

**Submission  
No 14**

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

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**Date Received:** 7 April 2020

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# **Submission to the Standing Committee on Social Issues, Review of the State Records Act 1998**

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

In September 2018 a review of the *State Records Act 1998* was commenced with the following terms of reference:

- Enacting a principles-based regulatory framework for recordkeeping and archiving in NSW, and complementarity of interaction with related government initiatives in areas such as information management, open data and privacy, to support government accountability and integrity
- Responsibilities for recordkeeping and information management and ensuring compliance with recordkeeping obligations within a contemporary archives context
- Opportunities to promote digital government and to future proof recordkeeping and archiving as new technologies emerge
- Public access to records identified as having enduring value as State Archives
- How the Act can support the use of State Archives in telling the story of NSW since European settlement
- Governance and organisational arrangements for the cultural role of State Archives, for recordkeeping and archiving in NSW public offices and whether a statutory authority and a Board should continue to administer the Act, including operating and funding models
- Any other matters as determined by the Steering Committee.

The Policy Paper released by the Parliamentary Standing Committee does not appear to adequately address some of the critical terms of reference noted above, in particular the first three points and the matter of the funding models.

This Inquiry provides an important opportunity to look at issues such as adequate funding / resourcing levels for many of the activities of the State Archives and Records Authority of NSW, which include:

- regulatory activities (including monitoring compliance with the Act and standards)
- assisting NSW public offices by providing records management guidance, advice and training
- processing backlogs of records to improve discoverability and public access
- improving digital accessibility (digitising more of the collection to make available online)
- collection preservation and conservation activities, including conversion of obsolete formats to ensure accessibility (such as digitising at risk film for preservation)
- ensuring a capacity to take in and maintain digital State archives (in terms of infrastructure, expertise and resourcing).

In addition, the matter of the records management provisions of the *State Records Act 1998* (in particular Part 2 and Part 3) and whether they are adequate (either in the specific provisions or in public office compliance) to support government accountability or meet community expectations of transparency of government decision-making, does not seem to have been addressed in sufficient depth in the policy paper.

*Proposal to merge State Archives and Records Authority of NSW (the Authority) and Sydney Living Museums (SLM).*

The proposal to merge the State Archives and Records Authority of NSW and the Sydney Living Museums is a matter of some concern. The purpose, role and functions of the Authority and

SLM are fundamentally different and the legislation required for both needs to cover quite different requirements/responsibilities/community expectations.

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.

There are significantly different skills and technical requirements for the management of large-scale archives collections (in paper and digital formats) and for ensuring the ongoing accessibility of the archives. Archives cannot be equated to heritage buildings or objects, and the way that the general public and researchers engage with and use archives is fundamentally different to how they might enjoy a heritage building. 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.

In order to achieve good recordkeeping, it is necessary to have the appropriate infrastructure, legislation and rules in place and support at all levels of Government. By ensuring that records are created and managed appropriately it is possible to ensure the citizens of NSW will have archives to use and enjoy. And while ensuring that the long-term records of value are identified and eventually become archives, the *State Records Act 1998* is also important for ensuring that even records of short-term value are still created and managed for as long as required to meet community expectation.

Another matter for consideration is the importance of the independence of the Archival function, which is best supported by having a strong independent Authority to make decisions about what records are retained as archives. 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.

The *State Records Act 1998* is a piece of administrative law – as much about how the NSW Government “regulates itself” in relation to recordkeeping as it is about managing and providing public access to archives. The proposal to merge the Authority with the SLM could be perceived as undermining the Government’s credibility in terms of how seriously it supports official recordkeeping.

#### *Proposal to improve records management provisions*

The proposal to give the Authority the power to issue a notice to a public office to investigate its recordkeeping practices and report back to the Authority is a potentially beneficial improvement.

However, the policy document has itself stated that “the ability for the Authority to monitor and enforce compliance with the Act is limited”. The proposal while useful does not substantially improve the Authority’s powers (or resources) to deal with NSW public offices that seriously breach the Act or that might inadequately “investigate its own recordkeeping practices”.

Consideration should be given to improving the Authority’s ability to take action against NSW public offices in matters of serious breaches of the *State Records Act, 1998*.

*Proposal regarding transfer of control of records of enduring value*

The proposal to improve the transfer mechanisms of Part 5 of the State Records Act, by requiring public offices to make and implement plans to transfer records to the Authority that are of enduring value when no longer of business use is beneficial.

However, the proposal needs to be supported by mechanisms that could be used if public offices failed to make and implement such plans.

*Proposal to improve public access provision*

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.

However, this proposal needs to be supported by a clear policy to ensure that public offices are not unnecessarily risk adverse in any risk assessment undertaken for the purposes of making a "closed to public access direction".

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7 April 2020