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State Records
of South Australia



Introduction to the State Records Act, 1997

Guideline

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Introduction

All public officials are legally obliged to create and maintain records that document the business activities and transactions of their agencies.

South Australian agencies, in both state and local government, need to be accountable to the Government and to the public for their decisions, actions and dealings. Under the *State Records Act 1997* agencies need to be committed to good record keeping practices to ensure greater transparency and accountability. So too, employees of the South Australian Government have record keeping obligations, regardless of the medium the records take.

Scope of this guideline

This guideline is generally aimed at all South Australian Government agencies and their employees. It provides an overview of the State Records Act and its implications for agencies. The State Records Act took effect from 31 October 1997 and amends the *Libraries Act 1982*, the *Freedom of Information Act 1991* and the *Local Government Act 1934* (subsequently *Local Government Act 1999*).

This guideline is issued in accordance with section 7(g) of the State Records Act.

Related documents

For an overview of other South Australian legislation with records management implications for agencies refer to the guideline – *Recordkeeping requirements within South Australian legislation*, State Records (May 2002).

Variation to this guideline

State Records may update or alter this guideline from time to time as authorised by the Manager [Director] of State Records, in consultation with the State Records Council. All South Australian agencies will be informed of any such alterations or updates.

Further information

Each year State Records is required to report to the Minister who then reports to the Parliament on the administration of the State Records Act. These annual reports provide a valuable review of the Act and how State Records and agencies have been working with this legislation.

The *State Records Act 1997* is available from the State Records of South Australia website at www.archives.sa.gov.au

Agencies seeking further information should contact the Manager, Government Recordkeeping at:

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How does the Act define a record?

What is a record?

A record is a written, graphic or pictorial matter, or a disk, film, tape or any other object that contains information or from which information may be reproduced (section 3(1)).

What is an official record?

An official record is a record made or received by an agency in the conduct of its business (section 3(1)).

What is *not* an official record?

Section 3(1) of the State Records Act outlines that the following records are not official records:

- records made or received by an agency for delivery of or transmission to another person or body (other than an agency) and so delivered and transmitted
- records that are drafts only and not for further use or reference
- records received into or made for the collection of a library, museum or art gallery and that are not otherwise associated with the business of the agency
- Commonwealth records (as defined by the Archives Act 1983)
- a record that has been transferred to the Commonwealth.

How does the Act define an agency?

What is an agency?

According to the interpretations in section 3(1) of the Act, an agency can mean:

- the Governor
- a minister of the Crown
- a court or tribunal
- a person who holds an office established by an Act
- an incorporated or unincorporated body
- a department or other administrative unit of the public service
- the police force
- a municipal or district council
- a person or body declared by the regulations to be an agency
- a former agency and an agency that ceased to exist before the commencement of the State Records Act.

What is *not* an agency?

By definition an agency is not:

- a House of Parliament or committee of the Parliament or a House of Parliament
- a present or former officer of a House of Parliament
- a present or former officer of a House of Parliament (other than a Minister in respect of records made or received in his or her capacity as a Minister)
- a person or former member of the staff of a House of Parliament or the joint parliamentary service.

What are the functions of State Records under the Act?

This legislation entrusts State Records with a pivotal role in guiding agencies, state and local, in their records management and record keeping processes. It is an acknowledgment by the State Government of South Australia that records management practices have a significant impact on accountability and the day-to-day effectiveness of any organisation.

Drawing on section 5(1) State Records' functions under the State Records Act include the following.

Archival records storage

State Records is the principal repository for all official records that are no longer of current administrative purpose (section 5(1a)).

Disposal regulation

State Records oversees and advises on the retention and destruction of official records, depending on whether they are of permanent or temporary value (section 23).

Access provision

State Records ensures that agencies have access to their official records in State Records' custody. It also ensures that members of the public have access to official records that are not subject to restriction (sections 25 and 26).

Standard setting

State Records is responsible for issuing standards and policies to ensure that records management practices in state and local Government agencies adhere to recognised best practice (sections 5(1d), 5(1c), 7(g), 7(h) and 14).

Advice provision

This is part of State Records' governance role. State Records' Consultancy Services Team, in particular, provides support and advice to agencies on a variety of records management related topics/issues (section 7(g)).

Performance monitoring

State Records monitors records management practices within agencies by using surveys. In this way it can ensure that appropriate standards are being maintained (section 15). It also promotes the use of internal self-monitoring for agencies.

Publicity and promotion

State Records is responsible for the promotion of good records management throughout all South Australian agencies (section 5(1c)). It is also charged with promoting an awareness of its existence and functions (section 7(i)).

What are the functions of Agencies under the Act?

Agencies also have responsibilities under the State Records Act to ensure that official records in their custody are well maintained, and that transfers and disposals only occur in an approved manner. Agencies are required to ensure their records management practices meet minimum standards of adequacy.

Under the State Records Act, the role and functions of state and local Government agencies are outlined by the following.

Records storage

Agencies are required to keep official records in their custody in good order and condition (section 13).

Disposal management

Agencies are legally obliged to ensure that official records are only disposed of in accordance with the Act and under relevant disposal schedules (section 23).

Access maintenance

Agencies are required to ensure that their official records are maintained in such a way as to enable access. They hold responsibility for determining public access to their records that are in the custody of State Records (sections 20 and 26).

Standards and policy implementation

Agencies are responsible for implementing records management standards issued by State Records, ensuring that they adhere to these standards (section 14) and developing their own agency-specific policy and procedures.

Completion of surveys

Agencies have a legislative responsibility to offer the Manager [Director] of State Records reasonable cooperation and assistance in the conduct of surveys of official records and record keeping practices (section 15).

Resource allocation

Agencies should dedicate sufficient resources to ensure their official records are kept in good condition and that the State Records Act is adhered to.

What are the general provisions of the Act?

Custody of official records

Every agency is responsible for ensuring that the official records in its custody are maintained both in good order and condition (section 13).

Part 6 of the Act deals with the custody of official records and confirms State Records' role as principal custodian of these records. Section 19 outlines the conditions surrounding the mandatory transfer of official records to State Records and emphasises that the Manager needs to approve the time and form of their delivery.

Conversely, this section of the Act allows that if the agency is still using their records or that agency's own storage facilities are deemed sufficient and adequate, then some records may be retained by the agency (sections 19(3) and 19(4)).

Section 19 also acknowledges the diversity in South Australia's state and local Government agencies. Agencies have different records management needs and expectations and the Act is designed to ensure that all reach a level of good records management practice.

State Records is also entrusted with the authority to recover official records that are in the possession of private individuals (section 21).

Disposal of official records

In accordance with sections 23 and 24 of the Act the agency or the Manager [Director] of State Records may only destroy records with the permission of the State Records Council. The Council was created by the Act and consists of nine members representing community, business, archival/records management, academic, indigenous, and state and local Government interests. Proposed disposals are subject to agency and broader consultation, and undergo peer review before being submitted to the State Records Council for consideration and approval.

Destruction of or tampering with Government records

The unauthorised destruction of or tampering with official records can have serious consequences for any agency. It can lead to the loss of valuable information and loss of trust in the reliability of an organisation, and may result in legal action. Losses also undermine good work done by employees. Risk management is part of the process in ensuring that this does not happen.

Section 17 of the Act states:

(1.) If a person, knowing that he or she does not have proper authority to do so, intentionally –

- damages or alters an official record; or
- disposes of an official record or removes an official record from official custody,

the person commits an offence.

The maximum penalty for this offence, which is placed on the individual, is \$10 000 or 2 years imprisonment.

According to section 17(3), however, a court that convicts a person of an offence under section 17(1) may order the convicted person to pay to the Minister such compensation as the court thinks fit.

This does not limit or derogate from any other right or power to institute criminal or civil proceedings in respect of an act referred to in section 17(4).

Clearly, the unauthorised destruction of or tampering with official records can have serious repercussions for both an agency and the individuals involved. Good records management training and clearly defined policies and practices will help to prevent this happening.

Access to official records

Part 8 of the Act deals with access considerations, both for the agency and the public.

Agency access

The agency responsible for official records in the custody of State Records can have access to its records and use them as it requires (section 25(1)). Placing official records into the custody of State Records does not mean that agency access is limited or restricted. The only exceptions are that records in existence for 15 years or more cannot be resumed by the agency, nor can they be kept by the agency for longer than is necessary for consultation or other purposes (section 25(2a)). In some instances, conservation and preservation issues also need to be taken into consideration when allowing agency access to their official records (section 25(2b)). For agencies, access is through State Records' Repository Services.

Public access

The agency, in consultation with the Manager [Director] of State Records, is responsible for determining public access and, in some cases, restrictions concerning their official records (section 26).

The main point of access for members of the public is through State Records' public search room. Access is, however, subject to the conditions determined by the agency.

Where records are restricted, a member of the public still has recourse to the relevant agency to gain limited permission on a case-by-case basis.

Note that there is nothing to prevent a person applying for access to a record under the *Freedom of Information Act 1991* or the *Local Government Act 1934*¹ (section 26(5)).

Records management standards and compliance

Section 16 of the State Records Act states that if the record keeping practices of an agency are brought to the attention of the Manager [Director] of State Records as being inadequate for the purposes they should be documenting, then the Manager is required to report this directly to the Minister. It is this directive that has informed the Adequate Records Management Framework that State Records has developed for Government agencies.

¹ Amended by the *Local Government Act 1999*.

To ensure compliance with adequate records management policies and practices, State Records promotes its standard Adequate Records Management: Meeting the Standard and the associated guidelines Improvement Matrix and Implementation Plan. Essential to these documents is the requirement that regular reporting needs to take place. This process of internal assessment can help agencies ensure that they are complying with good records management practices. It also means that combined with external monitoring, an agency's records management strengths can be assessed and weaknesses addressed.

Glossary

State Records has produced an extensive Glossary of Records Management Terms. This can be accessed and downloaded from the Adequate Records Management - publications section, of the State Records website, <http://www.archives.sa.gov.au>