



**State Archives
& Records**

Regulatory Framework

Published July 2021

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1. Our role

The *State Records Act 1998* (the Act) establishes the State Archives and Records Authority of New South Wales (SARA) as the regulator of records management and recordkeeping within NSW public offices.

The State Records Act provides SARA with regulatory powers and enables us to issue formal requirements (e.g. standards, codes of best practice, retention and disposal authorities) and to provide records management services (e.g. guidance, and training) to assist and support public offices in their compliance with the Act.

1.1 Purpose of this Framework

The **Regulatory Framework (2021-2024)** describes our approach to regulating records management, and how we intend to use the powers in the *State Records Act 1998* to support our regulatory activities. It replaces the Monitoring Framework (2004) and is applicable to all public offices.

The Framework will be reviewed in 2024.

1.2 Audience

This Framework has been written for:

- public offices covered by the *State Records Act 1998*
- our staff tasked with the development and implementation of our regulatory activities, and
- members of the public and external stakeholders with an interest in our regulatory role.

1.3 Definitions

For the purposes of this Framework, we are using the following definitions:

Monitoring activity

An activity undertaken by SARA using the Records Management Assessment Tool (RMAT) to measure the current status of records management and recordkeeping in public offices.

Monitoring activities can be undertaken with the entire jurisdiction of the *State Records Act 1998*, or with a sector of the jurisdiction (e.g. councils), or an individual public office.

Public Offices

Public offices are defined at [section 3](#) of the *State Records Act 1998*.

Recordkeeping

The process of making accurate and reliable records and capturing them into the official recordkeeping systems of the organisation.

Recordkeeping Assessment

An impartial and evidence-based assessment by SARA of recordkeeping issues occurring within a public office. The outcome of the assessment is a Recordkeeping Assessment Report which will include recommendations to the public office to remediate and improve recordkeeping.

Records management

Field of management responsible for the efficient and systematic control of the creation, receipt, maintenance, use and disposition [disposal] of records, including processes for capturing and maintaining evidence of and information about business activities and transactions in the form of records (*AS ISO 15489.1: 2017* – clause 3.15)

2. Our regulatory approach

We use a *responsive regulatory approach* in the pursuit of our objectives for the regulation of records management and recordkeeping. This approach enables us to use coordinated, responsive and risk-informed practices to improve compliance with the requirements of the *State Records Act 1998* and the standards issued under the Act.

Our regulatory objectives are to:

- Assist public offices to be compliant
- Monitor and report on public office compliance
- Promote excellence in records management and recordkeeping.

While our aim is to improve compliance with the State Records Act through cooperative and collaborative engagement with public offices, we will escalate matters of non-compliance when required. Depending on the circumstances of the non-compliance, this may involve referring public offices to integrity agencies, or the relevant Minister, or both.

2.1 Risk-based approach

Underpinning our responsive regulation approach is the application of risk-based decision making using information gained through monitoring activities. This approach allows us to assess priorities and allocate resources accordingly, and identify those public offices that are in the greatest need of assistance.

In order to do this, we need to:

- have a clear understanding of the sector's needs and performance against our regulatory objectives
- be able to identify where the most significant risks lie
- have a graduated set of compliance activities to match to risk, and
- be able to demonstrate that our regulatory actions are both proportionate and effective.

We seek to support compliance with the State Records Act with an approach that allows flexibility for public offices to achieve good recordkeeping outcomes and at the same time ensures that risks remain within acceptable levels. Our monitoring activities will enable us to identify those public offices who are at most risk of records management failure and to target resources to assist these public offices.

While the State Records Act does not include a formal complaint mechanism, we will assess complaints about poor records management or recordkeeping and act where outcomes align with our regulatory objectives or it becomes clear that there is an unacceptable level of risk. We will use learnings from such complaints to support improved records management and recordkeeping practices in public offices.

We will continue to support and provide advice and guidance to all public offices, including providing guidance on issues that pose risks to records management and recordkeeping, and will continue to promote the importance of recordkeeping in public offices.

2.2 Consistent, transparent and open

We recognise that we are accountable for how we monitor compliance with the State Records Act and resolve non-compliance issues.

We will take consistent approaches in responding to issues of non-compliance that we consider are negligent and that damage the integrity of the public record.

Public offices and individuals are able to make a complaint to us about serious instances of poor recordkeeping or non-compliant records management within a NSW Public Sector or Government organisation.

Our decision-making for responding to issues of non-compliance will occur within documented governance processes.

While our responses to non-compliance issues will be consistent, we recognise that each case will require us to consider the particular circumstances, the outcomes sought, level of risks, resources and other relevant factors.

We will address non-compliance issues with integrity and in an equitable, objective and unbiased manner. We will deal with issues in a transparent and open manner so that all parties involved in a non-compliance issue have a clear understanding of what is expected from them and what they can expect from SARA.

2.3 Supportive and collaborative

Using a responsive regulatory approach, we will support, collaborate with and actively encourage all public offices to improve their compliance with the State Records Act and the standards issued under the Act. We will focus on providing relevant guidance, advice, and tools to assist public offices to comply. We will support public offices in their efforts to improve records management and recordkeeping.

2.4 Co-regulatory partnerships

Co-regulation typically refers to where one organisation develops and administers standards or requirements, but is supported by other organisations to enforce those standards and requirements.

A partnering approach with integrity agencies recognises that in some matters concerning non-compliance, another regulator is better placed to take on an investigatory and enforcement role.

We will partner with a range of organisations (e.g. the Information and Privacy Commission (IPC), the NSW Ombudsman, and the Independent Commission Against Corruption (ICAC)) and work with these organisations to develop guidance and advice which will respond to specific issues, and improve records management in public offices.

We will refer matters to the relevant co-regulatory partner if the matter:

- relates to matters that indicate possible maladministration or corruption
- concerns the destruction of records and information to deliberately avoid providing access via the Government Information (Public Access) Act 2009 (GIPAA)
- identifies significant, widespread or complex issues about records management or recordkeeping which require investigation, or
- identifies significant or complex issues of records management or recordkeeping where there is limited interest in cooperating with SARA, complying with the State Records Act, or implementing recommendations to address recordkeeping failures.

2.5 Enforcement actions

Any enforcement action, as a result of issues raised in a Recordkeeping Assessment or a monitoring activity, will be in proportion to:

- the level of recordkeeping risk or failure
- the seriousness of the breach of the *State Records Act 1998* and the standards issued under the Act, and
- the public office's risk profile.

Decisions regarding enforcement are made by the Executive Director.

Enforcement actions can include:

- recommendations made in a Recordkeeping Assessment Report provided to a public office and a request for regular reports from the public office on the implementation of recommendations
- issue of a notice to the public office to investigate records management practices and report findings to SARA
- identification of non-compliant public offices in the SARA Annual Report
- escalation of the matter to the relevant Minister or a coordinating authority (e.g. Office of Local Government, Secretary of the relevant Department), or
- legal actions taken using the provisions of the State Records Act.

Referral of a matter to the Minister may also include the option for the matter to be examined by the Auditor-General of NSW.

3. Regulatory Objectives and Activities

SARA's Regulatory Objectives
1. Assist public offices to be compliant 2. Monitor and report on public office compliance 3. Promote excellence in records management and recordkeeping

3.1 Assist public offices to be compliant

We understand that compliance can seem complex. Our aim is to:

- make it easier for an organisation to know what it needs to do in order to comply
- provide clear information on requirements, and
- provide information to enable public offices to value good records management.

We will promote voluntary compliance with the State Records Act and the standards issued under the Act. We want public offices to implement good records management and recordkeeping because they understand that it provides critical support to their organisation.

We will encourage public offices to take an active role in assessing their current levels of maturity with requirements and implementing corrective actions where appropriate. The Records Management Assessment Tool (RMAT) enables public offices to self-assess conformity with requirements and levels of maturity, and to use reports from these self-assessment processes for planning and improvement purposes.

We will continue to provide a wide range of advice, guidance, resources, and tools to assist public offices in implementing records management best practice and responding to emerging challenges and issues in records management.

We recognise that some non-compliance is inevitable. We encourage any public office with non-compliance concerns or issues to have a discussion with us about the problems or challenges that they are facing. We will work with public offices to develop solutions to problems when they are brought to our attention. We believe an open discussion about issues and collaboratively developing a plan for improvement provides the best outcomes.

3.2 Monitor and report on public office compliance

In order to effectively regulate and respond to emerging issues, risks and challenges, and measure improvement in performance over time, we need to have a clear view of how well public offices are

performing against the records management requirements established in the State Records Act and the standards issued under the Act. Monitoring activities provides us with this view of performance.

We report to the Minister and the Parliament on the state of records management and recordkeeping in public offices. Our monitoring activities enable us to make such reports.

We will undertake a range of compliance monitoring including:

- Undertaking Recordkeeping Assessments in response to emerging records management/recordkeeping issues in a public office or a complaint about poor recordkeeping in a public office that meets our criteria for assessment
- inspections of records storage, records, systems, or records management practices
- assessing records management issues which are referred to us by another organisation
- following-up with a public office when serious incidents of non-compliant records management or recordkeeping are identified in integrity agency reports (e.g. NSW Auditor-General's Reports, NSW Ombudsman's report etc.) or in media reports
- referring a matter to a co-regulation partner for investigation, and
- conducting annual formal reporting processes using the RMAT.

The results of monitoring activities will be reported on our website and in our Annual Report. Understandings of trends and issues gained from our monitoring activities will be incorporated into new standards, guidance and tools for public offices.

3.3 Promote excellence in records management and recordkeeping

Records are at the core of government business. Good recordkeeping enables accurate, authentic and trustworthy evidence of the business of government that can be depended upon by the Government and the people of NSW. Records are an indispensable ingredient for accountable Government, service delivery, and decision-making.

Excellence in records management and recordkeeping contributes to achieving the outcomes of the State Records Act and helps to promote trust in the public record and Government.

We will promote and share excellence in records management and recordkeeping in public offices, particularly where it contributes to ensuring:

- creation and capture of trustworthy, useful and accountable records
- effective and efficient management of records in all formats, in all business environments, and in all types of systems
- records are accessible and retained for as long as they are required as per requirements in authorised retention and disposal authorities, and
- records are identified and transferred to the State Archives Collection.

We will increase public trust in the quality and care of government records and information by:

- assisting public offices and promoting exemplars of best practice/excellence through the distribution of information about good records management and recordkeeping practices
- encouraging public offices to adopt best practice and industry recognised standards
- monitoring, endorsing and promoting industry best practice standards
- incorporating industry standards and best practice into guidance, advice and resources available to public offices
- highlighting areas of high risk in common practice that threaten trust and confidence in government information, and
- incorporating reporting on compliance in our annual report.

4. Acknowledgements

We acknowledge the use of Archives New Zealand's [Regulatory Statement](#) (October 2019) and the NSW Information and Privacy Commission's [Regulatory Plan](#) (2020-2022) in the development of this Regulatory Framework.