

**STATE RECORDS  
BILL 1999**

**A BILL FOR**

**AN ACT to provide for the keeping of State  
records and for related purposes**

**CLAUSE NOTES**

## PART 1 - PRELIMINARY

**Clause 1 Short title** This Bill may be cited as the *State Records Act 1999*.

**Clause 2 Commencement**

The provisions of this Bill come into operation on such day as is, or days as are respectively, fixed by proclamation. Timing will be contingent upon the appointment of Commission members and staff, the determination of matters, if any, that require regulations to be drawn up, and related administrative arrangements.

**Clause 3 Interpretation**

Provides definitions of terms used throughout the Bill.

**"authorized applicant"**

Organization or person in instances where the creating organization no longer exists. See clause 4.

**"Commissioner"**

The regulatory body set up in terms of Part 8 of this Bill.

**"control"**

Means activities by which records are stored and managed. The concept does not include the act of actually creating a record in the first place.

**"destroy"**

Unlawful destruction is made an offence under this Bill; see Clause 78(3) & (4).

**"Director"**

A Director of State Records is established under Clause 70. That person and their staff comprise the State Records Office. The Director's functions are described in Clause 73. The Director controls the State archives collection (see Clause 36) and takes appropriate action under Part 7 'Recovering State Records'.

**"exempt record"**

(a) A record received by the clients of a State organization in the course of that organization's business. State records that are outsourced when an organization's record keeping function is outsourced are not exempt records. See Clause 33(3)

(b) Library materials in a State organization's library are exempt.

(c) Collections held by bodies such as the WA Museum and the Battye Library are exempt.

**"FOI Act"**

The access provisions of this Bill have been drafted to complement the operation of this State's *Freedom of Information Act 1992*. (see Part 6).

**"government organization"**

Refers to organizations mentioned in Schedules 1 and 3 of this Bill. They include all State and local government bodies within Western Australia as well as the Governor, Ministers of the Crown and Courts of Law (but not parliamentary departments).

**"government organization employee"**

Schedule 1 lists the organizations that employ these. They may be permanent or temporary employees or contract staff.

**"government record"**

A record created or maintained by employees of government organizations. Does not exclude "exempt records" as defined above.

**"keep"**

As outlined in Clause 3(2) to keep a record covers the creation, preservation and management of a record, and/or information on a record.

**"parliamentary department"**

There are currently three parliamentary departments covered by this definition viz. the two serving the Presiding Officers of the Legislative Council and Legislative Assembly, and Parliamentary Services.

**"parliamentary record"**

A record created or received by a parliamentary department.

**"record"**

The formats covered by this definition range from conventional paper records to electronic records.

**"record keeping plan"**

A plan that documents those records that are and have been created by a government organization (see Part 3) or a parliamentary department (see Part 2) and how those records are to be maintained and disposed of.

**"relevant Minister"**

Refers to those Ministers responsible for the Acts which established the government organizations listed in Schedule 3.

**"reproduce"**

Clause 3(3) defines the term as used throughout this Bill.

**"restricted access archive"**

Refers to a record that can only be viewed by the public following a successful application for access to the responsible government organization.

**"retention period"**

The organization's plan must refer to the period a record must be kept in its control before that record is either destroyed or transferred to the State archives collection.

**Clause 3(5)** Control of a record also includes access to the information in that record; e.g. if an organization is required to keep an electronic record as a State archive, it must have a way of making it available in a readable form.

**Clause 3(6)** A record's age is determined by the date when the first part of that record was created. This has particular relevance to Clause 32 which determines when State archives are to be transferred to the State archives collection.

**Clause 4**  
**Authorized applicant**  
This clause ensures that records created by defunct organizations will be covered by the Bill's access provisions (see Part 6).

**Clause 5**  
**Act binds Crown**  
The State of Western Australia is bound by this Bill.

**Clause 6**  
**Application to records created or received before commencement**  
The Bill applies to records created by past and present State organizations.

**Clause 7**  
**Application to State organizations**  
Private organizations are not subject to this Bill.

**Clause 8**  
**Application to former government organizations**  
These subclauses ensure that records will not be orphaned when the function that they document is terminated, or transferred to another organization. The Director of State Records is to be notified by an organization when it is about to be abolished, to enable the orderly disposition of that organization's records.

**Clause 8(5)** When a government organization's functions are privatised, the records that document the performance of that function prior to the organization's sale or lease are to remain as government records (unless another law says otherwise).

**Clause 9**  
**Effect on other enactments**  
Some Acts specify that certain records must be kept for a minimum period; e.g. The *Gold Corporation Act* requires the Western Australian Mint to keep some records indefinitely.

**Clause 10**  
**Person responsible for State organizations' obligations**  
This clause ensures that the same officer in each organization is responsible for that agency's compliance with the *Freedom of Information Act 1992* (FOI) and the provisions of this Bill. The CEO of the Ministry of Premier and Cabinet is responsible for ensuring that organizations mentioned under Schedule 1, items 4 to 7, comply with this Bill.  
In the case of parliamentary departments the responsible officer is the accountable officer under the FAANA Act.

**"Schedule 3 organization"**  
Refers to organizations that are mentioned in Schedule 3 and which must report on their recordkeeping in accordance with Part 3, Division 3 of this Bill.

**"State archive"**  
A record identified as a permanent value record in the organization's record keeping plan.

**"State archives collection"**  
Part 4 Division 1, identifies those records which comprise this collection. The Director of State Records controls this collection and is responsible for the proper storage and preservation of its contents.

**"State Collecting Institution"**  
These bodies hold collections (eg museum exhibits and original manuscripts) that are classed as exempt records under this Bill.

**"State organization"**  
Includes all organizations covered by Schedules 1 and 3, and Schedule 2 Item 3 (i.e. all government organizations plus parliamentary departments).

**"State organization employee"**  
An employee of a government organization or a parliamentary department.

**"State record"**  
A record of a government organization or a parliamentary department. This definition has particular significance for actions taken under Part 6, Recovering State Records. It excludes 'exempt' records.

**"State Records Office"**  
The "Director Of State Records" and staff comprise the State Records Office and are responsible for the "State archives collection"; see Part 9 'Administrative Matters'.

**"successor"**  
A government organization that performs all or some of the functions of another organization following the latter's abolition.

**"unauthorised possession"**  
This term applies when a government record is deemed to be out of lawful custody and action should be taken to recover it.

**Clause 3(2)** Defines the term record keeping.

**Clause 3(3)** Reproduction of a record may be achieved either by reproducing the record's image as per microfilm or capturing and reproducing the information in an electronic form.

**Clause 3(4)** This clarifies what constitutes an organization's records.

**PART 2 - RECORD KEEPING PLANS FOR PARLIAMENTARY DEPARTMENTS**

**Clause 11 Content of Plans**

**Clause 11(1,2)** Each parliamentary department's record keeping plan should be similar to those produced by Schedules 1 and 3 organizations, [see Clause 16(1&2)].

**Clause 11(3)** Each department's record keeping plan must identify those parliamentary records that are to be kept permanently and those which are to be kept for a finite period. These plans must also establish procedures for ensuring that the records are safe and secure and that departmental staff are aware of these procedures and other provisions in the plan. [Parliamentary records (unlike government records) are not subject to the compulsory transfer provisions of Clause 32 of this Bill. However provision is made under Clause 35(d) for the transfer of these records to the state archives collection.]

**Clause 11(4,5)** Similar provisions to government record keeping plans. See Clause 16(4&5).

**Clause 11(6)** Parliamentary records are normally not subject to either the *Freedom of Information Act* or Part 6 of this Bill. This subclause makes provision for each department's record keeping plan to specify which of its records may be available for public scrutiny and when such access will occur.

**Clause 12 Parliamentary departments to have plans**

**Clause 12(1,2)** Each department must compile a draft recordkeeping plan within 12 months after this section of the Bill takes effect and submit it to the relevant presiding officer (or both) of the Council or the Assembly.

**Clause 12(3)** Each plan must be prepared in consultation with the Commission and take cognisance of the principles and standards referred to in Clause 61.

**Clause 12(4-6)** The relevant presiding officer is empowered to approve or reject a draft plan. Where a plan is not approved it must be resubmitted by a specified date.

**Clause 13 Amending plans**

Record keeping plans are amended by the same process by which they were originally created. The relevant presiding officer must approve any amendment before the revised plan takes effect.

**Clause 14 Review of plans**

Each parliamentary record keeping plan must be reviewed within 5 years of the current plan's approval. A report on the review must be submitted to the relevant presiding officer.

**Clause 15 Effect of plans**

**Clause 15(1)** All persons, whether they be Members or Clerks of either House, employees of a parliamentary department, or employees of a government organization providing support services to that department, must comply with each department's record keeping plan.

**Clause 15(2,3)** Non compliance with the provisions of a parliamentary record keeping plan may constitute contempt of Parliament. [Clause 78 'Offences' does not apply to parliamentary records.]

**PART 3 - RECORD KEEPING PLANS FOR GOVERNMENT ORGANIZATIONS**

**Division 1 - General**

**Clause 16 Content of plans**

**Clause 16(1,2)** Under the current legislation organizations submit records disposal schedules to the Library Board's Standing Committee on Public Records. These disposal schedules categorize records maintained by the organization and specify retention periods and final disposal action for these records.

The record keeping plan has a broader purpose. It identifies what records are or should be created as per functions prescribed by legislation/regulation or Government directive, and how these records are to be maintained, e.g. if an organization is corporatised its plan should note requirements for it to keep certain records as a result of this status.

**Clause 16(3)** The plan indicates how long records are to be kept and what is to happen to them when they are no longer required by an organization. It also identifies records that will be kept forever as archives, restricted access records, the retention periods for short-term records, how an organization will secure its records and ensure ongoing compliance with its plan.

**Clause 16(4)** The record keeping plan may address the methodology of creating a record.

**Clause 16(5)** Provides for the reproduction of records in formats different from the original, and for the destruction of the original record.

**Clause 16(6)** Normally, State archives will be transferred to the State archives collection at or within 25 years of their creation (see Clause 32). However the Commission may approve the retention of an organization's records for longer periods. [Certain archives remain active records for a very long time; e.g. Certificates of Title, Registers of Births Deaths and Marriages].

**Clause 17 Effect of a plan**

All staff have a responsibility to maintain records in accordance with their organization's record keeping plan.

**Division 2 - Plans of government organizations other than those to which Division 3 applies.**

**Clause 18 Application**

Applies to those organizations covered by Schedule 1.

**Clause 19 Government organizations to have plans**

All organizations must compile record keeping plans.

- Clause 20**  
**Existing organizations to lodge draft plans**  
 All existing organizations must compile a plan, and submit it to the Director, State Records Office, when instructed to do so by the Commission.
- Clause 21**  
**New organizations to lodge plans**  
 All new organizations including those with a limited life, eg Royal Commissions, must submit a plan to the Director within 6 months of their creation.
- Clause 22**  
**Director to report on draft plans**  
 The Director will examine each draft plan and refer it to the Commission, along with his report and recommendation.
- Clause 23**  
**Commission may approve draft plans**  
 The Commission is empowered to accept or reject a draft plan, and must advise the organization accordingly. The latter must submit a new draft to the Director.
- Clause 24**  
**Amending plans**  
 All amendments to a plan must be referred to the Commission (via the Director) for approval.

**Division 3 - Plans of the Commission, the State Records Office and Schedule 3 organizations**

- Clause 25**  
**Commission to have plan**  
 The Commission must submit its record keeping plan to its Minister, within 6 months of this Bill's commencement. The Minister may accept or reject the Commission's plan.
- Clause 26**  
**State Records Office to have plan**  
 The Director must submit a plan to the Commission on behalf of the State Records Office. This plan does not refer to records maintained by staff of that Office within the State archives collection.
- Clause 27**  
**Schedule 3 organizations to have plans**  
 All organizations mentioned in Schedule 3, must compile record keeping plans, and submit the latter to their "relevant Minister" when instructed to do so by the Commission.
- It is the "relevant Minister" (and not the Commission) who is empowered to approve or not approve the plans of these organizations. When a plan is not approved the Minister must give reasons to the organization. The latter must submit a new draft plan to the Minister when directed to do so. When a plan is approved by the Minister the organization must formally notify the Commission of this approval.

**Division 4 - Reviews of and periodic reports about plans**

- Clause 28**  
**Review of plans**  
 Organizations must review their plans every 5 years, whenever the organization undergoes significant organizational changes or when the Commission calls for a review. A report of each review must be submitted to the Commission (via the Director) or (in the case of Schedule 3 organizations) to the "relevant Minister".
- Clause 29**  
**Government organizations to report periodically**
- Clause 29(1)**  
 In addition to reports submitted under Clause 28, organizations must report to the Commission at the latter's request concerning compliance with their respective plans. The Commission is likewise obliged to report to the Minister on its own plan.
- Clause 29(2)**  
 Schedule 3 organizations must report to their "relevant Minister" at a date to be determined by the Minister.
- Clause 30**  
**Reports to be given to Parliament**  
 Copies of reports received by the Commission and the Minister under Clause 29 must be given to Parliament, [Clause 64 gives more details about this].

**PART 4 - CONTROL OF STATE RECORDS**

- Clause 31**  
**Control of records that are not State archives**  
 An organization must keep its temporary value records until its record keeping plan says they may be destroyed.
- Clause 32**  
**State archives to be transferred to State archives collection**
- Clause 32(1)**  
 When they are 25 years old all State archives must be transferred to the State archives collection. (i.e. to the custody and control of the Director of State Records), unless alternative arrangements are made under Clause 61(1).
- Clause 32(2)**  
 An organization may transfer its archives to the State archives collection before the compulsory transfer date for these records.
- Clause 32(3-5)**  
 Organizations must notify the Director when they wish to transfer State archives to the Director's custody and control. If the Director notifies an organization that his/her office cannot in the short term accept custody of its records the transferring organization must make interim arrangements for the storage of these records.
- Clause 32(6)**  
 The Director has control of all archives that are in the State archives collection.
- Clause 32(7)**  
 Archives may be transferred to the State archives collection only when the organization's records are covered by an approved plan.

**Clause 33**  
**Contracting-out of record keeping not prevented**  
Where organizations arrange for their record keeping functions to be outsourced to private contractors, those records affected by these contracts or arrangements are to be treated as State records.

**PART 5 - STATE ARCHIVES**

**Division 1 - General**

**Clause 34**  
**State archives identified**  
The term State archives does not only apply to records held by the Director of State Records, in the State archives collection. Records identified as archives in a government organization's record keeping plan are State archives irrespective of their location or who controls them.

**Clause 35**  
**State archives collection**  
This clause describes the contents of the State archives collection. The latter consists of State archives held by the State Records Office before the commencement of this Bill, those State records transferred to the State Records office under Clause 32 of this Bill or another written law, and permanent value records of parliamentary departments and Schedule 3 organizations all which are accepted as State Archives subject to the approval of the Director.

**Clause 36**  
**Director has control of State archives collection**  
The Director is responsible for the State archives collection and must maintain it in accordance with an archives keeping plan.

**Division 2 - Restricted access archives**

**Clause 37**  
**Restricted access archives identified**

**Clause 37(1)**  
The restricted status of a record is specified in the record keeping plan of the government organization whose record it is.

**Clause 37(2)**  
A State archive in the State archives collection is a restricted access archive; if it is specified as such in a record keeping plan, or, if it has been so determined by the Commission's direction following an organization's application to change the access status of a State archive held by The Director.

**Clause 37(3)**  
Where the access status of an archive held by the Director is under review by the Commission, that record must be treated as restricted until a decision has been made by the Commission.

**Clause 37(4)**  
When the Commission restricts access to a record held by the Director, it must also determine the date when the restriction shall lapse.

**Clause 37(5)**  
The Commission must fix a review date for any records that it has restricted. The Commission must review its direction every 5 years. [NB: after 75 years all archives are open except those covered by Clauses 48 and 49(1)].

**Clause 38**

**When archives cease to be restricted access archives**  
This clause describes how a State archive may cease to be a restricted access archive (before it reaches 75 years of age).

**Clause 38(1)**

If the archive is not held in the State archives collection its controlling organization's record keeping plan is to indicate when that record is to be accessible to the public.

**Clause 38(2)**

If a record is transferred to the State archives collection, the access date mentioned in the transferring organization's record keeping plan will continue to be the open access date, unless amended by the Commission under clauses 37 or 38(4).

**Clause 38(3,4)**

The transferring organization mentioned in 38(2), and its successors, can at any time apply to the Commission to change the open access date of a record held by the Director in the State archives collection.

**Clause 38(5)**

The Director must comply with the Commission's decisions under Clauses 37 & 38.

**Division 3 - Archives keeping plan**

**Clause 39**  
**Director to have plan**

The Director and staff of the State Records Office must complete a plan for the proper custody and preservation of records held in the State archives collection. The plan must take into account technological changes to record keeping.

**Clause 40**  
**Approval of plan**

The Director must submit a draft archives keeping plan to the Commission within 12 months of the Act's commencement.

**Clause 41**  
**Plan to be reviewed**

The review process is the same as that described for all government organizations (see Clause 28).

**Clause 42**  
**Periodic report about plan**

The Director as custodian of the State archives collection is required to report periodically to the Commission on the archives keeping plan. The Commission is required to lodge a copy of this report with the Parliament.

**Division 4 - Destruction of archives**

**Clause 43**

**Destruction of archives**

Enables the Director to seek the approval of the Commission for the destruction of a State archive. In reaching a determination, the Commission must seek input from the organization that originally controlled the record and from other State organizations it sees fit. The Commission also must invite submissions about the application.

**PART 6 -**

**ACCESS TO GOVERNMENT RECORDS**

**Clause 44**

**Records that are not State archives**

Access to all government records that are not archives is determined by the State organization under the FOI Act.

**Clause 45**

**State archives that are not restricted access archives**

In the case of any government record that is an archive and is not a restricted access archive and less than 25 years old, and

- is in the organization's custody - access is determined by FOI
- is in the Director's custody - access is at the State Records Office.

If an archive is more than 25 years old and not restricted, and

- is in the organization's custody - open access upon application to the organization
- is in the Director's custody - open access at the State Records Office.

**Clause 46**

**Restricted access archives**

In the case of a government record that is a restricted access archive

- held by the organization - access is subject to FOI
- held by the Director - access is determined by the responsible organization subject to FOI.

**Clause 47**

**Archives at least 75 years old**

All government records that are State archives and are over 75 years of age, and which are not subject to Clauses 48 and 49(1), are open access archives (irrespective of which organization controls them). With the exception of records covered by Clauses 48 and 49(1), FOI legislation cannot be invoked to restrict access to archives that are more than 75 years old.

**Clause 48**

**Archives containing exceptionally sensitive information**

This clause gives the Commission discretion to restrict access (upon application by the controlling or transferring organization) to a State archive that is not a parliamentary record and which might be available for public scrutiny under clause 47 (i.e. is more than 75 years old), and is also not subject to Clause 49(1). Where it restricts a record under this clause, the Commission must review its decision every 5 years.

**Clause 49**

**Medical etc. information, limited access to**

The restricted period for patient records created, received and maintained by State hospitals, clinics, healthcare centres etc extends to 100 years. This clause does not apply to older medical records that are currently held as State archives by the Library Board and are no longer restricted access archives, e.g. Fremantle Asylum records (See Clause 16, *State Records (Consequential Provisions) Bill 1999*)

**Clause 50**

**Applying for access to State archives**

This clause explains how a State archive may be accessed by a member of the public where a right of access prevails.

**Clause 50(1)**

Access to archives is to be given in the same way as access is provided in accordance with the FOI Act; e.g. by a copy, transcript or précis, as well as an opportunity to inspect the original.

**Clause 50(2,3)**

This enables the Director, and staff of the State Records Office, to be flexible in the way they provide access to records in the State archives collection. Where State archives are in poor physical condition, the Director may impose conditions on public access to original documents.

**Clause 51**

**State organization to have access to its own archives**

This entitles organizations to reasonable access to records which they or their predecessors have transferred to the State archives collection.

**PART 7 -**

**RECOVERING STATE RECORDS**

**Clause 52**

**Direction to deliver**

If the Director believes a government record, as defined in Part 1, is not held by an authorized custodian, the Director may direct the person concerned to surrender custody of that record. Non compliance with a written notice from the Director may result in a \$3,000 fine.

**Clause 53**

**Court action to recover**

Non-compliance with the Director's written direction constitutes an offence under this Bill, and may result in a District Court Order for the return of the record, or a warrant to seize the record.

**Clause 54**

**Compensation for recovered records**

As the recovery provisions in the Bill are retrospective (see Clause 56) this Clause allows the Minister to compensate a person who surrenders a record to the Director in accordance with Clauses 52 and 53.

**Clause 55**

**Reciprocal agreements to recover State records**

This enables the Director to reach an agreement with his/her counterparts in other States, and Territories, and the Commonwealth, to act for each other in the recovery of their records.

**Clause 56** No limitation period etc

**Clause 56(1)** The age of a government record, or the length of time that it has been out of custody do not limit the Crown's and the Director's right of recovery.

**Clause 56(2)** Neither the Crown's nor the Director's right to take legal action to recover a government record is limited to following the procedure in Part 7 of this Bill.

**PART 8 - STATE RECORDS COMMISSION**

**Division 1 - General**

**Clause 57** **Commission established**  
The Commission is established as a government organization.

**Clause 58** **Membership**  
Composition of the Commission is described. Appointments are made by the Governor.

**Clause 59** **Provisions about membership and meetings**  
Refers to Schedule 4 which covers terms of office, meetings of the Commission, conflicts of interest and remuneration for members.

**Clause 60** **Functions**  
The Commission has a proactive role in ensuring that organizations implement and comply with this Bill's provisions.

**Clause 60(1)** The Commission is to ensure that record keeping in organizations is of a high standard and that records are accessible to the public.

**Clause 60(2)** The Commission is to ensure that record keeping in organizations is of a high standard and that records are accessible to the public.

**Clause 61** **Principles and standards**

**Clause 61(1)** The Commission will issue principles and standards on;

- record keeping generally throughout the WA public sector,
- contracts or arrangements for the outsourcing of government recordkeeping to the private sector,
- the selection of records as State archives.

The Commission will also issue determinations on;

- the access status of State archives,
- those State archives that are to be exempt from compulsory transfer to the Director's custody after 25 years,
- the retention and disposal of non-archival records.

**Clause 61(2)** Before it establishes a standard or set of principles under 61(1), the Commission is to consult with stakeholders and be mindful of the capacity of state organizations to implement its determinations.

**Clause 61(3)** This subclause prescribes how the principles and standards issued under 61(1) are to be made public, and how the principles are to take effect.

**Clause 61(4-6)** The principles and standards issued by the Commission have the status in law of regulations issued under this Bill. Their validity may be tested in a court of law.

**Clause 62** **Committees of the Commission**  
This clause provides for the creation of Commission committees.

**Clause 62(1)** The Commission must establish a committee that will consider draft record keeping plans and related matters submitted by the Director of State Records on behalf of organizations, and recommend on the same to the Commission.

**Clause 62(2)** This subcommittee will include representatives from public sector record keepers and other interested groups, such as the Records Management Association of Australia and the Australian Society of Archivists.

**Clause 62(3-5)** The Commission may establish more than one committee to assist in its work. Commissioners need not sit on any of these committees. It is left to the business and procedure.

**Clause 63** **Facilities and services for the Commission**

**Clause 63(1)** The Minister responsible for this Bill must ensure that the Commission is appropriately funded, staffed and resourced to carry out its functions under this Bill.

**Clause 63(2,3)** The Minister can arrange for the Commission to make use of existing public sector staff and resources. Funding and general resourcing of the Commission will be facilitated through a nominated host agency (e.g LISWA)

**Clause 63(4)** The host agency nominated under Clause 63(3) may engage or employ non public sector personnel on the Commission's behalf.

**Clause 64** **Annual and special reports to Parliament**

**Clause 64(1,2)** In addition to its own annual report, the Commission must also report on the operation of the Act and make suggestions for changes, if any, to help meet the objectives of the Act.

**Clause 64(3,4)** The Commission may submit a special report to Parliament on breaches of this Act by any government organization. A copy of this report must be sent to the Minister responsible for this Bill.

**Division 2 - Relationship with the Minister**

**Clause 65** Commission to be generally independent  
The Commission is to make its own deliberations without ministerial direction on compliance by government organizations with the record keeping provisions of this Bill. The Minister responsible for the Commission may issue a general policy direction to the Commission. This direction must be made in writing and made public by means of its inclusion in the Commission's annual report to Parliament.

**Clause 66** Minister to have access to information  
The Minister is entitled to have information and/or copies of documents received and retained by the Commission and/or its staff.

**Division 3 - Investigative powers**

**Clause 67** Commission's right of access to State records  
Commission members and staff must have reasonable access to places where government records are kept. The Commission cannot invoke this clause to obtain access to records of Schedule 3 organizations.

**Clause 68** Commission may request report on record keeping  
The Commission can ask a government organization, other than Schedule 3 organizations, to report on any facet of its record keeping. All organizations which receive such a request must report direct to the Commission. Exceptions are Schedule 3 Organisations which must report to the "relevant Minister", who must in turn advise the Commission of his/her findings.

**Clause 69** Commission to have powers of special inquirer under Public Sector Management Act 1994  
Provides the State Records Commission with the power to investigate record keeping in government organizations that are not Schedule 3 organizations.

**PART 9 - ADMINISTRATIVE MATTERS**

**Clauses 70-71** Director of State Records & Staff  
An office called the Director of State Records is established. That person, along with other officers, is appointed under Part 3 of the Public Sector Management Act 1994.

**Clause 72** State Records Office  
This entity comprises the Director of State Records and staff.

**Clause 73** Director's functions

**Clause 73(1)** In addition to other responsibilities mentioned elsewhere in this Bill, the Director's functions are:

**Clause 73(1)(a)** to advise government organizations on record keeping matters, including the preparation and implementation of record keeping plans,

**Clause 73(1)(b)** to advise the above on the preparation of and compliance with record keeping plans,

**Clause 73(1)(c)** to maintain a reference and information service for clients who wish to access or obtain information from records kept in the State archives collection,

**Clause 73(1)(d)** to establish and maintain a register of State archives irrespective of who controls those records,

This will enable the Director and staff to monitor the whereabouts of archives that are retained by State organizations under Clause 16(5).

**Clause 73(1)(e)** to support the work of the Commission in all its activities,

**Clause 73(1)(f)** to report to the Commission on the Act's effectiveness and any actual or suspected breach of its provisions by any State organization.

**Clause 73(2)** The Director's responsibility under subclause 73(1)(f) has effect despite any other legal impediment enacted before or since this Bill commences.

**Clause 73(3)** The Director may delegate his/her functions (but not the power of delegation or ultimate responsibility for the performance of this office's functions) to another person.

**Clause 74** Director's right of access to government records

**Clause 74(1,2)** The Director is entitled to access the records of all organizations referred to in Schedule 1 in order to fulfil the functions described under Clause 73(1). This right of access overrides any other written law.

**Clause 74(3)** The Director may access the records of Schedule 3 organizations only with the consent of the "relevant Minister".

**Clause 74(4)** The Director's right of access to records in the custody of government organizations does not make him/her responsible or accountable for those records for the purposes of the FOI Act.

**Clause 75** Director's contractual powers

The Director may contract out record keeping activities to commercial service providers. Alternatively, the Director may provide record keeping services to persons who are not State organizations.

**PART 10 - GENERAL**

**Clause 76** Information about Aboriginal Australians

Decisions about records concerning Aboriginal Australians are not to be made without consultation with them.

- Clause 77** **Confidentiality**  
A member or officer of the Commission or the State Records Office who discloses or uses unlawfully information obtained in the course of their duties commits an offence under this Bill and is liable for a penalty of \$10,000.
- Clause 78** **Offences**  
This clause details offences under this Bill for which the penalty is \$10,000:-
- Clause 78(1)**  
Failure to maintain a government record in accordance with a record keeping plan.
- Clause 78(2)**  
Unlawful disposal of a government record by sale or gift.
- Clause 78(3)**  
Unauthorised destruction of a government record by a government organization employee.
- Clause 78(4)**  
Destruction of a record that is the subject of a Court Order for the recovery of a record that is out of custody.
- Clause 78(5)**  
Unauthorised destruction of a government record by a person who is not a government organization employee, and not covered by (4) above.
- Clause 78(6,7)**  
Describes possible grounds for a defence against charges made under this clause.
- Clause 79** **Evidential matters**
- Clause 79(1)**  
Certification of a record keeping plan by a member of the Commission is evidence of that plan's validity and authenticity.
- Clause 79(2)**  
If a record is reproduced in another form (e.g. microfilm), the reproduction has the same evidential value as the original.
- Clause 79(3)**  
Empowers the person responsible for the above reproduction to certify that the copy has been made in accordance with the organization's record keeping plan.
- Clause 79(4,5)**  
A certified copy of a State archive (in the custody of the Director of State Records) has the same evidential value as the original record.
- Clause 79(6)**  
*The Evidence Act 1906* is not affected by sub clauses 79(2) to 79(5).
- Clause 80** **Protection from defamation or breach of confidence actions**
- Clause 80(1,2)**  
Where a State archive contains information that a member of the public finds offensive, neither the organization nor the employee who provided access to that archive can be sued for breach of confidence or defamation.
- Clause 80(3)**  
Provision of authorized access does not imply approval to publish.

- Clause 81** **Protection from criminal actions**  
The provider of access to a State archive has not committed an offence merely by providing such access.
- Clause 82** **Protection from personal liability for wrongdoing**
- Clause 82(1-3)**  
This protects persons, i.e. State organization employees, from any civil action that may result from tasks that they have performed in good faith in accordance with this Bill or previous legislation (for example, providing lawful public access to State archives).
- Clause 82(4)**  
The Crown is liable for action taken or not taken by a State employee in the course of his/her duties.
- Clause 83** **Crown's rights in respect of government records**  
The fact that a government record is destroyed under this Bill or another written law does not limit the Crown's rights in respect of any evidential value of the record.
- Clause 84** **Regulations**  
Allows for the Governor to issue regulations under this Bill. These may include charging for certain services, including access to archives.
- Schedule 1** **Government Organizations**  
The organizations listed in this Schedule are subject to all but the following clauses of this Bill:  
Clauses 11 to 15 'Record keeping plans for parliamentary departments', and Clause 27 'Schedule 3 organizations to have plans'.
- Schedule 2** **Organizations that are not government organizations**  
Organizations referred to in Schedule 2 are not government organizations and are not subject to this Bill. They are:  
The two Houses of Parliament and their committees  
The parliamentary office of a member of parliament  
Each of the three Parliamentary departments  
An electorate office of a member of parliament  
A party political officer employed by a parliamentary political party  
Persons defined as political office holders in Section 3 of the Public Sector Management Act, e.g. a Government Whip  
Staff employed by the parliamentary wing of minority parties
- Note :** Parliamentary departments are covered by Part 2, which applies specifically and solely to them.

**Schedule 3**      **Certain government organizations**

These three organizations are subject to all provisions of the Bill, except Part 2 and Part 3 Division 2.

**Schedule 4**      **Provisions applicable to the Commission**

Specific procedural arrangements for the Commission's functions including :  
terms of office, election of chairperson, meetings, remuneration and provision  
for disclosure of conflicts of interest.