

Pages 1 through 14 redacted for the following reasons:

Exempt Sch 3(7)

Released under RTI - DCHDE

From: OADGDPS
To: [Office of the State Archivist](#)
Subject: FYA - 18069R Right to Information Search Request (DC,I&TBS)
Date: Thursday, 15 March 2018 11:46:44 AM
Attachments: [18069R Right to Information - Search Request \(OADG DCI&TBS\).doc](#)

Hello

Please find attached RTI request.

I understand Mike is aware that this request was coming.

Can you please return to our office by 20 March 2018.

Regards

Kath

Kathryn Schmidt

Principal Advisor, Office of the Assistant Director-General

Digital Capability, Information and Transaction Based Services | Department of Housing and Public Works

Level 14 Terrica Place | 140 Creek Street | BRISBANE QLD 4000

ph 07 3719 7730 | email cathy.cross@dsiti.qld.gov.au | group email: oadgdps@dsiti.qld.gov.au

www.hpw.qld.gov.au

GPO Box 2457, BRISBANE QLD 4001

Customers first | Ideas into action | Unleash potential | Be courageous | Empower people | Healthy and safe workforce

From: OADGDPS

Sent: Thursday, 15 March 2018 11:03 AM

To: Kathryn Schmidt <Kathryn.Schmidt@dsiti.qld.gov.au>

Subject: FW: 18069R Right to Information Search Request (DC,I&TBS)

Hi Kath

This is the request for information. Not too sure what process you follow. Happy to progress as required.

Thanks

Varna

Varna Sharma

Acting Senior Advisor, Office of the Assistant Director-General

Work Days: Monday to Thursday

Digital Capability, Information and Transaction Based Services | Department of Housing and Public Works

Level 14 Terrica Place | 140 Creek Street | BRISBANE QLD 4000

ph 07 3719 7730 | email varna.sharma@dsiti.qld.gov.au | group email: oadgdps@dsiti.qld.gov.au

www.hpw.qld.gov.au

GPO Box 2457, BRISBANE QLD 4001

Customers first | Ideas into action | Unleash potential | Be courageous | Empower people | Healthy and safe workforce

From: WEAVER Simon [<mailto:Simon.WEAVER@hpw.qld.gov.au>]
Sent: Tuesday, 13 March 2018 4:12 PM
To: OADGDPS <oadgdps@dsiti.qld.gov.au>
Subject: 18069R Right to Information Search Request (DC,I&TBS)

Good afternoon

Right to Information application

The Department of Housing and Public Works has received a Right to Information application from The Australian seeking access to documents which may be held by your area. Attached is a Request for Documents form and it would be greatly appreciated if you could please arrange for searches to be conducted within your area of responsibility for the requested documents.

The attached Request for Documents form is to be completed and returned to me no later than **cob 21 March 2018** with any documents you have located so that we can meet the statutory timeline for responding to this application.

This request is being sent to the Office of the Assistant Director-General, Digital Capability, Information and Transaction Based Services for distribution to relevant business areas as appropriate.

Please do not hesitate to contact me if you wish to discuss this request.

Kind regards

Simon

Simon Weaver

A/Right To Information Officer | Legal Services
Corporate Services | Department of Housing and Public Works
Level 2 | AM60, 60 Albert Street | Brisbane Q 4000
GPO Box 2457 | Brisbane Q 4001
ph 07 3008 3117 | email righttoinformation@hpw.qld.gov.au
www.hpw.qld.gov.au

Customers first | Ideas into action | Unleash potential | Be courageous | Empower people | Healthy and safe workforce

***** Disclaimer *****

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Please note: the Department of Housing and Public Works carries out automatic software scanning, filtering and blocking of E-mails and attachments (including emails of a personal nature) for detection of viruses, malicious code, SPAM, executable programs or content it deems unacceptable. All reasonable precautions will be taken to respect the privacy of individuals in accordance with the Information Privacy Act 2009 (Qld). Personal information will only be used for official purposes, e.g. monitoring Departmental Personnel's compliance with Departmental Policies. Personal information will not be divulged or disclosed to others, unless authorised or required by Departmental Policy and/or law.

Thank you.

Released under RTI - DCH/DL

RTI Application Number :	18069R
Business Unit:	<ul style="list-style-type: none"> • Office of the Assistant Director-General Digital Capability, Information and Transaction Based Services
Reply Due Date:	21 March 2018
Please contact the Manager, RTI & Privacy if you wish to negotiate an extension	

REQUEST FOR DOCUMENTS
MADE UNDER THE RIGHT TO INFORMATION ACT 2009

Applicant: The Australian

The State Archivist's report, provided to the Crime and Corruption Commission on 5 September, arising from its investigation of minister Mark Bailey's use of a private email account, including any schedule or catalogue of emails identified as part of that investigation.

The following provides an outline of the tasks to be undertaken in meeting this request:

- Identify and retrieve all documents that may be relevant to the request. It is preferred that original documents are provided however if you provide copies of documents please ensure that the entire document, including any handwritten notations, is **clearly legible**.
- When searching for documents a broad interpretation of the above request should be considered.
- Searches should consider information contained in Yammer, Twitter and Facebook.
- Complete the attached Information Request Form, even if you are unable to locate any relevant documents.
- **IMPORTANT:** Include all access charges incurred including –
 - engagement of another entity to search for and retrieve the document/s; and
 - relocation of the document/s (ie transportation costs from offsite storage).

Please note that it is vital for estimating processing charges and for statistical purposes and annual reporting to the Department of Justice and the Attorney-General that we have information regarding any time spent by any officer per application.

Return the completed Information Request Form and located documents to:

Department of Housing and Public Works
 Manager Right to Information and Privacy
 Legal Services
 Level 2, 60 Albert Street
 BRISBANE QLD 4000
 Email: righttoinformation@hpw.qld.gov.au

If you have any concerns regarding the release of information contained in a document, please provide details on the completed Information Request Form (page three) for consideration in the assessment process.

Thank you for your cooperation. If you have any queries in relation to this matter, please do not hesitate to contact this office on 3008 3117.

Kind regards

Leanne Stafford
Manager, Right to Information and Privacy
Legal Services

RTI Application Number :	18069R
Business Unit:	<ul style="list-style-type: none"> Office of the Assistant Director-General Digital Capability, Information and Transaction Based Services
Reply Due Date:	21 March 2018
Please contact the Manager, RTI & Privacy if you wish to negotiate an extension	

INFORMATION REQUEST FORM

Right to Information Act 2009

"Document" includes any recorded information irrespective of the medium by which it is recorded including a copy of, a part of or extract from a document. Include all official and personal (unofficial) files, invoices, specifications, and plans (architectural, mechanical, electrical, civil), cost plans and other Quantity Surveying data, electronically stored information, (including computer files on hard or floppy disk and CD-ROM and video and audio tapes) meeting minutes, personal diary notes, memos and "Post It" notes and the like that relate to the subject of the Application.

Please ensure all records are identified that may be relevant to this application. A checklist has been prepared to assist in your search processes. (Please note this is not a definitive list and additional searches may be required.)

- Email office staff requesting any unfiled records that may reside in or around workstations (retain the email/copy with this proforma).
- Check "to-be-filed" documents and files.
- Check all documents in filing cabinets, pods and compactus.
- Check local business systems and recordkeeping systems for all files held at your office.
- Check information contained in Yammer, Twitter and Facebook.
- Obtain and check records as held in off-site storage.

File Title or Reference <i>(Please do not list every document) (Insert "Nil" if applicable)</i>	Identification No.	Original/ Copy (O/C)	Do you want it returned (Y/N)

Add additional lines if space above is insufficient

I have identified the following area of concern regarding the release of information contained in the following document/s for consideration in the assessment process:

RTI Application Number :	18069R
Business Unit:	<ul style="list-style-type: none">• Office of the Assistant Director-General Digital Capability, Information and Transaction Based Services
Reply Due Date:	21 March 2018
<small>Please contact the Manager, RTI & Privacy if you wish to negotiate an extension</small>	

Released under RTI - DCHIDE

RTI Application Number :	18069R
Business Unit:	<ul style="list-style-type: none"> Office of the Assistant Director-General Digital Capability, Information and Transaction Based Services
Reply Due Date:	21 March 2018
Please contact the Manager, RTI & Privacy if you wish to negotiate an extension	

TIME CONTROL SHEET

To assist in calculating and recording time spent on matters all officers involved in processing this request should record the time spent performing all tasks associated with the application. Please ensure that all time spent gathering information and responding to this request is recorded below. Please note however that any additional time spent retrieving documents that are misfiled by the agency is not to be included.

IMPORTANT: Include all access charges (costs) incurred including –

- engagement of another entity to search for and retrieve the document/s; and
- relocation of the document/s (ie courier charges, transportation costs from offsite storage).

Officer Conducting Search (Name and contact number)	Activity	Time Taken

AUTHORISATION

I hereby certify that a complete and thorough search has been made for all documents relevant to the above application that are held by this area.

(Please tick the appropriate box)

- The documents identified as relevant to the application (see below) have been forwarded to the Manager, Right to Information and Privacy; **or**
- My area of responsibility does not hold any documents relevant to the application; **or**
- The existence of other documents to which the application applies but are not held by this office may be located at:

RTI Application Number : 18069R
Business Unit: • Office of the Assistant Director-General Digital Capability, Information and Transaction Based Services

Reply Due Date: 21 March 2018
Please contact the Manager, RTI & Privacy if you wish to negotiate an extension

.....
Signature

.....
Print name

.... / / 2018

IMPORTANT: Signatory certifies a thorough search was completed and advice regarding all information held or not held in the office is supplied herewith to the Manager, Right to Information and Privacy.

Released under RTI - DCHDE

RTI Application Number :	18069R
Business Unit:	<ul style="list-style-type: none"> • Office of the Assistant Director-General Digital Capability, Information and Transaction Based Services
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WHAT IS A DOCUMENT?

- HPW records, electronic or hard-copy (letters, briefing notes, memos, facsimiles, etc)
- Emails (including attachments)
- iPhone/SMS messages where the information is work related
- Information contained in a database or information system
- Diaries (electronic and personal) where reference is made to a meeting and/or notes about the applicant
- Handwritten notes (ie Post-it notes, notebooks, etc)
- Minutes of meetings (including meeting agendas and papers presented at meetings)
- Internal manuals and instructions including superseded versions
- Message slip/telephone messages
- Unfiled records waiting to be placed onto a departmental file
- Plans and drawings, reports, submissions, etc
- Records generated from a project including project plans, project estimates and costings, resourcing requirements, background research materials, etc
- Audio and visual recordings

PLACES TO SEARCH FOR RECORDS

- HPW electronic records (ie G: drive, H: drive or similar)
- Data stored on USB, CD, DVD, audio tape, etc
- Filing cabinets
- Desks and surrounding workstations
- Compactus
- Electronic diary (Microsoft Outlook) and personal diaries containing work related information such as notations, appointments, meetings, etc
- Notebooks used to record information (electronic and hand-written)
- Yammer, Twitter and Facebook
- Off-site storage facilities¹

Please note:

Draft documents that contain significant annotations or were submitted for comment or approval by others are public records and must be provided with all other relevant information.

This list is not exhaustive and additional searches may be required.

¹ Please provide the RTI Manager with evidence of costs for transporting documents from off-site storage facilities

From: djhamill [redacted]
To: Office of the State Archivist; "David Reed"; "Dr David Solomon"; jennifer.clark [redacted]; Maria Samios; "Kate Slack"; "Linda O'Brien"
Cc: "Karen Baines"; "Linda Hammond"
Subject: RE: Draft Public Records Review Committee sub-Committee meeting minutes
Date: Thursday, 29 November 2018 10:41:59 PM
Attachments: image001.jpg
DRAFT - PRRC Meeting #41 minutes - 20 November 2018.docx
Importance: High

Dear All

I propose the following amendments to the draft minutes.

See the mark ups in the attachment.

Regards

David

From: Office of the State Archivist <Officeofthe.StateArchivist@archives.qld.gov.au>
Sent: Thursday, 29 November 2018 12:36 PM
To: David Reed <David.Reed@psc.qld.gov.au>; Dr David Hamill <[redacted]>; Dr David Solomon <[redacted]>; jennifer.clark [redacted]; Maria Samios <julie.steel@justice.qld.gov.au>; Kate Slack [redacted] <[redacted]>; Linda O'Brien [redacted] <[redacted]>
Cc: Karen Baines <Karen.Baines@justice.qld.gov.au>; Linda Hammond [redacted]
Subject: Draft Public Records Review Committee sub-Committee meeting minutes

Good afternoon everyone

Please find attached for your review the minutes from the Public Records Review Committee meeting minutes.

If you have any changes, please advise by 20 December 2018.

Regards Heather

Heather Rayfield

Executive Officer Public Records Review Committee
Senior Project Officer | Office of the Executive Director & State Archivist
Queensland State Archives | Department of Housing and Public Works
435 Compton Road, Runcorn QLD 4113
PO Box 1397, Sunnybank Hills, QLD, 4109
Ph 07 3037 6661 (ext 76661) | email Heather.rayfield@archives.qld.gov.au
www.hpw.qld.gov.au

www.archives.qld.gov.au | www.facebook.com/qldstatearchives | www.twitter.com/qsarchives
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PUBLIC RECORDS REVIEW COMMITTEE

Meeting No. 41

Tuesday 20 November 2018

Diamantina Room
Queensland State Archives, Runcorn
1:00pm – 3:00pm

DRAFT MINUTES

Attendance

Dr David Hamill (Acting Chair), Dr David Solomon AM,
Mr David Reed and Ms Julie Steel

Mr Mike Summerell Executive Director and State Archivist,
Ms Heather Rayfield PRRC Executive Officer QSA,
Ms Josephine Marsh, Director of Government Recordkeeping

1

WELCOME AND APOLOGIES

Ms Linda O'Brien, Ms Kate Slack, Ms Jennifer Clark,

1.1

Welcome

Dr Hamill opened the meeting at 12:45pm, he acknowledged that due to the vacancies and apologies for today's meeting the Committee does not have a quorum. (A quorum is five members.) He suggested that the members present could form a sub-committee. Members agreed.

Ms Rayfield advised members that the Minister has signed letters to all members asking if they would like to be considered for reappointment.

Dr Hamill asked members if due to the timing of reappointment process, there was a need to have a meeting in March 2019.

Members agreed that unless an issue arose, or a dispute was lodged there was no need to schedule a meeting.

Members agreed that Dr Hamill would chair this meeting in accordance with *Section 34 (2) of the Public Record Act 2002 (the Act) – If the Chairperson is absent, the committee member chosen by the members present must preside.*

Dr Hamill welcomed Mr Summerell the Queensland State Archivist, Ms Marsh the Director of Manager Government Recordkeeping, and Ms Rayfield the Executive Officer.

1.2

Apologies

Ms Linda O'Brien, Ms Kate Slack, Ms Jennifer Clark,

2

DRAFT MINUTES OF PREVIOUS MEETING

Dr Hamill asked all members of the sub-committee meeting if the minutes represented a true account of the previous meeting. All members agreed the minutes represent a true representation of the meeting.

It is recommended that the new Committee in 2019 adopt the minutes.

3

BUSINESS ARISING FROM PREVIOUS MINUTES

Dr Hamill noted all business had been completed

4.

MATTERS OF CONCERN RAISED ABOUT THE ADMINISTRATION AND ENFORCEMENT OF THE ACT

4.1

Government recordkeeping update including:

- Progress report recommendations on Minister Bailey's email
- National redress scheme

Ms Marsh provided the committee with an update on the lack of progress of the CCC recommendations on the Minister Bailey email issue. Queensland State Archives (QSA) continues to work with Department of the Premier and Cabinet (DPC) to improve the recordkeeping in Ministerial offices.

~~Mr Summerell advised the committee that he and QSA are being hampered from completing the recommendations by the Director-General and Minister. QSA needs to contact six Ministers including Minister de Brenni.~~

The CCC met with QSA this week in respect of Logan City Council breaching the *Public Records Act 2002*. They have advised that although there has been a breach there will be no penalty as the Act does not have penalties.

Mr Reed asked if the CCC expect the State Archivist to provide a report on the breach.

The State Archivist has not been asked to provide a report.

Mr Summerell advised that as the State Archivist he is concerned that he ~~is being stopped~~ has been unable to ~~from performing~~ his key duties under the Act.

Ms Marsh advised QSA is working with CCC to try to issue joint advice to local government authorities ~~as~~. Like Ministers the Councillors have a blurred line as to what constitutes a record.

Ms Marsh gave a quick update on the impact the national redress scheme is having on the workload of staff at QSA. Agencies are requesting records and members of the public can come into the public search room and request their own records. To date QSA has not been given any extra FTE to cover the extra workload.

4.2

Queensland State Archives annual report and highlight of statistics 2017-18

Mr Summerell advised the Committee that the Annual report was the State Archivist's report on the state of recordkeeping. The department had interfered with the content of the annual report and asked that all reference to the Minister Bailey email issues was removed from the report. The issue is the Minister Bailey email issue was a large program of work for QSA.

Dr Hamill asked if the State Archivist was invited to the estimate hearings.

Mr Summerell advised that prior to the Minister Bailey email issue the State Archivist had attended estimate hearings she did not attend the estimates hearings.

Mr Summerell advised the independence of the State Archivist is an issue.

Dr Hamill advised the committee has canvassed this issue before and have agreed that it is outside the Committee's remit.

4.3

Ipswich City Council disposal freeze

Ms Marsh advised QSA had a very constructive meeting with the administrators of Ipswich City Council. The administrators want to make Ipswich City Council an exemplary recordkeeping agency. The administrators are not in a hurry to have the freeze lifted and are looking to really improve recordkeeping and the other issues within council before asking to have the freeze lifted. QSA are working with the administrator and have lifted the freeze on CCTV records to allow records to be overwritten.

QSA have discussed whether to freeze all councils that are being investigated. QSA will await the investigation to be completed.

QSA has also been working with the Local Government Association Queensland (LGAQ).

4.4

Update on the Digital archiving program

Mr Summerell advised the Digital Archiving program update paper is for members' information. The project is being run very efficiently. The project is running under budget which ~~is unusual but~~ will allow for the digital archive to be funded for a year or two after completion of the project.

Ms Steel advised she is on the board and the procurement project is running well. She is confident it will be successful.

Ms Marsh advised the consortia that is working on the project have a lot of experience across similar projects for other jurisdictions.

Mr Reed asked if the outcome would be a service?

Mr Summerell advised the digital archive would be as a service. There are still questions regarding who is paying once the project finishes, who will pay the ongoing costs associated with running the digital archive. There will be a growing cost for the storing of the data, agencies will probably not reduce their own data storage costs. QSA has no guarantee of being given budget to cover the costs of the digital archive

5. DISPUTES REFERRED TO THE COMMITTEE UNDER SECTION 19(4)

Dr Hamill advised there are no disputes

6. APPLICATIONS MADE TO THE COMMITTEE UNDER SECTION 39

Dr Hamill advised there are no applications

7. Date of next meeting

The process of appointing a new committee is underway, the next meeting will be scheduled once appointment process completed.

Other business

Meeting closed at 1.20pm

Dr Hamill thanked members of the committee for their diligence and thanked QSA staff for all their work.

Released under RTI / DFOI

From: Mike Summerell (QSA)
To: [Karen Newton \(OSA\)](#)
Subject: Reports to DG
Date: Friday, 27 October 2017 9:28:16 AM
Attachments: [image001.png](#)
[State Archivist Full Report to DG- October 2017.docx](#)
[State Archivist Summary Report to DG - October 2017.docx](#)

Can you print and bind these as appropriate

Include a letter to the DG, essentially noting the provision of the Summary and Full Reports

Please can you mark as confidential to Jamie

Thanks

Mike

Mike Summerell

Executive Director & State Archivist

Queensland State Archives

Department of Science, Information Technology and Innovation

P 3037 6601 M

E mike.summerell@archives.qld.gov.au

435 Compton Road, Runcorn QLD 4113

GPO Box 1397, Sunnybank Hills QLD 4109

archives.qld.gov.au [facebook.com/qldstatearchives](https://www.facebook.com/qldstatearchives) twitter.com/qsarchives

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Released under RTI - DCHDE

Pages 31 through 63 redacted for the following reasons:

Publicly Available Document - Merrick Report

Released under RTI - DCHDE

STATE ARCHIVIST BRIEFING
TO
JAMIE MERRICK,
DIRECTOR GENERAL,
DEPARTMENT OF SCIENCE, INFORMATION
TECHNOLOGY AND INNOVATION (DSITI)

**KEY RECOMMENDATIONS RESULTING FROM THE STATUTORY
INVESTIGATION INTO ALLEGATIONS OF UNAUTHORISED DISPOSAL OF
PUBLIC RECORDS BY HONOURABLE MARK BAILEY MP, MINISTER FOR MAIN
ROADS, ROAD SAFETY AND PORTS AND MINISTER FOR ENERGY, BIO FUELS
AND WATER SUPPLY**

24 OCTOBER 2017



This briefing is a summary of key recommendations resulting from the independent investigation undertaken by the State Archivist to fulfil his statutory responsibility to investigate allegations of unauthorised disposal of public records by Mark Bailey, MP, Minister for Main Roads, Road Safety and Ports and Minister for Energy, Bio Fuels and Water Supply.

The investigation sought to answer a number of core questions:

1. Were there public records within the private email account of Minister Bailey at the time of the deletion of the account on 5 February?
2. If there were public records present, were any disposed of without appropriate authorisation?
3. Did the actions of Minister Bailey in managing the public records contained within this private email account result in a breach of the *Public Records Act*?
4. What actions if any should be taken in response to breach of the *Public Records Act*?
5. What other actions in regard to fulfilling the purpose of the *Public Records Act* are required to be undertaken by the State Archivist or others as a result of this investigation?

WERE THERE PUBLIC RECORDS WITHIN THE PRIVATE EMAIL ACCOUNT OF MINISTER BAILEY AT THE TIME OF THE DELETION OF THE ACCOUNT ON 5 FEBRUARY?

There have been 1199 public records identified that were within the account at the time of deletion.

IF THERE WERE PUBLIC RECORDS PRESENT, WERE ANY DISPOSED OF WITHOUT APPROPRIATE AUTHORISATION?

Of the 1199 public records identified: 539 were able to be disposed of without additional authorisation, as they were deemed as transitory public records and were not required to be retained beyond their immediate business use. Minister Bailey had authorisation to dispose of these 539 public records.

660 were required to be retained for periods ranging from 2 years to permanent retention. 69 records were deemed as having permanent value and were required to be retained permanently. 355 records were required to be retained for 7 years.

DID THE ACTIONS OF MINISTER BAILEY IN MANAGING THE PUBLIC RECORDS CONTAINED WITHIN HIS PRIVATE EMAIL ACCOUNT RESULT IN A BREACH OF THE *PUBLIC RECORDS ACT*?

On 5 September 2017, the State Archivist provided a report to the Crime and Corruption Commission (CCC) relating to the State Archivist's investigation into Minister Bailey's actions. On 22 September 2017, the CCC announced that they would not be taking any criminal actions against Minister Bailey in regard to this matter.

The State Archivist's view is that Minister Bailey's actions in managing the public records within his private email account were likely to have resulted in multiple technical breaches of the *Public Records Act*. Specifically:

Section 7 – Making and keeping of public records

Section 8 – Custody and preservation of public records

Section 13 – Disposal of public records

Section 14 – Public authority must ensure particular records remain accessible.

Following the decision of the CCC, the State Archivist considered whether any actions should be taken under the powers of the *Public Records Act*, for which he is responsible and under which decisions related to disposal must be made by the State Archivist without direction or interference.

Following careful consideration the State Archivist has concluded that no actions should be taken by the State Archivist in response to the potential breaches of the *Public Records Act* by Minister Bailey.

For breaches under sections 7, 8 and 14 the *Public Records Act* provides no penalties for breach, thus prosecution is not possible under the *Public Records Act*. In regard to section 13 - disposal of public records - the State Archivist's view is that the evidence available is unlikely to be able to prove beyond reasonable doubt that breach of section 13 has occurred. The fact that Minister Bailey eventually recovered the public records with the assistance of the CCC and that technically the breach would have only been for 26 days even if proven is significant.

WHAT OTHER ACTIONS ARE REQUIRED TO BE UNDERTAKEN BY THE STATE ARCHIVIST OR OTHERS AS A RESULT OF THIS INVESTIGATION?

The investigation has highlighted the potential for widespread creation and receipt of public records in the private email accounts of Ministers and their staff. Without appropriate processes to manage public records created or received within the private email accounts of Ministers there is a significant risk of further breaches of the *Public Records Act* by other Ministers and their staff.

This issue is symptomatic of much wider issues related to the standard of government recordkeeping practice in multiple areas of the Queensland public sector. The State Archivist has outlined a number of key recommendations that relate to actions that should be taken as a matter of urgency both in regard to the specific issue of management of public records in private email accounts of Ministers and their staff and other wider issues.

KEY RECOMMENDATIONS

CURRENT AND FORMER MINISTERS

- 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.
- 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.

MINISTERIAL RECORDS/RECORDKEEPING

- The State Archivist to issue new guidance for Ministers and their staff on the management of Ministerial records.
- 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.
- The Department of the Premier and Cabinet 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.
- The Department of the Premier and Cabinet 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.

URGENT AMENDMENTS TO THE PUBLIC RECORDS ACT

- Government to consider urgent amendments to the Public Records Act 2002 including:

- Clear and contemporary definition of the disposal of public records.
- Appropriate penalties for breaches of key sections of the Public Records Act 2002 in particular non-compliance and unauthorised disposal.
- 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

GENERAL RECORDKEEPING

- 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.
- The State Archivist to issue new minimum standards for recordkeeping for all public authorities that replace Information Standard 40: Recordkeeping and Information Standard 31: Retention and disposal of public records. With the aim of these becoming mandatory requirements once the Public Records Act 2002 is amended.
- The State Archivist to develop an auditing regime to monitor compliance with the Public Records Act 2002.

Released under RTI - Disclosure

From: [SUMMERELL Mike](#)
To: [OSA Office of the State Archivist](#)
Subject: FW: Request for independent legal advice
Date: Monday, 10 June 2019 11:21:16 AM

Can you trim this please

From: SUMMERELL Mike
Sent: Monday, 10 June 2019 11:21 AM
To: SPINA Andrew <Andrew.SPINA@hpw.qld.gov.au>
Subject: RE: Request for independent legal advice

Hi Andrew

I have already asked CCC directly whether I can share the referral with QBCC and others. It is clear referrals are intended to be confidential. Given proximity of QBCC to HPW I am very concerned with conflict of interest. When CCC provide advice on that question I will let you know.

Exempt Sch 3(7)



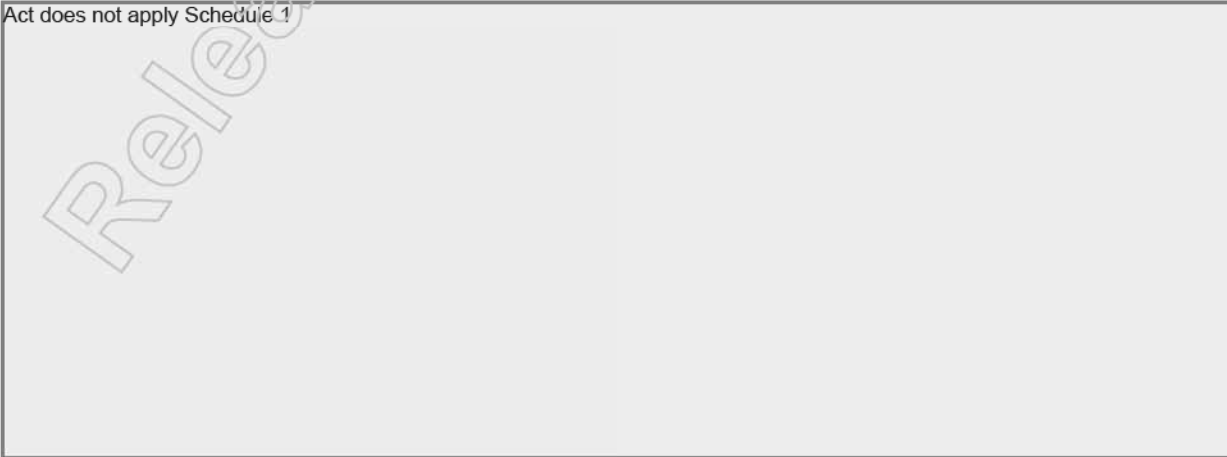
To quote....

Exempt Sch 3(7)



In addition the previous Integrity Commissioner advice during the Bailey review, in relation to direction from the DSITI DG and conflict between my statutory role and my role in the department remains more than relevant I think:

Act does not apply Schedule 1



I do intend to seek further advice on this matter from the Integrity Commissioner. As I have said I am concerned at the overall concept of direction around my statutory powers and functions, but in particular around matters relating to Investigations and the Annual Report. As we have a new Annual report coming up, I do want that matter addressed to avoid a repeat of last year.

Mike

From: SPINA Andrew
Sent: Monday, 10 June 2019 10:26 AM
To: SUMMERELL Mike <Mike.SUMMERELL@archives.qld.gov.au>
Subject: RE: Request for independent legal advice

Mike, I am looking at the scope of the request to Crown Law and will discuss with Boyd and Liza this week.

Also, can you please provide details of the CCC referral on QBCC to Robyn Turbit as she is the CCC liaison person for the department and it would be appropriate for her to be across this issue.

Andrew

From: SUMMERELL Mike
Sent: Friday, 31 May 2019 2:27 PM
To: SPINA Andrew <Andrew.SPINA@hpw.qld.gov.au>
Subject: Re: Request for independent legal advice

Hi Andrew

Where are with this request ?

If I am not going to be able to get independent legal advice I will need to at other options as I

hugely concerned about this issue

Mike

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From: SUMMERELL Mike <Mike.SUMMERELL@archives.qld.gov.au>

Sent: Tuesday, May 21, 2019 12:22 am

To: SPINA Andrew

Cc: QSA Office of the State Archivist; BACKHOUSE Boyd

Subject: Request for independent legal advice

Hi Andrew

As discussed last week

I contacted Boyd last week to request independent legal advice

Exempt Sec. 3(7)

Boyd has indicated that In these circumstances, that he considers it appropriate that any further request for legal advice on this topic be referred to yourself in the first instance so that consideration can be given as to what further advice may be required, and, if so, from whom

I have provided the original request for your information

Regards

Mike

From: QSA Office of the State Archivist

Sent: Wednesday, 15 May 2019 4:23 PM

To: BACKHOUSE Boyd <Boyd.BACKHOUSE@hpw.qld.gov.au>

Cc: SUMMERELL Mike <Mike.SUMMERELL@archives.qld.gov.au>

Subject: Independent Legal Advice required by State Archivist

Hello Boyd

The State Archivist is seeking some independent legal advice.

In Feb 2018, the State Archivist was provided Crown Law legal advice Exempt Sch 3(7)

The State Archivist and the Public Records Review Committee have expressed concern at the impact of the interpretation of the Act by Crown Law. The State Archivist is seeking independent legal advice

 Whilst the Crown Law advice

The matters upon which the State Archivist wishes some independent legal advice are as follows:

Exempt Sch 3(7)

Background

In Feb 2018, the DG of HPW provided the State Archivist with a copy of Crown Law advice,

Exempt Sch 3(7)

Exempt Sch 3(7)

There is no doubt that the Crown Law interpretation is

The State Archivist would like independent legal advice

The 2nd Reading speech, debate and committee sessions relating to the passing of the Public Records Act in 2001, include significant discussion of the matter of independence. The independence of the State Archivist was seen as being guaranteed by the legislation, however

During the 2nd reading committee session, the Minister at the time noted that “Clause 27 guarantees the independence of the Archivist. That is a fundamental clause of the bill. Clause 56 provides for the Archivist to make an annual report. The bill also has a provision for a Public Records Review Committee.”. The State Archivist concern is that the legislative intent here is that the State Archivist has independence in matters of disposal and in drafting an annual report to be tabled in the legislative assembly, at a minimum.

Over the last 12 months there have been instances where direction from the Minister and/or DG has occurred relating to the content of the Annual report and investigation of potential breaches of the Public Records Act, including those relating to potential unauthorised disposal.

Exempt Sch 3(7)

In consideration of the concerns noted above, the State Archivist is seeking urgent independent advice on the matters requested.

Thanks and regards

Karen

Karen Newton

Manager | Office of the State Archivist

Queensland State Archives | Department of Housing and Public Works

435 Compton Road Runcorn Qld 4113

ph 07 3037 6675 | fax 07 3131 7764 | email karen.newton@archives.qld.gov.au
www.archives.qld.gov.au

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Released under RTI - DCHDE

Pages 74 through 94 redacted for the following reasons:

Act does not apply Schedule 1

Released under RTI - DCHDE

From: Mike Summerell
To: [Andrew Spina](#)
Subject: Fw: Extract from previous Advice from the Integrity Commissioner
Date: Wednesday, 17 October 2018 12:39:51 PM
Attachments: [image001.jpg](#)
[image002.jpg](#)

FYI

My concerns are really whether instructing me to change my annual report is potentially a breach of the Public Records Act or anything else

Key concerns are whether omitting reference to the investigation and indeed its recommendations are a breach of my statutory duty as Archivist given the sections referring to the Annual report. Key point to me is whether the examples are directive on me in any way and whether their omission would be perceived as misleading of the work we undertook during the year in administration of the Act. My view is that the investigation and its recommendations were a material part of the work of QSA during the year and their omission has the potential to create a misleading impression

And/or

Whether the DG has the ability to direct me to change my report and omit references to the investigation

If the DG has legal authority and directs as such then I will obviously do so and presumably the DG is thus taking responsibility for the content of the annual report in those circumstances under her authority under the Act which could allow her to direct me in this matter

I suppose it comes down to interpretation of the Section around independence and direction

For me I really want to ensure that I am not in breach of my statutory duties under the Act and potentially subject to criticisms of political influence and direction and that Liza also doesn't get into strife by exceeding her authority under the Act. I feel hugely exposed by omitting reference to it in some way and I do feel it would be misleading and inappropriate not to acknowledge it

The omission of any reference to the investigation given how public it already is, is to me a little ridiculous. everybody knows it happened it is in the press every 2 weeks- rewriting it out of history is bit late. Anyone with an interest would be likely to comment and criticise more as a result of its omission than the very weak inclusion of it as it stands. I think the current comment is actually fine and omitting would a mistake likely to create more negative comment

Mike

From: Mike Summerell
Sent: Tuesday, 9 October 2018 1:19:57 PM
To: Kathryn Schmidt
Subject: Extract from previous Advice from the Integrity Commissioner

Further to our conversation

This is an extract from advice I received from the Integrity Commissioner at the time of the Bailey Investigation report. Whilst it is clearly focused on my report on that matter. I believe the central points as valid again when it comes to the Annual report. Bracketed sections are my changes to reflect that the advice referred to Minister Enoch at the time, but clearly would apply to Minister Debrenni as well.

In short I shouldn't being asked to omit key sections of my annual report. Minor wordsmithing I really have no problem with, but omitting key events and observations for the purpose of sanitisation of the report is totally inappropriate....and probably not legal

Act does not apply Schedule 1

Mike Summerell

Executive Director & State Archivist

Queensland State Archives | Department of Housing and Public Works

435 Compton Road, Runcorn QLD 4113

GPO Box 1397, Sunnybank Hills QLD 4109

P 3037 6601 M

E mike.summerell@archives.qld.gov.au



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Released under RTI - DCH/DE

Pages 98 through 148 redacted for the following reasons:

Act does not apply Schedule 1
Exempt Sch 3(7)

Released under RTI - DCHDE

From: [MARSH Josephine](#)
To: [SUMMERELL Mike](#)
Cc: [QSA Office of the State Archivist](#); [SHANKS Julie](#)
Subject: Request for legal advice
Date: Friday, 23 August 2019 10:52:04 AM
Attachments: [image001.jpg](#)
Request for legal advice Exempt Sch 3(7)

Hi Mike

I have reviewed and endorse the attached request for legal advice drafted by Julie which is Exempt Sch 3(7)

When you have a chance (I know the next week is busy) I am assuming you will need to request permission from Andrew for the legal advice to be submitted to DHPW Legal. We will also need to make it clear that we want independent advice from Crown Law not DHPW legal. This is covered in the request but will need to be clear in the requesting email.

We have made it as clear and comprehensive as possible to cover all avenues. Please let me know if you have any questions or points of clarification.

Thanks

Josephine

Josephine Marsh

Director | Government Records and Discovery
Queensland State Archives | Department of Housing and Public Works
435 Compton Road | Runcorn
PO Box 1397 | Sunnybank Hills | QLD | 4109
ph 07 3037 6605 | mb [redacted] | email josephine.marsh@archives.qld.gov.au
archives.qld.gov.au facebook.com/qldstatearchives twitter.com/qsarchives

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REQUEST FOR LEGAL ADVICE

Exempt Sch 3(7)

The State Archivist is seeking legal advice

Released under RTI - DCHDE

¹ Royal Commission into Institutional Responses to Child Sexual Abuse Final Report: Volume 8, Recordkeeping and Information Sharing, p 9

Exempt Sch 3(7)

Please note: QSA acknowledges that DHPW Legal has provided

QSA has also received legal advice from Clayton Utz

QSA is therefore

Additionally, QSA acknowledges previous Crown Law advice

Questions:

1. Exempt Sch 3(7)

2.

3.

Legal advice the State Archivist received from Clayton Utz in March 2018 stated:

Exempt Sch 3(7)

In addition Integrity Commissioner advice provided to the State Archivist during the investigation into the alleged disposal of public records by Minister Bailey, in relation to direction from the DSITI DG

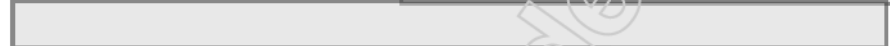
² Please note there is also a question below about Crown immunity.

and conflict between the statutory role of the State Archivist and the role of the State Archivist in the department is relevant:

Act does not apply Schedule 1



The State Archivist has concerns Exempt Sch 3(7)



Questions

- 4. Exempt Sch 3(7)
- 5.
- 6.

Crown immunity

Previous legal advice Exempt Sch 3(7)

At this time it is

In the DHPW legal advice Exempt Sch 3(7)

 The DHPW advice also states:
Exempt Sch 3(7)

Based on these relevant matters

Previous legal advice from Crown Law (dated 28 April 2003) also indicates:
Exempt Sch 3(7)

The State Archivist is

- Questions:**
- 7. Exempt Sch 3(7)
 - 8.
 - 9.

Exempt Sch 3(7)

10.

11.

12.

Released under RTI - DCHIDE

From: Karen Newton (QSA)
To: [Mike Summerell \(QSA\)](#)
Subject: Draft for review : Letter to Jamie Merrick Director-General DSITI accompanying State Archivists Report on Email Investigation
Date: Friday, 27 October 2017 11:53:42 AM
Attachments: [Letter to Jamie Merrick Director-General DSITI accompanying State Archivists Report on Email Investigation.DOC](#)
[Letter to Jamie Merrick Director-General DSITI accompanying State Archivists Report on Email Investigation.tr5](#)

Hi Mike

Here is the draft for your review

I will print for signature when you are happy with it

Regards

Karen

Released under RTI - DCHDE



Ref 17/28185

27 October 2017

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

TO BE OPENED BY ADDRESSEE ONLY

Mr Jamie Merrick
Director-General DSITI
GPO Box 5078
BRISBANE QLD 4001

Dear Mr Merrick

Report of statutory investigation into alleged unauthorised disposal of emails

Please find attached for noting, my report and summary of key recommendations from the statutory investigation I have recently conducted. This investigation was into allegations of unauthorised disposal of public records by the Hon Mark Bailey MP, Minister for Main Roads, Road Safety and Ports and Minister for Energy, Biofuels and Water Supply.

Yours sincerely

Mike Summerell]
Executive Director and State Archivist
Queensland State Archives

Encl

435 Compton Road Runcorn
PO Box 1397
Sunnybank Hills QLD

Telephone +617 3037 6601
Facsimile +617 3131 7764
Website www.archives.qld.gov.au
ABN 41 841 375 926

Pages 157 through 183 redacted for the following reasons:

Exempt Sch 3(6)

Released under RTI - DCHDE

From: Cathy Cross
To: [Mike Summerell \(OSA\)](#)
Cc: [Office of the State Archivist](#)
Subject: DMView_1516864194810_00105-2018_64815_Ministerial briefing note on recommendations arising from investigation into alleged disposal of public records by Minister Bailey - mS edit
Date: Thursday, 25 January 2018 5:16:37 PM
Attachments: [DMView_1516864194810_00105-2018_64815_Ministerial briefing note on recommendations arising from investigation into alleged disposal of public records by Minister Bailey - mS edit.docx](#)

Hi Mike

I've made some changes to the brief that was sent up today – mostly I've moved wording around and deleted some which was repeated but due to the changes I thought it prudent for you to review it again to make sure you are happy with it. I did google define guideline and the result made me wonder if guideline is the right word (although it may be your technical term) – the definition I found was: A **guideline** is a statement by which to determine a course of action. A **guideline** aims to streamline particular processes according to a set routine or sound practice. **By definition, following a guideline is never mandatory. Guidelines are not binding and are not enforced** Anyway some food for thought, and it's coming back to you in MEGS for another review. (sorry)

Have a great weekend.

Cathy

Cathy Cross

Executive Officer

Office of the Assistant Director-General

Digital Capability, Information and Transaction Based Services

Department of Housing and Public Works

P (07) 3719 7730

E cathy.cross@dsiti.qld.gov.au ~ Group E: oag@dsiti.qld.gov.au

Level 14, Terrica Place,

140 Creek Street, BRISBANE QLD 4000

GPO Box 2457, BRISBANE QLD 4001

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MINISTERIAL BRIEFING NOTE

Subject: State Archivist's update on the progress of recommendations resulting from the independent investigation into alleged unauthorised disposal of public records by a Minister

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 the independent investigation into alleged unauthorised disposal of public records by a Minister.

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In March 2017, allegations were made that Mark Bailey, Minister for Main Roads, Road Safety and Ports and Minister for Energy, Bio Fuels and Water Supply had disposed of public records without appropriate authorisation. Under the *Public Records Act 2002*, the State Archivist had a statutory obligation to independently investigate this matter. Subsequent to the commencement of the State Archivist's investigation commencing, the matter was referred to the Crime and Corruption Commission (CCC).

The CCC were informed of the statutory obligation of the State Archivist to investigate the matter. The CCC requested that the State Archivist delay his independent investigation until their own investigation into the matter had been completed, the CCC then requested the State Archivist to investigate the matter on their behalf. The CCC investigation included matters relevant to the statutory obligations of the State Archivist plus specific matters that CCC wished to be investigated. In September 2017, the State Archivist presented the report of his investigation of the matter to the CCC. The State Archivist was then given approval by CCC to complete his independent investigation. The State Archivist's independent report was completed in October 2017 and a report was provided to the Director General of the Department of Science, Information Technology and Innovation.

The State Archivist made a number of common recommendations in both reports which related to the creation, maintenance and disposal of public records by Ministers. This Briefing Note provides an update on progress being made in relation to implementation of these recommendations.

RECOMMENDATION

It is recommended that the Minister:

- Note the State Archivist's recommendations made following an independent investigation into allegations of unauthorised disposal of public records by Minister Mark Bailey.
- Note the progress to date in implementing these recommendations.

Noted	Approved	Not approved

Yes	No
	x

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: / /</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>

Released under RTI - DCHDE

CONTEXT

- In March 2017, allegations were made that The Honourable Mark Bailey, Minister for Main Roads, Road Safety and Ports and Minister for Energy, Bio Fuels and Water Supply had disposed of public records without appropriate authorisation. Under the *Public Records Act 2002*, the State Archivist had a statutory obligation to independently investigate this matter. Subsequent to the commencement of the State Archivist's investigation commencing, the matter was referred to the Crime and Corruption Commission (CCC).
- In March 2017, allegations were made that Minister Mark Bailey had disposed of public records without appropriate authorisation. Under the *Public Records Act 2002*, the State Archivist had a statutory obligation to independently investigate this matter. Subsequent to the commencement of the State Archivist's investigation commencing, the matter was referred to the Crime and Corruption Commission (CCC).
- The CCC were informed of the statutory obligation of the State Archivist to investigate the matter.
- The CCC requested that the State Archivist delay his independent investigation until their own investigation into the matter had been completed, the CCC then requested the State Archivist to investigate the matter on their behalf.
- The CCC investigation included matters relevant to the statutory obligations of the State Archivist plus specific matters that the CCC wished to be investigated.
- In September 2017, the State Archivist presented the report of his investigation of the matter to the CCC.
- The State Archivist was then given approval to complete his independent investigation.
- The State Archivist's independent report was completed in October 2017 and a report was provided to the Director General of the former Department of Science, Information Technology and Innovation.
- The State Archivist made a number of common recommendations in both reports which related to the creation, maintenance and disposal of public records by Ministers. This Briefing Notes provides an update on progress being made in relation to implementation of these recommendations.

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Indent at: 0.63 cm

KEY ISSUES

- The investigation into allegations of unauthorised disposal of public records highlighted the potential for the widespread creation and receipt of public records in the private email accounts by Ministers and their staff.
- While the use of private email accounts is not a breach of the Act, without implementation of appropriate processes to manage public records created or received in private accounts, there is a risk that future breaches of the Act will occur.
- Following the completion of the CCC investigation the CCC reported that the use of private email accounts, and particularly the deletion of records in those accounts, can give rise to a significant perception that the use of such accounts is done for a corrupt purpose.
- The use of private email accounts for official purposes is also symptomatic of a much wider issue related to the standard of recordkeeping practices across government and a lack of awareness of responsibilities and requirements relating to the management of public records.
- A number of recommendations specific to the actions of Minister Bailey were made to the CCC along with several key recommendations relating to improving the standard of government recordkeeping and the management of ministerial records. Recommendations related to recordkeeping practices made by the State Archivist were accepted by the CCC. These recommendations were repeated in the independent report provided to the former Director General of DSITI.
- The common recommendations made relating to improving the standard of government recordkeeping and the management of ministerial records are as follows:
 - That the State Archivist undertakes an urgent review of the processes in place for all current Ministers and Ministerial staff in managing public records created or received within their private email accounts.

- ~~That the~~ State Archivist ~~contacts~~ former Ministers of the last two Governments to request that they review their private email accounts for public records that may be in their possession.
- ~~That the~~ State Archivist ~~reviews urgently~~ ~~urgently reviews~~ the guidance ~~it provides~~ ~~provided~~ by Queensland State Archives on the management of public records within email, private email and social media accounts.
- ~~That the~~ Department of the Premier and Cabinet (DPC) ~~reviews urgently~~ ~~urgently reviews~~ the training and support it provides to Ministers and their staff in managing public records. DPC should work closely with the State Archivist in developing and delivering this training and support.
- ~~That~~ DPC ~~reviews urgently~~ ~~urgently reviews~~ the guidance it provides via the *Ministerial Handbook* and *Ministerial Information Security Policy* around the management of public records within the private email and social media accounts of Ministers and their staff. This needs to comply fully with Queensland State Archives guidance.
- ~~That an~~ ~~Urgent~~ amendment ~~of be made to~~ the *Public Records Act 2002* to include a requirement that all public authorities must comply with mandatory guidelines issued by the State Archivist.
- ~~The urgent amendment of the *Public Records Act 2002* is to include a requirement that all public authorities must ensure public records created or received in private email and social media accounts are forwarded to official systems within 20 days of creation or transmission or the inclusion of this requirement as a mandatory guideline.~~
- ~~That~~ the State Archivist develop a priority set of mandatory ~~guidelines~~ for implementation.
- ~~That the~~ State Archivist develops a team to undertake monitoring of compliance with mandatory guidelines. (Additional resources and budget will be required for Queensland State Archives to undertake these tasks).
- ~~Urgent amendment of the *Public Records Act 2002* to include a requirement that all public authorities must ensure public records created or received in private email and social media accounts are forwarded to official systems within 20 days of creation or transmission or the inclusion of this requirement as a mandatory guideline.~~
- The State Archivist reviews all guidance and disposal schedules relevant to Ministers.
- ~~That the~~ State Archivist ~~to reviews~~ recordkeeping systems and processes in key departments supporting Ministers.
- An alliance of integrity agencies is established including the State Archivist, Information Commissioner, Integrity Commissioner, Auditor-General, Ombudsman, Crime and Corruption Commissioner and Public Service Commissioner to raise awareness and promote the importance of recordkeeping for good governance and government accountability.
- Progress has been made in relation to a number of these recommendations including:
 - A review of guidance provided on the management of public records within email, private email and social media accounts
 - The publication of the *Ministerial Records Policy* for Ministers, Assistant Ministers and their staff
 - Ministers and Assistant Ministers ~~were~~ advised of their recordkeeping responsibilities in a letter from the State Archivist sent on 19 December 2017
 - The development of training on the management of ministerial records ~~to will be~~ delivered at a time agreed with the Department of the Premier and Cabinet to Ministers, Assistant Ministers and their staff
 - Input into the *Ministerial Handbook* and the *Ministerial Information Security Policy* provided to the Department of the Premier and Cabinet
 - Initiation of priority amendments to the *Public Records Act 2002* Act
 - Review of the *Office of a Minister of the Crown and Parliamentary Secretaries Retention and Disposal Schedule*
 - Ongoing contact with integrity agencies such as the Information Commissioner and the Ombudsman.

Commented [CC1]: should the word guidelines be requirements or instruction, direction, procedure etc
 Wikipedia defines a guideline as a statement by which to determine a course of action. A **guideline** aims to streamline particular processes according to a set routine or sound practice. By **definition**, following a **guideline** is never mandatory. **Guidelines** are not binding and are not enforced

ELECTION AND GOVERNMENT COMMITMENTS

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

FINANCIAL IMPLICATIONS

- The implementation of some recommendations will require extra resources and budget including the development of a monitoring framework for compliance with mandatory guidelines.
- Some resources were provided by the former Department of Science, Information Technology and Innovation while the investigation was underway and for the commencement of implementing the recommendations.

CONSULTATION

- Not applicable.

FUTURE STEPS

- Work will continue on implementing the recommendations from the State Archivist's investigation.
- Further ministerial briefing notes will be prepared ~~on~~ relating to specific recommendations including priority amendments to the Act.

COMMUNICATIONS/MEDIA OPPORTUNITIES

- Not applicable.

Released under RTI - DCHDE

From: [Josephine Marsh](#)
To: [Mike Summerell](#); [QSA Office of the State Archivist](#)
Subject: RE: Progress on the recommendations
Date: Wednesday, 9 December 2020 9:42:33 AM
Attachments: [Bailey recommendations status.docx](#)
[image004.jpg](#)
[image005.jpg](#)
[image006.jpg](#)

These are the ones that don't relate to recommendations to the CCC about Bailey himself.

Let me know if you need more.

Josephine

From: Mike Summerell <Mike.SUMMERELL@archives.qld.gov.au>
Sent: Wednesday, 9 December 2020 9:30 AM
To: Josephine Marsh <Josephine.MARSH@archives.qld.gov.au>; [QSA Office of the State Archivist](#) <Officeofthe.StateArchivist@archives.qld.gov.au>
Subject: Progress on the recommendations

I know we have done this before....can you send me a summary of the progress on the recommendations made to CCC in the report....in a table perhaps. But what we have already is fine as need it ASAP

Mike

Mike Summerell

Executive Director & State Archivist
Queensland State Archives | Department of Communities, Housing and Digital Economy
435 Compton Road, Runcorn QLD 4113
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Status of recommendations from State Archivist's report

Recommendation	Status	Summary
<p>Recommendation 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.</p>	On hold/Closed	<p>Letters prepared but not approved for distribution by DHPW.</p>
<p>Recommendation 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.</p>	On hold/Closed	<p>Letters prepared but not approved for distribution by DHPW.</p>
<p>Recommendation 3: The State Archivist to issue new guidance for Ministers and their staff on the management of Ministerial records.</p>	Completed	<p><i>Ministerial Records Policy</i> for Ministers, Assistant Ministers and their staff published.</p> <p>Ministers and Assistant Ministers reminded of their recordkeeping responsibilities in letter from the State Archivist sent 19 December 2017.</p>
<p>Recommendation 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.</p>	Open	<p>Revised <i>Office of a Minister of the Crown and Parliamentary Secretaries Retention and Disposal Schedule</i> developed. Meetings with Ministerial Services have not progressed.</p>
<p>Recommendation 5: The Department of the Premier and Cabinet 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>	Open	<p>Following consultation with Department of Premier and Cabinet (DPC) QSA delivered training to approximately 250 ministerial staff on the management of ministerial records over multiple sessions on 30 January 2018 and 7 February 2018 by QSA.</p> <p>Ongoing recordkeeping advice is being provided to Ministerial Services by QSA.</p>
<p>Recommendation 6: The Department of the Premier and Cabinet to review and update the <i>Ministerial Handbook</i> and the <i>Information Security Policy</i> regarding the management of Ministerial records created or received within private email accounts or social media accounts to ensure compliance with State Archivist guidance.</p>	Completed	<p>Input into the review of the <i>Ministerial Handbook</i> and the <i>Ministerial Information Security Policy</i> provided to DPC by QSA. Updated documents published by DPC.</p>

Recommendation	Status	Summary
<p>Recommendation 7: 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. • 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. 	On hold/Closed	<p>The State Archivist did not receive approval by the Minister for Housing and Public Works, Minister for Digital Technology and Minister for Sport to proceed beyond project initiation phase for this recommendation.</p>
<p>Recommendation 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.</p>	Completed	<p>Public Service Commission released <i>Private Email Use Policy</i> in March 2018.</p> <p>Recordkeeping advice updated on QSA website in April 2018 in relation to management of public records within email, private email and social media accounts.</p>
<p>Recommendation 9: The State Archivist to issue new minimum standards for recordkeeping for all public authorities that replace <i>Information Standard 40: Recordkeeping and 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.</p>	Completed	<p>Release of <i>Records Governance Policy</i> in June 2018, replacing Information Standards 31 & 40. RGP issued by the State Archivist under the Queensland Government Chief Information Office Queensland Government Enterprise Architecture.</p>
<p>Recommendation 10: The State Archivist to develop an auditing regime to monitor compliance with the <i>Public Records Act 2002</i>.</p>	Open	<p>Recordkeeping Maturity Assessment Tool issued.</p> <p>Approval to conduct baseline Recordkeeping Survey of public authorities not given by DHPW.</p>

From: [MARSH Josephine](#)
To: [SUMMERELL Mike](#)
Cc: [QSA Office of the State Archivist](#)
Subject: RE: Report - case for reviewing Public Records Act
Date: Monday, 2 November 2020 12:31:32 PM
Attachments: [image001.jpg](#)
[Issues with current Public Records Act 2002 - for DG update.DOCX](#)

Additions made to the document – see below.

We have various documents on these issues including PRRC papers and the legal advice itself so let me know if you want these as well to draw from, I've added the highlights.

Let me know if I can add anything further to the document.

Josephine

From: SUMMERELL Mike <Mike.SUMMERELL@archives.qld.gov.au>
Sent: Monday, 2 November 2020 10:25 AM
To: MARSH Josephine <Josephine.MARSH@archives.qld.gov.au>
Cc: QSA Office of the State Archivist <Officeofthe.StateArchivist@archives.qld.gov.au>
Subject: Re: Report - case for reviewing Public Records Act

Can you add some commentary on (I say some as I have a lot of views on these)

Section 23 -

The statutory powers given and then seemingly taken away new paragraph added at the end of the document. Paraphrased from your commentary in response to the DG's legal advice

Contradictory advice Exempt Sch 3(7)

46-48 independence or not in investigations Added to paragraph on Enforcement of public authority compliance with the Act

56 - annual report - clearly seen as independent in 2nd reading but crown law advice in 2018

Exempt Sch 3(7)

Added at the end of the document

Power to prosecute- no mention in act at all. Crown law advice Exempt Sch 3(7)

Added to paragraph on Enforcement of public authority compliance with the Act

It useful to have something on these as well
Mike

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From: MARSH Josephine <Josephine.MARSH@archives.qld.gov.au>
Sent: Monday, November 2, 2020 9:51:55 AM
To: SUMMERELL Mike <Mike.SUMMERELL@archives.qld.gov.au>
Cc: QSA Office of the State Archivist <Officeofthe.StateArchivist@archives.qld.gov.au>
Subject: Report - case for reviewing Public Records Act

Hi Mike

As requested please find attached a report on all the current issues with the Public Records Act. I've written it as separate paragraphs to cover the relevant issues from all of the papers and briefs we have done over the years so you can add or subtract as you wish.

I think I've covered almost everything (it's quite a compelling argument when you see it in its entirety) but please let me know if there is anything you were expecting that isn't there or anything I can expand upon.

Thanks

Josephine

Josephine Marsh

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Customers first | Ideas into action | Unleash potential | Be courageous | Empower people | Healthy and safe workforce

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Issues with current *Public Records Act 2002*

Making and keeping records

Section 7(1)(a) of the *Public Records Act 2002* requires that a public authority must 'make and keep full and accurate records of its activities'. Under section 7(2) of the Act the Chief Executive Officer of each public authority is responsible and accountable for ensuring their public authority complies with this requirement. However, despite the mandatory direction of section 7(1)(a), there are no penalties that can be applied for failing to make and keep public records under the Act. One of the main purposes of the Act is for public records to be made, managed, kept and preserved. However the lack of penalty for not making records is inconsistent with the penalty that can be applied for the unlawful disposal of public records under section 13 (165 penalty points). It is anomalous that a public authority can be prosecuted for unlawfully disposing of public records under s.13 but will face no penalty if records are not created in the first place. This oversight risks damaging the integrity of public records across Queensland's public authorities.

There have been several examples where the failure to make and keep public records has been identified as a significant issue. Apart from the practical impact on the efficient operation of government, the failure to make and keep public records (whether deliberate or otherwise) has the real potential to impact people's lives. The Royal Commission into Institutional Responses to Child Sexual Abuse (RCIRCSA) recognised that inadequate records and recordkeeping practices contributed to delays or failures to identify and respond to risks and incidents of child sexual abuse. The problem was identified as continuing in present day institutions. A practical mechanism is required to enforce this section of the Act otherwise public authorities can openly fail in terms of making and keeping public records without repercussion.

The lack of a penalty applied to this section has been a factor in several investigations conducted by QSA including an investigation into the Queensland Building and Construction Commission which found:

'Section 7 (1) (a) states that a public authority must make and keep full and accurate records of its activities and section 7 (2) states that the executive officer of a public authority must ensure the public authority complies with subsection (1).

QBCC should have made and kept full and accurate records of its interactions with ^{Complainant} in the course of its business activities i.e. managing complaints against builders and contractors. While it is not expected that a public authority keeps records of every single interaction, during the course of investigating a complaint, records of decisions and actions taken should be made and kept as it is a business activity.

Keeping full and accurate records is a principle of the Records Governance Policy issued by the State Archivist under section 25 of the Act and which agencies are required to have regard to. All of the advice we publish relate to agencies keeping full and accurate (or complete and reliable) records including the advice 'What records do I need to keep?'

Section 7 of the Act also presents concerns when looked at in the local government context. Section 7(2) places the responsibility for compliance with the Act upon the chief executive of the public authority which in the case of local governments is the Chief Executive Officer. Local government councillors are required to make public records but Chief Executive Officers cannot direct councillors and councillors are not defined specifically as a public authority under the Act. If a councillor deliberately attempts to bypass legitimate and reasonable procedures put in place by the council and Chief Executive Officer, as was found in QSA's investigation of Logan City Council, it would be inappropriate for action to be taken against the CEO for the actions of councillors. This anomaly needs to be resolved as part of a review of the Act.

Non mandatory nature of policies, standards and guidelines

Section 7(1)(a) of the Act requires that a public authority 'must make and keep full and accurate records of its activities'. However, section 7(1)(b) of the Act only requires public authorities to 'have regard to' policies, standards and guidelines issued by the State Archivist. The term 'have regard to' means that public authorities must consider policies, standards and guidelines issued by the State Archivist when managing their records, but do not have to comply with them.

Policies, standards and guidelines issued by the State Archivist are developed to assist public authorities in meeting their legislative obligations. However, the inability to issue mandatory guidance related to the making and keeping of public records is a limitation of this section of the Act. The non-mandatory nature of the guidance could be considered a contributing factor to the poor standard of government recordkeeping in Queensland. In earlier drafting of the Act, the *Public Records Bill 1999* required public authorities to 'take all reasonable steps to comply with' any relevant policy, standards and guidelines issued by the Archivist.

The lack of a penalty applied to this section has been a factor in several investigations conducted by QSA including Minister Bailey, Logan City Council and the Queensland Building and Construction Commission.

Enforcement of public authority compliance with the Act

Several sections of the Act have penalty provisions applied but is silent on how breaches of legislative obligations should be enforced. As it currently stands, no entity is allocated any enforcement responsibility to prosecute breaches of the Act. Queensland State Archives currently has limited powers for monitoring compliance with the Act including the power to send authorised officers to enter an agency's premises and examine their recordkeeping procedures and records under sections 46-48 of the Act. QSA staff however cannot copy or remove records nor compel an agency's officers or staff to answer questions about recordkeeping. The Act is silent on which entity can bring about a prosecution in effect creating an offence under the Act but no mechanism or power to enact it.

More recently investigations under the Act have come under the remit of the Department of Housing and Public Works with complaints being referred to the Integrity Services Unit for consideration by the Corrupt Conduct Intake and Assessment Committee. The Committee assesses any complaints for potential corrupt conduct under the *Crime and Corruption Act 2001*. Current departmental

processes require any liaison with the Crime and Corruption Commission to be through the Assistant Director-General, Corporate Services. Correspondence with the CCC indicates that they regard the State Archivist having independence under the Act to undertake investigations and make recommendations about potential actions.

Action for non-compliance with the Act can only be taken under the *Justices Act 1886* which has its own set of limitations. For example, if it is suspected that a public record has been unlawfully disposed of under section 13, the offence is classified as a summary offence under the *Justices Act* which means any legal action must be taken within 12 months of the offence occurring. This raises difficulties when determining an exact date of the unlawful disposal and becoming aware of the offence within the 12-month period.

While section 7 of the Act does not itself impose criminal sanctions or penalties for a breach of the requirement to make and keep full and accurate records, section 7(1)(a) of the Act establishes a statutory duty which, when read in conjunction with section 204 of the *Queensland Criminal Code*, could potentially be interpreted as leading to the establishment of a criminal offence.

Section 204 of the Code establishes the offence of 'disobedience to statute law' which provides as follows:

'Any person who without lawful excuse, the proof of which lies on the person, does any act which the person is, by the provisions of any public statute in force in Queensland, forbidden to do, or omits to do any act which the person is, by the provisions of any such statute, required to do, is guilty of a misdemeanour, unless some mode of proceeding against the person for such disobedience is expressly provided by statute, and is intended to be exclusive of all other punishment. The offender is liable to imprisonment for 1 year.'

Section 7 of the Act includes an express statutory requirement which if not complied with could enliven the application of section 204 of the *Queensland Criminal Code*.

The lack of clear enforcement provisions under the Act have meant that while technical breaches of the Act may have occurred in several cases that have been investigated by the State Archivist, e.g. Logan City Council and Minister Bailey, no prosecutions for breaches of the Act have been instigated. The limitations of the *Public Records Act 2002* have played a significant role in the lack of prosecutions.

The current Act relies primarily on facilitation and persuasion techniques such as awareness raising and education, as well as monitoring (e.g. via self-assessment surveys) and independent dispute resolution (e.g. via the Public Records Review Committee). This model relies upon public authorities 'doing the right thing' due to the limited availability of enforcement mechanisms. QSA also reports on the state of recordkeeping in Queensland to Parliament (s.56 of the Act) but does not currently require the State Archivist to 'name and shame' public authorities that are not compliant with the requirements of the Act.

Statutory requirements of the Act with no penalty for non-compliance

In addition to section 7 of the Act, a number of other sections of the Act create statutory obligations but contain no penalty and therefore no avenue for prosecution for non-

compliance. Section 8 of the Act requires public authorities to ensure the safe custody and preservation of records in their possession which is a statutory obligation. There have been examples of technical breaches of this section uncovered during QSA investigations including Logan City Council where councillors retained public records in private messaging applications rather than transferring them to official council recordkeeping systems. As this section does not require a person to take a specific action rather a provision to generally ensure the safe custody and preservation of records, prosecution under other legislation such as the *Queensland Criminal Code* is unlikely.

Section 14 of the Act requires public authorities to ensure their public records remain accessible, with a specific focus on digital records or records that require particular equipment or technology to be produced or made available. In the case of Logan City Council, it could be argued that the actions of the councillors in deleting records from private messaging accounts before being captured in official council systems may have involved a failure to take reasonable action to ensure that the messages remained able to be produced or made available. Between the time the councillors deleted messages from their private messaging accounts to when they were recovered by the Crime and Corruption Commission, the records were clearly not accessible.

Although section 14 of the Act provides a statutory direction that agencies '*must take all reasonable action to ensure information is able to be produced or made available*', for the purposes of other legislation such as the Criminal Code, '*reasonable action*' is not sufficiently clear to be able to establish that a breach of this section occurred.

By failing to adhere to the requirements of these sections of the Act, public authorities put at risk the integrity of public records which may lead to the loss or destruction of public records.

Disposal of public records in a digital context

Schedule 2 of the Act defines the definition of disposal of a record to include destroying or damaging a record, or part of it or abandoning, transferring, donating, giving away or selling a record, or part of it. Section 13 of the Act sets out the conditions for the disposal of public records to include authorisation of the State Archivist or other legal authority, justification or excuse. In a digital context, this definition of disposal is inadequate as just about any digital record can be forensically recovered which means records are never really destroyed. In the digital world, there is rarely only one record as copies are held on backup servers and multiple copies of the same record held in different locations. This then is at odds with how disposal is described in the Act.

Another issue not considered by the Act is the 'intent' to destroy public records. In a digital environment, a person may intend to destroy digital public records but they can often be recovered (potentially at great expense). Under the current Act, the intent to deliberately destroy records is not a consideration while records can be recovered. However, under section 129 of the *Criminal Code Act 1899*, however a maximum penalty of 7 years imprisonment applies for the damaging evidence with intent.

The ability to recover digital records was an issue in QSA investigations relating to Minister Bailey and Logan City Council which both involved the deletion of public records in private email accounts or messaging apps. In both cases the records were recovered by the Crime and Corruption Commission as part of their investigations which negated the disposal of the records by the individuals involved. In the case of Minister Bailey, the CCC concluded that as the emails had not permanently been deleted due to their recovery, it would be difficult to prove beyond reasonable doubt that a breach of section s.13 had occurred.

Transfer of public records not mandatory

The transfer of permanent value records to QSA helps to ensure that records of an historical or cultural nature are appropriately protected, securely stored and accessible to the public. The Act does not mandate the transfer of records by public authorities to QSA instead relying on public authorities to decide when records are transferred with QSA's agreement. The Act only provides for the transfer of public records more than 25 years old under section 10. This may be appropriate for records in stable formats such as paper or microfilm but can be problematic for records in less stable formats such as digital and audio visual records. Technological obsolescence means these types of records can deteriorate or become unreadable after a few years due to the speed of technology advances. Waiting too long for digital records may mean that it is too late to ensure the ongoing useability and integrity of the records. The lack of mandatory transfers also means that public authorities can refuse to transfer records to QSA and keep them within their own agencies or communities. This lack of access to a wider audience limits the available of records to all Queenslanders.

Management of Ministerial records

The Act is ambiguous about the management of public records of former Ministers. Under the Act, Ministers and Assistant Ministers are identified as public authorities for the purposes of the Act. However this only applies while a Minister or Assistant Minister remains in office. Once a Minister or Assistant Minister leaves office they are no longer a public authority. In effect means there is no entity identified that can make decisions about access to or the disposal of Ministerial records in QSA's custody. The impact of this means access to Ministerial records held at QSA can only be applied for under Right to Information and Privacy legislation. This includes former Ministers accessing records they created while in office. It also means temporary value Ministerial records held at QSA cannot be destroyed and remain available for access under the above legislation even though former Ministers may have expected them to have been destroyed.

Changes in legislation impacting on recordkeeping

A range of legislative obligations with recordkeeping implications have been introduced over the past 12 – 24 months. Most notably, these include the introduction of the *Human Rights Act 2019* and legislative amendments made in response to recommendations from the Royal Commission into Institutional Responses to Child Sexual Abuse. The new and amended legislative obligations emphasise the importance of good recordkeeping and keeping complete and reliable records that provide evidence that public authorities have taken all reasonable steps to ensure the

proactive protection of vulnerable persons. This includes the introduction of a 'reverse-onus' on institutions to prove that they took all reasonable steps to prevent abuse; removal of limitation periods in relation to commencing action for civil damages in relation to child sexual abuse; records that demonstrate that acts or decisions are made in a way that is compatible with human rights; and providing a positive human right for access to government information. The changes in legislation highlight and strengthen the importance for the need for good recordkeeping in public authorities and the need for the Act to reflect this level of importance. In its current form, the Act is powerless to deliver on the expectations established by these legislative amendments.

Why the Public Records Act was developed

The Archives in Queensland commenced regulatory life under iterations of the *Libraries Act* from 1943 and then *The Libraries and Archives Act 1988*. It wasn't until 2002 when the archives were established under standalone legislation following key Queensland reviews that looked at corruption, the archival legislation and freedom of information.

As a result of the Fitzgerald Inquiry (the Inquiry into Possible Illegal Activities and Associated Police Misconduct) the proper protection and preservation of public records was determined as a matter that related to honesty, impartiality and efficiency in the public administration of the State.

The Electoral and Administrative Review Commission (EARC) was established as a result of the Fitzgerald Inquiry to achieve and maintain efficiency in the operation of the Parliament; and honesty, impartiality and efficiency in (i) elections;(ii) public administration of the State and (iii) Local Authority Administration. The EARC reviews of Freedom of Information Legislation and the Queensland Legislative Assembly Electoral System, determined that there needed to be a review of the archives legislation and the administrative practices and resources of QSA and deemed that the powers, practices and procedures of the Queensland State Archives were important matters.

EARC released their Review on Archives Legislation in June 1992. The Review recommended there should be specific archives legislation to provide for the establishment of an independent archives authority, with this authority to be constituted as a statutory corporation and independent agency within a ministerial portfolio. The archives legislation was to provide that the Archives Authority not be subject to external direction, whether ministerial or otherwise. Changes as part of the drafting and review process that led to the *Public Records Act 2002* meant that Queensland State Archives was not established as an independent archives authority but did retain the provision that the State Archivist is not subject to external direction in decisions relating to the disposal of public records.

Critical role archives play

Australia, as a member state of UNESCO, supported and adopted the implementation of the Universal Declaration on Archives in September 2010. The Declaration states:

“Archives record decisions, actions and memories. Archives are a unique and irreplaceable heritage passed from one generation to another. Archives are managed from creation to preserve their value and meaning. They are authoritative sources of information underpinning accountable and transparent administrative actions. They play an essential role in the development of societies by safeguarding and contributing to individual and community memory. Open access to archives enriches our knowledge of human society, promotes democracy, protects citizens’ rights and enhances the quality of life.

Public records form the cornerstone of government accountability. Good records support effective business practice and improve government accountability and efficiency as records provide unique evidence and context of the actions and decisions taken by government over time. Records are central to the government’s ability to efficiently and effectively provide goods and services, protect the community, and demonstrate delivery on its commitments.

Government archives play a leading role in enabling good government recordkeeping through the issuing of standards, policies, guidelines and by providing oversight (if not enforcement) of government recordkeeping. It is a widely recognised belief in Australia that there is a need for government archives and records authorities to perform their role free from the perceptions, or the reality, of political or bureaucratic interference.

NAA is the Commonwealth Institution that sets the records management policy and standards that must be met by Commonwealth Government agencies in the creation, retention, maintaining, preservation and disposal of government records. NAA states *“that this is to ensure the authentic and essential records – including data in digital form – are created, received, secured and maintained, and preserved as the authentic evidence and memory of Government activity and decisions, remaining accessible and re-usable, now and in the future. The preservation and accessibility of authentic government records is necessary for the administrative accountability, integrity and transparency of our representative democracy.*

Support for review of the Public Records Act 2002

Since 2015, the State Archivist has campaigned for a review of the *Public Records Act 2002*. This has included both a full review and also for the introduction of several priority amendments. The then Minister for Housing and Public Works and Minister for Science and Innovation, Leanne Enoch, approved a review of the *Public Records Act 2002* on 12 April 2015.

The 2017 investigation into allegations of unauthorised disposal of public records and breaches of the *Public Records Act 2002* by Minister Mark Bailey highlighted several of the deficiencies of the Public Records Act that the State Archivist had been wanting to address. For example, the investigation found that several technical breaches of the Act had taken place but because of the restoration of records from Minister Bailey’s private email accounts, prosecution under the Act was unlikely.

Following the review, the State Archivist made the following recommendations in relation to the *Public Records Act 2002*:

- An urgent amendment of the Act to include a requirement that all public authorities must comply with mandatory guidelines issued by the State Archivist
- An urgent amendment of the Act to include a requirement that all public authorities must ensure public records created or received in private email and social media accounts are forwarded to official systems within 20 days of creation or transmission or the inclusion of this requirement as a mandatory guideline

The CCC in their response supported all of the recommendations made by the State Archivist including the two outlined above. However despite repeated attempts to progress either a full review of the Act or the introduction of priority legislative amendments, the review has not progressed as it has not been regarded as a government priority.

Baseline recordkeeping survey

Under the Act, public authorities are required to make and keep full and accurate records of their activities and have regard to the recordkeeping standards, policies and guidelines issued by the State Archivist. From 2009 to 2015, Queensland State Archives monitored agency compliance with the Act against *Information Standard 40: Recordkeeping* and *Information Standard 31: Retention and Disposal of Public Records*. In June 2018, the information standards were repealed and replaced by the *Records Governance Policy*.

QSA's previous survey monitoring revealed that levels of recordkeeping compliance had been demonstrably poor, with the 2014-15 survey revealing that 85 per cent of public authorities did not meet the minimum standard of records management practice that QSA deemed appropriate. Despite the efforts of QSA to improve recordkeeping since the introduction of the Act in 2002, compliance levels were only 15%.

In November 2017, QSA launched its 'Recordkeeping Transformation Program' to improve the standard of records and information management across government. A baseline survey was proposed to measure public authorities' recordkeeping maturity against the simplified requirements of the *Records Governance Policy* and support Queensland public authorities in lifting their digital recordkeeping maturity. The first Survey was designed to establish a baseline level of compliance against the Policy and be repeated annually to measure recordkeeping maturity over time.

The survey was initially planned for release in 2018 but has not been able to be progressed.

Recordkeeping failures

Successful open government relies on sound recordkeeping practices to support public accountability and transparency. Under the Act, Queensland public authorities

are required to manage public records responsibly to ensure that information is complete, reliable, accessible, and usable for as long as they are needed.

Through an examination of 202 reports tabled between 2013 and 2020 by the Queensland Audit Office, the Queensland Ombudsman, the Office of the Information Commissioner and the Crime and Corruption Commission, QSA has noted many cases of poor recordkeeping practices within government departments and public authorities within its jurisdiction.

Recordkeeping issues were identified in 82 of the 202 reports. Specific issues include:

- ineffective recordkeeping practices (e.g. procedures; policies; workplace culture)
- decentralised records management systems
- systems and technology limitations (e.g. maintenance; security, capability, automation)
- inadequate recordkeeping training / awareness
- falsified / fabricated records.

Forty-two Acts of Parliament were acknowledged as having been impacted in some ways due to recordkeeping issues in the 2019/20 period.

There have been high profile cases where the failure to make and keep public records has been identified as a significant issue. The Royal Commission into Institutional Responses to Child Sexual Abuse found that the impact of poor recordkeeping added to the trauma associated with childhood abuse. Bob Atkinson AO APM who was a Commissioner of the Royal Commission wrote in his forward to QSA's *Guideline on creating and keeping records for the proactive protection of vulnerable persons*:

'Throughout the Royal Commission into Institutional Response to Child Sexual Abuse (the Royal Commission), I heard first hand from many people with lived experience of institutional child sexual abuse about the associated impact recordkeeping had on their lives.

The past recordkeeping practices of many organisations failed the children in their care. For many institutions, records did not exist, were incomplete or were inaccurate and insensitive. Some records were deliberately destroyed or otherwise withheld from authorities.

It was common for an institution to approach recordkeeping from its own perspective, often to protect its reputation, its finances and its personnel.

We found during the Royal Commission that the impact of poor recordkeeping can add to the trauma associated with childhood abuse. We heard of the distress and frustration experienced when people received files about them that contained limited, inaccurate and inappropriate information.

There is no doubt recordkeeping has greatly improved over the years. Contemporary organisations accept that recordkeeping is an important element of institutional leadership and culture as well as transparent and accountable governance.

Importantly, full, accurate and sensitive records have the potential to support people with lived experience and alleviate the lifelong impact of child sexual abuse.'

In March 2020, a coronial inquest was conducted into the death of 22-month old Mason Jet Lee in 2016. The Coroner's report published in June 2020 details numerous incidents involving poor recordkeeping which contributed to the eventual death of the toddler.

Public perception

The majority of identified weaknesses in the Act are not in the public domain with the exception of support from the CCC for amendments to the Act following the investigation into Minister Bailey. There has been an increase in complaints to the State Archivist about alleged unlawful disposal of public records since the public visibility of the Minister Bailey investigation. The public's perception is that the State Archivist has powers under the Act to investigate alleged offences, that offences apply to the disposal of records as well as their non creation under the Act and that prosecution by the State Archivist is possible. In reality this is inaccurate with the State Archivist having limited investigatory powers and no ability to prosecute under the Act. Legal advice over the years has supported this view.

Independence of the State Archivist

Section 24 of the Act details the statutory functions of the State Archivist:

- a) To develop and promote efficient and effective methods, procedures and systems for making, managing, keeping, storing, disposing of, preserving and using public records;
- b) To identify public records of enduring value and require that they be retained in a useable form, whether or not the records are in the custody of the archives;
- c) To make decisions about the disposal of public records;
- d) To manage, keep and preserve records for public authorities and other entities;
- e) To provide public access to public records
- f) To conduct research and give advice about the making, managing, keeping and preserving of public records;
- g) To perform another function given to the archivist under this or another Act;
- h) To do anything else – incidental, complementary or helpful to the archivist's other functions; or likely to enhance the effective and efficient performance of the archivist's other functions.

Section 25 of the Act details the statutory powers of the State Archivist:

- a) To establish and manage repositories and other facilities to store, preserve, exhibit and make available for use public records and other materials;
- b) To copy public records and other materials;
- c) To publish public records and other materials;
- d) To acquire records by purchase, gift, bequest or loan;
- e) To authorise the disposal of particular public records or classes of public records;
- f) To make policy, standards and guidelines about the making, keeping, preserving, managing and disposing of public records.

Section 27 of the Act details specific directions around the independence of the State Archivist in relation to disposal decisions, specifically:

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

Section 23 of the Act complicates this however by stating:

'Subject to the Minister and the chief executive, the archivist is to control the archives.'

Since 2002 the State Archivist has operated with an assumption of independence in regard to all the statutory functions and powers noted in the Act. This practice is consistent with the operation of archival institutions within Australia and New Zealand.

Crown Law advice

Exempt Sch 3(7)

The wording of the Act, section 23 in particular, relating to direction and control is problematic. It is however:

- Inconsistent with practices across all archives in Australia and New Zealand,
- Potentially inconsistent with the intent of the Act itself, as the independence of the State Archivist was apparently a major consideration during the development and passing of the Act

• Exempt Sch 3(7)

The contradictions within the Act, in particular S23 relating to direction and control, led to the State Archivist seeking the advice of the Integrity Commissioner in October 2017 in regard to attempts to change the content of a report on the investigation. The State Archivist sought advice relating to the potential conflict of following the direction of the Director-General versus his statutory obligations.

Advice provided by the Integrity Commissioner included:

Act does not apply Schedule 1

The perception, valid or not, that Cabinet, the Minister or a Director-General is trying to avoid or manipulate recordkeeping obligations in ways that could undermine the integrity of the public record and levels of public trust in government is the biggest concern Exempt Sch 3(7)

The argument in favour of maintaining the State Archivist's operational independence relates to the need to minimise, if not eliminate, the possibility or perception that executive government might try to hide evidence of corruption or maladministration by avoiding or manipulating its recordkeeping responsibilities. Trust in government depends on there being confidence in the completeness and integrity of the public record. Therefore any suggestion that the public record may be manipulated will undermine trust in government. Whilst it would be completely unfair to suggest that the current government has at any time sought to interfere or manipulate in this way,

Exempt Sch 3(7)

The requirement for the State Archivist's non mandatory guidance to be approved by Cabinet, Minister or Director-General would significantly increase bureaucracy in all areas. It would significantly add time and expense to processes that would risk a scenario where such processes could grind to a practical halt. There are multiple occasions where it is imperative that guidance is issued quickly, a process requiring multiple approvals has potential to cause significant delays and impacts as a result of these delays. Given that QSA guidance is not mandatory under the Act, the need for higher approvals seems frankly ridiculous.

QSA guidance has and always will be mindful of, and consistent, with government policy. Existing consultation processes that are built into QSA's procedures for developing its recordkeeping policies, standards and guidance are designed to ensure alignment and consistency with government policies and the Act. QSA undertakes extensive consultation already with key stakeholders such as departments and Ministerial offices where relevant when issuing guidance.

The great strength of the current process is that whilst consultation occurs the overriding priority for the State Archivist is to fulfil his key responsibilities under the Act "to ensure that 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 this Act is consistent with the principles of the Right to Information Act 2009.”

A change where the priority becomes ensuring the guidance is acceptable to the Minister and Cabinet rather than what is best for maintaining the public record in Queensland is a fundamental betrayal of the purpose of the Act.

Annual report

Under section 56 of the Act, the State Archivist is to give an annual report on the administration of the Act. The report may include details of the extent to which public authorities are complying with the Act including for example instances of non-compliance and any measures taken or the State Archivist recommends be taken to prevent or reduce noncompliance with the Act.

The Department of Housing & Public Works (DHPW) directed the State Archivist to remove certain content from the 2017-18 Annual report that related to the administration of the Public Records Act and key activities undertaken during the year. In October 2019, the State Archivist was again directed to remove content from his statement in the Annual report that related to the administration of the Act, investigations and the need for amendments to the Public Records Act that were impacting the ability to undertake his role.

The State Archivist stated this he was unwilling to remove the content that related to issues of non-compliance or recommendations to improve compliance with the Act. It was agreed that rather than amend the State Archivist’s statement that it be removed entirely. The State Archivist’s view was that it was more appropriate to say nothing at all than to issue something misleading or distorting.

The Annual Report 2018-2019 contains no statement at all from the State Archivist relating to compliance with Act, instances of non compliance and actions recommended to prevent or reduce non-compliance with the Act, despite the desire to do so.

The State Archivist has significant concerns that DHPW are potentially in breach of the Act by directing him on the content of the Annual report and in particular to remove content directly related to the administration of the Act. In addition, the State Archivist’s view is that the content being removed is motivated by political considerations and is thus a potential breach of the QPS Code of Conduct. The public perception of the removal of this content is of significant concern in terms of the reputation of the office of the State Archivist.

Crown Law legal advice Exempt Sch 3(7)

Great care should be taken in directing a public servant to exclude matters in a report required to be provided under any legislation and tabled in Parliament.

In previous years the report has been used as a mechanism to draw attention to the lack of compliance with the Act by public authorities and areas of concern with the Act that need addressing. The need for a review of the Act was first flagged in the 2014/15 annual report.

Released under RTI - DCHDE

Pages 209 through 260 redacted for the following reasons:

Duplicate Documents
Exempt Sch 3(7)

Released under RTI - DCHDE