



Online Publication Policy

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1. Policy Statement

1.1 Background and Purpose

To increase access to the NSW State archives collection by:

- selecting material for online publication
- responding to requests for the removal of online material

through consistent, clear and transparent processes that ensure the appropriate protection of copyright material and personal and cultural information.

Attached to the policy are assessment procedures and considerations for:

- Determining if material is suitable for publishing online.
- Responding to requests to remove material published online.

The policy is consistent with State Records' goal for the widespread distribution of information about and access to the NSW State archives collection.

1.2 Objectives

To ensure increased access to the State archives collection through the digitisation, indexing, cataloguing and describing of material for online use and research does not unreasonably prejudice copyright holders or facilitate the unreasonable release of personal or cultural information.

The key objectives of the policy are:

- Promote the use of Crown copyright material through online publication.
- Identify Crown copyright material that requires protection.
- Non Crown Copyright holders for material in the collection are not disadvantaged by having their material published online.
- Privacy of individuals is not infringed through the online accessibility of personal information.
- Culturally sensitive material is appropriately protected and labelled.

1.3 Scope

This policy applies to material from and about the NSW State archives collection put online by State Records NSW.

Material includes:

- Copies of State archives.
- Digital archives – born digital records.
- Material published about State archives online including finding aids such as indexes, lists, catalogues and descriptive archival information.

1.4 Ethical Conduct

All activities must be conducted in an ethical and transparent manner and comply with the values, principles and articles in the Code of Conduct.

1.5 Website Policy Statement

The State Records Authority of NSW places State archives online that are open to public access under the *State Records Act 1998*. Decisions to open information to public access are made by the public office responsible for the records and take into consideration the sensitivity of information including personal information. When deciding to publish material online State Records NSW has made the best effort to ensure that copyright material is appropriately protected. However despite these efforts we recognise that there may be rare instances where our online publication of State archives material breaches copyright or provides unintended access to personal and or cultural information.

If you are concerned by material we have published online and would like us to review its online accessibility or copyright attribution please contact us in writing setting out in detail the material including the URL of where you found the material.

State Records NSW will acknowledge your request in writing and assess your request to review material available online within 20 working days of the request. The material will be assessed by staff with expertise with the *Government Information (Public Access) Act 2009*(NSW), *Privacy Personal Information Protection Act 1998*(NSW), *Health Records and Information Protection Act 2002* (NSW), and the access provisions of the State Records Act. Material will be removed only in exceptional circumstances at the discretion of State Records NSW.

2. Policy Components

2.1 Responsibilities

Each of the following parties has specific assigned responsibilities under this policy:

- Director
- Deputy Director
- Managers
- Public Access
- Officers responsible for the selection of material to publish online

2.1.1 Director

The Director is responsible for:

- ensuring the implementation of this policy including its conformity to legislative and other compliance requirements and communicating this policy to staff.

2.1.2 Deputy Director

Deputy Director is responsible for:

- ensuring staff, including consultants, contractors and outsourced service providers, comply with this policy.
- ensuring the outcome of any review of material published online is consistent with this policy.

2.1.3 Managers

Managers are responsible for:

- ensuring that their staff, including consultants, contractors and outsourced service providers, comply with this policy.
- authorising online publication of material complying with this policy where officers selecting material have identified content requiring consideration.

2.1.4 Public Access

Manager Public Access responsible for:

- administering and updating this policy.

2.1.5 Officers selecting material to publish online

Officers selecting material for online publication are responsible for:

- complying with this policy.
- assessing material against the considerations set out under this policy.

3. Selecting Material to Publish Online

3.1 Criteria to assess material for online publication

Material published online should be:

- Open to public access under the access provisions of the *State Records Act 1998* (NSW) (access direction or early access authorisation).
- Without copyright restrictions (out of copyright material or Crown copyright material assessed to be suitable for access and use without restriction).
- Non-Crown copyright material made available with the permission of the copyright holder.
- Non-Crown copyright material that can be made available under the flexible dealing 200AB exemptions of the *Copyright Act 1968* (Cwlth).
- Non-Crown copyright material in the collection where the copyright holder is unknown (orphan works) and State Records NSW has assessed the impact of publishing on the copyright holder and State Records NSW as low.

There may be very rare instances where providing universal searchable online access to material, while technically open under the State Records Act and provided without copyright restriction, facilitates a level of access at odds with individual or community standards and expectations.

Examples of material that may require consideration outside the open access provisions of the legislative framework include information depicting/relating to:

- Aboriginal and Torres Strait Islanders.
- Personal information.
- Graphic material that may cause offence or upset.

3.2 Publishing non-Crown copyright works

Copyright in unpublished material in the State archives collection remains in perpetuity.

If material proposed for online publication is not Crown copyright it should be determined if:

- The copyright holder can be identified and approached for permission.

- The copyright holder can not be traced and the material can be considered an orphan work. Providing online access is permitted under the Copyright Act, in particular the flexible dealing provisions under [200AB of the Act](#).

3.2.1 Orphan works

A majority of non-Crown copyright in the State archives collection rests with estates of those who wrote letters, submitted unsolicited material, or provided responses to government services. These are known as orphan works because the current copyright holder, their estates, is unknown.

To put orphan works online requires the use of exemptions under the Copyright Act and a risk management approach.

3.2.2 Publishing using Flexible Dealing provisions of the Copyright Act

The Flexible Dealing provisions for libraries, educational institutions and cultural institutions, which include State Records NSW, are contained in Section 200 AB of the Copyright Act.

Meeting the following criteria allows for non-Crown copyright material to be published online under the Flexible Dealing Provision:

- There are no other exemptions available.
- The purpose of the use – using the material for a set purpose – includes providing a service of a kind usually provided by an archive encompassing providing services to users.
- The use is non-commercial.
- The use will not conflict with normal exploitation.
- The use will not unreasonably prejudice the copyright holder.
- The use is a special case.

(*A Users Guide* –Laura Simes – Libraries Copyright Committee and the Australian Digital Alliance, 2008, p.7)

For more detail see [A Users Guide to the Flexible Dealing Provision for Libraries, Educational Institutions and Cultural Institutions Section 200AB of the Copyright Act 1968 \(Cwlth\)](#) –Laura Simes – Libraries Copyright Committee and the Australian Digital Alliance 2008

3.2.3 Risk management framework

If it is determined that material can be published online using the Fair Dealing Provisions a risk assessment should also support publication.

That is, the impact and likelihood of a copyright holder coming forward to claim copyright ownership of material published online should be assessed as low.

3.2.4 Considerations when publishing non-Crown copyright material

Questions to ask in determining the risks in publishing non-Crown copyright material online.

- Is the information already publicly available?
- Are the copyright holders likely to be disadvantaged for having the material online?

3.2.5 Website advice to potential copyright claimants

The risk and impact of publishing non-Crown copyright material online is also minimised if the publication of the material is accompanied by a notice that advises users that if they are the copyright holder to the material and object to its publication to contact us and we will, depending on the advice, take the material down or attribute the material to the copyright holder. (See 1.5 Website policy statement).

3.3 Publishing personal information

Not all material authorised for public access under an access direction or early access authorisation of the State Records Act may be appropriate for making accessible and searchable online.

It may be that the decision to make the material publicly available was made without considering the likelihood of the universal ease of online search engines such as Google bringing up personal information – for example details of living persons from the lists of divorce and matrimonial cause case papers.

It may also be that the public office authorising the direction was unaware of the extent/detail of the personal information available in the material.

In situations where there is uncertainty about previous knowledge of the personal information in material the public office responsible for the records should be contacted to confirm or amend the access direction allowing public access.

3.3.1 Considerations when publishing personal information

Questions to ask in determining whether to put personal information online.

- Is the information already publicly available?
- Did the individual consent to making the information publicly available?
- Is consultation with the public office responsible for the access direction required?
- Is legal advice required?
- Does it meet community expectations/standards?
- Does the potential linking of personal information from this material to other collections of data through the exposure of search engines, such as Google, provide for the compiling of information that creates an unintended intrusion of privacy or facilitates identity fraud for living persons?
- Can the material be published in an amended form without the level of personal information and without affecting the principle of right of access?
- Is the material appropriate for use in the reading room but not on the State Records NSW website?

3.4 Material relating to Aboriginal and Torres Strait Islander people and culture

When proposing to publish material relating to or depicting Aboriginal and Torres Strait Islander people and communities consider:

- Could the material be considered as being secret or sacred by Aboriginal and Torres Strait Islander communities?
- Could the material be considered as being offensive or sensitive by Aboriginal and Torres Strait Islander communities?
- Is the material appropriate for use in the reading room but not on the State Records NSW website?
- Does State Records NSW need approval from any other government agencies or community groups before using the material?
- Will putting the material online assist in improving services for Aboriginal and Torres Strait Islander people?

For guidance on who and how to consult on these questions refer to State Records' *Protocols for staff working with Indigenous people*.

3.5 Graphic and confronting material

Some material containing graphic images, detailed descriptions or information may cause offence or upset, such as images of crime scenes, coronial inquiries, and autopsies, and is not always suitable for online publication.

The impact of such material may be mitigated with care and warning notices.

4. Related Policies and Documents

Issuer	Reference	Document Name
NSW Government	No 17 of 1998	State Records Act 1998 No 17
State Records Authority of NSW		Register of Access Directions
State Records Authority of NSW	June 2008	Protocols for staff working with Indigenous people
Department of Finance, Services and Innovation	April 2015	Code of Ethics and Conduct

5. Document Control

5.1 Document Approval

Name & Position	Signature	Date
Wendy Gallagher A/Manager Public Access		
Jenni Stapleton Deputy Director		
Geoff Hinchcliffe Director		

5.2 Document Version Control

Version	Status	Date	Prepared By	Comments
1.0	Draft	1 August 2016	Warwick Hunter	
1.0	Final			

5.3 Review Date

This policy will be reviewed in August 2020.

It may be reviewed earlier in response to post-implementation feedback from Business Units.