

## State Records Amendment Bill 2004

### Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

#### Overview of Bill

The object of this Bill is to amend the *State Records Act 1998* as follows:

- (a) to provide that bodies that become State collecting institutions under the Act by being added by regulations will not be subject to the existing exclusion applicable to other State collecting institutions that disappplies various provisions of the Act to records that came into their collection before the commencement of the Act (but without affecting the blanket exclusion for private records held by State collecting institutions),
- (b) to remove any doubt that the State Records Authority (***the Authority***) has power to provide certain services (including commercial services) outside New South Wales,
- (c) to provide for guidelines as to what constitutes normal administrative practice in a public office (which are presently in Schedule 1 to the Act) to be prescribed by the regulations,
- (d) to explicitly state that there is a presumption in favour of public access to State records that are at least 30 years old and to require public offices to have regard to that presumption when considering whether State records are to be open or closed to public access,
- (e) to provide that State records that are at least 30 years old and not the subject of an access direction are to be made available for public access unless a closed to public access direction (***a CPA direction***) is given in relation to them within 14 days (rather than the current 1 month) after an application for an open to public access direction (***an OPA direction***) for the records is made,
- (f) to require public offices to provide reasons for giving CPA directions if such reasons are requested by the Authority or by a person whose application for an OPA direction has been refused,
- (g) to provide for Ministerial review of access directions, (h) to explicitly provide for public offices to authorise early public access to State records, so that the provision of access is covered by the provision of the Act that protects the State, access providers and certain other persons from certain liability when access is given to a record under the Act,
- (i) to provide that the name "State Records NSW" will have the same legal effect as the corporate name of the State Records Authority,
- (j) to extend from 6 months to 2 years the limitation period applicable to prosecutions for unauthorised abandonment, disposal, transfer, removal from the State, damage, alteration or neglect of State records.

#### Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** is a formal provision that gives effect to the amendments to the *State Records Act 1998* set out in Schedule 1.

## **Schedule 1 Amendments**

### **Application of Act to certain State collecting institutions**

The *State Records Act 1998* (***the Act***) contains special provisions for State collecting institutions. Private records in the collections of such institutions are not subject to the Act. Other records that came into their collections before the commencement of the Act are excluded from the operation of the provisions of the Act concerned with records management, control of State records not currently in use and public access to State records.

**Schedule 1 [2]** and **[3]** provide that the exclusion for records that came into their collection before the commencement of the Act does not apply to bodies that become State collecting institutions by being added by regulation to the definition of that term.

### **Power of Authority to provide certain services outside New South Wales**

Section 19 (1) of the Act gives the Authority the power to provide services in all areas of records management. The services can be provided on a commercial basis.

**Schedule 1 [4]** removes any doubt that those services can also be provided outside this State.

### **Guidelines for normal administrative practice**

Section 21 (2) of the Act provides that a person does not commit an offence of unauthorised abandonment, disposal, transfer, removal from the State, damage, alteration or neglect of a State record by doing anything in accordance with “normal administrative practice in a public office” within the meaning of section 22. Section 22 describes what is considered to be done in accordance with normal administrative practice and refers to Schedule 1 to the Act, which contains guidelines on some aspects of normal administrative practice. The guidelines do not limit what constitutes normal administrative practice.

**Schedule 1 [5]** provides for those guidelines to be prescribed by the regulations rather than be in Schedule 1 to the Act.

**Schedule 1 [21]** repeals the guidelines in Schedule 1 to the Act.

### **Public access to State records after 30 years**

A State record is in the open access period if the record is at least 30 years old (see section 50 of the Act). Public offices are currently required to give access directions for all of the records for which they are responsible that are over 30 years old (see section 51 (1)). An access direction must be either a direction that records are open to public access (***an OPA direction***) or a direction that records are closed to public access (***a CPA direction***). If a State record is in the open access period and is not the subject of an access direction any person can apply to the public office responsible for the record for an OPA direction for the record and thus for access to it (see section 54).

**Schedule 1 [6]** adds to a note as a consequence of the proposed amendments to Part 6 of the Act.

**Schedule 1 [7]** expressly provides that there is a presumption that State records in the open access period should be open to public access.

**Schedule 1 [8]** requires a public office to have regard to the presumption that State records in the open access period should be open to public access when deciding what type of access direction to give.

**Schedule 1 [9]** provides that State records that are at least 30 years old are to be made available for public access unless a CPA direction is given in relation to them within 14 days (rather than the current 1 month) after an application for an OPA direction for the records is made.

**Schedule 1 [12]** requires a public office that gives a CPA direction for a State record to give its reasons for giving the direction to the Authority on request or to any person who has had an application for an OPA direction refused and who requests those reasons.

**Schedule 1 [13]** provides for the Authority to request a review of an access direction by the Minister

responsible for the public office that gave it.

**Schedule 1 [10] and [11]** make consequential amendments.

#### **Public office may give earlier public access**

**Schedule 1 [14]** provides for the public office responsible for a State record that is not in the open access period to authorise early public access to the record and to notify the Authority that it has authorised that early public access. The proposed amendment does not limit the power of a public office to give access to a State record independently of the Act (see section 57 (6)). However, if access is given in accordance with the proposed amendment, the public office, its officers and certain other persons will be protected from liability to the extent provided by section 62 of the Act (subject to section 57 (4)).

**Schedule 1 [15]** requires a public office that authorises such access to first have regard to the principles established by section 52 of the Act.

#### **Use of name “State Records NSW”**

At present, section 63 (3) of the Act provides that the State Records Authority of New South Wales may also be called State Records and the use of that name has the same effect for all purposes as the use of its corporate name.

**Schedule 1 [16]** provides for the State Records Authority to also be called State Records NSW.

#### **Limitation period on prosecutions for unauthorised disposal etc of records**

Section 21 of the Act creates certain offences relating to the unauthorized abandonment, disposal, transfer, removal from the State, damage, alteration or neglect of a State record. As those offences are summary offences, there is a 6-month limitation period. That is, proceedings for an offence must be commenced no later than 6 months from the date the offence was alleged to have occurred (see section 179 of the *Criminal Procedure Act 1986*).

**Schedule 1 [20]** provides for a 2-year limitation period for offences under section 21 and retains the 6-month period for all other offences against the Act and for offences against the regulations.

#### **Other amendments**

**Schedule 1 [1], [17] and [22]** update references to a repealed Act.

**Schedule 1 [18]** clarifies the meaning of a term.

**Schedule 1 [19]** omits unnecessary words.

**Schedule 1 [23] and [24]** provide for the making of savings and transitional regulations consequent on the making of the proposed amendments.

**Schedule 1 [25]** inserts savings and transitional provisions consequent on the making of the proposed amendments.