

**STATE RECORDS (CONSEQUENTIAL
PROVISIONS) BILL 1999**

A BILL FOR

**AN ACT to amend various Acts and enact
transitional provisions as a consequence of
the enactment of the *State Records Bill*
1999.**

CLAUSE NOTES

The Parliament of Western Australia enacts as follows:

PART 1 - PRELIMINARY

Short title

Clause 1

This Bill when enacted may be cited as the *State Records (Consequential Provisions) Bill 1999*.

Commencement

Clause 2

Different provisions of this Act come into operation on the either the same day or different days, as fixed by proclamation.

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Clause 3 Part 6 repealed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Clause 4 Part IX repealed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 - FREEDOM OF INFORMATION ACT 1992

Clause 5 Act amended by this Part

The *Freedom of Information Act 1992* is amended in clauses 6 to 10 of this Bill.

Clause 6 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 7 Section 7 amended

The term 'State Archives' is no longer current.

Clause 8 Section 8 amended

In matters concerning access to State archives, Part 6 of the *State Records Bill* will override the *Freedom of Information Act*.

Clause 9 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 10 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 Bill*.

PART 5 - JUSTICES ACT 1902

Clause 11 Part X repealed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 6 - LIBRARY BOARD OF WESTERN AUSTRALIA ACT 1951

Division 1 - Amendments

Clause 12 Amendments

This clause repeals those sections and subsections of the *Library Board of Western Australia Act* that will be superseded by the *State Records Bill*.

Division 2 - Transitional provisions

Clause 13 Interpretation

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

Clause 14 State archives to continue as such

Those records held by the Library Board as State archives will, under the *State Records Bill*, 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 upon the commencement of the *State Records Bill*.

Clause 15 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 Bill*. 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 16 State archives with unrestricted access not to be restricted

This clause will allow continued public access to some 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 State Records Office.]

Clause 17 Provisions that apply until record keeping plan approved

Despite the repeal provisions of Clause 12 of this Bill, 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 18 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 *State Records Bill*.

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 16(6) of the *State Records Bill*.

Clause 19 Applications to restrict access to archives not limited

Any organization has the right to apply to the Commission under Clause 37 (2) of the *State Records Bill* for approval to restrict access to records that were identified as State archives prior the Act's commencement.

PART 7 - LOCAL COURTS ACT 1904

Clause 20 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 8 - PUBLIC SECTOR MANAGEMENT ACT 1994

Clause 21 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 Bill*.

PART 9 - ROYAL COMMISSION (CUSTODY OF RECORDS) ACT 1992

Clause 22 Act amended by this Part

The *Royal Commission (Custody of Records) Act 1992* resulted from the need to provide for the lawful disposal of and access to the records of the Royal Commission into WA Inc, following the winding up of that Commission.

Clauses 23 & 24 Sections 3 & 4 amended

Administrative arrangements to conform with the commencement of the *State Records Bill* and the repeal of the *Library Board of Western Australia Act*.

Clause 25 Sections 5 to 12 repealed

These Sections of the *Royal Commission (Custody of Records) Act 1992* are now repealed to take account of the transfer in 1999 of all of the records of this Royal Commission, previously held by the DPP, to the custody of the Library Board.

Clause 26 Section 13 amended

Provides for copies of Royal Commission records to have the same evidential status as originals.

Clause 27 Section 14 amended

This clause legitimises the transfer of Royal Commission records as State archives in the Library Board's custody to the State archives collection, and stipulates how access to these records may be provided.

The amendments to this clause ensure conformity with the *State Records Bill*.

Note: 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 date all State archives become open access records.

Clause 28 Section 15 amended

Subsections 1 to 7 are deleted as they refer to the Royal Commission as an existing body. Subsection 8 remains as it indemnifies the Royal Commissioners against any legal challenge that may result from their decisions regarding the disposition of the Commission's records.