

**Submission
No 3**

**INQUIRY INTO STATE RECORDS ACT 1998 AND THE
POLICY PAPER ON ITS REVIEW**

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Records Authority

Date Received: 20 March 2020



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The Hon Shayne Mallard MLC
Chair, Legislative Council Standing
Committee on Social Issues
Parliament House
Macquarie Street
Sydney NSW 2000

Dear Mr Mallard,

REVIEW OF THE *STATE RECORDS ACT 1998* & *HISTORIC HOUSES ACT 1980*

In my capacity as the Chair of the Board of the NSW State Archives and Records Authority (SARA), I welcome the opportunity to respond to the policy outcomes under consideration as part of the current review of the *State Records Act 1998* and *Historic Houses Act 1980*.

I am fully supportive of the review and am strongly of the opinion that improving public access ought to be placed at the core of this endeavour. As a historian, I firmly believe that archival material and historic records not only reveal the past to us, but foster a better understanding of the present and inform contemporary debate. The Archives Act 1983 (Cth) and the United States' National Archives Strategic Plan are exemplary of legislation and public policy which have effectively achieved greater public access.

Further, I believe that the archives and museums sector in NSW has the opportunity through this review to not only meet international best practice, but to be a global leader through the innovative creation of a new institution which brings together the recording and the telling of our history.

Please find below my specific comments on the four key policy outcomes and the ensuing options for reform that are under consideration.

Policy Outcome One: NSW public offices create, keep and protect records as evidence of their activities and decisions

Identified option for reform: The Authority 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 the Authority.

Identified option for reform: The Authority will also have power to refer instances of poor recordkeeping to investigative agencies for further investigation and action.

These options for reform address the current lack of any legislative or otherwise mandatory mechanism to monitor or investigate compliance under the *State Records Act 1998*. As the SARA Board Chair I am cognizant of the gap between community expectations of SARA's role in enforcing proper Government recordkeeping, and the lack of authority currently vested in SARA to do so.

There is a clear need for a mechanism through which SARA can compel Government bodies to comply with the Act. In my view, proactive language that vests SARA with the ability to compel compliance through powers of investigation and referral for higher action, as identified in the options for reform is the apposite approach.

Policy Outcome Two: Records of enduring value to the citizens of NSW are managed, preserved and made accessible

Identified option for reform: Public offices will be required to make and implement plans to transfer records of enduring value that are no longer in active business use to the State Archives Collection.

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.

Policy Outcome Three: Citizens have timely access to records documenting the activities and decisions that shape NSW and the lives of its citizens

Identified option for reform: 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' (CPA) direction. The assessment could be based on a risk assessment, as is the case under the current provisions.

I am fully supportive of the proposal for records in the open access period to default to open. Currently, the administrative burden that is placed on an agency by requiring them to make an open access direction for all of their records means that in practice, records are often left with no direction at all.

Ultimately, this unreasonably limits accessibility for members of the public who must make GIPA applications for records that are in the open access period and quite appropriate for public access, but that are without an explicit open access direction.

This shift would be in alignment with many other jurisdictions and is evidenced through Executive Orders 12958 and 13526 regarding automatic declassification in the United States.

Identified option for reform: 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 and an implementation approach will be informed by consultation with Public Offices.

I am in support of the proposal to decrease the open access period from 30 years to 20 years. Not only is this in line with international best practice (e.g. the United Kingdom) but is also consistent with other jurisdictions in Australia (see Archives Act 1983 (Cth)). Decreasing the open access period also furthers the institutions remit to facilitate and increase accessibility to the State's records.

A key factor in the success of this reform will be the proper resourcing of implementation. SARA has already undertaken extensive consultation with key Government Stakeholders who have

leaned towards support of this policy and reform, but have consistently raised concerns with respect to the implementation and effect this will have on not only their own personal internal resourcing and capacity, but also that of the State Archives. SARA is incredibly commercial, raising over 90% of its own operating income. Due to this, SARA is continually implementing measures to reduce costs, exacerbated by continual government efficiency dividends. The need for government to support the growth and care for this organisation and its Collection, valued at over \$1bn, is not only key to managing one of the State's most valuable assets but also to preserving our history.

Implementing a move from a 30 year to 20 year open access period in stages would appear appropriate. This approach would reflect that assumed by the Commonwealth when they implemented a corresponding change and would allow for the proper planning and resourcing of both the institution itself and all other bodies required to transfer their records into the Archives.

Policy Outcome Four: A single institution will act as custodian of the documentary and built history of NSW

Identified option for reform: A single Executive Agency will be responsible for collecting, managing, preserving and providing public access to government records, objects, buildings and places of historic, social, cultural and architectural interest and/or significance to the people of NSW. This institution will replace the existing Authority and Sydney Living Museums.

In principle, I am highly supportive of the proposal to create a single Executive Agency that will replace the existing State Archives and Records Authority and Sydney Living Museums (SLM).

Since 1 July 2019 the agencies have partnered and shared a single Executive Director. In my capacity as Chair, I have witnessed the growth and benefits that this partnership has brought to both institutions. To date the partnership has yielded improved outcomes for the people of NSW with an enhanced ability to deliver on their shared remit of making the State's history publicly accessible being perhaps the most laudable.

SARA is the custodian of a \$1b Collection with limited physical capacity or resourcing to facilitate public access. SLM, meanwhile, is the custodian of 12 important heritage venues without a significant collection to exhibit or relevant historic material to assist visitors to interpret and truly appreciate the sites.

As well as the many administrative and financial efficiencies gained through the partnership, through shared service delivery and the deployment and improvement of IT systems, the ability to partner on curatorial and exhibitions projects will create better outcomes to document, describe, preserve and interpret the state's history.

The first jointly designed and executed exhibition between the two entities will open in May 2020 at The Museum of Sydney. The exhibition features materials from both the SARA and SLM Collections and leverages the expertise of both institutions for success.

My recommendation in respect of this option for reform is that the combining of these institutions into a single Executive Agency will require the complete re-baselining of budget needs. The State must commit to ensuring funding for the significant costs associated with implementation of this proposal, and to ensure the proper functionality of the newly formed agency so that it can fulfil its revised statutory mandates.

Identified option for reform: A single governing body will be responsible for the strategic direction of the new institution. Sub-committees will be responsible for advising on and approving

arrangements for recordkeeping and the acquisition and management of significant buildings or places.

I support the proposal to form a single governing body to guide the strategic direction of the new institution.

Generally, this structure reflects the current *Historic Houses Act 1980* as well as several other State Cultural Institutions. Given all of the functions that will be brought together through the creation of this proposed new act, it is logical that the Board has the ability to create sub-committees with expertise to support them.

The structure of the current SARA Board is quite restrictive in that it prescribes the areas of State Government and expertise that must be represented on the Board in order to properly carry out their prescribed functions. The structure of the proposed 'Strategic Board' will lose this representation and it is my strong feeling that this must be retained.

As such, I strongly advocate that a Record Keeping and Disposal sub-committee is hard-coded into the legislation. This Committee should hold authority and responsibility for the powers and legislative responsibilities of the current *State Records Act 1998*, and in particular Section 21.

Section 21 relates to protection measures and should be retained and reflected in the new legislation. This committee should report to the Board but should not be directed by the Board. It will need to exist as an independent authority on the functions assigned under s21 of the current Act.

I appreciate the opportunity to provide this submission for your consideration. Please do not hesitate to contact me should you wish to discuss this submission further.

Yours sincerely

Brian Lindsay
Chair, State Archives and Records Authority of NSW Board