

State Archives and Records Authority of New South Wales

Functional Retention and Disposal Authority: FA430

This authority covers records documenting the function of
Consumer protection

This retention and disposal authority is approved under section 21(2)c of the *State Records Act 1998* following prior approval by the Board of the State Archives and Records Authority of New South Wales in accordance with section 21(3) of the Act.

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Functional Retention and Disposal Authority

Authority no FA430

SR file no 21/0028

Scope

This retention and disposal authority covers records documenting the function of consumer protection.

Public office

Better Regulation Division
Department of Customer Service

Approval date

24 August 2022

About the Functional Retention and Disposal Authority

Purpose of the authority

The purpose of this retention and disposal authority is to identify those records created and maintained by NSW public offices which are required as State archives and to provide approval for the destruction of certain other records created and maintained by NSW public offices, after minimum retention periods have been met.

The approval for disposal given by this authority is given under the provisions of the *State Records Act 1998* only and does not override any other obligations of an organisation to retain records.

The retention and disposal of State records

The records retention and disposal practices outlined in this authority are approved under section 21(2)(c) of the *State Records Act 1998 (NSW)*. Part 3 (Protection of State Records) of the Act provides that records are not to be disposed of without the consent of the State Archives and Records Authority of New South Wales (State Archives and Records NSW) with certain defined exceptions. These exceptions include an action of disposal which is positively required by law, or which takes place in accordance with a normal administrative practice (NAP) of which State Archives and Records NSW does not disapprove. Advice on the State Records Act can be obtained from State Archives and Records NSW.

The authority sets out how long the different classes of records generated by an organisation must be kept to meet its legal, operational and other requirements, and whether the records are to be kept as State archives. State Archives and Records NSW reviews and approves organisations' retention and disposal authorities under the *State Records Act*. It is the duty of a public office, in submitting a draft retention and disposal authority for approval, to disclose to State Archives and Records NSW any information which affects the retention of the records covered by the authority.

State Archives and Records NSW's decisions take into account both the administrative requirements of public offices in discharging their functional responsibilities and the potential research use of the records by the NSW Government and the public. One of State Archives and Records NSW's functions is to identify and preserve records as State archives. These are records which document the authority and functions of Government, its decision-making processes and the implementation and outcomes of those decisions, including the nature of their influence and effect on communities and individual lives. Criteria for the identification of State archives are listed in *Building the Archives: Policy on records appraisal and the identification of State archives*. The Policy also explains the roles and responsibilities of State Archives and Records NSW and of public offices in undertaking appraisal processes and disposal activities.

Implementing the authority

This retention and disposal authority covers records controlled by the public office and applies only to the records or classes of records described in the authority. The authority should be implemented as part of the records management program of the organisation. Two primary objectives of this program are to ensure that records are kept for as long as they are of value to the organisation and its stakeholders and to enable the destruction or other disposal of records once they are no longer required for business or operational purposes.

The implementation process entails use of the authority to sentence records. Sentencing is the examination of records in order to identify the disposal class in the authority to which they belong. This process enables the organisation to determine the appropriate retention period and disposal action for the records. For further advice see *Implementing a retention and disposal authority*.

Where the format of records has changed (for example, from paper-based to electronic) this does not prevent the disposal decisions in the authority from being applied to records which perform the same function. The information contained in non paper-based or technology dependant records must be accessible for the periods prescribed in the classes. Where a record is copied, either onto microform or digitally imaged, the original should not be disposed of without authorisation (see the *General Retention and Disposal Authority – Original or source records that have been copied*). Public offices will need to ensure that any software, hardware or documentation required to gain continuing access to technology dependent records is available for the periods prescribed.

Disposal action

Records required as State archives

Records which are to be retained as State archives are identified with the disposal action 'Required as State archives'. Records that are identified as being required as State archives should be stored in controlled environmental conditions and control of these records should be transferred to State Archives and Records NSW when they are no longer in use for official purposes.

The transfer of control of records as State archives may, or may not, involve a change in custodial arrangements. Records can continue to be managed by the public office under a distributed management agreement. Public offices are encouraged to make arrangements with State Archives and Records NSW regarding the management of State archives.

Transferring records identified as State archives and no longer in use for official purposes to State Archives and Records NSW should be a routine and systematic part of a public office's records management program. If the records are more than 25 years old and are still in use for official purposes, then a 'still in use determination' should be made.

Records approved for destruction

Records that have been identified as being approved for destruction may only be destroyed once a public office has ensured that all other requirements for retaining the records are met. Retention periods set down in this authority are *minimum* periods only and a public office should keep records for a longer period if necessary. Reasons for longer retention can include legal requirements, administrative need, government directives and changing social or community expectations. A public office **must not** dispose of any records where the public office is aware of possible legal action (including legal discovery, court cases, formal applications for access) where the records may be required as evidence.

Once all requirements for retention have been met, destruction of records should be carried out in a secure and environmentally sound way. Relevant details of the destruction should be recorded. See *Destruction of records: a practical guide*.

Organisations should review functional retention and disposal authorities regularly to ensure that they remain relevant as the organisation's functions and activities, operating environment and requirements for records change. Retention requirements may change over time. This can occur when:

- business needs or practices change
- new laws, regulations or standards are introduced
- new technology is implemented
- government administration is restructured and functions are moved between entities, or
- unforeseen or new community expectations become apparent.

State Archives and Records NSW recommends that organisations check any functional retention and disposal authorities more than 5 years old to ensure that the retention periods and disposal actions remain relevant.

Regardless of whether a record has been approved for destruction or is required as a State archive, a public office or an officer of a public office **must not** permanently transfer possession or ownership of a State record to any person or organisation without the explicit approval of State Archives and Records NSW.

Administrative change

This retention and disposal authority has been designed to link records to the functions they document rather than to organisational structure. This provides for a stable retention and disposal authority that is less affected by administrative change. The movement of specified functions between branches or units within the public office does not require the authority to be resubmitted to State Archives and Records NSW for approval. However, when functions move from one public office to another the public office that inherits the new function should contact State Archives and Records NSW to discuss use of any existing retention and disposal authority approved for use by a predecessor organisation.

Amendment and review of this authority

State Archives and Records NSW must approve any amendment to this authority. Public offices that use the authority should advise State Archives and Records NSW of any proposed changes or amendments to the authority.

State Archives and Records NSW recommends a review of this authority after five years to establish whether its provisions are still appropriate. Either the public office or State Archives and Records NSW may propose a review of the authority at any other time, particularly in the case of change of administrative arrangements, procedures or to operating environments which are likely to affect the value of the records covered by this authority.

In all cases the process of review will involve consultation between State Archives Records NSW and the public office. If the process of review reveals that this authority requires amendment, the necessary amendments should be made and approved.

Contact Information

State Archives and Records NSW
PO Box 516
Kingswood NSW 2747
Telephone: (02) 9673 1788
E-mail: govrec@records.nsw.gov.au

Functional Retention and Disposal Authority

Consumer protection

Authority number: FA430

Dates of coverage: Open

List of Functions and Activities covered
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No.	Description of records	Disposal action
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1.0.0 CONSUMER PROTECTION

The function of administering consumer protection laws. Includes:

- advising consumers and traders about their rights and responsibilities
- helping to resolve consumer complaints and disputes
- licensing and accrediting businesses, contractors, tradespeople and property professionals
- registering and accrediting building and development certifiers and accreditation authorities
- registering associations and co-operatives
- authorising charitable fundraising and community gaming
- conducting compliance, inspection and testing programs
- developing and enforcing laws to safeguard consumer rights and inform business and traders on fair and ethical practices
- safeguarding rental bonds.

Note: includes legacy records relating to the regulation and monitoring of insurance premiums undertaken by the Emergency Services Levy Insurance Monitor (ESLIM)

See General Retention and Disposal Authority *Administrative records* **INFORMATION MANAGEMENT - Cases** for records relating to the handling of requests for access to the organisation's records

See General Retention and Disposal Authority *Administrative records* **INFORMATION MANAGEMENT - Control** for primary control records which are required to facilitate access and give meaning and context to the records over time.

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CONSUMER PROTECTION - Advice

1.1.0 Advice

The activities associated with offering opinions by or to the organisation as to an action or judgement.

See **CONSUMER PROTECTION - Community and industry education** for records relating to the development of programs and resources to educate the community.

See **CONSUMER PROTECTION - Compliance** for advice provided in relation to a specific complaint or compliance matter.

See General Retention and Disposal Authority *Administrative records* **COMMUNITY RELATIONS - Enquiries** for records relating to requests for and the handling of enquiries regarding routine information about the organisation and its services.

See General Retention and Disposal Authority *Administrative records* **GOVERNMENT RELATIONS - Advice** for records relating to the provision of advice to the portfolio Minister or other government organisations.

See General Retention and Disposal Authority *Administrative records* **LEGAL SERVICES - Advice** for records relating to advice from the Crown Solicitor or external legal advisors relating to the interpretation of legislation.

1.1.1	Records relating to the provision of: - operational advice to consumers, traders, charitable organisations, public or other organisations - advice relating to certification and accreditation of building certifiers. Includes legacy records such as advice, registers and certification of encumbrances on vehicles, e.g. register of encumbered vehicles.	Retain minimum of 10 years after action completed, then destroy
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CONSUMER PROTECTION - Bonds & trust accounts

1.2.0 Bonds & trust accounts

The activities relating to the management of bonds and trust accounts. Includes building bonds, rental bonds, real estate trust accounts etc.

See **CONSUMER PROTECTION - Advice** for records relating to advice provided in relation to bonds.

1.2.1	Records relating to the management of bonds and trust accounts, e.g. building bonds, rental bonds, real estate trust accounts etc. Includes lodgement forms, claim forms, authorised signatories forms, changes of particulars requests, master agents files, audit reports, trust account registration and closure documents etc.	Retain minimum of 7 years after refund of bond money or closure of account, then destroy
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1.3.0 Community & industry education

The activities relating to educating the community and industry about consumer protection and industry regulation.

See General Retention and Disposal Authority *Administrative records* **COMMUNITY RELATIONS - Customer service** for records relating to the management of surveys, bookings for events, programs or other activities held by the organisation.

See General Retention and Disposal Authority *Administrative records* **COMMUNITY RELATIONS - Marketing** for records relating to exhibitions mounted by the organisation

1.3.1	Records relating to the development of community and industry education resources, e.g. educational kits, practice notes, circulars and bulletins issued as guidance and advice relating to building and development accreditation, disciplinary processes, certification etc. Includes final versions, summary records of consultation, drafts containing significant changes.	Required as State archives
1.3.2	Records relating to the development of short courses, seminars, information nights, outreach services etc.	Retain until no longer required for teaching or other purposes, then destroy

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CONSUMER PROTECTION - Compliance

1.4.0 Compliance

The activities associated with the management of complaints and investigations, and monitoring compliance with conditions of licenses, permits etc.

See General Retention and Disposal Authority *Administrative records* **LEGAL SERVICES - Litigation** for records relating to compliance matters that result in litigation.

1.4.1	Key records of compliance processes: Includes • summary records and investigations that result in conditional or total banning of products, including building products • registers of disciplinary findings against licensees and complaints against accredited building certifiers • investigations which set a precedent or result in changes to policy • investigations that result in deregistration of associations and co-operatives including Starr-Bowkett society or co-operative housing societies • investigations that result in a ban or major withdrawal of product, or where a faulty product leads to death or serious injury • investigations of incidents/certification of work that have the potential to cause serious risk to public safety. Includes inspector's reports, complaints, scientific reports, correspondence and policy documents. Includes legacy records such as registers of electrical fatalities occurring in NSW.	Required as State archives
1.4.2	Records relating to the management of compliance processes which: • lead to building and plumbing licenses (including building certifiers) being suspended or cancelled • lead to the exclusion of a person from holding a licence, permit or approval • lead to prosecution for fraudulent dealings	Retain minimum of 75 years after license/undertaking first issued, then destroy

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CONSUMER PROTECTION - Compliance

	require an undertaking to put additional safety measures in place to mitigate the risk caused by an unsafe building product, e.g. combustible cladding.	
1.4.3	Records relating to: - routine monitoring of compliance conditions - management of routine complaints and investigations, including initial complaint or incident report, management of seizures, statements, investigation reports, hearings, and outcome of investigation, penalty and infringement notices etc. Includes summary records of complaints. Includes legacy records of reporting fatal accidents from electrocution to investigating bodies and ensuring trade measurement devices are correct. Note: Exhibits seized or obtained from companies and individuals in the course of investigations should be returned to owner at completion of the investigation where possible.	Retain minimum of 10 years after action completed, then destroy

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CONSUMER PROTECTION - Funding, compensation & assistance programs

1.5.0 Funding, compensation & assistance programs

The activities relating to the management of funding and assistance programs. Includes community funding programs, grants, provision of specialised counselling in relation to the credit issues, assistance to individuals demonstrating severe financial problems, the mediation and management of disputes, such as strata scheme disputes.

Includes the administration of compensation schemes, such as the Motor Dealers Compensation Fund which provides compensation in cases where motor dealers go out of business with warranty work outstanding, real estate dealings where managing agents fail to forward rent, cease trading, newsagents to assist with fit-outs to align with NSW Lotteries standards, insurance schemes to protect consumers from defective, incomplete building works etc.

1.5.1	Records relating to significant stages in developing, reviewing and implementing funding programs such as: • funding to community-based organisations to provide independent tenancy advice and advocacy services • funds to industry-based organisations providing education and research relating to the building industry and consumers of that industry • funds to organisations providing education or research in the property services industry • credit counselling programs • financial counselling trust funds. Includes summary reporting on programs and distribution of monies.	Required as State archives
1.5.2	Records relating to the administration, coordination and monitoring of grants, funding, compensation, counselling, financial, legal and other assistance, and dispute resolution and mediation programs. Includes applications, associated documentation, agreements, correspondence with parties involved, determinations, reports, payments, determinations, etc. Includes approved and refused applications. Includes legacy records such as claims made by government run home building insurance schemes.	Retain minimum of 10 years after claim or conditions of grant finalised, or action completed, then destroy

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CONSUMER PROTECTION - Funding, compensation & assistance programs

1.6.0 Registration, licensing, permits & approvals

The activities relating to the:

- licensing of tradespersons, contractors, businesses, property agents etc.
- registration and de-registration of associations, co-operatives, accommodation (boarding houses, retirement villages, residential land leases), swimming pools and spas, loose fill asbestos etc
- approvals for charitable fundraising, electrical appliances & equipment etc
- authority to conduct community gaming.

Includes legacy functions such as the licensing of employment placement services etc.

1.6.1	Summary records of: • incorporated associations and co-operatives, co-operative housing societies and Starr-Bowkett societies, corporations, limited partnerships, body corporates, and funeral funds • boarding houses, retirement villages, residential land leases. Includes legacy records such as registration of business names.	Required as State archives
1.6.2	Records relating to the management of the register of residential properties that contain loose fill asbestos insulation.	Retain minimum of 75 years after removal from the register, then destroy
1.6.3	Records relating to the registration, licensing or accreditation of high-risk trades. Includes, for example, but not restricted to: • registers of builders and plumbers (builders, demolisher, gasfitter, drainage plumber, electrician), building surveyors, building & development certifiers, tow truck operators • details of licences or registrations which have been cancelled or suspended, the detailed records of a decision to refuse to renew, or to place conditions on, an existing registration or licence, and any process to review this decision.	Retain minimum of 75 years after date registration first issued, then destroy

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CONSUMER PROTECTION - Funding, compensation & assistance programs

1.6.4	Records relating to applications for registration, licensing or accreditation. Includes, for example, but not restricted to, applications for: • associations, solicitor corporations, limited partnerships, miscellaneous bodies corporate and funeral funds etc. Includes routine inspections and the investigation of complaints or reported breaches of the operations • boarding houses, retirement villages, residential land leases, swimming pools, spas etc. • building and construction industry operators (e.g. builders, plumbers, certifiers etc) • trade and business operators • real estate and property-related licensing • brand and product approval, including electrical items and non-declared items • applications for conduct of charitable fundraising activities • conduct of community gaming activities and competitions such as lotteries, art unions, games of chance, Two-up etc. Includes approved and refused applications, supporting documentation, documents required to be submitted. Includes legacy records such as weighbridge servicing licensing. See General Retention and Disposal Authority <i>Administrative records</i> INFORMATION MANAGEMENT - Control for control records.	Retain minimum of 7 years after expiry or termination, then destroy
1.6.5	Records relating to low risk activities. Includes: • withdrawn applications • non-statutory registrations such as registration of fuel service stations for pricing comparisons e.g. Fuel Check • transactional information and records relating to the processing of successful registration/licence applications (e.g. name check data), renewals, changes to particulars, etc.	Retain until no longer required for reference or business purposes, then destroy

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CONSUMER PROTECTION - Funding, compensation & assistance programs

	• routine records of compliance and inspections, including provision of information, form letters, enquiries, monthly/quarterly/annual returns (e.g. biofuel data), mandatory lodgements etc.	
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