

STATE RECORDS

of South Australia

General Disposal Schedule 47

Records of relevance to allegations of Child Abuse matters

Effective from 18 December 2024 to 31 December 2034

Version 1

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Approval for the commencement of this schedule

State Records Act 1997

Government of South Australia

General Disposal Schedule 47 Version 1

for

Records of relevance to allegations of Child Abuse matters

Effective 18 December 2024 until 31 December 2034

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 children whilst they were in State Care, or where the State is alleged to be responsible for the abuse.

Records assist Police, the Office of the Director of Public Prosecutions, Courts and other stakeholders in the criminal justice system in determining issues of fact arising out of allegations of child abuse. The retention of records is particularly important from the perspective of the criminal law where there is no time limit for criminal charges being brought.

Claimants are able to seek compensation in civil matters through legal proceedings against the Crown under the *Civil Liability (Institutional Child Abuse Liability) Act 2021*, or legal proceedings at common law as modified by statute.

Since 1 February 2019, there is no statute of limitations for claims of sexual abuse and serious physical abuse for which an institution is responsible. Although a common law claim may be stayed as an abuse of process on account of delay, that is a very rare outcome.

Due to the reverse onus placed on institutions pursuant to sections 50E and 50F of the *Civil Liability (Institutional Child Abuse Liability) Amendment Act 2021* which commenced in South Australia on 1 August 2022, it is very important that records relevant to the circumstances of child abuse, and systems and policies operating in relation to child abuse, are retained for as long as practicable to cover potential claims.

In the alternative, a victim of child abuse may bring a claim for compensation under the *Victims of Crime Act 2001* (SA) and must ordinarily prove beyond a reasonable doubt that the offence has occurred.

In addition, applications for redress from persons who allege that they experienced sexual abuse as children within a South Australian government institution are being made to the National Redress Scheme for Institutional Child Sexual Abuse (the Scheme). Applicants can be those who have lived in residential care facilities or foster care settings, those who experienced sexual abuse at school, or those who otherwise allege that the State institution is responsible for their abuse. The alleged abuse must have occurred prior to 1 July 2018.

The Scheme is a result of a recommendation made following the Commonwealth Royal Commission into Institutional Responses to Child Sexual Abuse. The *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (National Redress Act) established the Scheme. The *National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Act 2018* commenced operation in South Australia in November 2018 which adopted the National Redress Act. South Australia joined the Scheme in February 2019.

The Scheme is administered by the Commonwealth Department of Social Services with the State Redress Response Unit being established within the

Attorney-General's Department in 2019 to provide oversight of South Australia's participation in the Scheme as well as implementation of the Scheme in South Australia. The Attorney-General is the Minister with portfolio responsibility for the Scheme in South Australia.

The South Australian government, as a participating government, is required to respond to Requests for Information from the Scheme to assist in determining applications. This extends to local government, who are participating in the Scheme under the South Australian government.

Records may be related to claimants and redress applicants, who may include those seeking compensation or a redress payment. Records may also relate to alleged offenders, or the systems of work and policies in operation at the time responsible institutions have the care of, or dealings with, children.

GDS 47 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 legal proceedings arising out of alleged abuse of children currently in State Care
- for legal proceedings arising out of alleged abuse of children whilst interacting with a state or local government agency or contracted out service or where the agency or service is considered to be responsible for the child or the abuse or
- for the redress application process.

GDS 47, 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 47 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 in this schedule. This list is not conclusive.

Objectives

The aim of GDS 47 is to ensure the protection of rights and entitlements of:

- stakeholders in the criminal justice system;
- the individuals who present a claim for compensation or apply for redress and
- of the South Australian Government in defending or processing those claims and applications.

In order to achieve its aim, GDS 47 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 2034** (and for any additional period that may be determined by a review).

Implementation

GDS 47 is issued under the *State Records Act 1997* (Act).

The Act was proclaimed in October 1997 to provide for the preservation and management of official records. GDS 47 is issued as a determination under section 23 of the Act.

Section 23 of the 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 47 Version 1 was first approved by the State Records Council on 26 November 2024.

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 47 Version 1 is effective immediately from 18 December 2024 until 31 December 2034, retention subject to a review at that date.

GDS 47 may be reviewed earlier as instructed by the Crown Solicitor's Office, State Redress Response Unit, 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 47 Version 1 revokes:

- General Disposal Schedule 27 (GDS 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*
- General Disposal Schedule 32 (GDS 32) Version 3 *Records of Relevance to the Royal Commission into Institutional Responses to Child Sexual Abuse* and
- General Disposal Schedule 36 (GDS 36) Version 2 *Records of Relevance in relation to Child Abuse or Alleged Child Abuse*.

GDS 47 Version 1 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 47 in association with other General Disposal Schedules and the agency's operational records disposal schedule/s.

Consultation

In developing GDS 47 consultation occurred with the Crown Solicitor's Office (Civil) and the State Redress Response Unit.

Record Formats

GDS 47 Version 1 applies to records in any format.

Access 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.

Categories of records that may be relevant

Various classes of records (covering any time period, held in any format or in any system) may be of relevance and subject to the disposal freeze.

In general, these may include (but not limited to):

- records directly relevant to a child being at risk of harm
- individual client and case files
- records relating to children under the age of 18, including but not limited to care concerns notified to the Department for Child Protection and Department for Human Services records of placements with foster carers or designated carers, residential care placements or disability supported accommodation, records of enrolment/attendance at schools or training institutions, admission records in relation to hospital attendances, records of periods of detention at youth detention facilities etc
- 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 that have direct or indirect contact with children, e.g. attendance, leave, travel records, timesheets, site access registers
- records of legal, disciplinary and/or appeal proceedings
- records of investigations, reviews or inquiries
- 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 relating to past and future Royal Commissions related to the subject of child abuse such as Child Protection Systems Royal Commission and Royal Commission into Institutional Responses to Child Sexual Abuse in Australia
- records in the possession or control of third-party providers of child protection/care services
- contractual arrangements between agencies and third-party providers where it relates to the provision of a service for children i.e. school camps, school bus services, alternative care providers.

Following on from the above is a list of some of the specific types of records that may be of relevance. It is by no means an exhaustive list.

Aboriginal Affairs and Reconciliation records, including:

- records relating to claimants, *ex gratia* payment applicants, redress applicants or alleged offenders
- general correspondence files
- minutes and agendas of Aborigines Protection Board and Aboriginal Affairs Board and associated documents and annual reports.

Child protection records, including:

- individual client and case files relating to children
- notifications that a child may be at risk of harm
- files relating to claimants, redress applicants or alleged offenders
- general correspondence files
- foster care files and files relating to designated carers within the meaning of the *Children and Young People Safety Act 2017*
- files relating to children's residential facilities/institutions or any other facility that provides non-family-based care to children or young people
- employee/personnel files of employees, agents, contractors of institutions and individuals who are akin to employees i.e. such individuals carry out activities as an integral part of the activities carried on by the institution, or otherwise associated with an institution
- logs/rosters of shifts worked by employees, agents, contractors and those akin to employees
- role descriptions of the above individuals for the purpose of assessing vicarious liability

OFFICIAL

- 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
- records relating to the staffing of the State's child protection system to ensure the safety of children at risk of harm.

Correctional Services and Youth Justice records, including:

- prison health records of children including those in the custody and/or guardianship of the Minister, claimants, redress applicants or of alleged offenders
- case files regarding juvenile offenders (including claimants and ex gratia payment applicants and redress applicants), including offender history, probation records etc.
- any files relating to institutions (e.g. Adelaide Remand Centre and Adelaide Youth Training Centre) for juvenile offenders and files regarding individuals who were placed at these institutions. These records may include log books.
- any files relating to institutions (e.g., Adelaide Remand Centre and Adelaide Youth Training Centre) for offenders who interacted with juvenile offenders placed at adult institutions and files regarding individuals who were placed at these institutions. These records may include log books.

Court records regarding claimants or *ex gratia* payment applicants or redress applicants, including their court history as children and adults – includes:

- files of cases before any Court. These include files regarding trials for murder, rape and indecent assaults
- Child protection records which existed in the Youth Court, including committals to the Custody and Control of the Minister, Detention Orders, etc

Court records regarding offenders alleged to have abused children.

Medical records of children, 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 individuals employed by government agencies or work or volunteer with children including those 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 of persons who work and volunteer with children in the custody and/or under the guardianship of the Minister.

Police records, including:

- records relating to the making of a complaint, investigation and prosecution of child abuse offences
- police incident reports, apprehension reports, offender history summary reports, statements of witnesses (including notebook statements), any PD108, PD207A/B forms for why charges may not have proceeded, and police officer/prosecutor notes.
- criminal history of alleged offenders or convicted offenders (ie foster carers or government employees)
- records relating to the prosecution for child abuse offences
- documents relating to criminal proceedings (including any associated processes such as appeals) that may bear upon the subject of Royal Commissions
- Paedophile Task Force or Sexual Crime Branch records.

Public prosecution files relating to criminal proceedings (including any associated processes such as appeals), prosecution of offenders, claimants, or *ex gratia* payment applicants or redress applicants.

Royal Commission Response Unit records relating to past and future Royal Commissions related to the subject of child abuse.

School records of children, including records relating to:

- student assessment and achievement at school
- enrolment, admission, and attendance
- behaviour and discipline
- student work experience placement
- 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
- counselling
- photographs of individual students.

Training or education records of students under 18 years of age, claimants or *ex gratia* payment applicants or redress applicants, including:

- Training and Further Education (TAFE) student record
- Government training providers

Impact on Agencies

Agencies Affected

At the time of approval of GDS 47 Version 1, the Crown Solicitor's Office and the State Redress Response Unit had identified the following agencies (their predecessors and successors) as potentially holding relevant records:

- Attorney-General's Department
- Courts Administration Authority of South Australia
- Department for Child Protection
- Teacher's Registration Board
- Department of Human Services
- Aboriginal Affairs and Reconciliation
- Department for Correctional Services
- Department for Education
- Office of the Director of Public Prosecutions
- Health agencies (including public hospitals and community health and specialty needs services)
- Mental health services such as CAMHS
- South Australia Police
- TAFE SA.

While such agencies have been identified, GDS 47 is not limited in its application to these and can apply to any State or Local Government agency that holds records of relevance (or likely relevance).

Agencies must also be aware that records of actual abuse incidents and allegations are retained under various items in: GDS 30 (as amended) for State Government agencies including 13.29 (various) and GDS 40 (as amended) for Local Councils and Local Governing Bodies and Authorities including 5.1.and 5.2.

Action Required of Agencies

Agencies need to:

- ensure that staff responsible for records are informed of GDS 47 and the disposal freeze that it imposes
- check any records for relevance to GDS 47 prior to destruction, this includes records held by an Approved Service Provider
- sentence records against GDS 47 in addition to other relevant disposal schedules, e.g. GDS 30 (as amended), GDS 40 (as amended), GDS 50 (as amended) and any RDS relevant to the agency

- ensure that any relevant records in the possession or control of third party providers of contracted out government services are not destroyed
- withhold from destruction any such records identified
- retain the records for the duration of the disposal freeze set by GDS 47 (until 31 December 2034), 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 47 will need to be borne by the agencies affected.

Disposal Determination

Item No.	Description (Disposal Class)	Disposal Action
1.	Official records that may have relevance or have been deemed to have relevance in relation to allegations of Child Abuse matters.	Retain until 31 December 2034, and for any additional period determined by a review.

Further Information

For advice on implementing GDS 47, contact State Records of South Australia.

Contact Details

Information Governance, State Records of South Australia

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ADELAIDE

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For general advice on records appraisal, disposal, destruction, transfer and storage, changes or updates to GDS 47 contact Information Governance, State Records of South Australia.