



New South Wales

State Records Regulation 2015

under the

State Records Act 1998

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

DOMINIC PERROTTET, MP
Minister for Finance, Services and Property

Explanatory note

The object of this Regulation is to remake, with minor amendments, the provisions of the *State Records Regulation 2010*, which is repealed on 1 September 2015 by section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation makes provision with respect to the following:

- (a) prescribing certain public offices as State collecting institutions (so as to exempt the private records in the collections of those offices from the operation of the *State Records Act 1998*),
- (b) providing exemptions from a provision that prohibits certain actions in relation to State records, such as disposal, damage and alteration of those records,
- (c) prescribing guidelines on what constitutes normal administrative practice in a public office (for the purpose of the provision referred to in paragraph (b), which permits certain actions in relation to State records if they are in accordance with normal administrative practice in a public office),
- (d) savings and formal matters.

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

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

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1 Name of Regulation

This Regulation is the *State Records Regulation 2015*.

2 Commencement

This Regulation commences on 1 September 2015 and is required to be published on the NSW legislation website.

Note. This Regulation replaces the *State Records Regulation 2010* which is repealed on 1 September 2015 by section 10 (2) of the *Subordinate Legislation Act 1989*.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 2010*, 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 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, 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)

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

Law Enforcement (Powers and Responsibilities) Act 2002, sections 75B (Access to and downloading of data from computers (including access to computers outside premises the subject of a warrant)), 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)

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

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

Tattoo Parlours 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, 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 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:

continuing value, in respect of records, means records that have administrative, business, fiscal, legal, evidential or historic value to the public office.

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.

Part 2 Drafts

3 Definition of “draft”

In this Part:

draft means any version, other than the final version, of a record, 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 record.

4 Drafts that must not be disposed of

Drafts that must not be disposed of are drafts that document significant decisions, discussions, reasons and actions or contain significant information that is not contained in the final version of the record. For example:

- (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 record.

5 Drafts that may be disposed of

Drafts that may be disposed of are drafts that are of a routine nature (other than drafts referred to in clause 4). For example, drafts annotated with only facilitative instructions for formatting or the correction of typographical, grammatical or spelling errors.

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 records.

7 Working papers and records that must not be disposed of

Working papers and records that must not be disposed of are those that document significant decisions, discussions, reasons and actions or contain significant information that is not contained in the final version of the record. For example:

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

8 Working papers and records that may be disposed of

Working papers and records may be disposed of when they are primarily facilitative and when the retention of the final version of a record 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. For example:

- (a) audio recordings of conferences and meetings used to prepare correspondence, papers, minutes and transcripts, and
- (b) calculations, and
- (c) rough notes (including rough notes of meetings and 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 the original or authorised copies of which are 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 records sourced from outside the public office that should properly be captured in an appropriate way within the record-keeping system of the public office, and
- (b) duplicates of internal public office records 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 may be disposed of

Duplicates that may be disposed of are:

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

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 may be disposed of

The following computer records may 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 electronic business and 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.

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, records that 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 may be disposed of

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

- (a) correcting typing errors,
- (b) file creation or retrieval,
- (c) filing a letter,
- (d) formatting records,
- (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 sent 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 must not be disposed of.

19 Outgoing correspondence may be sent after capturing authorised copies

After an authorised copy of outgoing correspondence has been captured in an appropriate way within the public office’s record-keeping system, the original may be sent 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) messages, instant messaging, facsimiles, telephone messages, transmission reports or similar records.

21 Messages that must not be disposed of

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

22 Messages that may be disposed of

Messages that may be disposed of are:

- (a) those that are ephemeral, or
- (b) those of which a copy has been placed on the relevant file or captured in an appropriate way within a public office record-keeping system.

Part 9 Stationery

23 Stationery that may be disposed of

Unused stationery items, such as unused letterhead, volumes or forms, may be disposed of.

Part 10 Solicited and unsolicited advertising material

24 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.

25 Disposal

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

Part 11 Temporarily taking records out of the State

26 Object

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

27 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.