

Operational Records Disposal Schedule

Legal Profession Conduct Commissioner (and predecessor agencies)

RDS 2023/18 Version 1

Effective Dates: 13 December 2023 to 13 December 2033

This operational records disposal schedule (RDS) authorises disposal of official records (including destruction and transfer of records to State Records custody) as a determination in accordance with section 23(2) of the *State Records Act 1997*.

RDS No	RDS 2023/18 Version 1
Disposal Schedule Type	Operational Records Disposal Schedule
Agency	Legal Profession Conduct Commissioner
Records Scope	Records documenting the function of regulating the legal profession practising in South Australia
Records Coverage Dates	1 Jan 1983 – ongoing
Effective Dates	13 December 2023 to 13 December 2033
Status	Determined by Director State Records and approved by State Records Council 31 October 2023
Associated RDS	Previous RDS 2004/16 v1 for the Legal Practitioners Conduct Board (expired 30 June 2019)
Associated Document	Use the RDS in conjunction with its RDS Context Statement

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Contents

RDS 2023/18 Version 1 1

Introduction 4

 Scope 4

 Objectives 4

 Relationship to other disposal schedules 5

 State Records Contact Details 7

Introduction

Scope

This RDS applies to official records in all formats including (but not limited to) those that were born digital in databases, email systems, office applications, digital cameras and video as well as physical records on paper, film, tape and other analogue media. Any common records of Government Agencies are covered under General Disposal Schedule for State Government Agencies (GDS 30).

This RDS excludes:

- all pre-1901 records. These are permanent in accordance with a motion approved by the State Records Council on 19 February 2008
- records of permanent value already in State Records custody
- destruction of physical records badly damaged by fire, flood, mould, etc, and neglect of physical, digital records which makes them unreadable and inaccessible
- records to be transferred as part of a privatisation or sale to a non-government organisation
- records not adequately covered within the scope of this RDS

If records fall into any of the above exclusions please contact State Records for advice.

Objectives

The purpose of this RDS is to authorise the disposal of records in accordance with the *State Records Act 1997* including:

- records of enduring evidential or informational value that cannot be destroyed and must be preserved for future reference (identified as permanent - retain as state archives) in accordance with State Records appraisal criteria and
- authorising the destruction of records not of enduring evidential or information value (identified as temporary) after they have been retained a minimum period

Relationship to other disposal schedules

The General Disposal Schedule for State Government Agencies in South Australia (GDS 30, as amended) should be used by State Government agencies for common records documenting activities such as HR, financial management, policy and procedures.

Hardcopy source records dating from 1 January 2005 that are converted to digital format (digitised) as part of business processes can be disposed of under General Disposal Schedule 21 (GDS 21) where the conditions outlined in GDS 21 are met.

State Records issue general disposal schedules from time to time to implement disposal freezes, restricting disposal of records which might otherwise be authorised for destruction. To see the latest schedules implementing disposal freezes check State Records website [General Disposal Schedules \(GDS\) | State Records of South Australia \(archives.sa.gov.au\)](https://www.archives.sa.gov.au)

Interpretation

This RDS establishes minimum periods before temporary value digital and physical records can be legally destroyed and identifies records of permanent value to be transferred to State Records' custody.

Status/Disposal action definitions

- **Permanent – retain as State archives**
The disposal action 'Retain as State archives' is used to identify those records of enduring evidential or informational value that cannot be destroyed and must be preserved for future reference. The permanent retention of these records as State archives has been identified in accordance with the State Records' appraisal criteria. These records are required to be transferred to State Records in accordance with State Records Transfer Standard (as amended).
- **Temporary – retain a minimum of [list specific period of time] then destroy.**
The disposal action 'temporary' is used to identify records not of enduring evidential or informational value. These records are not considered to have continuing value to the agency or the State but must be retained for a minimum period. They can be destroyed after reaching this minimum period, and once any other disposal considerations have been taken into account.

Retain a record of records destroyed under this RDS

Agencies must keep their own record of all records destroyed under this RDS, noting the relevant disposal schedule entry and the authorisation for destruction. Temporary records should only be destroyed with the approval of the CE or delegate in accordance with the *Destruction of Official Records Guideline* issued by State Records of South Australia.

Compliance with the Determination

Failure to comply with this determination, or any directions in it, falls under Section 17 of the *State Records Act 1997*.

For more information

Refer to State Records sentencing, transfer and destruction guidelines on our website at www.archives.sa.gov.au.

State Records Contact Details

Contact details

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RDS 2023/18 Version 1 - Legal Profession Conduct Commissioner

No	Function/Activity	Description including Records Examples	Status	Disposal Action
1	LAWYER CONDUCT MANAGEMENT	The function of dealing with complaints against legal practitioners. Includes dealing with enquiries and written complaints from the public and other reporting agencies and entities. Also involves conciliation of complaint matters, investigation of complaints of overcharging, laying charges before the Legal Practitioners Disciplinary Tribunal (Tribunal), making applications before the Supreme Court, issuing statutory notices, reporting to external bodies pursuant to the Act, debt collection in relation to the Board's functions and certification of lawyers. <i>See also GDS 30 v2 (as amended): 6.1 (various) for debt collection.</i>		
1.1	Certification	The issuing of Certificates of Fitness at the request of the Law Society in accordance with the Legal Practitioners Education and Admission Council (LPEAC) Rules (1999 and 2004 respectively), and for records relating to the issuing of Certificates of Fitness for South Australian practitioners seeking admission interstate or overseas at the request of the Law Society.		
1.1.1	Certification	Records documenting the preparation and issuing of Certificates of Fitness for practitioners seeking admission interstate or overseas at the request of the Law Society.	TEMPORARY	Retain a minimum of 6 years after action completed, then destroy
1.2	Complaints Management	The activity of receiving, assessing and investigating suspected unsatisfactory professional conduct or professional misconduct by legal practitioners and matters of general complaint by the public and other complainants. Includes initiating disciplinary action against legal practitioners and law practice employees.		
1.2.1	Complaints Management	Determinations of the Legal Profession Conduct Commissioner recording the outcome of investigations into the conduct of members of the legal profession in South Australia.	PERMANENT	Retain as State archives
1.2.2	Complaints Management	Records documenting the management and reporting of complaints, including: <ul style="list-style-type: none"> • Complaint Management System • LPCB Resolve database <i>See Item 1.2.3 for complaint files.</i>	TEMPORARY	Retain a minimum of 20 years after action completed, then destroy

No	Function/Activity	Description including Records Examples	Status	Disposal Action
1.2.3	Complaints Management	<p>Records documenting written complaints investigated and considered by the Commissioner in accordance with the Act and where the Commissioner has taken action pursuant to section 77J(1) or (2) of the Act.</p> <p>Includes C (Complaint), F (Conciliation), M (Miscellaneous), and X (Investigation) files which can contain:</p> <ul style="list-style-type: none"> • notes of prior enquiries made by the complainant • details of the complaint made against legal practitioners and supporting documentation • responses from practitioners • internal memos • telephone notes • reports on investigations by the Commissioner’s staff • recommendations, orders, and action taken • conciliation notes, agreements and related correspondence • statutory notices and • advices or opinions from external advisors. <p><i>See Item 1.3 Disciplinary Management for Disciplinary Action Register and legal practitioner’ compliance with sanctions imposed by the Supreme Court, the Disciplinary Tribunal or the Commissioner.</i></p> <p><i>See Item 1.2.2 for complaints registration.</i></p>	TEMPORARY	Retain a minimum of 20 years after action completed, then destroy

No	Function/Activity	Description including Records Examples	Status	Disposal Action
1.2.4	Complaints Management	<p>Records of written complaints investigated and considered by the Commissioner in accordance with the Act and with no formal charge being laid by the Commissioner, ie Investigation files.</p> <p>Includes C (Complaint), F (Conciliation), M (Miscellaneous), and X (Investigation) files which can contain:</p> <ul style="list-style-type: none"> • notes of prior enquiries made by the complainant • details of the complaint made against legal practitioners and supporting documentation • responses from practitioners • internal memos • telephone notes • reports on investigations by the Commissioner’s staff • recommendations, orders and action taken • conciliation notes, agreements and related correspondence • statutory notices and • advices or opinions from external advisors. 	TEMPORARY	Retain a minimum of 10 years after action completed, then destroy
1.2.5	Complaints Management	<p>Records of complaints closed or dismissed by the Commissioner or withdrawn by the complainant in accordance with the Act. Includes C (Complaint), F (Conciliation), M (Miscellaneous), and X (Investigation) files which can contain:</p> <ul style="list-style-type: none"> • notes of prior enquiries made by the complainant • details of the complaint made against legal practitioners and supporting documentation • responses from practitioners • internal memos 	TEMPORARY	Retain a minimum of 10 years after action completed, then destroy

No	Function/Activity	Description including Records Examples	Status	Disposal Action
		<ul style="list-style-type: none"> • telephone notes • reports on investigations by the Commissioner’s staff • recommendations, orders and action taken • conciliation notes, agreements and related correspondence • statutory notices • advices or opinions from external advisors. 		
1.3	Court Charges and Appeals	The activity of commencing disciplinary proceedings against legal practitioners in the Supreme Court or High Court or due to an appeal of the Commissioner’s, Tribunal’s or Court’s decision by the legal practitioner.		
1.3.1	Court Charges and Appeals	<p>Records documenting the preparation, filing and prosecution of disciplinary applications (charges) and appeals lodged with other bodies, e.g. Supreme Court and High Court. Includes: S - Supreme Court files and L - Litigation files which can contain:</p> <ul style="list-style-type: none"> • discipline applications • court documents initiating proceedings and supporting evidence • pleadings and response from all parties • internal memos • telephone notes • reports to the Commissioner on investigations • recommendations, orders and action taken • related correspondence • evidence • witness statements • submissions • judgments of the courts and tribunals 	TEMPORARY	Retain a minimum of 50 years from date of closure, then destroy

No	Function/Activity	Description including Records Examples	Status	Disposal Action
1.4	Disciplinary Management	The activity of managing the legal practitioner’s compliance with sanctions imposed by the Commissioner, the Disciplinary Tribunal, the Supreme Court, or the High Court.		
1.4.1	Disciplinary Management	Disciplinary Action Register containing findings made by the Commissioner, the Disciplinary Tribunal, Supreme Court or the High Court, of professional misconduct by legal practitioners and disciplinary action taken.	PERMANENT	Retain as State archives
1.4.2	Disciplinary Management	Records documenting the legal practitioner’s compliance with sanctions imposed by the High Court, Supreme Court, Disciplinary Tribunal or the Commissioner. Includes: <ul style="list-style-type: none"> • internal memos • telephone notes • sanctions imposed • reports on compliance with sanctions imposed 	TEMPORARY	Retain a minimum of 15 years after action completed, then destroy
1.5	Disciplinary Tribunal Charges and Appeals	The activity of commencing disciplinary proceedings against legal practitioners in the Legal Practitioners Disciplinary Tribunal, or due to an appeal of the Commissioner's determination by the legal practitioner.		
1.5.1	Disciplinary Tribunal Charges and Appeals	Records documenting the preparation, filing and prosecution of disciplinary applications (charges) and appeals lodged with the Disciplinary Tribunal. Includes T – Tribunal files and L - Litigation files which can contain: <ul style="list-style-type: none"> • tribunal documents initiating proceedings and supporting evidence • pleadings and response from all parties • internal memos • telephone notes • reports to the Commissioner on investigations 	TEMPORARY	Retain a minimum of 25 years after action completed, then destroy

No	Function/Activity	Description including Records Examples	Status	Disposal Action
		<ul style="list-style-type: none"> • recommendations, orders, action taken and related correspondence • evidence and witness statements • submissions • tribunal judgments 		
1.6	Enquiry Management	The activity of managing enquiries made to the Commissioner relating to matters such as the Commissioner’s jurisdiction, how to lodge a complaint, how the Commissioner deals with complaints and general matters pertaining to legal costs and legal practice.		
1.6.1	Enquiry Management	<p>Records documenting general enquiries and enquiries seeking advice about whether there are grounds for a formal complaint in accordance with the Act. Includes E – Designated Enquiry file which can include:</p> <ul style="list-style-type: none"> • staff notes with enquirer • internal memos • telephone notes <p><i>See also Item 1.2 Complaints Management for complaints that are investigated and later closed or dismissed by the Commissioner or withdrawn by the complainant in accordance with the Act.</i></p> <p><i>See also GDS 30 v2 (as amended): 13.2 (various) for statistics relating to enquiries made to the Commissioner regarding legal practitioner conduct.</i></p>	TEMPORARY	Destroy when reference ceases
1.7	Reporting	The processes associated with initiating or providing a formal response to a situation or request (either external or as a requirement of corporate policies), and to provide formal statement or findings of the results or their examination or investigation pursuant to the <i>Legal Practitioners Act 1981</i> . Includes agenda, briefing papers, proposals, reports, review and returns.		

RDS 2023/18 Version 1 - Legal Profession Conduct Commissioner

No	Function/Activity	Description including Records Examples	Status	Disposal Action
1.7.1	Reporting	Records documenting the reporting of professional misconduct by a legal practitioner or former legal practitioner to the Attorney-General and the Law Society of South Australia, and/or the Crown Solicitor and any relevant law enforcement or prosecution authority in accordance with section 77 of the <i>Legal Practitioners Act 1981</i> . Includes correspondence and reports.	PERMANENT	Retain as State archives