

STATE RECORDS

of South Australia

State Records Act 1997

Operational Records Disposal Schedule

The Office of the Small Business Commissioner
RDS 2020/09 Version 1

Effective Date: 20 August 2021 to 31 August 2031

Approved Date: 20 August 2021



Government of South Australia

State Records

Table of Contents

State Records' Contact Information	4
Preamble.....	5
Purpose of the Schedule	5
Application of the Schedule	5
Authorisation by State Records	5
Approval	5
Disposal of Official Records	6
Legislation	6
Functions of the Schedule	6
Using the Schedule.....	6
Layout.....	7
Retention Period of the Records	7
Custody and Transfer of the Record.....	7
Permanent Records.....	7
Temporary Records.....	8
Destruction of Records	8
Review.....	9
Context Statement	10
Context of the Agency Covered by the Schedule	10
History and Background	10
Role and Function	15
Structure Description.....	15
Predecessor Agencies.....	16
Successor Agencies.....	16
Legislation	16
Context of the Records Covered by the Schedule.....	17
Coverage of RDS 2020/09	17
Related Series Affected by RDS 2020/09.....	17
Complementary Schedules to RDS 2020/09	17
Existing Disposal Schedules Superseded by RDS 2020/09.....	17
Records Structure.....	17
Broad Description and Purpose of the Records	18

Functions and Activities Documented by the Records.....	18
Arrangement of the Records	19
Agency Creating the Records.....	19
Agency Owning or Controlling the Records.....	19
Date Range of the Records	19
Volume of the Records	19
Special Custody Requirements	20
Special Storage Requirements.....	20
Issues Not Mentioned Previously	20
Comments Regarding Disposal Recommendations	20
Permanent Records Rationale	20
Temporary Records Rationale.....	20
Other Disposal Considerations.....	21
Disposal Recommendation Effect on Related Records.....	21
Alternative Record Formats.....	21
Impact on Native Title Claims	21
Indigenous Considerations	21
Scope Note	22
Records Covered by this Schedule.....	22
How to Apply this Schedule	22
Use in conjunction with GDS	22
Use in conjunction with, or complementary to, other RDS.....	22
Other RDS superseded by RDS 2020/09.....	23
Re-sentencing of records where schedules are superseded or particular entries within a schedule are superseded	23
Records excluded from RDS 2020/09	23
Application to records in all formats.....	23
Interpretation of the Schedule.....	23
Minimum retention periods	23
Acronyms	23
Definitions of terms specific to RDS 2020/09	23
Legal Deposit.....	24
Records and Litigation	24
Pre-1901 Records.....	24

List of Functions and Activities	25
BOND MANAGEMENT.....	25
Bond Lodgements and Refunds.....	25
Investment Management.....	25

State Records' Contact Information

Contact details

Level 15, GPO Exchange, 10 Franklin Street

ADELAIDE SA 5000

GPO Box 464

ADELAIDE SA 5000

Tel (+61 8) 8204 8786

Email staterecords@sa.gov.au

Web www.archives.sa.gov.au

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Preamble

Purpose of the Schedule

This Operational Records Disposal Schedule (RDS) authorises arrangements for the retention or destruction of records in accordance with Section 23(2) of the *State Records Act 1997*.

Application of the Schedule

The Office of the Small Business Commissioner

Approved Date: 20 August 2021

Effective Date: 20 August 2021 to 31 August 2031

Authorisation by State Records

This authorisation applies only to the disposal of the records described in the Schedule.

Approval

In accordance with section 23 of the *State Records Act 1997*, this RDS constitutes a determination by the Director, State Records, with the approval of State Records Council, at their meeting held on 20 August 2021.

Disposal of Official Records

Legislation

Section 23(1) of the *State Records Act 1997* states that an agency must not dispose of official records except in accordance with a determination made by the Manager [Director] of State Records with the approval of the State Records Council.

Section 23(2) states:

'If an agency requests the Manager to make a determination as to the disposal of official records, the Manager must, as soon as practicable:

- (a) with the approval of the [State Records] Council, make a determination requiring or authorising disposal of the records in a specified manner; or
- (b) make a determination requiring delivery of the records into the custody of State Records or retention of the records and later delivery into the custody of State Records.'

The contents of an RDS, once the approval process is complete, constitute a determination within the meaning of the *State Records Act 1997*.

Functions of the Schedule

An RDS plans the life of these records from the time of their creation to their disposal. It describes the records created and/or controlled by the Office of the Small Business Commissioner (OSBC) the disposal sentence specifying whether they are to be retained as archives or destroyed, and when this should occur.

This Operational Records Disposal Schedule has been prepared in conjunction with staff from the OSBC to determine the records which need to be kept because of their long term value and to enable the disposal of records once they are no longer needed for administrative purposes. The assessment of the records takes into account their administrative, legal, evidential, financial, informational and historical values. The appraisal of the records is in accordance with the State Records' policy as documented in *Appraisal of Official Records – Policy and Objectives* - available from State Records' website (www.archives.sa.gov.au).

The Schedule complements the General Disposal Schedules (GDS) that are issued by State Records to cover housekeeping and other administrative records common to most State Government agencies.

Using the Schedule

The Schedule applies only to the records described within it.

Layout

The Schedule is laid out as follows:

Item Number: Numbering in the Schedule is multi-level:

- Functions have single numbers (e.g. 1.)
- Activities and/or processes have two-level numbers (e.g. 1.1)
- Disposal classes have three-level numbers (e.g. 1.1.1)

Function: The general functions are shown in 11 point bold Arial upper case at the start of each section (e.g. **BOND MANAGEMENT**).

Activity/Process: The activities and processes relating to each function are shown in 11 point bold Arial sentence case (e.g. **Investment Management**).

Description: Descriptions are in three levels ranging from broad functions to specific disposal classes:

- definitions of functions are shown at the start of each section in **bold** (e.g. The function of managing land for which the agency is legislatively responsible);
- definitions of activities are located adjacent to the activity title in *italics* e.g. The acquisition of land in accordance with the agency's strategic objectives; and
- descriptions of each disposal class are arranged in sequence under the activity definitions.

Disposal Action: Disposal actions relate to the disposal classes arranged under the activity descriptions. The status of the class is either PERMANENT or TEMPORARY with a disposal trigger and retention period given for all temporary records.

Retention Period of the Records

The Schedule is used to sentence records. Sentencing involves applying the record retention periods within the RDS to the records of the OSBC. Decisions are made using the Schedule about whether records are to be retained and, if so, for how long, or when they are to be destroyed.

Retention periods set down in the Schedule are the minimum requirements and the OSBC may extend the retention period of the record if it considers there is an administrative need to do so. Where the OSBC wishes to retain records for substantially longer periods, it should request that the Schedule be amended to reflect this requirement.

Custody and Transfer of the Record

Permanent Records

Section 19 of the *State Records Act 1997* includes provisions for the transfer of custody of an official record:

- a) when the agency ceases to require access to the record for current administrative purposes; or

b) during the year occurring 15 years after the record came into existence - whichever first occurs.

Official records that have been sentenced as permanent, in accordance with an approved disposal schedule, are required to be transferred to State Records.

Agencies with valid reasons to retain permanent records for longer than 15 years should apply in writing to Director [Manager], State Records requesting either a postponement or an exemption from section 19.

It should be noted that postponement or exemption are only granted in exceptional circumstances.

Temporary Records

The custody of official records that have been sentenced as temporary is the responsibility of agencies. A policy and standards framework for the management and storage of temporary value official records has been established by State Records as documented in Records of Temporary Value: Management and Storage: Standard and Guidelines (May 2002). The OSBC needs to comply with these policy documents - available from State Records' website (www.archives.sa.gov.au).

The custody of official records on networks or hard drives is also the responsibility of agencies. The OSBC needs to ensure that records in electronic format remain accessible to authorised users for the duration of the designated retention period. State Records is, however, currently examining options for the transfer of permanent value electronic records in digital form to its custody.

Destruction of Records

Prior to destruction, the following General Disposal Schedules (GDS) need to be consulted:

- GDS 16 Impact of Native Title Claims on Disposal of Records to ensure records which are relevant to native title claims in South Australia are identified and preserved;
- GDS 27 for Records Required for Legal Proceedings or Ex Gratia Applications Relating to Alleged Abuse of Former Children Whilst in State Care to ensure the preservation of official records that may relate to the 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; and
- GDS 32 for Records of Relevance to the Royal Commission into Institutional Responses to Child Sexual Abuse to ensure that records of relevance to the Royal Commission are protected and available for the purposes of the Royal Commission and any subsequent actions involving the South Australian Government as well as for future reference and accountability purposes and to protect the rights and entitlements of stakeholders.

- GDS 36 for Records of Relevance in relation to Child Abuse or Alleged Child Abuse to ensure that records of relevance are protected and available for any subsequent actions involving the South Australian as well as for future reference and accountability purposes and to protect the rights and entitlements of stakeholders.
- GDS 37 for Records of Relevance to the Royal Commission into Aged Care Quality and Safety to ensure that records of relevance to the Royal Commission are protected and available for the purposes of the Royal Commission and any subsequent actions involving the South Australian Government as well as for future reference and accountability purposes and to protect the rights and entitlements of stakeholders.
- GDS 38 for Records of Relevance to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability to ensure that records of relevance to the Royal Commission are protected and available for the purposes of the Royal Commission and any subsequent actions involving the South Australian Government as well as for future reference and accountability purposes and to protect the rights and entitlements of stakeholders.

The OSBC must ensure that all destruction is secure and confidential and that a certificate confirming destruction is provided by private contractors.

Standard methods for destruction of paper are shredding, pulping or other means that are environmentally friendly.

Records in electronic format must only be destroyed by reformatting or rewriting to ensure that the data and any “pointers” in the system are destroyed. “Delete” instructions do not offer adequate security as data may be restored or recovered.

The OSBC should keep their own record of all records destroyed, noting the relevant disposal authority. Proof of destruction may be required for legal purposes, or in response to FOI applications. When records are destroyed systems that control them should also be updated by inputting destruction dates and relevant disposal authorities.

Review

State Records’ disposal schedules apply for a period of ten years. Either the OSBC or State Records may propose a review of the Schedule at an earlier time, in the event of changes to functions or procedures that affect the value of the records covered by the disposal authority. Reviews are especially necessary if there is vast administrative change that affects the currency and use of the records and/or the records are dispersed to other agencies.

The State Records Council needs to approve all amendments to the Schedule. Officers using the Schedule should advise State Records of any necessary changes.

Context Statement

Context of the Agency Covered by the Schedule

History and Background

In October 2010, the then Minister for Small Business, the Hon Tom Koutsantonis MP announced the establishment of a Small Business Commissioner. Legislation, *the Small Business Commissioner Act 2011*, was subsequently developed and passed in the South Australian Parliament in October 2011. The Office of the South Australian Small Business Commissioner (OSBC) commenced operations on 29 March 2012.¹

The Office of the Small Business Commissioner is registered with State Records as GA 3001.

The Small Business Commissioner (SBC) is an independent statutory authority created by the South Australian Government to help small businesses resolve disputes with other businesses, landlords or State and local government bodies.

The SBC provides independent recommendations to the State Government on issues affecting small business and makes representations or submissions for relevant inquiries to relevant Ministers, government agencies, or the State or Federal Parliaments.

The first SBC was Mike Sinkunas and the Deputy Commissioner was Associate Professor Frank Zumbo, who were both appointed for a period of five years. The current Small Business Commissioner, John Chapman was appointed to the role in September 2014 and reappointed for a further four years in 2017. There is no current Deputy Small Business Commissioner.²

¹ OSBC About us – Our Services [online] Available at: https://www.sasbc.sa.gov.au/about_us/our_services [Accessed 8 May 2020]

² OSBC About us – About the Commissioner [online] Available at: https://www.sasbc.sa.gov.au/about_us/about_the_commissioner [Accessed 8 May 2020]

As documented in the *Small Business Commissioner Act 2011*³

5—Functions

- (1) *The functions of the Commissioner are—*
- (a) *to receive and investigate complaints by or on behalf of small businesses regarding their commercial dealings with other businesses and to facilitate resolution of such complaints through measures considered appropriate by the Commissioner such as mediation or making representations on behalf of small businesses; and*
 - (b) *to assist small businesses on request in their dealings with State and local government bodies; and*
 - (c) *to disseminate information to small businesses to assist them in making decisions relevant to their commercial dealings with other businesses and their dealings with State and local government bodies; and*
 - (d) *to administer Part 3A (Industry codes) of the Fair Trading Act 1987 and the Australian Consumer Law (SA) to the extent that responsibility for that administration is assigned to the Commissioner under the Fair Trading Act 1987; and*
 - (e) *to monitor, investigate and advise the Minister about—*
 - (i) *non-compliance with industry codes that may adversely affect small businesses; and*
 - (ii) *market practices that may adversely affect small businesses; and*
 - (f) *to report to the Minister on matters affecting small businesses at the request of the Minister; and*
 - (g) *to report to the Minister on any aspect of the Commissioner's functions at the request of the Minister or on the Commissioner's own initiative; and*
 - (h) *to take any other action considered appropriate by the Commissioner for the purpose of facilitating and encouraging the fair treatment of small businesses in their commercial dealings with other businesses or assisting small businesses in their dealings with State or local government bodies; and*
 - (i) *any other functions conferred on the Commissioner by or under this or any other Act.*

³ Small Business Commissioner Act 2011 [online] Available at <https://www.legislation.sa.gov.au/LZ/C/A/SMALL%20BUSINESS%20COMMISSIONER%20ACT%202011.aspx> [Accessed 5 June 2020]

- (2) *The Commissioner is to perform the functions with a view to the development and maintenance in South Australia of relationships between small businesses and other businesses, and small businesses and State and local government bodies, that are based on dealings conducted fairly and in good faith.*

The responsibility for administration of the *Retail and Commercial Leases Act 1995* transferred from Consumer and Business Services (CBS) from 22 March 2012. Physical and electronic records for Bond Lodgements and Refunds (1985 – 2012) were transferred from CBS. OSBC is not aware of any other records held by CBS prior to 1985.

⁴The OSBC supports and advocates for small business, providing information and tailored, industry-specific services to improve business management and decision making. The services of the Office include:

- Receiving and investigating complaints by or on behalf of small businesses regarding their commercial dealings with other businesses, State or Local government agencies or bodies. The OSBC website provides an explanation of how this is done through the Office's dispute resolution services.
- Facilitating the resolution of such complaints through measures considered appropriate by the SBC. These include measures such as mediation services and/or making representations on behalf of small businesses. There is detailed information about mediation processes on the OSBC website.
- Disseminating information to small businesses to assist them in making decisions relevant to their commercial dealings with other businesses and their dealings with State and Local government bodies.
- Developing, monitoring and investigating through consultation with stakeholders and industry, and enforcing compliance (where it is prescribed) through an Industry Code that may adversely affect small businesses in accordance with the *Fair Trading Act 1987*. This may include evaluating and reviewing codes when required.
- Investigating market practices that may adversely affect a small business.

In addition to the SBC's role under the *Small Business Commissioner Act 2011*, the SBC is the statutory office holder responsible for the administration and development of regulation under the following Acts:

- *Retail and Commercial Leases Act 1995*: provides for the regulation of retail and commercial lease arrangements between tenants and landlords. Includes the lodgement and refund of bonds for commercial premises which are managed through the Retail Shop Leases Fund (RSLF). The Act also allows for the SBC to invest monies from the RSLF with the Public Trustee, with the approval of the relevant Minister.

⁴ OSBS About us – Our Services [online] Available at: https://www.sasbc.sa.gov.au/about_us/our_services [Accessed 8 May 2020]

- *Building and Construction Industry Security of Payment Act 2009*: provides a mechanism for subcontractors and suppliers in the building and construction industry to claim money that is owed to them.
- *Farm Debt Mediation Act 2018*: provides for the mediation of disputes between farmers and creditors relating to debt incurred in the conduct of farming operations.

The SBC has additional responsibilities under the following Acts:

- *Fair Trading Act 1987* and relevant regulations: the SBC has special powers under these regulations to enforce mediation in the specific industries:
 - Farming
 - Motor vehicle
 - Newsagency
 - Franchising
 - Building and construction
 - Mining and resources
- *Work Health and Safety Act 2012*: the role of the SBC is to consult with small business and seek feedback on new codes of practice under the Act, on behalf of the South Australian Government.
- *Late Payment of Government Debts (Interest) Act 2013*: the role of the SBC is to act as an arbiter, in the event that there is a dispute between an agency and a small business vendor as to whether interest is payable on a particular overdue invoice.
- *Local Government Act 1999*: the role of the SBC is to assist with disputes between food businesses including mobile food vending and food trucks and Local Councils around food truck restrictions.
- *COVID-19 Emergency Response (Further Measures) Amendment Act 2020*: the role of the SBC is to assist with disputes between landlords and tenants on retail and commercial leasing matters which have arisen due to the COVID-19 pandemic.

The SBC also:

- Provides independent advice and recommendations regarding small business issues to the Government of the day. This may include advice, comments or recommendations on various matters relating to small business.
- Makes representations to the Minister and other groups as required.
- Makes submissions to relevant inquiries at various levels.
- Undertakes tasks as per the responsibilities under relevant legislation not administered by the SBC.
- Proposes or recommends to the Minister the development of industry codes. This may include code development processes, industry consultation and engagement with stakeholders, monitoring and reporting.
- Enforces industry codes to improve standards of conduct within an industry, as prescribed by the Minister.

- Develops and manages, through consultation with relevant stakeholders, industry sector initiatives as directed by relevant legislation or direction by the Minister. This may include industry engagement and the planning and execution of industry sector programs and projects such as the *Security of Payment Act* (SOPA) Education Program or the Small Business Friendly Council Initiative.
- Advocates for the sector, including attending events, providing presentations and delivering speeches to the community. Also includes working with local and State government on matters such as minimising the effects of roadworks or major developments on small business.
- Provides advice and information to small businesses, industry and intermediaries through information sessions, printed material, social media and presentations.

From 1 July 2019, the Attorney General is the Minister responsible for the *Small Business Commissioner Act 2011*, to whom the SBC reports annually. Previous responsible Ministers include the Minister for Innovation and Skills (March 2018 – June 2019) and the Minister for Small Business (March 2010 – March 2018).⁵

⁵ SA Government Gazette, page 32 [online] Available at:

https://governmentgazette.sa.gov.au/sites/default/files/public/documents/gazette/2019/June/2019_026.pdf

[Accessed 5 June 2020]

Role and Function⁶

The OSBC supports and advocates for small business by providing information and tailored, industry-specific services to improve business management and decision making. This includes assisting to effectively resolve commercial disputes between parties through negotiation, mediation and investigation if required.

The OSBC processes, holds and administers security bonds for retail and commercial leasing and late payment of government debts. The OSBC also manages matters in relation to security of payment in the building and construction industry including the administration of Authorised Nominating Authorities (ANA). An ANA is an external body that manages the adjudication of building and construction industry disputes under the *Building and Construction Industry Security of Payment Act 2009*. ANAs are approved by the relevant Minister.

The OSBC also facilitates negotiations between farmers and creditors in relation to issues around farm debt and with farmers and resource companies in relation to access to farming land.

The Small Business Commissioner may request information by providing a written request under Section 12 of the *Small Business Commissioner Act 2011*. A failure to respond to this request may lead to prosecution with a fine of up to \$20,000. A court would determine any penalty. From the consultation process legal privilege was added to this section to put that beyond doubt. If SBC is seen by a party to being unreasonable, then that party may apply for judicial review or refer the matter to the Ombudsman.

The role of the SBC is to provide independent recommendations to the State Government on issues affecting small business and to make representations or submissions for relevant inquiries to relevant Ministers, government agencies, or the State or Federal Parliaments.

Structure Description

As at 30 June 2021, the OSBC employs 11 staff. It does not have a separation of divisions, however there are small teams who have specific responsibilities:

- Case Team – responsible for managing all enquiries to the Office including dispute matters that become formal cases and/or external mediations.

⁶ OSBC 2018-19 Annual Report (2019) page 6 [online] Available at: https://www.sasbc.sa.gov.au/files/1313_osbc_annual_report_2019_web.pdf [Accessed 8 May 2020]

- Policy and Project Team – responsible for managing policy and legislation for the Office and special project work as required.
- Corporate Team – responsible for managing the Office including human resources, IT matters, financial matters, marketing and events and records management.

Predecessor Agencies

Consumer and Business Affairs GA 605 (1994 - 2011) and Consumer and Business Services GA 2342 (2011 - current) only in relation to the activity of Bond Lodgements and Refunds in accordance with the Retail and Commercial Leases Act 1995 – OSBC became responsible in 2012. Records transferred from CBS date from 1985 - 2012.

Successor Agencies

There are no successor agencies.

Legislation

Relevant Legislation administered by the OSBC:

- *Australian Consumer Law (SA)*
- *Building and Construction Industry Security of Payment Act 2009*
- *Building and Construction Industry Security of Payment Regulations 2011*
- *Fair Trading (Building and Construction Industry Dispute Resolution Code) Regulations 2017*
- *Fair Trading (Farming Industry Dispute Resolution Code) Regulations 2013*
- *Fair Trading (Franchising Industry Dispute Resolution Code) Regulations 2015*
- *Fair Trading (Mining and Resources Industry Land Access Dispute Resolution Code) Regulations 2018*
- *Fair Trading (Motor Vehicle Industry Dispute Resolution Code) Regulations 2014*
- *Fair Trading (Newsagency Industry Dispute Resolution Code) Regulations 2014*
- *Farm Debt Mediation Act 2018*
- *Retail and Commercial Leases Act 1995*
- *Retail and Commercial Leases Regulations 2010*
- *Small Business Commissioner Act 2011*
- *Small Business Commissioner Regulations 2012*

Relevant Legislation NOT administered by OSBC:

- *COVID-19 Emergency Response Act 2020*
- *COVID-19 Emergency Response (Commercial Leases No 2) Regulations 2020*
- *Fair Trading Act 1987*
- *Late Payment of Government Debts (Interest) Act 2013*
- *Late Payment of Government Debts (Interest) Regulations 2014*
- *Local Government Act 1999*
- *Work Health and Safety Act 2012 (SA)*
- *Work Health and Safety Regulations 2012*

Context of the Records Covered by the Schedule

Coverage of RDS 2020/09

RDS 2020/09 Version 1 is intended to provide ongoing comprehensive coverage of the operational records of the OSBC.

Related Series Affected by RDS 2020/09

There are no related series affected by this RDS.

Complementary Schedules to RDS 2020/09

There are no complementary schedules to this RDS.

Existing Disposal Schedules Superseded by RDS 2020/09

There are no existing disposal schedules superseded by this RDS.

Records Structure

The OSBC currently use Micro Focus Content Manager (referred to as HPE) for managing its records. All correspondence is recorded in HPE and provided with a unique document number. Records are mostly maintained electronically but some records also have physical files, particularly the case and bonds files which consist of many important original physical documents. These documents are scanned and saved into HPE.

Salesforce is also used to record data and holds some documents relating to enquiries and cases with the OSBC.

The OSBC also uses the Retail Bonds Management System (RBMS) to record and process lodgements and refunds of security bonds for retail and commercial leases. RBMS is used for transactional tasks.

The previous RBMS used by CBS came across to OSBC in 2012 (data base and hard copy records) however the data base was migrated into OSBC's new RMBS. The bond numbers from the old system were unchanged however new lodgements adopted the new naming convention as detailed in the arrangement of the records (Page 19). Paper forms are scanned and stored in HPE.

As the OSBC is a relatively small office, the records structure is decentralised in that there is no records management section centrally controlling records, however the corporate team provide overall support and oversee the system and its use. Records creation and capture is undertaken by all staff in the office, records management and disposal is managed by the corporate team.

From 1 July 2019 the OSBC, in a machinery of Government change, moved from the Department for Innovation and Skills (DIS) to the Attorney-General's Department (AGD). At this time AGD was in the process of rolling out Objective as its records management system. Due to unreasonable cost of migration, it was decided that OSBC would continue to use a DIS hosted version of HPE until a new Objective structure and migration project could be completed. At the time of developing this RDS, there are no planned dates for an Objective implementation and OSBC continues to use HPE hosted by DIS.

Broad Description and Purpose of the Records

The purpose of the records covered in this schedule is to facilitate and document the operational functions and activities of the OSBC as described previously.

In particular, the records will include:

- The lodgement of retail and commercial bonds and the administration of the RSLF
- Farm debt mediation case files
- Small business dispute resolution enquiries and case files including mediation
- Administration of Authorised Nominating Authorities and their activity in resolving claims in the building and construction industry
- Industry Code development including Cabinet Submissions, Ministerial briefings and industry engagement
- Program files including joint ventures with other SA Government agencies or associations

Functions and Activities Documented by the Records

Functions and activities were determined through workshops with key staff within the OSBC, discussions with key individuals, and researching organisational resources and publications.

RDS 2020/09 Version 1 covers the following functions and activities of the OSBC:

- Bond Management
 - Bond Lodgements and Refunds
 - Investment Management
- Case Management
 - Dispute Resolution
 - Investigations

- Farm Debt Mediation
 - Cases (Farm Debt)
- Industry Code Management
 - Code Development
 - Consultation
 - Regulating
- Industry Sector Initiatives
 - Program Management
 - Industry Engagement
- Small Business Advocacy
 - Representation
- Security of Payment Management
 - Authorised Nominating Authorities
 - Cases – Investigation Management
 - Program Management
 - Reporting

Arrangement of the Records

There are various arrangement systems in place for the records covered by the RDS including:

- Alpha numeric annual single number (e.g. HPE corporate filing system SBC2019/00492)
- Alpha numeric sequential number (e.g. Sales Force SF20-025567 where SF20 denotes the year)
- Sequential numbering system (e.g. current Retail Bonds Management System 34844)
- Sequential numbering system (e.g. old Retail Bonds Management System 8001244-X)

Agency Creating the Records

The records covered by this RDS are currently administered by the OSBC.

Agency Owning or Controlling the Records

The OSBC that administers these records also controls or owns them.

Date Range of the Records

Records Date Range: 1985 to ongoing.

Volume of the Records

The OSBC currently hold approximately 9 linear metres of active files on site and approximately 48 linear metres in the custody of an approved storage provider.

Special Custody Requirements

There are no special custody requirements.

Special Storage Requirements

There are no special storage requirements.

Issues Not Mentioned Previously

There are no issues that have not already been mentioned or require discussion in this context statement.

Comments Regarding Disposal Recommendations

Permanent Records Rationale

Records nominated for permanent retention document the substantive role of the OSBC and are of national significance or ongoing value to the State of South Australia. The appraisal themes adopted by State Records of South Australia for identifying records of permanent value relevant to the records covered by this schedule are:

Theme 3: Records that document impact on people

Examples of records of the OSBC that meet this objective include:

- records that provide recommendations in relation to dispute cases covered under the *COVID-19 Emergency Response Act 2020* (2.1.1)
- records that provide recommendations in relation to complex investigations involving Government agencies that are subject to Cabinet in Confidence (2.2.1)
- records of advocacy and representation on behalf of small businesses by the Small Business Commissioner (6.1.1)

Theme 7: Records of governance and accountability.

Examples of records of the OSBC that meet this objective include:

- records that provide evidence of the formulation of Industry Codes to improve standards of conduct including disclosure arrangements and resolution of disputes (items 4.1.1 and 4.2.1). Also includes records that provide evidence of monitoring and investigation of non-compliance with Industry Codes (4.3.1)

Temporary Records Rationale

Records nominated for temporary retention in the Schedule provide evidence of activities frequently undertaken and of less significance to Government or the community.

The retention periods assigned to temporary records are a combination of value appraisal by the OSBC and the minimum retention periods required by other legal requirements.

Examples include:

Less than 50 years – Activities documenting the lodgement and refund of retail and commercial security bonds under the *Retail and Commercial Leases Act 1995*, small business mediation and dispute resolution including investigations, and the broader services provided to assist small businesses to better manage disputes and inform decision making.

- Bond Lodgements and Refunds (1.1.1, 1.1.2 and 1.1.3), Investment Management (1.2.1), Dispute Resolution (2.1.2 and 2.1.3) Investigations (2.2.2 and 2.2.3) Cases (Farm Debt) (3.1.1), Code Development (4.1.2), Consultation (4.2.2), Program Management (5.1.1, 5.1.2 and 5.1.3), Industry Engagement (5.2.1), Representation (6.1.2), Authorised Nominating Authorities (7.1.1), Cases – Investigation Management (7.2.1), Program Management (7.3.1) and Reporting (7.4.1)

Other Disposal Considerations

There are no other disposal considerations in relation to this RDS.

Disposal Recommendation Effect on Related Records

There are no related records affected by the disposal recommendations in this RDS.

Alternative Record Formats

There are no alternative record formats.

Impact on Native Title Claims

There is no discernible relevance to Native Title Claims.

Indigenous Considerations

The determinations within RDS 2020/09 are consistent with Recommendation 21 of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families.

The principles outlined in GDS 16, relating to Native Title claims, have also been considered in the development of this Schedule.

RDS 2020/09 meets all cultural, historical, legal and administrative requirements.

All documents considered relevant to native title in South Australia must be checked for actual relevance with the Native Title Section of the Crown Solicitor's Office before being disposed of.

Scope Note

Records Covered by this Schedule

This RDS 2020/09 applies to operational records of the OSBC.

How to Apply this Schedule

Use in conjunction with GDS

This Schedule should be used in conjunction with GDS 30, as amended, or its successor. Cross-references to the GDS 30 are included in this Schedule where appropriate.

To identify records that may be potentially relevant to native title claims, please refer to guideline 'Identifying documents which may be relevant to Native Title' attached to GDS 16. Where records sentenced for temporary retention are identified as having potential relevance to a native title claim, they need to be retained until 31 December 2024.

To identify records that may be potentially relevant to Legal Proceedings or Ex Gratia Applications Relating to Alleged Abuse of Former Children Whilst in State Care, please refer to GDS 27. Where records sentenced for temporary retention are identified as having potential relevance, they need to be retained until 31 December 2023.

To identify records that may be potentially relevant to the Royal Commission into Institutional Responses to Child Sexual Abuse, please refer to GDS 32 and GDS 36. Where records sentenced for temporary retention are identified as having potential relevance, they need to be retained until 31 December 2023.

To identify records that may be potentially relevant to the Royal Commission into Aged Care Quality and Safety, please refer to GDS 37. Where records sentenced for temporary retention are identified as having potential relevance, they need to be retained until 31 December 2025.

To identify records that may be potentially relevant to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, please refer to GDS 38. Where records sentenced for temporary retention are identified as having potential relevance, they need to be retained until 31 December 2025.

Use in conjunction with, or complementary to, other RDS

This RDS does not complement any existing schedules.

Other RDS superseded by RDS 2020/09

There are no RDSs superseded by this RDS.

Re-sentencing of records where schedules are superseded or particular entries within a schedule are superseded

Not applicable.

Records excluded from RDS 2020/09

There are no records excluded from cover by this RDS.

Application to records in all formats

RDS 2020/09 applies to records in all formats, including databases and other electronic records. The OSBC is required to ensure that records remain accessible for the duration of designated retention periods.

Interpretation of the Schedule

Minimum retention periods

Retention periods for temporary records shown in RDS 2020/09 are minimum retention periods for which records need to be retained. It is at the discretion of the OSBC as to whether records are kept for longer than the minimum period.

Acronyms

- AGD Attorney-General's Department
- ANA Authorised Nominating Authority
- OSBC Office of the Small Business Commissioner
- RSLF Retail Shop Leases Fund
- RBMS Retail Bonds Management System
- SBC Small Business Commissioner
- SOPA Security of Payment Act

Definitions of terms specific to RDS 2020/09

- ANA – An Authorised Nominating Authority is a resource appointed by the relevant Minister as an adjudicator to adjudicate payment disputes in building and construction industry.
- SOPA Education Program – An OSBC initiative supporting the relevant industry associations with promoting the *Building and Construction Industry Security of Payment Act 2009* and its use.

- Regional Voice Program – A program run by Business SA, which is sponsored by the OSBC and includes a number of networking sessions held across the State (regionally) and attended by the SBC.
- Small Business Friendly Council – An OSBC initiative that aims to recognise Councils that are working to support their small business communities.

Legal Deposit

Legal deposit refers to statutory provisions that oblige publishers to deposit copies of their publications in libraries in the country in which they are published. Under the *Commonwealth Copyright Act 1968* and various Australian State Acts, a copy of any work published in Australia must be deposited with (a) the National Library of Australia and (b) the appropriate State Library. Legal deposit extends not only to commercial publishers but also to private individuals, clubs, churches, societies and organisations.

In South Australia, one copy of publications produced for external use should be deposited with the State Library and the Parliamentary Library (section 35, *Libraries Act 1982*). Publications include books, newspapers, magazines, journals, pamphlets, maps, plans, charts, printed music, records, cassettes, films, video or audio tapes, computer software CD-ROMS, compact discs and other items made available to the public.

Records and Litigation

Where the OSBC is aware that records may be required for use in litigation, for use in a government inquiry or the consideration of the Ombudsman, the records must not be destroyed. In such circumstances the records must be retained until two years after all cases and inquiries are complete (including appeals) and then have the original retention period applied to the records.

Pre-1901 Records

All pre-1901 records are required to be retained permanently in accordance with a motion approved by the State Records Council on 19 February 2008.

In this instance, this RDS does NOT apply to pre-1901 records.

List of Functions and Activities

Item No.	FUNCTION Activity / Process	Description / Disposal Class	Disposal Action
1. BOND MANAGEMENT			
1	BOND MANAGEMENT	The function of managing both retail and commercial bond lodgements and refunds for retail and commercial leases in accordance with the <i>Retail and Commercial Leases Act 1995</i>.	
1.1	Bond Lodgements and Refunds	<i>The activities associated with the lodgement and refund of retail and commercial security bonds under the Retail and Commercial Leases Act 1995.</i>	
1.1.1	Bond Lodgements and Refunds	Records relating to lodgements and refunds of bonds for property leases by small businesses. Includes refund application forms and receipts issued to agents and lessees for bond lodgements. Also includes data contained in the RBMS.	TEMPORARY Destroy 25 years after bond refund is issued.
1.1.2	Bond Lodgements and Refunds	Records relating to changes of lessee, lessor or agent. Includes relevant forms lodged with the SBC that are processed and filed with lodgements.	TEMPORARY Destroy 10 years after bond refund issued.
1.1.3	Bond Lodgements and Refunds	Records relating to bond refund disputes that are not settled and are referred to the Magistrates Court for a Directions Hearing. Includes records relating to the Direction Hearing including Notice of Hearing and advice from the Magistrate as to whom the bond refund is to be paid.	TEMPORARY Destroy 10 years after action completed.
1.2	Investment Management	<i>The activities associated with the management of bonds deposited into the RSLF. Funds are transferred by the SBC to the Public Trustee for investing.</i>	

Item No.	FUNCTION Activity / Process	Description / Disposal Class	Disposal Action
1.2.1	Investment Management	Records relating to the transfer of funds from the RSLF to the Public Trustee for investing. Includes records of authorisation from the SBC.	TEMPORARY Destroy 10 years after action completed.
2. CASE MANAGEMENT			
2	CASE MANAGEMENT	<p>The function of managing enquiries and cases relating to small businesses disputes. Can include initial assistance, negotiation and/or mediation to resolve disputes in relation to issues regarding commercial dealings, retail tenancy disputes between businesses and landlords and disputes between small businesses and State and/or Local Government bodies. Also includes the activities associated with conducting investigations to resolve disputes on behalf of small businesses on advice from the Crown Solicitor.</p> <p><i>See 3.1.1 FARM DEBT MEDIATION – Cases (Farm Debt) for records relating to farm debt disputes.</i></p> <p><i>See 7.2.1 SECURITY OF PAYMENT MANAGEMENT – Cases – Investigations Management for records relating to disputes for contractors of the building and construction industry.</i></p>	
2.1	Dispute Resolution	<p><i>The process of assisting small businesses to manage disputes where they believe they have been treated unfairly in commercial dealings with other businesses or State or Local Government. Includes disputes relating to retail and commercial leases, franchising matters, goods and service matters, late payment of government debts and food businesses including mobile food vending and food trucks disputes.</i></p> <p><i>See 3.1.1 FARM DEBT MEDIATION – Cases (Farm Debt) for records relating to dispute resolution through mediation for Farm Debt.</i></p> <p><i>See GDS30v2.1: 6.10 FINANCIAL MANAGEMENT – Procurement (Goods and Services) for records relating to the engagement of mediators for dispute resolution.</i></p>	

Item No.	FUNCTION Activity / Process	Description / Disposal Class	Disposal Action
2.1.1	Dispute Resolution	Dispute resolution case files containing records pertaining to dispute cases covered under the <i>COVID-19 Emergency Response Act 2020</i> . Includes notes from phone conversations, copies of leases, contracts, mediation overviews, mediation documentation, meeting arrangements, mediation agreements and Terms of Settlement.	PERMANENT
2.1.2	Dispute Resolution	Dispute resolution case files containing records pertaining to a dispute and resolution. Includes notes from phone conversations, copies of leases, contracts, mediation overviews, mediation documentation, meeting arrangements, mediation agreements and Terms of Settlement.	TEMPORARY Destroy 15 years after action completed.
2.1.3	Dispute Resolution	Dispute resolution case files containing records relating to a dispute where a resolution is not reached, and parties are directed to seek legal advice.	TEMPORARY Destroy 10 years after action completed.
2.2	Investigations	<i>The processes associated with conducting investigations to resolve disputes on behalf of small businesses on advice from The Crown Solicitor.</i>	
2.2.1	Investigations	Records relating to complex investigations involving Government agencies that result in detailed reports and recommendations and are subject to Cabinet in Confidence. For example, where a head contractor becomes insolvent while working on Government projects.	PERMANENT
2.2.2	Investigations	Records relating to investigations involving Government agencies that result in detailed reports and recommendations but are not subject to Cabinet in Confidence. For example, a printing business becomes insolvent while working on a government project.	TEMPORARY Destroy 20 years after action completed.

Item No.	FUNCTION Activity / Process	Description / Disposal Class	Disposal Action
2.2.3	Investigations	Records relating to investigations that result in detailed reports and recommendations for the purpose of facilitating and encouraging the fair treatment of small businesses in their commercial dealings with other businesses or with State and local government bodies.	TEMPORARY Destroy 20 years after action completed.
3. FARM DEBT MEDIATION			
3	FARM DEBT MEDIATION	The function of managing the efficient and equitable resolution of farm debt disputes. This is achieved by requiring creditors to provide farmers with the opportunity to have disputes referred to mediation before creditors can take possession of property or other enforcement action under farm mortgages.	
3.1	Cases (Farm Debt)	<i>The process of regulating statutory requirements. This is the enforcement of regulatory responsibilities in accordance with legislation. Includes mediation and the issuing of Enforcement Notices, Exemption Certificates, Prohibition Certificates and Settlement Agreements.</i> See 2.1.1 CASE MANAGEMENT – Dispute Resolution for records relating to dispute resolution of small business disputes. See 7.2.1 SECURITY OF PAYMENT MANAGEMENT – Cases – Investigations Management for records relating to disputes for contractors of the building and construction industry.	
3.1.1	Cases (Farm Debt)	Records documenting farm debt cases. This includes documentation to initiate the mediation, forms from creditors and farmers required under the <i>Farm Debt Mediation Act 2018</i> , mediation meeting notes, briefing notes, and recommendations to the SBC. Includes correspondence with all parties, such as lawyers, creditors, farmers and rural financial counsellors. May also include legal advice, prohibition and/or exemption certificates and settlement agreements.	TEMPORARY Destroy 20 years after action completed.

Item No.	FUNCTION Activity / Process	Description / Disposal Class	Disposal Action
4. INDUSTRY CODE MANAGEMENT			
4	INDUSTRY CODE MANAGEMENT	The function of developing and monitoring Industry Codes as prescribed by the Minister. Includes activities involving code development processes, industry consultation, monitoring and reporting.	
4.1	Code Development	<i>The activities involved in developing relevant and appropriate Industry Codes as required under the Fair Trading Act 1987 for approval by the Minister and submission to Cabinet.</i>	
4.1.1	Code Development	Development and drafting of relevant Industry Codes includes legislation, minutes, submissions and consultation with relevant industries. Also includes industry engagement, briefings to the Minister in relation to code amendments or introduction of new Industry Codes, instructions to Parliamentary Council for the development of regulations and Cabinet Submissions seeking approval for the Governor to make the regulations in executive council. SEE 5.2.1 INDUSTRY SECTOR INITIATIVES – Industry Engagement for other industry engagement matters dealt with by OSBC.	PERMANENT
4.1.2	Code Development	Supplementary records relating to the code development including drafts and working papers.	TEMPORARY Destroy 5 years after action completed.
4.2	Consultation	<i>The activities involved in a formal consultation process whereby the OSBC publishes draft materials for consideration and comment by small business and members of the public. Includes the processes involved in receiving and processing submissions and reporting on consultation findings.</i>	

Item No.	FUNCTION Activity / Process	Description / Disposal Class	Disposal Action
4.2.1	Consultation	<p>Records relating to materials placed on consultation, advising affected person and the public of such consultation.</p> <p>Includes a summary report of submissions and recommendations to the Minister.</p> <p>Excludes the activities associated with submissions received.</p> <p>See: 4.2.2 INDUSTRY CODE MANAGEMENT - Consultation for submissions received in relation to consultation on Industry Code matters.</p>	PERMANENT
4.2.2	Consultation	<p>Submissions received by the SBC in relation to consultation on Industry Code matters.</p> <p>See: 4.2.1 INDUSTRY CODE MANAGEMENT - Consultation Records relating to materials placed on consultation, advising affected person and the public of such consultation.</p>	TEMPORARY Destroy 20 years after action completed.
4.3	Regulating	<i>The process of monitoring and investigating non-compliance with Industry Codes.</i>	
4.3.1	Regulating	Records relating to monitoring and investigating non-compliance with Industry Codes and advising the Minister of such. Includes, minutes, briefings, letters and Crown Solicitor's Office advice.	PERMANENT
5. INDUSTRY SECTOR INITIATIVES			
5	INDUSTRY SECTOR INITIATIVES	<p>The function of planning and executing education programs and projects to support South Australia's various Industry Sectors.</p> <p>See 7.3.1 SECURITY OF PAYMENT MANAGEMENT – Program Management for the Education Program.</p>	

Item No.	FUNCTION Activity / Process	Description / Disposal Class	Disposal Action
5.1	Program Management	<i>The activities involved in planning, implementing, monitoring, assessing, and evaluating education programs (such as assisting and educating Local Government through the Small Business Friendly Council Initiative).</i>	
5.1.1	Program Management	Records relating to education programs that are joint ventures with other SA government agencies, the Commonwealth, other States and Local Government, and public or private partnerships in relation to core functions and activities of the OSBC.	TEMPORARY Destroy 10 years after action completed.
5.1.2	Program Management	Records relating to programs where OSBC provides funding to the Industry Sector to assist in educating their members. For example, the It's My Business program. Includes applications for funding and reporting from funding recipients.	TEMPORARY Destroy 10 years after action completed.
5.1.3	Program Management	Supplementary records relating to the development, implementation and review of OSBC programs.	TEMPORARY Destroy 5 years after action completed.
5.2	Industry Engagement	<p>The activities associated with establishing rapport and engaging with Industry Associations. Includes the processes associated with consultation with industry groups on matters being dealt with by OSBC such as changes to legislation.</p> <p>See 4.1 INDUSTRY CODE MANAGEMENT – Code Development for records in relation to industry engagement for the development and drafting of Industry Codes.</p> <p>See GDS30v2:3.1 COMMUNITY RELATIONS – Addresses (presentations) for records relating to involvement at industry events</p> <p>See GDS30v2:13.12 STRATEGIC MANAGEMENT – Joint Ventures for records relating to joint ventures, e.g. Regional Voice Program with Business SA.</p> <p>See GDS30v2:3.5 COMMUNITY RELATIONS – Events for records relating to the promotion of or presenting at industry events.</p>	

Item No.	FUNCTION Activity / Process	Description / Disposal Class	Disposal Action
5.2.1	Industry Engagement	Records relating to consultation with industry on matters being dealt with by OSBC. Examples include changes to legislation, such as the <i>Retail and Commercial Leases Act 1995</i> or the <i>Building and Construction Industry Security of Payment Act 2009</i> . Includes records relating to submissions received from industry on matters being dealt with by OSBC regarding formal consultation.	TEMPORARY Destroy 15 years after action completed.
6. SMALL BUSINESS ADVOCACY			
6	SMALL BUSINESS ADVOCACY	The function of providing advocacy on behalf of small business to assist in resolving issues and to influence meaningful change and fair trading across the small business sector in the State. See GDS30v2 COMMUNITY RELATIONS for records relating to engagement with the broader community.	
6.1	Representation	<i>The activities of providing assistance to small businesses through advocacy on their behalf in dealings with State and Local Government, and other instances as required.</i>	
6.1.1	Representation	Records relating to advocacy and representation by the SBC or their representative including: <ul style="list-style-type: none"> Articles written by the SBC for media publication Speeches given by the SBC at events and meetings Submissions made by the SBC 	PERMANENT
6.1.2	Representation	Other records relating to advocacy including arrangements and liaison.	TEMPORARY Destroy 15 years after action completed.

7. SECURITY OF PAYMENT MANAGEMENT			
7	SECURITY OF PAYMENT MANAGEMENT	The function of providing advocacy on behalf of small business to assist in resolving issues and adjudication of disputes in relation to security of payment in the Building and Construction industry under the <i>Building and Construction Industry Security of Payment Act 2009</i>.	
7.1	Authorised Nominating Authorities	<i>The processes associated with the application process to be considered as an ANA to adjudicate building and construction industry disputes, approved by the Minister under Section 29 of the Building and Construction Industry Security of Payment Act 2009.</i>	
7.1.1	Authorised Nominating Authorities	Records relating to applying for authorisation as a nominating authority, to nominate adjudicators to resolve payment disputes. Includes applications, correspondence and decision notifications from the Minister.	TEMPORARY Destroy 15 years after action completed.
7.2	Cases – Investigations Management	<i>The processes associated with conducting investigations to resolve payment disputes for contractors of the building and construction industry.</i> See 2.1.1 CASE MANAGEMENT – Dispute Resolution for records relating to dispute resolution of small business disputes. See 3.1.1 FARM DEBT MEDIATION – Cases (Farm Debt) for records relating to farm debt disputes.	
7.2.1	Cases – Investigations Management	Case files containing records pertaining to disputed cases of payment to contractors. Includes notes from phone conversations, contracts, mediation overviews, mediation documentation, meeting arrangements, mediation agreements and Terms of Settlement.	TEMPORARY Destroy 15 years after action completed.
7.3	Program Management	<i>The activities involved in planning, implementing, monitoring, assessing, and evaluating education programs.</i>	
7.3.1	Program Management	Records relating to the development, implementation and review of the SOPA Education Program which provides funding to	TEMPORARY Destroy 15 years

		Industry Sectors to educate their members. Includes applications for funding and reporting from funding recipients.	after action completed.
7.4	Reporting	<i>The activities associated with ANA's reporting to OSBC on adjudication and determinations made.</i>	
7.4.1	Reporting	Records relating to the process of reporting on adjudication and determinations including annual reports submitted to OSBC by ANA's.	TEMPORARY Destroy 15 years after action completed.

Appendix A – Office of the Small Business Commissioner Organisation Chart

