

Appraisal Report

2009/0398 (A334144)

Client Name:	Ministry of Economic Development, Companies Office
Disposal Type	One-off Disposal Authority
Agency Coverage:	Companies Office
Scope:	Physical case-files created by the Companies Office and closed prior to 2004.

1. Executive Summary

This is an Appraisal Report for a one-off Disposal Authority, and encompasses all closed physical case-files created by the Ministry of Economic Development's Companies Office and closed prior to 2004. With the Companies Office being declared entirely electronic in June of 2002, the Disposal Authority being sought will cover all remaining physical case-files, and will supersede the Companies Office's current disposal schedule, DA336.

Approximate quantity recommended for <u>retention as public archives:</u>	277 Im (6.5%)
Approximately quantity recommended for <u>destruction:</u>	3973 Im (93.5%)

2. Appraisal Circumstances

The Companies Office's current disposal schedule, DA336, allows for the disposal of all Companies Office records. The Companies Office's Seaview records storage facility is closing on July 31 2009, and accordingly the Companies Office would like to sentence records held at Seaview and dispose by transfer to Archives New Zealand.

In January 2009, a meeting was held between Archives New Zealand – represented by [name removed], Group Manager, Archives Management and [name removed], Manager, Appraisal – and the Ministry of Economic Development – represented by [name removed], Business Development Manager. The meeting was called to discuss the broader issues regarding the Companies Office records in light of the imminent closure of the Seaview facility, the Companies Office's adoption of fully electronic systems, and Archives New Zealand's limited capacity to receive, process and house such a large quantity of records, the value of which has become questionable, especially in light of changes in legislation and digitisation. Over the course of the meeting, it became apparent that both the Companies Office and Archives New Zealand shared concerns that under the current schedule, records of little archival value were to be retained as public archives. Following further discussion, it was agreed that a new appraisal be undertaken by Archives New Zealand, which will reassess the value of company case files in light of legislative, technological and value changes since the original schedule was authorised in 1998.

The original schedule¹ was authorised in 1998. Since that time changes in the recordkeeping environment at the Companies Office, coupled with changes in appraisal standards and approach have rendered many of the assumptions and conclusions that this original authority was based on out of date.

¹ AT 1998/0009

More recently it has come to light that much of the discussion around the archival value of the records concerned was based on historical assumptions which are no longer valid. Several submissions from the legal community asserted that Companies Office paper files should be retained as archives in order to provide for the reinstatement of an entity to the companies register once struck off. While entities may be struck off the New Zealand Companies Register for failing to comply with statutory requirements, in practice, these entities can be reinstated using copies of the original documents, or registers that the entities are required to create, maintain and retain. Therefore, companies are invariably in a position to update the Companies Office with whatever documentation that may be required to support their restoration to the companies register.

Further to this, following the introduction of the Companies Act, 1993, all companies were required to reregister with the Companies Office. This requirement has created a fresh starting point for active company records.² From the 1st of May 2002 the Companies Register was declared to be entirely electronic. Following a back-capture project initiated by the Companies Office, every substantive record created since 1993 that relates to registered companies are available electronically.

In 2008 DA336 was authorised, altering the original disposal action trigger point from 10 years after a company was struck off to 10 years from file closure. The practical outcome of this alteration is that 269,358 entity files became eligible for transfer to Archives New Zealand.

3. Agency Information

<i>Agency code</i>	AATJ – Ministry of Economic Development, Head Office
<i>Agency name:</i>	Ministry of Economic Development, Companies Office
<i>Alternative names:</i>	1973-1988 – Department of Trade and Industry 1988-2000 – Department of Trade and Industry became Ministry of Commerce
<i>Year established:</i>	2000 – Ministry of Commerce became Ministry of Economic Development
<i>Year dis-established:</i>	Current

4. Methodology

As detailed above, this one-off appraisal is limited to physical records of company registrations – otherwise referred to as case-files – that were closed prior to 2004. The introduction of electronic company registration and digitisation in 2000 has seen the closure of all physical case-files, effectively creating a closed series, and meaning that 269,358 entity files have become eligible for transfer to Archives New Zealand under DA336. The large quantity of records effected, coupled with the uncertain nature of their archival value, has necessitated a re-evaluation of the disposal criteria for this record series. Following consultation with [name removed], Business Development Manager at the Ministry of Economic Development, new disposal criteria were

² Effectively, the Companies Act, 1993, coupled with the Limitations Act, 1950, renders all pre-1993 paper records for companies that reregistered ‘obsolete’. No legal action relating to these records may now be commenced, even if relating to an executed deed.

developed. These new criteria will see a dramatic reduction in the volume of case-files transferred to Archives New Zealand, while ensuring records of ongoing value are retained as archives.

5. Consultation

During the drafting of this Appraisal Report, input was solicited from various archival and historical experts, including members of the Archives and Records Association of New Zealand (ARANZ), the Professional Historians Association of New Zealand/Aotearoa (PHANZA), and Archives New Zealand. Companies Office employees were also consulted.

6. Disposal Criteria

6.1. Records to be retained:

The archival retention of records relating to companies that fit within one of the following criteria will ensure that:

- records that relate to prominent, large or 'iconic' New Zealand companies – along with overseas companies registered on the New Zealand Companies Register – are retained as archives. These 'iconic' companies are those that have significantly impacted on the development of New Zealand's economic and social identity, such as Brierley Investments Limited, Fletcher Challenge Finance Holdings Limited, and Fisher & Paykel Appliances Limited;
- all specialised sections of the Companies Register are captured as archives, including Incorporated Societies, which provide evidence of a diverse range of community activity;
- Iwi-based companies are retained. It is expected that, as a result of the Treaty claim process, all Iwi-based companies have more than two directors with more than \$50,000 share capital.

Entity Type	Total
Incorporated Societies	4558
Listed Companies	115
Industrial & Provident Societies	11
Overseas Companies	585
Public Companies	31
Charitable Trusts	171
Cooperative Companies	27
Insurance Companies	3
Credit Unions & Friendly Societies	508
Companies with more than \$50,000 share capital and more than two directors	2792
Total Files	8801

During the consultation phase, the possibility of retaining a small sample of files that did not meet the criteria above was discussed. However, it was felt that this process would not provide any further value to this class of records. A summary of the activity of these entities is available from the Companies Office website; and the inherent lack of ongoing value attributed to these records made their retention ultimately redundant. The assumption that records relating to these entities are of ongoing research value is mitigated by the fact that they are very rarely accessed, if accessed at all.

6.2. Records to be destroyed:

Case-files that relate to companies that do not fall into the criteria above are recommended for destruction. This amounts to 261,241 entity files. An earlier appraisal of Companies Office case-files recommended retaining the entire series.³ However, this recommendation was based on the assumption that case-file documentation would be required to reinstate a company that was incorrectly struck-off the register. As Companies Office case-files contain only copies of original documents – with the companies themselves required to maintain the original documentation – the retention of these records is not required to reinstate a company to the register.⁴ Since the 1st of May 2002, the records of every company, both currently registered, and struck-off, have been available worldwide via the Companies Office's website, which is a record that will be retained indefinitely by the Companies Office. This means that while the majority of company files will be destroyed, there will always be a record of the existence of every New Zealand Company.

These files are of limited ongoing value. They do not possess any of the values outlined in Archives New Zealand's *Appraisal Policy* to a level sufficient enough to justify their retention as archives. Therefore, it is recommended that they are destroyed.

7. Series Information

As stated above, this series encompasses all closed physical case-files created by the Ministry of Economic Development's Companies Office and closed prior to 2004. Each file may contain the following material:

- Documents relating to a company's initial registration
- Memorandum of association detailing the purposes/objects of the business
- Articles of association detailing company shares, directors, meetings etc
- Annual returns
- Details of its dissolution

8. Access Recommendations

[removed]

³ The value statement in the original Appraisal Report, AT98/9, was also included in the Appraisal Report for DA336 to justify the retention of the entire case-file series.

⁴ Companies Act 1993, s189.

9. Transfer Arrangements

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