



Procedure No. 1

Procedures for making still in use determinations

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Summary

These procedures provide information and guidance to New South Wales public offices on the requirements and processes involved in making a 'still in use' determination for records over 25 years old which the public office wishes to retain.

These procedures should be read in conjunction with State Records' other publications on procedures for public offices, particularly:

- [*Procedures for Transferring Custody of Records as State Archives*](#) (August 1999), and
- [*Procedures for Making Access Directions*](#) (August 1999).

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Procedures at a glance

The following summary of the procedures for making still in use determinations has been provided for those users who are already familiar with the more detailed information contained in this document.

The table sets out the stages to follow.

Stage	Description
1	Identify records still required by the public office
2	Contact State Records to discuss the determination
3	Prepare the determination in accordance with these procedures
4	Have determination authorised
5	Submit determination to State Records

Introduction

In this section

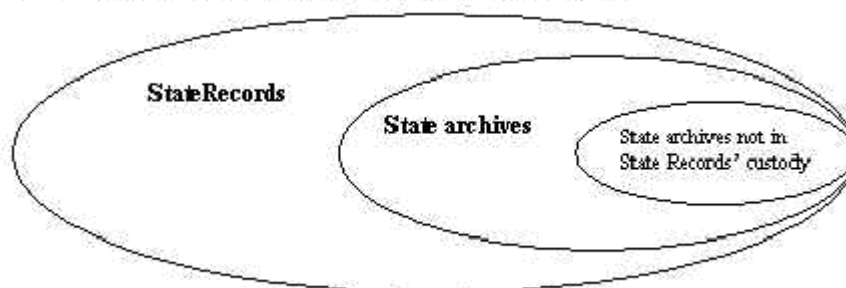
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Part 4 of the State Records Act

Part 4 of the State Records Act governs arrangements for the custody and control of records. In particular, it aims to ensure that records of continuing value that are no longer in use for official purposes are controlled and properly managed as State archives regardless of who has control or custody.

In practical terms, Part 4 deals with the small proportion of State records which have been authorised for retention as records of continuing value by State Records. Such records become State archives when control passes from a public office to State Records. This process may, or may not, involve a change in custodial arrangements.

Figure 1. *Relationship between State records and State archives*



Managing records identified as State archives

State Records is entitled to control records no longer in use for official purposes (s.27). Once State Records is entitled to control a record, the public office ceases to be entitled to control it. The public office is then required to make that record available to State Records (s.29).

The catalyst for considering transfer of records is whether or not the records are still in use for official purposes. In order to provide an unambiguous statutory framework, however, Part 4 also links rights and obligations to a 'trigger' time period of 25 years with respect to the age of records (s.28). These arrangements are outlined in the table below.

If the records are...	Then ...
less than 25 years old	<p>public offices should usually retain control and custody.</p> <p>Note: Records less than 25 years old that are inactive, (and identified as State archives), should be made available to State Records. Early transfer is possible. Contact State Records to discuss options.</p>
more than 25 years old AND inactive / no longer in use	<p>State Records is entitled to control.</p> <p>If requested, State Records must take control of records more than 25 years old (s.32(1) unless:</p> <ul style="list-style-type: none"> • the parties agree otherwise • the public office breaches the transfer guidelines, or • State Records does not require the records as State archives (s.32(2)). <p>Taking control may or may not include taking custody.</p>
more than 25 years old AND still in use for official purposes	<p>public office makes a 'still in use determination' to retain control of the records.</p> <p>This remains in force for five years and can be renewed indefinitely. State Records can request a public office to review a determination.</p>

Definitions

Key terms that are used in these guidelines are explained below. For other recordkeeping terms see State Records' [Glossary of Recordkeeping Terms](#).

Continuing value

State records of continuing value are those which State Records has approved being kept as State archives.

Control

A person is taken to have control of a record if the person has possession or custody of the record or has the record in the possession or custody of some other person. [Control of a State record must rest with State Records or with the public office responsible for the records.]

Custody

1. The responsibility for the care of records, archives or other material, usually based on their physical possession. Custody does not always include legal ownership, or the right to control access to records.

2. The physical location of the records or archives.
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Still in use determinations

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What are still in use determinations?

The State Records Act makes the presumption that records more than 25 years old are not in use and that State Records is therefore entitled to control them. However, the Act also acknowledges that, while most records over 25 years old are inactive, a proportion will continue to be used for longer than 25 years. In cases where such records have been authorised for continuing retention by State Records, continuing official use can be accommodated by making a still in use determination (s.28(1)). A still in use determination is a written statement, prepared by the responsible public office, regarding the need for continued use of certain records. A determination defers (but does not extinguish) State Records' entitlement to control of the records covered.

How long do they last?

Determinations may cover any period up to five years. They must have a starting date and a finishing date. They may be renewed after expiry, or revoked at any time.

What records should they cover?

Determinations are only needed for those records that:

- are authorised as having continuing value or are unapprised
- are currently under the public office's control, and
- need to be maintained under the public office's control beyond the time when they are 25 years old.

This applies regardless of where the records are stored.

Temporary records, that is, those that have been authorised for disposal at some future date under s.21 of the State Records Act, do not require a still in use determination, even if they will be retained until they are more than 25 years old.

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Identify the records

A still in use determination must state which records it covers. The determination does not have to relate to a specific record, but may relate to a series, group or class of records. This is aimed at giving maximum flexibility in identifying the records over which the public office needs to maintain control, in order to facilitate their continuing use for official purposes.

Consult with State Records

The next step involves consulting with State Records prior to making a still in use determination. This is required under s.28(2) of the State Records Act. This consultation provides an opportunity to clarify issues relating to policy or procedures, to discuss duration and commencement date, or to explore other possible options for the management of the records.

Prepare the still in use determination

After consultation, prepare the determination, using a Still in Use Determination form.

Click [here](#) to download an electronic version of the form. Copies may also be obtained from State Records or by photocopying a blank form.

Essential components of the determination include:

Component	Explanation
Status	The records in question should be documented in a current disposal authority, which should include a finite agency retention period (the estimated period for which the public office needs to maintain control).
Quantity	The quantity (as at the time the determination is made) and anticipated growth per annum (where applicable).
Physical location	The physical location of the records is required in order to assist State Records in planning future storage requirements. State Records should be notified if the records are relocated.
Use	The determination must specify that the records are 'still in use for official purposes' in the public office responsible for the records.
Duration	The determination must have a starting date and a finishing date and may cover any period up to five years.

Have the determination authorised

The determination should be signed by the Chief Executive Officer or nominated delegate (for example, the Chief Information Officer or the Corporate Records Manager) and sent to State Records. A copy of the determination should be retained, along with the acknowledgment of receipt from State Records.

Forward the determination to State Records

A copy of a determination must be sent to State Records as soon as practicable after it is made. A still in use determination comes into effect on the date stated in the determination.

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Reviewing determinations

Still in use determinations should be reviewed regularly to determine whether or not they are still required. State Records may request a public office to have a determination reviewed and approved by the Minister responsible for the public office. If that determination is not approved by the Minister within three months, it lapses and cannot be remade. State Records is then entitled to control of those records.

Renewing determinations

If, at the time a determination expires, the public office still needs to maintain control over the records, a new determination covering the same records can be made. A renewed determination should show that that usage of the records has been reconsidered. State Records should be notified of the renewal in the same way as the initial determination.

Revoking determinations

If it becomes clear that a still in use determination is no longer necessary, a determination may be revoked at any time by the responsible public office. State Records must be notified of any revocation so that appropriate arrangements can be made for the transfer of control.

Appendix A: Example of a determination

A completed [example](#) of a Still in Use Determination can be downloaded as a word file (151KB).

Appendix B: Still in use determination form

A [blank form](#) can be downloaded as a word file (275KB).

State Records Authority of New South Wales Sydney, Australia.

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