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State Records
of South Australia



General Disposal Schedule No. 27

Records Required for Legal Proceedings Relating
to Alleged Abuse of Former Children Whilst in State
Care

Effective from 25 January 2011 to 31 December 2020

1st Edition

Approved by SRC

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Approval for the commencement of this schedule

State Records Act 1997

Government of South Australia

General Disposal Schedule No. 27, 1st Edition

for

Records Required for Legal Proceedings Relating to *Alleged* Abuse of Former Children Whilst in State Care

Effective 25 January 2011 until 31 December 2020

Approved By

Chair, State Records Council

Director, State Records



Acknowledgments

Disposal freezes issued by the National Archives of Australia have been referred to as a reference point.

Introduction

Background

The State of South Australia is a party to a number of legal proceedings arising out of alleged abuse of former children whilst they were in State Care. In addition, applications for *ex gratia* payments from former residents in State Care who allege that they have experienced sexual abuse as children pursuant to Section 31 of the *Victims of Crime Act 2001* have been received by the Attorney-General's Department.

Scope

GDS 27 applies to records that may be required for either:

- legal proceedings arising out of alleged abuse of former children whilst they were in State Care or
- the *ex gratia* applications process for former residents in State Care who experienced sexual abuse as children, pursuant to Section 31 of the *Victims of Crime Act 2001*.

GDS 27, in effect, places an immediate destruction freeze on records of relevance (or likely relevance) that have been sentenced as temporary under another disposal schedule.

GDS 27 does *not* affect records that have been sentenced as permanent under another disposal schedule.

To provide some guidance to agencies, types of records that may be relevant are listed below. Such a list is not conclusive, however.

Objectives

The aim of GDS 27 is to ensure the protection of rights and entitlements of the individuals who present a court claim or apply for an *ex gratia* payment and of the State Government in defending or processing those claims and applications.

In order to achieve its aim, GDS 27 protects records of relevance (or likely relevance) by suspending any other disposal authority that would normally enable destruction.

Implementation

GDS 27 is issued under the *State Records Act 1997*.



The State Records Act was proclaimed in October 1997 to provide for the preservation and management of official records. GDS 27 is issued as a determination under section 23 of the Act.

Section 23 of the State Records Act states that no official records may be disposed of without a determination made by the Director [Manager], State Records and approved by the State Records Council.

GDS 27 was approved by the State Records Council on 25 January 2011 and is effective immediately until 31 December 2020, retention subject to a review at that date.

GDS 27 has been issued in electronic form via the State Records website (www.archives.sa.gov.au) to allow ease of use and greater accessibility.

Any modification of the Schedule by end users is not permitted. Changes can only be made with the approval of State Records and the State Records Council.

Updates/Amendments

GDS 27 is effective immediately from 25 January 2011 until 31 December 2020, retention subject to a review at that date. GDS 27 may be reviewed earlier as instructed by the Crown Solicitor's Office, State Records or the State Records Council. Amendments approved by the State Records Council may be issued during this period.

Previous Disposal Schedules Revoked

GDS 27 does not revoke any previous disposal schedules. However, it temporarily suspends, for the period of the freeze, the operation of disposal classes relevant to records described below.

Complementary Disposal Schedules

An agency needs to use GDS 27 in association with other GDS' and the agency's operational records disposal schedule/s.

Consultation

In developing GDS 27 consultation occurred with the Crown Solicitor's Office.

Record Formats

GDS 27 applies to records in any format. This includes paper, microform (film or fiche), audiovisual, graphic, photographic and electronic media.

Access Rights and Responsibilities

An agency needs to ensure that records, irrespective of format, will remain accessible for the duration of the designated retention period. By "accessible" it is meant that the information contained within a record remains readable for the life of the record. In addition,



“accessible” also refers to the retrievability and availability of a record. Whether stored on or off-site, a record needs to be able to be retrieved and made available as soon as practicable (and, in any case, within 30 days).

With respect to the legal proceedings arising out of alleged abuse of former children whilst they were in State Care, the State of South Australia is required to disclose documents that are, or have been, in the State’s possession and are directly relevant to any issue raised in the pleadings, or are to be disclosed by Order of the Court. The duty of the State remains a very onerous one and the consequences remain dire where proper disclosure is not made. On some occasions the disclosure of documents will involve searching in various government agencies to ensure that all relevant documents have been disclosed. The obligation to provide disclosure is a continuing obligation.

Contacts/Help Desk

For advice on implementing GDS 27, including identifying records of relevance contact the Civil Litigation Section, Crown Solicitor’s Office.

For general advice on records appraisal, disposal, destruction, transfer and storage, contact Records Management Services, State Records.

For changes or updates to GDS 27, please also contact Records Management Services, State Records.

Civil Litigation Section, Crown Solicitor’s Office

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Categories of Records that may be Relevant

The following is a list of records that may be of relevance. It is by no means an exhaustive list.

Actual relevance is a matter to be determined by officers of the Crown Solicitor's Office.

- **Children in State Care Commission of Inquiry 2008 records**, including:
 - any records of the Commission of Inquiry set up by the *Commission of Inquiry (Children in State Care and Children on APY Lands) Act 2004*
 - any records provided by government agencies to the Children in State Care Commission of Inquiry (referred to above).
- **School records¹** of plaintiffs or *ex gratia* payment applicants, including records relating to:
 - student assessment and achievement at school
 - attendance
 - behaviour and discipline
 - student work experience placement
 - case files of individual students
 - financial assistance to individual students
 - reports of accidents, incidents and injuries
 - reports relating to suspected abuse sustained at home
 - student health and hygiene matters
 - student's medical or psychiatric condition
 - home schooling
 - individual student observation
 - student management
 - admission/enrolment
 - photographs of individual students.
- **Medical records** of plaintiffs or *ex gratia* payment applicants, including:
 - Child Guidance Clinic Records
 - health facility client/patient files
 - Child and Adolescent Mental Health Services client files
 - files relating to attendances or treatment for sexual assaults.

¹ To cover these records, an amendment to *GDS 22 for Primary and Secondary Schools* has been made, consistent with the disposal freeze in *GDS 27*.



- **Personnel records** of plaintiffs, *ex gratia* payment applicants or alleged offenders that were employed by government agencies. Includes:
 - personal files
 - files regarding workers compensation claims.

- **Court records** regarding plaintiffs or *ex gratia* payment applicants, including their court history as children and adults – includes:
 - records of the Adelaide Juvenile Court, Adelaide Children's Court and the Youth Court (various locations), Darlington Court of Summary Jurisdiction
 - child protection records which existed in the Youth Court, including committals to the Custody and Control of the Minister, Detention Orders, etc
 - files of cases before the Magistrates, District, Supreme and Youth Courts. These include files regarding trials for murder, rape and indecent assaults.

- **Court records** regarding offenders alleged to have abused plaintiffs or *ex gratia* payment applicants.

- **Correctional Services records**, including:
 - prison health records of plaintiffs, *ex gratia* payment applicants or of alleged offenders
 - case files regarding offenders (including plaintiffs and *ex gratia* payment applicants), including offender history, probation records etc
 - any files relating to institutions (e.g. Adelaide Remand Centre) for offenders and files regarding individuals who were placed at these institutions. These records may include log books.

- **Police records**, including:
 - records relating to the prosecution of offenders and any documents relating to victims (e.g. reports of offences, investigation files, prosecution files, interviews of witnesses etc)
 - criminal history of alleged offenders (i.e. foster carers or government employees)
 - records relating to the prosecution for offences of plaintiffs or *ex gratia* payment applicants
 - Paedophile Task Force or Sexual Crime Branch records.

- **Public prosecution** files relating to prosecution of offenders, plaintiffs or *ex gratia* payment applicants.

- **Training or education records** of the plaintiffs or *ex gratia* payment applicants, including:



- Training and Further Education (TAFE) student records.
- **Aboriginal Affairs records**, including:
 - files relating to plaintiffs, *ex gratia* payment applicants or alleged offenders
 - general correspondence files
 - minutes and agendas of Aborigines Protection Board and Aboriginal Affairs Board and associated documents and annual reports.
- **Families and Communities records**, including:
 - files relating to plaintiffs, *ex gratia* applicants or alleged offenders
 - general correspondence files
 - foster care files
 - files relating to institutions
 - minutes and agendas of Children's Welfare and Public Relief Board and associated documents and annual reports.

Approved by SRC



Impact on Agencies

Agencies Affected

At the time of approval of GDS 27, the Crown Solicitor's Office had identified the following agencies as potentially holding relevant records:

- Attorney-General's Department
- Courts Administration Authority
- Department for Families and Communities
- Department of Aboriginal Affairs and Reconciliation
- Department of Correctional Services
- Department of Education and Children's Services
- Department of Further Education, Employment, Science and Technology
- Department of Public Prosecutions
- Health agencies (including public hospitals and community health and specialty needs services)
- South Australia Police.

While such agencies have been identified, GDS 27 is not limited in its application to these and in general can apply to any State Government agency that holds records of relevance (or likely relevance).

Action Required of Agencies

Agencies need to:

- ensure that staff responsible for records management are informed of GDS 27 and the disposal freeze that it imposes
- check if they or their approved service provider for records storage have any records due or overdue for destruction that come within the scope of GDS 27
- liaise with the Civil Litigation Section, Crown Solicitor's Office to confirm the relevance of records
- withhold from destruction any such records identified
- retain the records for the duration of the disposal freeze set by GDS 27 or until further notice.

The sentencing of records affected by the disposal freeze can continue. However, the records must be set aside and retained for the period of the disposal freeze. The records need to be retained by the agency – they will not be accepted for transfer to State Records.

The processing and storage costs arising from the implementation of GDS 27 will need to be borne by the agencies affected.



Disposal Determination

Item No.	Description (Disposal Class)	Disposal Action
1.	Where an agency decides an official record may have relevance.	Retain record until Crown Solicitor's Office has determined actual relevance
2.	Where the Crown Solicitor's Office determines actual relevance.	Retain until 31 December 2020, subject to a review at that date

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