



Tabled, by leave,
Minister Mitchell
.....
Sharon Ohnesorge, for
Clerk of the Parliament
10 / 8 / 22

MUSEUMS OF HISTORY NSW BILL 2022

STATEMENT OF PUBLIC INTEREST

Need: Why is the policy needed based on factual evidence and stakeholder input?

The State Records Act 1998 (SR Act) was reviewed in 2019 following the 20th anniversary of its commencement. As a result of this review a number of changes were identified to improve and modernise this legislation, with assessment of expert input and national/international jurisdictional benchmarking.

In 2019, the State Archives and Records Authority of NSW (SARA) and the Historic Houses Trust, trading as Sydney Living Museums (SLM), were partnered to improve policy, legislative and operational outcomes for both institutions. The review of the State Records Act and the potential that was demonstrated by this partnership was referred to the Parliamentary Standing Committee on Social Issues (The Committee) in 2020. Following an inquiry from the Committee and the publication of their recommendations, a detailed policy paper was produced outlining the need and benefits of the changes proposed.

Through the statutory review, Committee inquiry process and significant stakeholder engagement, a significant gap in the cultural institution space in NSW was identified, in addition to the need to modernise and improve the SR Act.

NSW currently has Cultural Institutions who have statutory provisions focusing on art, literature and library services, applied arts and sciences, our natural environment and a diverse range of entertainment arts; but none that focus on history. NSW is the only state in Australia not to have an institution dedicated to telling the stories of its history. The complementary Collections of SLM and SARA place them in a unique position to fill this identified gap.

The above review processes also identified the need to modernise the SR Act to bring it in line with comparable jurisdictions, improve recordkeeping outcomes and accountability in NSW, strengthen the independence of the regulatory and policy functions of SARA and improve access to the Archives.

The processes undertaken to develop the policy positions outlined in the Bill involved extensive consultation with stakeholders and implementation of their feedback. Stakeholder feedback, specifically through the Committee inquiry process, has significantly shaped the policy proposals including the shift to create a dedicated public office

Objectives: What is the policy's objective couched in terms of the public interest?

Each of the policy outcomes of the proposed Bill serve the public interest.

Changes to access provisions and transfer planning will increase public access to the records of our State and its citizens, which have a range of uses (from academic to social) and are a crucial evidentiary resource for a range of important issues (such as reparations to Aboriginal people and Royal Commission processes).

The transfer planning provisions will enable the new Cultural Institution, Museums of History New South Wales (MHNSW), to ensure that records identified as having enduring value are conserved and cared for into the future. Operationally, understanding the level of transfers allows better planning based on age, format and conditions of records, to ensure that content is not lost and requirements under the State Records Act are complied with, and

allow resources to be allocated to ensure adequate control over this growing asset with an audited financial value >\$1billion.

Amendments to the SR Act, such as the monitoring powers requiring public offices to report on recordkeeping practices, enhances the efficiency and effectiveness of this regulatory tool to improve the recordkeeping practices of public offices, while balancing the cost and burden of other regulatory options. Good recordkeeping practices of public offices are a matter of public interest as they promote good decision making by public agencies, create records to hold those agencies accountable, and form the written memory of the state.

The creation of a new Cultural Institution with a focus on history will allow the complementary collections and strengths of the current SARA and SLM to be combined and expanded to deliver a broader remit across all the regions of NSW. This new Institution will develop more platforms to engage the public with material from NSW history and activate the collections of both SARA and SLM to offer more than merely passive access. The formation of the new Institution will allow for better leveraging of opportunities for sponsorship, prospects for funding and a greater influence in decision making across the cultural sector conferring benefits of additional cultural opportunities for the people of NSW.

Options: What alternative policies and mechanisms were considered in advance of the bill?

The partnership of SARA and SLM through administrative order has been in place since 2019. This partnership has allowed many of the benefits resulting from combining these entities to be realised, however, the structure is inefficient and does not allow for a full realisation of the benefits of creating a new Cultural Institution. In addition, the current arrangements do not allow a response to stakeholder feedback that the policy and regulatory functions of the current SARA should be strengthened and made more independent. Legislative change is the only mechanism to enact this feedback and achieve the policy outcomes. Further, key improvements relating to access and planning for State Archives can only be implemented through amendments to the Act.

Alternative policy positions have been considered and reviewed throughout this process, dating back to its commencement in 2018. Since the initial policy paper produced in 2019, each change has been shaped and influenced by stakeholder feedback and refined to the policy positions outlined today. The Committee website features all the relevant information relating to the progression of these policies and how different options were considered and refined.

Not progressing with the proposed changes to the SR Act and the creation of the MHNSW Act would continue to leave NSW with a gap in the cultural landscape, would fail to realise the potential of the new institution to serve the people of NSW and forego the opportunities to modernise recordkeeping obligations and improve access to the State Archive Collection.

Analysis: What were the pros/cons and benefits/costs of each option considered?

The option to not progress this suite of policy positions would have the benefit of minimising change on public offices, save the budget \$3.06m in establishment costs and would continue the impressive work of the current SARA and SLM.

Not progressing these changes would, however, fail to deliver on the benefits that can be realised through the policy positions in the proposed Bill. These include the increased cultural benefit across all of NSW in creating a history focused cultural institution, improvements to access and transfer planning relating to our irreplaceable State Archives Collection and improvements in government recordkeeping to ensure records enabling sound decision making and accountability are created.

Further analysis of the options and benefit analysis can be found in the policy paper published by the Committee in February 2022.

Pathway: What are the timetable and steps for the policy's rollout and who will administer it?

The Bill provides for the commencement of the two agencies, Museums of History NSW and State Records Authority NSW, and the majority of the policy positions to be effective on 31 December 2022. The current SARA and SLM will manage these changes and work towards the establishment of these new entities by this date. The NSW Government has allocated funding to ensure a smooth transition and appropriate communications and planning to be undertaken.

Significant policy changes, including transfer planning and the reduction of the access period from 30 years to 20 years, will be effective from 1 January 2024 allowing a 12-month implementation period. MHNSW will lead this implementation to ensure that public offices are supported to understand the changes and assist with the development of efficient and effective processes.

Consultation: Were the views of affected stakeholders sought and considered in making the policy?

A wide and varied range of stakeholders were consulted via a number of different opportunities and pathways. This began with the statutory review in 2018, where a steering group of key stakeholders was convened to guide the process in addition to stakeholder working groups and expressions of interest from interested parties.

Through the Committee inquiry, 68 submissions were received, three hearings were held, and two formal responses were provided to the Committee.

Key industry and representative bodies provided feedback and evidence via the statutory review and Committee inquiry as well as directly to SARA and SLM.

In December 2020, each NSW Government Department was contacted for input and comment in December 2020 to ensure the impact and benefits for the public service were understood. Conversations with public offices have continued since that formal consultation period.

In addition, SARA and SLM have sought feedback on these policies through meetings, forums and industry events with a variety of stakeholders not captured through the formal processes above, including our audiences, members, donors, customers and fellow Cultural Institutions.

Significantly, a policy position that was advanced in the response submitted to the Committee in December 2021, has since been revised to take into account the feedback from industry professionals about its practical application.

Previously, it was proposed that the words 'full and accurate' be removed from s12(1) of the SR Act as outdated, technical jargon. It was proposed that more specific guidance regarding the types of records that need to be created would be more effectively provided through the standards that are issued, thus allowing the Act to keep pace with technological change. Public Office Records professionals advised through consultation processes that at a public office level, the current drafting policy is understood and assists them to communicate their records management programs. They argued that its removal may suggest that records no longer need to be full and accurate. Noting the intent of the change was to make compliance easier and ensure records management programs were complied with by public offices, this policy change is no longer sought.