

General Disposal Schedule 27

**Records required for legal proceedings relating to
alleged abuse of former children whilst in State care
and/or relevance to the Child Protection Systems
Royal Commission**

Effective from 14 October 2014 to 31 December 2024
Version 3

Table of Contents

Approval for the commencement of this schedule	3
Scope	4
Objectives	5
Implementation	6
Updates/Amendments	6
Previous Disposal Schedules Revoked	6
Complementary Disposal Schedules	7
Consultation.....	7
Record Formats	7
Access Rights and Responsibilities	7
Categories of records that may be relevant.....	7
Impact on Agencies.....	11
Agencies Affected.....	11
Action Required of Agencies.....	12
Disposal Determination	13
Acknowledgements.....	13
Further Information	13
Contact Details	14

© 2022 - 2025 Government of South Australia

This Disposal Schedule may be copied for use by South Australian Government Agencies and Local Government Authorities and for reasonable study or research purposes. No part of this Disposal Schedule may be reproduced or distributed for profit or gain or for any other purpose without the written permission of the Manager [Director] of State Records of South Australia.

The Terms and Scope Notes in the Schedule Body may include terms and relationships that have been taken from Keyword AAA: A Thesaurus of General Terms (© State Records Authority of New South Wales, 1995 and 1998), and are reproduced under a licence agreement between State Records of South Australia and the State Records Authority of New South Wales.

Approval for the commencement of this schedule

State Records Act 1997

Government of South Australia

General Disposal Schedule 27 Version 3

for

Records required for legal proceedings relating to alleged abuse of former children whilst in State Care and/or of relevance to the Child Protection Systems Royal Commission

Effective 14 October 2014 until 31 December 2024

Determined by Director of State Records of South Australia

Approved by State Records Council

Scope

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.

On 15 August 2014 the Governor of South Australia issued an instrument to establish a Royal Commission in South Australia concerning the State's child protection system and the safety of children, with the Honourable Margaret Jean Nyland AM appointed as Commissioner of the Royal Commission (the Child Protection Systems Royal Commission)¹.

The Child Protection Systems Royal Commission is to inquire into and provide a report on the following matters:

- the adequacy of existing laws and policies relevant to the State's child protection system for children at risk of harm
- improvements that may be made to existing laws, policies, structures and allocation of resources relevant to the State's child protection system for children at risk of harm
- the adequacy of existing practices and procedures adopted by Families SA and other relevant agencies, including entities licenced by the Minister, in implementing the State's child protection system for children at risk of harm
- improvements that may be made to the practices and procedures of Families SA and other relevant agencies, including entities licensed by the Minister, to provide for the best practical and financially achievable implementation of the State's child protection system for children at risk of harm
- the inquiry into the above matters should include consideration of, but is not limited to, the following matters:
 - > the means by which a child who may be at risk of harm is brought to the attention of relevant authorities
 - > the assessment, by relevant authorities, as to whether a child is at risk of harm
 - > the assessment, by relevant authorities, about whether to remove, or not to remove, a child from the custody and care of their guardians and to place the child in the custody and/or under the guardianship of the Minister

¹*The South Australian Government Gazette*, 15 August 2014, pp.4052-4053.

- > whether the environment into which a child is placed, either on a short-term or long-term basis, is safe
- > the assessment, by relevant authorities, of persons who work and volunteer with children in the custody and/or under the guardianship of the Minister
- > management, training, supervision and ongoing oversight of persons who work and volunteer with children in the custody and/or under the guardianship of the Minister
- > the reporting of, investigation of and handling of complaints about care concerns, abuse or neglect of children cared for in the custody and/or under the guardianship of the Minister
- > the staffing of the State's child protection system to ensure the safety of children at risk of harm.

GDS 27 applies to records that may be required:

- for legal proceedings arising out of alleged abuse of former children whilst they were in State Care
- for 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*
- for the purposes of the Child Protection Systems Royal Commission
- for any subsequent actions by the South Australian Government or
- to protect the rights and entitlements of stakeholders.

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 and

- to ensure that records of relevance (or likely relevance) to the Child Protection Systems Royal Commission are protected and available for the purposes of the Child Protection Systems Royal Commission and any subsequent actions involving the South Australian Government, for future reference and accountability purposes and to protect the rights and entitlements of stakeholders.

In order to achieve its aim, GDS 27 protects records of relevance (or likely relevance) by suspending authorisation to destroy any relevant records that could otherwise be legally destroyed under current disposal schedules determined by State Records and approved by the State Records Council.

Records identified as relevant must be retained until **31 December 2024** (and for any additional period that may be determined by a review).

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 first approved by the State Records Council on 25 January 2011.

GDS 27 Version 2 was approved on 14 October 2014 and is effective immediately until 31 December 2023, retention subject to a review at that date.

GDS 27 Version 3 was approved on 5 December 2023 and is effective immediately until 31 December 2024, retention subject to a review at that date.

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

Updates/Amendments

GDS 27 Version 3 is effective immediately from 5 December 2023 until 31 December 2024, 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 Version 3 revokes GDS 27 Version 2.

GDS 27 Version 3 also 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 General Disposal Schedules 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.

Access Rights and Responsibilities

A South Australian Government 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 any legal proceedings arising out of the Child Protection Systems Royal Commission and 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.

With respect to the Child Protection Systems Royal Commission the State of South Australia may be required to disclose documents that are, or have been, in the State's possession and are directly relevant to any issue raised by the Child Protection Systems Royal Commission. The Child Protection Systems Royal Commission will have the power to issue a summons to compel the production of any books, papers, documents or records.

Categories of records that may be relevant

Various classes of records may be of relevance and subject to the disposal freeze. In general, these may include:

- records directly relevant to a child being at risk of harm
- individual client and case files
- policies, procedures and practices relevant to the State's child protection system
- records relating to government legislation and its implementation
- administrative records, including those that place a person at a location at a particular point in time or records documenting the whereabouts of employees, e.g. attendance, leave, travel records, timesheets, site access registers
- records of legal, disciplinary and/or appeal proceedings
- records of investigations, reviews or inquiries
- files/records of employees, volunteers and contractors who work and/or volunteer with children in the custody and/or under the guardianship of the Minister
- control records which may identify records of relevance (or likely relevance), eg registers of case files, cards and electronic indexes of files and records, metadata identifying specific records in databases and other digital business systems
- records relevant to the Child Protection Systems Royal Commission in the possession or control of third party providers of child protection/care services.

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

When relevance is unclear, the determination of actual relevance needs to be the subject of advice from 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 records² of children who may be at risk of harm, plaintiffs or *ex gratia* payment applicants, including records relating to:

- student assessment and achievement at school
- attendance
- behaviour and discipline
- student work experience placement

² To cover these records, an amendment to *GDS 22 for Primary and Secondary Schools* was made, consistent with the disposal freeze in GDS 27.

- 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 children who may be at risk of harm, 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.

Personnel records of plaintiffs, *ex gratia* payment applicants or alleged offenders that were employed by government agencies or work and volunteer with children in the custody and/or guardianship of the Minister. Includes:

- personal files
- files regarding workers compensation claims
- documents regarding the assessment, by relevant authorities, of persons who work and volunteer with children in the custody and/or guardianship of the Minister
- documents regarding the management, training, supervision and ongoing oversight if persons who work and volunteer with children in the custody and/or under the guardianship of the Minister.

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 children in the custody and/or guardianship of the Minister, plaintiffs or *ex gratia* payment applicants.

Correctional Services records, including:

- prison health records of children in the custody and/or guardianship of the Minister, 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 (eg reports of offences, investigation files, prosecution files, interviews of witnesses etc)
- criminal history of alleged offenders (ie foster carers or government employees)
- records relating to the prosecution for offences of plaintiffs or *ex gratia* payment applicants
- documents relating to criminal proceedings (including any associated processes such as appeals) that may bear upon the subject of the Child Protection Systems Royal Commission
- Paedophile Task Force or Sexual Crime Branch records.

Public prosecution files relating to criminal proceedings (including any associated processes such as appeals) that may bear upon the subject of the Child Protection Systems Royal Commission, 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 and Reconciliation 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.

Department for Child Protection (formerly Families SA (Office for Child Safety)) and/or Department for Communities and Social Inclusion records, including:

- individual client and case files relating to children who may be at risk of harm
- documents, including electronic records, regarding notifications that a child may be at risk of harm
- files relating to plaintiffs, *ex gratia* applicants or alleged offenders
- general correspondence files
- foster care files
- files relating to children's residential facilities/institutions
- minutes and agendas of Children's Welfare and Public Relief Board and associated documents and annual reports
- documents relating to the adequacy of existing laws and policies relevant to the State's child protection system for children at risk of harm
- documents relating to the allocation of resources relevant to the State's child protection system for children at risk of harm
- practices and procedures adopted in implementing the State's child protection system for children at risk of harm
- documents relating to the following:
 - > the means by which a child who may be at risk of harm is brought to the attention of relevant authorities
 - > the assessment as to whether a child is at risk of harm
 - > the assessment about whether to remove, or not to remove, a child from the custody and care of their guardians and to place the child in the custody and/or under the guardianship of the Minister
 - > whether the environment into which a child is placed is safe
- documents relating to the assessment of persons who work and volunteer with children in the custody and/or under the guardianship of the Minister
- documents relating to the management, training, supervision and ongoing oversight of persons who work and volunteer with children in the custody and/or guardianship of the Minister
- documents relating to the staffing of the State's child protection system to ensure the safety of children at risk of harm.

Impact on Agencies

Agencies Affected

At the time of approval of GDS 27 Version 2, the Crown Solicitor's Office had identified the following agencies as potentially holding relevant records:

- Attorney-General's Department,

- Courts Administration Authority of South Australia,
- Department for Child Protection (formerly Families SA (Office for Child Safety),
- Department of Education and Child Development)
- Department of Human Services (formerly Department for Communities and Social Inclusion)
- Aboriginal Affairs and Reconciliation,
- Department for Correctional Services,
- Department for Education (formerly Department for Education and Child Development) (formerly, Department of State Development Department of Further Education, Employment, Science and Technology),
- Office of the Director 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 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
- ensure that records relevant to the Child Protections Systems Royal Commission in the possession or control of **third party providers** of child protection/care services are not destroyed
- when relevance is unclear, liaise with the Crown Solicitor's Office to seek advice about the relevance of records and note that only the Crown Solicitor's Office can determine actual relevance
- 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 a South Australian Government agency decides an official record may have relevance.	Retain record. If relevance is unclear, seek advice from the Crown Solicitor's Office as to relevance.
2.	Where it is determined that an official record is relevant.	Retain until at least 31 December 2024 , and for any additional period determined by a review.

Acknowledgements

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

Further Information

For advice on implementing GDS 27, contact State Records of South Australia.

Where relevance of documents to the Child Protection Systems Royal Commission is unclear, contact the Crown Solicitor's Office. It should be noted, however, that legal services provided by the Crown Solicitor's Office, through the Attorney-General, do not extend to local government authorities or contractors engaged to provide services to South Australian agencies pursuant to a contract for service.

Councils and contractors, however, may seek assistance from the Crown Solicitor's Office with identifying records of relevance to the Child Protection Systems Royal Commission. Councils and contractors are also open to obtain their own independent legal advice concerning records of relevance (or likely relevance) covered by GDS 27 and their destruction.

Contact Details

Information Governance, State Records of South Australia

GPO Box 464

Ph: +61 8 7322 7081

ADELAIDE

South Australia 5001

Email: staterecords@sa.gov.au

Web: www.archives.sa.gov.au

For general advice on records appraisal, disposal, destruction, transfer and storage, contact Information Governance, State Records of South Australia.

For changes or updates to GDS 27, please also contact Information Governance, State Records of South Australia.

Civil Litigation Section, Crown Solicitor's Office

GPO Box 464

Ph: +61 8 7322 7000

ADELAIDE

South Australia 5001