

# LEGISLATION

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## Introduction

Murdoch University was established under Statute and is therefore accountable to Parliament and the relevant laws that apply to public organisations in Western Australia. The principal piece of legislation governing records management in Western Australia is the *State Records Act 2000*.

A summary of the main provisions of the State Records Act and other legislation relevant to records management is provided below. It should be noted that the highest holders of office created under some of these Acts are members of the State Records Commission which was established in July 2001 under the terms of Part 8 of the *State Records Act 2000*. They include the Auditor General, Information Commissioner and the State Ombudsman.

The University must create, manage and dispose of its records in accord with the following legislation:

## State Records Act 2000

The *State Records Act 2000 (WA)* is the principal statute governing the way the University administers its records. All “State organisations” are covered by the Act including public sector agencies, universities, TAFE institutes, parliamentary departments, local government, and Royal Commissions.

The primary intention of the Act is to strengthen organisational accountability and transparency in the recordkeeping practices of State and Local Government agencies through the implementation of effective record keeping practices.

The operation of, and compliance with, the Act is monitored by the State Records Office and the State Records Commission, the latter having authority to enquire into any breaches or possible breaches of the Act.

The key provisions of the Act are:

- Every organisation that is subject to the Act must have a **“recordkeeping plan”** approved by the State Records Commission. A recordkeeping plan consists of a series of documents relating to the University’s record keeping system/s, retention and disposal arrangements, policies, practices and processes;

- All employees of the University, and contractors and consultants providing services to or on behalf of the University, have a legal responsibility to create records that sufficiently record the performance of the University's functions;
- The destruction of the University's records must be in accordance with approved retention and disposal authorities;
- A **State Records Commission** has responsibility for producing standards and principles to govern key aspects of recordkeeping in government organisations;
- Organisations are responsible for preservation strategies that ensure records are protected and preserved for the duration of their retention requirements;
- Organisations must conduct a recordkeeping training program;
- **Offences** - There are heavy penalties for non-compliance with the Act. These include failing to create and keep proper and adequate records; unlawful transfer of a record; and destruction of records other than in accordance with an approved disposal authority.

## **Freedom of Information Act 1992**

The *Freedom of Information Act (1992)* provides for public access to documents held by the University, and to enable the public to ensure that personal information held by the University about them is accurate, complete, and up to date and not misleading;

- **Definition of a record** - The definition of a "record" in the FOI Act is very broad and includes documents, maps, plans, drawings, diagrams, photographs, any thing from which sounds, images or writing can be reproduced, and any article on which information has been stored or recorded either electronically, mechanically or magnetically. All university records, regardless of the media they are created in, are therefore subject to disclosure under this Act;
- **Exempted records** - There is a range of documentation that is exempted under the Act. All of these exemptions are strictly defined, and are severely limited by the need to prove that disclosure would be against the public interest except in the case of the exemption that concerns legal professional privilege;
- **Preservation** - Once a request for access under the FOI Act has been lodged all records relevant to that request, regardless of whether they are due for destruction, must be identified and preserved until action

on the request and on any subsequent internal and external reviews are completed;

- **Publicly available documents** - The access procedures covered by the FOI Act do not apply to documents that are already available for purchase by the public or free distribution to the public. These records include the annual report, University Handbook, student prospectus, academic transcripts, agendas and minutes of most committees, examination scripts, internal manuals and publications of the University;
- **Offences** - A staff member that conceals, destroys or disposes of a document or part of a document or knowingly does so in order to prevent the University from being able to give access to that document, whether or not an application for access has been made, commits an offence under the Act and is liable to a fine of \$6,000.

Failure to disclose all documents may be construed as a deliberate attempt to hide some documents from public scrutiny and hence constitute a breach of the University's obligations under the Act.

### **Evidence Act 1906 and Acts Amendment (Evidence) Act 2000**

- Records provide evidence of the University's business activities, transactions and decisions;
- The *Evidence Act 1906* provides for documents to be subpoenaed for litigation purposes;
- The law of evidence requires documents to be authentic, complete and accurate if they are to be admissible in a court of law;

A court of law may need to establish that a record is what it claims to be, it was created by the person who claims to have created it, the record was created at the time claimed, and the record has not been altered by an unauthorised officer. The quality and integrity of the University's record keeping processes is therefore important;

- The Act's definition of a document is very broad and essentially mirrors the scope of a "record" described in the *State Records Act 2000*. It includes, in addition to a document in writing, books, maps, plans, photographs, discs, and tapes;
- The Act provides for a court of law to direct any document received in evidence to be impounded and kept in the custody of the court until further order;
- The Act contains various provisions concerning the reproduction of documents as admissible evidence before a court of law;

- Any microfilming arranged by university Offices must be produced in accordance with the requirements of the Evidence Act 1906, in particular the admissibility of reproductions as evidence. The best evidence rule permits micrographic reproductions of documents to be accepted where the original has been destroyed;
- The Act has implications for the destruction of records and the requirements for creating acceptable reproductions;
- The *Acts Amendment (Evidence) Act 2000* expands upon the original Act to permit the admission of evidence created using electronic media.

### **Parliamentary Commissioner Act 1971**

The Parliamentary Commissioner for Administrative Investigations - or Ombudsman - investigates complaints from the public about Western Australian State Government agencies, statutory authorities, local governments and public universities.

There are certain conditions that must be satisfied before the Ombudsman will investigate a complaint made against the University. These are:

- It must relate to a matter of administration. That is, complaints about actions and decisions of the University to see if they are wrong, unjust, unlawful, discriminatory or unfair;
- It must affect the complainant personally. Hence nearly all complaints typically originate from the University's staff and students;
- The Ombudsman will not investigate a complaint until it has first been raised with the University by the complainant and has gone through the University's internal complaints processes.

To assist in the investigation of a complaint the legislation grants the Ombudsman authority to request from the University any documents or records that will be relevant to the investigation. When investigating any matter the Ombudsman has all the powers and rights specified in the *Royal Commissions Act 1968* as applying to a Royal Commission and its Chair.

The ability of the University to comply efficiently and effectively with the requirements of this Act is dependent upon the quality of the University's administrative practices, in particular its records management processes and practices.

## **Criminal Code Act 1913**

Western Australia's Criminal Code Act is a comprehensive codification of criminal law and the primary instrument for the source of criminal law in WA.

The main provisions in the Act relate to the falsification of records, destruction of evidence, and forgery of records. The penalties, that recognise the seriousness of the offences, include up to seven years imprisonment and substantial fines. The main provisions of the Act relating to records are:

- **Falsification of records by a public officer**  
Any public officer who, in the performance or discharge of the functions of his office or employment, corruptly
  - (i) makes any false entry in any record;
  - (ii) omits to make any entry in any record;
  - (iii) by act or omission falsifies, destroys, alters or damages any record; is guilty of a crime and is liable to imprisonment for 7 years.
- **Destroying evidence**  
Any officer of the University who, knowing that any record is or may be required in evidence in a judicial proceeding, wilfully destroys it or renders it illegible or undecipherable or incapable of identification, with intent thereby to prevent it from being used in evidence, is guilty of a crime, and is liable to imprisonment for 7 years.
- **Forgery and uttering**  
Any officer of the University who with intent to defraud forges a record; or utters a forged record, is guilty of a crime and is liable to imprisonment for 7 years.

## **Electronic Transactions Act 2003**

This Act gives legal recognition to transactions that take place wholly or partly by electronic communications. The intention of the Act is to provide a legal and regulatory framework that:

- Recognises the importance of electronic communications;
- Facilitates the use of electronic communication as a way of entering into transactions;
- Promotes business and community confidence in the use of electronic communication as a way of entering into transactions; and

- Enables business and the community to use electronic communication in their dealings with government.

Information is defined by the Act to include any information in the form of data, text, images or sound.

The Act contains various provisions concerning the recording of information in electronic form. These include:

- Electronic signatures (subject to certain conditions)
- Retention of documents on a data storage device
- Retention requirements
- Accessibility of documents stored electronically
- Maintenance of the integrity of the electronic information

### **Financial Management Act 2006**

The *Financial Management Act 2006* and associated *Treasurers Instructions* provide for the management, administration and reporting of the finances of State public agencies.

Although the Act contains limited specific references to records management functions there is, nevertheless, an implicit understanding that effective records management processes and procedures are essential to ensuring the proper management, access and maintenance of financial and accounting records.

### **Auditor General Act 2006**

- The key function of the Auditor General is to examine, investigate, inspect and review an agency's accounts and financial statements;
- The functions of the Auditor General also include responsibility for examining an agency's compliance with legislative provisions, public sector policies and its own internal policies;
- For purposes of an audit the Office of the Auditor General is entitled to full and free access at all reasonable times to the records of the University. These include all accounts, information, documents, books, writings, monetary forms, vouchers, systems and records that the Auditor General considers to be relevant to its audit of the University's activities.

## **Privacy Amendment (Private Sector) Act 2000**

The (Commonwealth) *Privacy Amendment (Private Sector) Act 2000* that came into force on 22 December 2001 introduced strict standards for the way in which private sector organisations should manage personal information.

Although the scope of the Act does not specifically include universities it nevertheless provides a benchmark for privacy considerations against which the University reviews its own practices. The provisions most relevant for the University concern the collection, storage and security of personal information and safeguards against loss, unauthorised access, use, misuse, modification or disclosure of personal information to third parties.

All Western Australian legislation may be viewed at the website of the WA State Law Publisher at: <http://www.slp.wa.gov.au/index.html>

Commonwealth legislation may be viewed at: [http://www.austlii.edu.au/au/legis/cth/num\\_act/](http://www.austlii.edu.au/au/legis/cth/num_act/)