
State Records Authority NSW

Regulatory Framework for the *State Records Act NSW* 1998

August 2023

Acknowledgement of Country

We, State Records NSW, acknowledge the Traditional Custodians of the lands where we work and live. We celebrate the diversity of Aboriginal peoples and their ongoing cultures and connections to the lands and waters of NSW.

We pay our respects to Elders past, present and emerging.

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1. Our role

The *State Records Act 1998* (the Act) establishes the State Records Authority NSW ('State Records NSW') as the regulator of records management and recordkeeping within NSW public offices. Section 66(1)(a) of the Act identifies that one of the key functions of State Records NSW is the oversight of public office recordkeeping.

The State Records Act provides State Records NSW with regulatory powers and enables State Records NSW to issue formal requirements (e.g. standards, codes of best practice, retention and disposal authorities, notices) and to provide records management services (e.g. guidance, and training) to assist and support public offices in their compliance with the Act.

1.1. Purpose of this Framework

The Regulatory Framework (2023-2026) describes State Records NSW approach to regulating records management, and how State Records NSW will use the powers in the *State Records Act 1998* to support regulatory activities. The Framework is applicable to all public offices and replaces the previous Regulatory Framework (2021-2023).

The Framework will be reviewed in 2026.

1.2. Audience

This Framework has been written for:

- public offices covered by the *State Records Act 1998*
- State Records NSW staff tasked with the development and implementation of regulatory activities, and
- members of the public and external stakeholders with an interest in State Records NSW regulatory role.

1.3. Definitions

For the purposes of this Framework, the following definitions apply:

Monitoring activity

Sections 12(4) and 15 of the *State Records Act 1998* provide the authority for monitoring activities undertaken by State Records NSW.

Monitoring activities undertaken by State Records NSW measure the maturity and conformity of records management and recordkeeping in a public office. The monitoring activity may use the Records Management Assessment Tool (RMAT), or the minimum compliance requirements in a records management standard issued by State Records NSW, or other specified requirements.

State Records NSW monitoring activities include:

- formal reporting by public offices on their compliance to the State Records Act and standards in the annual Recordkeeping Monitoring Exercise¹
- Recordkeeping Assessments (undertaken in response to a complaint or an emerging recordkeeping/records management issue in a public office)²
- inspections of State records, records storage, systems used to store and manage records, or records management practices
- monitoring of the implementation of recommendations made in a Recordkeeping Assessment Report

¹ Conducted under the authority of section 12(4) of the State Records Act 1998.

² A Recordkeeping Assessment is conducted under section 15 of the *State Records Act 1998* and is a separate process to a formal notice issued to a public office under section 12(5) of the Act requiring a public office to conduct an assessment of recordkeeping processes and the records management program.

- monitoring of the implementation of recommendations made by State Records NSW to a public office subsequent to the public office's report on its findings (i.e. report in response to a notice issued to the public office under section 12(5) of the State Records Act)
- follow-up with a public office when serious incidents of non-compliant records management or recordkeeping are identified in oversight agency reports or in media reports, and
- an assessment of a recordkeeping issue which has been referred to us by another organisation.

Monitoring activities can be undertaken with the entire jurisdiction of the *State Records Act 1998*, or with a sector of the jurisdiction (e.g. councils), or an individual public office.

Monitoring activities are conducted according to policies and documented procedures. See the *Policy managing complaints about recordkeeping in public offices* and *Policy on co-regulation and referral of matters*.

Monitoring activities are reported in State Records NSW Annual Report.

Notices power

Section 12(5) of the *State Records Act 1998* allows State Records NSW to issue a notice to a public office requiring a public office to:

- conduct an assessment of its record-keeping processes and records management program, and
- provide State Records NSW with a report on the findings arising from the assessment.

State Records NSW may use this section of the State Records Act to escalate actions that can be taken in response to a records management or recordkeeping issue, e.g. if monitoring mechanisms available at sections 12(4) and 15 of the Act have been unsuccessful, or the issue has not been able to be resolved with the public office.

Section 12(6) of the State Records Act allows State Records NSW, if it is not satisfied with a report or the findings of a report, made under section 12(5) of the Act, to include information about this in the State Records NSW Annual Report.

See the [Policy on the Notices Power in the State Records Act 1998](#).

Oversight agencies

Oversight agencies are those agencies which have special powers that enable them to safeguard the public interest and conduct investigations. They include the NSW Ombudsman, Independent Commission Against Corruption, Audit Office of NSW, and the Information and Privacy Commission of NSW. (see <https://sef.psc.nsw.gov.au/understanding-the-sector/central-and-oversight-agencies>)

Public Offices

Public offices are defined at section 3 of the *State Records Act 1998*.

Recordkeeping

The process of making accurate and reliable records and capturing them into the official recordkeeping systems of the organisation.

Recordkeeping Assessment

An impartial and evidence-based assessment of a public office's recordkeeping conducted by State Records NSW. Section 15 of the State Records Act provides the authority for this work.

A Recordkeeping Assessment may be undertaken in response to a complaint about poor recordkeeping or an emerging recordkeeping/records management issue in a public office.³ After an initial assessment, approval is sought from the Executive Director, State Records NSW, to proceed with a Recordkeeping Assessment process.

³ A Recordkeeping Assessment is conducted according to documented procedures.

The outcome of the assessment is a draft Recordkeeping Assessment Report which may include recommendations to the public office to remediate and improve recordkeeping. State Records NSW will provide the public office with the draft Recordkeeping Assessment Report for comment. The public office's response to the findings of the Recordkeeping Assessment will be incorporated into the final version of the Report and a copy of the final Report will be provided to the public office.

Recordkeeping Assessments are reported in the State Records NSW Annual Report.

Records management

Field of management responsible for the efficient and systematic control of the creation, receipt, maintenance, use and disposition [disposal] of records, including processes for capturing and maintaining evidence of and information about business activities and transactions in the form of records (AS ISO 15489.1: 2017 – clause 3.15)

Unless otherwise defined in this Framework, words and phrases used in this document have the same meaning as in the State Records Act.

2. Responsive regulatory approach

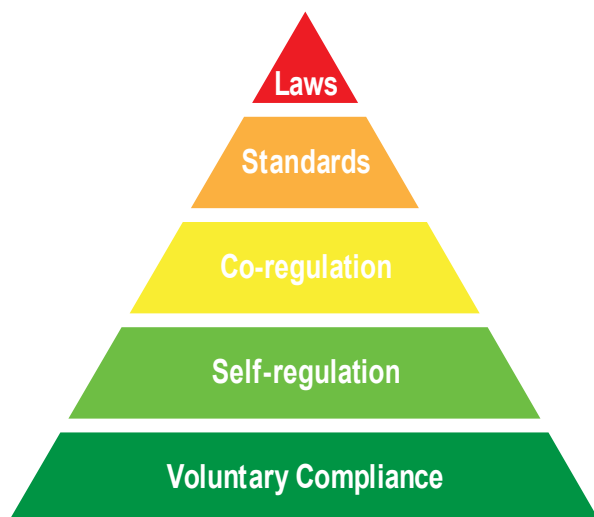
State Records NSW takes a *responsive regulatory approach* in the pursuit of our objectives for the regulation of records management and recordkeeping. This approach enables cooperative and collaborative engagement with public offices to promote voluntary compliance and self-regulation with the State Records Act. This regulatory approach enables State Records NSW to escalate its monitoring activities and actions according to the level of risk posed by non-compliance, for example escalating to formal notices, referral of matters to a co-regulator, to reporting to the Minister, and legal proceedings.

State Records NSW uses coordinated, responsive and risk-informed practices to improve compliance with the requirements of the State Records Act and the standards issued under the Act. State Records NSW regulatory objectives are to:

- Assist public offices to be compliant
- Monitor and report on public office compliance
- Champion best practice records management and recordkeeping.

While our aim is to improve compliance with the State Records Act through cooperative and collaborative engagement with public offices, we will escalate matters of non-compliance when required. Depending on the circumstances of the non-compliance, this may involve referring public offices to oversight agencies, or the relevant Minister, or both.

The **pyramid diagram** below shows the options available for regulation and enforcement and the frequency of their use within a responsive regulation framework. The use of responsive regulation encourages compliance and reduces the necessity and use of coercive powers.



Green layers of the pyramid are **Low Risk/High Frequency**. State Records NSW provides guidance, resources, tools to public offices. Public offices undertake self-assessment and self-improvement to voluntarily comply with requirements and to self regulate.

Yellow/Orange layers of the pyramid are **Medium Risk**. As the risk escalates State Records NSW issues formal improvement notices to public offices, reports public offices to co-regulator, and reports on poor recordkeeping in the Annual Report (section s12(6) and section 20 of the *State Records Act 1998*).

Red layer of the pyramid is **High Risk/Low Frequency**. With high risk, State Records NSW will seek criminal proceedings, injunctions, and report public offices to the Minister (section 17 of the *State Records Act 1998*).

2.1 Risk-based approach

Underpinning State Records NSW responsive regulation approach is the application of risk-based decision-making using information gained through monitoring activities. This approach allows us to assess priorities and allocate resources accordingly, and identify those public offices that are in the greatest need of assistance.

In order to do this, we need to:

- have a clear understanding of the sector's needs and performance against our regulatory objectives
- be able to identify where the most significant risks lie
- have a graduated set of compliance activities to match to risk, and
- be able to demonstrate that our regulatory actions are both proportionate and effective.

We seek to support compliance with the State Records Act with an approach that allows flexibility for public offices to achieve good recordkeeping outcomes and at the same time ensures that risks remain within acceptable levels.

While the State Records Act does not include a formal complaint mechanism, we will assess complaints about poor records management or recordkeeping and act where outcomes align with our regulatory objectives or it becomes clear that there is an unacceptable level of risk. We will use learnings from such complaints to support improved records management and recordkeeping practices in public offices.

We will continue to support and provide advice and guidance to all public offices, including providing guidance on issues that pose risks to records management and recordkeeping, and promote the importance of recordkeeping in public offices.

2.2 Consistent, transparent and open

State Records NSW recognises that we are accountable for how we monitor compliance with the State Records Act and resolve non-compliance issues.

We will take consistent approaches in responding to issues of non-compliance that we consider are negligent and that damage the integrity of the public record.

Public offices and individuals are able to make a complaint to State Records NSW about serious instances of poor recordkeeping or non-compliant records management within a NSW public sector or government organisation.

State Records NSW decision-making for responding to issues of non-compliance will occur within documented governance processes.

While our responses to non-compliance issues will be consistent, we recognise that each case will require us to consider the particular circumstances, the outcomes sought, level of risks, resources and other relevant factors.

State Records NSW will address non-compliance issues with integrity and in an equitable, objective and unbiased manner. We will deal with issues in a transparent and open manner so that all parties involved in a non-compliance issue have a clear understanding of what is expected from them and what they can expect from State Records NSW.

2.3 Supportive and collaborative

Using a responsive regulatory approach, we will support, collaborate with and actively encourage all public offices to improve their compliance with the State Records Act and the standards issued under the Act. We will focus on providing relevant guidance, advice, and tools to assist public offices to comply. We will support public offices in their efforts to improve records management and recordkeeping.

2.4 Co-regulation

Co-regulation typically refers to where one organisation develops and administers standards or requirements, but is supported by other organisations to enforce those standards and requirements.

This Regulatory Framework incorporates co-regulation:

- the *State Records Act 1998* sets out the mandatory requirements and standards for public offices
- State Records NSW administers the requirements and standards
- State Records NSW monitors compliance with the requirements and standards using sections 12(4) – 12(6) and section 15 of the State Records Act
- oversight agencies⁴ in NSW Government assist State Records NSW to enforce the requirements and standards.

State Records NSW recognises that oversight agencies are better placed to take on an investigatory and enforcement role. The Information and Privacy Commission (IPC) and the NSW Ombudsman have been identified as having complementary legislative scope and investigative powers which would assist State Records NSW to enforce the requirements of the State Records Act.

State Records NSW will refer matters to the relevant oversight agency if the matter:

- relates to matters that indicate possible maladministration or corruption
- concerns the destruction of information held in a record to deliberately prevent disclosure via the *Government Information (Public Access) Act 2009* as authorised or permitted under the GIPA Act
- identifies significant, widespread or complex issues about records management or recordkeeping which require investigation, or
- identifies significant or complex issues of records management or recordkeeping where there is limited interest in cooperating with State Records NSW, complying with the State Records Act, or implementing recommendations to address recordkeeping failures.⁵

State Records NSW will work with a range of organisations (e.g. the Information and Privacy Commission, the NSW Ombudsman, and the Independent Commission Against Corruption) to develop guidance and advice which will respond to specific issues, and improve records management in public offices.

2.5 Enforcement actions

Any enforcement action, as a result of issues raised in a Recordkeeping Assessment, a report on the findings of a public office's assessment in response to a notice, or a monitoring activity, will be in proportion to:

- the level of recordkeeping risk or failure
- the seriousness of the breach of the State Records Act 1998 and the standards issued under the Act, and
- the public office's risk profile.

Decisions regarding enforcement are made by the Executive Director, State Records NSW.

⁴ See definition for oversight agencies

⁵ For further information on co-regulation see the *Policy on co-regulation and referral of matters*.

Enforcement actions can include:

- recommendations made in a Recordkeeping Assessment Report provided to a public office and a request for regular reports from the public office on the implementation of these recommendations
- referral of the public office to an oversight agency (e.g. the NSW Ombudsman, the Independent Commission Against Corruption, the Information and Privacy Commission)
- identification of a non-compliant public office in the State Records NSW Annual Report (section 20(2) of the State Records Act)
- identification in the State Records NSW Annual Report that the report by a public office in response to a notice was not satisfactory (section 12(6) of the State Records Act)
- escalation of the matter to the relevant Minister (section 17 of the State Records Act) or a coordinating authority (e.g. Office of Local Government, Secretary of the relevant Department)
- reporting the public office to the relevant Minister as the public office has failed to comply with the State Records Act or the regulations, State Records NSW has other concerns about the public office's obligations under the State Records Act or the regulations (section 20(1) of the State Records Act),
- legal actions taken using the provisions of the State Records Act.

Referral of a matter to the Minister may also include the option for the matter to be examined by the Auditor-General of NSW.

3. Regulatory objectives and activities

3.1 Assist public offices to be compliant

State Records NSW understands that compliance can seem complex. Our aim is to:

- make it easier for a public office to know what it needs to do in order to comply
- provide clear information on requirements, and
- provide information to enable public offices to value good records management.

State Records NSW will promote voluntary compliance with the State Records Act and the standards issued under the Act. We want public offices to implement good records management and recordkeeping because they understand that it provides critical support to their organisation.

We encourage all public offices to take an active role in assessing their current levels of maturity with requirements and implementing corrective actions where appropriate. The Records Management Assessment Tool (RMAT) enables public offices to self-assess conformity with requirements and levels of maturity, and to use reports from the Annual Recordkeeping Monitoring Exercises for planning and improvement purposes.

State Records NSW will continue to provide advice, guidance, resources, and tools to assist public offices in implementing records management best practice and responding to emerging challenges and issues in records management.

State Records NSW encourages any public office with non-compliance concerns or issues to have a discussion with us about the problems or challenges that they are facing. We will work with public offices to develop solutions to problems when they are brought to our attention. We believe an open discussion about issues and collaboratively developing a plan for improvement provides the best outcomes.

3.2 Monitor and report on public office compliance

State Records NSW needs to have a clear view of how well public offices are performing against the records management requirements established in the State Records Act and the standards issued under the Act. This information enables us to effectively regulate and respond to emerging issues, risks and challenges, and measure improvement in performance over time. Monitoring activities provides us with this view of performance.

We report to the Minister and the Parliament on the state of records management and recordkeeping in public offices. Our monitoring activities enable us to make such reports.

The results of monitoring activities will be reported on our website and in our Annual Report. Understandings of trends and issues gained from our monitoring activities will be incorporated into new standards, guidance and tools for public offices.

3.3 Champion best practice records management and recordkeeping

Records are at the core of government business. Good recordkeeping enables accurate, authentic and trustworthy evidence of the business of government that can be depended upon by the Government and the people of NSW. Records are an indispensable ingredient for accountable Government, service delivery, and decision-making.

Excellence in records management and recordkeeping contributes to achieving the outcomes of the *State Records Act 1998* and helps to promote trust in the public record and Government.

State Records NSW will promote and share excellence in records management and recordkeeping in public offices, particularly where it contributes to ensuring:

- creation and capture of trustworthy, useful and accountable records
- effective and efficient management of records in all formats, in all business environments, and in all types of systems
- records are accessible and retained for as long as they are required as per requirements in authorised retention and disposal authorities, and
- records are identified and transferred to the State Archives Collection.

State Records NSW will increase public trust in the quality and care of government records and information by:

- assisting public offices and promoting exemplars of best practice/excellence through the distribution of information about good records management and recordkeeping practices
- encouraging public offices to adopt best practice and industry recognised standards
- monitoring, endorsing and promoting industry best practice standards
- incorporating industry standards and best practice into guidance, advice and resources available to public offices
- highlighting areas of high risk in common practice that threaten trust and confidence in government information, and
- incorporating reporting on compliance in our Annual Report.

Document History

Version	Date	Reason for Amendment
1.0	April 2021	Initial Draft; consultation with RSA
2.0	May 2021	Draft for consultation with Director
2.1	May 2021	Draft for consultation with PSAC

2.2	June 2021	Incorporation of PSAC comments/revisions
3.0	June 2021	Final draft approved by the Board
4.0	May 2023	Revisions to incorporate legislative changes; consultation with Manager State Records NSW
4.1	June 2023	Incorporation of feedback and finalisation of draft
5.0	July 2023	Final draft approved by the Board

Review Date

This policy will be reviewed approx. July 2026 (review dates are dependent on the type of policy and impending regulatory changes. Review dates may change to accommodate).

Contact

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