



LEGISLATIVE COUNCIL



The Hon Dr Peter Wong AM MLC

MBBS(Syd), BPharm(Syd)
Unity Party

Mr. Don Colagiuri
Parliamentary Council
Parliamentary Council's Office
Level 12, Goodsell Building
8-12 Chifley Square
Sydney NSW 2000

25th May 2006

Dear Mr. Colagiuri

Re: Private Members Bill: *State Records (Institutional Care) Amendment Bill*

Could you please draft a Bill for me that gives effect to recommendations 12 through to 18 of the report of the Senate Community Affairs Inquiry into Children in Institutional Care: *Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children.*

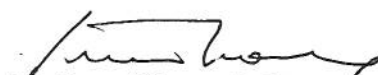
I would envisage that the Bill would depart from the intents of the recommendations only to the extent that all records mentioned in the recommendations would be required to be in the custody and control of the State Records Office. This would ensure that State Records would then be the 'dedicated information and search service' in NSW.

To this effect the Office may need to be able to charge, or recover costs from the various bodies and organisations mentioned in the recommendations for the purposes of acquisition, preservation, and compilation of directories. Individual organisations would be able to retain copies of their own records should they wish, but with the possibility of hundreds of record holders, a central repository would do away with a great deal of confusion, and replication of services.

I would envision that some additional amendment may need to be made to sections 44 to 48 of the State Records Act 1998 to give effect to, or enhance the powers under these sections for State Records to properly fulfil its new responsibilities.

Provision would also need to be made for State Records to provide counselling services to those viewing or seeking to view records, and given the often disturbing nature of the documents, this would need to extend to the staff who would be providing services to people seeking to access to these records.

Yours sincerely,


Dr. Peter Wong AM MLC

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Introduced by the Hon Dr Peter Wong, MLC

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Warning note: This is a draft version of a Non-Government Bill.

New South Wales

State Records Amendment (Institutional Care) Bill 2006

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to give effect to certain recommendations of the Senate Community Affairs Inquiry entitled *Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children*. Those recommendations concern access to records and information relating to the institutional or out-of-home care of certain children and young people.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act 6 months after the date of assent, except for the provision that provides for the protection of privately held records. That provision commences on the date of assent.

Clause 3 is a formal provision that gives effect to the amendment to the *State Records Act 1998* set out in Schedule 1.

Clause 4 provides for the repeal of the proposed Act after all of the provisions of the amendment made by the proposed Act have commenced. Once the amendment has fully commenced the proposed Act will be spent and section 30 of the *Interpretation*

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State Records Amendment (Institutional Care) Bill 2006

Explanatory note

Act 1987 provides that the repeal of an amending Act does not affect the amendment made by that Act.

Schedule 1 Amendment

Schedule 1 inserts the following provisions into the *State Records Act 1998*:

Proposed section 62A defines *child or young person* as a person under 18 years of age and *institutional or out-of-home care* as the residential care and control of a child or young person by a person other than the parent of a child or young person and includes such care provided at an orphanage, group cottage home, foster care, a home for children with disabilities and a juvenile detention centre or any other place prescribed by the regulations.

Proposed section 62B sets out the guiding principles that the State Records Authority (*the Authority*) must give effect to in exercising functions under the proposed Part.

Proposed section 62C provides for all records relating to the institutional or out-of-home care of a child or young person to be centrally held by the Authority.

Proposed section 62D provides for the Authority to act as a dedicated information and search service in relation to records relating to the institutional or out-of-home care of a child or young person and the institutions or out-of-home care providers with which they were placed.

Proposed section 62E provides for the Authority to provide assistance and counselling to people in the locating and accessing of State records relating to their institutional or out-of-home care as a child or young person and the institutions or out-of-home care providers with which they were placed.

Proposed section 62F provides that in dealing with an application under the *Freedom of Information Act 1989* for access to a record relating to the institutional or out-of-home care of a child or young person, the Authority must give a flexible and compassionate interpretation of that Act such as to allow a person who was in institutional or out-of-home care while a child or young person to identify his or her childhood, family and background.

Proposed section 62G provides for the protection of privately held records, before they are provided to the Authority.

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New South Wales

State Records Amendment (Institutional Care) Bill 2006

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New South Wales

State Records Amendment (Institutional Care) Bill 2006

No. , 2006

A Bill for

An Act to amend the *State Records Act 1998* in relation to State records and other records relating to the institutional and out-of-home care of certain children and young persons; and for other purposes.

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Clause 1 State Records Amendment (Institutional Care) Bill 2006

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *State Records Amendment (Institutional Care) Act 2006*.

2 Commencement

- (1) This Act commences on the date that is 6 months after the date of assent, except as provided by subsection (2).
- (2) Schedule 1, to the extent that it inserts section 62G into the *State Records Act 1998*, commences on the date of assent.

3 Amendment of State Records Act 1998 No 17

The *State Records Act 1998* is amended as set out in Schedule 1.

4 Repeal of Act

- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 Amendment

(Section 3)

Part 6A

Insert after section 62:

**Part 6A Access to State records and other records
relating to the institutional or out-of-home
care of children and young persons**

62A Definitions

In this Part:

child or young person means a person under 18 years of age.

institutional or out-of-home care means the residential care and control of a child or young person by a person other than the parent of a child or young person and includes such care provided at an orphanage, group cottage home, foster care, a home for children with disabilities and a juvenile detention centre or any other place prescribed by the regulations.

records includes photographs and other memorabilia.

62B Guiding principles

In exercising functions under this Part, the Authority must give effect to the following rights and commitments:

- (a) the right of every person who was in institutional or out-of-home care while a child or young person:
 - (i) to view all information of the relevant institution or out-of-home care provider relating to himself or herself or his or her care, and to receive a free copy of that information, and
 - (ii) to initiate searches of the records of the relevant institution or out-of-home care provider and to be provided with free copies of those records, and
 - (iii) to have his or her request for information or records dealt with within a set time-limit,
- (b) the commitment to the flexible and compassionate interpretation of any discretion under privacy legislation and freedom of information legislation to allow a person who was in institutional or out-of-home care while a child or young person to identify his or her family and

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State Records Amendment (Institutional Care) Bill 2006

Schedule 1 Amendment

background (including his or her religion, culture, ethnicity or caste).

62C Records of children or young persons to be centrally held

- (1) A public office that holds any State record relating to the institutional or out-of-home care of a child or young person and the institutions or out-of-home care providers with which children and young persons were placed must provide it to the Authority.
- (2) A body that is not a public office, or any person, that holds any record relating to the institutional or out-of-home care of a child or young person and the institutions or out-of-home care providers with which children and young persons were placed must enter into arrangements with the Authority to find and identify that record and to provide it to the Authority. That record then becomes a State record for the purposes of this Act.
- (3) The Authority may impose a charge, calculated in accordance with the regulations, for the acquisition of records from public offices, bodies or persons required to provide them under this section and for the preservation and cataloguing of those records.
- (4) To avoid doubt, this section extends to any record relating to the institutional or out-of-home care of a child or young person and the institutions or out-of-home care providers with which children and young persons were placed that the Authority believes to be an estray within the meaning of Part 5.
- (5) A public office, body or person required to provide a record under this section may keep a copy of that record. Section 62G does not apply to that copy if such a copy is not itself a State record.

62D Authority to act as dedicated information and search service

The Authority:

- (a) must ensure that all agencies holding records of any kind identify, preserve and provide to the Authority all surviving records relating to the institutional or out-of-home care of children or young persons and the institutions or out-of-home care providers with which they were placed, and
- (b) must develop a register of all State records relating to the institutional or out-of-home care of children or young persons and the institutions or out-of-home care providers

with which they were placed formerly held by public offices and other bodies or persons, and

- (c) must compile a directory to assist in the locating and accessing of all State records relating to the institutional or out-of-home care of children or young persons and the institutions or out-of-home care providers with which they were placed.

62E Authority must help care leavers gain access to records

The Authority:

- (a) must appoint or employ persons whose tasks include assisting people in the locating and accessing of State records relating to the institutional or out-of-home care of children or young persons and the institutions or out-of-home care providers with which they were placed, and
- (b) must provide assistance to any person to locate and access records relating to the institutional or out-of-home care of the person while a child or young person or relating to the institution or other out-of-home care provider with which he or she was placed, and
- (c) must ensure that a request for access to such information or records is dealt with within 28 days, and
- (d) must provide advocacy and mediation services to persons accessing, or seeking to access, records relating to their institutional or out-of-home care as children or young persons or relating to the institutions or other out-of-home care providers with which they were placed, and
- (e) must ensure adequate support and counselling services are provided to people at the time of viewing or otherwise accessing such information or records and, if required, subsequent to the viewing of records, and
- (f) must provide funding for independent counselling services to be provided to those people who do not wish to access counselling services provided by the Authority, and
- (g) must ensure adequate support and counselling of its own staff who are involved in the provision of access to such information and records.

62F Application of Freedom of Information Act 1989

In dealing with an application under the *Freedom of Information Act 1989* for access to a record relating to the institutional or

State Records Amendment (Institutional Care) Bill 2006

Schedule 1 Amendment

out-of-home care of a child or young person, the Authority must give a flexible and compassionate interpretation to any discretion under that Act such as to allow a person who was in institutional or out-of-home care while a child or young person to identify his or her childhood, family and background.

62G Protection measures for privately held records of care leavers

- (1) This section does not apply to State records.
- (2) A person must not:
 - (a) abandon or dispose of a record relating to the institutional or out-of-home care of any child or young person and the institutions or out-of-home care providers with which children and young persons were placed, or
 - (b) transfer or offer to transfer, or be a party to arrangements for the transfer of, the possession or ownership of such a record, or
 - (c) take or send such a record out of New South Wales, or
 - (d) damage or alter such a record, or
 - (e) neglect such a record in a way that causes or is likely to cause damage to the record.Maximum penalty: 50 penalty units.
- (3) None of the following is a contravention of this section:
 - (a) anything that is authorised or required to be done by or under this Act, or by or under a provision of any other Act that is prescribed by the regulations as being an exception to this Part,
 - (b) anything done by or with the permission of the Authority or in accordance with any practice or procedure approved by the Authority either generally or in a particular case or class of cases (including any practice or procedure approved of under any standards and codes of best practice for records management formulated by the Authority),
 - (c) anything done pursuant to an order or determination of a court or tribunal,
 - (d) the disposal, in accordance with a resolution of a House of Parliament, of a State record for which the House is the responsible public office.
- (4) The Authority must not do, or give permission or approval for or with respect to the doing of, anything referred to in subsection (2)