



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

Short title

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

Commencement

2. The provisions of this Act come into operation at the same time as the principal Act is proclaimed. However, Parts 2, 3, 6 and 8, which provide for Court records should not be proclaimed until record keeping plans for those Courts have been approved by the Commission under the State Records Act.

Note: The Culture, Libraries and the Arts (Consequential Provisions) Bill 1998 proposes the repeal of the whole of the Library Board of Western Australia Act 1951. This Act [State Records (Consequential Provisions)], along with the State Records Act 1998 must commence before the two culture Acts commence, otherwise Part 7 of this Act [State Records (Consequential Provisions)] will have no effect and the status of existing archives etc will be uncertain.

PART 2 - CHILDREN'S COURT OF WESTERN AUSTRALIA ACT 1988

Clause 3 Part 6 repealed

Part 6 of that Act deals with the retention and disposal of this court's records and evidentiary material resulting from the microfilming of those records.

PART 3 - DISTRICT COURT OF WESTERN AUSTRALIA ACT 1969

Clause 4 Part IX repealed

Part IX of that Act deals with the retention and disposal of records created and maintained by the District Court, and related evidentiary matters.

PART 4 - FINANCIAL ADMINISTRATION AND AUDIT ACT 1985

Clause 5

Schedule 1 is amended by inserting "State Records Commission" in the appropriate place.

PART 5 - FREEDOM OF INFORMATION ACT 1992

Clause 6 Principal Act

In this Part the *Freedom of Information Act* is referred to as the Principal Act.

Clause 7 Section 6 amended

The effect of this change will be to recognize that State archives may be kept in places other than the State archives collection at the State Records Office.

Clause 8 Section 7 amended

The term 'State Archives' is no longer current.

Clause 9 Section 8 amended

In matters concerning access to State archives Part 5 of the State Records Act will override the *Freedom of Information Act*.

Clause 10 Section 48 amended

Under this Section it is possible for information in a file to be amended. A certificate to that effect was previously sent to the State Archivist. That certificate will now be sent to the State Records Commission.

Clause 11 Glossary amended

The repeal of Clause 7 of the Glossary in Schedule 2 of the FOI Act ensures that requests for access to State archives that have been transferred to the State archives collection must be determined primarily in accordance with Part 5 of the *State Records Act*.

PART 6 - JUSTICES ACT 1902

Clause 12 Part X repealed

Part 6 of the Justices Act covers the retention and disposal of records maintained by Courts of Petty Sessions and related evidentiary matters.

PART 7 - LIBRARY BOARD OF WESTERN AUSTRALIA ACT 1951

Division 1 - Amendments

Clause 13 Amendments

This clause repeals those sections and subsections of the *Library Board of Western Australia Act* that will be superseded by the State Records Act

Division 2 - Transitional provisions

Clause 14 Interpretation

Where the same terminology is used in both Acts, it is to mean the same unless otherwise stated.

Clause 15 State archives to continue as such

Those records held by the Library Board as State archives will, under the *State Records Act*, comprise the 'State archives collection'. Control of the records in the 'State archives collection' will transfer from the Library Board to the Director of State Records from the State Records Act's commencement date.

Clause 16 Certain State archives to be restricted access archives

Archives restricted under the *Library Board of Western Australia Act* will remain restricted for 5 years after commencement of the State Records Act. If the organization wishes to extend the restriction, it must, before 5 years have passed, apply to the State Records Commission for an access determination to be made.

Clause 17 State archives with unrestricted access not to be restricted

This clause is intended to allow continued public access to records, held in the State archives collection, that contain medical information and have not been restricted under Section 32 of the *Library Board of Western Australia Act*. (Examples are the older records of the Fremantle Asylum which have been publicly accessible for some years at the Public Records Office.)

Clause 18 Provisions that apply until record keeping plan approved

Despite the repeal provisions of Clause 13 of this Act, those sections of The Library Board Act that deal with records retention and disposal, and access will prevail with respect to individual organizations until the Commission approves the latter's record keeping plans.

Clause 19 Agreements as to State archives

Under Section 26 of the *Library Board of Western Australia Act*, the Board may enter into an agreement for an organization to keep its own archives. This clause will ensure that such agreements will prevail until confirmed in the organization's record keeping plans in terms of the new Act.

Those organizations that are parties to agreements made under The Library Board Act are authorised to maintain their archives. [Note: There are two: the University of WA and Murdoch University].

See also Clause 11(6) of the *State Records Act*.

Clause 20 Applications to restrict access to archives not limited

Any organization has the right to apply to the Commission under section 32 (2) of the *State Records Act* for approval to restrict access to records that were identified as State archives prior the Act's commencement.

PART 8 - LOCAL COURTS ACT 1904

Clause 21 Part X repealed

Part X of the *Local Courts Act* is repealed. This part concerns the retention and disposal of records maintained by all Local Courts.

PART 9 - PUBLIC SECTOR MANAGEMENT ACT 1994

Clause 22 Section 29 amended

Section 29(1) of the *Public Sector Management Act 1994*, lists the functions of chief executive officers and chief employees of State organizations. The keeping of "proper records" in terms of that Act is to be subject to the *State Records Act*.

PART 10 - ROYAL COMMISSION (CUSTODY OF RECORDS) ACT 1992

Clause 23 Principal Act

The 1992 Act arose from the need to provide for the lawful disposal of the Royal Commission's records and access to those records, following the winding up of the body that created them.

Clauses 24 & 25 Sections 3 & 4 amended

Administrative arrangements to conform with the *State Records Act 1998*, and the repeal of the *Library Board of Western Australia Act 1951*.

Clauses 26 to 30 Sections 6 to 10, & 12 to 15 amended

The effects of Clauses 26 to 30 of this Act are to repeal those provisions of the *Royal Commission (Custody of Records) Act 1992* that are now spent and amend other provisions in order to preserve the intent of that Act, once the *State Records Act* commences.

In respect of records falling under Section 14(1a) of the *Royal Commission (Custody of Records Act)*, restrictions will apply for 5 years after the commencement of the *State Records Act*. Before that period elapses it will be necessary for the Minister administering the *Royal Commissions Act 1968* to apply to the State Records Commission for a directive to set the age at which those records cease to be restricted archives. (At present, these records are restricted for 30 years).

In respect of records falling under Section 14(2) of the 1992 Act, access decisions will continue to be made by the Supreme Court until the records are 75 years old. At that point State archives become open access records.