



New South Wales

State Records Regulation 2024

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*.

JOHN GRAHAM, MLC
Minister for the Arts

Explanatory note

The object of this regulation is to remake, with amendments, the *State Records Regulation 2015*, which is repealed on 1 September 2024 by the *Subordinate Legislation Act 1989*, section 10(2).

This regulation—

- (a) prescribes certain public offices as State collecting institutions to exempt the private records in the collections of those offices from the operation of the *State Records Act 1998* (*the Act*), and
- (b) provides exceptions from the Act, Part 3, which prohibits certain actions in relation to State records, such as disposal, damage and alteration of the records, and
- (c) prescribes certain persons and entities as persons or entities to whom information acquired in the exercise of functions under the Act may be disclosed to, under legal compulsion, in legal proceedings if the disclosure would otherwise be an offence under the Act, and
- (d) prescribes guidelines on what constitutes normal administrative practice in a public office for the Act, section 22(3), which permits certain actions in relation to State records if the actions are done in accordance with normal administrative practice in a public office, and
- (e) requires a public office to prepare and submit a transfer plan in relation to the transfer of certain State records to Museums of History NSW, and
- (f) provides for savings and formal matters.

This regulation comprises or relates to matters set out in the *Subordinate Legislation Act 1989*, Schedule 3, namely—

- (a) matters of a machinery nature, and
- (b) matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

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State Records Regulation 2024

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1 Name of regulation

This regulation is the *State Records Regulation 2024*.

2 Commencement

This regulation commences on 1 September 2024.

Note— This regulation replaces the *State Records Regulation 2015*, which is repealed on 1 September 2024 by the *Subordinate Legislation Act 1989*, section 10(2).

3 Definition

In this regulation—

the Act means the *State Records Act 1998*.

Note— The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this regulation.

4 Prescribed State collecting institutions

For the Act, section 3(1), definition of **State collecting institution**, paragraph (j), each of the following institutions is prescribed—

- (a) a university, but only in relation to private records in a research library or archives collection,
- (b) a council within the meaning of the *Local Government Act 1993*, but only in relation to private records in a local studies or similar collection,
- (c) the Greater Sydney Parklands Trust,
- (d) Venues NSW,
- (e) the Parliament of New South Wales,
- (f) Place Management NSW,
- (g) The Trustees of the Anzac Memorial Building.

5 Exceptions to operation of the Act, Part 3

For the Act, section 21(2)(b), anything that is authorised or required to be done by or under a provision of an Act specified in Schedule 1 is prescribed as an exception to the Act, Part 3.

6 Guidelines on what constitutes normal administrative practice

For the Act, section 22(3), the guidelines on what constitutes normal administrative practice set out in Schedule 2 are prescribed.

7 Transfer of State records to Museums of History NSW

For the Act, section 32(4), the arrangements and requirements set out in Schedule 3 are prescribed.

8 Prescribed persons

For the Act, section 73(5)(e), the following persons are prescribed—

- (a) Museums of History NSW,
- (b) the Information and Privacy Commission,
- (c) the Law Enforcement Conduct Commission,
- (d) a person carrying out the functions of the Office of Local Government.

9 Savings

An act, matter or thing that, immediately before the repeal of the *State Records Regulation 2015*, had effect under that regulation continues to have effect under this regulation.

Schedule 1 Provisions excepted from operation of the Act, Part 3—the Act, s 21(2)(b)

section 5

1 Provision requiring alteration of records

Privacy and Personal Information Protection Act 1998, section 15 (Alteration of personal information).

2 Provisions authorising or requiring destruction of records

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

Crimes (Forensic Procedures) Act 2000—

- (a) Part 10 (Destruction of forensic material), and
- (b) section 94 (Recording, retention and removal of identifying information on DNA database system).

Electoral Act 2017—

- (a) section 146 (Retention of applications), and
- (b) section 175 (Security of election materials and electronic resources).

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

Gaming and Liquor Administration Act 2007, section 15 (Destruction of finger prints etc).

Law Enforcement (Powers and Responsibilities) Act 2002—

- (a) section 75B (Access to and downloading of data from computers, including access to computers outside premises the subject of a warrant), and
- (b) section 137A (Destruction of finger-prints and palm-prints—adults and children), and
- (c) section 137C (Commissioner may order destruction of identification particulars), and
- (d) section 138A (Taking of finger-prints and palm-prints from persons issued penalty notices).

Police Act 1990, section 96A (Finger printing and hand printing of applicants—police officers).

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

Security Industry Act 1997, section 18 (Investigation of licence and renewal applications).

Surveillance Devices Act 2007—

- (a) section 41 (Dealing with records obtained by use of surveillance devices), and
- (b) section 58 (Orders for forfeiture).

Tattoo Industry Act 2012, section 13 (Fingerprinting and palm printing of applicants).

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

Totalizator Act 1997—

- (a) section 65 (Destruction of fingerprints and palm prints of former key employees), and
- (b) section 110 (Destruction of fingerprints etc).

Workplace Surveillance Act 2005, section 29 (Duration and conditions of covert surveillance authority).

3 Provisions authorising the making of regulations relating to destruction of records

A provision of a regulation made under any of the following provisions to the extent the provision of the regulation relates to the destruction of fingerprints or palm prints, or copies of fingerprints or palm prints—

- (a) *Firearms Act 1996*, section 88,
- (b) *Gaming Machines Act 2001*, section 210,
- (c) *Independent Commission Against Corruption Act 1988*, section 117,
- (d) *Security Industry Act 1997*, section 48.

Schedule 2 Guidelines on what constitutes normal administrative practice—the Act, s 22(3)

section 6

Part 1 Preliminary

1 General

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

2 Definitions

In these guidelines—

business system, of a public office, means the means by which the public office makes, keeps or disposes of records, or information about records, whether the records or informations are in electronic form or hard copy, and includes the following—

- (a) software packages,
- (b) application programs, including mobile applications,
- (c) databases.

Note— Information about a record includes metadata in relation to the record.

continuing value, in relation to a record of a public office, means being of, or having, ongoing administrative, business, fiscal, legal, evidential or historic importance to the public office, as assessed by the public office.

electronic data includes algorithms, metadata, script, software specifications, source code and audit trails.

ephemeral value, in relation to a record of a public office, means being of, or having, such negligible or little importance to the public office, as assessed by the public office, that—

- (a) only requires the record to be kept for a limited or short period of time, and
- (b) means the record has no continuing value to the public office.

facilitative, in relation to a record of a public office, means—

- (a) being of, or having, only ephemeral value, and
- (b) being of a routine or instructional nature, and
- (c) created or used to further an activity of a public office.

significant, in relation to information held by a public office, means being of, or having, importance for the purposes of enabling, or providing evidence of, the exercise of the public office's functions.

Part 2 Drafts

3 Definition

In this part—

draft means a version of a record prepared before the approval or production of the final version of the record.

Examples of drafts— versions of briefing notes, addresses, speeches, presentations, reports, correspondence, tables, statistics, file notes, plans or sketches, other than the final approved version of those records

4 Drafts that must not be disposed of

- (1) A draft must not be disposed of if the draft contains significant information, including information about significant decisions, discussions, reasons and actions related to the public office's activities.
- (2) Without limiting guideline 4(1), a draft must not be disposed of if the draft—
 - (a) contains significant annotations or changes compared to other versions of the draft, or
 - (b) relates to the formulation or amendment of legislation, policies or procedures, or
 - (c) documents the processes involved in the formulation or amendment of legislation, policy or procedure, or
 - (d) contains significantly more information than the final version of the record.

5 Drafts that may be disposed of

- (1) A draft may be disposed of if the draft—
 - (a) is only of ephemeral value, or
 - (b) does not contain significant information.
- (2) Without limiting guideline 5(1), a draft may be disposed of if the only additional information the draft contains is annotations relating only to formatting or the correction of typographical, grammatical or spelling errors.

Part 3 Working papers and records

6 Definition

In this part—

working papers and records means electronic data or physical materials, including background notes and reference materials, used to prepare or complete other records.

7 Working papers and records that must not be disposed of

- (1) Working papers and records must not be disposed of if the working papers or records—
 - (a) contain significant information, including significant decisions, discussions, reasons and actions related to the public office's functions or activities, or
 - (b) contain significant information not contained in the final version of the record.
- (2) Without limiting guideline 7(1), the following working papers and records must not be disposed of—
 - (a) working papers and records in relation to a project officer or investigative officer of the public office that—
 - (i) are, or form part of, the substantive record of a project or investigation undertaken by the officer, or
 - (ii) contain substantial and valuable information not contained in other records,
 - (b) if a registered or official version of a record has not been created, or is not kept in the public office's business system—working papers and records in the public office's filing systems,
 - (c) electronic and other data that has been collected or analysed and that provides information or evidence about decision-making processes in relation to the public office's functions or activities.

8 Working papers and records that may be disposed of

- (1) Working papers and records may be disposed of if—
 - (a) the working papers and records are facilitative, and
 - (b) the final version of the record to which the working papers and records relate is sufficient to meet the record-keeping requirements of the public office, and
 - (c) the working papers or records are not required as evidence of the public office's functions or activities.
- (2) Without limiting guideline 8(1), the following working papers and records may be disposed of—
 - (a) audio recordings of conferences and meetings that are used only to prepare correspondence, papers, minutes and transcripts,
 - (b) calculations, statistics and figures that are not relied on or used by the public office to further the public office's functions or activities,
 - (c) draft notes of meetings and conversations of which a record has been made that is already captured in the public office's business system.

Part 4 Duplicates of records

9 Definition

In this part—

duplicate, in relation to a record, means an exact copy of the record.

10 Duplicates that must not be disposed of

The following duplicates must not be disposed of—

- (a) a duplicate of a record sourced from outside the public office,
Example of a duplicate sourced from outside the public office— a duplicate of a document held by the public office that has been sent to the public office by a member of the public under cover of correspondence in which the member of the public is making submissions or comments in relation to the duplicate, in which case the duplicate would be appropriate to capture to accurately reflect what version of the record the member of the public was commenting on
- (b) a duplicate of an internal record of the public office that forms part of another record.
Example of an internal record of the public office that forms part of another record— an authorised copy of a document sent from the central office of the public office to a regional office of the public office

11 Duplicates that may be disposed of

The following duplicates may be disposed of—

- (a) a duplicate of a record kept in the public office's business system if the duplicate is being kept or used only for reference purposes,
Examples of duplicates kept or used only for reference purposes— duplicates of correspondence, a report or a memo of another record already kept in the public office's business system
- (b) duplicates of publications.
Examples of publications— annual reports, price lists, trade journals, catalogues, brochures and leaflets published by the public office that are available externally and captured in the public office's business systems

Part 5 Computer support records

12 Definition

In this part—

computer support record means a record that relates primarily to the use, or that supports the operation, of business systems and other applications or processes.

13 Computer support records that must not be disposed of

A computer support record must not be disposed of if the record—

- (a) contains significant information, including significant decisions, discussions, reasons and actions relating to the public office's functions or activities, or
- (b) may be needed as information about, or evidence of, the public office's functions or activities.

Examples— audit trails or other electronic data that may be required as evidence of an activity or function carried out by the public office

14 Computer support records that may be disposed of

- (1) A computer support record may be disposed of if the record—
 - (a) has been acted on or superseded, and
 - (b) is not required for any ongoing business requirements of the public office.
- (2) Without limiting guideline 14(1), the following computer support records may be disposed of—
 - (a) input and output formats, including 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) system back-ups,
 - (f) test data,
 - (g) data held in a business system that mirrors the primary records storage system held in a cloud storage environment,
 - (h) duplicate data entries in systems or applications,
 - (i) empty files or folders, being files with no content and zero length or folders comprising only empty files or otherwise being folders with no content and zero length, that were created in error.

Part 6 Facilitating instructions

15 Definition

In this part—

facilitating instructions means records that contain routine or facilitative instructions to officers of a public office relating to the public office's functions or activities.

16 Facilitating instructions that must not be disposed of

- (1) Facilitating instructions must not be disposed of if the record—
 - (a) contains significant information, including significant decisions, discussions, reasons and actions related to the public office's functions or activities, or
 - (b) has continuing value to the public office or has otherwise been identified as being important to the public office, or
 - (c) relates to matters that have policy, legislative or procedural implications for the public office or the State.
- (2) Without limiting guideline 16(1)(b), facilitating instructions that have continuing value include records that are part of a business transaction.

17 Facilitating instructions that may be disposed of

- (1) Facilitating instructions may be disposed of if the record is ephemeral.
- (2) Without limiting guideline 17(1), facilitating instructions that relate only to any of the following matters are ephemeral—
 - (a) correcting typing errors in a record,
 - (b) creating or retrieving a file,
 - (c) filing a letter,
 - (d) formatting a record,
 - (e) creating or updating internal distribution lists for informational purposes,
 - (f) making or producing duplicates.

Part 7 Outgoing correspondence

18 Definitions

In this part—

authorised copy, of outgoing correspondence, is the version of the correspondence authorised by a public office as the version that may be sent to persons outside the public office.

outgoing correspondence is physical or electronic correspondence that—

- (a) relates to a public office's ordinary business activities, and
- (b) is intended to be sent from the public office to persons outside the public office.

19 Requirements in relation to outgoing correspondence

- (1) Outgoing correspondence from a public office must not be sent unless—
 - (a) there is an authorised copy of the outgoing correspondence, and
 - (b) the authorised copy is appropriately captured in the public office's business system.
- (2) Authorised copies of outgoing correspondence must not be disposed of.

Part 8 Messages

20 Definition

In this part—

message includes a message in electronic form.

Examples of messages in electronic form—

- email,
- voicemail,
- SMS,
- instant messages, such as messages on Whatsapp or Facebook Messenger,
- posts via social media channels,
- facsimiles,
- telephone messages,
- transmission reports.

21 Messages that must not be disposed of

Messages that have continuing value to the public office must not be disposed of.

22 Messages that may be disposed of

Messages that may be disposed of include the following—

- (a) messages that are ephemeral,
- (b) messages that are an identical copy of messages already kept in the public office's business system,
- (c) messages that otherwise have little or no importance to the public office, including system reminders or alerts.

Part 9 Stationery

23 Stationery that may be disposed of

Unused stationery items may be disposed of.

Examples of stationery items— letterheads, volumes and forms

Part 10 Solicited and unsolicited advertising material

24 Definition

In this part—

solicited and unsolicited advertising material means advertising and other material known as “junk mail”, including the following—

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

25 Disposal of solicited and unsolicited advertising material

- (1) Solicited and unsolicited advertising material may be disposed of.
- (2) However, some catalogues may need to be kept with, or placed on, the relevant equipment or kept or stored in files relating to the purchase of equipment.

Part 11 Temporarily taking records out of the State

26 Records may be temporarily taken out of the State

- (1) An authorised person may temporarily take a record out of the State for the purposes of conducting the public office's official business.
- (2) The authorised person must ensure the record—
 - (a) is relevant or necessary to the conduct of the official business, and
 - (b) remains in the authorised person's custody during the course of the official business, and
 - (c) is returned to the public office when the record is no longer required for the conduct of the official business.
- (3) In this guideline—
authorised person means a person authorised by a public office to exercise the functions of the public office for the purposes of the official business.

Schedule 3 Transfer of State records to Museums of History NSW

section 7

1 Definitions

In this schedule—

approved form means a form approved by Museums of History NSW.

records retention and disposal authority means a permission or approval of the Authority under the Act, section 21(2)(c) permitting or authorising a public office to do a thing referred to in the Act, section 21(3) in relation to a State record kept by the public office.

transfer plan means a document prepared by a public office in accordance with this schedule that provides for arrangements relating to the transfer of eligible State records held by the public office to Museums of History NSW.

2 State records eligible for transfer

A State record held by a public office is eligible for transfer from the public office to Museums of History NSW if—

- (a) a records retention and disposal authority permits or authorises the transfer, and
- (b) the record is, or is identified in the authority as being required as, a State archive.

3 Transfer plans for public offices

A public office must prepare and submit a transfer plan to Museums of History NSW in the approved form.

4 When transfer plans must be submitted

The transfer plan must be submitted—

- (a) for the transfer plan of a public office in existence on 1 January 2024—on or before 31 December 2024, or
- (b) otherwise—within 12 months of the date the public office came into existence.

5 Revised transfer plans

- (1) A public office must review, and appropriately revise, its transfer plan every 5 years.
- (2) However, Museums of History NSW may require a public office to review, and appropriately revise, its transfer plan by a specified date that is earlier than the 5-year anniversary under subsection (1).
- (3) The public office must submit the revised transfer plan, in the approved form, to Museums of History NSW—
 - (a) if Museums of History NSW has required the public office to review, and appropriately revise, its transfer plan by a date under subsection (2)—by the specified date, or
 - (b) otherwise—not later than the 5-year anniversary of the date on which the public office submitted its previous transfer plan.
- (4) If a revised transfer plan must be submitted before the 5-year anniversary under subsection (2), the date on which the next revised transfer plan must be submitted under this section is calculated by reference to the date specified under subsection (2).

6 Information to be included in transfer plan

- (1) The transfer plan must include relevant information about the records to which the plan applies.
- (2) Without limiting subsection (1), relevant information includes the following information relating to the records—
 - (a) the format of the records,
 - (b) the location of the records,
 - (c) the condition of the records,
 - (d) the quantity or size of the records,
 - (e) if known—the intended date of transfer of the records.

7 Request for further information

- (1) Museums of History NSW may ask a public office for further information in relation to the public office's transfer plan or revised transfer plan.
- (2) The request may specify—
 - (a) a time by which the information must be given, and
 - (b) the way in which the information must be given.
- (3) The public office must comply with a request under this section.