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STANDING COMMITTEE ON SOCIAL ISSUES

*State Records Act 1998 and the  
Policy Paper on its review*

Report 57

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Standing Committee on Social Issues

*State Records Act 1998* and  
**the Policy Paper on its  
review**

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## Terms of reference

1. That the Standing Committee on Social Issues inquire into and report on the *State Records Act 1998* (NSW) (the Act) and the Policy Paper on its review, with particular reference to:
  - (a) the role and purposes of the State Records Authority of NSW and Sydney Living Museums
  - (b) the adequacy of the Act in meeting citizens' needs
  - (c) factors constraining public access to and use of the documentary and material heritage of NSW
  - (d) the operation and effect of the proposed reforms in the attached Policy Paper, in particular:
    - (i) the effect of the proposed reforms on NSW public offices, including NSW Government agencies, local councils, public health organisations and State-owned corporations
    - (ii) whether the proposed reforms support digital government
    - (iii) whether the proposed reforms will increase public knowledge and enjoyment of the stories that shape our social, historical and cultural identity, enhancing social outcomes for the people of NSW
    - (iv) whether the proposed reforms will enhance the protection of the key cultural assets of NSW
  - (e) any other related matter.

The terms of reference were referred to the committee by the Hon Don Harwin MLC, Special Minister of State, Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts and Vice President of the Executive Council on 10 January 2020. The committee adopted these terms of reference on 11 March 2020.<sup>1</sup>

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<sup>1</sup> *Minutes*, NSW Legislative Council, 24 March 2020, p 858.

## Committee details

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### Committee members

<b>The Hon Shayne Mallard MLC</b>	Liberal Party	<i>Chair</i>
<b>The Hon Daniel Mookhey MLC</b>	Australian Labor Party	<i>Deputy Chair</i>
<b>Ms Cate Faehrmann MLC<sup>2</sup></b>	The Greens	
<b>The Hon Ben Franklin MLC</b>	The Nationals	
<b>The Hon Rose Jackson MLC</b>	Australian Labor Party	
<b>The Hon Taylor Martin MLC</b>	Liberal Party	
<b>Reverend the Hon Fred Nile MLC</b>	Christian Democratic Party	
<b>The Hon Natalie Ward MLC</b>	Liberal Party	

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<sup>2</sup> Ms Cate Faehrmann MLC substituted for Ms Abigail Boyd MLC from 4 February 2020 for the duration of the inquiry.

## Chair's foreword

As part of a broader review of the legislative and policy framework supporting the creation, preservation and access of our State's documentary and material heritage, this timely inquiry marks an innovative use of the committee process. Referred by the Minister for the Arts, the Hon Don Harwin MLC, the inquiry saw the committee tasked with examining the *State Records Act 1998* and the Policy Paper on its review, which identified a number of proposed reforms aimed at enhancing access to the stories of our State's history. As a mechanism for public consultation, the inquiry thus provided a means to canvass potential legislative change and to explore different policy considerations with key stakeholders and the wider public before moving forward.

For the committee, this investigation was very much rooted in the deep and rich history of our State – a history captured in records and places worth protecting, sharing and learning from, but one to which there has been relatively limited access to date. It is on this basis that the committee expresses its strong support for the key proposal discussed during this inquiry, that is, to create a new single cultural institution to replace the existing State Archives and Records Authority (SARA) and Sydney Living Museums (SLM). The committee believes that such an institution can strengthen and diversify access, and broaden engagement with wider audiences in ways not seen before to truly bring the history of New South Wales to life.

Notwithstanding this support, the committee considers it important for due diligence performed, and thus recommends that a detailed analysis of all aspects of the proposal to create a new cultural institution be documented. Moreover, the committee believes that the new entity must be built on strong legislative and policy foundations, and thus makes a number of recommendations to ensure it is appropriately funded, its recordkeeping and archival functions clearly identified, its governance structure inclusive of skill and expertise, and its objectives reflective of its State-wide mandate.

In addition, the committee makes further recommendations in relation to other proposed amendments to the legislation which support greater and more timely access to records, promote strategic records management, and strengthen the regulation of recordkeeping through monitoring powers. The committee also makes recommendations encouraging partnership with Aboriginal people for the management and care of Aboriginal records.

Together, these recommendations seek to contribute to the development of a reimagined approach to our documentary and material heritage – one that will stand on the strengths of SARA and SLM to deliver a truly unique institution, supported by robust legislation, to collect, manage, preserve and provide access to government records, objects, buildings and places of interest to the people of New South Wales into the future.

I would like to thank Minister Harwin for this referral, and my fellow committee members for their participation and considered engagement throughout the inquiry. I also thank all inquiry participants for providing valuable evidence and assistance to the committee. Finally, I thank the secretariat for their hard work and professional support.

I commend this report to the House.

A handwritten signature in black ink that reads "Shayne Mallard". The signature is written in a cursive, flowing style.

The Hon Shayne Mallard MLC  
**Committee Chair**

## Findings

### **Finding 1**

**47**

That the committee strongly supports the proposal to create a single new cultural institution with Executive Agency status, in place of the existing State Archives and Records Authority of New South Wales and Sydney Living Museums, to collect, manage, preserve and provide access to government records, objects, buildings and places of interest to the people of New South Wales. Moreover, the committee believes this new cultural institution will strengthen and diversify access to and engagement with the history of New South Wales.

## Recommendations

- Recommendation 1** 47  
That the NSW Government document a detailed analysis of all aspects of the proposal to create a single new cultural institution in place of the existing State Archives and Records Authority of New South Wales and Sydney Living Museums.
- Recommendation 2** 48  
That the NSW Government ensure that the proposed new cultural institution is:
- supported by sufficient baseline funding to successfully care for Collections, Archives and assets, and to fulfil its mandate
  - empowered to activate its assets to achieve commercial income as part of its core activities.
- Recommendation 3** 48  
That the NSW Government ensure the legislation giving effect to the new cultural institution clearly defines the government recordkeeping and archival functions of the institution, based on the existing functions of the State Archives and Records Authority of New South Wales.
- Recommendation 4** 49  
That the NSW Government ensure the governance structure supporting the new cultural institution is inclusive and represents a wide range of skill and expertise sufficient to manage the institution's broad remit.
- Recommendation 5** 49  
That the NSW Government ensure the legislation giving effect to the new cultural institution bestows a clear state-wide mandate, such that the objectives of the legislation clearly acknowledge regional and remote New South Wales as areas of specific consideration.
- Recommendation 6** 74  
That the NSW Government ensure, in any amended or new legislation regarding government recordkeeping and archiving, that:
- records in the open access period be open by default, unless subject to a 'closed to public access' direction
  - the open access period be reduced to 20 years.
- Recommendation 7** 75  
That the NSW Government ensure, in any amended or new legislation regarding government recordkeeping and archiving, that public offices are required to make and implement plans to transfer control of records of enduring value that are no longer in active business use to the State Archives and Records Authority of New South Wales.
- Recommendation 8** 75  
That the NSW Government ensure, in any amended or new legislation regarding government recordkeeping and archiving, that a monitoring power be included to require public offices to investigate its recordkeeping practices and to report back its findings, when directed.

**Recommendation 9**

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That the NSW Government:

- work in partnership with Aboriginal people to manage and care for highly sensitive and confidential Aboriginal records and enable greater access to them
- consider appointing Aboriginal archivists within the State Archives and Records Authority of New South Wales.

## Conduct of inquiry

The terms of reference for the inquiry were referred to the committee by the Hon Don Harwin MLC, Special Minister of State, Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts, and Vice President of the Executive Council, on 10 January 2020 and adopted on 11 March 2020.

The committee received 68 submissions and one supplementary submissions.

The committee held one public hearing by video conference on 1 June 2020, and two public hearings in the Macquarie Room at Parliament House in Sydney on 1 July 2020 and 20 August 2020.

The committee also conducted site visits on 27 July 2020. The committee visited the Museum of Sydney, Sydney, and toured the site, including the *A Thousand Words* exhibition. The committee toured the Western Sydney Records Centre, Kingswood, and observed workroom icons, conservation and digitisation activities, and archive storage. Lastly the committee toured Elizabeth Farm, Rosehill, and were briefed on house-museum interpretation methodologies.

Inquiry related documents are available on the committee's website, including submissions, hearing transcripts, tabled documents and answers to questions on notice.

# Chapter 1      Background

This chapter provides background information on the *State Records Act 1998*, including key provisions and obligations under the legislation. The chapter also outlines the *Review of the State Records Act 1998 Policy Paper* which presents a number of proposed reforms aimed at achieving key policy outcomes. The chapter concludes with an overview of the two key institutions central to the proposed reforms – the State Archives and Records Authority of New South Wales and Sydney Living Museums.

## *State Records Act 1998*

- 1.1 The *State Records Act 1998* provides for the 'creation, management and protection of the records of public offices' documenting the administration of the State, including the right of public access to those records. The Act also establishes the State Archives and Records Authority of New South Wales (SARA) (also known as NSW State Archives and Records).<sup>3</sup>
- 1.2 According to the *Review of the State Records Act 1998 Policy Paper* (the Policy Paper), the Act is a 'foundation for government accountability, integrity, transparency and efficiency'.<sup>4</sup> It was introduced because there was an identified need for public offices to be more accountable through good recordkeeping. At the same time, the move from paper-based to electronic business processes saw a shift in when public offices were required to make decisions about the value and preservation of records, from final disposal to the point of record creation.<sup>5</sup>
- 1.3 Replacing the *Archives Act 1960*, the *State Records Act* was thus considered 'landmark legislation'.<sup>6</sup> The Act moved the focus of public records legislation in New South Wales 'from archival legacy to the contemporary business environment', thereby underpinning the State's open government and digital government initiatives.<sup>7</sup>

### **Provisions of the Act**

- 1.4 The *State Records Act* applies to a wide range of public sector bodies, referred to in the Act as 'public offices'. Under the Act, the records they generate are referred to as 'State records'.<sup>8</sup>

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<sup>3</sup> *State Records Act 1998*.

<sup>4</sup> State Archives and Records Authority of New South Wales, *Review of the State Records Act 1998 Policy Paper*, 8 January 2020, p 3.

<sup>5</sup> State Archives and Records Authority of New South Wales, *Review of the State Records Act 1998 Policy Paper*, 8 January 2020, p 4.

<sup>6</sup> State Archives and Records Authority of New South Wales, *Review of the State Records Act 1998 Policy Paper*, 8 January 2020, p 4.

<sup>7</sup> State Archives and Records Authority of New South Wales, *Review of the State Records Act 1998 Policy Paper*, 8 January 2020, p 4.

<sup>8</sup> NSW State Archives and Records, *State Records Act 1998*, <https://www.records.nsw.gov.au/about/state-records-act-1998>.

- 1.5 The public offices covered by the Act include NSW Government agencies, State-owned corporations, local government, the public hospital system, and universities. The records of the Governor, Parliament and the courts are also subject to certain parts of the Act.<sup>9</sup>
- 1.6 The *State Records Act* has eight parts containing provisions pertaining to records management, the protection, control and recovery of State records, public access to State records, and SARA:
- Part 1 defines key terms and concepts.
  - Part 2 sets out the records management responsibilities of public offices, including the requirement to make and keep full and accurate records, to institute a records management program, and to maintain accessibility to digital records and other technology dependent records.
  - Part 3 protects State records from unauthorised destruction and disposal by public offices and puts into place a systematic means of identifying those records which are of 'continuing value'.
  - Part 4 ensures that records of continuing value are controlled and properly managed as State archives. State records become State archives when they are no longer in use by the public office and are passed into the control of SARA.
  - Part 5 protects official records which have left official hands (estrays) by giving SARA the power to recover them, within and outside New South Wales.
  - Part 6 establishes the right of public access to State records that are at least thirty years old, unless a public office gives an access direction to close the records to public access. This ensures the protection of any confidential or sensitive information in the records.
  - Part 7 defines the powers and responsibilities of SARA, and the powers, responsibilities and composition of SARA's Board.
  - Part 8 comprises miscellaneous provisions.<sup>10</sup>

### **Key obligations under the Act**

- 1.7 In accordance with the provisions of the *State Records Act*, public offices have a number of obligations, including:
- to make and keep full and accurate records of its activities
  - to protect its records
  - to establish and maintain a records management program to facilitate monitoring by SARA
  - to maintain accessibility to digital records and other technology dependent records

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<sup>9</sup> NSW State Archives and Records, *State Records Act 1998*, <https://www.records.nsw.gov.au/about/state-records-act-1998>.

<sup>10</sup> State Archives and Records Authority of New South Wales, *Review of the State Records Act 1998 Policy Paper*, 8 January 2020, p 3; NSW State Archives and Records, Summary of provisions, <https://www.records.nsw.gov.au/recordkeeping/rules/legislation/summary-of-provisions>.

- to not dispose of, transfer or alter records without the approval of SARA
- to protect and manage records of continuing value, including the transfer of those records to SARA
- to ensure records over thirty years old are subject to an access direction that either opens or closes the records to public access.<sup>11</sup>

**1.8** In addition to these obligations, the State Records Regulations 2015 sets out the guidelines for what constitutes normal administrative practice for the disposal of State records.<sup>12</sup>

**1.9** According to the Policy Paper, the Act's obligations, in particular its requirements to create, protect and transfer to SARA records of continuing value, ensure that 'NSW's collective memory and cultural heritage continue to grow'.<sup>13</sup> Moreover, the right of public access to records established by the Act ensures 'these records will be ultimately read, experienced and used by citizens'.<sup>14</sup>

## Review of the Act

**1.10** When referring the inquiry to the committee, Minister for the Arts, the Hon Don Harwin MLC, advised that Create NSW and the Department of Finance, Services and Innovation had commenced a review of the *State Records Act* in September 2018. The review would assess the impacts of the Act's operation, and whether it continues to support contemporary government and meet community expectations.<sup>15</sup> Indeed, as the Policy Paper states:

The government business environment has changed dramatically in the last 20 years. At the same time, citizen expectations about government accountability and public access to the documentary heritage of NSW have increased.<sup>16</sup>

**1.11** An interagency steering committee, comprising senior executives across government, was tasked with overseeing the review.<sup>17</sup>

<sup>11</sup> NSW State Archives and Records, Key obligations, <https://www.records.nsw.gov.au/recordkeeping/rules/legislation/key-obligations-under-the-act>.

<sup>12</sup> NSW State Archives and Records, Key obligations, <https://www.records.nsw.gov.au/recordkeeping/rules/legislation/key-obligations-under-the-act>.

<sup>13</sup> State Archives and Records Authority of New South Wales, *Review of the State Records Act 1998 Policy Paper*, 8 January 2020, p 3.

<sup>14</sup> State Archives and Records Authority of New South Wales, *Review of the State Records Act 1998 Policy Paper*, 8 January 2020, p 3.

<sup>15</sup> Correspondence from Hon Don Harwin MLC, Leader of the Government in the Legislative Council, Special Minister of State, Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts, Vice President of the Executive Council, to Hon Shayne Mallard, Chair, Standing Committee on Social Issues, 10 January 2020.

<sup>16</sup> State Archives and Records Authority of New South Wales, *Review of the State Records Act 1998 Policy Paper*, 8 January 2020, p 4.

<sup>17</sup> State Archives and Records Authority of New South Wales, *Review of the State Records Act 1998 Policy Paper*, 8 January 2020, p 4.

- 1.12** In early 2019, the review met with a range of stakeholders with an interest in the operation of the Act, including SARA staff, recordkeeping professionals, data managers, investigation and accountability organisations, and selected archive users and representatives from peak bodies, such as historical and genealogical societies. The *Review of the State Records Act 1998 Policy Paper* was the product of this consultation and research.<sup>18</sup> The Policy Paper is discussed in further detail in the next section.
- 1.13** A partnership between SARA and Sydney Living Museums (SLM) was later formed, with a single Executive Director leading both organisations from 1 July 2019.<sup>19</sup>

### **Review of the *State Records Act 1998* Policy Paper**

- 1.14** In January 2020, the *Review of the State Records Act 1998 Policy Paper* by SARA was released as part of the Minister's referral of the inquiry to the committee.
- 1.15** The Policy Paper reflects the Government's consideration of proposed reforms to the legislative framework for SARA and SLM, including the creation of a new institution which would replace the existing organisations. As stated in the Policy Paper:
- The NSW Government is considering whether the Authority and SLM should remain separate entities and continue their partnership, or whether a single entity would be more effective in telling the stories that make us who we are, making our history widely known and enjoyed.<sup>20</sup>
- 1.16** The Policy Paper also discusses the Government's consideration of possible amendments to the *State Records Act* to 'ensure that records documenting our social, historical and cultural identity are created, preserved and accessed'.<sup>21</sup>
- 1.17** The Policy Paper presents six proposed reforms aimed at achieving four policy outcomes. These are outlined in the following table.

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<sup>18</sup> State Archives and Records Authority of New South Wales, *Review of the State Records Act 1998 Policy Paper*, 8 January 2020, pp 4-5.

<sup>19</sup> Correspondence from Hon Don Harwin MLC, Leader of the Government in the Legislative Council, Special Minister of State, Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts, Vice President of the Executive Council, to Hon Shayne Mallard, Chair, Standing Committee on Social Issues, 10 January 2020; State Archives and Records Authority of New South Wales, *Review of the State Records Act 1998 Policy Paper*, 8 January 2020, p 2.

<sup>20</sup> State Archives and Records Authority of New South Wales, *Review of the State Records Act 1998 Policy Paper*, 8 January 2020, p 2.

<sup>21</sup> State Archives and Records Authority of New South Wales, *Review of the State Records Act 1998 Policy Paper*, 8 January 2020, p 2.

**Table 1 Policy outcomes and proposed reforms<sup>22</sup>**

<b>Policy outcome 1:</b> Stories that shape the social, historical and cultural identity of NSW are widely shared and understood.
<p><b>Proposed reforms:</b></p> <ul style="list-style-type: none"> <li>• A single institution will be responsible for collecting, managing, preserving and providing public access to government records, objects, buildings and places of historic, social, cultural or architectural interest to the people of NSW. This institution would replace the existing SARA and SLM and consideration would be given to conferring it with Executive Agency status, in line with the State's other Cultural Institutions.</li> <li>• A single governing body will be responsible for the strategic direction and policies of the new institution. Committees will have statutory responsibility for advising on and approving recordkeeping standards, the retention and disposal of records and the acquisition and management of buildings or places.</li> </ul>
<b>Policy outcome 2:</b> Records of enduring value to the citizens of NSW are managed, preserved and made accessible.
<p><b>Proposed reform:</b></p> <ul style="list-style-type: none"> <li>• Public offices will be required to make and implement plans to transfer control of records of enduring value that are no longer in active business use to SARA. These plans may involve the immediate or postponed transfer of custody.</li> </ul>
<b>Policy outcome 3:</b> Citizens have timely access to records documenting the activities and decisions that shape NSW and the lives of its citizens.
<p><b>Proposed reforms:</b></p> <ul style="list-style-type: none"> <li>• Records in the open access period will be open by default, unless the public office that is responsible for the records makes a 'closed to public access' direction. The assessment could be based on a risk assessment, as is the case under the current provisions.</li> <li>• The open access period will be reduced to 20 years in line with other jurisdictions and citizen expectations. This change could be phased in over a period of time.</li> </ul>
<b>Policy outcome 4:</b> NSW public offices create, keep and protect records as evidence of their activities and decisions.
<p><b>Proposed reform:</b></p> <ul style="list-style-type: none"> <li>• SARA will have power to issue a notice to require a public office to investigate its recordkeeping practices (whether generally or specifically) and report back on its findings to SARA.</li> </ul>

<sup>22</sup> State Archives and Records Authority of New South Wales, *Review of the State Records Act 1998 Policy Paper*, 8 January 2020, pp 5-8.

- 1.18** According to the Policy Paper, the proposed reforms will 'enhance public access to and use of our documentary and material heritage, and ensure that our collective memory and cultural heritage are protected and continue to grow'. As a result, there will be 'increased knowledge and enjoyment of the rich, multi-layered stories that speak to who we are'.<sup>23</sup>

## **State Archives and Records Authority and Sydney Living Museums**

- 1.19** Central to the Government's proposed reforms are two existing institutions which, as described in the Policy Paper, 'play a leading role in telling our stories and preserving our collective memory'<sup>24</sup> – the State Archives and Records Authority of New South Wales (SARA) and Sydney Living Museums (SLM).

### **State Archives and Records Authority of New South Wales (SARA)**

- 1.20** SARA is the Government's archives and records management authority.<sup>25</sup> It is a statutory body legislated under the *State Records Act*, and is an agency within the Department of Premier and Cabinet.<sup>26</sup>
- 1.21** With responsibilities for development, preservation and access for the State's archives, SARA is custodian not only of the largest collection of records documenting the history of New South Wales, but of the oldest archives collection in the country. SARA manages some 14 million items and dating back to the European settlement of Australia.<sup>27</sup>
- 1.22** Dr Brian Lindsay, Chair of the State Archives and Records Authority of New South Wales, noted that the State archives are among 'the most culturally significant archival collections in the world'.<sup>28</sup> The collection has a financial value of approximately \$1 billion and 'a cultural worth beyond measure'.<sup>29</sup>
- 1.23** In addition to its operational activities in collections access and engagement, SARA maintains a government recordkeeping function, assisting public offices to meet their recordkeeping obligations under the Act.<sup>30</sup>

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<sup>23</sup> State Archives and Records Authority of New South Wales, *Review of the State Records Act 1998 Policy Paper*, 8 January 2020, p 8.

<sup>24</sup> State Archives and Records Authority of New South Wales, *Review of the State Records Act 1998 Policy Paper*, 8 January 2020, p 2.

<sup>25</sup> NSW State Archives and Records, *Annual Report 2018-2019*, p 7.

<sup>26</sup> NSW State Archives and Records, About NSW State Archives, <https://www.records.nsw.gov.au/about-state-records>.

<sup>27</sup> NSW State Archives and Records, About NSW State Archives, <https://www.records.nsw.gov.au/about-state-records>; State Archives and Records Authority of New South Wales, *Review of the State Records Act 1998 Policy Paper*, 8 January 2020, p 3.

<sup>28</sup> Evidence, Dr Brian Lindsay, Chair, State Archives and Records Authority of New South Wales, 1 June 2020, p 2.

<sup>29</sup> State Archives and Records Authority of New South Wales, *Review of the State Records Act 1998 Policy Paper*, 8 January 2020, p 3.

<sup>30</sup> NSW State Archives and Records, *Annual Report 2018-2019*, p 8.

- 1.24** SARA is also responsible for managing and storing over 650 kilometres of government records for the New South Wales public sector,<sup>31</sup> through its commercial operation of the Government Records Repository (GRR).<sup>32</sup> The GRR manages records storage services for semi-active records created by public sector bodies, including Government agencies, local council, public hospitals and universities.<sup>33</sup>
- 1.25** SARA and the GRR operate out of the Western Sydney Records Centre in Kingswood. This facility, as well as being a storage facility housing the State archives and records also provides a Reading Room for the public to access and view records.<sup>34</sup>
- 1.26** SARA also maintains a network of Regional Archives Centres located in host institutions in Armidale, Broken Hill, Newcastle, Wagga Wagga, Wingecarribee and Wollongong. These host institutions have a memorandum of understanding with SARA.<sup>35</sup> Through them, the centres provide access to State archives of regional significance and to copies of key State archives as well as archives of the host institution.<sup>36</sup>

### **Sydney Living Museums (SLM)**

- 1.27** SLM is responsible for conserving, managing, interpreting and activating places and sites of local, national and international significance so as to 'bring history to life'.<sup>37</sup> It is a State Cultural Institution, and forms part of the Arts Screen and Culture Division of the Department of Premier and Cabinet.<sup>38</sup>
- 1.28** SLM was established in 1980 under the *Historic Houses Act 1980*. From 1980 to 2013 it was known as the Historic Houses Trust of New South Wales.<sup>39</sup> Following a review of its structure and operations in 2013, it launched its new identity as Sydney Living Museums 'to refresh and unify our diverse range of properties and highlight our role and relevance for current and future generations'.<sup>40</sup>

<sup>31</sup> Evidence, Dr Brian Lindsay, Chair, State Archives and Records Authority of New South Wales, 1 June 2020, p 2.

<sup>32</sup> NSW State Archives and Records, *Annual Report 2018-2019*, p 8.

<sup>33</sup> NSW State Archives and Records, Government Records Repository, <https://www.records.nsw.gov.au/records-repository>.

<sup>34</sup> NSW State Archives and Records, Plan your visit, <https://www.records.nsw.gov.au/archives/plan-your-visit>.

<sup>35</sup> Evidence, Mr William Oates, Archivist, 1 July 2020, p 35.

<sup>36</sup> NSW State Archives and Records, Regional Archives Centres, <https://www.records.nsw.gov.au/archives/collections-and-research/guides-and-indexes/regional-repositories>.

<sup>37</sup> Sydney Living Museums, *Annual Report, 2018-19*, p 12; State Archives and Records Authority of New South Wales, *Review of the State Records Act 1998 Policy Paper*, 8 January 2020, p 3.

<sup>38</sup> Sydney Living Museums, About us, <https://sydneylivingmuseums.com.au/about-us>.

<sup>39</sup> Sydney Living Museums, *Annual Report, 2018-19*, p 12.

<sup>40</sup> Sydney Living Museums, About us, <https://sydneylivingmuseums.com.au/about-us>.

- 1.29** SLM is the custodian of a range of important historic houses, gardens and museums in New South Wales.<sup>41</sup> It maintains and opens to the public 12 museums, all of which are listed on the NSW State Heritage Register<sup>42</sup>:
- Caroline Simpson Library and Research Collection (1984/2004), Sydney
  - Elizabeth Bay House (1835), Elizabeth Bay
  - Elizabeth Farm (1793), Rosehill
  - Hyde Park Barracks (1819), Sydney
  - Justice and Police Museum (1856), Sydney
  - Meroogal (1885), Nowra
  - Museum of Sydney (1995), Sydney
  - Rose Seidler House (1948), Wahroonga
  - Rouse Hill Estate (1813), Rouse Hill
  - Susannah Place (1844), Sydney
  - The Mint (1816/2003), Sydney
  - Vacluse House (1805), Vacluse.<sup>43</sup>
- 1.30** In addition, SLM owns and cares for other portfolio assets, including sites that it leases out commercially.<sup>44</sup>
- 1.31** SLM also manages the Endangered Houses Fund, a conservation program established in 2005 that identifies significant 'at risk' properties and protects them from demolition or unsympathetic development.<sup>45</sup>

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<sup>41</sup> State Archives and Records Authority of New South Wales, *Review of the State Records Act 1998 Policy Paper*, 8 January 2020, p 2.

<sup>42</sup> State Archives and Records Authority of New South Wales, *Review of the State Records Act 1998 Policy Paper*, 8 January 2020, p 5.

<sup>43</sup> Sydney Living Museums, House and Museums, <https://sydneylivingmuseums.com.au/houses-museums>.

<sup>44</sup> Evidence, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 1 June 2020, p 12; Sydney Living Museums, *Annual Report, 2018-19*, p 20.

<sup>45</sup> Sydney Living Museums, *Annual Report, 2018-19*, p 21.

## Chapter 2 The proposal for a new cultural institution

While reviewing the legislative framework for State archives and records more broadly, central to this inquiry has been the proposal for a new cultural institution to replace the existing State Archives and Records Authority of New South Wales (SARA) and Sydney Living Museums (SLM). As a key reform in the *Review of the State Records Act 1998 Policy Paper*, the proposal to create a new entity forms much of the basis for proposed amendments to the legislation that seek to achieve the policy outcomes outlined in chapter 1.

This chapter considers a range of issues raised by inquiry participants in relation to the creation of this new cultural institution, with some expressing deep concern over the replacement of SARA and SLM with a single entity, and others, supportive of an alternate approach to the documentary and material heritage of the State through the new institution. The chapter considers the compatibility of SARA and SLM to provide the foundation of this new entity, and explores the question of whether the proposal represents a merger of the existing bodies or a takeover of one by the other. The chapter also examines the notion of 'access' and whether the new cultural institution will indeed enhance public access, particularly through the exhibition of SARA material in SLM sites. Other issues discussed in this chapter include the absence of a business case for the proposal, the governance of the new entity, regional interests and the impact of the proposal on the Government Records Repository (GRR).

### Introduction

- 2.1 As outlined in chapter 1, the *Review of the State Records Act 1998 Policy Paper* (the Policy Paper) identifies four policy outcomes to support the NSW Government's commitment to 'increasing public knowledge and enjoyment of the stories that shape our social, historical and cultural identity'.<sup>46</sup> To achieve these policy outcomes, six proposed reforms were presented, including the proposal to create a single institution 'responsible for collecting, managing, preserving and providing public access to government records, objects, buildings and places of historic, social, cultural or architectural interest to the people of NSW'.<sup>47</sup>
- 2.2 Amongst the proposed reforms, the proposal to create a new cultural institution elicited the most debate over the course of the inquiry, with vigorous and passionate responses from those who agreed and disagreed with the idea. On the one hand, various inquiry participants strongly argued against replacing the State Archives and Records Authority (SARA) and Sydney Living Museums (SLM) with a single new entity, with some labelling the proposal 'misguided', 'non-sensical' and 'ridiculous'.<sup>48</sup>
- 2.3 Asserting that the reform is unnecessary, these stakeholders maintained that the creation of a single institution in place of SARA and SLM is unjustified and that the policy objectives named in the Policy Paper could be achieved without the amalgamation of these two very different

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<sup>46</sup> State Archives and Records Authority of New South Wales, *Review of the State Records Act 1998 Policy Paper*, 8 January 2020, p 2.

<sup>47</sup> State Archives and Records Authority of New South Wales, *Review of the State Records Act 1998 Policy Paper*, 8 January 2020, p 6.

<sup>48</sup> For example Submission 12, Mr Alan Ventress, p 5; Submission 36, Dr Shirley Fitzgerald, p 5; Submission 53, Name suppressed, p 1.

institutions.<sup>49</sup> Moreover, those opposed to the proposal contended that this change will come at a considerable cost to the functions of both organisations. In particular, it will threaten the future of government recordkeeping, management, preservation and security integral to accountable government and the rights of citizens to access records.<sup>50</sup> Ultimately, for a number of inquiry participants, the focus on this new entity is unwarranted and misdirected. As Ms Jenni Stapleton, former Director of SARA, stated:

The suggestion that this [the creation of a new cultural institution] should be the key outcome of a major review into the *State Records Act* is ludicrous and a distraction from the real issues facing SARA right now and into the future.<sup>51</sup>

**2.4** Others, however, including the Executive Director of SARA and SLM and the respective Chairs of the Boards of SARA and SLM, firmly advocated for the new cultural institution, heralding the proposition as 'bold', 'forward-looking' and 'innovative'.<sup>52</sup>

**2.5** These stakeholders argued that the current review of the legislative framework has provided a timely opportunity to create what Mr Adam Lindsay, Executive Director, SARA and SLM, described as a 'truly unique institution',<sup>53</sup> one that will 'improve, increase and diversify the way that people access and engage with the State's history...'.<sup>54</sup> Those in support of a single new entity to replace the existing institutions insisted that there is in fact a clear thematic link between SARA and SLM, as they have compatible goals and complementary roles focused on making the State's history accessible.<sup>55</sup> For Ms Naseema Sparks AM, Chair of SLM, 'the combined organisations will be a gift to the people of New South Wales—a new organisation to create a future for our past'.<sup>56</sup>

**2.6** The following sections examine the basis of these arguments in detail.

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<sup>49</sup> For example, Submission 31, Professional Historians Australia, p 1; Submission 13, Dr Peter Watts AM, p 1; Submission 14, Ms Amanda Barber, p 2; Evidence, Mr Alan Ventress, former Director, State Archives and Records Authority of New South Wales, 1 June 2020, p 17; Evidence, Ms Julia Mant, President, Australian Society of Archivists, 1 July 2020, p 23.

<sup>50</sup> For example, Evidence, Mr Alan Ventress, former Director, State Archives and Records Authority of New South Wales, 1 June 2020, pp 17-18; Evidence, Ms Jenni Stapleton, former Director, State Archives and Records Authority of New South Wales, 20 August 2020, p 9; Submission 29, Professor Lucy Taksa, pp 4-5; Evidence, Ms Julia Mant, President, Australian Society of Archivists, 1 July 2020, p 23.

<sup>51</sup> Evidence, Ms Jenni Stapleton, former Director, State Archives and Records Authority of New South Wales, 20 August 2020, p 10.

<sup>52</sup> For example, Evidence, Dr Brian Lindsay, Chair, State Archives and Records Authority of New South Wales, 1 June 2020, p 2; Evidence, Ms Naseema Sparks AM, Chair, Sydney Living Museums, 1 June 2020, p 4; Evidence, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 20 August 2020, p 27.

<sup>53</sup> Evidence, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 1 June 2020, p 6.

<sup>54</sup> Evidence, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 20 August 2020, p 27.

<sup>55</sup> For example, Answers to supplementary questions, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, p 16; Submission 27, Mrs Maisy Stapleton, p 2.

<sup>56</sup> Evidence, Ms Naseema Sparks AM, Chair, Sydney Living Museums, 1 June 2020, p 4.

## The perfect match?

- 2.7 Among the issues raised during the inquiry about the proposed new single entity was the question of whether SARA and SLM are indeed the 'perfect match' – are these two organisations fundamentally different or is there a clear thematic link between the two?

### Two different institutions

- 2.8 From the outset, numerous inquiry participants questioned the pairing of SARA and SLM to provide the foundation for a new cultural institution. These stakeholders asserted that the two organisations are inherently different in their function and role, such that the proposal to amalgamate the two is, in the words of Dr Peter Watts AM, Inaugural Director of the Historic Houses Trust of New South Wales (HHT), 'like merging an elephant with a giraffe...'.<sup>57</sup>
- 2.9 While inquiry participants acknowledged a common thread between SARA and SLM grounded in making history accessible, they contended that the nature of the two institutions are fundamentally different.<sup>58</sup> As Professor Lucy Taksa, former Chair of SARA, argued:
- ... [T]he proposed merger of SARA and SLM conflates documentary (paper-based and digital) records with built heritage. While the two may be complementary and supplement each other in specific contexts they are of a fundamentally different nature, perform different functions and have different resource and infrastructure needs in the present and in the future.<sup>59</sup>
- 2.10 This view was shared by others, such as the Federation of Australian Historical Societies, who asserted that 'while both institutions have an historical focus and contribute to the preservation and understanding of the state's history and heritage', their purposes, roles and operations are 'in some respects so different that they are potentially incompatible in the one organisation'.<sup>60</sup>
- 2.11 According to these stakeholders, the functions, responsibilities and skills required by SARA to manage the evidential record of the State stand in stark contrast with those of SLM to manage physical buildings and objects.<sup>61</sup> For Dr Rosemary Webb, these stem from a fundamental difference in the concepts underlying the two institutions – for SARA, to support governance, and for SLM, to conserve 'cultural narratives'.<sup>62</sup>
- 2.12 Numerous inquiry participants drew particular attention to SARA's role in upholding government accountability through its statutory recordkeeping obligations to highlight just how different its functions are to SLM. Moreover, these stakeholders discussed not only the

<sup>57</sup> Evidence, Dr Peter Watts AM, former Director, Historic Houses Trust of New South Wales, 1 June 2020, p 30.

<sup>58</sup> For example, Evidence, Dr Lisa Murray, Chair, Professional Historians Association (NSW and ACT), 1 July 2020, p 9.

<sup>59</sup> Submission 29, Professor Lucy Taksa, p 4.

<sup>60</sup> Submission 28, Federation of Australian Historical Societies, p 2.

<sup>61</sup> For example, Submission 43, Recordkeeping Innovation Pty Ltd, p 3; Submission 13, Dr Peter Watts AM, p 3; Submission 14, Ms Amanda Barber, p 2; Submission 28, Federation of Historical Societies, p 2.

<sup>62</sup> Submission 32, Dr Rosemary Webb, p 2.

importance of SARA remaining a separate entity to exercise this function, but to maintain its independence in doing so.<sup>63</sup>

- 2.13** For example, Ms Jenni Stapleton, former Director of SARA, declared that '[archives] are about democracy, citizens' rights, Government transparency and individual accountability'.<sup>64</sup> She described SARA's remit as being evidenced by its name:

The State Archives and Records Authority, as evidenced by its name, does two things: it preserves, it documents and it makes available the State's archival collection; it also ensures government records are properly created and maintained today for use now and into the future. Both these roles are essential. To lump records in with objects, buildings and places of interest reduces the Authority to a body seen merely to collect pretty things.<sup>65</sup>

- 2.14** Similarly, Ms Amanda Barber, archivist and former manager at SARA, argued that '[a]rchives cannot be equated to heritage buildings or objects' because they underpin the accountability and transparency of government decisions, and as such must be supported by an independent authority. Ms Barber asserted:

Archives need to be managed so that they maintain trustworthiness, authenticity, and accessibility which will ensure that they can be used as evidence. Archives underpin the rights and entitlements of the citizens and residents of NSW, they provide accountability and transparency of the processes, decisions and actions of government.

... [T]he importance of the independence of the Archival function ... is best supported by having a strong independent Authority to make decisions about what records are retained as archives.<sup>66</sup>

- 2.15** In light of this, several stakeholders maintained that, unlike SLM, SARA is not and must not be considered as a cultural institution. For example, Mr Alan Ventress, former Director of SARA, did not regard SARA as an arts or cultural entity, and instead believed the institution should be considered 'at the sharp end of policy and regulatory intervention in government'.<sup>67</sup>

- 2.16** Likewise, Professor Taksa questioned the 'construction of archives as a cultural entity', arguing that this approach 'neglects [the] broader records management responsibility, regulatory dimension, an information management dimension of all government records, not just cultural records'.<sup>68</sup>

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<sup>63</sup> For example, Submission 42, Recordkeeping Innovation, p 2; Submission 52, Records and Information Professionals of Australia, p 1; Submission 44, Australian Society of Archivists, p 4; Submission 48, The University of Sydney, p 2.

<sup>64</sup> Submission 52, Ms Jenni Stapleton, p 1.

<sup>65</sup> Submission 52, Ms Jenni Stapleton, p 1.

<sup>66</sup> Submission 14, Ms Amanda Barber, p 2.

<sup>67</sup> Evidence, Mr Alan Ventress, former Director, State Archives and Records Authority of New South Wales, 1 June 2020, p 18; see also Evidence, Ms Julie Mant, President of the Australian Society of Archivists, 1 July 2020, p 32.

<sup>68</sup> Evidence, Professor Lucy Taksa, former Chair, State Archives and Records Authority of New South Wales, 20 August 2020, p 11.

**2.17** Other inquiry participants discussed the role and function of SLM (previously known as the Historic Houses Trust of New South Wales (HHT)) to demonstrate its incompatibility with SARA. For example, Dr Watts argued that the core work of the HHT involves a myriad of activity irrelevant to SARA, including major building and garden conservation, historic site management, art collection management, education and commercial enterprise. He stated:

The HHT does a whole range of things, apart from exhibitions that are not in any way informed by State Records. In my judgement, probably 95 per cent of the work of the trust has nothing to do with exhibitions, nor with State Records.<sup>69</sup>

**2.18** Given this, Dr Watts questioned what value there would be in amalgamating SARA and SLM:

How does any of that—all those vital activities that occupy ... the trust's time and resources, which is the very core of what the trust does—gain any value from a formal association with State Records? The very short, clear answer is: absolutely none.<sup>70</sup>

**2.19** Similarly, the Royal Australian Historical Society asserted that 'the ongoing position of SLM within the cultural landscape of NSW is not dependent on integration with SARA. Likewise, the management of the many historic houses by SLM is not dependant on SARA and has no relationship to its role and legislative mandate'.<sup>71</sup>

**2.20** Indeed, stakeholders commented on the lack of synchronicity between SARA and SLM, despite the Policy Paper speaking of potential synergies between the two institutions. Mr Ventress, for example, described there being 'such a minor point of convergence' between SARA and SLM.<sup>72</sup>

**2.21** Meanwhile, others such as Dr Lisa Murray, Chair of the Professional Historians Association (NSW and ACT), argued that there was no more synchronicity between SARA and SLM than with other cultural institutions, such as the Art Gallery of New South Wales or the Australian Museum.<sup>73</sup> Ms Barber also shared this view, stating:

The fact that both organisations have boards and that both have public and curatorial programs or exhibitions around the stories of the people of NSW and the history of the state does not seem to be sufficient reason or justification to amalgamate them. For the purpose of creating exhibitions (a small part of any Archives functions) the State Archives and Records Authority has as much synergy with the State Library, the Australian Museum, the Powerhouse Museum and other cultural institutions as it does with SLM.<sup>74</sup>

<sup>69</sup> Evidence, Dr Peter Watts AM, former Director, Historic Houses Trust of New South Wales, 1 June 2020, p 24.

<sup>70</sup> Evidence, Dr Peter Watts AM, former Director, Historic Houses Trust of New South Wales, 1 June 2020, p 25.

<sup>71</sup> Submission 33, Royal Australian Historical Society, p 1.

<sup>72</sup> Evidence, Mr Alan Ventress, former Director, State Archives and Records Authority of New South Wales, 1 June 2020, p 18.

<sup>73</sup> Evidence, Dr Lisa Murray, Chair, Professional Historians Association (NSW and ACT), 1 July 2020, p 9.

<sup>74</sup> Submission 14, Ms Amanda Barber, p 2.

**2.22** So different are SARA and SLM that, according to Ms Stapleton, the placement of archival institutions within heritage bodies 'has proven ineffective in jurisdictions within Australia and across the world'.<sup>75</sup> Similarly, Professor Taksa asserted that there are no examples of such a merger elsewhere:

Having looked across the world, I see no real examples of national or State archives ... merging with built heritage entities. It has been called groundbreaking here but I think it is actually misconceived, to say the least.<sup>76</sup>

**2.23** Those who deemed SARA and SLM inherently different thus argued that the two institutions should not be replaced by a single new entity as proposed.<sup>77</sup> To do so would diminish the focus of each organisation and would be limiting to both, according to Dr Watts:

To combine the two organisations that require very different professional disciplines, attitudes, approaches, expertise and experience seems senseless and will only diminish the focus each organisation requires.<sup>78</sup>

**2.24** Agreeing that SARA and SLM are 'too different', Dr Webb also concluded that to 'unify' them would weaken both institutions, particularly in the context of acknowledging their purpose and integrity as two distinct organisations.

... [T]he SRA and SLM, while each important repositories for social and cultural recording, are too different for their distinctive missions to be blurred by merger. To 'unify' these agencies would constrain and diminish both.<sup>79</sup>

**2.25** The limitations and risks to both organisations under the proposed reform are explored in greater detail later in the chapter.

**2.26** As such, stakeholders called for SARA and SLM to remain separate entities, and moreover, for SARA to be spared of a merger with any other organisation.<sup>80</sup> As Mr Clive Lucas, founder of the HHT, declared: '... I cannot understand how anyone could think [HHT] should be linked with State Archives and Records Authority. They have different charters and clearly should be kept separate'.<sup>81</sup>

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<sup>75</sup> Submission 51, Ms Jenni Stapleton, p 1.

<sup>76</sup> Evidence, Professor Lucy Taksa, former Chair, State Archives and Records Authority of New South Wales, 20 August 2020, p 14.

<sup>77</sup> For example, Submission 55, Name suppressed, pp 1-2.

<sup>78</sup> Submission 13, Dr Peter Watts AM, p 4; see also Submission 42, Ms Helen Temple, p 2.

<sup>79</sup> Submission 32, Dr Rosemary Webb, p 2; see also Evidence, Mr Alan Ventress, former Director, State Archives and Records Authority of New South Wales, 1 June 2020, p 18.

<sup>80</sup> For example, Evidence, Mr Alan Ventress, former Director, State Archives and Records Authority of New South Wales, 1 June 2020, pp 20-21; Submission 33, Royal Australian Historical Society, p 1; Submission 34, Professional Historians Association (NSW and ACT), p 2; Submission 44, Australian Society of Archivists, p 5; Submission 54, Name suppressed, p 1.

<sup>81</sup> Submission 66, Mr Clive Lucas, p 1.

- 2.27** Indeed, Dr Murray argued that, while there may be some overlap between the two institutions, 'there are significant differences that make it worthwhile having them as separate organisations'.<sup>82</sup>
- 2.28** For Mr Ventress, 'there is strength in diversity' if the institutions were to remain separate,<sup>83</sup> a sentiment echoed by the Australian Society of Archivists who argued that 'a strong and vibrant ecosystem of collaborating cultural institutions is critically important for the continued success of our democracy and our State'.<sup>84</sup>
- 2.29** Rather than promoting a new entity to replace SARA and SLM, stakeholders argued that the NSW Government should instead be supporting SARA to meet its remit and for SLM to be considered as part of a broader museums strategy.<sup>85</sup>
- 2.30** For example, Professor Taksa advocated for 'the continued existence of an independent and adequately resourced records management and archives authority serving the interests of all citizens of New South Wales'.<sup>86</sup> Similarly, Ms Julia Mant, President of the Australian Society of Archivists, expressed support for 'a strong, independent archives authority with a strong Act behind it, adequately resourced to meet its functions across the State ...'.<sup>87</sup>
- 2.31** Meanwhile, Dr Murray urged for cultural institutions to be looked at more holistically, to 'encourage them to work more collaboratively together to tell the different stories of the State and its history', adding '[w]e do not need to merge State Records and Sydney Living Museums to actually achieve that'.<sup>88</sup> Dr Watts shared this view, arguing that there has always been and continues to be a need for an overarching strategy for museums in the State.<sup>89</sup>

### **A clear thematic link**

- 2.32** While various inquiry participants argued that SARA and SLM are in essence different institutions and thus not appropriate for replacement by a single new entity, others maintained that their core remit is in fact very similar, with a clear thematic link between the two organisations. These stakeholders asserted that SARA and SLM perfectly complement one another, with the potential to draw on each other's strengths and assets to broaden its remit and

<sup>82</sup> Evidence, Dr Lisa Murray, Chair, Professional Historians Association (NSW and ACT), 1 July 2020, p 3.

<sup>83</sup> Evidence, Mr Alan Ventress, former Director, State Archives and Records Authority of New South Wales, 1 June 2020, p 17.

<sup>84</sup> Submission 44, Australian Society of Archivists, p 2.

<sup>85</sup> For example, Evidence, Dr Lisa Murray, Chair, Professional Historians Association (NSW and ACT), 1 July 2020, pp 2-3; Submission 13, Dr Peter Watts AM, p 1; Submission 26, Australian Museums and Galleries Association, p 2.

<sup>86</sup> Evidence, Professor Taksa, former Chair, State Archives and Records Authority of New South Wales, 20 August 2020, p 9.

<sup>87</sup> Evidence, Ms Julia Mant, President, Australian Society of Archivists, 1 July 2020, p 23.

<sup>88</sup> Evidence, Dr Lisa Murray, Chair, Professional Historians Association (NSW and ACT), 1 July 2020, p 3.

<sup>89</sup> Evidence, Dr Peter Watts AM, former Director, Historic Houses Trust of New South Wales, 1 June 2020, p 30; see also Evidence, Mr Michael Rolfe, Chief Executive Officer of Museums and Galleries NSW, 1 July 2020 p 38.

provide greater public access if brought together. According to Mr Lindsay, Executive Director of SARA and SLM, SARA and SLM represent a 'marriage made in heaven'.<sup>90</sup>

- 2.33** While acknowledging some differences in their functions, Mr Lindsay asserted that SARA and SLM have fundamentally similar remits, both grounded in providing access to the State's history. This being the clear thematic link between the two institutions, he stated:

Although SLM and SARA have some different functions, their core remit is very similar. SLM exists to conserve, protect and make accessible the State's significant heritage properties; SARA exists to conserve, protect and make accessible the State's Records and Archives. The very clear thematic link between these institutions is focussed on making the history of NSW accessible.<sup>91</sup>

- 2.34** This link was recognised by other inquiry participants, including Ms Elizabeth Tydd, Chief Executive Officer and Information Commissioner, Information and Privacy Commission NSW, who stated: 'There certainly seems to be a strong thematic and legislative link between SLM and SARA'.<sup>92</sup> Likewise, Mrs Maisy Stapleton, inaugural CEO of Museums and Galleries NSW and former curator at HHT, asserted that 'the unity of purpose forms a strong link between the two organisations', claiming that in fulfilling their roles, both SARA and SLM:

- Conserve, protect and manage cultural material that provides the basis for their work
- Rely on a solid foundation of documentary and physical evidence and analysis to underpin their work
- Engage with the past and its links to the present through their collections of cultural material
- Develop programs, stories, exhibitions, digital material and publications that link their collections to our cultural identity now and in the future
- Enhance the value and scope of their cultural collections through programs, events, stories, exhibitions, digital material, publications and other material.<sup>93</sup>

- 2.35** For these stakeholders, the proposal to create a new cultural institution based on the foundations of SARA and SLM provides an opportunity to demonstrate the ways in which the two organisations can complement one another. Mr Lindsay described this dynamic by highlighting how a lack in one institution could be met by a strength in the other:

Where SLM lacks considerable collections and archives, SARA holds an extensive and globally significant collection that documents unique moments and stories from our past. Where SARA lacks space to engage people, SLM holds historically important properties ideal for interpretation, programming and exhibitions. Where SLM has the existing expertise and infrastructure to support education, marketing and digital content

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<sup>90</sup> Evidence, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 1 June 2020, p 12.

<sup>91</sup> Answers to supplementary questions, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 4 July 2020, p 17.

<sup>92</sup> Evidence, Ms Elizabeth Tydd, Chief Executive Officer and Information Commissioner, Information and Privacy Commission NSW, 20 August 2020, p 7.

<sup>93</sup> Submission 27, Mrs Maisy Stapleton, p 3.

production, SARA has the expertise and infrastructure to support collections and archives management, digitisation, research and policy-making.<sup>94</sup>

- 2.36** Ms Sparks, Chair of SLM, spoke in similar terms, drawing attention to the purpose of SLM which she argued would still stand if applied to SARA:

Where SLM owns physical spaces and locations, SARA has the records and archives to bring them to life. Where SARA has a depth of historic material, SLM has the capability to co-curate and display them. The purpose of Sydney Living Museums is to create a living future for the past. This is a promise we make to our stakeholders and audiences ... I use this purpose as a filter when considering aspects of bringing SARA and SLM together and ask myself if it would still apply. The answer is a resounding yes.<sup>95</sup>

- 2.37** Likewise, Mr Frank Howarth, Chair of the Heritage Council of NSW explained how SARA and SLM are able to complement one another through these overlapping areas of expertise:

... I think SARA suffers from the lack of physical ... outlets to its amazing collection, and Sydney Living Museums provides a number of those. That is a positive point. SARA is incredibly strong in the digital area and I think in many ways Sydney Living Museums would benefit from that knowledge as well. So we are talking about the overlap areas and areas of expertise.<sup>96</sup>

- 2.38** Inquiry participants highlighted a number of examples of how the thematic link between SARA and SLM has borne a successful collaboration. For example, Ms Sparks spoke of a renewed Hyde Park Barracks experience which uses state of the art audio-spatial technology, and the *A Thousand Words* exhibition, an audience-led content exhibition based on State archive material uploaded to social media platforms.<sup>97</sup> Mrs Lucy Turnbull told the committee of her experience at Hambledon Cottage which brought to her 'vividly the history of the area to life'.<sup>98</sup>

- 2.39** Indeed, according to stakeholders such as Mr Lindsay, it is this notion of bringing life to the archival collections which can deliver the biggest impact on public value. Mr Lindsay asserted that through a new cultural institution, based on the shared purposes of SARA and SLM, there will be greater opportunities for public access:

Far too often, whether due to a lack of space, under funding or outdated attitudes, public collections are left to languish and be forgotten. Millions of dollars of public money are spent collecting and preserving vital, beautiful, emotional and highly socially relevant material, only for it to sit in storage beyond the reach or, worse, memory of the public who own it. By addressing this issue and forming a new entity, we will be able to make the biggest impact on public value. To achieve this value gain we must focus on the diversification of public access and the entry points to our collections and properties. The creation of a single entity will allow for the expertise and infrastructure

<sup>94</sup> Evidence, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 20 August 2020, p 27.

<sup>95</sup> Evidence, Ms Naseema Sparks AM, Chair, Sydney Living Museums, 1 June 2020, p 3.

<sup>96</sup> Evidence, Mr Frank Howarth, Chair, Heritage Council of NSW, 1 July 2020, p 5.

<sup>97</sup> Evidence, Ms Naseema Sparks AM, Chair, Sydney Living Museums, 1 June 2020, p 4.

<sup>98</sup> Evidence, Mrs Lucy Turnbull, private individual, 20 August 2020, p 18.

at SARA and SLM to cross pollinate and create far more opportunities for access and for our staff.<sup>99</sup>

- 2.40** Ms Tydd reflected a similar view, noting the importance of maximising synergies and recognising the advantages of a new entity in providing access to information through non-traditional means. She stated:

From the perspective of open government, if that is part of the policy objective—and that certainly appears to be informing the policy paper—then the merger does provide the advantages of experiential access and stimulation. ... [I]t does provide another means of accessing information through non-traditional ways. Therefore, it may create an environment in which the citizens of New South Wales in particular have a heightened awareness of the value of information access. But, most importantly, it creates the need to ensure an open, accountable and transparent government.<sup>100</sup>

- 2.41** The notion of public access, and in particular the diversification of this access through a new cultural institution, will be explored later in the chapter.

- 2.42** Ultimately, for those who acknowledged the clear connection between SARA and SLM, a new entity based on the two organisations will deliver a much broader remit and a diversity of expertise and capacity – an organisation that is, as the Hon Don Harwin MLC, Minister for the Arts, described it, 'greater than the sum of its parts'.<sup>101</sup> Whatever differences there may be between the SARA and SLM, these will form the strength of the proposed institution, explained Mr Lindsay:

... [T]he functions of SARA and SLM that are unrelated will still be able to work harmoniously to enhance the broader successes of the proposed new entity. The new entity will have a broad remit and deliver a wide range of functions, and this is precisely the strength of this proposal and all contribute to propagating and increasing the knowledge and appreciation of History. The diverse expertise and capacity of the new entity will be the reason for its success and continued relevance.<sup>102</sup>

- 2.43** Dr Brian Lindsay, Chair of the SARA, expressed a similar view, asserting that the creation of this new entity will provide a 'modern, twenty-first century institution, defined expansively by the outcomes it delivers in combination, rather than remaining apart, narrowly conscribed by the specialist functions that we perform'.<sup>103</sup>

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<sup>99</sup> Evidence, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 1 June 2020, p 5.

<sup>100</sup> Evidence, Ms Elizabeth Tydd, Chief Executive Officer and Information Commissioner, Information and Privacy Commission NSW, 20 August 2020, p 7.

<sup>101</sup> Evidence, Hon Don Harwin MLC, Minister for the Arts, 20 August 2020, p 25.

<sup>102</sup> Answers to supplementary questions, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 4 July 2020, p 17.

<sup>103</sup> Evidence, Dr Brian Lindsay, Chair, State Archives and Records Authority of New South Wales, 1 June 2020, p 3.

## A merger or a takeover?

**2.44** A key question raised during the inquiry was whether the proposal to create a single new cultural institution based on the foundations of SARA and SLM represents a true merger of the two organisations or signals the takeover of one by the other. Indeed, numerous stakeholders expressed deep concern that the proposed reform would result in a dilution of functions and a diversion of focus for both entities. In particular, some argued that, with an emphasis on storytelling in the Policy Paper, the proposed reform will see government recordkeeping and SARA's core remit diminish over time. However, other inquiry participants, particularly the Executive Director of SARA and SLM, insisted that the proposed reform does not equate to a takeover or even a merger. In fact, he asserted that the proposal was constructed so as not to allow one entity to subsume the other – that rather than an amalgamation of two institutions, the creation of a whole new entity drawing on the strengths of SARA and SLM is what is being proposed.

### The diminution of two existing institutions

**2.45** According to some stakeholders, a change to current administrative arrangements that would see a single entity replace the existing SARA and SLM opens up both institutions to grave risks and consequences.<sup>104</sup> As Ms Julia Mant, President of the Australian Society of Archivists, stated: '[T]his has the potential to create strategic, operational and conceptual risks for both entities and dilute the mandates of both SARA and Sydney Living Museums [SLM]'.<sup>105</sup>

**2.46** Ms Mant raised concerns that bringing SARA and SLM together would 'dilute the importance of both entities in order to achieve unclear objectives'.<sup>106</sup> Similarly, the Australian Historical Association asserted that '[a]ny combining of the two organisations ... risks diluting the core remit and funding for both entities'.<sup>107</sup> For Mr Tim Robinson, Professional Member of the Australian Society of Archivists, the new entity will have a 'confused mission, its focus lost and the citizens of New South Wales the losers'.<sup>108</sup>

**2.47** Some inquiry participants drew particular attention to the detrimental impact the proposed merger would have on SARA. These stakeholders argued that SARA's purpose and function would be diminished or compromised if the organisation were to be replaced with an institution that had a dual focus.<sup>109</sup> Some went so far as to say that the proposal to create a new cultural institution through a merger or amalgamation of the two organisations represents a takeover of SARA by SLM.

<sup>104</sup> For example, Evidence, Mr Alan Ventress, former Director, State Archives and Records Authority of New South Wales, 1 June 2020, pp 17-18.

<sup>105</sup> Evidence, Ms Julia Mant, President, Australian Society of Archivists, 1 July 2020, p 23.

<sup>106</sup> Evidence, Ms Julia Mant, President, Australian Society of Archivists, 1 July 2020, p 31; see also Submission 42, Ms Helen Temple, p 2.

<sup>107</sup> Submission 47, Australian Historical Association, p 2.

<sup>108</sup> Evidence, Mr Tim Robinson, Professional Member, Australian Society of Archivists, 1 July 2020, p 24.

<sup>109</sup> For example, Submission 29, Professor Lucy Taksa, p 4.

**2.48** For example, Mr Ventress, former Director of SARA, contended that there are risks in the proposed reform because of the potential to divert attention away from SARA's recordkeeping and regulatory function in favour of the 'tangible' and 'exciting'. He stated:

I think there are major risks because ... there is a tendency in organisations to move towards things that are easy and tangible and exciting in government. Ministers understand the excitement of exhibitions and going to exhibition openings ... Diverting the responsibility or the focus of an organisation to me is quite dangerous really. It is dangerous for the future of democracy in New South Wales ... people should be more focused on the regulatory and the recordkeeping aspects of this proposal than on the shall we say pretty history ideas ...<sup>110</sup>

**2.49** Similarly, Professor Taksa expressed her fear that 'there will be a preferencing for that which can be sold as good stories, good news and reputation building rather than the hard yakka ... that is involved in dealing with regulatory issues as well as ... preservation costs'. She argued that there will not be the long-term investment in SARA's functions, given 'this marketised world [where] branding, imagery and simple presentations are much more likely to get funding'.<sup>111</sup>

**2.50** In light of this, Ms Stapleton claimed: '... [T]he so-called merger is only moving in one direction'.<sup>112</sup> She asserted that, while the stated intention is for a 'joining together of equals', 'what is happening is a takeover, by a Macquarie Street-based institution of a Western Sydney-based one ...'.<sup>113</sup> She pointed to the apparent 'hollowing out' of SARA and 'consolidating Executive, specialist, administrative and supporting functions in the Macquarie Street offices of SLM'.<sup>114</sup>

**2.51** For a number of inquiry participants, the emphasis on storytelling in the Policy Paper as the context for the proposed reform was particularly alarming. While some asserted that storytelling is very important,<sup>115</sup> others considered it a distraction from and a denigration of SARA's mandate, and criticised the Policy Paper for elevating the significance of storytelling over recordkeeping. As Mr Ventress declared: '[W]e are talking about the archives of government and not the opportunity to entertain the public'.<sup>116</sup>

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<sup>110</sup> Evidence, Mr Alan Ventress, former Director, State Archives and Records Authority of New South Wales, 1 June 2020, pp 21-22.

<sup>111</sup> Evidence, Professor Lucy Taksa, former Chair, State Archives and Records Authority of New South Wales, 20 August 2020, p 16.

<sup>112</sup> Additional information, Ms Jenni Stapleton, former Director, State Archives and Records Authority of New South Wales, 5 September 2020, p 2.

<sup>113</sup> Additional information, Ms Jenni Stapleton, former Director, State Archives and Records Authority of New South Wales, 5 September 2020, p 2.

<sup>114</sup> Additional information, Ms Jenni Stapleton, former Director, State Archives and Records Authority of New South Wales, 5 September 2020, p 2.

<sup>115</sup> Evidence, Ms Anne Henderson, former Chair, State Archives and Records Authority of New South Wales, 1 July 2020, p 23; Evidence, Mr Michael Rolfe, Chief Executive Officer, Museum and Galleries NSW, 1 July 2020, p 35.

<sup>116</sup> Evidence, Mr Alan Ventress, former Director, State Archives and Records Authority of New South Wales, 1 June 2020, p 17.

**2.52** Indeed, according to Ms Stapleton, 'Archives are not about storytelling .... Archives can contribute to great stories, but that's not what they are created to do'.<sup>117</sup> By merging the two institutions and the legislation establishing their remits, she claimed that 'this is saying "storytelling" is as important, if not more important, than government's accountability'.<sup>118</sup> Ms Stapleton contended:

You are reducing something that is intrinsically about government accountability, about citizen's rights, to display, to storytelling, to nice, pretty, digital images on a wall in a house museum. The archives are not about that sort of thing.<sup>119</sup>

**2.53** Mr Robinson also questioned the emphasis on storytelling, arguing that government records are not created to tell stories. Noting that the right of access to information and records have been cited as second only to the right to the vote, Mr Robinson expressed concerns that the policy outcomes in the Policy Paper listed sharing stories ahead of recordkeeping. He explained:

It is concerning to me to see in the review of the State Records Act policy paper that recordkeeping is placed last in the four proposed reforms; the sharing of stories is listed first. With respect, government records are not created to tell stories. They are evidence of government actions that protect the rights of citizens and document the responsibilities of government. If complete, accurate and authentic records are not created, kept and protected by government any possibility of accountability or meaningful access to government information by citizens is removed.<sup>120</sup>

**2.54** Professor Taksa shared this concern, arguing that unlike other jurisdictions in Australia and internationally, such as Canada and New Zealand,<sup>121</sup> New South Wales has chosen to focus on storytelling rather than futureproofing for the challenges of information management in the digital age:

Across the world and across Australia, State archives are being integrated with digital government information management and the development of a whole-of-government strategy to ensure standards and, I emphasise, security for public records and access. In New South Wales, the Government wishes solely to focus on storytelling and the nexus with built heritage through the Arts portfolio rather than futureproofing New South Wales for the challenges of good information management for the digital age.<sup>122</sup>

<sup>117</sup> Submission 51, Ms Jenni Stapleton, former Director, State Archives and Records Authority of New South Wales, p 1.

<sup>118</sup> Evidence, Ms Jenni Stapleton, former Director, State Archives and Records Authority of New South Wales, 20 August 2020, p 10.

<sup>119</sup> Evidence, Ms Jenni Stapleton, former Director, State Archives and Records Authority of New South Wales, 20 August 2020, p 10.

<sup>120</sup> Evidence, Mr Tim Robinson, Professional Member, Australian Society of Archivists, 1 July 2020, p 23.

<sup>121</sup> Evidence, Professor Lucy Taksa, former Chair, State Archives and Records Authority of New South Wales, 20 August 2020, p 8.

<sup>122</sup> Evidence, Professor Lucy Taksa, former Chair, State Archives and Records Authority of New South Wales, 20 August 2020, p 9.

- 2.55** Mr Robinson expressed a similar point, urging that, in our current times – being 'in the midst of the industrial revolution of electronic records' – 'we need an authority that does not have its purposed diluted. Its focus must not be lost'.<sup>123</sup>
- 2.56** Some such as Ms Barber warned of the risk of 'curatorial priorities' guiding the management and preservation of State records should the two organisations be merged. She asserted: 'In a merged entity there may be potential for appraisal to be guided by curatorial priorities rather than criteria designed to ensure that the most significant of records, or those which protect rights and entitlements, are maintained'.<sup>124</sup>
- 2.57** Mr David Fricker, Director-General, National Archives of Australia, acknowledged this issue and explained to the committee the importance of differentiating between private records that are voluntarily deposited and are often 'cherry-picked' to register a 'more glorious past', and government records that are an 'authentic, reliable record which conserves evidence of what actually took place'.<sup>125</sup> Mr Fricker highlighted in particular the significance of government records not only as the foundation for our democracy and the collective memory of the State, but to document the present to guide future actions:

The importance of archives is that it is the public record that ultimately belongs to the public. It is the foundation for Australia's system of democracy and it is a foundation for Australian values ... This evidence is kept to uphold accountability, transparency of Government, and is maintained to protect the rights and entitlements of individuals. It is also maintained for a collective memory of a society, of a State or of a nation and it is an authentic memory. It is not a curated memory ...

... It is important that, in situations like we are facing now with the COVID-19 pandemic, archives have a very profound role to make sure that we are documenting the present so that we are guiding future actions ...<sup>126</sup>

- 2.58** Mr Fricker thus argued for maintaining the distinction between government records and private records, and upholding strict standards in legislation to ensure that government archival material was accumulated based on neutral and objective criteria. He stated:

[T]here has to be quite a different standard applied to government records that are archived as opposed to personal voluntary deposits ....

... [F]or State Archives to be a trusted, respected institution for the State of New South Wales that distinction should be built into its operations under legislation.<sup>127</sup>

### **A new entity**

- 2.59** While stakeholders raised concerns about the proposed reform representing a detrimental amalgamation of two institutions, other inquiry participants, in particular the Executive Director

<sup>123</sup> Evidence, Mr Tim Robinson, Professional Member, Australian Society of Archivists, 1 July 2020, p 24.

<sup>124</sup> Submission 14, Ms Amanda Barber, p 2.

<sup>125</sup> Evidence, Mr David Fricker, Director-General, National Archives of Australia, 1 July 2020, p 20.

<sup>126</sup> Evidence, Mr David Fricker, Director-General, National Archives of Australia, 1 July 2020, p 16.

<sup>127</sup> Evidence, Mr David Fricker, Director-General, National Archives of Australia, 1 July 2020, p 20.

of SARA and SLM, argued that it was neither a merger or takeover, but rather the creation of a completely new cultural institution.

**2.60** While based on the foundations of SARA and SLM, Mr Lindsay told the committee that the new entity was 'carefully constructed so that one entity does not subsume or take precedence over the other'. He explained: 'This is a foundational principle of the proposal – that the new cultural institution builds upon the strengths of the two and creates a stronger, more prominent entity for the people of NSW'.<sup>128</sup>

**2.61** According to Mr Lindsay, the proposal signifies the evolution of SARA and SLM: 'This proposal does not aim to detract from nor disrespect the strong history of these two organisations, but instead aims to evolve them into something even greater than the sum of their already wonderful parts'.<sup>129</sup> Ms Sparks, Chair of SLM, acknowledged the value of this evolution, stating that 'agencies such as SLM and SARA need to evolve if they are to remain relevant and engaging to younger and more diverse audiences for decades to come'.<sup>130</sup>

**2.62** Mr Lindsay stressed the importance of making the distinction between a merger and the creation of something new, explaining:

I think from a staff and eventually public engagement point of view, it is really important that we do not think of this as a merger or an amalgamation, that we think of this as a creation of something new with the staff, collections, infrastructure and expertise of the two entities best placed to work together to forefront history.<sup>131</sup>

**2.63** According to Mr Lindsay, the creation of the new cultural institution, rather than a joining of two organisations, was conceived in this way to address a gap in what New South Wales offers in terms of its cultural, social, economic history and storytelling.<sup>132</sup> It was also designed as a new entity so that staff of the existing SARA and SLM would not feel like it is a takeover or a merged entity with internal factions.<sup>133</sup> For the Minister for the Arts, the Hon Don Harwin MLC, the new cultural institution also heralds a means to meet potential opportunities for New South Wales to have a museum with a mandated responsibility for the history of the State, noting that it is the only jurisdiction not to have one.<sup>134</sup>

**2.64** Mr Lindsay explained that the cultural institution will have the responsibility and capacity to 'improve, increase and diversify the way that people access and engage with the State's history—both colonial and pre-colonial—and will prioritise the inclusion of First Nation voices in the

<sup>128</sup> Answers to supplementary questions, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 4 July 2020, p 10.

<sup>129</sup> Evidence, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 1 June 2020, p 5.

<sup>130</sup> Evidence, Ms Naseema Sparks AM, Chair, Sydney Living Museums, 1 June 2020, p 4.

<sup>131</sup> Evidence, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 20 August 2020, p 36.

<sup>132</sup> Evidence, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 20 August 2020, p 36.

<sup>133</sup> Evidence, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 20 August 2020, p 36.

<sup>134</sup> Evidence, Hon Don Harwin MLC, Minister for the Arts, 20 August 2020, p 35.

telling of our history'.<sup>135</sup> Accordingly, he advised that SARA and SLM provide the natural basis for this entity:

With this as the intent, it follows that the foundation for this new cultural institution is the collections, assets, staff, infrastructure, expertise and capacity of the existing SLM and NSW State Archives and Records Authority. A discussion about a new entity devoted to our history that did not include these two institutions would be unthinkable.<sup>136</sup>

**2.65** As this 'solid' foundation, Mr Lindsay maintained that the new institution 'signals a commitment to the protection of the cultural assets of the State', whilst 'growing the public collection that records our history in line with contemporary technologies, philosophies, accessibility and the public interest'.<sup>137</sup> Mr Lindsay explained the underpinning of this position:

Together, SLM and SARA believe that the places and records of our past can enrich our lives, create a deeper understanding of who we are through preserving and making accessible the memory of the State.<sup>138</sup>

**2.66** Mr Lindsay told the committee that, as one, two equally significant forces will be brought together to highlight the State's history in a unique way:

The NSW State Archives Collection is among the most culturally significant archival collections in the world and Sydney Living Museums holds a portfolio of some of the country's most significant sites and properties.<sup>139</sup>

**2.67** Numerous inquiry participants expressed support for the new cultural institution, including the National Archives of Australia, the Sydney Opera House, the State Library of New South Wales and the Art Gallery of New South Wales.<sup>140</sup> The Sherman Centre for Culture and Ideas described it as an 'elevated contemporary organisation [that] would provide a contemporary user-focussed repository of information'.<sup>141</sup>

**2.68** Mr Lindsay shared his experience of the past year as Executive Director of both SARA and SLM, advising the committee that, while 'there was initial scepticism and cultural resistance to bringing the organisations together', over time 'it became clear to most that bringing the organisations together to create something new is a compelling forward direction – both

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<sup>135</sup> Evidence, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 20 August 2020, p 27.

<sup>136</sup> Evidence, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 20 August 2020, p 27.

<sup>137</sup> Additional information, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 4 July 2020, p 1.

<sup>138</sup> Additional information, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 4 July 2020, p 1.

<sup>139</sup> Additional information, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 4 July 2020, p 1.

<sup>140</sup> Evidence, Dr Brian Lindsay, Chair, State Archives and Records Authority of New South Wales, 1 June 2020, p 2; see also Submission 61, National Archives of Australia, p 1; Submission 58, Sydney Opera House, p 1; Submission 15, Art Gallery of New South Wales, pp 1-2.

<sup>141</sup> Submission 37, Sherman Centre for Culture and Ideas, p 1.

practically and creatively'.<sup>142</sup> He stated: 'Through vision setting and communication, and outcomes of joint endeavours, it has become clear that the whole is more than the sum of its parts'.<sup>143</sup>

### *Equal partners*

**2.69** While not a merger or amalgamation, some inquiry participants highlighted the need for and expectation that SARA and SLM will be equal partners under the new entity.<sup>144</sup> Mr Lindsay assured that this was carefully considered when the proposal was designed, indicating that SARA and SLM were specifically chosen as equal partners because of their comparable remit, size and resources. He explained that 'that would not be the case with other cultural institutions. We would be sitting here talking about a merger or a takeover. We would be swallowed up, not just in terms of assets, size and profile, but into their brand'.<sup>145</sup>

**2.70** He concluded that 'the attraction of this is you have got two entities that are of similar size, that are able to complement one another, and that one's deficiencies is the other's strengths, and together they are able to create ... something more than the sum of its parts'.<sup>146</sup>

### *Existing functions will remain*

**2.71** Inquiry participants also discussed the importance of SARA and SLM maintaining existing functions, in response to concerns that a unification of the two will result in diluted purposes and diminished responsibilities.

**2.72** For example, Mr Frank Howarth, Chair of the Heritage Council of NSW, argued that it is 'critically important' that the proposed reform maintains the key roles of both organisations.<sup>147</sup> Supporting the proposed reform, he stated: 'The function of neither organisation should be in any way compromised by a merger, but if a merger enables either or both of them to do more, then prima facie it is a good thing'.<sup>148</sup> Mr Howarth added that the Heritage Council of NSW was also 'very keen' to see that 'the sum is greater than the parts if these two organisations are put together'.<sup>149</sup>

<sup>142</sup> Answers to supplementary questions, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 4 July 2020, p 1.

<sup>143</sup> Answers to supplementary questions, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 4 July 2020, p 1.

<sup>144</sup> For example, Evidence, Dr Lisa Murray, Chair, Professional Historians Association (NSW and ACT), 1 July 2020 July 2020, p 9; Evidence, Mr Frank Howarth, Chair, Heritage Council of NSW, 1 July 2020, p 2.

<sup>145</sup> Evidence, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 1 June 2020, p 12.

<sup>146</sup> Evidence, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 20 August 2020, p 36.

<sup>147</sup> Evidence, Mr Frank Howarth, Chair, Heritage Council of NSW, 1 July 2020, p 2.

<sup>148</sup> Evidence, Mr Frank Howarth, Chair, Heritage Council of NSW, 1 July 2020, p 5.

<sup>149</sup> Evidence, Mr Frank Howarth, Chair, Heritage Council of NSW, 1 July 2020, p 2.

**2.73** Similarly, Mrs Lucy Turnbull agreed that, with specific reference to the archival functions of the new entity, a strong legislative framework is needed to ensure roles remain intact. She stated that any questions about this could be 'quite easily addressed by setting out very clearly the statutory obligations and objects of the archival function of the merged entity'.<sup>150</sup>

**2.74** Mr Geoff Hinchcliffe, former Executive Director of SARA, argued: 'Strengthening recordkeeping governance in the new or revised Act is vital so that governments remain accountable and public confidence in a democracy such as ours is maintained'.<sup>151</sup>

**2.75** In response to concerns that the existing functions of the two institutions, particularly, SARA, might be diminished, diluted or lost with the proposal for a singly new entity, Mr Lindsay unequivocally advised:

[T]he new entity is proposed to maintain the principal objects of both the existing *State Records Act 1998* and *Historic Houses Act 1980*. No existing functions, powers or responsibilities of either existing agency will be lost or sidelined and the presentation and management of the State's Archives will remain a priority of the new entity.<sup>152</sup>

**2.76** Minister Harwin confirmed that 'the objectives of the organisation will be clear and we are maintaining the existing legislative structure of the archives'.<sup>153</sup>

**2.77** Mr Lindsay explained further:

Existing functions and activities will not be jeopardised or lost. Archiving and protecting built heritage will not be jeopardised or lost. Rather, a cultural institution dedicated to history will provide a greater platform to emphasise the important work of archivists, curators, record keepers and historians. These roles are fundamental to a new organisation. They enable the fulfilment of its core mission—a core mission that will be legislatively mandated just as the current institutions are legislatively mandated to achieve these outcomes.<sup>154</sup>

**2.78** Reflecting on this and the criticism that the proposed reform would weaken SARA and/or SLM and dilute their core remits, Dr Brian Lindsay, Chair of SARA, argued that the proposal is 'not an "either/or" proposition where one entity and its role take precedence at the expense of the other. Rather it is an expansive approach that focuses on thematic outcomes rather than traditional, specialised functions. Drawing attention to SARA's objectives in particular, Dr Lindsay stated:

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<sup>150</sup> Evidence, Mrs Lucy Turnbull, private individual, 20 August 2020, p 19.

<sup>151</sup> Evidence, Mr Geoff Hinchcliffe, former Executive Director of State Archives and Records Authority of New South Wales, 1 July 2020, p 12.

<sup>152</sup> Answers to supplementary questions, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 4 July 2020, p 3.

<sup>153</sup> Evidence, Hon Don Harwin MLC, Minister for the Arts, 20 August 2020, p 30.

<sup>154</sup> Evidence, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 20 August 2020, p 27.

This is not an "either/or" proposition in which the core remit of the archives is subsumed or the remit of Sydney Living Museums is lessened. It is an "and" proposition that builds upon the sum of its parts ...<sup>155</sup>

...

The traditional purpose, function and responsibilities of the archive will be maintained. The statutory responsibilities and powers of the existing SARA board will be transferred to a subcommittee of the new entity as it is proposed in a way that is unaltered and unfettered. So that the focus on archive building and recordkeeping will be maintained and our operational focus on digitisation and cataloguing will be maintained. What we see here is an opportunity ... to diversify access, to add on to what it is that we already do, ... to have a more expansive approach. It is not an either/or, it is an add. This is about augmentation.<sup>156</sup>

- 2.79** Insisting that criticisms levelled at SARA for 'pulling away from its core business are unfounded', Dr Lindsay asserted that those who have raised concerns 'fail to acknowledge the changing landscape and the potential for wider appreciation of the archives'.<sup>157</sup> He explained that the lines between the professions are blurring reflecting an evolution of institutions who now perform a range of traditionally separated roles:

Increasingly ... the experience of professionals concerned with managing, preserving and accessing records is blurring. Archivists become historians and conservationists become curators, for example, creating a spectrum of skilled practitioners whose integrated expertise illuminates our society's diverse and contested histories. Increasingly, institutions are evolving and being shaped similarly. In communities right across New South Wales the public accesses history through local cultural institutions that dynamically and simultaneously embrace traditionally separated roles: museum, gallery, library and archive.<sup>158</sup>

- 2.80** With regard to the focus on storytelling in the Policy Paper and the broader objectives and outcomes of the proposed reforms, Mr Lindsay asserted that the public value of the archives is in the stories they tell and the lessons they teach:

Above all we must remember that the public value of the archives and the properties we maintain is not created by us possessing them; it is the stories they tell us and the things we can learn from them that create value for the State. We must be careful to preserve and protect them, yes, but so that they can be accessed, enjoyed and learned from. The proposals under review will achieve that.<sup>159</sup>

<sup>155</sup> Evidence, Dr Brian Lindsay, Chair, State Archives and Records Authority of New South Wales, 1 June 2020, p 3.

<sup>156</sup> Evidence, Dr Brian Lindsay, Chair, State Archives and Records Authority of New South Wales, 1 June 2020, p 12.

<sup>157</sup> Evidence, Dr Brian Lindsay, Chair, State Archives and Records Authority of New South Wales, 1 June 2020, p 2.

<sup>158</sup> Evidence, Dr Brian Lindsay, Chair, State Archives and Records Authority of New South Wales, 1 June 2020, p 2.

<sup>159</sup> Evidence, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 1 June 2020, p 5.

- 2.81** For those with doubts that the same standards currently applied to the records maintained and preserved by SARA as State archives will continue under the new entity, the Minister gave 'absolute assurance' that a curatorial approach will not be taken to records considered for disposal.<sup>160</sup> The Minister explained that decisions about retention and disposal are taken 'so seriously' that it is mandated in a legislative process.<sup>161</sup> Minister Harwin maintained that these same legislative structures for the archives will be retained.<sup>162</sup>
- 2.82** Beyond these assurances, Ms Sparks, Chair of SLM, told the committee that, in practice, there has been no dilution or diversion of focus, resources or expertise at SARA or SLM under the single Executive Director.<sup>163</sup> Indeed, Mr Lindsay advised the committee: 'Through the past twelve months of operational merger there has been no subjugation of obligations generally or specifically and no signs of a takeover'.<sup>164</sup> Moreover, he stated that the policy proposals have been developed to prevent this from being possible:

Enshrining the new entity with the existing and new obligations outlined in both the current Acts and the policy proposal paper, and equipping the new entity with the full resources of the existing separate entities will also prevent any possibility of a takeover. This has been at the forefront of the development of these policy proposals as a way of addressing these concerns.<sup>165</sup>

***Administrative and legal fences will be removed***

- 2.83** While some inquiry participants questioned the barriers impeding a successful collaboration between SARA and SLM without the need to merge,<sup>166</sup> the committee was advised that there are in fact a number of administrative and legal fences that limit SARA and SLM's current partnership. As Mr Lindsay stated: '... [A] partnership, however close, has limits. There are other outcomes we can achieve only through combination in a new cultural entity'.<sup>167</sup>
- 2.84** Mr Lindsay explained that these fences currently exist across a range of areas, including:
- accounting processes and reporting requirements
  - auditing processes
  - payroll processes
  - recruitment and procurement

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<sup>160</sup> Evidence, Hon Don Harwin MLC, Minister for the Arts, 20 August 2020, p 29.

<sup>161</sup> Evidence, Hon Don Harwin MLC, Minister for the Arts, 20 August 2020, p 29.

<sup>162</sup> Evidence, Hon Don Harwin MLC, Minister for the Arts, 20 August 2020, p 30.

<sup>163</sup> Evidence, Ms Naseema Sparks AM, Chair, Sydney Living Museums, 1 June 2020, p 4.

<sup>164</sup> Answers to supplementary questions, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 4 July 2020, p 2.

<sup>165</sup> Answers to supplementary questions, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 4 July 2020, p 2.

<sup>166</sup> For example, Dr Lisa Murray, Chair, Professional Historians Association (NSW and ACT), 1 July 2020, p 4; Evidence, Dr Peter Watts AM, former Director, Historic Houses Trust of New South Wales, 1 June 2020, p 30.

<sup>167</sup> Evidence, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 1 June 2020, p 5.

- IT networks
- legal and financial resources
- valuation of collections.<sup>168</sup>

**2.85** Mr Lindsay asserted that removal of these legal and administrative barriers would lead to 'greater administrative and financial efficiencies'<sup>169</sup> and provide for a more 'seamless' entity.<sup>170</sup>

*An enhanced public profile*

**2.86** Some inquiry participants, such as Ms Sparks, Chair of SLM, commented on the lack of brand recognition suffered by both SARA and SLM.<sup>171</sup> This was also acknowledged by Mr Lindsay, who argued that the creation of a new cultural institution, with its increased remit and weight, will 'enhance the public profile for archiving and history that both SLM and SARA have been unable to garner in the past'.<sup>172</sup>

**2.87** Mr Lindsay asserted that this increased 'cultural cachet' will have significant benefits 'in the space of fundraising, philanthropy, corporate sponsorship and overall competitive strength when appealing to government for funding'.<sup>173</sup> He maintained:

The creation of a new cultural institution will be a prime opportunity to develop a publically recognised Australian history brand that can serve as a contemporary entry point for the public to access collections, ultimately leading to greater audience engagement with the stories of our past.<sup>174</sup>

**2.88** Similarly, Ms Sparks spoke of the benefits of a new, higher profile entity, including:

... increased quality and reach of public programs and exhibitions able to be produced by the two organisations working together; scale benefits for fundraising, philanthropy, corporate sponsorship, audience numbers and overall competitive strength when appealing to governments for funding that comes from being a more substantial cultural organisation; and real monetary synergies and operating efficiencies in bringing together services such as parts of the leadership team, finance, IT, marketing and administration.<sup>175</sup>

<sup>168</sup> Answers to supplementary questions, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 4 July 2020, pp 14-15.

<sup>169</sup> Answers to supplementary questions, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 4 July 2020, p 14.

<sup>170</sup> Evidence, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 1 June 2020, p 9.

<sup>171</sup> Evidence, Ms Naseema Sparks AM, Chair, Sydney Living Museums, 1 June 2020, p 4.

<sup>172</sup> Evidence, Evidence, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 20 August 2020, p 27.

<sup>173</sup> Evidence, Evidence, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 20 August 2020, p 27.

<sup>174</sup> Evidence, Evidence, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 20 August 2020, p 27.

<sup>175</sup> Evidence, Ms Naseema Sparks AM, Chair, Sydney Living Museums, 1 June 2020, p 3.

### *Executive Agency status*

- 2.89** One aspect of the proposed reform is that the new cultural institution be given Executive Agency status, in line with the State's other Cultural Institutions.<sup>176</sup> Minister Harwin explained that it is proposed for this status to be embedded in the legislation.<sup>177</sup>
- 2.90** According to Mr Lindsay, as an Executive Agency, the new entity will have 'greater flexibility and agility to employ the best people to protect, research and make accessible our past'.<sup>178</sup> Mr Howarth, Heritage Council of NSW, added that such a status provides a 'greater agility and innovation capacity', particularly with a global budget.<sup>179</sup>
- 2.91** Across the board, inquiry participants generally agreed with the proposal to confer this status either on the new entity<sup>180</sup> or, for those who did not support the creation of a new cultural institution, on SARA.<sup>181</sup> These stakeholders saw the benefit of an elevated status, which Minister Harwin stated made the entity 'better protected than any of the other iterations it has had up to this time' when considered in conjunction with a greater emphasis on engagement.<sup>182</sup>

### **Access**

- 2.92** Under the proposal to create a new cultural institution, the committee was advised that the entity will have 'the responsibility and capacity to improve, increase and diversify the way that people access and engage with the State's history'.<sup>183</sup> Dr Brian Lindsay, Chair of SARA, explained:

The new entity, encompassing diverse holdings and the full spectrum of professional expertise concerning history, will have the ability to expand on the curation and accessibility of the archives through SLM's capacity for exhibitions, education programming and so forth.<sup>184</sup>

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<sup>176</sup> State Archives and Records Authority of New South Wales, *Review of the State Records Act 1998 Policy Paper*, January 2020, p 6.

<sup>177</sup> Evidence, Hon Don Harwin MLC, Minister for the Arts, 20 August 2020, p 30.

<sup>178</sup> Additional information, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 4 July 2020, p 1.

<sup>179</sup> Evidence, Mr Frank Howarth, Chair, Heritage Council of NSW, 1 July 2020, p 5.

<sup>180</sup> For example, Evidence, Mr Frank Howarth, Chair, Heritage Council of NSW, 1 July 2020, p 2; Evidence, Dr Lisa Murray, Chair, Professional Historians Association (NSW and ACT), 1 July 2020, p 6.

<sup>181</sup> For example, Evidence, Professor Lucy Taksa, former Chair, State Archives and Records Authority of New South Wales, 20 August 2020, p 8; Evidence, Ms Julia Mant, President, Australian Society of Archivists, 1 July 2020, p 31.

<sup>182</sup> Evidence, Hon Don Harwin MLC, Minister for the Arts, 20 August 2020, p 29.

<sup>183</sup> Evidence, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 20 August 2020, p 27.

<sup>184</sup> Evidence, Dr Brian Lindsay, Chair, State Archives and Records Authority of New South Wales, 1 June 2020, p 3.

**2.93** However, numerous inquiry participants took issue with this, questioning the notion of access and whether the new entity will in fact support its intended mandate and enhance public access to State records and archives. These stakeholders called for a greater focus on digital access rather than engagement through interpretation and storytelling in exhibitions.

**2.94** For example, the Professional Historians Association (PHA) (NSW & ACT) argued that '[a]ccess to records and interpretation of the records are different things' and maintained that '[p]ublic engagement through exhibitions does not equate to access'.<sup>185</sup> The PHA argued:

Access is not about presenting the records in an interpreted form: be it through social media, exhibition, book or podcast. Access is about enabling the records to be arranged, described, preserved, and consulted. State Archives should be dealing with managing access to the raw material.<sup>186</sup>

**2.95** Indeed, both the PHA (NSW and ACT) and Australian Historical Association (AHA) contended that SARA should be focussing on improving access to the records, 'not shifting its purpose across to activating the collection',<sup>187</sup> as part of a merged entity.

**2.96** According to the AHA, problems with accessibility not only impact people in New South Wales, but those interstate and internationally seeking to use the collections. They therefore suggested that 'improving access to the digital catalogue and expanding digitised collections be urgently prioritised ...'.<sup>188</sup>

**2.97** Similarly, Mr Ventress, former Director of SARA, advocated for greater digital access as he challenged the notion that accessibility to SARA material would be expanded through SLM's exhibition capacity under the new entity:

The idea that this merger is modern and exciting is not logical. In fact, it is old-fashioned and facing backwards to our past, limiting access through mediated exhibitions rather than enhancing access through a more equitable digital future where more of our archives are made available to all in a truly democratic fashion.<sup>189</sup>

**2.98** Meanwhile, Dr Shirley Fitzgerald, former Chair of SARA, argued that access 'is not stories': '... "[A]ccess" means access. To records. To information. At "item" level as well as at more overarching levels ...'.<sup>190</sup> In this regard, Dr Fitzgerald called for greater online access, stating:

The public requires of its archives access, including on-line access down to item level along with good clear descriptions by professional archivists describing the records. Currently there are many thousands of items unavailable because they have not yet been accessioned into the collection and recorded to make them publicly accessible.<sup>191</sup>

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<sup>185</sup> Submission 34, Professional Historians Association (NSW & ACT), p 2.

<sup>186</sup> Submission 34, Professional Historians Association (NSW & ACT), p 5.

<sup>187</sup> Submission 34, Professional Historians Association (NSW & ACT), p 2; Submission 47, Australian Historical Association, p 1.

<sup>188</sup> Submission 47, Australian Historical Association, p 2.

<sup>189</sup> Evidence, Mr Alan Ventress, former Director, State Archives and Records Authority of New South Wales, 1 June 2020, p 18.

<sup>190</sup> Submission 36, Dr Shirley Fitzgerald, p 3.

<sup>191</sup> Submission 36, Dr Shirley Fitzgerald, p 3.

- 2.99** Likewise, for Dr Michael Bennett, Member of the Professional Historians Association (NSW and ACT), 'the focus needs to be on the cataloguing and indexing' of material, given concerns that 'there is a vast amount of material ... government records that have not been properly catalogued and indexed as yet'.<sup>192</sup>
- 2.100** In response to these concerns, Mr Lindsay, Executive Director of SARA and SLM, advised that 'this isn't an either/or proposition that will preference exhibitions over digital access or indeed any of SARA's existing functions or any of SLM's'.<sup>193</sup> Mr Lindsay stated that both functions are highly valued and will be important elements of the proposed new institution. Moreover, he asserted that it is 'limiting to suggest that exhibitions and digitisation are the only, or even the primary means of creating access to collections'.<sup>194</sup>
- 2.101** Mr Lindsay argued that exhibitions are a 'valid and important means of access to collections' and rejected claims that they will limit access to the archive collection. He insisted that instead, exhibitions will 'diversify the groups of people who access and engage the State Archives Collection, beyond those who would ordinarily come to the Reading Room or look at our catalogue'.<sup>195</sup>
- 2.102** Conversely, Mr Lindsay firmly maintained that digitising the collections and publishing it in the online catalogue may only increase access for a select few and will not provide more equitable access for the broader community.<sup>196</sup> This view was shared by Dr Lindsay, Chair of SARA, who asserted that while the importance of digitised archives cannot be overstated, 'the value that can be derived from directly accessing digitised records in their raw form is limited for many people'.<sup>197</sup>
- 2.103** In light of this, Mr Lindsay concluded that the proposed cultural institution will broaden access and engagement more than ever before:
- The new entity will be able to broaden the way people in NSW of diverse ages, backgrounds, interests, education and skill levels engage with our past by diversifying access points, embracing inclusive storytelling, and acknowledging multiple perspectives.<sup>198</sup>
- 2.104** Mr Lindsay further argued that this new entity will enable SARA to fulfil its obligations to broaden and diversify the way people engage with its material by helping SLM 'to tell more

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<sup>192</sup> Evidence, Dr Michael Bennett, Member, Professional Historians Association (NSW and ACT), 1 July 2020, pp 3-4.

<sup>193</sup> Answers to supplementary questions, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 4 July 2020, p 6.

<sup>194</sup> Answers to supplementary questions, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 4 July 2020, p 6.

<sup>195</sup> Answers to supplementary questions, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 4 July 2020, p 6.

<sup>196</sup> Answers to supplementary questions, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 4 July 2020, p 6.

<sup>197</sup> Evidence, Dr Brian Lindsay, Chair, State Archives and Records Authority of New South Wales, 1 June 2020, p 3.

<sup>198</sup> Answers to supplementary questions, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 4 July 2020, pp 6-7.

diverse stories about our past, in settings that will help contextualise them'.<sup>199</sup> With SARA and SLM as the basis for this new cultural institution, Mr Lindsay said there is an opportunity for 'lateral thinking' about how to make 'deeper and broader connections with a wider cross-section of society'.<sup>200</sup>

- 2.105** Indeed, Dr Lindsay, Chair of SARA, spoke of how the single new entity, with its diverse physical holdings, could present these alongside one another in a way that is outcome focused – understanding society, the human experience, history – rather than tied to specialist functions, with one institution for archivists, one for librarians, one for historians.<sup>201</sup> As previously noted, Dr Lindsay argued that institutions are progressively blending and merging the traditionally separated functions of libraries, museums, galleries and archives, and this is the approach that is currently being proposed to enhance and broaden access and engagement.<sup>202</sup>
- 2.106** Mr Frank Howarth acknowledged this view, arguing that 'the community does not see the barriers that the professions or the governments put around organisations. They just want information ...'.<sup>203</sup> He asserted that someone in the community who wants to find information about a particular subject about New South Wales 'should not have to think, "Do I need to ask that of SARA, or SLM, or the Australian Museum?"'.<sup>204</sup>
- 2.107** Other inquiry participants agreed that the new cultural institution would deliver enhanced public access through its expanded remit, spanning the functions, operations and expertise of both SARA and SLM.
- 2.108** For example, the National Archives of Australia supported 'maximis[ing] the extent to which the State's cultural heritage is promoted and accessible' and believed that the proposed reform to create a new entity based on SARA and SLM 'will enable the development and delivery of public programs and resources that will encourage engagement with NSW's cultural heritage and foster a deeper understanding of the State's history'.<sup>205</sup>
- 2.109** Similarly, Mr Hinchcliffe, former Executive Director of SARA, expressed support for 'all strategies to increase community engagement and access to the Authority's collection', and thought the proposed merger of SARA with SLM will provide opportunities for this increased access.<sup>206</sup>

<sup>199</sup> Answers to supplementary questions, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 4 July 2020, p 5.

<sup>200</sup> Answers to supplementary questions, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 4 July 2020, p 5.

<sup>201</sup> Evidence, Dr Brian Lindsay, Chair, State Archives and Records Authority of New South Wales, 1 June 2020, p 6.

<sup>202</sup> Evidence, Dr Brian Lindsay, Chair, State Archives and Records Authority of New South Wales, 1 June 2020, p 6.

<sup>203</sup> Evidence, Mr Frank Howarth, Chair, Heritage Council of NSW, 1 July 2020, p 5.

<sup>204</sup> Evidence, Mr Frank Howarth, Chair, Heritage Council of NSW, 1 July 2020, p 5.

<sup>205</sup> Submission 61, National Archives of Australia, p 1.

<sup>206</sup> Evidence, Mr Geoff Hinchcliffe, former Executive Director, State Archives and Records Authority of New South Wales, 1 July 2020, p 13.

- 2.110** Ms Tydd, Information and Privacy Commission NSW, also acknowledged the many ways awareness can be raised about the importance of information access, including 'by way of digital means, by way of a broadsheet ... but also ... through exposure and greater understanding, which might take a physical form. So having houses, locations, places to display records may be one way of promoting the importance of access to government information'.<sup>207</sup> She asserted: 'Ensuring that [records] are visible to the public to stimulate that right of access is certainly a policy proposal that promotes open access.'<sup>208</sup>

### **Exhibiting SARA material in SLM sites**

- 2.111** A key issue raised in relation to the new entity and its capacity to enhance public access is the value and impact of exhibiting SARA material in SLM sites.
- 2.112** Several inquiry participants argued that SARA material is not suitable for physical exhibition. For example, Dr Watts, former Director of HHT, argued that, while archival material is very good supplementary material for objects, 'archival material is generally not ... the primary thing that you are showing ... Exhibitions are about three-dimensional objects largely'.<sup>209</sup>
- 2.113** Similarly, Dr Fitzgerald asserted that 'given that state archives are primarily paper based records, it is impossible to argue their adequacy for most museum displays or curated exhibitions .... All these museums can and do collaborate with SARA at the level of records. There is nothing particularly 'fitting' about SLM'.<sup>210</sup>
- 2.114** However, other stakeholders argued that there is an important connection between the collections of SARA and SLM, and that, without only focusing on the physical exhibition of the records, SARA material indeed holds much value to SLM sites.
- 2.115** For example, Mr Lindsay argued that it is a 'misunderstanding or a misstatement' to say that the collections of SARA and SLM are not connected.<sup>211</sup> He asserted that the majority of information about the places that SLM manages forms part of the State archives collection, such as information about the buildings themselves, and the people who lived in those places and their life histories.<sup>212</sup> According to Mr Lindsay, SARA material thus holds 'incredible value' to SLM's properties.<sup>213</sup>

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<sup>207</sup> Evidence, Ms Elizabeth Tydd, Chief Executive Officer and Information Commissioner, Information and Privacy Commission NSW, 20 August 2020, p 6.

<sup>208</sup> Evidence, Ms Elizabeth Tydd, Chief Executive Officer and Information Commissioner, Information and Privacy Commission NSW, 20 August 2020, p 6.

<sup>209</sup> Evidence, Dr Peter Watts AM, former Director, Historic Houses Trust of New South Wales, 1 June 2020, p 26.

<sup>210</sup> Submission 36, Dr Shirley Fitzgerald, p 4.

<sup>211</sup> Evidence, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 1 June 2020, p 9.

<sup>212</sup> Evidence, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 1 June 2020, p 9; Answers to supplementary questions, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 4 July 2020, p 5.

<sup>213</sup> Answers to supplementary questions, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 4 July 2020, p 5.

- 2.116** Mrs Turnbull agreed, asserting that 'we cannot underestimate the value of putting story into the architecture' which she says 'can often be in written form'. Mrs Turnbull considered the archives to be a 'very powerful tool to bring life to the stories of the buildings' in SLM's collection.<sup>214</sup>
- 2.117** Mr Lindsay cited the example of the archival content depicting John Macarthur's struggle with mental health in the early 1800s presented in his former home, now under the care of SLM. Mr Lindsay stated that 'this kind of innovative access would not have been possible without the collaboration between SLM and SARA existing'.<sup>215</sup>
- 2.118** Equally, in the way that archives can give value to built sites, Ms Anne Henderson, former Chair of SARA, argued that built sites can give value to archives by giving them a physical presence. Ms Henderson contended that there is a critical need for archives to have presence, not only amongst government agencies, but physically. She argued that 'Archives is a kind of mystery. People do not even know what it is'.<sup>216</sup> Ms Henderson thus supported the proposal to unite SARA and SLM, stating: 'I welcome this move to put New South Wales historic buildings in with the Archives because I think the two together could make the Archives a real presence'.<sup>217</sup>
- 2.119** Some inquiry participants also raised concerns about the move away from the place-based philosophy that has been traditionally applied to SLM sites, with the breadth of material in State archives that would become more readily drawn upon under the proposed reform.
- 2.120** For example, Dr Watts, former Director of HHT, argued strongly for maintaining a place-based philosophy for SLM's properties. He regarded it as 'absolutely critical' if these properties are to preserve their relevance and integrity. He asserted:
- ... So it is absolutely critical that these things remain essentially place-based. They are really, really important properties—they are just not any properties. It is the distinguishing thing about the Historic Houses Trust that it sees the building and the collections within the building as the primary artefact; it is not a box to show anything in .... A place-based museum gives primacy always to the place and it is hard to do, it is very hard, but you do not give up on it. ... Then you lose your way, a place then loses its integrity.<sup>218</sup>
- 2.121** However, Mr Lindsay argued that there may be occasions when 'curatorially ... we might want to move away from that', and cited international examples of where material is often displayed that is tangential or without any relationship to the site itself. Mr Lindsay maintained that 'this does not mean disrespecting the history of that place' or indeed not having interpretations of

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<sup>214</sup> Evidence, Mrs Lucy Turnbull, 20 August 2020, p 18.

<sup>215</sup> Evidence, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 1 June 2020, p 5.

<sup>216</sup> Evidence, Ms Anne Henderson, former Chair, State Archives and Records Authority of New South Wales, 1 July 2020, p 22.

<sup>217</sup> Evidence, Ms Anne Henderson, former Chair, State Archives and Records Authority of New South Wales, 1 July 2020, p 22.

<sup>218</sup> Evidence, Dr Peter Watts AM, former Director, Historic Houses Trust of New South Wales, 1 June 2020, pp 28-29.

what the site is or was, but he pointed to the notion of 'experiencing material in a historical setting'.<sup>219</sup>

- 2.122** Mr Lindsay stated that there are infinite stories that can be told that are related to a place and still stay true to the place-based philosophy, however, he believed 'there are also other ways to interpret' these stories.<sup>220</sup>

### **A Sydney CBD Reading Room**

- 2.123** As part of discussions about enhancing public access, some drew attention to the absence of a SARA Reading Room in the Sydney CBD,<sup>221</sup> following its closure in 2012, and suggested ways in which this could be addressed.

- 2.124** For example, Mr Ventress suggested that the State Library of NSW could provide a space and facilities, arguing that a space in an SLM property 'is not really workable' in his opinion.<sup>222</sup> Others such as Dr Watts believed that the SLM-managed Justice and Police Museum would be a most suitable place to provide an access point in the city as a Reading Room.<sup>223</sup> However, both, among others,<sup>224</sup> did not see this as a 'good enough reason for a merger'.<sup>225</sup>

- 2.125** According to Dr Lindsay, Chair of SARA, there has been some interest for a Reading Room in the city, however, he told the committee that re-establishing the room 'is not something that the archives can responsibly achieve on its own', given the prohibitive costs and chain of custody issues involved.<sup>226</sup>

- 2.126** However, with the creation of a new cultural institution, Dr Lindsay argued that there would be capacity for archival material to be accessed in the city, potentially through an SLM property such as the Mint. Dr Lindsay argued that this is an example of 'a practical outcome that only a combined entity would be able to achieve'.<sup>227</sup>

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<sup>219</sup> Evidence, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 1 June 2020, p 10.

<sup>220</sup> Evidence, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 1 June 2020, p 10.

<sup>221</sup> For example, Submission 2, Dr David Clune and Mr Mark Hildebrand, p 1; Submission 47, Australian Historical Association, p 2.

<sup>222</sup> Evidence, Mr Alan Ventress, former Director, State Archives and Records Authority of New South Wales, 1 June 2020, p 20.

<sup>223</sup> Evidence, Dr Peter Watts AM, former Director, Historic Houses Trust of New South Wales, 1 June 2020, p 26.

<sup>224</sup> For example, Evidence, Ms Julia Mant, President, Australian Society of Archivists, 1 July 2020, p 26.

<sup>225</sup> Evidence, Dr Lisa Murray, Chair, Professional Historians Association (NSW and ACT), 1 July 2020, p 9.

<sup>226</sup> Evidence, Dr Brian Lindsay, Chair, State Archives and Records Authority of New South Wales, 1 June 2020, p 8.

<sup>227</sup> Evidence, Dr Brian Lindsay, Chair, State Archives and Records Authority of New South Wales, 1 June 2020, p 8.

## The absence of a business case

**2.127** With the proposal to replace two existing organisations – each with significant assets and holdings - with a new cultural institution, numerous inquiry participants questioned the absence of a business case.<sup>228</sup> For example, Dr Murray, Professional Historians Australia (NSW and ACT), stated that they are 'perplexed' by the absence of any detailed analysis of the proposed changes, which she described as being 'light on in detail'. She argued:

The public has been presented with a brief policy paper that shifts the focus away from recordkeeping and archival access—the whole purpose of the State Records Act—and instead proposes a merger of the archives with Sydney Living Museums to create an executive agency. We ask: Where is the business case or cost analysis for this?<sup>229</sup>

**2.128** Similarly, Mr Ventress, former Director of SARA, said he found it 'strange' and 'particularly disappointing' that the proposed reforms were presented in the manner they were. He stated: '... [S]uch a case ... looks like a thought bubble that comes from some creative person in Government who thinks this might be a good idea and puts it forward without any real analysis'.<sup>230</sup> He added: 'I would be disappointed to see this go ahead without a stringent review of putting forward the benefits and the opposition for this'.<sup>231</sup>

**2.129** While in support of the proposed reform, Mr Hinchcliffe, former Executive Director of SARA, also asserted that it would be 'most useful for a business case to be developed to better inform decision making should the merger proceed or, importantly and conversely, should it not proceed and the agencies continue their partnership as separate entities'.<sup>232</sup>

**2.130** In response to criticisms about a lack of detailed analysis through a business case, Minister Harwin explained his approach to the development of this policy. Acknowledging these proposed reforms as a 'significant policy proposal [with] ... many important stakeholders', he described to the committee the process which he is following, based on a proposed framework for legislative and policy change currently being considered by the House. He explained that the process involves:

1. A Green Paper process
2. A parliamentary committee hearing on public responses to the Green Paper
3. A Government response to the outcome of the parliamentary hearing in the form of a White Paper Decision and Bill
4. A Selections of Bills Committee decision on whether to refer the Bill to the House or to a Standing Committee for further inquiry.<sup>233</sup>

<sup>228</sup> For example, Evidence, Ms Julia Mant, President, Australian Society of Archivists, 1 July 2020, p 31.

<sup>229</sup> Evidence, Dr Lisa Murray, Chair, Professional Historians Association (NSW and ACT), 1 July 2020, p 3.

<sup>230</sup> Evidence, Mr Alan Ventress, former Director, State Archives and Records Authority of New South Wales, 1 June 2020, p 22.

<sup>231</sup> Evidence, Mr Alan Ventress, former Director, State Archives and Records Authority of New South Wales, 1 June 2020, p 22.

<sup>232</sup> Evidence, Mr Geoff Hinchcliffe, former Executive Director, State Archives and Records Authority of New South Wales, 1 July 2020, p 12.

<sup>233</sup> Evidence, Hon Don Harwin MLC, Minister for the Arts, 20 August 2020, pp 25-26.

- 2.131** Minister Harwin advised that the *Review of the State Records Act 1998 Policy Paper* is akin to the Green Paper, and that the current committee inquiry is akin to the public hearing on public responses to the Green Paper. He stated that the outcome of this inquiry will inform the White Paper and any legislation that goes to Cabinet for consideration.<sup>234</sup>
- 2.132** Minister Harwin said that he accepts the criticism regarding the absence of a business case in the Policy Paper but advised that it was his preference 'to see if there was in-principle support from this Committee before proceeding to costings'.<sup>235</sup> He stated that he would consider the evidence of this inquiry and 'amend the proposal accordingly'<sup>236</sup> before taking it to Cabinet.
- 2.133** Mr Lindsay, Executive Director of SARA and SLM, added that to procure an external business case would be a waste of taxpayer money, without assurances that the proposal would be supported:

... [T]he procurement of an external business case is estimated to cost upwards of a million dollars and would be a waste of State resources and taxpayer money, without SLM and SARA having further assurance that the proposition will be politically and legislatively supported.

- 2.134** Mr Lindsay stated that a thorough review as due diligence would be conducted, if there is in-principle support from the committee. He explained:

With the in-principle support of the Committee to the proposed new entity, SLM and SARA will conduct a thorough review as due diligence prior to the creation of the new entity. A main feature of this work will be to identify the financial benefits to be realised and where any residual savings can be allocated within the organisation, and will serve as performance indicators for the transition process and beyond.<sup>237</sup>

- 2.135** Notwithstanding the absence of a business case, throughout the inquiry Mr Lindsay maintained that the proposal to create a new cultural institution was 'an intellectual idea ... a creative concept' to forefront history.<sup>238</sup> He acknowledged that the Policy Paper is 'a brief document' but advised that it serves to signal an idea and stimulate discussion:

Indeed, as many have noted, the policy paper is a brief document. It is neither a definitive commercial strategy, nor is it a bill before Parliament. Rather, it represents an idea, signalling the intention to create something new and to introduce significant improvements to the centralised understanding and control over the record-keeping and archival practices of public offices. It serves to stimulate discussions about what this proposal might look like in practice.<sup>239</sup>

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<sup>234</sup> Evidence, Hon Don Harwin MLC, Minister for the Arts, 20 August 2020, p 26.

<sup>235</sup> Evidence, Hon Don Harwin MLC, Minister for the Arts, 20 August 2020, p 26.

<sup>236</sup> Evidence, Hon Don Harwin MLC, Minister for the Arts, 20 August 2020, p 30.

<sup>237</sup> Answers to supplementary questions, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 4 July 2020, p 5.

<sup>238</sup> Answers to supplementary questions, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 4 July 2020, p 5; see also Evidence, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 1 June 2020, p 11 and p 12.

<sup>239</sup> Evidence, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 20 August 2020, p 26.

**2.136** Mr Lindsay told the committee that, as such, the business case 'is not the primary driver'. He insisted: 'The efficiencies are not the sales pitch here, they are the halo benefit'.<sup>240</sup>

**2.137** Indeed, while there is no business case, Mr Lindsay argued that the partnership between SARA and SLM over the past 12 months under a single Executive Director, has provided empirical evidence of these halo benefits and supports his 'strong belief that the proposed new entity will bring greater value and outcomes to the people of New South Wales'.<sup>241</sup> Rather than divert focus and resources, as has been suggested, Mr Lindsay explained the partnership between SARA and SLM has created many efficiencies:

I can state with certainty that the past 12 months of partnership between SARA and SLM has not been responsible for a diversion of manpower, funding or resources away from any one part of SLM and SARA's core operations in favour of another. In fact, the partnership has created large-scale financial and administrative efficiencies that have allowed us to invest more in the things that really matter: creating public value through access. Although not the purpose of this proposal, a single new entity will result in even more efficiencies by removing legal and administrative fences. These efficiencies will allow us to focus our resources on the highest gain activities.<sup>242</sup>

**2.138** For example, Mr Lindsay advised that SARA and SLM have been able to reduce costs significantly through the development of shared services. He cited grounds keeping as a simple example.<sup>243</sup> He also pointed to staffing retention and efficiencies through a shared service model with SLM for SARA services that were previously outsourced.<sup>244</sup>

**2.139** In response to assertions that the creation of the proposed new entity is a response to declining budgets,<sup>245</sup> Mr Lindsay advised that 'the budgets for SARA and SLM have not been declining and this proposal is not in response to the budget position, real or imagined, of either entity'.<sup>246</sup> He stated:

Although there has been and will continue to be fluctuations in government funding there has also been significant government investment in areas such as the capital works programs of both SLM and SARA.<sup>247</sup>

<sup>240</sup> Evidence, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 1 June 2020, p 12.

<sup>241</sup> Evidence, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 1 June 2020, p 5.

<sup>242</sup> Evidence, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 1 June 2020, p 5.

<sup>243</sup> Evidence, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 1 June 2020, p 11.

<sup>244</sup> Evidence, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 1 June 2020, p 13.

<sup>245</sup> For example, Evidence, Mr Alan Ventress, former Director, State Archives and Records Authority of New South Wales, 1 June 2020, p 21.

<sup>246</sup> Answers to supplementary questions, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 4 July 2020, p 17.

<sup>247</sup> Answers to supplementary questions, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 4 July 2020, p 17.

- 2.140** Noting that a budget is composed of total revenue (government operational grant, government capital grant and self-generated revenue) and total expenditure, Mr Lindsay explained that for SLM, compared with the 2008-09 financial year:
- the estimated total government operational grant for the current financial year is 18.8% higher
  - the government capital grant is 24.4% higher
  - self-generated revenue is 11.7% lower (acknowledging that COVID-19 has eliminated all self-generated revenue for a number of months in the current financial year)
  - expenditure has increased by only 5.6%.<sup>248</sup>
- 2.141** For State Archives, compared with the 2008-09 financial year, Mr Lindsay advised:
- the estimated total government operational grant for the current financial year is 37.3% higher
  - the government capital grant is 1851.9% higher (and helps to fund improvements to collection storage areas and digitisation)
  - self-generated revenue is 84.2% higher
  - expenditure has increased by 93.2% (with this being directly invested in the core functions of the Institution'.<sup>249</sup>
- 2.142** With specific reference to SARA's budget, Mr Lindsay informed the committee that SARA generates between '85 per cent and 90 per cent, sometimes 100 per cent of its own revenue' through its commercial operations. He explained that its Government funding 'fluctuates quite strongly' in response to SARA's ability to generate commercial income. As such, he stated: 'I could not call it systematic funding cuts to State Archives'.<sup>250</sup>

## Governance

- 2.143** Inquiry participants also discussed the governance structure proposed for the new cultural institution. As outlined in chapter 1, a single governing body will be responsible for the strategic direction and policies of the new institution. Committees will have statutory responsibility for advising on and approving recordkeeping standards, the retention and disposal of records and the acquisition and management of buildings or places.<sup>251</sup>

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<sup>248</sup> Answers to supplementary questions, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 4 July 2020, p 17

<sup>249</sup> Answers to supplementary questions, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 4 July 2020, p 17.

<sup>250</sup> Evidence, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 1 June 2020, p 13.

<sup>251</sup> State Archives and Records Authority of New South Wales, *Review of the State Records Act 1998 Policy Paper*, January 2020, p 6.

- 2.144** A number of stakeholders were troubled by the proposed governance structure. For example, Ms Mant, Australian Society of Archivists, argued that the proposal 'appears to add an unnecessary layer of governance and complexity', noting that the current SARA Board reports directly to Parliament through the Minister 'as is appropriate'.<sup>252</sup>
- 2.145** Ms Stapleton, former Director of SARA, asserted that the construction of what she described as 'subcommittees' to replace the existing Boards does not strengthen its role, but rather diminishes it, stating, 'if not in fact, certainly in perception'.<sup>253</sup> She raised concerns that the existing powers of the SARA Board will be 'shunted to a subcommittee and above that will be a committee looking at the heritage values'.<sup>254</sup>
- 2.146** The University of Sydney expressed a similar view, arguing that the proposal will not only diminish accountability functions but also independence, with the committees sitting under the overarching governing body:
- ... [T]he proposal ... to give committees within the single governing body statutory responsibility for government recordkeeping, information retention and disposal, will reduce both the independence and the influence of these core accountability functions.<sup>255</sup>
- 2.147** Professor Taksa, former Chair of SARA, expressed a similar point, asserting that 'there is always a gap between intentions and impact'.<sup>256</sup> She argued that, while the proposal is for two equivalent committees, there is an inherent imbalance between SARA and SLM which she believes will be reflected in the operation of the governance structure. She argued:
- There are always unintended consequences. Where you are proposing two equivalent subcommittees, where you have one entity responsible for assets worth 980 million dollars or whatever it is worth now and another one for how many properties, there is an imbalance, for starters. Not to mention the fact that State records is responsible for the whole of government recordkeeping ... This is huge. There is an imbalance. That imbalance will be replicated not only in the committees but also at the governance level. If ... there has been an existing imbalance in the current constitution of the board under the Act favouring depositors, which I think needs to be changed, this situation that is being proposed will reinforce imbalances and, therefore, have a negative impact on digital futures on whole of government approaches to records management.<sup>257</sup>
- 2.148** Indeed, Professor Taksa argued that the composition of the current Board is troublesome, with a focus on depositors of records rather than users.<sup>258</sup> She suggested that the Board needs the

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<sup>252</sup> Evidence, Ms Julia Mant, President, Australian Society of Archivists, 1 July 2020, p 23.

<sup>253</sup> Evidence, Ms Jenni Stapleton, former Director, State Archives and Records Authority of New South Wales, 20 August 2020, p 12.

<sup>254</sup> Evidence, Ms Jenni Stapleton, former Director, State Archives and Records Authority of New South Wales, 20 August 2020, p 12.

<sup>255</sup> Submission 48, University of Sydney, p 2.

<sup>256</sup> Evidence, Professor Lucy Taksa, former Chair, State Archives and Records Authority of New South Wales, 20 August 2020, p 12.

<sup>257</sup> Evidence, Professor Lucy Taksa, former Chair, State Archives and Records Authority of New South Wales, 20 August 2020, pp 12-13.

<sup>258</sup> Evidence, Professor Lucy Taksa, former Chair, State Archives and Records Authority of New South Wales, 20 August 2020, p 12.

representation of records managements experts, users such as archivists, digital records managers and historians, a view that was also shared by others such as Ms Stapleton and Australian Historical Association.<sup>259</sup> Professor Taksa explained that her opposition to the proposed committee structure is thus based on her belief that 'you need a marriage, a confluence, between expertise and governance', without which you have 'governance being cut off from the critical skills that are required...'.<sup>260</sup>

- 2.149** In response to concerns about the governance structure proposed for the new cultural entity, Minister Harwin explained that the two proposed committees will have a statutory basis and will retain the roles and functions of the current Boards of SARA and SLM. He clarified that, for SARA, this means the committee will maintain the functions of the existing Board which are primarily based on advising on document retention and disposal.<sup>261</sup> Minister Harwin advised that, with this committee structure in place, the Board of the new institution will be more akin the Boards of other cultural institutions, with a focus on governance and philanthropy:

... [T]he new committee envisaged in the policy paper will play much the same role as the current board. There is no reason why any of those document retention decisions have to be referred to the governance board of the new organisation other than for information ... Similarly, SLM has a committee that focusses on the heritage of its houses and places already. It should be enshrined in the legislation for a merged entity to provide a level of comfort to those who have concerns about the historic houses legacy. With these two committees having a statutory basis the board of the merged entity could resemble the more governance and philanthropy-focussed boards that the other State cultural institutions have.<sup>262</sup>

- 2.150** Various inquiry participants saw merit in this proposal and supported the governance structure of the new entity.<sup>263</sup> For example, Mr Fricker from the National Archives of Australia considered it 'the strength' of the Policy Paper that these committees are established, such that there will be a committee 'given the authority to make sure that that archival collection was being collected and maintained in a proper way'.<sup>264</sup>

## Regional interests

- 2.151** Inquiry participants also raised regional issues, and discussed the impact and potential opportunities that a new cultural institution might bring to regional New South Wales.

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<sup>259</sup> Evidence, Ms Jenni Stapleton, former Director, State Archives and Records Authority of New South Wales, 20 August 2020, p 15; Submission 47, Australian Historical Association, p 2; see also Submission 31, Professional Historians Australia, p 1; Submission 55, Name suppressed, p 2.

<sup>260</sup> Evidence, Professor Lucy Taksa, former Chair, State Archives and Records Authority of New South Wales, 20 August 2020, p 14.

<sup>261</sup> Evidence, Hon Don Harwin MLC, Minister for the Arts, 20 August 2020, p 25.

<sup>262</sup> Evidence, Hon Don Harwin MLC, Minister for the Arts, 20 August 2020, p 25.

<sup>263</sup> For example, Evidence, Mr Frank Howarth, Chair, Heritage Council of NSW, 1 July 2020, p 2; Evidence, Mr Geoff Hinchcliffe, former Executive Director, State Archives and Records Authority of New South Wales, 1 July 2020, p 15.

<sup>264</sup> Evidence, Mr David Fricker, Director-General, National Archives of Australia, 1 July 2020, p 16.

- 2.152** For example, Mr William Oates, an archivist from Armidale, expressed hope that 'the new model for museums and archives in NSW sees greater emphasis placed on regional and remote cultural locations'.<sup>265</sup>
- 2.153** Mr Oates advised the committee that there are a number of regional archive repositories across the State operating out of host institutions who have a memorandum of understanding with SARA to provide access to State archival material at these sites.<sup>266</sup> Mr Oates told the committee that, while this model has enabled 'the eyes and ears of the State archives out in the regions', it is 'patchy and underfunded'.<sup>267</sup> Indeed, he argued that funding to these regional archive centres has been diminished over the last twenty years 'to the point where local communities now are lobbying agencies to request they retain State Archives'.<sup>268</sup>
- 2.154** Mr Oates also drew attention to the absence of a regional archive repository in the Central West of the State. He informed the committee that regional archive centres currently cover the northern third of NSW, Newcastle, Wollongong and the southern third of the State, however, there is 'hole' in one of the oldest settled areas in New South Wales, outside of Sydney'.<sup>269</sup> Mr Oates argued that 'if you are going to have a systematic program, you have to have the whole of the State covered by regional archives and appropriate funding in place to run them'.<sup>270</sup>
- 2.155** Dr Fitzgerald, former Chair of SARA and former Trustee of the HHT, highlighted the Sydney-centricity of SLM's portfolio, stating that it is 'heavily skewed towards Sydney it does not represent NSW'.<sup>271</sup> She argued that in Nowra, for example, 'overwhelmingly visitors to historical houses in the region are not held by SLM'.<sup>272</sup>
- 2.156** Dr Fitzgerald told the committee that the name 'SLM' 'annoys a lot of people, not least where the regional property of Meroogal is located...'.<sup>273</sup> Mr Oates expressed a similar view, remarking: 'How people living in rural and remote NSW could perceive current support can be seen in the nomenclature "Sydney Living Museums". Yes, lots of culture in NSW if you visit Sydney'.<sup>274</sup>
- 2.157** Notwithstanding this, Mr Oates believed that the proposed reform 'will allow for new directions for all the state'.<sup>275</sup>
- 2.158** Indeed, Mr Lindsay, Executive Director of SARA and SLM, asserted that the new cultural institution 'will hold the remit of creating access to the history and records of the entire state, and through the combination of the assets of SLM and SARA further regional engagement

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<sup>265</sup> Submission 10, Mr William Oates, p 1.

<sup>266</sup> Evidence, Mr William Oates, Archivist, 1 July 2020, p 35.

<sup>267</sup> Evidence, Mr William Oates, Archivist, 1 July 2020, p 35.

<sup>268</sup> Submission 10, Mr William Oates, p 1.

<sup>269</sup> Evidence, Mr William Oates, Archivist, 1 July 2020, p 35; Submission 10, Mr William Oates, p 1.

<sup>270</sup> Evidence, Mr William Oates, Archivist, 1 July 2020, p 35.

<sup>271</sup> Submission 36, Dr Shirley Fitzgerald, p 4.

<sup>272</sup> Submission 36, Dr Shirley Fitzgerald, p 3.

<sup>273</sup> Submission 36, Dr Shirley Fitzgerald, p 3.

<sup>274</sup> Submission 10, Mr William Oates, p 2.

<sup>275</sup> Submission 10, Mr William Oates, p 2.

growth will be able to be realised'.<sup>276</sup> For example, he advised that the new entity will enable greater regional outreach, stating:

The institution will have an increased capacity for regional outreach and connection through an expanded touring program and regional partnerships. It will be able to develop education programming and resources to provide more relevant and in-depth access to the State archives collection and its significant properties than ever before.<sup>277</sup>

- 2.159** In response to concerns about SLM branding, Mr Lindsay gave evidence that 'SLM is keen to shift toward a perception among audiences that it is state wide', and that the proposed new entity will allow a rebrand that moves 'away from the current limitations placed on SLM by the perceptions of its' existing Sydney brand focus'.<sup>278</sup>
- 2.160** Minister Harwin acknowledged these limitations, stating that 'clearly there needs to be a greater focus outside' of Sydney for SLM's portfolio of properties, particularly towards regional New South Wales.<sup>279</sup> Dr Watts, former Director of HHT, supported the acquisition of historically relevant properties outside metropolitan Sydney, but noted that this is a 'very largely opportunistic' endeavor as they can only take place when the opportunity arises.<sup>280</sup>
- 2.161** Minister Harwin also acknowledged the need for the new cultural institution to consider opportunities in Sydney's west to address concerns about Sydney-centricity, stating: '... [I]t is not just Sydney versus the regions. It is also central Sydney versus the west'.<sup>281</sup> Minister Harwin identified potential opportunities in North Parramatta, such as Parramatta Girls' Home.<sup>282</sup>
- 2.162** Beyond the acquisition of assets, Minister Harwin also highlighted the need to rebuild a network of museums across the state, and argued that an institution such as the one being proposed will be able to facilitate this and provide more support to regionally based museums. He stated:

... [I]here is a need for this sort of organisation to start to rebuild the network of museums across the State, because really if you look at the 300 or so volunteer-led museums plus the regional museums ... their collections are generally very history-focused ... This museum should lead efforts to rebuild that network of museums because it is not necessarily about adding things to the asset base of this merged entity. It is about supporting very similar collections, both documents and places, houses, movable cultural heritage, other objects. I can envisage the capacity for a merged entity like this to work on that network and make suggestions about ways that the State can help those regionally based museums more.<sup>283</sup>

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<sup>276</sup> Answers to supplementary questions, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 4 July 2020, p 3.

<sup>277</sup> Evidence, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 20 August 2020, p 27.

<sup>278</sup> Answers to supplementary questions, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 4 July 2020, p 3.

<sup>279</sup> Evidence, Hon Don Harwin MLC, Minister for the Arts, 20 August 2020, p 34.

<sup>280</sup> Evidence, Dr Peter Watts AM, former Director, Historic Houses Trust of New South Wales, 1 June 2020, p 27.

<sup>281</sup> Evidence, Hon Don Harwin MLC, Minister for the Arts, 20 August 2020, p 36.

<sup>282</sup> Evidence, Hon Don Harwin MLC, Minister for the Arts, 20 August 2020, p 36.

<sup>283</sup> Evidence, Hon Don Harwin MLC, Minister for the Arts, 20 August 2020, p 34.

## Impact on the Government Records Repository

**2.163** As outlined in chapter 1, the Government Records Repository (GRR) is SARA's commercial operation which manages records storage services for semi-active records created by public sector bodies.

**2.164** During the inquiry, one stakeholder raised fears that the proposed reform seeking to create a single new entity to replace SARA and SLM would 'seek to legitimate and authorise the privatisation of this very essential public service'.<sup>284</sup> According to Professor Taksa, former Chair of SARA, the GRR 'ensures the highest level of records management for public records prior to assessment for disposal or retention as state archives, ensuring that what is preserved is of the highest quality', which she believed would be threatened under the current proposal.<sup>285</sup>

**2.165** Professor Taksa explained that her concerns stem from her understanding under the proposed reforms 'depositing bodies should have more responsibility over their records' ... which she believes 'seems to foreshadow that possibility'. Professor Taksa stated:

The most important thing is that SARA is responsible for records even before they come in to be assessed by the Board. They need to be in good standing, as it were. The standards created for preservation and maintenance during that interim term are crucial for the long-term outcome. As a public body, the GRR maintains the standards, security and all of the things that I do not believe private entities ... could maintain.<sup>286</sup>

**2.166** In response to this concern, Minister Harwin assured that there are no plans for the privatisation of the GRR, citing his role in quashing previous attempts to privatise the operation. Minister Harwin argued that the establishment of this new cultural institution as an Executive Agency will cement the link between SARA and the GRR and combat any such threat in the future. He stated:

I just want to make it very clear that that is not on the agenda and that proceeding in this direction in my view ensures that the intrinsic link between SARA and the Government Records Repository will never be broken ....

... I firmly believe that by putting GRR into an executive agency with a high profile board, the threat of that happening in the future will go away.<sup>287</sup>

**2.167** Minister Harwin maintained that, in his view, the commercial operations of the GRR are 'an essential addendum to the archival work of SARA in its current form and the merged entity in a possible future form', and believed 'it is essential that they stay together'.<sup>288</sup> Indeed, Mr Lindsay argued that the GRR and the business model of SARA is 'a government success story and a model for Cultural and Collecting institutions to emulate'.<sup>289</sup>

<sup>284</sup> Submission 29, Professor Lucy Taksa, p 5.

<sup>285</sup> Submission 29, Professor Lucy Taksa, p 5.

<sup>286</sup> Evidence, Professor Lucy Taksa, former Chair, State Archives and Records Authority of New South Wales, 20 August 2020, p 16.

<sup>287</sup> Evidence, Hon Don Harwin MLC, Minister for the Arts, 20 August 2020, p 32.

<sup>288</sup> Evidence, Hon Don Harwin MLC, Minister for the Arts, 20 August 2020, p 32.

<sup>289</sup> Answers to supplementary questions, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 4 July 2020, p 7.

## Committee comment

- 2.168** The committee notes that, while in its proposals the government presented a broader review of the legislative framework for State archives and records, stakeholders were primarily concerned with the proposal for a new cultural institution to replace the existing State Archives and Records Authority of New South Wales (SARA) and Sydney Living Museums (SLM) .
- 2.169** The committee acknowledges the breadth of evidence received during the inquiry about this proposed reform, and notes the range of views presented – from deep concern over the replacement of SARA and SLM with a single new entity to unequivocal support for it. The committee is encouraged by the fact that there are a significant number of members of the community who have a deep and caring interest in the future of archives and records in the State.
- 2.170** The committee notes that New South Wales has a deep and rich history – a history that matters and is worth telling. The committee shares the view that the places and records of our past can indeed enrich our lives, and more tellingly, teach us lessons for the future. Indeed, the public value from SARA's and SLM's collective assets and Collections is rooted in what can be learnt from these snapshots of the past, and sharing these with the State, the nation and the world.
- 2.171** While the committee notes the views of those who oppose the proposal, the committee agrees that a new cultural institution to illuminate the history of New South Wales is both bold and innovative, and appreciates the potential for this new entity to be more than the sum of its parts. The committee is convinced that the new proposal is not an 'either/or' proposition, wherein the role and remit of one entity takes precedence at the expense of the other. Instead, the committee recognises the potential synergies between SARA and SLM and believes that together these will only serve to strengthen and diversify access to and engagement with the State's history under a new entity.
- 2.172** For while access to our State's history may have been limited to the domain of historians and archivists in the past, the committee recognises that this new cultural institution will broaden access and engagement to wider audiences in ways not explored before. SARA's archives will be open to storytelling through the cultural brick and mortar assets of the SLM collection, and will thus be able to tell more diverse stories about our past in settings that will provide important and meaningful context for them.
- 2.173** Moreover, the committee acknowledges the great benefit a new cultural entity with Executive Agency status, as proposed, will have on enhancing the public profile of the State's history – for both citizens of and visitors to New South Wales – and the opportunities this can provide in philanthropy, fundraising and beyond.
- 2.174** The committee is heartened by the Minister's assurances that by putting the Government Records Repository into an Executive Agency the threat that it could be privatised is mitigated.
- 2.175** The committee is also particularly encouraged by the successful and fruitful partnership of SARA and SLM to date under the single Executive Director since July 2019.
- 2.176** The committee finds such arguments and the various others put forward in support of the new cultural institution compelling.

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- 2.177** The committee thus strongly supports the creation of a single new cultural institution, with Executive Agency status, to replace SARA and SLM, to collect, manage, preserve and provide access to government records, objects, building and places of interest to the people of New South Wales. Moreover, the committee believes that this new entity will strengthen and diversify access to and engagement with the history of New South Wales.
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### **Finding 1**

That the committee strongly supports the proposal to create a single new cultural institution with Executive Agency status, in place of the existing State Archives and Records Authority of New South Wales and Sydney Living Museums, to collect, manage, preserve and provide access to government records, objects, buildings and places of interest to the people of New South Wales. Moreover, the committee believes this new cultural institution will strengthen and diversify access to and engagement with the history of New South Wales.

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- 2.178** Notwithstanding the above support, the committee considers that due diligence should be performed before proceeding with the proposal. This should include a clear articulation of the benefits to be gained from creating the new entity as well as any potential drawbacks that might require further consideration.
- 2.179** The committee therefore recommends that the NSW Government document a detailed analysis of all aspects of the proposal to create a single new cultural institution in place of the existing SARA and SLM.
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### **Recommendation 1**

That the NSW Government document a detailed analysis of all aspects of the proposal to create a single new cultural institution in place of the existing State Archives and Records Authority of New South Wales and Sydney Living Museums.

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- 2.180** The committee acknowledges the adequacy of current government funding for SARA and SLM, and notes, in particular, the important contributions of commercial operations to the functioning of each entity, and the success of this model. However, the committee notes that it cannot be taken for granted that the allocation of present funding to the two organisations will be sufficient to enable the new entity to succeed in its role.
- 2.181** Hence the committee recommends that the NSW Government ensure there is sufficient baseline funding for the new entity to successfully care for its Collections, Archives and assets, and to fulfil its mandate. Moreover, the committee recommends that the new cultural institution be empowered to activate its assets to achieve commercial income as part of its core activities.
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**Recommendation 2**

That the NSW Government ensure that the proposed new cultural institution is:

- supported by sufficient baseline funding to successfully care for Collections, Archives and assets, and to fulfil its mandate
  - empowered to activate its assets to achieve commercial income as part of its core activities.
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- 2.182** The committee notes the particular concerns raised by inquiry participants that the replacement of SARA and SLM with a new entity may result in the diminution of existing functions, particularly with regard to government recordkeeping and archiving. The committee acknowledges, in particular, the evidence from the National Archives of Australia on the distinction between government records and private deposits, and maintaining strict standards in legislation for the archival of government records.
- 2.183** While the committee is encouraged by assurances from the Minister that the principal objectives of the existing legislation – the *State Archives and Records Act 1998* and the *Historic Houses Act 1980* – will be maintained, as will the existing functions, powers and responsibilities of SARA and SLM under the proposal, the committee seeks to ensure that a strong legislative framework is maintained to uphold government accountability and transparency through government recordkeeping.
- 2.184** Therefore the committee recommends that the NSW Government ensure that the legislation giving effect to the new cultural institution clearly defines the government recordkeeping and archival functions of the institution, based on the existing functions of the State Archives and Records Authority of New South Wales.
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**Recommendation 3**

That the NSW Government ensure the legislation giving effect to the new cultural institution clearly defines the government recordkeeping and archival functions of the institution, based on the existing functions of the State Archives and Records Authority of New South Wales.

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- 2.185** The committee sees real merit in the governance structure proposed for the new cultural institution, and believes that the two committees with statutory responsibilities will operate well under a single governing Board.
- 2.186** The committee notes the evidence of inquiry participants regarding the need for relevant records management experts and users to be represented on the SARA Board or any governance structure exercising records management and archival functions.
- 2.187** The committee believes that the new cultural institution should be supported by a governance structure that is inclusive and wide ranging in its representation of skill and expertise, sufficient to manage the asset portfolio, collections and operations of this institution. This may include historians, archivists, planners, philanthropists, property specialists and community business leaders.
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- 2.188** Accordingly, the committee recommends that the NSW Government ensure that the governance structure supporting the new cultural institution is inclusive and represents a wide range of skill and expertise sufficient to manage the institution's broad remit.

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**Recommendation 4**

That the NSW Government ensure the governance structure supporting the new cultural institution is inclusive and represents a wide range of skill and expertise sufficient to manage the institution's broad remit.

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- 2.189** The committee notes the issues identified in relation to regional interests, including concerns about regional archival repositories and the Sydney-centricity of the Sydney Living Museum's current branding and property portfolio.
- 2.190** The committee acknowledges these limitations but is convinced the new cultural institution could broaden opportunities for regional outreach, access and support, and help shift perceptions about an existing Sydney focus.
- 2.191** To ensure this, the committee recommends the NSW Government ensure the legislation giving effect to the new cultural institution bestows a clear state-wide mandate, such that the objectives of the legislation clearly acknowledge regional and remote New South Wales as areas of specific consideration. The committee notes this can be achieved through broadening regional access points, regional archives centres, touring exhibitions, supporting a network of regional museums, and developing educational programs and outreach activities.

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**Recommendation 5**

That the NSW Government ensure the legislation giving effect to the new cultural institution bestows a clear state-wide mandate, such that the objectives of the legislation clearly acknowledge regional and remote New South Wales as areas of specific consideration.

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## Chapter 3 Other amendments to the legislative and policy framework

Noting the proposal to create a new cultural institution to replace the State Archives and Records Authority and Sydney Living Museums discussed in chapter 2, this chapter examines a range of other amendments to the *State Records Act 1998* and the broader legislative and policy framework. These include proposed reforms to the open access, transfer and compliance provisions of the Act, support for digital recordkeeping, consideration of Aboriginal records, and proposed amendments to the *Historic Houses Act 1980*.

### Introduction

3.1 Many inquiry participants welcomed a review of the *State Records Act 1998* (the Act), as part of a broader review of the legislative and policy framework supporting the creation, preservation and access of records documenting our social, historical and cultural identity. With some noting the review of the Act as 'timely' and 'overdue',<sup>290</sup> inquiry participants discussed various provisions of the Act subject to proposed reform as identified in the *Review of the State Records Act 1998 Policy Paper* (the Policy Paper). These provisions relate to the access default and open access period, the transfer of State records to the State Archives and Records Authority (SARA), and monitoring and compliance requirements. Stakeholders also raised issues regarding digital recordkeeping, including the digitisation of existing records and the archival of born-digital records. Access to Aboriginal records was also discussed as were proposed amendments to the legislation governing Sydney Living Museums (SLM), formerly the Historic Houses Trust of New South Wales.

### Open access

3.2 As explained in chapter 1, the *Review of the State Records Act 1998 Policy Paper* presents a range of proposed reforms, including the following proposals regarding open access:

- That records in the open access period be open by default, unless the public office that is responsible for the records makes a 'closed to public access' (CPA) direction
- That the open access period is reduced from 30 years to 20 years, with this change potentially being phased in over a period of time.<sup>291</sup>

### Default public access

3.3 As outlined in chapter 1, Part 6 of the *State Records Act* establishes a framework for regulating public access to State records which have been in existence for at least 30 years. After 30 years, these records enter the 'open access period'. While there is a presumption in the Act that most State records in the open access period will be open to public access, the effect of the Act is

<sup>290</sup> For example, Submission 46, History Council of New South Wales, p 2; Submission 34, Professional Historians Association (NSW and ACT), p 2; Submission 25, Mr Gerard Calihanna, p 1.

<sup>291</sup> State Archives and Records Authority of New South Wales, *Review of the State Records Act 1998 Policy Paper*, January 2020, pp 6-7.

that these records are in fact closed to public access unless they are the subject of an 'open to public access' direction.<sup>292</sup>

**3.4** Dr Brian Lindsay, Chair of the State Archives and Records Authority (SARA), explained the operation of this provision in the Act:

Records in the open access period should, in most cases, be open to public access, but do not automatically become open. A public office must make an open public access [OPA] direction in order for the records to be opened ... Providing public access to records of continuing value relies on public offices making OPA directions. If they do not, their records will be closed to public access under our Act, regardless of their age or their sensitivity.<sup>293</sup>

**3.5** The Policy Paper notes that this outcome 'is at odds with the intention of the Act',<sup>294</sup> hence the proposal for records in the open access period to be open by default, rather than closed, unless a 'closed to public access' direction is made.<sup>295</sup>

**3.6** According to Dr Lindsay, this proposed reform is 'pragmatic and efficient', and switches the onus on to public offices to declare that public access should be closed. Dr Lindsay asserted that 'this achieves the intention of the Act to provide public access to records in the open access period' and allows public offices 'to focus on identifying categories of information that favour or require a [closed public access] direction', such as mental health records.<sup>296</sup>

**3.7** Mr Adam Lindsay, Executive Director of SARA and SLM, added that 'the public office has the full ability to close a record for any reason that they see fit', and that appropriately this power 'best sits with the public office because they know the content of those records'.<sup>297</sup> He explained further:

The primary office that creates the archive is the determiner of whether it is open or closed. ... An important part of the policy proposal before you is that the self-determination of public offices does not change in terms of determining access directions.<sup>298</sup>

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<sup>292</sup> State Archives and Records Authority of New South Wales, *Review of the State Records Act 1998 Policy Paper*, January 2020, pp 6-7.

<sup>293</sup> Evidence, Dr Brian Lindsay, Chair, State Archives and Records Authority of New South Wales, 1 June 2020, pp 7-8.

<sup>294</sup> State Archives and Records Authority of New South Wales, *Review of the State Records Act 1998 Policy Paper*, January 2020, p 6.

<sup>295</sup> State Archives and Records Authority of New South Wales, *Review of the State Records Act 1998 Policy Paper*, January 2020, pp 6-7.

<sup>296</sup> Evidence, Dr Brian Lindsay, Chair, State Archives and Records Authority of New South Wales, 1 June 2020, p 7.

<sup>297</sup> Evidence, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 1 June 2020, p 8.

<sup>298</sup> Evidence, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 1 June 2020, p 15.

### Open access period

- 3.8** With regard to the open access period, currently specified in the Act to be after 30 years, the Policy Paper notes that online access to documentary heritage material, such as records, has 'vastly changed citizens' expectations about accessing information'. The paper explains that the ease with which people are able to discover material that is also documented in State records and the extent to which they are available online means that a closed to public access period of at least 30 years is 'increasingly anachronistic'.<sup>299</sup>
- 3.9** Mr Lindsay stated that the proposal to reduce this period from 30 years to 20 years meets 'an important international and national benchmark',<sup>300</sup> with Dr Lindsay explaining that the reduced period is in line with other jurisdictions, including the Commonwealth.<sup>301</sup> Dr Lindsay stated that the proposed reform 'encourages timely public access to records documenting the activities and decisions that shape New South Wales and the lives of its citizens'.<sup>302</sup>

### Stakeholder response

- 3.10** Both of the proposed reforms garnered general support from inquiry participants.<sup>303</sup> For example, Dr Shirley Fitzgerald, former Chair of SARA, called the proposals 'commendable',<sup>304</sup> while Ms Amanda Barber, archivist and former manager at SARA, stated:

The proposals to improve the mechanism of public access in the *State Records Act 1998* are good. Making records open by default in a reduced open access period (proposed to be 20 years) is an overall benefit to users of records.<sup>305</sup>

- 3.11** With specific reference to the proposal to open public access to records by default rather than default to closed, Ms Elizabeth Tydd, Chief Executive Officer and Information Commissioner, Information and Privacy Commission NSW, described this as 'powerful', explaining:

To be opened by default as opposed to by way of application ... opens government and diminishes the regulatory burden on the agency who would be required to make a declaration of openness. Importantly for citizens, they do not have to apply for this to

<sup>299</sup> State Archives and Records Authority of New South Wales, *Review of the State Records Act 1998 Policy Paper*, January 2020, p 7.

<sup>300</sup> Evidence, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 1 June 2020, p 7.

<sup>301</sup> Evidence, Dr Brian Lindsay, Chair, State Archives and Records Authority of New South Wales, 1 June 2020, p 7.

<sup>302</sup> Evidence, Dr Brian Lindsay, Chair, State Archives and Records Authority of New South Wales, 1 June 2020, p 7.

<sup>303</sup> For example, Evidence, Dr Lisa Murray, Chair, Professional Historians Association (NSW and ACT), 1 July 2020, p 10; Evidence, Ms Julia Mant, President, Australian Society of Archivists, 1 July 2020, pp 22-23; Evidence, Mr Alan Ventress, former Director, State Archives and Records Authority of New South Wales, 1 June 2020, p 17.

<sup>304</sup> Submission 36, Dr Shirley Fitzgerald, p 1.

<sup>305</sup> Submission 14, Ms Amanda Barber, p 3.

be open. It is opened by default ... So there are advantages to agencies, to citizens, but also to access very broadly and open government ...<sup>306</sup>

**3.12** Dr Fitzgerald also commented positively on this proposal, stating: 'Shifting from the practice of 'closed until open' to an 'open unless closed' regime is long overdue and makes a lot of sense.'<sup>307</sup>

**3.13** With regard to the access period reducing from 30 years to 20 years, inquiry participants were similarly approving, with Mr Alan Ventress, former Director of SARA, expressing full support for the reduction.<sup>308</sup>

**3.14** Ms Tydd told the committee that the policy proposal 'does appear to advance open access',<sup>309</sup> a view shared by Mr David Fricker, Director-General of the National Archives of Australia, who discussed his experience of the shift to a reduced access period of 20 years at the Commonwealth level.<sup>310</sup> Mr Fricker advised that the move was a successful process and has helped meet public expectations about timely access to records:

My lived experience of that transition period of reducing that access period from 30 years down to 20 years has been quite a successful process. I think it helps the public expectation that public records would be in the public domain in a reasonable period of time while it is still sort of in living memory and people have got the opportunity to learn from those records and the sensitivities have sufficiently diminished in that 20-year period.<sup>311</sup>

**3.15** While there was general support for the proposed reforms, some inquiry participants drew attention to particular issues for consideration. For example, the Professional Historians Association (PHA) (NSW and ACT), expressed support for the reduction of the open access period to 20 years, but cautioned that any new legislation needs to be clear about its interaction with freedom of information and privacy legislation. The Association argued that there are a number of records where the 20 year default to open access provision would be inappropriate, such a health, welfare and inquest records.<sup>312</sup>

**3.16** Indeed, NSW Health expressed this very concern, arguing that any amendment to the *State Records Act* 'should not seek to change existing protections of personal information and health information under the *Health Records and Information Privacy Act 2002* and *Privacy and Personal Information Protection Act 1998*'.<sup>313</sup>

<sup>306</sup> Evidence, Ms Elizabeth Tydd, Chief Executive Officer and Information Commissioner, Information and Privacy Commission NSW, 20 August 2020, pp 5-6.

<sup>307</sup> Submission 36, Dr Shirley Fitzgerald, p 1.

<sup>308</sup> Evidence, Mr Alan Ventress, former Director, State Archives and Records Authority of New South Wales, 1 June 2020, p 17.

<sup>309</sup> Evidence, Ms Elizabeth Tydd, Chief Executive Officer and Information Commissioner, Information and Privacy Commission NSW, 20 August 2020, p 5.

<sup>310</sup> Evidence, Mr David Fricker, Director-General of the National Archives of Australia, 1 July 2020, p 21.

<sup>311</sup> Evidence, Mr David Fricker, Director-General of the National Archives of Australia, 1 July 2020, p 21.

<sup>312</sup> Submission 34, Professional Historians Association (NSW and ACT), p 5.

<sup>313</sup> Submission 64, NSW Health, p 3.

- 3.17** NSW Health explained that both Acts create restrictions around the use and disclosure of personal information and health information which apply for a period of 30 years after a patient has died, unless the health information is contained in a State record under the control of SARA and is available for public inspection under SARA.<sup>314</sup>
- 3.18** NSW Health asserted that the proposal to reduce the open access period to 20 years 'creates an inconsistency with the Acts, in that records containing sensitive health information will potentially be available for public inspection after 20 years'. NSW Health urged for widespread public consultation on the change and consultation with the Minister of Health if it was to proceed, submitting that 'this would be a substantial change and would also impact on times provided for in privacy law'.<sup>315</sup>
- 3.19** NSW Health also called for all existing 'closed to public' access directions to continue for the protection of NSW Health records, citing the example of an existing access direction which closes all patient identifying records for 110 years.<sup>316</sup>
- 3.20** Mr Fricker, National Archives of Australia, acknowledged this issue in evidence, stating that to protect personal privacy, security and confidentiality, 'exemptions do need to be present in legislation'. He stated that 'not every record of government ought be in the public domain after a 20-year period' and thus exemptions should be considered but 'need to be clearly understood and explained to the public'.<sup>317</sup>
- 3.21** Accordingly, the National Archives of Australia recommended that should the proposed reforms proceed, an independent assessment of any CPA directions should be undertaken and, without disclosing sensitive aspects of the direction, be made public to build public trust. The National Archive argued:
- ... [A]ny ability for [SARA or the proposed new entity] to provide an independent view of CPA directions will build public trust in [SARA or the proposed new entity] and will also enhance the public's understanding and appreciation of the necessity to keep some records out of the public domain until sensitivities have diminished.<sup>318</sup>
- 3.22** Some inquiry participants also referred to the practical administrative implications of the proposed reforms, with NSW Health raising concerns about the 'administrative burden' of the proposed amendments should a CPA be required for individual patient records.<sup>319</sup> Tweed Shire Council expressed a similar point, stating that resources would need to be directed to ensure CPA directions were made where necessary, and suggested a centralised system for all councils should be established to promote consistency and efficiency of resources.<sup>320</sup>

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<sup>314</sup> Submission 64, NSW Health, p 3.

<sup>315</sup> Submission 64, NSW Health, p 3.

<sup>316</sup> Submission 64, NSW Health, p 3.

<sup>317</sup> Evidence, Mr David Fricker, Director-General of the National Archives of Australia, 1 July 2020, p 21.

<sup>318</sup> Submission 61, National Archives of Australia, p 2.

<sup>319</sup> Submission 64, NSW Health, p 3.

<sup>320</sup> Submission 59, Tweed Shire Council, p 2.

- 3.23** Others, such as Ms Julia Mant, President of the Australian Society of Archivists, recommended that a public right to appeal access directions be included in the legislation, similar to provisions under the *Government Information (Public Access) Act 2009*.<sup>321</sup> Similarly, the Professional Historians Association argued:

The review of the Act does need to closely look at how access decisions are made and the right of appeal. Currently there is no process for the public to question or appeal access decisions and SARA is unable to overturn access decisions once they are made. This limitation should be addressed.<sup>322</sup>

## Transfer planning

- 3.24** Among the reforms presented in the Policy Paper, it is also proposed that public offices 'be required to make and implement plans to transfer control of records of enduring value that are no longer in active business use to the Authority'. The proposal noted that these plans may involve the immediate or postponed transfer of custody.<sup>323</sup>
- 3.25** As outlined in chapter 1, Part 4 of the State Records Act ensures that records of continuing value are controlled and properly managed as State archives, and are passed in to the control of SARA when they are no longer in use. This is to ensure that records are documented, preserved, contextualized and are made accessible to the public access.<sup>324</sup>
- 3.26** Dr Lindsay, Chair of SARA, explained this provision in operation:
- Part 4 of the Act gives SARA an entitlement to control any records that are no longer in use and presumes that records more than 25 years old are no longer in use. Public offices must make a still-in-use determination if they want to keep records that are more than 25 years old.<sup>325</sup>
- 3.27** Dr Lindsay advised that, while public offices should, in most cases, transfer records of continuing value that are no longer in use on a day to day basis, 'only a small number of public offices have established programs that routinely transfer records of enduring value into our custody'. He stated that many transfers are 'ad hoc, driven by external factors such as office moves or machinery of government changes'.<sup>326</sup>
- 3.28** According to the Policy Paper, the proposed reform thus aims to 'encourage the strategic management, protection and accessibility of records of enduring value', noting that public

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<sup>321</sup> Evidence, Ms Julia Mant, President, Australian Society of Archivists, 1 July 2020, p 23.

<sup>322</sup> Answers to questions on notice, Dr Lisa Murray, Chair, Professional Historians Association (NSW and ACT), 27 July 2020, p 1.

<sup>323</sup> State Archives and Records Authority of New South Wales, *Review of the State Records Act 1998 Policy Paper*, January 2020, p 6.

<sup>324</sup> State Archives and Records Authority of New South Wales, *Review of the State Records Act 1998 Policy Paper*, January 2020, p 6.

<sup>325</sup> Evidence, Dr Brian Lindsay, Chair, State Archives and Records Authority of New South Wales, 1 June 2020, p 7.

<sup>326</sup> Evidence, Dr Brian Lindsay, Chair, State Archives and Records Authority of New South Wales, 1 June 2020, p 7.

offices 'must have the capacity to appropriately store, maintain and provide public access' to records they wish to retain custody of for operational reasons.<sup>327</sup>

- 3.29** Dr Lindsay explained that through this proposal, 'public offices will have better visibility of the records they hold that are of enduring value, as will we' and both will be 'more cognisant of issues such as where they are kept and whether they are safe from deterioration or damage'.<sup>328</sup> In his submission, Mr Lindsay added:

This policy outcome and option for reform directly supports the facilitation and increase of public accessibility to the States' Archives. It will provide another proactive measure which compels compliance with the Act and creates an accountability for Government agencies to work towards with respect to their recordkeeping practices.<sup>329</sup>

- 3.30** Ms Tydd shared this view, stating that the proposal serves a regulatory purpose in addition to allowing greater visibility of records. She explained:

That serves regulatory outcomes, because they have visibility and take responsibility for their records, but it also serves the outcomes of enabling SARA to be better positioned about their incoming work, how they will manage it, its value, and where it will be stored. I think that bringing that nexus closer, giving greater visibility, is also a positive regulatory outcome.<sup>330</sup>

- 3.31** Dr Fitzgerald also supported this proposed reform, describing it as 'timely and important if the state's records are to be properly managed', given that 'public offices are currently insufficiently obliged to take their responsibilities seriously in relation to transference of records'.<sup>331</sup> Likewise, Ms Barber stated that the proposal is 'beneficial', but asserted that it 'needs to be supported by mechanisms that could be used if public offices failed to make and implement such plans'.<sup>332</sup>

## Monitoring and compliance

- 3.32** Noting that the importance of good recordkeeping 'cannot be overstated and is essential to democracy', that Policy Paper also proposes that SARA have the power to issue a notice to require a public office to investigate its recordkeeping practices and report back on its findings to the Authority.<sup>333</sup>

<sup>327</sup> State Archives and Records Authority of New South Wales, *Review of the State Records Act 1998 Policy Paper*, January 2020, p 6.

<sup>328</sup> Evidence, Dr Brian Lindsay, Chair, State Archives and Records Authority of New South Wales, 1 June 2020, p 7.

<sup>329</sup> Submission 3, Dr Brian Lindsay, Chair, State Archives and Records Authority of New South Wales, p 2.

<sup>330</sup> Evidence, Ms Elizabeth Tydd, Chief Executive Officer and Information Commissioner, Information and Privacy Commission NSW, 20 August 2020, p 3.

<sup>331</sup> Submission 36, Dr Shirley Fitzgerald, p 1.

<sup>332</sup> Submission 14, Ms Amanda Barber, p 3.

<sup>333</sup> State Archives and Records Authority of New South Wales, *Review of the State Records Act 1998 Policy Paper*, January 2020, pp 7-8.

**3.33** Mr Lindsay, Executive Director of SARA and SLM, explained that under the current State Records Act, 'often there is a misconception that SARA can force public office to comply with the Act'. He stated: 'This is far from correct, let alone realistic in any way'. Mr Lindsay advised that in reality SARA has 'minimal power or authority to validate compliance with the policies it develops for public office'.<sup>334</sup>

**3.34** Indeed, the Policy Paper states that the ability for SARA to monitor and enforce compliance with the Act is 'limited', as the Act contains no mandatory mechanism to audit or monitor compliance with its provisions or standards. The Policy Paper explains:

The Authority's existing monitoring activities rely on the cooperation of the public office under scrutiny, and the extent of this cooperation impacts compliance verification and the quality of the Authority's responses to complainants.<sup>335</sup>

**3.35** The Policy Paper also notes that recordkeeping failures may also be identified during integrity agency audits and investigations. However, it states that the Act 'contains no specific complaint-handling or referral process to ensure the relevant regulator follows up'. In addition, 'the financial penalties for breaches of recordkeeping requirements are not practically enforceable'.<sup>336</sup>

**3.36** Thus to encourage public offices to take greater responsibility for the day to day management of records, it is proposed that SARA (or the new entity) be granted a 'monitoring' power to compel public offices to audit their own recordkeeping practices in whole or in part and to report back on the findings of their investigation.<sup>337</sup>

**3.37** According to Mr Lindsay, this proposal will strengthen the regulation of recordkeeping by enabling public offices to be more accountable. He explained:

The information collected from this proposed monitoring power is vital to strengthen the new entity's ability to create evidence-based policy and education programs that allows for government accountability and efficiency while also protecting the State's archival assets ...

... This model moves towards more pragmatic and effective regulation that enables public offices to have accountability for their own actions, which is the only effective method through which recordkeeping requirements can ever realistically be complied with.<sup>338</sup>

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<sup>334</sup> Answers to supplementary questions, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 4 July 2020, p 3.

<sup>335</sup> State Archives and Records Authority of New South Wales, *Review of the State Records Act 1998 Policy Paper*, January 2020, p 7.

<sup>336</sup> State Archives and Records Authority of New South Wales, *Review of the State Records Act 1998 Policy Paper*, January 2020, p 7.

<sup>337</sup> State Archives and Records Authority of New South Wales, *Review of the State Records Act 1998 Policy Paper*, January 2020, p 8; Answers to supplementary questions, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 4 July 2020, p 3.

<sup>338</sup> Answers to supplementary questions, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 4 July 2020, p 3.

**3.38** Ms Tydd, Chief Executive Officer and Information Commissioner, Information and Privacy Commission NSW, shared this view, stating that the requirement to compel a public office to self-audit and then report back 'would actually enhance the ability to regulate'.<sup>339</sup> She added that the proposed reform would also 'shift the burden in an appropriate position, then apply the expertise that exists within SARA to a determination as to the adequacy of that self audit'. According to Ms Tydd, 'that is a positive use of the skill and expertise that currently exists and is well demonstrated within SARA'.<sup>340</sup>

**3.39** As an example, Ms Tydd drew attention to the use of the self-audit mechanism within the context of the *Government Information (Public Access) Act*. Ms Tydd advised that the Information and Privacy Commission (IPC) is increasingly using self-audit as a 'legitimate and valuable regulatory tool', with its recent launch of online self-audit tools.<sup>341</sup> Ms Tydd explained:

A year ago, 18 months ago, the IPC launched self-audit tools that can be conducted online so that agencies conduct an audit and they conduct that in respect of compliance with information access requirements. But there is also a twin, and that is privacy requirements. We are increasingly asking agencies to undertake that audit and to report back to us, and then we may, depending upon the responses, conduct a further audit.<sup>342</sup>

**3.40** Ms Tydd described self-auditing as a 'very powerful tool' as it places the onus on the regulated entity to ensure compliance while building their own knowledge:

That notion of ensuring that the regulated entities had the burden of ensuring proper regulation, but also build their own knowledge as they are conducting a self-audit, is a very powerful tool and we are finding that, although it is early days, to be a very useful instrument. I think from a regulatory perspective that serves a positive policy purpose.<sup>343</sup>

**3.41** Ms Tydd did point out, however, that the value of self-audit 'is dependent upon the agency's capacity to undertake, understand and be open and candid in their response', such that SARA's assessment of the audit is dependent of the information provided by the agency.<sup>344</sup>

**3.42** Ms Tydd also raised the question of what would happen if additional steps were needed to be taken once a self-audit report is returned to SARA. She explained that options exist in other regulatory environments where investigations can be undertaken by those with the power to investigate. She advised, for example, that under relevant legislation, as Information Commissioner, she is able to conduct investigations and make reports. She noted that currently

<sup>339</sup> Evidence, Ms Elizabeth Tydd, Chief Executive Officer and Information Commissioner, Information and Privacy Commission NSW, 20 August 2020, p 4.

<sup>340</sup> Evidence, Ms Elizabeth Tydd, Chief Executive Officer and Information Commissioner, Information and Privacy Commission NSW, 20 August 2020, p 4.

<sup>341</sup> Evidence, Ms Elizabeth Tydd, Chief Executive Officer and Information Commissioner, Information and Privacy Commission NSW, 20 August 2020, p 3.

<sup>342</sup> Evidence, Ms Elizabeth Tydd, Chief Executive Officer and Information Commissioner, Information and Privacy Commission NSW, 20 August 2020, p 3.

<sup>343</sup> Evidence, Ms Elizabeth Tydd, Chief Executive Officer and Information Commissioner, Information and Privacy Commission NSW, 20 August 2020, p 3.

<sup>344</sup> Evidence, Ms Elizabeth Tydd, Chief Executive Officer and Information Commissioner, Information and Privacy Commission NSW, 20 August 2020, p 4.

SARA has the power to make reports, 'but the investigatory power ... might be something that should be examined more closely'.<sup>345</sup>

**3.43** Other inquiry participants also discussed the proposed reform, and monitoring and compliance requirements, in light of the Act's current limitations. For example, Ms Jenni Stapleton, former Director of SARA, argued that more needs to be done to allow SARA to undertake active monitoring and enforcement of compliance, particularly with moves to digital service delivery. She asserted SARA needs to have 'legislative firepower to ensure agencies consider data integrity and transference as they design their operational systems'.<sup>346</sup>

**3.44** While acknowledging that the proposed reform is 'a good first step', Mr Geoff Hinchcliffe, former Executive Director of SARA, stated it 'does not go far enough' to address the lack of adequate measures to ensure that public offices comply with the recordkeeping requirements of the Act.<sup>347</sup> Mr Hinchcliffe suggested a number of strategies to ensure compliance and accountability, including the requirement for all public offices to complete an annual compliance attestation, which he explained could be included in the public office's Annual Report. In his submission, he argued that this will ensure 'a much stronger awareness by public office Chief Executives of their responsibilities under the Act'.<sup>348</sup>

**3.45** Ms Anne Henderson, former Chair of SARA, expressed a similar view, likewise recommending an annual reporting mechanism. She called on public offices to take more responsibility with regard to their recordkeeping obligations, commenting: 'It was always astonishing to me that even though there is an Act and there are requirements under the Act, departments constantly do not observe the Act in regard to records'.<sup>349</sup> Ms Henderson suggested that a report could be made at the end of the financial year into how the record requirements have been carried out, stating:

I think in the big departmental jungle, an awful lot of stuff just goes into the mist. If there is a regulation that at the end of every year every department has to make a report as to what it has done in regards to its obligations under the records Act, that should be a long way toward solving your problem.<sup>350</sup>

**3.46** Mr Tim Robinson, Professional Member of the Australian Society of Archivists, argued that for public offices these considerations should be made when designing a business system. He asserted that it should be mandatory for recordkeeping – encompassing issues such as compliance, accountability and protection of privacy – to be built into the system so that by

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<sup>345</sup> Evidence, Ms Elizabeth Tydd, Chief Executive Officer and Information Commissioner, Information and Privacy Commission NSW, 20 August, p 4.

<sup>346</sup> Evidence, Ms Jenni Stapleton, former Director, State Archives and Records Authority of New South Wales, 20 August 2020, p 9.

<sup>347</sup> Evidence, Mr Geoff Hinchcliffe, former Executive Director, State Archives and Records Authority of New South Wales, 1 July 2020, p 12.

<sup>348</sup> Submission 60, Mr Geoff Hinchcliffe, p 5.

<sup>349</sup> Evidence, Ms Anne Henderson, former Chair, State Archives and Records Authority of New South Wales, 1 July 2020, p 22.

<sup>350</sup> Evidence, Ms Anne Henderson, former Chair, State Archives and Records Authority of New South Wales, 1 July 2020, p 29.

default proper records are created.<sup>351</sup> Mr Hinchcliffe also articulated these principles in relation to the management of digital records.<sup>352</sup>

- 3.47** Rather than create a new cultural institution, Mr Robinson also advocated for the creation of a Records Commissioner, akin the role of the Information Commissioner or Privacy Commissioner. He argued that the compliance roles 'fit very nicely together' and signify a powerful synergy. He stated: 'The connections are indisputable; you cannot do one without the other ... I would put records as paramount because without records you have neither privacy or information access ... So if we were looking at that kind of future those are the synergies that I think would be very powerful'.<sup>353</sup>
- 3.48** Mr Fricker, National Archives of Australia, discussed compliance in terms of the level of assurance it gives to the public that Government records are being maintained appropriately. He stated: '... I think whatever compliance powers or authorities are given to the institution from my point of view should be driven by that: What is the necessary level to ensure the ongoing trust of the public in the institution?'.<sup>354</sup>
- 3.49** Mr Fricker believed that international best practice points to Commonwealth legislation which he advised 'makes it an offence to destroy or to otherwise alter the record unless it is done with the proper authority of the archival institution'. Mr Fricker asserted that compliance as 'an obligation on all government officials' is 'a very strong point', as it provides a legislative basis upon which compliance can be tested. He stated:
- ... [I]f the legislation made it clear that it was an offence to engage in conduct that leads to the loss or alteration of a record other than by an authorised action, that represents a good level of practice.<sup>355</sup>
- 3.50** Mr Hinchcliffe expressed a similar view, stating: 'As a strong deterrent, consideration should be given to make deliberate and wilful non-compliance a criminal offence'.<sup>356</sup>

## Digital recordkeeping

- 3.51** During the inquiry, a key area of discussion for numerous inquiry participants centred around digital recordkeeping and how this could best be supported by the legislative and policy

<sup>351</sup> Evidence, Mr Tim Robinson, Professional Member, Australian Society of Archivists, 1 July 2020, p 30.

<sup>352</sup> Evidence, Mr Geoff Hinchcliffe, former Executive Director, State Archives and Records Authority of New South Wales, 1 July 2020, pp 18-19.

<sup>353</sup> Evidence, Mr Tim Robinson, Professional Member, Australian Society of Archivists, 1 July 2020, p 32.

<sup>354</sup> Evidence, Mr David Fricker, Director-General, National Archives of Australia, 1 July 2020, p 15.

<sup>355</sup> Evidence, Mr David Fricker, Director-General, National Archives of Australia, 1 July 2020, p 15.

<sup>356</sup> Submission 60, Mr Geoff Hinchcliffe, p 5.

framework. After all, as several stakeholders commented, 'the future of recordkeeping ... and archiving ... is digital'.<sup>357</sup>

**3.52** Many inquiry participants spoke of the complexities and challenges of managing digital recordkeeping and archiving as we move into the future.<sup>358</sup> For example, Mr Hinchcliffe, former Executive Director of SARA, stated that 'digital recordkeeping can be very difficult and requires very different approaches from that with physical and other forms of records'.<sup>359</sup>

**3.53** According to the Australian Society of Archives, the NSW Government is leading the nation in digital transformation,<sup>360</sup> with Mr Robinson, Australian Society of Archivists, pointing to SARA in particular 'as an exemplar of the kind of leadership in the world of electronic recordkeeping'.<sup>361</sup> Urging that this momentum continue, Mr Robinson stated:

A lot of the leadership in thinking worldwide has come from Australia and significantly from New South Wales in how we approach these issues ... [W]e need to build on that momentum that we have ...<sup>362</sup>

**3.54** Indeed, inquiry participants called for digital recordkeeping to be at the fore when seeking to strengthen the legislative and policy framework moving forward.<sup>363</sup> For example, Mr Fricker, National Archives of Australia, stated: 'If I had to come down to one issue I do think the digital issue should be foremost in constructing legislation for the twenty-first century'.<sup>364</sup>

**3.55** For Ms Mant, Australian Society of Archivists, the current review of the *State Records Act* is 'critical to be able to put in place the strength that is required in the Act to ensure that, as New South Wales invests in digital transformation in a really big way, and that the recordkeeping underpins that'.<sup>365</sup> She asserted that the Act needs to support SARA to 'prepare for and coordinate the management of the archives of tomorrow and to deal with the challenges of genuine digital transformation and the maintenance of digital evidence'.<sup>366</sup>

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<sup>357</sup> Evidence, Mr Tim Robinson, Professional Member, Australian Society of Archivists, 1 July 2020, p 28; see also Evidence, Mr Frank Howarth, Chair, Heritage Council of New South Wales, 1 July 2020, p 2.

<sup>358</sup> For example, Answers to questions on notice, Ms Julia Mant, President, Australian Society of Archivists, 28 July 2020, p 1.

<sup>359</sup> Evidence, Mr Geoff Hinchcliffe, former Executive Director, State Archives and Records Authority of New South Wales, 1 July 2020, p 12.

<sup>360</sup> For example, Answers to questions on notice, Ms Julia Mant, President, Australian Society of Archivists, 28 July 2020, p 1.

<sup>361</sup> Evidence, Mr Tim Robinson, Professional Member, Australian Society of Archivists, 1 July 2020, p 28.

<sup>362</sup> Evidence, Mr Tim Robinson, Professional Member, Australian Society of Archivists, 1 July 2020, p 28.

<sup>363</sup> For example, Evidence, Mr Geoff Hinchcliffe, former Executive Director, State Archives and Records Authority of New South Wales, 1 July 2020, p 13; Answers to questions on notice, Ms Julia Mant, President, Australian Society of Archivists, 28 July 2020, p 1.

<sup>364</sup> Evidence, Mr David Fricker, Director-General, National Archives of Australia, 1 July 2020, p 21.

<sup>365</sup> Evidence, Ms Julia Mant, President, Australian Society of Archivists, 1 July 2020, p 29.

<sup>366</sup> Evidence, Ms Julia Mant, President, Australian Society of Archivists, 1 July 2020, p 22.

**3.56** During the inquiry, stakeholders spoke of digital recordkeeping in terms of two distinct functions – the digitisation of physical records and the management of 'born-digital' records. Mr Lindsay, Executive Director of SARA and SLM, advised that these functions are often conflated but are in fact two separate areas of SARA's work:

- The digitisation of physical records involves the creation of digital versions of State archive material that have been scanned or converted into digital form for access or preservation purposes
- The management of born-digital records involves records that have only been created in digital (electronic) form and transferred to SARA.<sup>367</sup>

### **Digitisation**

**3.57** Mr Lindsay explained that there are two broad aspects to digitisation – the full catalogue record, which is informed by physical and intellectual control of the material to understand what is in a collection, and the digitisation of that material, which is when you capture the digital asset. Together, the two parts get published online.<sup>368</sup>

**3.58** Mr Lindsay advised that '[j]ust digitising without the cataloguing does not allow discoverability, but ironically and conversely cataloguing without digitising can result in discoverability', because once the catalogue is uploaded to the website, people are able to see what is being held and can then request a digital copy.<sup>369</sup> Dr Brian Lindsay, Chair of SARA, thus advised that a pragmatic approach to digitisation has been adopted 'in which discoverability is optimised by focusing on providing series and item listings to the archives'.<sup>370</sup>

**3.59** As discussed in chapter 2, numerous inquiry participants called for greater digital access to records, both in terms of the digital catalogue and digitised collections. These stakeholders argued that there is a vast amount of material that is not yet discoverable or accessible, and insisted that this be urgently prioritised.<sup>371</sup>

**3.60** However, SARA maintained that cataloguing and digitisation has and continues to be a key strategic objective, as digitisation is directly relevant to the two principal responsibilities of SARA – to preserve and to provide access.<sup>372</sup> In particular, Dr Lindsay refuted claims that there has been a lack in focus on digitisation, stating that the documentation and cataloguing of

<sup>367</sup> Answers to supplementary questions, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 4 July 2020, pp 8-9.

<sup>368</sup> Evidence, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 20 August 2020, pp 32.

<sup>369</sup> Evidence, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 20 August 2020, pp 32.

<sup>370</sup> Evidence, Dr Brian Lindsay, Chair, State Archives and Records Authority of New South Wales, 1 June 2020, p 2.

<sup>371</sup> See paragraphs 2.93-2.99.

<sup>372</sup> Answers to supplementary questions, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 4 July 2020, pp 8-9.

archival records are 'vital components of our archivist work and enable discoverability'.<sup>373</sup> He maintained that this practice 'steadfastly remains at the very core of what the Archives deliver'.<sup>374</sup>

- 3.61** To reflect this, the Hon Don Harwin MLC, Minister for the Arts, highlighted the significant financial investment in digitisation projects across the State. While acknowledging the constraints of digitising all collections across all cultural institutions immediately, Minister Harwin stated that there is currently 'a huge emphasis on digitisation already'.<sup>375</sup>
- 3.62** In terms of a backlog of material, Mr Lindsay confirmed that SARA has a backlog of material comprising of physical items and documentation. He stated that 'although the legacy backlog is steadily decreasing, the State Archives Collection also grows at a rate of between 1,000-3,000 linear metres each year'. Mr Lindsay advised that SARA must therefore 'strike an appropriate balance between managing the ingesting of new records coming into the Collection and addressing the legacy backlog of material'.<sup>376</sup>
- 3.63** Mr Lindsay explained that there are two aspects to the backlog – the cataloguing backlog and the digitisation or 'creation of digital-image-capture' backlog.<sup>377</sup>
- 3.64** Mr Lindsay informed the committee that for all new material coming in to SARA's custody, this is documented to full physical control within three months of receipt. He stated that this backlog is not increasing.<sup>378</sup>
- 3.65** In terms of the existing backlog – the legacy backlog – Mr Lindsay advised that this has been there for a number of years, comprising mostly of material from when the Act was passed. Mr Lindsay stated that this material has both a cataloguing and digitisation backlog. Mr Lindsay maintained that 'an enormous amount of resources' has been devoted to reducing this backlog, resulting in more records being made discoverable each year.<sup>379</sup> For example, he advised that over 900,000 new items were made discoverable online this year, with 200,000 of those being digital images and the remainder catalogue and index entries that would not otherwise have been made accessible to the public.<sup>380</sup>

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<sup>373</sup> Evidence, Dr Brian Lindsay, Chair, State Archives and Records Authority of New South Wales, 1 June 2020, p 2.

<sup>374</sup> Evidence, Dr Brian Lindsay, Chair, State Archives and Records Authority of New South Wales, 1 June 2020, p 2.

<sup>375</sup> Evidence, Hon Don Harwin MLC, Minister for the Arts, 20 August 2020, p 30.

<sup>376</sup> Answers to supplementary questions, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 4 July 2020, p 4.

<sup>377</sup> Evidence, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 20 August 2020, pp 32-33.

<sup>378</sup> Evidence, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 20 August 2020, pp 32-33.

<sup>379</sup> Evidence, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 20 August 2020, pp 32-33. Answers to supplementary questions, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 4 July 2020, p 4.

<sup>380</sup> Evidence, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 20 August 2020, pp 32-33.

- 3.66** With regard to the funding of SARA's digitisation operations, some inquiry participants such as Ms Henderson argued that there needs to be 'a much faster investment', with costs to be identified and funded regularly provided'.<sup>381</sup> Similarly, Mr Ventress called for funding by the NSW Government to enable 'mass digitisation of the archives, down to the item level', which he argued 'will go a long way to make the collection more accessible, not only to the government and citizens of NSW but to the world at large'.<sup>382</sup>
- 3.67** On digitisation funding, Mr Lindsay explained that, in the first instance, the funding already devoted to digitisation in both SARA and SLM will be maintained, 'so no-one loses anything because the budgets are just smashed together. No-one loses anything by becoming one entity'. Mr Lindsay stated that digitisation for both organisations remains one of the top strategic priorities.<sup>383</sup>
- 3.68** Moreover, Mr Lindsay advised that all future digitisation, on top of what is already being done, will be generated and funded from money SARA raises themselves, noting that the proposed new entity 'will equip us better to raise both philanthropic and commercial revenue'.<sup>384</sup>
- 3.69** In drawing attention to the increasing use of volunteers for digitising and the exploration of commercial opportunities with third party institutes, Mr Lindsay stated: 'We are at the point where we know there is no more money from government coming to fund the digitisation of our collection so we are wanting a business model that helps us raise even more money to plough into digitisation'.<sup>385</sup>

### **Born-digital records**

- 3.70** Of perhaps greater concern to inquiry participants with regard to digital recordkeeping was the management of born-digital records.<sup>386</sup> Numerous stakeholders commented on the various challenges to recordkeeping posed by the digital age, including the threat of technological obsolescence and maintaining the integrity of born-digital records.
- 3.71** For example, Mr Fricker, National Archives of Australia, stated that 'in the digital world as soon as a digital record is created it is vulnerable to technological obsolescence'.<sup>387</sup> Indeed, archivist Mr William Oates, asserted: 'The software obsolescence and the technological obsolescence that we have seen in the last two or three decades has wiped away a mass of records from all over the spectrum'.<sup>388</sup>

<sup>381</sup> Evidence, Ms Anne Henderson, former Chair, State Archives and Records Authority of New South Wales, 1 July 2020, p 22.

<sup>382</sup> Submission 12, Mr Alan Ventress, p 4.

<sup>383</sup> Evidence, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 1 June 2020, p 14.

<sup>384</sup> Evidence, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 1 June 2020, p 14.

<sup>385</sup> Evidence, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 1 June 2020, p 14.

<sup>386</sup> For example, Evidence, Ms Jenni Stapleton, 20 August 2020, p 9; Evidence, Professor Lucy Taksa, 20 August 2020, p 8.

<sup>387</sup> Evidence, Mr David Fricker, Director-General, National Archives of Australia, 1 July 2020, p 20.

<sup>388</sup> Evidence, Mr William Oates, 1 July 2020, p 35.

- 3.72** According to Ms Mant, Australian Society of Archivists, '[g]overnments today face a range of pressing risks' when it comes to making and keeping born-digital records, including evolving business and service environments that do not support information accountability requirements, and an increased use of social media, applications and other diverse business platforms.<sup>389</sup>
- 3.73** As such, the Australian Society of Archivists (ASA) argued that 'a key underpinning for sustainable digital transformation is enabling the long-term accessibility and integrity of born-digital records'. To do this, they asserted that effective digital recordkeeping strategies need to be employed and a digital archives program developed. The ASA maintained that the current legislative review should consider how this might best be supported.<sup>390</sup> Similarly, Mr Howarth from the Heritage Council of New South Wales encouraged specific initiatives for the timely identification and conservation of born-digital records, as a key heritage function.<sup>391</sup>
- 3.74** Some inquiry participants discussed the agility of the *State Records Act* to keep pace with the digital age. For example, Ms Tydd, Information and Privacy Commission NSW, stated that 'a great benefit' of the language used in the Act is that it is technology neutral, 'so they envisage holding information or records in whatever format'. Ms Tydd asserted that this positions New South Wales very well, noting that '[t]hose definitions are not universally seen in other information access regimes'.<sup>392</sup>
- 3.75** However, the Professional Historians Association (PHA) (NSW and ACT) expressed a different view, arguing that the Act 'needs to be strengthened to ensure born-digital records will be accessible in the future'. The PHA explained:
- The *State Records Act* 1998 defines records as 'any document or other source of information compiled, recorded or stored in written form or on film, or by electronic process'. However, it is silent on the need to store or digitise audiovisual materials, collecting website and social media content, appropriate digital recordkeeping and digital archiving. The mandate to protect film stock, audio files and digital records is implied. But SARA's role in capturing and keeping digital records, including secure digital archiving and sustainable migration of file formats, should be made explicit.<sup>393</sup>
- 3.76** As such, the PHA asserted that '[t]he new State Records Act should specifically address born-digital records and the digital archive, including preservation and public access'.<sup>394</sup>

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<sup>389</sup> Answers to questions on notice, Ms Julia Mant, President, Australian Society of Archivists, 28 July 2020, p 1.

<sup>390</sup> Submission 44, Australian Society of Archivist, p 9.

<sup>391</sup> Evidence, Mr Frank Howarth, Chair, Heritage Council of NSW, 1 July 2020, p 2.

<sup>392</sup> Evidence, Ms Elizabeth Tydd, Chief Executive Officer and Information Commissioner, Information and Privacy Commission NSW, 20 August 2020, p 3.

<sup>393</sup> Answers to questions on notice, Dr Lisa Murray, Chair, Professional Historians Association (NSW and ACT), 27 July 2020, p 1.

<sup>394</sup> Answers to questions on notice, Dr Lisa Murray, Chair, Professional Historians Association (NSW and ACT), 27 July 2020, p 2.

- 3.77** Concerns about the application of the transfer provisions of the Act to born-digital records was also raised by inquiry participants, such as Mr Hinchcliffe, former Executive Director of SARA, who stated: 'The transferring capabilities in the Act are just completely unsuited for digital ...'.<sup>395</sup>
- 3.78** Mr Hinchcliffe highlighted his concerns around the timely transfer of born-digital records, explaining that currently the Act allows for a period of up to 25 years before records of continuing value need to be transferred to SARA. He argued: 'That is far too long for digital records', explaining:
- Digital records, if they are transferred after 25 years, you have probably got a technology box which nobody can access. That immediately puts the Authority in breach of its Act if it cannot provide access to that.<sup>396</sup>
- 3.79** Mr Hinchcliffe cited the example of original footage from the 2000 Sydney Olympic Games which was in danger of being lost after only 15 years, as formats had changed.<sup>397</sup>
- 3.80** Ms Mant, Australian Society of Archivists, raised this same issue, arguing it is not possible in the digital world to wait an extended period of time before transferring records to SARA:
- If you are thinking about computer processes, we change our systems every five to seven years. If we are going to wait, will we just park that system of software, hardware, servers, cloud environments, black boxes and vendor agreements for 20 years and then transfer it to the digital archives? It is not going to be possible. You cannot open your WordPerfect files from the 1990s without format-shifting being in place. There are literally practical applications that you need to think. The 20-year transfer rule is not going to work.<sup>398</sup>
- 3.81** Mr Hinchcliffe therefore asserted that the transfer of digital records needs to be brought forward, supported by an 'active dialogue happening between the agency and the Authority so they are planning in advance the transfer of records'. He argued that there should be plans made by the agency, in consultation with SARA, to transfer those records early. Mr Hinchcliffe stated that by doing so, this will ensure that born-digital records are transferred 'appropriately, expeditiously and securely ...'.<sup>399</sup>
- 3.82** The PHA expressed a similar view, arguing that there should be close collaboration between SARA and public offices at the point of record creation 'to ensure that the longevity of the records are addressed and migration strategies for digital records are in place'. They maintained there needs to be coordination about how born-digital records are collected, managed and migrated to keep up with technology and to ensure accessibility.<sup>400</sup>

<sup>395</sup> Evidence, Mr Geoff Hinchcliffe, former Executive Director, State Archives and Records Authority of New South Wales, 1 July 2020, p 18.

<sup>396</sup> Evidence, Mr Geoff Hinchcliffe, former Executive Director, State Archives and Records Authority of New South Wales, 1 July 2020, p 13.

<sup>397</sup> Evidence, Mr Geoff Hinchcliffe, former Executive Director, State Archives and Records Authority of New South Wales, 1 July 2020, p 14.

<sup>398</sup> Evidence, Ms Julia Mant, President, Australian Society of Archivists, 1 July 2020, p 29.

<sup>399</sup> Evidence, Mr Geoff Hinchcliffe, former Executive Director, State Archives and Records Authority of New South Wales, 1 July 2020, p 13.

<sup>400</sup> Answers to questions on notice, Dr Lisa Murray, Chair, Professional Historians Association (NSW and ACT), 27 July 2020, p 1.

- 3.83** Mr Fricker drew attention to other issues around the Act's provisions for the transfer of records of continuing value. For example, he discussed the term 'active business use' and its application to born-digital records that may effectively be in 'active business use forever'. He asserted: 'I would be just be quite wary of using those terms because in the digital world that phrase does not mean much'.<sup>401</sup>
- 3.84** Moreover, he suggested that the term is based on a 'very analogue idea that one record can exist in one place at one time', such that:
- ... when it is no longer being used on that particular desk of that official, then that one record can be physically transferred to the State to be archived; whereas in a digital world it may be quite legitimate for an organ of the State to want to keep that historic information on their database because they are still using that for decision-making and policy-making ...<sup>402</sup>
- 3.85** Mr Fricker added: 'The idea that something in the archives is not being used is an anathema to me. Archives are always actively in active business use as well'.<sup>403</sup>
- 3.86** Given the vulnerability to technological obsolescence coupled with the objective of preserving evidence of government activity, Mr Fricker concluded that born-digital records should not wait until they are no longer in 'active business use'. He argued that these records should be 'archived and preserved as soon as its archival value is recognised, because that does not deny the creating authority to continue to use the record'.<sup>404</sup>
- 3.87** When asked if SARA is equipped to preserve born-digital records, Mr Lindsay asserted that it is, arguing that the State Records Act is indeed format neutral and so the same requirements for creation, preservation, disposal or transfer and access apply to born-digital records as they do for all other records.<sup>405</sup>
- 3.88** Mr Lindsay advised that NSW State Archives thus has processes and systems in place to facilitate the transfer of born-digital State archives from public offices into the State Archives Collection. This includes the newly implemented State Archives Management System (SAMS) which he explained 'controls, manages and preserves such material with a capability and capacity that SARA has never had before'. Mr Lindsay explained the operation of this system:

SAMS is the integration of a discovery layer, a control system and a digital preservation system, Rosetta. Rosetta can manage born-digital formats used most extensively by Government and SARA assists in the migration of formats for transfer into Rosetta. This management includes storage and accessibility of digital State Archives, the latter for the first time. The system is also scalable and able to be tailored for different formats

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<sup>401</sup> Evidence, Mr David Fricker, Director-General, National Archives of Australia, 1 July 2020, p 20.

<sup>402</sup> Evidence, Mr David Fricker, Director-General, National Archives of Australia, 1 July 2020, p 20.

<sup>403</sup> Evidence, Mr David Fricker, Director-General, National Archives of Australia, 1 July 2020, p 20.

<sup>404</sup> Evidence, Mr David Fricker, Director-General, National Archives of Australia, 1 July 2020, pp 20-21.

<sup>405</sup> Answers to supplementary questions, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 4 July 2020, p 8.

as more digital archives are transferred to the State Archives. It is a system that is used by other Australian and International cultural institutions.<sup>406</sup>

- 3.89** Mr Lindsay also advised that the increasing transfer of born-digital State archives is also a strategic priority of SARA. He stated that work has commenced to promote and facilitate increased transfer, including reviewing transfer procedures to ensure they are fit for purpose for digital transfer.<sup>407</sup>

## Aboriginal records

- 3.90** Under the proposed reforms, including the creation of a new cultural institution, Mr Lindsay, Executive Director of SARA and SLM, said that the new entity will 'prioritise the inclusion of First Nation voices in the telling of our history'.<sup>408</sup>

- 3.91** Indeed, Minister Harwin reflected on the capacity of the State's existing cultural institutions to tell the stories of Aboriginal people, to draw attention to the value the proposed new cultural institution – as a social history museum – could have in addressing the current limitations for those stories to be told. Minister Harwin stated: 'I think the capacity for a merged identity with a legislated history mission takes us somewhere where we are not going at the moment. I think this is the opportunity to redress that'.<sup>409</sup>

- 3.92** Regardless, SARA and SLM maintained their current commitment to what Ms Naseema Sparks, Chair of SLM, described as 'a strong Indigenous voice in relating any of the stories from any age onwards'.<sup>410</sup>

- 3.93** For example, Ms Sparks asserted that there is an important role for SLM to play in telling the stories about the land on which their buildings sit, explaining:

... [T]he fact that most of the buildings that Sydney Living Museums holds—many of them are actually colonial buildings—should not stop us telling the stories of the land upon which those buildings were built and the people who owned and cared for that land beforehand.<sup>411</sup>

- 3.94** Indeed, Mr Lindsay drew attention to the Hyde Park Barracks as an example of this, where he explained the Aboriginal narrative is weaved throughout the Barracks as 'a reclamation and a redress of the colonial narrative':

... [T]he material and the building is colonial but the impact that that had on country, being the administrative centre of colonisation, is told in the barracks in a number of ways. The Aboriginal narrative is threaded right through the barracks. There are

<sup>406</sup> Answers to supplementary questions, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 4 July 2020, p 8.

<sup>407</sup> Answers to supplementary questions, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 4 July 2020, p 9.

<sup>408</sup> Additional information, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 4 July 2020, p 1.

<sup>409</sup> Evidence, Hon Don Harwin MLC, Minister for the Arts, 20 August 2020, pp 33-34.

<sup>410</sup> Evidence, Ms Naseema Sparks AM, Chair, Sydney Living Museums, 1 June 2020, p 15.

<sup>411</sup> Evidence, Ms Naseema Sparks AM, Chair, Sydney Living Museums, 1 June 2020, p 15.

dedicated galleries that tell stories about frontier violence and, indeed, unpack the Myall Creek massacre story. To open it, we commissioned an Aboriginal contemporary artist to do an earthwork that completely covered the land around the barracks, so from all angles there was a reclamation and a redress of the colonial narrative. Sometimes those stories are not told through historical material, they are told through contemporary voice.<sup>412</sup>

- 3.95** Minister Harwin also stated that there is potentially a role for SLM to support efforts to renew focus on places where the Stolen Generation were taken, following the NSW Government's *Unfinished Business Report on the Stolen Generations*. Minister Harwin advised that there are four sites that were recommended for commemoration as places of truth-telling and healing.<sup>413</sup> Given SLM's curating and conservation and capabilities and experience, Minister Harwin thought it was important for SLM to provide that support.<sup>414</sup>
- 3.96** However, some inquiry participants, including organisations supporting Aboriginal people, challenged this paradigm, and questioned the capacity of the current legislative and policy framework to support the management of and access to Aboriginal records and archives. As Dr Michael Bennett, Member of the Professional Historians Association, asserted: 'The NSW State Archives is not created for entertainment and is not simply a cultural collection'.<sup>415</sup>
- 3.97** The Jumbunna Institute for Indigenous Education and Research argued that the records held by SARA 'represent the evidence of colonisation and forced dispossession of Aboriginal people in NSW' but they 'do not capture the lived experiences of Aboriginal people'.<sup>416</sup> As such, Jumbunna asserted that framing the Policy Paper to highlight the 'increasing public knowledge and enjoyment of stories that shape our social, historical and cultural identity' <sup>417</sup> 'seems incommensurable to Aboriginal peoples' need to set the record straight'.<sup>418</sup>
- 3.98** The Jumbunna Institute believed that a recognition of Aboriginal people's rights in records 'requires a focus on national truth-telling and healing which cannot be achieved solely through collection interpretation and exhibitions'. Jumbunna argued that transformative work needs to be undertaken 'to engage Aboriginal people to be active agents in recordkeeping processes rather than remaining subjects of the records'. According to Jumbunna, on a practical level this means enabling greater access for Aboriginal people to these records.<sup>419</sup>

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<sup>412</sup> Evidence, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 1 June 2020, p 15.

<sup>413</sup> Evidence, Hon Don Harwin MLC, Minister for the Arts, 20 August 2020, p 33.

<sup>414</sup> Evidence, Hon Don Harwin MLC, Minister for the Arts, 20 August 2020, p 33.

<sup>415</sup> Evidence, Dr Michael Bennett, Member, Professional Historians Association (NSW and ACT), 1 July 2020, p 3.

<sup>416</sup> Submission 67, Jumbunna Institute for Indigenous Education and Research, University of Technology Sydney, p 3.

<sup>417</sup> State Archives and Records Authority of New South Wales, *Review of the State Records Act 1998 Policy Paper*, January 2020, p 2.

<sup>418</sup> Submission 67, Jumbunna Institute for Indigenous Education and Research, University of Technology Sydney, p 4.

<sup>419</sup> Submission 67, Jumbunna Institute for Indigenous Education and Research, University of Technology Sydney, p 4.

- 3.99** Indeed, Link-Up NSW, an organisation which reconnects members of the Stolen Generation with their community, shared this view, stating that '[a]ccess to properly catalogued, cohesive and protected documents and archives are vital to Aboriginal people constructing their personal, national and communal histories'.<sup>420</sup>
- 3.100** Link-Up NSW explained that it regularly interacts with Aboriginal Affairs NSW, the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) and SARA, and stated that its experience in attempting to access records 'varies significantly amongst these entities'.<sup>421</sup>
- 3.101** According to Link-Up NSW, the inefficiencies in the processes for obtaining records relating to Aboriginal people in New South Wales 'means that Indigenous people are less well served than non-Indigenous people attempting to locate records pertaining to non-Indigenous people'.<sup>422</sup> Link-Up stated:
- Link-Up NSW's experience has been that non-Indigenous history and records are far more centralised, categorised and more readily available through State Archives than Aboriginal records.<sup>423</sup>
- 3.102** While acknowledging that process in relation to accessing records from SARA are 'relatively efficient', Link-Up NSW argued that there is a 'clear need for a much more streamlined and responsive approach to obtain records relating to Aboriginal people in New South Wales'.<sup>424</sup>
- 3.103** Dr Bennett, a specialist in native title research, agreed that gaining access is a key challenge for Aboriginal people, particularly sensitive material. In calling for the need to improve and expand access to records to assist all citizens, Dr Bennett highlighted the depth and breadth of records relating to the Aboriginal people of New South Wales which he argued 'is only partially understood'. He explained that these records 'have a deep personal and cultural interest to Aboriginal people of New South Wales', and thus urged for resources to be invested in 'gaining a deeper understanding of this archival material' rather than in exhibitions, noting the ongoing absence of an Aboriginal archivist at SARA.<sup>425</sup>
- 3.104** Ultimately, for Jumbunna, all of this points to engagement with Aboriginal people being at the fore of any consideration of the management, use, preservation and access of Aboriginal material. Jumbunna criticised the lack of consideration demonstrated in the Policy Paper of Aboriginal people's rights in records held by SARA, and the lack of recognition of the 'unique relationship' Aboriginal and Torres Strait Islander peoples have with the documentary heritage records held by SARA.<sup>426</sup>
- 3.105** Jumbunna argued that SARA has a responsibility to 'work in partnership with Aboriginal people in New South Wales to care for and manage these items appropriately,' particularly with regard

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<sup>420</sup> Submission 68, Link-Up (NSW) Aboriginal Corporation, p 3.

<sup>421</sup> Submission 68, Link-Up (NSW) Aboriginal Corporation, p 2.

<sup>422</sup> Submission 68, Link-Up (NSW) Aboriginal Corporation, p 2.

<sup>423</sup> Submission 68, Link-Up (NSW) Aboriginal Corporation, p 3.

<sup>424</sup> Submission 68, Link-Up (NSW) Aboriginal Corporation, p 2.

<sup>425</sup> Evidence, Dr Michael Bennett, Member, Professional Historians Association (NSW and ACT), 1 July 2020, p 3.

<sup>426</sup> Submission 67, Jumbunna Institute for Indigenous Education and Research, University of Technology Sydney, p 2.

to decisions about describing and managing highly sensitive and confidential Aboriginal records.<sup>427</sup>

**3.106** Ms Mant agreed, stating: 'Engagement with Aboriginal communities must be seen as a key pillar of what State Records does because it is an important trust building exercise'. She talked about the impact of SARA's *In Living Memory* exhibition, a series based on Aboriginal Welfare Board photographs, which Ms Mant stated 'actually had an amazing impact on the Aboriginal communities across New South Wales'.<sup>428</sup> She explained:

In terms of impact and trust building with Aboriginal and Torres Strait Islander communities in New South Wales, the series based on the Aboriginal Welfare Board photographs, taking government photos and turning it into something that the community embraced, was a wonderful initiative.

... For those communities, this was a State agency reaching out and saying 'Come with us and develop an exhibition'. It was not just 'Tell us who is in this photo?'. It was a now and then so families felt connected, communities felt connected.<sup>429</sup>

## Amendments to the *Historic Houses Act 1980*

**3.107** In addition to the proposed reforms presented in the Policy Paper and discussed more broadly relating to the legislative and policy framework, the Board of Trustees for the Historic Houses Trust of New South Wales (HHT) (known as SLM) made two recommendations for consideration in any revised legislation in relation to the *Historic Houses Act 1980* (the Act):

- That all references within the Act to 'historic buildings or places' be amended to 'significant buildings or places'
- That an explicit provision be included in the Act for the undertaking or provision of commercial and retail activities and facilities.<sup>430</sup>

### The replacement of 'historic' with 'significant'

**3.108** The Board of the HHT explained that currently section 7 of the Act establishes the principal objects of the HHT to essential care for and promote accessibility to the 'historic' buildings and places and associated collections in its custodianship.<sup>431</sup>

**3.109** The Board's proposal to replace all references to 'historic buildings or places' with 'significant buildings or places' seeks to address the limitations of the word 'historic' on SLM's acquisitions. The Board stated that 'the use of the word 'historic' has proven to be limiting in terms of the acquisitions SLM has made, and been able to make, during its 40 years'.<sup>432</sup>

<sup>427</sup> Submission 67, Jumbunna Institute for Indigenous Education and Research, University of Technology Sydney, p 3.

<sup>428</sup> Evidence, Ms Julia Mant, President, Australian Society of Archivists, 1 July 2020, p 27.

<sup>429</sup> Evidence, Ms Julia Mant, President, Australian Society of Archivists, 1 July 2020, p 28.

<sup>430</sup> Submission 16, Board of Trustees for the Historic Houses Trust of New South Wales, p 3.

<sup>431</sup> Submission 16, Board of Trustees for the Historic Houses Trust of New South Wales, p 3.

<sup>432</sup> Submission 16, Board of Trustees for the Historic Houses Trust of New South Wales, p 3.

- 3.110** The Board asserted that, 'in line with the expansive and broad ranging collections' that will form part of the proposed new entity should it be merged with SARA, 'it would be consistent to broaden the scope of property acquisitions imposed by the use of this language'. The Board explained:

We want to be able to tell the stories of all Australians, from our enduring Indigenous history, our historic patterns of migration, through to the contemporary social issues we collectively face. The Act should reflect the increased mandate of the proposed new entity, and not inhibit it.<sup>433</sup>

- 3.111** Mr Lindsay, Executive Director, SARA and SLM, added that the proposal is 'a future-proofing proposition that seeks to de-limit the stringent property acquisition remit of the newly formed entity'. He explained that the new term does not have any connotations of age but instead of importance or relevance. In addition, he stated:

As a term, 'significant' allows us to categorise specifically too: social significance, historical significance, cultural significance etc and expands the prospects for the entity to engage people in our history without limiting connotations.

The potential to acquire properties of contemporary significance will also allow us to interpret spaces and tell stories of relevance to a more modern Australia, from our enduring Indigenous history, to our patterns of migration, and the contemporary social issues we collectively face.<sup>434</sup>

### **Explicit reference to the undertaking of commercial activity**

- 3.112** With regard to the second recommendation, the Board explained that section 8 of the Act providing for the 'Powers of Trust' does not currently contain an explicit provision 'to undertake, provide or facilitate the undertaking or provision of commercial and retail activities and facilities'. The Board stated that this has 'created ambiguity for SLM in the past'.<sup>435</sup>
- 3.113** The Board thus proposes that explicit provisions for this activity are included in any new legislation, 'with the object of supporting the viability of the management of the agency'. The Board explained:

Commercial activities like venue hire and retail/restaurant leasing are crucial to the financial viability of SLM, and will only become more essential with the drastically increased remit of the new entity.

Furthermore, commercial activity has been an important contributor to the public enjoyment, interest and awareness of our sites and has been essential in activating and fulfilling our mission in a contemporary Australian setting.<sup>436</sup>

<sup>433</sup> Submission 16, Board of Trustees for the Historic Houses Trust of New South Wales, p 3.

<sup>434</sup> Answers to supplementary questions, Mr Adam Lindsay, Executive Director, State Archives and Records Authority of New South Wales and Sydney Living Museums, 4 July 2020, p 20.

<sup>435</sup> Submission 16, Board of Trustees for the Historic Houses Trust of New South Wales, p 3.

<sup>436</sup> Submission 16, Board of Trustees for the Historic Houses Trust of New South Wales, p 4.

## Committee comment

- 3.114** The committee acknowledges the range of issues raised in relation to other proposed amendments to the *State Records Act* and the legislative and policy framework more broadly.
- 3.115** In particular, the committee notes the range of stakeholder views on the remaining proposed reforms presented in the *Review of the State Records Act 1998 Policy Paper*.
- 3.116** Among these is the proposal to make records in the open access period open by default and to reduce the open access period from 30 to 20 years. The committee agrees that these changes will achieve the intention of the Act to advance public access. The committee notes with particular interest the experience of the Commonwealth in moving to a reduced access period and is encouraged by the success of that transition.
- 3.117** The committee also acknowledges the concerns raised by NSW Health regarding the impact of this proposed reform on existing protections of personal and health information found in relevant privacy legislation. In this regard, the committee urges the NSW Government to consult with public offices about the implications of this proposal, with particular consideration of the interactions with relevant privacy legislation, and to consider exemptions when developing legislation giving it effect.
- 3.118** On balance, the committee considers these proposals to be beneficial in enhancing greater access to records. The committee therefore recommends that the NSW Government ensure, in any amended or new legislation regarding government recordkeeping and archiving, that records in the open access period be open by default, unless subject to a 'closed to public access' direction, and that the open access period be reduced to 20 years.
- 

### Recommendation 6

That the NSW Government ensure, in any amended or new legislation regarding government recordkeeping and archiving, that:

- records in the open access period be open by default, unless subject to a 'closed to public access' direction
  - the open access period be reduced to 20 years.
- 

- 3.119** The committee notes stakeholder views on the proposal to require public offices to make and implement plans to transfer control of records of enduring value that are no longer in active business use to SARA. The committee agrees that this proposed reform encourages strategic management, protection and accessibility to records by giving both public offices and SARA greater visibility over records of enduring value, particularly in light of the concerns raised about the transfer of born-digital records.
- 3.120** The committee therefore recommends that the NSW Government ensure, in any amended or new legislation regarding government recordkeeping and archiving, that public offices are required to make and implement plans to transfer control of records of enduring value that are no longer in active business use to SARA.
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**Recommendation 7**

That the NSW Government ensure, in any amended or new legislation regarding government recordkeeping and archiving, that public offices are required to make and implement plans to transfer control of records of enduring value that are no longer in active business use to the State Archives and Records Authority of New South Wales.

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- 3.121** The committee also acknowledges the evidence regarding monitoring and compliance requirements, in light of the proposal for a monitoring power to be included in the legislation to compel public offices to audit their own recordkeeping practices.
- 3.122** The committee notes the limitations on SARA to monitor and enforce compliance under the Act, and thus considers the proposed reform a positive step towards strengthening the regulation of recordkeeping. The committee also agrees with the Information Commissioner that self-auditing is a legitimate and valuable regulatory tool, and considers it an important mechanism to encourage greater accountability.
- 3.123** Accordingly, the committee recommends that the NSW Government ensure, in any amended or new legislation regarding government recordkeeping and archiving, that a monitoring power be included to require public offices to investigate its recordkeeping practices and to report back its findings, when directed.
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**Recommendation 8**

That the NSW Government ensure, in any amended or new legislation regarding government recordkeeping and archiving, that a monitoring power be included to require public offices to investigate its recordkeeping practices and to report back its findings, when directed.

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- 3.124** The committee acknowledges that the digital age presents various challenges to recordkeeping and archiving, and notes that born-digital records are particularly vulnerable to threats of technological obsolescence.
- 3.125** The committee is particularly pleased by the evidence referencing New South Wales and, in particular, SARA, as leaders in digital transformation and digital recordkeeping.
- 3.126** The committee notes the two aspects of digital recordkeeping discussed during the inquiry – namely the digitisation of existing records and the management of born-digital records.
- 3.127** With reference to SARA's digitisation operations, the committee acknowledges SARA's tremendous efforts in progressing the digitisation of its records and increasingly allowing discoverability of its catalogue. The committee supports its continued focus on digitisation to enhance public access for the benefit of citizen's across the State.
- 3.128** The committee also notes the evidence with respect to the records and stories of Aboriginal people. The committee acknowledges the continued prioritisation of First Nation voices in the telling of the State's history, and looks with interest to the proposed new cultural institution to address current limitations on sharing the Aboriginal narrative.
-

- 3.129** The committee notes the concerns raised by inquiry participants regarding engagement with Aboriginal people on the management, preservation, use and access to Aboriginal records. The committee urges the NSW Government to ensure that active engagement with Aboriginal people is a priority moving forward.
- 3.130** The committee was concerned at evidence suggesting that the existing legislative and policy framework to support the management of and access to Aboriginal peoples' records and archives was inadequate. Furthermore, the committee acknowledges the view of Jumbunna Institute for Indigenous Education and Research that the records held by SARA 'represent the evidence of colonisation and forced dispossession of Aboriginal people in NSW' but they 'do not capture the lived experience of Aboriginal people'.
- 3.131** The committee therefore recommends that the NSW Government work in partnership with Aboriginal people to manage and care for highly sensitive and confidential Aboriginal records and enable greater access to them, and to consider appointing Aboriginal archivists within the State Archives and Records Authority of New South Wales.
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**Recommendation 9**

That the NSW Government:

- work in partnership with Aboriginal people to manage and care for highly sensitive and confidential Aboriginal records and enable greater access to them
  - consider appointing Aboriginal archivists within the State Archives and Records Authority of New South Wales.
- 

- 3.132** The committee also acknowledges and supports the amendments proposed by the Historic Houses Trust to the *Historic Houses Trust Act 1980*.

## Appendix 1 Submissions

No.	Author
1	Mr Peter Root
2	Dr David Clune and Mr Mark Hildebrand
3	Dr Brian Lindsay, Chair, Board of the NSW State Archives and Records Authority
4	Name suppressed
5	Ms Virginia Macleod
6	Mr Ian Campbell
7	The National Art School
8	Name suppressed
9	Lucinda Hughes Turnbull AO
9a	Lucinda Hughes Turnbull AO
10	Mr William Oates
11	Museums and Galleries of NSW
12	Mr Alan Ventress
13	Dr Peter Watts AM
14	Ms Amanda Barber
15	Art Gallery of New South Wales
16	Board of Trustees for the Historic Houses Trust of NSW, Sydney Living Museums
17	City of Newcastle
18	Ms Ruth Medd
19	Mr Philip Grove
20	Anne Henderson AM
21	Name suppressed
22	Board of the NSW State Archives and Records Authority
23	Information & Privacy Commission
24	Society of Australian Genealogists
25	Mr Gerard Calilhanna
26	Australian Museums and Galleries Association
27	Mrs Maisy Stapleton
28	Federation of Australian Historical Societies
29	Professor Lucy Taksa
30	NSW & ACT Association of Family History Societies Inc
31	Professional Historians Australia

<b>No.</b>	<b>Author</b>
32	Dr Rosemary Webb
33	Royal Australian Historical Society
34	Professional Historians Association (NSW & ACT)
35	Dr Marlene Kanga AM
36	Dr Shirley Fitzgerald
37	Sherman Centre for Culture & Ideas
38	Port Stephens Council
39	Heritage Council of NSW
40	Mr Edward Simpson
41	Ms Karen Moses
42	Helen Temple
43	Recordkeeping Innovation Pty Ltd
44	Australian Society of Archivists Inc
45	Mrs Chris McDiven AM
46	History Council of New South Wales, Inc
47	Australian Historical Association
48	The University of Sydney
49	Dr Mark Dunn
50	Mr Adam Lindsay
51	Jenni Stapleton
52	Records & Information Professionals of Australasia
53	Name suppressed
54	Name suppressed
55	Name suppressed
56	Mr Roderick Simpson
57	Mr Aaron Waters-Marsh
58	Sydney Opera House
59	Tweed Shire Council
60	Mr Geoff Hinchcliffe
61	National Archives of Australia
62	Jennifer Sanders
63	Far West Local Health District
64	NSW Health
65	NSW Trustee and Guardian
66	Mr Clive Lucas

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<b>No.</b>	<b>Author</b>
67	Jumbunna Institute for Indigenous Education & Research, UTS
68	Link-Up (NSW) Aboriginal Corporation

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## Appendix 2 Witnesses at hearings

<b>Date</b>	<b>Name</b>	<b>Position and Organisation</b>
<b>Monday 1 June 2020</b> <b>Video conference</b>	Mr Adam Lindsay	Executive Director, State Archives and Records Authority of NSW and Sydney Living Museums
	Dr Brian Lindsay	Chair, State Archives and Records Authority of NSW
	Ms Naseema Sparks AM	Chair, Historic Houses Trust of NSW (Sydney Living Museums)
	Mr Alan Ventress	Former Director, State Archives and Authority of NSW
	Dr Peter Watts AM	Former Director, Historic Houses Trust of NSW
<b>Wednesday 1 July 2020</b> <b>Macquarie Room</b> <b>Parliament House, Sydney</b>	Dr Lisa Murray	Chair, Professional Historians Association (NSW and ACT)
	Dr Michael Bennett	Member, Professional Historians Association (NSW and ACT)
	Mr Frank Howarth	Chair, Heritage Council of NSW
	Mr David Fricker <i>via teleconference</i>	Director-General, National Archives of Australia
	Mr Geoff Hinchcliffe	Former Executive Director, State Archives and Records Authority of NSW
	Ms Anne Henderson	Former Chair, State Archives and Records Authority of NSW
	Ms Julia Mant	President, Australian Society of Archivists Inc.
	Mr Tim Robinson	Professional Member, Australian Society of Archivists Inc.
	Mr William Oates	Archivist
Mr Michael Rolfe	Chief Executive Officer, Museums and Galleries NSW	

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<b>Date</b>	<b>Name</b>	<b>Position and Organisation</b>
<b>Thursday 20 August 2020 Macquarie Room Parliament House, Sydney</b>	Ms Elizabeth Tydd	Chief Executive Officer and Information Commissioner, Information and Privacy Commission NSW
	Ms Jessica Kavanagh	Director, Legal Counsel & Regulatory Advice, Information and Privacy Commission NSW
	Ms Jenni Stapleton	Former Director, State Archives and Records Authority of NSW
	Professor Lucy Taksa	Former Chair, State Archives and Records Authority of NSW
	Mrs Lucinda Turnbull	Private individual
	The Hon Don Harwin MLC	Special Minister of State, and Minister for the Public Service and Employee Relations, Aboriginal Affairs and the Arts
	Mr Adam Lindsay	Executive Director, State Archives and Records Authority of NSW and Sydney Living Museums

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## Appendix 3 Minutes

### Minutes no. 15

Wednesday 11 March 2020

Standing Committee on Social Issues

Room 1136, Parliament House, Sydney at 1.00 pm

#### 1. Members present

Mr Mallard, *Chair*

Mr Mookhey, *Deputy Chair*

Mr Amato (substituting for Mrs Ward) (*via teleconference*)

Ms Faehrmann (substituting for Ms Boyd for the duration of the inquiry into the *State Records Act 1998* (NSW) and the Policy Paper on its review)

Mr Franklin

Ms Jackson

Mr Martin

#### 2. Previous minutes

Resolved on the motion of Mr Franklin: that draft minutes no. 14 be confirmed.

#### 3. Correspondence

The Committee noted the following items of correspondence:

##### *Received:*

- 4 February 2020 – Email from Ms Abigail Boyd MLC to the secretariat, advising that Ms Cate Faehrmann MLC will be substituting for her for the inquiry into the *State Records Act 1998* (NSW) and the Policy Paper on its review.

#### 4. Chair's resignation from the NSW State Archives and Records Authority Board

The Chair tabled correspondence from himself to the Hon. Don Harwin MLC, Special Minister of State and Minister for Public Service and Employee Relations, Aboriginal Affairs, and the Arts, dated 9 March 2020, advising of his resignation from the NSW State Archives and Records Authority Board, effective 9 March 2020.

#### 5. Consideration of Ministerial terms of reference

The Chair tabled the following terms of reference received from the Hon Don Harwin MLC, Special Minister of State, Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts and Vice President of the Executive Council on 10 January 2020:

1. That the Standing Committee on Social Issues inquire into and report on the *State Records Act 1998* (NSW) (the Act) and the Policy Paper on its review, with particular reference to:
  - (a) the role and purposes of the State Records Authority of NSW and Sydney Living Museums
  - (b) the adequacy of the Act in meeting citizens' needs
  - (c) factors constraining public access to and use of the documentary and material heritage of NSW
  - (d) the operation and effect of the proposed reforms in the attached Policy Paper, in particular:
    - (i) the effect of the proposed reforms on NSW public offices, including NSW Government agencies, local councils, public health organisations and State-owned corporations
    - (ii) whether the proposed reforms support digital government

- (iii) whether the proposed reforms will increase public knowledge and enjoyment of the stories that shape our social, historical and cultural identity, enhancing social outcomes for the people of NSW
- (iv) whether the proposed reforms will enhance the protection of the key cultural assets of NSW
- (e) any other related matter.

Chair further tabled the following documents:

- Letter from the Hon Don Harwin MLC, Special Minister of State, Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts and Vice President of the Executive Council to the Chair, dated 10 January 2020
- Review of the *State Records Act 1998* Policy Paper, dated 8 January 2020.

Resolved, on the motion Ms Faehrmann:

- That the committee adopt the terms of reference.
- That the committee authorise the publication of the following documents on the inquiry webpage:
  - Letter from the Hon Don Harwin MLC, Special Minister of State, Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts and Vice President of the Executive Council to the Chair, dated 10 January 2020
  - Review of the State Records Act 1998 Policy Paper, dated 8 January 2020.

## 6. Conduct of the inquiry into the *State Records Act 1998* (NSW) and the Policy Paper on its review

### 6.1 Proposed timeline

Resolved, on the motion of Mr Mookhey: That the committee adopt the following timeline for the administration of the inquiry:

- Close of submissions: 9 April 2020
- Hearing: 20 May 2020
- Reserve hearing date: 27 May 2020
- Reporting date: By 31 July 2020

### 6.2 Stakeholder list

Resolved, on the motion of Ms Jackson: That members have until 1.00 pm Friday 13 March 2020 to amend the Chair's proposed stakeholder list or nominate additional stakeholders, and that the committee agree to the stakeholder list by email, unless a meeting of the committee is required to resolve any disagreement.

### 6.3 Advertising

The committee noted that the standard practice is for all inquiries to be advertised via Twitter, Facebook, stakeholder letters and a media release distributed to all media outlets in New South Wales.

## 7. Adjournment

The committee adjourned at 1.08 pm, until 10.00 am, Wednesday 18 March 2020 (Modern Slavery Act inquiry).

Stewart Smith  
Clerk to the Committee

**Minutes no. 17**

Monday 1 June 2020

Standing Committee on Social Issues

Webex videoconferencing at 9.19 am

**1. Members present**Mr Mallard, *Chair*Mr Mookhey, *Deputy Chair*

Ms Faehrmann

Mr Franklin

Ms Jackson

Mr Martin

Revd Mr Nile

Mrs Ward

**2. Previous minutes**

Resolved, on the motion of Mrs Ward: That draft minutes no. 16 be confirmed.

**3. Correspondence**

The Committee noted the following item of correspondence:

***Received:***

- 16 March 2020 – Mr Adam Lindsay, Executive Director, State Archives and Records Authority of NSW and Sydney Living Museums, to Office of the Clerk, advertising the inquiry to senior responsible officers and records management contacts in the NSW public sector and inviting submissions.

**4. Inquiry into the State Records Act 1998 and the Policy Paper on its review****4.1 Revised timeline**

Resolved, on the motion of Revd Mr Nile: That the following revised timeline be adopted:

- Submissions closing date – 30 April 2020
- Hearings on:
  - Monday, 1 June 2020
  - Wednesday, 1 July 2020
  - Thursday, 30 July 2020.

**4.2 Public submissions**

The committee noted that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 1-3, 5-7, 9-20, 22-52 and 56-64.

**4.3 Partially confidential submissions*****Name suppressed submissions***

Resolved, on the motion of Ms Faehrmann: That the committee authorise the publication of submission nos. 4, 8, 21, and 53-55, with the exception of the author's name, which is to remain confidential, at the request of the author.

**4.4 Confidential submission**

Resolved, on the motion of Mrs Ward: That the secretariat advise the submission author that the committee has deferred consideration of the publication of its submission, but that the committee is not inclined to keep the submission confidential, and so provides opportunity for the submission author to:

- give further details as to why the submission should be kept confidential
- revise their submission on the basis that it will be made public.

**4.5 Public hearing – via videoconference**

The committee proceeded to take evidence in public.

The witnesses were admitted via video link.

The Chair made an opening statement regarding the broadcasting of proceedings, adverse mention and other matters. The Chair also declared his resignation from the Board of the State Archives and Records Authority upon the referral of the inquiry to the committee.

The following witnesses were sworn and examined:

- Mr Adam Lindsay, Executive Director, State Archives and Records Authority of NSW and Sydney Living Museums
- Dr Brian Lindsay, Chair, State Archives and Records Authority of NSW
- Ms Naseema Sparks AM, Chair, Historic Houses Trust of NSW (Sydney Living Museums)

The evidence concluded and the witnesses withdrew.

The following witness was admitted via video link, sworn and examined:

- Mr Alan Ventress, former Director, State Records NSW.

The evidence concluded and the witnesses withdrew.

The following witness was admitted via video link, sworn and examined:

- Dr Peter Watts AM, former Director, Historic Houses Trust of NSW.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 1.26 pm.

## 5. Adjournment

The committee adjourned at 1.26 pm, until 1 July 2020 (public hearing).

Rhia Victorino

**Clerk to the Committee**

## Minutes no. 18

Wednesday 1 July 2020

Standing Committee on Social Issues

Macquarie Room, Sydney, at 9.53 am

### 1. Members present

Mr Mallard, *Chair*

Ms Faehrmann (from 10.52 am)

Mr Farlow (substituting for Mrs Ward)

Mr Franklin

Ms Jackson

Mr Martin

Revd Mr Nile

### 2. Apologies

Mr Mookhey, *Deputy Chair*

### 3. Election of Deputy Chair

The Chair noted the absence of the Deputy Chair for the meeting.

The Chair called for nominations for Deputy Chair for the purpose of the meeting.

Mr Farlow moved: That Ms Jackson be elected Deputy Chair of the committee for the purpose of the meeting.

There being no further nominations, the Chair declared Ms Jackson elected Deputy Chair for the purpose of the meeting.

**4. Draft minutes**

Resolved, on the motion of Mr Franklin: That draft minutes no. 17 be confirmed.

**5. Correspondence**

The committee noted the following items of correspondence:

***Received:***

- 3 April 2020 – Letter from Ms Ruth Pollard, Director Legal and Professional Services, NSW Trustee and Guardian, to the Director, requesting that the NSW Trustee and Guardian submission be kept confidential.
- 4 June 2020 – Email from Mr Alan Ventress, former Director, State Records NSW, to Chair, regarding statements made in Mr Adam Lindsay's submission to the inquiry.
- 9 June 2020 – Email from Ms Ruth Pollard, Director Legal and Professional Services, NSW Trustee and Guardian, to the secretariat, regarding the publication of its submission.

***Sent:***

- 3 June 2020 – Email from the secretariat to Ms Ruth Pollard, Director Legal and Professional Services, NSW Trustee and Guardian, regarding publication of the NSW Trustee and Guardian submission.

Resolved, on the motion of Mr Franklin: That the committee authorise the publication of correspondence from Mr Alan Ventress regarding statements made in Mr Adam Lindsay's submission to the inquiry, dated 4 June 2020, with the exception of the names of third party individuals, and that the correspondence be published on the committee's website.

**6. Inquiry into the State Records Act 1998 and the Policy Paper on its review**

**6.1 Submission no. 65 – NSW Trustee and Guardian**

Resolved, on the motion of Ms Jackson: That the committee authorise the publication of submission no. 65.

Resolved, on the motion of Mr Franklin: That the Chair, on behalf of the committee, write to Mr Adam Lindsay, Executive Director, State Archives and Records Authority of NSW and Sydney Living Museums, attaching the submission from the NSW Trustee and Guardian and seeking a response to the submission.

**6.2 Public submissions**

The committee noted that the following submission was published by the committee clerk under the authorisation of the resolution appointing the committee: submission no. 66.

**6.3 Site visit**

Resolved, on the motion of Revd Mr Nile: That a site visit be conducted on Monday 27 July 2020 to the NSW State Archives and Records Western Sydney Records Centre in Kingswood, the Mint and Hyde Park Barracks.

**6.4 Public hearing**

The committee proceeded to take evidence in public.

The Chair made an opening statement regarding the broadcasting of proceedings, adverse mention and other matters.

The following witnesses were sworn and examined:

- Dr Lisa Murray, Chair, Professional Historians Association (NSW and ACT)
- Dr Michael Bennett, Member, Professional Historians Association (NSW and ACT)
- Mr Frank Howarth, Chair, Heritage Council of NSW

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr David Fricker, Director-General, National Archives of Australia (via teleconference)
- Mr Geoff Hinchcliffe, Former Executive Director, State Archives and Records Authority of NSW

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Anne Henderson, Former Chair, State Archives and Records Authority of NSW
- Ms Julia Mant, President, Australian Society of Archivists Inc.
- Mr Tim Robinson, Professional Member, Australian Society of Archivists Inc.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr William Oates, Archivist
- Mr Michael Rolfe, Chief Executive Officer, Museums and Galleries NSW

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 2.36 pm.

#### **6.5 Additional witnesses**

Resolved, on the motion of Mr Franklin: That the following additional witnesses be invited to give evidence at the hearing on 30 July 2020:

- Mr Adam Lindsay, Executive Director, State Archives and Records Authority of NSW and Sydney Living Museums
- Hon Don Harwin MLC.

#### **7. Next meeting**

The committee adjourned at 2.45 pm until Monday, 27 July 2020 (site visit).

Rhia Victorino

**Clerk to the Committee**

#### **Minutes no. 19**

Monday 27 July 2020

Standing Committee on Social Issues

Museum of Sydney, Sydney, at 10.00 am

#### **1. Members present**

Mr Mallard, *Chair*  
Ms Jackson  
Mr Martin  
Revd Mr Nile

#### **2. Apologies**

Ms Faehrmann  
Mr Franklin  
Mr Mookhey, *Deputy Chair*  
Mrs Ward

### 3. Inquiry into the State Records Act 1998 and the Policy Paper on its review

#### 3.1 Locations of site visit

Resolved, on the motion of Ms Jackson: That the committee visit the Museum of Sydney in Sydney, Western Sydney Records Centre in Kingswood and Elizabeth Park in Rosehill as part of its site visit on Monday 27 July 2020.

#### 3.2 Visit to Museum of Sydney

The committee visited the Museum of Sydney, Sydney, and received a briefing from:

- Mr Adam Lindsay, Executive Director, State Archives and Records Authority of NSW and Sydney Living Museums
- Dr Brian Lindsay, Chair, State Archives and Records Authority of NSW
- Ms Naseema Sparks AM, Chair, Historic Houses Trust of NSW (Sydney Living Museums)
- Ms Rebecca Bushby, A/Director Strategy and Engagement
- Ms Judy Tanna, Head of Development and Fundraising
- Dr Penny Stannard, Lead Curator of A Thousand Words

#### 3.3 Visit to Western Sydney Records Centre

The committee visited the Western Sydney Records Centre, Kingswood, and received a briefing from:

- Mr Lindsay
- Dr Lindsay
- Ms Sparks
- Mr Martyn Killion, Director Collections Access and Engagement
- Mr Ben Alexander, Director Commercial Operations
- Ms Clare Donnellan, Director Corporate and Commercial Services

#### 3.4 Visit to Elizabeth Farm

The committee visited the Elizabeth Farm, Rosehill, and received a briefing from:

- Mr Lindsay
- Dr Lindsay
- Ms Sparks
- Mr Ian Innes, Director Heritage, Collections and Portfolio
- Ms Beth Hise, Head of Curatorial and Exhibitions
- Ms Gay Hendriksen, Visitor Interpretation Officer (Sydney Living Museums)/Volunteer (State Archive and Records Authority of NSW)

### 4. Next meeting

The committee adjourned at 4.10 pm until Thursday, 30 July 2020 (public hearing).

Rhia Victorino  
Clerk to the Committee

**Minutes no. 20**

Thursday 20 August 2020

Standing Committee on Social Issues

Macquarie Room, Sydney, at 10.01 am

**1. Members present**

Mr Mallard, *Chair*

Ms Faehrmann

Mr Franklin

Ms Jackson

Mr Martin (via video link)

Revd Mr Nile

Mrs Ward (via video link)

**2. Apologies**

Mr Mookhey, *Deputy Chair*

**3. Election of Deputy Chair**

The Chair noted the absence of the Deputy Chair for the meeting.

The Chair called for nominations for Deputy Chair for the purpose of the meeting.

Mrs Ward moved: That Ms Jackson be elected Deputy Chair of the committee for the purpose of the meeting.

There being no further nominations, the Chair declared Ms Jackson elected Deputy Chair for the purpose of the meeting.

**4. Draft minutes**

Resolved, on the motion of Ms Jackson: That draft minutes no. 18 and 19 be confirmed.

**5. Correspondence**

The committee noted the following items of correspondence:

***Received:***

- 4 July 2020 – Email from Mr Adam Lindsay, Executive Director, State Archives and Records Authority of NSW and Sydney Living Museums, to secretariat, providing additional information to evidence given at the hearing on 1 June 2020.
- 7 July 2020 – Email from Dr David Clune, Honorary Associate, Department of Government and International Relations, University of Sydney to secretariat, declining the invitation to appear at the hearing on 30 July 2020.
- 7 July 2020 – Email from Mr Mark Hildebrand, Curator Emeritus, State Library of NSW, to secretariat, declining the invitation to appear at the hearing on 30 July 2020.
- 9 July 2020 – Email from Ms Anna Read, Senior Legal Officer, Legal and Regulatory Services, NSW Health, to secretariat, advising that the Ministry does not propose having a witness appear at the hearing on 30 July 2020.
- 15 July 2020 – Letter from Mr Adam Lindsay, Executive Director, State Archives and Records Authority of NSW and Sydney Living Museums, to the Chair, providing a response to the NSW Trustee and Guardian submission to the inquiry.

***Sent:***

- 3 July 2020 – Letter from the Chair to Mr Adam Lindsay, Executive Director, State Archives and Records Authority of NSW and Sydney Living Museums, seeking a response to the NSW Trustee and Guardian submission to the inquiry.

Resolved, on the motion of Ms Faehrmann: That:

- the committee authorise the publication of the correspondence from Mr Adam Lindsay providing a response to the NSW Trustee and Guardian submission to the inquiry, dated 15 July 2020
- the correspondence be published on the committee's website
- a copy of the correspondence be forwarded to the NSW Trustee and Guardian for their information.

## **6. Inquiry into the State Records Act 1998 and the Policy Paper on its review**

### **6.1 Revised timeline**

Resolved, on the motion of Revd Mr Nile: That the following revised timeline be adopted:

- Rescheduled hearing: 20 August 2020
- Reporting date: By 16 October 2020.

### **6.2 Engagement with the Aboriginal community**

The committee noted that, following his evidence at the hearing on 1 July 2020, Dr Michael Bennett, Member of the Professional Historians Association, identified a number of stakeholders for engagement with the inquiry, particularly on the issue of accessibility to material in the State Archives by the Aboriginal community. These stakeholders were contacted and submissions have been received.

### **6.3 Public submissions**

The committee noted that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 67 and 68.

### **6.4 Answers to questions on notice and supplementary questions**

The committee noted that the following answers to questions on notice and supplementary questions were published by the committee clerk under the authorisation of the resolution appointing the committee:

- Answers to questions on notice from Mr Alan Ventress, former Director, State Records NSW, received 19 June 2020
- Answers to supplementary questions from Ms Naseema Sparks AM, Chair, Historic Houses Trust of NSW, received 3 July 2020
- Answers to supplementary questions from Mr Adam Lindsay, Executive Director, State Archives and Records Authority of NSW and Sydney Living Museums, received 4 July 2020
- Answers to supplementary questions from Dr Brian Lindsay, Chair, State Archives and Records Authority of NSW, received 7 July 2020
- Answers to questions on notice from Dr Lisa Murray, Chair, Professional Historians Association (NSW & ACT), received 27 July 2020
- Answers to questions on notice from Ms Julia Mant, President, Australian Society of Archivists, received 28 July 2020.

### **6.5 Camera operator arrangement for committee hearings**

Members were advised that the new three-year funding from Treasury has enabled the Parliament to extend its existing camera operator arrangements to cover committee hearings. Since 2018 the Parliament has had the equipment necessary to operate the cameras in the Jubilee and Macquarie Rooms from the broadcast control room on Level 6, but has been unable to utilise the capacity due to funding constraints.

The new arrangements mean that the footage will now provide for a wide or close shot of members when questions are being asked, and then revert to a wide or close shot of the witness table during answers. Camera operators will make adjustments for each group of witnesses. The existing Broadcast Guidelines for the filming of committee hearings will continue to apply.

The committee secretariat present in the hearing room will continue to control the broadcast modes of 'Broadcast', 'Off', 'Deliberative' and 'In Camera'.

### **6.6 Appearance of Minister Harwin and Mr Lindsay**

Resolved, on the motion of Ms Jackson: That Mr Adam Lindsay, Executive Director, State Archives and Records Authority of NSW and Sydney Living Museums, appear alongside Minister Don Harwin MLC in the one session, instead of appearing separately, at the hearing on 20 August 2020.

#### **6.7 Public hearing**

The committee proceeded to take evidence in public.

The Chair made an opening statement regarding the broadcasting of proceedings, electronic participation by members and witnesses, adverse mention and other matters.

The following witnesses were sworn and examined:

- Ms Elizabeth Tydd, Chief Executive Officer and Information Commissioner, Information and Privacy Commission NSW
- Ms Jessica Kavanagh, Director, Legal Counsel & Regulatory Advice, Information and Privacy Commission NSW.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Jenni Stapleton, Former Director, State Archives and Records Authority of NSW
- Professor Lucy Taksa, Former Chair, State Archives and Records Authority of NSW.

The evidence concluded and the witnesses withdrew.

The following witness was admitted, sworn and examined, via video link:

- Mrs Lucinda Turnbull, private individual.

Mrs Turnbull tendered the following document:

- Photographs from Hambleton Cottage, Experiment Farm, Harris Park, February 2018.

The evidence concluded and the witness withdrew.

The Hon Don Harwin MLC, Special Minister of State, and Minister for the Public Service and Employee Relations, Aboriginal Affairs and the Arts, was admitted.

Mr Adam Lindsay, Executive Director, State Archives and Records Authority of NSW and Sydney Living Museums, was admitted.

The Chair noted that members of Parliament swear an oath to their office, and therefore do not need to be sworn prior to giving evidence before a committee.

The Chair also reminded Mr Lindsay that he did not need to be sworn as he had been sworn in at a previous hearing for their inquiry.

The witnesses were examined.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 3.10 pm.

Resolved, on the motion of Ms Jackson: That the committee accept and publish the following documents tendered during the public hearing:

- Photographs from Hambleton Cottage, Experiment Farm, Harris Park, February 2018, tendered by Mrs Lucinda Turnbull.

#### **7. Next meeting**

The committee adjourned at 3.11 pm until Wednesday, 7 October 2020 (report deliberative).

Rhia Victorino  
**Clerk to the Committee**

**Minutes no. 21**

Wednesday 7 October 2020

Standing Committee on Social Issues

Macquarie Room, Sydney, at 10.02 am

**1. Members present**Mr Mallard, *Chair*Mr Mookhey, *Deputy Chair*

Ms Faehrmann

Mr Franklin

Ms Jackson

Mrs Maclaren-Jones (via video link) (substituting for Mrs Ward)

Mr Martin

Revd Mr Nile

**2. Draft minutes**

Resolved, on the motion of Mr Franklin: That draft minutes no. 20 be confirmed.

**3. Correspondence**

The committee noted the following items of correspondence:

***Received:***

- 31 August 2020 – Letter from Dr Peter Watts AM to Chair, regarding comments made by the Hon Don Harwin MLC, Minister for the Arts, at the hearing on 20 August 2020.
- 1 September 2020 – Email from Mr Adam Lindsay, Executive Director, State Archives and Records Authority and Sydney Living Museums, to the secretariat, responding to an email sent from Mr Alan Ventress regarding evidence given.
- 1 September 2020 – Email from Mr Alan Ventress to Mr Adam Lindsay, Executive Director, State Archives and Records Authority and Sydney Living Museums, regarding Mr Lindsay's response to his email regarding evidence given.

***Sent:***

- 21 August 2020 – Email from the secretariat to Ms Ruth Pollard, Director Legal and Professional Services, NSW Trustee and Guardian, forwarding the response from Mr Adam Lindsay, Executive Director, State Archives and Records Authority and Sydney Living Museums, to the NSW Trustee and Guardian submission, as requested by the Chair.

Resolved, on the motion of Mr Mookhey: That:

- the committee authorise the publication of the correspondence from Dr Peter Watts to the Chair, regarding comments made by the Hon Don Harwin MLC, Minister for the Arts, at the hearing on 20 August 2020, dated 31 August 2020, at the author's request
- the correspondence from Dr Watts be published on the committee's website.

**4. Inquiry into the State Records Act 1998 and the Policy Paper on its review****4.1 Answers to questions on notice and supplementary questions**

The committee noted that the following answers to questions on notice and additional information were published by the committee clerk under the authorisation of the resolution appointing the committee:

- Additional information from Ms Jenni Stapleton, former Director, State Records NSW, 5 September 2020
- Answers to questions on notice from Hon Don Harwin MLC, Minister for the Arts, received 25 September 2020.

#### 4.2 Consideration of the Chair's draft report

The Chair submitted his draft report entitled '*State Records Act 1998* and the Policy Paper on its review', which, having been previously circulated, was taken as being read.

Resolved, on the motion of Ms Faehrmann: That paragraph 2.169 be amended by omitting 'a reimagined approach to documentary and material heritage in the State' and inserting instead 'it'.

Ms Faehrmann moved: That paragraphs 2.171-2.176 be omitted:

'While the committee notes the views of those who oppose the proposal, the committee agrees that a new cultural institution to illuminate the history of New South Wales is both bold and innovative, and appreciates the potential for this new entity to be more than the sum of its parts. The committee is convinced that the new proposal is not an 'either/or' proposition, wherein the role and remit of one entity takes precedence at the expense of the other. Instead, the committee recognises the potential synergies between SARA and SLM and believes that together these will only serve to strengthen and diversify access to and engagement with the State's history under a new entity.

For while access to our State's history may have been limited to the domain of historians and archivists in the past, the committee recognises that this new cultural institution will broaden access and engagement to wider audiences in ways not explored before. SARA's archives will be open to storytelling through the cultural brick and mortar assets of the SLM collection, and will thus be able to tell more diverse stories about our past in settings that will provide important and meaningful context for them.

Moreover, the committee acknowledges the great benefit a new cultural entity with Executive Agency status, as proposed, will have on enhancing the public profile of the State's history – for both citizens of and visitors to New South Wales – and the opportunities this can provide in philanthropy, fundraising and beyond.

The committee is also particularly encouraged by the successful and fruitful partnership of SARA and SLM to date under the single Executive Director since July 2019.

The committee finds such arguments and the various others put forward in support of the new cultural institution compelling.

The committee thus strongly supports the creation of a single new cultural institution, with Executive Agency status, to replace SARA and SLM, to collect, manage, preserve and provide access to government records, objects, building and places of interest to the people of New South Wales. Moreover, the committee believes that this new entity will strengthen and diversify access to and engagement with the history of New South Wales.'

and the following new paragraphs be inserted instead:

'The committee agrees with many of the stakeholders concerns that the proponents of the single new entity appear to be elevating the significance of storytelling over recordkeeping. The committee agrees with the evidence received that archives provide accountability and transparency of government decisions and must be maintained by an independent authority.

The committee is convinced by evidence from other jurisdictions both within Australian and throughout the world that have shown that placing archival institutions within heritage bodies has proven ineffective. Further, the committee is concerned that no evidence of a successful merger could be demonstrated by the merger's proponents.

The committee supports the strengthening of SARA's role in the management and preservation of the records of the government so that they can continue to be archived in an accurate, accessible and transparent manner.'

Question put.

The committee divided.

Ayes: Ms Faehrmann, Ms Jackson, Mr Mookhey.

Noes: Mr Franklin, Mrs Maclaren-Jones, Mr Mallard, Mr Martin, Revd Nile.

Question resolved in the negative.

Resolved, on the motion of Ms Faehrmann: That the following new paragraph be inserted after paragraph 2.173:

'The committee is heartened by the Minister's assurances that by putting the Government Records Repository into an Executive Agency the threat that it could be privatised is mitigated.'

Ms Faehrmann moved: That Finding 1 be omitted: 'That the committee strongly supports the proposal to create a single new cultural institution with Executive Agency status, in place of the existing State Archives and Records Authority of New South Wales and Sydney Living Museums, to collect, manage, preserve and provide access to government records, objects, building and places of interest to the people of New South Wales. Moreover, the committee believes this new cultural institution will strengthen and diversify access to and engagement with the history of New South Wales.', and the following new finding be inserted instead:

'That the committee does not believe the proposal for the replacement of the State Archives and Records Authority of New South Wales and Sydney Living Museums with a single new entity is justified.'

Question put.

The committee divided.

Ayes: Ms Faehrmann, Ms Jackson, Mr Mookhey.

Noes: Mr Franklin, Mrs Maclaren-Jones, Mr Mallard, Mr Martin, Revd Nile.

Question resolved in the negative.

Ms Faehrmann moved: That Recommendation 1 be amended by omitting 'document a detailed analysis of all aspects of the proposal' and inserting instead 'provide a strategic business case'.

Question put.

The committee divided.

Ayes: Ms Faehrmann, Ms Jackson, Mr Mookhey.

Noes: Mr Franklin, Mrs Maclaren-Jones, Mr Mallard, Mr Martin, Revd Nile.

Question resolved in the negative.

Ms Faehrmann moved: That paragraph 2.179 be amended by omitting 'The committee acknowledges the adequacy of current government funding for SARA and SLM, and notes, in particular, the important contributions of commercial operations to the functioning of each entity, and the success of this model. However,' and inserting instead 'The committee notes the contributions of commercial operations to the functioning of SARA and SLM and the concerns from a number of stakeholders that SARA has been suffering budget constraints for some time.'

Question put.

The committee divided.

Ayes: Ms Faehrmann, Ms Jackson, Mr Mookhey.

Noes: Mr Franklin, Mrs Maclaren-Jones, Mr Mallard, Mr Martin, Revd Nile.

Question resolved in the negative.

Ms Faehrmann moved: That paragraph 2.180 be omitted: 'Hence the committee recommends that the NSW Government ensure there is sufficient baseline funding for the new entity to successfully care for its Collections and assets, and to fulfil its mandate. Moreover, the committee recommends that the new cultural institution be empowered to activate its assets to achieve commercial income as part of its core activities.'

Question put.

The committee divided.

Ayes: Ms Faehrmann.

Noes: Mr Franklin, Ms Jackson, Mrs Maclaren-Jones, Mr Mallard, Mr Martin, Mr Mookhey, Revd Nile.

Question resolved in the negative.

Ms Faehrmann moved: That paragraph 2.180 be amended by inserting at the end: 'The committee is concerned that the proposed reform is seeking to legitimate and authorise the privatisation of the essential public service of maintaining and preserving the state's records.'

Mr Mookhey moved: That the motion of Ms Faehrmann be amended by omitting 'is seeking to legitimate and authorise' and inserting instead 'might lead to'.

Amendment of Mr Mookhey put.

The committee divided.

Ayes: Ms Faehrmann, Ms Jackson, Mr Mookhey.

Noes: Mr Franklin, Mrs Maclaren-Jones, Mr Mallard, Mr Martin, Revd Nile.

Amendment of Mr Mookhey resolved in the negative.

Original question of Ms Faehrmann put.

The committee divided.

Ayes: Ms Faehrmann, Ms Jackson, Mr Mookhey.

Noes: Mr Franklin, Mrs Maclaren-Jones, Mr Mallard, Mr Martin, Revd Nile.

Question resolved in the negative.

Resolved, on the motion of Ms Faehrmann: That paragraph 2.180 and Recommendation 2 be amended by omitting 'Collections and assets' and inserting instead 'Collections, Archives and assets'.

Ms Faehrmann moved: That Recommendation 2 be amended by omitting 'empowered to activate its assets to achieve commercial income as part of its core activities'.

Question put.

The committee divided.

Ayes: Ms Faehrmann.

Noes: Mr Franklin, Ms Jackson, Mrs Maclaren-Jones, Mr Mallard, Mr Martin, Mr Mookhey, Revd Nile.

Question resolved in the negative.

Ms Faehrmann moved: That Recommendation 4 be amended by inserting at the end: 'That the legislation giving effect to the new cultural institution ensures that the board's makeup includes records management experts and users.'

Question put.

The committee divided.

Ayes: Ms Faehrmann, Ms Jackson, Mr Mookhey.

Noes: Mr Franklin, Mrs Maclaren-Jones, Mr Mallard, Mr Martin, Revd Nile.

Question resolved in the negative.

Resolved, on the motion of Ms Faehrmann: That paragraph 2.189 be amended by omitting 'will only broaden opportunities' and inserting instead 'could broaden opportunities'.

Ms Faehrmann moved: That paragraph 3.122 be amended by omitting 'and thus considers the proposed reform a positive step towards strengthening the regulation of recordkeeping. The committee also agrees with the Information Commissioner that self-auditing is a legitimate and valuable regulatory tool, and considers it an important mechanism to encourage greater accountability' and inserting instead 'and was convinced by evidence that SARA requires greater legislative authority to undertake active monitoring and enforcement of compliance, and to ensure agencies consider data integrity and transference as they design their operational archives'.

Question put.

The committee divided.

Ayes: Ms Faehrmann, Ms Jackson, Mr Mookhey.

Noes: Mr Franklin, Mrs Maclaren-Jones, Mr Mallard, Mr Martin, Revd Nile.

Question resolved in the negative.

Ms Faehrmann moved: That Recommendation 8 be omitted: ' That the NSW Government ensure, in any amended or new legislation regarding government recordkeeping and archiving, that a monitoring power be included to require public offices to investigate its record keeping practices and to report back its findings, when directed.', and the following new recommendation be inserted instead:

'That the NSW Government requires that all public offices complete an annual compliance attestation as part of its Annual Report.'

Question put.

The committee divided.

Ayes: Ms Faehrmann, Ms Jackson, Mr Mookhey.

Noes: Mr Franklin, Mrs Maclaren-Jones, Mr Mallard, Mr Martin, Revd Nile.

Ms Faehrmann moved: That the following committee comment and recommendation be inserted after paragraph 3.128:

'The committee was concerned at evidence suggesting that the existing legislative and policy framework to support the management of and access to Aboriginal peoples' records and archives was inadequate. Furthermore, the committee acknowledges the view of Jumbunna Institute for Indigenous Education and Research that the records held by SARA 'represent the evidence of colonisation and forced dispossession of Aboriginal people in NSW' but they 'do not capture the lived experience of Aboriginal people'.

#### **Recommendation X**

That the NSW Government:

- work in partnership with Aboriginal people to manage and care for highly sensitive and confidential Aboriginal records and enable greater access to them
- establishes at least two full-time Aboriginal archivists within the State Archives and Records Authority of New South Wales.'

Mr Franklin moved: That the motion of Ms Faehrmann be amended by omitting 'establishes at least two full-time Aboriginal archivists' and inserting instead 'consider appointing Aboriginal archivists'.

Amendment of Mr Franklin put and passed.

Original question of Ms Faehrmann, as amended, put and passed.

Resolved, on the motion of Mr Franklin: That:

The draft report, as amended, be the report of the committee and that the committee present the report to the House;

The transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, additional information, and correspondence relating to the inquiry be tabled in the House with the report;

Upon tabling, all unpublished attachments to submissions be kept confidential by the committee;

Upon tabling, all unpublished transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, additional information, and correspondence relating to the inquiry, be published by the committee, except for those documents kept confidential by resolution of the committee;

The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;

The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;

Dissenting statements be provided to the secretariat within 24 hours after receipt of the draft minutes of the meeting;

That the report be tabled on 15 October 2020.

The Chair to advise the secretariat and members if they intend to hold a press conference, and if so, the date and time.

**5. Next meeting**

The committee adjourned at 10.45 am until Friday, 13 November 2020 (Gay hate crimes inquiry – public hearing).

Rhia Victorino  
**Clerk to the Committee**

## Appendix 4 Dissenting statement

### Ms Cate Faehrmann MLC, The Greens NSW

The Greens NSW do not agree with the key finding of this Inquiry, that the proposal for a 'single new cultural institution' in place of the State Archives and Records Authority and Sydney Living Museums is strongly supported.

In fact, the majority of evidence received from witnesses with extensive experience in the state's management and preservation of government records spoke to the significant risks posed to the critical role that an agency such as SARA plays in government accountability through its statutory recordkeeping obligations. This evidence was compelling and convincing.

Therefore as the Greens NSW representative on this committee I sought to move a number of amendments throughout the report. These are detailed below.

The Committee comment on p.45 of the Final Report is written to support its key finding. I do not believe this committee comment (paragraphs 2.171 to 2.176) accurately reflects the evidence received during this Inquiry. I therefore sought to remove these paragraphs and replace them with the following:

"That the committee does not believe the proposal for the replacement of the State Archives and Records Authority of New South Wales and Sydney Living Museums with a single new entity is justified.

The committee agrees with many of the stakeholders concerns that the proponents of the single new entity appear to be elevating the significance of storytelling over recordkeeping. The committee agrees with the evidence received that archives provide accountability and transparency of government decisions and must be maintained by an independent authority.

The committee is convinced by evidence from other jurisdictions both within Australian and throughout the world that have shown that placing archival institutions within heritage bodies has proven ineffective. Further, the committee is concerned that no evidence of a successful merger could be demonstrated by the merger's proponents.

The committee supports the strengthening of SARA's role in the management and preservation of the records of the government so that they can continue to be archived in an accurate, accessible and transparent manner."

This was not supported.

### Privatisation / Commercialisation of an Essential Government Service

The Committee comment on p.46 at 2.179 acknowledging the adequacy of SARA's and SLM's existing funding is not supported. In fact, on the contrary, the evidence of Mr Alan Ventress, former Director, State Records NSW, was:

"While heroic efforts have been made by all staff to raise the profile of SARA and make our archives available online and to make money through the storage of non-current records, and in many other ways, continued lack of major budget support condemns the organisation to a greatly diminished role in government. The reliance of the agency on profits from the government records repository to fill statutory obligations is not sustainable in the long term."

My amendment to replace with existing 2.179 with the following was not supported:

"The committee notes the contributions of commercial operations to the functioning of SARA and SLM and the concerns from a number of stakeholders that SARA has been suffering budget constraints for some time."

While the enthusiasm of the current Executive Director of both SARA and SLM to be able to attract philanthropic funds through a combined, single entity focussed on story-telling was evident to all members, the impact this might have on the essential role of maintaining the records of government and holding public offices to account was raised as a concern by other witnesses. As was the potential privatisation of the government's record keeping role. I moved the following amendment in an effort to address that:

"The committee is concerned that the proposed reform is seeking to legitimate and authorise the privatisation of the essential public service of maintaining and preserving the state's records."

It failed.

### **New Board Makeup**

The urgings of some of the state's most experienced archivists and historians, that the Government ensures the Board makeup of a new Agency includes records management experts and users was ignored. My amendment to the report to ensure this was also not supported.

### **Aboriginal access to, and management of, records**

I was pleased however, that my amendment to include a recommendation for the NSW Government to work in partnership with Aboriginal people to manage and care for highly sensitive and confidential Aboriginal records and enable greater access to them, and to consider appointing Aboriginal archivists within the new entity, was supported.

### **Compliance and Monitoring**

The review of the State Records Act should have been used as an opportunity to provide SARA with more authority under the Act to undertake monitoring and compliance of public agencies. Instead it went down the path of creating a new agency with the risk of a reduced emphasis on government recordkeeping and archiving.

This report confirms a disturbing shift away from the ability for the agency with authority over the state's records to enforce compliance over another public agency's recordkeeping and towards 'self-auditing'. I do not support the Committee comment at p.72, paragraph 3.122 that the committee "agrees with the Information Commissioner that self-auditing is a legitimate and valuable regulatory tool", and that instead, public offices should investigate their own recordkeeping.

My attempt to omit 3.122 and replace it with the comment that SARA requires greater legislative authority to undertake active monitoring and enforcement of compliance, and to ensure agencies consider data integrity and transference as they design their operational archives, was not supported.

