



STATE RECORDS COMMISSION

SRC Standard 6

OUTSOURCING

A Recordkeeping Standard for State Organizations

**State Records Commission of WA
Perth, Western Australia
February 2002**

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DEFINITIONS

Contractor – is the person or persons with whom the State organization has entered into a contract or arrangement whereby the person or persons are to perform any function for the organization.

Control – means the responsibility for keeping a record but does not include the responsibility for creating it.

Custody – means the responsibility for the care of State records usually based on their physical possession. Custody does not include legal ownership, or the right to control access to the records.

Government organization – is an organization listed in Schedule 1 or Schedule 3 of the State Records Act 2000.

Government record – is a record created or received by a government organization or a government organization employee or contractor in the course of the work for the organization.

Outsourcing – is the transfer of responsibility for a service or function conducted by the State organization to an external service provider.

Ownership – means the legal, physical and intellectual property rights over State records. The records may not be in the custody of a State organization but they remain the property of the State.

Parliamentary department – is a department that is deemed to have been constituted in relation to the administration of Parliament for the purposes of the *Financial Administration and Audit Act 1985* by regulations made under Section 3(2) of that Act.

Parliamentary record – is a record created or received by a parliamentary department or a person in the course of their work for the department, whether the person is employed under a contract of service or is engaged under a contract for services or otherwise.

State archive – is a State record that is to be retained permanently.

State organization – is a parliamentary department or a government organization.

State record – is a parliamentary record or a government record.

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PURPOSE

The purpose of this Standard, established under Section 61(1)(b) of the State Records Act 2000, is to define principles and standards governing contracts or arrangements entered into by State organizations with persons to perform any aspect of recordkeeping for the organization.

BACKGROUND

The State Records Act 2000 is an Act to provide for the keeping of State records and for related purposes. Section 61(1) of the Act requires that the State Records Commission is to establish principles and standards for record keeping.

It is of the utmost importance that the integrity of State records be maintained and that proper procedures ensuring correct capture, management and maintenance are put in place at the time that any contract or agreement is entered into. Such contracts or agreements may involve contracting an individual or an organization to act as the State organization's agent to deliver services to clients, or for the State organization's own use.

Contracts should provide that the contractor create records that meet the organization's accountability requirements, in relation to the functions performed or services provided for the organization. Such contracts should also provide that the contractor maintain those records according to standards acceptable to the organization, for as long as the records are required and return them to the organization when the contract expires.

SCOPE

The principles and minimum compliance requirements in this Standard apply to all State organizations as defined in Section 3 of the State Records Act 2000.

Contracts and agreements must be developed in accordance with government guidelines supplied by the State Supply Commission and the Department of Industry and Technology.

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Principle 1 –Planning

State organizations ensure that the keeping of State records is in accordance with legislative requirements.

Rationale

The process of engaging a contractor to deliver services to clients or to provide support services to the organization is usually achieved through a contract or binding service agreement. These contracts and agreements can generally cover areas such as service levels, performance benchmarks, costs and penalties. Records, which enable compliance measurement to be undertaken, must also be included.

It may be legally difficult to re-acquire records when needed for administrative purposes or litigation if access to records is not included in the contract or agreement.

Accordingly, State organizations must ensure that access to State records is considered in the planning process and included in the contract or agreement established for outsourcing.

Minimum Compliance Requirements

The contract or agreement must provide evidence to adduce that:

1. Specific recordkeeping requirements in any enabling legislation relating to the organization are analysed, documented and accommodated within the contract or agreement.
2. If the contracting out is taking place as a result of specific legislation and there are specific provisions relating to recordkeeping, these provisions are considered when developing the contract or agreement. In other instances, recordkeeping provisions may not be specifically mentioned within the legislation but may be intended to be covered within the scope of the term “assets”.
3. The records and their owners are identified.
4. The organization and the contractor are bound by the State Records Act 2000 and any Principles and Standards developed in accordance with the Act.
5. The disposal of the records is in accordance with Western Australian legislation.
6. Unlimited access to the records is provided for the organization and access provisions are specified to the contractor.

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7. Records custody provisions are defined, both within the contracting body and the State organization.
8. Control and ownership of the records are established for the duration of the contract and following completion of the contract or agreement.

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Principle 2 –Ownership

State organizations ensure that the ownership of State records is addressed and resolved during outsourcing exercises.

Rationale

Failure to clarify issues surrounding the legal ownership of records, and the information they contain, in outsourcing agreements and contracts can severely restrict the business capabilities of the contractor and expose the organization to considerable risks. The issue of ownership extends not only to records of the organization that may be acquired by the contractor but also to records created by the contractor during the life of the agreement or contract.

Minimum Compliance Requirements

The contract or agreement must provide evidence to adduce that:

1. Existing State records, for which custody is to be transferred to the contractor, are specified.
2. State records remaining the property of the State organization are specified.
3. Any records remaining the property of the contractor at the completion of the contract or agreement are specified.
4. Ownership of the intellectual property of the records is specified.
5. Any State records of the State organization that are excluded from the transfer of custody to the contractor are specified.
6. The legal ownership of records, or copies of those records, created by the contractor during the course of the contract or agreement is specified.
7. Any limitation imposed on the contractor for the use of State records, and disclosure of information contained therein, is specified.
8. All rights of the State organization regarding the use of records created by the contractor during the life of the contract or agreement, are specified.
9. State records are returned to the State organization upon completion of the contract or at any other time specified by the State organization.

Note: State organizations should be cognisant of the specifications relating to intellectual property outlined in Government Information and Technology Contracts (GITC) 3 Terms and Conditions.

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Principle 3 –Control

State organizations ensure that contractors comply with the recordkeeping controls determined by the recordkeeping plan of the organization.

Rationale

Even though a service or operation has been outsourced it is likely that the controlling organization will retain some degree of responsibility and control over the contractor and how it performs its business. This control will be best supported by the State organization ensuring proper and adequate records management practices are observed by the contractor.

To make this possible the State organization must require the contractor to create and manage records, whether manual or automated, effectively and efficiently in a manner specified by the organization. The organization may also require that the contractor follow particular government policies and standards that are binding upon the organization.

Minimum Compliance Requirements

The contract or agreement must provide evidence to adduce that:

1. Any records that must be created to enable the State organization and the contractor to fulfil their statutory and service obligations are stipulated.
2. The State organization ensures that the contractor is complying with any relevant State legislation with regard to creation and management of proper and adequate records relating to the business function, activity or operation being outsourced.
3. The State organization ensures that the contractor is complying with recordkeeping standards, policies, procedures and guidelines stipulated by the organization.
4. The State organization stipulates any technical standards needed to ensure the information created and managed by the contractor can integrate with other government or private service provider recordkeeping systems, as required.

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Principle 4 –Disposal

State organizations ensure that State records are disposed of in accordance with Western Australian legislation.

Rationale

State records transferred to the custody of the contractor and those State records received or created by the contractor during the term of the contract, remain the property of the State organization. They must be disposed of in accordance with an approved disposal authority. The State Records Commission, via the State Records Advisory Committee, is the authorising body for disposal authorities.

Further disposal issues are addressed under Principle 7 – Contract Completion.

Minimum Compliance Requirements

The contract or agreement must provide evidence to adduce that:

1. A Retention and Disposal Schedule covering the records of the outsourced function, both those State records transferred to the custody of the contractor and those State records received or created by the contractor during the term of the contract, will be developed and submitted to the State Records Commission for approval.
2. All State records included in the terms of the contract are returned to the organization, in accessible format, before or at the conclusion of the contract, for disposal in accordance with the approved Retention and Disposal Schedule.

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Principle 5 –Access

Agreement is reached between the State organization and the contractor concerning the provision of access to State records.

Rationale

State records are retained not only for their administrative use, but also as an information resource for non government access. This access is established in the State Records Act 2000, Freedom of Information legislation and other instruments.

This dual access role of State records is easy to establish and maintain whilst the records remain in the custody of the government. It is vital therefore, that organizations ensure that when they are considering outsourcing, issues of access to State records held by the contractor are written into the contract. Failure to do so will make it extremely difficult for the organization to inspect and validate the service delivery being performed for it by the contractor, and Government accountability through its recordkeeping systems may be compromised.

Minimum Compliance Requirements

The contract or agreement must provide evidence to adduce that:

1. Agreement is reached between the State organization and the contractor concerning access by the organization to State records held by the contractor.
2. Agreement is reached between the State organization and the contractor concerning public access to State records held by the contractor.
3. Agreement is reached between the State organization and the contractor concerning any State records held by the contractor, to which access by the public is restricted.
4. Agreement is reached between the State organization and the contractor upon State records, held by the organization, to which the contractor requires access.
5. The State organization shall ensure that public access to State records held by the contractor, is no less than was previously available when the records were in the custody of the State organization.
6. The State organization ensures that the access rules established under the agreement are enforced equitably and consistently.

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Principle 6 –Custody

State organizations ensure that the custody of State records is addressed and resolved as part of the outsourcing arrangements.

Rationale

The custodial arrangements for State records are well established and have been designed to fulfil the requirements of the State Records Act 2000, and other instruments where these exist. It is important that these gains are not lost when an agency is outsourcing a function, activity or operation.

Poor, or no, decisions over the custodial arrangement for State records will result in the loss of records of evidential value, the integrity of collections of records being lost and unnecessary duplication and waste of effort will follow. Organizations must ensure that when they are outsourcing they include custodial arrangements in the agreements and contracts that are entered into with contractors.

It is also vital that organizations ensure that these agreements and contracts include arrangements for the custody of records at the end of the agreement or contract.

Minimum Compliance Requirements

The contract or agreement must provide evidence to adduce that:

1. Custody agreements are reached between the organization and the contractor for State records stored off site by the contractor.
2. Custody agreements are reached between the organization and the contractor for records stored on site by the contractor.
3. The organization ensures that custody agreements it enters into with contractors, as indicated in 1 and 2 above, cover the following:
 - Environmental requirements, i.e. temperature and relative humidity levels within the areas where the records are stored;
 - Security and safety systems that operate over areas in which the records are stored;
 - The records storage container requirements;
 - The degree and detail of documentation of records held in the records storage area; and
 - The record arrangement requirements for records held in the records storage area.
4. The State Records Office is informed of the location of State records of the organization held outside the custody of that authority.

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Principle 7 –Contract Completion

State organizations ensure that State records are returned upon the completion of contracts.

Rationale

Just as organizations must ensure that the initial stages of a contract are well regulated and specified, they must also ensure that the completion, and post completion, stages of a contract are well regulated, monitored and specified. Failure to do so will result in lost information, increased risk of exposure to legal liabilities and wasted time and money.

It is unlikely that a contractor will wish to devote time and effort to the State records of an activity or function which it is no longer performing for the government, unless there is an established contractual requirement for them to do so.

It is equally important that these processes are planned to be initiated in advance of the completion of the contract. Where records are boxed, listed or transported in a hurry the risk of material of continuing value being lost or accidentally destroyed increases exponentially. An orderly end of contract or agreement process will result in good records management and fewer wasted resources, both by the contractor and the organization. It will also substantially reduce both the organization's and the contractor's exposure to risk.

See also Principle 4 – Disposal

Minimum Compliance Requirements

The contract or agreement must provide evidence to adduce that:

1. The organization ensures that record custody issues, upon completion of the contract or agreement, are contained in the contract or agreement.
2. The organization ensures that record ownership issues, upon completion of the contract or agreement, are contained in the contract or agreement.
3. The organization ensures that record disposal issues, upon completion of the contract or agreement, are contained in the contract or agreement.
4. The organization ensures that record transfer issues, upon completion of the contract or agreement, are contained in the contract or agreement.

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5. The organization ensures that the contract or agreement includes any restrictions on the contractor using information from records for commercial profit or for unauthorised purposes, upon completion of the project, that the organization feels are required.
6. The organization ensures that the contract or agreement contains provisions for the orderly transfer of records when one contractor is replaced by another performing an outsourced function.
7. The organization ensures that the contract or agreement includes sufficient lead time for record issues to be addressed during the final stages of a contract or agreement.
8. The organization ensures that the recordkeeping issues at the completion stages of an outsourcing contract or agreement are well monitored and reported on at the request of the State Records Commission.
9. Those records identified by the State organization as State records be returned to the State organization.

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**For further information regarding this standard contact
State Records Office of WA
ph: 9427 3360
email: sro@sro.wa.gov.au**