

## **SUPPLEMENTARY QUESTIONS**

**Dr Brian Lindsay, Chair, State Archives and Records Authority of NSW**

**1. We are reviewing the Act in this inquiry – are there any areas of NSW government that are not subject to the current Act? Would you advocate more inclusion and openness? Are there other areas not identified where you feel the Act could be improved?**

The Act was designed to have a wide ambit and covers records in all formats created by any ‘body’ established for a public purpose. However, records of the Governor’s vice regal duties, the Houses of Parliament and judicial functions of courts and tribunals are exempt from certain Parts unless by agreement: Part 2 (regarding records management obligations); Part 4 (regarding records transfer) and Part 6 (regarding public access to records). Importantly, the Office of the Governor, Houses of Parliament and courts and tribunals are subject to Part 3, so can only dispose of any records they create and receive where authorised by SARA.

Alterations to these exemption provisions are not proposed under the current policy proposal. Access to information legislation in NSW has similar exclusions: the Houses of Parliament and their committees, judicial officers of a court or tribunal and the Governor are not agencies for the purposes of the Government Information (Public Access) Act 2009, so the information they hold is not subject to the NSW access to information regime. Similar provisions excluding the courts and Parliament from recordkeeping obligations also exist in other jurisdictions. For example, under the Commonwealth Archives Act, Federal Parliament and court records are excluded from recordkeeping, transfer and access obligations, unless prescribed in regulations or otherwise agreed.

Whilst its ambit is wide, the Act is focussed on ‘State records’ and ensuring that these records of government activity are created, protected, preserved and ultimately made accessible to the public. The State Archives Collection, comprising records created by government and document government decision making and activities, has an additional, official role not present in the SLM collection material, which comprises personal and family papers, architectural and design publications, and objects such as furniture, art and furnishings. The distinctions between the ways in which the two collections were formed, their purposes and their relative nature will be preserved should the proposed new entity be created.

As more and more collecting institutions make their holdings discoverable online, it becomes increasingly irrelevant as to which institutions hold which collection items. There are opportunities to create portals for federated searches across collections, improving the experience for users and ensuring that they can discover relevant material, wherever it is located, while ensuring that the items are appropriately contextualised.

One area where the current Act could be improved relates to the increasing delivery of public services and programs by private sector and not-for-profit organisations on behalf of government. The records created by these third-party providers should be kept and protected to ensure that public offices are accountable for their decisions and activities. In practice it relies on public offices to ensure that any third parties delivering services or programs on their behalf are contractually bound by and aware of their recordkeeping obligations. Questions also arise as to how public offices maintain accessibility and oversight of records created and handled by contracted third parties. The relevant provisions could be tightened and made more explicit so that it is clear that such arrangements do not escape the obligations provided by the Act.

The proposals seek more openness by reducing the open access period to 20 years and establishing that records will be open by default after this time, unless a public office chooses to close them for a longer period. These changes are in line with better practice international benchmarks and trends,

while ensuring that the ability for public offices to apply longer closure periods remains exactly as it is under the current Act. There are some records that do need to be closed for longer periods – mental health records, for example – and public offices are able to apply closure periods that keep such material sealed for longer than the 20 year default period.

The proposals seek more inclusion by introducing a requirement for public offices to make and implement plans to transfer control of records of enduring value that are no longer in active business use (regardless of their age) to the new entity's control. This may involve the immediate or postponed transfer of custody. This will mean public offices will have better visibility of the records they hold that are of enduring value and be more cognisant of issues such as where they are they kept, and whether they are safe from deterioration/damage etc. This is particularly important for digital records, which are particularly vulnerable to loss if not actively managed. And the new entity will have visibility of the range of records of enduring value in public office custody. This will enable us to work with public offices to allocate resources to control these records, protect and preserve them and make them publicly accessible while in the custody of the public office.

I am satisfied that the proposed changes capture the scope of improvements to the Act that are merited to enable the Archives to operate as appropriate for current circumstances and community expectations, as well as be fit for purpose through the remaining decades of this century. While there are numerous areas in which I believe the Archives can improve the ways in which it engages with the community, Right of Reply mechanisms and protocols for example, these are operational matters that do not require a legislative basis.

## **2. How do you respond to claims that both SA and SLM are too Sydney centric? Will the proposed merger respond to this perception?**

State Archives has a long-standing philosophy of placing archives of local significance in the relevant communities. We have seven Regional Archives Centres throughout the State of NSW, a network that has been in place and been built on since the 1960s. Each contains part of the State Archives Collection under a Distributed Management Agreement, whereby NSW State Archives retains control of the material but custody sits with and access is facilitated by a local organisation. Further, State Archives has an Archives Resources Kit, comprising copies of the most heavily-used archives, which is available at a large number of public libraries and other organisations throughout the State and the nation more broadly.

There is also significant material from the Collection online through commercial partners such as Ancestry and FindMyPast. This is an initiative predicated on overcoming access barriers, including geography, and complements our ongoing work to ensure more of the State Archives Collection than ever before is accessible online.

In addition, the collection storage, reading room and headquarters for the commercial business is in Western Sydney.

Finally, the State Archives exhibitions tour regionally and are hosted by key cultural institutions in local communities around NSW such as public libraries and museums and archives. Through the creation of a new cultural entity, we hope to be able to expand this capability.