

Modernising Tasmania's Archives and Libraries Legislation

Consultation Paper

March 2013

From the Minister

LINC Tasmania is an integral part of the Tasmanian cultural and learning sectors and has an important role in providing Tasmanians with better access to opportunities for skills development and the information they need to function effectively in the 21st century.



Through a statewide network of welcoming spaces in LINC, libraries, and online access centres, the people of Tasmania can access library and information services, conduct research, seek adult literacy support, participate in community learning, get online, and access the resources and services of the Tasmanian Archive and Heritage Office. Increasingly, many of these resources and services are being made accessible through LINC Online, where they can be used at any time in the home, the office or on a mobile device, wherever they may be.

Library and archive services are essential pillars supporting learning and information, giving the community free access to the wealth of knowledge and ideas recorded by our forebears and contemporaries in diverse formats, from books to maps and digital media.

To ensure LINC Tasmania is able to continue to evolve, be innovative and continue to serve Tasmanians in a meaningful way, it is important that the legislative framework providing the basis for State library and State archives services reflects contemporary practices, especially in an increasingly digital environment. As such, I am pleased to present this Paper that explores some of the issues in the existing *Libraries Act 1984* and *Archives Act 1983*, and highlights the areas being considered for update.

In order for legislation to be an effective tool, it needs to be easily understood and transparent. I encourage stakeholders with an interest in our State library and State archives services to engage with the consultation process. In presenting this Paper, I should highlight that no proposed amendments to either the libraries or archives legislation will impact on the current provision of services to clients.

I look forward to your contribution to ensure the revised legislation reflects a contemporary library, information, archives and heritage service for Tasmanians.

A handwritten signature in black ink that reads "Nick McKim". The signature is written in a cursive, flowing style.

Hon Nick McKim MP
Minister for Education and Skills

Purpose

This Paper outlines specific areas for review and provides a series of recommendations to the existing legislation governing Tasmania's public libraries and archives services, namely:

- *Libraries Act 1984*, and
- *Archives Act 1983*.

It is intended that the two Acts remain as separate pieces of legislation, which combined with the relevant subordinate legislation, make up the legislative framework for the Tasmania public library and archives service, as administered by LINC Tasmania.

The revision of the existing legislation will ensure:

- currency and consistency with contemporary library, archives and associated services
- consistency and uniformity between the libraries and archives legislation
- compliance with modern drafting standards including clear, readily understood language, definitions and intent, and
- the legislation is able to be readily updated in the future without significant rewrites.

The proposed changes are mostly administrative in nature and will have no impact on the provision of library and archives services to clients.

It is important to note that this Paper reflects the fact that no conclusions in relation to the issues identified have been reached.

The paper is split into two main sections associated with the proposed amendments to each Act, and should be read in conjunction with the current legislation, which is available at: www.thelaw.tas.gov.au.

Comments and feedback on the recommendations contained in this paper are invited from stakeholders that have an interest or expertise in the business of LINC Tasmania, and in particular, public library services, Tasmanian publications or documentary heritage collections.

Feedback received through the consultation process will help to refine the proposals that will be incorporated into the Office of the Parliamentary Counsel's drafting processes. Once a draft Bill for each Act has been developed, further consultation will be undertaken.

The preferred method for receiving comments and feedback is via a pre-prepared feedback form. A copy of this form can be obtained by emailing legislationreview.linc@education.tas.gov.au, ph – (03) 6233 2568, or mailing:

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The closing date for feedback is 5pm, Friday 24 May 2013.

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Introduction

LINC Tasmania operates within a legislative framework which was designed to support the requirements of formerly separate entities: the State Library of Tasmania and the Archives Office of Tasmania. Bringing them together under the administration of LINC Tasmania creates a need to review existing frameworks and structures to ensure the State's long-term strategies for these services are consistent and clear, and recognises the broader context of support for adult learning and literacy in which they operate. Furthermore, the environment in which the provision of library, heritage, and adult learning services is being administered is changing rapidly, as are the information and skills needs of Tasmanians. Digital formats are fast becoming the predominant means by which information is created, kept and read. Our legislation needs to reflect these shifts and account for ongoing technological change.

The strategic direction for LINC Tasmania focuses on making information, learning and literacy services more accessible to all Tasmanians – where, when and how they need them. It will do this by building on the strength of existing services, along with a fresh focus on second chance learning and adult literacy. In light of this, it is important that the relevant legislation clearly articulates the role of library and archive services including the roles and composition of the Tasmanian Library Advisory Board and any other existing committees.

The paper also considers the functions of the Tasmanian Archive and Heritage Office (TAHO), which operates across both libraries and archives, to establish legislative clarity and consistency between the two roles. Areas of potential overlap include boards and committees, management of the Allport Library and Museum of Fine Arts, the function to develop, maintain and make available collections of Tasmanian materials, and Legal Deposit requirements.

A further need to review the *Archives Act 1983* resulted from the response to the destruction of a draft document in the office of the Attorney-General in 2007. This incident created divided opinion over the precise interpretation of key definitions in the *Archives Act 1983* and highlighted the need for these definitions to be modified accordingly.

An essential requirement of any amended legislation is the preserving of existing and legislated principles relating to the provision of public access to information, including free access to basic library and heritage services; the function of government recordkeeping, and collection of published Legal Deposit.

About LINC Tasmania

Committed to a vision that aims to improve the lives of all Tasmanians, LINC Tasmania is founded on four essential building blocks: the State Library of Tasmania, the online access centre (OAC) network, Adult Education and the Tasmanian Archive and Heritage Office (TAHO).

The integrated state-wide service network provides Tasmanians with access to: library services, research and information services, adult literacy support, community learning and online access. LINC Tasmania also has responsibility for the preservation of Tasmania's cultural memory, through the heritage collections and government recordkeeping functions administered within TAHO. LINC Tasmania currently operates through LINC Online and physical service points including Learning and Information Network Centres (LINC's), branch libraries and online access centres in over 70 locations across the state.

Through the LINC network, LINC Tasmania aims to strengthen and sustain connections with existing clients – readers, learners, researchers, educators and partners— as well as connect with new clients, particularly those who need greater information and technology access, skills and support to participate fully in work and community life.

Further information about LINC Tasmania and its services is available at LINC Online:
www.linc.tas.gov.au.

SECTION A – LIBRARIES ACT 1984

1. OVERVIEW

The *Libraries Act 1984* provides for the establishment, maintenance, and management of library services in Tasmania. Updating and modernising the Act will ensure that:

- the language and definitions are contemporary and relevant
- the role and function of the Board and Committees is clarified, and
- there is uniformity and consistency with the Archives legislation.

The *Libraries Regulations 2002* were due for automatic repeal on 25 December 2012 in accordance with the *Subordinate Legislation Act 1992*. Prior to their expiry, the Regulations were remade as *Libraries Regulations 2012* without policy change. This temporary measure allows time for a fuller review of the subordinate legislation as part of this consultation.

The issues in relation to amendments to the *Libraries Act 1984*, which are discussed in this paper as the basis for consultation, are around the following:

- short title of the legislation
- definition of the State library service and of a 'book'
- function, purpose or objective of the library service
- provision of services to the Parliamentary Library
- governance arrangements for Board and Committees
- Legal Deposit requirements for publications published in Tasmania, and
- updates to the Libraries Regulations

2. SHORT TITLE

The current short title is: *Libraries Act 1984*. Contemporary libraries provide a range of client services and programs in addition to core services such as reference and lending services. Since the Act has been in force in its current form, LINC Tasmania has assumed additional roles in adult literacy support, community learning and online access as well as retaining a focus on core functions such as free access to public library services, Legal Deposit and the right to information. It is therefore appropriate to consider changing the short title of the legislation to reflect this, and without specifically naming the organisation responsible for administering these functions.

Recommendation 1

Revise the short title of the legislation to more broadly reflect the provision of 'library services' in the State: for example, State Library Services Act.

3. DEFINITIONS

3.1 Definition of a State Library Service

Part I, s3 of the current legislation provides the following definitions:

- '**library service**' means a service provided by the State Library Service
- '**service**' includes resource and facility
- '**State Library Service**' means the system of libraries and library services operated throughout the State and established by this Act

Reviewing the *Libraries Act* provides an opportunity to ensure that the function and objectives of the State library service are clearly articulated (see also Section 4 below) and the definitions provided in Part I may need to be updated accordingly.

Part I of the Act defines the *State Library Service* as follows:

State Library Service means the system of libraries and library services operated throughout the State and established by this Act;

As the State library service is now administered by LINC Tasmania, rather than a body of the same name, it is preferable that the definition avoids any confusion between the services/functions of a State library service and the organisation or entity which administers them.

Recommendation 2

Review and update the definitions in Part I – Preliminary.

3.2 Definition of a ‘book’

The current definition of a ‘book’ under Part I s3 is as follows:

‘book’ means any book, periodical, newspaper, printed matter, map, plan, music, manuscript, picture, print, motion picture, sound recording, photographic negative or print, microphotograph, video recording, and any other matter or thing whereby words, sounds, or images are recorded or reproduced...

This definition has remained valid through the years, as it is broad enough to be interpreted as covering physical and electronic media. In the past the definition has led to some confusion between the collecting roles of the Archives Office and the State Library as it can apply to published and unpublished materials. In revising the two Acts, it is intended to clarify the collecting scope of each body.

In the library context, the definition needs to make it explicit that the primary collecting role relates to ‘published material’ – that is, material which is publicly available. This will make a clear distinction from the responsibilities of the *Archives Act*, which focusses on the management of State records and preservation of State Archives which may or may not be published. The term should provide for all forms of print and digital media.

Recommendation 3

Review the definition of a **‘book’** and ensure that it clearly encompasses published material in digital and print formats.

This definition of a ‘book’ also provides the context for Legal Deposit requirements in the legislation which is addressed in Part VI – Miscellaneous, s22 (1, 2a). This requires that the publisher of every book published in the State shall ... *deliver at his own expense a copy of that book to the Secretary.*

4. FUNCTION, PURPOSE AND OBJECTIVE OF THE LIBRARY SERVICE

4.1 Functions, purpose or objective of the library service

In the existing legislation, the functions, purpose or objectives of the library service are loosely addressed in Part II – *Functions and powers of the Secretary* and in Part III – *Functions of Board*. This includes reference to:

- collecting and making available books relating to the history and development of the State for use by the public
- the provision of free library services except in certain cases, and
- the public's right of access to information and ideas.

By reflecting the broader policy objectives of State library services, the legislation will provide clarity around the context for Legal Deposit requirements, and reference the expanded range of library services currently administered by LINC Tasmania.

A further area that should be clarified in the objectives is the capacity for the State library service to selectively accept non-State records (e.g. manuscripts, personal papers, diaries, company records) where these are in accordance with its collection development policies.

Non-State records are not subject to Legal Deposit and have been collected opportunistically by both the State Archives and the State Library Service in the past. In order to achieve consistency and uniformity between the *Libraries Act* and the *Archives Act*, it is recommended that the State Archivist relinquishes any power and responsibility for the acquisition and management of non-State records and this be the exclusive domain of the State library service. (See also recommendation 24 of this Paper).

Recommendation 4

Develop a clear set of objectives of providing a State library service, so that they are enshrined in the legislation and may include the following provisions to:

- promote and administer the provision of State library services in Tasmania
- provide the public with free access to basic library services, which may include: lending services, reference and information services and access, community programs and learning and literacy services, and
- provide for the acquisition, preservation, and display of, and provision of access to, publications and non-State records relating to the documentary and cultural heritage of Tasmania, in accordance with current collection development policies.

5. POWERS OF THE SECRETARY

5.1 Provision of services to the Parliamentary Library

Part II- Division I provides for the functions and powers of the Secretary as they relate to library services. This section is still current and relevant. It is proposed that this section remains unchanged apart from removing the function relating to s7 (3) (a): *to make arrangements with the Parliamentary Library Committee for the provision of library services for the officers and members of Parliament.* The State library service no longer provides library services to the Parliamentary Library. Any potential future arrangements involving the State library service and any Agency is already provided for in s7 (3) (b).

Recommendation 5

Remove the function relating to the powers of the Secretary to make arrangements with the Parliamentary Library Committee for the provision of services by the State library service to the Parliamentary Library.

6. GOVERNANCE ARRANGEMENTS FOR THE BOARD AND COMMITTEES

6.1 Tasmanian Library Advisory Board (TLAB) – Part III

The diverse composition of membership has served TLAB well over the years and has provided LINC Tasmania and its predecessors with valuable guidance and support to ensure the State library service continues to meet community needs and expectations. This has been particularly important during recent times with the establishment of LINC Tasmania and the new opportunities and challenges for library services in the expanding world of digital and print information.

No major changes are proposed except to simplify the wording around the composition of the Board whilst still maintaining representation from users of the State library service, and a balance of representation from urban and regional areas. The size of the Board will be retained at 13 members which allows for diversity and inclusiveness. A broad range of member experience, knowledge and skills represents a wide range of viewpoints and ideas whilst also demonstrating TLAB's connection to the community.

The current membership is specified as follows:

s 11 (2) The Board consists of –

- (a) a chairperson nominated by the Minister; and
- (b) 4 persons nominated by the Minister from a list of names representing a mix of urban and rural interests submitted by the Local Government Association of Tasmania of whom –
 - (i) at least one is from the northern area; and
 - (ii) at least one is from the north-western area; and
 - (iii) at least one is from the southern area; and
- (c) 4 persons nominated by the Minister to represent the interests of users of the State Library Service; and
- (d) the person for the time being holding, in the Department, an office or position nominated by the Secretary; and
- (e) a person nominated by the Minister from the northern area to represent the interests of users from that area; and

- (f) a person nominated by the Minister from the north-western area to represent the interests of users from that area; and
- (g) a person nominated by the Minister from the southern area to represent the interests of users from that area.

Given that LINC Tasmania is a major cultural heritage and collecting institution for Tasmania's documentary history and heritage, it would be desirable to have a member of the board with knowledge and expertise in heritage matters. It is therefore proposed to specify that one of the Minister's nominees representing users of the State library service be a person who has expertise in heritage matters. The requirement for the Local Government Association of Tasmania to nominate four representatives will remain.

Recommendation 6

Simplify the wording for the composition of TLAB members and include a person with heritage knowledge and expertise, for example:

The Board consists of –

- (a) a chairperson nominated by the Minister; and
- (b) 4 persons nominated by the Minister from a list of names representing a mix of urban and rural interests submitted by the Local Government Association of Tasmania, with at least one person from each of the northern, north-western and southern areas; and
- (c) 7 persons nominated by the Minister to represent the interests of users of the State Library Service with at least one person from each of the northern, north-western and southern areas, and at least one person nominated by the Minister with heritage knowledge and expertise; and
- (d) the person for the time being holding, in the Department, an office or position nominated by the Secretary.

The current legislation provides flexibility around the scope of matters that TLAB can advise and make recommendations on, which has served the Board well and should be retained.

Furthermore, to simplify the appointment processes, it is suggested that new members are appointed by the Minister rather than the Governor, which is currently prescribed in s11 (3).

Recommendation 7

Simplify the TLAB appointment process so that appointments are made by the Minister rather than the Governor.

6.2 State Library and Archives Trust (SLAT) – Part IV

The existing legislation states that:

s16 (2) the Trust shall consist of 5 persons of whom –

- (a) one person shall be the chairman of the Board who shall be the chairman of the Trust;
- (b) one shall be a person nominated by the Public Trustee;
- (c) one shall be a person who, in the opinion of the Minister, has knowledge of and experience in law;
- (d) one shall be the person for the time being holding, in the Department, an office or position nominated by the Secretary; and
- (e) one shall be the State Archivist.

SLAT membership includes two persons that are State Service employees (d and e above). A change to broaden SLAT membership is proposed, to include a person with relevant expertise who is outside the State Service. This is considered appropriate, as the trust administers grant funding from gifts or bequests to library and archives workers in a broad sense and is not limited to State government employees. Replacing one State government representative with an independent person with expertise alleviates any potential conflict of interest with the current situation which sees two representatives from the State Service making up two of the total five members.

Recommendation 8

Alter the composition of the State Library and Archives Trust to replace the State Archivist with one person who, in the opinion of the Minister, has knowledge of and experience in the library and/or archives industry and is not employed by state government.

6.3 Allport Library and Museum of Fine Arts Management Committee (Allport Committee) – Part V

This Committee will continue as a standalone Committee, as the functions were initially established as part of the functions of TLAB and separated out from TLAB in the last legislation amendment. An amendment to the process of nominating the chairperson is suggested, that is, the Chair is nominated by the Minister, rather than members of the Committee electing one of their numbers to be chairperson. This is consistent with how the Chair is appointed to TLAB.

Recommendation 9

Amend the current process whereby the Allport Committee chairperson is nominated by members of the Committee, to the chairperson being nominated by the Minister.

6.4 Provisions with Respect to Membership and Meetings of TLAB, SLAT and Allport Committee - Schedules I, II and III

The details in the schedules will remain as they are, except to simplify administrative processes. All references relating to the 'Governor' could be replaced with the 'Minister' for notification of vacation of office and determination of remuneration.

Recommendation 10

Simplify administrative processes for boards and committees by replacing the authorising person for notification of vacation of office and determining remuneration from the 'Governor' with the 'Minister.'

7. LEGAL DEPOSIT

The requirement whereby publishers must deposit a copy of each publication published in Tasmania with the State library service is known as 'Legal Deposit'. The requirements for Legal Deposit are outlined in Part VI – Miscellaneous s22. This provision enables the State library service to meet its objective to acquire, preserve, display and provide access to publications relating to the documentary and cultural heritage of Tasmania.

As previously mentioned in this paper, the existing definition of 'book' has been interpreted to cover both print and electronic publications. In this regard, Tasmania's legislation has kept up-to-date with technological change as it is technology-neutral. Electronic holdings are obtained by electronic deposit of digital publications into the Stable Tasmanian Open Repository Service (STORS) (www.stors.tas.gov.au) and through LINC Tasmania itself undertaking electronic capture of web pages. It is therefore not recommended that any changes are made to the intent of this section of the legislation. The use of the term 'book' will be considered as part of Recommendation 3 above.

The volume of electronic material published in Tasmania is likely to increase, making it difficult and costly for LINC Tasmania to collect and preserve everything. LINC Tasmania's ability to exercise selectivity in what it acquires and preserves, and its ability to actively acquire content (in addition to a requirement for publishers to deposit), will help ensure that publications reflecting the documentary and cultural heritage of Tasmania will be preserved for current and future generations.

It is recommended that the 'process' for Legal Deposit under s22 is moved to the Libraries Regulations and that the capture of online publications (either through automated processes such as 'harvesting' or through selective manual capture) is deemed to constitute 'Legal Deposit' of that publication.

Recommendation 11

- (a) Replace the term 'book' as per any definition recommended in Recommendation 3, and ensure that the wording allows the State library service the right to exercise selectivity in the capture and preservation of publications.
- (b) Move the processes surrounding the Legal Deposit requirements to the Libraries Regulations.

8. LIBRARIES REGULATIONS 2012

The current *Libraries Regulations 2012* consist of the following four parts:

- Part 1 – Preliminary: definitions and interpretations
- Part 2 – Library card: provisions for application, granting and use
- Part 3 – Use of library services
- Part 4 – Offences: relating to behaviour and respect for library property

Generally, the intent and provisions in the existing Regulations will remain. Minor amendments are proposed as described below. It may also be possible for some of the detail describing process that is covered in the primary legislation be transferred to the Regulations as determined appropriate by the Office of the Parliamentary Counsel during the drafting process. This may include details on:

- issuing of guidelines
- review of charges
- membership of the Board, and
- processes relevant to the Legal Deposit requirement.

8.1 Preliminary

Part 1 s3 of the current Regulations provide for:

- the use of library services including defining a 'lending book' as *a book of the State Library Service designated by the Secretary as suitable for lending to cardholders* s3 (1); and
- the Secretary's power to *designate a book of the State Library Service as suitable for lending to cardholders* s3 (2) (a).

In order to reflect the expansive range of library items that are now available to borrow in a contemporary library service, e.g. eBooks, magazines, DVDs etc, it is suggested to remove the term 'lending book' and replace it with a 'lending item'.

Recommendation 12

The following amendments are considered in the Library Regulations:

- (a) Replace the term 'lending book' with 'lending item,' and define a 'lending item' as any material of the State library service designated by the Secretary as suitable for lending to cardholders.
- (b) Similarly, reflect the above in the powers of the Secretary to designate material of the State library service as suitable for lending to cardholders.

8.2 Librarycard

Part 2 of the Regulations provide for a 'Librarycard' for clients to access library services and authorises the cardholder to borrow any lending book. In the past, the term 'Librarycard' has been used to 'brand' the library membership card. As there is no requirement for this brand to be legislated, it is proposed that this term be replaced with generic terminology to allow for greater flexibility.

For consistency purposes, it is also suggested to incorporate the current section under Part 3 s10 regarding the use of a Librarycard for other services with Part 2 s6.

Recommendation 13

The following amendments are considered in the Library Regulations:

- (a) Change the term 'Librarycard' to the generic two words with no capitalisation, i.e. 'library card' to allow for greater flexibility of use.
- (b) Combine the current section regarding the use of a *Librarycard for other services* together under Part 2 s6 which authorises the card to be used for other purposes than borrowing.

8.3 Use of library services

Part 3 s9 outlines the Secretary's role in determining:

- the maximum number of lending books that can be borrowed at any one time, and
- the period of time that a cardholder may retain any book borrowed.

It also outlines the applicable fine for 'overdue' books, and provisions for cardholders to pay an amount equivalent to the replacement value of a book which is not returned.

The term preferred in LINC Tasmania is 'overdue fees' rather than 'overdue fines'. To ensure the Regulations provides the appropriate level of authority for determining 'fines' or replacement value of a book to be paid, it is recommended that the Secretary is provided with the authority to charge fees and the power to initiate a formal process of recovery if necessary.

Recommendation 14

Provide clarity around the Secretary's authority to charge fees for non-compliance with the prescribed borrowing periods, and the power to initiate a formal process of recovery if necessary in the Library Regulations.

8.4 Offences

Part 4 deals with offences relating to behaviour and respect for library property. It has been nearly 10 years since the Regulations were last amended and as such, the offences listed in this section are outdated or may be covered under other legislation (such as smoking on library property). Contemporary library services provide community spaces which aim to be inclusive and non-discriminatory.

It is also considered necessary to ensure that employees have the authority to direct a person to leave a facility or exclude a person if they contravene the regulations.

Recommendation 15

Review, modernise and simplify the list of offences for inappropriate behaviour of people using the State library service in the Library Regulations.

SECTION B – ARCHIVES ACT 1983

9. OVERVIEW

The Tasmanian *Archives Act 1983* provides the legislative base for the creation, management and preservation of Tasmanian government and public authority records. This ensures that records of continuing value to the public and the government are accessible for appropriate lengths of time. In order for the legislation to be fully effective, it must be articulated in clear, contemporary and readily understood language.

At the time of its creation the Tasmanian *Archives Act 1983* was acknowledged as a leading example of modern archival legislation. However, with the passing of time, the language has become antiquated and some of its definitions are in need of revision, particularly in response to technological change. For example, the destruction of a draft document in the Office of the Attorney General in 2007 created divided opinion over the interpretation of definitions critical to the effective understanding and use of the Act.

10. SHORT AND LONG TITLE

Consideration should be given to revising both the short and long title of the Act. The use of the term 'Archives Act' and the current long title (below) do not articulate the full scope of responsibilities represented in the legislation.

An Act to provide for the custody of State and other records and to repeal the provisions of the Archives Act 1965.

Less than 10 per cent of government records become 'State archives' whereas all records created in Tasmanian government are subject to the requirements of the legislation.

In other Australian government jurisdictions, legislation titles such as: 'Public Records Act' or 'State Records Act,' are used to more clearly define the scope of the legislation. Based upon other Australian models, a possible title for the revised Tasmanian legislation could be:

*State Records Act (Tasmania)
An Act to provide for the creation, management and accessibility of the records of the Tasmanian government and public authorities, and for related purposes.*

Recommendation 16

Revise both the long and short title of the archives legislation to more accurately reflect the purpose and scope.

11. LANGUAGE, DEFINITIONS AND INTERPRETATION

The language used throughout the *Archives Act 1983* is dated and difficult to understand which runs the risk of either deliberate or unintended misinterpretation.

11.1 Definition of 'record'

To address the issues emanating from a recordkeeping matter in the Attorney General's Office in 2007, the existing definition of a 'record' is in need of modification. In particular, the term 'made' within the existing definition needs to be removed to avoid scope for interpretation beyond the intended purpose of the definition. Since 1983, a number of alternative definitions have been created by similar legislation reviews in other Australian jurisdictions, as well as through the development of Australian and international standards for records management.

The *Commonwealth Archives Act 1983* is the most recent archives legislation in Australia to be reviewed. Its definition of 'record' is contemporary and clear. By virtue of this and to create consistency across the Commonwealth/State jurisdictions, it may be appropriate to adopt the definition of 'record' from this Act:

record means a document, or an object, in any form (including any electronic form) that is, or has been, kept by reason of: (a) any information or matter that it contains or that can be obtained from it; or (b) its connection with any event, person, circumstance or thing.

Recommendation 17

Review the definition of a 'record' so that it is contemporary and clear.

11.2 Definition of a 'State record'

There is a need to ensure definitions are clear and consistent with the requirements of the legislation. The existing definition (in s3 of the Act) is:

State record means –

- (a) a Crown record; or
- (b) a record of a State authority; or
- (c) a record of a local authority; or
- (d) any other record that was at any time a record mentioned in paragraph (a), (b) or (c) – but does not include a record of the Parliament of Tasmania.

To provide greater clarity that a 'State record' means records made or kept relating to the business of Government, a revised definition might read:

State record means –

- (a) a Crown record; or
- (b) a record of a State authority which relates to the business or affairs of that authority; or
- (c) a record of a local authority which relates to the business or affairs of that authority; or
- (d) any other record that was at any time a record mentioned in paragraph (a), (b) or (c) – but does not include a record of the Parliament of Tasmania.

Recommendation 18

Revise the existing definitions of 'record' and 'State record' to enable absolute clarity and consistent understanding of the requirements of the Act.

11.3 Definition of the term 'Crown'

Presently, the Act provides a definition of 'Crown record' but does not define the term 'Crown'. A revised Act should include such a definition.

Recommendation 19

- (a) Create a definition for the term 'Crown' for inclusion in the archives legislation; and
- (b) Remove the existing definition of a 'Crown record' which is already included in the definition of a 'State record.'

11.4 Status of 'drafts'

In response to the matter of 2007, consideration was given to the possibility of creating and adding a definition for the term 'draft' in a revised Act. Improved definition of the terms 'record', 'State record' and 'Crown' should satisfactorily address the major issues with interpretation. The status and disposal of drafts is better dealt with as a recordkeeping matter at agency level via records appraisals and creation of records disposal authorities.

12. ARCHIVES OFFICE OF TASMANIA

The State Archives function is at present administered by the State Archivist, whose role also encompasses the management of a business unit within LINC Tasmania and the Department of Education, known as the Tasmanian Archive and Heritage Office (TAHO). The existence of the Archives Office of Tasmania is enshrined within the Archives Act in which the legislation specifically states that the office performing the State Archives function is to 'be known as the 'Archives Office of Tasmania'. This statutory provision means that the naming of the Archives Office in the legislation cannot be dispensed with, or succeeded by (or have its functions assigned to) another body by way of an administrative decision.

Whilst there is no intention in the legislative review process to dispense with the State Archives function or the role of the State Archivist, it is recommend that consideration is given as to whether the name 'Archives Office of Tasmania' is retained or an alternative title created.

Recommendation 20

Consider whether the name 'Archives Office of Tasmania' is retained or an alternative title created in the legislation.

13. DISPOSAL, DESTRUCTION AND AMENDMENT OF STATE RECORDS

Part III, *Division 3 – Dealings with State records and State archives*, s20 provides for the unauthorised disposal, amendment and destruction of State records. The current penalty for this offence is not exceeding 50 penalty units. Given that the current value of a single penalty unit in Tasmanian government stands at \$130, a maximum fine of \$6,850 per instance does not equate in importance to the seriousness of such offences. It is recommended that the seriousness and potential consequences are better articulated in the legislation.

Recommendation 21

- (a) Draft an appropriate narrative to reinforce that non-compliance with the unauthorised disposal, destruction or amendment of State records is an offence, and that the State Archivist has the capacity to direct matters of non-compliance to law enforcers for investigation.
- (b) Consider increasing the number of penalty units that applies to a breach of this offence.

14. RESPONSIBILITIES AND POWERS OF THE STATE ARCHIVIST

14.1 Articulating responsibilities and powers of the State Archivist

The majority of the responsibilities and powers of the State Archivist are provided for in Part II s8 of the current archives legislation. However, the *Archives Regulations 2004* address the use of and access to State archives and the retention and management of records of State and local authorities in response to administrative change. These are critical ongoing responsibilities of the State Archivist that need to be more visible and included in the primary legislation.

Subsequently it is proposed that the Regulations be incorporated into the main body of the primary legislation so that all responsibilities and powers of the State Archivist are accounted for and clearly articulated in the Act. This would abolish the need for subordinate legislation to the Archives Act.

Recommendation 22

Incorporate the provisions contained within the *Archives Regulations 2004* into the main body of the primary legislation so that all responsibilities and powers of the State Archivist are accounted for and clearly articulated in the Act.

Additionally, the following amendments are proposed to enhance and provide clarity around the responsibilities and powers of the State Archivist and address an issue relating to the acquisition of non-government records.

14.2 Responsibility for the government recordkeeping function

The current legislation does not explicitly provide for the whole-of-government responsibility for recordkeeping, beyond the powers of the State Archivist to issue guidelines and advices (Part II s8). The issuing of guidelines and advices serves as a means of providing whole of government policy and direction on recordkeeping matters. Whilst this responsibility is implied, the Act does not specifically define whole-of-government leadership for the recordkeeping function as the responsibility of the State Archivist. Enhancing the scope, responsibilities and powers of the State Archivist to more accurately reflect this accepted and established role within government is necessary to provide clarity and make this responsibility obvious and known.

Recommendation 23

Provide appropriate wording so that the leadership of the recordkeeping function is reflected as a whole-of-government responsibility of the State Archivist.

14.3 Relinquishment of the power for the State Archivist to accept transfer of non-government records

Part II s8 (2) (d) of the current Archives legislation enables the State Archivist to: *accept responsibility for the safe keeping of documents and objects which are not State records*. In all other Australian states, the government archives entity only accepts transfer of records created via performance of government functions, and the responsibility for the safekeeping of non-government records falls within the collecting brief of the respective State Libraries.

Recommendation 24

Relinquish the State Archivist's power and responsibility for the acquisition and management of non-State records, and rather this be considered as the exclusive domain of the State library services under the revised objectives of the Libraries legislation (refer also to Recommendation 4).

14.4 De-accessioning

Part II s8 (4) currently gives the State Archivist the authority to make arrangements with another person for records in his/her custody to be kept in the custody of that person, where appropriate. It would be useful to expand the scope to enable the State Archivist to de-accession records no longer identified as State records, and for these records to be potentially passed on to third parties who would benefit from access to and use of these records.

This would enable an arrangement in Tasmania similar to the *Places of Deposit* (POD) arrangement in Victoria without placing onus upon the State Archivist to maintain a regime to oversee the management of such records. The POD program describes arrangements for facilities outside of the Victorian Public Record Office to house public records to enable certain public records that may be of value to a local community to be kept for public use in that community.

Recommendation 25

Broaden the current provision, to give the State Archivist the autonomy to delegate the custody and ownership of State records to another entity, where the records are no longer required for government business and are not identified as State Archives.

15. USE OF ARCHIVES OFFICE OF TASMANIA SEAL

Part IV s25 of the current Act stipulates that:

all courts, judges, and persons acting judicially shall take judicial notice of the seal of the Archives Office affixed to any document purporting to emanate from that Office and shall presume that it was duly affixed.

The opportunity should be taken via the legislative review process to consider use of contemporary certification and authentication practices in favour of use of the seal.

Recommendation 26

- (a) Consider the use of contemporary certification and authentication practices to authorise any document purporting to emanate from the Archives Office; and
- (b) Remove the requirement for use of a seal bearing the armorial designs and supporters assigned for Tasmania surrounded by the words 'Archives Office of Tasmania'.

16. SCRUTINY OF RECORDKEEPING PERFORMANCE IN TASMANIAN GOVERNMENT

There is currently no legislated requirement for monitoring the quality and compliance of recordkeeping in Tasmanian Government administration. A requirement for the State Archivist to monitor performance and report on the overall health of recordkeeping is recommended.

Recommendation 27

Establish a new requirement for the State Archivist to develop and table an annual report to the Tasmanian Government on the health of recordkeeping in Tasmanian government administration.

17. GOVERNANCE AND THE RELATIONSHIP WITH RELATED LEGISLATION

17.1 Relationship with *Libraries Act 1984*

Whilst the current Act does not stipulate the requirement for the establishment of a government or advisory committee, there is scope for the provision of advice on the preservation of Tasmania's documentary history to be incorporated into the jurisdiction of the Tasmanian Library Advisory Board (TLAB) under the *Libraries Act 1984* (refer section 4.1 above).

Recommendation 28

Include a new clause in the archives legislation to give provision for the Tasmanian Library Advisory Board (TLAB) to provide advice to the Minister on the preservation of Tasmania's documentary history with a cross-reference back to the libraries legislation.

17.2 Relationship with *Right to Information Act 2009*

There is an important linkage between the *Archives Act 1983* and the *Right to Information Act 2009* as good recordkeeping practices across government underpin a reliable and trusted right to information regime. Therefore it is recommended that the revised archives legislation is written in a manner that is consistent in its language and tone with the *Right to Information Act 2009*. Terms that need to be defined in both Acts should wherever possible be identical in their description.

Recommendation 29

Revise the language and tone of the archives legislation so that it is written in a manner that is consistent with the language and tone of the *Right to Information Act 2009*.

SECTION C - SUMMARY OF RECOMMENDATIONS

Libraries Legislation

<p><i>Recommendation 1</i></p> <p>Revise the short title of the legislation to more broadly reflect the provision of 'library services' in the State: for example, State Library Services Act.</p>
<p><i>Recommendation 2</i></p> <p>Review and update the definitions in Part I – Preliminary.</p>
<p><i>Recommendation 3</i></p> <p>Review the definition of a 'book' and ensure that it clearly encompasses published material in digital and print formats.</p>
<p><i>Recommendation 4</i></p> <p>Develop a clear set of objectives of providing a State library service, so that they are enshrined in the legislation and may include the following provisions to:</p> <ul style="list-style-type: none">• promote and administer the provision of State library services in Tasmania;• provide the public with free access to basic library services, which may include: lending services, reference and information services and access, community programs and learning and literacy services;• provide for the acquisition, preservation, and display of, and provision of access to, publications and non-State records relating to the documentary and cultural heritage of Tasmania, in accordance with current collection development policies.
<p><i>Recommendation 5</i></p> <p>Remove the function relating to the powers of the Secretary to make arrangements with the Parliamentary Library Committee for the provision of services by the State library service to the Parliamentary Library.</p>
<p><i>Recommendation 6</i></p> <p>Simplify the wording for the composition of TLAB members, and include a person with heritage knowledge and expertise, for example:</p> <p>The Board consists of –</p> <ol style="list-style-type: none">(a) a chairperson nominated by the Minister; and(b) 4 persons nominated by the Minister from a list of names representing a mix of urban and rural interests submitted by the Local Government Association of Tasmania, with at least one person from each of the northern, north-western and southern areas; and(c) 7 persons nominated by the Minister to represent the interests of users of the State Library Service with at least one person from each of the northern, north-western and southern areas, and at least one person nominated by the Minister with heritage knowledge and expertise; and(d) the person for the time being holding, in the Department, an office or position nominated by the Secretary.
<p><i>Recommendation 7</i></p> <p>Simplify the TLAB appointment process so that appointments are made by the Minister rather than the Governor.</p>
<p><i>Recommendation 8</i></p> <p>Alter the composition of the State Library and Archives Trust to replace the State Archivist with one person who, in the opinion of the Minister, has knowledge of and experience in the library and/or archives industry and is not employed by state government.</p>
<p><i>Recommendation 9</i></p> <p>Amend the current process whereby the Allport Committee chairperson is nominated by members of the Committee, to the chairperson being nominated by the Minister.</p>

Recommendation 10

Simplify administrative processes for boards and committees by replacing the authorising person for notification of vacation of office and determining remuneration from the 'Governor' with the 'Minister.'

Recommendation 11

The following amendments are considered in the Library Regulations:

- (a) Replace the term 'book' as per any definition recommended in Recommendation 3, and ensure that the wording allows the State library service the right to exercise selectivity in the capture and preservation of publications.
- (b) Move the processes surrounding the Legal Deposit requirements to the Libraries Regulations.

Recommendation 12

The following amendments are considered in the Library Regulations:

- (a) Replace the term 'lending book' with 'lending item,' and define a 'lending item' as any material of the State library service designated by the Secretary as suitable for lending to cardholders.
- (b) Similarly, reflect the above in the powers of the Secretary to designate material of the State library service as suitable for lending to cardholders.

Recommendation 13

The following amendments are considered in the Library Regulations:

- (a) Change the term 'Librarycard' to the generic two words with no capitalisation, i.e. 'library card' to allow for greater flexibility of use.
- (b) Combine the current section regarding the use of a *Librarycard for other services* together under Part 2 s6 which authorises the card to be used for other purposes than borrowing.

Recommendation 14

Provide clarity around the Secretary's authority to charge fees for non-compliance with the prescribed borrowing periods, and the power to initiate a formal process of recovery if necessary in the Library Regulations.

Recommendation 15

Review, modernise and simplify the list of offences for inappropriate behaviour of people using the State library service in the Library Regulations.

Archives Legislation

Recommendation 16

Revise both the long and short title of the archives legislation to more accurately reflect the purpose and scope.

Recommendation 17

Review the definition of a 'record' so that it is contemporary and clear.

Recommendation 18

Revise the existing definitions of 'record' and 'State record' to enable absolute clarity and consistent understanding of the requirements of the Act.

Recommendation 19

- (a) Create a definition for the term 'Crown' for inclusion in the archives legislation; and
- (b) Remove the existing definition of a 'Crown record' which is already included in the definition of a 'State record.'

Recommendation 20

Consider whether the name 'Archives Office of Tasmania' is retained or an alternative title created in the legislation.

Recommendation 21

- (a) Draft an appropriate narrative to reinforce that non-compliance with the unauthorised disposal, destruction or amendment of State records is an offence, and that the State Archivist has the capacity to direct matters of non-compliance to law enforcers for investigation.
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Establish a new requirement for the State Archivist to develop and table an annual report to the Tasmanian Government on the health of recordkeeping in Tasmanian government administration.

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Include a new clause in the archives legislation to give provision for the Tasmanian Library Advisory Board (TLAB) to provide advice to the Minister on the preservation of Tasmania's documentary history with a cross-reference back to the libraries legislation.

Recommendation 29

Revise the language and tone of the archives legislation so that it is written in a manner that is consistent with the language and tone of the *Right to Information Act 2009*.