

State Records Regulation 2010

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New South Wales

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Authorisation

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Contents

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

State Records Regulation 2010



New South Wales

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

PAUL LYNCH, MP Minister for Commerce

1 Name of Regulation

This Regulation is the *State Records Regulation 2010*.

2 Commencement

This Regulation commences on 1 September 2010 and is required to be published on the NSW legislation website.

Note—

This Regulation replaces the *State Records Regulation 2005* which is repealed on 1 September 2010 by section 10 (2) of the *Subordinate Legislation Act 1989*.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 of the following institutions is prescribed as a State collecting institution:

- (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 Centennial Park and Moore Park Trust,

- (d) the Sydney Cricket and Sports Ground Trust,
- (e) the Parliament of New South Wales,
- (f) the Sydney Harbour Foreshore Authority,
- (g) the Trustees of the Anzac Memorial Building.

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 1 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 2 prescribes guidelines on what constitutes normal administrative practice.

7 Savings

Any act, matter or thing that, immediately before the repeal of the *State Records Regulation 2005*, had effect under that Regulation continues to have effect under this Regulation.

Schedule 1 Provisions excepted from operation of section 21

(Clause 5)

1 Provisions authorising alteration of records

Privacy and Personal Information Protection Act 1998, section 59F (Determination of applications)

2 Provisions requiring destruction of records

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

Casino, Liquor and Gaming Control Authority Act 2007, section 15 (Destruction of finger prints etc)

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

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

Law Enforcement (Powers and Responsibilities) Act 2002, sections 137A (Destruction of finger-prints and palm-prints (adults and children)) and 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)

Surveillance Devices Act 2007, sections 41 (Dealing with records obtained by use of surveillance devices) and 58 (Orders for forfeiture)

Terrorism (Police Powers) Act 2002, section 27W (Destruction of records)

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

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

3 Provisions authorising destruction of records

Security Industry Act 1997, section 18 (Investigation of licence application)

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

4 Provisions authorising the making of regulations concerning destruction of records

Firearms Act 1996, section 88, to the extent that it authorises the making of a regulation concerning the destruction of fingerprints and copies of fingerprints

Gaming Machines Act 2001, section 210, to the extent that it authorises the making of a regulation concerning the destruction of fingerprints or palm prints and copies of fingerprints or palm prints

Independent Commission Against Corruption Act 1988, section 117, to the extent that it authorises the making of a regulation concerning the destruction of fingerprint imprints

Security Industry Act 1997, section 48, to the extent that it authorises the making of a regulation concerning the destruction of fingerprints and copies of fingerprints

Schedule 2 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 in respect of records means records of little value that only need to be kept for a limited or short period of time. Records that are ephemeral have no continuing value to the public office and, generally, are only needed for a few hours or a few days.

facilitative in respect of records means records of little value and of a routine

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

continuing value in respect of records means records that have 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 record keeping 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:

- (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 record keeping 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 record keeping 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 record keeping 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 record keeping 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 record keeping 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 record keeping 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 record keeping 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 record keeping 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 record keeping 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 record keeping 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 record keeping 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 record keeping system.

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.