

Appraisal Report for Ministry of Justice Retention and Disposal Schedule for Courts case files

December 2012

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Date:	August 2012
Name of public office:	Ministry of Justice
Disposal type:	Retention and disposal schedule
Coverage:	Supreme Court, Court of Appeal, High Courts, District Courts, Family Courts, Youth Courts, and including any tribunals still managed in the Courts
Scope:	<p>All hard-copy records of court proceedings and case files, including records no longer current and records created by predecessors of the current courts.</p> <p>Records excluded from the scope:</p> <ul style="list-style-type: none"> • Electronic records • Fines collections records • Employment Court records • Courts administrative records • Digital and analogue audio recordings

1 Executive summary

The schedule discussed in this appraisal report is a replacement for the existing disposal authority (DA53) for High Court and District Court records. This new retention and disposal schedule (hereafter schedule) also includes the records of the Supreme Court, which has no existing disposal authority and the Court of Appeal, the disposal authority for which (OP SR 91/0264) has expired.

The scope of this schedule is all hard-copy records of court proceedings and case files, including records no longer current and records created by predecessors of the current courts. Electronic records created in the courts are excluded from the scope, as are the courts administrative and fines collection records.

The schedule includes a considerable number of legacy records taken from the schedule for DA53, which was drafted in 1987, although only approved in 2003. Recordkeeping in the courts has changed considerably since 1987 and even since 2003. The most significant change is the introduction in 2000 - 2003 of an electronic case management system (CMS). This database replaced the hard-copy registers that were used to register the initial filing of an information, application or claim, by type of case. The electronic records now used in the courts to register cases are out of the scope of this appraisal.

In general terms, the evaluation of the archival value of these records has taken into account:

- Precedent value recommendations in DA53 (although there are no formal disposal criteria for this authority)
- The objectives statements in the Archives New Zealand Appraisal Policy
- Evaluation of similar records in other jurisdictions
- Relationship to other records created by central government agencies
- Quantity and format of records

A significant aspect of this schedule is that even if records are not considered to be of archival value, there may be a requirement to retain the records in the courts. There may be a distinction between what is of permanent archival value that will eventually be retained by Archives New Zealand and what must be retained as a permanent (or formal) record by the courts. The formal record of the Court represents those elements of a Court file that documents the Court proceedings and decisions. While the formal Court record is defined variously for each jurisdiction, in the context of this appraisal it is most relevant for those classes of District Court case files recommended for destruction. In these cases, processes are in place to extract the formal Court record at the point that files are ready to be destroyed. Following extraction, the formal record will be retained permanently within each Court but will not be transferred to Archives New Zealand as they have not been identified as public archives. Further information about the formal Court record is provided in section 7.7 of this report.

The schedule recommends the retention as public archives of all records of the Supreme Court, Court of Appeal and the High Court. The recommendation for High Court records continues the precedent in DA53. There is strong judicial support for retention as public archives of the records of these three Courts. The recommendations for retention of District Courts civil records largely follow the precedent of DA53.

The recommendation of archival value for the criminal case files maintained in the District Courts aligns with the recommendations in the existing disposal authority for Police offence records (DA224) and there are selection criteria for specific types of offence cases to be retained as public archives, based on the recommendations of DA224.

Criminal Record Sheets maintained in the District Courts are not recommended for retention as public archives because they are of a quantity and format that precludes a selection process and contain such quantities of low-level information that their retention as archives as a complete set is not warranted.

Family Court records have been analysed in more detail than was the case in DA53 and the recommendation from that disposal authority that all Family Court case records should be retained as public archives has not been continued. Records have been evaluated by type and some types have been recommended for retention as public archives because of their value in establishing the legal status and fundamental rights and entitlements of individuals and groups, providing information of research value, and information about the State’s direct intervention in the lives of individuals and the Family Court’s role in determining the extent or duration of that intervention. Other types have been assessed as not having archival value. A retention period of 25 years before disposal recognises that there may be several cases over time in the Court concerning the same family, and also that there may be requests from the public to the Court for reference to closed case files over a period of time.

Recommendations of the archival value of the legacy records largely follow the precedent of DA53; however some licensing case files have been assessed using the precedent of the schedule for Tribunals Unit records (DA415) as this is more recent precedent. It should be noted that it is possible that, apart from the registers replaced by CMS, none of the legacy records are now held in the courts. The legacy classes have been retained in the schedule as a precautionary measure, so as to enable disposal if some records do exist.

Access restrictions for Family Court case files retained as public archives have been reassessed and because many involve children, the period of restriction has been recommended to be 100 years from date of last paper, rather than 60 years, as is now the case. Access restriction periods for other Court records remain as agreed between Archives New Zealand and the Ministry of Justice, to wit 100 years for criminal records and 60 years for civil records. The classes of civil records recommended to be restricted have been expanded after consultation with the judiciary.

The table below summarises at a high level the disposal recommendations for the various courts and provides a comparison between the disposal recommendations from DA53 and the new schedule. Note that the table below does not include indexes and registers some of which will be retained even where the corresponding case files are destroyed.

Court	Previous disposal authority recommendations	New schedule recommendations
Supreme Court	No disposal authority	Retain as public archives
Court of Appeal	Retain as public archives	Retain as public archives
High Court civil	Retain as public archives	Retain as public archives
High Court criminal	Retain as public archives	Retain as public archives
District Courts civil	Not of archival value; retain as public archives ‘significant’ cases	Not of archival value; retain as public archives ‘significant’ cases
District Courts criminal case files	Not of archival value; retain as public archives ‘significant’ cases	Retain as public archives records of offences where the Police incident and offence schedule recommends retention; retain as public archives ‘significant’ cases; other offence cases not of archival value
District Courts criminal record sheets	No disposal authority	Not of archival value
Family Court	Retain as public archives	Retain specified case files as public archives; other case files not of archival value

Youth Court	Not of archival value	Not of archival value
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Quantities of records for destruction or retention as archives are difficult to estimate as the quantity of information depends on the type of case and the number of cases heard. Estimates of case numbers and quantities for 2011 are provided in section 3.6 below.

Appraisal circumstances

The process for developing a schedule covering records created and received by the High Court and District Courts first commenced in 1986. The schedule developed at that time was designed to replace the Court Circular Number 21/1954 (dated 14 September 1954) that set out disposal criteria for Court records.

The schedule was subject to extensive consultation and discussions between the then National Archives and the Courts Executive of the then Department of Justice and this in turn led to delays in the processes for developing the schedule.

A draft schedule was submitted to the Courts Executive in 1987. Restructuring of the Department for Courts meant that access conditions were not finalised. The disposal authority was finally agreed in 2003.

The disposal authority agreed in 2003 (DA53) expired in 2009, and two extensions have been granted since then. The Chief Archivist authorised the second extension on the proviso that work had commenced on a replacement for the schedule authorised by DA53.

In 2011 the Ministry of Justice established a project to develop a schedule to replace DA53 and to include records from the Supreme Court (which has had no disposal authorities) and the Court of Appeal (which had a disposal authority that expired in 2001 - OP SR 91/0264). The project established a steering committee that included a representative from Archives New Zealand, representatives from Higher Courts, District Courts, Judicial Libraries, Office of Legal Counsel and the Office of the Chief Justice. The project also established a reference group of Courts staff actively engaged in the management of court records (as key contact points for the project). The representative from the Office of the Chief Justice provided liaison with the judiciary.

This appraisal report discusses the schedule developed by this project.

1.1 Scope of retention and disposal schedule

The schedule covers hard-copy case-related records created by the following courts:

- Supreme Court
- Court of Appeal
- High Court
- District Court, including any tribunals still managed in the Court (and including criminal record sheets)
- Family Court
- Youth Court.

Records concerning the administration of the Courts, fines collection and enforcement, and electronic records created in the Courts are excluded from the scope of this schedule.

The Ministry will develop additional schedules for other courts records in the future.

2 Public office (Agency) information

The Ministry of Justice supports the independent judiciary to administer the Courts system. The Ministry provides administration, case management and support services to the Supreme Court, Court of Appeal, High Court, District Court, special jurisdictions, and a range of tribunals and authorities in 103 locations around New Zealand.

Since the first court was established in New Zealand in 1841, there have been several name changes and changes in responsibilities for jurisdictions and for administration of the courts.

The diagram on page 9 provides an overview of Courts, tribunals and appeal process presently in place.

2.1 Supreme Court

The Supreme Court Act 2003 established the Supreme Court of New Zealand.

The Act establishes within New Zealand a new court of final appeal comprising New Zealand judges:

- to recognise that New Zealand is an independent nation with its own history and traditions; and
- to enable important legal matters, including legal matters relating to the Treaty of Waitangi, to be resolved with an understanding of New Zealand conditions, history and traditions; and
- to improve access to justice.

As the court of final appeal, the Supreme Court has the role of maintaining overall coherence in the legal system.

Appeals to the Supreme Court can be heard only with the leave of the court. It must give leave to appeal only if it is satisfied that it is necessary in the interests of justice (s12 and s13 Supreme Court Act 2003).

2.2 Court of Appeal

The Court of Appeal is New Zealand's intermediate appellate court and is located in Wellington, but also sits regularly in Auckland and Christchurch.

The Court of Appeal has been in existence since 1862 when it was made up of judges of the Supreme Court sitting periodically in panels. In 1957, the permanent Court of Appeal was established in Wellington with specifically appointed judges. The President and eight other permanent appellate Judges constitute the full-time working membership of the Court.

The Court sits in panels of either five or three judges depending on the nature and wider significance of the particular case. In order to assist with the workload of the Court of Appeal, it also sits in divisions which consist of one Court of Appeal judge and two High Court judges dealing with routine appeals.

The Court deals with civil and criminal appeals from proceedings heard in the High Court, and indictable criminal proceedings in District Courts. Matters appealed to the High Court from a District Court and certain tribunals can be taken to the Court of Appeal with leave if a second appeal is warranted. The Court may also grant leave to hear appeals against pre-trial rulings in criminal cases, and appeals on questions of law from the Employment Court.

2.3 High Court

The Supreme Court that was the first court established in New Zealand in 1841 is now known as the High Court. The High Court has general jurisdiction and responsibility, under the Judicature Act 1908, for the administration of justice throughout New Zealand. This includes maintaining the consistent application of the rule of law, supervision of other courts and tribunals, and the judicial review of administrative power. It has jurisdiction over both criminal and civil matters, and deals with cases at first instance or on appeal from other courts and certain tribunals.

It comprises the head of the New Zealand Judiciary, the Chief Justice and up to 55 other judges (which includes the judges of the Supreme Court and Court of Appeal). In addition, Associate Judges of the High Court (formerly known as Masters of the High Court) supervise the Court's preliminary processes in most civil proceedings, and have jurisdiction to deal with summary judgment applications, company liquidations, bankruptcy proceedings, and some other types of civil proceedings.

The High Court deals with the most serious types of criminal offences before a judge and jury, and can impose sentences in summary, judge alone, cases where the District Court considers that a penalty is warranted that exceeds the District Court's jurisdiction. It also hears appeals from summary cases.

The Court has virtually unlimited jurisdiction in civil cases, but generally deals only with those civil claims that exceed the jurisdiction of the District Court or other courts and tribunals, or where particularly complex issues are involved. This jurisdiction includes matters concerning admiralty, company law, bankruptcy, the administration of estates and trusts, property transfer, land valuation, and many other areas.

Rights of appeal to the High Court exist against the decisions of District, Family, Youth and Environment Courts and numerous administrative tribunals and regulatory bodies.

2.4 District Court

New Zealand has had courts that deal with minor criminal offences and civil claims since the mid-1840s. These courts have been known at different times as District Local Courts and Magistrates Courts. In 1980 the Magistrates Courts were renamed District Courts and their jurisdiction increased.

There are currently 66 District Courts throughout New Zealand. Many of these have resident judges, and judges visit the remaining Courts on circuit from time to time. The District Courts Act 1947 provides for a maximum of 156 District Court judges.

The District Courts Act also sets the jurisdiction of the District Courts. In the civil jurisdiction, the District Court can determine claims involving up to \$200,000. At the lower end of the scale, disputes involving less than \$15,000 can be dealt with by the Disputes Tribunals.

In the criminal jurisdiction, the District Court hears cases involving minor offences, but can conduct trials for some serious offences, such as rape and aggravated robbery.

2.4.1 Disputes Tribunal

The Disputes Tribunal (formerly the Small Claims Tribunal) is a division of the District Court. Until 2009 the Tribunal heard claims of up to \$7,500 (or where all parties agree, up to \$12,000). From 2009, the Tribunal can hear claims of up to \$15,000 or where parties agree, \$20,000. The most common cases heard by the Tribunal are those based on agreements to supply goods or services and motor vehicle accident claims. In the Tribunal the presiding judicial officer may assist the parties to reach an agreed settlement. If this is not

appropriate the Referee makes a decision based on the merits and justice of the case and has regard to the law. The order of the Tribunal becomes an order of the District Court and can be enforced accordingly.

2.4.2 Land Valuation Tribunal

The Land Valuation Tribunal deals with objections relating to the valuation of a property by a district council or its valuation agent, usually Quotable Value. The Tribunal also hears matters relating to a valuation when land is taken under the Public Works Act 1981.

Any owner, occupier, body corporate, or agent can lodge an objection with the Tribunal, within 20 working days of being notified of the decision being reviewed.

If an objection to a land valuation cannot be resolved, then the Tribunal will arrange a hearing where both parties can put forward their case.

Each Tribunal consists of a chairperson, who is a District Court Judge, and two registered valuers.

2.5 Family Court

The Family Court is a division of the District Court. It was established under the Family Courts Act 1980. There are 58 Family Courts throughout New Zealand and 43 warranted Family Court Judges

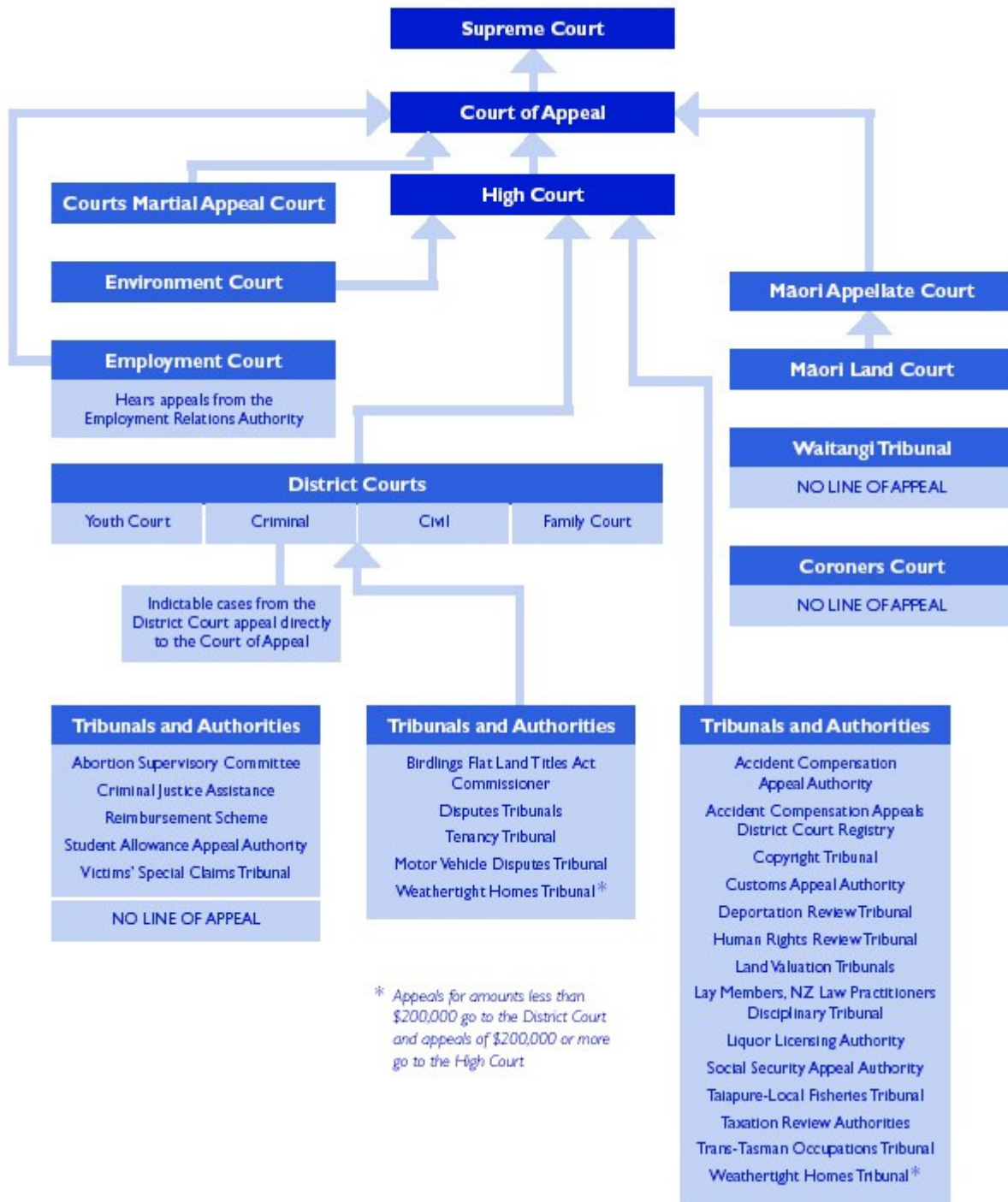
The Family Court deals with applications under the following Acts:

- Adoption Act 1955
- Adoption (Intercountry) Act 1997
- Alcoholism and Drug Addiction Act 1966
- Care of Children Act 2004
- Children Young Persons and Their Families Act 1989
- Child Support Act 1991
- Domestic Violence Act 1995
- Family Proceedings Act 1980
- Family Protection Act 1955
- Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003
- Law Reform (Testamentary Promises) Act 1949
- Marriage Act 1955
- Mental Health (Compulsory) Assessment and Treatment Act 1992
- Property (Relationships) Act 1976
- Protection of Personal and Property Rights Act 1988

2.6 Youth Court

The Youth Court is a division of the District Court. It was established as the Children and Young Persons Court by the Children and Young Persons Act 1974 (this act was replaced by the Children, Young Persons and their Families Act 1989). The Youth Court deals with criminal offending by children and young people aged between 12 and 16 years old. It hears all cases to do with young people, except murder or manslaughter, or when a young person chooses to have a jury trial. Preliminary hearings for murder or manslaughter are heard in the Youth Court. Other indictable offences where a jury trial is chosen may be heard in either the District or the High Court depending upon the charge.

Overview of Courts, Tribunals and Other Authorities and the Appeal Processes in Place



Source: http://www.justice.govt.nz/media/media-information/media-guide-for-reporting-the-courts_pA9.pdf

3 Recordkeeping in the courts

3.1 Registration

Recordkeeping in the courts has changed considerably since the schedule for DA53 was drafted in 1987 and even since DA53 was approved in 2003. The most significant change is the introduction in 2000 - 2003 of an electronic case management system (CMS). This database replaced the hard-copy registers that were used to register the initial filing of an information, application or claim, by type of case (e.g. criminal, civil, bankruptcy etc.). However, in the High Court the Register of Prisoners Tried (Return of Prisoners Tried and Sentenced) is maintained as a hard-copy print-out from CMS that is signed by the judge.

A case begins when an information (in the criminal jurisdiction) or a claim or application (in the civil jurisdiction) is filed with the Court. Since CMS was introduced all filings have been recorded into CMS, which provides a case number that is then attached to the case file. The case number is made up of the following codes:

- Jurisdiction (CIV, CRI or FAM)
- Year of filing
- Court of filing
- Up to 6 digit unique number.

A sub-set of the case defines the case type in all jurisdictions.

In the Family Court, a database that registered applications was implemented in the early 1990s. The content of this database was migrated into CMS.

Consequently, many of the registers listed in the DA53 schedule are now legacy records, in that they are no longer added to by the Courts.

The Supreme Court and the Court of Appeal also use a database to register applications, called Appeal Management System (AMS).

3.2 Case files

The Courts have guidelines about the creation of case files that indicate in which order papers are to be placed on the file and in the case of the civil jurisdiction and the Family Court, when a new or separate file should be created.

Court filing guidelines provide some information about the documentation on some kinds of files. Appendix 1 provides lists of file contents for some court records.

3.3 Digital recording of Court proceedings

Formerly Court minutes of proceedings were recorded only in hard-copy minute books. In High Court criminal proceedings the minutes records were known as Crown books and civil proceedings minutes were called Court books or Court minute books. District Courts created Court minute books for both criminal and civil hearings.

Most Courts now have digital audio technology to record court proceedings, using a system known as For the Record (FTR), which has been installed in more than 80 courtrooms in New Zealand. As well as providing audio recordings of the court proceedings, the technology allows the addition of log notes in the system which detail physical events within the court, such as changes of witness.

A National Transcription Service (NTS) was established in 2007, which allows ‘behind the scenes’ transcription rather than relying upon a Court Report or Judges Associate to be present at the hearing to transcribe the proceedings. The NTS can provide a court transcript as the court fixture is happening, as well as provide full transcripts after the fixture has closed for the day. This is known as “contemporaneous” or “non-contemporaneous” and is provided for:

- all Supreme Court proceedings
- the High Court
- 56 out of 64 District Court sites
- some Environment Court cases.

The Ministry is currently undertaking work that will connect the National Transcription Service to a further ten district courts and some specialist jurisdictions.

Contemporaneous transcripts are provided for all High Court criminal trials, and copies of the transcripts are provided to counsel, the jury and the judge. The judge’s copy is signed and added to the case file.

In other jurisdictions contemporaneous and non-contemporaneous transcripts may be provided if the judge requests.

In the High Court FTR replaces the Crown books and Court books only in so far as FTR is used in the actual proceedings (for example to repeat a witness’s evidence rather than having it read from a minute book). Crown books and Court (minute) books are still created for criminal and civil proceedings respectively.

Practices appear to vary in the District Courts both with regard to the keeping of hard-copy minutes alongside FTR and in the process of recording and storing FTR records. Some District Courts are still using CD-ROMs on which to store FTR recordings. . Most store the FTR recordings on a server. A small number still use audio tapes as they are not enabled for the use of FTR. Many appear now not to maintain hard-copy minute books.

The digital audio records and the audio tapes created and maintained by courts that are not FTR enabled are out of scope of this appraisal.

3.4 Legacy records

The Courts still hold a quantity of records that can be termed legacy records; that is, they are records that are no longer maintained. They are legacy records either because they have been superseded, as in the case of registers now replaced by CMS, or because the activity the records document has either ceased or been transferred to another agency; for example licensing of massage parlours or second-hand dealers. A separate class has been created in the schedule for legacy records, as their retention period in the Courts may be different from that for actively maintained records.

3.5 Publication of decisions and transcripts

Judicial Decisions Online (JDO) provides a searchable database of judgments and decisions sourced from New Zealand courts (<http://jdo.justice.govt.nz/jdo/Introduction.jsp>). The purpose of *Judicial Decisions Online* is to make a greater number of New Zealand’s Higher Courts’ judicial decisions and the reasoning behind them, available to the public as efficiently and widely as possible.

Decisions of particular public interest may be published on the internet on the Decisions of Public Interest site (<http://www.courtsofnz.govt.nz/from/decisions/judgments>) immediately following delivery of the decision. Decisions are published on the JDO site following delivery to the parties but no earlier than three days after the decisions are given.

Decisions from the following New Zealand Courts are available:

- Supreme Court (all)
- Court of Appeal (cases from 2003)
- High Court (cases from 2005)

The following decisions are NOT published:

- Decisions subject to statutory prohibitions or orders prohibiting publication
- Decisions subject to time-limited suppression orders
- Decisions relating to bail applications or bail appeals (unless the Court concerned determines otherwise in the particular case)
- Memoranda
- Administrative minutes

Decisions subject to a statutory prohibition or suppression order are published if available in a form that complies with the prohibition or restriction. Some published decisions may contain banners outlining time-limited suppression orders pending final disposition of trial, however those decisions will only have been published following determination that the orders are spent because the trial or retrial has occurred.

Decisions on the Decisions of Public Interest site are in general restricted to criminal sentences and judgments in which there may be public interest. Decisions are maintained on the site for 28 days. The purpose is to enable decisions of public interest to be made available as soon as possible.

Supreme Court decisions are also published on a site specifically for that Court's decisions (<http://www.courtsofnz.govt.nz/from/decisions/judgments-supreme/judgments-supreme-2011>). Supreme Court transcripts can be found at: <http://www.courtsofnz.govt.nz/from/transcripts/supreme-court-transcripts-2011>

Court of Appeal reports that contain summaries of some cases are published annually on-line (<http://www.courtsofnz.govt.nz/from/judicial-reports>).

Some Family Court decisions are published on the Family Court website (<http://www.justice.govt.nz/courts/family-court/legislation>).

The Youth Court decisions database contains case summaries of Youth Court decisions from 1989 until the present (<http://www.justice.govt.nz/courts/youth/legislation-and-decisions>).

3.6 Quantity of records

The quantity of information on case files varies considerably depending on the type of case; for example an appeal to the Supreme Court where leave to appeal was not granted will generate a slim file, while a Family Court child protection case or a High Court bankruptcy case may generate several large boxes (e.g. 1- 2 linear metres).

It is not possible to estimate the quantity of legacy records held in the courts, and apart from the registers superseded by CMS, it is possible that none or very few of the records listed in the other legacy classes are still held in the courts.

Estimates of the quantity of cases per year and the annual accretion of linear metres based on the cases for 2011 are listed in the table below.

Record type	Number of case files generated annually (2011)	Linear metres (estimated annual accretion)	Comments
Supreme Court	132	15 lm	A mix of slim files (for cases not accepted) and box files for cases accepted
High Court	27,070	450 lm	Large variations from skinny probates (at 1,000 a linear metre) through to several large boxes for a single case
Court of Appeal	719	75 lm	Criminal are stored in structured and thin files while Civil are much more bulky and stored in boxes
District Court:			
Criminal	202,818	1,466 lm	Estimated 45-50 files per Online box and 3 Online boxes per LM
Youth Court	5,360	60 lm	
Civil	33,023	320 lm	Generally smaller than Family Court files
Family Court	38,382	506 lm	Individual files often large, may be stored in boxes rather than files

4 Relevant precedent

4.1 New Zealand

Archives New Zealand appraisal job files 87/236 and AT91/95 relevant to the development of DA53 were consulted, although unfortunately job file 86/74 was missing. As the appraisal report for DA53 notes, the schedule was originally developed in 1987 and at that time the rationale for decisions to retain as archives or destroy was not always documented. The appraisal report for DA53 notes that the schedule represented ‘an amalgamation of views held by a wide range of archivists and Court officials’ and that ‘the evaluation of records values has been thoroughly canvassed in terms of the Court requirements’¹, but does not provide formalised disposal criteria.

Archives New Zealand appraisal job file OP SR 91/0264 regarding the development of a now expired schedule for Court of Appeal records was also reviewed.

The following Archives New Zealand disposal authorities were also consulted in the development of the disposal recommendations, as records covered by these authorities are similar to or have content that may relate to records considered in this appraisal report:

OP99/0073 – Legal Services Agency records, including application case files:

http://www.archway.archives.govt.nz/ViewEntity.do?code=OP_99/0073

DA60 – Child Youth and Family records, including care and protection ‘client’ files:

<http://www.archway.archives.govt.nz/ViewEntity.do?code=DA60>

DA224 New Zealand Police, Office of the Commissioner, records including incident and offence records:

<http://www.archway.archives.govt.nz/ViewEntity.do?code=DA224>

DA378 – New Zealand Insolvency and Trustee Service records, including bankruptcy and insolvency case files: <http://www.archway.archives.govt.nz/ViewEntity.do?code=DA378>

DA415 – Ministry of Justice Tribunals Unit records, including hearing case files:

<http://www.archway.archives.govt.nz/ViewEntity.do?code=DA415>

DA472 – Ministry of Justice records, including Hague Convention child abduction case files:

<http://www.archway.archives.govt.nz/ViewEntity.do?code=DA472>

DA34 – Ministry of Justice – Law enforcement system and Justice Datawarehouse:

<http://www.archway.archives.govt.nz/ViewEntity.do?code=DA34>

DA418 – Department of Inland Revenue, including child support records:

<http://www.archway.archives.govt.nz/ViewEntity.do?code=DA418>

More detailed discussion of specific relevant precedent can be found in the evaluation of specific types of records in section 9.

4.2 Other jurisdictions

Disposal authorities from other jurisdictions, primarily Australia, were also consulted to identify any useful precedent. It should be noted that the retention and disposal schedules from other jurisdictions reflect the recordkeeping systems in use and thus sometimes the disposal classes are not readily applicable to the New Zealand situation. The authorities consulted are listed below.

National Archives of Australia 2010/00663993 – High Court of Australia:

<http://www.naa.gov.au/naaresources/ra/2010-00663993.pdf>

National Archives of Australia 2009/00614707 – Family Court of Australia:

<http://www.naa.gov.au/naaresources/ra/2008-00614707.pdf>

¹ Appraisal report for DA53, p. 8, Archives NZ AT91/95

Public Record Office Victoria (Australia) PROS 08/03 – County Court: <http://prov.vic.gov.au/wp-content/uploads/2011/05/PROS08-03CountyCourt-WebVersion20110822.pdf>

Public Record Office Victoria (Australia) PROS 09/01 – Dispute Settlement Centre of Victoria: <http://prov.vic.gov.au/wp-content/uploads/2011/05/PROS09-01DSCV-WebVersion20110110.pdf>

Public Record Office Victoria (Australia) PROS 09/04 Children’s Court: <http://prov.vic.gov.au/wp-content/uploads/2011/05/PROS09-04ChildrensCourt-WebVersion20110711.pdf>

Queensland State Archives QDAN 598 – Land Court: <http://www.archives.qld.gov.au/downloads/qdan598v2.pdf>

Queensland State Archives QDAN 296 – Magistrates Court: <http://www.archives.qld.gov.au/downloads/MagistratesCourtRetentionSchedule.pdf>

State Records Authority of New South Wales DA43 - Supreme Court of New South Wales: <http://www.records.nsw.gov.au/recordkeeping/topics/documents/recordkeeping-fdas/DA0043.pdf>

State Records Authority of New South Wales DA178 - Supreme Court of New South Wales: <http://www.records.nsw.gov.au/recordkeeping/topics/documents/recordkeeping-fdas/DA0178.pdf>

State Records Authority of New South Wales FA269 - Supreme Court of New South Wales: <http://www.records.nsw.gov.au/recordkeeping/topics/documents/recordkeeping-fdas/FA0269.pdf>

Archives Office of Tasmania DS40 - Magistrates Court of Tasmania: http://www.linc.tas.gov.au/_data/assets/pdf_file/0012/334020/DS40.pdf

Archives Office of Tasmania DS2185 – Supreme Court of Tasmania: <http://www.linc.tas.gov.au/global/govtrecordkeeping/files/disposals/DA2185.pdf>

The National Archives United Kingdom Magistrates Court Records Schedule: <http://www.nationalarchives.gov.uk/documents/information-management/magistratescourts.pdf>

The National Archives United Kingdom Operational Selection Policy OSP40 - Records relating to indictable criminal proceedings 1972 – 1992: <http://www.nationalarchives.gov.uk/documents/information-management/osp40final.pdf>

The National Archives United Kingdom Operational Selection Policy OSP32 – Records relating to court action for individual bankruptcy 1973 – 2003: <http://www.nationalarchives.gov.uk/documents/information-management/osp32.pdf>

The National Archives United Kingdom Operational Selection Policy OSP33 – Records relating to court actions for corporate insolvency 1973 – 2003: <http://www.nationalarchives.gov.uk/documents/information-management/osp33.pdf>

More detailed discussion of specific relevant precedent can be found in the evaluation of specific types of records in section 9.

5 Consultation

5.1 *Internal consultation*

The Ministry of Justice project for the development of a new Court records schedule established several project groups to facilitate consultation among Ministry staff and the judiciary. These groups and their membership are listed below.

Project Steering Committee:

General Manager Higher Courts (Chair)
General Manager District Courts
Manager, Judicial Libraries
Manager, Knowledge and Information Services (KIS)
Archives New Zealand representative
Office of Legal Counsel representative
Judicial Administrator to the Chief Justice (primary point of judicial liaison)
Project Manager as an attendee

Project Reference Group:

[Name removed] representing Supreme Court and Court of Appeal
[Name removed] representing High Court
[Name removed] representing District Courts
[Name removed] representing District Courts
[Name removed] representing Special Jurisdictions

Project team

Ministry project manager
Judicial libraries representative
Knowledge and Information Services representative
Quality assurance adviser (KIS team)

5.2 *External consultation*

The Ministry undertook an extensive external consultation process to ensure that the views of stakeholders on the value of court case records were considered in the development of this schedule. The initial focus was on identifying groups with a potential interest in the disposal of court case files. Appendix 2 lists the stakeholders consulted, provides a summary of the comments received and outlines the changes proposed to the schedule as a consequence of the input received.

Letters were sent to all identified stakeholders with copies of the draft schedule and appraisal report enclosed. Both these documents and an information sheet in the form of a series of frequently asked questions to assist stakeholders in making public comments were put on the Ministry of Justice website to facilitate public comment. Stakeholders were given 4 weeks to make comments.

The Ministry also met with several groups who had raised major issues which could be more productively discussed in meetings rather than via correspondence.

Comments from three groups in particular influenced disposal recommendations in the schedule.

The Professional Historians Association of New Zealand Aotearoa (PHANZA) submitted that case files of crimes regarded as less serious or more commonplace could be as historically interesting as those of more serious crimes, particularly in regard to research into social norms and attitudes towards groups regarded

as socially deviant. As a result of this submission and subsequent discussion, the criteria for selection of the less serious District Courts criminal case files have been added to so as to include selection of 'significant' files outside of the case types specified by the Police incident and offence files schedule. These criteria align with the discretionary class for civil case files that allows the selection for transfer public archives of 'significant' records. PHANZA also submitted that a case could be significant locally and receive extensive local media coverage without much national media coverage. The criteria for significance for both District court civil and criminal case files have been amended to include 'significant local media coverage'. See [sections 9.5](#) and [9.6](#) for discussion of these criteria in the context of the evaluation of the District Courts criminal and civil case files.

PHANZA also submitted that the Family Court domestic violence case (DV) files initially recommend as not of archival value, should be retained as archives because they are 'likely to be useful for historical research into domestic violence, and societal responses to such violence' and that 'taken together they may build up a valuable picture of the nature and extent of domestic violence'. Further discussion with Ministry staff identified that frequently domestic violence case files are associated or even merged with Care of Children Act (CoCA) files (which are recommended for retention as archives). Consideration of the PHANZA submission, the relationship of the DV files to the CoCA files and the fact that the DV files themselves are generally not large in volume has led to the recommendation that DV files are retained as public archives. See [section 9.8](#) for discussion of the value of both types of files.

Members of the New Zealand Lost Cases project (<http://www.victoria.ac.nz/law/nzlostcases/>) submitted that a larger sub-set of District Courts civil case files should be retained, on the basis that the more commonplace cases illustrate social and legal trends in New Zealand and that the majority of New Zealanders' interactions with the courts would be represented only in District Courts case files. They recognised the difficulty of developing and implementing criteria that would allow the selection of more civil case files, and recommended that in the first instance all case files up till 1920 should be retained, rather than up till 1910 as initially suggested in this disposal schedule. The reasoning for this time period is that it will cover a period of significant social change including the period of WW1 and its immediate aftermath. In particular records from this period will provide evidence of women's use of the courts during a period in which women were employed in formerly male-dominated occupations and in which women experienced a broadening of their roles in society. See [section 9.10](#) for discussion of this recommendation.

They further suggested that the retention of all civil case files generated in a particular, preferably rural, court might provide a useful sample of 'typical' civil cases. The Ministry is considering this suggestion, which if accepted would require the development of an advisory committee that would include representatives from Archives New Zealand.

The Ministry of Social Development raised concerns about the proposed destruction of some classes of Family Court and Youth Court case files in the context of possible future investigations into historical abuse claims. After some discussions it was finally agreed that the new definition of the formal court for Family Court case files is broad enough to include documents likely to be relevant to historical abuse claims. As the formal court record will be retained permanently within Courts this meets the Ministry's concerns. In relation to Youth Court case files, Ministry of Social Development staff identified that psychological assessments requested by the court are likely to be relevant to future abuse investigations. On this basis it was agreed that a new process will be developed by which the assessments would be identified and held with the formal court record within each court.

6 Schedule format and terminology

The table below provides a brief explanation of the fields used in the schedule.

Schedule field	Explanation
Reference number	A number assigned to each disposal class, which may be used during implementation
Class	Expressed either as 'legacy record' or the name of the Court creating and maintaining the record
Record type	The type or series of record
Archival value recommendation	A recommendation of the archival value of the record based upon the Archives New Zealand appraisal policy, precedent and disposal criteria and worded in terms aligning with the definition of disposal in the Public Records Act
Courts disposal action	The disposal action to be taken by the court responsible for the record. This statement includes the 'retention period', which is the time the record should be retained by the court <i>after it is closed</i> and before disposal
Authority for disposal	The ultimate authority for agreeing to the disposal of the record

The format of the schedule for Court records is somewhat different from the usual class-based schedules. The schedule is based in types or series of records rather than classes. The class is replaced by either the name of the court in which the records are created, the class for legacy records (records no longer maintained by the Courts). This follows the structure of the previous disposal authority, DA53. The class is related to the court also for ease of use of courts staff. It is envisaged that an implementation version of the schedule will provide separate sheets for each court (including the legacy records) so that the schedule is easy to follow.

The disposal recommendation has been separated into two fields:

- The archival value recommendation, and
- The court disposal action.

This distinction has been made because there may be a difference between the archival value recommendation and the final disposition of the records by the courts. Under the Public Records Act 2005 Part 1, 4 - Interpretation, the *only disposal actions that can be recommended* are:

- (a) The transfer of control of a record (usually phrased as 'retain as public archives')
- (b) The sale, alteration, destruction or discharge of a record.

It is not possible to have a disposal action that is expressed as 'retain permanently in the creating/controlling agency'.

In most schedules, when the archival value has been assessed as low, the disposal recommendation is usually expressed as 'destroy.' In the case of court records, it is possible that a judge may make a ruling that the record must be retained permanently in the court or there may be a legal opinion that asserts that the record is a permanent record of the court, while the recommendation from an archival perspective is that the record is not of archival value. It is not possible in that case to provide a disposal recommendation of 'destroy'.

However, the archival value consideration is still that the records '*may be destroyed*' since that is the only recommendation that can be provided under the Public Records Act and agreed to by the Chief Archivist

where the records are not considered to be of archival value. In effect, while this recommendation allows destruction (which otherwise would not be lawful) it does not *require* destruction.

The two separate fields allow the schedule to express the archival value recommendation as well as the final disposition from the perspective of the courts, and are intended also to avoid confusion on the part of Courts staff implementing the schedule. The implementation version of the schedule will include only the court disposal action field.

The archival value recommendation has been expressed as:

- Retain as public archives, or
- Not of archival value. May be destroyed when all legal, administrative and financial requirements have been met.

The Courts disposal action is variously expressed to take into account different disposal actions and retention periods before disposal.

The standard retention period before closed records can be transferred to Archives New Zealand is 10 years, and most records assessed as having archival value have this disposal action. However, where it was known that a legacy record type would have been closed for over 10 years the disposal action has been expressed as 'transfer to Archives NZ as soon as practicable'. Where records may be destroyed by the courts the standard retention period is 10 years after the date of the last entry before destruction, unless a more specific retention period based on a precedent appraisal has been used.

The schedule also has a field for authority for disposal. This field is intended also to assist Courts staff who may be implementing the schedule, so that they know which position has authorised the disposal recommendations.

The Ministry has received an opinion from the Crown Law Office that the 'administrative head' as defined in the Public Records Act is the Head of Bench for each jurisdiction.

The schedule also includes a separate sheet that lists the selection criteria for the records of criminal cases heard in District Courts. The selection criteria are listed separately because they take a different form from the main body of the schedule, but they should be read in conjunction with the schedule. See section 8.5.1 below for more discussion of these selection criteria.

7 Considerations for determining archival value of court records

This section discusses the considerations that have informed the development of the disposal criteria for the evaluation of the archival value of the records.

In general terms, the evaluation of the archival value of these records has taken into account:

- Precedent value recommendations in DA53
- Relationship to other records created by central government agencies
- The objectives statements in the Archives New Zealand Appraisal Policy
- Evaluation of similar records in other jurisdictions
- Quantity and format of records.

As noted in section 4 above, the appraisal report for DA53 does not include formalised disposal criteria and does not include detailed justifications for the disposal recommendations for each series of records in the DA53 schedule. However, it does include some discussion in general terms of the criteria used to determine archival value. In some cases this precedent has been followed in the development of this schedule. The discussion in this section and in section 9 identifies where the precedent has been followed and where it has not been followed and provides reasons for not following the precedent.

7.1 *'Medium-term' value*

When the DA53 schedule was first developed in 1987, it was common for archivists not to make a distinction between long-term 'administrative' value and enduring or permanent value. Thus many records that were considered to be of long-term value to the controlling agency were recommended for transfer as public archives where today those records would be recommended for destruction after an extensive retention period in the agency. 'Medium-term value' can be for a significant period of time but does not necessarily mean that the records meet other criteria for retention as records of permanent value.

The assumption has been made in this appraisal that some records that do not meet other criteria for retention as records of permanent value were recommended for retention in DA53 because there was not a distinction made between medium-term value and permanent archival value.

7.2 *Archival evidential and informational value*

7.2.1 *Archival evidential value*

Archival evidential value refers to the enduring value of records in providing evidence of activities and processes; they are evidence that something occurred or of the way in which an activity or process was performed.

Evidential value can also refer to the evidence the records provide of legal rights and entitlements, for example the Archives New Zealand Appraisal Policy includes the Rights and Entitlements Objective – 'to identify and preserve records providing evidence of the legal status and fundamental rights and entitlements of individuals and groups'²

Case files, or single-instance records, do not generally have archival value as evidence of a particular process or activity, because all of them reflect the same or a similar process. Sometimes, in order to provide examples of the process, it will be recommended that records are 'sampled', or 'selected' according to specific criteria so that some case files are retained to provide examples of the processes they record. However, example sampling or selection is often difficult and time-consuming to implement

² Archives New Zealand Appraisal Policy, p.7. http://archives.govt.nz/sites/default/files/appraisal_policy_0.pdf

and can place a burden on the staff of the agency controlling the records. Example sampling/selection has not been recommended for any court records in this schedule

In the case of some court records, the records that document the process of the Court are not necessarily the case files, as at least in the higher courts, minutes of the court process are maintained.

Other court records meet the rights and entitlements objective of the Archives New Zealand appraisal policy and the discussion of specific types of court records identifies where this evaluation has been made.

Evidential value can also be considered in terms of the Machinery of Government objective of the Archives New Zealand Appraisal Policy which is 'to identify and preserve the best evidence of the source of authority, foundation and machinery of the government of New Zealand and its public sector bodies'³. The judicial arm of government has the primary role of maintaining the coherence of the legal system, maintaining the consistent application of the rule of law, judicial review of administrative power and interpreting and explaining the law. Therefore some court case records have evidential value in terms of providing evidence of these significant functions.

7.2.2 Archival informational value

Informational value is the enduring value of the records in providing information about a specific case, instance, activity, or person that has research value in terms of genealogical, social history, legal history or other research interests, or that have significant on-going public interest and therefore contribute to New Zealand's collective memory and documentary heritage.

In the case of court records, there is also the consideration of significance in terms of cases that set legal precedents, cases that reflect changes in social attitudes, or cases that relate to significant events in New Zealand history.

There is further discussion of the informational value of specific types of court records in section 9 below.

7.3 The 'best' record

Consideration must be given to what represents the 'best' record to provide evidential and/or informational value. In some cases a summary record, for example, a register, may provide sufficient information for the purposes of research and the full case record may not add significant information to what is in the register. In those situations, registers are often recommended for retention as archives while the case records themselves are not.

7.4 Published information

If a summary or all of the record has been published and is available to the public in that form it will not generally be recommended for retention as an archival record.

7.5 Quantity and format of records

One of the principles of the Archives New Zealand Appraisal Policy is 'considerate of resources'. As the explanation for this principle says, 'it is unrealistic and inefficient to retain and manage all records created by [an agency]'. Appraisal of any records has to take into account the quantity and format of records created as well as the evidential and/or informational value of the records. Where the quantity is high and the archival value of the records is considered to be low, then the records will not be recommended for retention as archives. Similarly, where the informational archival value of the records is perceived to be low and the format is one that will require considerable resources to conserve, preserve and maintain, the records will not be recommended for retention as public archives.

³ Ibid, p. 6

7.6 Relationship to other records

Although the judiciary is a separate arm of government, the records of courts can have a relationship to records of other agencies in the Justice sector or in other sectors of government. Therefore court records may complement the records of other agencies in providing information about cases, events or people that continues a 'story' begun in other records.

Equally, where cases are brought to court by government agencies, it is possible that the most comprehensive record in terms of archival value is not in the court record but in the record of the originating agency.

7.7 Definitions of formal and permanent record of the Court

The courts are 'Courts of record'. A court of record is obliged to maintain the record of its proceedings. The formal record of the court that must be maintained by the court is not necessarily the entirety of the case file. In effect the formal record of the Court is the record of the process of the Court that proves what happened in the Court.

The Criminal Proceedings (Access to Court Documents) Rules 2009 (SR2009/134) define the formal court record (for criminal proceedings) as:

'any of the following kept in a registry of a court:

- (a) the register of persons committed for trial or sentence
- (b) the register commonly known as the Return of Prisoners Tried and Sentenced'
- (c) any index:
- (d) the counts or charges set out in any information or indictment
- (e) any published list that gives notice of a hearing:
- (f) a document that –
 - i. May be accessed under an enactment other than these rules; or
 - ii. Constitutes notice of its content to the public
- (g) a judgment, order, or minute of the court given in a criminal proceeding, including any record of the reasons given by the Judge
- (h) the Judge's sentencing notes'.

The Court of Appeal (Access to Court Documents) Rules 2009 (SR 2009/401) define the formal record of the Court of Appeal as:

'any of the following kept in a registry of a court:

- (a) a register or index
- (b) any published list that gives notice of a hearing
- (c) any document that
 - i. may be accessed under an enactment other than these rules; or
 - ii. constitutes a notice if it's content to the public'.
- (d) a judgement, order, or minute of the court, including any record of the reasons given by a Judge

High Court (Access to Court Documents) Amendment Rules 2009 (SR 2009/133) define the formal court record as:

'any of the following kept in a registry of the court:

- (a) a register or index:
- (b) any published list that gives notice of a hearing:
- (c) a document that—
 - (i) may be accessed under an enactment other than these rules; or
 - (ii) constitutes notice of its contents to the public:
- (d) a judgment, order, or minute of the court, including any record of the reasons given by the Judge:

(e) the rolls of barristers and solicitors kept under section 56 of the Lawyers and Conveyancers Act 2006 or any former corresponding enactment’.

The Criminal Procedure Act 2011 s.184 - Permanent court record states:

- (1) Courts conducting criminal proceedings must continue to maintain a permanent court record of the formal steps in those proceedings
- (2) Courts must maintain the permanent court record in accordance with rules of court
- (3) The permanent court record is, subject to the power of the court to amend it, conclusive evidence of the matters recorded in it.

Most of the provisions of the Criminal Procedure Act will be brought into force by Order in Council in 2013. Court rules that, among other things, will define the permanent record of the court are being developed by a Rules Committee. At that point it is likely that there will be no distinctions made between the permanent record of a summarily laid case and that of an indictable case.

District Courts Rules (2009) (SR2009/257) state:

- **formal court record** means any of the following kept in an office of the court:
 - (a) a register or index:
 - (b) any published list that gives notice of a hearing:
 - (c) a document that—
 - (i) may be accessed under an enactment other than these rules; or
 - (ii) constitutes notice of its contents to the public:
 - (d) a judgment, order, or minute of the court, including any record of the reasons given by the Judge.

During the process of development of this disposal schedule, the Ministry of Justice sought a definition of the formal record of the Family Court and this draft definition is presently being consulted upon within the Ministry:

- Every application
- Every direction or order made as a result of the application
- Any other document or record directed to be made by the chief executive pursuant to a statutory power
- Any other document or record prescribed by legislation
- Any other document or record determined by the Principal Family Court Judge.

These definitions have a bearing on this appraisal, because what is defined as a permanent court record is a record that must be retained permanently. However, there may be a distinction between what is of permanent *archival value* that will eventually be retained by Archives New Zealand and what must be retained as a permanent record by the courts. Similarly, what is defined as a formal record of the court for is not the entirety of the records created at a hearing, nor is it necessarily entirely a record of permanent archival value.

There is further discussion of this issue in sections 8.5 (regarding the archival value of District Courts criminal jurisdiction records) and 8.8.2 (regarding Family Court records).

7.8 Disposal criteria

The tables below list the disposal criteria that have been developed and applied in evaluating the archival value of court records. There is further explanation of these disposal criteria as appropriate in the next section of the report where evaluations of particular records are discussed (section 9).

Criteria for recommending the retention of records as archives

A1	Records provide evidence of and information about the functions and activities of the Supreme Court in the exercise of its jurisdiction as the highest appellate court in New Zealand
A2	Records provide information about cases taken for appeal to the Supreme Court which are of informational value because: <ul style="list-style-type: none"> • they have been taken to this level of appeal • they involve a matter of general public importance or a matter of general commercial significance • they involve a significant issue relating to the Treaty of Waitangi • they concern claims of miscarriage of justice • they provide information of research value into particular cases, development of case law, or history of the development of the New Zealand legal system
A3	Records provide information about cases taken for appeal to the Court of Appeal, which are of informational value because they have been taken to this level of appeal
A4	Records provide information about leave to appeal that has not been granted which may be of value in terms of precedent and the development of case law
A5	Records provide evidence of and information about the functions and activities of the Court of Appeal in the exercise of its jurisdiction as an appellate Court
A6	Records provide evidence of and information about the High Court's civil jurisdiction, including its functions of making authoritative declarations of law, determining the legality of administrative conduct, protection of legal rights and immunities, and hearing appeals from inferior courts
A7	Records provide information about significant civil cases held in the District Courts, where: <ul style="list-style-type: none"> • the case created legal precedent and/or • the case concerned eminent or notorious persons and/or • the case received national media coverage
A8	Records provide evidence of the legal status and fundamental rights and entitlements of individuals and groups
A9	Records provide information about the State's direct intervention in the lives of individuals and the Family Court's role in determining the extent or duration of that intervention
A10	Records provide information that is of research value to: <ul style="list-style-type: none"> • family history research • New Zealand economic and commercial history • the history of the administration of government and the development of administrative case law • the development of the New Zealand legal system • social history research

A11	Records provide evidence of and information about the prosecution of criminal offences where: <ul style="list-style-type: none"> • the crime is serious <i>and/or</i> • the crime is an unusual offence, <i>and/or</i> • the offence is one in which there is or may be considerable public interest, <i>and/or</i> • the legislated penalty for the offence is over 7 years imprisonment, <i>and/or</i> • the offence is rarely committed; thus few records are created, <i>and/or</i> • the offence involves children as victims in sexual cases
A12	Retention of records provides an alignment between the records retained as public archives from Police and courts, allowing later researchers to follow a case from investigation to conclusion in the courts
A13	Records provide evidence of and information about the proceedings of the District Court
A14	Records provide summary information about cases heard in the courts and provide access to case files that have been retained as public archives
A15	Records provide summary information about occupational or activity licensing or approval applications
A16	Records are legacy records determined in previous appraisals to have archival value, and complete series of records already held by Archives New Zealand

Criteria for recommending that the records are not of permanent archival value

D1	Records contain information about cases where the more substantive record is held by another agency
D2	Records concern routine civil cases brought before a court of the first instance and/or are of low long-term informational value
D3	Records concern less serious criminal cases before a court of the first instance that are of low long-term informational value
D4	Records are of a quantity and format that preclude a selection process and contain such quantities of low-level information that their retention as archives as a complete set is not warranted
D5	Records concern routine licensing or approval applications that are summarised in other records recommended for retention
D6	Records are routine operational records

8 Evaluation of the archival value of court records

8.1 Supreme Court records

When DA53 was developed, it only covered the records of the High and District Courts. At that time the Court of Appeal, which had a separate disposal authority that has now expired (see section 5.1.) was New Zealand's appellate court. The highest court of appeal for New Zealand was the Judicial Committee of the Privy Council in London. The Supreme Court of New Zealand was established by the Supreme Court Act 2003 and it is now New Zealand's highest appellate court.

An appeal is an application to a higher court to correct the decision of a lower court.

The Supreme Court can hear and determine an appeal:

- by a party to a civil proceeding in the Court of Appeal against any decision unless a statute provides that there is no right of appeal, or the decision is a refusal to give leave or special leave to appeal to the Court of Appeal.
- by a party to a civil proceeding in the High Court against any decision unless a statute provides that there is no right of appeal, or the decision is a refusal to give leave or special leave to appeal to the High Court or the Court of Appeal, or the decision was made on an interlocutory application.
- against a decision made in a civil proceeding other than in the Court of Appeal or High Court only if a statute provides for the bringing of an appeal.
- specifically authorised by Part 13 or s406A of the Crimes Act or s144A of the Summary Proceedings Act 1957 or s10A or s10B (1) of the Courts Martial Appeals Act 1953.

Appeals to the Supreme Court can be heard only with the leave of the court. It must not give leave to appeal unless it is satisfied that it is necessary in the interests of justice for the court to hear and determine the proposed appeal.

It is necessary in the interests of justice for the Supreme Court to hear and determine a proposed appeal if:

- the appeal involves a matter of general public importance;
- a substantial miscarriage of justice may have occurred, or may occur, unless the appeal is heard;
- the appeal involves a matter of general commercial significance; or
- the appeal involves a significant issue relating to the Treaty of Waitangi.

In general, the court will only hear appeals coming from the Court of Appeal. The Court may however in exceptional circumstances, give leave to appeal a decision of a lower court.

In its first year of operation the Supreme Court split applications into criminal and civil files. It now uses one set of numbers for all applications for leave to appeal, starting afresh each year. If leave is granted and the case proceeds to a substantive appeal hearing the same number is continued with. All documents filed are kept on these files. The majority of files are quite small. If an appeal proceeds to a full hearing it can be quite large, as documentation from the lower courts are reproduced. A file may fill a large archive box.

The Court publishes summaries of cases online (<http://www.courtsofnz.govt.nz/about/supreme/case-summaries/supreme-court-case-summaries/case-summaries-2004>) and transcripts of cases (<http://www.courtsofnz.govt.nz/from/transcripts//from/transcripts/supreme-court-transcripts-2010>).

The published transcripts are unedited transcripts and are not a formal record of the Court's proceedings.

8.1.1 Evaluation of archival value of records

Records of appeals to the Supreme Court have both informational and evidential archival value. They are significant because of the very fact that the Court is the highest appellate court. The cases have already been heard in the Court of Appeal (or in some cases the High Court), but the appellants have not been satisfied with the judgment of that court. They provide information not only about how the Court carries out its functions, but also about the cases that have been appealed. Cases files provide information about decisions that set precedent, are of general public interest, involve a significant issue relating to the Treaty of Waitangi, involve claims of miscarriage of justice or in some other way provide information of research value into particular cases, development of case law, or history of the development of the New Zealand legal system.

The most identifiable precedent is National Archives of Australia Records Authority 2010/00663993, for the High Court of Australia, which is the final appellate court in Australia. Class no. 21900 in this schedule recommends the retention as archives of case files, registers of matters for each State, Court minute books, audio and audio-visual recordings of constitutional and other noteworthy cases nominated by the Registrar, case management system database.

8.1.2 Records recommended for retention as public archives

Record type	Disposal criteria
Supreme Court civil case files	A1, A2, A4
Supreme Court criminal case files	A1, A2, A4
Supreme Court register of all case filings	A1, A2
Supreme Court minute book	A1, A2

8.1.3 Records identified as not having archival value

None.

8.2 Court of Appeal records

The Court deals with civil and criminal appeals from proceedings heard in the High Court, and indictable criminal proceedings in District Courts. Matters appealed to the High Court from a District Court and certain tribunals can be taken to the Court of Appeal with leave if a second appeal is warranted. The Court may also grant leave to hear appeals against pre-trial rulings in criminal cases, and appeals on questions of law from the Employment Court.

The Court of Appeal sits in divisions to deal with routine appeals, as authorised by the Judicature Act. The Criminal Appeal Division consists of one judge of the Court of Appeal together with two High Court judges nominated by the Chief Justice. The Civil Appeal Division also consists of one judge of the Court of Appeal together with two High Court judges nominated by the Chief Justice.

The court sits as a full court (consisting of five permanent Court of Appeal judges) to consider the most significant cases.

Civil Proceedings

The Court of Appeal has jurisdiction to hear and determine appeals from any judgment, decree or order of the High Court. Appeals from other jurisdictions requires of leave to appeal is given by the High Court. Questions of law from the Employment Court can also be appealed to the Court of Appeal.

If an application for leave to appeal is required, the Rules set out the documents and information needed to assist the court in coming to a decision. The court makes its decision based on the documents filed plus any oral submissions made at the hearing of the application.

If the application for leave is granted or there is a right of appeal, the Rules set out the procedure to follow for the substantive hearing of the appeal. This could occur before the Civil Appeals Division or before the full court. In either case the appeal will be conducted by way of a rehearing.

Criminal proceedings

Any person convicted on indictment may appeal to the Court of Appeal against the conviction, or the sentence passed on conviction (unless the sentence is one fixed by law) or both.

The Court of Appeal has jurisdiction to hear appeals against pre-trial rulings in criminal cases. There is a right of appeal with respect to High Court decisions granting or refusing bail or in respect of conditions of bail.

An appeal or application for leave to appeal must be dealt with by way of a hearing involving oral submissions unless the judge or court making the decision on the mode of hearing determines on the basis of the information contained in the notice of appeal, notice of application or other written material provided by the parties, that the appeal or application can be fairly dealt with on the papers.

Most criminal appeals will be dealt with by the Criminal Appeal Division of the Court of Appeal, constituting one Court of Appeal judge and two High Court judges.

Records created by the court are:

- Civil case files
- Criminal case files
- Civil index register
- Criminal index register
- Court minute books

8.2.1 Evaluation of archival value of records

The appraisal report for the now-expired schedule for Court of Appeal records, OP SR 91/0264, records the criterion for disposal as evidence of the functions and activities of the Court of Appeal. When the previous appraisal was written, the Supreme Court did not exist and the Court of Appeal was the only appellate Court in New Zealand (notwithstanding that appeals could be made to the Privy Council). However, not all cases heard by the Court of Appeal are later heard by the Supreme Court.

The Courts of New Zealand website notes: 'The role and workload of the Court of Appeal has not diminished with the establishment of the Supreme Court. The small number of cases likely to reach the Supreme Court means the Court of Appeal will continue to have a key role in error correction, ensuring consistency in lower court determinations and developing aspects of the law'

The website further states that 'the Court of Appeal has a critical role in developing legal principle and maintaining consistency in the application of the law. It supervises through appeal the judgments of the High Court and ensures consistent application of the law in the High Court'⁴.

Thus the records of the Court of Appeal retain the value identified in the previous appraisal. They provide evidence of the functions and activities of the Court of Appeal. Similarly to the records of the Supreme Court, the cases brought to the Court of Appeal provide information about decisions that set precedent, are of general public interest, and are of research value into particular cases, development of case law, or history of the development of the New Zealand legal system.

There is similar precedent in the State Records Authority of New South Wales retention and disposal authority FA269 for records of the Supreme Court of New South Wales, which recommends the retention as state archives of Court of Appeal cases and Court of Criminal appeal cases.

8.2.2 Records recommended for retention as public archives

Record type	Disposal criteria
Court of Appeal criminal index registers	A3, A4, A5
Court of Appeal criminal case files	A3, A4, A5
Court of Appeal civil index registers	A3, A4, A5
Court of Appeal Civil case files	A3, A4, A5
Court minute book	A3, A4, A5

8.2.3 Records identified as not having archival value

None.

⁴ <http://www.courtsofnz.govt.nz/about/appeal/role-structure>

8.3 High Court criminal jurisdiction records

The High Court has jurisdiction to try all criminal cases involving indictable offences or cases where the defendant elects trial by jury. It therefore deals with the most serious types of criminal offences before a judge and jury. The High Court can impose a sentence in summary; judge alone, cases where the District Court considers that a penalty is warranted that exceeds the District Court's jurisdiction. It also hears appeals from summary cases.

The records created in the High Court are:

- Criminal case files, including sentencing case files
- Criminal appeal case files
- Criminal Crown books, which are a summary of criminal proceedings in the High Court
- Return of prisoners tried and sentenced, which is printed from CMS and signed by a judge

Hard-copy registers of criminal cases and criminal appeal cases and indexes to these registers are no longer created, having been superseded by CMS. However, they are discussed and listed in this section because in the schedule itself they have been included in the list of High Court records, for ease of use of the schedule by courts staff.

Criminal cases begin with the filing of an 'information'. Since the implementation of CMS, an information can be electronically received into CMS, or a charge is created in CMS on the receipt of a paper information. CMS replaces the hard-copy criminal registers. From introduction of CMS all criminal files in each Court have been maintained in a single sequence.

Prior to the introduction of CMS, bail case files were registered and maintained separately. All matters relating to bail are now retained as part of the same CRI number and kept on the same file. The only time that they are not maintained on the same CRI number and a new CRI reference number is generated is if the case is an appeal from the District Court against refusal to grant bail, or an originating application for bail because the District Court did not have jurisdiction to grant bail or vary bail conditions. Bail records have not been treated as separate records in the schedule but as criminal case files. Legacy bail case files and registers are discussed in section 8.10 Legacy records.

Case files contents include depositions, committals, witness statements, details of evidence presented and the verdict. (See Appendix 1 for a list of potential contents of a criminal jury trial file, from Court guidelines).

Prior to the mid-1940s the files of those convicted also contained information from the sentencing. This convention was maintained into the 1970s and the trials conducted directly through the High Court where an individual was found guilty regularly contained the associated sentencing file. In the 1980s in instances where the trial and the sentencing were held at different times, a separate sentencing file may have been created and consequently maintained as a separate entity.

Criminal Crown books are a summary record of all criminal proceedings in the High Court. Summary details of each case heard is recorded including the name of the presiding judge, trial file number, defendant's name, charges, sentence or outcome and 'a memorandum of the substance of all proceedings at every trial' (s.353 Crimes Act 1961).

The Return/Register of Prisoners Tried and Sentenced records the results of trials of prisoners at the High Court. Information generally includes:

- Date of trial
- Trial number
- Name of prisoner
- Age
- Where born
- Crime or offence charged
- Day of committal
- Verdict
- Sentence

As noted above, the practice is now to print out the return from CMS and have it signed by the judge.

8.3.1 Evaluation of archival value of records

The DA53 schedule recommends the retention of the records of all criminal cases and criminal appeal cases held in the High Court. This schedule continues that precedent on the basis that the cases before the High Court are the most serious crimes, and that appeals heard in the High Court for cases originally heard in the District Court reflect the fact that the High Court is the court to which application is made for authoritative declarations of law.

This recommendation also aligns with the recommendations of the schedule for Police incident and offence files (DA 224 New Zealand Police, Office of the Commissioner, records including incident and offence records⁵), which recommends the retention as public archives of all records of offences that are middle band⁶ and High Court only indictable.

Relevant precedent in most other jurisdictions provides similar recommendations:

- National Archives of Australia 2010/00663993 – High Court of Australia recommends the retention as archives of case records
- State Records Authority of New South Wales DA178 - Supreme Court of New South Wales recommends the retention as State archives of records relating to the hearing of criminal matters (excluding bail matters)
- Archives Office of Tasmania DS2185 – Supreme Court of Tasmania recommends the retention as archives of the following records:
 - cases on charges of major crimes
 - cases selected by a Judge or Registrar to be exceptional or as setting a precedent
- The National Archives United Kingdom Operational Selection Policy OSP40 Records relating to indictable criminal proceedings 1972 – 1992:

This document is not a retention and disposal schedule but rather a policy that sets selection criteria for the development of a retention and disposal schedule. OSP40 recommends that Crown Court indictable proceedings case files are only retained as archives when the following applies:

- A charge under the Official Secrets Acts, treason, treachery, and sedition
- Trials of persons connected with the Irish Republican Army or other terrorist organisation
- Where the following criteria are met:
 - Attracted national/widespread contemporary public interest
 - Was of national historical significance
 - Involved eminent or notorious persons
 - Was legally significant; e.g. where the case catalysed a change in the law or legal procedures after the trial

⁵ <http://www.archway.archives.govt.nz/ViewEntity.do?code=DA224>)

⁶ See p. 38 below for an explanation of offence categories

- Gave rise to widespread and prolonged public concern (measured by the frequency of parliamentary questions, Ministers cases and media coverage at a national level) or were raised as a matter of concern by criminal justice reform organisations.

Note that this is a more limited retention regime than that envisaged in the schedule proposed by this appraisal report.

Criminal Crown books and the Return/Register of Prisoners Tried and Sentenced provide a summary record of the proceedings of the High Court and a summary record of the results of trials and sentencing in the High Court. They are also a means, like the formerly used hard-copy registers, of identifying and accessing a case record. The Crown books moreover provide a narrative of the proceedings that will complement the information in the case files. They are recommended for retention as public archives, which is also in accordance with the precedent set in DA53.

Registers to criminal cases and criminal appeal cases are recommended for retention as public archives because they not only provide a summary record of what cases were heard but also a means of accessing individual case records also recommended for retention as public archives. The case records are identified by case number and it is necessary to use the register to identify the relevant file for a particular individual or organisation. Indexes sometimes were created to assist in accessing the registers, and are also recommended for retention as public archives.

8.3.2 Records recommended for retention as public archives

Record type	Disposal criteria
Criminal case files (including criminal trial and sentencing files)	A11
Criminal registers (including criminal trial and sentencing registers)	A14
Criminal appeals case files	A11
Criminal appeals registers	A14
Crown books	A11
Return of prisoners tried and sentenced	A11
Return of prisoners tried index	A14

8.3.3 Records identified as not having archival value

None.

8.4 High Court civil jurisdiction records

In this section, descriptions of each type of case record created in the High Court are included in the table listing records recommended for retention as public archives (section 9.4.2).

Civil cases begin with either an application or a statement of claim filed in the Court.

Several of the case file types listed in the DA53 schedule are no longer created and maintained by the High Court, because the function has devolved to another court (e.g. mental health), or the function is no longer performed (e.g. apprenticeship cases, stabilisation regulations cases). These records are discussed in section 9.9.

Hard-copy registers of civil cases by case type (e.g. bankruptcy registers), civil appeal case registers and indexes to these registers are no longer created, having been superseded by CMS. However, they are discussed and listed in this section because in the schedule itself they have been included in the list of High Court records, for ease of use of the schedule by courts staff.

The High Court has virtually unlimited jurisdiction in civil cases, but generally deals only with those civil claims that exceed the jurisdiction of the District Court or other courts and tribunals, or where particularly complex issues are involved. This jurisdiction includes matters concerning admiralty, company law, bankruptcy, the administration of estates and trusts, property transfer, land valuation. The High Court has jurisdiction over matters where the amount in dispute is over \$200,000.

The High Court has the particular responsibility of ensuring the legality of the conduct of all sections of the community including inferior courts and tribunals and the protection of legal rights and immunities. Although there is a wide range of statutes providing for appeals to the High Court from such courts and tribunals, through judicial review, the High Court secures the legality of all public sector conduct including that of inferior courts.

Decisions of the High Court are binding on all lower courts until overruled by the Court of Appeal or Supreme Court. Because of its position in the judicial structure, the High Court is the court to which application is made for authoritative declarations of law

The practice and procedure of the High Court in all civil proceedings is regulated by the High Court Rules. The Rules set out how proceedings are started and specify the documents that must be filed and how they are to be served. They specify what applications to the court need to cover for pre-trial matters and for the trial or hearing.

The High Court can order the removal of civil proceedings from the District Courts to the High Court, and the High Court can order a civil proceeding to be transferred to the Court of Appeal in exceptional circumstances.

Appeals to the High Court from the District Courts or other courts are generally conducted through a rehearing. That means the High Court judge can come to a different decision to the lower courts on the evidence presented and on the law.

Commercial list

In Auckland, there is a commercial list that is specifically set up by the Judicature Act to deal with commercial cases. Some High Court judges are appointed as commercial list judges. Commercial cases may relate to such things as the carriage of goods for the purpose of trade or commerce, the

interpretation of commercial documents and disputes arising out of intellectual property rights between parties engaged in commerce

Land Valuation appeals

Section 3 of the Land Valuation Proceedings Act 1948 provides for the Governor-General to appoint two lay members of the High Court to assist the court in hearing appeals from the land valuation tribunals under a range of Acts including the Rating Valuation Act 1998, the Public Works Act 1981, the Maori Reserved Land Amendment Acts 1997 and 1998. Appointments are made for a term of five years and may be renewed. Registers and indexes as well as case files are covered by the schedule.

8.4.1 Evaluation of archival value of records

DA53 recommended the retention of most civil case records from the High Court, based on the premise that the majority of important or more significant cases are heard in the High Court by virtue of the hierarchical nature of the courts and the High Court's jurisdiction to hear appeals from inferior courts. This schedule continues that precedent.

The relevant precedent from other jurisdictions is the Supreme Court of New South Wales, the Supreme Court of Tasmania and the National Archives of UK Operational Selection Policy for individual insolvency.

- State Records Authority of New South Wales FA269 recommends the retention as State archives of administrative law cases (analogous to judicial review) and the sampling of records from other civil cases based on the criteria of contribution in developing the law, factual complexity, or the level of public interest. FA269 also recommends the retention of all registers and judgments and decisions maintained separately from the case papers to which they relate
- State Records Authority of New South Wales DA43 Supreme Court of New South Wales recommends the retention as archives of probate files
- Archives Office of Tasmania DS2185 recommends the retention as archives of all registers, original judgments and orders, and records of matters commenced by application or summons. It further recommends the retention of exceptional cases or those setting a precedent of records relating to matters commenced by writ
- National Archives of UK Operational Selection Policy OSP32 recommends the retention of *cause celebre* case files of historical or legal significance and records that demonstrate developments and changes in the way that bankruptcy was dealt with by the High Court and County Courts.

The case type-based registers to civil cases and civil appeal case registers that have been superseded by CMS are recommended for retention as public archives because they not only provide a summary record of what cases were heard but also a means of accessing individual case records. The case records are identified by case number and it is necessary to use the register to identify the relevant file for a particular individual or organisation. Indexes sometimes were created to assist in accessing the registers, and are also recommended for retention as public archives.

The register now used by courts in New Zealand is outside the scope of this appraisal, as it is an electronic record. The Courts do not regard CMS as an official record of cases, but as an electronic copy of the paper application or claim that is filed. In any case, given that the database was designed and built before the Digital Recordkeeping Standard was developed, it is possible that the database may not be able to be preserved as an archival summary record of the cases heard in the High Court. Therefore it cannot be recommended that the case records created after the introduction of CMS are not retained as public archives simply because CMS may be recommended for retention as public archives at a later date and it may provide adequate *summary* information about the cases heard.

Judgments and decisions are not kept separately from the case files, and although some decisions are published, not all can be published, so the published record does not provide a comprehensive record of decisions.

The considerations for retention as public archives expressed in the appraisal report for DA53 still apply. In addition cases files from the High Court provide evidence of the High Court’s function of making authoritative declarations of law (e.g. civil appeals, land valuation appeals, originating applications, applications in equity and under statute) and determining the legality of administrative conduct (e.g. judicial review, election petitions). These records also fit the Accountability and Machinery of Government Objectives of the Archives New Zealand Appraisal Policy, which respectively specifically identify ‘representation and appeals against the decisions and actions of government and the legislature’ and ‘judgments or rulings determining the extent of jurisdiction or powers’ as records that contribute to the objectives⁷.

The informational value of the case files is also high, although restrictions on access mean that the most recent records will not be available for some time. Many of the individual case files will be of value to family history researchers. Some case files also have research value in terms of research into New Zealand economic and commercial history; others in terms of the history of the administration of government and the development of administrative case law. Bankruptcy, company liquidation, mortgagee sales and rating sales case files from the late 1980s onward will also assist in research into the effects of the recessions of the late 20th and early 21st century.

It should be noted here that the schedule for the records of the New Zealand Insolvency and Trustee Service (DA378) was considered in the development of this schedule. DA378 recommends the retention of all pre-1988 insolvency case files and the retention of only complex post-1988 insolvency records. While it may seem that these records provide a more comprehensive record of insolvencies than the Court record, the Insolvency and Trustee Service only administers liquidations where the Court has appointed the Official Assignee as liquidator, so not all liquidations are recorded in the Service’s case files.

Court books (civil) provide a record of proceedings and they are also a means of assisting access to the case file record in that they identify when a case was heard. They are also recommended for retention as public archives.

8.4.2 Records recommended for retention as public archives

Record type	Description	Disposal criteria
Admiralty case files	These files relate to cases heard by the High Court under its admiralty jurisdiction. Admiralty cases relate to civil disputes involving shipping companies or vessels and include ownership disputes, liability for damage caused by ship, damage to cargoes, salvage, cases involving failure to pay wages to ships’ crews and other payment disputes. The 1973 Admiralty Act also brought aircraft and hovercraft within the ambit of the Admiralty Court.	A6, A10

⁷ Archives New Zealand Appraisal Policy, p.6

Record type	Description	Disposal criteria
Admiralty registers	These registers record cases under the admiralty jurisdiction of the Supreme / High Court. Admiralty cases are those which involve vessels or shipping. Terms used include "in rem", about provision of food and supplies, and "in personam", which was a proceeding against the owner of the vessel. Now superseded by CMS	A14
Applications in equity and under statutes	Applications for relief under equity, including contractual claims, rights of property and disputes relating to partnerships and trusts	A6, A10
Bankruptcy case files	Bankruptcy files record the proceedings in bankruptcy cases. They contain petitions to adjudge a debtor bankrupt, whether requested by the debtor, or issued by the creditor.	A6, A10
Bankruptcy registers	The registers entered each case by its file number, and gave brief details of the progress of petitions to adjudge a debtor bankrupt, whether requested by the debtor or issued by the creditor.	A14
Barristers and solicitors (law practitioners) case files	These files relate to the admission of persons as barristers and/or solicitors to the New Zealand Court. In addition the papers can relate to the removal of a barrister or solicitor, due to misconduct under the various Law Practitioner Acts. Typically these files contain the applicant's notice of intention to apply for admission and supporting affidavits. In some cases the applicant may include a birth certificate (if born overseas). Included among the papers relating to the application to the bar are the Order for admission by the judge and a signed oath by successful applicant swearing to <i>honestly demean oneself in the practice of a barrister and/or solicitor to the best of one's knowledge and ability.</i>	A6, A10
Barristers and solicitors rolls/registers and associated indexes	These registers and indexes record barristers and solicitors who were admitted to the bar at the High Court.	A6, A10
Civil appeal case files	Appeals against a judgment in an inferior court	A6, A10
Civil appeal registers	Registers of civil appeal cases in the High Court	A14

Record type	Description	Disposal criteria
Commercial list proceedings case files	These files relate commercial list proceedings heard by the High court. Files comprise documents registered with the court pertaining to a particular commercial case. Occasionally two or more registered cases are combined and dealt with as a single case. Commercial cases may relate to such things as the carriage of goods for the purpose of trade or commerce, the interpretation of commercial documents and disputes arising out of the intellectual property rights between parties engaged in commerce.	A6, A10
Commercial list proceedings registers	Record commercial list cases held in the Auckland High Court. Now superseded by CMS	A14
Company liquidations	Documentation relating to the company liquidations including evidence, court proceedings and decisions	A6, A10
Court (civil) books	The Court (civil minute) books are a chronological record of High Court civil hearings. Include the date of proceedings, the names of the parties, and the judge hearing the case. Names of jurors may also be recorded.	A6, A10
Election petitions case files	A challenge to the result of an election	A6, A10
Election petitions registers	Registers of election petition cases. Now superseded by CMS	A14
General (civil) proceedings (Actions) case files	General Proceedings are civil proceedings other than those already classified as appeals, bankruptcy, judicial reviews, etc. They are called Civil proceedings in DA53, but CMS uses the term General proceedings. The files comprise documents admitted as evidence, in addition to testimony and judgements, affidavits, statements of claim, exhibits (such as advertising and gazette notices) and correspondence. Previously civil proceedings were known as Actions, and Archives New Zealand has some series of Actions case files	A6, A10
General (civil) proceedings (Actions) registers	These record civil actions and proceedings filed in the High Court. There was a name change in 1986 from actions to Civil Proceedings. Actions/civil proceedings involved cases in which a person, or body was suing someone else in the Court for financial or other reasons. The registers contain details of the plaintiff, defendant and progress of the case. Civil proceedings are now known as General proceedings. Now superseded by CMS	A14

Record type	Description	Disposal criteria
Habeas corpus	A legal action, through which a prisoner can be released from unlawful detention, that is, detention lacking sufficient cause or evidence. The court determines whether the custodian has lawful authority to detain the person	A6, A10
Judicial review case files	Judicial review is a review by the Court as to whether a decision by a public body has been made lawfully	A6, A10
Land valuation appeals case files	Cases of appeals against the decisions of land valuation tribunals.	A6, A10
Land valuation appeals registers	Register of land valuation appeals. Now superseded by CMS	A14
Mortgagee sales case files	Property Law Act 1952 Property Law Act 2009 Applications by mortgagees to sell properties where mortgagors have defaulted on payments. Papers contained in the files may include: application to Registrar to conduct sale; declaration as to service of notice; declaration in support of application; memorandum of mortgage; advertisement of sale; particulars and conditions of sale; correspondence and file notes.	A6, A10
Mortgagee sales registers	Mortgagee sales registers contain <ul style="list-style-type: none"> • the registration number • name of mortgagor • name of mortgagee and their solicitor • the registration number • date and amount of the mortgage • the mortgagee's estimate of value and date of sale • the amount actually sold for, and generally the result of the case, including who the property was sold to. <p>The registers were self-indexed, and provided the reference for each individual file. Now superseded by CMS</p>	A14
Originating summons/ originating applications case files	Applications for a declaratory order from the court to determine the validity of a statute, regulation, deed, etc.	A6, A10
Originating summons registers	Registers of applications for a declaratory order from the court to determine the validity of a statute, regulation, deed, etc. Now superseded by CMS	A14
Probate case files	Probate files contain all the legal documentation required for the granting of a probate of a will. Files include copies of probate, wills and affidavits.	A6, A10

Record type	Description	Disposal criteria
Probate registers	<p>These registers listed probate cases in the order in which they were dealt with by the Court, and provide the probate file number.</p> <p>The entries recorded information such as name of the testator and the dates that the various documents were filed at the Court. Sometimes a probate file has been removed from its sequence, and attached to a later file: the reference to the destination file was recorded in these registers.</p> <p>Now superseded by CMS</p>	A14
Rating sales case files	<p>Proceedings regarding the sale or lease of land for non-payment of rates. Papers in these files may include copies of notices that a property may be sold or leased, certificates of title, certificates of judgment for rates and correspondence</p>	A6, A10
Rating sales registers	<p>Registers of rating sales cases</p> <p>Now superseded by CMS</p>	A14

8.4.3 Records identified as not having archival value

None.

8.5 District Courts criminal jurisdiction records

The District Courts hear criminal cases involving minor offences, but can conduct trials for some serious offences, such as rape and aggravated robbery. Over 95% of all criminal trials, including jury trials on all but the most serious matters are heard in the District Courts⁸. Within its jurisdiction are offences ranging from very serious offending such as rape, aggravated robbery, and sexual violation down to minor offences such as disorderly behaviour. The only charges that cannot be heard by the District Courts are murder, manslaughter and Class A drug offences, and a small number of other very serious crimes.

In the District Courts the records created are:

- Criminal Record Sheets (discussed further in section 8.5.2)
- Criminal case files
- Return of prisoners tried and sentenced, which is printed from CMS and signed by a judge

Hard-copy registers of criminal cases and indexes to these registers are no longer created, having been superseded by CMS. However, they are discussed and listed in this section because in the schedule itself they have been included in the list of District Courts records, for ease of use of the schedule by courts staff

Criminal cases begin with the filing of an 'information'. Since the implementation of CMS, an information can be electronically received into CMS, or a charge is created in CMS on the receipt of a paper information. CMS replaces the hard-copy criminal registers. From introduction of CMS all criminal files in each Court have been maintained in a single sequence.

⁸ <http://www.courtsofnz.govt.nz/district/district/jurisdiction>

The Return/Register of Prisoners Tried and Sentenced records the results of trials of prisoners at the District Courts. Information generally includes:

- Date of trial
- Trial number
- Name of prisoner
- Age
- Where born
- Crime or offence charged
- Day of committal
- Verdict
- Sentence

As noted above, the practice in some District Courts to print out the return from CMS and have it signed by the judge.

8.5.1 Evaluation of archival value of criminal case files and registers

Registers to criminal cases are recommended for retention as public archives because they provide a summary record of what cases were heard, including cases where the records have not been recommended for transfer as public archives. They also provide a means of accessing individual case records that have been recommended for retention as public archives. The case records are identified by case number and it is necessary to use the register to identify the relevant file for a particular individual or organisation. Indexes sometimes were created to assist in accessing the registers, and are also recommended for retention as public archives.

The DA53 schedule recommends the retention of the records of all jury trials held in the District Courts and the destruction of other criminal case files. However, 'significant' cases in the District Courts were to be retained, and the implementation guide for the schedule identified the criteria for significance as:

- Legal precedent
- Publicity or notoriety in cases that have received national media coverage.

Archives New Zealand reports that there have been no transfers of 'significant' criminal case records from the District Courts and staff from the Courts have noted that this approach is difficult to implement.

The appraisal report for DA53 notes that some consideration was given to making a disposal recommendation for criminal case files based on offence types, in line with the then current schedule for Police incident and offence files. This approach was rejected because there was no specific classification in statute, changes in legislation result in changes to sentencing periods and dollar value of fines, and the jurisdiction of Courts to hear specific cases varies as a result of legislative changes⁹.

The schedule for Police incident and offence files in existence at that time based the criteria for retention of records on the length of sentence and the value of fines. This schedule has since been replaced by a later schedule that has disposal criteria based on seriousness of offence and other factors such as quantity of records, social attitudes and unusual crimes. The seriousness of offence was largely determined by the categories of criminal offences.

The current categories of offences are:

- Purely summary:
 - Punishable by three months' imprisonment or less
 - Charge must be laid summarily
 - Tried by judge, one or more Community Magistrates or one or more Justices of the Peace

⁹ Appraisal report for DA53, p. 8, Archives NZ AT91/95

- Heard in the District Court
- Purely summary electable (summary/indictable)¹⁰:
 - Punishable by more than three months' imprisonment
 - Charge must be laid 'summarily'
 - Defendant can elect jury trial (with some exceptions)
 - Heard in the District Court
- Schedule 1 Summary Proceedings Act 1957 (indictable/summary):
 - Charge may be laid 'summarily' or 'indictably' by prosecution
 - If laid summarily, defendant may elect jury if penalty greater than three months' imprisonment
 - If laid summarily and jury trial not elected, tried by judge
 - If laid indictably or jury trial elected, tried by jury
 - Heard in the District Court
- District Court only indictable (purely indictable District Courts):
 - Charge must be laid indictably
 - Tried by jury or by judge alone
- Middle band (purely indictable District Courts/High Court):
 - Specified offences
 - Charge must be laid indictably
 - Case transferred to High Court after committal but may be transferred back to District Court for trial
 - Tried by jury or by judge alone
- High court only indictable (purely indictable High Court):
 - Specified offences
 - Charge must be laid indictably
 - Tried by jury or by judge alone

The Police offence files schedule recommends the retention as public archives of records relating to two summary offences and several (but not all) summary electable and Schedule 1 SPA offences. It also recommends the retention as public archives of all records of offences that are District Court only indictable, middle band and High Court only indictable. The latter three recommendations are in line with the existing recommendations for High Court and District Courts criminal case files in DA53.

The summary offences recommended for retention as archives are offences related to careless driving, reflecting changing social attitudes towards driving offences (and so-called 'boy-racer' offending). The summary electable and Schedule 1 SPA offences recommended for retention as archives include (among others) offences that:

- have a higher legislated maximum penalty
- are of a sexual nature
- involve ill-treatment of children or animals
- involve use of weapons
- involve serious alcohol related driving offences
- concern forgery or money laundering
- concern endangering life.

The criteria for the retention of these records was:

- the crime is an unusual offence, *and/or*
- the offence is one in which there is or may be considerable public interest, *and/or*
- the legislated penalty for the offence is over 7 years imprisonment, *and/or*

¹⁰ The terms in brackets are the terms used in the Police incident and offence file schedule

- the offence is rarely committed; thus few records are created, *and/or*
- the offence involves children as victims in sexual cases.

The advantages of taking a similar approach in the Courts schedule are:

- there would be an alignment between the records retained as public archives from Police and courts, allowing later researchers to follow a case from investigation to conclusion in the courts
- cases that fulfil the criterion of 'significance' are more likely to be captured by the disposal classes and therefore are more likely to be retained without requiring courts staff or the judiciary to make a case by case assessment of that 'significance'
- case files relating to more serious crimes heard in the District Court (indicated by legislated maximum penalties, social attitudes towards particular crimes) will be retained as public archives
- the precedent from DA53 of retaining as public archives all criminal cases heard as jury trials in the District Courts will still be applied

The disadvantage is that it will make the schedule for the District Courts more complex. It may still be difficult for District Courts staff to implement the disposal actions, as they will have to identify which cases fall into the classes for retention as public archives, because the Police offence files schedule identified the records for retention by categories of offence and other factors. However, if the types of offences to be retained as archives are specified in the schedule according to the classes in the Police schedule, this may assist that process.

Accordingly this appraisal report recommends aligning the criminal case files from the District Courts that are retained as public archives with the types of Police offence files that are recommended for retention as public archives. The schedule includes a separate worksheet that identifies the summary, summary/electable and Schedule 1 SPA offences for which case files should be retained as archives. It provides the current Police description of the offence and the section of the applicable act as well as the current Police offence codes.

This recommendation also means that there will be more disposal classes in the schedule for criminal case files in the District Court, because of impending changes to the categories of offences.

Presently, as discussed above, there are seven categories of criminal offences that determine how offences are to proceed; that is, whether there is a judge-alone trial or a jury trial and whether an offence is heard in the High Court or in a District Court. The Criminal Procedure Act 2011, among other reforms intended to make criminal procedure faster, clearer and fairer¹¹, replaces the current seven categories with four new categories and removes the summary/indictable distinction.

This change in categories will come into effect in 2013, and the existing seven classes will be replaced by the following four classes:

- Category 1 - non-imprisonable:
 - Not punishable by imprisonment (including infringement offences when proceedings commenced by filing charging document, rather than by issuing infringement notice)
 - Tried by judge, one or more community magistrates, or one of more Justices of the Peace
- Category 2 – non-electable:
 - Punishable by less than two years' imprisonment
 - Tried by judge

¹¹ <http://www.justice.govt.nz/media/in-focus/topic-library/simplifying-criminal-procedure>

- Transfer process (protocol or application) determines whether case tried in District Court or High Court
- Category 3 – electable:
 - Punishable by 2 or more year' imprisonment
 - Defendant can elect jury
 - Transfer process (protocol or application) determines whether case tried in District Court or High Court
- Category 4 – High court only:
 - Specified offences (in Schedule 1 of the Criminal Procedures Act)
 - Must be tried by jury in the High court because of such high public/symbolic importance.

Any disposal recommendations for criminal records in the District Courts therefore have to take into account the two systems of categorisation, as this schedule applies retrospectively to existing records, but will be in force for 10 years. Therefore separate classes have been developed for pre-2013 case files and post-2013 case files. In the case of the post-2013 case files, the recommendation is that case files for category 3 offences are retained as archives. The same selection criteria apply to category 1 and 2 case files as to the pre-2013 summary, summary/electable and Schedule 1 SPA offences.

In addition to providing section criteria based on the Police offence codes and offence descriptions, the classes in the schedule that refer to selection also provide that records meeting the following criteria can be selected for retention as public archives:

- the case created legal precedent and/or
- the case concerned eminent or notorious persons and/or
- the case received national or significant local media coverage.

These are discretionary criteria that may be used if records otherwise not fitting the criteria for selection are identified as significant and of value as public archives. This class also now aligns with the class for selection of District Courts civil case files. The category of significant *local* media coverage was added at the suggestion of representatives of PHANZA during the external consultation process (see [section 6.2](#) for discussion of PHANZA's submission).

The Returns/Registers of Prisoners Tried and Sentenced provide a summary record of the results of trials and sentencing in the District Court and are recommended for retention as public archives.

Relevant precedent from other jurisdictions:

- Archives Office of Tasmania DS40 - Magistrates Court of Tasmania recommends the retention as archives of the following records from the Criminal and General Jurisdiction:
 - register of criminal and general cases
 - complaints applications and proceedings sheets excluding records relating to Family court matters
- Public Record Office Victoria (Australia) PROS 08/03 – County Court recommends the retention as archives of the following records:
 - presentment and final order
 - suppression orders and revocations
 - case registration
- Queensland State Archives QDAN 296 Magistrates Court recommends the retention as archives of the following records:
 - Register of criminal cases.

8.5.2 Evaluation of archival value of District Courts Criminal Record Sheets

One of the reasons for the delay in the approval of the schedule drafted in 1987 and finally approved in 2003 was the issue of the Criminal Record Sheets. In September 2003 the Department for Courts wrote to the Chief Archivist confirming access arrangements and agreed to sign the schedule on the proviso that Criminal Record Sheets would be excluded and dealt with as a separate issue.

Restructuring of the Department for Courts along with the availability of a reviewer and change of personnel in both agencies meant that the review of Criminal Record Sheets was delayed. In March 2006 Archives New Zealand reactivated the review process and, in agreement with the Ministry of Justice, contracted an independent appraisal consultant to identify an agreed approach to resolve outstanding issues relating to the Criminal Records Sheets. Also in 2006 the General Manager of Higher Courts of the Ministry of Justice requested a legal opinion from the Ministry's Office of Legal Counsel on a suitable retention period for Criminal Record Sheets in order to satisfy legal requirements. The conclusion of the legal opinion was that the Criminal Record sheets are part of the Court's formal record and that they are the summary equivalent of the Crown Book kept in the indictable jurisdiction. The opinion advised that the term "keep" and statutory references to the records "kept" are generally considered to mean to have in stock, to have charge or custody of, and, to protect, save and preserve"¹². A report on approaches and a subsequent appraisal report for Criminal Records Sheets were produced; however, no further steps were taken by Archives New Zealand and the Ministry of Justice in this matter.

Criminal Record Sheets (CRS) are generated for every offence that is lodged by way of information in the District Court. Four copies of the Sheet are made, each distinguished by a coloured stripe down the side of the page:

- White copy – this is maintained separately from the case file and constitutes the official record of outcome signed by the judicial officer
- Blue copy – defendant's copy
- Pink copy – Court's copy (in an instance of a trial this copy is placed on the court file)
- Green copy – media copy

The Criminal Record Sheets are printed on self-carbonated preformatted forms. The paper is very thin and fragile. Court staff have confirmed that deterioration is definitely a problem with the sheets and that those forms that were printed using a dot matrix printer are especially vulnerable to fading.

Criminal Record Sheets are filed by criminal record number, which is effectively a number unique to the court district followed by a sequential number determined by the date of the charge laid. There may be multiple charges laid against an individual but a separate record sheet must be prepared for each charge.

The Criminal Record Sheet is used in the District Court to record the proceedings in a criminal hearing. The requirement for creating Criminal Record Sheets is detailed in the Summary Proceedings Act 1957, Part 2, Section 71, Criminal Records. The Act requires the Registrar of each Court to keep criminal records in a prescribed form that minutes all of the proceedings. This record must be signed by the District Court Judge.

The Court may need to refer back to the original criminal record sheet in the case of an appeal or if a defendant challenges the information.

Under s. 360 of the Crimes Act 1961, in a trial of an issue on a plea of previous acquittal or conviction a copy of the Criminal Record Sheet is admissible in evidence to prove or disprove the identity of the charges (see Appendix Two for relevant extract).

¹² Memorandum from Renay Duncafe and Gina de Graff, Office of Legal Counsel to Andrew Hampton, Higher Courts, September 22 2006,

If the Criminal Record Sheet is unavailable, section 360(2) also allows certified copies of any notes made by the Judge or Justices to prove or disprove previous charges. If neither record is available, section 360(2) cannot be relied upon to provide a summary conviction. The parties will need to rely on other admissible evidence to prove or disprove the original charges.

Under the Privacy Act individuals are entitled to seek correction of information held on them and the Office of Legal Counsel notes that it is not unknown for individuals, under the Act, to take issue with the accuracy of information held on them in CMS and seek correction of the same, many years after the event.¹³ The original criminal record sheet will be needed to check the source information.

Under the Bail Act 2000 failure to comply with conditions of bail is entered onto the Criminal Record Sheet and may be considered in any subsequent application for bail. The Office of Legal Counsel advises that in order to comply with the provisions of this Act as a minimum the criminal record sheet needs to be available to the court for the defendant's lifetime.¹⁴

For all these reasons, the District Courts need to retain the Criminal Records Sheets. However, these are in archival terms considerations of administrative value to the creating agency, and not necessarily considerations of enduring archival value.

As discussed in section 7.2 above, single instance records such as Criminal Record Sheets do not usually have archival evidential value. Evaluations of archival value of these types of records are usually made using considerations of informational archival value. In terms of informational value, the Criminal Records Sheets have a relationship to the criminal case records of the District Courts. Only some of these case files are recommended for retention as public archives. Ideally, the Criminal Record Sheets that correspond to the case files recommended for retention should also be retained. However, implementation of such a recommendation would place an administrative burden on District Courts staff, as they would have to identify and then separate the Criminal Record Sheets. While it has been recommended that they identify and separate case files, the quantity of Criminal Record Sheets is much greater, as at least until 2007, sheets were created regarding infringements.

The Archives New Zealand Appraisal Policy principle of 'considerate of resources' is also a consideration in terms of the quantity and format of the records. The quantity of these records is high and their format is of a nature that will require considerable resources to preserve, if indeed it can be preserved over time. While the Criminal Record Sheets are the summary equivalent of the Crown Books in kept in the indictable jurisdiction, their form is not equivalent to the Crown Books, which summarise the High Court proceedings in a more usable fashion.

If records of the more serious offences cannot be selected, the retention as public archives of the entire collection of Criminal Record Sheets would mean the permanent retention *as archives* of a significant number of records that are of low information value and require considerable resources to preserve as archival records.

In terms of archival informational value, it should be noted that information from the Criminal Record Sheets can be found in a *summarised* form from another source that has been recommended for retention as a public archive.

Prior to the introduction of the Law Enforcement System (LES), an index of the CRS was kept on index cards. These indexes were in turn microfiched. The microfiching of indexes continued after the

¹³ Ibid, para 30

¹⁴ Ibid para 36

introduction of LES, in the form of computer output microfiche from LES. When Courts replaced their use of LES with CMS, the retrospective information from LES was entered into CMS. Information from the Criminal Record Sheets continues to be entered into CMS.

The criminal record sheet information from CMS is also supplied to the Justice Data Warehouse. This sector wide warehouse, which is used primarily for research purposes, has a schedule authorised by the Chief Archivist that identifies all data contained in the warehouse to have archival value and is therefore to be retained permanently (DA34).

For the reasons discussed above, the Criminal Record Sheets are not considered of archival value.

8.5.3 Records recommended for retention as public archives

Record type	Disposal criteria
Criminal case files pre 2013 - middle band and DC only indictable (jury trials)	A11
Selected criminal case files pre 2013 - summary, summary/electable and Schedule 1 SPA	A11, A12
Criminal case files post 2012 - category 3	A11
Selected criminal case files post 2012 - categories 1 and 2	A11, A12
Criminal registers and indexes to registers	A14
Return of prisoners tried	A14
Return of prisoners tried index	

8.5.4 Records identified as not having archival value

Record type	Disposal criteria
Criminal case files - pre 2013 - summary, summary/electable and Schedule 1 SPA that do not fit the selection criteria for retention as public archives	D3
Criminal case files post 2012 - categories 1 and 2 that do not fit the selection criteria for retention as public archives	D3
Criminal Record Sheets	D4

8.6 District Courts civil jurisdiction

In this section, descriptions of each type of case record created in the District Courts are included in the tables listing records recommended for retention as public archives (section 8.6.2) and records not recommended for retention as public archives (section 8.6.3).

A civil case comes to the District Courts if the parties themselves cannot resolve the dispute between them. Most claims are filed by lawyers filing a statement of claim in the Courts on behalf of the plaintiff, but it is not compulsory to use a lawyer.

Even after they have been filed in court, many civil claims are resolved before they get to a hearing because the parties reach an agreement between themselves. Often such agreements are facilitated by a Judge at a settlement conference.

The District Court hears approximately 1,800 civil cases per year.

Records of District Courts cases appealed to the High Court are transferred to the appellate court.

Several of the case file types listed in DA53 as records of the District Courts are now no longer maintained as the function has ceased or been transferred to another agency (e.g. massage parlour registration, land agents licensing, shops and offices records). These records are discussed in section 8.10.

Hard-copy registers of civil cases and indexes to these registers are no longer created, having been superseded by CMS. However, they are discussed and listed in this section because in the schedule itself they have been included in the list of District Courts records, for ease of use of the schedule by courts staff.

It appears that currently recordkeeping practices differ in different District Courts, in that some still maintain court minutes, while others simply use the digital audio recordings of hearings. Some District Courts still use audio tapes for recording hearings.

Disputes Tribunal cases are registered into CMS.

8.6.1 Evaluation of archival value of records

Two classes of records that were listed in DA53 are not covered in this schedule:

- Fines enforcement records, because fines collection and enforcement records are out of scope of this project
- Justice of the Peace nominations and reports, because these records are now covered by Archives New Zealand General Disposal Authority GDA1.

DA53 recommended that District Court civil case files were not retained as public archives on the basis that the more significant and complex cases were heard in the High Court. DA53 recommended the retention as public archives of registers, because they provide a summary of cases, and any associated indexes that assist in accessing the registers.

Relevant precedent in other jurisdictions indicates a similar approach:

- Queensland State Archives QDAN296 recommends the retention of indexes and records of proceedings, but not case files. The disposal authority notes that a decision on the retention of audio and video recording tapes is still to be determined

- Archives Office of Tasmania DS40 recommends the retention of indexes and only cases selected by a Magistrate or Registrar to be exceptional or setting a precedent, and the destruction of audio tapes three months after action completed
- Public Records Office Victoria PROS 08/03 recommends the retention of suppression orders and revocations, final judgements, and registers, but not case files or audio and visual recordings of court proceedings.

The introduction of CMS in 2000 means that there are now no hard-copy registers to provide summary information of 21st century civil cases, and as noted previously CMS is outside the scope of this appraisal report and schedule. The case type-based registers to civil cases that have been superseded by CMS are recommended for retention as public archives because they provide a summary record of what cases were heard. They are also a means of accessing any individual case records that may be retained as public archives. The case records are identified by case number and it is necessary to use the register to identify the relevant file for a particular individual or organisation. Indexes were sometimes created to assist in accessing the registers, and are also recommended for retention as public archives.

Where Court minutes are maintained, these will provide a record of proceedings that can function as a summary record, and they are recommended for retention as public archives not only because they provide a summary record but also because they are a record of the process of the Court.

Having regard to the recommendations made in DA53 and in other jurisdictions regarding similar records, most civil case files from the District Courts are not recommended for retention as public archives, because they generally concern routine cases brought before a court of the first instance. However, the recommendation from DA53 is continued that 'significant' cases should be selected for retention. The criteria for selection are:

- the case created legal precedent and/or
- the case concerned eminent or notorious persons and/or
- the case received national or significant local media coverage.

The category of significant *local* media coverage was added at the suggestion of representatives of PHANZA during the external consultation process, on the basis that a case could be significant locally if not nationally (see [section 6.2](#) for discussion of PHANZA's submission).

The implementation guide for courts staff will delineate a process for identifying 'significant' records. In practice this selective class may not be applied actively to many records, but to remove it from the schedule would mean that any records that were identified as significant could not be retained as public archives under this disposal authority.

It should also be noted that a 'sampling' of what happens in the District Courts is provided in the cases that go to the High Court for appeal or that are sent to the High Court by a judge of the District Court.

Disputes Tribunal cases are also not recommended for retention as public archives, as they concern minor disputes. This recommendation aligns with similar records created by the tribunals managed by the Tribunals Unit (DA415) and with precedent in other jurisdictions:

- Public Record Office Victoria PROS 09/01 does not recommend the retention as archives of any dispute resolution records
- Queensland State Archives QDAN296 does not recommend the retention of any Small Claims Tribunals records as archives (including registers).

The registers of Disputes Tribunal cases that have been superseded by CMS are recommended for retention because they provide a summary record of the cases heard by the Tribunal.

8.6.2 Records recommended for retention as public archives

Record type	Description	Disposal criteria
Civil case files - selected	Records where the case created a precedent and/or where the case was of significant public interest and/or where the case concerned eminent or notorious persons	A7
District Court minutes books	The District Courts Minute books contain a summary of civil application and proceedings including judgements and court orders.	A7, A13
Disputes/ Small Claims Tribunal registers	Registers of Disputes tribunal cases. Now superseded by CMS	A14
Civil record books	Details contained in civil record books include: <ul style="list-style-type: none"> • Record of proceedings in civil cases • Date • Number (of Plaintiff) • Plaintiff • Defendant • Amount of claim • For whom (-judgment) • Costs 	A14
Civil record book indexes	Indexes to civil record books	A14

8.6.3 Records identified as not having archival value

Record type	Description	Disposal criteria
Civil case files – not 'significant'	Records where the case did not create a precedent, was not of significant public interest and did not concern eminent or notorious persons	D2
Disputes Tribunal case files		D2

8.7 Land Valuation Tribunal records

The Land Valuation Tribunal records are discussed separately, and the records are listed separately in the schedule because the jurisdiction of land valuation matters changed from High Court to District Court in 1977. (The Land Valuation Proceedings Amendment Act 1977 replaced the Land Valuation Committees with Land Valuation Tribunals and moved the jurisdiction of land valuation matters to the District Court from the High Court).The separate entry was made to avoid confusion in the case that some older records are held by the High Court, while more recent records will be held in District Courts.

Tribunal cases are not registered into CMS.

8.7.1 Evaluation of archival value of records

The appraisal report for DA53 recommends the retention of all Land Valuation Tribunal (Committees) records dated prior to 1952 and that Land Valuation Tribunal records after that date are not retained 'by

reason of their number, kind and routine nature¹⁵. However the schedule for DA53, which is the legal instrument, recommends the retention of all records pre-dating 1975. The Archives New Zealand appraisal job files provided no information about any reasons for this discrepancy.

However, it has been noted by Archives New Zealand during a preliminary review of this report that since 1977, there have been several 'landmark' cases heard by the Tribunals, for example the Commissioner of Crown Lands v. Minaret Station¹⁶. There are 18 Land Valuation Tribunals. District Courts staff report Tribunal cases occur infrequently but are often heard in blocks so as to facilitate assembling the Tribunal. It is difficult to estimate quantity of records, but for example, the Tauranga Court has had no cases for two years and expects to hear five cases this year. Assuming this is indicative of the other 17 Tribunals a reasonable estimate might be up to 100 cases in a year. Selected Tribunal decisions are published on the NZ Legal Information Institute website. These selected decisions are likely to be from the most 'significant' cases. Although the published decision could be seen as a summary record of the case and thus obviate the need for case files to be retained as public archives, it could also be argued that having the decision available may increase interest in viewing the entire record of the case. Rather than imposing an administrative burden on the courts by requiring the selection of 'significant' or landmark' cases, and given the low number of cases, it is recommended that all Land Valuation Tribunal case records and registers are retained as public archives.

8.7.2 Records recommended for retention as public archives

Record type	Disposal criteria
Land Valuation Tribunal (Committee) case files	A10
Land Valuation Tribunal registers	A14

8.7.3 Records identified as not having archival value

None

¹⁵ Appraisal report for DA53, p. 14, Archives NZ AT91/95

¹⁶ <http://www.nzlii.org/nz/cases/NZLVT/2009/2.html>

8.8 Family Court Records

The Family Court deals with cases that prior to its establishment in 1980 were dealt with either by the High Court or the District Court, for example adoption in the District Court and divorce in the High Court.

Hard-copy registers of cases and indexes to these registers are no longer created, having been superseded by first the Family Court database and later CMS. However, they are discussed and listed in this section because in the schedule itself they have been included in the list of Family Court records, for ease of use of the schedule by courts staff.

In the Family Court several applications concerning the same family or individual may be entered; for example there may be a Domestic Violence application as well as a custody (Care of Children) application. Each application will be given a separate number in CMS, but the case files may be combined or kept together, because the judge needs to see all the information that relates to a particular family. All CMS numbers will be recorded on the files, but the files may be physically managed according to one CMS number. Some regions use the earliest number; others use the latest number. Depending on the quantity of information, the information may be separated by case number, or by types of information as directed by the Family court filing guidelines (see Appendix 1, section 10.3).

When the Family Courts were first established, files were given a FP (Family Proceedings) prefix followed by a consecutive number. When the Family Court database came into use in the 1990s, some files were separated out, such as adoption, CYPF, mental health, and others continued to be given an FP number. From the introduction of the CMS numbers in 2003, the files are given a FAM prefix followed by codes representing the court, the case number and the year. Alphabetical suffixes representing the type of case are often, but not always, added to the file as a visual cue for Courts staff (e.g. A for adoption, MH for mental health).

File identification is made more complex by changes to legislation. For example:

- alphabetical suffixes relate to the Act under which the application was made, and some acts have been superseded, for example the Guardianship Act 1968 (GU) has been superseded by the Care of Children Act (CoCA)
- prior to the Domestic Violence Act 1995, domestic violence was treated as part of family proceedings.

The Family Court File Management Guidelines also note that some cases can be combined:

- Family Protection Act and Law Reform (Testamentary Promises) Act (FPTP) files can be combined with Property (Relationships) files if there are no discrete pleadings
- A separate file is made up for a marriage or civil union dissolution application if there is only the application for dissolution; otherwise the dissolution papers should be included in an existing family file (e.g. Property (Relationships), Care of Children)
- Domestic Violence/Care of Children/Paternity files may be initially combined. If a defence is filed the records must be separated into discrete files but kept together.

Some Family Court cases files grow quite large. CYFS cases require reports from the Ministry of Social Development that can be large and may return to the Courts several times. Property Relationships cases may generate a significant quantity of evidence relating to property.

In addition to case records, sometimes other records are created, such as records of counselling requests.

The case types as identified in the schedule are intended to be applied to FP-prefix files as well as to files now given a FAM prefix.

8.8.1 Evaluation of archival value of records

The appraisal report for DA53 states that all records documenting the activities of the Family Court were recommended for retention as public archives 'not only because of their legal value but because of the very high research use made of these records, particularly by social historians and genealogists'¹⁷.

Relevant precedent in other jurisdictions:

- Public Records Office Victoria PROS 08/03 County Court recommends the retention as archives of adoption case files and registers
- State Records Authority of New South Wales DA43 Supreme Court of New South Wales recommends the retention as archives of adoption proceedings, and legacy divorce records
- Public Records Office Victoria PROS 09/04 Children's Court recommends the retention as archives of orders made in the Family Division, but not the retention of case files
- National Archives of Australia 2008/00614707 Family Court of Australia recommends the retention as archives of selected documents from family law cases, but not all case material (documents for retention include orders of the court, initiating applications, certificate of divorce, decree nisi of dissolution of marriage, judgements, summaries of arguments)
- Queensland State Archives QDAN 296 Magistrates Court recommends the retention as archives of registers and datasets relating to family law cases and children's court cases involving child protection, but not the retention of case files

The appraisal report for DA53 has considered the archival value of all Family Court case files to be the same, regardless of the nature of the proceeding. This appraisal considers that the archival evidential and informational values of some types of Family Court cases are higher than others and that some case types are not of sufficient archival value to be retained as public archives.

The archival evidential value identified in the DA53 report as 'legal' can be assumed to refer to the Rights and Entitlements Objective of the Archives New Zealand Appraisal Policy – 'to identify and preserve records providing evidence of the legal status and fundamental rights and entitlements of individuals and groups'.

The Family Court records that most clearly meet this objective are adoption cases and marriage or civil union dissolution records, which identify legal status and also have a high informational value for the individuals concerned and their descendants. They are recommended for retention as public archives. However, the records the Court maintains concerning requests to access adoption records are routine operational records and are not recommended for retention as public archives.

While it could be assumed that Paternity cases meet this objective, the Birth Register maintained by the Registrar of Births, Deaths and Marriages is updated when a paternity order is made, so that the most salient information is available through these records, which are retained as public archives. Therefore Paternity case files are not recommended for retention as public archives.

The Mental Health and Intellectual Disability (IDCCR) case files also meet this objective as they concern cases where compulsory treatment orders or compulsory care and rehabilitation orders have been made for individuals. These records also provide information about the State's direct intervention in the lives of individuals and the Family Court's role in determining the extent or duration of that intervention. The records also complement records already held at Archives New Zealand (Lunacy and Mental Defectives files) and will provide information for research into changing regimes for the management of mentally ill

¹⁷ Appraisal report for DA53, p. 13, Archives NZ AT91/95

or intellectually disabled persons over time in New Zealand. They are recommended for retention as public archives.

There is a relationship between the Mental Health and Intellectual Disability case files and the Protection of Personal and Property Rights (PPPR) case files, since the latter concern arrangements for the management of affairs of adults who, because of incapacity, are no longer able to make or communicate decisions or manage their own affairs. However, the coverage of the PPPR files is wider than simply adults who have compulsory treatment or care orders and includes anyone who is incapable of managing their own affairs. These files concern the granting of enduring powers of attorney and personal protection orders and also meet the Rights and Entitlements objective of the Archives New Zealand Appraisal Policy. Legacy Power of Attorney case files created and maintained in the High Court were recommended for retention as public archives in DA53.

Alcohol and Drug files concern applications for the compulsory treatment of alcoholics or drug addicts at certified institutions. These files tend to be thin and there are approximately 65 applications in a year. As with the Mental Health and Intellectual Disability case files, these records also provide information about the State's direct intervention in the lives of individuals and the Family Court's role in determining the extent or duration of that intervention. They are recommended for retention as public archives.

Care of children (CoCA) files concern applications under the Care of Children Act 2004, which replaced the Guardianship Act, and concern arrangements for the care of children and resolving disputes about the parenting of children. The Family Court has a role in providing counselling or arranging mediation regarding disagreements over parenting arrangements, and this information is included in the case files. These records are of high informational value to genealogical researchers, and Family Court staff report that there are requests for access to these records by the children concerned in later life. These records are also of value to social historians in researching changing attitudes over time to child custody, including the role of the child in the proceedings. These records are recommended for retention as public archives.

Applications for orders to prevent the removal of children from New Zealand under the Hague Convention on Civil Aspects of Child Abduction are often included in the CoCA files although they are distinguished as a 'Hague' application by the Court registry. Applications for orders to prevent the removal of children normally follow or are concurrent with applications for parenting orders under the Care of Children Act. The disposal class in the schedule therefore notes that Hague applications are included under CoCA files so as to ensure that any physically separate 'Hague' files are considered as part of CoCa files when disposal is implemented. It should be noted that DA472 approved the destruction after 16 years of the Hague application case files held by the National Office of the Ministry. Those case files concern applications for the return of children already taken overseas and the Ministry's communications (as the New Zealand Central Authority for the Convention) with overseas authorities, as well as communications from and with overseas authorities regarding the return of any children abducted to New Zealand. Any court orders made in New Zealand regarding those cases will originate from the Family Court, although there will be copies on the National Office files.

Domestic Violence (DV) case files concern applications for protection orders and any hearings concerning the order. Discussions with Ministry staff following a submission from PHANZA that DV cases should be retained as public archives has established that DV case files are often associated or even merged with Care of Children Act files. PHANZA submitted that the DV files are 'likely to be useful for historical research into domestic violence, and societal responses to such violence' and that 'taken together they may build up a valuable picture of the nature and extent of domestic violence'. Consideration of the PHANZA submission, the relationship of the DV files to the CoCA files and the fact that the DV files themselves are generally not large in volume has led to the recommendation that DV files are retained as public archives.

Children, Young Persons and their Family (CYPF) files concern child protection. If Child, Youth and Family believe a child is in need of protection (e.g. they are being abused or neglected), they may apply to the Family Court for orders to protect the child. A social worker or the Police usually file the application and the Court will appoint a lawyer for the child. A wide range of orders can be made under the Children Young Persons and their Families Act 1989 to protect children and provide support to their families or caregivers.

While these records do meet the Rights and Entitlements objective of the Archives New Zealand Appraisal Policy and also provide evidence of State intervention in the lives of individuals, these records are arguably not the 'best' or most complete record of the State's role in protection of children. The Family Court CYPF case files only contain the information that was placed before the Court. The Care and Protection records created and maintained by the Ministry of Social Development will contain considerably more information covering a longer period of time. The disposal authority for the former Department of Child Youth and Family Services (DA60) is still current, and it recommends the retention as public archives of the care and protection records. Therefore the Family Court CYPF case files are not recommended for retention as public archives.

Child Support case files concern applications for departure from formula assessments and appeals against assessments and determinations made by the Department of Inland Revenue regarding the payment of child support. The more complete record concerning child support assessments and determinations is the record kept by the Department of Inland Revenue. The disposal authority for the Department of Inland Revenue (DA418) recommends the destruction of these records after 25 years because they are of a routine operational nature. The case files in the Family Court are also not recommended for retention as public archives because they are of low long-term informational value and the more complete record is maintained by another agency.

Estates - Family Protection Act and Law Reform (Testamentary Promises) Act (FPTP) - case files concern claims by family members under a will or claims against an estate where a person believes a promise was made for them to be a beneficiary under a will. Originally, cases under these acts were heard in the High Court. Presently the High Court and Family Court have concurrent jurisdiction in cases under these Acts, in that a Family Court judge or a High Court judge may refer proceedings from the Family Court to the High Court. Therefore any 'significant' or more complex cases are likely to be heard in the High Court and records of those cases will be retained as public archives. That being the case, the Family Court case files are not recommended for retention as public archives as the records are of low long-term informational value. It should be noted that CMS codes these files as 'Estates', although some Family Courts still refer to them as FPTP files. Therefore the schedule class description includes both terms.

Property (Relationships) Act case files concern applications under the Property (Relationships) Act 1977 concerning the division of relationship property. The Act provides that a Family Court judge can order the proceedings to be transferred to the High Court if the issues are complex. As with the FPTP case files, this means that the records any complex or 'significant' cases transferred to the High Court will be retained as public archives. The Family Court case files are frequently large in quantity, with the bulk of the files taken up with evidence regarding the property in question. Given the quantity and the nature of the documents that comprise the bulk of the records and the relatively low long-term informational value, these records are not recommended for retention as public archives.

Records of counseling requests are routine operational records and are not recommended for retention as public archives.

It should also be noted that, as with District Courts records, a ‘sampling’ of what happens in the Family Court is provided in the cases that go to the High Court on appeal or that are transferred to the High Court.

Hard-copy registers of cases that have been superseded by CMS are recommended for retention as public archives because they provide a summary record of what cases were heard. They are also a means of accessing the individual case records that may be retained as public archives. The case records are identified by case number and it is necessary to use the register to identify the relevant file for a particular individual or organisation. Indexes were sometimes created to assist in accessing the registers, and are also recommended for retention as public archives.

8.8.2 Records to be retained permanently in the Court

The definition of the permanent record of the Family Court as a court of record is still under discussion in the Ministry. However, a preliminary definition is :

- Every application
- Every direction or order made as a result of the application
- Any other document or record directed to be made by the chief executive pursuant to a statutory power
- Any other document or record prescribed by legislation
- Any other document or record determined by the Principal Family Court Judge.

That information (once determined) on those case files that have not been recommended for retention as public archives must be retained in the Court even if the rest of the case file is destroyed.

This means that the schedule has two classes for each type of Family Court record that has been assessed as not having archival value. One class is for the case file *excluding the permanent record of the court*, and the other class is for *the [case type] permanent record of the Court*. The archival value assessment is the same, but the Courts disposal action for the latter class is ‘retain permanently in the Court’.

The implementation guide will include an instruction for the formal record of the court to be removed from the case files prior to destruction. Because case files are created in a particular form, with specific partitions in the files and instructions on what is kept in each section of the file, the separation of the formal record for permanent retention in the court will be relatively straightforward and should not result in either destruction of the part of the file that should be kept or retention of extraneous information.

8.8.3 Retention period for Family court records

As these records may involve children, and later applications may be made concerning the same family or child, the retention period by the Family Court of records recommended for retention as public archives and for destruction is 25 years from the completion of the case.

However, adoption records are recommended for retention by the Family Court for 50 years from the completion of the case to facilitate the court’s role in providing access to these records under the Adoption Act 1955. This retention period is the same as recommended in DA53. The Ministry of Justice understands that a deferral of transfer under s. 22 (1) (b) of the Public Records Act will be required and this will be applied for following approval of the schedule.

8.8.4 Records recommended for retention as public archives

Record type	Disposal criteria
Adoption case files	A8, A10
Adoption registers	A14

Alcohol and drug case files	A8, A9, A10
Case registers and indexes	A14
Care of Children case files (includes Hague applications)	A9, A10
Intellectual disability (IDCCR) case files	A8, A9, A10
Domestic violence (DV)	A10
Dissolution (marriage or civil union)	A8, A10
Mental Health (MH)	A8, A9, A10
Protection of Personal and Property Rights (PPPR) case files	A8, A9, A10

8.8.5 Records identified as not having archival value

Record type	Disposal criteria
Applications to view adoption records under s.23 Adoption Act	D6
Child support case files	D1
Children Young Person and their Families (CYPF) case files	D1
Estates - Family Protection Act and Law Reform (Testamentary Promises) Act (FPTP) - case files	D2
Paternity case files	D2
Property (Relationships) case files	D2
Records of counselling requests	D6

8.9 Youth Court Records

The Youth Court deals with criminal offending by children and young people aged between 12 and 16 years old. It hears all cases to do with young people, except murder or manslaughter, or when a young person chooses to have a jury trial. Preliminary hearings for murder or manslaughter are heard in the Youth Court.

Hard-copy registers of cases and indexes to these registers are no longer created, having been superseded by CMS. However, they are discussed and listed in this section because in the schedule itself they have been included in the list of Youth Court records, for ease of use of the schedule by courts staff.

8.9.1 Records to be retained permanently in the Court

The permanent record of the Youth Court as a court of record has not yet been determined. However, that information (once determined) on the case files that have not been recommended for retention as public archives must be retained in the Court even if the rest of the case file is destroyed.

This means that the schedule has two classes for Youth Court records that have been assessed as not having archival value. One class is for the case file *excluding the permanent record of the court*, and the other class is for *the permanent record of the Court*. The archival value assessment is the same, but the Courts disposal action for the latter class is 'retain permanently in the Court'.

The implementation guide will include an instruction for the formal record of the court to be removed from the case files prior to destruction. Because case files are created in a particular form, with specific partitions in the files and instructions on what is kept in each section of the file, the separation of the formal record for permanent retention in the court will be relatively straightforward and should not result in either destruction of the part of the file that should be kept or retention of extraneous information.

8.9.2 Evaluation of archival value of records

DA53 did not recommend the retention as public archives of Youth Court case files. Public Records Office Victoria PROS 09/04 Children’s Court recommends the retention as archives of registers and orders made in the Criminal Division, but not the retention of case files. Queensland State Archives QDAN 296 Magistrates Court recommends the retention as archives of registers and datasets relating to children’s court cases concerning offenses, but not the retention of case files.

Given that the most serious crimes committed by young persons will be heard in the High Court (murder, manslaughter) or the District Court (other indictable offences) and the case files will be retained as public archives, and given existing precedent, these case files are not recommended for retention as public archives. Hard-copy case registers and indexes are recommended for retention as public archives, as in DA53, because they provide a summary record of the cases.

8.9.3 Records recommended for retention as public archives

Record type	Disposal criteria
Youth Court (Children and Young Persons Court) registers	A14

8.9.4 Records identified as not having archival value

Record type	Disposal criteria
Youth Court case files	D3

8.10 Legacy Records from all Courts

This section discusses the legacy records of all Courts, taken from the records listed in the schedule for DA53. They are legacy records because the activity the records document has either ceased or been transferred to another agency. Some of these records appeared in the schedule for DA53 as legacy records; others as current records.

Individual hard-copy case-type registers that have been replaced in the 21st century by an electronic case management system are not listed in this section although they are technically legacy records, because it was considered that it would be easier for Courts staff to implement the schedule if these recently legacy records were listed in conjunction with the still current case files they control. See sections 9.4 -9.9. discussing High Court District Courts, Family Court and Youth Court records for discussion of these registers.

It should be noted that it is possible that some legacy records classes are no longer held in the Courts, all extant records having been transferred to Archives New Zealand. For example, any legal aid records still remaining in the courts would date from the 1970s. The legacy classes have been included in the schedule as a precautionary measure so as to enable disposal if some records do exist.

In this section, descriptions of each type of record are included in the table listing records recommended for retention as public archives (section 8.10.2) or records not identified as having archival value (section 8.10.3). Some of the description of the record types has been taken from Archives New Zealand series descriptions.

The list is alphabetical and registers and case files are listed together.

8.10.1 Evaluation of archival value of records

In general the precedent decisions of the schedule for DA53 have been followed, as the nature of the records has not changed. Unfortunately there is very little discussion in the appraisal report for DA53 regarding the justification for the recommendations. Sections below discuss the evaluation of particular types of records.

As many of the records are legacy records they provide information regarding historical functions of the High and District Courts, and information of value for research into previous arrangements for disputes between people, employment arrangements and remuneration, or licensing of occupations or activities.

Records dating from before 1921

All 19th century records and records up to 1920 are recommended for retention as public archives, because of their age and the scarcity of records from that period. Originally, the end date of 1910 was suggested by Archives New Zealand, as it will ensure coverage of the records of the former District Courts that existed from 1858 until 1909. Representatives of the New Zealand Lost Cases project (<http://www.victoria.ac.nz/law/nzlostcases/>) have indicated that retaining all records up until 1920 will assist social history researchers because it will cover a period of significant social change including the period of WW1. In particular records from this period will provide evidence of women's use of the courts during a period in which women were employed in formerly male-dominated occupations and in which women experienced a broadening of their roles in society.

It is anticipated that this recommendation will not result in large quantities of records for transfer to Archives New Zealand as it is likely that most records in this class will have been disposed under previous schedules and one-off appraisals. The recommendation has been expressed in the schedule as 'all records dating from before 1921' so as to ensure that records from 1920 are captured in this class.

Registers and indexes

The registers that record case files that are also legacy records (that is; the case records and the registers are no longer created) are listed in this section. Generally registers are recommended for retention as public archives because they provide a summary record of what cases were heard in the situation where the case records have not been recommended for retention as public archives. Registers also provide a means of accessing individual case records, if those records have been recommended for retention as public archives. The case records are identified by case number and it is necessary to use the register to identify the relevant file for a particular individual or organisation. Sometimes indexes are also created to assist in accessing the register, which are also recommended for retention as public archives.

Some registers however, were not registers of applications or claims, but registers that listed licensees or items; for example, massage parlour registers, chattels registers. In some cases these registers have also been recommended for retention as public archives, following the precedent from DA53. In the case of licensing records, the case files are generally not recommended for retention as public archives, so the registers are retained as a summary record of the activity.

Chattels registers

Chattels files and registers were both recommended for destruction in DA53, as the case files were considered not to be of long-term value and the registers were considered to not contain enough detail to warrant their retention.

While the evaluation of archival value is not changed in this schedule, it should be noted that in June 2004 Hon. Justice Robertson (then Acting Chief Justice) approved the destruction of the chattels files but instructed that the chattels registers were to be retained indefinitely under s. 9 of the Chattels Transfer Act 1924. This schedule recognises that instruction in the 'Courts disposal action' column.

Licensing records

Occupational licensing was carried out in the High and District Courts prior to either the removal of the requirement for licensing (e.g. newspaper printers) or the establishment of specific licensing authorities (e.g. real estate agents). In determining the archival value of these records the precedent set by the schedule for the Tribunals Unit of the Ministry of Justice (DA415) was followed. In that disposal authority, records concerning applications for licensing and accompanying correspondence were not recommended for retention as public archives because they were routine operational case records, but the registers were recommended for retention as public archives.

Shops and offices records

Under the Shops and Offices Act 1955, shop occupiers could apply to the Magistrates Court for exemption from specified closing hours. The registers of these applications have been recommended for retention as a summary record. The applications files are similar to those of licensing applications and have not been recommended for retention as public archives.

Legal Aid case files and registers

The schedule for DA53 includes legal aid registers and case files in the records of the High Court, possibly because the Legal Aid Act 1969 designated that a Registrar of the Supreme Court should be secretary to the District Legal Aid Committees and records were held in the Courts. Both Legal Aid registers and case files contain largely administrative information of little archival value.

DA 53 recommended the destruction of both case files and registers. The disposal authority for the Legal Services Board and its successor the Legal Services Agency (OP 99/0073) recommended the destruction of the case files one year from the date of the final correspondence or when all requirements from the

Inland Revenue department have been met, whichever is the later date. This schedule has followed that precedent.

Domestic Proceedings case files

The Domestic Proceedings (DP) prefix was used in the District Courts before the establishment of the Family Courts to denote proceedings under the Domestic Proceedings Act 1939 and subsequent acts (1968), concerned with custody, guardianship, access to and paternity of children; domestic violence; matrimonial related cases and matrimonial property issues, mental health issues; and maintenance cases. The Act was repealed in 1980 by the Family Proceedings Act. Although this schedule recommends the identification of particular ‘family’ case types for retention as archives for files created from the time of the establishment of the Family Court in 1980, it has followed the precedent of DA53 in considering all DP files to be of archival value. These are legacy case files, no longer created and used in the same manner, and it would be difficult for courts staff to separate out the case types. In addition the files will concern some cases that in the later series are recommended for retention as public archives. It is likely that the majority of these files are already held by Archives NZ.

8.10.2 Records recommended for retention as public archives

Record type	Description	Disposal criteria
Agency case files	The meaning of the term “Agency” is unclear. It appears to have been used both as an early term for miscellaneous cases, and also for cases referred to the court by another Supreme (High) Court.	A16
Agency registers	Agency registers listed a wide range of different cases, including suits, appeals, land transfers, chattels, registration and various disputes. Later on most of these cases were classified as Miscellaneous.	A14
Apprenticeship records	Apprentices Act 1948 These registers and files contained matters relating to apprenticeship orders, granting of apprenticeships, dismissals, appointments to apprenticeship committees and appeals against the apprenticeship committee. Function transferred to the Employment Tribunal by Apprenticeship Amendment Act 1991	A16, A10
Auctioneers licensing registers and indexes	Auctioneers were licensed in the District Court under the Auctioneers Act 1928. Initially a register of Auctioneers (as opposed to a register of applications for licensing) had to be maintained. That requirement was abolished by the Auctioneers Amendment Act 1957.	A14
Awards records	It is unclear what these records are, as there is no discussion of record types in DA53. It is assumed that these records have to do with awards under various industrial conciliation and arbitration legislation, and may in fact be records of the former Arbitration Court, whose presiding judge was a Judge of the then Supreme Court (Industrial Conciliation and Arbitration Act 1925)	A16
Bail registers	The Bail Registers recorded all bail cases. Now superseded by CMS	A14

Record type	Description	Disposal criteria
Compensation Court case files	The Compensation Court was set up in 1940 to hear workers compensation claims. The Court's role in workers compensation was discontinued in 1976 after the establishment of ACC in 1974. The files recorded details of the claims against employers, names of parties, nature of the claim and the result.	A10, A16
Compensation Court registers	Registers of Compensation Court claims	A14
Crown suits case files	Cases under the Crown Proceedings Act 1950	A10, A16
Crown suits registers	Registers of Crown suits cases	A16
District Court Civil plaint book indexes	Plain books are registers of civil cases filed with a court, with the date on which they are due to be heard. Indexes were required to be maintained for the plaint books. The plaint indexes provided the names of the two parties (defendant and plaintiff) and a plaint number. The number refers to an entry in the numerically organised plaint books.	A14
District Court Civil plaint books	A plaint is the first document to be filed in a civil case. Plaint books are registers of civil cases filed with a court, with the date on which they were due to be heard. The volumes contain the following information <ul style="list-style-type: none"> • Date of entry of plaint • No. of plaint • Plaintiff, residence and Occupation • Defendant, Residence and occupation • Cause of Action • Amount sued for • Date of hearing • Initials of bailiff • Date of Receipt of Bailiff • Name of Foreign Court to which summons sent • Date on which sent • Date of return from Foreign court 	A14

Record type	Description	Disposal criteria
District Court miscellaneous applications registers and indexes	<p>These volumes recorded details of Miscellaneous Applications heard by the Magistrate's/District Court. Miscellaneous cases include all legal matters not already covered by the other court series. Information recorded in these volumes includes:</p> <ul style="list-style-type: none"> • Number of the application • Date of application • Applicant • Respondent • Nature of Application and act • Date of hearing • Decision • Magistrate or Registrar • Fee 	A14
Divorce case files	<p>Paper in these files generally included copies of decrees absolute and decrees nisi, copies of affidavits in support of the divorce and often copies of the marriage certificate.</p>	A8, A10
Divorce registers	<p>These registers controlled the divorce files. Contents included:</p> <ul style="list-style-type: none"> • Detailed names of the parties to the divorce • Register number • Dates of the different stages of the proceedings • Dates of grant of decree nisi and decree absolute 	A14
Domestic Proceedings case files	<p>Domestic Proceedings files covered custody, guardianship, access and paternity of children; domestic violence; matrimonial related cases & property issues; mental health issues; and maintenance cases.</p>	A8, A9, A10
Factories Act records	<p>These records contain information on factories registered in the area including the nature of the work carried out, name and address of occupier/firm or company, number of employees and date of registration.</p>	A10, A16
Foreign judgement summons registers	<p>These registers record applications for Judgement Summons from foreign courts i.e. courts outside the geographical area.</p>	A14
Foreign process receipt books	<p>These receipt books were a record of summons from other courts throughout new Zealand for civil debtors to appear before the court on matters relating to non-payment. The type of information listed in the books included:</p> <ul style="list-style-type: none"> • Number • Court received from • Date • Plaintiff • Defendant • Nature of document • Amount of fine • Date issue • Initials of bailiff • How dealt with • Date of return to foreign court 	A16

Record type	Description	Disposal criteria
High Court Miscellaneous registers and indexes	Registers of miscellaneous cases	A14
High Court miscellaneous case files	Miscellaneous case files covered case files not already covered by other court series (e.g. Civil Proceedings, Criminal, bankruptcy, etc.). Miscellaneous case files might contain material on companies winding up, aged and infirm persons, matrimonial property applications, changes of name by deed poll, criminal and civil appeals, domestic appeals, applications by solicitor or admission to the bar or anything else which did not fit into other categories of the court record.	A10, A16
Land agents/ real estate agents licensing registers	Information in these registers include: <ul style="list-style-type: none"> • Name • Trading Name • Address • Date of filing, hearing decision and remarks including licence number Subsequent renewals are included. Magistrates/District Courts licensed real estate agents until a licensing board was established 1973.	A16
Land Sales Court case files	The Land Sales Court heard objections to the taking of farm land for soldier settlement, fixed compensation for land so taken, and controlled prices for sale or lease or rural or urban land. Replaced in 1948 by Land Valuation Court, which was later replaced by Land Valuation Tribunals with more limited ambit (see section 9.6)	A10, A16
Land Sales Court registers	These registers were used by the High Court to record details of Land Sales / Land valuation proceedings. Details recorded in the volumes are as follows: <ul style="list-style-type: none"> • Register number • Parties • Type • Locality • Area • date received • price • value requested • value received • date of hearing • parties notified • committee's decision • file to Deputy Registrar • remarks. 	A14

Record type	Description	Disposal criteria
Licensing committee registers and indexes	Registers of liquor licensing applications	A14
Lunacy and mental defectives case files	These case files dealt with in relation to persons deemed to be suffering from mental illness. Most of the files dealt with the administration and/or disposal of personal effects and property. Included on the files were all the relevant documentation, including petitions, affidavits, Court Orders, notices and reports. Now called mental health case files and heard in the Family Court (see section 8.8)	A8, A9, A10
Lunacy and mental defectives registers	Registers of mental defectives and lunacy cases	A14
Maintenance order records	A maintenance order is a court order requiring a person to make regular maintenance payments towards the upkeep of a family member – most commonly children	A16
Massage parlour licensing registers and indexes	Information held in this register includes: <ul style="list-style-type: none"> • Name of parlour and manager • Address • Miscellaneous application number • Licence number • Date of grant or renewal of licence • Date of lapse of licence The Prostitution Reform Act passed in 2003 removed the requirement for massage parlour operators to be registered.	A10, A16
Judgement summons registers	This register was used to register and control Judgement Summons. A Judgement Summons is a summons requiring a civil debtor to appear before the Court, and is issued when the creditor has already obtained a judgement from the court requiring payment of the debt which remains outstanding. Information that can be found in these registers includes: <ul style="list-style-type: none"> • Date • No. of Plaintiff (which also included judgement summons number) • Plaintiff • Defendant • Amount of claim • Particulars of the Decision and name of Magistrate 	A14

Record type	Description	Disposal criteria
Moneylenders licensing register	<p>These registers record:</p> <ul style="list-style-type: none"> • license number • dates of registration • name of applicant • trade name and address <p>Requirement to license moneylenders repealed by the Credit Contracts Act 1981</p>	A14
Newspaper/printer registers	These volumes provided access to the Newspaper and Printing Presses case files kept by the Supreme Court.	A14
Newspaper/printer registration case files	These files were kept by the Supreme/High Court and recorded newspaper ownership details as required by the Printers and Newspapers Registration Act 1868 and its 1908 and 1955 successors.	A16
Orders in Chambers	Orders were determinations, rather than judgments, and were made to determine interlocutory applications or other proceedings not required to be heard in open Court.	A16
Originating summons registers	Registers of applications for a declaratory order from the court to determine the validity of a statute, regulation, deed, etc.	A14
Pawnbrokers licensing registers and indexes	<p>This register recorded details of pawnbrokers licenses issued and/or renewed by the Dunedin Magistrate's Court. Details recorded included:</p> <ul style="list-style-type: none"> • Reference number [civil or miscellaneous] • Name • Address or premises situated • Period from • Period to • License number 	A14
Petitions case files	<p>These case files dealt with petitions made to the Supreme/High Court for the exercise of its jurisdiction. The petitions dealt with a wide range of issues, including the winding up of deceased estates, land transfers, and matters relating to insolvency and trustees. The files include the original petition and all papers relevant to the resolving of the legal matter, including affidavits, memorandum, Court orders and judgments.</p> <p>After 1954, petitions were included as part of the miscellaneous case files.</p>	A6, A16
Petitions registers	These registers recorded particulars of petitions brought before the Supreme Court and provided access to the case files. Details included the case number, name of case, purpose of the petition and all further papers files.	A14
Power of attorney case files	<p>Powers of attorney are formal instruments giving a person power to act for another in respect of their care and property.</p> <p>Superseded by Family court PPR case files (see section 9.8)</p>	A8, A10, A16

Record type	Description	Disposal criteria
Power of attorney registers	These registers listed Powers of Attorney registered at the Supreme/High Court.	A14
Register of licensed dealers in coined gold (Board of Trade Act)	<p>In 1932 regulations were made under the provisions of the Board of Trade act 1919 for the licensing of dealers in gold coins, from 1932, dealers of gold coins had to obtain a licence from a Stipendiary Magistrate, and the Clerk of every Magistrate's court was required to keep a register of all licenses issued under the regulation. The register was required to record the following;</p> <ul style="list-style-type: none"> • Date of license (and number) • Name of the licensee • Premises at which the licensee is authorised to carry on business • Particulars of every endorsement, order or revocation or suspension, or any conditions <p>In 1949 the Board of Trade (Coined Gold Regulations 1932 (and 1933 amendments) were revoked.</p>	A14, A16
Second-hand dealers licensing registers and indexes	Registers of applications for second-hand dealers licenses. A separate Licensing Authority for Second-hand Dealers and Pawnbrokers was established under the Second-hand Dealers and Pawnbrokers Act 2004.	A14
Shops and offices registers	Registers of applications for alterations to shop training hours. The Shop Trading Hours Act 1977 established the Shop Trading Hours Commission	A14
Special partnerships case files	<p>A Special Partnership was one according to some of its partners limited liability status. Their liability or obligations limited to the amount recorded in a certificate at the commencement of the partnership, while the liability of the general partner remains unlimited.</p> <p>Special Partnerships were formed for 7 years, after which time it was necessary to reapply for registration. They were registered at the nearest High Court and there was no central registry.</p>	A15
Special partnerships registers	This series records Special Partnerships registered with the High Court, as required in Part 2 of the Partnership act 1908. Each entry gave the name of the special partnership, the date of registration, and a unique annual running number, which was also given to the related file on which a copy of the registration certificate was kept.	A14
Stabilisation regulations records	It is unclear what these records are, as there is no discussion of record types in DA53. It is assumed that these record concern the Stabilisation of Remuneration Act 1971, and may be records of the former Arbitration Court	A16

Record type	Description	Disposal criteria
Summary instalment order registers	Information includes: <ul style="list-style-type: none"> • Case number • Date • Applicant's name • Nature of Application • Date of hearing • Decision • Magistrate/registrars name • Fee 	A16
Wardens Court records	All records generated by Warden's Courts including: <ul style="list-style-type: none"> • Mining application hearings • Mining rights • Plaintiff books • Cashbooks • Correspondence • Leases • Disputes • Other records generated by Warden Courts. 	A14, A16
Warrant books	Warrant books are a record of warrants issued under civil processes to the Bailiff of the court, or a foreign court for execution.	A16
Writs of sale case files	Writs of Sale files contained information concerning court action to recover moneys owned by defaulting debtors. They also referred to associated Actions or Civil Proceedings files.	A16
Writs of sale registers	The registers in this series were used to record the recovery of money from the defaulting debtors after judgement by the court; they generally noted the details of the plaintiff and the defendant, the types of papers included in each file and the date they were filed. Warrants to sell goods of debtors were also sometimes included. A cross reference to the related Civil Proceedings file heard by the Court was noted in later entries and the volumes were self-indexed.	A14

8.10.3 Records identified as not having archival value

Record type	Description	Disposal criteria
Auctioneers case files	Applications for auctioneers' licences	D5
Bail case files	These files may contain affidavits in support of bail, police reports, conditions and orders for bail, bail bonds and related documents. Bail information is now included on the criminal case file	D6
Chattels case files	Chattels files record the use of chattels as security against a loan agreement, hire purchase agreement etc.	D2
Chattels registers	The registers contained the following information: <ul style="list-style-type: none"> • Number • By whom given, or against whom processed/issued (name, residence, occupation) • Nature and date of instrument • Consideration • Date of registration • Date of renewal • Satisfaction entered. 	D2
District Court miscellaneous case files	Miscellaneous case files covered case files not already covered by other court series (e.g. Civil Proceedings, Criminal, bankruptcy, etc.). Miscellaneous case files might contain material on companies winding up, aged and infirm persons, matrimonial property applications, changes of name by deed poll, criminal and civil appeals, domestic appeals, applications by solicitor or admission to the bar or anything else which did not fit into other categories of the court record.	D2
Land agents/ real estate agents licensing case files	Magistrates/District Courts licensed real estate agents until a licensing board was established 1973.	D5
Legal aid case files	Applications for legal aid	D6
Legal aid registers	Registers of applications for legal aid	D6

Record type	Description	Disposal criteria
Licensing committee case files	<p>These files are related to new licenses or the renewal of existing licenses sent to the Licensing Committee within each district.</p> <p>These files contain the summary of applications heard for licences, correspondence to the committee and the police reports on licensed premises within each district. The later files only consist of the Police Reports Upon Licensed Houses which were sent to the Licensing Committee. These reports contained the following information:</p> <ul style="list-style-type: none"> • Licence No. • Name of Licence • House - Sign and Situation • Accommodation on premises • Number of other licensed premises in area • Condition of premises • Manner in which house has been conducted • Character of persons frequenting it • Objections (if any) • Decision <p>In 1989 The Sale of Liquor Act passed liquor licensing from the Courts to local authorities and established a Liquor Licensing Authority.</p>	D5
Maintenance order payment records	<p>These volumes contain an internal index which is arranged alphabetically by surname of the person paying maintenance. Details recorded for each entry are:</p> <ul style="list-style-type: none"> • Number in criminal record book • Title of case • Date of order • By whom made • Particulars of order • Date of payment into Court • Amount paid • Date up to which paid • Date of payment out of court • Name of person paid • Remarks 	D6
Massage parlour licensing case files	Records of licensing applications	D5
Moneylenders licensing case files	Applications for licenses under the Moneylenders Act 1908. Repealed by the Credit Contracts Act 1981	D5
District Courts Originating summons case files	Applications for a declaratory order from the court to determine the validity of a statute, regulation, deed, etc.	D2

Record type	Description	Disposal criteria
Pawnbrokers licensing case files	Applications for pawnbrokers licenses. The Second-hand Dealers and Pawnbrokers Act 2004 established a separate licensing authority.	D5
Second-hand dealers licensing case files	The licence records the license number, date of license and renewals, name of license and place or area of business. The Second-hand Dealers and Pawnbrokers Act 2004 established a separate licensing authority.	D5
Shops and offices case files	Applications for alterations to shop trading hours The Shop Trading Hours Act 1977 established the Shop Trading Hours Commission	D5
Summary instalment order case files	A summary instalment order is a formal arrangement between a debtor and their creditors allowing the debtor to pay back all, or an agreed part, of their debts by instalments. The orders are usually for three years, but where there are special circumstances, five years.	D2

9 Restrictions on access to records

[Removed]

Refer to any sentencing guidelines accompanying this report for specific recommendations:

- Records must be kept for the minimum period specified.
- Records may be destroyed at any point once the minimum retention periods have passed. Records do not have to be destroyed; the agency may keep them for longer if required.

This authority is valid for a period of 10 years from date of signing, unless previously agreed with the Chief Archivist.

10 Appendix 1 Court filing guidelines list of file contents

10.1 Criminal jury files

File division	Document types
Charges	<ul style="list-style-type: none"> ▪ indictment ▪ informations
Interlocutory	<ul style="list-style-type: none"> ▪ callover sheets ▪ interlocutory applications ▪ pre- and mid-trial rulings
Depositions	<ul style="list-style-type: none"> ▪ witness list, including those not called ▪ SP41 Deposition of Witness at Preliminary hearing ▪ depositions (indexed)
Exhibits	<ul style="list-style-type: none"> ▪ exhibits list ▪ copies of accused's statements and video transcripts ▪ photographic exhibits
Evidence	<ul style="list-style-type: none"> ▪ jury list ▪ notes of evidence (indexed) ▪ jury questions
Sentencing	<ul style="list-style-type: none"> ▪ file note indicating where the recording of the judge's summing-up is stored ▪ sentencing papers (e.g. pre-sentence reports) ▪ other related papers
Administrative	<ul style="list-style-type: none"> ▪ terms of bail ▪ summary of facts ▪ suppression and other orders ▪ SP 42 Committal to High Court/District Court ▪ SP 43 Copy Warrant of Commitment of Defendant committed for Trial/Sentence ▪ S168AA Middle band Determination forms ▪ other general papers, e.g. correspondence

10.2 Civil files

File division	Document types
Decisions:	<ul style="list-style-type: none"> ▪ decisions ▪ judges' memoranda ▪ judgments ▪ minutes ▪ rulings ▪ sealed orders
Pleadings:	<ul style="list-style-type: none"> ▪ statement of defence ▪ notice of proceedings ▪ statement of claim ▪ third and subsequent parties claims and defences ▪ cross-claims
Other matters	all other documents apart from correspondence and administrative documents
Administration	<ul style="list-style-type: none"> ▪ administrative documents

10.3 Family Court files

Note that not all document types listed will be on all case types

File division	Document types
Hearing	<ul style="list-style-type: none"> ▪ case law ▪ exhibits ▪ Judge's notes of evidence ▪ submissions ▪ transcript of evidence ▪ tape logs and hearing sheets
Decisions:	<ul style="list-style-type: none"> ▪ without notices applications/decisions ▪ decisions (Judges' decisions handwritten on applications are photocopied and placed in the decisions section of the file) ▪ certified true copy of the criminal record sheet ▪ intellectual disability examinations ▪ judges' handwritten notes - pre-trial hearings ▪ judgments ▪ Judge's minutes ▪ mediation conference records ▪ mental health examinations ▪ pre-trial directions/orders ▪ Registrar's list record ▪ sealed orders ▪ warrants
Pleadings:	<ul style="list-style-type: none"> ▪ applications and affidavits ▪ application for taking of evidence or examination of means ▪ CYPF plans (with consents attached) ▪ consent memoranda ▪ information sheet ▪ interlocutory applications ▪ Notices of: <ul style="list-style-type: none"> ○ defence ○ intention to appear ○ objection to programme ▪ notice of appeal ▪ notice to respondent ▪ statements of issues ▪ undertakings (e.g. in Domestic Violence (DV) Act proceedings)
Reports	<ul style="list-style-type: none"> ▪ counselling reports ▪ CYPF reports and diagnostic interviews ▪ independent accountant's report (Property Relationships) ▪ lawyer to assist the Court reports ▪ lawyer for the child reports ▪ lawyer for subject person reports (PPPR, IDCCR) ▪ medical reports (PPPR) unless exhibited to affidavit ▪ second opinions (IDCCR, Mental Health) ▪ specialist reports, e.g. cultural, psychological ▪ valuations of property (Property Relationships)

File division	Document types
Administrative	<ul style="list-style-type: none"> ▪ briefs and referrals to specialist report writers ▪ briefs and referrals to CYPF ▪ correspondence ▪ counselling and programme referrals ▪ DV information for police ▪ DV summons ▪ DV prosecutions ▪ fixture notices ▪ invoices ▪ lawyer acceptance of appointment ▪ lawyer for the child/lawyer to assist letter of appointment and brief ▪ lawyer for the subject person (PPPR, IDCCR) ▪ legal aid ▪ notice of absence (from programme) ▪ notices of : <ul style="list-style-type: none"> ○ changes of solicitor ○ change of address for service ▪ notice of conclusion ▪ notice of service ▪ witness summons
Miscellaneous	dissolution applications (if a separate file is not used)

10.4 Youth Court files

File division	Document types
Informations	<ul style="list-style-type: none"> ▪ informations
Summary of facts/evidence	<ul style="list-style-type: none"> ▪ summary of facts ▪ notes of evidence ▪ victim impact statements
FGC decisions	<ul style="list-style-type: none"> ▪ FGC (family group conference) decisions
Social Work Reports	<ul style="list-style-type: none"> ▪ social work reports and plans ▪ monitoring and progress reports
Reports	<ul style="list-style-type: none"> ▪ psychological/psychiatric/medical reports ▪ lay advocate reports ▪ education reports ▪ cultural reports ▪ effectiveness reports
Orders/rulings	<ul style="list-style-type: none"> ▪ Judge's rulings/minutes ▪ final orders ▪ other related papers
Applications	<ul style="list-style-type: none"> ▪ applications for review/cancellation of order ▪ bail applications
Bail/remands	<ul style="list-style-type: none"> ▪ bail bonds ▪ custody orders
Family Court information	<ul style="list-style-type: none"> ▪ any FC information requested from the FC including care and protection

File division	Document types
Administration/ Professional services	<ul style="list-style-type: none">▪ assignment letters▪ estimates of third party costs▪ third party invoices▪ requests for extensions▪ general correspondence