

Submission
No 34

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

Organisation: Professional Historians Association (NSW & ACT)

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

This submission is made on behalf of members of the Professional Historians Association (NSW & ACT) and has been endorsed by the Executive Committee.

About us

The Professional Historians Association (NSW & ACT) represents over 120 professionally accredited historians practising in New South Wales and the Australian Capital Territory. Professional historians are trained to research and present history in a variety of formats. They work in museums, government departments, universities, schools, private firms (usually in the heritage sector) and as freelance writers. They research an array of subjects, from community and company histories to heritage. They undertake oral history projects and curate exhibitions. Their work is published in a variety of formats such as a book, information pamphlet, exhibition, walking tour app or website. There is also a range of work undertaken by historians that does not end up in print, for example a variety of reports and advice; films and documentaries; research for Native Title claims, mining leases and other litigation; and as expert witnesses.

The Professional Historians Association (NSW & ACT) membership are active users of the collections of State Records and Sydney Living Museums. The proposed reforms directly impact the professional livelihood and practice of our members.

The Professional Historians Association (NSW & ACT) is committed to inculcating an ethos of high standards of professional and ethical practices among professional historians. We advocate for historical perspectives in public debates and in government, and the keeping of documentary, environmental and other historical records.

Submission summary

- The PHA (NSW & ACT) commends the government on valuing the state's history, archives, and material collections.
- The PHA (NSW & ACT) agrees with the principles that define the four policy outcomes, however, the Association questions whether some of the proposed reforms are the best way to achieve these policy objectives.
- The PHA (NSW & ACT) endorses responsible record keeping to support good governance, decision making, and transparency, and to ensure government records are available to the public now through GIPPA legislation and accessible into the future through the timely transfer of records to the State Archives.
- The PHA (NSW & ACT) maintains that government record keeping and the Archives are key government business that should be appropriately funded by the government.

- The PHA (NSW & ACT) believes that the review of the *State Records Act 1998* is overdue. It questions the lack of documentation and the consultative process of the review, and particularly the lack of detail around the proposal to create a single entity encompassing SARA and SLM.
- The PHA (NSW & ACT) understands that the primary role of the State Archives and Records Authority in NSW is recordkeeping regulation; management and access to State archives; and commercial storage and associated services for government agencies. Community engagement through history is already an implied part of their existing mandate.
- The PHA (NSW & ACT) contends that State Archives should be focussing on improving access to the records, not shifting its purpose across to activating the collection. Public engagement through exhibitions does not equate to access. Access to records and interpretation of the records are different things.
- A significant and ongoing concern for all users of the State Archives is the problematic catalogue and lack of digitised collections. We suggest that these items should be prioritised as access imperatives over exhibitions programmes coordinated by SLM.
- The PHA (NSW & ACT) supports the recommended reduction for the open access period to 20 years. This access direction requires whole of government coordination to ensure compatibility and functionality with other information management legislation.
- The move to a 20-year access embargo may have unexpected consequences in that sensitive records may be retained by ministers and agencies. This issue may require a revision in freedom of information regulations.
- The PHA (NSW & ACT) supports the strengthening of compliance in public office recordkeeping practices. However, the policy paper is silent on how compliance will be tested, measured and enforced.
- In the 21st century, the proposed reforms to the State Records Act also need to address outcomes for records associated with Indigenous communities, particularly access, reconciliation and the right of reply. The policy paper is silent on these issues.
- The PHA (NSW & ACT) does not support the creation of a new executive agency comprising of State Archives and Records Authority and Sydney Living Museums, as the proposed reforms are not well thought through and the policy outcomes can be achieved by other measures. The Authority and SLM should remain separate entities and continue their partnership.
- The PHA (NSW & ACT) calls on the government to develop a state strategy for history and the broader context of all collections which contribute to the cultural heritage and history of the state, including the galleries, libraries, archives and museums sector.
- One area that is lacking in the preservation of and access to the state's material heritage is a repository for archaeological artefacts. If SARA and SLM were to merge to create a documentary

and built heritage archival collection, then a government repository for archaeological relics should be a key outcome.

- The PHA (NSW & ACT) encourages the government to consider establishing the role of a State Historian to foster collaboration across the state's cultural institutions and ensure the stories that shape the social, historical and cultural identity of NSW are widely shared and understood.
- The PHA (NSW & ACT) suggests that the State Archives and Records Authority should develop a program of annual Fellowships to actively foster the use, scholarship, and significance of the state archives collection.
- The PHA (NSW & ACT) advocates for a diversity of historians to be appointed on government agency boards, including any new board created if SARA & SLM merge, to promote a historical perspective to governance and decision making.

Response to the Terms of Reference

a) The role and purpose of State Records Authority of NSW and Sydney Living Museums

The policy paper promotes a major change to the role and purpose of the State Archives and Records Authority of NSW. It is proposing that the archives expand its mandate to “deliver programs to activate the Collection”. (Policy paper p.3)

The primary purpose of the State Archives and Records Authority of NSW is recordkeeping regulation; management and access to State archives; and commercial storage and associated services for government agencies.

Community engagement through history is already an implied part of their existing mandate. Indeed, the Authority has achieved this over the years through its magazine *Vital Signs*, through the loan of archive materials for exhibitions, as well as displays in the reading rooms and online exhibitions. It has also raised the profile of the collection through social media and through volunteering opportunities.

The PHA (NSW & ACT) contends that State Archives should be focussing upon improving access to the records, not shifting its purpose across to activating the collection. Public engagement through exhibitions does not equate to access. Access to records and interpretation of the records are different things. The policy paper's emphasis on 'stories' will be addressed later in this submission.

Sydney Living Museums, under the leadership of the Historic Houses Trust, manage, maintain and interpret buildings and places of historic importance for the education and enjoyment of the public. A strong element of their education and outreach is a dynamic public program of exhibitions, research and events.

The proposed reform of the two organisations presents as an uneasy amalgamation of commissions, with a relatively small point of confluence of aligned activities and responsibilities. No business analysis or report has been made publicly available to look at whether the blending of the two organisations makes business or financial sense.

SLM has curatorial expertise in quite particular collections and history, but this does not equate or align or naturally translate across to the collections of the State Archives and Records Authority. They are two very different collections. Even the expertise in collection management and conservation of both organisations are very different. Any combining of the two organisations will require more staff to achieve the proposed outcomes: more historians, more curators and more archivists.

The assumption that Sydney Living Museums has many venues that are available for exhibitions, and that these can be used for showcasing the State Archives collection, misrepresents both the nature of most of the house museums and buildings in the custody of Sydney Living Museums and the conservation and display requirements of paper-based archival material.

The role of house museums is to share the history of these buildings, their former residents (including workforce), and their historical context in a community. It is not their remit to tell all the cultural history of the state. The power of Sydney Living Museums' venues is that they respond to the history and context of the place. If they are required to tell stories of the state drawing primarily from the collections of the State Archives and Records Authority, these venues will lose much of their authenticity and potency with audiences.

With the majority of the policy paper addressing the reform needs of SARA, little information has been provided about how the objectives, philosophy and resources of the Historic Houses Trust will be managed in the proposed new arrangements. The governance arrangements are not articulated in enough detail to dispel concerns that the mission of the Historic Houses Trust could become diluted and the long-term effectiveness of the organisation diminished.

b) Adequacy of the State Records Act

The State Records Act is now more than 20 years old. The review of the Act is an opportunity to ensure the legislation is not only fit for purpose, but can provide the leadership and guidance for archival standards, record keeping and access for the next one or two decades.

While it is overdue to review the *State Records Act*, we question the consultative process of the review and the range of stakeholders involved. The PHA (NSW & ACT), whose members comprise one of SARA's largest user groups, has not been part of the review process to date, beyond broad participation in the Authority's community stakeholder committee, which regrettably has since been disbanded.

The policy paper provides no detailed analysis of the current legislation nor does it provide any provisional report on the review process which has been going since 2018, including comparative assessments of public records legislation in other jurisdictions. (Policy paper, p.4)

The PHA (NSW & ACT) understands that detailed comment on the current legislation was given by archivists and records managers in the public sector, but their expert advice has been largely overlooked in the proposed reforms.

We agree with the policy statement that “by mandating the creation and keeping of records of the activities of public offices, the Act underpins NSW’s open government and digital government initiatives.” (Policy paper p.4) This is one of the key roles of the State Archives and Records Authority.

The review does not adequately address how the State Records Act interacts with other information management legislation, such as the *Government Information (Public Access) Act (GIPPA)*, *Privacy and Personal Information Protection Act (PPIPA)*, *Health Records and Information Protection Act (HRIPA)*, and the *Copyright Act (Cwlth)*. This is a lost opportunity to ensure such legislation forms a cohesive and coherent message regarding the management of information across the State. The State Archives and Records Authority should be leading government agencies on best practice in their recordkeeping obligations.

The policy paper posits that history, interpretation and ‘storytelling’ is an integral part of access and therefore a function of the State Archives. The policy paper argues that the role of State Archives in providing access to records is curtailed because they do not have a mandate under the current act for public engagement with the records nor do they have a dedicated space in which to tell these stories. (Policy paper, p.3)

The PHA (NSW & ACT) do not agree with this statement. Public engagement is implied in their current mandate. The PHA (NSW & ACT) contends that State Archives should be focussing upon improving access to the records, not shifting its purpose across to activating the collection.

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.

The PHA (NSW & ACT) supports the recommended reduction to 20 years for the open access period. However, any new legislation needs to be clear how this open access direction interacts with freedom of information and privacy legislation, and agencies need to be given time to reassess and reissue their access directions. There are many records where a 20-year open access direction is inappropriate – particularly health, welfare and inquest records. The move to a 20-year access embargo may have unexpected consequences in that sensitive records may be retained by ministers and agencies. This issue may require a revision in freedom of information regulations.

Furthermore, discretion needs to be given for longitudinal research on closed records. Such longitudinal studies are important for understanding government policy and decision making and the impact of government decisions on communities.

The PHA (NSW & ACT) supports the strengthening of compliance in public office recordkeeping practices. However, the policy paper is silent on how compliance will be tested, measured and enforced.

In the 21st century, the proposed reforms to the State Records Act also need to address outcomes for records associated with Indigenous communities, particularly access, reconciliation and the right of reply. The policy paper is silent on these issues.

c) Factors constraining public access to and use of the documentary and material heritage of NSW

Access to the documentary heritage of NSW has been constrained for decades by the incremental annual budget cuts to the State Archives and Records Authority and a lack of government commitment to good record keeping.

The fact that State Records has cross-subsidised its budget to meet its statutory requirements through the income generated by the commercial operation of the Government Records Repository has curtailed public access and is not an acceptable outcome. The PHA (NSW & ACT) maintains that government record keeping and the archives is key government business that should be appropriately funded by the government.

The impact of budget cuts on services is not unique to State Records NSW. However, it has severely curtailed public access to the collection. This is demonstrated by:

- the closing of the city access point in 2012
- the reduction of access days in the Western Reading Room in 2019
- the large backlog of transferred records still awaiting preservation, arrangement, description and cataloguing to make them publicly identifiable and thereby accessible
- the lack of investment in the digital archive.

The staff at State Archives and Records Authority are extremely helpful in assisting with public access in the Western Sydney Reading Room. However, a loss of corporate knowledge due to retiring archivists, and dwindling investment in staff research of government administrative history, has led to a decline in the archivists' knowledge of the contextual history needed to navigate the collection and identify relevant records series. Declining staff knowledge is compounded by constant government restructures, leading to complex rearranging of departmental responsibilities. This constant diminution of administrative knowledge has a relentless and ongoing negative impact on public access.

The investment in the catalogue to simplify searching to keyword searches has contributed to a de-contextualisation of the records making it difficult for professional historians and the public alike to navigate the collection and identify the records they require.

A significant and ongoing concern for all users of the State Archives is the problematic catalogue and lack of digitised collections; we suggest that these items should be prioritised as access imperatives over exhibitions programmes coordinated by SLM.

The lack of custodial transfer of records, and the privatisation of access to some of these records, has severely impacted access to critical historical records for our built heritage.

Planning NSW continues to hold over 700,000 digitised plans of public buildings, and charges fees for searching and copy provision. These records should be transferred to State Archives and Record Authority.

Land Titles records have been privatised and are now held by NSW Land Registry Services. Historical titles must be purchased through a network of authorised Information Brokers, or through other paid service providers. These brokers are not set up for individual researchers, be they professional historians or family researchers, and some refuse to provide the service. Again, public access and free access has been severely curtailed and this has a detrimental impact on the practice of history and research on the state's built heritage.

Sydney Living Museums is responsible for only a small proportion of the State's built and material heritage. Much of the state's built heritage is managed through other government agencies and departments, local government, Heritage NSW and the Heritage Council of NSW. Documentary and material heritage is also managed through state, local government and community museums and local studies collection.

One area that is lacking in the preservation and access to the state's material heritage is a repository for archaeological artefacts. There is no central repository for archaeological relics managed under the NSW Heritage Act. Artefacts removed from development sites under archaeological permits are often disowned by the relevant land owner and are left to moulder in boxes in garages and private archaeological stores. If SARA and SLM were to merge, then a government repository for archaeological artefacts should be a key outcome. Perhaps some space could be allocated at the Government Records Repository to accommodate this new arm of the Archive.

d) The operation and effect of the proposed reforms

i) Effect of reforms on NSW public offices, government agencies, etc.

Policy outcome 1, that the "Stories that shape the social, historical and cultural identity of NSW are widely shared and understood", is an outcome shared by many other cultural institutions and agencies, including the State Library of NSW, the Museum of Applied Arts & Sciences, and the Heritage Council of NSW, along with community groups such as the National Trust of Australia (NSW).

The policy paper does not provide direction on how the proposed new executive agency would relate to other government departments, agencies and community groups.

There may be opportunities for the Heritage Council to work with SLM and SARA, making more of the intersection of the State Property Register (S117) responsibilities under the Heritage Act.

The PHA (NSW & ACT) supports the proposal to strengthen the compliance provisions for public offices to create, keep and transfer records to the State Archives and Records Authority. However, it questions the feasibility of implementing transfer control plans and enforcing these requirements. It may be timely to do an audit to determine what historical records are still held in government departments and local councils. The PHA (NSW & ACT) recommends that such an audit should be made publicly available.

The PHA (NSW & ACT) advocates for a diversity of historians to be appointed on government agency boards, including any new board created if SARA & SLM merge, to promote vigorous discussion and a historical perspective to governance and decision making.

ii) Whether proposed reforms support digital government

History is an important function that contributes to government accountability and transparency. It is complemented by good record keeping, ensuring that the records of government are captured, preserved and available for the public in the future.

History and the documentary heritage in the State Archives are a foundation and catalyst for policy reform, program development and effective governance. History, and the access to archival records, has a vital role in future planning for Sydney and the state.

The proposed reforms do not go far enough in supporting digital government and preparing a digital archive. The digital transfer team at the State Archives and Records Authority will need to be strengthened to enable the smooth transfer of digital records. The Authority should be playing a leading role across public offices in best practice of record keeping to ensure the preservation of records for the future. The State Records Act needs to work hand in hand with GIPAA to support digital government, public access and the archive.

There is little consideration of how the growing number of born-digital state records will be integrated into either current access arrangements or through the proposed SLM exhibitions program.

iii) Whether 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

The PHA (NSW & ACT) commends the NSW government in its valuing of history and the State Archives collection, along with the buildings and collections of Sydney Living Museums, as demonstrated by the proposed policy outcomes.



As *The Value of History Statement* adopted by History Councils around Australia states, “The study of the past and telling its stories are critical to our sense of belonging, to our communities and to our shared future. History shapes our identities, engages us as citizens, creates inclusive communities, is part of our economic well-being, teaches us to think critically and creatively, inspires leaders and is the foundation of our future generations.”

Given the government’s commitment to valuing history and the state’s documentary and material heritage, we hope that a corollary increase in the value of government funding will flow to achieve the four policy outcomes; for none of the proposed reforms will be achieved without greater investment in budgets, staff and resources.

History can be enjoyable, surprising and intriguing and historical content can support life-long learning in our community. However, it would be wrong to frame the material held in the State Archives as simply for the “enjoyment” of our citizens. The archives document the business of government in managing our natural and built environment and caring for the state’s communities.

Many of the documents in the State Archives collection are material evidence of difficult histories, be it related to family history (divorce, inquests, mental health, stolen generations) or broader cultural history and government administrative history (stolen generations, shipwrecks, mental health facilities, social welfare, governance and decision making).

It seems that the role of State Archives and Records Authority in providing access to records is being confused with, or at least subsumed within, history, interpretation and ‘storytelling’. Historians have always been – and continue to be – ‘creators of content’ in a range of formats; we are ‘storytellers’. But ‘stories’ (or, in fact, history) do not just sit there waiting to be found – research and interpretation of sources are required and the understanding of context is essential; this is the skill of the historian – to understand and interpret the past. Not to shape the past to fit a convenient narrative.

The archive throws up all sorts of surprises and a good historian can (and should) tease out the nuances and complexities of the story / history being told, whatever the audience or format it’s delivered in. Currently SLM employs one historian and several curators. If the State Archives and Records Authority is to have a new mandate to deliver programs to activate the collection, then the organisation will need to invest in employing several more historians to undertake this work. Historians and archivists are very different creatures.

While we have been assured by the Executive Director that any budgetary savings in merging the two organisations will be ploughed back into programs, the implications of a broad interpretation mandate for State Archives has not been addressed in the policy paper. Exhibitions require a lot of time and resources and PHA (NSW & ACT) is concerned that this mandate could divert resources from the important work of arranging, describing and cataloguing the archives collection.

The policy reforms proposed are driven by a desire to “deliver richer, more heterogeneous stories about our social, historical and cultural identity.” (Policy paper, p.3). This is a policy outcome that is applicable for many of the state’s cultural institutions. It is not clear from the policy paper why the

combination of the State Archives with Sydney Living Museums will achieve the proposed outcomes any more than if broader collaboration across institutions was fostered by government. Initiatives such as the History Roundtable hosted by Minister Don Harwin in 2018 are an excellent step towards fostering greater collaboration amongst our cultural institutions.

The PHA (NSW & ACT) encourages the NSW Government to consider how a state strategy for history could assist public offices and cultural agencies to further value history and “increase public knowledge and enjoyment of the stories that shape our social, historical and cultural heritage”. (Policy outcome 1)

A comparative strategy in other jurisdictions is the City of Sydney’s History Policy. The Council of the City of Sydney has had an active history program for over three decades, led by the City Historian. The Council’s Executive has adopted a History Policy that outlines the organisation’s commitment to history and defines how the organisation prioritises, researches and presents history.

A state government strategy addressing the broader context of all collections which contribute to the cultural heritage and history of the state could support many opportunities for collaboration across cultural institutions and encourage many diverse voices and histories.

The Government could show leadership in creating a new position of State Historian that could work across cultural organisations and foster collaboration to tell the state’s history. The independence of this position will be critical for its success. The position could be hosted across the cultural agencies. The State Historian could oversee a Round Table or Working group, with representatives of each of the key cultural agencies, to encourage collaboration across organisations.

The State Archives and Records Authority could consider offering an annual program of fellowships, in the manner of the State Library of NSW’s outstanding fellowship program <<https://www.sl.nsw.gov.au/about-library/fellows-and-residents>>, to actively foster the use, scholarship, and significance of the state archives collection.

iv) Whether proposed reforms will enhance the protection of the key cultural assets of NSW

No business or cost-benefit analysis has been made publicly available to consider whether the blending of the two organisations makes business or financial sense.

The policy paper only provides a very limited explanation of the administration of the proposed new executive agency and does not provide any detail of how the proposed reforms will affect budgets and the allocation of resources.

Consequently, it is difficult to comment on whether the proposed reforms will enhance the protection of the key cultural assets of NSW in terms of budgets and staff resources.

The policy states that if public offices retain records, they must have the capacity to appropriately store, maintain and provide public access to them. (Policy paper p.6) The de-centralising of records of enduring value may have the unintended effect of limiting public access to records. The longevity

of records and services and the access to files over time are critical to public accountability and longitudinal historical research. The breaking up of material with custody in various locations makes it more difficult for researchers to access this material. Government departments may charge for access, again curtailing access. This situation is already in play, as has been noted above.

Contact person

This submission has been endorsed by the Executive Committee of the Professional Historians Association (NSW & ACT) on 7 April 2020.

Dr Lisa Murray, Chair, Professional Historians Association (NSW & ACT)

References

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