

MINISTERIAL BRIEFING NOTE

Subject: Recommendations resulting from the independent investigation by the State Archivist into alleged unauthorised disposal of public records by a Minister and progress to date.

Decision/Action by: N/A

Reasons for Urgency: N/A

Briefing type: Requested briefing note for noting

Responsible Area: Queensland State Archives

Electorate: Statewide

Contact Officer: Mike Summerell, Executive Director & State Archivist – (07) 3037 6601

PURPOSE

To provide the Minister with an update on the progress of recommendations resulting from an independent investigation by the State Archivist into the alleged unauthorised disposal of public records by a Minister.

RECOMMENDATION

It is recommended that the Minister:

1. Note the State Archivist's recommendations following an independent investigation into allegations of unauthorised disposal of public records by the Honourable Mark Bailey MP, Minister for Transport and Main Roads.
2. Note the progress to date in implementing these recommendations.

Noted	Approved	Not approved
✓		
✓		

Yes	No

Media Release Required

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

<p>DIVISIONAL HEAD ENDORSEMENT</p> <hr/> <p>Andrew Spina Assistant Director-General Digital Capability, Information and Transaction Based Services</p> <p>Date: 05 / 03 /2018</p>	<p>COMMENTS</p>
<p>DIRECTOR-GENERAL ENDORSEMENT</p> <hr/> <p><i>Liza Carroll</i></p> <p>Liza Carroll Director-General Department of Housing and Public Works</p> <p>Date: 11/31/18</p>	<p>COMMENTS</p>
<p>MINISTERIAL APPROVAL</p> <hr/> <p><i>Mick de Brenni</i></p> <p>Mick de Brenni MP Minister for Housing and Public Works Minister for Digital Technology Minister for Sport</p> <p>Date: 2 / 4 / 18</p>	<p>COMMENTS</p>

CONTEXT

- In March 2017, allegations were made that the Honourable Mark Bailey MP, Minister for Transport and Main Roads disposed of public records without appropriate authorisation under the *Public Records Act 2002* (the Act).
- The matter was referred to the Crime and Corruption Commission (CCC) and as the matter related to potential breaches of the Act, the CCC requested the State Archivist investigate the allegations.
- In September 2017, the State Archivist presented his final report of the investigation to the CCC who accepted all recommendations made.
- The State Archivist has a statutory obligation to independently investigate breaches of the Act and as such, completed an independent investigation into the matter and provided his report of the investigation to the Director-General of the former Department of Science, Information Technology and Innovation (DSITI) in October 2017.

KEY ISSUES

- A number of recommendations specific to the actions of Minister Bailey were made to the CCC, along with several recommendations relating to improving the standard of government recordkeeping and the management of ministerial records.
- Recommendations relating to recordkeeping were also included in the report to the Director-General of the former DSITI.
- The investigation highlighted the potential for the widespread creation and receipt of ministerial records in the private email accounts of Ministers, Assistant Ministers and their staff, and wider issues relating to the standard of recordkeeping practices across government and a lack of awareness of responsibilities and requirements relating to the management of public records.
- Following the completion of the CCC investigation, CCC reported that the use of private email accounts, and particularly the deletion of records in those accounts, could give rise to a significant public perception that the use of such accounts is done for a corrupt purpose.
- The recommendations from the independent investigation relating to improving the standard of government recordkeeping and the management of ministerial records along with progress to date are included at **Attachment 1**.
- Queensland State Archives (QSA) is working to improve the standard of government recordkeeping through the Recordkeeping Transformation Program which includes a number of key deliverables:
 - review of the Act
 - development of new minimum recordkeeping standards
 - an improved records disposal authorisation framework
 - a digital maturity framework and a digital transition strategy.
- Briefing notes relating to the Recordkeeping Transformation Program, the review of the Act and priority amendments to the Act are being prepared by QSA.

ELECTION AND GOVERNMENT COMMITMENTS

- The issue is not the subject of an election or Government commitment.

FINANCIAL IMPLICATIONS

- A monitoring framework for compliance with mandatory guidelines is not able to be undertaken within existing resourcing.
- Resourcing implications for these recommendations and other improvements in record keeping standards are considered in a separate ministerial briefing note relating to a proposed Record Keeping Transformation Program.
- Funding for additional resources was provided to QSA by the former DSITI to enable QSA to undertake the investigation.

CONSULTATION

- Not applicable.

FUTURE STEPS

- Work will continue on implementing the recommendations from the State Archivist's independent investigation within the capacity of available resourcing.
- Further ministerial briefing notes will be prepared relating to specific recommendations including proposed amendments to the Act.

COMMUNICATIONS/MEDIA OPPORTUNITIES

- Not applicable.

Released under RTI - DCHDE

Attachment 1 – Recommendations and progress to date as at 16 February, 2018.

No.	Recommendations	Progress to date
1.	The State Archivist to seek assurance from current Ministers that Ministerial records are managed appropriately including procedures for the management of Ministerial records created or received within private email accounts and social media accounts.	Not commenced
2.	The State Archivist to explore appropriate ways of seeking permanent value Ministerial records that may be in the possession of former Ministers including those contained within private email accounts.	Not commenced
3.	The State Archivist to issue new guidance for Ministers and their staff on the management of Ministerial records.	<p><i>Ministerial Records Policy</i> for Ministers, Assistant Ministers and their staff published</p> <p>Ministers and Assistant Ministers advised of their recordkeeping responsibilities in letter from the State Archivist sent 19 December 2017</p>
4.	The State Archivist to issue a revised retention and disposal schedule to cover Ministerial records. This revision will be focused on making the process far more practical for Ministers and their offices.	Review of the <i>Office of a Minister of the Crown and Parliamentary Secretaries Retention and Disposal Schedule</i> commenced.
5.	The Department of the Premier and Cabinet (DPC) to review training, IT systems and advice provided to Ministers and their staff on the management of Ministerial records to ensure compliance with State Archivist guidance.	<p>Following consultation with DPC, QSA provided training on the management of ministerial records which was delivered to ministerial staff on 30 January and 7 February 2018 by QSA.</p> <p>Ongoing recordkeeping advice is being provided to Ministerial Services in DPC by QSA.</p>
6.	DPC to review and update the Ministerial Handbook and the Information Security Policy regarding the management of Ministerial records created or received within private email accounts or social media accounts to ensure compliance with State Archivist guidance.	Input into the review of the <i>Ministerial Handbook</i> and the <i>Ministerial Information Security Policy</i> has been provided to DPC by QSA.
7.	<p>Government to consider urgent amendments to the <i>Public Records Act 2002</i> including:</p> <ul style="list-style-type: none"> • Clear and contemporary definition of the disposal of public records. • Appropriate penalties for breaches of key sections of the <i>Public Records Act 2002</i> in particular non-compliance and unauthorised disposal. 	<p>Priority amendments to the <i>Public Records Act 2002</i> have been scoped.</p> <p>Ministerial Briefing Note to follow with specific recommendations.</p>

	<ul style="list-style-type: none"> • Compliance with mandatory recordkeeping guidelines. • Public records contained in private email or social email accounts to be forwarded/transferred to official systems within 20 days of receipt or creation. • Establishment of a relevant and responsible public authority for Ministerial records. 	
8.	The State Archivist to review and update guidance for all public authorities on the management of public records within email, private email and social media accounts.	Under development.
9.	The State Archivist to issue new minimum standards for recordkeeping for all public authorities that replace <i>Information Standard 40: Recordkeeping</i> and <i>Information Standard 31: Retention and disposal of public records</i> . With the aim of these becoming mandatory requirements once the <i>Public Records Act 2002</i> is amended.	Consultation on new minimum standards for recordkeeping underway with agencies.
10.	The State Archivist to develop an auditing regime to monitor compliance with the <i>Public Records Act 2002</i> .	Not commenced.

Released under RTI - SCHIDE

MINISTERIAL BRIEFING NOTE

Subject: The Review of the *Public Records Act 2002*
Decision/Action by: 2 March 2018
Reasons for Urgency: Planned public consultation
Briefing type: Requested briefing note for noting
Responsible Area: Queensland State Archives
Electorate: Statewide
Contact Officer: Mike Summerell, Executive Director and State Archivist – (07) 3037 6601

PURPOSE

To inform the Minister about the review of the *Public Records Act 2002* including the terms of reference, timeline, proposed whole-of-government and public consultation and the release of a discussion paper.

RECOMMENDATION

It is recommended that the Minister:

1. **Note** the review of the *Public Records Act 2002*, including the Terms of Reference (**Attachment 2**) and the proposed time frames for the Review (**Attachment 4**)
2. **Note** the Discussion Paper for the Review of the *Public Records Act 2002* (**Attachment 3**)
3. **Approve** whole-of-government and public consultation and the release of the Discussion paper (**Attachment 3**)
4. **Sign** the letter to the Premier providing an update on the Review of the *Public Records Act 2002* (**Attachment 5**)

Noted	Approved	Not approved

Yes	No
	x

Media Release Required

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

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

CONTEXT

- *The Public Records Act 2002* (the Act) governs the creation, management, access and preservation of public records that are created by over 500 public authorities across Queensland. Apart from some minor amendments, the Act has not been reviewed since it was enacted in 2002. It is timely to review the Act to establish if its prime objectives remain appropriate and fit for purpose in a digital age.

KEY ISSUES

- Queensland State Archives (QSA) is leading the review of the Act with input from and recommendations by an external Independent Review Panel (the Panel)
- In April 2015 QSA received approval from the former Minister, the Honourable Leeanne Enoch, Minister for Housing and Public Works and Minister for Science and Innovation, to review the Act, with further approval provided by Minister Enoch for a new approach to the review in December 2016 (refer **Attachment 1**)
- As per the terms of reference (refer **Attachment 2**), the review will be carried out to examine how the current Act may be improved to increase the standard of recordkeeping across the Queensland Government.
- A range of consultation strategies will be used to gather initial public and government feedback on the Act, including a public discussion paper, independently facilitated workshops with key stakeholders, and an online general public community survey. The discussion paper is attached for noting and approval of its release for whole-of-government and public consultation. (refer **Attachment 3**)
- Proposed timeframes for the review are also attached (refer **Attachment 4**)
- In addition to the consultation above, QSA is also working with the Queensland University of Technology (QUT) Chair in Digital Economy to apply an innovation sprint technique to the review to gather further insight for consideration.
- The Panel will be established to review the results of the consultation process and to make recommendations based on this information.
- It is proposed that members of the Panel will include representatives from the Right to Information Commissioner, the Integrity Commissioner, the Queensland Auditor-General, the Queensland Government Chief Information Office and the Department of the Premier and Cabinet.
- QSA's former Minister, the Honourable Leeanne Enoch, Minister for Housing and Public Works and Minister for Science and Innovation wrote to the Premier advising of the review of the Act in 2016 and it is recommended that a similar update be provided to the Premier prior to the release of the discussion paper (refer **Attachment 5**)

ELECTION AND GOVERNMENT COMMITMENTS

- The issue is not the subject of an election or Government commitment.

FINANCIAL IMPLICATIONS

- The review of the Act has been published as an action for QSA, in the 2016-17 Department of Science, Information Technology and Innovation (DSITI) Service Delivery Statement.
- This review will be funded from within existing QSA budget allocation.

CONSULTATION

- QSA has been working with DSITI Communications and Engagement Services, DSITI Strategic Policy and Innovation Division and Department of Housing and Public Works (DHPW) Corporate Communications regarding the consultation and editing process.
- Feedback from the DHPW Corporate Communications team is still being considered.
- QSA has been liaising with Finance and Procurement teams regarding the procurement process for the Act review consultation.
- QSA has been working with the QUT Chair of the Digital Economy for sprints relevant to recordkeeping and the Act Review.

FUTURE STEPS

- It is anticipated that QSA will commence formal consultation processes from late February. This will include the release of the discussion paper for whole-of-government and public consultation, public consultation in the form of independent stakeholder workshops and an online general public community survey from early March to late May 2018.
- It is anticipated that QSA will the Panel to review the results of consultation from June to July 2018. The panel are expected to deliver their recommendations in July 2018 with QSA providing their outcome and recommendations shortly after.
- If consultation reveals that legislative amendments to the Act are required, QSA will progress these through the formal Cabinet process and potentially introduce a Bill to Parliament in the first half of 2019.

COMMUNICATIONS/MEDIA OPPORTUNITIES

- N/A

BACKGROUND

- The Act establishes QSA as the responsible body to oversee recordkeeping practices in Queensland Government and to set the recordkeeping requirements for public records.
- The Act specifies powers for the State Archivist including: the issuing of standards and advice, authorising access considerations for public records and outlines the requirements for the disposal of public records.
- Technological advances over the past 15 years have resulted in vastly increased volumes of records, growing public expectations of easy access to records, and increased complexity of records being created. These changes have challenged traditional recordkeeping practices and a review of the Act is required to ensure the Act is fit for purpose as the government transitions its business to digital platforms.
- The review also presents a unique opportunity for Queenslanders to have their say about how to further the objectives of the Act and improve the legislation for the greatest public benefit.
- The Act review was originally proposed to be led by an independent expert. Despite several attempts to secure an expert, one could not be sourced and QSA was given approval to lead the review.

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

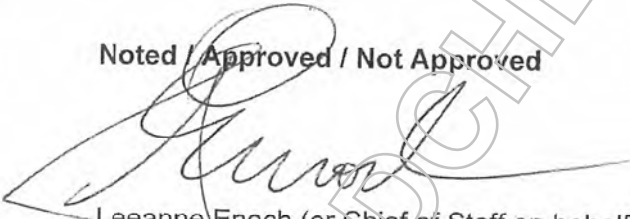
- The estimated cost of \$150,000 will be funded by QSA.

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

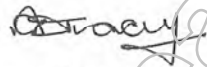
- Once a successful candidate is approved, it is recommended the Minister announce the commencement of the review of the Act (as noted in the DSITI media opportunities plan).

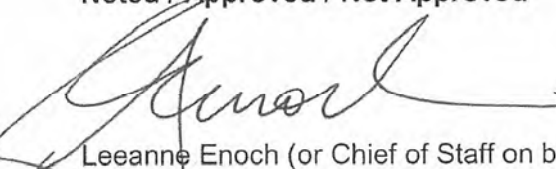
FUTURE STEPS

- 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
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Email innovation@ministerial.qld.gov.au
Website 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 or on telephone 07 3719 7123.

Yours sincerely

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

Terms of reference

Review of the *Public Records Act 2002*

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.

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
- investigate issues that limit the effectiveness of recordkeeping and identify opportunities to improve the legislative framework's treatment of digital records
- determine if there are appropriate opportunities to increase accountability and transparency of government through appropriate regimes for making and keeping information, including considering the extent to which the legislative framework supports other important matters such as right to information and privacy legislation.

QUEENSLAND
STATE

ARCHIVES

**The *Public Records Act 2002* Review:
How should we manage our public records now and in
the future?**

Discussion paper
December 2017

Security classification: Public

Department of Housing
and Public Works



Queensland
Government

Document details

Security classification	PUBLIC		
Date of review of security classification	December 2017		
Authority	Department of Housing and Public Works		
Author	Queensland State Archives		
Documentation status	<input checked="" type="checkbox"/> Working draft	<input type="checkbox"/> Consultation release	<input type="checkbox"/> Final version

Contact for enquiries and proposed changes

All enquiries about this document should be directed in the first instance to:

Queensland State Archives
 Phone: 07 3037 6777
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2017 Review of the Public Records Act 2002

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Minister's foreword

Public records are a key business asset that support effective decision making. They must be managed effectively. Keeping accurate records, in all kinds of formats, is vital to the success of Queensland Government business activities. Records must be created, captured, managed, maintained, and preserved to provide unique evidence and context of government actions and decisions over time. Recordkeeping plays an invaluable role in creating a culture of accountability and transparency.

The *Public Records Act 2002* (the Act) is devoted to the management of public records. Queensland State Archives (QSA), in my portfolio of Housing and Public Works, is the state's lead agency for government recordkeeping, offering practical recordkeeping advice and tools to more than 500 Queensland public authorities.

Because the Act is now 15 years old, it needs to be reviewed to cope with technological advances and the vast volume of records being created. A review will ensure the Act is fit for purpose in a technical age. It also presents a unique opportunity for Queenslanders to have their say about how to further the objectives of the Act and improve the legislation for the greatest public benefit.

QSA is leading the review of the Act. I am pleased to release *The Public Records Act 2002 Review: Discussion Paper*. This paper is provided for public consultation to stimulate discussion of the wide range of issues that need to be considered about the records of the Queensland Government. This paper presents topics and asks questions about the creation, management, access and preservation of the records in current and imagined legislation. Your submissions will help the Queensland Government assess the statutes for usefulness, necessity and improvement.

I encourage everyone interested in these important issues to respond to this paper. The management of information held by government is important in a democracy, and broad community input is required to ensure we get the best possible legislation for our state.

This paper is not government policy. It has been developed to invite public feedback and to encourage consideration of key issues arising in the development of more appropriate, cohesive and modern public records legislation for Queensland for now and for the future.

I look forward to considering the range of views generated by this discussion paper.

The Hon Mick de Brenni
Minister for Housing and Public Works
Minister for Digital Technology
Minister for Sport

December 2017

What is this discussion paper about?

Queensland State Archives has a vision.

Our vision is to inspire all Queenslanders to discover the stories contained within the record of the Queensland Government – anytime, anywhere.

The Archives need an Act that will achieve this vision.

We want your views about creating an Act that can support this vision and the changes that need to be made. How do we ensure government agencies create, manage and preserve their records? What role can the community play? How do we provide better access to records while balancing the need for privacy and sensitivity? Should the Archives and the Archivist have stronger powers? Is there a need for statutory independence for the Archives? How should we deal with government agencies that consistently fail to manage and preserve records?¹

Queensland has had dedicated legislation to regulate records management since 2002 – the *Public Records Act 2002*. The Act sets the foundations for recordkeeping requirements for government agencies and for managing, preserving, and providing access to the Archives. The Act was introduced in response to the Fitzgerald Commission of Inquiry and subsequent recommendations from the Electoral and Administrative Review Commission. Since its introduction, only minor changes have been made to the Act.

In the 15 years since the Act was passed, many things have changed. We no longer work predominantly on paper – workplaces are increasingly digital. Instead of creating paper files on shelves, we create terabytes of data in business systems. The Act worked well in 2002 but does not fit today's digital government. It's time to review the Act. We must think about the changes needed to ensure records we create and manage continue to support the rigours of government, and are preserved and accessible now and in the future.

We already know that recordkeeping is flawed in many government agencies². The last Bi-annual Recordkeeping Survey, in December 2015, showed that only 15 per cent of agencies meet the minimum standard for recordkeeping. The problem is exacerbated by new technology and the creation of a significant volume of digital records. Unfortunately, many agencies continue to grapple with large volumes of their old paper records, and are yet to turn their focus towards their growing digital records.

This problem is fundamental for government. The records³ created by agencies underpin the work of the government – they are the cornerstone of democracy, accountability and transparency.

¹ For full details of the Terms of Reference for the Act Review, please refer to Appendix 1.

² Known as public authorities in the *Public Records Act 2002*.

³ Known as public records in the *Public Records Act 2002*.

These records are critical in providing services to the community, in demonstrating value for money, and in justifying decisions and actions.

The State Archives at Runcorn currently holds 64 linear⁴ kilometres of records, and receives about 5500 visitors per annum. Digital access to archives is increasingly important to ensure access for all Queenslanders 24/7. To enable continued access, legislation must balance privacy concerns with open access to records.

How can you have your say?

We invite your views on the need for changes to the legislation dealing with records management and access in the Queensland government. You can respond specifically to the issues raised here, or submit a general response about your concerns or views.

Please submit your response:

online: www.getinvolved.qld.gov.au

by email: ActReview@archives.qld.gov.au

by post: Public Records Act Review
Queensland State Archives
PO Box 1397
Sunnybank Hills Q 4109

The closing date for submission is **DAY Date Month 2018**.

All responses will be considered by the Archives and an independent panel. A report with recommendations will be prepared for the Minister for Housing and Public Works, Minister for Digital Technology and Minister for Sport.

Please note that submissions may be published. If you want your submission, or any part of it, to be treated as confidential, please indicate clearly in your submission. Note that all submissions may be subject to disclosure under the *Right to Information Act 2009* (RTI Act).

⁴ Linear kilometres held as at December 2017.

Your feedback is welcomed on:

1.0 What should the aim of the Act be?

This question is fundamental because the Act establishes roles, responsibilities, functions, powers and offences to help achieve the aims. The current purposes of the Act are to ensure:

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

The links to the RTI and IP Acts are important. Without creating, keeping and managing records, the community cannot access records and protect their privacy. Our relationship with the RTI and IP Acts could be strengthened. For instance, we could require notification from the Office of the Information Commissioner (OIC) when an agency is unable to produce public records they should be able to locate. Such notifications could help to identify agencies with recordkeeping issues so that appropriate action can be taken.

But what should the future purpose of the Act be? Do we need to change or broaden the purpose? Should it specifically include increasing accountability, and enhancing decision making and transparency for government agencies? Should it include new themes, such as supporting information sharing across government or open data? Do you think that other Acts have a key relationship with the *Public Records Act 2002*?

Discussion points

1. What should the aim of the Act be? Should it be broadened?
2. Are there opportunities for closer alignment with other Acts, for example, RTI Act and IP Act?

2.0 What is a public record?

Under the current Act, the definition of a public record is quite broad. It gives a lot of leeway for government agencies to create many records that may be regarded as public records under the definition.

Under the Act, a public record is defined as:

- A record made for use by, or a purpose of, a public authority, other than a Minister or Assistant Minister
- 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
- A Ministerial record
- A record of an Assistant Minister.

A public record includes a copy of a record as well as a part of a record.

The broad definition of a public record means that many government agencies are managing vast quantities of data, information and documents because they have difficulties determining exactly what a public record is. This can result in an over-retention of public records because it is easier to manage all records in the same way. This practice raises some questions about the definition of a public record. Do public records have characteristics that are different from non-public records? If so, what are those characteristics? What makes a public record special?

There is also some debate within the recordkeeping industry about whether we should continue to use the terms 'public record', 'recordkeeping' and 'records management'. They conjure images of administrative officers filing piles of paper. Instead, some argue that we should use terms such as 'business information' and 'managing information'.

Discussion points

3. Should we change the definition of a public record? For instance, should we make it narrower?
4. Should we keep using the terms 'public record', 'records management' and 'recordkeeping'? Which terms could we use instead?

3.0 Which agencies should be covered?

The Act now covers a wide range of agencies ranging in size from the Integrity Commission with about three staff, to Education with about 68,000 employees. The different types of agencies covered are outlined in Figure 1.

Figure 1: Types of agencies covered by the Act

The Governor in his or her official capacity	An entity created by the Governor, a Minister or established by an Act (other than a parliamentary service). This includes: <ul style="list-style-type: none"> • hospital and health services • public universities • public utilities • grammar schools • public museums and art galleries. 	Local governments
The Executive Council		A rail government entity under the <i>Transport Infrastructure Act 1994</i>
Ministers and Assistant Ministers		Government-owned corporations
Commissions of inquiry under the <i>Commissions of Inquiry Act 1950</i>		Entities established by the state and a local government
Departments		An entity declared under a regulation to be a public authority for this Act.
The registrar or other officer of a court with the responsibility for official records of the court		

Discussion point

5. Should we broaden the scope of agencies and entities that the Act covers?

4.0 Should the Archives be more independent?

When the Act was originally drafted, the Archives was proposed to be a statutory authority rather than an administrative unit of a government department. This proposal was to ensure the independence of the State Archivist's decision making. However, this changed during the drafting. Currently, the Archives and the State Archivist are administratively part of the Department of Housing and Public Works (DHPW) The Archives reports to the Director-General of DHPW and the Minister for Housing and Public Works, Minister for Digital Technology and Minister for Sport. The Archives is subject to all the requirements of a government department.

Under the Act, the Archivist is required to act independently in certain matters, specifically in making decisions about the disposal of public records. The Archivist and staff are not subject to the control or direction of any minister or department in making decisions about the disposal of public records. However, other provisions in the Act establish the role of the Archives in administrative government, which can present practical challenges for the independence of the Archives and the role of the State Archivist.

It could be argued that, by managing and preserving the records of the state, the Archives upholds public integrity standards. As such, it should be independent, similar to the Ombudsman, and the OIC. These are both independent statutory bodies reporting directly to the Parliamentary Legal Affairs and Community Safety Committee. As an independent statutory body, the Archives could improve transparency, accountability and integrity in the management of public records.

Discussion point

6. Is the current level of independence for the State Archivist appropriate, or should the Archives become more independent?

5.0 How can we improve recordkeeping in agencies?

5.1 Should we fundamentally change our approach to compliance?

Which regulatory approach should the Archives adopt to improve recordkeeping of agencies and community access to records? Currently, the Act is a combination of self-regulation and direct regulation (Figure 2). For instance, while agencies must make and keep accurate records of their activities, they are required to only 'have regard to' any relevant policy, standards and guidelines made by the Archivist. The Chief Executive Officer (or equivalent) of an agency is then responsible for ensuring the agency complies with these requirements.

The term 'have regard to' means that when agencies are managing their records, they need to consider policies, standards and guidelines. Agencies cannot ignore them, but they do not have to comply with them. Agencies just have to show they have considered the documents when making decisions about their approach.

Figure 2: Different types of regulation

Self-regulation	Direct Regulation
Instead of regulation, use tools such as: <ul style="list-style-type: none"> • standards • codes of conduct • codes of practice • voluntary agreements. 	Comply with relevant legislation.

The Archivist has issued two Information Standards (IS) that are focused on a best practice approach – *IS40: Recordkeeping*, and *IS31: Retention and disposal of public records*. These standards help agencies understand their recordkeeping requirements. While these standards have been in place for almost 15 years, most agencies continue to have difficulty complying with them, despite more recordkeeping advice being provided by the Archives.

Consequently, the Archives have developed a new standard, Recordkeeping Standard: *Minimum requirements for government agencies (Minimum Requirements)*. This new standard will focus on the minimum standards that agencies are required to achieve, rather than best practice. They will be based on outcomes, not processes.

While the new *Minimum Requirements* will help improve government recordkeeping, it is important that we consider the type of regulation that can best help the Archives improve recordkeeping and access to records.

Discussion point

7. Should compliance with the policies, standards and guidelines established by the Archives be mandatory?

5.2 Should the enforcement and monitoring powers of the Archives be strengthened to improve recordkeeping?

While the Archives are responsible for taking enforcement action under the Act, no enforcement action has been initiated to date.

The Archives currently have limited powers for monitoring compliance with the Act. While we have the power to enter an agency's premises and examine their recordkeeping procedures and records, we cannot copy or remove the records, nor can we compel an agency's officers or staff to answer questions about recordkeeping.

Archival authorities in other jurisdictions have stronger investigative powers. For instance, New Zealand Archives have the powers to issue a direction to the administrative head of a public office to report to the Chief Archivist on any specific aspect of its recordkeeping practice and public records. Additionally, when a request for information made to an agency fails due to recordkeeping issues (such as the agency not being able to locate the records), New Zealand Archives are notified by the Ombudsman or the Office of the Information Commissioner. This is a proactive approach that could help QSA identify potential non-compliance with requirements to make and keep records.

Discussion points

8. Should the enforcement powers of the Archives be strengthened to enable monitoring, investigating, and directing agencies to take specific action?
9. To help detect non-compliance, should the Archives be notified (e.g. by the OIC or the Ombudsman) when an agency cannot meet community requests for information due to recordkeeping failure?

5.3 Should there be more flexibility to apply penalties for non-compliance?

Under the current Act, there are limited specific penalties for non-compliance, with only four sections in the Act having an offence attached⁵. The most significant penalties within the Act include:

- unlawful disposal of public records – maximum penalty of 165 penalty units⁶, which equates to \$20,113 for an individual or \$100,567 for a corporation
- special protection of public records over 30 years old (maximum penalty of 100 penalty units), which equates to \$12,190 for an individual, or \$60,950 for a corporation.

⁵ Sections with an offence are 12, 13, 44 and 48. Note the offence in section 44 relates to a failure by an authorised officer at QSA to hand in an identity card after they cease to be an authorised officer.

⁶ The values of the penalty units referred to in the Act are set in the *Penalties and Sentences Act 1992* and *Penalties and Sentences Regulation 2015*. The *Penalties and Sentences Act 1992* sections 5 and 5A create the power to set the value of the penalty unit. The *Penalties and Sentences Regulation 2015*, under s3, sets the value of a penalty unit at \$121.90 (as of 1 July 2016). The *Penalties and Sentences Act 1992* also provides for increased penalties for corporations, up to a maximum of five times the amount for an individual.

Archival legislation in South Australia and the Northern Territory goes beyond monetary penalties to include penalties of imprisonment (for two years and one year, respectively).

In Queensland, when non-compliance with the Act is detected, the Archives must take action under the *Justices Act 1886*. This can pose difficulties. For instance, if it is suspected that a public record has been unlawfully disposed of (an offence under section 13 of the Act), the offence is classified as a summary offence under the *Justices Act 1886*, which means that action must be taken within 12 months of the offence occurring. However, the ability of the Archives to take action is limited by at least two difficulties: (a) determining an exact date of the unlawful disposal; and (b) becoming aware of the offence within that 12-month period. Potentially, the Act could be changed to allow for more flexible enforcement of the Act and application of penalties without these time limits.

Discussion points

10. To encourage compliance with the Act, should there be more offences with higher penalties (e.g. increased penalties and/or imprisonment)?
11. For offences under our Act, should the requirement to take action within 12 months of the offence, as stipulated in the Justice Act 1886, be removed?

5.4 Should the Archives have the power to audit recordkeeping?

To determine compliance with legislation, many government regulators have the power to audit agencies they regulate. Some other archives have auditing powers. For example, Archives New Zealand is required under its legislation to audit agency records-management regimes at least every 10 years, but not more than every five years. The audit has several purposes: to assure the public that government agencies have good information management and practices; and to support accountability and good business practice. In the 2014–15 financial year, New Zealand Archives audited 33 agencies, including the courts.

Because QSA have limited powers to examine and obtain records, our power to audit an agency's recordkeeping is significantly limited. Our legislative powers would need to be strengthened considerably to enable any auditing role.

Discussion point

12. To help determine compliance, should the Archives have greater powers to audit recordkeeping of agencies?

5.5 Can the Act deal with digital records properly?

Most agencies now create digital records of their activities, including emails, documents, spreadsheets, databases, and other business systems, such as finance and payroll systems. Technology is advancing rapidly, with new applications, software and hardware being released constantly. Agencies are now using drones, body cameras, social media, and virtual reality. They could soon add self-driving cars and face-detecting systems (e.g. for payment authorisation). In a fast-changing world, the Act needs to remain flexible and adaptable to new technologies.

While the Act has attempted to remain format neutral to include new types of records, can we do more to ensure that the Act can deal with those records? Is it flexible enough for new technology?

In the future, we will need to be able to access records created in these new technology formats. Some records created by agencies are classified as permanent, which means they need to be kept forever, and must be usable and accessible forever. Currently, the Act makes the agencies responsible for ensuring those records are preserved and accessible.

Discussion point

13. Is the Act flexible enough to be able to deal with new technology and new types of records?

6.0 What role can the community and industry play?

One of the main reasons the Archives exist is to provide access for the community to the significant records of Queensland. Community involvement can add value to the Archives, create opportunities to reuse the records, and help ensure the Archives meet the ongoing needs of the community. While the current Act enables community and industry involvement in specific aspects of the Archives, there is potential for greater involvement.

Community and industry involvement in archival decision making is currently limited to the Public Records Review Committee (the Committee). The Act sets out the membership of the Committee, which is drawn from the judiciary, state government, local government, the information management profession, and five other members determined by the Minister for their relevant experience and knowledge⁷. Other sectors of the community and industry could be reflected in the Committee membership, such as the general community and Indigenous community.

The Committee provides advice to the Minister and Archivist about the administration and enforcement of the Act. The Committee can resolve specific disputes about restricted access notices for records in the Archives' custody, and can review decisions of the Archivist not to authorise disposal of public records. Since its establishment in 2003, the Committee has never been asked to resolve a dispute or review a decision.

It is important to determine whether a Committee is still needed, and the role it should play in a modern Archive, or whether a different mechanism is needed. Current issues with the role of the Committee include:

- the community or industry cannot refer disputes or seek a review decision. Only the Archivist or the agency involved can refer disputes and review decisions to the Committee
- the community and industry do not currently play a role in setting time periods that different records should be kept, nor in identifying government records to be classified as permanent and retained forever for community access. For example, State Archives and Records Authority of NSW consults on setting time periods for different types of records
- the community and industry do not provide input into restricted access periods set for records transferred to the custody of the Archives.

It is acknowledged there may be some difficulties consulting with the community or industry on restricted access periods for all records, especially where the records contain information about:

- the personal affairs of an individual
- national or state security
- law enforcement or public safety information.

⁷ The Committee consists of the following members: one person, nominated by the Minister, who administers the *Local Government Act 2009*; one person nominated by the Chief Justice; one person, nominated by the Minister, who administers the *Public Service Act 2008*; one person, nominated by the Minister, who has knowledge of, and experience in, the management of information and records; and five people who have knowledge of, and experience in, any area considered by the Minister to be relevant to the functions of the committee.

The community and industry should be able to at least seek a review about restricted access decisions.

The role of the Committee could be broadened. In other states, such as South Australia, New South Wales and Western Australia, a separate council has powers to approve disposal decisions and standards recommended by the Archivist, rather than the Archivist making these decisions alone. The council operates more like a board than an advisory committee.

Discussion points

14. How can the community and industry be more involved in the Archives?
15. Should the Committee continue? Should the role of the Committee change (e.g. have greater community and industry involvement; have rights in seeking reviews of appraisal decisions and restricted access periods for records; or operate more as a board)?
16. Should the membership of the Committee be changed to reflect the community and industry?
17. Should the community and industry be consulted on how long different types of records should be kept (including those kept permanently)?

Released under RTI/SHIELD

7.0 How can we improve the way records are transferred to the Archives?

7.1 When should records be transferred to the Archives?

In consultation with agencies, the Archives decide that records are either of temporary or permanent value. When they are of temporary value, it is the agency's responsibility to keep, manage and preserve the record for the time period set for that record. Some temporary records may be needed only for a short time, until the agency no longer needs the record, but others need to be kept for up to 120 years. For example, records of some investigations into suspected child abuse must be retained for 120 years from the year of birth of the child.

When records are classified as having permanent value, they must be kept forever. While agencies can keep these records in their custody, it is the current expectation that they be transferred to the Archives when the agency no longer has a business need for them. The Archives generally take records only of permanent value. We have 64 kilometres of paper records that are managed in a climate-controlled environment to ensure their ongoing preservation. A digital archive is currently being progressed to store, manage, preserve and provide access to digital records.

Only 25 per cent of agencies have transferred permanent records to the Archives. The Act does not mandate the transfer of any records. Instead, agencies determine when permanent records are transferred, with the Archives' agreement. Factors that typically influence agencies to transfer their records include significant moves to a building with limited storage facilities; reducing the costs of records storage; or the closure of an agency. Factors that may make agencies reluctant to transfer their permanent records include:

- retaining access to the records in their own archival facilities
- the agency generating revenue from the records
- a remote or regional community agency wanting to keep their records in the local area
- the time and resources needed to prepare permanent records for transfer.

The current process allows for agencies to transfer records at their convenience. They regularly transfer high-value and high-volume records, but there are also many high-value, high-risk records that they never intend to transfer. The Archives cannot target nor compel records to be transferred. There may be times when it would be beneficial to compel the transfer of records. For instance, if it could be demonstrated that the records were of significant value to the state, or if the Archives had concerns about the ongoing management and preservation of the records.

Discussion point

18. Should the Archives be able to compel the mandatory transfer of records by agencies?

7.2 Which records should be transferred to the Archives?

Another key question is whether only permanent records should be accepted for transfer to the Archives. Should the Archives be able to accept transfers of other records, including:

- temporary records?
 - the Archives accept a limited number of temporary records, generally when the permanent and temporary records are stored together (some Commissions of Inquiry), and from ministerial offices because there is no other public authority these records could be transferred to. However, in some cases, it can be difficult to determine who has the power to dispose of the temporary records once the set time period for the record has expired.
 - should the Archives accept the transfer of some temporary records when the records are required to be kept for significant lengths of time, for example, for 100 years or more?
 - should the Archives dispose of temporary records once their retention period has expired?
- private records?
 - the Archives do not accept transfers of private records because the Act focuses on public records. Donors are directed to other collecting institutions
 - should this provision be changed if it could be demonstrated that the records were of significant value to the state
 - who would be responsible for making decisions on these records?

Discussion point

19. Should the Act allow the transfer of other types of records, such as temporary or private?

8.0 How can we improve access to records at the Archives?

8.1 How can the Archives balance access with managing sensitive information?

A key role of the Archives is to provide community access to records we hold. When records are transferred to the Archives, the agency can set a time period for which community access is restricted – known as a restricted access period. The Act also sets a legislated restricted access period for some records. For example, Cabinet records created after 1 July 2009 have restricted access of 20 years. The only way a record with a restricted access period can be accessed is through written agreement from the agency that transferred the record or with an application made under the RTI Act or IP Act. The setting of restricted access periods is based on the premise that sensitivity to information contained in the records declines over time. All restricted access periods commence from the day of last action on the record. Depending on the sensitivity of a record, restricted access periods include:

- beyond 100 years – only if a regulation is in place⁸
- up to 100 years – where a record contains information about the personal affairs of an individual (living or dead)⁹
- up to 65 years – for specific records, including those where disclosure could reasonably be expected to damage the security of the Commonwealth or the state¹⁰
- up to 30 years – for other public records
- open access – immediately on transfer
- other provisions as made in other legislation, which then overrides the Act.

Agencies can also decide whether the descriptive information¹¹ about their transferred records will be restricted or publicly available on the Archives' search catalogue. When the descriptive information is restricted, only the transferring agency and the Archives know that these records exist.

Agencies do not have to justify the restricted access periods they set. While the Archivist may ask an agency to review or change a restricted access period, if there is a dispute about the restricted access period, the Archivist or the agency can refer the dispute to the Committee for resolution. No disputes have ever been referred to the Committee.

⁸ There are currently no regulations in place setting a restricted access period of more than 100 years.

⁹ Section 16(4): the restricted access period cannot be longer than the last day of the year that is not more than 100 years after the day of last action on the record.

¹⁰ Also includes records containing information subject to legal professional privilege; information, disclosure of which would found action for breach of confidence; and law enforcement or public safety information.

¹¹ This includes title of the file, date, agency, a description of the record and the restricted access period – also known as metadata.

The Archives have noticed a trend over the last few years of agencies becoming increasingly risk averse and setting long restricted access periods for their records. In 2001, 97 per cent of 1.8 million-plus records held at the Archives were available for public access after 30 years or less. Only three per cent were restricted beyond 30 years. At that time, the *Libraries and Archives Act 1988* and regulations applied to the Archives. These set the default restricted access period at 30 years, although with agreement from the agency¹², the records could be inspected for genuine research. Personal and staff records of agencies were open after 65 years, although access could be granted after 30 years for genuine research. The Chief Executive Officer of an agency could also place conditions and restrictions on access to the records (e.g. to protect the privacy of any person).

Fast forward to 2017, and the collection holds about 2.6 million items, with 52 per cent of the records closed to public access. With transfers of records in 2015–16, this issue is increasing. In 2015–16, 90 per cent of the records transferred to the Archives were restricted for 30 to 100 years. In 2016–17, about 55 per cent of records transferred were restricted for more than 30 years. Note that the public can apply for access during the closure period. Some of this risk aversion may be attributed to the Parliamentary Crime and Misconduct Committee inquiry into the release and destruction of Fitzgerald Inquiry documents in 2013¹³.

While there is a genuine need for some records to have a restricted access period, it is the Archives' vision to inspire Queenslanders to discover the stories contained within the records of the Queensland Government. The setting of long restrictive access periods defeats the objective of the Act to provide public access to the records.

Discussion points

20. Should records and descriptive information about the records transferred to the Archives be open by default?
21. Should agencies be required to justify the setting of any restricted access periods?

¹² Restricted access periods under the *Libraries and Archives Act 1988* were set in the *Libraries and Archives Regulation 1990* sections 20 to 21. Conditions could also be imposed on access.

¹³ The Parliamentary Crime and Misconduct Committee conducted an inquiry into the Crime and Misconduct Commission's release and destruction of Fitzgerald Inquiry documents in March 2013, with a report tabled in Parliament on 5 April 2013. The report contained a number of recommendations with specific actions for the Archives. In response to the report, the Minister for Science, Information Technology, Innovation and the Arts issued a directive to his Director-General on 8 April to take steps to close public access to item-level metadata relating to records that are subject to a restricted access period. After complying with that directive, the Archives consulted with agencies to identify the item-level metadata that could be reopened to public access. In addition to the work associated with this metadata review, the Archives also reviewed its practices, procedures, and advice to agencies regarding the setting of restricted access periods, transfer of records, release of item-level metadata in the public catalogue, and the provision of authorised access to closed records.

8.2 How can the public access permanent records not held at the Archives?

The Act allows public access to the permanent records held at the Archives, with agencies able to manage privacy and sensitivity concerns by setting restricted access periods for these records. This right of access does not extend to records still held by agencies because access is managed through the Right to Information process. Some agencies are unlikely to transfer records to the Archives. Some have established their own archives, some use the records to provide commercial services to generate revenue, and others say the time and cost of preparing and transferring records can be too great. If an agency chooses not to transfer records to the Archives:

- the public has limited ability to access these records because they are not part of the state's archival collection, and not discoverable through the Archives' public search catalogue
- the public has little or no awareness of these records unless they approach the agencies
- the public may need to seek access through the *RTI Act* or the *IP Act*.

To overcome these difficulties, the Act could allow for distributed custody of records, which is when records are managed by another party in facilities not under the control of the Archives¹⁴. While the Act currently allows for some distributed custody arrangements, these limited provisions primarily apply to storage, not management and access of the records. Most other archival legislation throughout Australasia includes distributed custody. For instance, the National Archives of Australia, under the *Archives Act 1983*, is able to establish arrangements for records in the custody of others to deal with custody, preservation, inspection, and access.

One reason an agency may decide not to transfer records to the Archives is its need to have easy access to the records in the future. Given the size of Queensland, this factor may be a legitimate concern for agencies not located in south-east Queensland. While one solution could be for the Archives to digitise records the agency needs urgently (depending on the volume of records), another potential solution could be the adoption of a 'place of deposit' model. Under this model, agency records are kept in the custody of another agency locally – not transferred to the Archives. Records are transferred to a storage facility that meets set archival and preservation standards, while still providing local access. When the Act was being prepared in the 1990s, the mandatory adoption of a place of deposit model was originally included, but removed due to potential costs.

Factors to consider in deciding whether a place of deposit model in the Act is worthwhile include:

- value to the Archives, the agencies and the public
- how its adoption might affect the Archives' current services, including preservation treatments, digitisation and access
- cost of adopting the model, for example, cost of upgrades and certification of existing storage locations for agencies, certification of storage providers, and the volume of potential records transferred
- the ability of QSA and agencies to charge for storage and access
- whether temporary and permanent records are included.

The Public Records Office of Victoria has a place of deposit scheme that mainly deals with temporary records. Under the scheme, agencies, particularly local governments, can transfer their temporary-value records to approved sites, such as local history societies or museums. A limited

¹⁴ Definition taken from the Distributed Custody Policy issued by the National Archives of Australia.

number of approved places of deposit can accept the transfer of permanent records because the ability to ensure the preservation of the records is a limited skill that costs more than storage alone.

Discussion points

22. Should the Act provide for access to permanent records held by agencies that have not been transferred to the Archives?
23. Should the Act allow agencies to store their records locally with other agencies (known as places of deposit) to provide easier access, while ensuring the records are stored and preserved appropriately?

Released under RTI - DC/DP/DE

9.0 Should the Archives be able to charge fees for services?

There is a need for the Archives to be able to charge users for services. Currently, the Archives' powers to charge fees is limited to access to a record in the custody of the Archives¹⁵.

The Archives have the potential to offer many services to public and government clients that could benefit them and be funded by users of the Archives. Those services could include those already provided by the Archives, as well as new services, including, but not limited to those in Figure 3.

Figure 3: Our services – current and possible new ones

Current services	Potential new services
<ul style="list-style-type: none"> • managing repositories to store, preserve, exhibit, and make public records and other materials available for use • copying public records • publishing public records • making policy, standards and guidelines about the making, keeping, preserving, managing and disposing of public records 	<ul style="list-style-type: none"> • doing historical research and preparing papers • storage, preservation and accessibility of digital records (digital archiving services) • auditing and assessing recordkeeping practices • consultancy services to help agencies solve recordkeeping challenges (e.g. to develop recordkeeping policies and programs; large-scale digitisation projects) • assistance with setting greater penalties for non-compliance • assistance with transferring records • temporary storage of records/artefacts at the Archives' facility • appraisal services for individual agencies or industry sectors • assistance during emergencies, including preservation treatments, storage, provision of equipment • sale of merchandise, including photographs and prints • cost of digital storage device used, such as USB, CD or DVD

Discussion point

24. Should the Archives be able to charge fees for services provided?

10.0 What other changes could be made to the Act?

¹⁵ Refer to section 17 of the Act.

Other matters under consideration for changes include:

- Streamlining arrangements for setting a relevant and responsible public authority. This matter arises when the original public authority no longer exists, and a new entity must be responsible for public records held at QSA and outside of QSA. These arrangements often follow machinery-of-government changes or during privatisation. The current process requires amending the Public Records Regulation 2014 to establish the relevant and responsible public authority, which takes time and resources. Instead, the relevant and responsible public authority could be established through notification in the Government Gazette (or similar process).
- Potential disposal of public records in QSA's custody. QSA may need to review the public records in its collection, and determine whether they should remain there (e.g. are they still of permanent value, or do we dispose of some temporary records). QSA would return those public records to the responsible public authority. It may be beneficial to have provisions to deal with these circumstances.

Discussion point

25. In addition to the items mentioned, what other changes could be made to the Act?

Appendix 1: Terms of reference

Review of the *Public Records Act 2002*

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.

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 usable 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 affected the creation and management of public records. The progressive move by public authorities to use digital platforms to support operations and deliver services is stretching the ability of public authorities and the 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, numerous complex machinery-of-government changes, asset disposals and third party service delivery mechanisms have been put in place. All of these have challenged traditional recordkeeping arrangements. Finally, the increasing use of digital technologies highlights a need to review the Act.

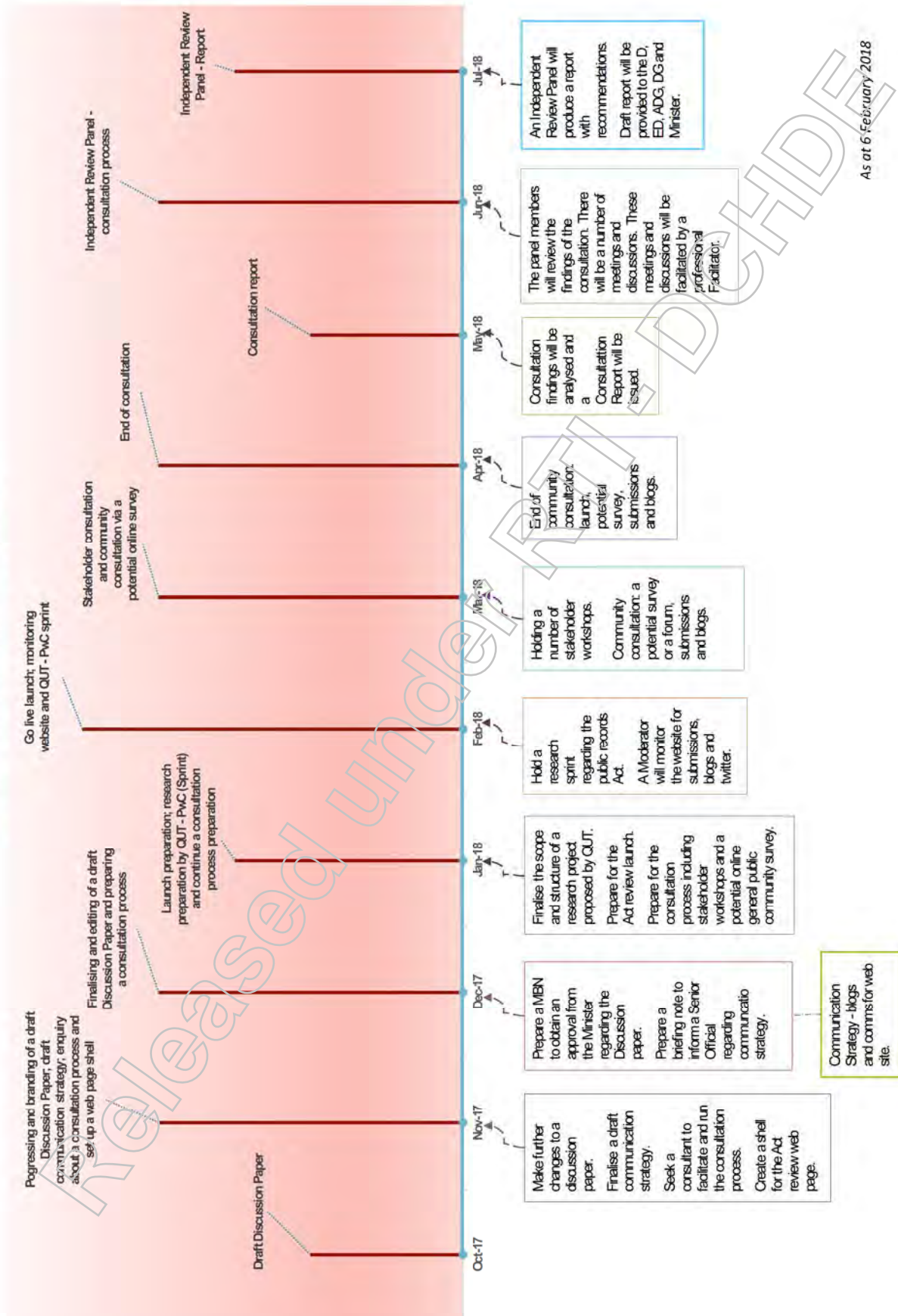
Objectives for the review of the Act:

- consider the extent to which the current legislative framework achieves the objectives of the Act for current and anticipated operating environments, with particular consideration being given to digital records and the future financial sustainability of the Archives
- investigate issues that limit the effectiveness of recordkeeping, and identify opportunities to improve the legislative framework's treatment of digital records
- determine whether there are appropriate opportunities to increase accountability and transparency of government through appropriate regimes for making and keeping information, including considering the extent to which the legislative framework supports other important matters, such as right to information and privacy legislation.

Released under RTI - DCP/06

Released under RTI - DCHDE

The Public Records Act 2002 Review Timeline



As at 6 February 2018



Minister for Housing and Public Works
Minister for Digital Technology
Minister for Sport

HPW [SystemRefNo]

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

Dear Premier

Update on the Review of the *Public Records Act 2002*

I am writing to update you about the review of the *Public Records Act 2002* (the Act), now administered in my portfolio by the Department of Housing and Public Works.

You were previously updated on changes to the review of the Act by the Minister for Science, Information Technology and Innovation, on 3 January 2017, when the Act fell under that portfolio. At the time it was noted that Queensland State Archives would lead the review of the Act, develop a discussion paper for public and whole-of-government consultation and establish an independent review panel to review the responses and recommend a way forward.

The discussion paper has now been developed by Queensland State Archives with a focus on the effectiveness of the Act in meeting its current objectives and improving the standard of recordkeeping across the Queensland Government. The discussion paper is expected to be released for whole-of-government and public consultation in the coming weeks and will be followed by other consultation activities.

The independent review panel will then consider all the responses from the consultation activities and make a set of recommendations that reflect the recordkeeping requirements of a digital government environment. If any legislative amendments to the Act are required, these will be progressed through the formal Cabinet process.

I hope this update is helpful and if you require any further information please contact my office on (07) 3719 7270.

Yours sincerely

Mick de Brenni MP
Minister for Housing and Public Works
Minister for Digital Technology
Minister for Sport

MINISTERIAL BRIEFING NOTE

Subject: Proposed amendments to the *Public Records Act 2002*
Decision/Action by:
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* (the Act). ~~Apart from some consequential amendments, the Act has not been reviewed or updated since its commencement in 2002. The proposed amendments are designed to ensure a robust legislative regime is in place for the management of the public records of Queensland. The proposed amendments will:~~

- ~~• Help ensure greater consistency with related legislation that commenced after the introduction of the Act (e.g. Right to Information legislation)~~
- ~~• address gaps in legislation identified as a result of the findings from recent government reviews and inquiries such as the Royal Commission into Institutional Responses to Child Sexual Abuse, and~~
- ~~• generally assist to meet the increased expectations of society in relation to the accountability and transparency of government.~~

RECOMMENDATION

It is recommended that the Minister:

1. Approve an amendment to the Act to specifically define local government councillors as a public authority.
2. Approve an amendment to the Act to make compliance with key recordkeeping standards and policies issued by the State Archivist mandatory.
3. Approve amendments to the Act to introduce penalties for breaches of key statutory requirements.
4. Approve an amendment to the Act to specify the timeframe in which enforcement of breaches can be investigated.
5. Approve an amendment to the Act to establish a relevant and responsible public authority for records of former Ministers and Assistant Ministers.

Noted	Approved	Not approved

Yes	No

Media Release Required

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

<p>DIVISIONAL HEAD ENDORSEMENT</p> <hr/> <p>Andrew Spina Deputy Director-General Digital Technology and Services</p> <p>Date: / /</p>	<p>COMMENTS</p>
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<p>DIRECTOR-GENERAL ENDORSEMENT</p> <p>Liza Carroll Director-General Department of Housing and Public Works</p> <p>Date: / /</p>	<p>COMMENTS</p>
<p>MINISTERIAL APPROVAL</p> <p>Mick de Brenni MP Minister for Housing and Public Works Minister for Digital Technology Minister for Sport</p> <p>Date: / /</p>	<p>COMMENTS</p>

CONTEXT

- The purposes of the *Public Records Act 2002* (the Act) ~~are~~ is to ensure:
 - ~~T~~he public records of Queensland are made, managed, kept and, if appropriate, preserved in a useable form for the benefit of present and future generations ss
 - Public access to records under the Act is consistent with the principles of the *Right to information Act 2009* (RTI Act) and the *Information Privacy Act 2009* (IP Act).
- Excluding some consequential amendments, the Act has not been reviewed or updated since its commencement in 2002.
- The proposed amendments are designed to ensure a robust legislative regime is in place for the management of the public records of Queensland. The proposed amendments will:
 - help to ensure greater consistency with related legislation that commenced after the introduction of the Act (e.g. Right to Information legislation)
 - address gaps in legislation identified as a result of the findings from recent government reviews and inquiries such as the Royal Commission into Institutional Responses to Child Sexual Abuse
 - generally assist to meet the increased expectations of society in relation to the accountability and transparency of government.

KEY ISSUES

- Recent government inquiries have highlighted the need for good recordkeeping and information sharing. For example:
 - ~~T~~he Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) found that inadequate records and recordkeeping have contributed to delays or failures to identify and respond to risks of child sexual abuse
 - ~~T~~he Royal Commission found that problems with accessing records created difficulties for survivors seeking information about their lives while in the care of institutions
 - ~~D~~eficiencies in recordkeeping practices were identified as part of the Crime and Corruption Commission’s (CCC) Operation Belcarra investigations.
- Administration of the legislation by Queensland State Archives (QSA) over the past 17 years has identified that the Act does not provide a robust legislative framework to ensure the purposes of the Act are adequately met.
- Specifically, a number of sections of the Act establish statutory requirements and place a responsibility on public authorities to take mandatory action, including:
 - ~~S~~ection 7: Making and keeping of public records
 - ~~s~~Section 8: Custody and preservation of public records
 - ~~s~~Section 14: Public authority must ensure particular records remain accessible.
- Despite the statutory requirements established in sections 7, 8 and 14 of the Act, there are no penalties if a public authority fails to take appropriate action. For example:

- Despite section 13 of the Act providing penalties for unauthorised disposal of public records, there are no penalties for actually failing to make public records. This anomaly in the Act means that a responsible public authority could be subject to penalties for disposing of public records without appropriate authority, yet they would not be subject to any penalties for failing to make the same records in the first place. This is clearly inconsistent with the purpose of the Act. Section 7(1)(a) indicates a statutory direction to ‘*make and keep full and accurate records of its activities*’, yet there are no penalties provided if a responsible public authority fails to follow this statutory direction. In effect, to avoid the requirements of the Act a responsible public authority, arguably, simply has to avoid making any records at all.
- Despite the mandatory requirement for public authorities to make and keep full and accurate records (section 7(1)(a) of the Act) noted above, section 7(1)(b) only requires public authorities to ‘*have regard to any relevant policy, standards and guidelines made by the State Archivist about the making and keeping of public records.*’ Yet it is extremely likely that in order to “make and keep full and accurate records of its activities” the key guidance of the State Archivist would be required to be followed. There is currently no provision that allows the State Archivist to issue mandatory recordkeeping requirements to ensure a minimum standard of recordkeeping practice is maintained.
- In the context of the Royal Commission, if a public authority does not create records of their interactions with children, while this is a breach of section 7(1)(a) of the Act and negatively impacts the rights and entitlements of these vulnerable members of society, there is currently no penalty associated with a breach of this section.
- In addition ~~for to~~ the need to make, manage and keep public records, the Act also legislates access to the records of government to the public (consistent with the principles of the RTI Act and IP Act).
- In the case of records of former Ministers and Assistant Ministers which are held at QSA, the Act does not allow the public to have access to these records (including access to records that a Minister personally dealt with while in office).
- Responsibility for making decisions about access to records of former Ministers and Assistant Ministers ~~is-are~~ not allocated to an entity or agency under the Act.
- Access to records of former Ministers and Assistant Ministers that are held at QSA can only be given under the RTI Act. This is inconsistent with the access provisions outlined in the *Ministerial Handbook* and inconsistent with one of the main purposes of the Act (i.e. to provide access to records). This includes access by Ministers to records they personally dealt with while in office.
- The Act also does not allow for the disposal of Ministerial records that can be lawfully disposed of under an authorised retention and disposal schedule. As a result, these records are being retained for longer than required and are also subject to public access under the RTI Act.
- Recent investigations by the CCC and QSA have highlighted confusion over the applicability of the Act to local governments and particularly councillors and mayors. While local governments are defined as a public authority under the Act (schedule 2) and are therefore required to comply, councillors and mayors are not specifically covered.
- Under section 12 of the *Local Government Act 2009* councillors are required to comply with the provisions of the Act as a statutory responsibility. In addition, the Council ~~Chief Executive Officer CEO~~ is currently responsible for ensuring councillors make and keep public records, rather than councillors being responsible themselves.
- Offences under the Act that contain a penalty provision can be prosecuted under the *Justices Act 1886*. As the Act does not currently contain any specified time limit to commence proceedings for breaches, section 52 of the *Justices Act 1886* comes into play which requires a complaint to be made within one year from the date of the offence occurring. This limited timeframe for the commencement of an action is constricting given that an offence may not always be apparent within one year from the time of the breach e.g. from the date of unlawful disposal of a public record.
- To ensure the Act achieves its stated purposes and is consistent with the expectations of government and the community in general, the State Archivist is proposing the following legislative amendments to the Act:

- ~~I~~inclusion of a provision to make compliance with key recordkeeping standards, policies and guidelines issued by the State Archivist mandatory for public authorities-
- ~~I~~inclusion of a provision to delegate approval of key recordkeeping standards, policies and guidelines deemed mandatory by the Public Records Review Committee
- ~~I~~ntroduction of penalties for breaches of key statutory requirements of the Act – specifically sections 7, 8 and 14.
- ~~A~~ssigning a relevant and responsible public authority for records of former Ministers and Assistant Ministers
- ~~S~~pecifically defining local government councillors as a public authority
- ~~S~~pecifying the timeframe in which enforcement of breaches to the Act can be investigated.

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 State Archivist consulted with the CCC on several of the proposed legislative amendments during recent government reviews. The CCC has provided their full support for these recommendations.

- QSA has received advice from Crown Law Exempt Sch 3(7)

(refer to

Attachments 1 and 2).

- Consultation on the proposed amendments will take place as part of the Cabinet process.
- Consultation with the Opposition Leader may be beneficial as any changes to the handling of records of former Ministers and Assistant Ministers 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.

FUTURE STEPS

- ~~Following approval, Queensland State Archives will to work with the Department Executive Services of Housing and Public Works Cabinet and Legislation Officer (the CLLO) to place the proposed amendments to the Public Records Act 2002 on the Cabinet forward timetable.~~
- ~~In consultation with Executive Services, QSA will De~~velop an Authority to Prepare Submission as part of the Cabinet process for the amendments to the Act.

COMMUNICATIONS/MEDIA OPPORTUNITIES

- Not applicable

BACKGROUND

Key sections of the Act

- Section 7(1) of the Act requires public authorities to:
 - ~~M~~make and keep full and accurate records of its activities;
 - ~~H~~have regard to any relevant policy, standards and guidelines made by the State Archivist about the making and keeping of public records.
- Section 7(2) of the Act states that 'The executive officer of a public authority must ensure the public authority complies with section 7(1)'.
- Section 8 of the Act states that a public authority is responsible for ensuring the safe custody and preservation of records in its possession.
- Section 14 of the Act states that a public authority must ensure particular records remain accessible.
- The sections of the Act that currently 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 units
 - 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 units
 - 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 units
 - 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 units
 - Section 49 – A person must comply with a notice [about recovery of records] unless the person has a reasonable excuse – 40 penalty units.