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Recordkeeping Requirements within South Australian Legislation

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 agency. State Records is committed to assisting agencies, both state and local government, to achieve adequate practices in their management of official records. In the Adequate Records Management document suite, there is a requirement that agencies are aware of their legislative obligations, particularly with regards to the creation and disposal of records. This guide has been developed as part of State Record's role in assisting agencies to achieve adequate records management practices.

About this Document

Scope

This guideline provides an overview of a selection of South Australian legislation and in particular highlights any recordkeeping implications. Legislation has been grouped under a number of broad headings. The intention is to provide a starting point for agencies that wish to examine legislation that is most relevant to the functions and activities of their own department.

Important note: This guideline is not meant to form advice for agencies, many of whom will have their own specific legislation to refer to, instead it provides an introduction to some of the key legislation of South Australia that has recordkeeping implications.

Application

This guideline applies to agencies within South Australia as defined in section 3 of the *State Records Act 1997*.

This document is issued as a guideline in accordance with section 7(g) of the *State Records Act 1997*.

Structure of this Document

This guideline reviews the following legislation with particular reference to their recordkeeping implications:

- ▶ Local Government Act 1934
- ▶ Local Government Act 1999
- ▶ Occupational, Health Safety and Welfare Act 1986
- ▶ Workers Rehabilitation and Compensation Act 1986
- ▶ Aboriginal Heritage Act 1988
- ▶ Births Deaths and Marriage Registration Act 1996
- ▶ Evidence Act 1929
- ▶ Electronic Transactions Act 2000
- ▶ Freedom of Information Act 1991
- ▶ State Records Act 1997
- ▶ Taxation Administration Act 1996
- ▶ The Business Names Act 1996
- ▶ Heritage Act 1993
- ▶ Development Act 1993
- ▶ Adoption Act 1988
- ▶ Long Service Leave Act 1987

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- ▶ Guardianship and Administration Act 1993
- ▶ The Libraries Act 1982

A discussion of the Legislation is presented under the following broad headings:

- ▶ Financial Legislation
- ▶ Aboriginal/Indigenous Legislation
- ▶ Employment Legislation
- ▶ Commercial Legislation
- ▶ Taxation
- ▶ Public Sector Legislation (this covers the State Records Act 1997)
- ▶ Local Government Legislation
- ▶ Other Legislation.

Important Note

This guide is not intended as a definitive document but is designed to raise awareness of the recordkeeping implications of some of the most prominent legislation in South Australia.

Agencies should be aware of other legislation that is specific to their agencies.

As the nature of legislation is never static, this guide will be revised on a regular basis. State Records welcomes comments and suggestions on its future development. The concluding page of this guide provides a list of sources for ensuring that the most up to date versions of the Acts can be consulted.

All of the material covered in this guide should be read in conjunction with the *Standard for Records Management AS-ISO 15489 – 2002 (Parts 1 & 2)* that provides guidance on managing records.

Financial Legislation

Taxation Administration Act 1996

This Act, which covers access issues, specifies that records must be kept so that they can be readily produced for the Commissioner if required. Also, access to the content of the record is an important consideration in that the form of the record must be in English or so that it can be readily converted or translated into English, section 52.

In terms of retention, the Act specifies that records must be retained for not less than 5 years either after the date it was made or obtained by the person or after the date of completion of the transaction, s53. Records may not be deliberately damaged or destroyed, s54. The inviolable nature of the records is covered in s55-57. These sections cover falsifying records, omitting data and the failure to lodge a tax return. The maximum penalty for each of these offences is \$10,000.

Aboriginal/Indigenous Legislation

Aboriginal Heritage Act 1988

This Act deals with “Division and Acquisition and Customs of Aboriginal Sites, Objects and Records.” Sections 31-34 cover the acquisition, surrender, forfeiture, and custody of land, objects and records. This requires the Minister to either return the site, object or record back to an Aboriginal person or organisation or to find another appropriate place for it.

Employment Legislation

Occupational Health, Safety and Welfare Act 1986

This Act requires the employer to keep information and records relating to work related injuries suffered by employees in their employment with the employer, and to retain those records for whatever period has been prescribed, s19.

Long Service Leave Act 1987

This Act covers the recordkeeping obligations of employers. Employers must, for every employee, keep a detailed record of their work history, including date of commencement of service, their occupation, rates of pay, the number of hours they work per week and their entitlement for long service leave. The Act also outlines that the records stipulated in s10(a1) must be kept in a form that complies with the regulations, and that they must be kept throughout the period of the worker’s service and for at least three years after the termination of that service, s10(2a)(c). The entitlement of workers to inspect any records kept under s10 is also specified under s10(5). Further to this, section 11 deals with inspector’s access to records relating to long service leave under this Act.

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Workers Rehabilitation and Compensation Act 1986

The liability of employers to keep accounts is covered in s74. For the purpose of completing returns that are in accordance with this Act the employer must keep an accurate account of all remuneration paid or payable to the workers of the employer, s74. Under this Act an authorised officer may, at any reasonable time may require a person who has custody or control of books, documents or records to any matter arising under the act to produce these items, s110(1)(c). The authorised officer also has the authority to examine, copy or take extracts from these records, s110(1)(d).

Commercial Legislation

Business Names Act 1996

This Act details the requirements for the registration of business names (part 2). The Act outlines the regulations surrounding the creation and maintenance of a business name register, s11. It stipulates access to view this register and also designates the authorities that are able to alter this register, s12-13.

Public Sector Legislation

State Records Act 1997

This Act creates the institution of State Records of South Australia as the principal repository for official government records that are no longer required for current administrative purposes, s5(1). It invests State Records with a governance role in issuing standards and conducting surveys to ensure that recordkeeping standards are adhered to across local and state government, s14-16. The Act also invests State Records with the responsibility for approving the destruction of official records of temporary value and overseeing this disposal, s23-24. It outlines the powers and responsibilities of the Manager [Director] of State Records in acting on behalf of, and reporting records management issues, to the Minister, s16.

For an overview of the *State Records Act 1997* see the guideline: *The State Records Act 1997: An Introduction* produced by State Records (2001).

Local Government Legislation

Local Government Act 1934

While this Act was largely superseded by the *Local Government Act 1999*, s65 still applies to local government. This section covers access to council documents and Freedom of Information issues, including exempt documents, restricted documents and documents requiring consultation.

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Local Government Act 1999

This Act became operational on 1 January 2000. The Chief Executive Officer is assigned responsibility for the proper keep and maintenance of records, s99(1h). Methods of access and the media in which records can be accessed are also covered. It also defines which documents are to be made available, s5.

Local government authorities have a statutory responsibility to enforce legislation. Examples of relevant legislation are as follows:

- ▶ Dog and Cat Management Act 1995
- ▶ Impounding Act 1920
- ▶ Development Act 1993
- ▶ Environmental Protection Act 1993
- ▶ Water Resources Act 1997
- ▶ Road Traffic Act 1961
- ▶ Expiation of Offences Act 1996
- ▶ Environment Protection Act 1993
- ▶ Country Fires Act 1989
- ▶ South Australian Metropolitan Fire Service Act 1936
- ▶ Public and Environmental Health Act 1987
- ▶ Food Act 1985
- ▶ Supported Residential Facilities Act 1992
- ▶ Council By-laws

The records creation, retention and disposal requirements of these Acts are documented in *General Disposal Schedule 20 for Local Government Records of South Australia*. (GDS 20 is available from our web site or by contacting Records Management Services at State Records).

Regulations under the Development Act 1993: Development Regulations 1993

This regulation accounts for a large amount of the recordkeeping responsibilities of the local government. In particular, part 16 of the Act is relevant to records managers. The relevant authority must keep available for inspection (during its normal office hours) without a fee a register of applications for consent, approval or the assignment of building classifications under the Act, s98(1). This also covers the type of material that should be recorded in the register. Further to this, s98(A) details the responsibility of the Minister and the Council to establish their respective register of agreements, to record agreements entered into under s57 of the Act. It also outlines where registers must be kept. The documents relating to building work approved under the Act must be preserved by the Council, the type of documents are specified in s99(1) and the retention period and conditions for disposal are outlined in s99(2)-99(5).

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It is important to note that GDS (General Disposal Schedule) 20 authority 3.71.4 overrides the retention period and recommended disposal stated in the regulations.

Other Legislation

Births Deaths and Marriages Registration Act 1996

This Act outlines the provisions for the registration of births, deaths and marriages and alterations to the register. It also outlines requirements concerning keeping the register and authority to correct the register, s40-42. Furthermore, s43-49 covers regulations governing access to and certification of register entries. It also deals with the issue of protecting privacy.

Freedom of Information Act 1991

This Act enables applicants to have as much access to government documents as possible. The Act extends as far as possible, the right of the public to: (1) obtain access to information held by the government and; (2) to ensure that records held by the government concerning the personal affairs of members of the public are not incomplete, incorrect, out-of-date or misleading.

State Records offers advice on this Act via its Freedom of Information Advice hotline, ph (08) 8226 7750. In addition State Records facilitates an FOI Forum for practitioners and supports an online FOI Discussion Group.

Heritage Act 1993

This Act deals in part with the creation and maintenance of a register for Heritage listed properties, s13-15. The Act makes provision for proposals to make entries in the register and the notification process, s17-21. In addition, the Act details the process for the alteration and removal of records that are listed in the register. It outlines the requirement for written notice to the owners of the land, local council, the minister and the media. Removal of entries from the register is covered in s23-24.

Evidence Act 1929 (as amended)

In essence, this Act defines evidence provisions, that records in all formats are admissible under the rules of evidence. In this Act, s59(b) covers the computer specific approach, giving legislative provisions that are specifically directed to the admissibility of computer-produced evidence. The Act specifies that computer output shall be admissible subject to its meeting certain requirements. These include – correct programming and use, data from output systematically prepared, no reason to suspect error, no malfunction, no alterations to the computer, responsible person kept the records, and that there is no reason to believe the accuracy/validity has been seriously affected.

Electronic Transactions Act 2000

The Electronic Transactions Act mirrors the Commonwealth Act with a few minor differences. The Act provides a 'light handed' regulatory framework to ensure that transactions conducted electronically or on paper are treated equally by law. The Act supports the development of e-commerce. It is technology neutral, and therefore does not endorse a particular electronic signature technology, nor does it prescribe rules for digital or electronic signatures.

Guardianship and Administration Act 1993

This Act covers the administrator's access to wills and other records, s40. Administrators are entitled to view records relating to the testamentary disposition. The person in control/custody of the document must allow the administrator to have access to the record. The reporting requirements for private administrators are outlined in s44. Reporting by the Public Trustee is covered in s45.

The Libraries Act 1982

This Act stipulates that the publisher of material published in South Australia shall deliver at their expense a copy to the board and to the Parliamentary Librarian within one month of publication, s35(1).

Further Information

The following web sites provide valuable information:

- ▶ The website for South Australia's Legislation provides the most up to date listing of legislation and regulations <http://www.legislation.sa.gov.au>
- ▶ 'Austlii' Australian Consolidated Acts site provides an index for all Australian legislation. It also reflects amendments to Acts. (Please note however that this site is not updated as often as the SA Legislation site) <http://www.austlii.edu.au>
- ▶ State Records' website <http://www.archives.sa.gov.au/>
- ▶ For advice on The State Records Act 1997: refer to the guideline The State Records Act 1997: An Introduction or contact the Records Policy Team at State Records for assistance <http://www.archives.sa.gov.au/contact.html>
- ▶ For current best practice see Australian Standard for Records Management AS-ISO 15489 - 2002. Part 1: General and Part 2: Guidelines.
- ▶ State Records has developed the Adequate Records Management document suite consisting of: Executive Statement, Meeting the Standard, Implementation Plan and Improvement Matrix. This document suite is available online from the State Records website <http://www.archives.sa.gov.au>

Glossary

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