

Passed by both Houses



New South Wales

State Records Amendment Bill 2005

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*I certify that this PUBLIC BILL,
which originated in the LEGISLATIVE ASSEMBLY, has finally passed the
LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.*

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2005*



New South Wales

State Records Amendment Bill 2005

Act No , 2005

An Act to amend the *State Records Act 1998* to make further provision in relation to public access to State records, normal administrative practice, prosecutions and other matters; and for other purposes.

*I have examined this Bill, and find it to correspond in all respects with the Bill
as finally passed by both Houses.*

Chairman of Committees of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *State Records Amendment Act 2005*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of State Records Act 1998 No 17

The *State Records Act 1998* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Section 3)

- [1] **Sections 3 (1), definition of “Director” and 68 and Schedule 2, clause 10 (1)**
Omit “Part 2 of the *Public Sector Management Act 1988*” wherever occurring.
Insert instead “Chapter 2 of the *Public Sector Employment and Management Act 2002*”.
- [2] **Section 3 Definitions**
Insert “(a *prescribed State collecting institution*)” after “institution” in paragraph (j) of the definition of *State collecting institution* in section 3 (1).
- [3] **Section 5 Application of Act to State collecting institutions**
Insert “(other than a prescribed State collecting institution)” after “institution” where firstly occurring in section 5 (2).
- [4] **Section 19 Records storage facilities and other services**
Insert at the end of section 19 (3) (c):
 , and
 (d) can be provided within and outside the State, including outside Australia.
- [5] **Section 22 Normal administrative practice**
Omit “Schedule 1 contains guidelines on some aspects of” from section 22 (3).
Insert instead “The regulations may prescribe guidelines on what constitutes”.
- [6] **Section 50 Open access period for records**
Insert at the end of the note to the section:
 There is a presumption that a State record in the open access period should be open to public access but the public office responsible for the record can close the record to public access by giving a closed to public access direction (a CPA direction).
- [7] **Section 51 Access direction must be given for records in the open access period**
Insert after section 51 (1):
 (1A) There is a presumption that State records in the open access period should be open to public access under this Act.

[8] Section 52 Deciding whether to open or close records to public access

Insert before section 52 (1):

- (1A) When making an assessment as to whether records should be open or closed to public access under this Act, a public office must have regard to the presumption that State records in the open access period should be open to public access under this Act.

[9] Section 54 Application to open records to public access

Omit “1 month” from section 54 (3). Insert instead “14 days”.

[10] Section 55 Procedures for giving and revoking access directions

Omit “or” from section 55 (4) (a).

[11] Section 55 (4) (c)

Insert after section 55 (4) (b):

- (c) in compliance with a direction of the responsible Minister under section 55A (3) (b).

[12] Section 55 (6)

Insert after section 55 (5):

- (6) A public office that gives a CPA direction for a State record must give its reasons for giving the direction:
- (a) to the Authority, if the Authority has requested that the public office give those reasons, and
- (b) to any person who has had an application for an OPA direction for the record under section 54 refused by the giving of the CPA direction and who has requested that the public office give those reasons.

[13] Section 55A

Insert after section 55:

55A Review of access directions by responsible Minister

- (1) The Authority may request the public office responsible for a State record that is the subject of an access direction to have the direction reviewed by the Minister responsible for the public office (*the responsible Minister*).
- (2) Such a review is to be finalised within 3 months after the request is made by the Authority and may be carried out in consultation with the Authority.

- (3) The responsible Minister finalises the review by:
- (a) confirming the access direction, or
 - (b) directing the public office to revoke the access direction and replace it with another access direction specified in the direction.

Note. For example, the responsible Minister's direction could require that a CPA direction be replaced with an OPA direction, or with another CPA direction of a different duration.

- (4) A public office must comply with a direction of the responsible Minister within 14 days. An access direction given in compliance with such a direction cannot be revoked except with the permission of the responsible Minister or the Authority.

Note. OPA directions remain in force until revoked. CPA directions remain in force for the period specified in the direction unless revoked or renewed sooner. The prohibition on revocation in subsection (4) does not prevent a CPA direction being renewed, or being given again after it has lapsed.

- (5) If the review is not finalised within 3 months after the review was requested, or the responsible public office does not comply with a direction of the responsible Minister within 14 days after it is given, the access direction under review is revoked (with the result that there is no access direction for the records concerned). An access direction of the same kind as the revoked access direction cannot be given again for the records concerned without the permission of the Authority.

Note. The 2 *kinds* of access direction are an OPA direction and a CPA direction.

[14] Section 57 Public office may authorise earlier public access

Omit "authorising the Authority to make the record available for public access" from section 57 (1).

Insert instead "authorising early public access to the record under this Act and notifying the Authority that it has authorised that access".

[15] Section 57 (2A)

Insert after section 57 (2):

- (2A) In assessing whether to authorise early public access to State records under this Act, a public office is to apply the principles established by section 52 for an assessment under that section. The power conferred by subsection (1) is exercisable at the absolute discretion of the public office concerned and this subsection does not limit the exercise of that discretion.

[16] Section 63 Establishment of the Authority

Omit “and the use of that name” from section 63 (3).

Insert instead “or State Records NSW and the use of either of those names”.

[17] Section 69 Establishment of Board

Omit “*Public Sector Management Act 1988*” wherever occurring from section 69 (2) (b) and (4).

Insert instead “*Public Sector Employment and Management Act 2002*”.

[18] Section 69 (4) (b)

Insert “to which Part 6.4 of that Act applies” after “authorities”.

[19] Section 78 Proceedings for offences

Omit “constituted by a Magistrate sitting alone”.

[20] Section 78 (2)

Insert at the end of section 78:

- (2) Despite anything in the *Criminal Procedure Act 1986*, proceedings for an offence against section 21 may be commenced not later than 2 years from when the offence was alleged to have been committed.

Note. Section 179 of the *Criminal Procedure Act 1986* has the effect that proceedings for an offence against a section of this Act other than section 21, or for an offence against the regulations, may be commenced not later than 6 months from when the offence was alleged to have been committed.

[21] Schedule 1 Guidelines on some aspects of normal administrative practice

Omit the Schedule.

[22] Schedule 2 Provisions relating to constitution and procedure of the Board

Omit “Part 8 of the *Public Sector Management Act 1988*” from clause 5 (1) (d).

Insert instead “Chapter 5 of the *Public Sector Employment and Management Act 2002*”.

[23] Schedule 3 Savings and transitional provisions

Insert before clause 1:

Part 1 Savings and transitional regulations

1A Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:
this Act
State Records Amendment Act 2005
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on enactment of this Act

[24] Schedule 3, clause 10

Omit the clause.

[25] Schedule 3, Part 3

Insert in appropriate order:

Part 3 Provisions consequent on enactment of State Records Amendment Act 2005

11 Meaning of “amending Act”

In this Part, *amending Act* means the *State Records Amendment Act 2005*.

12 Operation of amendment concerning provision of services

The amendment of section 19 (3) by the amending Act is for the avoidance of doubt and accordingly is taken to have had effect from the commencement of section 19.

13 Application of amendment to existing applications to open records to public access

The amendment of section 54 (3) by the amending Act does not apply to an application made under section 54 before the commencement of that amendment.

14 Validation concerning corporate name of Authority

The use of the corporate name State Records NSW before the commencement of the amendment of section 63 made by the amending Act is as valid and effectual as it would have been had the amendment been in force at the time of use.

15 Limitation period for existing offences not affected

Section 78 (2), as inserted by the amending Act, does not apply in relation to an offence that was committed or is alleged to have been committed before the commencement of that subsection.