

COURTS DISPOSAL SCHEDULE INSTRUCTIONS

1. What is a Retention and Disposal Schedule?

1.1 Principles and general method of application.

A retention and disposal schedule identifies types of records with similar retention and disposal requirements and specifies those requirements. It lists the types of records and identifies for each type the disposal action (transfer or destroy) and the time period after which the disposal can occur.

This means that retention decisions can be made quickly over a range of records, reducing the need for appraisal of each individual record series, and assisting in the efficient management of records once they are closed. Retention periods and disposal decisions only become effective once the record is closed.

1.2 Schedule provisions mandatory yet permissive

The disposal decisions are mandatory in that the instructions to transfer or destroy the records not required by Archives New Zealand may not be changed without the approval of the Chief Archivist, once the Chief Archivist, the Chief Executive of the Department for Courts and the judges' representatives, has signed off once the schedule.

They are permissive in that individual courts may hold records for longer periods than set down in the schedule before transferring the records. The Archives Act 1957 provides that no records may be destroyed without the permission of the Chief Archivist. This does not constitute a requirement to destroy records that Archives New Zealand does not wish transferred to its custody.

2 Coverage of the Schedule

2.1 Records no longer created or used by the Courts

The Disposal Schedule covers as many records as possible, including some records that are now no longer created by the courts, but may still be held by individual Courts (e.g. Awards, petitions).

2.2 Amalgamating or separating sequences of records

The Schedule specifies some categories of records separately, although it is recognised that these are not always kept as a separate record in all courts. For example, some courts kept separate sequences of barristers and solicitors files whereas others maintained them as part of the 'Miscellaneous' record system.

In some cases a court may have kept a separate sequence of records for a limited period before re-amalgamating it as part of another records system. The Schedule has attempted to identify as many of these separate sequences as possible, but not all will have been captured.

Please notify Archives New Zealand when records are separated into new record categories so that the new categories can be added as amendments to the schedule.

2.3 Changes in the names of records or administering bodies

The names of records may change or the names of the bodies administering them may change. In some cases responsibility for specific categories of records has changed from the High Court to the District Court and vice versa. (e.g. Land Valuation Court records moved from the Supreme Court to Magistrates Court).

Where changes are known to have occurred the Schedule lists records under both Courts. However, where changes in responsibility have occurred between Courts, but are not reflected in the disposal Schedule, the disposal provisions for the relevant record category should be applied irrespective of what Court the records are listed under.

Whilst the Schedule refers to the High Court and District Court it also covers the former Supreme Court, Resident Magistrates and Magistrates Courts, (Children's Court and Family Court).

2.4 Notify Archives New Zealand if the following records are held

Where records originally created by the following courts are held, they should be brought to Archives New Zealand's attention:

- District Courts 1858-1909
- Assessment Court
- Court of Review
- Arbitration Court
- Mayors Court

2.5 Records not covered by the Schedule

Where a category of records has been omitted from the Schedule the court should notify the Department for Courts, National Office, Records Adviser. They will co-ordinate discussions with Archives New Zealand on developing a disposal authority for the records (either by transfer to Archives New Zealand, retention in the Court, or destruction of the record).

Do not under any circumstances destroy records not listed on the Schedule - this is illegal and in contravention of the Archives Act 1957.

Administration records created by all Courts are not covered by the Schedule. Prior to disposal, these records must be appraised in accordance with Archives New Zealand's guidelines and standards.

Specifically excluded from this Schedule are the criminal record sheets in the District Court. These records are covered under a separate schedule.

2.6 Amendments to the Schedule

Archives New Zealand should be notified of any changes in the Court structure and changes in the record types including changes in the format of records (e.g. introduction of computerised indexes).

The provision of this information is vital ensures that amendments to the Schedule can be made, thereby ensuring an accurate coverage of Court practice and records administered by the Courts.

Currently this information should be channelled through the Department for Courts National Office, Records Adviser. Changes to this procedure will be advised when it becomes necessary. Similarly any queries relating to the Schedule should initially be directed through the Records Adviser.

3. Transferring records

3.1 Transfer all records pre-dating 1900

Any surviving records held in the Courts that predate 1900 should be transferred to the appropriate Archives New Zealand Office, regardless of what record type they are and what the disposal is for that record type. This is because Archives New Zealand regards all records that predate 1900 as significant.

3.2 Judge's approval for transfer

Under the provisions of section 14 of the Archives Act 1957 - "No public archives of any Court of record may be deposited in Archives New Zealand or otherwise disposed of under this Act, except with the prior approval of a Judge or Magistrate, as the case may be, of that Court subject to any conditions imposed by him in granting that approval".

This means that each transfer of archives to Archives New Zealand must be approved in writing by a judge. It would be unreasonable to expect a judge to examine each file that is to be transferred. The suggested process is that Courts staff assemble and list the records, flag any items that they consider the judge should examine, and provide the judge with a list for sign-off.

3.3 Transfer records regularly, avoiding multiple small transfers

When transferring case files, all the files for a specific year should be sent to the appropriate Archives New Zealand Office in a single transfer (except case file(s) where the case is still before the court). Multiple small transfers throughout the year are resource intensive for both Courts and Archives. Archives New Zealand prefers a periodic routine transfer of all categories of records held by the Court at regular intervals. Annual transfers are preferable, but in the case of smaller courts transfers could be made at longer intervals, for example, once every two to five years. If possible, Courts should avoid building up transfers for longer periods than five years, as the accumulation of records becomes more difficult to deal with.

3.4 Registers to be transferred with case files

When transferring records, related registers and indexes **must** accompany case files to ensure adequate control and access. Where the Schedule specifies registers, but indexes exist, the provisions apply to both registers and indexes.

Courts should close off registers at the end of the year and maintain a duplicate copy of indexes before sending the originals to Archives New Zealand. This ensures Courts can provide accurate references when loaning material back.

3.5 Individual listing of files only if registers or indexes do not exist

Where no registers or indexes survive, case files must be individually listed, ensuring adequate control and identification. Archives New Zealand listing guidelines are available through all Archives offices.

3.6 List of missing files

When case files are transferred with registers or indexes, the files are listed by the range in a box (e.g. 75/119 – 76/12). However, a list of any files known to be missing should be included so it is clear that the missing files were never transferred to Archives New Zealand.

3.7 Disposal periods – what they mean

Where the disposal instructions specify:

transfer X years after registration of the file

- the instructions apply at the end of x years after the file has been opened or entered in the controlling register (i.e. assigned a file number).

may be destroyed when all legal, financial and administrative requirements have been met

- this gives the Department for Courts authority to destroy these records once all other retention requirements have been met.

3.8 Registers used for more than one type of record

In some cases a register may have been used to control more than one type of record. (e.g. newspapers and printing press and barristers and solicitors) and/or may span a range of years. In such instances the overriding principle is that **registers and indexes must accompany the case files transferred as archives**, even if they cover more than the span of years of the case files. This may mean that registers (and indexes) have to be closed off and sent to Archives New Zealand earlier than the recommended disposal period. For example, rather than transfer 10 years after last entry the transfer may be much sooner.

Similarly, where a register controls more than one type of record all records types controlled by the register should be transferred at the same time. Where a register controls more than one type of record and only one type of record is transferred (e.g. when the other record types are recommended for destruction) the relevant register(s) **must** accompany the files. The dates covered by the case files transferred must also be covered in the register(s) that are transferred.

3.9 Listing and boxing of records

- Court staff should contact the Archives New Zealand Office to which the records are to be transferred, in order to obtain appropriate boxes and ensure listing details and other transfer requirements are fulfilled.
- Records sent to Archives New Zealand must be boxed in approved Archives New Zealand boxes.
- When the records to be transferred are case files, the label and listing should specify the box number, type of case (e.g. Probates), range of files in the box (e.g. 1978/1-20).
- A separate record should be kept of files that were missing at the point the files were boxed.
- If there is some time between boxing the records and transferring them to Archives New Zealand any retrievals and returns from the boxes must be controlled, so that the list of files transferred shows what is in fact transferred to Archives New Zealand

3.10 'Significant cases'

Significant files in terms of legal precedent or case law, and highly publicised cases that have received national media coverage should be retained from among files that would otherwise be destroyed. Ultimately this will be dependent on the judgement of court officials.

Examples of these would include papers associated with cases such as Bastion Point, murder, aggravated assault, kidnapping, major arson cases and other 'major' criminal or civil cases. Cases related to 'prominent' personalities or national identities unless relating to minor civil or criminal matters (e.g. traffic speeding tickets) should be retained. Cases relating to town planning and the Resource Management Act are also likely to be worth retaining as archives.

In terms of legal precedent or important case law the opinion of local judges should be sought.

It is recommended that the Department for Courts and Archives New Zealand document the type of cases retained as being significant and use these precedents to develop more detailed guidelines for Court officials to apply when selecting such cases.

4. Access provisions

The access provisions are set in accordance with various statutes and Court rules (e.g. District Court Rules, Rule 69 and High Court Rules, Rule 66).

The provisions are aimed at achieving uniformity across all courts when responding to requests to access restricted records. The provisions will also make Archives New Zealand staff aware of what restrictions apply and alert them to the need to refer people to the Department for Courts for written access permission.

4.1. Access to trial records

Requests for access to any information relating to trial or punishment trial under section 20 (1)(c) of the Archives Act 1957 must be made by writing directly to the Minister for Courts.

4.2. Access to non-trial records

Requests for access to restricted non-trial records should be made in writing to the Court Manager of the Court transferring the files, who may refer the request to a judge.

4.3. Access to Adoption Records

The Adult Adoption Information Act 1985 section 15 specifies adoption records shall not be available for production or inspection (with some exceptions) except on the order of a Family Court, a District Court or the High Court. Because there is no expiry period the restrictions on access are deemed to be on-going. The statutory provisions under the Adult Adoption Act with respect to adoption information include District Court (former Magistrates Court) minute books because of the adoption details they record.

4.4. Restrictions on Publications

In addition to the restrictions on access there are a number of laws that prohibit the publications of proceedings except with the leave of the Court. These are generally in the family law area and include:

- Adoption Act 1955 s22
- Children Young Persons and their Families Act 1989 s438
- Domestic Violence Act 1995 s125 (SR 1996/52 r2 (1) (b))
- Family Proceedings Act 1980 s169 (SR 1981/261 Part II r8)
- Guardianship Act 1968 s27A
- Matrimonial Property Act 1976 s35A
- Mental Health (Compulsory Assessment and Treatment) Act 1992 s25
- Protection of Personal and Property Rights 1988 s80
- Child Support Act 1991 s124

The Harassment Act 1977 s39 has a similar restriction on publication, but section 40 allows the Court to renew, revoke, or vary an order made under Section 39.

These restrictions are on publication not access. With the exception of the specific provision within the Adoption Act the District Court Rules 1992 (SR 1992/109) are deemed to apply. The District Court Rules 1992 state:

- (11) “Notwithstanding anything in the foregoing provisions of this rule, any person shall on payment of the prescribed fee (if any), be entitled during office hours to search, inspect, and take a copy of any document or record filed or lodged in the Court more than 60 years before”

Access to records relating to the above acts that are lodged in Archives New Zealand are restricted for 60 years but restrictions on publication continue to apply beyond this 60 years restriction on access.

To alert researchers of possible restrictions on publication the following notice will be placed in all registers. All researchers who have concerns or queries on matters relating to

publication will referred to the nearest Court for clarification.

“IMPORTANT NOTICE”

“It is the responsibility of the individual searching court registers and/or court files to ensure compliance with any conditions regarding access, release and publication made by the Court and/or through legislative provision.

Examples of such conditions include court ordered name suppression, restrictions on access to information contained within a court file, or a blanket order that access to the court file can only be with the leave of the Court. There are a number of legislative restrictions governing some court files, notably in the family law area. For example the Guardianship Act 1968 restricts the dissemination and publication of any information relating to court proceedings brought under that Act.

If in doubt, or in particular if you are considering publication of information that you have accessed in court registers or files, it is strongly recommended that you seek guidance from the relevant Court”.

4.5 Access to case files with name or content suppression

A Judge may place a name or content suppression on specific files. In all instances it is the responsibility of the Court to ensure the cover sheet of the file is clearly flagged to show it has a suppression order. **These files must be clearly distinguishable from other records and all transfers shall be accompanied by a secondary list of files subject to Court order restriction or suppression.** In the absence of such flagging, and subject to any statutory restrictions specified in individual transfer agreements, the access restrictions in the Schedule shall apply.

Persons seeking permission to view records held at Archives New Zealand subject to a name or contents suppression shall be directed to the Court Manager or registrar who will be responsible for getting a Judge’s authority to grant access or deny access. Ideally the permission of the Judge issuing the suppression order should be sought but in lieu of this the written permission of the Executive Judge of the High Court in the area the case was filed is sufficient.

Normally where access is granted special conditions shall apply. For example, access may be granted provided no parties are identified in any subsequent use of the information derived from the file. Where the names and/or contents are suppressed the file should be loaned back by the Court and public access will be at the Court under strictly monitored conditions.

4.6 Access conditions to be specified on transfer

When records are transferred to Archives New Zealand the Access Agreement should specify the access conditions in detail.

4.7 Access to fragile records held at Archives New Zealand

Court Officials (and researchers) should be aware that whilst records may not be subject to any access restrictions under the terms of this Schedule Archives New Zealand reserves the right for physical / preservation reasons to deny the right to photocopy records that are in a fragile conditions (Archives Act 1957 20 (1) (d)).

4.8 Annotating registers at Archives New Zealand

Annotations of registers and additions of papers to files may be required by Court Officials. This will be performed by Court Officials on Archives New Zealand premises, as registers and/or indexes cannot be loaned back.

4.9 Removing papers from files held at Archives New Zealand

Once a court record has been transferred to Archives New Zealand no papers are to be removed from files unless by order of a Judge. In such instances photocopies of the originals are to be placed on the old file and a cross reference made to the new file.

Similarly, where a record is created and is subsequently incorporated on another file (e.g. a probate becomes an action file) the relevant register should be annotated to show where the original may be found.

Researchers should be referred to the Registrar Generals Office for copies of birth death and marriage certificates. Archives New Zealand does not remove certified marriage certificates from divorce files.

4.10 Loaning records back from Archives New Zealand

Courts may loan records back from Archives New Zealand if the records are required for current administrative use. This procedure is called 'government loans' by Archives New Zealand. Current administrative use does not include historical or genealogical research. Enquirers wishing to access records for these purposes should be referred to Archives New Zealand. Arrangements may be made with Archives New Zealand in special circumstances.

Archives New Zealand reserves the right to prescribe conditions governing loans of Court records in accordance with section 13 Archives Act 1957.

Registers and/or indexes cannot be loaned back. Only case files may be temporarily loaned back as part of our government loan policy and only then for administrative purposes.

4.11 Court fees not charged for referring inquirers to Archives New Zealand

Where the Court refers an inquiry to Archives New Zealand no Court fees should be charged by the Court unless it subsequently has to loan the file in order to fulfil an administrative transaction or provide legal advice.

This procedure is aimed at avoiding situations whereby both Archives New Zealand and the Court charge the public in relation to the same inquiry.

4.12 Referring inquiries to Archives New Zealand

Before referring inquiries or researchers to Archives New Zealand Court officials should check that:

- Archives New Zealand actually hold the record(s) sought, including the registers and indexes controlling individual court records. If the Court still holds the registers and/or indexes they should ensure the researcher is provided the record or file reference prior to referring researchers to Archives New Zealand.
- that the researcher is not seeking access to restricted records. If the records are restricted it is important that the researcher is advised that restrictions apply and is informed of how and to whom they must apply for access, in advance of any visit they make to Archives New Zealand.

Records Currently Covered by the Schedule include:

High Court Records

Pre 1900 records
Admiralty records
Agency
Apprenticeship
Awards
Bail
Bankruptcy
Barristers and Solicitors
Chattels
Commercial List Proceedings
Compensation Court records
Civil Proceedings
Criminal
Crown Books
Crown Suits
Divorce
Election Petitions
Land Sales
Land Valuation
Mental Health
Miscellaneous
Mortgage Sales
Newspaper/Printer registrations
Orders in Chambers
Petitions
Powers of Attorney
Probates
Rating Files
Special Partnerships
Stabilisation Regulations
Writs of Sale

District Court Records

Pre 1900 records
Auctioneers
Adoptions
Board of Trade (Coined Gold)
Children and Young Persons Court records
Civil
Court Minute Books
Criminal
Factories Amendment Act
Family Court records
Fines Enforcement
Justice of the Peace
Land Agents
Land Valuation
Licensed Premises
Maintenance
Massage Parlours
Mental Health
Miscellaneous Applications
Money Lenders/Pawnbrokers
Originating Summons
Private Investigators and Security Guards
Second-hand Dealers
Shop and Office
Small Claims/Disputes Tribunal
Summary Instalments registers

Wardens Court

All records

Note: In some instances responsibility may have moved from the jurisdiction of the High Court to District Court and vice versa (or is now no longer a High Court or District Court responsibility).

Irrespective of the above circumstances, if the records are listed in the Schedule the disposal provisions should be applied.