

**Disposal Schedule
for
Functional Records of
the Crown Law Office**

Disposal Authorisation No. 16

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INTRODUCTION

Archives legislation

The *Archives Act 1983* stipulates that State and local government organisations, must not dispose of **records of any type or format** without the written approval of the State Archivist. Disposal of records involves their destruction, their removal from the custody of their creating Agency, or their transfer to the Tasmanian Archive & Heritage Office.

Schedule elements and arrangement

The administrative functions covered by this schedule are arranged in alphabetical order as function headings. The activities performed under each function are listed in alphabetical order within each function.

- **Reference**

All function and activity headings and disposal classes are allocated a reference number. These reference numbers are used, in conjunction with the schedule number, to identify records in the Tasmanian Archive & Heritage Office disposal documentation. These numbers can also be used by agencies, in the same way, to indicate disposal authorisation in their records control systems, where the records have been registered in these systems.

- **Disposal classes**

The groups of records that document, and are derived from, the performance of the functions and activities are listed as disposal classes under each function/activity set.

It should be noted that Disposal Classes have been described in functional terms irrespective of the format or medium in which the records were created.

- **Status**

All disposal classes have either 'PERMANENT' or 'TEMPORARY' status. Records identified as 'PERMANENT' are those that will be transferred to the Tasmanian Archives & Heritage Office to be retained as State archives. 'TEMPORARY' records are those that can be destroyed under the authority of this schedule.

- **Disposal action**

All temporary records identified in this schedule will have a disposal action which specifies the length of time for which the record must be retained before it can be destroyed under this authorisation.

Review of the schedule

It is the responsibility of agencies to monitor administrative, legal or regulatory changes which may result in the need to alter disposal class descriptions or disposal actions for records covered by this schedule. When this occurs, this schedule should not be used to dispose of those records and the State Archivist should be informed of the need to revise the schedule. If necessary, the procedures for the disposal of unscheduled records can be used in the interim. Reviews may also be initiated by the Tasmanian Archive & Heritage Office.

Contacts

Any enquiries relating to this schedule should be directed in writing to the Tasmanian Archive & Heritage Office, 91 Murray Street, Hobart, email gisu@education.tas.gov.au, phone 03 6165 5581

TASMANIAN ARCHIVE & HERITAGE OFFICE

DISPOSAL AUTHORISATION No. 16

Title: Disposal Schedule for Litigation Records of the Crown Law Office

Authorisation:

Under Section 20 (2) (b) of the *Archives Act 1983*, I hereby authorise 'relevant authorities' (as defined in Section 3 of that Act) to manage the disposal of the records described in this schedule in accordance with the procedures specified herein.

Ross Latham
State Archivist

Document Development History
Build Status

Version	Date	Author	Reason	Sections
2.0	20-01-2016	Christine Woods	Template	All
1.0	04-10-2000	TAHO	Initial release	All

Amendments in this Release

Section Title	Section Number	Amendment Summary
All	All	Document imported into new template

INTERPRETATION

Definitions

Permanent records are those that will be transferred to the Tasmanian Archive & Heritage Office to be retained as State Archives. The *Archives Act 1983* establishes 25 years as the maximum required timeframe for the transfer of permanent records to the Tasmanian Archive & Heritage Office unless an extension of time has been approved by the State Archivist.

Temporary records are those that can be destroyed under the authority of this schedule after a minimum retention period, or once certain requirements have been met.

Coverage

This schedule covers functional records of the Crown Law office.

This schedule **does not cover pre-1960 records**. The disposal of those records should be managed according to the procedures for unscheduled records.

The *Disposal Schedule for Short-term Value Records - DA No. 2158* covers the disposal of short-term value records which are created by most agencies. These documents are usually of a trivial nature or of such short-term value that they do not support or contribute to the business functions of the agency.

Records not covered by these schedules, or other authorised disposal schedules, should be disposed of according to the current Tasmanian Archive & Heritage Office procedures for unscheduled records.

Preservation of records

Section 10 (1) (a) of the *Archives Act 1983* requires agencies to preserve records until they are dealt with under the Act. This places a statutory obligation on agencies to ensure that all records, regardless of format, remain accessible while they are in the custody of the agency.

Permanent records

All disposal classes of records identified as having 'PERMANENT' status in this schedule should be transferred to the Tasmanian Archive & Heritage Office 25 years after the date of creation. Agencies may make application to the Tasmanian Archive & Heritage Office for earlier transfer of particular groups of records and the Tasmanian Archive & Heritage Office may also initiate an earlier transfer arrangement.

Records for transfer should be arranged and described in accordance with any instruction provided by the Tasmanian Archive & Heritage Office.

Temporary records

All records identified as having 'TEMPORARY' status in this schedule will have a disposal action which is the authorised date for destruction. These disposal actions specify minimum retention periods. Temporary records can be kept as long as the agency wishes following the expiration of the specified period, but the provisions of the *Archives Act 1983* regarding their proper care and custody will still apply to them.

Frequently the disposal actions will refer to '**after action completed**' which means after completion of the transaction to which the records relate. The disposal action '**destroy when reference ceases**' authorises the destruction of records when all business needs to refer to the records have ceased.

Destruction of records

The destruction method chosen for records authorised for destruction in this schedule should be appropriate to the medium in which the record exists. It is the responsibility of the agency to ensure that the identified records are actually destroyed, and that this process is confidential and secure. The following issues should be considered before destruction of any documents.

Right to Information

Right to Information legislation prescribe rights and processes for access to documents held by government agencies. If a request for access under the legislation has been lodged, all records relevant to the request, regardless of whether they are due for destruction, must be identified and preserved until action on the request and any subsequent reviews are completed.

Personal Information Protection

Personal Information Protection legislation provides appropriate safeguards for government agencies in collecting and handling individual's personal information, creating statutory obligations and a right to make a privacy complaint. If an application is in progress, all records relevant to the application must be identified and preserved until the action and any subsequent actions are completed.

Other investigations or inquiries

If an investigation or inquiry is in progress, all records relevant to the investigation or inquiry must be identified and preserved until the action and any subsequent actions are completed.

Records relating to indigenous people

Key recommendations of the *Bringing Them Home Report 1997* relate to the need for the identification, preservation, indexing, management and access to records relating to Indigenous individuals, families and/or communities in accordance with established privacy principles.

Records relating to indigenous families and communities or which document links between indigenous people and localities are not to be destroyed and should be the subject of consultation with the Tasmanian Archive & Heritage Office.

Native title

If a native title claim is in progress, all documents relevant to the claim must be identified and preserved until the action and any subsequent actions are completed.

Registration of destruction

Central to the accountability process built into the disposal schedules is the requirement that agencies maintain a *Register of Records Destroyed*. It is important to recognise that the formal evidential record of destruction is contained in this registration process. The register is to be made available to the State Archivist (or his nominee) on request.

The register must be clearly identified as the *Register of Records Destroyed* (under Section 20 (2) (b) of the *Archives Act 1983*) and should include the name of the agency. The register can be the same used for registering destructions authorised under other disposal schedules. A sample format indicating the required elements for the register and related procedures are available on the Government Information Strategy Unit (GISU) website.

01.00.00	CRIMINAL PROSECUTIONS	
01.01.00	REGISTERS	
01.01.01	Prosecution register of persons committed or indicted to appear before the Supreme Court, recording file number and details of crime, accused, trial and outcome, including any related appeals and prosecutions for breach of sentence.	PERMANENT
01.01.02	Statistics card summarising register information and including administrative details relating to trial.	PERMANENT
01.01.03	Court diary	TEMPORARY Destroy 3 years after last action.
01.01.04	Long list recording administrative details of trial preparation.	TEMPORARY Destroy 6 months after last action.
01.01.05	Exhibit books recording name of case, list of exhibits, date and from whom received.	TEMPORARY Destroy when audit complete and agency reference ceases.
01.01.06	Calendar of accused recording status of case.	TEMPORARY Destroy 2 years after last action.

01.02.00

PROSECUTION FILES

Documents on the file include:

- Complaint and/or indictment
- Record of proceedings
- Exhibit list
- Photographs
- Plan
- File cover
- Crown papers (police brief for trial) including:
 - Index
 - Proofs and/or statutory declarations
 - Depositions
 - Copies of (paper based) exhibits
 - Statements
 - Record of interview
 - Transcript of interview
 - Fact form and antecedent report
 - Record of convictions
- File notes and correspondence
- Internal memoranda
- Notes by counsel
- Bail letters
- Pre-trial check list
- Points of view
- Exhibits
- Reports
- Comments on passing sentence
- Sentence letter

Documents on file or crown papers, unless contained in appeal books include:

- Depositions
- Exhibits
- Notes by Law Clerk
- Opening address
- Closing address
- Supplemental proofs

MAJOR CRIMES are charges including:

- Murder contrary to section 158 of the Criminal Code
- Attempted murder contrary to sections 299 and 158 of the Criminal Code
- Manslaughter (including Motor Manslaughter) contrary to section 159 of the Criminal Code
- Cause death by dangerous driving contrary to section 167A of the Criminal Code
- Rape contrary to section 185 of the Criminal Code
- Incest contrary to section 133 of the Criminal Code
- Robbery contrary to section 240(1) of the Criminal Code
- Aggravated robbery contrary to section 240(2) of the Criminal Code
- Armed robbery contrary to section 240(3) of the Criminal Code
- Aggravated armed robbery contrary to section 240(4) of the Criminal Code
- Major fraud – involving money and/or goods to a value exceeding \$20,000.
 - Stealing contrary to section 234 of the Criminal Code
 - Obtaining goods by a false pretence contrary to section 250 of the Criminal Code
 - Dishonestly acquiring a financial advantage contrary to section 252 of the Criminal Code
 - Forgery contrary to section 278 of the Criminal Code
 - Uttering contrary to section 279 of the Criminal Code
- Arson contrary to section 268 of the Criminal Code.

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01.02.01	Prosecution files for major crimes	PERMANENT
01.02.02	Prosecution files that are indicated by the Director of Public Prosecutions to be rare and exceptional or a precedent.	PERMANENT
01.02.03	Prosecution files where the accused has failed to appear, a Warrant for their arrest has been issued and the Warrant remains outstanding.	TEMPORARY Destroy 50 years after Warrant issued
01.02.04	Prosecution files for crimes of violence or sexual offences not referred to in classes 01.02.01, 01.02.02 or 01.02.03.	TEMPORARY Destroy 30 years after last action.
01.02.05	Prosecution files for crimes not referred to in classes 01.02.01 - 01.02.04.	TEMPORARY Destroy 10 years after last action.
01.02.06	Director of Public Prosecutions' copy of transcript of trial.	TEMPORARY Destroy 1 year after last action.
01.02.07	Supporting documents that can be culled from the file include: <ul style="list-style-type: none"> • Covering letter • Committal order • Bail documents • Depositions certificate (from Clerk of Court) • Summons to witnesses • Subpoenas • Subpoenas duces tecum • Notes of court appearances • Affidavits of service 	TEMPORARY Destroy after last action
01.03.00	BAIL FILES	
01.03.01	Prosecution bail files, including: <ul style="list-style-type: none"> • Application for bail • Affidavit • Documents from Police • Notes by law clerk • Prior convictions • Bail letter 	TEMPORARY Destroy 1 year after last action.
01.03.02	Breach of Supreme Court bail files, including: <ul style="list-style-type: none"> • Application • Record of proceedings • Documents from police • Notes by law clerk • Bail letter 	TEMPORARY Destroy 1 year after last action

02.00.00	APPEALS AND SUMMARY PROSECUTIONS	
02.01.00	<p>BREACH OF SUSPENDED SENTENCE OR COMMUNITY SERVICE ORDER Documents contained on prosecution files relating to breaches of Supreme Court suspended sentences or community service orders include:</p> <ul style="list-style-type: none"> • Certificate of conviction • Notice to appear • Summons • Affidavit of service • Application to review community service order • Application for discharge or variation of a Probation Order • Warrant for arrest of offender • Summons • Prior convictions • Correspondence with information bureau, police and/or Supreme Court <p>Prosecution files relating to breach of lower court sentences (where the original prosecution was not handled by the Director of Public Prosecutions) usually only contain correspondence with police.</p>	
02.01.01	Prosecution files for breach of a suspended sentence or Community Service Order imposed by the Supreme Court for a major crime or one indicated by the Director of Public Prosecutions to be rare, exceptional or a precedent.	PERMANENT Transfer to prosecution file.
02.01.02	Prosecution files for breach of a suspended sentence or Community Service Order imposed by the Supreme Court where the offender fails to appear, a warrant for their arrest issued and the warrant is still outstanding.	TEMPORARY Destroy 25 years after warrant issued.
02.01.03	Prosecution files for breach of a suspended sentence or Community Service Order imposed by the Supreme Court for a crime of violence or sexual offence not referred to in class 02.01.01 above.	TEMPORARY Destroy 25 years after last action.
02.01.04	Prosecution files for breach of a suspended sentence or Community Service Order imposed by the Supreme Court for a crime not referred to in classes 02.01.01 – 02.01.03 above.	TEMPORARY Destroy 10 years after last action.
02.01.05	Prosecution files for breach of a suspended sentence or Community Service Order imposed by a lower court.	TEMPORARY Destroy 1 year after last action.
02.02.00	<p>APPEALS FROM SUPREME COURT TRIALS Documents on criminal prosecution appeal files include:</p> <ul style="list-style-type: none"> • Notice of Appeal • Appeal Books <ul style="list-style-type: none"> • Notice of appeal • Indictment • Copy of exhibits • Memorandum to jury • Voire dire • Summing up • Transcript • Correspondence with Supreme Court and appellant's counsel • Submissions of applicant • List of Authorities • Cases • Order 	

02.02.01	Files for appeals from criminal prosecutions in the Supreme Court involving major crimes or prosecutions indicated to be rare and exceptional or a precedent.	PERMANENT Transfer to prosecution file.
02.02.02	Files for appeals from criminal prosecutions in the Supreme Court involving crimes of violence or sexual offences not referred to in class 02.02.01 above.	TEMPORARY Destroy 30 years after last action.
02.02.03	Files for appeals from criminal prosecutions in the Supreme Court involving crimes not referred to in classes 02.02.01 or 02.02.02	TEMPORARY Destroy 10 years after last action.
02.02.04	Arrest warrants issued from appeals in the Supreme Court but not served.	TEMPORARY Destroy 25 years after issue
02.03.00	APPEALS FROM LOWER COURT TRIALS	
	Documents on lower court appeal files include: <ul style="list-style-type: none"> • Notice of motion to review • Affidavit of service • Originating application intended to be served • Appeal file cover sheet • Correspondence with police • File notes • Transcript of hearing • Order 	
02.03.01	Register of lower court appeals, recording: file number, LCA number, date received, mode, court, charge, order, parties, venue and result.	PERMANENT
02.03.02	Lower court appeal files.	TEMPORARY Destroy 5 years after last action.
02.04.00	SUMMARY PROSECUTIOS	
	Summary prosecutions are dealt with by the Office of the Director of Public Prosecutions upon instructions from other Departments.	
	Documents contained in the files include: <ul style="list-style-type: none"> • Complaint • Summons • Correspondence with instructing Department. <p><i>Only copies are provided to the Director of Public Prosecutions, the instructing department retains original documents in its own files.</i></p>	
02.04.01	Summary prosecution files dealing with Child Protection and Child Welfare.	TEMPORARY Destroy 10 years after last action.
02.04.02	Summary prosecution files, not referred to in class 02.04.01 above, in which the matter has gone to hearing.	TEMPORARY Destroy 3 years after last action.
02.04.03	Summary prosecution files where a guilty plea has been entered.	TEMPORARY Destroy 1 year after last action.

03.00.00	CIVIL LITIGATION Records created by the Crown Law Office defending the Crown against claims of liability and obtaining restitution of money or property owed to the Crown. There is no separate series of appeal files for civil litigation. In the event of an appeal, by either party, the Appeal Book is added to the original case file.	
03.01.00	REGISTRATION	
03.01.01	Registers and indices for the management of civil litigation case-work.	PERMANENT
03.02.00	INQUESTS AND COMMISSIONS OF INQUIRY Records created by the Crown Law Office appearing before Coronial Inquests and Commissions of Inquiry to represent the Crown. <i>See DS40, Section 03.00.00, for records of inquests where counsel appear to assist the Coroner.</i>	
03.02.01	Records of Coronial Inquests and Inquiries where the Director of Public Prosecutions represents the Crown rather than his usual role of assisting the Coroner or Commissioner of Inquiry.	PERMANENT
03.02.02	Director of Public Prosecution's copy of transcripts of hearings.	TEMPORARY Destroy 1 year after action completed.

<p>03.03.00</p>	<p>WORKERS COMPENSATION</p> <p>Records created by the Crown Law Office defending the Crown against Workers Compensation Act and common law claims.</p> <p>Documents in Workers Compensation cases may include:</p> <ul style="list-style-type: none"> • Medical information such as: <ul style="list-style-type: none"> • Accounts • Correspondence • Videos and photographs • Medical certificates and rehabilitation reports • Details of accidents such as: <ul style="list-style-type: none"> • Statements • Reports (eg: Engineer, Loss Assessor, surveillance) • Correspondence • Plans and photographs • Records of the litigation process such as: <ul style="list-style-type: none"> • Lists of documents • Exhibit list • Interrogatories • Affidavits • Interlocutory applications • Statement of claim • Particulars of claim • Statements • Reports • Subpoenas and Writs (eg: of Fieri Facias) • Notices (eg: Appearance, change of solicitor, bankruptcy) • Authorities • Certificate of readiness • Correspondence • Memoranda (eg: Consent) and notes (of clerk, solicitor or counsel) • Proofs of evidence • Offers of compromise • Applications to extend time • Statement of Defence • Section 86 Certificates • Referrals to Tribunal • Judgement (including reasons) • Bill of costs • Certificate of taxation • Receipts • Notice of appeal • Appeal Book 	
<p>03.03.01</p>	<p>Records in cases for Workers Compensation Act and common law claims against the Crown that are indicated by the Director of Public Prosecutions to be rare and exceptional or a precedent.</p>	<p>PERMANENT</p>
<p>03.03.02</p>	<p>Records in cases for Workers Compensation Act and common law claims against the Crown not described in 03.03.01 above.</p>	<p>TEMPORARY Destroy 10 years after action completed</p>
<p>03.03.03</p>	<p>Crown Law Office copy of transcripts of hearings.</p>	<p>TEMPORARY Destroy 1 year after action completed.</p>

03.04.00	<p>MEDICAL NEGLIGENCE</p> <p>Records created by the Crown Law Office defending the Crown against claims of professional negligence on the part of a medical professional or failure to fulfil a contract (whether a formal deed or an implied contract) on the part of a Medical professional or Hospital.</p> <p>Documents in medical negligence cases may include:</p> <ul style="list-style-type: none"> • Medical information such as: <ul style="list-style-type: none"> • Accounts • Correspondence • Videos and photographs • Details of accidents such as: <ul style="list-style-type: none"> • Statements • Reports (eg: Engineer, Loss Assessor) • Correspondence • Plans and photographs • Records of the litigation process such as: <ul style="list-style-type: none"> • Lists of documents • Exhibit list • Interrogatories • Affidavits • Interlocutory applications • Statement of claim • Particulars of claim • Statements • Reports • Subpoenas and Writs (eg: of Fieri Facias) • Notices (eg: Appearance, change of solicitor, bankruptcy) • Authorities • Certificate of readiness • Correspondence • Memoranda (eg: Consent) and notes (of clerk, solicitor or counsel) • Proofs of evidence • Offers of compromise • Applications to extend time • Statement of Defence • Judgement (including reasons) • Bill of costs • Certificate of taxation • Receipts • Notice of appeal • Appeal Book 	
03.04.01	Records in medical negligence cases that are indicated by the Director of Public Prosecutions to be rare and exceptional or a precedent.	PERMANENT
03.04.02	Records in medical negligence cases not described in 03.04.01 above.	TEMPORARY Destroy 7 years after action completed.
03.04.03	Crown Law Office copy of transcripts of hearings.	TEMPORARY Destroy 1 year after action completed.

03.05.00	<p>PUBLIC LIABILITY</p> <p>Records created by the Crown Law Office defending the Crown against claims for liability for injury sustained by members of the public. Includes injuries sustained by those in the care of the Crown (such as schoolchildren). Sometimes referred to as occupiers liability.</p> <p>Documents in public liability cases may include:</p> <ul style="list-style-type: none"> • Medical information such as: <ul style="list-style-type: none"> • Medical reports • Accounts • Correspondence • Videos and photographs • Medical certificates and rehabilitation reports • Details of accidents such as: <ul style="list-style-type: none"> • Statements • Reports (eg: Engineer, Loss Assessor, surveillance) • Correspondence • Plans and photographs • Details of claim and litigation process, such as: <ul style="list-style-type: none"> • Lists of documents • Interrogatories • Affidavits • Notices (eg: of Appearance, Bankruptcy, Change of Solicitors, etc.) • Particulars of claim • Statement of claim • Statement of defence • Interlocutory applications • Applications to extend time • Writs and Subpoenas • Pleadings • Notes by clerk, solicitor or counsel • Correspondence • Plans and photographs • Certificate of Readiness • Consent memorandum • Judgement (including reasons) • Bill of costs • Certificate of Taxation • Receipts • Notice of appeal • Appeal Book 	
03.05.01	Records in public liability claims against the Crown that are indicated by the Director of Public Prosecutions to be rare and exceptional or a precedent.	PERMANENT
03.05.02	Records in public liability claims against the Crown that are not included in 03.05.01 above.	TEMPORARY Destroy 7 years after action completed
03.05.03	Crown Law Office copy of transcripts of hearings.	TEMPORARY Destroy 1 year after action completed

<p>03.06.00</p>	<p>RECOVERY PROCEEDINGS Records created by the Crown Law office in obtaining restitution of money or property owed to the Crown.</p> <p>Records of the claim and the litigation process may include:</p> <ul style="list-style-type: none"> • Lists of documents • Interrogatories • Affidavits • Notices (eg: of Appearance, Bankruptcy, Change of Solicitors, etc.) • Particulars of claim • Statement of claim • Statement of Defence • Interlocutory applications • Applications to extend time • Writs and Subpoenas • Pleadings • Notes by clerk, solicitor or counsel • Correspondence • Plans and photographs • Certificate of readiness • Consent memorandum • Judgement (including reasons) • Bill of costs • Certificate of taxation • Receipts 	
<p>03.06.01</p>	<p>Records of action to recover moneys owed to the Crown (for breach of contract, salary overpayment, etc.)</p>	<p>TEMPORARY Destroy 7 years after action completed.</p>
<p>03.06.02</p>	<p>Records of housing cases (usually eviction of unsuitable tenants).</p>	<p>TEMPORARY Destroy 7 years after action completed.</p>
<p>03.06.03</p>	<p>Crown Law Office copy of transcripts of hearings.</p>	<p>TEMPORARY Destroy 1 year after action completed.</p>

03.07.00	<p>CRIMINAL INJURIES COMPENSATION</p> <p>The Director of Public Prosecutions is advised of all pending claims under the <i>Criminal Injuries Compensation Act 1976</i>. The DPP usually only appears when there is a case to present for the Crown, such as where there is a potential to recover part or all of the claim from the criminal, or in occasional cases where there is a perceived need to object to the claim.</p> <p>Records of application and judgement may include:</p> <ul style="list-style-type: none"> • Application • Letters to and from lawyers • Letter to offender • Other correspondence • Letter of Service • Affidavit of service • Notification of date of hearing • Judgement order <p>These records may also include:</p> <ul style="list-style-type: none"> • Copy of police file • Photographs • Writ of Fieri Facias • Application to record writ • Letter to Sheriff • Caveat • Withdrawal of caveat • Letter from offender • Copies of receipts. 	
03.07.01	<p>Case files for claims under the <i>Criminal Injuries Compensation Act 1976</i> where the Director of Public Prosecutions appears for the Crown.</p>	<p>TEMPORARY Destroy 10 years after action completed.</p>
03.07.02	<p>Director of Public Prosecution's copy of transcripts of hearings.</p>	<p>TEMPORARY Destroy 1 year after action completed.</p>