PRESERVING THE PAST IN THE INTERESTS OF THE FUTURE: THE PUBLIC RECORDS BILL 1999

LEGISLATION BULLETIN NO 11/99

KAREN SAMPFORD

QUEENSLAND PARLIAMENTARY LIBRARY
Research Publications and Resources Section

BRISBANE
December 1999
ISSN 1324-860X
ISBN 0 7242 7864 8
This Legislation Bulletin was prepared to assist Members in their consideration of the
Bill in the Queensland Legislative Assembly. It should not be considered as a
complete guide to the legislation and does not constitute legal advice.

The Bulletin reflects the legislation as introduced. The *Queensland Legislation
Annotations*, prepared by the Office of the Queensland Parliamentary Counsel, or the
*Bills Update*, produced by the Table Office of the Queensland Parliament, should be
consulted to determine whether the Bill has been enacted and if so, whether the
legislation as enacted reflects amendments in Committee. Readers are also directed to
the relevant *Alert Digest* of the Scrutiny of Legislation Committee of the Queensland
Parliament.

© Queensland Parliamentary Library, 1999

Copyright protects this publication. Except for purposes permitted by the Copyright
Act 1968, reproduction by whatever means is prohibited, other than by Members of
the Queensland Parliament in the course of their official duties, without the prior
written permission of the Parliamentary Librarian, Queensland Parliamentary Library.

Inquiries should be addressed to: Director, Research Publications & Resources,
Queensland Parliamentary Library, Parliament House, George Street, Brisbane.
Director: Ms Mary Seefried. (Tel: 3406 7116)

Information about Research Publications can be found on the Internet at:


CONTENTS
1. BACKGROUND............................................................................................................. 1

2. THE PUBLIC RECORDS BILL 1999 (QLD) ............................................................. 3

2.1 PURPOSE .................................................................................................................. 3

2.2 PUBLIC RECORDS ................................................................................................... 4

2.2.1 Record Defined.................................................................................................... 4

2.2.2 Public Record Defined ..................................................................................... 4

2.2.3 Public Authority .............................................................................................. 5

2.2.4 Making and Keeping Public Records .............................................................. 6

2.2.5 Custody and Preservation of Records ............................................................. 6

2.2.6 Ownership of Public Records ........................................................................ 7

2.2.7 Transfer of Records ....................................................................................... 7

2.2.8 Obligation To Maintain Accessibility Of Equipment/Information Technology Dependent Records ............................................................................................................ 7

2.2.9 Access to Public Records ................................................................................ 7

2.3 THE STATE ARCHIVIST AND THE QUEENSLAND STATE ARCHIVES ............ 9

2.3.1 General ............................................................................................................. 9

2.3.2 Archivist’s Functions ...................................................................................... 9

2.3.3 Archivist’s Powers ......................................................................................... 10

2.3.4 State Archives Board ..................................................................................... 11

2.3.5 Disposal of Public Records .......................................................................... 12

2.4 POWERS OF ENFORCEMENT ........................................................................... 13

2.4.1 Obstruction Of Authorised Officer ................................................................. 13

2.4.2 Recovery Of Public Records ......................................................................... 13

2.5 PROTECTION FROM LIABILITY .......................................................................... 14

2.6 REPORTING REQUIREMENTS .............................................................................. 14

3. INTERSTATE COMPARISONS .................................................................................. 14

3.1 SOUTH AUSTRALIA .............................................................................................. 14

3.2 NEW SOUTH WALES ........................................................................................... 16

3.3. WESTERN AUSTRALIA ....................................................................................... 18

BIBLIOGRAPHY ........................................................................................................... 21
1. BACKGROUND

In June 1992, the Electoral and Administrative Review Commission (EARC) reported to the Queensland Legislative Assembly on its review of archives legislation. Although Queensland’s archives legislation was not directly referred to in the *Report of the Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct* (the Fitzgerald Report), EARC determined that the proper protection and preservation of public records was a matter relating to honesty, impartiality and efficiency in the public administration of the State and, as such, was an appropriate matter for investigation and report. Specifically, EARC’s decision that there was a need to review Queensland’s archives legislation arose from the Commission’s previous reviews of the Legislative Assembly Electoral System and Freedom of Information, during which systemic problems relating to the proper custody and archiving of State records became apparent.¹

The Parliamentary Committee for Electoral and Administrative Review (PEARC) subsequently considered EARC’s recommendations, and the draft Archives Bill giving effect to them (Appendix A to EARC’s report) in its review on Archives Legislation, tabled in November 1992.\(^2\) In its report, PEARC endorsed EARC’s recommendation (para 2.14) that archives legislation be separated from libraries legislation.

On 15 November 1995, the then Minister for Administrative Services, the Hon GR Milliner MLA, introduced the Archives Bill 1995 to the Queensland Legislative Assembly. When Parliament adjourned on 17 November 1995, the Bill remained before Parliament. With the change of Government in February 1996, the Bill was not subsequently re-introduced.

In Research Bulletin No. 2/96, published by the Queensland Parliamentary Library, Anita Sweet described the background to the existing Libraries and Archives Act 1988 (Qld) and its Regulations. That Bulletin discussed in detail the key provisions of the Archives Bill 1995, comparing them with the existing provisions of the Libraries and Archives Act,\(^3\) and with the recommendations contained in EARC’s and PEARC’s reports. Provisions of the Archives Bill 1995 were also compared with the provisions of archives legislation in other Australian jurisdictions, in particular the Commonwealth.

Since the publication of Research Bulletin No 2/96, new State records legislation has been enacted in South Australia (State Records Act 1997) and New South Wales (State Records Act 1998). A State Records Bill has also been introduced into the Western Australian Parliament. In Queensland, in its 1998 report on Privacy in Queensland, the Legislative Assembly’s Legal, Constitutional and Administrative Review Committee recommended that the responsible Minister review, in the short term, Queensland’s archives legislation with a view to enacting separate archives legislation as had previously been proposed by EARC and PEARC.\(^4\)

On 26 October 1999, Hon TM Mackenroth MLA, the Minister for Communication and Information and Minister for Local Government, Planning, Regional and Rural Communities, introduced the Public Records Bill 1999 into the Queensland Legislative Assembly.

---


3 It should be noted that since the date of issue of Research Bulletin No 2/96, provisions of the Libraries and Archives Act 1988 have been renumbered under the Reprints Act 1992 (Qld) s 43.

This *Legislation Bulletin* discusses key provisions in the Public Records Bill 1999 (Qld), and also summarises the legislation introduced, or proposed to be introduced, in NSW, SA and WA in recent years.

2. THE PUBLIC RECORDS BILL 1999 (QLD)

Currently, the *Libraries and Archives Act 1988* (Qld) and the Libraries and Archives Regulations 1990 regulate archival documents in this State. Responsibility for the administration of the Queensland State Archives and its legislation was transferred to the portfolio of the Minister for Administrative Services in February 1992. Currently it is administered by the Minister for Communication and Information whilst State Library functions are administered by the Minister for the Arts.

The Public Records Bill 1999 (Qld) repeals and replaces relevant sections of the current Libraries and Archives Act with a new statute focussing specifically on the management of public records.5

2.1 PURPOSE

The main purposes of the Public Records Bill, as stated in *Clause 3*, are:

- to ensure that Queensland’s public records are made, managed, kept and, if appropriate, preserved in a useable format for the benefit of both present and future generations, and

- to ensure that public access to records is consistent with the principles of the *Freedom of Information Act 1992* (Qld) .

Introducing the 1999 Bill, Hon TM Mackenroth MLA stated in his Second Reading Speech that it provided:

> …a contemporary framework for the management of the public records of State and local government. Public records are the corporate memory of the Government and the State. As such, the legislative framework for public records must strengthen accountability for the management of public records, support equitable access to these records and provide the opportunity to respond to challenges presented by a rapidly changing technological environment. The Bill achieves these objectives.6

---


6 Public Records Bill 1999 (Qld), Second Reading Speech, Hon TM Mackenroth MLA, at p 4298.
2.2 **PUBLIC RECORDS**

2.2.1 Record Defined

The current Libraries and Archives Act does not define what is meant by a “record”. In its *Report on Review of Archives Legislation*, EARC concluded that the definition of record should be sufficiently broad to allow for future technological developments but should not be couched in such wide terms, without specificity, as to cause uncertainty. EARC recommended that the definition should include a non-exhaustive list of examples.  

Schedule 2 to the 1999 Bill (the “Dictionary”) defines “record” to mean “recorded information created or received by an entity in the transaction of business or the conduct of affairs that provides evidence of the business or affairs”. The term includes:

- anything on which there is writing
- anything on which there are marks, figures, symbols or perforations from which persons qualified to interpret them would be able to deduce a meaning
- anything from which sounds, images or writings can be reproduced, or
- a map, plan, drawing or photograph.

2.2.2 Public Record Defined

Clause 6(1) of the 1999 Bill defines a “public record” as:

- a record made for use by, or a purpose of, a public authority, other than a Minister; or
- a record received or kept by a public authority, other than a Minister, in the exercise of its statutory, administrative or other public responsibilities or for a related purpose, or
- a Ministerial record.

A public record includes a copy of a public record, a part of a public record, or a copy of a part thereof: cl 6(2).

---

7 EARC, pp 17-18.
2.2.3 Public Authority

The Current Legislation

Currently under s 2 of the Libraries and Archives Act (the Interpretation section), “public authority” is defined to mean an office, department, sub-department, board, commission, institution or instrumentality of the State and includes courts, commissions under the Commissions of Inquiry Act 1950, local government and statutory bodies under the Statutory Bodies Financial Arrangements Act 1982.

The Proposed Legislation

Under the Public Records Bill 1999 (see the Dictionary (Schedule 2)), the term “public authority” is widened to mean:

• The Governor in his or her official capacity
• The Executive Council
• The Legislative Assembly⁸
• A Minister
• The registrar or other officer of a court dealing with official records of the court
• A commission of inquiry under the Commissions of Inquiry Act
• An entity established under an Act or created by the Governor in Council or a Minister
• A government-owned corporation
• A department
• An inter-governmental authority
• A local government, or
• Another entity declared by regulation to be a public authority for the purposes of the proposed legislation.

---

⁸ In response to a request for information from Queensland’s Parliamentary Scrutiny of Legislation Committee as to the intended scope of the term “Legislative Assembly” and in particular, whether it would apply to the electorate office records of members of Parliament, the Minister, Hon Mr Mackenroth MLA, advised that: “The term ‘Legislative Assembly’ refers only to the Legislative Assembly offices. It does not apply to individual members of Parliament”. See the Alert Digest Issue No 15 of 1999, p 44.
2.2.4 Making and Keeping Public Records

The Current Legislation

Section 58 of the Libraries and Archives Act provides that a public authority shall cause “complete and accurate records” of the activities of the authority to be made and preserved; and take all reasonable steps to implement recommendations of the State Archivist applicable to the public authority concerning the making and preservation of public records.

In its 1992 Report, EARC recognised that:

… a requirement to cause complete and accurate records to be made could cause confusion where no other guidelines are laid down. For example, does such a provision require that where business is transacted orally, a record should be made of the conversation or, what does such a provision require where transactions have occurred through electronic media?\(^9\)

EARC recommended that clarification of what was meant by “complete and accurate records” could be provided by the introduction of records management standards.\(^10\)

The Proposed Legislation

Clause 7(1) of the 1999 Bill makes it mandatory for a public authority to make and keep full and accurate records of its activities, and to take all reasonable steps to comply with any relevant policy and standards set, or guidelines issued, by the State Archivist about the making and keeping of public records. The power of the State Archivist to set standards is discussed more fully in Section 2.3.3 of this Bulletin.

Under cl 7(2) it is the executive officer of a public authority who is responsible for ensuring that the public authority complies with the above requirements.

2.2.5 Custody and Preservation of Records

Clause 8 of the 1999 Bill places upon the public authority which controls a public record the responsibility for making arrangements for the safe custody, preservation and return of records.

---

\(^9\) EARC, p 43.

\(^10\) EARC, p 43.
2.2.6 Ownership of Public Records

Where a public record is a record of the State or of a State instrumentality (i.e., a public authority other than a local government), ownership of the record vests in the State: cl 9(1).

Ownership of public records of another public authority vests in that authority if the records are in the authority’s possession, and in any other case, in the State: cl 9(2).

2.2.7 Transfer of Records

Clause 11 of the 1999 Bill allows the transfer of public records 25 years old or less to the State Archives if they need not be readily available in a public authority’s own custody, while Clause 10(1) requires all public authorities to provide the State Archives with written notification of all public records in their custody which are more than 25 years old. The Archivist may take possession of the record or give directions about its storage: cl 10(2).

2.2.8 Obligation To Maintain Accessibility Of Equipment/Information Technology Dependent Records

Under Clause 14 of the 1999 Bill, if a public record is an article or material from which information can be produced or made available only with the use of particular equipment or information technology, then the public authority controlling the record must take all reasonable action to ensure the information remains able to be produced or made available.

2.2.9 Access to Public Records

The Current Legislation

Archival Period

Currently, the Libraries and Archives Regulations 1990 provide that personal and staff files are open to access after 65 years from the date of the last dealing on the record, and other public records are open to access 30 years after the date of last dealing: r 22

Access to records

Regulation 21 of the Libraries and Archives Regulations provides that the State Archivist may permit access to public records held by the State Archives, subject to the imposition by the Chief Officer of a public authority of conditions or
restrictions upon access to the records of that public authority. Regulation 23 specifically envisages that the Chief Officer of a public authority may impose prohibitions, conditions and restrictions on accessing and inspecting public records because the records contain information the disclosure of which is prohibited or restricted by law, may be prejudicial to public interest, or may adversely affect someone’s privacy.

Regulation 24 allows the State Archivist to request the Chief Officer to review or amend a prohibition or condition or restriction on access. Where a dispute arises over such a request, Regulation 25 allows the State Archivist to refer the matter to the Minister.

**The Proposed Legislation**

**Clause 17** of the Public Records Bill allows a person to apply to the Archivist for access to a public record in the custody of the archives.

**Clause 18(1)** of the 1999 Bill provides that the archivist must allow an applicant access to a public record if the **“restricted access period”** (defined in cl 16, see below) for the record has ended:

- For a record classified by a public authority as containing potentially exempt matter mentioned in s 44 of the *Freedom of Information Act 1992* (Qld), the “restricted access period” is the period from the day the record is made to the last day of the year 100 years after the day of the last action on the record.

- For a record classified by a public authority as containing potentially exempt matter referred to in ss 42, 43 or 46 of the Freedom of Information Act, the “restricted access period” is the period from the day the record is made to the last day of the year 65 years after the day of the last action on the record.

- For any other record, the “restricted access period” is the period from the day the record is made to the last day of the year 30 years after the day of the last action on the record.

Where the restricted access period has not ended, an applicant may have access to a public record only if access is obtained under the Freedom of Information Act, or the responsible public authority classifies the record as a record to which unrestricted access is allowed: **cl 18(2).**

**Clause 18(3)** allows the archivist to refuse to allow access to a public record:

- if giving access would be detrimental to its preservation
- if the record is reasonably available for purchase by members of the community under arrangements made by a public authority,
• if information in the record can be produced or made available only with the use of particular equipment or information technology which the archives does not possess, and cannot reasonably obtain access to, or
• if giving access to the record is restricted under a regulation.

Access may be restricted under a regulation where a record is more than 100 years old, contains information about the personal affairs of a person, and access to the record would not, on balance, be in the public interest: cl 18(4).

2.3 THE STATE ARCHIVIST AND THE QUEENSLAND STATE ARCHIVES

2.3.1 General

Clause 20 of the 1999 Bill establishes the position of the State Archivist (cl 20(1)) and the office of Queensland State Archives (cl 20(2)). The Archivist is to be appointed by the Governor in Council: cl 21(1), on terms decided by the Governor in Council: cl 22(1). The Archivist is to be appointed for a term not longer than five years: cl 21(2) & (3), and is eligible for reappointment: cl 21(2).

Clause 29 gives control of the archives to the Archivist, subject to the Minister and the chief executive.

2.3.2 Archivist’s Functions

Clause 30 of the 1999 Bill sets out the Archivist’s functions, which include:
• developing and promoting efficient and effective methods, procedures and systems for making, managing, keeping, storing, disposing of, preserving and using public records
• identifying public records of enduring value and requiring that they be retained in a useable form, regardless of whether the records are in the custody of the archives
• making decisions about the disposal of public records
• managing, keeping and preserving records for public authorities and other entities
• providing access to public records
• conducting research and giving advice about making, managing, keeping and preserving public records
• performing other function(s) given to the archivist under the proposed legislation or another Act.
Clause 30 also includes a catch-all provision (cl 30(h)) to cover any other activities incidental, complementary or helpful to the Archivist’s other functions, or likely to enhance the effective and efficient performance of the Archivist’s other functions.

2.3.3 Archivist’s Powers

Clause 31 establishes the Archivist’s powers which include:

- establishing and managing repositories and other facilities to store, preserve, exhibit and make available for use public records and other materials
- copying public records and other materials
- publishing public records and other materials
- acquiring records by purchase, gift, bequest or loan
- authorising the disposal of particular public records or classes of public records
- setting policy and standards, and issuing guidelines, about the making, keeping, preserving, managing and disposing of public records.

In response to information sought by the Scrutiny of Legislation Committee as to the nature of matters which it was envisaged would be dealt with by policies, standards and guidelines under cl 31, the Minister, Hon TM Mackenroth MLA, advised that:

The policies, standards and guidelines allowed to be issued under clause 31 of the Bill are intended to set a general framework within which Government agencies would operate in relation to all aspects of government record-keeping. Matters potentially encompassed under such policies, standards and guidelines include, but are not limited to, storage, management of information, preservation, transfer procedures, migration and management of records in electronic formats.

Many of the policies, standards and guidelines will be of a technical nature. Because of the rapidly developing technical environment in which government record-keeping operates, this framework of policies and strategies will need to be constantly updated.

The policies, standards and guidelines will reflect national and international best practice and will be developed in consultation with all relevant stakeholders within and outside State and local government.

In light of the generally technical and administrative nature of matters to be contained in the policies, standards and guidelines issued under clause 31 of the Bill, and the need for them to be responsive to rapidly changing technical requirements, it is considered appropriate that these matters be dealt with through administrative mechanisms rather than through subordinate legislation.\(^{11}\)

---

Delegation of Archivist’s Powers

A delegation power is conferred on the Archivist by cl 39.

2.3.4 State Archives Board

Establishment and Functions

Clause 35(1) provides that the Minister must establish a State Archives Board. The functions of the Board, set out in cl 35(2), are:

- To advise the Archivist and the Minister about issues affecting the administration or enforcement of the proposed legislation, and
- To hear appeals by public authorities from decisions made by the Archivist not to authorise the disposal of particular public records or classes of records.

Board’s Composition

As explained in the Second Reading Speech, the establishment of the Board will “… ensure stakeholders can have a voice in the ongoing administration of public records”. 12

Clause 35(3) provides that the Board is to consist of the following members:

- One person nominated by the Minister who administers the Local Government Act 1993
- One person nominated by the Chief Justice
- One person nominated by the Speaker of the Legislative Assembly
- One person nominated by the Minister for the department in which the Public Service Act 1996 is administered
- One person who has knowledge of and experience in the management of information and records nominated by the Minister, and
- Four persons who have knowledge of, and experience in, any area considered by the Minister to be relevant to the functions of the committee.

2.3.5 Disposal of Public Records

The Current Legislation

Under s 61 of the Libraries and Archives Act, the State Archivist has responsibility for approving the destruction of public records. However, in managing the State Archives and supervising the discharge of its functions, the State Archivist is subject to directions from the responsible Minister, the Library Board and the State Librarian: s 57.

The Proposed Legislation

As explained in the Second Reading Speech, the Public Records Bill 1999:

“… ensures the independence of the State Archivist in making decisions on the retention of public records.

The State Archivist will not be subject to direction by any person or agency in making decisions on the retention of records.” 13

Clause 32(1) provides that the Archivist may authorise the disposal of particular public records or classes of public records if the public authority with control of the records has applied for, or consented to, the records being disposed. In authorising the disposal of records, the Archivist is required to have regard to any relevant professional standards, and the purposes of the proposed legislation: cl 32(2).

Under Clause 33 of the 1999 Bill (despite the provisions in cl 29), the Archivist will not be subject to the control or direction of a Minister or department in relation to making decisions about the disposal of public records. However, Clause 36 provides for review of certain disposal decisions made by the Archivist.

Application For Review Of Archivist’s Decision About Disposal

Clause 36(1) allows a public authority to make written application to the State Archives Board for a review of a decision made by the Archivist refusing to authorise the disposal of particular public records or classes of records. The application is to be made within 14 days after the public authority is notified of the Archivist’s decision, or within such further period as the Board allows: cl 36(2).

When the Board receives an application, it must give written notice thereof to the Archivist: cl 36(3).

Within a period specified by the Board in its notice to the Archivist, the Archivist must give the Board written reasons for refusing to authorise the disposal of the public records the subject of the application: **Clause 37**.

After reviewing the Archivist’s decision, the Board may:
- confirm or amend the decision, or
- revoke the decision and substitute a new decision: **cl 38**.

The decision of the Board is taken to be the decision of the Archivist: **cl 38(2)**. However, a decision made under clause 38 cannot be reviewed under cl 36 (ie the clause which allows for a review of a decision by the Archivist about disposal of records): **cl 38(3)**.

### 2.4 POWERS OF ENFORCEMENT

**Clause 40** of the Public Records Bill 1999 gives the Archivist the power to appoint a member of the staff of the archives as an authorised officer. Any such officer must be issued with an identity card by the Archivist: **cl 41**. **Clause 43** provides authorised officers with the power to enter a public authority’s premises, and to examine both its records and its procedures for the making, management, keeping and preservation of its public records. **Clause 44** requires a public authority to comply with an authorised officer’s request for inspection. However, by virtue of **cl 44(2)**, an authorised officer may exercise powers under Part 4 of the Bill in relation to the Governor’s official residence, the Legislative Assembly, or a court, only by agreement with the Governor’s secretary, the Clerk of the Legislative Assembly, or the registrar or proper officer of the court. These persons may not, however, unreasonably withhold their agreement: **cl 44(3)**.

#### 2.4.1 Obstruction Of Authorised Officer

**Clause 45** provides for an authorised officer not to be unreasonably obstructed in the exercise of his or her powers under Part 4. The maximum penalty for failing to comply with this provision is 10 penalty units ($750).

#### 2.4.2 Recovery Of Public Records

Under **Clause 46**, if the Archivist believes on reasonable grounds that someone is in unlawful possession of public records, the archivist may give a written notice to the person requiring the records to be given to the person specified in the notice.

---

14 Part 4 “Powers of Enforcement”.
If the notice is not complied with, the Archivist may apply to a Magistrates Court for an order directing the person to comply with the notice. If the Magistrates Court is satisfied that the person is in unlawful possession of public records, the court may order the person to give the records to the Archivist. The maximum penalty for failing to comply with such an order of the court is 100 penalty units ($7500).

2.5 PROTECTION FROM LIABILITY

Clause 50 protects the State and officials with protection against actions for defamation or breach of confidence because of the giving of access to a public record under the proposed Act.

Clause 51 protects officials from civil liability for acts done or omissions made honestly and without negligence under the proposed Act.

2.6 REPORTING REQUIREMENTS

Clause 53 places an obligation upon the Archivist to report annually to the Minister on the administration of the proposed Act. The report may include details of the extent to which public authorities are complying with the Act, including any instances of non-compliance, and any measures taken or recommended by the Archivist to be taken to prevent or reduce non-compliance with the Act.

The Minister is required to table a copy of the report in the Legislative Assembly within 14 sitting days after receiving it.

3. INTERSTATE COMPARISONS

3.1 SOUTH AUSTRALIA

The objects of the South Australian State Records Act 1997 are to:
- Establish the Office of State Records (State Records)
- Make State Records the principal repository for official records no longer required for current administrative purposes
- Ensure that official records of enduring evidential or information value are preserved for future reference
- Promote the observance of best practices by agencies in their management of official records
• Provide access to official records in the custody of State Records providing that exemptions or restrictions are observed: s 5.

The SA State Records Act applies to:
• The Governor
• A Minister of the Crown
• A court or tribunal
• A person who holds an office established by an Act
• An incorporated or unincorporated body -
• Established for a public purpose by or under an Act, or
• Established or subject to control or direction by the Governor, a Minister of the Crown or any instrumentality or agency of the Crown
• A department or other administrative unit of the public service
• The police force
• A municipal or district council
• A person or body declared by the regulations to be an agency: s 3.

The legislation does not apply to the Houses of Parliament, Parliamentary committees, members of Parliament or parliamentary officers or staff: s 3.

Under the SA legislation, the office of State Records (established as a unit in the department for State Government Services) and the Manager, State Records are charged with the following responsibilities and functions:
• To receive official records into the custody of State Records in accordance with the legislation.
• To ensure the organisation, retention, conservation and repair of official records in the custody of State records
• To make determinations (with the approval of the State Records Council) as to the disposal of official records under the legislation
• To publish indexes of and other guides to the official records in the custody of State records
• To provide for public and agency access to the official records in the custody of State Records in accordance with the Act
• To assist in identifying official records in the custody of State records, the disclosure of which might constitute a contravention of aboriginal tradition
• To provide advice and assistance to agencies with respect to their record management practices
• To issue standards (following consultation with the State Records Council) relating to record management and assist in ensuring that agencies observe the best record management practices
• To promote awareness of State Records and its functions: s 7.
The SA Act requires the Manager of State Records to report to the Minister if the record management practices of an agency to which the act applies are inadequate:  

Section 15 allows the Manager to conduct surveys of agencies’ official records and record management practices, as reasonably required for the purposes of the Act.

The Manager, State Records, is also required, under s 32 of the Act, to produce an annual report which the Minister must table in both Houses of Parliament.

The State Records Council, established under s 9 of the Act, has the function of approving determinations of the Manager, State Records about the disposal or retention of official records: s 10(a). The Council’s membership includes an academic historian, qualified professionals nominated by the Australian Society of Archivists and the Records Management Association of Australia, a Chief Executive Officer (or delegate) of a Government agency, a local government representative, a business person and a legal practitioner.

Under the South Australian Act, public access to official records is determined by the agency responsible for the record, in consultation with the Manager, State Records—i.e. the legislation itself does not specify at what point an access determination should be made nor when there might be a general right to expect that records will move into the public domain.

3.2 NEW SOUTH WALES

In introducing the NSW State Records Bill 1998 (now Act) to the New South Wales Legislative assembly, Hon Mr Debus MP, Minister Assisting the Premier on the Arts, identified the impetus for change as having emanated from primarily two sources:

...first, a perception that governments and other public institutions should be made more accountable, coupled with a recognition by several royal commissions in New South Wales and interstate of the link between accountability and good record keeping and, second, the rapidly developing switch from paper-based to electronic business processes, with their ever-changing and generally transient technologies


which require decisions on evidential value and preservation of records to be made at the point of record creation, instead of final disposal, as has been traditional.\textsuperscript{17}

Like its predecessor, the \textit{Archives Act 1960}, the NSW \textit{State Records Act 1998} applies only to public offices and their records; however the ambit of the new Act is extended to include Parliament, the courts, state-owned corporations, local government and universities.\textsuperscript{18}

The NSW State Records Act 1998 requires public offices to make and keep such records as are necessary to record fully and accurately the activities of the public office: s 12(1). To this end, each public office is required to establish and maintain a records management program in conformity with standards and codes of best practice: 12(2). Public offices are also responsible for maintaining accessibility to records which are dependent on equipment or technology such as electronic records: s 14. A Note to s 14 of the NSW Act explains that public offices can comply with this requirement, for example, “by migration of existing records into new technology, creating records or copies of records using technology that outlasts technological change, or by retaining existing technology”. The Note to the Act advises that the State Records Authority can provide guidance on how to comply with s 14.

Under the NSW Act, records management extends to include all aspects of the making, keeping, and disposal of records: s 13(1).

The Act establishes the State Records Authority of NSW (also known simply as State Records), a body corporate controlled by a board of nine members appointed by the Governor (the Board of the Authority): ss 63 & 69. The Authority may approve standards and codes of best practice for records management by public offices: s 13(1) but is not to do so unless the Board has approved of the standard or code: s 13(2). Section 13(3) provides that the Authority is to consult with public offices on any proposed standards or codes. It is deemed to be sufficient consultation if the Authority gives notice in the Gazette of the availability of any proposed standards and codes and invites submissions on them. The State Records Authority is to notify its approval of a standard or code by notice published in the Gazette: s 13(5). Two key standards on \textit{Full and Accurate Records} and \textit{Records Management Programs}, were issued in April 1998, in readiness prior to the proclamation of the State Records Act on 1 January 1999. The \textit{Standard on Records Management Programs} includes a compliance checklist, which may be

\textsuperscript{17} State Records Bill 1998 (NSW), Second Reading Speech, Hon Mr Debus MP, \textit{NSW Parliamentary Debates}, Legislative Assembly, 6 May 1998, pp 4503-4 at p 4503.

\textsuperscript{18} NSW \textit{State Records Act 1998}, see s 3 but note also s 9.
used to audit an agency’s records management program, or for the agency’s own assessment of its records management program.¹⁹

The NSW Act allows the State Records Authority to report to the relevant minister any failures by a public office to comply with the requirements of the Act: s 20(1); details about failure to comply may also be included in the Annual Report: s 20(2).

3.3. WESTERN AUSTRALIA

On 22 October 1998, a State Records Bill was introduced into the Western Australian Legislative Assembly.

The State Records Bill 1998 proposed to establish a State Records Office and a State Records Commission.

The State Records Office (comprising a Director and his or her staff, to be appointed under the Public Sector Management Act 1994 (WA)) was described in the Second Reading Speech to introduce the 1998 Bill into the Legislative Assembly as the “operational arm of the record keeping functions”.²⁰ The 1998 Bill did not stipulate the allocation of ministerial responsibility for the State Records Office; rather, this was to be determined by administrative edict according to circumstances, however, it appeared the State Records Office was likely to be located within the Library and Information Service of Western Australia as the service agency of the Ministry for Culture and the Arts, thereby enabling the State Records Office – the present Public Records Office – to take advantage of existing support services.²¹

It was proposed that the State Records Commission would consist of three members to be appointed by the Governor: namely, a former judge of the Supreme Court or the District Court or a person who is eligible to be appointed as a judge of the Supreme Court; a member of the academic staff of a Western Australian university; and a retired state public servant: cl 53.


²⁰ State Records Bill 1998 (WA), Second Reading Speech, Mrs Cheryl Edwardes, Western Australian Parliamentary Debates, Legislative Assembly, pp 2542-43 at p 2542.

²¹ State Records Bill 1998 (WA), Second Reading Speech, Mrs Cheryl Edwardes, Western Australian Parliamentary Debates, Legislative Assembly at p 2543.
The functions of the proposed State Records Commission included to establish principles and standards:

- by which organisations will manage their records, and
- for selecting those records which should be preserved for their archival value: cl 56.

The standards were to be published in the Government Gazette: cl 56(3).

Under the Bill, every government organisation would be required to formulate a record keeping plan: cl 14, which must set out:

- The matters about which records are to be created by an agency;
- How those records are to be managed in the context of the agency’s functions, and
- The length of time for which records are to be kept: cl 11.

The range of government organisations required to comply with the Bill was wide, including public sector agencies, local government, royal commissions, Parliament, Cabinet and Ministers: Schedule 1.

Under the WA Bill, the State Records Commission would monitor compliance by government organisations with their record keeping plans, and would be empowered to inquire into breaches or possible breaches of the Act: cl 55.

Under cl 60, the Commission would provide Parliament with an annual report about the operation of the legislation. In addition to its Annual Report, it was proposed that the Commission could at any time submit a written report to Parliament about a contravention of the Act (the report to be tabled in Parliament within 15 sitting days after it is received): cl 61.

Note: Since the Bill was presented to the WA Legislative Assembly in 1998, further consultation has taken place and the Minister for the Arts accepted changes to the Bill. A reprinted Bill (the State Records Bill 1999) was introduced on 24 November 1999.

Key amendments incorporated into the 1999 Bill as reprinted include:

- The need to provide for electronic scanning of documents
- Allowing for community input if an archive is to be destroyed
- Establishing standards to cover the outsourcing of record-keeping functions
- The necessity for the Director of State Records to report breaches or suspected breaches to the State Records Commission

• Changes introduced to the membership of the State Records Commission, to meet concerns of the Records Management Association of Australia. (Under the 1999 Bill, the State Records Commission will now consist of four members to be appointed by the Governor. These will be the Auditor-General, the Information Commissioner, the Ombudsman, and a person with record keeping experience from outside government.)

• To meet concerns of the presiding officers of the two Houses of Parliament, “the traditional Westminster independence of the Legislature is kept separate from the executive arm without removing the need for Parliament to meet its record-keeping obligations in a transparent way” (Under the 1999 Bill, the Bill will apply to State organisations unless the Bill or another written law expressly says otherwise (see s 7). “State organisation” is defined to mean a parliamentary department or a government organisation (s 3). Schedules to the Bill explain which organisations are government organisations (Schedule 1) and which are not (Schedule 2). Schedule 2 to the Bill omits the Legislative Assembly, Legislative Council, a committee of either or both of them, the office of a member of either House, and the organisation controlled by a member of Parliament dealing with constituency matters of the member, from the definition of government organisations for the purposes of the Bill. Parliamentary departments (defined as departments that are deemed to have been constituted in relation to the administration of Parliament for the purposes of the WA Financial Administration and Audit Act 1985 by regulations made under s 3(2) of that Act) are to develop their record keeping plans in consultation with the State Records Commission. The draft record keeping plans of each parliamentary department are to be submitted to the appropriate Presiding Officer for approval.)
BIBLIOGRAPHY

MONOGRAPHS


INTERNET ARTICLES


LEGISLATION

New South Wales

• State Records Act 1998

• State Records Bill 1998 (NSW), Second Reading Speech, Hon Mr Debus MP, NSW Parliamentary Debates, Legislative Assembly, 6 May 1998, pp 4503-4.

South Australia

• State Records Act 1997

**Western Australia**

• State Records Bill 1998

• State Records (Consequential Provisions) Bill 1998

• State Records Bill (WA), Second Reading Speech, Mrs Cheryl Edwardes, *Western Australian Parliamentary Debates*, Legislative Assembly, pp 2542-43.

• State Records Bill 1999