

**Submission
No 60**

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

Name: Mr Geoff Hinchcliffe

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Thursday, 30 April 2020

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

Re: Submission to the Inquiry into the State Records Act 1998 (the Act) and Policy Paper

Dear Mr Mallard,

I thank you for the opportunity to make a submission to the Committee conducting the inquiry into the Act and the accompanying Policy Paper. I commend the Government for this review which I support.

By way of introduction and background, my name is Geoff Hinchcliffe and I was privileged to lead the State Archives and Records Authority (the Authority) of NSW from April 2014 through to my retirement in July 2018.

In April 2014 I was appointed the new Director of the Authority. In October 2016 I was further honoured to be promoted to the newly created role of Executive Director of the Authority. I held this position until my retirement from the Authority in 2018.

As the Authority's chief executive, I was fortunate to be afforded membership of the Australasian Council of Archives & Records Authorities (CAARA) and to work closely with talented peers from across Australia and New Zealand. CAARA comprises the heads of the government archives authorities of the Commonwealth of Australia, New Zealand and each of the Australian States and Territories. CAARA is regarded the peak body of government archives and records institutions in Australia and New Zealand. I was honoured to be its Chair from late 2015 through to early 2018.

At the Authority I was supported by a highly skilled and very professional team. Together we delivered many successful initiatives which included the:

- Establishment of an exhibition program which continues today to gain wide acclaim and recognition in the media and in the community
- Establishment of a large-scale commercial digitisation capability which responded to agency demand for mass digitisation of care leaver records during the Royal Commission into Institutional Responses to Child Sexual Abuse and has evolved into a critical function of the Authority
- Completion of an emergency digitisation project in 2015 which prevented the imminent loss of irreplaceable and highly at-risk state archives
- Completion of an upgrade and renewal of the Authority's website and archival collection management systems which has greatly improved agency and public access to the State Archives (SA) collection and made recordkeeping best practice advice and training more accessible
- The adoption of a next generation digital preservation system which is integrated into the Authority's new archival collection management system and ensures the long-term preservation of born digital archives and records
- Refocussing of the Authority's resources to promote community engagement and provide broader public access with the State Archive (SA) collection
- The setting of a new 5-year strategic plan in 2016 to provide contemporary services that matched the community's expectation for ever increasing access to archives and other records on an anytime, anywhere basis

- Successfully completed the first full revaluation of the SA collection without issue. The value of this iconic collection is now circa \$1 billion

Prior to my appointment to the Director role at the Authority, I worked at the State Library of NSW (the Library) as its inaugural Director, Digital Library Services and CIO from November 2010 through to April 2014.

During my time at the Library I was proud to lead a team which secured over \$70 million in funding for 10 years, and established the Library's ground-breaking Digital Excellence program (DEP). This project, which commenced in 2012 and is set to run until 2022, will digitise and make accessible online in excess of 12 million iconic collection items from the Library's vast collection to the people of NSW.

Since retiring I remain a passionate supporter of the Authority and the Library and am a strong advocate of the vital role they play in documenting and accessing our past and educating communities for the future. The Authority plays an important role for the public in keeping the Government and its public offices accountable through the strong recordkeeping practices it has developed since its establishment in 1998. This must not be lost in any new merged entity or review of the Act.

I have reviewed the policy paper setting out the proposed review of the State Records Act 1998 (the Act) and the formation of a new combined agency and discussed the review at length with the current Executive Director, Mr Adam Lindsay. From our discussions it is pleasing to learn that the review of the Act in particular, aligns with many elements of the strategy the Board of the Authority set in 2016 when the new 5 year strategic plan for the Authority¹ was released.

I make the following observations, recommendations and comments to support and strengthen the review and to deliver the best outcome going forward for the people of NSW.

1. DIGITAL RECORDS AND ARCHIVES.

The use of digital technology is ubiquitous in today's world in everything we do. Digital therefore needs to have a very strong focus in any review of the Act. It requires very different approaches to the treatment of physical paper. I note that digital is mentioned in the Terms of Reference (refer 1. (d) (ii)) but I could not find any significant mention or discussion of digital records in the Policy Paper provided. Accordingly, I make the following recommendations to support the digital transfer of records which have a continuing value.

Currently the Act does not address the issues associated with digital records and their transfer to the Authority. Nor does the current Act address the substantial costs absorbed by the Authority that are associated with their ingestion into the SA and their ongoing preservation, maintenance and accessibility.

Additionally, public offices are not obligated under the Act to transfer digital records to the Authority within a timely period following decommissioning of a legacy system and while they still have the technical staff and skills available to facilitate the transfer and ingestion into the SA. This is a major short-coming of the current Act which must be addressed in any revision of/or new Act.

Recommendation 1:

The following recommendations are made for consideration to include into the Act:

1. Public offices be required to identify in advance digital records of continuing value each year and coordinate with the Authority their plans to transfer the records to the SA collection. Public offices transferring digital records to the SA should:
 - a. Complete the transfer of digital records to the Authority within a suitable time period following either the "go-live" of any new replacement system, or the decommissioning of an

¹ Strategic Plan 2016 – 2021 State Records Authority of New South Wales
<https://www.records.nsw.gov.au/sites/default/files/About/SARA%20Strategic%20Plan%202016-2021-%20Feb%2017.pdf>

old system whichever is the earliest. (As a suggestion I nominate 2 years to be the maximum time period for the transfer to occur).

- b. Provide the necessary technology capability skills to facilitate the transfer and provide the necessary technology handover to the Authority who have the ongoing responsibility for maintaining, preserving and making accessible the records in the SA in perpetuity.
- c. Cover any and all costs associated with the transfer and ingestion of digital records of continuing value.

Note: I understand that the new digital collection management system which I believe is called "SAM" is now live. I also understand SAM enables public offices to directly upload their digital records into it and negates the majority of costs associated with records transfer and ingestion into the SA. Nonetheless, there will be times when digital and physical records are transferred outside the usual processes and the Authority needs to have the ability to recover any and all unexpected costs incurred from the transfer of records, regardless of their form.

Ideally digital records should be transferred earlier than later and done so as a system decommissioning task. This will better ensure that the controlling public office has the technology skills available to assist the Authority to ingest the transferred records into the SA with little or no financial outlay.

2. In reviewing the Act, the inclusion of "data aggregation" as a new digital record is important for the Committee to consider. I define data aggregation as the mixing or mashing of data and information which is drawn from different sources to form new information sources and create new uses and tools. This could potentially create a new class of record where "control" of the record under the Act today, is difficult to determine or assign as defined in the current Act.
 - a. For example, a digital tool created by a public office to identify say "children at risk in the community", may draw data and information from records held by multiple agencies and in many forms. However, data is also likely to be drawn from external non-government organisations which aren't defined as public offices under the Act. The new Act needs to consider how scenario's such as this will be treated under the Act to prevent loss of potential digital archival records.
 - b. In the future, historians will want to look back and analyse the "digital" records from our current period. The revised Act needs to instruct how today's digital records which have a continuing value are to be identified, managed throughout their lifecycle and preserved for the future.
 - c. My experience while at the Authority, has been that not all staff working on digital initiatives and in particular developing digital platforms and applications, are fully aware of their responsibilities under the Act and what constitutes good recordkeeping in a digital form. Better induction and training would assist as would more targeted advice and guidance from the Authority. Nonetheless, these issues need to be considered in the review of the Act.

Recommendation 2:

- A. The Authority reviews its advice to public offices and external parties working in digital development for Government, to ensure the digital records and data of continuing value are retained and preserved and not lost.
- B. In the Authority's 2016 Strategic Plan the concept of 'records by design' was introduced. With a focus on digital records, this concept was developed to prompt agencies to plan for digital records retention and disposal at the design phase of a project and not as an afterthought when the project was well underway or completed. This concept is also in keeping with the current Act which focusses on recordkeeping as a continuum from record creation to record disposal.

2. INDEXING AND CATALOGUING BACKLOG

Making collections available and enhancing public access is a very positive objective and one I fully support.

Historically, a fundamental problem the Authority has faced for many years, was that fewer than 10% of the Authority's estimated 12,000,000 plus archival records were actually catalogued or indexed making search and discovery for research, access or exhibition purposes extremely difficult.

With the introduction of the Authority's new Strategic Plan in 2016, accessing the collection was established as a strategic priority. This objective provided the Authority with the impetus to find innovative ways to address the historic backlog of records as a "business as usual" activity.

I understand that with the recent realignment of internal resources, clearing the backlog of archival records awaiting indexing and cataloguing is now progressing at a satisfactory rate and does not require additional dedicated funding at this time. Should this continue then this is a very good outcome and one I fully support.

Progress however needs to be maintained and further funding provided should the Board feel the backlog cannot be cleared within a reasonable time period. With the proposal to reduce the open access period of records to 20 years from 30 years, I suggest setting a 10 year time period to clear the backlog of archival records would seem appropriate.

3.3 POLICY OUTCOME: CITIZENS HAVE TIMELY ACCESS TO RECORDS DOCUMENTING THE ACTIVITIES AND DECISIONS THAT SHAPE NSW AND THE LIVES OF ITS CITIZENS

4. 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.
5. 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.

General Comment 1:

I support the above recommendation and proposed change to the Act.

Not only will this align open access in NSW with the Commonwealth, the reduced access period will provide an added impetus for the Authority to reduce the quantum of legacy records requiring Indexing and Cataloguing. This change will further drive the Authority to continue to improve its business operations to meet a new open access regime and to avoid failing to comply with its own Act as occurred prior to my appointment to the Authority in 2014.

3.4 POLICY OUTCOME: NSW PUBLIC OFFICES CREATE, KEEP AND PROTECT RECORDS AS EVIDENCE OF THEIR ACTIVITIES AND DECISIONS

Recordkeeping failures may also be identified during integrity agency audits and investigations. However, the Act contains no specific complaint-handling or referral process to ensure the relevant regulator follows up.

General Comment 2:

I agree this is a real problem with the current Act and needs addressing.

The Act needs to strengthen the Authority's powers to investigate and report on recordkeeping non-compliance.

I also support defining the proposed complaint handling processes and the agency referral processes. Both of these processes are urgently needed.

Recommendation 2:

The following recommendations are suggested to further improve recordkeeping compliance within Public Offices:

1. **“Chief executives to ensure compliance with Act”** (s.10). Moving to implement agency self-reporting and assessment of the agency’s recordkeeping compliance is a positive move which I fully support. Additionally, an agency self-assessment report provides a useful starting point for any investigation initiated within a public office involving potential recordkeeping non-compliance.
2. To further strengthen and support the introduction of agency self-assessment reporting by public offices, I suggest the following are considered for inclusion in the Act:
 - a. A requirement for Chief Executives to complete annually a “State Records Compliance Attestation” which is then included in the public office’s Annual Report. This will ensure a much stronger awareness by public office Chief Executives of their responsibilities under the Act.
 - b. A requirement for the Authority to prepare a recordkeeping compliance framework to guide and assist public offices to complete their agency compliance self-assessment and attestation obligations each year.
 - c. Consideration should also be given to having NSW Audit Office review public offices’ self-assessments’ and attestation documentation as part of their agency audits each year.

Note: It would be useful for the Authority to develop, in consultation with the Audit Office, a scoring framework for public office’s which “score” and show improvement or degradation in each public office’s recordkeeping performance year on year. This scoring system should be constructed to show the organisations recordkeeping maturity trending when compared to previous years.
 - d. A further obligation for public offices to review their current induction processes for staff is long overdue. This would help improve agency staff’s understanding and compliance with the Act.
 - e. Standard metrics could easily be developed and included in annual self-assessment scores to monitor and report on public offices recordkeeping maturity.

In addition, the financial penalties for breaches of recordkeeping requirements are not practically enforceable.

General Comment 3:

I agree with the above statement. The current penalties in the Act are completely inadequate and meaningless. In the four years I was chief executive of the Authority, not once did I receive a referral to consider for an infraction of the Act.

Consequently, applying penalty points against an agency or individual for breaching the Act was never a consideration.

In my opinion, serious and wilful breaches of the Act should be made criminal. This would ensure public officers take more notice of their responsibilities and what they are doing. I therefore suggest:

- 1) Accountability for non-compliance must be strengthened and "real" penalties imposed for deliberate non-compliance and illegal records destruction.
- 2) As a strong deterrent, consideration should be given to make deliberate and wilful non-compliance a criminal offence.

- 3) As an additional deterrent, consideration should be given to having serious non-compliance tabled in the NSW Parliament by the Authority annually and reported to the offending agency's principal Minister.
- 4) Section 21 of the Act is a concern and needs a total review. Consideration should be given to remove the ability of an individual to claim "I didn't know" as an acceptable defence as currently allowed under the Act [Part 3, s.21, (5)], which states
(5) It is a defence to a prosecution for an offence under this section for the defendant to establish that he or she did not know and had no reasonable cause to suspect that the record was a State record.
- 5) Public offices must more effectively induct and train staff in their recordkeeping obligations as I have previously stated.

3. CONCLUSION

Despite my initial concerns, I understand the main thrust of this review is not to weaken or damage recordkeeping in NSW or the Authority per se, but to improve and strengthen recordkeeping in the public sector and to allow greater access to the SA collection. This can only be a positive thing and the Government must be commended for undertaking this review.

Committing to improving and broadening public access is an important initiative which, when coupled with strong leadership will have the biggest impact to ensure the issues of the past are dealt with and the Authority can look ahead to a bright future albeit in possibly a new organisational form.

Some might argue that hosting exhibitions does not align with the main purpose of the Authority or the Act as it currently stands. I would counter that promoting access and engagement with the State Archives through exhibitions, aligns to the current intent of the act to expand access to the SA. Exhibitions generate tremendous interest and discussion in the community whenever the collection materials are on display and/or featured in the media.

I acknowledge however that an exhibition program provides one form of access. Expanded access for historians and researchers remains vitally important to ensure that they can continue to interrogate and report on events of the past so we as a community benefit in the future. For this to happen, strong recordkeeping governance must be maintained and strengthened in any new Act so that the Government remains accountable and public confidence in a democracy such as ours is maintained.

The Authority's 2016 Strategic Plan focused on growing the Authority's identity in the community and across the Public Sector. It remains very important that the expansive program of community and public office engagement, which is now in place, continues to grow in the new entity.

I am extremely hopeful that the proposed new operating model to create a new combined entity will further build the profile in the community for both the Authority and Sydney Living Museums.

With appropriate funding and resourcing provided, this move to create a new combined entity can be a positive initiative for both institutions and I look forward to learning the result of this review when it concludes.

Yours sincerely,

Geoff Hinchcliffe
Former Executive Director (retired)
State Archives and Records Authority of NSW