

SOUTH AUSTRALIA

STATE RECORDS ACT 1997

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STATE RECORDS ACT 1997

being

State Records Act 1997 No. 8 of 1997
[Assented to 20 March 1997]¹

¹ Came into operation 31 October 1997: *Gaz.* 4 September 1997, p. 612.

N.B. The amendments effected to this Act by the *Statutes Amendment (Attorney-General's Portfolio) Act 1998* have not been brought into operation.

An Act to provide for the preservation and management of official records; to amend the Libraries Act 1982, the Freedom of Information Act 1991 and the Local Government Act 1934; and for other purposes.

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *State Records Act 1997*.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Interpretation

3. (1) In this Act, unless the contrary intention appears—

"agency" means—

- (a) the Governor; or
- (b) a Minister of the Crown; or
- (c) a court or tribunal; or
- (d) a person who holds an office established by an Act; or
- (e) an incorporated or unincorporated body—
 - (i) established for a public purpose by or under an Act; or
 - (ii) established or subject to control or direction by the Governor, a Minister of the Crown or any instrumentality or agency of the Crown; or
- (f) a department or other administrative unit of the public service; or
- (g) the police force; or
- (h) a municipal or district council; or
- (i) a person or body declared by the regulations to be an agency,

and includes a former agency and an agency that ceased to exist before the commencement of this Act, but does not include—

- (j) a House of Parliament or a committee of the Parliament or a House of Parliament; and
- (k) a present or former officer of a House of Parliament; and

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- (l) a present or former member of a House of Parliament (other than a Minister in respect of records made or received in his or her capacity as a Minister); and
- (m) a present or former member of the staff of a House of Parliament or the joint parliamentary service;

"**Council**" means the State Records Council established under Part 4;

"**dispose of**" an official record means—

- (a) destroy or abandon the record; or
- (b) carry out an act or process as a result of which it is no longer possible or reasonably practicable to reproduce the whole or a part of the information contained in the record; or
- (c) transfer or deliver ownership or possession of or sell the record, or purport to do so,

but does not include to transfer or deliver the record to State Records or between one agency and another;

"**Manager**" means the Manager of State Records;

"**official record**" means a record made or received by an agency in the conduct of its business, but does not include—

- (a) a record made or received by an agency for delivery or transmission to another person or body (other than an agency) and so delivered or transmitted; or
- (b) a record made by an agency as a draft only and not for further use or reference; or
- (c) a record received into or made for the collection of a library, museum or art gallery and not otherwise associated with the business of the agency; or
- (d) a Commonwealth record as defined by the *Archives Act 1983* of the Commonwealth, as amended from time to time, or an Act of the Commonwealth enacted in substitution for that Act; or
- (e) a record that has been transferred to the Commonwealth;

"**record**" means—

- (a) written, graphic or pictorial matter; or
- (b) a disk, tape, film or other object that contains information or from which information may be reproduced (with or without the aid of another object or device);

"**record management**" includes the manner in which records are created;

"**State Records**" means the office of State Records established under Part 3.

(2) For the purposes of this Act, a reference to a record includes a reference to—

- (a) a part of a record; and
- (b) a copy of a record; and
- (c) an object or matter that—
 - (i) is attached or annexed to a record; or
 - (ii) is reasonably required in order to interpret, explain or comprehend a record; or
 - (iii) usually accompanies, or comprises a part of, a record,

but does not include a reference to an object or device used to produce or record a record, or used to reproduce information contained in a record.

(3) For the purposes of this Act, a reference to the agency responsible for an official record in the custody of State Records is a reference to—

- (a) the agency from which the record was received into the custody of State Records; or
- (b) if that agency has ceased to exist, the agency (if any) that has succeeded to the functions of that former agency; or
- (c) if that agency has ceased to exist and no other agency has succeeded to the functions of that former agency—
 - (i) the agency (if any) nominated by the Minister under the *Freedom of Information Act 1991* as the agency on which the responsibilities of the former agency under that Act will devolve; or
 - (ii) in the absence of such a nomination, State Records.

(4) For the purposes of this Act, a record will be taken to have come into existence on 31 December of the year in which it came into existence.

Application of Act

4. The Governor may, by regulation, exclude or modify the application of this Act to agencies or official records.

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**PART 2
OBJECTS OF ACT****Objects of Act**

5. (1) The objects of this Act are—

- (a) to establish the office of *State Records*—
 - (i) as the principal repository for official records that are no longer required for current administrative purposes; and
 - (ii) with general responsibility under the Minister for the administration of this Act; and
- (b) to ensure that official records of enduring evidential or informational value are preserved for future reference; and
- (c) to promote the observance of best practices by agencies in their management of official records; and
- (d) to ensure that each agency is afforded prompt and efficient access to official records in the custody of State Records for which the agency is responsible; and
- (e) to ensure that members of the public have ready access to official records in the custody of State Records subject only to exceptions or restrictions that—
 - (i) would be authorised under the *Freedom of Information Act 1991* or Part 5A of the *Local Government Act 1934*; and
 - (ii) are required—
 - for protection of the right to privacy of private individuals or on other grounds that have continued relevance despite the passage of time since the records came into existence; or
 - for the preservation of the records or necessary administrative purposes.

(2) This Act must be administered and standards must be formulated and determinations and decisions made under this Act so as to give effect to the objects set out in subsection (1).

PART 3
OFFICE AND MANAGER OF STATE RECORDS

Office and Manager of State Records

- 6.** (1) There is to be an office of *State Records*.
- (2) State Records is to consist of—
- (a) the Manager of State Records who is to be a Public Service employee; and
 - (b) other Public Service employees assigned or appointed to assist the Manager.

Functions

7. State Records has the following functions:

- (a) to receive official records into its custody in accordance with this Act;
- (b) to ensure the organisation, retention, conservation and repair of official records in its custody;
- (c) to make determinations (with the approval of the Council) as to the disposal of official records under this Act;
- (d) to publish, or assist in the publication of, indexes of, and other guides to, the official records in the custody of State Records or official records whose delivery into State Records' custody has been postponed or is subject to an exemption granted by the Manager;
- (e) to provide for public and agency access to the official records in the custody of State Records in accordance with this Act;
- (f) to assist in identifying official records in the custody of State Records the disclosure of which might constitute a contravention of aboriginal tradition;
- (g) to provide advice and assistance to agencies with respect to their record management practices;
- (h) to issue standards (following consultation with the Council) relating to record management and assist in ensuring that agencies observe the best record management practices;
- (i) to promote awareness of State Records and its functions;
- (j) to perform any other functions assigned to State Records by this or any other Act or by the Minister.

Delegation

8. (1) The Manager may, by instrument in writing, delegate to a suitable person powers or functions of the Manager under this or any other Act.

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(2) A delegation under this section—

(a) is revocable at will; and

(b) does not prevent the Manager from acting personally in the matter.

PART 4
STATE RECORDS COUNCIL

Establishment of Council

- 9.** (1) The *State Records Council* is established.
- (2) The Council is to consist of nine persons appointed by the Minister, of whom—
- (a) one will be a historian nominated by the Minister to whom the administration of the *History Trust of South Australia Act 1981* is committed after consultation with academic historians from South Australian tertiary education institutions; and
 - (b) one will be a person eligible for professional membership of the Australian Society of Archivists; and
 - (c) one will be a person eligible for membership of the Records Management Association of Australia;
 - (d) one will be the chief executive of an agency nominated by the Commissioner for Public Employment, or a delegate of the chief executive; and
 - (e) one will be a person with experience in local government (who may, but need not, be a member or officer of a council) nominated by the Local Government Association of South Australia; and
 - (f) one will be a person with practical business experience; and
 - (g) one will be a person nominated by the Chief Justice of the Supreme Court; and
 - (h) one will be an Aboriginal person engaged in historical research involving the use of official records nominated by the Chief Executive of the Department of State Aboriginal Affairs; and
 - (i) one will be a person who, as a member of the public, makes use of official records in the custody of State Records for research purposes.
- (3) One member of the Council will be appointed by the Minister to chair the Council.
- (4) At least two members of the Council must be women and at least two must be men.

Functions

- 10.** The Council has the functions of—
- (a) approving determinations under this Act relating to the disposal of official records; and
 - (b) providing advice to the Minister or the Manager, either on its initiative or at the request of the Minister or the Manager, with respect to policies relating to record management or access to official records.

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Terms and conditions of office

11. (1) A member of the Council is to be appointed for a term, not exceeding three years, specified in the instrument of appointment and is, on the expiration of a term of office, eligible for reappointment.

(2) A member of the Council is entitled to such remuneration and expenses as may be determined by the Governor.

(3) A member of the Council may be removed from office by the Minister—

(a) in the case of a member appointed on the nomination of a person or body—at the request of that person or body; or

(b) for misconduct; or

(c) for incapacity or failure to carry out satisfactorily the duties of his or her office.

(4) The office of a member of the Council becomes vacant if the member—

(a) dies; or

(b) completes a term of office and is not reappointed; or

(c) resigns by written notice addressed to the Minister; or

(d) is removed from office under this section.

(5) On the office of a member becoming vacant, a person must be appointed in accordance with this Act to the vacant office.

Procedures of Council

12. (1) The Council may meet at times and places determined by the Council but must meet at least once every three months and at any other time required by the Minister.

(2) The member appointed to chair the Council will preside at meetings of the Council or, in the absence of that member, a member chosen by those present.

(3) Five members of the Council constitute a quorum for a meeting of the Council and no business may be transacted at such a meeting unless a quorum is present.

(4) The Manager must receive notice of meetings of the Council and he or she, or a member of the staff of State Records nominated by the Manager, may attend any meeting of the Council and, with the exception of voting, take such part in the proceedings as the Council approves.

(5) A decision carried by a majority of the votes cast by the members present at a meeting is a decision of the Council.

(6) Each member present at a meeting of the Council has one vote on a matter arising for decision and, if the votes are equal, the member presiding at the meeting may exercise a casting vote.

(7) The Council must have accurate minutes kept of its proceedings and must provide a copy of the minutes to the Manager.

(8) Subject to this Act, the Council may determine its own procedures.

PART 5
CARE AND MANAGEMENT OF OFFICIAL RECORDS

Maintenance of official records

13. Subject to this Act, every agency must ensure that the official records in its custody are maintained in good order and condition.

Standards relating to record management practices

14. (1) The Manager may, with the approval of the Minister, issue standards relating to the record management practices of agencies.

(2) Standards relating to record management will be binding only in their application to—

- (a) administrative units of the Public Service; and
- (b) agencies or instrumentalities of the Crown (other than an agency or instrumentality excluded by regulation from the application of this subsection).

Surveys of official records and record management

15. (1) The Manager may conduct surveys of the official records and record management practices of agencies as reasonably required for the purposes of this Act.

(2) An agency must afford the Manager reasonable cooperation and assistance in the conduct of such a survey.

Inadequate record management practices to be reported

16. If the Manager is of the opinion that the record management practices of an agency are inadequate, the Manager must report the matter to the Minister.

Damaging, etc., of official records

17. (1) If a person, knowing that he or she does not have proper authority to do so, intentionally—

- (a) damages or alters an official record; or
- (b) disposes of an official record or removes an official record from official custody,

the person commits an offence.

Maximum penalty: \$10 000 or imprisonment for 2 years.

(2) For the purposes of subsection (1), authority to dispose of an official record may only be conferred by or under this or any other Act.

(3) A court that convicts a person of an offence under subsection (1) may order the convicted person to pay to the Minister such compensation as the court thinks fit.

(4) This section does not limit or derogate from any other right or power to institute criminal or civil proceedings in respect of an act referred to in this section.

**PART 6
CUSTODY OF OFFICIAL RECORDS**

Voluntary transfer to State Records' custody

18. (1) Subject to subsection (2), an agency may deliver any of its records into the custody of State Records.

(2) The Manager may, if of the opinion that it is necessary or appropriate to do so, decline to receive records sought to be delivered to State Records under this section.

Mandatory transfer to State Records' custody

19. (1) Subject to this section, an official record of an agency must be delivered into the custody of State Records (unless sooner delivered to State Records or disposed of in accordance with this Act)—

- (a) when the agency ceases to require access to the record for current administrative purposes; or
- (b) during the year occurring 15 years after the record came into existence,

whichever first occurs.

(2) The delivery of official records into the custody of State Records under this section must be effected in accordance with arrangements approved by the Manager which may include arrangements as to—

- (a) the time and place at which the records are to be delivered; and
- (b) the form in which the records are to be delivered; and
- (c) the delivery of, or access to, a device required to reproduce information from the record.

(3) Delivery of records into the custody of State Records may be postponed—

- (a) in accordance with record management standards issued by the Manager; or
- (b) by the Manager in order to enable arrangements to be completed for their appraisal and receipt by State Records; or
- (c) with the Manager's approval, in cases where the Manager is satisfied (after consultation with the agency) that the records are further required for current administrative purposes or should be retained for any other special reason.

(4) If the Manager is satisfied that an agency has sufficient and adequate facilities for the proper storage and care of the records, the Manager may exempt all, or a particular class or classes, of the agency's records from the requirement that they be delivered into the custody of State Records.

(5) An exemption granted under subsection (4) may be varied or revoked by the Manager—

- (a) on the application of the agency; or

- (b) if, on inspection by the Manager, the Manager is no longer satisfied that the agency has sufficient and adequate facilities for the proper storage and care of the records concerned.

(6) The preceding provisions of this section do not apply to records of a court, but the Governor may, if satisfied that it is advisable to do so for the proper preservation of the records, direct that specified court records be delivered into the custody of State Records.

Restriction under other Acts on disclosure of information

20. (1) When an agency delivers into the custody of State Records an official record disclosure of the contents of which is restricted by any other Act or law, the agency must ensure that the Manager is advised of that restriction.

- (2) This section does not apply to records of a court.

Recovery of official records in private hands

21. (1) If the Manager believes that a person has custody or possession of an official record otherwise than in an official capacity (and whether or not ownership of the record has passed to that person), he or she may, by notice in writing, require the person to deliver the record into the custody of State Records within a period specified in the notice.

(2) If a person fails to comply with a notice given under subsection (1), the Magistrates Court may, on the application of the Manager, order the person to deliver the record into the custody of State Records on or before a day specified in the order.

(3) The Minister may, at the Minister's discretion, on application in writing by a person who has delivered a record into the custody of State Records as a result of a requirement or order under this section, make a payment to the person in compensation for deprivation of the record.

Keeping of official records in premises other than State Records' premises

22. (1) On the recommendation of the Manager, the Minister may, in relation to official records that have been received into the custody of State Records, make arrangements with the Commonwealth, another State, or any other person for the keeping and use of the records in premises other than premises under the control of the Manager or in premises jointly controlled by the Manager and the Commonwealth, the other State or other person.

(2) An arrangement under subsection (1) is to be subject to such conditions as may be reasonably required by the agency responsible for the record.

(3) A record to which arrangements referred to in subsection (1) apply will be subject to recall by the Manager at any time.

PART 7
DISPOSAL OF OFFICIAL RECORDS

Disposal of official records by agency

23. (1) An agency must not dispose of official records except in accordance with a determination made by the Manager with the approval of the Council.

(2) If an agency requests the Manager to make a determination as to the disposal of official records, the Manager must, as soon as practicable—

- (a) with the approval of the Council, make a determination requiring or authorising disposal of the records in a specified manner; or
- (b) make a determination requiring delivery of the records into the custody of State Records or retention of the records and later delivery into the custody of State Records.

(3) A determination or approval for the purposes of this section may be a general determination or approval relating to classes of official records.

(4) If there is a dispute as to a determination under this section, the Minister may, on application, determine the matter.

Disposal of official records by Manager

24. (1) If the Manager determines, with the approval of the Council, that an official record in the custody of State Records is not worthy of preservation, the Manager may dispose of the record.

(2) A determination or approval for the purposes of this section may be a general determination or approval relating to classes of official records.

(3) The Manager must, before disposing of a record under subsection (1), obtain the consent of the agency responsible for the record and consult with any other person who has, in the opinion of the Manager, a proper interest in the record.

PART 8
ACCESS TO RECORDS IN CUSTODY OF STATE RECORDS

Agency's access to records in custody of State Records

25. (1) The agency responsible for an official record in the custody of State Records is to have such access to, and may make or direct such use of, the record as it requires.

(2) Despite subsection (1)—

- (a) an agency is not entitled to resume possession of an official record that has been in existence for 15 years or more for longer than is reasonably necessary for the proper performance of the functions of the agency; and
- (b) an agency's access to an official record is subject to conditions imposed by the Manager to ensure the preservation of the record.

(3) If there is a dispute as to access under this section, the Minister may, on application, determine the matter.

Public access to records in custody of State Records

26. (1) The agency responsible for an official record in the custody of State Records may, in consultation with the Manager—

- (a) determine that access to the record (other than by the agency) is not subject to any restrictions other than those determined by the Manager under subsection (2); or
- (b) determine conditions excluding or restricting access to the record.

(2) The Manager may determine conditions as to access that the Manager considers necessary for the preservation of a record or for administrative purposes (but must advise the Council of any such determination).

(3) Applications for public access to official records in the custody of State Records must be made to the Manager in the manner and form and be accompanied by the fee (if any) prescribed by regulation.

(4) The Manager must decide an application under this section for public access to an official record according to a determination made under this section in relation to the record.

(5) This section does not prevent a person from applying for access to a record under the *Freedom of Information Act 1991* or Part 5A of the *Local Government Act 1934* (as the case requires), and a determination or decision under this section will be subject to that Act or that Part if application for access is made under the provisions of that Act or that Part.

**PART 9
MISCELLANEOUS**

Records other than official records

27. (1) The Manager may, after consultation with the Council, accept records (other than official records) or other objects that he or she considers appropriate to be kept in the custody of State Records.

(2) The Manager may, in accepting a record or other object under subsection (1), agree to be bound by conditions and, in doing so, he or she will be binding future holders of the office of Manager.

(3) Where a record or other object is accepted into the custody of State Records pursuant to this section, this Act will apply in relation to the record or object as if it were an official record but without affecting the duty to comply with any conditions referred to in subsection (2).

Act applies despite secrecy provisions

28. Official records may be delivered into the custody of State Records as required or authorised under this Act despite the provisions of any other Act or law (whether enacted or made before or after the commencement of this Act) preventing or restricting the disclosure of official information or information gained in the course of official duties.

Protection in respect of civil actions or criminal proceedings

29. (1) No criminal liability, or liability for defamation or breach of confidence or other civil liability, will be incurred by the author of an official record or any other person by reason of the author or other person having delivered the record into the custody of State Records.

(2) No criminal liability, or liability for defamation or breach of confidence or other civil liability, will be incurred by the Manager or an officer of State Records, by reason of the granting of access to an official record in the custody of State Records where the person who makes the decision to grant access honestly believes, when making the decision, that it is a proper decision under this Act.

(3) The granting of access to a record under this Act does not constitute, for the purposes of the law relating to defamation or breach of confidence, an authorisation or approval of the publication of the record or its contents by the person to whom access is granted.

Evidentiary provisions

30. (1) An official record produced from State Records will have the same evidentiary value as if it were produced from the agency from which it was obtained.

(2) An apparently genuine document purporting to be a copy, or to state the contents, of an official record in the custody of State Records and to be certified by the Manager as an accurate copy, or statement of the contents, of the record will be accepted in any legal proceedings, in the absence of proof to the contrary, as proof of the contents of that record.

Certificate as to disposal of official record

31. A certificate signed by the Manager certifying as to disposal of an official record by the Manager will, in the absence of proof to the contrary, be accepted as evidence of the matter so certified.

Annual report

32. (1) The Manager must, on or before 30 September in each year, provide a report to the Minister on the administration of this Act for the 12 months ending on 30 June.

(2) The Minister must cause a copy of the report to be laid before both Houses of Parliament within six sitting days after being provided with the report.

Regulations

33. (1) The Governor may make such regulations as are contemplated by, or as are necessary or expedient for the purposes of, this Act.

(2) The regulations may—

- (a) prescribe fees to be paid in respect of services provided by State Records or in respect of any matter under this Act and provide for the waiver or refund of such fees; and
- (b) prescribe a fine not exceeding \$2 500 for contravention of, or non-compliance with, a regulation.

SCHEDULE
Amendments and Transitional Provisions

Amendment of Libraries Act 1982

1. The *Libraries Act 1982* is amended—

- (a) by striking out section 3;
- (b) by striking out from section 5 the definitions of "**public instrumentality**" and "**public record**";
- (c) by striking out from section 14(c) "and the Public Record Office of South Australia";
- (d) by striking out paragraph (j) of section 14;
- (e) by striking out Part III and the heading to that Part.

Amendment of Freedom of Information Act 1991

2. The *Freedom of Information Act 1991* is amended—

- (a) by striking out from section 4(1) the definition of "**State Records**" and substituting the following definition:

"State Records" means the office of State Records established under the *State Records Act 1996*;
- (b) by striking out from section 7 "deposited in the office of State Records" and substituting "delivered into the custody of State Records";
- (c) by striking out from section 8(2)(b) "the office of";
- (d) by striking out from section 20(2) the word "or" occurring between paragraphs (a) and (b) and inserting after paragraph (b) the following word and paragraph:

or

 - (c) a document if 20 years have passed since the end of the calendar year in which the document came into existence.;
- (e) by striking out paragraph (a) of section 22(2) and substituting the following paragraph:

(a) would unreasonably divert the resources of the agency (or, if the document is in the custody of State Records, the resources of State Records) from their use for other official purposes.;
- (f) by inserting after subsection (2) of section 22 the following subsection:

(2a) If a document is in the custody of State Records, the determination as to the way in which access is given to the document must be made by or jointly with the Manager of State Records.;
- (g) by striking out from section 22(3) "in that way";
- (h) by striking out from section 22(4) "This" and substituting "Subject to subsection (2a), this";
- (i) by striking out from clause 1(2)(b) of Schedule 1 "30" and substituting "20";
- (j) by striking out from clause 2(2)(b) of Schedule 1 "30" and substituting "20";
- (k) by striking out from clause 19(2)(a) of Schedule 1 "the office of".

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Amendment of Local Government Act 1934

3. The *Local Government Act 1934* is amended—

- (a) by striking out from section 65a(1) the definition of "State Records" and substituting the following definition:

"State Records" means the office of State Records established under the *State Records Act 1996*;

- (b) by striking out from section 65b "deposited in the office of State Records" and substituting "delivered into the custody of State Records";

- (c) by striking out from section 65zb(2) the word "or" occurring between paragraphs (a) and (b) and inserting after paragraph (b) the following word and paragraph:

or

- (c) a document in the custody of State Records.;

- (d) by striking out paragraph (a) of section 65zd(2) and substituting the following paragraph:

(a) would unreasonably divert the resources of the council (or, if the document is in the custody of State Records, the resources of State Records) from their use for other official purposes.;

- (e) by inserting after subsection (2) of section 65zd the following subsection:

(2a) If a document is in the custody of State Records, the determination as to the way in which access is given to the document must be made by or jointly with the Manager of State Records.;

- (f) by striking out from section 65zd(3) "in that way";

- (g) by striking out from section 65zd(4) "This" and substituting "Subject to subsection (2a), this".

Transitional provisions

4. (1) All official records in the custody of the Libraries Board of South Australia immediately before the commencement of this Act pursuant to Part III of the *Libraries Act 1982* will, on the commencement of this Act, be placed in the custody of State Records.

(2) For the purposes of this Act, the agency responsible for an official record in the custody of State Records will, in the case of a record placed in the custody of State Records under subclause (1), be determined in accordance with section 3(3) as if the agency with corresponding responsibility for the record when in the custody of the Libraries Board immediately before the commencement of this Act had, on the commencement of this Act, delivered the record into the custody of State Records.

(3) All principles and determinations promulgated by the Libraries Board of South Australia and in operation immediately before the commencement of this Act relating to the disposal of records will continue in operation until the Manager otherwise determines with the approval of the Council.