulation 1999* is repealed.

2005 No 356

State Records Regulation 2005

Schedule 1 Prescribed State collecting institutions

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(Clause 4)

A university (in relation only to private records in a research library or archives collection)

A council within the meaning of the *Local Government Act 1993* (in relation only to private records in a local studies or similar collection)

The Centennial Park and Moore Park Trust

The Sydney Cricket and Sports Ground Trust

The Parliament of New South Wales

The Sydney Harbour Foreshore Authority

Schedule 2 Provisions excepted from operation of section 21

(Clause 5)

Provisions authorising alteration of records

Freedom of Information Act 1989, section 43 (Determination of applications)

Provisions requiring destruction of records

Casino Control Act 1992, section 159 (Destruction of finger prints etc)

Gambling (Two-up) Act 1998, section 28 (Destruction of fingerprints and palm prints)

Crimes (Forensic Procedures) Act 2000, Part 10 (sections 86, 87, 87A, 88 and 89) (Destruction of forensic material) and section 94 (Recording, retention and removal of identifying information on DNA database system)

Listening Devices Act 1984, sections 22 (Destruction of irrelevant records made by the use of a listening device) and 30 (Orders for forfeiture)

Public Lotteries Act 1996, section 58 (Destruction of finger and palm prints of former key employees)

Totalizator Act 1997, sections 65 (Destruction of fingerprints and palm prints of former key employees) and 110 (Destruction of fingerprints etc)

Provisions authorising destruction of records

Telecommunications (Interception) (New South Wales) Act 1987, section 8 (Keeping and destruction of restricted records)

2005 No 356

State Records Regulation 2005

Schedule 3 Guidelines on what constitutes normal administrative practice

Schedule 3 Guidelines on what constitutes normal administrative practice

(Clause 6)

Part 1 Preliminary

1 General

These guidelines give guidance as to what constitutes normal administrative practice in a public office.

2 Definitions

In this Schedule:

ephemeral records means records of little value that only need to be kept for a limited or short period of time. Ephemeral records have no continuing value to the public office and, generally, are only needed for a few hours or a few days.

facilitative records means records of little value and of a routine instructional nature that are used to further some activity. Most facilitative records have no continuing value to the public office and, generally, are only needed for a few hours or a few days.

record of continuing value means any record that has administrative, business, fiscal, legal, evidential or historic value to the public office.

Part 2 Drafts

3 Definition of “draft”

In this Part:

draft means any version, other than the final version, of a document, such as an address, speech, report, correspondence, table, statistics, file note, plan or sketch prepared prior to approval or production of the final version of the document.

4 Drafts that must not be disposed of

Drafts in paper form or electronic form that must not be disposed of are those for which there is an identified recordkeeping requirement to retain them because they document significant decisions, discussions, reasons and actions or contain significant information that is not contained in the final form of the document, or both. Examples of such drafts are:

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- (a) drafts containing significant or substantial changes or annotations, and
 - (b) drafts relating to the formulation of legislation, legislative proposals and amendments, and
 - (c) drafts relating to the formulation of policy and procedures, where the draft provides evidence of the processes involved or contains significantly more information than the final version of the document, and
 - (d) drafts of legal documents (for example, contracts or tenders).

5 Drafts that can be disposed of

Drafts in paper form or electronic form that can be disposed of are draft documents of a routine nature and for which there is no identified recordkeeping requirement, as set out in clause 4, to retain them.

Part 3 Working papers and records

6 Definition of “working papers and records”

In this Part:

working papers and records means papers, background notes and reference materials that are used to prepare or complete other documents.

7 Working papers and records that must not be disposed of

Working papers and records that must not be disposed of are those for which there is an identified recordkeeping requirement to retain them because they document significant decisions, discussions, reasons and actions or contain significant information that is not contained in the final form of the document, or both.

Examples are:

- (a) working papers and records of a project officer or investigative officer where they are the substantive record of the project or investigation (that is, they contain substantial and valuable information not found elsewhere), and
- (b) papers in an unofficial filing system where a registered file has not been created or kept within a public office’s recordkeeping system, for example, within small business units, or within the office of the Chief Executive Officer.

8 Working papers and records that can be disposed of

Working papers and records can be disposed of when they are primarily facilitative and when the retention of the final version of a document is sufficient to meet the recordkeeping requirements of a public office, so long as they are not required to be retained in order to account for policies, decisions, reasons and actions or not required to function as evidence.

Examples are:

- (a) audio recordings of dictated correspondence, conferences and meetings used to prepare correspondence, papers, minutes and transcripts, and
- (b) calculations, and
- (c) rough notes (including rough notes of meetings and telephone conversations where a formal record has been made), and
- (d) statistics and figures.

Part 4 Duplicates of records

9 Definition of “duplicates”

In this Part:

duplicates means reproductions of records where the original or authorised copy of the record is contained within a public office recordkeeping system.

10 Duplicates that must not be disposed of

Duplicates that must not be disposed of are:

- (a) duplicates of documents sourced from outside the public office that should properly be placed on file or captured in an appropriate way within the recordkeeping system of the public office, and
- (b) duplicates of internal public office documents that in themselves may form part of a record, for example an authorised copy of a document sent from a central office to a regional area where that copy should be captured in the recordkeeping system of the regional area.

11 Duplicates that can be disposed of

Duplicates that can be disposed of are:

- (a) information copies or duplicates of records that have already been captured within a recordkeeping system elsewhere in the public office, and that are generally kept for reference purposes by individuals (for example, information copies of correspondence, reports and memos), and
- (b) duplicates of internal publications held for informational purposes (for example, annual reports, brochures and leaflets), and
- (c) duplicates of external documents and publications (for example, external annual reports, price lists, trade journals and catalogues).

Part 5 Computer support records**12 Computer support records that must not be disposed of**

Computer support records that must not be disposed of are those that support significant functions of the public office and that may be needed as evidence of particular activities (for example, records that provide audit trails).

13 Computer records that can be disposed of

The following computer records can be disposed of once they have been acted upon or superseded and are not required for ongoing business requirements:

- (a) input and output formats from mechanical and electronic records systems, such as the following:
 - (i) error or control reports,
 - (ii) input forms for data entry,
 - (iii) output used for checking and verifying,
 - (iv) regular batch reports,
 - (v) system reports,
 - (vi) transaction reports used for checking and control purposes,
- (b) reference copies of user manuals and similar documents,
- (c) superseded computer logs,
- (d) superseded or obsolete computing software,
- (e) systems back-ups,
- (f) test data.

Part 6 Facilitating instructions

14 Definition of “facilitating instructions”

In this Part:

facilitating instructions means records that contain routine or facilitative instructions to officers in the form of “post-it” or sticky notes, forms or similar records.

15 Facilitating instructions that must not be disposed of

The following facilitating instructions must not be disposed of:

- (a) those that are identified as having continuing value (for example, are part of an actual business transaction itself),
- (b) those that have policy or procedural implications,
- (c) those that are identified as important to the public office.

16 Facilitating instructions that can be disposed of

Facilitating instructions that can be disposed of are those that are ephemeral and have short term value. They may relate to such activities as the following:

- (a) correcting typing errors,
- (b) file creation or retrieval,
- (c) filing a letter,
- (d) formatting documents,
- (e) internal distribution lists for informational purposes,
- (f) running off duplicates.

Part 7 Outgoing correspondence

17 Definition of “outgoing correspondence”

In this Part:

outgoing correspondence means original correspondence that is prepared for dispatch from a public office in the course of normal business activities.

18 Authorised copies of outgoing correspondence must not be disposed of

Authorised copies of outgoing correspondence are to be captured in an appropriate way within the public office’s recordkeeping system and are not to be disposed of.

19 Original outgoing correspondence can be dispatched

After an authorised copy of outgoing correspondence has been captured in an appropriate way within the public office's recordkeeping system, the original can be dispatched from the public office.

Part 8 Messages**20 Definition of "messages"**

In this Part:

messages includes messages in the form of e-mail, voice mail, SMS (short message service) or text messages, instant messaging, facsimiles, "post-it" or sticky notes, slips of paper, telephone messages, transmission reports or similar records.

21 Messages that must not be disposed of

Messages that are not to be disposed of are those that are identified as having continuing value.

22 Messages that can be disposed of

Messages that can be disposed of are those that:

- (a) are ephemeral and are only of short term value, or
- (b) have had a copy placed on the relevant file or captured in an appropriate way within a public office recordkeeping system.

Part 9 Facsimiles**23 Preservation of facsimiles**

As thermal paper deteriorates, facsimiles that have been printed on thermal paper must be photocopied onto appropriate paper to ensure long-term preservation.

24 Facsimiles that must not be disposed of

Facsimiles that must not be disposed of are those that are identified as having continuing value.

25 Facsimiles that can be disposed of

Facsimiles that can be disposed of are those that:

- (a) are ephemeral and are only of short term value, or
- (b) have an authorised copy captured in an appropriate way within a public office recordkeeping system.

2005 No 356

State Records Regulation 2005

Schedule 3 Guidelines on what constitutes normal administrative practice

Part 10 Stationery

26 Stationery that can be disposed of

The following items can be disposed of:

- (a) unused numbered volumes or pads,
- (b) unused printed forms,
- (c) unused stationery,
- (d) unused letterhead.

Part 11 Solicited and unsolicited advertising material

27 Definition of “solicited and unsolicited advertising material”

In this Part:

solicited and unsolicited advertising material refers particularly to advertising and other material generally known as “junk mail”. It includes (but is not limited to) the following:

- (a) advertising “flyers”,
- (b) brochures,
- (c) catalogues,
- (d) price lists.

28 Disposal

Solicited and unsolicited advertising material can be disposed of. Some catalogues may need to be placed on the appropriate equipment or purchase files.

Part 12 Temporarily taking records out of the State

29 Object

From time to time it may be necessary for records to be taken out of the State for the conduct of official business.

30 Disposal

It is acceptable for an authorised person (who is employed in a NSW Department or other NSW public office) to take records temporarily out of the State for official business, but only if those records are relevant or necessary to the conduct of that official business. Such records are to remain in the custody of the authorised person and are to be returned to the public office when no longer required for the conduct of that business. Records cannot be taken or sent out of the State permanently without explicit and legal authorisation of the kind described in section 21 (2) of the Act.