



NSW Legislative Assembly Hansard Full Day Transcript

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STATE RECORDS AMENDMENT BILL

Bill introduced and read a first time.

Second Reading

Mr NEVILLE NEWELL (Tweed—Parliamentary Secretary) [10.01 a.m.], on behalf of Mr Bob Carr: I move:

That this bill be now read a second time.

The purpose of this bill is to introduce measures to streamline operations under the State Records Act 1998 and to update some of the Act's provisions. The proposed amendments are the result of a comprehensive review of the State Records Act conducted by the State Records Authority earlier this year, and outlined in the report tabled. The review found strong support for the objectives of the State Records Act. Stakeholders noted the importance of having sound, up-to-date public records legislation for the purpose of protecting the State's rich official archives, and ensuring efficient, accountable government in the digital age. There was general agreement that the Act's provisions have been effective in securing those objectives. In particular, submissions referred to improvements in records management across the New South Wales public sector since the commencement of the Act in 1998.

However, although the objectives of the Act remain valid and its terms appropriate, the review concluded that certain amendments were desirable in order to update the Act and improve its operation. The first of those amendments concerns public access to records over 30 years old. One of the great achievements of the State Records Act 1998 was to introduce a statutory open access period, providing for public access to State records that are over 30 years old, irrespective of whether the records are under the control of the State Records Authority or of a public office. The Act in its current form provides that such records are open to public access where the public office responsible for the record issues an open-to-public-access direction. The Act also makes provision for records containing sensitive information to be closed to public access by a closed-to-public-access direction from the public office responsible.

The bill seeks to strengthen the existing provisions by including an explicit presumption in favour of opening a record to public access. Public offices are required to have regard to this presumption when deciding what type of access direction to give. In addition, to further streamline the process, the bill provides that any record over 30 years old, but not yet the subject of an access direction, is to be made available within 14 days of the initial request for access, unless the public office responsible for the record makes a closed-to-public-access direction within this time. Existing safeguards to protect a record from disclosure where it contains information still sensitive after 30 years are to be retained. Access directions made by public offices are currently not subject to review. However in response to widespread support for the introduction of some form of review mechanism, the bill provides that the State Records Authority can request a review of an access direction by the Minister responsible for the public office that gave the direction. Consistent with this approach, the bill requires public offices to provide reasons, upon request, for closing State records over 30 years old.

Public offices may authorise earlier public access. The Act currently provides that a public office responsible for a record that is not in the open access period may authorise the State Records Authority to make the record available to public access. This provision presumes, however, that the record in question is in the custody of the State Records Authority. This is not always the case. The record in question may in fact be in the custody of the public office or a regional repository. The wording of the current Act

means that where a public office provides early access to a record in its own custody or in the custody of some other person, it is unclear whether the public office would be protected by the liability protections of the Act. The bill recognises that it is desirable for public offices to be protected from liability, as the State Records Authority is, where they provide public access under the Act to records less than 30 years old. Accordingly, the bill makes it explicit that where public offices provide appropriate early access to State records within their custody, they too are protected by the liability protections of the Act.

The Act creates certain summary offences relating to the unauthorised abandonment, disposal, transfer, removal from the State, damage, alteration or neglect of a State record. Proceedings for these offences must be commenced no later than six months from the date the offence was alleged to have occurred. By their very nature, however, these offences often do not come to light within six months. To enable the State Records Authority to meaningfully carry out its protective functions under the Act, the bill increases the limitation period from six months to two years. The legislation currently contains, by way of a schedule to the Act, guidelines on normal administrative practice. As the guidelines form part of the legislation, it is difficult for them to be readily updated as business practices change and new issues arise. The bill proposes a more flexible approach whereby the guidelines in schedule 1 are to be repealed and the guidelines prescribed instead by the regulations, making them easier to update as required.

The focus of the State Records Act is on official records. However, in administering the Act the State Records Authority has found difficulties in the relationship of the Act to collections of private records held by certain public offices. To prevent these records from being treated as State records, the Act exempts private records held by State collecting institutions. The Act lists these institutions and provides that any other public office can be prescribed by regulation as a State collecting institution. However, where a public office is prescribed as a State collecting institution by regulation, the Act also provides that State records held in the collection of State collecting institutions before the commencement of the Act are exempt from provisions of the Act relating to records management, control and access.

The bill amends the Act so that private records can be excluded from the operation of the Act without exempting State records that should remain covered. The purpose of the proposal is to correct an unintended result of the Act. The change will mean that in future where a public office is prescribed as a State collecting institution, private records held by public offices are excluded from the coverage of the Act, but State records held by the institution will be covered by the Act. The current arrangements for State collecting institutions already listed will be retained, so that collections held by these institutions before the commencement of the Act will not be subject to the records management, control and access provisions of the Act. The rationale for this is that the existing State collecting institutions, such as the State Library of New South Wales, are recognised as already having sufficient measures in place for managing collections held before the commencement of the Act.

The current Act enables the State Records Authority to provide services on a commercial basis. However, in the absence of clear authority, this power could be interpreted as limited to New South Wales. The State Records Authority offers services beyond New South Wales, such as licensing thesaurus products to the Commonwealth and various State governments, and to other organisations in Australia and overseas. To ensure that State Records can continue to provide such services and products in other States and overseas, any doubts about the authority's power to operate outside New South Wales should be removed. The bill will amend the Act to make explicit that State Records has clear powers to provide commercial services outside New South Wales.

The Act allows "State Records" to be used with the same legal effect as the corporate name of the State Records Authority of New South Wales. However, a number of other archival institutions have been renamed "State Records" or similar since the passage of the Act, so confusion may arise. The Authority uses "State Records NSW" when there is a possibility of such confusion. This bill amends the Act so that "State Records NSW" will have the same legal effect as its corporate name. The State Records Act represents a positive approach to public records management. It promotes the importance of sound records management from the moment records are created, and the importance of protecting archives. Its objectives remain valid. The amendments I have outlined today will serve only to strengthen this Act and further improve records management across the New South Wales public sector. I commend the bill to

the House.