Western Australia

State Records Act 2000

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Contents

Part 1 — Preliminary

1. Short title 2
2. Commencement 2
3. Terms used 2
4. Authorised applicant, meaning of 7
5. Act binds Crown 7
6. Application of Act to records created or received before commencement 7
7. Application of Act to State organizations 8
8. Application of Act to former government organizations 8
9. Relationship of this Act with other enactments 9
10. Individual responsible for State organization's obligations 9

Part 2 — Record keeping plans for parliamentary departments

11. Content of plans 11
12. Parliamentary departments to have plans 12
13. Amending plans 13
14. Review of plans 13
15. Effect of plans 13

Part 3 — Record keeping plans for government organizations

Division 1 — General

16. Content of plans 15

17. Effect of plans 16

Division 2 — Plans of government organizations other than those to which Division 3 applies

18. Application 16
19. Government organizations to have plans 17
20. Existing organizations to lodge draft plans 17
21. New organizations to lodge draft plans 17
22. Director to report on draft plans 17
23. Commission may approve draft plans 18
24. Amending plans 18

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

25. Commission to have plan 18
26. State Records Office to have plan 19
27. Schedule 3 organizations to have plans 20

Division 4 — Reviews of and periodic reports about plans

28. Review of plans 20
29. Government organizations to report periodically 21
30. Reports to be given to Parliament 21

Part 4 — Control of State records

31. Control of records that are not State archives 23
32. State archives to be transferred to State archives collection 23
33. Contracting-out of record keeping not prevented 24

Part 5 — State archives

Division 1 — General

34. State archives identified 25
35. State archives collection 25
36. Director has control of State archives collection 25

Division 2 — Restricted access archives

37. Restricted access archives identified 26
38. When archives cease to be restricted access archives 26

Division 3 — Archives keeping plan

39. Director to have plan 27
40. Approval of plan 28
41. Plan to be reviewed 28
42. Periodic report about plan 28

Division 4 — Destruction of archives

43. Destruction of archives 29

Part 6 — Access to government records

44. Records that are not State archives 30
45. State archives that are not restricted access archives 30
46. Restricted access archives 30
47. Archives at least 75 years old 31
48. Archives containing exceptionally sensitive information 31
49. Medical etc. information, limited access to 32
50. Applying for access to State archives 32
51. Access to archives may be controlled 33

Part 7 — Recovering government records

52. Direction to deliver 34
53. Court action to recover 34
54. Compensation for recovered records 34
55. Reciprocal agreements to recover government records 35
56. No limitation period etc. 35

Part 8 — State Records Commission

Division 1 — General

57. Commission established 36
58. Membership 36
59. Provisions about membership and meetings 36
60. Functions 36
61. Principles and standards 37
62. Committees of Commission 38
63. Facilities and services for Commission 39

64. Annual and special reports to Parliament 40

Division 2 — Relationship with the Minister

65. Commission to be generally independent 41
66. Minister to have access to information 41

Division 3 — Investigative powers

67. Commission's right of access to government records 42
68. Commission may request report on record keeping 42
69. Commission to have powers of special inquirer under *Public Sector Management Act 1994* 43

Part 9 — Administrative matters

70. Director of State Records 45
71. Staff 45
72. State Records Office 45
73. Director's functions 45
74. Director's right of access to government records 46
75. Director's contractual powers 47

Part 10 — General

76. Information about Aboriginal Australians 48
77. Confidentiality 48
78. Offences 49
79. Evidential matters 50
80. Protection from defamation or breach of confidence actions 51
81. Protection from criminal actions 52
82. Protection from personal liability for wrongdoing 52
83. Crown's rights in respect of government records 52
84. Regulations 52

Schedule 1 — Government organizations

Schedule 2 — Organizations that are not government organizations

Schedule 3 — Certain government organizations

Schedule 4 — Provisions applicable to the Commission

1.	Terms used	57
2.	Term of office of the appointed member	57
3.	Chairperson	57
4.	Meetings	58
5.	Conflicts of interest	58
6.	Leave of absence	59
7.	Remuneration	59

Notes

Compilation table	60
Uncommenced provisions table	61

Defined terms

Western Australia

State Records Act 2000

An Act to provide for the keeping of State records and for related purposes.

Part 1 — Preliminary

1. Short title

This Act may be cited as the *State Records Act 2000.*

2. Commencement

(1) This Act comes into operation on a day fixed by proclamation.

(2) Different days may be fixed under subsection (1) for different provisions.

3. Terms used

(1) In this Act —

authorised applicant, in relation to an application to the Commission, means a person authorised under section 4 to make the application;

Commission means the State Records Commission established by section 57;

control, in relation to a record, means the responsibility for keeping it but does not include the responsibility for creating it;

destroy, in relation to a record, means to deal with the record —

(a) so that any or all of the information recorded or stored on it is obliterated or rendered illegible or irrecoverable; or

(b) so that it can not convey a meaning in a visible, audible or recoverable form;

Director means the Director of State Records referred to in section 70;

exempt record means a record —

(a) control of which is given by a State organization to another person in the course of the organization's operations;

(b) that is part of publicly available library material held by a State organization for reference purposes;

(c) that was not created by a State organization and that is part of the collection of a State collecting institution;

FOI Act means the *Freedom of Information Act 1992*;

government organization means an organization in Schedule 1 but does not include an organization in Schedule 2;

government organization employee means —

(a) a person who, whether or not an employee, alone or with others governs, controls or manages a government organization; or

(b) a person who, under the *Public Sector Management Act 1994*, is a public service officer of a government organization; or

(c) a person who is engaged by a government organization, whether under a contract for services or otherwise,

and includes, in the case of a government organization referred to in item 5 or 6 of Schedule 1, a ministerial officer (as defined in the *Public Sector Management Act 1994*) assisting the organization;

government record means a record created or received by —

(a) a government organization; or

(b) a government organization employee in the course of the employee's work for the organization,

but does not include an exempt record;

keep, in relation to a record, has the meaning affected by subsection (2);

parliamentary department means a department that is deemed to have been constituted in relation to the administration of Parliament for the purposes of the *Financial Management Act 2006* by regulations made for the purposes of section 5(1) of that Act;

parliamentary record means a record created or received by —

(a) a parliamentary department; or

(b) a person in the course of the person's work for the department, whether the person is employed under a contract of service or is engaged under a contract for services or otherwise,

but does not include an exempt record;

record means any record of information however recorded and includes —

(a) any thing on which there is writing or Braille; and

(b) a map, plan, diagram or graph; and

(c) a drawing, pictorial or graphic work, or photograph; and

(d) any thing on which there are figures, marks, perforations, or symbols, having a meaning for persons qualified to interpret them; and

(e) anything from which images, sounds or writings can be reproduced with or without the aid of anything else; and

(f) any thing on which information has been stored or recorded, either mechanically, magnetically, or electronically;

record keeping plan means —

(a) in relation to a parliamentary department, the record keeping plan approved in respect of the department under Part 2, as the plan is amended from time to time under that Part;

(b) in relation to a government organization, the record keeping plan approved in respect of the organization under Part 3, as the plan is amended from time to time under that Part;

relevant Minister, in relation to a Schedule 3 organization, means the Minister to whom the administration of the Act under which the organization is established or continued is for the time being committed by the Governor;

reproduce, in relation to a record, has the meaning affected by subsection (3);

restricted access archive means a State archive that is a government record and to which access is restricted until it is of a certain age;

retention period, in relation to a record, means the period for which the record must be kept before it may be destroyed;

Schedule 3 organization means a government organization in Schedule 3;

State archive means a State record that is to be retained permanently;

State archives collection means the collection of State archives referred to in section 35;

State collecting institution means —

(a) the Art Gallery of Western Australia preserved and continued by the *Art Gallery Act 1959*; and

(b) the State Reference Library (as defined in the *Library Board of Western Australia Act 1951*); and

(c) the Western Australian Museum constituted under the *Museum Act 1969*;

State organization means —

(a) a parliamentary department; or

(b) a government organization;

State record means —

(a) a parliamentary record; or

(b) a government record;

State Records Office means the entity referred to in section 72;

successor, in relation to a government organization that is abolished or that ceases to be a government organization, means the government organization (if any) that takes over that organization's functions;

unauthorised possession, in relation to a government record, means possession that is not authorised by any of the following —

(a) the record keeping plan of the government organization that last had possession of, or that has the control of, the record;

(b) the government organization that last had possession of, or that has the control of, the record;

(c) the archives keeping plan;

(d) the Director;

(e) a written law;

(f) an order or determination of a court or tribunal.

(2) In this Act a reference to keeping records or record keeping includes a reference —

(a) to creating, maintaining, indexing, organizing, storing, preserving, securing, retaining and managing records; and

(b) to maintaining, preserving, securing and retaining the means by which any information on a record can be recovered.

(3) In this Act a reference to reproducing a record in another form includes a reference to reproducing the information in the record by another means.

For example: a paper record could be reproduced in the form of a microfilm or it could be scanned and the information in it digitised for reproduction by means of a computer.

(4) In this Act a State organization's State records are those records that the organization has created or received or taken control of.

(5) In this Act a reference to transferring a record to another person includes a reference to transferring the means of recovering the record's information to the person.

(6) In this Act the age of a record is to be determined from the date when it first became a State record.

(7) Notes and examples in this Act are provided to assist understanding and do not form part of the Act.

[Section 3 amended: No. 77 of 2006 Sch. 1 cl. 159(1).]

4. Authorised applicant, meaning of

If under section 37(2)(b), 38(3), or 48(3) a government organization could apply to the Commission in relation to a State archive but the organization has been abolished or has ceased to be a government organization, then the application may be made by —

(a) the successor (if any) to the former organization that took over the function of the former organization to which the archive most closely relates; or

(b) the Minister administering the *Royal Commissions Act 1968* if the former organization was a Royal Commission; or

(c) the Director in any other case.

5. Act binds Crown

This Act binds the Crown.

6. Application of Act to records created or received before commencement

This Act applies to any record that on the commencement of this Act is a State record, even though the record was created or received by or on behalf of a State organization before then and notwithstanding that the organization may have been abolished or ceased to be a State organization.

7. Application of Act to State organizations

This Act applies to a State organization unless this Act or another written law expressly says otherwise.

8. Application of Act to former government organizations

(1) In this section —

former organization means a government organization that is abolished or that ceases to be a government organization.

(2) A government organization that is about to become a former organization is to notify the Director accordingly.

(3) Subject to Part 4, control of a government record kept by a former organization is to be taken —

(a) if there is only one successor to the former organization — by that successor; or

(b) if there are 2 or more successors to the former organization — by the successor that takes over the function to which the record most closely relates; or

(c) if a person that is not a government organization takes over the function of the former organization to which the record relates — by that person; or

(d) if the functions of the former organization are not taken over by any person — by a government organization designated by the Minister.

(4) A government organization that takes control of a government record from a former organization must keep that record in accordance with the former organization's record keeping plan until the organization's own record keeping plan is amended.

(5) If a person that is not a government organization takes control of a government record from a former organization —

(a) the person is to be taken to be a government organization for the purposes of this Act; and

(b) the former organization's record keeping plan is to be taken to be the person's record keeping plan.

(6) This section is subject to any express provision in a written law about the records of a former organization.

9. Relationship of this Act with other enactments

(1) If a provision in another written law requires a government organization to keep a record in respect of any matter and that provision is inconsistent with a provision in this Act, the provision in the other written law prevails.

(2) This Act does not affect the operation of the *Royal Commission (Custody of Records) Act 1992*.

10. Individual responsible for State organization's obligations

(1) The individual responsible for ensuring that a parliamentary department complies with this Act is the individual who under the *Financial Management Act 2006* is the accountable authority for that department.

(2) Where a government organization is not an individual, the individual responsible for ensuring that a government organization complies with this Act is the individual who, under the FOI Act, is the principal officer of the organization.

(3) If under the FOI Act a government organization that is not an individual does not have a principal officer, the individual responsible for ensuring that the organization complies with this Act is the individual who holds the office or class of office prescribed by the regulations to be the office responsible in respect of that organization.

(4) The chief executive officer of the department principally assisting the Premier is responsible for ensuring that the

government organizations described in items 3, 4, 5 and 6 of Schedule 1 comply with this Act.

[Section 10 amended: No. 77 of 2006 s. 6 and Sch. 1 cl. 159(2).]

Part 2 — Record keeping plans for parliamentary departments

11. Content of plans

(1) A record keeping plan in respect of a parliamentary department is a record setting out —

(a) the matters about which parliamentary records are to be created by the department; and

(b) how the department is to keep its parliamentary records.

(2) A parliamentary department's record keeping plan must be consistent with any written law to which the department is subject when performing its functions.

(3) Without limiting subsection (1), a parliamentary department's record keeping plan must set out —

(a) those parliamentary records that will be retained permanently; and

(b) the retention period for those parliamentary records that are not to be retained permanently; and

(c) the systems to ensure the security of the parliamentary records and compliance with the record keeping plan.

(4) A parliamentary department's record keeping plan may set out the manner in which records will be created.

(5) A parliamentary department's record keeping plan may provide —

(a) for a parliamentary record to be reproduced in another form;

(b) for the destruction of a parliamentary record if a reproduction of it is being kept, even though the destruction occurs at a time when the record would otherwise not be able to be lawfully destroyed.

(6) A parliamentary department's record keeping plan may set out —

(a) whether or not public access is to be permitted to a parliamentary record or class of parliamentary record;

(b) if public access is to be permitted, the age of the record at which it will be permitted.

12. Parliamentary departments to have plans

(1) Each parliamentary department is to have a record keeping plan approved under this section.

(2) Within 12 months after this section commences a parliamentary department must submit a draft record keeping plan —

(a) in the case of a department concerned with administration of the Legislative Council — to the President of the Legislative Council; and

(b) in the case of a department concerned with the administration of the Legislative Assembly — to the Speaker of the Legislative Assembly; and

(c) in the case of any other department — to both the President and the Speaker.

(3) A draft record keeping plan must be prepared in consultation with the Commission and taking notice of any relevant principles and standards established by the Commission under section 61.

(4) The President or the Speaker, as the case requires, may approve or refuse to approve a draft record keeping plan submitted under subsection (2)(a) or (b).

(5) A draft record keeping plan submitted under subsection (2)(c) may be refused approval either by the President or by the Speaker or it may be approved by both of them.

(6) If a parliamentary department's draft record keeping plan is refused approval the department must submit another draft plan

within one month or such time as is directed by the President or the Speaker or both, as the case requires.

13. Amending plans

If a parliamentary department wants to amend its record keeping plan it must submit a draft amendment to the relevant person under section 12(2) and section 12(3) to (6) apply to the draft amendment as if it were a draft record keeping plan.

14. Review of plans

(1) A parliamentary department may review its record keeping plan at any time.

(2) Not more than 5 years is to elapse between the approval of a parliamentary department's record keeping plan and a review of it or between one review and another.

(3) When a parliamentary department has reviewed its record keeping plan, it must submit a report of the review to the relevant person under section 12(2).

15. Effect of plans

(1) A parliamentary department's record keeping plan must be complied with by —

(a) every member of Parliament; and

(b) the Clerk and Deputy Clerks of both Houses; and

(c) every person employed in a parliamentary department; and

(d) every person engaged under a contract for services to provide services to a parliamentary department.

(2) If a person does not comply with a parliamentary department's record keeping plan, the department is to report the matter to the President or the Speaker or both of them, as the case requires.

(3) If a matter is reported under subsection (2), the President or the Speaker or both of them, as the case requires, may take such action as they see fit including reporting the matter to a House or to both Houses which may deal with the matter as a contempt.

Part 3 — Record keeping plans for government organizations

Division 1 — General

16. Content of plans

(1) A record keeping plan in respect of a government organization is a record setting out —

(a) the matters about which records are to be created by the organization; and

(b) how the organization is to keep its government records.

(2) A government organization's record keeping plan must —

(a) comply with principles and standards established by the Commission under section 61; and

(b) ensure that the government records kept by the organization properly and adequately record the performance of the organization's functions; and

(c) be consistent with any written law to which the organization is subject when performing its functions.

(3) Without limiting subsection (1), a record keeping plan must set out —

(a) those government records that will be State archives; and

(b) those State archives that will be restricted access archives and the ages at which they will cease to be restricted access archives; and

(c) the retention period for those government records that are not State archives; and

(d) the systems to ensure the security of government records and compliance with the record keeping plan.

Note for this subsection:

retention period is defined in section 3.

(4) A record keeping plan may set out the manner in which records will be created.

(5) A record keeping plan may provide —

(a) for a government record to be reproduced in another form;

(b) for the destruction of a government record if a reproduction of it is being kept, even though the destruction occurs at a time when the record would otherwise not be able to be lawfully destroyed.

(6) A government organization's record keeping plan may provide that some or all of the organization's State archives —

(a) are never to be transferred to the State archives collection under section 32(1); or

(b) are to be transferred at a time other than that prescribed by that section.

17. Effect of plans

A government organization's record keeping plan must be complied with by —

(a) the government organization; and

(b) every government organization employee of the organization.

Division 2 — Plans of government organizations other than those to which Division 3 applies

18. Application

This Division applies to every government organization other than the Commission, the State Records Office and Schedule 3 organizations.

19. Government organizations to have plans

Every government organization must have a record keeping plan that has been approved by the Commission under section 23.

20. Existing organizations to lodge draft plans

(1) A government organization in existence when this Act commences must submit its draft record keeping plan to the Director.

(2) The Commission, by order or orders published in the *Gazette*, is to prescribe the timing of the progressive introduction after the commencement of this Act of the requirement in subsection (1).

(3) The Commission must ensure that subsection (1) is complied with by all government organizations within 2 years after principles and standards first come into operation under section 61(3).

21. New organizations to lodge draft plans

A government organization that is created after this Act commences —

(a) must submit its draft record keeping plan to the Director within 6 months after its creation and in any event before it is abolished or ceases to be a government organization; and

(b) must keep records in accordance with principles and standards established by the Commission under section 61 until the Commission approves its record keeping plan.

22. Director to report on draft plans

(1) The Director must prepare a report for the Commission about every draft record keeping plan submitted to the Director.

(2) The Director's report must include a recommendation as to whether or not the draft plan should be approved by the Commission.

(3) The Director must submit the draft plan and his or her report about it to the Commission.

23. Commission may approve draft plans

(1) The Commission may approve or refuse to approve a government organization's draft record keeping plan.

(2) If the Commission refuses to approve a draft plan it must give its reasons for doing so to the government organization concerned.

(3) If a government organization's draft plan is refused approval the organization must submit another draft plan to the Director within such time as the Commission directs.

24. Amending plans

(1) If a government organization wants to amend its record keeping plan it must submit a draft amendment to the Director.

(2) Sections 22 and 23 apply to the draft amendment as if it were a draft record keeping plan.

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

25. Commission to have plan

(1) The Commission must have a record keeping plan that has been approved by the Minister under this section.

(2) The Commission must submit its draft record keeping plan to the Minister within 6 months after this section commences.

(3) The Minister may approve or refuse to approve the draft plan.

(4) If the Minister refuses to approve the draft plan the Minister must give reasons for doing so to the Commission.

(5) If the Commission's draft plan is refused approval the Commission must submit another draft plan within such time as the Minister directs.

(6) If the Commission wants to amend its record keeping plan it must submit a draft amendment to the Minister and subsections (3) to (5) apply as if the draft amendment were a draft plan.

26. State Records Office to have plan

(1) The State Records Office must have a record keeping plan that has been approved by the Commission under this section.

(2) The State Records Office's plan is not to relate to the State archives collection.

(3) The Director must submit the State Records Office's draft record keeping plan to the Commission within 6 months after this section commences.

(4) The Commission may approve or refuse to approve the draft plan.

(5) If the Commission refuses to approve the draft plan it must give its reasons for doing so to the Director.

(6) If the State Records Office's draft plan is refused approval the Director must submit another draft plan within such time as the Commission directs.

(7) If the Director wants to amend the State Records Office's record keeping plan the Director must submit a draft amendment to the Commission and subsections (4) to (6) apply as if the draft amendment were a draft plan.

27. Schedule 3 organizations to have plans

(1) Every Schedule 3 organization must have a record keeping plan that has been approved by its relevant Minister under this section.

(2) A Schedule 3 organization must submit its draft record keeping plan to its relevant Minister.

(3) The Commission, by order or orders published in the *Gazette*, is to prescribe the timing of the progressive introduction after the commencement of this Act of the requirement in subsection (2).

(4) The relevant Minister may approve or refuse to approve the organization's draft record keeping plan.

(5) If the relevant Minister refuses to approve the draft plan the relevant Minister must give reasons for doing so to the organization.

(6) If the organization's draft plan is refused approval it must submit another draft plan within such time as the relevant Minister directs.

(7) If the organization's draft plan is approved, it must give the Commission a copy of the approval.

(8) If a Schedule 3 organization wants to amend its record keeping plan it must submit a draft amendment to the relevant Minister and subsections (4) to (7) apply as if the draft amendment were a draft plan.

Division 4 — Reviews of and periodic reports about plans

28. Review of plans

(1) A government organization may review its record keeping plan at any time.

(2) A government organization must review its record keeping plan whenever there is any significant change to the organization's functions.

(3) The Commission may require a government organization, other than a Schedule 3 organization, to review its record keeping plan.

(4) The relevant Minister may require a Schedule 3 organization to review its record keeping plan.

(5) Not more than 5 years is to elapse between the approval of a government organization's record keeping plan and a review of it or between one review and another.

(6) When a government organization, other than the Commission or a Schedule 3 organization, has reviewed its record keeping plan it must submit a report of the review to the Commission.

(7) When a Schedule 3 organization has reviewed its record keeping plan it must submit a report of the review to its relevant Minister.

29. Government organizations to report periodically

(1) Every government organization, other than a Schedule 3 organization, must report in writing to the Commission at such intervals as the Commission from time to time directs about its record keeping plan and its compliance with the plan.

(2) A Schedule 3 organization must report in writing to its relevant Minister at such intervals as the relevant Minister from time to time directs about its record keeping plan and its compliance with the plan.

30. Reports to be given to Parliament

(1) As soon as practicable after the Commission receives a report under section 29 it must give a copy to Parliament.

(2) As soon as practicable after a relevant Minister receives a report under section 29 the Minister must give a copy to Parliament.

(3) For the purpose of subsections (1) and (2), section 64(3), with any necessary changes, applies.

Part 4 — Control of State records

31. Control of records that are not State archives

A State organization must keep those of its State records that are not State archives until it destroys them in accordance with its record keeping plan.

32. State archives to be transferred to State archives collection

(1) Unless its record keeping plan says otherwise, a government organization must transfer a State archive that is under its control to the State archives collection when the archive becomes 25 years old.

(2) A government organization may transfer a State archive under its control to the State archives collection before the archive becomes 25 years old if the organization does not require the archive for current administrative purposes.

(3) A State organization must give the Director at least 30 days written notice of its intention to transfer a State archive to the State archives collection.

(4) If the Director is unable to accept the transfer of the State archive to the State archives collection at the intended time, the Director must give the State organization written notice of that fact and directions as to keeping the archive until the Director is able to accept the transfer of the archive.

(5) A State organization that is given notice under subsection (4) must comply with the directions at its expense.

(6) When a State archive is transferred to the State archives collection by a State organization —

(a) the organization's record keeping plan ceases to apply to the archive; and

(b) the organization ceases to have control of it.

(7) This section does not apply to a government organization until a record keeping plan has been approved under Part 3 in respect of it.

33. Contracting-out of record keeping not prevented

(1) This Part does not prevent a State organization from entering into a contract or arrangement with a person under which the person is to perform any aspect of record keeping for the organization.

(2) If a government organization enters into such a contract or arrangement with a person that is not a government organization it must notify the Director accordingly.

(3) If a State organization enters into such a contract or arrangement with a person, any State record subject to the contract or arrangement —

(a) remains under the control of the organization and control of it is not to be taken as having been transferred to the person; and

(b) remains subject to this Act and the organization's record keeping plan.

Part 5 — State archives

Division 1 — General

34. State archives identified

A State record is a State archive if —

(a) the record keeping plan of the State organization that has control of it says it is; or

(b) another written law says it is; or

(c) it is in the State archives collection.

35. State archives collection

The State archives collection consists of —

(a) State archives that on the commencement of this Act are taken to be in the collection; and

(b) State archives that have been transferred to the collection under section 32; and

(c) records that have been transferred to the collection under another written law; and

(d) records that have been transferred to the collection with the approval of the Director.

36. Director has control of State archives collection

(1) The Director has control of the State archives that are in the State archives collection.

(2) The Director must keep the State archives that are in the State archives collection in accordance with the archives keeping plan.

Division 2 — Restricted access archives

37. Restricted access archives identified

(1) A State archive that is a government record and that is not in the State archives collection is a restricted access archive if the record keeping plan of the government organization that has control of it says it is.

(2) A State archive that is a government record and that is in the State archives collection is a restricted access archive if —

(a) at the time when it was transferred to the collection by a government organization, the organization's record keeping plan said it was; or

(b) after it is transferred to the State archives collection by a government organization, the Commission, on an application by the government organization or by an authorised applicant, directs that it is a restricted access archive.

(3) If an application is made under subsection (2)(b) in respect of a State archive, the archive is to be treated as if it were a restricted access archive until the Commission makes its decision.

(4) If under subsection (2)(b) the Commission directs that a State archive is a restricted access archive, it must set the age at which the archive will cease to be a restricted access archive.

(5) The Commission must review a direction made under subsection (2)(b) at least once in the 5 years after it is made and, until the archive ceases to be a restricted access archive, at least once in the 5 years after any review.

38. When archives cease to be restricted access archives

(1) A State archive that is a restricted access archive and that is not in the State archives collection ceases to be a restricted access archive at the age stated in respect of that archive by the record

keeping plan of the government organization that has control of it.

(2) A State archive that is a restricted access archive and that is in the State archives collection ceases to be a restricted access archive —

(a) at the age set for that archive by the record keeping plan of the government organization that transferred it to the collection at the time it was transferred; or

(b) the age set by the Commission under section 37 or under subsection (4).

(3) An application may be made to the Commission for a direction changing the age at which a restricted access archive in the State archives collection ceases to be a restricted access archive by the State organization that transferred the archive to the collection or by an authorised applicant.

(4) On such an application the Commission may change the age at which the restricted access archive ceases to be so.

(5) The Director must give effect to any direction made by the Commission.

Division 3 — Archives keeping plan

39. Director to have plan

(1) The Director must have an archives keeping plan that is approved by the Commission under section 40.

(2) The archives keeping plan must set out how State archives in the State archives collection are to be kept by the Director.

(3) The archives keeping plan may provide —

(a) for a State archive to be reproduced in another form;

(b) for the destruction of a State archive if a reproduction of it is being kept.

40. Approval of plan

(1) The Director must submit a draft archives keeping plan to the Commission within 12 months after this section commences.

(2) The Commission may approve or refuse to approve the draft plan.

(3) If the Commission refuses to approve the draft plan it must give its reasons for doing so to the Director.

(4) If a draft plan is refused approval the Director must submit another draft plan within such time as the Commission directs.

(5) If the Director wants to amend the archives keeping plan the Director must submit a draft amendment to the Commission and subsections (2) to (4) apply as if the draft amendment were a draft plan.

41. Plan to be reviewed

(1) The Director may review the archives keeping plan at any time.

(2) The Commission may require the Director to review the archives keeping plan.

(3) Not more than 5 years is to elapse between the approval of the archives keeping plan and a review of it or between one review and another.

(4) When the Director has reviewed the archives keeping plan the Director must submit a report of the review to the Commission.

42. Periodic report about plan

(1) The Director must report in writing to the Commission at such intervals as the Commission from time to time directs about the archives keeping plan and compliance with it by the Director.

(2) Sections 30(1) and 64(3), with any necessary changes, apply in respect of the report.

Division 4 — Destruction of archives

43. Destruction of archives

(1) In this section —

State archive includes a class of State archives.

(2) If the Director is of the opinion that a State archive in the State archives collection (including any reproduction of it) should no longer be retained permanently the Director may apply to the Commission for permission to destroy it.

(3) On receipt of such an application, the Commission is to —

(a) refer the application to the State organization that had control of the archive before it was transferred to the State archives collection unless that organization has been abolished or has ceased to exist; and

(b) refer the application to any other State organization that in the Commission's opinion has an interest in the archive concerned; and

(c) publish in the *Gazette* and a newspaper circulating generally in the State a notice that gives details of the application and the archive concerned and that invites submissions from the public about the application.

(4) An organization to which an application is referred may make a submission to the Commission about the application.

(5) After considering the application and any submission received about it, the Commission may grant or refuse it and the Director is to give effect to the decision accordingly.

Part 6 — Access to government records

44. Records that are not State archives

If a government record is not a State archive, any right that a person may have to be given access to it is to be determined under the FOI Act.

45. State archives that are not restricted access archives

(1) This section applies to a State archive that is not a restricted access archive and not a parliamentary record.

(2) If the State archive is not in the State archives collection and is less than 25 years old, any right that a person may have to be given access to it is to be determined under the FOI Act.

(3) If the State archive —

(a) is in the State archives collection; or

(b) is not in the State archives collection but is at least 25 years old,

a person has a right to be given access to it, subject to section 49 and any express provision in another written law, and the FOI Act does not apply to or in relation to it.

46. Restricted access archives

(1) Any right that a person may have to be given access to a restricted access archive is to be determined under the FOI Act.

(2) A restricted access archive in the State archives collection is not a document of the Director or of the State Records Office for the purposes of the FOI Act.

(3) If a restricted access archive is in the State archives collection any application for access to it must be made under the FOI Act; but if the government organization to which the application

must be made has been abolished or has ceased to be a government organization, the application must be made —

(a) to the successor (if any) to the former organization that took over the function of the former organization to which the restricted access archive most closely relates; or

(b) to the Minister administering the *Royal Commissions Act 1968* if the former organization was a Royal Commission; or

(c) to the Director in any other case.

47. Archives at least 75 years old

(1) This section applies to a State archive that is not a parliamentary record and that is at least 75 years old and irrespective of —

(a) whether it was a restricted access archive when it turned 75; or

(b) whether it is in the State archives collection or not.

(2) Unless under section 48 the Commission has directed that the State archive is an exceptionally sensitive archive, a person has a right to be given access to the State archive, subject to section 49 and any express provision in another written law, and the FOI Act does not apply to or in relation to it.

48. Archives containing exceptionally sensitive information

(1) If the Commission is satisfied on an application made under subsection (3) that a State archive that is not a parliamentary record contains information of such exceptional sensitivity that there should not be a right to be given access to it under section 47, the Commission may direct that it is an exceptionally sensitive archive.

(2) If the Commission makes such a direction it must set the age of the archive at which, or the event on the occurrence of which, it will cease to be an exceptionally sensitive archive.

(3) An application may be made to the Commission for such a direction by the government organization that has control of a State archive or that transferred an archive to the State archives collection or by an authorised applicant.

(4) The Commission must review such a direction at least once in the 5 years after it is made and, until the State archive ceases to be an exceptionally sensitive archive, at least once in the 5 years after any review.

(5) When a State archive ceases to be an exceptionally sensitive archive, a person has a right to be given access to it, subject to section 49 and any express provision in another written law, and the FOI Act does not apply to or in relation to it.

49. Medical etc. information, limited access to

(1) A person is not entitled under section 45(3), 47(2) or 48(5) to have access to a State archive that contains information about another person's medical condition or about another person's disability (as defined in the *Disability Services Act 1993*) unless —

(a) the other person has consented to the person being given access; or

(b) that information is in a form that does not —

(i) disclose the identity of the other person; or

(ii) enable the identity of the other person to be ascertained.

(2) Subsection (1) does not apply to a State archive that is at least 100 years old.

50. Applying for access to State archives

(1) An application for access to a State archive to which there is a right of access under section 45(3), 47(2) or 48(5) is to be made —

(a) if it is in the State archives collection — to the Director;

(b) if it is not in the collection — to the government organization that has control of it.

(2) Access to the State archive may be given in any of the ways set out in section 27 of the FOI Act.

(3) A government organization that had access to a State archive before it was transferred to the State archives collection is, on application to the Director, entitled to have access to it at any reasonable time.

51. Access to archives may be controlled

For the purpose of ensuring the safe custody of and protecting the condition of a State archive, whether in the State archives collection or not, the Director may attach conditions to a person or a government organization having access to it.

Part 7 — Recovering government records

52. Direction to deliver

(1) If the Director believes that a person has unauthorised possession of a government record (whether or not ownership of the record has passed to the person), the Director may direct the person to deliver the record to the Director.

(2) The direction must be by a written notice signed by the Director and given to the person and must specify a reasonable period for delivery of the record.

(3) The person must comply with the direction.

Penalty: $3 000.

53. Court action to recover

(1) If a person does not comply with a direction made under section 52, the Director may apply to the District Court for an order that the person deliver the government record to the Director.

(2) If the Court is satisfied that the person has unauthorised possession of the record (whether or not ownership of the record has passed to the person), it may —

(a) order the person to deliver the record to the Director; or

(b) by its warrant direct the sheriff to seize the record.

54. Compensation for recovered records

(1) If a person loses possession of a government record as a result of a direction given under section 52 or an order or warrant issued under section 53, the person may apply to the Minister for compensation for being deprived of the record.

(2) On such an application the Minister may pay the person such compensation as the Minister thinks fit.

55. Reciprocal agreements to recover government records

(1) In this section —

reciprocal person means a person that, under a law of the Commonwealth, another State or a Territory that corresponds with this Act, has functions that correspond with the Director's.

(2) The Director may enter into an agreement with a reciprocal person under which —

(a) the Director may take action in this State to recover a record that under the law of the other place corresponds to a government record and to give the record to the reciprocal person; and

(b) the reciprocal person may take action in the other place to recover a government record and to give the record to the Director.

(3) Sections 52 and 53, with any necessary changes, apply for the purpose of the Director taking action to recover a record for a reciprocal person.

56. No limitation period etc.

(1) The Crown's and the Director's right to take legal action to recover a government record, whether under this Part or otherwise, is not subject to any limitation period.

(2) The Crown's and the Director's right to take legal action to recover a government record otherwise than under this Part is not limited by this Part.

Part 8 — State Records Commission

Division 1 — General

57. Commission established

A body called the State Records Commission is established.

58. Membership

The members of the Commission are —

(a) the person who is the Auditor General, or who is acting in that office, under the *Auditor General Act 2006*; and

(b) the person who is the Information Commissioner, or who is acting in that office, under the FOI Act; and

(c) the person who is the Parliamentary Commissioner for Administrative Investigations, or who is acting in that office, under the *Parliamentary Commissioner Act 1971*; and

(d) a person, appointed by the Governor, who has experience in record keeping and who is not a public service officer within the meaning of the *Public Sector Management Act 1994*.

[Section 58 amended: No. 77 of 2006 Sch. 1 cl. 159(3).]

59. Provisions about membership and meetings

Schedule 4 has effect.

60. Functions

(1) The Commission's functions are as set out in this Act and include —

(a) monitoring the operation of and compliance with this Act; and

(b) monitoring compliance by government organizations with record keeping plans; and

(c) inquiring into breaches or possible breaches of this Act.

(2) In performing its functions the Commission is, as far as possible to ensure —

(a) that State record keeping is of a standard that best serves the interests of the people of this State; and

(b) that, subject to the law, government records are accessible to the public.

61. Principles and standards

(1) The Commission is to establish principles and standards —

(a) governing record keeping by State organizations; and

(b) governing contracts or arrangements entered into by State organizations with persons under which the persons are to perform any aspect of record keeping for the organizations; and

(c) for determining which State records should be State archives; and

(d) for determining which State archives that are government records should be restricted access archives and the ages at which they should cease to be a restricted access archive; and

(e) for determining which State archives should not be transferred to the State archives collection under section 32(1); and

(f) for determining the retention periods for State records that are not to be State archives.

(2) Before establishing, amending or repealing the principles and standards, the Commission is to —

(a) consult such people as the Commission considers desirable and practical to consult; and

(b) take into account the impact which the principles and standards may have on the efficiency and effectiveness

of State organizations and endeavour to minimize any adverse impact.

(3) The principles and standards —

(a) are to be published in the *Gazette*; and

(b) come into operation on the day on which they are published in the *Gazette* or on such later date as is specified in the principles or standards; and

(c) may be amended or repealed by the Commission by subsequent principles or standards.

(4) Section 42 of the *Interpretation Act 1984* applies to and in relation to the principles and standards as if they were regulations within the meaning of that section.

(5) Subject to subsection (6), principles or standards have in relation to other Acts and subsidiary legislation made under them the force of law as if enacted as part of this Act, but are subject to any regulations made under this Act.

(6) Nothing in subsection (5) prevents a court from inquiring into, and deciding, whether or not a principle or standard or any of its provisions —

(a) has been validly established;

(b) is inconsistent with a provision of this Act;

(c) is unrelated to the power conferred by this section to establish principles and standards,

as if the principle or standard or its provision were a regulation within the meaning of the *Interpretation Act 1984*.

62. Committees of Commission

(1) The Commission is to establish a committee to advise it about —

(a) the State records that should be State archives; and

(b) the retention periods for those State records that are not to be State archives; and

(c) associated matters.

(2) The committee is to include representatives from the Public Service and bodies concerned with record keeping.

(3) The Commission may establish other committees to assist it in the performance of its functions.

(4) A committee need not include a member of the Commission as a member.

(5) The procedure for calling committee meetings and for the conduct of business at those meetings is to be as determined by the Commission or (subject to any determination of the Commission) by the committee.

63. Facilities and services for Commission

(1) The Minister is to ensure that the Commission is provided with the facilities and services that are reasonably necessary to enable it to perform its functions.

(2) Without limiting subsection (1) the Minister may arrange for the Commission to make use, either full-time or part-time, of —

(a) the services of any person employed under Part 3 or section 100 of the *Public Sector Management Act 1994*; or

(b) any facilities or services of a department of the Public Service.

(3) The arrangement is to be made by the Minister with —

(a) the department of the Public Service that principally assists the Minister in the administration of this Act; or

(b) in the case of any other constituent of the Public Service, the relevant Minister, and if necessary the

relevant employing authority (within the meaning of the *Public Sector Management Act 1994*),

on terms and conditions that are agreed between them.

(4) Without limiting subsection (1) the Minister may arrange for the chief executive officer of the department that principally assists the Minister in the administration of this Act to engage or employ, under section 100 of the *Public Sector Management Act 1994*, consultants or professional, technical or other assistance to enable the Commission to carry out its functions.

64. Annual and special reports to Parliament

(1) Before 1 November in each year the Commission is to submit its annual report to Parliament about —

(a) the activities of the Commission during the previous financial year; and

(b) the operation of this Act and about any legislative or administrative changes that, in the Commission's view, could be made to help the objects of the Act to be achieved.

(2) In addition to its annual report the Commission may at any time submit a written report to Parliament about a contravention of this Act by a government organization.

(3) Such a report is to be given to the President of the Legislative Council and to the Speaker of the Legislative Assembly who respectively must cause a copy of it to be laid before the Legislative Council and the Legislative Assembly within 15 sitting days after the report is received.

(4) The Commission must give the Minister a copy of any report it submits to Parliament as soon as is practicable after doing so.

Division 2 — Relationship with the Minister

65. Commission to be generally independent

(1) The Commission is not subject to direction by the Minister or any other person in the performance of its functions, except as provided in this Division.

(2) The Minister may, after consulting the Commission, issue the Commission with directions as to the general policy to be followed in the performance of any of the Commission's functions.

(3) A direction may not be issued under subsection (2) in respect of a particular government record or a particular government organization.

(4) Every direction under this section must be in writing and the text of it must be included in the Commission's annual report.

66. Minister to have access to information

(1) In this section —

information means information specified, or of a description specified, by the Minister that relates to the functions of the Commission.

(2) The Minister is entitled —

(a) to have information in the possession of the Commission; and

(b) where the information is in or on a record, to have, and make and retain copies of, that record.

(3) For the purposes of subsection (2) the Minister may —

(a) request the Commission to furnish information to the Minister;

(b) request the Commission to give the Minister access to information; and

(c) for the purposes of paragraph (b) make use of the staff of the Commission to obtain the information and furnish it to the Minister.

(4) The Commission shall comply with a request made under subsection (3) and make its facilities and services available to the Minister for the purposes of paragraph (c) of that subsection.

Division 3 — Investigative powers

67. Commission's right of access to government records

(1) A member of the Commission or a person authorised by the Commission is entitled to have access to the government records of a government organization, other than a Schedule 3 organization, for the purposes of performing the Commission's functions.

(2) Subsection (1) has effect despite any other written law.

(3) If the relevant Minister of a Schedule 3 organization so authorises the Commission, the Commission is entitled to have access to the government records of the organization for the purposes of performing the Commission's functions.

(4) Government records to which the Commission is entitled to access under subsection (1) or (3) are not documents of the Commission for the purposes of the FOI Act.

68. Commission may request report on record keeping

(1) The Commission may at any time request a government organization, other than a Schedule 3 organization, to report to it about the organization's record keeping or an aspect of the organization's record keeping.

(2) The Commission may at any time request a Schedule 3 organization to report to its relevant Minister about the organization's record keeping or an aspect of the organization's record keeping.

(3) The request must be in writing and must specify when the report is to be provided to the Commission or the relevant Minister, as the case requires.

(4) An organization that is requested to report to the Commission or a relevant Minister must do so in accordance with the request.

(5) A relevant Minister to whom a report is provided by a Schedule 3 organization must give to the Commission —

(a) written notice of the report; and

(b) if the report indicates the Schedule 3 organization is, or is not, complying with its record keeping plan, written notice of the compliance or failure to comply.

69. Commission to have powers of special inquirer under *Public Sector Management Act 1994*

(1) For the purpose of performing its functions, the Commission may investigate the record keeping of any government organization, other than a Schedule 3 organization.

(2) For that purpose the Commission, or a person authorised in writing by it, has all the powers conferred on a special inquirer by sections 24I and 24J of, and Schedule 4 to, the *Public Sector Management Act 1994* and those provisions apply to and in relation to —

(a) the Commission or that person as if it or the person were a special inquirer under that Act; and

(b) the investigation as if it were a special inquiry under that Act.

(3) A person authorised by the Commission under subsection (2) to make an investigation must —

(a) within such period as the Commission requires, prepare a report on the conduct, findings and any recommendations of the investigation; and

(b) immediately after preparing the report, provide the Commission with a copy of it.

[Section 69 amended: No. 39 of 2010 s. 85.]

Part 9 — Administrative matters

70. Director of State Records

(1) There is to be an office in the Public Service called the Director of State Records or by such other name as the Minister from time to time directs.

(2) A person is to be appointed to the office under Part 3 of the *Public Sector Management Act 1994*.

71. Staff

Officers may be appointed or made available under Part 3 of the *Public Sector Management Act 1994* to enable the Director to perform the Director's functions.

72. State Records Office

The entity consisting of the Director and the officers referred to in section 71 is to be called the State Records Office or by such other name as the Minister from time to time directs.

73. Director's functions

(1) In addition to the Director's other functions under this Act, the Director's functions are —

(a) to advise government organizations on record keeping and on training their staff in record keeping and to assist in such matters; and

(b) to advise government organizations on the preparation of and compliance with record keeping plans; and

(c) as to those State archives in the State archives collection to which there is unrestricted access, to provide —

(i) an information service about them; and

(ii) public access to them; and

(iii) appropriate facilities and services to enable them to be effectively used for administrative requirements and for study and research;

and

(d) to create and maintain a register of all State archives, including those that are not in the State archives collection; and

(e) to provide such advice and assistance to the Commission as the Commission requests; and

(f) to report to the Commission about —

(i) the operation and effectiveness of this Act; and

(ii) any breach or suspected breach of this Act by any person or State organization.

(2) The Director's function under subsection (1)(f)(ii) has effect despite any duty to keep information secret that the Director has under any other written law, whether enacted before or after the commencement of this Act.

(3) The Director may, either generally or as provided by the instrument of delegation, delegate to any person any of the Director's functions under this Act except this power of delegation.

(4) Performance of a function by a delegate is to be treated as performance by the Director.

74. Director's right of access to government records

(1) The Director is entitled to have access to the government records of a government organization, other than a Schedule 3 organization, for the purposes of monitoring the organization's compliance with its record keeping plan and this Act.

(2) Subsection (1) has effect despite any other written law.

(3) If the relevant Minister of a Schedule 3 organization so authorises the Director, the Director is entitled to have access to

the government records of the organization for the purposes of monitoring the organization's compliance with its record keeping plan and this Act.

(4) Government records to which the Director is entitled to access under subsection (1) or (3) are not documents of the Director for the purposes of the FOI Act.

75. Director's contractual powers

The Director may enter into a contract or an arrangement with any person under which —

(a) the person indexes, organizes, stores, preserves, secures, destroys or manages government records or State archives;

(b) the State Records Office indexes, organizes, stores, preserves, secures, destroys or manages records for the person.

Part 10 — General

76. Information about Aboriginal Australians

(1) If a State record contains information about —

(a) Aboriginal cultural material or an Aboriginal site (as those expressions are defined in the *Aboriginal Heritage Act 1972*); or

(b) any other matter relating to the heritage of Aboriginal Australians,

these decisions must not be made unless Aboriginal bodies concerned with that information have been consulted about the decision —

(c) a decision on whether the record will be a State archive;

(d) if the record is not a State archive, a decision as to the retention period for the record.

(2) If a State archive that is not a parliamentary record contains information about Aboriginal Australians or their culture the disclosure of which is likely to contravene Aboriginal tradition, these decisions must not be made unless Aboriginal bodies concerned with that tradition have been consulted about the decision —

(a) a decision on whether the archive will be a restricted access archive;

(b) a decision as to the age at which it will cease to be a restricted access archive.

[Section 76 amended: No. 27 of 2021 s. 353(2); No. 23 of 2023 s. 34.]

77. Confidentiality

(1) This section applies to —

(a) a person who is or was a member of the Commission, or a committee of it; and

(b) a person whose services the Commission makes or made use of, or who is or was engaged or employed to assist the Commission; and

(c) a person who is or was the Director or an officer in the State Records Office.

(2) A person to whom this section applies must not, directly or indirectly, disclose or make use of —

(a) any information that is in a State record to which the person has access in the course of duty;

(b) any information obtained in the course of duty,

except —

(c) for the purpose of performing functions under this Act;

(d) as required or allowed by this Act or under another written law;

(e) in the case of a government record, with the consent of the government organization that has control of it.

Penalty: $10 000.

78. Offences

(1) A government organization employee who does not keep a government record in accordance with the record keeping plan of the organization, commits an offence.

(2) A government organization employee who, without lawful authority, transfers, or who offers to transfer, the possession of a government record to a person who is not entitled to possession of the record, commits an offence.

(3) A government organization employee who destroys a government record commits an offence unless the destruction is authorised by the record keeping plan of the organization.

(4) A person who destroys a government record while the record is the subject of a notice under section 52 or an application made,

or order or warrant issued, under section 53, commits an offence.

(5) A person who has unauthorised possession of a government record and who destroys that record, commits an offence unless the person owns the record.

(6) It is a defence to a charge of an offence under subsection (2), (3), (4) or (5) to prove that the alleged act was done pursuant to —

(a) a written law; or

(b) an order or determination of a court or tribunal.

(7) It is a defence to a charge of an offence under subsection (5) to prove that the person had no reasonable cause to suspect that the record was a government record.

Penalty: $10 000.

79. Evidential matters

(1) A copy of a government organization's record keeping plan certified by a member of the Commission is evidence of the plan and its contents and of the fact that it has been made and approved under this Act.

(2) If under a State organization's record keeping plan a State record is reproduced in another form, the reproduction has the same evidential value as the record, in the absence of evidence to the contrary.

(3) For the purposes of subsection (2) a certificate signed by the individual who under section 10 is responsible for a government organization complying with this Act, or by his or her delegate, certifying that a record is a reproduction of a government record that has been reproduced under the organization's record keeping plan is evidence of the certificate's contents.

(4) A copy of a State archive certified as a copy by the Director has the same evidential value as the original, in the absence of evidence to the contrary.

(5) Unless the contrary is proved, it is to be presumed that a certificate under this section, purporting to have been signed by a person who is authorised to sign it was signed by a person who at the time was authorised to sign it.

(6) Subsections (2) to (5) are in addition to and do not affect the operation of the *Evidence Act 1906*.

80. Protection from defamation or breach of confidence actions

(1) When a State archive is transferred to the State archives collection under this Act by its author or any other person, neither person is criminally liable or liable in tort for doing so.

(2) If access to a State archive is given under this Act by a person who believes, in good faith, that this Act requires or permits the access to be given —

(a) an action in tort for defamation or breach of confidence does not lie against the Crown, a government organization or a government organization employee merely because access is given; and

(b) an action in tort for defamation or breach of confidence in respect of any publication involved in, or resulting from, the giving of access does not lie against the author of the archive or any other person by reason of the author or other person having supplied the archive to a government organization.

(3) The giving of access to a State archive under this Act does not constitute, for the purpose of the law on defamation or breach of confidence, an authorisation or approval of the publication of the archive, or any matter it contains, by the person to whom access is given.

81. Protection from criminal actions

If access to a State archive is given under this Act by a person who believes, in good faith, that this Act requires or permits the access to be given, the person is not guilty of an offence merely because access is given.

82. Protection from personal liability for wrongdoing

(1) An action in tort does not lie against a person for anything that the person has done, in good faith, in the performance or purported performance of a function under this Act.

(2) The protection given by subsection (1) applies even though the thing done as described in that subsection may have been capable of being done whether or not this Act had been enacted.

(3) Despite subsection (1), the Crown is not relieved of any liability that it might have for another person having done anything as described in that subsection.

(4) In this section, a reference to the doing of anything includes a reference to an omission to do anything.

83. Crown's rights in respect of government records

The fact that a government record is destroyed under this Act or another written law does not limit the Crown's rights in respect of any evidential value of the record.

84. Regulations

(1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

(2) Without limiting subsection (1), regulations may —

(a) provide for charges for the reasonable expenses incurred by the State Records Office in —

(i) keeping any government record for another government organization;

(ii) giving a person or a government organization access to a State archive in the State archives collection;

(b) provide for matters in connection with giving access to State archives.

Schedule 1 — Government organizations

[s. 3]

1. The Governor.
2. The Governor's Establishment referred to in the *Governor's Establishment Act 1992*.
3. The Executive Council.
4. The Cabinet.
5. A Minister of the Crown.
6. The parliamentary secretary of the Cabinet or a parliamentary secretary holding office under section 44A of the *Constitution Acts Amendment Act 1899*.
7. A court or tribunal established or continued under a written law.
8. The Police Force within the meaning of the *Police Act 1892*.
9. An incorporated or unincorporated body established or continued for a public purpose under a written law.
10. An office, post or position established or continued for a public purpose under a written law.
11. A department as defined in the *Public Sector Management Act 1994*.
12. A local government, regional local government or regional subsidiary under the *Local Government Act 1995*.
13. A Royal Commission established under the *Royal Commissions Act 1968*.
14. A body or office that is established by the Governor or a Minister.
15. A commission, board, committee or other body established by, or a person appointed by, the Governor or the Government of the State or a Minister of the Crown to advise on, inquire into or investigate any matter.

[Schedule 1 amended: No. 26 of 2016 s. 93.]

Schedule 2 — Organizations that are not government organizations

[s. 3]

1. The Legislative Council, the Legislative Assembly and a committee of either or both of them.

2. The offices of member of the Legislative Council and member of the Legislative Assembly.

3. A parliamentary department.

4. The organization, controlled by a member of Parliament, that is concerned with dealing with constituency matters of the member, even if it includes an electorate officer appointed under the *Parliamentary and Electorate Staff (Employment) Act 1992* to assist the member.

5. The organization, controlled by the secretary of a parliamentary political party, that is concerned with dealing with the affairs of the party, even if it includes an electorate officer appointed under the *Parliamentary and Electorate Staff (Employment) Act 1992* to assist the secretary.

6. The organization, controlled by the holder of an office described in paragraph (d), (e) or (f) of the definition of ***political office holder*** in section 3 of the *Public Sector Management Act 1994*, even if it includes a ministerial officer appointed under that Act to assist the holder of the office.

7. The organization, controlled by the leader of a party in the Legislative Assembly, other than a party led by the Premier or by the Leader of the Opposition in that House, even if it includes a ministerial officer appointed under the *Public Sector Management Act 1994* to assist the leader.

Schedule 3 — Certain government organizations

[s. 3]

1. A body established by the *Electricity Corporations Act 2005* section 4(1).

2. A body established by or under the *Water Corporations Act 1995* section 4, namely —

   (i) the Water Corporation; and

   (ii) the Bunbury Water Corporation; and

   (iii) the Busselton Water Corporation; and

   (iv) a body established by the Governor.

   [Schedule 3 amended: No. 18 of 2005 s. 139; No. 25 of 2012 s. 230(1) and (2); No. 25 of 2013 s. 46.]

Schedule 4 — Provisions applicable to the Commission

[s. 59]

1. Terms used

In this Schedule —

appointed member means the member of the Commission appointed under section 58(d);

member means a member of the Commission under section 58.

2. Term of office of the appointed member

(1) The appointment of a person as the appointed member is to specify a term of appointment of not more than 3 years.

(2) A person who is or was the appointed member may be re-appointed as the appointed member.

(3) The appointed member may resign by giving his or her written resignation to the Minister.

(4) The Governor may terminate the appointment of the appointed member if the Governor is satisfied that the member —

(a) is an insolvent under administration (as defined in the Corporations Law);

(b) is incompetent, has misbehaved or has neglected his or her functions as a member;

(c) has been absent, without leave and without reasonable excuse, from 3 consecutive meetings of the Commission of which the member has had notice;

(d) is unable to perform his or her functions as a member because of illness.

3. Chairperson

The Commission is to decide which of its members is to be its chairperson.

4. Meetings

(1) The Commission is to decide when it meets.

(2) The Commission may hold a meeting at which some or all members participate by telephone or other similar means of instantaneous communication, but a member who speaks on a matter at the meeting must be able to be heard by all the other members at the meeting.

(3) At a meeting of the Commission the chairperson is to preside or, if he or she is absent, a member chosen by those present.

(4) The Commission is to ensure that accurate minutes are kept of its meetings.

(5) Subject to this clause and section 54 of the *Interpretation Act 1984*, the Commission is to determine the procedure for convening and conducting its meetings.

5. Conflicts of interest

(1) In this clause —

material personal interest, in relation to a member, includes an interest arising because of an office that the member holds in a government organization.

(2) A member who has a material personal interest in a matter involving the Commission must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Commission.

Penalty: $1 000.

(3) A disclosure by a member is to be recorded in the minutes of the meeting.

(4) A member who has a material personal interest in a matter being considered by the Commission must not be present while the matter is considered, and must not vote on the matter unless the Commission resolves that the member should not be so disqualified.

(5) The member with a material personal interest must not be present while the Commission considers whether to make a resolution for the purposes of subclause (4), and must not vote on the matter.

(6) On an application by the Commission the Minister may issue a written declaration that this clause does not apply in relation to a specified matter.

6. Leave of absence

The Commission may grant leave of absence to a member on such terms and conditions as it thinks fit.

7. Remuneration

The appointed member is to be paid such remuneration and travelling and other allowances as the Minister determines on the recommendation of the Public Sector Commissioner.

[Clause 7 amended: No. 39 of 2010 s. 89.]

Notes

This is a compilation of the *State Records Act 2000* and includes amendments made by other written laws. For provisions that have come into operation, and for information about any reprints, see the compilation table. For provisions that have not yet come into operation see the uncommenced provisions table.

Compilation table

Short title	Number and year	Assent	Commencement
State Records Act 2000	52 of 2000	28 Nov 2000	s. 1 and 2: 28 Nov 2000; s. 3-10, Pt. 8 and 9 and s. 77 and 82: 28 Jul 2001 (see s. 2 and *Gazette* 27 Jul 2001 p. 3797); Pt. 2-7 and s. 72, 78-81, 83 and 84: 1 Dec 2001 (see s. 2 and *Gazette* 30 Nov 2001 p. 6067)
Electricity Corporations Act 2005 s. 139	18 of 2005	13 Oct 2005	1 Apr 2006 (see s. 2(2) and *Gazette* 31 Mar 2006 p. 1153)
Financial Legislation Amendment and Repeal Act 2006 s. 6 and Sch. 1 cl. 159	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2(1) and *Gazette* 19 Jan 2007 p. 137)
Public Sector Reform Act 2010 s. 85 and 89	39 of 2010	1 Oct 2010	1 Dec 2010 (see s. 2(b) and *Gazette* 5 Nov 2010 p. 5563)
Reprint 1: The *State Records Act 2000* as at 6 Jan 2012 (includes amendments listed above)			
Water Services Legislation Amendment and Repeal Act 2012 s. 230(1) and (2)	25 of 2012	3 Sep 2012	18 Nov 2013 (see s. 2(b) and *Gazette* 14 Nov 2013 p. 5028)
Electricity Corporations Amendment Act 2013 s. 46	25 of 2013	18 Dec 2013	1 Jan 2014 (see s. 2(c) and *Gazette* 27 Dec 2013 p. 6465)
Local Government Legislation Amendment Act 2016 Pt. 3 Div. 33	26 of 2016	21 Sep 2016	21 Jan 2017 (see s. 2(b) and *Gazette* 20 Jan 2017 p. 648)
Aboriginal Cultural Heritage Act 2021 s. 353	27 of 2021	22 Dec 2021	1 Jul 2023 (see s. 2(e) and SL 2023/40 cl. 2(b))
Aboriginal Heritage Legislation Amendment and Repeal Act 2023 s. 34	23 of 2023	24 Oct 2023	15 Nov 2023 (see s. 2(d) and SL 2023/161 cl. 2)

Uncommenced provisions table

To view the text of the uncommenced provisions see *Acts as passed* on the WA Legislation website.

Short title	Number and year	Assent	Commencement
Water Services Legislation Amendment and Repeal Act 2012 s. 230(3)	25 of 2012	3 Sep 2012	To be proclaimed (see s. 2(b))

Defined terms

[This is a list of terms defined and the provisions where they are defined. The list is not part of the law.]

Defined term	Provision(s)
appointed member	Sch. 4 cl. 1
authorised applicant	3(1)
Commission	3(1)
control	3(1)
destroy	3(1)
Director	3(1)
exempt record	3(1)
FOI Act	3(1)
former organization	8(1)
government organization	3(1)
government organization employee	3(1)
government record	3(1)
information	66(1)
keep	3(1)
material personal interest	Sch. 4 cl. 5(1)
member	Sch. 4 cl. 1
parliamentary department	3(1)
parliamentary record	3(1)
reciprocal person	55(1)
record	3(1)
record keeping plan	3(1)
relevant Minister	3(1)
reproduce	3(1)
restricted access archive	3(1)
retention period	3(1)
Schedule 3 organization	3(1)
State archive	3(1), 43(1)
State archives collection	3(1)
State collecting institution	3(1)
State organization	3(1)
State record	3(1)
State Records Office	3(1)
successor	3(1)
unauthorised possession	3(1)

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