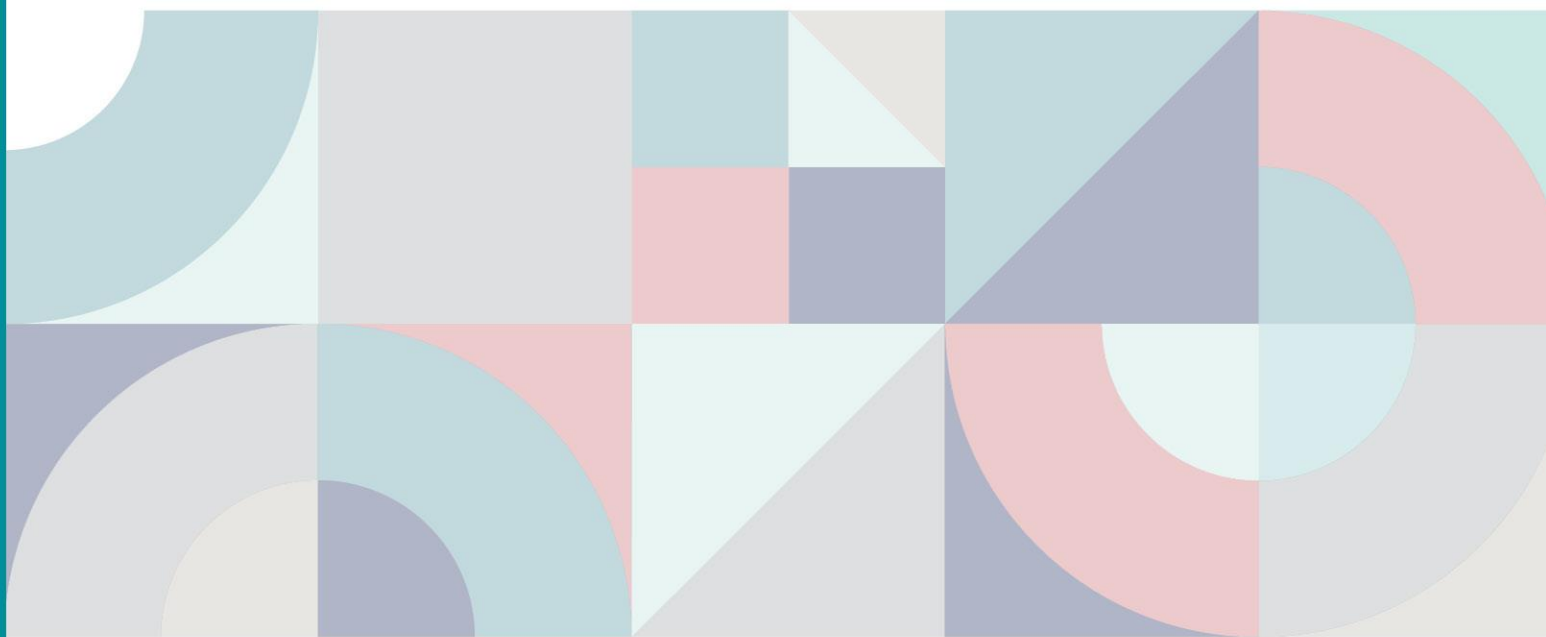


# Report of review of the Public Records Act 2002

31 August 2022



## **Copyright**

© State of Queensland (Department of Communities, Housing and Digital Economy) 2022.

Published by the Queensland Government, Department of Communities, Housing and Digital Economy, 1 William Street, Brisbane Qld 4000, Australia.

## **Licence**

This work is licensed under the Creative Commons CC BY 4.0 Australia Licence.

You are free to copy, communicate and adapt this publication, as long as you attribute appropriately, including:

- a) The name of the publication '*Report of the Review of the Public Records Act 2002*'
- b) A link to the work if you have it online
- c) The copyright licence statement above
- d) Indicate if you have made changes to the work.

You must keep intact any and all copyright notices in the works as indicated by the symbol ©.

To view a copy of this licence, visit <http://creativecommons.org/licenses/by/4.0/>



## Letter of transmittal

Ms Clare O'Connor  
Director-General  
Department of Communities, Housing and Digital Economy  
Level 33, 1 William Street  
Brisbane QLD 4001

By email – [Clare.O'Connor@chde.qld.gov.au](mailto:Clare.O'Connor@chde.qld.gov.au)

Dear Ms O'Connor,

### **Report of review of the Public Records Act 2002**

I am pleased to provide the report of the Review of the *Public Records Act 2002*.

Yours sincerely

John H Byrne AO RFD  
Chair, Public Records Act Review Panel

## Contents

Letter of transmittal .....	3
Contents .....	4
Acknowledgement of Country .....	7
Executive summary .....	7
Review recommendations .....	8
Part A: Recommendations for legislative reform .....	8
Part B: Recommendations for operational improvement .....	11
Introduction .....	12
Establishment of this review .....	12
Terms of reference .....	12
The Panel .....	12
The Act .....	12
Public authorities regulated by the Act .....	13
State Archivist and the Archives .....	14
Consultation .....	14
Methodology .....	14
Consultation activity summary .....	15
Consultation challenges .....	15
Consultation themes .....	16
Key insights .....	18
Other reviews, reports and government policies .....	18
Foundations for this review .....	19
Public records matter .....	19
Records management in government .....	20
Practical impact of records management .....	20
Drivers for change in records management .....	20
Revising the purposes of the Act .....	22
Purposes clause .....	22
Inclusion of First Nations peoples .....	24
Past and present .....	24
QSA operational initiatives .....	25
Sovereignty, governance and intellectual property .....	25
Consultation .....	26
Legislative changes .....	26
First Nations voices – Amending the Act .....	27
Digital transformation .....	29

Digital data, information and records – assets to be managed .....	29
Digital management - contested space .....	30
Practicalities .....	31
Defining – record and public record .....	31
Ability to compel transfer of public records.....	34
Implementation of the Act .....	36
Promoting compliance .....	36
Monitor, audit and report.....	36
Education .....	37
Sanctions .....	38
Investigations.....	40
Records responsibilities.....	42
Taking account of the Archivist’s prescriptions.....	42
Standards – directory or mandatory? .....	42
Outsourcing and third-party agreements.....	45
Access .....	46
Restrictive access regime .....	47
Alignment of access provisions .....	47
Provision to challenge access decisions .....	48
Role of State Archivist.....	50
Ministerial and chief executive control.....	50
Independence of the State Archivist.....	50
Ministerial supervision .....	52
Chief executive control .....	53
Public Records Review Committee .....	53
Functions .....	53
Membership and meetings .....	54
Change in composition? .....	54
Additional function.....	54
Regulatory effectiveness and efficiencies.....	55
Retention and disposal of records .....	55
Implications.....	55
Third party storage of physical records .....	56
Notification by gazette .....	56
Ministerial records .....	57
Change of Custody .....	57
Access to ministerial records .....	58
Councillor records.....	59
Alignment with RTI Act and IP Act .....	60
Savings and efficiencies.....	61

Recommendation: Whole-of-government strategy.....	61
Gains.....	61
Recommendation: Policies, standards and guidelines.....	62
Gains.....	62
Recommendation: Protection through transfer.....	63
Gains.....	63
Addressing low rates of disposal.....	63
Gains.....	63
Recommendation: Digitisation.....	63
Gains.....	64
Recommendation: Notification by gazette.....	64
Gains.....	64
Appendix A: Terms of reference .....	65
Terms of reference for this review .....	65
Background .....	65
Scope.....	65
Timeframe.....	66
Appendix B: Panel biographies.....	67
Appendix C: Key concepts and terms.....	69
Public authorities .....	69
Establishment of the Archivist and QSA.....	70
Key requirements of the Act .....	71
Appendix D: Other reviews and reports .....	72
Appendix E: Appealing a decision to refuse access to records in QSA's custody .....	73
Appendix F: Glossary .....	74

## Acknowledgement of Country

The Review acknowledges Aboriginal and Torres Strait Islander peoples as the traditional custodians of country throughout Queensland. We recognise it is our collective efforts, and responsibility as individuals, communities and governments to ensure equality and advancement of First Nations peoples and cultures. We pay our respects to Elders past, present and those of the future who will inherit the legacy of our efforts.

## Executive summary

The *Public Records Act 2002* (the Act) makes no reference to First Nations peoples. It should. In nature, content and extent, the public records relating to First Nations peoples are different. And access to the state's records about First Nations peoples matters to them. Recognition in the Act makes sense. Giving First Nations peoples a voice in the implementation of the Act advances the common good. The Review's recommendations are founded on those ideas.

In the two decades since the Act was introduced, systems and practices to manage records have been challenged by technological advances as well as by the scale and complexity of data and information made and kept. Expectations of the public sector have grown too: relevantly, in gaining access to information and in securing integrity and accountability. Good public records are vital in advancing those interests. They are critical to the efficient, effective conduct of business and the delivery of services. And they preserve collective memory.

To address such concerns, to accommodate the digital reality and to take full advantage of the opportunities it presents, the Act needs revision. The changes proposed are not ground-breaking: largely, they adopt terminology and ideas already found in other Australian legislation.

To improve operations, some administrative arrangements implementing the Act merit reconsideration.

About 500 public authorities are regulated by the Act. They differ greatly in size, resources, activities, location and goals. That diversity has been kept in mind in formulating the recommendations.

## Review recommendations

### Part A: Recommendations for legislative reform

#### New purposes

1. There be additions to the main purposes stated in Part 1 of the *Public Records Act 2002* to acknowledge:
  - a. the value of Queensland's public records:
    - i. to economic development, innovation and research
    - ii. to good government
    - iii. in sustaining the integrity and accountability of public authorities
    - iv. in supporting the rights of the people of Queensland, and
    - v. in preserving the history of Queensland.
  - b. the importance of public records for First Nations peoples (see Recommendation 3).

#### First Nations

2. In implementing the government's commitment to the Path to Treaty process, or otherwise, consideration:
  - a. be given to new legislation that would afford due recognition to the special interests and needs of First Nations peoples in relation to Queensland's public records.
  - b. include evaluation of any potential for concepts of Indigenous Data Sovereignty, Indigenous Data Governance and Indigenous Cultural and Intellectual Property to contribute to meeting those special needs and interests.
3. There be added to the main purposes expressed in Part 1 of the *Public Records Act 2002* a statement of the importance to First Nations peoples of the state's public records and ready access to them, in particular in supporting rights and entitlements, in connection with culture and community and in relation to reconciliation.
4. The *Public Records Act 2002* be amended to provide that:
  - a. two of the nine members of the Public Records Review Committee be First Nations persons with relevant expertise or experience
  - b. those additional members be nominated by the minister administering the *Aboriginal Cultural Heritage Act 2003* and the *Torres Strait Islander Cultural Heritage Act 2003* or by another minister.
5. Consideration be given to amending the *Public Records Act 2002* to establish an advisory group comprised of First Nations persons to consult with the State Archivist concerning records held by Queensland State Archives relating to First Nations peoples.

#### Digital transformation

6.
  - a. The definition of 'record' in the *Public Records Act 2002* be replaced with words needed to accommodate the exigencies of dealing with digital material.
  - b. The new definition be along these lines:

*Record means information and data, recorded in any medium, that is created or received by an entity in the transaction of business or the conduct of affairs that provides evidence of the business or affairs and includes- anything compiled, recorded or stored, by any means in any form, that is capable of being communicated, analysed or processed whether by a person, a computer or other electronic means.*



### Protection through transfer

7. In the interest of preserving public records from loss or damage, the State Archivist be empowered, by amendment of the *Public Records Act 2002*, to direct any public authority to transfer to Queensland State Archives a public record that is in the authority's possession or power.

### Monitor, audit and report

8. The *Public Records Act 2002* be amended to add, as functions of the State Archivist, to monitor, audit and report on compliance with the *Public Records Act 2002*.

### Education

9. Section s 24(f) of the *Public Records Act 2002* be amended to add, after 'advice,' the words 'assistance and training'.

### Sanctions

10. The time limit for prosecution of a contravention of s 13 of the *Public Records Act 2002* (unlawful disposal) be increased from one year to three.
11. An offence of unlawful attempted disposal be introduced.
12. The definition of 'disposal' in the schedule 2 Dictionary (paragraph a) be amended by adding 'altering' and 'deleting'.

### Investigation

13.
  - a. The investigative functions which Divisions 1 and 2 of Part 4 of the *Public Records Act 2002* sustain be given to another agency and those two Divisions repealed.
  - b. If that be done, the *Public Records Act 2002* be amended to authorise the State Archivist to:
    - i. report compliance concerns to the investigative agency and to the minister administering the Act, and
    - ii. assist that agency in exercising its functions in relation to public records.

### Policies, standards and guidelines

14. The *Public Records Act 2002* be amended to empower the State Archivist to promulgate records management standards with which public authorities regulated by the *Public Records Act 2002* must comply.

### Access

15. The *Public Records Act 2002* be amended to make public records accessible to the public according to the following:
  - a. A public record transferred to Queensland State Archives is to be accessible at the time of transfer unless the public record contains information which under the *Right to Information Act 2009* or *Information Privacy Act 2009* would be 'Exempt information' as defined in the *Right to Information Act* or contrary to the public interest or have access restricted under another law.
  - b. If access to the public record is to be restricted, the responsible public authority must set a restricted access period.
  - c. In fixing the duration of the restricted access period, the responsible public authority:
    - i. should be pro-disclosure, restricting access only for as long as giving access to the record would, on balance, be contrary to the public interest.
    - ii. is to have regard to:
      - the *Human Rights Act 2019*, and
      - the needs and interests of any affected First Nations persons.

- d. The *Public Records Act 2002* authorise the making of regulations, including with respect to the operation and duration of restricted access periods.
- e. The *Public Records Act 2002* provide a mechanism for challenging a refusal of access to public records in the custody of Queensland State Archives.

### Supervision

16.

- a. The State Archivist remain generally subject to direction by the Minister.
- b. Section 27 of the *Public Records Act 2002* be retained to preserve the independence of the State Archivist in respect of a disposal decision.
- c. The same degree of independence be put in place through amendment to the *Public Records Act 2002* in respect of:
  - i. So much of the annual report to the Minister (required by s 56 of the *Public Records Act 2002*) as relates to compliance by public authorities with their responsibilities in relation to the *Public Records Act 2002*, and
  - ii. A decision in respect of access to the records of a former minister after a change of government (if access in those circumstances is to be decided by the State Archivist).

17. The Act be amended to provide that a ministerial direction in relation to the State Archivist's performance of a function or the exercise of a power conferred by the *Public Records Act 2002* be:

- a. in writing
- b. not inconsistent with the *Public Records Act 2002*, and
- c. included in the State Archivist's annual report pursuant to s 56 of the *Public Records Act 2002*.

18. The State Archivist be subject to the direction of the chief executive of the department administering Queensland State Archives except in respect of the performance of functions and in the exercise of powers conferred by the *Public Records Act 2002*, and the *Public Records Act 2002* be amended accordingly.

### Public Records Review Committee

19. If the State Archivist is to decide on applications for access to ministerial records, the *Public Records Act 2002* be amended to provide for a right of appeal against the State Archivist's decision to the Public Records Review Committee.

### Notification by gazette

20. The process for notification of the selected public authority referred to in s 8(3)(b) and s 15(d) of the *Public Records Act 2002* be changed to publication in the *Queensland Government Gazette*.

### Local government councillors

- 21. The definition of 'public authority' in the schedule 2 Dictionary be amended to add local government councillors.
- 22. A definition of 'record of a councillor' be added in the Dictionary to exclude a record related to a councillor's 'personal or party political activities'.
- 23. Consequential changes be made to the *Public Records Act 2002*, including to add:
  - a. a definition for a record of a councillor in the schedule 2 Dictionary, and
  - b. a 'record of a councillor' to the definition of public record in s 6.

## Part B: Recommendations for operational improvement

### Whole-of-government strategy

24.
  - a. The government adopt a cohesive approach to the management of its public data, information and records as a valuable and inter-connected asset.
  - b. In doing so, consideration be given to clarification of roles and accountability for management of data, information and records.
  - c. The State Archivist be requested to provide advice on the selection and implementation of business ICT solutions from a records and information management perspective.

### Digitisation

25. To investigate savings that might be achieved, the State Archivist be requested to prepare a plan, for the government's consideration, to address:
  - a. legacy physical records, and
  - b. opportunities for digitisation of public records which are not already stored in digital form.

### Ministerial records

26. The difficulties that attend the transfer of 'ministerial records' on a change of government and otherwise in connection with the operation of s 8 of the *Public Records Act 2002* be addressed by government.

### Alignment with Right to Information and Information Privacy Acts

27. The alignment of definitions and concepts in the *Public Records Act 2002* with similar provisions in the *Right to Information Act 2009* and the *Information Privacy Act 2009*, including with respect to the practice of outsourcing, be addressed after completion of the review now being conducted concerning those Acts.

## Introduction

### Establishment of this review

On 27 May 2022, The Honourable Leeanne Enoch MP, Minister for Communities and Housing, Minister for Digital Economy and Minister for the Arts (the Minister), announced a review (the Review) into the *Public Records Act 2002*. The Minister stated that the Review will make ‘...sure our legislation is up to date will give Queenslanders’ confidence in robust public records management practices.’<sup>1</sup> There were a number of drivers for the Review, including public interest, technology changes and the government’s commitment to Path to Treaty.<sup>2</sup>

### Terms of reference

The *Terms of reference for the review of the Public Records Act 2002* (the Terms of reference) for the Review can be found in [Appendix A](#).

### The Panel

The Review was conducted by a panel, chaired by The Honourable John H Byrne AO RFD and including Professor Bronwyn Fredericks, Mr David Fricker CdOAL GAICD, Adjunct Professor Linda O’Brien and Dr Katie McConnel. Their biographies can be found in [Appendix B](#).

### The Act

The *Public Records Act 2002* (the Act) is the primary records management legislation in Queensland. The Act establishes a comprehensive regime for the management of public records. It applies to a wide range of agencies, referred to in the Act as ‘public authorities’. The records created and received by public authorities are referred to in the Act as ‘public records’.

The main purposes of the Act are to ensure that:<sup>3</sup>

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

For further information on the key concepts and terms in this report, see [Appendix C](#).

---

<sup>1</sup> Minister for Communities and Housing, Minister for Digital Economy and Minister for the Arts (Qld), ‘[Review to strengthen government recordkeeping](#)’ (Ministerial media statement, 27 May 2022).

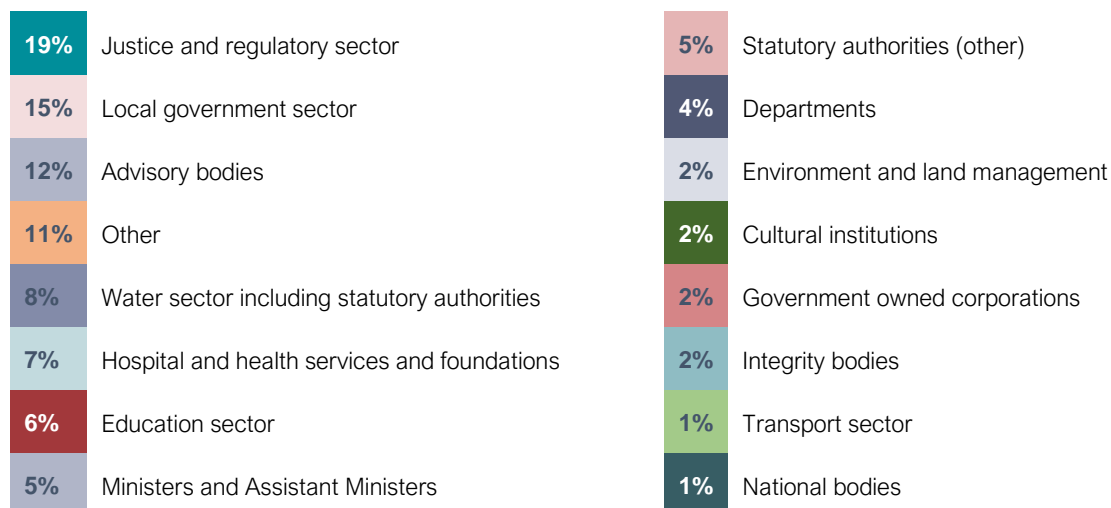
<sup>2</sup> Department of Aboriginal and Torres Strait Islander Partnerships, [Queensland Government Treaty Statement of Commitment and response to recommendations of the Eminent Panel](#) (Statement, August 2020). Since the Review commenced, the government has reaffirmed its commitment and accepted all recommendations from the Treaty Advancement Committee: [Queensland Government Response to the Treaty Advancement Committee Report](#) (Report, August 2022).

<sup>3</sup> [Public Records Act 2002](#) (Qld) s 3.

## Public authorities regulated by the Act

There are about 500 public authorities regulated by the Act. They are diverse. Some individuals are public authorities. Those that are organisations range in size from about 96,000 staff to fewer than four full-time equivalent employees. The public authorities vary greatly in their resources, goals, activities and locations as well as in expectations of them. State government departments comprise only about 4% of them.

Recognition of the disparate variety of agencies has shaped the Review’s recommendations. The recommendations must take account of, and be appropriate for, the full range of public authorities regulated by the Act.



**Table 1:** Public authority breakdown % (approximate)

## State Archivist and the Archives

The Act creates the position of State Archivist (the Archivist) and establishes an office called the Queensland State Archives (QSA).<sup>4</sup>

QSA is a business unit of the Department of Communities, Housing and Digital Economy (the Department). The Archivist controls QSA and oversees its everyday operation.

There are approximately 3.5 million items held in QSA's collection. The oldest record in the collection dates back to the early Moreton Bay penal settlement of 1823.

The records held at QSA are permanent-value archival records created by public authorities. They include letters, immigration registers, survey maps, court records, photographs, school enrolment records, police records, hydrographic charts, architectural plans, and audio-visual material. The collection is a significant source of information about the state's heritage. QSA does not hold private records.

## Consultation

The terms of reference for the Review were published on a dedicated web page established to support the Review.<sup>5</sup> Consultation, which opened on 1 June 2022, was hosted on the Department's *Have your say* platform.<sup>6</sup> The Review accepted responses until 6 July 2022.

## Methodology

A robust consultation strategy was developed. Input was invited from public authorities, the Public Records Review Committee (PRRC) and the broader Queensland community. First Nations peoples were identified as key stakeholders.

To meet the timeframe requirements of the Review, concurrent consultation activities occurred, providing a variety of ways to contribute, including:

- written submissions, collected between 1 and 30 June 2022 in response to an open invitation for individuals and organisations to submit their perspectives
- an online survey, open between 1 and 30 June 2022 invited responses to guided questions, with options for free text explanations and reasons
- facilitated workshops between 20 and 30 June 2022. Workshops were offered with online and in person options providing opportunities for two-way conversations to identify outcomes and solutions
- individual interviews conducted between 15 and 30 June to allow for more detailed discussions to capture insights from public sector representatives and industry experts.

Metropolitan and regional stakeholders across Queensland were engaged.

Awareness activities promoting the consultations included electronic mailouts to government stakeholders, records management professionals from public authorities, and others. Promotion

---

<sup>4</sup> [Public Records Act 2002](#) (Qld) s 21.

<sup>5</sup> Department of Communities, Housing and Digital Economy (Qld), [Review of the Public Records Act 2002](#) (Webpage, 1 July 2022).

<sup>6</sup> Department of Communities, Housing and Digital Economy (Qld), [Review of the Public Records Act 2002](#) (Webpage, 1 June 2022).

through public social media was employed. In addition, industry bodies advertised the Review through their social media channels and communication networks.

Through the consultation channels, the Review heard from a variety of stakeholders including:

- city and regional public authorities
- government departments
- local governments
- universities
- history and heritage associations
- professional associations
- Australian and international archival jurisdictions
- subject matter experts.

## Consultation activity summary

The consultation process generated:

- 1,210 visits to the *Have your say* website
- 22 written submissions
- 56 survey responses
- 10 workshop sessions, with seven facilitated workshops - one with a local government sector focus, one with a First Nations theme and one general workshop held in person in the Brisbane CBD
- 58 invitations to participate in interviews, with 27 interviews conducted.

All interview participants were from metropolitan regions. Most submissions were from metropolitan regions, 9% came from regional areas. Workshop attendees were divided: 72% metropolitan and 28% from the regions. Survey respondents were 55% metropolitan and 45% regional.

## Consultation challenges

The condensed timeframe for the Review brought challenges for engagement. Short notice periods impacted on participation. So did other factors. The consultation phase coincided with the end of the financial year, school holidays and the flu season. Fewer workshops were held than planned for and the First Nations workshop offered in Cairns had to be cancelled. Healthcare and education sector focused online sessions were combined with other workshops.

Challenges were experienced in achieving direct engagement with First Nations communities. The Review sent 25 invitations for individual interviews with First Nations representatives. Three were accepted. Two First Nations workshops were offered, including the one in Cairns. Registration numbers were low for both. Five submissions focused on First Nations. These were from organisations, not individuals.

The limitations of the consultations have been considered in evaluating the insights shared. First, as with any comparable consultations, those who are content with the present situation often do not feel motivated to contribute. Secondly, the low level of participation is especially important in relation to First Nations issues. In formulating its recommendations, the Review has used the information obtained with an awareness that the extent of participation by First Nations communities and individuals means that the views presented may well not be representative of the range of First Nations opinions.

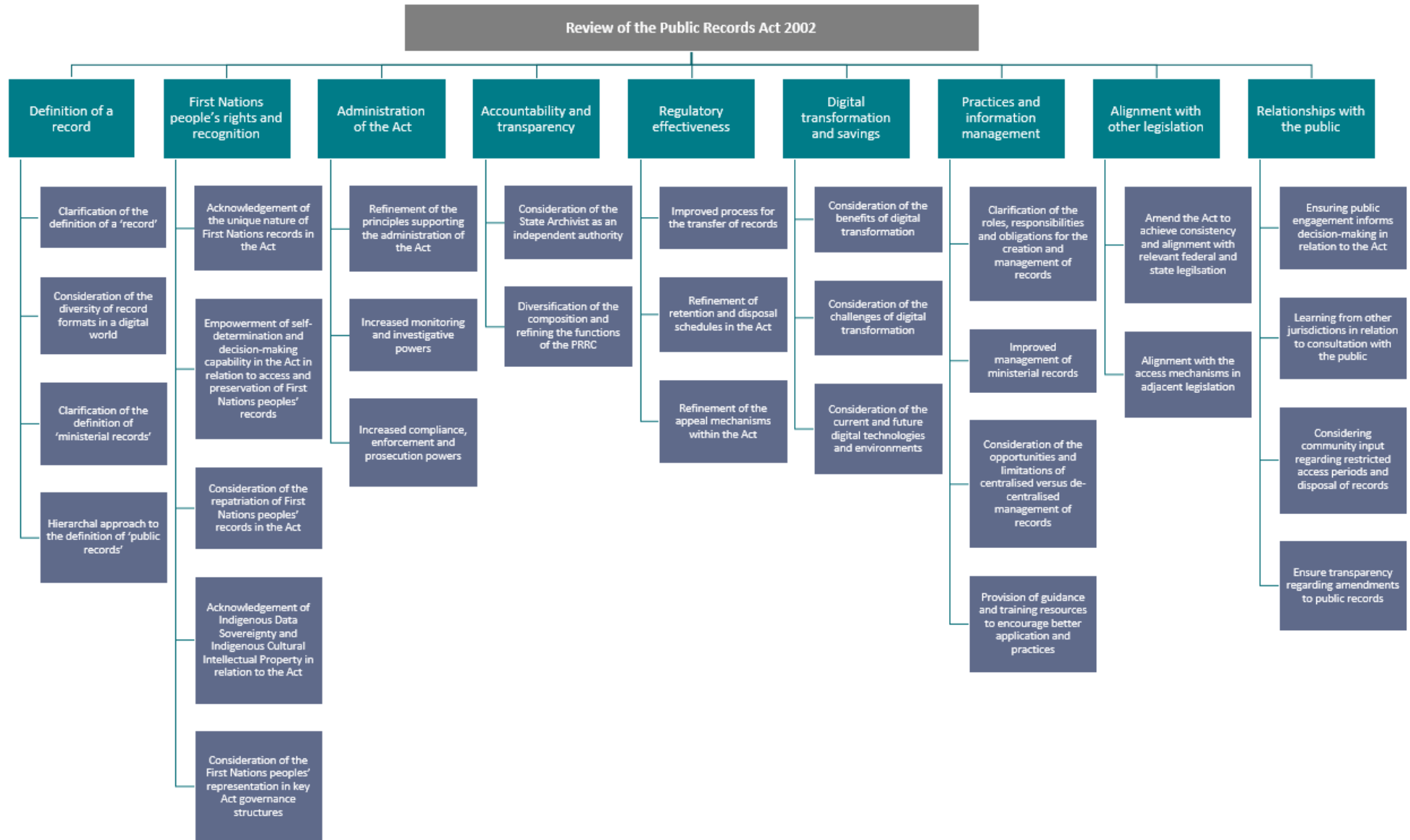
## Consultation themes

The topics identified within the terms of reference to be considered in the Review were categorised into nine themes:

1. Definition of a record
2. Recognition of the rights of First Nations peoples
3. Accountability and transparency
4. Administration of the Act
5. Regulatory effectiveness
6. Digital transformation and savings
7. Practices and information management
8. Alignment with other legislation
9. Relationships with the public

Through these, a number of sub-themes were identified. These are shown in **Figure 1**.





**Figure 1:** Topics and sub-themes identified in the terms of reference

Submissions explored compelling reasons to strengthen the effectiveness of the Act in preserving public records for users now and into the future. Submissions spoke of public records as a foundation of government accountability and transparency, as upholding rights and entitlements, and as sources of historical research.

Many submissions pointed to the need for the Act to be more detailed in its definition of records in the digital environment, mentioning digital messaging applications (apps), social media and government datasets as well as different understandings of information, data and record.

Several submissions noted the increasing uptake of digital technology and identified public records as an invaluable 'information asset' for Queensland, with potential to support research and innovation that could deliver enhanced outcomes across the economy.

Constraints on access to public records featured in submissions. Some pointed to a trend toward a more risk averse posture by public authorities that resulted in denying access beyond the usual 30-year closed period.

The nature and treatment of the records about First Nation peoples attracted attention. First Nation and non-First Nation contributors alike recognised that public records that document the lives of First Nations peoples are special – for one thing, often cradle to grave.

## Key insights

Through consultation, these key insights were identified:

- 73% of survey respondents think that the current definition of record is not appropriate
- 80% of survey respondents consider that public authorities need to do more than just 'have regard to' the directions of the Archivist
- 71% of survey respondents believe that the Archivist should be an independent authority
- 71% of survey respondents do not believe that the Act adequately allows for management of digital records.
- First Nations decision-making in relation to records about Aboriginal and Torres Strait Islander peoples is important.
- There is desire for easier discoverability of, and access to, public records.

Overall, there was a high level of consistency in responses by those who participated through the survey, written submissions and workshops. The interviews, however, yielded some different perspectives. Increasing influence, monitoring and investigative powers of the Archivist were favoured in most response channels. For example, 79% of survey respondents considered that public authorities need to be 'obliged to comply' rather than merely 'have regard to' directions of the Archivist. Some of those interviewed were not so enthusiastic about enlarging the Archivist's responsibilities.

The Panel is grateful to all who contributed to the Review.

## Other reviews, reports and government policies

The Review noted other reviews and reports. These are listed in [Appendix D](#).

## Foundations for this review

This review is occurring at a time when trust in public institutions is under pressure, digital technologies require us to reconceptualise records management, and the public expects easy, Google-like, access to the information held about them and in relation to the actions and decisions of government.

In the 20 years since the Act was passed, technological advances have created unprecedented opportunities for government services. These advances have also resulted in unforeseen challenges for the management of records owing to growth in the scale and complexity of information produced.

Government records are created in a diverse range of formats, from text messages to mobile camera images, from structured database records to health data.

## Public records matter

Good records support effective, efficient business practice. They also improve government accountability. The International Council of Archives explains why archives and records are important, and why government should manage them accordingly:<sup>7</sup>

*Archives and records are the tools by which governments can make themselves accountable and demonstrate their democratic credentials. Well-managed archives and records are the means by which a country can understand the who, when, where, how and why of government actions. They enable the delivery of human rights and the ability for a government to explain and defend its actions. Good management also ensures efficient, timely government.*

Records provide evidence of the actions and decisions of government. They are central to a government's ability to provide goods and services, protect the community, and demonstrate delivery on its commitments. Without records, information sharing between agencies, and with the community cannot take place. Open data cannot be provided if it is not captured in the first place.

Australia was a member state of UNESCO when it endorsed the *Universal Declaration on Archives* in September 2010.<sup>8</sup> The declaration states:<sup>9</sup>

*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.*

Records management requires decisions about when and how to create, capture and control records. Good records management supports improved productivity because it enables easy access to the information needed to make the right decisions at the right time. The benefits of good records management should be clear. However, the realities of operational and budget restrictions mean that business cases for implementing records management programs are often unable to compete with other organisational priorities, including frontline service delivery.

---

<sup>7</sup> International Council on Archives, [Why archiving?](#) (Webpage, 2016).

<sup>8</sup> UNESCO, [Records of the General Conference](#), 36th session, Paris, 25 October - 10 November 2011, v. 1: Resolutions, GC Res 62.

<sup>9</sup> International Council on Archives, [Universal Declaration on Archives](#) (Declaration, 10 November 2011).

## Records management in government

Government reports show that public records are not always appropriately managed. Through an examination of 225 reports tabled between the 2013 and 2022 financial years by the Queensland Audit Office (QAO), Queensland Ombudsman, Office of the Information Commissioner, and Crime and Corruption Commission, QSA noted many cases of poor records management.

Records management issues were identified in 93 of the 225 reports. Issues included:

- ineffective records management practices and systems
- systems and technology limitations (e.g., maintenance, security, capability, automation)
- inadequate training and awareness
- falsified records.

## Practical impact of records management

The Victorian *COVID-19 Hotel Quarantine Inquiry Final Report* highlighted the need for accessible records that contain all relevant information. The Inquiry found that poor records management had hindered contact tracing activities during COVID outbreaks. The Inquiry noted that:<sup>10</sup>

*[t]here should be documents that record not only this significant decision, but the rationale for doing so and why this particular facility was considered appropriate, what investigations were made, what criteria was considered, including risks and benefits and risk mitigation strategies for this facility and the personnel on site, and who was consulted.*

The Royal Commission into Institutional Responses to Child Sexual Abuse recognised that inadequate records management practices had detrimental effects upon the safety, health and welfare of vulnerable citizens.<sup>11</sup> The Commission found that accurate records are critical to preventing child sexual abuse.<sup>12</sup>

## Drivers for change in records management

Analogue records exist as physical objects, predominantly, but not exclusively, paper. Digital records are complex, dynamic, and fragmented. They are intangible, stored on but not bound to the computer hardware that holds them for any period of time. They exist in multiple formats, as multiple versions in multiple locations. Emails, text messages, websites, social media posts and work management systems are all examples of electronically created information.

Digital information was not new in 2002 when the Act was passed. However, the scope, volume and complexity of digital information that is now created and received by government could not have been anticipated. To put the changes in the digital landscape in context, in 2002, smartphones were still five years away.

Social media platforms such as Facebook and Twitter have transformed the way government interacts with citizens. Artificial intelligence (AI) is increasingly transforming the way data and information are harvested and used.

---

<sup>10</sup> Jennifer Coate, 'Chapter 9: Outbreaks at Rydges and Stamford hotels', [COVID-19 Hotel Quarantine Inquiry Final Report](#) (Final report, 21 December 2020) 35.

<sup>11</sup> Royal Commission into Institutional Responses to Child Sexual Abuse, [Final Report, Volume 8: Recordkeeping and information sharing](#) (Final Report, December 2017) 38.

<sup>12</sup> Royal Commission into Institutional Responses to Child Sexual Abuse, [Final Report, Volume 8: Recordkeeping and information sharing](#) (Final Report, December 2017) 63.

Other factors challenge traditional records management arrangements. For example, community expectations about access to government records have changed, with a desire for more immediate access. The relative ease with which the community transacts with government through digital channels creates an expectation that reverse engineering of such transactions should be simple. If it is easy for government to extract information, it should be easy for government to find and reproduce that information. Community appetite is growing for information sharing, open data and joined-up government services. The idea that information 'cannot be located' is not readily accepted. That the community has no choice but to interact with, and often to give information to, government usually means that government effectively has a monopoly on the services it provides. It is, therefore, incumbent on government to manage that information properly

Government has responded to these changed expectations. For example, until 2009, public access to Cabinet records was restricted for 30 years.<sup>13</sup> Records created after 1 July 2009 are subject to restricted access for 20 years after the day of last action.<sup>14</sup> More recently, accepting recommendations made in Professor Coaldrake's final report *Let the sunshine in - Review of culture and accountability in the Queensland public sector* (the Coaldrake Report),<sup>15</sup> the government has committed to releasing cabinet submissions, agendas and decision papers within 30 business days of a final decision being taken by Cabinet, subject to reasonable exceptions.<sup>16</sup>

The language of records management has traditionally been paper-focused. Words like 'transfer', 'disposal' and 'custody' suit records as material objects to be held and moved. For instance, the transfer of a digital record is not, strictly speaking, a physical shift of data but a replication of the data onto a new storage medium. Similarly, migration of digital records – a crucial part of long-term preservation – is the creation of a new format of the record, maintaining the provenance and authority of the record but in a form compatible with current technology.

Across consultation channels, the view was that the Act is not 'digital-ready'. This outlook was supported in the survey outcomes and 71% of survey respondents indicated that the Act does not adequately allow for the management of digital records.

---

<sup>13</sup> [Public Records Act 2002](#) (Qld) s 62A.

<sup>14</sup> [Public Records Act 2002](#) (Qld) s 16(1A) links to information that is potentially exempt information under the [Right to Information Act 2009](#) (Qld) sch 3, s 2 (which includes Cabinet records).

<sup>15</sup> Peter Coaldrake, [Let the sunshine in - Review of culture and accountability in the Queensland public sector](#) (Final report, 28 June 2022) 10.

<sup>16</sup> Premier and Minister for the Olympics and Deputy Premier, Minister for State Development Infrastructure, Local Government and Planning and Minister Assisting the Premier on Olympics Infrastructure (Qld), [Taskforce to implement Coaldrake recommendations](#) (Ministerial media statement, 4 July 2022).

## Revising the purposes of the Act

The terms of reference require a review of the Act to ensure that its framework supports good governance and the management and preservation of digital records for the benefit of present and future generations.

It is helpful to consider the extent to which the Act:

- reflects the largely digital operating environment of public authorities
- reflects the relevance and value of public records for public administration and the achievement of desired social and economic outcomes
- provides an adequate scope of records intended to be protected and preserved
- conveys the expectation that records will be accessible at the earliest opportunity, for the public good.

The Review presents an opportunity for the Act to be changed to articulate the importance of public records, for the present and the future, in new ways.

### Purposes clause

The Act would be strengthened by a more fulsome Purposes clause: one that provides a more ample statement of its goals. In considering that, it is useful to examine the ways in which public records serve stakeholders.

For the Queensland Government:

- a) Records contain information that upholds integrity.
- b) Records hold authentic information and data needed for evidence-based policy development and service delivery.
- c) Properly managed records are sources of data to fuel innovation and research.
- d) Records provide auditability and accountability to support ethical and effective use of government resources.
- e) Records provide evidence of policy impact and outcomes, enabling accurate monitoring of performance and continuous improvement of strategic and operational plans by public authorities.

For the public:

- a) The protection of public records helps build trust in government, offering evidence that authorities are acting in the public interest.
- b) The availability of public records is a foundation of Queensland's democracy, providing the public with knowledge of successive governments' activities and informing choices made at the ballot box.
- c) The public record is the primary source of memory of citizen-government engagement, preserving records of individual experiences and a collective memory for the people of Queensland.
- d) Records created and maintained by government provide evidence of rights and entitlements.
- e) The whole-of-government regulation of records assures a 'citizen first' approach to access, with records being readily findable, accessible, interoperable, and reusable.

For First Nations peoples:

- a) Public records provide connections with personal identity, ancestry and family.
- b) Public records contain material that documents the language and culture of First Nations peoples and can be used to protect traditional language and cultural practices at risk of permanent loss.
- c) Public records hold the evidence of the treatment of First Nations individuals by governments, with the availability of public records being fundamental for truth-telling and reconciliation.
- d) Public records are sources of education and inter-cultural understanding for the benefit of indigenous and non-indigenous people.
- e) Administration of public records that recognises the personal and cultural sensitivities of First Nations peoples can empower those communities without compromising privacy or cultural sensibilities.

For business and industry, including research and education:

- a) Data sourced from public records can fuel learning, research and innovation.
- b) The widespread availability of non-sensitive data derived from records is internationally acknowledged as a high value asset for economic development.

A new Purposes section in the Act which captures the essence of the values outlined above could: (i) provide context and guidance for public authorities in the performance of their responsibilities and (ii) encourage the proper stewardship of public records.

## Recommendations

There be additions to the main purposes stated in Part 1 of the *Public Records Act 2002* to acknowledge:

- a. the value of Queensland's public records:
  - i. to economic development, innovation and research
  - ii. to good government
  - iii. in sustaining the integrity and accountability of public authorities
  - iv. in supporting the rights of the people of Queensland, and
  - v. in preserving the history of Queensland.
- b. the importance of public records for First Nations peoples (see below for [further discussion of this recommendation](#)).

## Inclusion of First Nations peoples

### Past and present

QSA has tens of thousands of records about Aboriginal and Torres Strait Islander peoples. The records were created by government agencies over the past 200 years, many without the knowledge, let alone consent, of those people mentioned in them. The records refer to: cultural knowledge, including traditions, sacred sites and activities; personal information about individuals, groups and relationships; and policies, programs and activities relating to children, marriages, employment and land use. Information in these records is often a source of pain or sadness.

Queensland's public records matter to First Nations peoples. Information about family, childhood, marriages, community, movements, employment and other historical facts is especially important. So too is control over, and timely access to, that information.

Socio-economic and other disadvantages have contributed to Aboriginal and Torres Strait Islander peoples encountering organisations that deal with child safety, justice, health and others when many records were made about them.<sup>17</sup> The state's records attest that surveillance of First Nations persons was common and contributed to considerable intervention into their lives by government.

The Act, however, is silent on First Nations peoples and issues. This omission is consistent with traditional archival practice. However, developing societal expectations, as well as movements such as Path to Treaty, have highlighted this silence, drawing attention to the historical exclusion of First Nations perspectives and interests in the management of the state's records.<sup>18</sup>

Things are changing. In 2019, the failures of past archival practice in relation to First Nations peoples were considered in the 2019 *Tandanya-Adelaide Declaration* – the first international archives declaration on First Nations peoples and matters.<sup>19</sup> The declaration identifies the following themes and commitments for action: knowledge authorities, property ownership, recognition and identity, research and access, and self-determination.

In 2021, QSA responded to the *Tandanya-Adelaide Declaration* with its *Statement of Intent* which commits to embracing First Nations worldviews and to a more inclusive record of the people of Queensland.<sup>20</sup> The *Statement of Intent* declares:<sup>21</sup>

*We acknowledge that the records we manage, keep, preserve and make available relate to many Aboriginal and Torres Strait Islander individuals and communities, who have had an ongoing connection to this land for over 65,000 years.*

*Our worldview, principles and approaches have limitations, and the historical information that is held is often a source of pain to Aboriginal and Torres Strait Islanders peoples. However, we aim to be an archive that respects Indigenous knowledge and that is a space for healing and remembrance for Aboriginal and Torres Strait Islander peoples.*

---

<sup>17</sup> See, e.g., Anti-Discrimination Commission Queensland, [Aboriginal people in Queensland: a brief human rights history](#) (Report, 2017) 20; Department of Aboriginal and Torres Strait Islander Partnerships (Qld), [Queensland Closing the Gap Snapshot Report Card 2019](#) (Report, February 2020).

<sup>18</sup> The Treaty Working Group has described what they have heard about 'the disastrous disruption to [First Nations] societies caused by colonisation and dispossession, attempted extermination and the so called "protection" and assimilation policies'. The Treaty Working Group has also described other experiences of truth-telling: in particular the role of mandatory inclusion into educational curriculums: [Report from the Treaty Working Group on Queensland's Path to Treaty](#) (Report, February 2020) 59.

<sup>19</sup> [Tandanya-Adelaide Declaration](#) (Declaration, 25 October 2019).

<sup>20</sup> Queensland State Archives, Department of Housing, Communities and Digital Economy, [Statement of Intent](#) (Statement, 31 May 2021).

<sup>21</sup> Queensland State Archives, Department of Housing, Communities and Digital Economy, [Statement of Intent](#) (Statement, 31 May 2021).



Through the evidence to be found in its collection, QSA assists in raising awareness of Queensland's difficult history. As the state's central repository for permanent government records, QSA will assume a significant role in contributing to truth-telling and healing.<sup>22</sup>

## QSA operational initiatives

Much is already being done to address the concerns of First Nations peoples.

QSA has a project focused on First Wars, sharing evidence of frontier conflict, in support of truth-telling and healing. A languages program will contribute to revitalising Aboriginal and Torres Strait Islander languages. A cultural safety review ensures that QSA is welcoming and safe for First Nations persons. Metadata, digitisation and exploratory repatriation projects are planned to support discoverability of, and access to, records about First Nations persons.

QSA is dealing with access limitations through its First Nations Metadata Initiative. This work supports Path to Treaty by improving identification of information in records as well as by enabling culturally appropriate access to QSA's heritage collection for Aboriginal and Torres Strait Islander people. In partnership with stakeholders, record metadata will be enriched through embedding First Nations names and language groups to assist in connecting records to the relevant First Nation and applying Australian Aboriginal and Torres Strait Islander Studies Institute subject headings to make records more discoverable.

## Sovereignty, governance and intellectual property

In supporting the self-determination of First Nations peoples, notions of Indigenous Data Sovereignty, Indigenous Data Governance and Indigenous Cultural and Intellectual Property contend for changes in how records and information are collected, used and owned.

Indigenous Data Sovereignty concerns domain over information that relates to First Nations peoples, collectively and individually. Indigenous Data Governance is about allowing First Nations peoples to decide how and when their data and information is collected, used and managed.<sup>23</sup> Both concepts reflect Aboriginal and Torres Strait Islander values and priorities. These ideas are gaining more attention.

Indigenous Cultural and Intellectual Property deals with cultural or customary knowledge and the extent of the protection of those interests in legislative frameworks, particularly those concerning intellectual property.<sup>24</sup> Aboriginal and Torres Strait Islander traditional knowledge largely consists of oral traditions, often accompanied by customs about when and how this knowledge may be shared. Failings in Australian intellectual property laws to protect traditional knowledge for the benefit of First Nations individuals and communities are discussed elsewhere.<sup>25</sup>

Those three constructs of sovereignty, governance and intellectual property raise important, challenging issues about the creation and control of records relating to First Nations peoples.

---

<sup>22</sup> QSA has begun to consider how it can best support truth-telling. Truth-telling has been emphasised by the Treaty Working Group and Eminent Panel: [Treaty Advancement Committee Report](#) (Report, October 2021) 29. The government has committed to 'support[ing] in good faith any future truth-telling and healing process': Department of Aboriginal and Torres Strait Islander Partnerships (Qld), [Queensland Government Treaty Statement of Commitment and response to recommendations of the Eminent Panel](#) (Statement, August 2020).

<sup>23</sup> Maïam nayri Wingara Indigenous Data Sovereignty Collective, '[Key principles](#)' (Webpage, undated).

<sup>24</sup> See, e.g., Ronald Sackville, '[Legal protection of indigenous culture in Australia](#)' (Conference paper, "Traditional Knowledge, Intellectual Property and Indigenous Culture" Conference, 21-22 February 2002).

<sup>25</sup> See, e.g., Terri Janke, [New tracks: Indigenous knowledge and cultural expression and the Australian intellectual property system](#) (Paper, 31 May 2021).

## Consultation

The *Bringing them Home Report*, the Royal Commission into Aboriginal Deaths in Custody and other investigations have detailed: the importance of records to truth-telling and healing, improved access to and control of information about First Nations people by First Nations people and supporting their self-determination in respect of information collected and used by government.<sup>26</sup>

Those with whom the Review consulted said that greater input from First Nations peoples was needed in the administration of QSA's collection and in the Act. Old ways of managing the records had fallen short of satisfying the interests of the Queensland community and others seeking access to the collection whether for kinship ties or other reasons.

The consultations elicited suggestions, including: legislated representation in governance structures (such as the PRRC); embedding First Nations perspectives throughout QSA activities, especially by employing more First Nations persons; consideration of principles such as the Global Indigenous Data Alliance CARE principles and actions that featured in the reconciliation framework for Canadian archives;<sup>27</sup> free access by First Nations peoples to records about them; greater resourcing for agencies to index First Nations records to facilitate discoverability and access; co-design of how enduring value is determined and access requests handled; a First Nations Archive or State Archivist to manage First Nations records; community-controlled repositories for records about First Nations persons; referral pathways for counselling and support services for individuals, families and communities accessing sensitive information; and involvement in policy and strategic considerations.

Issues around access and discoverability were raised. These included: problems in locating information because of poor records management systems; difficulty in identifying the agency to be contacted when seeking access; and adverse personal impacts from having (and being prevented from having) access to records about themselves, their family and community. The substantial level of interest in these records and the challenges in obtaining access can be seen in the high number of requests received by the Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnership's Community and Personal Histories unit.

## Legislative changes

Other Australasian jurisdictions have mechanisms to address First Nations concerns, including that their perspectives be considered in determining the long-term value of records, that there be processes to consult with First Nations persons and that an archival advisory committee have positions for First Nations persons.<sup>28</sup>

As well as the constructive operational initiatives mentioned, in Queensland, legislative change is called for. First Nations peoples, their special interests and needs, should receive due recognition in the Act.

---

<sup>26</sup> National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families, *Bringing them home* (Report, May 1997) Recommendations 21-29; Elliott Johnston, *Royal Commission into Aboriginal Deaths in Custody* (National Report, 15 April 1991) Recommendations 40, 53 and 57; and discussion of truth-telling in *Report from the Treaty Working Group on Queensland's Path to Treaty* (Report, February 2020) 59.

<sup>27</sup> Research Data Alliance International Indigenous Data Sovereignty Interest Group, *CARE Principles for Indigenous Data Governance* (September 2019); The Steering Committee on Canada's Archives, *Reconciliation Framework: The Response to the Report of the Truth and Reconciliation Commission Taskforce* (Report, February 2022).

<sup>28</sup> *State Records Act 2000* (WA) s 76(1). *Public Records Act 2005* (NZ) s 11 requires the Chief Archivist to have processes in place for consulting with Māori. *State Records Act 1997* (SA) s 9(2)(h) and *Public Records Act 2005* (NZ) s 14 requires that one member be an Aboriginal person engaged in historical research and at least two members of the Archives Council to have a knowledge of tikanga Māori respectively.

The Review is conscious of the limited participation of First Nations persons and organisations in our work. The government's Path to Treaty commitment has also been influential in deciding on the recommendations that this Review makes for amendments to the Act.<sup>29</sup>

Truth-telling is part of the Path to Treaty. It inevitably concerns records. And Path to Treaty seems likely to involve examination of broader questions about records that relate to First Nations peoples: as examples, conflict between an individual's claim for a record to be closed with the interests that their family, historians and the wider community may have in accessing the records; correction of the content of a record through recognition of a right to reply; and other forms of control over records such as repatriation and a capacity for First Nations peoples to restrict access.

More than one thoughtful submission has proposed that this Review defer to Path to Treaty, avoiding inhibiting its evaluation of such issues as those, including Indigenous Data Sovereignty, Indigenous Data Governance and Indigenous Cultural and Intellectual Property. The Review accepts the good sense of that encouragement to restraint.

## First Nations voices – Amending the Act

Useful legislative steps can, however, now be taken that could not adversely affect Path to Treaty: in particular, by providing statutory means for First Nations voices to be heard concerning how the Act is to be implemented.

First, the composition of the PRRC deserves consideration.

The PRRC advises the Minister and the Archivist.<sup>30</sup> Its membership should include First Nations persons.

With nine members, the PRRC is large enough. This Review proposes that two of its nine members be First Nations persons with relevant expertise or experience and nominated by the minister administering the *Aboriginal Cultural Heritage Act 2003* and the *Torres Strait Islander Cultural Heritage Act 2003* or else by another minister.

Secondly, there is a place for a First Nations advisory group, comprised of First Nations persons and dedicated to First Nations issues in relation to QSA's collection.

The Review prefers to refrain from recommending that the group be the subject of legislation. Whether this should be done is debatable. The concept does merit consideration by government.

Within the present legislative framework, the Archivist may form such a group. Legislation is not only unnecessary, it would also be less flexible than acting administratively. A capacity to adapt the group and its practices to suit circumstances as they arise has attraction.

Whether enshrined in legislation or not, an advisory group should include at least one of the two First Nations members of the PRRC. That arrangement would minimise the risk of inconsistent advice to the Archivist and foster information sharing and other collaboration between the advisory group and the PRRC.

## Recommendations

In implementing the government's commitment to the Path to Treaty process, or otherwise, consideration:

- a. be given to new legislation that would afford due recognition to the special interests and needs of First Nations peoples in relation to Queensland's public records

---

<sup>29</sup> Department of Aboriginal and Torres Strait Islander Partnerships, [Queensland Government Treaty Statement of Commitment and response to recommendations of the Eminent Panel](#) (Statement, August 2020).

<sup>30</sup> [Public Records Act 2002](#) (Qld) s 29.

- b. include evaluation of any potential for concepts of Indigenous Data Sovereignty, Indigenous Data Governance and Indigenous Cultural and Intellectual Property to contribute to meeting those special needs and interests.

There be added to the main purposes expressed in Part 1 of the *Public Records Act 2002* a statement of the importance to First Nations peoples of the state's public records and ready access to them, in particular in supporting rights and entitlements, in connection with culture and community and in relation to reconciliation.

The *Public Records Act 2002* be amended to provide that:

- a. two of the nine members of the Public Records Review Committee be First Nations persons with relevant expertise or experience
- b. those additional members be nominated by the minister administering the *Aboriginal Cultural Heritage Act 2003* and the *Torres Strait Islander Cultural Heritage Act 2003* or by another minister.

Consideration be given to amending the *Public Records Act 2002* to establish an advisory group comprised of First Nations persons to consult with the State Archivist concerning records held by Queensland State Archives relating to First Nations peoples.

## Digital transformation

The business of government is vast, comprising a variety of services, administrative arrangements, resourcing levels and business models which necessitate flexibility and autonomy in choices of digital solutions.

Records management needs to be made easier for public authorities. Achieving that goal requires consideration of standardisation, education, and technology. Digital systems already provide the capability to automate good data/information/records management practices, minimising the need for human intervention in implementation of standards. One early benefit of such an approach would be to minimise the impost of machinery of government changes.

## Digital data, information and records – assets to be managed

A theme in the consultations was that data and information created and collected by the public sector has value and should be regarded as a significant asset.

The value of a public record has long been recognised through legislation, though often as an ‘after-the-event’ record that evidences a decision. Increasingly, we see legislation and policy aimed at government information and data as a real-time resource: an asset to be managed, much like physical property and ICT (Information and communication technology) systems.

Understanding the value of information has ramifications for managing the asset and for the responsibilities of public authorities. Digital information requires active management, access, use and reuse to realise its full value.

Government data can enable service innovation, increase efficiency, drive improved policy development, enhance integrity and fuel research and development. The social and economic benefits of information can, in many cases, exceed the value anticipated when the information was received.

The Organisation for Economic Cooperation and Development (OECD) estimates that access and sharing of public sector data generates social and economic benefits of between 0.1% and 1.5% of gross domestic product.<sup>31</sup> In 2018, a United Kingdom Government Treasury discussion paper noted that data is an under-exploited asset in fuelling productivity and innovation and in improving well-being. It was said that data-driven innovation could transform public services.<sup>32</sup> The Australian Government has recognised its data as a national asset. Its [Public Data Policy Statement](#) encourages federal entities ‘to optimise the use and reuse of public data; release non-sensitive data as open by default; and collaborate with the private and research sectors to extend the value of public data for the benefit of the Australian public’.<sup>33</sup>

Deriving full benefit from government information can require a broader perspective than that of an individual agency. As one example, predicting, responding to and learning from natural disasters requires information from multiple agencies. Data sharing has evolved at the federal level and in states. There has been recent legislative recognition of the phenomenon in the Commonwealth *Data Availability and Transparency Act 2022*.

---

<sup>31</sup> OECD, [Enhancing Access to and Sharing of Data: Reconciling Risks and Benefits for Data Re-use across Societies](#) (Report, 26 November 2019) chap 3.

<sup>32</sup> HM Treasury, United Kingdom, [The economic value of data: discussion paper](#) (Discussion paper, August 2018) 5.

<sup>33</sup> Department of the Prime Minister and Cabinet, [Australian Government Public Data Policy Statement](#) (Policy statement, 7 December 2015) 1.

## Digital management - contested space

Responsibility for the ownership and management of data, information and records is divided among agencies dealing with records management and those concerned with ICT. This table of legislation and agencies involved in the government's information management framework illustrates the point:

Table 2:

Agency or area	Legislation	Responsibility
Department of Justice and Attorney-General	<i>Right to Information Act 2009</i> and <i>Information Privacy Act 2009</i>	Right to information scheme and management of personal information by public authorities.
Queensland Government Customer and Digital Group, Department of Communities, Housing and Digital Economy	N/a	Digital, strategic and service delivery including Queensland Government Enterprise Architecture (generally only departments).
Cybersecurity unit, Department of Communities, Housing and Digital Economy	N/a	Works with agencies to increase visibility and understanding of and leads initiatives to improve cybersecurity.
Open Data Office, Department of Communities, Housing and Digital Economy	N/a	Coordination and promotion of open data within and on behalf of Queensland Government, including management of the open data portal.
Integrity bodies such as the Crime and Corruption Commission, Queensland Audit Office, Office of the Information Commissioner, Queensland Ombudsman	Various	To review actions and decisions of agencies, usually using public records to do so.
Department of Local Government, Racing and Multicultural Affairs	<i>Local Government Act 2009</i> and <i>City of Brisbane Act 2010</i>	To oversee and support local governments.

Digital transformation impacts all agencies, not just state government departments. Those agencies at the forefront of change have an added role to play in managing this transformation. Different areas of government:

- implement legislation concerning information generated from services (e.g., Department of Justice and Attorney-General, local governments)
- define standards for technology and data governance (e.g., Queensland Government Customer and Digital Group)
- set frameworks for the management of data generated, including what information should be created and kept, how long it needs to be retained and privacy and security issues (e.g., QSA, Office of the Information Commissioner).

## Practicalities

The volume of, and speed of creation of, information cannot be managed properly without digital tools and technologies. And the full value of the asset will only be realised through active management. This requires a 'digital first' approach, implementing digital standards to facilitate findability, accessibility, inter-operability and re-use. It also calls for a strategic approach to information management, clarity around leadership roles and new policies and processes if Queensland is to maximise the value of its information.<sup>34</sup>

### Recommendations

- a. The government adopt a cohesive approach to the management of its public data, information and records as a valuable and inter-connected asset.
- b. In doing so, consideration be given to clarification of roles and accountability for management of data, information and records.
- c. The State Archivist be requested to provide advice on the selection and implementation of business ICT solutions from a records and information management perspective.

## Defining – record and public record

The Review examined whether the legislative framework appropriately supports the management of digital records and emerging technology impacts. Fundamental to this aspect is the extent to which the Act accommodates the digital forms in which public records are created and preserved, and whether the Act needs amendment to support the application of future technology.

'Record' is defined in the Act as 'recorded information created or received by an entity in the transaction of business or the conduct of affairs that provides evidence of the business or affairs...'.<sup>35</sup> The term includes:

- anything on which there is writing
- anything on which there are marks, figures, symbols or perforations having a meaning for persons including persons qualified to interpret them
- anything on which sounds, images or writings can be reproduced, or
- a map, plan, drawing or photograph.

The Act defines a public record as:<sup>36</sup>

- a record made for use by, or a purpose of, a public authority, other than a minister or assistant minister
- a record received or kept by a public authority, other than a minister or assistant minister, in the exercise of its statutory, administrative or other public responsibilities or for a related purpose

---

<sup>34</sup> For example, storing addresses in a consistent format would enable the use of AI and machine learning across data siloes to better address complex social problems. The government has begun work in this area, for example, through the Tell Us Once project.

<sup>35</sup> [Public Records Act 2002](#) (Qld) sch 2.

<sup>36</sup> [Public Records Act 2002](#) (Qld) s 6(1).

- a ministerial record<sup>37</sup>
- a record of an assistant minister<sup>38</sup>
- a copy of a public record
- part of a public records, or a copy of a part of a public record.<sup>39</sup>

The definitions of record and public record were designed to be technology neutral. But there have been changes in technology that were not foreseen in 2002.

The Review heard a range of viewpoints about suitable, fresh definitions of record and public record. Some contributors favoured express reference to terms such as data. Others remarked that a proprietorial concept of a record is unsuited to the digital reality where not all data can be untangled to identify a discrete 'record'.

Many submissions, including 71% from survey respondents, supported a new definition of record – one that is technology and format neutral, but which comprehends data and source code as well as algorithms used for automating or guiding decisions.

A revised definition of 'record' is required. It needs to try to cater for future technology. It must also be practicable in its operation.

Public authorities accumulate great volumes of data in systems designed for email, case management, document management, correspondence tracking, financial management, administration of grants, text messages, social media, websites, statistical analysis - the list goes on. Those systems operate on many platforms, including cloud-based services and personal devices, with data constantly in motion within and between those platforms.

A challenge is to describe the 'record': in other words, to define the information and data that provide an adequate and reliable memory of the processes, actions and decisions of public authorities. Composing the new definition is complicated by the variety of ways in which the words 'data' and 'information' are used, generally and in other legislation.

In the Commonwealth *Data Availability and Transparency Act 2022*, data is defined as a sub-type of information: 'any information in a form capable of being communicated, analysed or processed (whether by an individual or by computer or other automated means).'<sup>40</sup> Submissions to the Review indicated that data is commonly regarded as different to information. According to Borgman: '[d]ata are subject to interpretation; their status as facts or evidence is determined by the people who produce, manage, and use those data.'<sup>41</sup>

In a digital world, information and data can be seen as inputs, processes, and outputs. Digital information is intangible and capable of moving from one carrier to another. The conventional idea that a record is a 'thing' that holds information no longer works. The recorded information itself matters. And in the digital age, it extends beyond human activity. As algorithms and the use of machine learning become integral to business processes and decision-making, the algorithm itself becomes part of the record.

---

<sup>37</sup> A record created or received by a Minister in the course of carrying out the Minister's portfolio responsibilities, but does not include – (a) a record related to the Minister's personal or party political activities; or (b) a record the Minister holds in the Minister's capacity as a member of the Legislative assembly: *Public Records Act 2002* (Qld) sch 2.

<sup>38</sup> A record created or received by an Assistant Minister in the course of carrying out the Assistant Minister's official duties, but does not include – (a) a record related to the Assistant Minister's personal or party political activities; or (b) a record the Assistant Minister holds in the Assistant Minister's capacity as a member of the Legislative Assembly: *Public Records Act 2002* (Qld) sch 2.

<sup>39</sup> *Public Records Act 2002* (Qld) s 6(2).

<sup>40</sup> *Data Availability and Transparency Act 2022* (Cth) s 9.

<sup>41</sup> Christine Borgman, *Scholarship in the Digital Age: information, Infrastructure and the Internet* (MIT Press, 2007) 121.



Submissions suggested linking the definition of record to international standards. One such standard defines records as: 'information created, received, and maintained as evidence and information by an organisation or person, in pursuance of legal obligations or in the transaction of business'.<sup>42</sup> Another defines a record as: '[r]ecorded information produced or received in the initiation, conduct or completion of an institutional or individual activity and that comprises content, context and structure sufficient to provide evidence of the activity.'<sup>43</sup> The concept of a record providing evidence of something is commonplace in international standards.

A record should serve as an authentic memory. Public records should include the data and information created and collected in the planning and delivery of activities. The record should also include the context of the relevant activity. For that reason, a definition of record should encompass metadata that is needed to preserve the provenance and context of the record as a whole.

Importantly, the new definition proposed by the Review retains fundamental elements of the present: in particular, the new definition adopts the critical limit on the range of information that qualifies as a record that is imposed by the present words 'information... that provides evidence of the business or affairs.'

Throughout the normal working day of any public authority, staff will work with a range of types of documents and data in digital form. Most are developed over time by word processing systems or document sharing applications, transmitted and kept temporarily in email systems. Other data might be contained within case management systems or databases. Much of this data and information can be characterised as of temporary value, such as drafts, working papers and duplicates. Ordinarily such material is not appropriate for retention. More formal documents, however, are those that form the corporate memory of the authority, such as finalised policy advice, committee papers, official correspondence, financial transactions, reports and datasets that have informed important decisions or record dealings with the public. These records, kept in any digital or analogue form, are relied upon as evidence of decision-making and actions taken by the authority.

A public authority will work with vast volumes of information and data. The Act must be updated to ensure that the narrow subset of information and data necessary for corporate memory and evidence of activity is protected and preserved. Upon this basis, the new definition of record is proposed.

However, it is unrealistic to expect that a new definition will answer all the questions about what is to be created and preserved that will arise in the variety of regulated public authorities. In practice, standards promulgated by the Archivist can be expected to provide detailed guidance about what should be kept.

There is plenty of scope for reasonable difference concerning the terms of a contemporary definition of 'record'. The Review suggests that it be along these lines:

Record means information and data, recorded in any medium, that is created or received by an entity in the transaction of business or the conduct of affairs that provides evidence of the business or affairs and includes-  
anything compiled, recorded or stored, by any means in any form, that is capable of being communicated, analysed or processed whether by a person, a computer or other electronic means.

With a revised definition of 'record' suitable for the digital environment, consideration of the factors that bear upon the definition of 'public record' is straightforward. In the approach that this Review has taken, no change to that definition is proposed.

---

<sup>42</sup> Standards Australia, [Information and documentation – Records management: Part 1, Concepts and principles](#) (AS ISO 15489.1:2017, 29 May 2017) 2.

<sup>43</sup> Committee on Electronic Records, International Council on Archives, [Guide for Managing Electronic Records from an Archival Perspective](#) (Guide, February 1997) 7.

## Recommendations

- a. The definition of 'record' in the *Public Records Act 2002* be replaced with words needed to accommodate the exigencies of dealing with digital material.
- b. The new definition be along these lines:  
*Record means information and data, recorded in any medium, that is created or received by an entity in the transaction of business or the conduct of affairs that provides evidence of the business or affairs and includes- anything compiled, recorded or stored, by any means in any form, that is capable of being communicated, analysed or processed whether by a person, a computer or other electronic means.*

## Ability to compel transfer of public records

Records, paper and digital, are kept for two main reasons: use by the entity that created it and re-use by others. Public authorities use the record to advance their own goals. QSA preserves the public record as collective memory.

When records are assessed for permanent retention, typically, only QSA is funded to ensure their long-term preservation and access. This creates a vulnerability particularly for digital public records of permanent value: the longer they remain with the authority as administrative records, the more likely it is that they will be lost or become unreadable over time through technological obsolescence. Depending on environmental conditions such as humidity, physical records may be untouched for decades and still be readable. Digital records, however, require ongoing maintenance and migration to remain usable. The lifespan of digital technology is brief.<sup>44</sup>

In Queensland, some public authorities struggle to maintain the usability of digital records over the long term, particularly where legacy or bespoke systems are concerned. While standardisation and use of open-source technology have risen in prominence since the mid-2000s, earlier records and systems are vulnerable. And the volume of digital records poses difficulties in oversight of the information held and its condition. Failures in this respect can adversely affect internal and external access and the protection of cultural heritage.

The Act does not authorise the Archivist to compel a transfer of records from a public authority to the QSA.<sup>45</sup> Yet there are occasions when the Archivist identifies an urgent need for transfer to QSA: as examples, with records at risk of deterioration or loss, of former ministers and of commissions of inquiry.<sup>46</sup>

By comparison, QSA's Commonwealth, New Zealand, New South Wales, Victorian, South Australian and Western Australian counterparts all have the power to instigate a mandatory transfer of public records, subject to conditions.<sup>47</sup> QSA's Canadian counterpart has the advantage of an express power to require transfer of records 'at risk of serious damage or destruction'.<sup>48</sup>

Some public authorities never transfer permanent records to QSA.

---

<sup>44</sup> One estimate speaks of an average of five years before significant changes necessitate upgrade or the change of hardware: Digital Preservation Coalition, 'Storage', [Digital Preservation Handbook](#) (Webpage, 2015).

<sup>45</sup> s 10(2) of the Act permits the Archivist to take possession in limited circumstances.

<sup>46</sup> Currently only hardcopy Commission of Inquiry records can be transferred to QSA as QSA does not yet have a digital archive.

<sup>47</sup> [Archives Act 1983](#) (Cth) s 27; [Public Records Act 2005](#) (NZ) s 21; [State Records Act 1998](#) (NSW) s 27; [Public Records Act 1973](#) (Vic) s 8A; [State Records Act 1997](#) (SA) s 19; [State Records Act 2000](#) (WA) s 32.

<sup>48</sup> [Library and Archives of Canada Act](#), S.C. 2004, c.11, s 13.

The Archivist should be able to secure the timely transfer of records of permanent value to QSA. Responsibility for the records would remain with the public authority.

A direction by the Archivist requiring a transfer could impose additional cost for the public authority. However, the direction will be given only where the Archivist is persuaded of the necessity, no doubt after consultation with the authority holding the records. And a directed transfer is not likely to be common. Only between two and five per cent of public records are retained permanently (and eligible for transfer to QSA). Of those records, only a small subset might warrant mandatory transfer to QSA.

Offsetting any burden on agencies deriving from a directed transfer is that the cost thereafter of maintaining the records would be borne by QSA.

Mandated transfer will help to prevent the loss of history of Queensland by ensuring that at risk records are held in suitable storage facilities and maintained appropriately. To prevent duplication of digital records and the associated storage costs, the Archivist could authorise disposal once the transfer is complete.

### **Recommendation**

In the interest of preserving public records from loss or damage, the State Archivist be empowered, by amendment of the *Public Records Act 2002*, to direct a public authority to transfer to Queensland State Archives a public record that is in the authority's possession or power.

## Implementation of the Act

### Promoting compliance

Implementing a suitable records management system is the primary means by which a public authority meets the s 7 duty to 'make and keep...' records. Compliance can be fostered in other ways – mainly, through training, advice, and assistance; monitoring and reporting on performance; and sanctions for failure.<sup>49</sup>

Effective records management requires a framework of legislation, centralised governance and oversight, monitoring, and disincentives for noncompliance. The regulatory model that underpins the Act is compliance-oriented (as opposed to a deterrence-based model). This model relies primarily on facilitation and persuasion through means such as education and independent dispute resolution (through the PRRC), with limited enforcement mechanisms.

### Monitor, audit and report

QSA has limited ability to examine the records management activities of public authorities. In trying to establish the extent of departure from good practice, QSA relies on publicly released and volunteered information.

QSA last surveyed the state of records management in 2014/15 when, disappointingly, only about 15 per cent of public authorities met minimum records management requirements.<sup>50</sup>

The information standards used to assess compliance with were repealed in 2018 and replaced with the *Records Governance Policy* (RGP).<sup>51</sup> That policy provides a more principles-based approach to records management that recognises differing levels of records management resourcing, capability and maturity. Since the introduction of the RGP, public authorities have not been assessed against its requirements. This is a pity. The RGP establishes minimum requirements for the management of public records. The extent of compliance with the policy should be assessed periodically.

QSA continues to report on the state of records management in its annual reports using reports of integrity agencies. Such reports furnish indicative information about problems with records management. However, the observations of others are a by-product of audits directed primarily to other concerns. Useful though they are, the remarks are not sufficient for QSA properly to assess the state of records management.

This deficiency, which is not recent, comes at a cost.<sup>52</sup> Monitoring matters to compliance. For one thing, the prospect of it should spur performance. Moreover, monitoring would provide QSA with its own mechanism to measure records management against the requirements of the RGP. In this way, QSA could identify trends and gain insight into the challenges to effective records management being experienced by public authorities. QSA needs such information for the effective provision of its services, as well as to understand policy gaps and identify training needs. In short, monitoring by QSA

---

<sup>49</sup> Importantly, including the standards, policies and guidelines promulgated by the Archivist. Such guidance needs to be readily understood and easily capable of implementation. Simplification of retention and disposal schedules would be welcomed.

<sup>50</sup> [Queensland State Archives Annual Report 2016-17](#) (Report, 30 September 2017) 9.

<sup>51</sup> Queensland State Archives, Department of Housing and Public Works, [Records governance policy](#) (Policy, April 2019).

<sup>52</sup> In the 2008 Solomon Report, the Archivist's limited powers in relation to monitoring public authorities' records management practices were noted. The report stated '[t]he State Archivist's current authority and role in making, consulting and promoting the policies, standards and guidelines with a non-mandatory, self-assessment process to monitor agency capacity is not sufficient to surmount the public records challenges that beset FOI and public administration obligations generally': FOI Independent review panel, [The Right to Information: Reviewing Queensland's Freedom of Information Act](#) (Report, June 2008) 26.

will improve records management.<sup>53</sup> Having that function should also contribute to the quality of QSA's reporting, including annually to the Minister and parliament.<sup>54</sup>

Monitoring for records management compliance belongs with QSA.<sup>55</sup> Such an allocation of responsibility accords with industry approaches. Other jurisdictions exhibit a range of monitoring options, including self-assessment surveys. A 2020 review of the New South Wales *State Records Act 1998* recommended that monitoring powers be strengthened through a mandatory requirement to self-investigate and report when directed.<sup>56</sup> In New Zealand, a five-yearly independent audit program is used, with the cost met by the archival body.<sup>57</sup> A similar program was recommended in 2017 by the Victorian Auditor-General's Office.<sup>58</sup> In Western Australia, the archivist may require a report on the authority's records management.<sup>59</sup> The National Archives of Australia undertakes an annual information management survey, Check-up, to measure Commonwealth maturity and performance in managing information assets (records, information and data).<sup>60</sup>

Monitoring would have costs: mainly, the time and trouble to complete a self-assessment survey. The process would need to be deployed with discretion after taking into account such factors as the importance of striking a balance between the costs of the exercise and the value of the gains; possible inequitable impacts owing to the variety in size and resources of public authorities; and other regulatory burdens, such as those imposed by the Queensland Audit Office (QAO).

The likely benefits, however, justify the costs.

Queensland's Information Commissioner is empowered to review agencies in relation to the operation of the RTI Act, including by 'monitoring, auditing and reporting on agencies' compliance.<sup>61</sup>

A similar function could usefully be assigned to the Archivist in respect of compliance with the Act.

## Recommendation

The *Public Records Act 2002* be amended to add, as functions of the State Archivist, to monitor, audit and report on public authority compliance with the *Public Records Act 2002*.<sup>62</sup>

## Education

The help available to agencies with records management varies. Public authorities can draw upon publications and training opportunities provided by several providers. Apart from QSA, which takes a

---

<sup>53</sup> Monitoring must add value to governance. Agencies would need to recognise that reporting to QSA is a good idea. Persuading them of that is something the Archivist would need to attempt.

<sup>54</sup> [Public Records Act 2002](#) (Qld) s 56.

<sup>55</sup> Another agency, such as the Queensland Audit Office, could undertake monitoring as well as its audit and investigative functions. However, that option might involve the subordination of records management elements to other concerns. In any event, that office has no enthusiasm for such a role: see letter from Queensland Audit Office to Review chair dated 19 August 2022.

<sup>56</sup> Standing Committee on Social Issues, New South Wales Parliament, [State Records Act 1998 and the policy paper on its review](#) (Report No. 57, October 2020), x. This recommendation has been included in the associated bill introduced to parliament in June 2022: Museums of History NSW Bill 2022 cl 10.

<sup>57</sup> [Public Records Act 2005](#) (NZ) s 33. New Zealand Archives may issue a direction to the administrative head of a public office to report on any aspect of its records management practice and the records that it controls: [Public Records Act 2005](#) (NZ) s 31. Such a power could be useful to mandate the completion of self-assessment surveys for records management matters too.

<sup>58</sup> Victorian Auditor-General's Office, [Managing public sector records](#), (2016-17: 17, March 2017), xii.

<sup>59</sup> [State Records Act 2000](#) (WA) s 67.

<sup>60</sup> National Archives of Australia, ['Check-up survey'](#) (Webpage, undated).

<sup>61</sup> [Right to Information Act 2009](#) (Qld) s 131(1)(a).

<sup>62</sup> As in the [Territory Records Act 2002](#) (ACT) s. 33(1)(g), [State Records Act 1997](#) (SA) s16, and [Public Records Act 2005](#) (NZ) s 11(1)(b)(vi).

leading educative role,<sup>63</sup> sources of advice or training include the Information Commissioner, the Ombudsman, the Crime and Corruption Commission and several non-government providers.<sup>64</sup>

There is scope for coordinating the advice available to public authorities to maximise its effectiveness and to eliminate the risk of confusion.

For its part, QSA collaborates with agencies, providing advice on records management, to assist agencies to meet their legislative requirements and in complying with the RGP.<sup>65</sup>

Not all the assistance that QSA offers is accepted even though it comes at little or no expense and, typically, does not take a lot of time or effort to absorb. In the result, some managers and their staff miss out on opportunities to improve records management.

Agencies might be more amenable to taking advantage of QSA's support if the Act were amended to add the giving of assistance and training to the Archivist's functions.<sup>66</sup>

## Recommendation

Section s 24(f) of the *Public Records Act 2002* be amended to add, after 'advice,' the words 'assistance and training.'

## Sanctions

Penalties for breach of duties imposed by the Act are seen by quite a few contributors to this Review as inadequate incentives to compliance. In their view, staff of public authorities need to understand that culpable neglect, or worse, could be visited with criminal prosecution and, in the event of conviction, significant penalty.

The Act creates four offences. Section 12 prohibits damaging a public record more than 30 years old. Section 13 proscribes unauthorised disposal of a public record. Section 44 concerns a failure by an authorised officer to return an identity card. Section 48 deals with obstruction of an authorised officer exercising a power of entry or inspection.

None of those offences attracts a penalty other than monetary, and the maximum is 165 penalty units for a contravention of s 13. All four are simple offences which must be prosecuted within a year of commission.<sup>67</sup>

No charge has ever been preferred for an offence against the Act.

Under the Act, non-compliance with the s 7(1) fundamental duties is not an offence, although the 'executive officer' is exposed to the (in reality, remote) prospect of being charged with a contravention of s 204 of the *Criminal Code 1899* for omitting to discharge the s 7(2) duty to ensure that the public authority complies with its two s 7 responsibilities.<sup>68</sup>

Elsewhere, more punitive sanctions exist for records management failures. In Western Australia, an employee who does not keep a government record in accordance with the records management plan of the organisation commits an offence.<sup>69</sup> The penalty is a \$10,000 fine.<sup>70</sup> In New Zealand, a negligent

---

<sup>63</sup> Consistently with the Archivist's functions of promoting effective systems for the management of public records and giving advice: see s 24(a) and (f) of the Act.

<sup>64</sup> As another example, the Department of Local Government, Racing and Multicultural Affairs assists with [training for local government Councillors](#).

<sup>65</sup> Queensland State Archives, Department of Housing and Public Works, [Records governance policy](#) (Policy, April 2019).

<sup>66</sup> Cf. s 33 of the [Territory Records Act 2002](#) (ACT).

<sup>67</sup> [Justices Act 1886](#) (Qld) s 52(1).

<sup>68</sup> No such charge has been laid.

<sup>69</sup> [State Records Act 2000](#) (WA) s 78.

<sup>70</sup> [State Records Act 2000](#) (WA) s 78.

or wilful failure to comply with the Act, including its requirement to create and maintain full and accurate records, attracts a fine of \$5000 for individuals.<sup>71</sup>

To attach criminal penalties does serve to mark the importance that parliament accords to good practice. However, the practical consequences of increasing the number of offences or the severity of penalties might not be great.

The historical absence of prosecutions indicates that the risk of prosecution is slight. With that perception abroad, new criminal sanctions may not improve general compliance much. It is not as if criminal prosecutions are the only sanctions for failure to perform records management duties. Default already attracts other consequences. In some cases, the jurisdiction of the Crime and Corruption Commission may be enlivened.<sup>72</sup> The ordinary disciplinary processes of the affected agency might also be engaged.<sup>73</sup> Such things presumably encourage compliance now.

Consultation revealed different perspectives about enforcement. Records managers favoured stronger action, including criminal penalties, audits and regular monitoring of programs, all superintended by an independent Archivist. More senior officers tended to doubt the need for the Archivist's independence and, referring to existing disciplinary regimes, did not support additional criminal sanctions. Others who contributed to the consultation mostly supported more sanctions.

Many failures in records management are not caused by blameworthy default. They are attributable to a lack of appreciation of the value of proper records, inadequate training and supervision, insufficient attention to available guidance, requirements that are hard to implement and a reluctance to commit resources and leadership to the task.<sup>74</sup> In such circumstances, carrot is generally better than stick.

Criminal penalties do, however, have a place.

Where a record is wilfully altered, damaged, destroyed or disposed of without lawful authority, justification or excuse, as well as the loss of the information stored, integrity may be in jeopardy. That may explain why other Australasian jurisdictions stipulate for criminal penalties, including imprisonment, for alteration and destruction of records.<sup>75</sup>

The Act defines 'disposal' to include 'destroying or damaging' a record.<sup>76</sup> The statute does not include altering a record perhaps because it was thought that a paper record could not be altered without being damaged. The omission should be remedied. Unlawful alteration should be an offence.<sup>77</sup> That can be achieved by amending the definition of disposal to include 'altering'.

Other issues about wrongful disposal arise.

First, the time limit for prosecution of a contravention of s 13 should be increased from one year to three. QSA often does not learn of unlawful disposals within the year.

---

<sup>71</sup> \$10,000 in every other case: [Public Records Act 2005](#) (NZ) ss 17, 61 and 62.

<sup>72</sup> [Crime and Corruption Act 2001](#) (Qld) s 15.

<sup>73</sup> See, e.g., disciplinary action under 187, 188 of the [Public Service Act 2008](#) (Qld) or s 197 of the [Local Government Act 2009](#) (Qld), as well as proceedings under codes of conduct such as the [University of Southern Queensland's Code of Conduct](#) and [Queensland University of Technology's Code of Conduct](#).

<sup>74</sup> Such as complicated disposal and retention schedules.

<sup>75</sup> [Archives Act 1983](#) (Cth) s 24(1); [State Records Act 1998](#) (NSW) s 21(1); [Public Records Act 2005](#) (NZ) s 61-2; [Information Act 2002](#) (NT) s 145; [State Records Act 1997](#) (SA) s 17(1); [Archives Act 1983](#) (Tas) s 20(1)(d); [Public Records Act 1973](#) (Vic) s 19; [State Records Act 2000](#) (WA) s 78.

<sup>76</sup> [Public Records Act 2002](#) (Qld) sch 2.

<sup>76</sup> [Public Records Act 2002](#) (Qld) sch 2.

<sup>77</sup> Unlawful in this context means without an authority given by the Archivist or 'other legal authority, justification or excuse': [Public Records Act 2002](#) (Qld) s 13.

Secondly, an offence of unlawful attempted disposal should be introduced,<sup>78</sup> mainly to deal with unlawful intentional alterations to, and deletions of, electronically stored material that is later recovered or reconstructed.<sup>79</sup>

Thirdly, the definition appears to be constructed on the assumption that a physical object will be the subject of the disposal. The definition needs to be amended so that it clearly comprehends digital material. That involves at least the addition of 'deleting' in paragraph (a) of the schedule 2 Dictionary definition of disposal.

Fourthly, perhaps disposal, as defined, does not apply where an agency fails to maintain a suitable system for digital records and their permanent loss results. Digital records need maintenance for their preservation. An agency that does not operate functioning legacy systems could, deliberately or through neglect, cause information of enduring value to be lost forever. Something does need to be done to address this danger. But a criminal sanction may be too heavy-handed a response. Mandatory standards are a suitable place to start. Experience over time will reveal whether the kinds of sanctions that exist in Western Australia and New Zealand are also warranted.

## Recommendations

The time limit for prosecution of a contravention of s 13 of the *Public Records Act 2002* (unlawful disposal) be increased from one year to three.

An offence of unlawful attempted disposal be introduced.

The definition of 'disposal' in the schedule 2 Dictionary (a) be amended by adding 'altering' and 'deleting'.

## Investigations

Historically, QSA's compliance efforts have focused on supporting public authorities to implement and embed good records management practices through effective policy, information, and advice. With this approach, QSA does not employ trained investigators. Staff primarily have expertise in information management and policy. Before 2017, this posed no problems as the Archivist had not undertaken investigations into alleged breaches of the Act. Between 2017 and 2022, however, the Archivist completed 20 reviews into complaints that brought to light gaps in QSA's capability.

QSA's investigative power is weak. Authorised officers do have access to records in an authority's possession and may examine them and the authority's procedures.<sup>80</sup> However, there is no power to make copies, to take records away or to compel answers to questions. Accordingly, any QSA investigation of an offence against the Act or of records management practices is largely dependent on the agency's co-operation. That state of affairs may be contrasted with the powers of an authorised auditor under the *Auditor-General Act 2009* such as requiring answers on oath to questions, taking photographs and taking possession of anything.<sup>81</sup>

Digital technology can pose an additional difficulty for investigations. For example, the Act's reliance on records being in an agency's possession before they may be inspected has raised doubt about whether an officer can inspect digital records held by cloud storage providers. The answer depends on the terms of the agency's deal with the third party: if the contract confers an unconditional right to call for the information, usually the agency will have sufficient control over the record to be, in law, in possession of it.<sup>82</sup>

---

<sup>78</sup> Unlawful should bear the meaning it now has in s 13 of the Act.

<sup>79</sup> s 535 of the *Criminal Code Act 1899* (Qld) does not apply to simple offences. Digital records often exist in multiple copies, including on backup servers, or may be composed of multiple pieces of data.

<sup>80</sup> *Public Records Act 2002* (Qld) s 46.

<sup>81</sup> *Auditor-General Act 2009* (Qld) ss 46 and 48.

<sup>82</sup> Possession is defined in schedule 2 of the Act to include 'having control' of a public record.



If QSA is to retain its investigative role, additional powers such as those expressed in the *Auditor-General Act 2009* are called for.<sup>83</sup>

It is a question, however, whether Divisions 1 and 2 of Part 4 of the Act (which allow for an authorised officer to investigate records and practices) should be repealed and the investigations assigned to another state organisation. There is reason to favour that course.

Assigning the investigative functions to another agency would bring benefits. First, if, as this Review suggests, QSA is to be empowered to monitor, audit and report, the value of self-assessment surveys would be less likely to be diminished by perceptions within agencies of a risk in participating with candour. The primary objective of monitoring is to enable QSA to better support the public sector to build records management capability. Affording QSA enhanced investigative powers might discourage disclosure of information about problems. It is better that agencies welcome QSA's help than be apprehensive about its involvement and hesitant about accepting its assistance.

If QSA were not to retain its investigative role, where might the responsibility go?

The Crime and Corruption Commission would have jurisdiction only in unusual cases: not mere departures from proper management of records.<sup>84</sup> The Queensland Police Service may have higher priorities. Anyhow, it would only investigate allegations of offences having been committed: again, not mere compliance failures. There is no good case for creating an additional organisation to carry out investigations.

This appears to leave the Queensland Ombudsman and QAO as the practicable alternatives. Both are independent, investigatory bodies with ample investigative powers. Both consider agency performance through analysis of decisions and actions that are the subject matter of records. Both will notice whether proper records have been kept. Both are busy.

QAO is accustomed to the kinds of investigations that could be expected. The maintenance of proper records matters to much of the work that is already done by QAO.<sup>85</sup> QAO, however, prefers not to undertake the additional function.<sup>86</sup>

If another agency is assigned the investigations, QSA would need to assist the investigations with its expertise and guidelines.

## Recommendations

- a. The investigative functions which Divisions 1 and 2 of Part 4 of the *Public Records Act 2002* sustain be given to another agency and those two Divisions repealed.
- b. If that be done, the *Public Records Act 2002* be amended to authorise the State Archivist to:
  - i. report compliance concerns to the investigative agency and to the minister administering the Act, and
  - ii. assist that agency in exercising its functions in relation to public records.

---

<sup>83</sup> See, e.g., the investigative powers established in s 134 of the [Aboriginal Cultural Heritage Act 2003](#) (Qld); pt 4 of the [Ombudsman Act 2001](#) (Qld); or s 99 of the [Data Availability and Transparency Act 2022](#) (Cth).

<sup>84</sup> [Crime and Corruption Act 2001](#) (Qld) ss 4 and 5 emphasise the Crime and Corruption Commission's focus is to be on major crime and corruption, as distinguished from its previous scope including 'misconduct'. This scope was amended in 2014: [Crime and Misconduct and Other Legislation Amendment Act 2014](#) (Qld) s 6. See also [Carne v Crime and Corruption Commission](#) [2022] QCA 141.

<sup>85</sup> QAO is proposing to report on records management in 2023-24: Queensland Audit Office, [Forward work plan 2022-25](#) (Work plan, May 2022).

<sup>86</sup> See QAO letter dated 19 August 2022 to the Review chair.

## Records responsibilities

The Act stipulates that a 'public authority must...make and keep full and accurate records of its activities': see s 7(1)(a). No suggestion for change to s 7(1)(a) emerged during the consultations; and no amendment is needed. That provision clearly states the pertinent duties and, by its use of 'must', signifies that those requirements are mandatory, not discretionary.

By s 7(2), the public authority's executive officer must ensure that the authority complies with the two make and keep duties.<sup>87</sup> That is an appropriate assignment of primary responsibility for achieving the statutory mandate. The work of the Archivist, however, also matters to compliance.

## Taking account of the Archivist's prescriptions

An important function of the Archivist is, as s 24(a) of the Act puts it: 'to develop and promote efficient and effective methods, procedures and systems for making, managing, keeping, storing, disposing of, preserving and using public records.'<sup>88</sup> And by s 25(1)(f), the Archivist's powers include promulgating 'policies, standards and guidelines' about 'making [and] keeping... records.'

The Archivist's expertise in records management is to be influential in decisions about satisfying the s 7(1)(a) duties. By s 7(1)(b), an authority regulated by the Act 'must...have regard to any relevant policy, standards and guidelines made by the archivist....'

So, a public authority is not free to ignore the Archivist's prescriptions: they have to be taken into account when choices are made about how best to 'make and keep' records. But the 'policy, standards and guidelines' are not mandatory.

## Standards – directory or mandatory?

In 1992, in its *Report on Review of Archives Legislation*, the Queensland Electoral and Administrative Review Commission recommended that an archives authority should create records management standards with which regulated agencies had to conform.<sup>89</sup> The proposal was not adopted. Seven years later, a bill introduced in the Legislative Assembly provided that a public authority need only 'take all reasonable steps' to comply with the archivist's standards and guidelines.<sup>90</sup> Even that lesser burden was unacceptable to the Parliament. Instead, s 7(1)(b) of the Act obliged public authorities merely to 'have regard to' such standards and guidelines. The Archivist could advise but not insist.

Other Australasian jurisdictions have addressed the extent to which records management practices should be directed by an archival authority.<sup>91</sup>

---

<sup>87</sup> 'Executive officer' is satisfactorily defined in s 7(3). A chief executive in the public service must ensure 'maintenance of proper standards in the creation, keeping and management of public records': [Public Service Act 2008](#) (Qld) s 98(1)(i). A chief executive of a local government is similarly responsible: [Local Government Act 2009](#) (Qld) s 13(3)(e).

<sup>88</sup> See also the [Public Records Act 2002](#) (Qld) s 24(f) function of giving advice.

<sup>89</sup> Electoral and Administrative Review Commission, Queensland Parliament, [Report on Review of Archives Legislation](#) (Serial No. 92/R3, June 1992) 16.

<sup>90</sup> Public Records Bill 1999 cl 7(1)(a).

<sup>91</sup> Records management obligations have been built into broader public sector mandates. For example, those employed by the Commonwealth are bound by the [Australian Public Sector \(APS\) Values and Code of Conduct](#). APS employees (including the Senior Executive Service), agency heads and relevant statutory office holders *must* create, keep and maintain a record of a particular decision, meeting, transaction or occurrence if: the law requires it; a lawful and reasonable direction given by someone who has authority to give such a direction requires it; due care and diligence require it or the APS values or the maintenance of the integrity and the good reputation of the APS require it.

In New South Wales, a regulated agency must establish a records management program that conforms with standards approved by the archival authority.<sup>92</sup> The Victorian Keeper of Public Records fixes standards for the management of public records and assists those affected to apply them.<sup>93</sup> In Western Australia, records management standards are published by the archival authority; and organisations must implement a plan that complies with such standards.<sup>94</sup> The Tasmanian archivist may issue 'guidelines' which the agency must 'take all reasonable steps' to comply with.<sup>95</sup> In South Australia, 'binding' standards may, with ministerial approval, be issued.<sup>96</sup>

The New Zealand legislation allows the archivist to issue standards stating 'whether compliance is mandatory or discretionary'.<sup>97</sup> Before issuing a mandatory standard, the archivist must give a draft of the standard to any agency to which it could apply and have a process for consulting with affected agencies and 'any other interested person'.<sup>98</sup>

That legislation reflects a broad acceptance elsewhere of the useful contribution that mandatory records management standards make to sound public administration.

Queensland's mild s 7(2) 'have regard to' formula might be referable to a couple of considerations. Perhaps it was thought that, in a phrase, managers should manage and on that basis that an executive officer, who is bound to ensure compliance with the legislative command to make and keep, should be free to decide on the means to achieve that objective. After all, that officer cannot escape the s 7(1)(a) responsibility. It is obligatory: full and accurate records somehow must be kept. The large differences in the circumstances – especially, the resources – of the variety of public authorities may also have influenced the parliament's decision to step back from permitting the Archivist to prescribe mandatory standards out of a concern that they might prove to be unduly burdensome or otherwise inappropriate for some agencies.

There is nothing novel in externally mandated standards of conduct that operate to curtail managerial discretion. Chief executives of state government departments, for example, routinely implement workplace health and safety practices, meet financial management standards set by others and comply with Public Service Commission directives.<sup>99</sup>

As to the second concern, the hundreds of individuals and organisations within the range of public authorities regulated by the Act do differ greatly in their activities and resources. Archival standards can readily be adapted to suit their various circumstances.

Any risk that an unsuitable standard might be prescribed can be satisfactorily addressed.

First, the Archivist could confidently be expected to consult with potentially affected authorities before issuing the standard. Secondly, in respect of setting standards, the Archivist is subject to the prospect of direction by the Minister.<sup>100</sup> Ministerial intrusion into an operational decision that is informed by the Archivist's expertise would seem unlikely. The possibility would, however, encourage circumspection in designing standards. Thirdly, the PRRC advises the Archivist 'about issues affecting the administration or enforcement of' the Act.<sup>101</sup> It can play a role in standard setting.<sup>102</sup>

---

<sup>92</sup> [State Records Act 1998](#) (NSW) s 12(2). The authority may permit relaxation of the standards to accommodate particular needs: s 12(4).

<sup>93</sup> [Public Records Act 1973](#) (Vic) s 12.

<sup>94</sup> [State Records Act 2000](#) (WA) ss 16, 17, 61.

<sup>95</sup> [Archives Act 1983](#) (Tas) s 10A.

<sup>96</sup> [State Records Act 1997](#) (SA) s 14.

<sup>97</sup> [Public Records Act 2005](#) (NZ) s 27.

<sup>98</sup> [Public Records Act 2005](#) (NZ) s 27(2).

<sup>99</sup> [Work Health and Safety Act 2011](#) (Qld); [Financial Accountability Act 2009](#) (Qld); Queensland Treasury, [Financial accountability handbook](#) (Handbook, 15 January 2020); [Financial and Performance Management Standard 2019](#) (Qld); and [Public Service Act 2008](#) (Qld) pt 3.

<sup>100</sup> [Public Records Act 2002](#) (Qld) s 23. See also the [Judicial Review Act 1991](#) (Qld).

<sup>101</sup> [Public Records Act 2002](#) (Qld) s 29(2)(a).

<sup>102</sup> Mandatory standards could be conditioned on approval by the PRRC, if this additional supervision were considered desirable.

Anyhow, the digital age calls for revision of the role that the Archivist should play in records management through standard setting. In 2020, the Tune Review commented on the significance of the lack of mandatory standards for the Commonwealth:<sup>103</sup>

*The inability of National Archives to set mandatory standards for information governance across Commonwealth entities to implement whole-of-government interoperability and long-term re-use of government data, curbs the potential to create efficiencies in information management and result in real budget savings to government.*

Much the same can fairly be said of Queensland.

To manage the volume and complexity of digital records, it is necessary to harness the power of digital technologies. Records hold unstructured and structured data across multiple systems and technologies. Increasingly, machine learning provides ways in which to leverage the value of these disparate sources. But for machine learning to be fully effective, standards must be followed at a whole-of-government level. Such standards inform the ways in which digital data/information/records are structured from creation. At the data element level, the process can be as simple as ensuring that data elements are stored in the same format across multiple agency systems. Of even greater value is ensuring that appropriate metadata is stored to enable the context of the data to be understood and used or re-used appropriately.

The Archivist is well placed to develop appropriate information management standards.

Standards have emerged to ensure that data has 'Findability, Accessibility, Interoperability, and Reusability' (FAIR).<sup>104</sup> Findability ensures that anyone seeking to locate a record will know what records exist. Accessibility will ensure that records can be accessed, subject to any prescribed restrictions. Interoperability enables data within records to be linked to other records to create deeper understanding of policy issues and to improve the quality of government services. Reusability connotes that records can be re-used.

These FAIR requirements necessitate standards developed by ICT professionals. Doing so allows enormous volumes of data to be used, and re-used, to solve complex problems that span agency boundaries. Imagine a world where public data is FAIR, allowing smart tools to assist in responding to natural disasters, to predict which communities will be vulnerable and to enhance disaster preparedness.

Compliance with standards will result in savings and other benefits, including:

- reduced time and burden in finding and accessing records, e.g., under RTI requests
- improved compliance through automation of records management, including restricted access periods
- seamless transfer of records on machinery of government changes
- seamless transfer of digital records into the digital Archives.

## Recommendation

The *Public Records Act 2002* be amended to empower the State Archivist to promulgate records management standards with which public authorities regulated by *Public Records Act 2002* must comply.

---

<sup>103</sup> David Tune, [Functional and Efficiency Review of the National Archives of Australia](#) (30 January 2020) 80.

<sup>104</sup> First published in 2016, the FAIR principles have garnered international acceptance including support from G20, see, e.g., European Commission, [G20 Leaders' Communiqué Hangzhou Summit](#), Statement/16/2967, 5 September 2016, para 12. FAIR principles were first published in Mark D Wilkinson et al, [The FAIR Guiding Principles for scientific data management and stewardship](#) (2016) 3 *Sci Data* 160018.

## Outsourcing and third-party agreements

Public authorities often contract with private sector enterprises to deliver government services.

Those service providers will commonly create and receive records pertaining to their activities in performing their contractual duties. The provider's records, if 'made for use by, or a purpose of, a public authority', to that extent, constitute a public record.<sup>105</sup> The providers are not, however, comprehended by the definition of 'public authority'. So the legislation does not automatically impose records management obligations on them.<sup>106</sup>

Unless the Act is amended to alter that state of affairs,<sup>107</sup> the creation, preservation, ownership and possession of the provider's public records, as well as any intellectual property rights in them, largely<sup>108</sup> fall to be regulated by the terms of the contract under which the provider is engaged.<sup>109</sup>

Ordinarily, the contract would require the provider to create, retain and eventually transfer to the public authority appropriate records relating to the contracted service – even, perhaps, the full and accurate records that would be available had the authority itself delivered the services and discharged its statutory records management duties.

There are two points at which records management by a provider may fail: where the terms of the contract are insufficient; and where the provider does not satisfy obligations that are adequately stated in the contract. The main way in which the former can be addressed is by advice to the outsourcing agency: the latter, by remedies under the law for breach of contract. Both have their problems.

The Information Commissioner and QSA publish guidance on how to achieve satisfactory records management with contracted service delivery.<sup>110</sup> Other Australasian jurisdictions have addressed the issue.<sup>111</sup> Such assistance is valuable. However, it might not always be given effect to in the contractual arrangements that agencies put in place.

---

<sup>105</sup> See [Public Records Act 2002](#) (Qld) s 6(1)(a).

<sup>106</sup> The outsourcing authority records 'its activities' (s 7(1)(a)) - not those of its independent contractor. The New Zealand legislation mentions outsourcing: the agency's duty to 'create and maintain full and accurate records of its affairs' extends to 'the records of any matter that is contracted out to an independent contractor': [Public Records Act 2005](#) (NZ) s 17(1).

<sup>107</sup> Cf. ss 35-6 of the [Information Privacy Act 2009](#) (Qld), which operate to bind the provider to privacy principles.

<sup>108</sup> The qualification accommodates an arrangement where an authority gives custody of its record to another person (see s 8(2)), specific powers of the Archivist over public records under ss 25, 26 and 49 of the Act and that a Regulation might be made under (m) of the schedule 2 Dictionary definition of 'public authority' declaring a provider to be a public authority for the purposes of the Act.

<sup>109</sup> See Richard Mulgan, [Transparency and the Performance of Outsourced Government Services](#) (Occasional paper no. 5, March 2015), 11-2.

<sup>110</sup> See Queensland State Archives, [Outsourcing arrangements, third party and shared service providers](#) (Webpage, 7 May 2021); Queensland State Archives, [Overview of records management responsibilities during outsourcing of functions cheat sheet](#) (Cheat sheet, 22 July 2021); and Office of the Information Commissioner, [Contracts and other agreements](#) (Guideline, 20 September 2019).

<sup>111</sup> National Archives of Australia, [Information Management Standard for Australian Government](#) (Standard, undated); State Records of South Australia, Attorney-General's Department, [Contracting and Official Records Standard](#) (Standard, July 2008); Public Records Office Victoria, Department of Premier and Cabinet, [Operational Management Standard](#) (Standard, 1 August 2019); Tasmanian Archives, Department of Education, [State Records Guideline No. 10: Outsourcing of Government Business – Records management Issues](#) (Guideline, 2014); State Records Commission of Western Australia, [State Records Commission Standard 6: Outsourcing; Archives New Zealand's Outsourcing Business](#) (Standard, February 2002).

<sup>111</sup> See footnote above.

The usual remedy for breach of contract is damages. That prospect encourages performance. If the provider does not properly create and maintain the required records, however, monetary compensation will not bring them into existence.

The consultation phase touched upon outsourcing. No clear indication emerged of the extent to which inadequate records management by providers does hamper effective public administration. Still, the kinds of considerations that Professor Coaldrake has mentioned as posing problems in ensuring suitable oversight of the quality and value of services externally provided probably do call into question the adequacy of the records practices of providers.<sup>112</sup>

What should be done?

Already the Act envisages that an 'entity'<sup>113</sup> might be 'declared under a Regulation to be a public authority' for the purposes of the Act.<sup>114</sup> That step - which has never been taken - would enable the full s 7 records management duties to be imposed on anyone, including a contracted service provider, though this might not be welcomed by providers.

The contributions during consultations did not examine either the existing Regulation route or the utility of amending the Act to foist new records management duties onto providers. Nor have the issues been discussed with (present or potential) providers to gain their perspectives on whether additional records demands would discourage a willingness to tender for business or increase the price of the service. This lack of pertinent information is a reason to be reticent before proposing a legislative initiative. There is another.

This Review is happening as a review proceeds of the RTI Act and the IP Act. In that other review, consideration is to be given to the variety of agencies that are, or may become, public authorities to which the former Act applies.<sup>115</sup> Perhaps there is merit in aligning the reach of the Act with the range of public authorities to be bound by the RTI Act. To allow for due evaluation of that idea, it seems preferable to postpone decisions about outsourcing until after both reviews have reported.

## Recommendation

See below for [further discussion of this recommendation](#).

## Access

The Preamble to the RTI Act notes that government information is a public resource.<sup>116</sup> It is through access that the value of this resource is realised.

The RTI Act uses a 'pro-disclosure' model,<sup>117</sup> providing a right of access to government information unless, on balance, it is contrary to the public interest to do so.<sup>118</sup> Eventually, in public records, some of that information reaches the custody of QSA. Rights accorded under the RTI Act do apply to records held by QSA. Yet the Act prescribes a different regime of access and closure – one more focused on restricting access to public records.<sup>119</sup>

---

<sup>112</sup> Peter Coaldrake, [Let the sunshine in - Review of culture and accountability in the Queensland public sector](#) (Final report, 28 June 2022) 10.

<sup>113</sup> Entity includes 'a person and an unincorporated body': [Acts Interpretation Act 1954](#) (Qld) sch 1.

<sup>114</sup> [Public Records Act 2002](#) (Qld) schedule 2 Dictionary definition of 'public authority' (m).

<sup>115</sup> See Department of Justice and Attorney-General, [Consultation paper – Proposed changes to Queensland's Information Privacy and Right to Information framework](#) (Consultation paper, June 2022) 49-50.

<sup>116</sup> [Right to Information Act 2009](#) (Qld) Preamble, 1(b).

<sup>117</sup> [Right to Information Act 2009](#) (Qld) s 44.

<sup>118</sup> [Right to Information Act 2009](#) (Qld) s 44(1).

<sup>119</sup> [Public Records Act 2002](#) (Qld) s 16.

## Restrictive access regime

The Act attempts to balance rights to access public records with the protection of sensitive material, including information about personal affairs.

Division 3, headed 'Access to public records', provides for rules that operate to limit access. A chief executive of a public authority may fix a time, called a restricted access period (RAP), during which records transferred into QSA's custody may not be accessed, except through application under the RTI Act or by a separate authorisation from the transferring authority. When the RAP expires, the record becomes accessible.

The permissible duration of RAPs assumes that sensitivity to information in public records declines over time. RAPs currently include:<sup>120</sup>

- beyond 100 years – if a regulation is in place
- up to 100 years – where a record contains information about the personal affairs of an individual (living or dead)
- up to 65 years – for specific records, including those where disclosure might damage the security of the Commonwealth or the State
- up to 30 years – for other public records
- open access – immediately on transfer
- provision made in other legislation, which then overrides the Act.

Access restrictions can apply to metadata, including the title of the file, date, agency, a description of the record and the RAP. So metadata can be closed for up to 100 years while only QSA and the public authority will know that the records exist.

Agencies do not have to justify the RAPs they set. Section 19(3) of the Act, however, permits the Archivist to ask the authority to review its restricted access notices. Under s19(4), if a dispute arises between the Archivist and the public authority about a RAP, either may refer the dispute to the PRRC for resolution.<sup>121</sup> No dispute has yet been referred.

Long RAPs diminish the value of the records through denial of use. Unfortunately, the recent trend is for agencies to become more risk averse and close records and metadata for extensive periods.<sup>122</sup> This includes closing all records in a series even though only some merit closure.

Excessive restrictions on access can diminish accountability of government, result in lost opportunity for research and innovation and deny citizens information of personal significance.

## Alignment of access provisions

The Act was drafted to be consistent with freedom of information legislation then in place.<sup>123</sup> That 'pull model' regime was replaced by the RTI 'push model' which facilitated access other than for 'Exempt information'.<sup>124</sup>

---

<sup>120</sup> [Public Records Act 2002](#) (Qld) s 16.

<sup>121</sup> [Public Records Act 2002](#) (Qld) s 19.

<sup>122</sup> Perhaps because of the Parliamentary Crime and Misconduct Committee inquiry into the release and destruction of Fitzgerald Inquiry documents in 2013: Parliamentary Crime and Corruption Committee, Queensland Parliament, [Inquiry into the CMC's Release and Destruction of Fitzgerald Inquiry Documents](#) (Report No. 90, April 2013).

<sup>123</sup> Freedom of Information Act 1992 (Qld), repealed by [Right to Information Act 2009](#) (Qld) ch 7.

<sup>124</sup> [Right to Information Act 2009](#) (Qld) sch 3, Exempt information.

The access regime provided by the Act should be aligned with the pro-disclosure bias of the RTI Act. Then records in QSA's custody would, by default, be open to the public, unless they fell within an exemption category expressed in the RTI Act.

RAPs fixed by the responsible public authority would still have a place. But their duration should be set with a pro-disclosure bias, giving due consideration as to how the identified sensitivities within the records that preclude access will diminish over time, and limiting the period of the RAP to ensure that records are accessible as soon as the sensitivities are no longer present.

The RAP categories are stated in the Act. Is that the best place for them?

Legislation is not always easily amended to take account of changed circumstances. Rather than continuing to embed in the Act a set of requirements focused on restricting access, it seems better that provision be made for them in a regulation. The regulation would, much as the present categories do, prescribe the circumstances that indicate the maximum duration of denial of access yet be more readily able to be amended as circumstances change.

Change to a pro-disclosure model would:

- increase timely access to public records, maximising their value
- reduce confusion by harmonising the Act with the RTI Act and the IP Act
- streamline business processes, training and education
- decrease administrative burden by reducing the number of individual access decisions needing to be made.

Such a shift in approach would have ramifications for public authorities. They would need to consider existing RAP decisions affecting records already with QSA to ensure consistency with exemption categories in the RTI Act. However, this burden could be reduced through a transition period (perhaps 10 years) to allow sufficient time to plan for, review and, where necessary, update RAPs.

## Provision to challenge access decisions

There is no mechanism for members of the public, or public authorities, to challenge access decisions by a responsible authority in respect of records in QSA's custody. The only recourse is to seek access under the RTI Act.

The Act does not expressly require a public authority to respond to a request for access to records held by QSA. Nor does the Act require reasons for a refusal. Both deficiencies should be remedied. Doing so would accord with contemporary standards of public administration.

The addition of a reasons requirement would encourage more open access. The prospect of having to account for denial of access may also lead to less restrictive access being attached to records on transfer to QSA thereby allowing the value of the records to be realised sooner.

Where a public authority refuses a request for access to a record in QSA's custody, there should be an opportunity for challenge under the Act. The ability to contest a refusal promotes openness of government. At present, the only avenue for review is under the RTI Act. Section 80(1) of the RTI Act allows for internal review. A person affected by a decision may apply to have the decision reviewed by the agency or minister dealing with the access application.<sup>125</sup> If the agency still refuses access, Part 9 of the RTI Act allows for external review by the Information Commissioner.<sup>126</sup>

The Review has developed a mechanism for appealing a decision refusing access to records in QSA's custody: see [Appendix E](#).

---

<sup>125</sup> [Right to Information Act 2009](#) (Qld) s 80(1).

<sup>126</sup> [Right to Information Act 2009](#) (Qld) pt 9.



If the Act was amended to allow an applicant to request a review of an access decision made under the Act (rather than restarting the RTI access application process), this would:

- reduce the time and costs for the individual (by not having to apply for access under RTI and pay for costs under both the Act and the RTI Act), and
- provide a more streamlined approach (by relying on a process already established in the RTI Act rather than putting a different process into the Act).

That process would have resource implications for the public authority (for internal review decisions) and for the Information Commissioner (for external review decisions).<sup>127</sup> This would be balanced by a reduction in RTI requests for access to records within the Archives.

The inclusion of an appeals process within the Act may reduce the burden experienced by public authorities by eliminating what are essentially duplicate application processes caused by having to apply for access under the Act and then again under the RTI Act or IP Act. As there is no current provision in the Act, the precise workload and resource implications are unknown. However, in addition to eliminating duplicate application processes, by requiring a pro-disclosure model when records are transferred to QSA, it is anticipated that the resource burden for public authorities might be lessened.

## Recommendations

It is recommended that the *Public Records Act 2002* be amended to make public records accessible to the public according to the following:

- a. A public record transferred to Queensland State Archives is to be accessible at the time of transfer unless the public record contains information which under the *Right to Information Act 2009* or *Information Privacy Act 2009* would be 'Exempt information' as defined in the *Right to Information Act 2009* or contrary to the public interest or have access restricted under another law.
- b. If access to the public record is to be restricted, the responsible public authority must set a restricted access period.
- c. In fixing the duration of the restricted access period, the responsible public authority:
  - i. should be pro-disclosure, restricting access only for as long as giving access to the record would, on balance, be contrary to the public interest (for consistency with the *Right to Information Act 2009* s 44).
  - ii. is to have regard to:
    - the *Human Rights Act 2019*, and
    - the needs and interests of any affected First Nations persons.
- d. The *Public Records Act 2002* authorise the making of regulations, including with respect to the operation and duration of restricted access periods.
- e. The *Public Records Act 2002* provide a mechanism for challenging a refusal of access to public records in the custody of Queensland State Archives.

---

<sup>127</sup> The process takes into account the views of the Information Commissioner in her letter to the Review chair dated 25 August 2022.

## Role of State Archivist

### Ministerial and chief executive control

The Archivist is employed under the *Public Service Act 2008*.<sup>128</sup> Thereby, the Archivist is subject to the direction of the chief executive of the department administering QSA in relation to 'their employment in that department.'<sup>129</sup> In turn, that chief executive is generally subject to direction by the responsible minister.<sup>130</sup>

Unusually for a departmental subordinate, the Act stipulates for direction and reporting immediately between the Archivist and the minister.

As to ministerial supervision, by s 23, '[s]ubject to the Minister and the chief executive, the Archivist is to control the archives.'<sup>131</sup> The 'archives' 'consists of the archivist and the staff of the archives'.<sup>132</sup> This appears to give the minister general powers of direction in respect of the functions and powers conferred on the Archivist by the Act.

The reporting relationship is created by s 56 of the Act. The Archivist must report annually directly to the minister (not through the chief executive).

There is one relevant exception to ministerial and chief executive control: the Archivist is free of such direction in 'making decisions about the disposal of public records'.<sup>133</sup>

### Independence of the State Archivist

The consultation phase elicited support for a more independent archival authority.<sup>134</sup> A statutory authority governed by a board was suggested. Others favoured quarantining facets of the Archivist's work from political and official intervention. Records management standards, monitoring and reporting and decisions about transfer and storage were among the functions mentioned in that context. A few contributions preferred that the existing supervision regime be maintained. Such differences are unsurprising.

The appropriate degree of archival immunity from departmental and ministerial direction has been debated for years. In the early 1990s, the Queensland Electoral and Administrative Review Commission proposed that a statutory corporation that was not subject to operationally detailed direction be put in place, which did not happen.<sup>135</sup>

The reason for affording independence to a public official is, in a word, need: the freedom granted is reasonably required for the proper discharge of the responsibilities of the position and, commonly, to secure public confidence in the work.

In the management of the state's records, the primary justification for more independence is to better enable the Archivist to perform the functions of the office, unhampered by the prospect, or the fact, of

---

<sup>128</sup> [Public Records Act 2002](#) (Qld) s 22.

<sup>129</sup> [Public Service Act 2008](#) (Qld) s 11. Under current arrangements, the Archivist reports to the Deputy Director-General (Communities) of the Department of Communities, Housing and the Digital Economy.

<sup>130</sup> [Public Service Act 2008](#) (Qld) s 100(1). The administrative regime is discussed by J D McKenna QC in his [Review of the Allegations of the Former State Archivist about the Queensland State Archives Annual Reports for 2017 – 2018, 2018 – 2019 and 2019 – 2020](#): 9-10, 13-14.

<sup>131</sup> [Public Records Act 2002](#) (Qld) s 23.

<sup>132</sup> [Public Records Act 2002](#) (Qld) s 21(3).

<sup>133</sup> [Public Records Act 2002](#) (Qld) s 27.

<sup>134</sup> 71% of survey respondents felt that the Archivist should be independent, with support stronger in metropolitan areas (79%) than in the regions (60%).

<sup>135</sup> Electoral and Administrative Review Commission, Legislative Assembly of Queensland, [Report on Review of Archives Legislation](#) (Serial No. 92/R3, June 1992) 96.

inappropriate intervention by superiors.<sup>136</sup> That greater freedom is intended to facilitate an optimum contribution by QSA to the creation and preservation of public records, incidentally, enhancing integrity in public administration in the process.<sup>137</sup>

That concern is manifested in the Act in s 27. It shields disposal decisions from ministerial and chief executive intervention. No other function of the Archivist is legislatively protected from official supervision to any extent.

Appropriate deference to the Archivist's expertise and significant role in supporting the creation and preservation of public records should encourage a cautious approach to intervention. In practice, as things are, QSA operates comfortably enough, without inappropriate intrusion. However, arrangements for supervision that are enacted in legislation should be appropriate in principle, not dependent on the goodwill and sound judgment of the Archivist's superiors for the time being.

There are functions beyond disposal that could attract statutory independence. Views will reasonably differ about those that merit such protection. Those functions that this Review favours for complete independence are: (i) so much of the annual report (required by s 56 of the Act) as relates to compliance by public authorities with their responsibilities in relation to the Act; and (ii) a decision in respect of access to the records of a former minister after a change of government (if access in those circumstances is to be decided by the Archivist).

What about other functions and powers of the Archivist? To what extent should they be subject to direction?

The Act exhibits an all or nothing approach. Disposal decisions are completely protected. No other act or decision is assured of any independence.

Decisions of the Archivist may have significant consequences for public authorities. If the [recommendation to allow the Archivist to issue mandatory standards](#) is accepted, the impact on agency resources, may, in some instances, grow. In these circumstances, a potential for ministerial direction should be retained in respect of almost all of the Archivist's functions.

## Recommendations

The State Archivist remain generally subject to direction by the minister.

Section 27 of the *Public Records Act 2002* be retained to preserve the independence of the State Archivist in respect of a disposal decision.

The same degree of independence be put in place through amendment to the *Public Records Act 2002* in respect of:

- i. So much of the annual report to the minister (required by s 56 of the *Public Records Act 2002*) as relates to compliance by public authorities with their responsibilities in relation to the *Public Records Act 2002*, and
- ii. A decision in respect of access to the records of a former minister after a change of government (if access in those circumstances is to be decided by the State Archivist).

---

<sup>136</sup> [Public Records Act 2002](#) (Qld) s 24.

<sup>137</sup> Although several of the Archivist's decisions will have a discernible integrity dimension, QSA is not, Professor Coaldrake considers, a core integrity body: See Peter Coaldrake, [Let the sunshine in - Review of culture and accountability in the Queensland public sector](#) (Final report, 28 June 2022) 6. In this respect, it is unlike those persons and organisations that focus on integrity concerns and do operate with substantial, legislatively assured independence: Queensland Audit Office, Office of the Information Commissioner, Crime and Corruption Commission, Ombudsman and Queensland Integrity Commissioner.

## Ministerial supervision

A justifiable measure of practical independence can be secured in respect of the exercise of the minister's power to direct the Archivist. Parliaments have attached conditions to ministerial directions, mainly to inhibit unnecessary interventions. A balance may be struck that ensures accountability while promoting a degree of functional independence in the performance of those duties that reasonably require it in the interests of proper administration and for the sake of public confidence. There are other modern illustrations of this.

The Queensland Building and Construction Commission is subject to ministerial direction. The Minister, however, must cause a direction to be tabled in the Legislative Assembly within seven sitting days after it is given; and the Commission's annual report must include it.<sup>138</sup>

The Australian Sports Commission must comply with the Minister's directions. No such direction may be given unless that Commission has been informed, in writing, that the Minister is considering making it. The Chairperson must be afforded an opportunity to discuss the need for it. If, afterwards, the direction is made, a copy must be published in the gazette as well as laid before both houses of federal Parliament.<sup>139</sup>

Archival legislation elsewhere makes similar provision. In Western Australia, the Minister may, after consulting the archival Commission, issue directions on general policy. A direction must be in writing, may not be issued in respect of 'a particular government record or... organization' and is to be included in the Commission's annual report.<sup>140</sup> Something like that is also law in the Australian Capital Territory.<sup>141</sup> The Commonwealth archival legislation stipulates that a direction by the Minister cannot be inconsistent with that Act.<sup>142</sup>

This Review favours attaching conditions like those elsewhere to ministerial direction.

## Recommendations

The *Public Records Act 2002* be amended to provide that a ministerial direction in relation to the State Archivist's performance of a function or the exercise of a power conferred by the *Public Records Act 2002* be:

- a. in writing
- b. not inconsistent with the *Public Records Act 2002*
- c. included in the State Archivist's annual report pursuant to s 56 of the *Public Records Act 2002*.

---

<sup>138</sup> [Queensland Building and Construction Commission Act 1991](#) (Qld) s 9. See, e.g., [Professional Standards Act 2004](#) (Qld) s 65, [Hospital and Health Boards Act 2011](#) (Qld) s 44, [Health and Wellbeing Queensland Act 2019](#) (Qld) s 13, [Jobs Queensland Act 2015](#) (Qld) s 23-4.

<sup>139</sup> [Australian Sports Commission Act 1989](#) (Cth) s 11.

<sup>140</sup> [State Records Act 2000](#) (WA) s 65. In New Zealand, the Chief Archivist 'is not subject to direction from either the Minister or the chief executive': [Public Records Act 2005](#) (NZ) s 12.

<sup>141</sup> [Territory Records Act 2002](#) (ACT) s 39.

<sup>142</sup> [Archives Act 1983](#) (Cth) s 7.

## Chief executive control

The case is weaker for retaining chief executive control in respect of those functions and powers that are reposed in the Archivist by the Act - and not just because the Minister retains oversight.

The Archivist's capacity to set minimum standards for records management and to monitor compliance with them provide some assurance that the public record will be maintained in accordance with the purposes of the Act, including upholding the accountability of public authorities and sustaining the transparency of their activities. An ability in the chief executive of an administering department to direct the Archivist, for example, to lower records management standards or not to check and report on compliance has distinct potential to create a conflict of interest and duty for that chief executive.<sup>143</sup> It may also tend to diminish public confidence in the integrity of the administration of the Act.

QSA operates as a unit of administration within a state government department. That arrangement affords QSA substantial administrative and legal support. No change to that concept is suggested. Its retention involves departmental and other official supervision of the Archivist in many respects related to the operations of QSA, its budget, premises and staff. If this Review's recommendation is accepted, however, the Archivist would be freed of the prospect of direction (except by the Minister) in the performance of functions and the exercise of powers expressly conferred by the Act.

The status of the Archivist should be commensurate with the considerable responsibilities of the office and with signalling its importance in the public service and for the State. With that in mind, there is a good case for the Archivist to report directly to the chief executive of the administering department rather than to a Deputy Director-General.

### Recommendation

The State Archivist be subject to the direction of the chief executive of the department administering Queensland State Archives except in respect of the performance of functions and in the exercise of powers conferred by the *Public Records Act 2002*, and the *Public Records Act 2002* be amended accordingly.

## Public Records Review Committee

### Functions

The PRRC advises the Archivist and the Minister about the administration and enforcement of the Act, reviews decisions of the Archivist not to authorise disposal of public records and decides disputes between the Archivist and a public authority about a restricted access notice.<sup>144</sup>

---

<sup>143</sup> See s 23 of the Act in combination with s 33(11) of the [Acts Interpretation Act 1954](#).

<sup>144</sup> [Public Records Act 2002](#) (Qld) s 29.

## Membership and meetings

The PRRC has nine members. The Chief Justice of Queensland and the Ministers administering the Act, the *Local Government Act* and the *Public Service Act* each nominate one person. The other five members are nominated by the Minister administering the Act.<sup>145</sup> A member is appointed for a renewable term of no more than three years.<sup>146</sup>

The PRRC conducts its proceedings as it considers appropriate.<sup>147</sup> Mostly, the Archivist is entitled to 'attend and take part' in meetings although not in PRRC decisions.<sup>148</sup> Usually, the Archivist reports to PRRC meetings, in person or in writing.

## Change in composition?

[Mention is made elsewhere](#) of the significance of securing First Nations representation on the PRRC by amendment to the Act. In assuring public authorities and the public that PRRC decisions will be well considered, others have good claims to its membership: as examples, historians, genealogy researchers and relevant specialists in the management of digital data and information.

The appropriate composition of the PRRC should relate to its functions. Amendment of the Act is not needed to achieve that. Matching membership to business is feasible now because of the flexibility inherent in the Minister's power to appoint a majority of members if only they have knowledge of, and experience in, 'any area... relevant to the functions of' the PRRC.<sup>149</sup>

Incidentally, the importance of attracting and retaining suitable nominees does warrant improving the remuneration and allowances fixed for PRRC members.<sup>150</sup>

## Additional function

The breadth of the s 29(2) authority to 'advise... about... administration or enforcement' gives the PRRC ample scope for advice. The Review envisages the possibility of an additional function. It relates to ministerial records.

If the Archivist is to make decisions concerning [access to ministerial records](#), there should be a right of appeal to the PRRC.

## Recommendation

If the State Archivist is to decide on applications for access to ministerial records, the *Public Records Act 2002* be amended to provide for a right of appeal to the Public Records Review Committee against the State Archivist's decision.

---

<sup>145</sup> They are to have 'knowledge of, and experience in, any area considered by the Minister to be relevant to the functions' of the PRRC: [Public Records Act 2002](#) (Qld) s 29(3)(e). The Minister's other nominee has 'knowledge of, and experience in, the management of information and records': [Public Records Act 2002](#) (Qld) s 24(3)(d).

<sup>146</sup> See [Acts Interpretation Act 1954](#) (Qld) s 25(1)(c) in combination with [Public Records Act 2002](#) (Qld) s 31.

<sup>147</sup> [Public Records Act 2002](#) (Qld) s 34(4).

<sup>148</sup> The Archivist is not to be present when the PRRC considers challenges to a decision of the Archivist under [Public Records Act 2002](#) (Qld) ss 19(4) or 39; [Public Records Act 2002](#) (Qld) s 38(1).

<sup>149</sup> [Public Records Act 2002](#) (Qld) s 29(3)(e).

<sup>150</sup> By the Governor in Council: see [Public Records Act 2002](#) (Qld) s 29(4).

## Regulatory effectiveness and efficiencies

### Retention and disposal of records

The purpose of disposal is to ensure that records are kept only for as long as their value justifies their storage and management. The practice reduces security risks. It saves on storage and management costs. It facilitates discoverability and access.

The Archivist may authorise disposal, with regard to any relevant professional standards and the purposes of the Act.<sup>151</sup>

QSA and the public authority work together to decide how long a record should be kept. This decision is influenced by such considerations as experience in records management, the subject matter, and community interest. The agreed retention periods for the agency's records are documented in an approved schedule formally approved by the Archivist.<sup>152</sup> The schedule provides the lawful authority to dispose of public records. The process is time consuming and resource intensive for QSA and the authority.

Retention and disposal are often complicated. The following themes emerged in consultation:

- schedule development is difficult and slow. The process often takes months
- disposal decisions are difficult, largely due to the complexity of schedules
- implementation is difficult because there are many retention periods and excessive disposal triggers to build into systems
- schedules are too specific, and
- external changes, such as machinery-of-government changes, can make decisions difficult if a schedule or disposal authority is out of date.

### Implications

Because it is not always easy to determine for how long records should be kept or when they become eligible for disposal, some public authorities do not dispose of public records in a timely manner.

Prolonged retention of digital records poses cyber security risks and imposes costs. The maintenance of legacy systems has resource implications. There is no mechanism to assist agencies to consolidate digital storage to achieve savings at scale. The Tune Review recommended that digital storage of Commonwealth legacy systems be centralised at the National Archives to achieve savings of nearly \$50 million based on initial estimates.<sup>153</sup>

Additional costs are associated with lengthy retention of physical records.<sup>154</sup> None of the stakeholders who expressed concern about the complexity of records disposal thought the problem was sourced in legislation. The Review agrees and does not recommend legislation to simplify the retention and disposal schedule process. That said, the problems do relate to characteristics of government records management which have relevance to the functions and powers of the Archivist:

- Inconsistency in the implementation of records management systems across public authorities, with each authority inventing its own retention and disposal schedule.
- A lack of appreciation of records management duties by staff of authorities.
- An inability to acquire cost-effective technology to automate disposal.

---

<sup>151</sup> [Public Records Act 2002](#) (Qld) s 26.

<sup>152</sup> [Public Records Act 2002](#) (Qld) s 26.

<sup>153</sup> David Tune, [Functional and Efficiency Review of the National Archives of Australia](#) (30 January 2020) 59.

<sup>154</sup> These are discussed in the section on [Third Party Storage of Physical Records](#).

These difficulties could be addressed with standardisation of records management across government. Standardisation would bring efficiencies through the adoption of pre-authorised, off-the-shelf retention and disposal schedules, a whole-of-government solution for automated selection of records, and training. Standards will enable the use of digital processes to manage retention, disposal and preservation, reducing costs and increasing compliance. Disposal of digital records assists in reducing the risk of cyber-security breaches.

Recommendation 14 matters in this context.

## Third party storage of physical records

Management, including storage of information, physical and digital, has not kept pace with the volume of records generated.

Retaining physical records long after the business need has passed has resulted in stockpiling records unnecessarily. One consequence is financial: third-party suppliers store lots of records, physical and digital.

Storage costs are substantial and ever growing.

Several factors contribute to the high volume of records being stored under commercial arrangements:

- The process for managing retention and disposal of records is overly burdensome.
- Resourcing of this business function has reduced over time.
- Machinery of government changes shift responsibility for records management (including disposal) away from business areas with staff who do understand the records.

The current approach relies on agencies having a sufficient capability to undertake appropriate disposal. Some agencies do have good capability for records management. Smaller agencies and local governments, however, can be particularly challenged by this. Failing to achieve timely disposal is (at least in part) the result of diminishing capability.

Providing expertise to authorities to address legacy holdings can achieve savings. Opportunities for savings would be enhanced through further assistance to implement business processes which reduce unnecessary records creation.

Government continues to generate records requiring storage. Without archival intervention, storage costs will increase.

Mandatory standards can contribute to savings. The Archivist should be invited to propose other ways to reduce future expenditure on storage.

### **Recommendation:**

To investigate savings that might be achieved, the State Archivist be requested to prepare a plan, for the government's consideration, to address the legacy physical records and opportunities for digitisation of the public records which are not currently stored in digital form.

## Notification by gazette

When a public authority ceases to exist and its functions are not to be carried out by another public authority, a regulation must be developed nominating a relevant public authority.<sup>155</sup> This commonly

---

<sup>155</sup> [Public Records Act 2002](#) (Qld) s 8(3)(b).



occurs when a commission of inquiry ends. It happens when a public authority ceases to exist following a machinery-of-government change. A regulation nominates a different public authority which then has the responsibility to manage the records.

Developing a regulation is complex, time consuming and costly. The process involves months of administrative work by officers to develop the documentation for approvals, drafting and implementation. Additionally, there is cost associated with the publication of regulations because physical copies are supplied in addition to website publication.

To resolve such problems, jurisdictions across Australia and in New Zealand use a range of methods, including designation of the new records recipient by the Archivist or by the Minister<sup>156</sup>.

Other options for undertaking the change include using the *Queensland Government Gazette* (the Gazette) or by website publication.

The Gazette could be used to notify the identification of the new responsible public authority. There are administrative processes associated with this process but they are fewer than with a regulation.

The Gazette is published electronically. There are no costs of physical printing.

Another option is online publication. It is common for agencies to publish advice on their websites. The approval process for website publications involves only internal protocols governing publishing information on a department's website. Hence, this option is cheaper than notification by Regulation or Gazette.

Gazette seems the best option. It reduces the time and administrative effort in undertaking the work while incorporating ministerial oversight. Adopting this approach would realise savings and efficiencies through reduced costs and productivity gains through reduced administrative process.

Establishing a new responsible public authority for the ongoing management of records will still require consultation with stakeholders. This is an unavoidable part of the process. Use of the Gazette, however, will reduce delay and expense.

## Recommendation

The process for notification of the selected public authority referred to in s 8(3)(b) and s 15(d) of the *Public Records Act 2002* be changed to publication in the *Queensland Government Gazette*.

## Ministerial records

### Change of Custody

Public authorities regulated by the Act vary considerably in many respects, including powers and responsibilities. They also differ in legal personality: individuals, corporations and unincorporated organisations are comprehended by the statute. Mostly, the Act is comfortably applicable to the full range of authorities. But the one size fits all approach has created difficulties, mainly in connection with ministerial records.

Where 'a function or power of a public authority (the original) is transferred to another public authority, the records of the original... relating to the function or power must be given to the other public authority.'<sup>157</sup> In that scenario, the original public authority survives despite the loss of a function or power. The only alternative for which the statute provides is where 'a public authority ceases to exist.'<sup>158</sup> In that event, the records are to be dealt with in one of three ways: (i) if the functions of the authority are to be carried out by another authority—given to the other authority; or (ii) if the functions

---

<sup>156</sup> This occurs in South Australia and New South Wales: [State Records Act 1997](#) (SA) s 3; [State Records Act 1998](#) (NSW) s 7.

<sup>157</sup> [Public Records Act 2002](#) (Qld) s 8(4).

<sup>158</sup> [Public Records Act 2002](#) (Qld) s 8(3).

are not to be carried out by another authority—given to the authority that is the relevant authority under a regulation; or (iii) in any other case—given to the archives or disposed of in accordance with a decision of the Archivist.<sup>159</sup>

A minister is a public authority.<sup>160</sup> However, it is not easy to apply those provisions to ministerial circumstances. For example, a department will cease to exist if it is abolished. Other than by death, when can it be said that a minister ‘ceases to exist’? Avoiding an interpretation that is unlikely to have been intended, presumably, the answer is: when the office is lost from any cause including resignation, dismissal or the succession of a new minister.

When functions cease to be performed or are transferred between public authorities, the Act provides for responsibility for the relevant records to go to the new public authority or as designated by a regulation.<sup>161</sup> However, it is not clear how these provisions apply to ministers where there is a change in the individual appointed as minister, a change in the portfolio responsibilities of that minister, or a change in government. If a new minister is appointed to perform all the functions of the former minister, is s 8(3)(a) engaged?<sup>162</sup> If so, even on a change of government, the former minister’s records must be given to the new minister – an outcome that is at odds with an access arrangement agreed between former premiers that was in place when the Act was passed.<sup>163</sup> And if just one function of the former minister is not to be performed by a new minister – as might well happen on a change of government – do those records that relate to the abandoned function need to be the subject of a regulation made pursuant to s 8(b)?

QSA is acquainted with the problems concerning the custody of records of former ministers and with other difficulties in connection with the operation of s 8. It would be advantageous if the problems were resolved by government.

## Access to ministerial records

Decisions about access to public records are made by the public authority responsible for them.

Former ministers make an RTI application to access ministerial records from their tenure.<sup>164</sup>

An interim agreement was signed in 1999 between then Premier Peter Beattie and Rob Borbidge, then Leader of the Opposition, agreeing that access to ministerial records could be granted following consultation with the Leader of the Opposition or the leader of the party in government when the records were created. Ministers could not have access to the ministerial records of a previous government of a different political party. These understandings were not (in terms at any rate) translated into the Act.

Such access issues deserve reconsideration.

One solution is to transfer the records to QSA and authorise the Archivist to decide on access to them.

If that is to happen, two additional legislative changes would be appropriate. First, the Archivist should have independence from ministerial direction in connection with the access decision. Secondly, there should be a right to appeal the Archivist’s decision to the PRRC.

---

<sup>159</sup> [Public Records Act 2002](#) (Qld) s 8(3)(a), (b) and (c).

<sup>160</sup> [Public Records Act 2002](#) (Qld) sch 2.

<sup>161</sup> [Public Records Act 2002](#) (Qld) s 8.

<sup>162</sup> That would also appear to be the case if all the former minister’s functions are to be performed by more than one new minister.

<sup>163</sup> *Interim Arrangement for Access to Ministerial Office Records* promulgated on 18 April 1999 by the Hon Peter Beattie AC and the Hon Robert Borbidge AO: [Explanatory notes](#), Public Records Bill 2001 (Qld) 10.

<sup>164</sup> Ministerial Services, Department of Premier and Cabinet, [Ministerial handbook: Governing Queensland](#) (August 2022) section 2.2.4.

## Recommendation

The difficulties that attend the transfer of ‘ministerial records’ on a change of government and otherwise in connection with the operation of s 8 of the *Public Records Act 2002* be addressed by government.

## Councillor records

The chief executive officer is responsible for proceedings, accounts or transactions of the local government or its committees as well as for all documents owned or held by the local government.<sup>165</sup>

More to the present point, a local government is a public authority to which the Act applies.<sup>166</sup> As the executive officer under the Act,<sup>167</sup> the local government’s chief executive officer must ensure that it complies with its s 7 records management duties.<sup>168</sup>

In discharging that responsibility, a chief executive officer is legally entitled to the support of councillors. By s 12(3)(a)(iii) of the *Local Government Act 2009*, all councillors are responsible for ensuring that their local authority ‘complies with all laws that apply to local governments.’<sup>169</sup>

Unlike ministers, councillors are not comprehended by the definition of public authority in the Act.<sup>170</sup> Accordingly, the s 7 duty to make and keep records does not apply to them. Should it?

Factors that sustain parliament’s decision to impose the s 7 duties on ministers – especially, the interests of transparency, accountability and integrity in public administration – look to support extending those duties to councillors.

The Crime and Corruption Commission considers that the ‘differential treatment’ of ministers and councillors in records management ‘reflects a corruption risk in local government...’.<sup>171</sup> That perception favours enlarging the definition of public authority to include councillors. An issues paper that was widely distributed early in this Review adverted to that possibility.<sup>172</sup> None of the responses opposed the idea.<sup>173</sup> And taking that step would conform with the responsibility that councillors already accept through their *Code of Conduct* commitment to ‘keeping clear, concise and accessible records of decisions.’<sup>174</sup>

If councillors are to be public authorities, consequential changes will be needed.

## Recommendations

The definition of ‘public authority’ in the schedule 2 Dictionary be amended to add local government councillors.

---

<sup>165</sup> [Local Government Act 2009](#) (Qld) s 13(3)(e).

<sup>166</sup> [Public Records Act 2002](#) (Qld) sch 2.

<sup>167</sup> [Public Records Act 2002](#) (Qld) s 7(3)(b).

<sup>168</sup> The chief executive officer is subject to direction by the Mayor but not if it ‘would result in the chief executive officer contravening a provision of an Act’: [Local Government Act 2009](#) (Qld) ss 170(1)-(2)(d).

<sup>169</sup> [Local Government Act 2009](#) (Qld) s 12(3)(a)(iii).

<sup>170</sup> [Public Records Act 2002](#) (Qld) sch 2 Dictionary (c).

<sup>171</sup> Submission from Crime and Corruption Commission to Public Records Act Review, 30 June 2022, 3.

<sup>172</sup> Public Records Act Review, *Issues paper – Accountability and Transparency* (Issues paper, June 2022) 10.

<sup>173</sup> A few supported it.

<sup>174</sup> Department of Local Government, Racing and Multicultural Affairs, [Code of Conduct for Queensland Councillors](#) (4 August 2020) 5.

A definition of 'record of a Councillor' be added in the Dictionary to exclude a record related to a councillor's 'personal or party political activities'.

Consequential changes be made to the *Public Records Act 2002*, including to add:

- a. a definition for a record of a councillor in the schedule 2 Dictionary, and
- b. a 'record of a councillor' to the definition of public record in s 6.

## Alignment with RTI Act and IP Act

The government is undertaking consultation on proposed reforms to Queensland's information privacy and right to information framework.<sup>175</sup>

The IP Act protects privacy by regulating how personal information is collected and managed. The IP Act also provides a right of access to, and amendment of, personal information held by agencies and ministers.

The RTI Act provides a right of access to information held by agencies and ministers unless, on balance, it is contrary to the public interest to release the information.

Both those Acts use expressions found in the Act. It is appropriate that consideration be given to aligning definitions and concepts after completion of the review now being conducted concerning those Acts.

### Recommendation

The alignment of definitions and concepts in the *Public Records Act 2002* with similar provisions in the *Right to Information Act 2009* and the *Information Privacy Act 2009*, including with respect to the practice of outsourcing, be addressed after completion of the review being conducted concerning those Acts.

---

<sup>175</sup> See Department of Justice and Attorney-General, [Consultation paper – Proposed changes to Queensland's Information Privacy and Right to Information framework](#) (Consultation paper, June 2022).

## Savings and efficiencies

The terms of reference require consideration of 'efficiency gains which could be achieved, with regard to the scope of records retained.'<sup>176</sup>

Responses to this element are captured in multiple topics throughout the report leading to recommendations for amendments to the Act and also to proposals that can be implemented without legislative change. In this report:

- Savings means a reduction in costs or expenditure.
- Efficiencies means changing or removing an activity resulting in a reduction in waste, time, or effort.
- Benefits realisation means, irrespective of changes to cost or process, the value derived from the activity increases.

This section consolidates the recommendations with potential to realise savings, efficiencies and other benefits.

### Recommendation: Whole-of-government strategy

Cohesive management of public records can improve policy, services and accountability, as well as fuel research and innovation.

*Recommendations:*

- a. The government adopt a cohesive approach to the management of its public data, information and records as a valuable and inter-connected asset.*
- b. In doing so, consideration be given to clarification of roles and accountability for management of data, information and records.*
- c. The State Archivist be requested to provide advice on the selection and implementation of business ICT solutions from a records and information management perspective.*

The records of government are increasingly digital. Digital records include data and information. The responsibility for the management of data, information and records is distributed among those responsible within government for records management, information and data. Disconnected approaches to strategy setting and management of information risk confusion, inefficiencies and an inability to harness the benefits of the information to improve policy design and services.

Adopting a harmonised approach to information management will facilitate a coordinated information management framework.

### Gains

- **Savings:**
  - by reducing complexity for agencies in understanding their records management obligations
  - allowing digital solutions to manage the creation, management, use, re-use, deletion, and preservation of information.
  - reduced costs of machinery-of-government changes.

---

<sup>176</sup> See Terms of reference in [Appendix A](#).

- **Efficiency:**
  - Reduced duplication of effort in managing data, information and records as separate activities
  - Established protocols for metadata to provide essential contextual information will enable records to be more discoverable, accessible, and usable.
- **Benefits:** Better use and reuse of information.

**Is a legislative amendment required?** No

## Recommendation: Policies, standards and guidelines

Minimum mandatory standards for records management will enable more efficient and effective management of records. Importantly, the standards will be adapted to a public authority's circumstances. Mandatory standards are not uniform standards. They do not mean that every public authority regardless of size, budget and business activity will have the same systems and processes.

The standards would establish base level, principles-focused requirements for public authorities with low records management maturity, while enabling public authorities with more advanced systems and processes to better realise the value of digital technologies to manage the volume and complexity of digital record keeping.

*Recommendation:*

*The Public Records Act 2002 be amended to empower the State Archivist to promulgate records management standards with which public authorities regulated by the Public Records Act 2002 must comply.*

## Gains

- **Savings:**
  - Reduced costs for records management, including storage and maintenance of obsolete formats, through automated actions.
  - Reduced costs for machinery of government changes due to harmonised records management approaches.
- **Efficiency:**
  - Reduced time and administrative burden in finding and accessing records, e.g. under RTI requests.
  - Reduced administrative burden and improved compliance through automation of records management requirements, including RAPs.
  - Seamless transfer of records ownership as a result of machinery-of-government changes.
  - Seamless transfer of digital records from an agency into the digital Archives.
- **Benefits:** Opportunity for use of machine learning solutions to manage volume of records, with improved findability, use and reuse of information.

**Is a legislative amendment required?** Yes

## Recommendation: Protection through transfer

Mandatory transfers will enable the Archivist to direct a public authority to transfer a permanent public record that is in the authority's possession into the Archival collection once it has passed out of active use. As with other records in the archival collection, QSA will have custody of the record, with the public authority retaining decision-making responsibility: for example, in regard to access requests.

*Recommendation:*

*In the interest of preserving public records from loss or damage, the State Archivist be empowered, by amendment of the Public Records Act 2002, to direct any public authority to transfer to Queensland State Archives a public record that is in the authority's possession or power.*

### Gains

- **Savings:** Reduced costs (i) in maintaining significant historical records identified as being at risk; (ii) in providing access; (iii) from ongoing long-term storage of records not in active use.
- **Efficiency:** Economies of scale through use of existing, purpose-built repositories (physical and digital).
- **Benefits:**
  - Increased access to public records for use and re-use of identified, at risk records.
  - Reduced risk of loss of significant records.

**Is a legislative amendment required?** Yes

## Addressing low rates of disposal

The complex nature of retention and disposal schedules inhibits timely disposal of records. Addressing this issue requires QSA to simplify the process. These recommendations represent opportunities for government to work more collaboratively and effectively to achieve better returns on the collective investment of government.

### Gains

- **Savings:** Reduced costs for records storage and management of systems
- **Efficiency:** Simplified or automated disposal process will reduce time and effort in identifying records past their retention period.
- **Benefits:**
  - Reduced cyber security risks.
  - Easier access to records.

**Is a legislative amendment required?** No

## Recommendation: Digitisation

The current approach to the management and storage of information has not kept pace with the volume of records generated. The capacity constraints of government facilities have resulted in reliance on third-party suppliers. Storage costs are substantial, and growing.

*Recommendation:*

*To investigate savings that might be achieved, the State Archivist be requested to prepare a plan, for the government's consideration, to address:*

- a. legacy physical records, and*
- b. opportunities for digitisation of public records which are not already stored in digital form.*

## Gains

- **Savings:** Reduced costs for storage of physical records
- **Efficiency:**
  - Benefits for agencies which lack a capacity to undertake this work.
  - Reduced time and administrative burden in finding and making accessible records, e.g. under RTI requests
- **Benefits:** Savings and efficiency gains across government. Development of clear processes for other public authorities.

**Is a legislative amendment required?** No

## Recommendation: Notification by gazette

*Recommendation:*

*The process for notification of the selected public authority referred to in s 8(3)(b) and s 15(d) of the Public Records Act 2002 be changed to publication in the Queensland Government Gazette.*

## Gains

- **Savings:** Reduced costs of gazettal process compared to regulation.
- **Efficiency:** Reduction in administration compared to regulation, which will deliver productivity gains across the public sector.

**Is a legislative amendment required?** Yes



## Appendix A: Terms of reference

### Terms of reference for this review

The Premier and Minister for the Olympics approved the following Terms of reference for this review.

### Background

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

The current objectives of the Act are to ensure:

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

The Act has not been reviewed since commencement. During the last two decades public authorities have increasingly used digital technologies and platforms to undertake the business of government. This has driven a dramatic increase in the volume and types of information, data and records created by government. The Act now requires review to support legislative effectiveness within this digital environment and to enable efficient recordkeeping for digital channels.

The significant growth in use of digital platforms has not reduced the Queensland Government's reliance on paper. There has been a consistent growth of both digital and physical records with implications on the effective delivery of government services and fiscal impacts due to the significant costs incurred in storing information.

A comprehensive review of the Act is required to meet public expectations and to ensure the legislative framework enables contemporary information and recordkeeping practices that support good governance and decision making by government. A review may also support determinations about whether modernisation of the Act would enable the realisation of savings and efficiency gains and ensure the Act continues to deliver on its original intent of preserving records in a useable form for the benefit of present and future generations.

It is considered that the optimal approach is for the review to be led independently by an external party, given the level of public interest in Queensland State Archives.

### Scope

An external review of the Act will consider whether there is a need for any reform to enhance or update the Act, taking into account Australian and international best practices related to recordkeeping and archiving.

In undertaking this review, consideration will be given to whether there is a need for any reform, and if so, the scope of the reform including:

- i. enabling the inclusion of First Nations Peoples in decision making about control and access of public records regarding First Nations Peoples;
- ii. identifying any appropriate opportunities to increase accountability and transparency of government through appropriate procedures and systems for making and keeping records, including the adequacy of monitoring, compliance and penalty provisions within the Act;
- iii. reviewing the functions and powers of the State Archivist;
- iv. considering efficiency gains which could be achieved, with regard to the scope of records retained;

- v. examining whether the current legislative framework appropriately supports the management and preservation of digital records and emerging technology impacts;
- vi. considering the extent to which the legislative framework supports other important matters such as right to information and privacy legislation; and
- vii. considering other jurisdictions' legislative frameworks and outcomes of their similar legislative reviews.

## Timeframe

The external review lead will be requested to submit interim findings to the department in mid-August 2022 and a final report, for the consideration of Government by 31 August 2022.

## Appendix B: Panel biographies

### Chair: The Honourable John Byrne AO RFD

#### **Discipline: Law**

The Honourable John Byrne AO RFD graduated in Arts and in Law at the University of Queensland. In 1973, the University of Michigan awarded him the degree of Master of Laws. John started as a barrister in 1974. Practising mainly in commercial cases, he became Queen's Counsel in 1982. In 1989, aged 40, John was appointed a Judge of the Supreme Court of Queensland. In 2007, he was appointed, as Senior Judge Administrator, to head the Trial Division of the Supreme Court. John has been President of the Australasian Institute of Judicial Administration and has chaired the governing Council of the National Judicial College of Australia. In 2013, he was made an Officer of the Order of Australia for distinguished service to the judiciary and to the law.

John left the Queensland Supreme Court in 2017. He now resolves commercial disputes outside the courtroom, mainly as a mediator.

### Professor Bronwyn Fredericks

#### **Discipline: Education, Health, Indigenous Studies**

Bronwyn Fredericks is a Professor and the Pro Vice-Chancellor (Indigenous Engagement) at the University of Queensland (UQ, Australia) where she has worked for four years. Prior to this she was in a similar role at CQUniversity. Bronwyn was appointed as the Presiding Commissioner with the Queensland Productivity Commission (QPC) to lead the Inquiry into service delivery in Queensland's remote and discrete Indigenous communities (2016), the Inquiry into Imprisonment and Recidivism in Queensland (2019) and the Manufacturing Inquiry, along with the Queensland Recycling Review (2019).

Bronwyn has worked for both state and federal levels of government and has a long history of direct hands-on involvement in Aboriginal and Torres Strait Islander community-based organisations and broader community organisations spanning over 30 years. She is currently a Director of the Queensland Council of Social Service (QCOSS), and an affiliate with UQ's Poche Centre for Indigenous Health.

Bronwyn has lived in and out of Central Queensland for over 25 years and holds numerous formal qualifications in education, and health.

### Mr David Fricker CdOAL GAICD

#### **Discipline: Archival regulatory frameworks**

David was appointed President of the ICA in October 2014, and will complete his second term in September 2022. Since 2015 he has been a Vice-Chair of the UNESCO Memory of the World International Advisory Committee.

He held the office of Director-General of the National Archives of Australia for ten years, from January 2012. In this role, his focus was the whole-of-government transition to 'digital continuity' in records and information management; expansion of preservation capability for paper, audio-visual and digital records; acceleration of the declassification of sensitive archival documents; and the exploitation of emerging technology to enhance the public's access to archival resources. As the principal policy-maker for Federal government records and information management practices, David has been an outspoken and influential champion of public administration based on transparency, integrity and accountability.

He is a professional member of the Australian Society of Archivists, and a Graduate of the Australian Institute of Company Directors. In 2015 he was made Knight of the Order of Arts and Letters (*Chevalier dans l'ordre des Arts et des Lettres*) by the Republic of France.

### Adjunct Professor Linda O'Brien

#### **Discipline: Information systems, data management**

Linda is currently Adjunct Professor within Griffith Business School's Department of Business Strategy and Innovation. She was the formerly the Pro Vice Chancellor Information Services and University Librarian at Griffith University and a former member of the Queensland State Archives' Public Records Review Committee. Linda brings a wealth of knowledge in digital stewardship, information systems, data management, open data, and government relations. Linda is a former Director of the Open Data Institute of Queensland, current Chair of the ORCID Board, Deputy Chair of the Infoexchange Board and a Director of the Queensland CyberInfrastructure Foundation.

### Dr Katie McConnel

#### **Discipline: Queensland history and cultural heritage**

Katie is an historian and the Curator of Old Government House at the Queensland University of Technology. She has a research background in local heritage and regional history and extensive knowledge of Queensland's history and cultural heritage, and First Nations records within archival collections. Katie is a Member of the Queensland Heritage Council and has nearly 25 years' experience in the university and museum sectors.

## Appendix C: Key concepts and terms

The *Public Records Act 2002* (the Act) defines a record as:<sup>177</sup>

*A record means recorded information created or received by an entity in the transaction of business or the conduct of affairs that provides evidence of the business or affairs and includes—*

- (a) anything on which there is writing; or*
- (b) anything on which there are marks, figures, symbols or perforations having a meaning for persons, including persons qualified to interpret them; or*
- (c) anything from which sounds, images or writings can be reproduced with or without the aid of anything else; or*
- (d) a map, plan, drawing or photograph.*

The Act defines a public record as:<sup>178</sup>

*A public record is any of the following records made before or after the commencement of this Act—*

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

### Public authorities

Defined by the Dictionary in Schedule 2 of the Act, public authority means:

- (a) the Governor in his or her official capacity; or*
- (b) the Executive Council; or*
- (c) a Minister; or*
- (d) an Assistant Minister; or*
- (e) the registrar or other officer of a court with responsibility for official records of the court; or*
- (f) a commission of inquiry under the Commissions of Inquiry Act 1950; or*
- (g) an entity, other than the parliamentary service, that—*
  - (i) is established by an Act; or*
  - (ii) is created by the Governor in Council or a Minister; or*
- (h) a GOC; or*
- (i) a department; or*

---

<sup>177</sup> [Public Records Act 2002](#) (Qld) sch 2.

<sup>178</sup> [Public Records Act 2002](#) (Qld) s 6.

- (j) an entity established by the State and a local government; or*
- (k) a rail government entity under the Transport Infrastructure Act 1994; or*
- (l) a local government; or*
- (m) an entity declared under a regulation to be a public authority for this Act.*

## Establishment of the Archivist and QSA

The Act creates the position of Archivist and establishes an 'office called the Queensland State Archives.'<sup>179</sup>

The functions of the Archivist are to:<sup>180</sup>

- develop and promote efficient and effective methods, procedures and systems for making, managing, keeping, storing, disposing of, preserving and using public records
- 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
- make decisions about the disposal of public records
- manage, keep and preserve records for public authorities and other entities
- provide public access to public records
- conduct research and give advice about the making, managing, keeping and preserving of public records
- perform another function given to the archivist under this or another Act
- 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.

The powers of the Archivist are to:<sup>181</sup>

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

---

<sup>179</sup> [Public Records Act 2002](#) (Qld) s 21.

<sup>180</sup> [Public Records Act 2002](#) (Qld) s 24.

<sup>181</sup> [Public Records Act 2002](#) (Qld) s 25.

## Key requirements of the Act

The Act establishes the following obligations for public authorities:

- A public authority must (a) make and keep full and accurate records of its activities; and (b) have regard to any relevant policy, standards and guidelines made by the archivist about the making and keeping of public records.<sup>182</sup>
- A public authority is responsible for ensuring the safe custody and preservation of records in its custody.<sup>183</sup>
- If a public record in a public authority's possession is more than 25 years old, the public authority must give written notice of the record's existence to the archivist.<sup>184</sup>
- A person must not damage a public record more than 30 years old, unless the person has a reasonable excuse.<sup>185</sup>
- A person must not dispose of a public record unless the record is disposed of under an authority given by the archivist; or other legal authority, justification or excuse.<sup>186</sup>
- A public authority must ensure particular records remain accessible.<sup>187</sup>
- The public authority controlling the record must take all reasonable action to ensure the information remains able to be produced or made available.<sup>188</sup>
- An officer or employee of a public authority who is responsible for the management of the authority's records must if asked by an authorised officer, (a) produce the authority's records, or a particular type or sample of records, for the officer's inspection; and (b) give the officer access to the authority's records, or a particular type or sample of records in the reasonable way requested by the officer; and (c) allow the officer to examine the authority's systems for making, keeping and preserving records.<sup>189</sup>
- A person must not obstruct an authorised officer in the exercise of a power under [part 4], unless the person has a reasonable excuse.<sup>190</sup>

---

<sup>182</sup> [Public Records Act 2002](#) (Qld) s 7(1).

<sup>183</sup> [Public Records Act 2002](#) (Qld) s 8(1).

<sup>184</sup> [Public Records Act 2002](#) (Qld) s 10(1).

<sup>185</sup> [Public Records Act 2002](#) (Qld) s 12(1).

<sup>186</sup> [Public Records Act 2002](#) (Qld) s 13.

<sup>187</sup> [Public Records Act 2002](#) (Qld) s 14.

<sup>188</sup> [Public Records Act 2002](#) (Qld) s 14(2).

<sup>189</sup> [Public Records Act 2002](#) (Qld) s 47(1).

<sup>190</sup> [Public Records Act 2002](#) (Qld) s 48.

## Appendix D: Other reviews and reports

The Review noted other related reviews and reports such as:<sup>191</sup>

- *Let the sunshine in - Review of culture and accountability in the Queensland public sector* (2022)
- *Review of the Allegations Attributed to the Former State Archivist about the Queensland State Archives' Annual Reports for 2017-18, 2018-19 and 2019-20* (2022)
- *Proposed reforms to Queensland's Information privacy and right to information framework* (2022)
- *Functional and Efficiency Review of the National Archives of Australia* (2020)
- *Government Accountability in the Digital Age* (2020)
- the review of the *Aboriginal Cultural Heritage Act 2003* and the *Torres Strait Islander Cultural Heritage Act 2003*, which is currently underway at the time of this report
- *State Records Act 1998 and the policy paper on its review* (2020) and the associated bill introduced to parliament in June 2022, *Museums of History NSW Bill 2022*.

---

<sup>191</sup> Peter Coaldrake, [Let the sunshine in - Review of culture and accountability in the Queensland public sector](#) (Final report, 28 June 2022); John McKenna, [Review of the Allegations of the Former State Archivist about the Queensland State Archives Annual Reports for 2017 – 2018, 2018 – 2019 and 2019 – 2020](#) (Report, 4 March 2022); Department of Justice and Attorney-General, [Consultation paper – Proposed changes to Queensland's Information Privacy and Right to Information framework](#) (Consultation paper, June 2022); Vivienne Thom, [Government Accountability in the Digital Age](#) (Report, 24 March 2020); Standing Committee on Social Issues, New South Wales Parliament, [State Records Act 1998 and the policy paper on its review](#) (Report No. 57, October 2020).



## Appendix E: Appealing a decision to refuse access to records in QSA's custody

1. The applicant applies, in writing, to QSA for access to a public record.
2. If the RAP applied to the public record has ended, the Archivist gives access.
3. If the RAP has not ended, QSA transmits the application for access to the responsible public authority.
4. That authority considers the request for access and responds to the applicant and QSA, advising whether access can be provided by QSA. Access decisions should be 'pro-disclosure' unless giving access to the record would, on balance, be contrary to the public interest (for consistency with s 44 of the RTI Act). In deciding the application, the public authority is to have regard to the *Human Rights Act 2019* and to the needs and interests of any affected First Nations persons.
5. If the authority refuses access, in whole or in part, it is to provide reasons to the applicant and QSA (timeframe – 35 business days from the date the application is received by the authority, with further extension possible as negotiated with the applicant).
6. The applicant may have the decision reviewed by the authority dealing with the access application, ideally by [internal review](#) under Part 8 of the RTI Act (bypassing initial RTI access application process within Part 2 of the RTI Act).
7. An application for internal review is to be lodged: see s 82 of RTI Act.
8. The applicant is notified of decision: see s 83 of RTI Act.
9. The applicant may have the internal review decision reviewed by way of [external review](#) by the Information Commissioner: see Part 9 of RTI Act.
10. The application for external review is to be lodged: see s 88 of RTI Act.
11. The applicant is notified of the outcome: see s 110 of RTI Act.

## Appendix F: Glossary

<b>Acronym, Abbreviation</b>	<b>Formal Title, Definition</b>
the Act	<i>Public Records Act 2002</i>
AI	Artificial Intelligence
the Archivist	Queensland State Archivist
CARE	Collective Benefit, Authority to control, Responsibility and Ethics
the Department	Department of Communities, Housing and Digital Economy
FAIR	Findable, accessible, inter-operable and re-usable
ICT	Information and communications technology
IP Act	<i>Information Privacy Act 2009</i>
the Minister	Minister for Communities, Housing, Minister for Digital Economy and Minister for the Arts
Permanent record	'Permanent' records are those with a permanent retention period. Can also be known as 'permanent value'
PRRC	Public Records Review Committee
Public authorities	Public Authorities are different agencies which vary in size, resources, activities, and location. An organisation that is controlled by a government or that is granted special authority by a government. Public Authority as defined refer to schedule 2 in the Act.
QAO	Queensland Audit Office
QGCIO	Queensland Government Chief Information Office
QSA	Queensland State Archives
RAP	Restricted access period
Record	As defined in the Act: Recorded information created or received by an entity in the transaction of business or the conduct of affairs that provides evidence of the business affairs.
Records management	The field of management responsible for the efficient and systematic control of the creation, receipt, maintenance, use and disposition of records, including processes for capturing and maintaining evidence of and information about business activities and transactions in the form of records. <sup>192</sup>
the Review	The Public Records Act Review
RGP	Records Governance Policy
RTI Act	<i>Right to Information Act 2009</i>
the Terms of reference	<i>Terms of reference for the review of the Public Records Act 2002</i>

---

<sup>192</sup> ForGov, '[Glossary](#)' (Webpage, 4 June 2020).