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28 April 2020

The Hon. Shayne Mallard MLC
Chair, Standing Committee on Social Issues
NSW Legislative Council
Parliament House
Macquarie Street
SYDNEY NSW 2000

Submitted via the Standing Committee's online form

Dear Chair,

Legislative Council Standing Committee on Social Issues – Inquiry into the *State Records Act 1998*

The University of Sydney welcomes the opportunity to make a submission to the inquiry into the *State Records Act 1998* (the **Act**) and the NSW Government's Policy Paper on its review (**Policy Paper**).

The University of Sydney is Australia's oldest University and is member of the Group of Eight, a coalition of eight world-leading research-intensive Australian universities. The University is at the forefront of global research and education across a wide variety of academic disciplines.

The University's Archives and Records Management Services (ARMS) oversees the creation, management and access to the University's records and information, as well as compliance with the *State Records Act 1998* (NSW), the *Government Information (Public Access) (GIPA) Act 2009* (NSW), the *Privacy and Personal Information Protection (PPIP) Act 1998* (NSW) and the *Health Records and Information Privacy (HRIP) Act 2002* (NSW).

After assessing the Policy Paper, the University has formed the view that combining the legislation for the State Archives and Records Authority of NSW (**Authority**) and the Sydney Living Museums will not assist the University and other similar institutions to meet the community's information needs by protecting and preserving NSW's key cultural assets. However, there are some proposals in the Policy Paper that the University does support.

In relation to the options for reform set out in Section 3 of the Policy Paper, the University's comments on the NSW Government's proposed reforms are set out below.

3.1 Stories that shape the social, historical and cultural identity of NSW are widely shared and understood

We do not support the proposal to replace the Authority and Sydney Living Museums with a single institution responsible for their activities.



While the Policy Paper states that the Government is seeking to safeguard the Authority's key accountability role, our assessment is that the proposed changes would dilute the Authority's independence and diminish its standing within NSW government. In particular, the proposal in section 3.1.1 of the Policy Paper to give committees within the single governing body statutory responsibility for government recordkeeping, information retention and disposal, will reduce both the independence and the influence of these core accountability functions.

Maintaining the Authority's independence in setting recordkeeping standards, policies and guidelines for the management of NSW State Government records (from creation through to long-term preservation and disposal) is essential for accountability, transparency and public trust in the conduct of government business in NSW.

It is also important to note that the record creation and management responsibilities outlined in the Act are foundational to all other information and accountability legislation in NSW. The accountability foundations enshrined in the Act underpin the public entitlements, information management and accessibility rights covered by the PPIP, HRIP and GIPA Acts. We are therefore concerned about any potential downstream impacts the proposed changes to the Act may have on these other core public interest laws.

3.2 Records of enduring value to the citizens of NSW are managed, preserved and made accessible

We support the proposal in the Policy Paper for public offices to be required to make and implement plans to transfer control to the Authority of records of enduring value that are no longer in active business use. We also support public offices retaining custody of their archival records under distributed custody agreements, where organisations have the capacity to store, maintain and provide public access to them.

We also note that any diminution of the Authority's key accountability functions would lead to a significant decrease in archival records across the state. This would impact the numbers of records of enduring value that are able to be managed, preserved and made accessible to the citizens of NSW. This would then impact research and scholarship and limit the documenting of stories that share the social, historical and cultural identity of NSW.

From the perspective of research and ensuring the preservation of records of enduring value, we are concerned that the Policy Paper does not address digital records and data archiving sufficiently. Digital and data are the core records of government and business today. To sustain an enduring archive, it is therefore critical that the review of the Act addresses the identification, management and preservation of these core information resources. It also needs to ensure that the accessibility of these digital records can be maintained for the benefit of future generations of researchers and other interested citizens.

3.3 Citizens have timely access to records documenting the activities and decisions that shape NSW and the lives of its citizens

We agree that NSW public offices should make their State records open to public access before the expiration of the current 30-year open access waiting period. The public should have more timely access to archival records for the reasons set out in the Policy Paper. Earlier access to records under the Act would also make important information more readily available for research and education. To enable the university libraries across NSW to provide access to some material in advance of the proposed 20-year access period, we also support maintaining the current early access and special access provisions of the Act.



The proposal that the default position should be that records in the open access period will be open by default, unless there is a specific “closed to public access” direction, is supported. However, we recommend that appeal mechanisms are included in the Act. These could be similar to the provisions under section 56 of the GIPA Act, which enable the review of GIPA decisions.

3.4 NSW public offices create, keep and protect records as evidence of their activities and decisions

We support the NSW Government’s proposal that the Authority should have the power to issue a notice to require a public office to investigate its recordkeeping practices and report back to the Authority. These reporting powers and other relevant components of the Act need to acknowledge that creating and maintaining good, accountable records is a collaborative endeavour in digital business environments, requiring collaboration between recordkeeping professionals, business partners, ICT and cyber security specialists and technology providers, as well as commitment from senior management.

In conclusion, we reiterate our strong belief that the Authority’s independence must be maintained to help the NSW Government transition to creating, keeping and protecting records in new and emerging digital environments. It is critical that an independent records authority remains in place to help ensure records that document society and the conduct of government in NSW remain as accountable and accessible records, now and for future generations.

Should the Committee require further information or assistance from the University of Sydney about this inquiry, please do not hesitate to liaise, in the first instance, with Dr Kate Cumming, University Archivist and Manager (kate.cumming@sydney.edu.au, 02 9351 4263).

Yours sincerely,

(signature removed)

Stephen Garton