



New South Wales

Museums of History NSW Bill 2022

Explanatory note

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

Overview of Bill

The objects of this Bill are as follows—

- (a) to establish and confer functions on Museums of History NSW, including functions that are currently exercised by the Historic Houses Trust of New South Wales,
- (b) to repeal the *Historic Houses Act 1980* and dissolve the Trust,
- (c) to transfer the exercise of certain functions relating to records management services and assuming control of, recovering and facilitating public access to, State records, from the State Archives and Records Authority of New South Wales to Museums of History NSW,
- (d) to rename the State Archives and Records Authority of New South Wales as State Records Authority NSW,
- (e) to make other amendments to the *State Records Act 1998* that relate to the following—
 - (i) providing that a record need only be made or received in certain circumstances, not kept as well, in order for it to be a State record,
 - (ii) shortening the period of time that must elapse before a State record enters the open access period from 30 to 20 years,
 - (iii) making State records, on the commencement of the open access period, the subject of an open to public access direction by default,
 - (iv) enabling State Records Authority NSW to issue notices requiring public offices to assess and provide a report on record-keeping processes and the office's records management program,

- (v) increasing the maximum penalty for an offence relating to protection measures and the period of time within which proceedings must be commenced,
 - (vi) providing that access arrangements may allow copies of State archives to be altered,
 - (vii) altering the constitution of the Board of State Records Authority NSW,
- (f) to provide for the transfer of assets, liabilities and rights consequent on the establishment of Museums of History NSW,
- (g) to make other minor and consequential amendments.

Outline of provisions

Part 1 Preliminary

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.

Clause 3 defines certain words and expressions used in the proposed Act.

Clause 4 provides for the relationship of the proposed Act with certain other Acts.

Part 2 Constitution and management of Museums of History NSW

Clause 5 constitutes Museums of History NSW as a body corporate.

Clause 6 provides that Museums of History NSW is—

- (a) a statutory body representing the Crown, and
- (b) subject to the control and direction of the Minister.

Clause 7 constitutes the Board of Museums of History NSW, which is to consist of 11 members appointed by the Governor.

Clause 8 establishes the office of Chief Executive Officer, who is responsible for the day-to-day management of the affairs of Museums of History NSW.

Clause 9 provides for the employment of staff.

Part 3 Objects and functions of Museums of History NSW

Division 1 General

Clause 10 sets out the following main objects of Museums of History NSW, which are—

- (a) to collect, manage and preserve the following (the *collection*)—
 - (i) State archives,
 - (ii) significant buildings and sites,
 - (iii) objects and materials related to significant buildings and sites,
- (b) to increase—
 - (i) public knowledge and enjoyment of the collection, and
 - (ii) access to the collection,
- (c) to promote—
 - (i) knowledge and appreciation of history, and
 - (ii) the stories that shape the social, historical, political and cultural identity of New South Wales,
- (d) to achieve the objects described in paragraphs (a)–(c) across the State, including in regional and rural New South Wales.

Clause 11 provides that the functions of Museums of History NSW include—

- (a) acquiring, controlling and managing significant buildings and sites, and
- (b) exercising certain functions under the *State Records Act 1998*.

Clause 12 enables Museums of History NSW to delegate the exercise of a function to a member of the Board, an advisory committee established by the Board, the Chief Executive Officer or a member of staff. The Chief Executive Officer may delegate or subdelegate the exercise of a function to a member of staff.

Division 2 Significant buildings and sites

Clause 13 defines *significant building or site*, for the purposes of the proposed Act, as a building or site that, in the opinion of Museums of History NSW, holds architectural, social, historical, cultural or political significance for the history or identity of the State.

Clause 14 sets out various powers of Museums of History NSW that relate to significant buildings or sites, being powers that, before the repeal of the *Historic Houses Act 1980* and the dissolution of the Historic Houses Trust of New South Wales by the proposed Act, were exercisable by the Trust. The proposed section provides that Museums of History NSW may do the following—

- (a) acquire a building or site for—
 - (i) exhibition, or
 - (ii) restoration, or
 - (iii) maintenance, or
 - (iv) another purpose approved by the Minister,
- (b) lend property in circumstances Museums of History NSW thinks fit,
- (c) permit members of the public to enter a significant building or site under its control or management,
- (d) permit the use of a significant building or site under its control or management for the following if, in the opinion of Museums of History NSW, it is appropriate for the building or site—
 - (i) a conference or meeting,
 - (ii) an educational, cultural or other activity,
 - (iii) a function or event,
 - (iv) photography or as a set for audio or video production,
 - (v) the provision of food or beverages by Museums of History NSW or another person,
- (e) promote or provide educational services, including exhibitions, lectures and films,
- (f) engage the services of and pay fees to persons including—
 - (i) consultants or photographers, or
 - (ii) artists, entertainers, lecturers or performers engaged to appear at a significant building or site under its control or management.

Clause 15 enables Museums of History NSW to undertake reasonable investigations for the purpose of ascertaining the extent to which a building or site may be suitable for control and management by Museums of History NSW as a significant building or site.

Clause 16 enables Museums of History NSW to acquire a building or site in accordance with a written authorisation of the Minister.

Clause 17 enables the Governor to, by proclamation published in the Gazette, divest land from a public authority and vest it in Museums of History NSW if the Minister is satisfied that the land is suitable for control and management by Museums of History NSW as a significant building or site.

Clause 18 allows Museums of History NSW to carry out, for a significant building or site under its control or management—

- (a) restoration works that comply with the conditions imposed by the Minister, or
- (b) alterations or improvements that comply with a conservation plan made by Museums of History NSW that applies to the significant building or site.

Clause 19 limits how Museums of History NSW may dispose of property, including by making dealings conditional on the approval of the Governor or the Minister.

Clause 20 enables Museums of History NSW to acquire property to be the offices of Museums of History NSW or caretaker accommodation, or for another purpose reasonably necessary for, or incidental to, the exercise of its functions.

Clause 21 provides that Throsby Park Historic Site can only be sold or exchanged, in whole or in part, or the fee simple in the land otherwise disposed of, if authorised by an Act of Parliament.

Clause 22 exempts certain dealings from the operation of the *Duties Act 1997*.

Division 3 State archives and records

Clause 23 provides that Museums of History NSW has functions under the *State Records Act 1998*, including functions that relate to the following—

- (a) records management services,
- (b) assuming control of State records that are not currently in use,
- (c) the recovery of estrays and other State records,
- (d) facilitating public access to State records,
- (e) copying and publishing State archives,
- (f) exercising a right of the Crown as the owner of copyright subsisting in a State archive.

The amendments made to the *State Records Act 1998* in the proposed Act, Schedule 4 transfer these functions from the State Archives and Records Authority of New South Wales, renamed as the State Records Authority NSW by Schedule 4[29], to Museums of History NSW.

Part 4 Miscellaneous

Clause 24 provides protection from liability for certain protected persons.

Clause 25 enables the Governor to make regulations for the purposes of the proposed Act.

Clause 26 repeals the *Historic Houses Act 1980*.

Schedule 1 Constitution and procedure of Board

Schedule 1 contains provisions relating to the constitution and procedures of the Board of Museums of History NSW.

Schedule 2 Chief Executive Officer

Schedule 2 contains provisions relating to the employment of the Chief Executive Officer.

Schedule 3 Savings, transitional and other provisions

Schedule 3 contains savings, transitional and other provisions consequent on the enactment of the proposed Act. Proposed Part 2 provides for the vesting of the assets, liabilities and rights of the Historic Houses Trust of New South Wales, dissolved under the proposed Part, in Museums of History NSW.

Schedule 4 Amendment of State Records Act 1998 No 17

Schedule 4[4] amends the definition of *public office* to make clear that other individuals and private sector entities, except to the extent that section 8 applies, are excluded from the definition.

Schedule 4[5], [15], [16], [18], [19] and [26] omit and substitute references to the State Archives and Records Authority of New South Wales to transfer the functions referred to in proposed section 23 to Museums of History NSW and to make consequential amendments.

Schedule 4[6] amends the definition of *State collecting institution* to replace a reference to the Historic Houses Trust of New South Wales with a reference to Museums of History NSW.

Schedule 4[7] amends the definition of *State record* to make clear that a record need only be made or received in the circumstances specified, not kept as well, in order for it to be a State record. **Schedule 4[9]** makes a consequential amendment.

Schedule 4[8] amends section 5 to enable Museums of History NSW to enter into an agreement with a State collecting institution that provides for the application of certain provisions of Parts 2, 4 and 6 to records taken into the institution's collection before 1 January 1999.

Schedule 4[10] enables State Records Authority NSW to issue a notice requiring a public office to conduct an assessment of its record-keeping processes and records management program and to provide the Authority with a report on the findings. The proposed subsections also provides that the Authority may include information about unsatisfactory reports or findings in the Authority's annual report.

Schedule 4[11] extends a provision that provides for the resolution of disputes about the operation of the Act to disputes that arise between public offices and Museums of History NSW.

Schedule 4[12] enables Museums of History NSW to enter into special agreements with public offices exercising inter-government functions. The agreement may exclude or modify the operation of 1 or more provisions of Parts 2, 4 and 6 to specified records.

Schedule 4[13] increases the maximum penalty for an offence under section 21, relating to protection measures, from 50 to 75 penalty units. **Schedule 4[38]** increases the period of time within which proceedings for an offence under the section must be commenced from 2 to 3 years from when the offence was alleged to have been committed.

Schedule 4[14] provides that Museums of History NSW must not dispose, or permit the disposal, of a State record in the possession of Museums of History NSW, unless the public office responsible for the record has consented to its disposal.

Schedule 4[17] requires public office to make arrangements with Museums of History NSW for, and provide information to Museums of History NSW in connection with, the transfer of State records under section 32 as prescribed by the regulations.

Schedule 4[20] amends section 36A to provide that an access arrangement under which a person is given access to State archives for the purpose of making, publishing or giving other persons access to copies of State archives may allow for the copies to be altered.

Schedule 4[21] shortens the period of time that must elapse before a State record is in the open access period from 30 years since it, or the original record of which it is a copy, came into existence, to 20 years.

Schedule 4[23] amends section 51 to provide that a State record is, on the commencement of the open access period for the record, deemed to be the subject of a direction that the record is open to public access under the Act (an *OPA direction*), unless the public office responsible for the record has already given a direction that the record is closed to public access under the Act (a *CPA direction*). **Schedule 4[1], [3] and [22]** make consequential amendments. **Schedule 4[24]** omits section 54, which provides for the making of an application for an OPA direction for a State record that is in the open access period but not the subject of an access direction, as a result of an OPA direction applying by default. **Schedule 4[25]** makes a consequential amendment.

Schedule 4[27] amends section 62 to make clear that protection from liability in relation to the giving of access to a record extends to the giving of access under an access arrangement. **Schedule 4[28]** makes a consequential amendment.

Schedule 4[29] renames the State Archives and Records Authority of New South Wales as State Records Authority NSW. **Schedule 4[2] and [30]** make consequential amendments.

Schedule 4[31] revises the principal functions of the Authority in light of the transfer of several functions to Museums of History NSW.

Schedule 4[32] alters the constitution of the Board so that 3, not 4, of the members must be nominated by the Minister administering the *State Records Act 1998*, so that the Chief Executive Officer of Museums of History NSW, or a delegate of the Chief Executive Officer, may become a member. The proposed section also revises the criteria for the members to be nominated by the Minister to 3 persons with knowledge of, or experience in, respectively, the use of State records, history and First Nations cultures.

Schedule 4[33] enables Museums of History NSW to apply to the Supreme Court of NSW for an injunction relating to the contravention or possible contravention of a provision of the *State Records Act 1998* as it relates to a function conferred on Museums of History NSW.

Schedule 4[34] amends the heading to section 73 to make clear that the duty of confidentiality for persons who acquire information in exercising a function under the Act extends to persons exercising functions on behalf of Museums of History NSW.

Schedule 4[35] updates an exemption from personal liability provision.

Schedule 4[36] makes provision for the copying and publishing of State archives by Museums of History NSW.

Schedule 4[37] provides that a certificate given by the Authority or Museums of History NSW certifying that a State record has been lost or destroyed is conclusive evidence of the matter.

Schedule 4[39] amends Schedule 3 to insert savings and transitional provisions consequent on the enactment of the proposed Act. The provisions relate to the following—

- (a) the alteration of the name of the State Archives and Records Authority of New South Wales,
- (b) the alteration of the constitution of the Authority,
- (c) the transfer of certain functions of the Authority to Museums of History NSW, including the transfer of State archives, State records and other assets, and liabilities and rights.