

Western Australia

LEGISLATIVE ASSEMBLY

**State Records (Consequential Provisions)
Bill 1998**

A Bill for

**An Act to amend various Acts and enact transitional provisions as a
consequence of the enactment of the *State Records Act 1998*.**

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *State Records (Consequential Provisions) Act 1998*.

5 **2. Commencement**

The provisions of this Act come into operation on such day as is, or days as are respectively, fixed by proclamation.

**Part 2 — *Children's Court of Western Australia*
Act 1988**

3. Part 6 repealed

5 Part 6 of the *Children's Court of Western Australia Act 1988** is repealed.

[* *Reprinted as at 23 April 1996.*

For subsequent amendments see 1997 Index to Legislation of Western Australia, Table 1, p. 34, and Act No.15 of 1998.]

Part 3 — *District Court of Western Australia Act 1969*

4. Part IX repealed

Part IX of the *District Court of Western Australia Act 1969** is repealed.

5

[* *Reprinted as at 20 February 1996.*

For subsequent amendments see 1997 Index to Legislation of Western Australia, Table 1, p. 67.]

Part 4 — *Financial Administration and Audit Act 1985*

5. *Schedule 1 amended*

Schedule 1 to the *Financial Administration and Audit Act 1985**
is amended by inserting in the appropriate alphabetical position
the following —

“ State Records Commission ”.

[* *Reprinted as at 10 January 1997.*

*For subsequent amendments see 1997 Index to Legislation of
Western Australia, Table 1, p. 84, and Acts Nos.22 of 1997
and 4, 23 and 30 of 1998.]*

Part 5 — Freedom of Information Act 1992

6. Act amended by this Part

The amendments in this Part are to the *Freedom of Information Act 1992*.*.

5 [* Reprinted as at 8 July 1997.
For subsequent amendments see 1997 Index to Legislation of
Western Australia, Table 1, p..90, and Act No.13 of 1998.]

7. Section 6 amended

10 Section 6(c) is deleted and the following paragraph is inserted
instead —

“

(c) State archives to which a person has a right to
be given access under Part 5 of the *State
Records Act 1998* despite this Act;

15 ”.

8. Section 7 amended

Section 7 is amended by deleting “included in the State archives
or”.

9. Section 8 amended

20 After section 8(4) the following subsection is inserted —

“

(5) A person’s right to be given access to a document that
is a State archive is subject to Part 5 of the *State
Records Act 1998*.

25 ”.

10. Section 48 amended

Section 48(4) is repealed and the following subsection is inserted instead —

“

- 5 (4) Before information is amended under subsection (1) in a manner that —
- (a) obliterates or removes the information; or
 - (b) results in the destruction of a document containing the information,

10 and that contravenes the *State Records Act 1998*, a record keeping plan made under that Act or the archives keeping plan made under that Act, the Commissioner shall provide the State Records Commission with a copy of the certificate issued by the

15 Commissioner under subsection (3).

”.

11. Glossary amended

- (1) Clause 1 of the Glossary is amended by deleting the definition of “State archives” and inserting instead —

20

“

“**State archive**” has the same definition as in the *State Records Act 1998*;

”.

- (2) Clause 7 of the Glossary is repealed.

s. 12

Part 6 — *Justices Act 1902*

12. Part X repealed

Part X of the *Justices Act 1902** is repealed.

[* *Reprinted as at 4 June 1997.*

5 *For subsequent amendments see 1997 Index to Legislation of
 Western Australia, Table 1, p. 122, and Act No.29 of 1998.]*

Part 7 — Library Board of Western Australia Act 1951

Division 1 — Amendments

13. Amendments

5 The *Library Board of Western Australia Act 1951** is amended as set out in the Table to this section.

Table

s. 3(1)	Delete these definitions: “non-current public record”; “public office”; “public record”; “record”; “State archive”.
s. 3(2)	Repeal the subsection.
s. 21(5)	Delete paragraph (g).
s. 22	Repeal the section and delete the heading “ <i>State Archives</i> ” immediately before it.
ss. 23 to 33	Repeal the sections.

[* *Reprinted as at 17 May 1984.*

For subsequent amendments see 1997 Index to Legislation of Western Australia, Table 1, p. 134.]

10

Division 2 — Transitional provisions

14. Interpretation

(1) In this Division —

“**commencement**” means the commencement of the *State Records Act 1998*.

- (2) In this Division, unless the contrary intention appears, words and expressions have the same definitions as in the *State Records Act 1998*.

15. State archives to continue as such

5 (1) If immediately before commencement a record was a State archive under the *Library Board of Western Australia Act 1951*, then on and after commencement the record is to be taken to be a State archive for the purposes of the *State Records Act 1998*.

- (2) On commencement any record —
- 10 (a) that under subsection (1) is to be taken to be a State archive for the purposes of the *State Records Act 1998*; and
- (b) that is in the custody of the Library Board of Western Australia,

15 is to be taken to be in the State archive collection and the Board is to transfer the record to the collection.

- (3) Subsection (2) does not affect section 19.

16. Certain State archives to be restricted access archives

20 (1) If immediately before commencement a record was a State archive under the *Library Board of Western Australia Act 1951* and subject to —

- (a) restrictions on public access imposed under section 32(3) of that Act; or
- 25 (b) restrictions on access imposed under section 32(5) of that Act,

then on and after commencement the record is to be taken to be a restricted access archive for 5 years after commencement.

- (2) Subsection (1) does not prevent an application being made under section 33(3) of the *State Records Act 1998* in respect of the restricted access archive.

17. State archives with unrestricted access not to be restricted

- 5 If immediately before commencement a record —
- (a) was a State archive under the *Library Board of Western Australia Act 1951*;
 - (b) was not under that Act subject to any restrictions as to public access to it; and
 - 10 (c) contains information about a person's medical condition or about a person's disability (as defined in the *Disability Services Act 1993*),

then on and after commencement the record is not subject to section 44 of the *State Records Act 1998*.

15 **18. Provisions that apply until record keeping plan approved**

 Until a record keeping plan is approved by the Commission in respect of a State organization that is in existence on commencement, sections 30, 31 and 32 (except section 32(1)) of the *Library Board of Western Australia Act 1951* have effect, despite the repeal of those sections by this Act.

20

19. Agreements as to State archives

 If immediately before commencement an agreement is in force under section 26 of the *Library Board of Western Australia Act 1951* then on and after commencement —

- 25 (a) the agreement has effect as if the Director were substituted for the Library Board of Western Australia as a party to the agreement;

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Division 2 Transitional provisions

s. 20

- 5
- (b) if the other party to the agreement is a State organization, the agreement has effect until the Commission approves the record keeping plan of that organization; and
 - (c) if the other party to the agreement is not a State organization, the agreement has effect according to its terms.

20. Applications to restrict access to archives not limited

10 This Division does not limit any right to apply under section 32(2)(b) of the *State Records Act 1998* in respect of a State archive that immediately before commencement was a State archive under the *Library Board of Western Australia Act 1951*.

Part 8 — *Local Courts Act 1904*

21. Part X repealed

Part X of the *Local Courts Act 1904** is repealed.

[* *Reprinted as at 4 March 1994.*

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For subsequent amendments see 1997 Index to Legislation of Western Australia, Table 1, p. 138.]

Part 9 — Public Sector Management Act 1994

22. Section 29 amended

5 Section 29(1) of the *Public Sector Management Act 1994** is amended by deleting paragraph (n) and “and” following it and inserting instead —

“

10 (n) subject to the *State Records Act 1998*, to ensure that the department or organization keeps proper records; and

”.

[* Reprinted as at 3 September 1997.

15 *For subsequent amendments see 1997 Index to Legislation of Western Australia, Table 1, p. 191, and Act Nos. 22 of 1997 and 23 of 1998 and Gazettes of 24 March 1998 and 17 July 1998.]*

**Part 10 — *Royal Commission (Custody of Records)*
*Act 1992***

23. Act amended by this Part

5 The amendments in this Part are to the *Royal Commission (Custody of Records) Act 1992**.

[* *Act No. 43 of 1992.*

For subsequent amendments see 1997 Index to Legislation of Western Australia, Table 1, p. 206.]

24. Section 3 amended

10 Section 3(1)(b) is deleted and the following paragraph is inserted instead —

“ (b) the *State Records Act 1998*; ”.

25. Section 4 amended

Section 4(1) is amended as follows:

15 (a) by inserting in the appropriate alphabetical positions the following definitions —

“

“**Director of State Records**” means the Director of State Records under the *State Records Act 1998*;

20 “**State archives collection**” has the same definition as in the *State Records Act 1998*;

”;

(b) by deleting the definitions of “Library Act” and “Library Board”;

25 (c) in the definition of “record” by deleting “Library Act” and inserting instead —

“ *State Records Act 1998* ”.

s. 26

26. Sections 6 to 10 repealed

Sections 6 to 10 are repealed.

27. Section 12 amended

5 Section 12(1) is amended by deleting “the DPP shall transfer all records in the custody of the DPP under section 5 to the Library Board as State archives.” and inserting instead —

“
10 all records in the custody of the DPP under section 5, except those dealt with under subsection (2), shall become State archives and the DPP shall transfer them to the State archives collection.
”.

28. Section 13 amended

15 (1) Section 13(1) is amended by deleting “Subject to subsection (2) and section 6(2), if” and inserting instead —

“ If ”.

(2) Section 13(2) and (3) are repealed.

29. Section 14 amended

20 (1) Section 14(1) is repealed and the following subsection is inserted instead —

“
25 (1) The Director of State Records shall accept custody and control of a record transferred to the State archives collection under this Act and, subject to this section, shall keep the record as a State archive in accordance with the *State Records Act 1998*.
”.

- (2) Section 14(1a) is repealed.
- (3) Section 14(2)(a) and (b) are deleted and the following paragraphs are inserted instead —

“

- 5 (a) a confidential record, internal working document or private submission that is a State archive in the State archives collection; or
- (b) a transcript record that is a State archive in the State archives collection and that is the subject of a direction by the Royal Commission prohibiting its publication,
- 10

”.

- (4) Section 14(5)(d) is deleted and the following paragraph is inserted instead —

“

- 15 (d) that in the case of a record that is a restricted access archive under the *State Records Act 1998*, the provision of access to the record would not contravene or be inconsistent with the restrictions on access to the record under that Act.
- 20

”.

- (5) Section 14(8) is repealed and the following subsections are inserted instead —

“

- 25 (8) Without limiting section 3(1), the prohibition in subsection (2) has effect notwithstanding Part 5 of the *State Records Act 1998*.

s. 30

5 (9) This section ceases to have effect in relation to a confidential record, internal working document, private submission or transcript record, as the case may be, when it becomes 75 years old as determined under section 3(5) of the *State Records Act 1998* unless under section 43 of that Act, the State Records Commission has directed that it is an exceptionally sensitive archive in which case that section applies to it.

”.

10 **30. Section 15 amended**

- (1) Section 15 is amended by repealing subsections (1) to (7).
- (2) Section 15(8) is amended by inserting after “this section” the following —

“

15 (as this Act and that Act operated before the commencement of the *State Records (Consequential Provisions) Act 1998*)

”.

