

*Relevant and responsible public authority (sections 8(3) and 15(d) of the Act)*

- Under the Act, once a public authority ceases to exist (and its functions are not going to be carried out by another public authority), its records need to be managed by a relevant and/or responsible public authority on an ongoing basis.
- Sections 8(3) and 15(d) of the Act provide for a regulation to establish the responsible and/or relevant public authority.
- The role of a 'relevant' public authority is to ensure the safe custody and preservation of records in its possession (i.e. applies to records not in QSA's custody).
- A 'relevant' public authority is also required to authorise the disposal of temporary records.
- A 'responsible' public authority sets restricted access periods and makes decisions on access to records in the custody of QSA, including requests under the RTI Act and the IP Act.
- Ministers and Assistant Ministers are considered a public authority under the Act and are responsible for the management of their ministerial records.
- Once a Minister or Assistant Minister leaves their portfolio (e.g. on change of government, when they resign as a Minister or change ministerial portfolios under the same government), 'decision-making powers' for the ministerial portfolio documents must be transferred to a new public authority so decisions can be made about access and destruction of documents.
- The *Ministerial Handbook* requires Ministers to transfer records to QSA when they are no longer required or when the minister ceases to hold his/her portfolio.
- Ministerial records held in the custody of QSA currently have no assigned relevant or responsible public authority to make decisions relating to access and disposal. No public authority has previously been identified that could take responsibility for these records.
- QSA's portfolio department (i.e. Department of Housing and Public Works) is currently responsible for making any decisions regarding access requests made under the RTI Act or the IP Act for records of former Ministers and Assistant Ministers that are stored at QSA.
- QSA holds records from former ministers in its collection dating back to 1978, and includes diaries, pecuniary interest records, previous lobbyist registers and email accounts.
- Some ministerial records, including pecuniary interest records and lobbyist registers are only required to be retained on a temporary basis.

Pages 52 through 74 redacted for the following reasons:

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Exempt Sch 3(7)

Released under RTI - DCHDE

**Subject** Update on procurement activities for consultancy services to review the *Public Records Act 2002*

Approval required by 12/02/2016

## RECOMMENDATION

- It is recommended that the Minister:
  - **note** no applications were received for the Invitation to Offer (ITO) for consultancy services to review the *Public Records Act 2002*
  - **approve** the review of the *Public Records Act 2002* in two separate stages:
    - Stage 1 - a Queensland State Archives (QSA) led internal review focusing on issues requiring urgent attention to be progressed in a Bill as a matter of priority
    - Stage 2 - a wider review of the Act led by an independent expert based on the revised terms of reference (**Attachment 1**) involving broad stakeholder consultation
  - **approve** the re-release of the ITO with revised timeframes, revised terms of reference and inclusion of additional potential candidates to be invited to submit a response for consultancy services to review the *Public Records Act 2002*.

## BACKGROUND

- The Minister has previously approved the procurement strategy for an independent expert to lead a review of the *Public Records Act 2002* and wrote to the Honourable Anastacia Palaszczuk MP, Premier and Minister for the Arts advising the proposed timeframes, potential candidates and the original terms of reference for the review (refer to **Attachment 2**).
- The ITO was released to seven potential candidates on 25 August 2015, with a closing date of 9 September 2015.

## KEY ISSUES

- Follow-ups with the candidates invited to submit an ITO response for Consultancy Services confirmed that due to being highly committed for the rest of the year, they were not in a position to respond.
- Two candidates, Mr David Solomon (former Queensland Integrity Commissioner) and Ms Meryl Stanton PSM (former senior public servant and Chief Executive Officer of Comcare), indicated that if timeframes to submit an ITO response were moved to the early part of 2016, they would reconsider their position.
- QSA identified a potential candidate internal to the Queensland Government, however the potential candidate declined the opportunity.
- Given delays experienced up to this point in obtaining an external reviewer to review the Act, QSA proposes a two stage process for amending the Act:
  - Stage 1 – an urgent internal review by QSA with targeted consultation focusing on critical issues to be progressed in a Bill in 2016 (e.g. status of ministerial records once a minister ceases to hold office; the need to streamline processes for ownership of public records for certain machinery-of-government changes such as Commissions of Inquiry).
  - Stage 2 – a comprehensive review of the Act led by an independent expert using the revised terms of reference and involving broad consultation (e.g. public authorities).
- The terms of reference for the independent review (as approved in July 2015) have been amended to remove the urgent amendments to be covered in stage 1.
- Amendments being led by QSA could be commenced immediately.
- It is proposed the re-released ITO be issued in the first quarter of 2016 with a flexible start date to be agreed upon with the successful candidate.



- To help increase response rates to a re-released ITO, it is suggested that in addition to changing timeframes, the potential candidate list be extended to also include:
  - Professor Emeritus Richard Mulgan, Crawford School of Public Policy, Australian National University
  - Professor Patrick Weller AO, Professor Emeritus, Griffith University School of Government and International Relations and an Adjunct Professor in the Centre for Governance and Public Policy
  - Professor Scott Prasser, Executive Director, Public Policy Institute, Australian Catholic University
  - Simone Webbe, former Deputy Director-General (Governance), Department of the Premier and Cabinet
  - other candidates that may be identified or potentially available at the time of ITO release (e.g. Dr Anne Tiernan, School of Government and International Relations, Griffith University if she ceases to be a member of the Public Records Review Committee).
- As with the previously approved list, these candidates were chosen based on potential availability, expertise in public administration, regulatory practice and digital literacy.

#### **ELECTION/CABINET/PUBLIC COMMITMENTS/LEGISLATION**

- The review of the Act has been published as an action for QSA, Digital Productivity and Services, Department of Science, Information Technology and Innovation (DSITI) in the 2015-16 DSITI Service Delivery Statement.

#### **FINANCIAL IMPACTS**

- Funding will be provided by QSA and is categorised as professional non-technical consultancy services.

#### **CONSULTATION**

- QSA has been working with DSITI Procurement Services throughout the ITO process.
- DSITI Procurement Services supports the revised ITO approach.
- QSA has been consulting with the Department of the Premier and Cabinet as a member of the ITO evaluation panel.

#### **COMMUNICATIONS/MEDIA OPPORTUNITIES**

- Once a successful candidate is approved, it is recommended the Minister announce the commencement of the review of the Act (as noted in the DSITI media opportunities plan).

#### **FUTURE STEPS**

- Seek ministerial approval for progressing specific urgent legislative amendments.
- Re-release the ITO in the first quarter of 2016 for response by identified candidates.

**Endorsed**

**Noted / Approved / ~~Not Approved~~**

  
Jamie Merrick (or Director on behalf of)  
**Acting Director-General**

09/09/2016

  
Leeanne Enoch (or Chief of Staff on behalf of)  
**Minister for Innovation, Science  
and the Digital Economy and  
Minister for Small Business**

14/02/16

**Minister or Director-General comments**

Media release required: Yes  No

**Electorates:** Statewide.



**Minister**

**INDEPENDENT REVIEW OF  
QUEENSLAND'S *PUBLIC RECORDS ACT 2002***

**Terms of Reference**

**JANUARY 2016**

Released under RTI - DCHDE

## Terms of Reference

Queensland State Archives exists because evidence of our past informs our future. The past is important because Queenslanders:

- have a right to access documentation of their history and identity
- expect good and accountable government enabled by good public records.

A public record is any form of recorded information, either received or created by a public authority, which provides evidence of the business or affairs of that public authority.

The creation and management of public records in Queensland is governed by the *Public Records Act 2002* (the Act). This Act applies to an estimated 500 public authorities across Queensland including government departments, local governments, government-owned corporations and statutory bodies such as universities and water boards.

The Act:

- sets responsibilities for public authorities and the Archives
- specifies powers for the State Archivist, including the issuing of standards and advice
- authorises access considerations for public records, and
- outlines requirements for the disposal of public records.

The objectives of the Act are to ensure:

- the public records of Queensland are made, managed, kept and, if appropriate, preserved in a useable form for the benefit of present and future generations, and
- public access to records under the Act is consistent with the principles of the *Right to Information Act 2009* and the *Information Privacy Act 2009*.

### *Background to the need for a review of the Act*

The Act commenced in 2002 and has not been reviewed. Since 2002 there have been significant changes in technology and in our environment that have greatly impacted the creation and management of public records. The progressive move by public authorities to use digital platforms to support operations and service delivery is stretching the ability of public authorities and Archives to manage the massive increase in the volume of records being created.

The significant changes in digital technology, substantial rise in the volume of public records and the practical impacts on recordkeeping were not fully understood when the Act was drafted. In addition, in recent years there has been numerous complex machinery of government changes, asset disposals and third party service delivery mechanisms put in place. All of these have challenged traditional recordkeeping arrangements. Finally, the increasing use of digital technologies highlight a need to review the Act.

### *Objectives for the review of the Act:*

- consider the extent to which the current legislative framework achieves the objectives of the Act for both current and anticipated operating environments, with particular consideration being given to digital records
- determine if there are opportunities to improve the legislative framework's treatment of digital records
- determine if there are opportunities to increase accountability and transparency of government through appropriate regimes for making and keeping information.



In meeting the objectives of the Act review, factors to be considered will likely include (but not be limited to):

- the scope of the term “public record” and whether the current definition is leading to the capture and retention of too many records
- issues that limit the effectiveness of recordkeeping
- guidance on what public records should be captured under the legislative framework taking into account costs and benefits of creating, managing and preserving public records
- options for the management of restricted access periods including where access periods are not set, temporary closures and changing access periods
- the suitability of current legal provisions for distributed custody arrangements for public records not held by the Archives, including access to those records
- opportunities to improve alignment with the *Right to Information Act 2009* and the *Information Privacy Act 2009*
- appeal provisions regarding access and appraisal – requirement to consult with the community on appraisal decisions
- needs of communities in terms of what public records are kept and how they are accessed, both now and into the future
- how other jurisdictions have addressed these issues.

#### *Project governance*

A project board consisting of internal and external representatives including the Department of the Premier and Cabinet will be established to oversee the review of the Act.

#### *Expected output from a review of the Act*

The independent reviewer will prepare:

- a discussion paper for public feedback, developed in consultation with QSA
- a report to the Minister for Innovation, Science and the Digital Economy and Minister for Small Business that documents:
  - findings of the review
  - opportunities to improve the effectiveness of the legislative framework
  - recommended actions that might be put in place to give effect to identified opportunities.

Note: The proposed amendments below will be progressed in a separate process led by QSA:

- the effectiveness of current ownership and control arrangements applying to ministerial records
- current record ownership and control issues associated with changes of government administration, or associated with changes in service delivery or assets control arrangements
- opportunities to simplify models for continuing ownership and control of records associated with changes of government administration, asset control or service delivery arrangements

**Subject** Procurement of independent expert to commence review of the *Public Records Act 2002*

Approval required by N/A

### RECOMMENDATION

- It is recommended that the Minister:
  - **note** a limited procurement method will be used to undertake a review of the *Public Records Act 2002* (the Act) as such expertise cannot easily be sourced from existing panel arrangements
  - **approve** the draft terms of reference for the review of the Act (refer to **Attachment 1**)
  - **sign and forward** the letter to the Premier advising of the proposed timeframes and terms of reference for the review of the Act (refer to **Attachment 2**).

### BACKGROUND

- On 12 April 2015, approval was provided to initiate a review of the Act (refer to **Attachment 3**).
- The Act has not been reviewed since its commencement and will provide Queensland State Archives (QSA) with an opportunity to improve the legislative framework for records and information management in an increasingly digital age.

### KEY ISSUES

- It is proposed that an independent expert with relevant experience in public administration, and particular skills relating to regulatory practice and digital literacy be engaged to review the Act and deliver their findings to the Queensland Government.
- Potential candidates identified include Professor Peter Shergold AC (now Chancellor of the University of Western Sydney); Ms Lynelle Briggs AO (former Australian Public Service Commissioner and Chief Executive Officer of Medicare Australia); Dr Allan Hawke (former Secretary, ambassador and Chancellor of the Australian National University); Mr Andrew Podger (former Australian Public Service Commissioner); Ms Meryl Stanton PSM (former senior public servant and Chief Executive Officer of Comcare); Mr David Solomon (former Queensland Integrity Commissioner) and Ms Vanessa Fanning (former Managing Director and Chief Executive Officer of Health Services Australia).
- It is proposed that the seven potential candidates be invited to submit a proposal.
- A Request for Offer (RFO) package will be prepared to invite the submission of proposals which will allow candidates to demonstrate their ability to deliver the requirements.
- Once a candidate is selected, it is proposed a public announcement be released regarding the review of the Act.
- QSA will work with the independent reviewer to prepare a discussion paper for public consultation.
- A project board consisting of internal and external representatives including the Department of the Premier and Cabinet will oversee the review of the Act.
- The independent reviewer will submit their final report with recommendations to the department for consideration by the Minister.
- Based on the findings of the independent reviewer, QSA will prepare a Queensland Government response and associated Cabinet Submission to progress approved legislative amendments.
- It is proposed that the review of the Act commence in July 2015, with a final report delivered to the Queensland Government by the end of 2015.
- The likely timeframe to introduce a Bill to Parliament is the second half of 2016.

### FINANCIAL IMPACTS

Contact: Adrian Cunningham, Acting State Archivist  
Ph: 07 3131 7748  
Date: 11/06/2015

Endorsed: Andrew Spina, Assistant Director-General  
Ph: 07 3719 7733  
Date: 06/2015



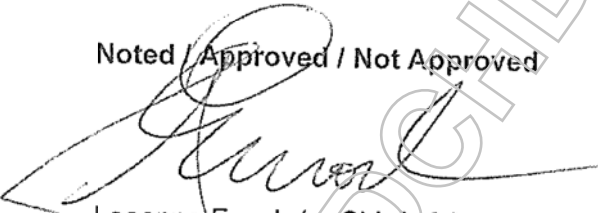
- The estimated cost of \$150,000 will be funded by QSA.

**CONSULTATION**

- Department of Science, Information Technology and Innovation (DSITI) Procurement Services.
- Mr Boyd Backhouse, Executive Director, Legal Services, Department of Housing and Public Works on the Act review process.
- Mr Nicholas Dowie, Senior Director, Economic Policy, Department of the Premier and Cabinet on the draft terms of reference for the Act review.
- Significant consultation will be undertaken across government and with members of the community during the review of the Act.

Endorsed

Noted / Approved / Not Approved



Sue Rickerby (or Director on behalf of)  
Director-General

Leanne Enoch (or Chief of Staff on behalf of)  
Minister for Housing and Public Works and  
Minister for Science and Innovation

03/06/12

06/07/12

|  |
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| <i>Minister or Director-General comments</i> |
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|  |

Released under RTI

INDEPENDENT REVIEW OF  
QUEENSLAND'S *PUBLIC RECORDS ACT 2002*

Terms of Reference

MAY 2015

Released under RTI - DCHDE



## Terms of Reference

Queensland State Archives exists because evidence of our past matters. The past is important because Queenslanders:

- have a right to access documentation of their history and identity
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A public record is any form of recorded information, either received or created by a public authority, which provides evidence of the business or affairs of that public authority.

The creation and management of public records in Queensland is governed by the *Public Records Act 2002* (the Act). The Act applies to an estimated 500 public authorities across Queensland including government departments, local governments, government-owned corporations, and statutory bodies such as universities and water boards.

The Act:

- sets responsibilities for public authorities and the Archives
- specifies powers for the State Archivist, including the issuing of standards and advice
- authorises access considerations for public records
- outlines requirements for the disposal of public records.

The objectives of the Act are to ensure:

- the public records of Queensland are made, managed, kept and, if appropriate, preserved in a useable form for the benefit of present and future generations
- public access to records under the Act is consistent with the principles of the *Right to Information Act 2009* and the *Information Privacy Act 2009*.

Background to the need for a review of the Act

The Act commenced in 2002 and has not been reviewed. Since 2002 there have been significant changes in technology and in our environment that have greatly impacted the creation and management of public records. The progressive move by public authorities to use digital platforms to support operations and service delivery is stretching the ability of public authorities and Archives to manage the massive increase in the volume of records being created.

The significant changes in digital technology, substantial rise in the volume of public records, and the practical impacts on recordkeeping were not fully understood when the Act was drafted. In addition, in recent years there has been numerous complex machinery-of-government changes, asset disposals, and third party service delivery mechanisms put in place. All of these have challenged traditional recordkeeping arrangements.

Finally, recent changes of government have also highlighted problems associated with access and ongoing management of the records of Ministers. Recent events and increasing use of digital technologies highlight a need to review the Act.

#### Objectives for the review of the Act:

- consider the extent to which the current legislative framework achieves the objectives of the Act for both current and anticipated operating environments, with particular consideration being given to digital records
- determine if there are opportunities to improve the legislative framework's treatment of digital and ministerial records
- determine if there are opportunities to increase accountability and transparency of government through appropriate regimes for making and keeping information.

In meeting the objectives of the Act review, factors to be considered will likely include (but not be limited to):

- the scope of the term 'public record' and whether the current definition is leading to the capture and retention of too many records
- issues that limit the effectiveness of recordkeeping
- guidance on what public records should be captured under the legislative framework taking into account costs and benefits of creating, managing and preserving public records
- the effectiveness of current ownership and control arrangements applying to ministerial records
- current record ownership and control issues associated with changes of government administration, or associated with changes in service delivery or assets control arrangements
- opportunities to simplify models for continuing ownership and control of records associated with changes of government administration, asset control or service delivery arrangements
- options for the management of restricted access periods including where access periods are not set, temporary closures and changing access periods
- the suitability of current legal provisions for distributed custody arrangements for public records not held by the Archives, including access to those records
- opportunities to improve alignment with the *Right to Information Act 2009* and the *Information Privacy Act 2009*
- appeal provisions regarding access and appraisal – requirement to consult with the community on appraisal decisions
- needs of communities in terms of what public records are kept and how they are accessed, both now and into the future
- how other jurisdictions have addressed these issues.

#### Project governance

A project board consisting of internal and external representatives including the Department of the Premier and Cabinet will be established to oversee the review of the Act.

#### Expected output from a review of the Act

The independent reviewer will prepare:

- a discussion paper for public feedback, developed in consultation with QSA
- a report to the Minister of Housing and Public Works and Minister for Science and Innovation that documents:
  - findings of the review
  - opportunities to improve the effectiveness of the legislative framework
  - recommended actions that might be put in place to give effect to identified opportunities.

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|--|---|---|--|
| Prepared by: Josephine Marsh<br>Title: A/Director<br>Division/Region: Queensland<br>State Archives<br>Telephone: 07 3131 7705<br>Date prepared: 01/06/15 | Endorsed by: Adrian<br>Cunningham<br>Title: A/State Archivist<br>Division/Region: Queensland<br>State Archives<br>Telephone: 07 3131 7748<br>Date endorsed: 11/6/2015 | Endorsed by: Andrew Spina<br>Title: Assistant Director-General<br>Division/Region: Digital<br>Productivity & Services<br>Telephone: 07 3719 7733<br>Date endorsed: 19/06/2015 | Approved by: Sue Rickerby (or<br>Director on behalf of)<br>Title: Director-General<br>Division/Region: D&IT<br>Telephone: 07 3215 3700<br>Date approved: |
|--|---|---|--|

Ref: 00627-2015

The Honourable Anastacia Palaszczuk MP  
Premier and Minister for the Arts  
PO Box 15185  
CITY EAST QLD 4002

Dear Premier

I am writing to advise you about the review of the *Public Records Act 2002* (the Act), administered by the Department of Science, Information Technology and Innovation. The Act has not been reviewed since its commencement. This review is needed to ensure the Act is fit for purpose as the government transitions its business to digital platforms.

The review will specifically reconsider the scope of the Act and the definition of a public record and aim to remove ambiguities associated with the management of public records of former Ministers in the custody of Queensland State Archives. The terms of reference for the review of the Act are enclosed for your reference.

The review of the Act will be undertaken by an independent expert who has relevant experience in public administration, and particular skills relating to regulatory practice and digital literacy. A Request for Offer will be released for candidates to submit their proposal to undertake the review. Candidates identified as demonstrating potentially suitable qualities include:

- Professor Peter Shergold AC (Chancellor of the University of Western Sydney)
- Ms Lynelle Briggs AO (former Australian Public Service Commissioner and Chief Executive Officer of Medicare Australia)
- Dr Allan Hawke (former Secretary, ambassador and Chancellor of the Australian National University)
- Mr Andrew Podger (former Australian Public Service Commissioner)
- Ms Meryl Stanton PSM (former senior public servant and Chief Executive Officer of Comcare)
- Mr David Solomon (former Queensland Integrity Commissioner)
- Ms Vanessa Fanning (former Managing Director and Chief Executive Officer of Health Services Australia).

Pending their ability to meet the specifications outlined in a Request for Offer, other candidates with similar experience may need to be approached.





Minister for Housing and Public Works  
Minister for Science and Innovation

Ref: 00627-2015

6 JUL 2015

The Honourable Anastacia Palaszczuk MP  
Premier and Minister for the Arts  
PO Box 15185  
CITY EAST QLD 4002

Level 7 80B George Street Brisbane  
GPO Box 2457 Brisbane  
Queensland 4001 Australia  
Telephone +61 7 3719 7270  
Facsimile +61 7 3012 9017  
Email [science@miniserial.qld.gov.au](mailto:science@miniserial.qld.gov.au)  
Website [qld.gov.au](http://qld.gov.au)

Dear Premier

I am writing to advise you about the review of the *Public Records Act 2002* (the Act), administered by the Department of Science, Information Technology and Innovation. The Act has not been reviewed since its commencement. This review is needed to ensure the Act is fit for purpose as the government transitions its business to digital platforms.

The review will specifically reconsider the scope of the Act and the definition of a public record and aim to remove ambiguities associated with the management of public records of former Ministers in the custody of Queensland State Archives. The terms of reference for the review of the Act are enclosed for your reference.

The review of the Act will be undertaken by an independent expert who has relevant experience in public administration, and particular skills relating to regulatory practice and digital literacy. A Request for Offer will be released for candidates to submit their proposal to undertake the review. Candidates identified as demonstrating potentially suitable qualities include:

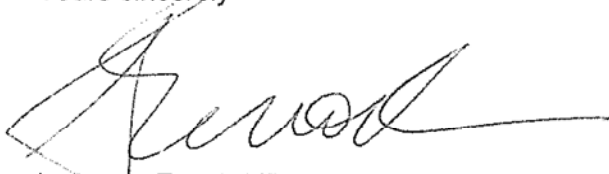
- Professor Peter Shergold AC (Chancellor of the University of Western Sydney)
- Ms Lynelle Briggs AO (former Australian Public Service Commissioner and Chief Executive Officer of Medicare Australia)
- Dr Allan Hawke (former Secretary, ambassador and Chancellor of the Australian National University)
- Mr Andrew Podger (former Australian Public Service Commissioner)
- Ms Meryl Stanton PSM (former senior public servant and Chief Executive Officer of Comcare)
- Mr David Solomon (former Queensland Integrity Commissioner)
- Ms Vanessa Fanning (former Managing Director and Chief Executive Officer of Health Services Australia).

Pending their ability to meet the specifications outlined in a Request for Offer, other candidates with similar experience may need to be approached.

The review of the Act is expected to commence in July 2015, with a final report delivered to the Queensland Government by December 2015. Following completion of the review of the Act, I will bring a submission to Cabinet outlining the main findings and a proposed response.

If you require any further information, please contact my office on telephone 07 3719 7270.

Yours sincerely



Leeanne Enoch MP  
**Minister for Housing and Public Works and  
Minister for Science and Innovation**

Encl. (1)

Released under RTI - DCF/DPE

Subject Review of Public Records Act 2002

Due to MO: N/A.

Approval required by: 13/04/2015

#### RECOMMENDATION

- It is recommended that the Minister:
  - approve commencement of a review of the Public Records Act 2002 (Act)
  - approve the Department of Science, Information Technology and Innovation (DSITI) liaise with the Department of the Premier and Cabinet (DPC) to resolve the review process.


#### KEY ISSUES

- The Act is ambiguous about the management of public records of former Ministers in the custody of Queensland State Archives (QSA).
- The Queensland Ministerial Handbook (Handbook) states: 'Former Ministers will be entitled to access ministerial records held by State Archives that they dealt with personally while in office, but they may not retain such documents. The State Archivist can arrange access after discussion with the present leader of the party that formed government at the time the records were created.'
- Under the Act there is currently no responsible public authority prescribed to make access and disposal decisions about ministerial records.
- As the Handbook is inconsistent with the Act, Crown Law has advised OSA Exempt Sch 3(7)
- Access to records of any former minister (before expiry of the 30 year restricted access period) can only be sought by application to the Director-General, DSITI under the Right to Information or Information Privacy legislation.
- Other key issues have also been identified about the operation of the Act including the scope and definition of public records (raised by DPC) and the need to ensure the Act is fit for purpose as government transitions its business to digital platforms.
- A review of the Act, which has not been done since its commencement, could be undertaken to resolve these issues. This could be commenced quickly and would take several months including consultation. It is likely that outcomes of the review would be considered by Cabinet with any amendments subject to normal legislative process.
- DSITI understands that DPC is briefing the Premier on this issue and is also likely to recommend a review of the Act be commenced.

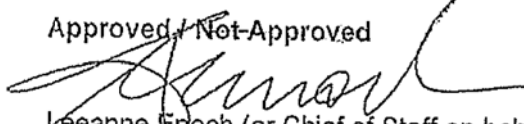
#### BACKGROUND

- Ministers and Assistant Ministers are defined as public authorities under the Act and are required, along with their staff, to create, manage, and keep full and accurate records of the official activities of their portfolio responsibilities as public records.
- Ministerial records held at QSA are restricted from public access for 30 years under the Act.

Endorsed

  
Sue Rickerby (or Director on behalf of)  
Director-General

Approved/Not-Approved

  
Leeanne Epoch (or Chief of Staff on behalf of)  
Minister for Housing and Public Works and  
Minister for Science and Innovation

Minister or Director-General comments



**MINISTERIAL BRIEFING NOTE**

**Subject:** Proposed amendments to the *Public Records Act 2002* for mandatory compliance and penalties for breaching the Act  
**Decision/Action by:** Click here to enter a date  
**Reasons for Urgency:** N/A  
**Briefing type:** Unrequested briefing note for approval  
**Responsible Area:** Queensland State Archives  
**Electorate:** Statewide  
**Contact Officer:** Mike Summerell – (07) 3037 6601

**PURPOSE**

To seek approval from the Minister for proposed amendments to the *Public Records Act 2002* to introduce mandatory compliance with key recordkeeping standards and policies with penalties for non-compliance and penalties for not ensuring the protection and safe custody of records in line with recommendations resulting from an investigation into the alleged unauthorised disposal of public records by the Honourable Mark Bailey MP, former Minister for Main Roads, Road Safety and Ports and Minister for Energy, Bio Fuels and Water Supply.

**RECOMMENDATION**

It is recommended that the Minister:

1. Approve an amendment to the *Public Records Act 2002* to make compliance with key recordkeeping standards and policies mandatory and introduce penalties for non-compliance.
2. Approve an amendment to the *Public Records Act 2002* to introduce penalties for not ensuring the safe custody and preservation of public records.

| Noted | Approved | Not approved |
|-------|----------|--------------|
|       |          |              |
|       |          |              |

| Yes | No |
|-----|----|
|     |    |

Media Release Required

**Routine** (Straight to MO)       **Non-routine** (DG to endorse)

|  |                        |
|--|------------------------|
| <p><b>DIVISIONAL HEAD ENDORSEMENT</b></p> <hr/> <p>Andrew Spina<br/>                     Assistant Director-General<br/>                     Digital Capability, Information and Transaction Based Services</p> <p>Date: / /</p>                       | <p><b>COMMENTS</b></p> |
| <p><b>DIRECTOR-GENERAL ENDORSEMENT</b></p> <hr/> <p>Liza Carroll<br/>                     Director-General<br/>                     Department of Housing and Public Works</p> <p>Date: / /</p>  | <p><b>COMMENTS</b></p> |
| <p><b>MINISTERIAL APPROVAL</b></p> <hr/> <p>Mick de Brenni MP<br/>                     Minister for Housing and Public Works<br/>                     Minister for Digital Technology<br/>                     Minister for Sport</p> <p>Date: / /</p> | <p><b>COMMENTS</b></p> |



## CONTEXT

- In March 2017, the Crime and Corruption Commission (CCC) tasked the State Archivist with investigating an allegation of unauthorised disposal of public records by the Honourable Mark Bailey MP, former Minister for Main Roads, Road Safety and Ports and Minister for Energy, Bio Fuels and Water Supply, when he deleted his private email account [mangocube6@yahoo.co.uk](mailto:mangocube6@yahoo.co.uk).
- The State Archivist's investigation found that Minister Bailey was likely in breach of several sections of the *Public Records Act 2002* (the Act) including section 7 which requires public authorities, including Ministers, to make and keep, full and accurate records of its activities and have regard to policies, standards and guidelines issued by the State Archivist and section 8 which requires public authorities to ensure the safe custody and preservation of public records in their possession.
- The Act currently provides no penalties for a breach of either section which are, in the State Archivist's view, the most important statutory requirements placed upon public authorities by the Act. The absence of penalties is a significant weakness of the Act and a major factor in the poor standards of recordkeeping across government.

## KEY ISSUES

- Following the completion of the investigation into Minister Bailey in September 2017, the State Archivist made several recommendations to the CCC including amendments to the Act for mandatory compliance with key recordkeeping standards and policies issued by the State Archivist and penalties for non-compliance.
- All the recommendations arising from the investigation were supported by the CCC including the introduction of mandatory compliance.
- The CCC investigation and the State Archivist's findings during the investigation highlighted a failure to meet recordkeeping responsibilities legislated by the Act by a Minister and his staff.
- The State Archivist noted that recordkeeping failures are likely to be commonplace across the whole of Government based on current standards of reported recordkeeping practices by public authorities.
- The CCC noted in media statements that even though technically breaches of the Act had been made by the Minister including the failure to manage public records appropriately, no provisions for actions arising or penalties for breaches are contained in the Act.
- To support these amendments a mechanism will be put in place for the Public Records Review Committee to approve mandatory standards and guidance to ensure appropriate limitations to the statutory powers of the State Archivist.
- By introducing limited mandatory compliance and penalties for breaches of key sections of the Act, public authorities will be encouraged to take their recordkeeping responsibilities more seriously and help ensure adequate resourcing is available to implement effective recordkeeping. It will also help to prevent corruption and promote accountability of public sector employees as evidenced by the recent corruption cases against a number of local governments where poor recordkeeping is often cited as an enabler of corruption.
- The proposed amendment will help reinforce the purpose of the Act which is to ensure that public records of Queensland are made, managed, kept and if appropriate, preserved in a usable form for the benefit of present and future generations.

## ELECTION AND GOVERNMENT COMMITMENTS

- With the government's significant investment and commitment to the Digital Archive Program, effective recordkeeping is key to ensuring permanent value records are created and preserved for future generations and managed in the digital archive.

## FINANCIAL IMPLICATIONS

- Not applicable.



**CONSULTATION**

- The CCC were provided with the recommendations as part of their investigation and provided full support for all of the recommendations.
- Consultation on the proposed amendment will take place as part of the Cabinet process.

**FUTURE STEPS**

- Queensland State Archives to work with the Department of Housing and Public Works Cabinet and Legislative Liaison Officer (the CLLO) to place the amendment to Section 7 of the *Public Records Act 2002* on the Cabinet forward timetable.
- Develop an Authority to Prepare as part of the Cabinet process for the amendments to the Act

**COMMUNICATIONS/MEDIA OPPORTUNITIES**

- Not applicable.

**BACKGROUND**

- There are approximately 500 public authorities covering agencies such as Ministers, Assistant Ministers, departments, universities, local governments, courts, Government Owned Corporations, statutory bodies and statutory authorities.
- The Minister was previously advised about this issue in MBN HPW 000682-2018 which provided information on the recommendations arising from the investigation and progress to date.
- The last biennial whole of government recordkeeping survey conducted by Queensland State Archives in 2014/15 found that 85% of public authorities are not compliant with minimum recordkeeping standards. The investigation confirmed these findings.
- Section 7 (1) of the Act requires public authorities to
  - Make and keep full and accurate records of its activities;
  - Have regard to any relevant policy, standards and guidelines made by the State Archivist about the making and keeping of public records
- The executive officer of a public authority must ensure compliance with section 7 (1) of the Act.
- Section 8 of the Act states that a public authority is responsible for ensuring the safe custody and preservation of records in its possession.
- The sections of the Act that have penalty points applied to them are:
  - Section 12 – A person must not damage a public record more than 30 years old, unless the person has a reasonable excuse – 100 penalty points
  - Section 13 – A person must not dispose of a public record unless the record is disposed of under an authority given by the archivist or other legal authority, justification or excuse – 165 penalty points
  - Section 44 – A person who ceases to be an authorised officer must return the person's identity card to the archivist as soon as practicable (but within 21 days) after the person ceases to be an authorised officer, unless the person has a reasonable excuse – 10 penalty points
  - Section 48 – a person must not obstruct an authorised officer in the exercise of a power unless the person has a reasonable excuse – 100 penalty points
  - Section 49 – a person must comply with a notice unless the person has a reasonable excuse – 40 penalty points.



**Subject** Update on procurement activities for consultancy services to review the *Public Records Act 2002*

Approval required by N/A.

## RECOMMENDATION

- It is recommended that the Minister:
  - **approve** that Queensland State Archives (QSA) lead an external consultation exercise to review the *Public Records Act 2002* (the Act)
  - **sign** the letter to the Premier providing an update on the review of the Act.

## BACKGROUND

- The Minister has previously approved the procurement strategy for an independent expert to lead a review of the Act (refer to **Attachments 1 and 2**).
- **No responses to the ITO were received.**
- Follow-up with the 13 candidates invited confirmed that while interested in the review, they were not in a position to respond, primarily due to existing work commitments in the foreseeable calendar years.

## KEY ISSUES

- QSA is proposing that an initial review of the Act is led by QSA itself.
- As per the terms of reference, the review of the Act will be carried out in the context of examining how the current legislation may be improved so as to increase the standard of recordkeeping across the Queensland Government.
- A whole-of-government consultation paper will seek feedback from QSA clients on the operation of the Act.
- An external working group will be established to work with QSA to review the results of consultation and determine the most appropriate way to respond to the findings.
- It is proposed that members of the external working group would include representatives such as the Right To Information Commissioner, the Integrity Commissioner, the Queensland Auditor-General, members from the Queensland Government Chief Information Office and representative/s from the Department of the Premier and Cabinet.
- If consultation reveals that legislative amendments to the Act are required, QSA will progress these through the formal Cabinet process.
- As the proposed approach for reviewing the Act is changing, a letter to the Premier has been prepared providing an update (refer to **Attachment 3**).
- It is anticipated that a discussion paper will be released for external consultation in the first half of 2017.

## ELECTION/CABINET/PUBLIC COMMITMENTS/LEGISLATION

- The review of the Act has been published as an action for QSA, Digital Productivity and Services, Department of Science, Information Technology and Innovation (DSITI) in the 2016-17 DSITI Service Delivery Statement.

## FINANCIAL IMPACTS

- The review will be funded from existing QSA resources allocated for consultancy services.

## CONSULTATION

- QSA has been working with DSITI Procurement Services throughout the ITO process.
- QSA has been consulting with the Department of the Premier and Cabinet as a member of the ITO evaluation panel.


**COMMUNICATIONS/MEDIA OPPORTUNITIES**

- N/A.

**FUTURE STEPS**

- Commence the development of a whole-of-government consultation paper.
- Identify and engage representatives to participate in an external working group to review the consultation findings.

**Endorsed**



Jamie Merrick (or Director on behalf of)  
**Director-General**

22 / 12 / 16

**Noted / Approved / Not Approved**



Leeanne Enoch (or Chief of Staff on behalf of)  
**Minister for Innovation, Science  
and the Digital Economy and  
Minister for Small Business**

29 / 12 / 16

**Minister or Director-General comments**

*please provide a timeline for intended consultation*

Media release required: Yes  No

**Electoralates:** Statewide.

Released under RTI



**Subject** Procurement of independent expert to commence review of the *Public Records Act 2002*

Approval required by N/A

### RECOMMENDATION

- It is recommended that the Minister:
  - **note** a limited procurement method will be used to undertake a review of the *Public Records Act 2002* (the Act) as such expertise cannot easily be sourced from existing panel arrangements
  - **approve** the draft terms of reference for the review of the Act (refer to **Attachment 1**)
  - **sign** and **forward** the letter to the Premier advising of the proposed timeframes and terms of reference for the review of the Act (refer to **Attachment 2**).

### BACKGROUND

- On 12 April 2015, approval was provided to initiate a review of the Act (refer to **Attachment 3**).
- The Act has not been reviewed since its commencement and will provide Queensland State Archives (QSA) with an opportunity to improve the legislative framework for records and information management in an increasingly digital age.

### KEY ISSUES

- It is proposed that an independent expert with relevant experience in public administration, and particular skills relating to regulatory practice and digital literacy be engaged to review the Act and deliver their findings to the Queensland Government.
- Potential candidates identified include Professor Peter Shergold AC (now Chancellor of the University of Western Sydney); Ms Lynelle Briggs AO (former Australian Public Service Commissioner and Chief Executive Officer of Medicare Australia); Dr Allan Hawke (former Secretary, ambassador and Chancellor of the Australian National University); Mr Andrew Podger (former Australian Public Service Commissioner); Ms Meryl Stanton PSM (former senior public servant and Chief Executive Officer of Comcare); Mr David Solomon (former Queensland Integrity Commissioner) and Ms Vanessa Fanning (former Managing Director and Chief Executive Officer of Health Services Australia).
- It is proposed that the seven potential candidates be invited to submit a proposal.
- A Request for Offer (RFO) package will be prepared to invite the submission of proposals which will allow candidates to demonstrate their ability to deliver the requirements.
- Once a candidate is selected, it is proposed a public announcement be released regarding the review of the Act.
- QSA will work with the independent reviewer to prepare a discussion paper for public consultation.
- A project board consisting of internal and external representatives including the Department of the Premier and Cabinet will oversee the review of the Act.
- The independent reviewer will submit their final report with recommendations to the department for consideration by the Minister.
- Based on the findings of the independent reviewer, QSA will prepare a Queensland Government response and associated Cabinet Submission to progress approved legislative amendments.
- It is proposed that the review of the Act commence in July 2015, with a final report delivered to the Queensland Government by the end of 2015.
- The likely timeframe to introduce a Bill to Parliament is the second half of 2016.

### FINANCIAL IMPACTS

Contact: Adrian Cunningham, Acting State Archivist  
Ph: 07 3131 7748  
Date: 11/06/2015

Endorsed: Andrew Spina, Assistant Director-General  
Ph: 07 3719 7733  
Date: 06/2015



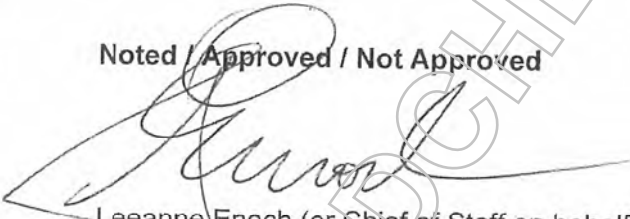
- The estimated cost of \$150,000 will be funded by QSA.

**CONSULTATION**

- Department of Science, Information Technology and Innovation (DSITI) Procurement Services.
- Mr Boyd Backhouse, Executive Director, Legal Services, Department of Housing and Public Works on the Act review process.
- Mr Nicholas Dowie, Senior Director, Economic Policy, Department of the Premier and Cabinet on the draft terms of reference for the Act review.
- Significant consultation will be undertaken across government and with members of the community during the review of the Act.

Endorsed

Noted / Approved / Not Approved



Sue Rickerby (or Director on behalf of)  
**Director-General**

Leeanne Enoch (or Chief of Staff on behalf of)  
**Minister for Housing and Public Works and  
Minister for Science and Innovation**

23/6/12

26/07/12

|  |
|--|
| <i>Minister or Director-General comments</i> |
|  |
|  |

Released under RTI

**Subject** Update on procurement activities for consultancy services to review the *Public Records Act 2002*

Approval required by 12/02/2016

## RECOMMENDATION

- It is recommended that the Minister:
  - **note** no applications were received for the Invitation to Offer (ITO) for consultancy services to review the *Public Records Act 2002*
  - **approve** the review of the *Public Records Act 2002* in two separate stages:
    - Stage 1 - a Queensland State Archives (QSA) led internal review focusing on issues requiring urgent attention to be progressed in a Bill as a matter of priority
    - Stage 2 - a wider review of the Act led by an independent expert based on the revised terms of reference (**Attachment 1**) involving broad stakeholder consultation
  - **approve** the re-release of the ITO with revised timeframes, revised terms of reference and inclusion of additional potential candidates to be invited to submit a response for consultancy services to review the *Public Records Act 2002*.

## BACKGROUND

- The Minister has previously approved the procurement strategy for an independent expert to lead a review of the *Public Records Act 2002* and wrote to the Honourable Anastacia Palaszczuk MP, Premier and Minister for the Arts advising the proposed timeframes, potential candidates and the original terms of reference for the review (refer to **Attachment 2**).
- The ITO was released to seven potential candidates on 25 August 2015, with a closing date of 9 September 2015.

## KEY ISSUES

- Follow-ups with the candidates invited to submit an ITO response for Consultancy Services confirmed that due to being highly committed for the rest of the year, they were not in a position to respond.
- Two candidates, Mr David Solomon (former Queensland Integrity Commissioner) and Ms Meryl Stanton PSM (former senior public servant and Chief Executive Officer of Comcare), indicated that if timeframes to submit an ITO response were moved to the early part of 2016, they would reconsider their position.
- QSA identified a potential candidate internal to the Queensland Government, however the potential candidate declined the opportunity.
- Given delays experienced up to this point in obtaining an external reviewer to review the Act, QSA proposes a two stage process for amending the Act:
  - Stage 1 – an urgent internal review by QSA with targeted consultation focusing on critical issues to be progressed in a Bill in 2016 (e.g. status of ministerial records once a minister ceases to hold office; the need to streamline processes for ownership of public records for certain machinery-of-government changes such as Commissions of Inquiry).
  - Stage 2 – a comprehensive review of the Act led by an independent expert using the revised terms of reference and involving broad consultation (e.g. public authorities).
- The terms of reference for the independent review (as approved in July 2015) have been amended to remove the urgent amendments to be covered in stage 1.
- Amendments being led by QSA could be commenced immediately.
- It is proposed the re-released ITO be issued in the first quarter of 2016 with a flexible start date to be agreed upon with the successful candidate.



- To help increase response rates to a re-released ITO, it is suggested that in addition to changing timeframes, the potential candidate list be extended to also include:
  - Professor Emeritus Richard Mulgan, Crawford School of Public Policy, Australian National University
  - Professor Patrick Weller AO, Professor Emeritus, Griffith University School of Government and International Relations and an Adjunct Professor in the Centre for Governance and Public Policy
  - Professor Scott Prasser, Executive Director, Public Policy Institute, Australian Catholic University
  - Simone Webbe, former Deputy Director-General (Governance), Department of the Premier and Cabinet
  - other candidates that may be identified or potentially available at the time of ITO release (e.g. Dr Anne Tiernan, School of Government and International Relations, Griffith University if she ceases to be a member of the Public Records Review Committee).
- As with the previously approved list, these candidates were chosen based on potential availability, expertise in public administration, regulatory practice and digital literacy.

#### ELECTION/CABINET/PUBLIC COMMITMENTS/LEGISLATION

- The review of the Act has been published as an action for QSA, Digital Productivity and Services, Department of Science, Information Technology and Innovation (DSITI) in the 2015-16 DSITI Service Delivery Statement.

#### FINANCIAL IMPACTS

- Funding will be provided by QSA and is categorised as professional non-technical consultancy services.

#### CONSULTATION

- QSA has been working with DSITI Procurement Services throughout the ITO process.
- DSITI Procurement Services supports the revised ITO approach.
- QSA has been consulting with the Department of the Premier and Cabinet as a member of the ITO evaluation panel.

#### COMMUNICATIONS/MEDIA OPPORTUNITIES

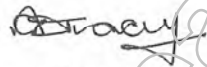
- Once a successful candidate is approved, it is recommended the Minister announce the commencement of the review of the Act (as noted in the DSITI media opportunities plan).

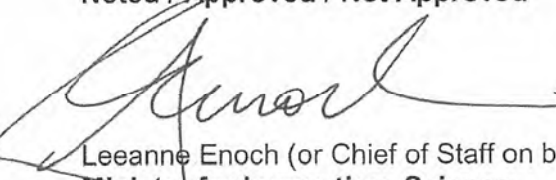
#### FUTURE STEPS

- Seek ministerial approval for progressing specific urgent legislative amendments.
- Re-release the ITO in the first quarter of 2016 for response by identified candidates.

Endorsed

Noted / Approved / Not Approved

  
Jamie Merrick (or Director on behalf of)  
Acting Director-General  
09/09/2016

  
Leeanne Enoch (or Chief of Staff on behalf of)  
Minister for Innovation, Science  
and the Digital Economy and  
Minister for Small Business  
14/02/16

Minister or Director-General comments

Media release required: Yes  No

Electorates: Statewide.





Minister for Innovation, Science and the Digital Economy  
Minister for Small Business



Ref: 01344-2016

03 JAN 2017

The Honourable Anastacia Palaszczuk MP  
Premier and Minister for the Arts  
PO Box 15185  
CITY EAST QLD 4002

GPO Box 5078 Brisbane  
Queensland 4001 Australia  
Telephone +61 7 3719 7110  
Email [innovation@ministerial.qld.gov.au](mailto:innovation@ministerial.qld.gov.au)  
Website [qld.gov.au](http://qld.gov.au)

Dear Premier

I have previously written to advise you about the review of the *Public Records Act 2002* (the Act), administered by the Department of Science, Information Technology and Innovation. I am now writing to provide an update of the review.

Queensland State Archives will lead the development of a consultation paper to seek whole-of-government feedback about the Act. The consultation paper will be focused on improving the standard of recordkeeping across the Queensland Government.

Following whole-of-government consultation, an external working group will be formed to work with Queensland State Archives to review the findings and progress any related initiatives. If any legislative amendments to the Act are required, these will be progressed through the formal Cabinet process.

Queensland State Archives will consult widely and be guided by the working group to create a framework for the management of public records across Queensland that reflects an increasingly digital government environment. If you require any further information, please contact my Chief of Staff, Ms Alana Tibbitts by email at [alana.tibbitts@ministerial.qld.gov.au](mailto:alana.tibbitts@ministerial.qld.gov.au) or on telephone 07 3719 7123.

Yours sincerely

Leanne Enoch MP  
Minister for Innovation, Science and the Digital Economy  
and Minister for Small Business

## Review of Public Records Act 2002 – process and timeframes associated with QSA led review

| Assumptions         |  |
|---------------------|--|
| Approvals           | The following timeframes are provided for approvals: <ul style="list-style-type: none"> <li>• <u>Executive Director and State Archivist</u> – 2 weeks</li> <li>• <u>Assistant Director-General</u> – 2 weeks</li> <li>• <u>Director-General</u> – 2 weeks</li> <li>• Minister – 2 weeks</li> </ul> |
| Priority amendments | Will continue to be advanced independently from wider review of Act  |
| Resourcing          | Dedicated resources will be allocated to the wider review of the Act   |
| Cabinet timeframes  | Will depend on priority at a whole-of-government level   |

| Deliverables  |
|---|
| Project Plan  |
| Background paper  |
| Discussion paper  |
| Consultation findings report  |
| Cabinet Policy Submission   |
| Authority to Prepare (ATP) / Authority to Introduce (ATI) – and related documents |

| Process  | Timeframe   |
|--|---|
| Internal QSA agreement on scope of review <ul style="list-style-type: none"> <li>• Based on previous background paper and any other suggestions for inclusion</li> <li>• Development and approval of Ministerial Briefing Note – noting change in scope and approach to review of act and placing on Cabinet forward timetable</li> </ul>  | 2 – 3 weeks<br><br>6 weeks                                  |
| Discussion paper development <ul style="list-style-type: none"> <li>• Includes internal QSA consultation and potential limited targeted external consultation. <b>Also includes</b></li> <li>• Contact Office of Best Practice - on preparing Regulatory Impact Statement (RIS) consultation.</li> </ul> <p><b>RIS assists the decisions makers by providing factual evidence about the impacts of the feasible options for dealing with specific policy issues</b></p> <ul style="list-style-type: none"> <li>• Approval from Minister prior to release (potentially Cabinet?)</li> </ul> | 6 – 8 weeks<br><br>6 weeks                                  |
| Discussion paper consultation <ul style="list-style-type: none"> <li>• Consultation to also build in RIS requirements (minimum 28 days)</li> </ul>   | 6 weeks   |
| Analysis of feedback <ul style="list-style-type: none"> <li>• Follow up consultation / individual stakeholder meetings</li> <li>• Revisions to discussion paper</li> </ul>   | 2 – 4 weeks   |
| <b>Total estimated time (including approvals) prior to lodgement with Cabinet – 28 to 33 weeks</b>   |   |
| Commence drafting Cabinet Policy Submission (approximately 2 months) <ul style="list-style-type: none"> <li>• Consultation</li> <li>• Finalisation of Policy Submission</li> </ul>   | Timeframes for remaining steps subject to Cabinet processes |
| Cabinet consideration of Policy Submission (approximately 2 months)  |   |
| Development of drafting instructions / ATP submission <ul style="list-style-type: none"> <li>• Consultation</li> <li>• Finalisation of ATP</li> </ul>  |   |
| Cabinet consideration of ATP (approximately 2 months)  |   |
| <u>Office of the Queensland Parliamentary Council</u> <ul style="list-style-type: none"> <li>• Develop legislation / explanatory notes / briefs</li> </ul>   |   |
| Consultation   |   |
| Finalise ATI (approximately 2 months) <ul style="list-style-type: none"> <li>• Ministerial approval</li> <li>• Cabinet consideration</li> <li>• Introduction into Parliament</li> </ul>  |   |
| Parliamentary Committee Process (approximately 6 months)   |   |

|   |  |
|---|--|
| Respond to Parliamentary Committee  |  |
| <ul style="list-style-type: none"><li>• Consider the need for any changes / back to Cabinet</li></ul> |  |
| Debate  |  |
| Pass legislation  |  |

Released under RTI - DCHDE



Department of Science, Information Technology and Innovation  
DIGITAL PRODUCTIVITY AND SERVICES – Queensland State Archives

SECURITY CLASSIFICATION: UNCLASSIFIED  
BRIEFING NOTE – MINISTER

Ref: 01526-2017  
Division Ref:

**Subject**                      **The *Public Records Act 2002*, the State of Government Recordkeeping and the Response of Queensland State Archives**

Approval required by    N/A

#### RECOMMENDATION

- It is recommended that the Minister:
  - **note** the report from the State Archivist on *The Public Records Act 2002, the State of Government Recordkeeping and the Response of Queensland State Archives*.

#### BACKGROUND

- On 19 July the Crime and Corruption Commission directed the State Archivist to investigate the alleged unauthorised disposal of Public Records by Minister Bailey as a result of the deletion of his private email account.
- Parliamentary and media attention both prior and after this announcement has been significant and has included widespread commentary and statements related to the role of the State Archivist, the *Public Records Act 2002* (the Act) and government recordkeeping practices.
- Under Section 23 of the Act, the Minister and Director-General have a key role in control of the Queensland State Archives.

#### KEY ISSUES

- There is widespread misunderstanding of the Act and the role of the State Archivist which has the potential to undermine the statutory role of the State Archivist and its effectiveness.
- There are weaknesses in the Act which significantly impact its effectiveness in meeting its key purpose to ensure that public records of Queensland are made, managed, kept and preserved for the benefit of present and future generations.
- The standard of government recordkeeping practice is poor and significant changes to the Act and the work of Queensland State Archives are required to address this.
- The report (refer to **Attachment 1**) provides a summary of the State Archivist's position in regard to matters raised.
- It highlights key elements of the Act, the operational approach by QSA to addressing identified deficits in agency recordkeeping practices, and implications for resourcing.

#### ELECTION/CABINET/PUBLIC COMMITMENTS/LEGISLATION

- Matters of the Ministerial recordkeeping and the role of the State Archivist has been discussed at Parliamentary Estimates Hearings and been the subject of media interest.

#### FINANCIAL IMPACTS

- N/A

#### CONSULTATION

- N/A

#### COMMUNICATIONS/MEDIA OPPORTUNITIES

- N/A

Contact: Mike Summerell, Executive Director and State Archivist  
Ph: 07 3037 6601  
Date: 26/07/2017

Endorsed: Andrew Spina, Assistant Director-General  
Ph: 07 3719 7733  
Date: xx/07/2017

**FUTURE STEPS**

- Queensland State Archives is reviewing the Public Records Act with a view to change this key piece of legislation
- Queensland State Archives will submit a brief to the Director-General on potential resourcing requirements to support improvements in government recordkeeping practice.

**Endorsed**

**Noted / Approved / Not Approved**

Jamie Merrick (or Senior Director on behalf of)  
**Director-General**  
/ / 2017

Leeanne Enoch (or Chief of Staff on behalf of)  
**Minister for Innovation, Science and the Digital Economy and Minister for Small Business**  
/ /

|  |
|--|
| <i>Minister or Director-General comments</i> |
|  |
|  |

Media release required: Yes  No

**Electorates:** Statewide

Released under RTI - COMPLETE



## The Public Records Act, the State of Government Recordkeeping & the Response of Queensland State Archives

### Introduction

The State Archivist is conscious of the significant public interest currently in the work of the State Archivist, interpretation of the *Public Records Act 2002* (the Act) and the standard of government recordkeeping in general. S23 of the Act states that control of the Archives lies with the Archivist, subject to the Minister and Chief Executive. Given this the State Archivist, in his statutory role, considers it appropriate to provide a formal briefing to the Minister and Director-General of DSITI (DG), on key issues related to the Act, the standard of Government recordkeeping practice and priorities for Queensland State Archives (QSA) in addressing these concerns. It is apparent there is misunderstanding with some members of Parliament, the media and indeed public authorities themselves about elements of the Act, in particular related to fundamental responsibilities, accountabilities and the powers and functions of the State Archivist, both within Government and externally.

Since the appointment of the State Archivist in March 2016, he has communicated concern at the standard of government recordkeeping practice and has outlined the longer term plan for QSA to help address the problem. In October 2016, the State Archivist for example presented to the Chief Executive (CE) Leadership Board on the State of Government Recordkeeping in Queensland. In June 2017, the Assistant Director General (ADG) of Digital Productivity Services (DPS) presented to the CE Leadership Board to restate this message and the initial steps that QSA was taking in attempting to improve the standards of recordkeeping practice.

A key and constant message has been that 85% of public authorities fail to meet what QSA deem minimum recordkeeping standards of practice, based on their own responses to the biennial recordkeeping survey managed by QSA, the last survey being conducted in 2015. The standards do not require expensive technology solutions, in most cases they are processes related to behaviour, culture and governance - yet 85% of the almost 500 public authorities (which includes 76% of state departments) do not meet them. The standards deemed as minimum were:

- A records management program in place for the whole public authority that clearly documents policies, procedures and business rules for managing records
- The public authority has systems in place to secure public records from unauthorised access, damage and misuse
- The public authority has processes in place to ensure records are created, stored and maintained systematically
- The public authority creates, stores and maintains records that document the complete range of business activities that it undertakes
- The public authority captures minimum mandatory metadata for all records in accordance with the Queensland Recordkeeping Metadata Standard
- The public authority ensures all disposals of public records are endorsed by the Chief Executive or an authorised delegate



- The public authority ensures that the method of destruction of public records is appropriate to the sensitivity of the records

A conclusion of the presentation by the State Archivist to the CE Leadership Board was that it was likely that the vast majority of public authorities were potentially in breach of the *Public Records Act 2002* in that they would not be able to satisfy the key requirement that they make and keep full and accurate records of their activities. There has been no significant improvement in this assessment.

In this report, it is the State Archivist's intent to highlight some key points and issues that need to be addressed in fulfilling the State Archivist's statutory functions and in particular the main function of the Act which is to ensure that the public records of Queensland are made, managed, kept and preserved in a usable form for the benefit of present and future generations.

#### Key elements of the Act and their significance

Sections 3, 6 and 6 – Purposes, what is a public record and making and keeping public records

The main purposes of the *Public Records Act* as stated in Section 3 of the Act are to ensure:

- (a) the public records of Queensland are made, managed, kept and, if appropriate, preserved in a useable form for the benefit of present and future generations; and*
- (b) public access to records under this Act is consistent with the principles of the Right to Information Act 2009 and the Information Privacy Act 2009*

Under Section 6 of the Act the definition of a public record is outlined to be:

- (a) a record made for use by, or a purpose of, a public authority, other than a Minister or Assistant Minister;*
- (b) a record received or kept by a public authority, other than a Minister or Assistant Minister, in the exercise of its statutory, administrative or other public responsibilities or for a related purpose;*
- (c) a Ministerial record;*
- (d) a record of an Assistant Minister.*

In addition a public record includes — a copy of a public record; and a part of a public record, or a copy of a part of a public record (s6).

A fundamental, yet widely misunderstood, part of the Act relates to the key responsibilities for the making, managing, keeping and preserving of public records. Section 7 of the Act states:



(1) A public authority must—

- (a) make and keep full and accurate records of its activities; and
  - (b) have regard to any relevant policy, standards and guidelines made by the archivist about the making and keeping of public records.
- (2) The executive officer of a public authority must ensure the public authority complies with subsection (1).

The executive officer, of a public authority, means—

- (a) if the public authority is a department—the chief executive of the department;  
or
- (b) if the public authority is a local government—the chief executive officer of the local government; or
- (c) if the public authority is not an authority mentioned in paragraphs (a) and (b)—a person (whatever the person's position is called) who is—
  - (i) a member of the governing body of the public authority; or
  - (ii) concerned with, or takes part in, the public authority's management.

This is a significant part of the Act as it outlines that responsibility for effective recordkeeping lies not with the State Archivist, as is frequently implied, but with public authorities themselves and in particular the Executive Officers of these authorities. It is important to note that for Ministerial offices, it is the Minister that is deemed the Executive Officer.

This section of the Act includes some weakness and contradiction. Failure to make and keep full and accurate records is a breach of the Act, and to be compliant it implies you should follow the guidance of the State Archivist. Public authorities must only “have regard” to State Archivist guidance around policy, standards and guidelines. It is unlikely an agency will be compliant unless they follow key guidance of the State Archivist. It is a circular contradiction with a breach of the Act being dependent on other non-mandatory sections of the Act.

In a further contradiction, it is a statutory requirement of the State Archivist to develop this guidance, even though it is not a statutory requirement to follow the guidance.

The optional compliance with the guidance of the State Archivist is, in the opinion of the State Archivist, the most significant reason for the poor standard of government recordkeeping in Queensland. Whilst QSA recognises there are improvements that could and should be made in the guidance it issues, fundamentally if certain key guidance already existing was mandatory, the standard of government recordkeeping would increase significantly.

Section 13 – Disposal of public records

One of the only areas of the Act that provides the State Archivist mandatory statutory powers relates to the disposal of public records. Section 13 of the Act states:

*A person must not dispose of a public record unless the record is disposed of under—*

- (a) an authority given by the archivist; or*
- (b) other legal authority, justification or excuse*

This section is one of few that incur a penalty for breach. The penalty for breach is 165 penalty points (around \$20,000 at present). The State Archivist is currently seeking legal advice as to whether this is 'per record' or 'per offence'.

Sections 24, 25 and 27 – Functions and powers of the Archivist and independence in relation to disposal decisions

Section 27 also provides statutory independence for the State Archivist and the staff of QSA in these disposal decisions. The Act states:

*The archivist and the staff of the archives are not subject to the control or direction of a Minister of department in relation to making decisions about the disposal of public records.*

It is clear from legal advice that this also includes decisions relating to unauthorised disposal. Legal advice received Exempt Sch 3(7)

(there is no suggestions that there has been any...

There are also widespread misconceptions around the functions and powers of the State Archivist under the Act. Under Section 24 of the Act the key functions of the State Archivist are

- (a) to develop and promote efficient and effective methods, procedures and systems for making, managing, keeping, storing, disposing of, preserving and using public records;*
- (b) to identify public records of enduring value and require that they be retained in a useable form, whether or not the records are in the custody of the archives;*
- (c) to make decisions about the disposal of public records;*
- (d) to manage, keep and preserve records for public authorities and other entities;*



*(e) to provide public access to public records;*

*(f) to conduct research and give advice about the making, managing, keeping and preserving of public records;*

In regard to the functions, the State Archivist is not responsible for the actual government recordkeeping itself, as previously noted that is the responsibility of public authorities.

Whilst the State Archivist has a statutory role in developing advice about making, managing, keeping and preserving public records under s24(a), and the State Archivist actively seeks to promote effective recordkeeping, the greatest challenge faced is that key advice is not mandatory and public authorities can choose to ignore it. This puts them in potential breach of the *Public Records Act* in terms of their responsibility to make and keep full and accurate records.

Noting this contradiction, the State Archivist can issue and develop best practice recordkeeping advice, policies and guidance but this can have no impact whatsoever on the standard of government recordkeeping if the advice is not followed and there is no consequence for not following it.

Despite this QSA has constantly sought to give good guidance and continues to strive to do more. In 2015/16 for example the amount of guidance issued by QSA was up 42% on the previous year. QSA is focused on improving the quality of its advice and guidance as a priority, however as stated without key guidance being mandatory it will have very little impact in improving recordkeeping. In the opinion of the State Archivist, improvement of recordkeeping would be assisted by mandatory compliance with key QSA guidance and policies.

Section 25 of the Act states the powers of the State Archivist. These include:

*(a) to establish and manage repositories and other facilities to store, preserve, exhibit and make available for use public records and other materials;*

*(b) to copy public records and other materials;*

*(c) to publish public records and other materials;*

*(d) to acquire records by purchase, gift, bequest or loan;*

*(e) to authorise the disposal of particular public records or classes of public records;*

*(f) to make policy, standards and guidelines about the making, keeping, preserving, managing and disposing of public records.*

The statutory powers include powers around making the policy, standards and guidelines which (outside of disposal requirements) are optional for public authorities.

Sections 46 and 47 – Powers of entry and inspection and public authorities to comply with request

There has been significant attention applied to the investigative powers of the State Archivist. Section 46 of the Act includes some specific powers of entry and inspection to the State Archivist. The Act states:

*For the administration and enforcement of this Act, an authorised officer is entitled to full and free access, at all reasonable times after giving the public authority reasonable notice of the intended access, to all public records in a public authority's possession.*

*Without limiting subsection (1), an authorised officer may—*

- (a) enter a public authority's premises; and*
- (b) examine the public authority's procedures for the making, management, keeping and preservation of its public records; and*
- (c) examine the public authority's records.*

Section 47 states:

*An officer or employee of a public authority who is responsible for the management of the authority's records must, if asked by an authorised officer—*

- (a) produce the authority's records, or a particular type or sample of records, for the officer's inspection; and*
- (b) give the officer access to the authority's records, or a particular type or sample of records in the reasonable way requested by the officer; and*
- (c) allow the officer to examine the authority's systems for making, keeping and preserving records.*

QSA has never used these powers of inspection, entry and compliance since the Act was passed in 2002. QSA has no team which focuses on actually assessing or auditing the recordkeeping practices within agencies. It is clear the biennial self-assessment survey approach that has been historically used, alongside guidance, to promote good recordkeeping practice is has not fostered adequate improvement in government recordkeeping practice. QSA has reported poor government recordkeeping practice for at least 9 years in its annual report, with limited progress in public authorities in addressing the poor standards.

Moving forward

QSA's strategic plan, developed in August 2016, highlighted the urgent need to address the poor standard of government recordkeeping. It is one of two key strategic objectives for QSA. The urgency for action is significant in particular as the volume of government data increases. Poor recordkeeping can compound the impact to the public record over time. With the increasing use of digital recordkeeping and the vast amounts of data there is an urgency to address the



quality of government recordkeeping practice. QSA's strategic plan has outlined a number of key steps. Over the next five years QSA will aim to:

- Review the *Public Records Act* – the Act as highlighted has significant limitations and it is a major factor in the poor standard of government recordkeeping. Its main purpose is to ensure the public records of Queensland are made, managed, kept and preserved for the benefit of present and future generations – arguably its limitations are perhaps the most significant factor in that purpose not being met.
- Develop and implement an Audit and Self-Assessment Programme of government recordkeeping practices to raise the standard of government recordkeeping significantly
- Develop and implement a Digital Recordkeeping Policy for government agencies to ensure the challenges of digital recordkeeping are urgently addressed
- Optimise and expand government recordkeeping services offered to government agencies
- Develop and implement a Government Agency Outreach and Management Programme
- Develop and implement new technology-based solutions for engaging with government partners
- Develop and implement the Digital Archive Programme focused on ensuring we are preserving the digital record for future generations
- Optimise our Physical and Digital Transfer Programme to ensure it is easy for government agencies to transfer records to our collection
- Review our Appraisal and Disposal Strategy and processes to ensure that our approaches meet the needs of agencies and the public
- Develop and implement a Government Agency Training Programme at Runcorn and online with the aim of raising the standard of government recordkeeping significantly
- Develop and implement a mobile recordkeeping advice team to support government agencies

Many of these initiatives are in progress, however their success is impacted by insufficient FTE resources. Some of the initiatives above require additional staff at QSA before they can progress. QSA is keen to take a more active role in addressing the fundamental problems facing public authorities in regard to meeting their responsibilities for managing public records, but needs assistance to do this.

Without changes it is likely little progress will be made in the standard of government recordkeeping practice. QSA will continue to improve the guidance and services it provides public authorities, however without key guidance becoming mandatory, without additional FTE and without an audit capability to ensure compliance it is the State Archivist's opinion that public sector recordkeeping will be exposed to risk. Recent issues are arguably a symptom of a much larger problem, applied attention will reveal a systemic issue in recordkeeping practice within the Queensland Government which to date has not been widely recognised outside of QSA.



**Subject** Priority amendments to the *Public Records Act 2002*

Approval required by 18/11/2016

## RECOMMENDATION

- It is recommended that the Minister:
  - **approve** placing priority amendments to the *Public Records Act 2002* (the Act) on the Cabinet forward timetable (refer to **Attachment 1**)
  - **approve** the preferred solution of State Archivist to be assigned as the relevant and responsible public authority for records of former ministers/assistant ministers
  - **approve** the preferred solution that the Department of Justice and Attorney-General (DJAG) to be assigned as the relevant and responsible public authority for records of Commissions of Inquiry (Col)
  - **approve** consultation by QSA on the priority amendments with relevant stakeholders
  - **confirm** that decisions regarding consultation with the Opposition Leader will be determined by the Minister in consultation with the Premier.

## BACKGROUND

### Review of the *Public Records Act 2002*

- The Minister has previously approved for QSA to commence an internal review of the Act focusing on issues requiring priority attention to be progressed in a Bill (refer to **Attachment 2**).
- The priority amendments relate to streamlining the process of assigning a relevant and responsible public authority for:
  - ministerial records (including addressing inconsistencies between the Ministerial Handbook and the Act for issues related to access to ministerial records once a minister ceases to hold office)
  - certain administrative changes such as the cessation of a Commission of Inquiry (Col) and when government functions cease.

### Assigning a relevant and responsible public authority

- Under the Act, once a public authority ceases to exist (including when a minister or Assistant minister no longer holds office) and its functions are not going to be carried out by another public authority, its records need to be managed by a relevant and/or responsible public authority on an ongoing basis.
- Sections 8(3) and 15(d) of the Act provide for a regulation to establish the responsible and/or relevant public authority.
- The role of a 'relevant' public authority is to ensure the safe custody and preservation of records in its possession (i.e. applies to records not in QSA's custody).
- A 'relevant' public authority is also required to authorise the disposal of temporary records.
- A 'responsible' public authority sets restricted access periods and makes decisions on access to records in the custody of QSA, including requests under the *Right to Information Act 2009* (RTI Act) and the *Information Privacy Act 2009* (IP Act).

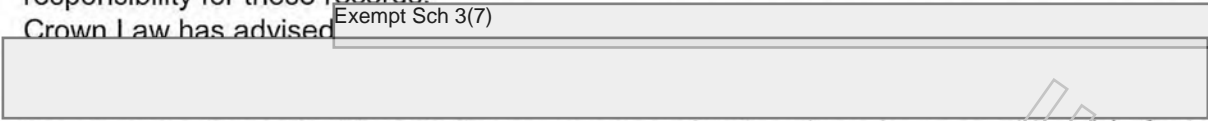
### Ministerial records

- The Ministerial Handbook requires ministers to transfer records to QSA when they are no longer required or when the minister ceases to hold his/her portfolio.
- QSA holds records from former ministers in its collection dating back to 1978, and includes diaries, pecuniary interest records and previous lobbyist registers.
- Some ministerial records, including pecuniary interest records and lobbyist registers are only required to be retained on a temporary basis.
- Ministerial records held in the custody of QSA currently have no assigned relevant or responsible public authority to make decisions relating to access and disposal.



## KEY ISSUES

### Ministerial records

- Under the current Act, establishing a relevant and responsible public authority for ministerial records has never been implemented as no public authority has been identified that could take responsibility for these records.
- Crown Law has advised <sup>Exempt Sch 3(7)</sup>  

- To overcome these identified challenges, a range of options have been considered (refer to **Attachment 3**) with the preferred option that: the State Archivist be assigned the relevant and responsible public authority for records of former ministers/assistant ministers.

### Administrative changes

- Currently for records associated with administrative change (e.g. when a public authority ceases to exist, such as a Col, or when government functions cease), a regulation is required to be developed for each specific instance, which can be time consuming for all parties involved.
- To streamline the process for the management of records of Col, various options have been considered (refer to **Attachment 4**) with the preferred being that: DJAG to be assigned as the relevant and responsible public authority for records of all future Col.
- In relation to administrative change within government where public authorities cease to exist and their functions are not transferred to another public authority, a range of options have been considered (refer to **Attachment 5**) with the preferred option being: the State Archivist to independently assign the relevant and responsible public authority for records of former public authorities (using a streamlined mechanism e.g. decisions published by way of gazette notice).

### ELECTION/CABINET/PUBLIC COMMITMENTS/LEGISLATION

- Cabinet approval of any amendments to the Act will be required.

### FINANCIAL IMPACTS

- Funding to progress the priority amendments will be provided from existing QSA resources.
- The recommendation to assign DJAG as the relevant and responsible public authority for records of Col will have financial implications for DJAG if implemented.

### CONSULTATION

- QSA has received advice from Crown Law on the proposed options (refer to **Attachment 6**).
- Consultation on the priority amendments will take place as part of the Cabinet process, and will also include the Ombudsman, the Integrity Commissioner and the Information Commissioner.
- Consultation with the Opposition Leader may be beneficial as any changes to the handling of ministerial records will impact the former, as well as current government.
- It is proposed that decisions regarding consultation with the Opposition Leader will be determined by the Minister in consultation with the Premier.
- QSA will consult with the Office of Best Practice Regulation to seek exemption from the Regulatory Impact Statement requirements, as the priority amendments relate to the internal management of the public sector.

### COMMUNICATIONS/MEDIA OPPORTUNITIES

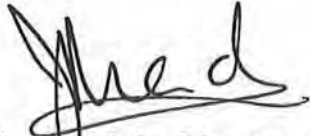
- N/A.

### FUTURE STEPS

- QSA to commence consultation and development of an Authority to Prepare Cabinet submission to progress priority amendments to the Act, with the submission placed on the Cabinet forward timetable.

- QSA to develop an Authority to Introduce Cabinet Submission.
- Subject to Cabinet approval of proposed changes to the management of ministerial records, QSA to work with Ministerial Services Branch and the Department of the Premier and Cabinet to implement changes, including updating section 2.3 of the Ministerial Handbook and developing recordkeeping guidance for ministerial offices.

**Endorsed**



Jamie Merrick (or Director on behalf of)  
**Director-General**  
14 / 11 / 16

**Noted / Approved / Not Approved**



Leeanne Enoch (or Chief of Staff on behalf of)  
**Minister for Innovation, Science  
and the Digital Economy and  
Minister for Small Business**  
16 / 11 / 16.

*Minister or Director-General comments*

Media release required:    Yes     No

**Electorates:** Statewide

Released under RTI - DRAFT



Page 113 redacted for the following reason:

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Exempt Sch 3(2)

Released under RTI - DCHDE

**Subject** Update on procurement activities for consultancy services to review the *Public Records Act 2002*

Approval required by 12/02/2016

## RECOMMENDATION

- It is recommended that the Minister:
  - **note** no applications were received for the Invitation to Offer (ITO) for consultancy services to review the *Public Records Act 2002*
  - **approve** the review of the *Public Records Act 2002* in two separate stages:
    - Stage 1 - a Queensland State Archives (QSA) led internal review focusing on issues requiring urgent attention to be progressed in a Bill as a matter of priority
    - Stage 2 - a wider review of the Act led by an independent expert based on the revised terms of reference (**Attachment 1**) involving broad stakeholder consultation
  - **approve** the re-release of the ITO with revised timeframes, revised terms of reference and inclusion of additional potential candidates to be invited to submit a response for consultancy services to review the *Public Records Act 2002*.

## BACKGROUND

- The Minister has previously approved the procurement strategy for an independent expert to lead a review of the *Public Records Act 2002* and wrote to the Honourable Anastacia Palaszczuk MP, Premier and Minister for the Arts advising the proposed timeframes, potential candidates and the original terms of reference for the review (refer to **Attachment 2**).
- The ITO was released to seven potential candidates on 25 August 2015, with a closing date of 9 September 2015.

## KEY ISSUES

- Follow-ups with the candidates invited to submit an ITO response for Consultancy Services confirmed that due to being highly committed for the rest of the year, they were not in a position to respond.
- Two candidates, Mr David Solomon (former Queensland Integrity Commissioner) and Ms Meryl Stanton PSM (former senior public servant and Chief Executive Officer of Comcare), indicated that if timeframes to submit an ITO response were moved to the early part of 2016, they would reconsider their position.
- QSA identified a potential candidate internal to the Queensland Government, however the potential candidate declined the opportunity.
- Given delays experienced up to this point in obtaining an external reviewer to review the Act, QSA proposes a two stage process for amending the Act:
  - Stage 1 – an urgent internal review by QSA with targeted consultation focusing on critical issues to be progressed in a Bill in 2016 (e.g. status of ministerial records once a minister ceases to hold office; the need to streamline processes for ownership of public records for certain machinery-of-government changes such as Commissions of Inquiry).
  - Stage 2 – a comprehensive review of the Act led by an independent expert using the revised terms of reference and involving broad consultation (e.g. public authorities).
- The terms of reference for the independent review (as approved in July 2015) have been amended to remove the urgent amendments to be covered in stage 1.
- Amendments being led by QSA could be commenced immediately.
- It is proposed the re-released ITO be issued in the first quarter of 2016 with a flexible start date to be agreed upon with the successful candidate.



- To help increase response rates to a re-released ITO, it is suggested that in addition to changing timeframes, the potential candidate list be extended to also include:
  - Professor Emeritus Richard Mulgan, Crawford School of Public Policy, Australian National University
  - Professor Patrick Weller AO, Professor Emeritus, Griffith University School of Government and International Relations and an Adjunct Professor in the Centre for Governance and Public Policy
  - Professor Scott Prasser, Executive Director, Public Policy Institute, Australian Catholic University
  - Simone Webbe, former Deputy Director-General (Governance), Department of the Premier and Cabinet
  - other candidates that may be identified or potentially available at the time of ITO release (e.g. Dr Anne Tiernan, School of Government and International Relations, Griffith University if she ceases to be a member of the Public Records Review Committee).
- As with the previously approved list, these candidates were chosen based on potential availability, expertise in public administration, regulatory practice and digital literacy.

**ELECTION/CABINET/PUBLIC COMMITMENTS/LEGISLATION**

- The review of the Act has been published as an action for QSA, Digital Productivity and Services, Department of Science, Information Technology and Innovation (DSITI) in the 2015-16 DSITI Service Delivery Statement.

**FINANCIAL IMPACTS**

- Funding will be provided by QSA and is categorised as professional non-technical consultancy services.

**CONSULTATION**

- QSA has been working with DSITI Procurement Services throughout the ITO process.
- DSITI Procurement Services supports the revised ITO approach.
- QSA has been consulting with the Department of the Premier and Cabinet as a member of the ITO evaluation panel.

**COMMUNICATIONS/MEDIA OPPORTUNITIES**


- Once a successful candidate is approved, it is recommended the Minister announce the commencement of the review of the Act (as noted in the DSITI media opportunities plan).

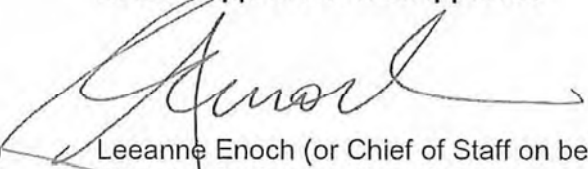
**FUTURE STEPS**

- Seek ministerial approval for progressing specific urgent legislative amendments.
- Re-release the ITO in the first quarter of 2016 for response by identified candidates.

Endorsed

Noted / Approved / Not-Approved

  
 Jamie Merrick (or Director on behalf of)  
 Acting Director-General  
 09/03/2016

  
 Leeanne Enoch (or Chief of Staff on behalf of)  
 Minister for Innovation, Science  
 and the Digital Economy and  
 Minister for Small Business  
 14/02/16

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|--|
| <i>Minister or Director-General comments</i> |
|  |
|  |

Media release required: Yes  No

Electorates: Statewide.

## ATTACHMENT 3

### Potential options for assigning relevant and responsible public authority for Ministerial records

| Options              | Outline  | Pros  | Cons   |
|----------------------|--|---|--|
| Preferred option     | State Archivist to be assigned the relevant and responsible public authority for records of former Ministers / Assistant Ministers   | <p>Overall responsibility clearly defined</p> <p>Ease of implementation</p> <p>Established recordkeeping system in place that could manage these records</p>                        | <p>Potential to be perceived as a conflict of interest as QSA would be the regulator and relevant/responsible public authority</p> <p>Records may be managed in the same recordkeeping system as departmental records</p>  |
| Alternative option 1 | Chief Executive Officer of the department responsible for Queensland State Archives to be assigned the relevant and responsible public authority for records of former Ministers / Assistant Ministers                                       | <p>Overall responsibility clearly defined</p> <p>Relative ease of implementation</p>  | <p>Potential for perceived conflict of interest</p> <p>Are suitable departmental recordkeeping systems in place to manage these records? E.g. DSITI does not have a recordkeeping system across the entire department</p> <p>Need to consider which area would have responsibility for management and disposal of the records</p>  |
| Alternative option 2 | An independent body such as the Integrity Commissioner / Queensland Ombudsman / Office of the Information Commissioner to be assigned as the relevant and responsible public authority for records of former Ministers / Assistant Ministers | <p>Overall responsibility clearly defined</p> <p>Potential for ease of management over time during future MoG changes (unless chosen entity goes through administrative change)</p> | <p>Potential for inherent institutional conflicts of interest for each of the identified independent bodies (e.g. Integrity Commissioner providing independent advice to a Minister about an ethical or integrity issue; potential conflict for the Office of the Information Commissioner with RTI and IP roles)</p> <p>Uncertainty whether chosen entity would support option / have resources (e.g. systems and processes) to manage these records</p> <p>Would chosen office have necessary resources (people and systems) in place to manage these records?</p> |



| Options              | Outline   | Pros   | Cons  |
|----------------------|---|--|---|
| Alternative option 3 | Department of the Premier and Cabinet (DPC) assigned as the default relevant and responsible public authority for records of former Ministers / Assistant Ministers   | <p>Overall responsibility clearly defined</p> <p>Ease of management over time during future MoG changes</p> <p>DPC has a recordkeeping system and records area</p> | <p>DPC not likely to support option</p> <p>DPC may not be perceived to be independent</p> <p>Records may be managed in the same recordkeeping system as departmental records</p>  |
| Alternative option 4 | Director-General with portfolio responsibility for the records of former Ministers / Assistant Ministers to be assigned the relevant and responsible public authority for records of former Ministers / Assistant Ministers | Responsibility rests with relevant DG – initial ease of implementation   | <p>Potential difficulty in obtaining buy in from all DGs</p> <p>Managing over time during future MoG changes (e.g. if functions split to more than one responsible public authority)</p> <p>May result in requests to multiple Directors-General when records are split across portfolios (e.g. when access is sought to a ministerial diary which falls under two portfolios)</p> <p>Potential for perceived conflict of interest by the community during change of government</p> <p>Variation in recordkeeping maturity levels and resourcing (e.g. recordkeeping systems) across departments</p> <p>Records management and disposal may be undertaken on an inconsistent basis due different practices across departments</p> |

Released under RTI

# ATTACHMENT 4

## Potential approaches managing records of Commissions of Inquiry

| Options              | Outline   | Pros  | Cons  |
|----------------------|---|---|---|
| Preferred option     | The Department of Justice and Attorney-General to be assigned as the relevant and responsible public authority for records of Commissions of Inquiry          | <p>Overall responsibility clearly defined</p> <p>Ease of implementation</p> <p>Consistency in recordkeeping processes (DJAG has a recordkeeping system)</p> <p>DJAG has tended to be the relevant and responsible entity for many (but not all) Commissions of Inquiry</p> <p>DJAG tends to remain stable during machinery-of-government changes – meaning consistency in process</p> <p>Community confidence in having a stable and consistent agency responsible for records of Commissions of Inquiry</p> <p>Public perception of independence (i.e. not having the agency which the Inquiry is based subsequently managing the Inquiry records)</p> | <p>DJAG unlikely to support this option as it will place additional costs and responsibility on them</p> <p>Given QSA does not have a digital archive, it means DJAG (or chosen agency) would need to manage and preserve the digital records of all future Commissions of Inquiry (until a digital archive is established)</p>   |
| Alternative option 1 | State Archivist to independently assign the relevant and responsible public authority for records of former Commissions of Inquiry (e.g. using a declaration) | <p>Flexibility in assigning responsibility to most appropriate public authority</p> <p>Involves input from those impacted</p> <p>Could link decision to the establishment of the Commission to set relevant and responsible entity (e.g. using Cabinet submission process to advise desired entity)</p>   | <p>Still involves administrative burden by needing to assign responsibility for each individual Inquiry</p> <p>Requires each individual chosen relevant and responsible public authority to have processes in place to ensure records are managed appropriately</p>   |
| Alternative option 2 | The relevant and responsible public authority to be the department administering the Act on which the Inquiry is based  | <p>Consistency in approach to assigning relevant and responsible public authority</p>   | <p>Potential for conflict of interest if relevant department did not provide secretariat to the Inquiry and records have to be transferred elsewhere</p> <p>Requires each public authority to have processes in place to ensure records are managed appropriately</p> <p>Potential administrative burden where multiple pieces of legislation involved that is owned by multiple agencies</p> |



# ATTACHMENT 5

## Managing records associated with administrative change within government where public authorities cease

| Options              | Outline   | Pros   | Cons  |
|----------------------|---|--|---|
| Preferred option     | State Archivist to independently assign the relevant and responsible public authority for records of former public authorities using a streamlined system (e.g. a declaration / gazette notice)   | <p>Flexibility in assigning responsibility to most appropriate public authority</p> <p>State Archivist best placed to exercise decision making power</p> | <p>Need to assign responsibility for each individual administrative change</p> <p>Requires each chosen public authority to have processes in place to ensure allocated records are managed appropriately</p>  |
| Alternative option 1 | CEO of the department responsible for Queensland State Archives, in consultation with the State Archivist, to assign the relevant and responsible public authority for records of former public authorities using a streamlined system (e.g. a declaration) | Flexibility in assigning responsibility to most appropriate public authority   | <p>Requires adequate consultation from CEO with the State Archivist to make these decisions</p> <p>Need to obtain agreement for each individual administrative change</p> <p>Requires each public authority to have systems and processes in place to ensure allocated records are managed appropriately</p> <p>Need to identify area of QSA with responsibility for undertaking this work</p>                |
| Alternative option 2 | Decisions about records of former public authorities are the responsibility of the CEO of the public authority that had responsibility for those records using a streamlined system (e.g. a declaration)  | Decision making power left with individual departmental CEOs   | <p>Reflects current operating model, where in reality, these issues are not addressed or left to the last possible moment and do not allow sufficient consultation and consideration for the proposed relevant and responsible public authority</p> <p>CEO may choose an entity and the entity is not agreeable to becoming the relevant and responsible public authority, consequently may be unworkable</p> |

Pages 120 through 144 redacted for the following reasons:

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Exempt Sch 3(7)

Released under RTI - DCHDE



**Subject** Consultation with Department of Justice and Attorney-General regarding amendments to *Public Records Act 2002*

Approval required by: N/A.

#### RECOMMENDATION

- It is recommended that the Director-General **approve** and **sign** the attached letter (refer to **Attachment 1**) to the Director-General of the Department of Justice and Attorney-General (DJAG) requesting consultation on the proposed amendments to the *Public Records Act 2002* (the Act).

#### BACKGROUND

- The Minister has approved for Queensland State Archives (QSA) to progress priority amendments to the Act (refer to **Attachment 2**).
- The priority amendments relate to streamlining the process of assigning a relevant and responsible public authority for certain administrative changes, including for records of a Commission of Inquiry (Col) once a commission closes.
- A 'relevant' public authority is responsible for ensuring the safe custody and preservation of records in its possession, for setting restricted access periods and making decisions regarding access to records held in the custody of QSA.

#### KEY ISSUES

- A regulation is currently required for each specific Col in order to assign a relevant and responsible public authority for the Col records once the Inquiry has concluded.
- Various options have been considered to streamline this process (refer to **Attachment 3**).
- The preferred option is that DJAG be assigned as the relevant and responsible public authority for records of all future Col's.
- DJAG is currently assigned as the relevant and responsible public authority for the majority of existing Col records.
- DJAG will need to be consulted due to potential funding and resourcing implications for the long term management of the digital and paper records of a commission.

#### ELECTION/CABINET/PUBLIC COMMITMENTS/LEGISLATION

- Cabinet approval of any amendments to the Act will be required.

#### FINANCIAL IMPACTS

- Funding to progress the priority amendments will be provided from existing QSA budget.
- The recommendation to assign DJAG as the relevant and responsible public authority for Col records will have financial implications for DJAG if implemented.

#### CONSULTATION

- QSA has received advice from Crown Law on the proposed options (refer to **Attachment 4 and 5**).

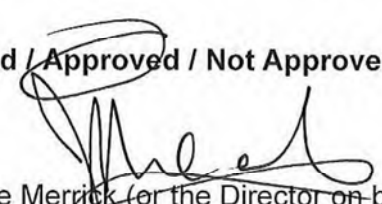
Endorsed

(Endorsed in MECS 22/12/2016)

Mike Summerell  
Acting Assistant Director-General

/ /

Noted / Approved / Not Approved

  
Jamie Merrick (or the Director on behalf of)  
Director-General

23/12/16

Director-General or Director comments





Department of  
**Science, information  
Technology and Innovation**

Ref: 02506-2016

Mr David Mackie  
Director-General  
Department of Justice and Attorney-General  
GPO Box 149  
BRISBANE QLD 4001

Dear Mr Mackie

*David,*

The Department of Science, Information Technology and Innovation (DSITI) is considering amending the *Public Records Act 2002* (the Act) to streamline processes for dealing with the management of public records following administrative changes. These administrative changes include the setting up and closure of Commissions of Inquiry (commissions). Specifically, consideration is being given to streamline the way responsibilities are assigned to ensure the ongoing management of records once a commission closes. Such amendments may impact your department and therefore I am seeking your input.

Currently, a regulation is required to assign a relevant and responsible public authority for the public records for every commission. A relevant public authority must manage the records and ensure the safe custody and preservation of records in its possession, including digital records and commission websites. A responsible public authority must make decisions about requests to access records of the commission in the custody of Queensland State Archives (QSA). The responsible public authority can also make decisions about restricted access periods set for the records in the custody of QSA.

DSITI is giving consideration to a new streamlined approach. Rather than developing a regulation upon the closure of each commission, that one permanent relevant and responsible public authority be assigned for all future commissions within the Act. Having one dedicated public authority assigned to manage these records helps ensure consistency in the way they are handled, and reduces the administrative burden associated with the development of each regulation.

As you may be aware, the Department of Justice and Attorney-General (DJAG) is currently assigned as the relevant and responsible public authority for records of the majority of previous commissions. DJAG has been identified as a potential candidate to be assigned as relevant and responsible public authority for all future commission records. DSITI is seeking your views about this proposal and the possible implications for your department.

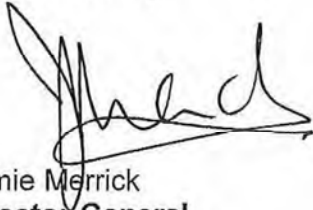
To discuss this proposed amendment and the range of options being considered, QSA officers would like to meet with representatives from DJAG. In developing the regulations to date, QSA has dealt primarily with Ms Alexis Hailstones, Principal Legal Officer, Strategic Policy and Legal Services unit, DJAG.



**COPY**

Should your officers require any further information, they may contact Ms Lauren Hein, Senior Policy Officer, Government Recordkeeping, Queensland State Archives, Department of Science Information Technology and Innovation on telephone 07 3037 6732 or by email at lauren.hein@archives.qld.gov.au.

Yours sincerely



Jamie Merrick  
**Director-General**  
23 / 12 / 16

Released under RTI - DCH/16/011

**Subject** Priority amendments to the *Public Records Act 2002*  
Approval required by 18/11/2016

## RECOMMENDATION

- It is recommended that the Minister:
  - **approve** placing priority amendments to the *Public Records Act 2002* (the Act) on the Cabinet forward timetable (refer to **Attachment 1**)
  - **approve** the preferred solution of State Archivist to be assigned as the relevant and responsible public authority for records of former ministers/assistant ministers
  - **approve** the preferred solution that the Department of Justice and Attorney-General (DJAG) to be assigned as the relevant and responsible public authority for records of Commissions of Inquiry (CoI)
  - **approve** consultation by QSA on the priority amendments with relevant stakeholders
  - **confirm** that decisions regarding consultation with the Opposition Leader will be determined by the Minister in consultation with the Premier.

## BACKGROUND

### Review of the *Public Records Act 2002*

- The Minister has previously approved for QSA to commence an internal review of the Act focusing on issues requiring priority attention to be progressed in a Bill (refer to **Attachment 2**).
- The priority amendments relate to streamlining the process of assigning a relevant and responsible public authority for:
  - ministerial records (including addressing inconsistencies between the Ministerial Handbook and the Act for issues related to access to ministerial records once a minister ceases to hold office)
  - certain administrative changes such as the cessation of a Commission of Inquiry (CoI) and when government functions cease.

### Assigning a relevant and responsible public authority

- Under the Act, once a public authority ceases to exist (including when a minister or Assistant minister no longer holds office) and its functions are not going to be carried out by another public authority, its records need to be managed by a relevant and/or responsible public authority on an ongoing basis.
- Sections 8(3) and 15(d) of the Act provide for a regulation to establish the responsible and/or relevant public authority.
- The role of a 'relevant' public authority is to ensure the safe custody and preservation of records in its possession (i.e. applies to records not in QSA's custody).
- A 'relevant' public authority is also required to authorise the disposal of temporary records.
- A 'responsible' public authority sets restricted access periods and makes decisions on access to records in the custody of QSA, including requests under the *Right to Information Act 2009* (RTI Act) and the *Information Privacy Act 2009* (IP Act).

### Ministerial records

- The Ministerial Handbook requires ministers to transfer records to QSA when they are no longer required or when the minister ceases to hold his/her portfolio.
- QSA holds records from former ministers in its collection dating back to 1978, and includes diaries, pecuniary interest records and previous lobbyist registers.
- Some ministerial records, including pecuniary interest records and lobbyist registers are only required to be retained on a temporary basis.
- Ministerial records held in the custody of QSA currently have no assigned relevant or responsible public authority to make decisions relating to access and disposal.



## KEY ISSUES

### Ministerial records

- Under the current Act, establishing a relevant and responsible public authority for ministerial records has never been implemented as no public authority has been identified that could take responsibility for these records.
- Crown Law has advised <sup>Exempt Sch 3(7)</sup>  

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- To overcome these identified challenges, a range of options have been considered (refer to **Attachment 3**) with the preferred option that: the State Archivist be assigned the relevant and responsible public authority for records of former ministers/assistant ministers.

### Administrative changes

- Currently for records associated with administrative change (e.g. when a public authority ceases to exist, such as a Col, or when government functions cease), a regulation is required to be developed for each specific instance, which can be time consuming for all parties involved.
- To streamline the process for the management of records of Col, various options have been considered (refer to **Attachment 4**) with the preferred being that: DJAG to be assigned as the relevant and responsible public authority for records of all future Col.
- In relation to administrative change within government where public authorities cease to exist and their functions are not transferred to another public authority, a range of options have been considered (refer to **Attachment 5**) with the preferred option being: the State Archivist to independently assign the relevant and responsible public authority for records of former public authorities (using a streamlined mechanism e.g. decisions published by way of gazette notice).

## ELECTION/CABINET/PUBLIC COMMITMENTS/LEGISLATION

- Cabinet approval of any amendments to the Act will be required.

## FINANCIAL IMPACTS

- Funding to progress the priority amendments will be provided from existing QSA resources.
- The recommendation to assign DJAG as the relevant and responsible public authority for records of Col will have financial implications for DJAG if implemented.

## CONSULTATION

- QSA has received advice from Crown Law on the proposed options (refer to **Attachment 6**).
- Consultation on the priority amendments will take place as part of the Cabinet process, and will also include the Ombudsman, the Integrity Commissioner and the Information Commissioner.
- Consultation with the Opposition Leader may be beneficial as any changes to the handling of ministerial records will impact the former, as well as current government.
- It is proposed that decisions regarding consultation with the Opposition Leader will be determined by the Minister in consultation with the Premier.
- QSA will consult with the Office of Best Practice Regulation to seek exemption from the Regulatory Impact Statement requirements, as the priority amendments relate to the internal management of the public sector.

## COMMUNICATIONS/MEDIA OPPORTUNITIES

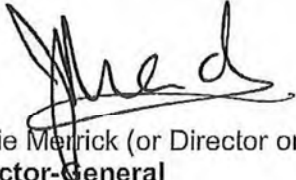
- N/A.

## FUTURE STEPS

- QSA to commence consultation and development of an Authority to Prepare Cabinet submission to progress priority amendments to the Act, with the submission placed on the Cabinet forward timetable.

- QSA to develop an Authority to Introduce Cabinet Submission.
- Subject to Cabinet approval of proposed changes to the management of ministerial records, QSA to work with Ministerial Services Branch and the Department of the Premier and Cabinet to implement changes, including updating section 2.3 of the Ministerial Handbook and developing recordkeeping guidance for ministerial offices.


Endorsed



Jamie Merrick (or Director on behalf of)  
Director-General

14 / 11 / 16

Noted / Approved / Not Approved



Leeanne Enoch (or Chief of Staff on behalf of)  
Minister for Innovation, Science  
and the Digital Economy and  
Minister for Small Business

16 / 11 / 16

Minister or Director-General comments

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Media release required:    Yes     No

Electorates: Statewide

Released under RTI - DDP



# ATTACHMENT 3

## Potential approaches managing records of Commissions of Inquiry

| Options              | Outline   | Pros  | Cons  |
|----------------------|---|---|---|
| Preferred option     | The Department of Justice and Attorney-General to be assigned as the relevant and responsible public authority for records of Commissions of Inquiry          | <p>Overall responsibility clearly defined</p> <p>Ease of implementation</p> <p>Consistency in recordkeeping processes (DJAG has a recordkeeping system)</p> <p>DJAG has tended to be the relevant and responsible entity for many (but not all) Commissions of Inquiry</p> <p>DJAG tends to remain stable during machinery-of-government changes – meaning consistency in process</p> <p>Community confidence in having a stable and consistent agency responsible for records of Commissions of Inquiry</p> <p>Public perception of independence (i.e. not having the agency which the Inquiry is based subsequently managing the Inquiry records)</p> | <p>DJAG unlikely to support this option as it will place additional costs and responsibility on them</p> <p>Given QSA does not have a digital archive, it means DJAG (or chosen agency) would need to manage and preserve the digital records of all future Commissions of Inquiry (until a digital archive is established)</p>   |
| Alternative option 1 | State Archivist to independently assign the relevant and responsible public authority for records of former Commissions of Inquiry (e.g. using a declaration) | <p>Flexibility in assigning responsibility to most appropriate public authority</p> <p>Involves input from those impacted</p> <p>Could link decision to the establishment of the Commission to set relevant and responsible entity (e.g. using Cabinet submission process to advise desired entity)</p>   | <p>Still involves administrative burden by needing to assign responsibility for each individual Inquiry</p> <p>Requires each individual chosen relevant and responsible public authority to have processes in place to ensure records are managed appropriately</p>   |
| Alternative option 2 | The relevant and responsible public authority to be the department administering the Act on which the Inquiry is based  | <p>Consistency in approach to assigning relevant and responsible public authority</p>   | <p>Potential for conflict of interest if relevant department did not provide secretariat to the Inquiry and records have to be transferred elsewhere</p> <p>Requires each public authority to have processes in place to ensure records are managed appropriately</p> <p>Potential administrative burden where multiple pieces of legislation involved that is owned by multiple agencies</p> |

Pages 152 through 176 redacted for the following reasons:

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Exempt Sch 3(7)

Released under RTI - DCHDE