Review of the *Public Records Act 2002*

Consultation Regulatory Impact Statement

February 2023

Queensland Government

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Contents

Overview

The Queensland Government recognises the need to modernise the legislative framework that governs public authority recordkeeping. An updated framework should reflect developments in technology, community expectations regarding transparency, and maintain proper information management and recordkeeping practices.

The *Public Records Act 2002* (**PR Act**) demonstrates a commitment by government to good recordkeeping and provides a comprehensive legislative framework. The legislative framework is designed to 'facilitate the documentation, management and preservation of Government business through full and accurate records, irrespective of the technological or administrative environment in which Government business is conducted or the custodial arrangements for public records…'[1]

The PR Act is the principal piece of legislation that governs records management for public authorities in Queensland. It does not apply to the general private sector or individual members of the public. In addition to the PR Act, there is also other legislation that includes requirements for records management. For example, the *Information Privacy Act 2009* creates requirements about how government agencies use personal information.

Since the commencement of the PR Act, there have been significant changes in technology, the volume of information generated, the business of government and community expectations about how information and records should be managed. These demands have placed increasing pressure on the existing legislative framework and are causing adverse outcomes for the effective management of public records.

Recognising this challenge, the Queensland Government is committed to modernising the legislative framework to ensure it supports effective information and recordkeeping practices that reflect community expectations.

The Queensland Government announced an independent review of the PR Act in May 2022 (**the Review**). This Review identified the risks and weaknesses in the current public records management framework, compared it with similar frameworks across Australia and New Zealand, and considered the lived experience of Queensland State Archives (**QSA**) over the past 20 years and feedback from stakeholders. The Review made 27 recommendations for both regulatory and non-regulatory actions. The Review made it clear that the legislative framework can be modernised by improving the following selected areas:

1. Clarifying the meaning of 'record' and thereby removing any confusion as to what records should be maintained.
2. Guaranteeing the recognition and contribution of First Nations peoples in public records management.
3. Addressing operational inefficiencies within the PR Act by:
    a. reducing the risk of permanent losses to public records
    b. ensuring risks of disposal, alteration and deletion are balanced with costs in managing such risks
    c. reducing confusion with regards to terminology, application, and best practices under the PR Act, and
    d. enabling efficient monitoring of public authority performance about records management.
4. Addressing the lack of transparency within the operation of the PR Act by:
    a. providing a mechanism for increased access to public records, and
    b. reducing the risks resulting from a lack of accountability and transparency within local government recordkeeping.

These recommendations seek to improve the functionality of the legislative framework and help maintain proper information management and recordkeeping practices.

[1] *Public Records Act 2002 (QLD)*, Explanatory Note, p. 1.

This Consultation Regulatory Impact Statement (**C-RIS**) is provided to encourage feedback about:

- whether the proposed solutions will achieve the intended benefits
- what the potential impact on the sector may be
- any unintended consequences of taking action (or not taking action), and
- other issues government should consider.

To guide stakeholders, the C-RIS contains a series of callout boxes with discussion questions on specific issues. Responses to these questions are welcome.

The Queensland Government will consider the impact of the proposed reforms informed by feedback on the C-RIS before deciding on a recommended option or making changes to the PR Act.

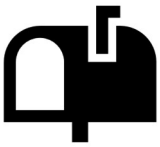
How to have your say

Feedback is invited on the proposal to modernise the PR Act to ensure that it continues to provide a comprehensive and effective approach to the management of information and records for all Queenslanders.

The Queensland Government welcomes your feedback on the costs and benefits of the proposals outlined in this C-RIS.

Feedback will be accepted until 5pm on Monday, 20 March 2023. Submissions can be made via email or submitted by post (see below).

By email to praris@chde.qld.gov.au



By post to: Public Records Act Consultation

Department of Communities, Housing and Digital Economy

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Brisbane QLD 4000

Executive Summary

Creating and keeping good records is acknowledged as an important part of providing accessible, trustworthy information across different levels of government. This should also occur in collaboration with community, industry and business, enhance service delivery and improve decision making, while deterring and uncovering wrongdoing.[2] The introduction of the PR Act demonstrated a commitment by government to good recordkeeping and provided a legislative framework that was appropriate for the time.

There have been significant and unanticipated changes since the introduction of the PR Act. The increased use of technology, the volume of information produced and shared, the business of government, and community expectations about how information and records should be managed have changed since the initial introduction of the PR Act.

These demands have placed increasing pressure on the existing legislative framework and are causing adverse outcomes for the effective management of public records. Analysis of the data from the 2014-15 survey of the state of records management indicated that only 15 per cent of public authorities met minimum requirements.[3] Since that time, the public records framework has not been amended and it is expected that the compliance rate has not improved.

The Queensland Government recognises the challenges of the existing public records management framework. It is committed to modernising the legislative framework to ensure it supports effective information and recordkeeping practices that reflect community expectations. This is further echoed within the Queensland Budget Paper 2022-23 Budget Measures, which seeks to fund the implementation of strategies that promote and preserve the Queensland State Archives collection and make it accessible for the benefit of current and future generations.

The Queensland Government also announced an independent review of the PR Act in May 2022 (**the Review**). The expert panel drew on expertise in law, public policy, archival practices, heritage aspects of public records, information management, digital technology and cultural aspects. The Review identified the risks and weaknesses in the current public records management framework, compared it with similar frameworks across Australia and New Zealand, and considered the lived experience of QSA and stakeholders over the past 20 years. It made recommendations for both regulatory and non-regulatory actions, which were analysed to identify priority areas of reform.

This C-RIS focusses on:

1. Clarifying the meaning of ‘record’ and thereby removing any confusion as to what records should be maintained.
2. Guaranteeing the recognition and contribution of First Nations peoples in public records management.
3. Addressing operational inefficiencies within the PR Act by:
    a. reducing the risk of permanent losses to public records
    b. ensuring risks of disposal, alteration and deletion are balanced with costs in managing such risks
    c. reducing confusion with regards to terminology, application, and best practices under the PR Act, and
    d. enabling efficient monitoring of public authority performance with regard to records management.
2. Addressing the lack of transparency within the operation of the PR Act by:
    a. providing a mechanism for increased access to public records, and
    b. reducing the risks resulting from a lack of accountability and transparency within local government recordkeeping.

[2] Crime and Corruption Commission, *Public records – Advice for all employees of a public authority,* available at Public records - Advice for all employees of a public authority (ccc.qld.gov.au), April 2020.
[3] *2014-2015 Report on the Recordkeeping Survey of Queensland Public Authorities,* previously available on QSA website and can be provided on request.

It is noted that, cumulatively, these problems impact the effective management of records. Feedback based on the C-RIS is sought about:

- whether the proposed solutions will achieve the intended outcome
- what the potential impact on the sector may be
- any unintended consequences of taking action (or not taking action), and
- other issues government should consider.

The C-RIS recommends a legislated approach, coupled with non-regulatory measures such as education and training to promote better application of, and compliance with, contemporary recordkeeping practices and standards in Queensland. This would have the greatest total net benefit of records management in Queensland. Importantly, this approach reflects the considerations of the Independent Panel and appropriately addresses key issues they identified with the current records management framework.

It is expected that the total net benefit for Option 3 (i.e., the cumulative for all the individual Option 3 proposals) will be greater than that for Option 1 or 2, despite Option 3 having the highest qualified gross costs, because approaches considered under Option 2 (non-regulatory approaches such as education and training) are not currently driving measurable growth in compliance with the PR Act by public authorities or meeting community expectations about access to public records. Option 2 will not provide an enduring statement of intent for First Nations peoples that is supported by legislation.

The proposed auditing powers and offences to incentivise much greater compliance by public authorities is considered to have greater net benefits than Option 2 as it will provide a legislative framework that supports and enables more effective targeting of recordkeeping service provision, such as advice, assistance and training.

To ensure this is the optimal approach, the Queensland Government will consider the impact of the proposed reforms informed by feedback on the C-RIS before deciding on a recommended option or making changes to the PR Act.

Overview of the Proposed Reforms

It is well documented that good records management practices support effective, efficient business practice and improve government accountability. 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, appropriate information sharing procedures that support the improvement of government funded services cannot take place. Transparent operations that support community confidence, or facilitate reflection, historical reconciliations, or learning processes cannot be undertaken if data and records are not captured and adequately protected.

Good records management requires decision making about when and how to create, capture and control records. Good records management also supports easy access to the information needed to make the right decisions at the right time. A systematic approach to good recordkeeping can also significantly reduce the risk of corruption. Inadequate management of public records can enable corruption, hinder a corruption investigation or prolong a corruption investigation.

Since the PR Act was introduced, the scope, volume and complexity of records has changed considerably. An increasing volume of digital information, alongside the realities of operational and budget restrictions, mean that the implementation of records management programs competes with other organisational priorities, including frontline service delivery. These developments make it increasingly difficult to understand and comply with the existing records management framework and best practices.

Community expectations around records management, specifically timely access and record integrity, have challenged traditional records management arrangements under the PR Act. The Queensland Government's commitment to the Path to Treaty is one example of compelling access to historical government records.

Recognition of First Nations peoples in the management and custody of records relating to their communities, and the efficient access to such records, is also an important component of a contemporary records management framework.

The existing records management framework under the PR Act means that, in some instances, records are being mismanaged and the benefits of effective records management are not being realised. The policy objectives of the proposed reforms are to:

- minimise public authorities' ambiguity regarding the meaning of the record under the PR Act
- minimise the chance for relevant public records to be inappropriately managed
- recognise the importance of public records (and ready access to such records) for First Nations peoples
- ensure mechanisms are in place that promote continued and efficient involvement and consultation with First Nations peoples
- reduce risk of permanent losses to public records
- ensure the risks of unlawful disposal, alteration and deletion are balanced with costs in managing such risks
- reduce confusion with regards to terminology, application and best practices under the PR Act
- enable efficient monitoring of public authority performance with regards to records management
- provide a mechanism for increased access to public records, and
- reduce the risks caused by lack of accountability and transparency within local government recordkeeping.

The C-RIS considers three broad options for reform:

- Option 1: Status Quo (No Change). This involves making no changes to the PR Act and maintaining the status quo.
- Option 2: Non-Legislated Response. This involves several measures focused on education and guidance and consultation with First Nations peoples to promote understanding and compliance with the existing legislative framework. It does not require making any changes to the PR Act.
- Option 3: Legislated Response. This involves a suite of measures to strengthen the application of, and compliance with, contemporary recordkeeping practices and standards. This option would be supported by non-regulatory approaches such as education and training.

The C-RIS explores the costs and benefits of reform options against the abovementioned policy objectives.

The following section outlines a summary of the key problems, recommended options to address the problem and a summary of the costs and benefits of the recommended option.

Definition of record

The PR Act's definition for a record was designed to be technology neutral. The Act's definition relies on the ability to identify a discreet object, or an assumption of control or possession of information that may not occur with newer technologies.

The meaning of 'record' therefore does not reflect contemporary practices in records management in Queensland. This can be confusing for public authorities and result in inefficiencies and errors in records management.

According to stakeholder feedback, there is a desire for clarification around the meaning of 'record' under the PR Act. The current definition was overwhelmingly viewed as inappropriate in a time where considerable amounts of information are now digital.

In considering reforms to address these issues, the Queensland Government's objectives have been to:

- minimise public authorities' ambiguity regarding the meaning of the record under the PR Act, and
- minimise the chance for relevant public records to be inappropriately managed.

Recommended option: Option 3, which involves:

- clarifying the meaning of record under the PR Act.

Summary of the regulatory impacts of the recommended option:

This reform seeks to remove confusion for public authorities as to the meaning of a record, and therefore promote efficiency and reduce errors in records management. This will ensure the PR Act reflects contemporary practice and proper records management.

This reform is anticipated to increase the number of clarifications with regards to the definitions of records, which would lead public authorities and QSA to divert staff effort which would have otherwise been used for alternative work. However, it is expected that any initial increase will be short-term, with a longer-term downward trend as maturity across public authorities is embedded.

Engagement with First Nations peoples

QSA has tens of thousands of records about Aboriginal and Torres Strait Islander peoples. These 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 can be a source of pain or sadness.

The PR Act is silent on First Nations peoples and issues of access. Stakeholder feedback during the Review suggested that greater input from First Nations peoples is needed in the administration and management of public records.

In considering reforms to address these issues, the Queensland Government's objectives have been to:

- recognise the importance of public records (and ready access to such records) for First Nations peoples, and
- ensure mechanisms are in place that promote continued and efficient involvement and consultation with First Nations peoples.

Recommended option: Option 3, which involves:

- amending the purpose of the PR Act to recognise First Nations peoples
- including First Nations peoples on the Public Records Review Committee (**PRRC**), and
- establishing a First Nations peoples Advisory Group.

Summary of regulatory impacts of recommended option:

This change would recognise the importance of public records and ready access to them for First Nations peoples. The inclusion of First Nations voices in the PR Act is consistent with the *United Nations Declaration on the Rights of Indigenous Peoples 2007* (**UNDRIP**), the requirements of the *Human Rights Act 2019 (Qld)* (the **HR Act**), and the broader reconciliation effort.

It is anticipated that the establishment of an advisory group would incur running costs and that changes to the composition of the PRRC could result in some inflexibility. However, the overall impacts are likely to be minimal.

Operational Inefficiencies

Misalignment of incentives providing risk of permanent losses to public record

The PR Act does not allow the State Archivist to compel the transfer of public records from a public authority to the Archives.

The inability to compel a transfer of records can impact the useability and integrity of records if they are insufficiently maintained. It can also contribute to the avoidable destruction of records.

According to stakeholder feedback during the Review, there is strong support to empower the State Archivist to compel a transfer of records. This would bring Queensland into line with best practices in other Australian and international jurisdictions.

In considering reforms to address these issues the Queensland Government's objectives have been to:

- reduce risk of permanent losses to public records.

Risk of disposal (including alteration and deletion) contrary to public interest

Under the PR Act, disposal of public records is an offence, unless appropriately authorised, with disposal defined as including 'destroying or damaging a record, or part of it, or abandoning, transferring, donating, giving away or selling a record, or part of it'.

This definition is grounded in traditional records management practices, such as the existence of a single, discreet object being the record of a decision or action. This is inconsistent with contemporary practices in digital record creation and management. There is also no offence for attempted disposal of a public record or the unauthorised alteration or deletion of a public record. This would promote good records management practices by providing incentives for public authorities to support improved compliance as well as enabling QSA's ability to address offences through prosecutions.

Other Australian jurisdictions, and New Zealand, provide for offences under their relevant legislative frameworks dealing with the management of information and records.

In considering reforms to address these issues, the Queensland Government's objectives have been to:

- ensure the risks of unlawful disposal, alteration and deletion are balanced with costs in managing such risks.

Confusion with regards to regards to terminology within Act, its application and best practices

The PR Act only requires a public authority to '*have regard* to any relevant policy, standards and guidelines made by the archivist about the making and keeping of public records.'

As such, it is unclear whether a public authority must have regard to a policy, standard or guideline on preserving, managing or disposing of public records. The ambiguity regarding the PR Act and its applicability means that the legislative framework designed to protect Queensland information and public records is weakened, ultimately impacting the entitlements of the Queensland public to have transparent access to the decision-making process of government. Transparent access to decision-making supports better community engagement, reflects modern human rights frameworks and provides government with greater clarity about potential impacts from decision-making.

According to stakeholder feedback during the Review, most respondents felt that public authorities need to do more than merely 'have regard to' the directions of the State Archivist.

In considering reforms to address these issues the Queensland Government's objectives have been to:

- reduce confusion with regards to terminology, application and best practices under the PR Act.

Consistent information sharing across public authorities regarding records management and compliance with PR Act

Under the PR Act, QSA has limited ability to monitor the records management activities of public authorities and is reliant on publicly released or volunteered information.

QSA does not have any ability to compel information from agencies and agencies are not required to provide information to QSA on a regular basis. Furthermore, while the PR Act requires that agencies give written notice of any records that are over 25 years old, in practice, this does not occur and there are no penalties or mechanisms in the PR Act to enforce or encourage compliance.

The inability of QSA to effectively monitor public authorities reduces its ability to promote compliance with the PR Act and their understanding of records management practices in Queensland. It contributes to poor records management practices, for which public authorities are not held accountable.

Other jurisdictions in Australia and New Zealand utilise a range of monitoring options, including self-assessment surveys.

In considering reforms to address these issues, the Queensland Government's objectives have been to:

- enable efficient monitoring of public authority performance with regards to records management.

Recommended option: Option 3, which involves:

- giving the State Archivist the ability to compel the transfer of records
- updating the definition of disposal and the introduction of new offences
- empowering the State Archivist to publish mandatory standards
- empowering the State Archivist to monitor, audit and report on compliance, and
- giving investigative functions to another agency.

Summary of regulatory impacts of recommended option:

Reforms to resolve any operational inefficiencies could result in benefits to consumers and businesses through improved access and adequate management of records. Another possible benefit of reforms to resolve any operational inefficiencies is the reduction in costs – such as the costs of physical storage of public records – resulting from increased disposal of public records with minimal use value.

However, it is anticipated that there will be costs related to the development of legislative and education material, and audit, monitoring and compliance activities.

Lack of Transparency

Access to records

Under the PR Act, one of QSA's significant roles is to provide access to the public records held in its custody. These are records with particular significance that are no longer in use by the responsible public authority.

Under the PR Act, members of the public can access these records, in certain circumstances, on application to the responsible public authority, but if access is refused, there is no mechanism for review.

Public authorities determine restricted access periods for records upon transfer to QSA and these periods can be for up to 100 years. The State Archivist can ask a responsible public authority to change a restricted access period, and if a dispute arises, it can be referred to the PRRC. To date, no dispute has ever been referred.

Under the PR Act, restricted access periods begin from 'the last action on the record'. This phrase is not defined in the PR Act but is understood to exclude extrinsic or management activities, such as any actions applied to the record for its preservation or organisation within the collection.

As a result of this framework, records are being closed for longer periods than necessary. A 2018 review of the archive collection identified that 51 per cent of public authorities had records with potentially excessive restrictions, which contributed to 18 per cent of the entire collection being completely undiscoverable by the public due to restricted metadata.

According to stakeholder feedback, an overwhelming majority were of the opinion that the criteria for the setting of restricted access periods should be revised and that access mechanisms should be aligned with relevant state and federal legislation.

In considering reforms to address these issues, the Queensland Government's objectives have been to:

- provide a mechanism for increased access to public records.

Local Government

The records management obligations of local government councillors are limited to broad provisions contained within the *Local Government Act 2009* (**LG Act**). Under the PR Act, they are not public authorities, although they will make and keep public records relating to the administration of council business.

As the responsible officer under the PR Act for ensuring compliance, the Chief Executive Officer (CEO) is placed in the position of being responsible for ensuring councillors are compliant with their records management responsibilities, without being able to direct them to do so, and being generally subject to their direction.

This often leads to poor recordkeeping practices among councillors, particularly with the use of social media. This issue is further compounded by ambiguity about the meaning of 'record' under the PR Act.

In considering reforms to address these issues the Queensland Government's objectives have been to:

- reduce the risks caused by lack of accountability and transparency within local government recordkeeping.

Recommended option: option 3, which involves:

- including local government councillors in the definition of public authority, and
- introducing an appeal mechanism and powers to make regulations regarding the operation and duration of restricted access periods.

Summary of regulatory impacts of recommended option:

The improvements in recordkeeping induced from both increased access to, and adequate management of, records can result in benefits of use to consumers and businesses, as well as savings from removal of inefficiencies. Improvements to recordkeeping practices at a local government level could result in reduced mismanagement and corruption risks within local government recordkeeping.

There would be increased costs for local government resulting from compliance with strengthened records management requirements. It is also expected that there would be costs relating to legislative and education material development costs.

Implementation and consultation

The implementation of the recommended changes will require regulatory and non-regulatory actions. It is expected that these actions would be implemented in stages to give stakeholders time to prepare for and adjust to new requirements.

This C-RIS builds on stakeholder feedback that informed the Review alongside limited consultation undertaken with the Queensland State Archivist, the Department of the Premier and Cabinet and local government. Before any changes are implemented, it is expected that further consultation will be conducted prior to the Decision Regulatory Impact Statement.

Introduction

Background

The Current Act

The PR Act commenced in 2002. As it stands, the purposes of the PR Act are to ensure:

- the public records of Queensland are made, kept, and if appropriate, preserved in a useable form for the benefit of present and future generations, and
- public access to records under the PR Act is consistent with the principles of the *Right to Information Act 2009* and the *Information Privacy Act 2009*.[4]

The PR Act also provides for the Queensland State Archives/Archivist and applies to an estimated 500 Queensland public authorities.

The PR Act plays an important role in the everyday business of government and promoting accountability and transparency. If public records are not created and appropriately maintained, they cannot be used to inform decision-making, be accessed by the community or researchers, or inform investigations by integrity agencies.

Public Records Act 2002

Establishes general requirements for public authorities and public records, with a foundational requirement to make and keep records about decisions and actions to ensure this information is available for as long as is needed for the agency and the community now and into the future.

Requirements also include what happens to public records when a public authority ceases to exist, when and how public records go into the State's archival collection and how public access to the collection occurs.

Right to information Act 2009

Queensland government agencies make information available to the public:[5]

- Proactively where possible through agency publication schemes – which set out the kinds of information that are routinely available, generally on an agency's website
- In response to a request to an agency through an administrative access scheme for specific types of agency information – for example a person's medical records
- As a last resort, through legislative access processes, where an agency decision maker can carefully consider whether disclosure would be contrary to public interest.

Information Privacy Act 2009

The *Information Privacy Act 2009* recognises the importance of protecting the personal information of individuals.[6] It creates a right for individuals to access and amend their own personal information and provides rules for how agencies may and must handle personal information.

Other legislation, e.g., *Adoption Act 2009*

Can include specific records management requirements relevant to a particular sector, agency, activity or situation. For example, the *Adoption Act 2009* includes various requirements about how and when information about an adoption can be accessed.

Figure 1: Description of the interaction between different legislation regarding records management requirements including access.[7]

[4] PR Act, section 3 Purposes.
[5] Office of the Information Commissioner Queensland, available at *Community members | Office of the Information Commissioner Queensland (oic.qld.gov.au)*.
[6] Office of the Information Commissioner Queensland, available at *Community members | Office of the Information Commissioner Queensland (oic.qld.gov.au)*.
[7] Office of the Information Commissioner Queensland, available at *Community members | Office of the Information Commissioner Queensland (oic.qld.gov.au)*.

The PR Act is the main piece of legislation that governs records management for these public authorities. It does not apply to the general private sector or individual members of the community.

In addition to the PR Act, there is other legislation that also includes requirements for records. For example, the *Information Privacy Act 2009* creates requirements about how government agencies use personal information.

The PR Act has seven parts containing provisions pertaining to records management, the administration of QSA, and public access to records held at QSA.

Public Authorities

Defined by the Dictionary in Schedule 2 of the PR 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
(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.[8]

The breakdown of public authorities is as follows:

Authority	Description
Advisory bodies	Public authorities, other than those falling within another category, whose functions are primarily to provide advice to another entity or public authority. For example, the Employment Agents Advisory Committee.
Cultural institutions	Public authorities which are primarily within the GLAM sector (galleries, libraries, archives and museums).
Departments	As defined by the *Public Service Act 2008.*
Education sector	Including universities, specific private schools, accreditation boards and agencies responsible for curriculum and assessment.
Environment and land management	Public authorities, other than government departments, whose primary functions are in regard to managing the environment or land.
Hospital and health services and foundations	As defined by the *Hospital and Health Boards Act 2011* and *Hospital Foundations Act 2018.*
Government owned corporations	As defined by the *Acts Interpretation Act 1954.*
Integrity bodies	Public authorities which are core bodies to Queensland's integrity framework and primarily carry out integrity functions. For example, the Crime and Corruption Commission.

[8] Ibid, Schedule 2 Dictionary.

Authority	Description
Justice and regulatory sector	Public authorities, other than those falling within other categories, whose primary functions are to support or form part of the justice or regulatory sector, for example, community justice groups.
Local government sector	Public authorities which are local governments as defined by the *Local Government Act 2009* or *City of Brisbane Act 2010* or, excluding government departments, whose functions are primarily to manage the local government sector.
Other	Public authorities which do not more appropriately fall into another category. For example, the Surveyors Board of Queensland.
Ministers and Assistant Ministers	Ministers and Assistant Ministers of the Government.
National bodies	Public authorities with a main office in Queensland but with Australia-wide functions.
Statutory authorities (other)	Public authorities, other than those falling within another category, which are statutory authorities. For example, the Queensland Rural and Industry Development Authority.
Transport sector	Public authorities which are responsible for managing the transport sector (and which do not fall into another category such as departments). For example, the Cross River Rail Delivery Authority.
Water sector	Public authorities, other than government departments, which manage water or the water sector. For example, the Bollon West Water Authority.

Records Management

In the government context, records management captures the activities and responsibilities for:

- creating reliable records of government decisions and actions, and
- ensuring these records are, and remain, authentic and usable and have integrity for as long as is needed.

The Universal Declaration on Archives, adopted by the UN in 2011, describes 'the vital necessity of archives for supporting business efficiency, accountability, and transparency, for protecting citizens' rights, for establishing individual and collective memory, for understanding the past, and for documenting the present to guide future actions'.

Depending on the decisions and actions they relate to, records may only need to be kept for a short while, whereas more significant records may need to be kept permanently. Only the most significant records are transferred into the archival collection, with the majority remaining with the relevant public authority for their use and management.

Records only come to the archival collection when they are no longer being used by the public authority in their ordinary business. The public authority maintains responsibility and decision making for any records in the collection, with QSA having custody.

Currently QSA does not have the capacity to accept born digital records for transfer into the archival collection. The project to build a digital archive is underway with an operational Digital Archive expected in 2023. QSA digitises physical records in the archival collection for the purpose of increasing access, and these are made available to the public in the catalogue – ArchivesSearch.

Currently there are 3,757,397 physical items in the collection and 113,322 digitised copies of records in the collection (as of October 2022). As the digital archive is not operational yet, there are no transfers of digital records coming to QSA, currently all transfers of records are physical. Not all physical records are digitised when they come into the archive.

QSA's digitisation program prioritises records for digitisation for access and preservation purposes based on certain criteria such as records of interest for First Nations peoples, the records are old/fragile and are digitised to ensure their preservation, have public interest and are regularly used and accessed by the public.

How long a public record should be kept depends on how much use or interest it has to the agency or community. QSA's Appraisal Statement describes the six key characteristics that affect a retention requirement.

These include characteristics such as whether the record contains information about land use that is relevant to the health and safety of the community on an ongoing basis, or contains information of great personal interest, such as adoption records.

Some examples of retention periods for records include:

Type of record	Minimum retention period
Records relating to the payment or receipt of money and the financial management of the agency's assets. Includes records, which document the agency's financial and bank transactions, as well as the management of trusts.	7 years
Workplace health and safety committees. Records of proceedings of workplace health and safety committees.	10 years
Records relating to the inspection, removal and disposal of hazardous waste from agency property (e.g., explosives, flammable liquids/solids, poisons, toxins, ecotoxins and infectious substances). Excludes the disposal of asbestos, lead and radioactive materials.	30 years
Restructures – significant Records relating to significant reviews and restructures of an entire agency or major functional sections of it. Includes the establishment and development of a new agency structure and the sale or outsourcing of government functions.[9]	Permanent

The majority of public records have retention periods of 10 years or less, with international best practice indicating that only 2-5% of public records have significance to be kept permanently. The legislative framework established by the PR Act includes responsibilities around making and keeping full and accurate records of activities, what happens to records when a public authority ceases to exist or when records are transferred into the archival collection and how public access is handled under the PR Act. There are some limited offences and related powers under the PR Act, for example, the offence of unauthorised disposal of a public record or the recovery of public records that should be under the control of a public authority.

The PR Act creates four offences:

- damaging a public record more than 30 years old (maximum penalty 100 penalty units)
- unauthorised disposal of a public record (maximum penalty 165 penalty units)
- failure by an authorised officer to return an identity card (maximum penalty 10 penalty units), and
- obstruction of an authorised officer exercising a power of entry or inspection (maximum penalty 100 penalty units).

Enforcement powers established by the PR Act include:

[9] Queensland Government, *General Retention and Disposal Schedule (GRDS),* available at https://www.forgov.qld.gov.au/information-and-communication-technology/recordkeeping-and-information-management/recordkeeping/retention-disposal-and-destruction-of-records/search-for-a-retention-and-disposal-schedule/general-retention-and-disposal-schedule-grds, December 2020.

- Authorised Officers have the power of entry and inspection of public records with reasonable notice
- to recover public records from unlawful possession, and
- to make reciprocal agreements with other jurisdictions about the recovery of public records.

Establishment of the State Archivist and QSA

The PR Act establishes both the position of State Archivist and Queensland State Archives.

QSA is part of the Department of Communities, Housing and Digital Economy (the Department). The Archivist is responsible for overseeing QSA which includes responsibilities for providing policy guidance on records management for government agencies and managing its archival collection.[10]

In the 2020-21 financial year, QSA had 64 FTE staff. Remuneration for the Public Records Review Committee (PRRC) established by the PR Act, is in line with government standard rates.[11]

The State Archivist controls QSA and oversees its everyday operation. They are required to prepare an annual report for the Minister on the administration of the PR Act for that year. The functions of the State Archivist are:

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

The powers of the State Archivist include the following:

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

[10] PR Act s 23.
[11] Queensland Government, *Remuneration procedures for Part-Time Chairs and Members of Queensland Government Bodies, available at* https://www.qld.gov.au/__data/assets/pdf_file/0025/39481/remuneration-procedures.pdf.

The PR Act also establishes the PRRC. The committee has nine members, including a chairperson, of various backgrounds and expertise who ordinarily meet quarterly or as needed.

The State Archivist reports regularly to the committee on the administration of the PR Act and QSA's activities and the committee may also review the State Archivist's decisions in certain limited circumstances, for example, if a public authority disagrees with the State Archivist's decision not to authorise disposal of certain public records. The committee also advises the Minister directly on matters relevant to the administration of the PR Act.

Public Access to the Collection

The PR Act establishes a framework for public access to records within the archival collection. This access regime is in addition to any access rights or mechanisms under the *Right to Information Act 2009* and the *Information Privacy Act 2009*, or other legislation.

First established in 1959, the collection holds millions of public records dating back to the early Moreton Bay penal settlement. It is a unique source of information on the activities of Queensland's government and cultural heritage.

The responsible public authority must decide whether or not a public record transferred into the archival collection should be open to the public, including conditional access. Access to public records may be restricted for different reasons, for example, if they contain personal information or would affect public safety. Access may only be restricted for certain timeframes set out in the PR Act, and reasons for restrictions generally mirror the *Right to Information Act 2009* and *Information Privacy Act 2009*.

A member of the public may still request access to a restricted record and a public authority will decide on the request.

The State Archivist is required, except in certain limited circumstances, to allow access to public records in the archival collection unless a public authority has restricted access. For records without any restrictions, the State Archivist is responsible for managing and sharing these records with the wider public, for example, by maintaining an online catalogue of what records are in the archival collection or in online or physical exhibits.

Independent Review Panel

On 27 May 2022, the Honourable Leeanne Enoch, MP, Minister for Communities and Housing, Minister for Digital Economy and Minister for the Arts, announced a review of the PR Act. Multiple drivers for the review included public interest, technological advances and the Queensland Government's commitment to the Path to Treaty.

An independent panel, chaired by the Honourable John Byrne AO RFD, was stood up to lead the review. Justice Byrne was supported by a panel of experts in information management, digital technology, archival practices, records related to First Nations peoples and heritage aspects of public records. Independent panel members were:

- Professor Bronwyn Fredericks (public policy, Indigenous knowledge)
- Mr David Fricker CdOAL GAICD (contemporary archival practices, digital recordkeeping, internal archival standards)
- Professor Linda O'Brien (data, digital and information expert) and
- Dr Katie McConnel (heritage and history).

The Terms of Reference for the Review were:

a. enabling the inclusion of First Nations peoples in decision making about control and access of public records regarding First Nations peoples
b. identifying any appropriate opportunities to increase accountability and transparency of government through appropriate procedures and systems for making and keeping records
c. including the adequacy of monitoring, compliance, and penalty provisions within the PR Act
d. reviewing the functions and powers of the State Archivist

e. considering efficiency gains which could be achieved, with regard to the scope of records retained
f. examining whether the current legislative framework appropriately supports the management and preservation of digital records and emerging technology impacts
g. considering the extent to which the legislative framework supports other important matters such as right to information and privacy legislation, and
h. considering other jurisdictions' legislative frameworks and outcomes of their similar legislative reviews.

What we heard through consultation

Consultation and engagement activities were undertaken with a number of stakeholders and the wider Queensland community. This was a broadscale consultation and interested stakeholders were able to contribute to the Review via multiple means, including an online survey, written submissions, interviews and workshops.

The stakeholders consulted were various, including agencies regulated by the PR Act, along with the Queensland community, with a particular focus on First Nations people. In total, 22 written submissions, 56 survey responses, 25 interview transcripts, and seven workshop key outcome notes were analysed. Nine key themes were identified:

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

To support the development of the C-RIS against a short timeframe, some limited consultation occurred with the Queensland State Archivist, the Department of the Premier and Cabinet and local government. This expanded on key themes identified through the previous consultation and provided further detail to support the development of the C-RIS.

Additional targeted consultation will be conducted prior to the Decision Regulatory Impact Statement.

Problem Identification

The problems identified in this C-RIS cause adverse outcomes for the effective management of public records in Queensland. The impact of the problems varies but have a cumulative impact that undermines the effectiveness of the existing legislative framework to promote best records management practices.

Analysis of the data from the 2014-15 survey of the state of records management indicated that only 15 per cent of public authorities met minimum requirements. In the time since this survey was undertaken, the PR Act has not been amended and the nature of records creation and management has become more complex due to technological advancements. It is therefore expected that the rate of compliance has not improved since the 2014-15 survey and may have deteriorated further.

The shortcomings of the existing public records management framework were considered further in the Review, which identified the risks and weaknesses in the current public records management framework, compared with similar frameworks across Australia and New Zealand, and considered the lived experience of QSA over the past 20 years.

This section outlines the nature and extent of four key problems, and government's objectives in relation to addressing each:

- definition of a record
- engagement with First Nations peoples
- operational inefficiencies, including:
  - misalignment of incentives providing risk of permanent losses to public records
  - risk of disposal (including alteration and deletion) contrary to public interest
  - confusion with regards to terminology within the PR Act, its application and best practices
  - consistent information sharing across public authorities regarding records management and compliance with the PR Act, and
- lack of transparency, including:
  - access to records, and
  - local government.

The overall objective is to have a marked improvement in all aspects of recordkeeping for public authorities in Queensland, which includes:

- minimising public authorities' ambiguity regarding the meaning of the record under the PR Act
- minimising the chance for relevant public records to be inappropriately managed
- reducing risk of permanent losses to public records
- ensuring the risks of unlawful disposal, alteration and deletion are balanced with costs in managing such risks
- reducing confusion with regards to terminology, application and best practices under the PR Act
- enabling efficient monitoring of public authority performance with regards to records management
- providing a mechanism for increased access to public records, and
- reducing the risks caused by lack of accountability and transparency within local government recordkeeping.

Definition of record

Problem identification

Since the commencement of the PR Act, public authorities have increasingly used digital technologies and platforms to undertake the business of government. As a result, the meaning of 'record' under the PR Act has become out-of-step with contemporary practices and does not adequately reflect the digital environment in which government records are now created and managed.

The PR Act defines a 'record' as follows:[12]

> '…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 definition relies on the ability to identify a discreet object, or an assumption of control or possession of information that may not occur with newer technologies, such as cloud computing. Similarly, there are other provisions that are only applicable where a record is in the possession of a public authority or other person.[13]

The transition from easy-to-identify, discreet physical objects such as records to digital formats, which are far broader and include a number of steps or stages such as code, algorithms, or other digital processes, has been challenging. In particular, digital recordkeeping is more complex than physical recordkeeping. The exponential volume and variety of digital records affect the ease of use and access, further complicated by the lifespans of technology needed to access or maintain digital records.[14]

Although digital storage is increasingly affordable, maintaining digital records in a way that is usable and easily searchable can be difficult. To assist stakeholders in meeting their compliance obligations, an expanded definition would clarify the nature of records including digital records.

The current definition of a 'record' in the PR Act does not adequately reflect contemporary practices in records management in Queensland, which now involves a considerable volume of digital records and relies on newer technologies to support the storage of records.

According to research in both Australia and New Zealand, no archival jurisdiction has been able to successfully assess the degree to which digital records are being administered in accordance with outdated definitions.

The Queensland Government currently spends approximately $1.6 billion per year on managing information systems across government, which is indicative of the considerable number of digital records now maintained by public authorities. The volume of digital records means that any confusion about how to appropriately manage such records would impact a considerable number of records.

Of all survey respondents during the Review, only 27 per cent agreed that the current definition of 'record' in the PR Act is appropriate. Meanwhile, 68 per cent of survey respondents noted the current definition of 'record' in the PR Act is inappropriate in a time when considerable amounts of information are now digital. Survey respondents consistently emphasised the need for greater clarity regarding the definition of a 'record'.

The current meaning of a 'record' under the PR Act and its implications for public authorities was also identified as an issue during our consultation.

[12] PR Act (n 1) Schedule 2.
[13] For example, s 8.
[14] See, for example, Preservation Issues, *Digital Preservation Handbook*.

For local government, the ambiguity in the definition means that records can be either mismanaged or not managed at all, particularly in smaller regional and remote local governments. A noted challenge for local government was social media and confusion as to whether it is covered by the current definition of record. In recent years, there has been a proliferation in the use of social media by local councillors to both interact with and update constituents. This leads to inefficiencies as agencies are then required to deal with a considerable number of queries regarding which records are covered by the current definition.

The definition of 'record' under the PR Act can be contrasted with the approach of the National Archives of Australia (**NAA**) which makes clear to agencies that its policies, standards and guidance include analogue and digital public records in all formats. Furthermore, other jurisdictions in Australia use legislative definitions of 'record' that stipulate the inclusion of digital records. For example, in NSW 'record' means any document or other source of information compiled, recorded, or stored in written form or on film, or by electronic process, or in any other manner or by any other means'.[15] Comparable definitions are also used in Victoria and Western Australia. These definitions are consistent with contemporary practices in digital record creation and management.

The current definition of 'record' under the PR Act can be confusing for public authorities, particularly with regard to data and information that can be characterised as of temporary value, such as drafts, working papers and duplicates, and records generated on social media. This has the potential to create inefficiencies and errors in records management and may mean that important documents are not maintained. For example, public records on social media are under both the control of the account holder as well as the social media platform. This means the social media platform may delete or suspend an account based on their policies, such as inactivity. This could place significant records at risk of loss or alteration.[16]

The PR Act is clear on what information should be kept by public authorities and deals with the ambiguities in changing technology, however that ambiguity can be used to avoid the objectives of the PR Act. This is consistent with stakeholder feedback. In response to the ambiguity about the meaning of 'record' under the PR Act, QSA has been required to publish guidelines to help stakeholders understand the definition of a record and their obligations.

Government objectives

Government objectives include:

- minimising public authorities' ambiguity regarding the meaning of the record under the PR Act, and
- minimising the chance for relevant public records to be inappropriately managed.

The C-RIS seeks your feedback in relation to problem identification and calibration of government objectives regarding the definition of 'record'. Questions to prompt this consultation process include:

1. To what extent does your public authority keep digital records at a level comparable and/or compliant with best practices under Queensland Government's Records Governance Policy? (https://www.qgcio.qld.gov.au/documents/records-governance-policy)
2. Are there any barriers (outside of the definition) which may restrict your public authority's capability and capacity to keep digital records?
3. Are the above government objectives adequate in ensuring that the PR Act facilitates public authorities to undertake records management in line with technological advancements? If not, what are some alternative objectives?

Where possible, please provide evidence/case studies to support your feedback.

[15] *State Records Act 1998* (NSW), section 3 Definitions
[16] See, for example, international discussion of use of social media by politicians such as https://www.abajournal.com/news/article/government_says_trumps_tweets_are_official_presidential_statements.

Engagement with First Nations peoples

Problem identification

QSA holds tens of thousands of records about Aboriginal and Torres Strait Islander peoples, created by government agencies over the past 200 years.

The PR Act predates the UNDRIP and the HR Act and is silent on First Nation peoples' worldviews and perspectives. Further, the PR Act does not align with the Queensland Government's commitment to the Path to Treaty and Truth Telling and Healing.

Consequently, the PR Act does not contain any specific provisions related to the decisions for the management of, or access to, records about First Nations peoples. This creates the risk of sub-optimal outcomes for First Nations peoples.

It is well-documented that government agencies collected, often unnecessarily, a considerable amount of information about First Nations peoples in the past. Many of these records were created without their consent or knowledge and the information they contain is often a source of pain or sadness. This existing framework makes it difficult for First Nations peoples to have a degree of control over or access to records relating to them and their past.

In 2019, the Queensland Government started a conversation with all Queenslanders about a Path to Treaty, to heal the past and create a new relationship with First Nations peoples by recognising past injustices and moving toward a treaty/treaties. In its Statement of Commitment, the Queensland Government recognised the rights and responsibilities of the First Nations peoples of Queensland.

In 2021, QSA published a response to the Tandanya-Adelaide Declaration by releasing a *Statement of Intent* which commits to embracing the worldviews of First Nations peoples and to becoming a more comprehensive and inclusive record of the people of Queensland.

Looking forward, QSA has an important role in supporting truth telling and raising awareness of Queensland's difficult shared history through the evidence found in public records.

The importance of public records

The overarching purpose of the PR Act does not recognise the importance of public records (and ready access to such records) for First Nations peoples.

A large volume of records concerning Indigenous peoples have been created. In 2021-22 alone, QSA supported the identification and digitisation of more than 4,000 historical records about frontier conflict, which accompanied the displacement of First Nations peoples from their traditional lands.[17] Whilst efforts to incorporate and acknowledge the perspectives of First Nations peoples are being made through the Queensland Government's Path to Treaty commitments, records have been disseminated and stored without the input of the affiliated Indigenous community.[18] There is a need for the legislative framework to reflect the self-determination of First Nations peoples in how and when their data is collected, used and stored by state-directed governance and cultural authorities.

The PR Act does not have a mechanism to enable individuals, including First Nations peoples, to dispute decisions about restricted access periods or accessing records. Similarly, it does not deal with disputes within the First Nations community, about who may or may not access records about individuals or the community. For example, the Community and Personal Histories team at the Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships (**DSDSATSIP**) (subject matter experts who deliver archival research services to Aboriginal and Torres Strait Islander people) receive 900 requests per year to access records.[19]

[17] Department of Communities, Housing and Digital Economy *Annual Report 2021-22*, p. 10.
[18] Ibid.
[19] QSA is aware of the distress and frustration experienced by First Nations applicants seeking information about themselves or their family when access is restricted or refused because it also contains personal information about another individual. For First Nations individuals, such as members of the Stolen Generation or their descendants, government records may be the only source of information from certain periods of their life or about their heritage. The ability to dispute restricted access decisions or the requirement to consider the particular interests of First Nations peoples may assist to address this issue.

The need for consultation

The current PR Act carries an inherent risk of failing to adequately acknowledge and reflect the views and aspirations of First Nations peoples.

It is critical that the legislation supports and enables Indigenous frameworks in understanding ideas of history, memory, heritage and cultural identity and understanding that traditional Indigenous knowledge models are built on ideas of space, community, spirituality and ecology.

While the PR Act provides for the appointment of members to the PRRC by various Ministers and the Chief Justice, it does not specifically provide for the representation of First Nations peoples or for the PRRC to provide advice on the preservation of records about Aboriginal and Torres Strait Islander heritage.[20]

As a result of this omission there is a risk that First Nations perspectives are not reflected in decision making frameworks which determine which records should be made, kept or disposed of or in assessing the enduring value of records. This can lead to the creation and maintenance of records relating to First Nations peoples that are not appropriate. As the PR Act does not provide a framework for how public authorities should deal with the records of First Nations peoples, records may be created and managed in a way that does not reflect cultural and community considerations. This means public authorities may still be requesting and obtaining sensitive cultural information unnecessarily. Alternatively, it can result in the destruction of records that contain information that may allow people to establish links with their Aboriginal or Torres Strait Islander heritage.

During the Review, 67 per cent of survey respondents, which included a number of Indigenous stakeholders, were of the opinion that the current composition of the PRRC is not suitable. Furthermore, 79 per cent of the survey respondents were of the opinion that there should be additional or different subject matter experts or representatives on the PRRC, such as First Nations peoples.

Addressing this gap would move Queensland in line with other jurisdictions, such as New Zealand where two members of the Archives Council are required to have knowledge of tikanga Māori.[21]

Government objectives

Government objectives include:

- recognise the importance of public records (and ready access to such records) for First Nations peoples, and
- ensure mechanisms are in place that promote continued and efficient involvement and consultation with First Nations peoples.

The C-RIS seeks your feedback in relation to problem identification and calibration of government objectives regarding engagement with First Nations peoples. Questions to prompt this consultation include:

1. Are current public recordkeeping practices under the PR Act leading to adverse outcomes for First Nations peoples? In which ways?
2. To what extent are such adverse outcomes due to the current regulatory framework as opposed to the implementation of the framework?
3. Are the above government objectives adequate in addressing current problems with management of public records (especially those regarding First Nations peoples)? If not, what are some alternative objectives?
4. To what extent does the current regulatory framework contribute to the creation and maintenance of records relating to First Nations peoples that are not appropriate?

Where possible, please provide evidence/case studies to support your feedback.

[20] PR Act s 29.
[21] *Public Records Act 2005* (NZ) s 14.

Operational Inefficiencies

Problem identification

The PR Act and recordkeeping framework could be improved to better meet existing community expectations for accountability and transparency. It is now expected by the community that records created by government about people should be appropriately managed, stored and preserved securely and retained for no longer than is necessary.

These expectations have been demonstrated following recent public cases involving data breaches by large Australian corporations. To meet these expectations, it is essential that efficient and effective records management systems are in place. The international standard (ISO15489.1 2017), which describes best practices for records management, sets out measurements of effectiveness for records including authenticity, reliability, integrity and usability.

Within the PR Act, operational inefficiencies have been identified that may undermine the effectiveness of Queensland's public records management framework. These operational inefficiencies contribute to non-compliance with the current legislative framework as public authorities do not have sufficient knowledge of the rules regarding disposal of records and QSA lacks sufficient power to inspect and sanction public authorities for lack of compliance with the PR Act.

Overall, these operational inefficiencies mean that public authorities may lack incentive or concern to comply with the existing records management framework.

Misalignment of incentives providing risk of permanent losses to public records

The PR Act does not currently allow the State Archivist to compel the transfer of public records from a public authority to the Archives. The PR Act includes a requirement for public authorities to provide written notice of records older than 25 years in their possession, however, there is no ability to compel a transfer in these circumstances and no penalty for a failure to comply.[22] The State Archivist can give directions about the storage of a record but cannot direct an agency to transfer the record.[23]

Long-term storage can be problematic for both physical and digital records. The ongoing usability and integrity of records can be undermined by delays in transferring records. The volume of digital records held by the Queensland Government also poses difficulties for agencies to maintain oversight of the information held, or its condition, which can have flow-on effects to internal and external access and the protection of Queensland's cultural heritage.

The ability to compel the transfer of records could prevent the avoidable destruction of certain records. For example, QSA is aware of multiple instances following natural disasters, such as the 2022 floods, where public records were water damaged, disposed of without authorisation in the council clean-up efforts, and therefore were lost.

In one instance, this included records dating back to 1920. Furthermore, it was identified during consultation that, due to the State Archivist's inability to compel transfers of records, First Nations peoples have difficulty locating records relating to them.

In addition, the refusal to transfer records of state significance to QSA restricts access to persons only within the local vicinity and not the wider community. This could have been avoided if the State Archivist was empowered to compel the transfer of particular records to ensure their protection and preservation.

During the Review, 81 per cent of survey respondents were of the opinion that a public authority should be required to transfer records to QSA if the State Archivist directs the authority to do so. According to international archival practice and standards, which are recognised across Australia and New Zealand, including Queensland, only 2-5 per cent of public records require permanent retention. Of those records, only a small subset might warrant mandatory transfer to QSA.[24]

[22] PR Act (n 1) s 10.
[23] Ibid s 10(2).
[24] National Archives, *About the National Archives of the United States,* available at https://www.archives.gov/publications/general-info-leaflets/1-about-archives.html, March 2021.

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 such as once business use has ceased, or after a prescribed amount of time.

Risk of disposal (including alteration and deletion) contrary to public interest

Under the PR Act, disposal of public records, unless appropriately authorised, is an offence, with disposal defined as including 'destroying or damaging a record, or part of it, or abandoning, transferring, donating, giving away or selling a record, or part of it'. There are two key problems with this definition.

First, this definition is grounded in traditional records management practices, such as the existence of a single, discreet object being the record of a decision or action. This is inconsistent with contemporary practices in digital record creation and management.

For example, the definition does not recognise that digital records may be forensically recovered and therefore no longer disposed of. It may also fail to recognise a situation where a public authority fails to maintain a digital storage system resulting in the permanent loss of records.

Second, there is no offence for attempted disposal of a public record or the unauthorised alteration or deletion of a public record. It should be already understood that the intentional alteration or deletion of a public record is not acceptable, although the current definition of disposal does not put this beyond doubt.

This limits QSA's ability to promote good records management practices through prosecution. For example, 15 out of 21 complaints received since 2017 have been in relation to alleged unlawful disposal, including of public records that should be retained permanently as well of mass deletion of thousands of emails which were later recovered.[25] If the meaning of disposal was expanded, there would potentially be a small number of complaints, likely 3 to 5 that would have been considered for prosecution.

By contrast, other Australian jurisdictions, as well as New Zealand, provide for offences under their relevant legislative frameworks dealing with the management of information and records. Broadly, the offences relate to matters such as the destruction of material, alteration of material and disposal of material.

Without a legislative framework that comprehensively protects information and public records, Queensland's information and public records are vulnerable.

Confusion with regards to terminology within the PR Act, its application and best practices

Under the PR Act, the State Archivist has the power to:

- make policy, standards and guidelines about the making, keeping, preserving, managing and disposing of public records,[26] and
- authorise disposal, subject to the conditions in the PR Act.[27]

However, section 7 of the PR Act only requires a public authority to 'have regard to any relevant policy, standards and guidelines made by the State Archivist about the making and keeping of public records.'[28]

As such, it is unclear whether a public authority **must** have regard to a policy, standard or guideline on preserving, managing or disposing of public records. The relationships between policies, standards and guidelines, and a public authority's responsibilities regarding safe custody and preservation of records, are also unclear.

[25] Internal QSA data 2017-2022: Not published.
[26] PR Act (n 1) s 7(2).
[27] Ibid s 26.
[28] Ibid s 7.

During the Review, 80 per cent of survey respondents were of the opinion that public authorities need to do more than merely 'have regard to' the directions of the State Archivist. Of this, 95 per cent were of the opinion that public authorities need to 'take reasonable steps' to comply with directions of the State Archivist, while 79 per cent were of the opinion that there should be an obligation to comply.

The potential ambiguity regarding the PR Act and its applicability means that the legislative framework designed to protect Queensland information and public records is weakened. Of the 140 reports covering 732 public authorities tabled in the last five years by the Queensland Audit Office, Queensland Ombudsman, Office of the Information Commissioner, and Crime and Corruption Commission, 74 (or 53 per cent) included recordkeeping issues including ineffective recordkeeping practices, unlawful destruction of records, inadequate recordkeeping awareness and falsified records.[29] These reports suggest poor records management may be widespread.

The impacts of poor records management are various, including both financial and personal impacts to individuals and the community. For example, a Queensland Audit Office report in 2020 found that poor records management practices had resulted in duplicate payments of $6.5 million.[30] The Royal Commission into Institutional Responses to Child Sexual Abuse dedicated an entire volume of their final report to recordkeeping and information sharing issues and stated that inadequate records and recordkeeping contributed to delays in, or failure to identify and respond to risks of abuse and exacerbated distress and trauma for survivors and that there was also a need for training in the importance of records management to individuals and public safety. The ability to issue mandatory standards would encourage public authorities to prioritise the resourcing and management of public records.

Consistent information sharing across public authorities regarding records management and compliance with the PR Act

Under the PR Act, QSA has limited ability to monitor the records management activities of public authorities and is reliant on publicly released or volunteered information. QSA does not have any ability to compel information from agencies and agencies are not required to provide information to QSA on a regular basis. While the PR Act requires that agencies give written notice of any records that are over 25 years old, in practice, this does not occur and there are no penalties or mechanisms in the PR Act to enforce or encourage compliance.

The inability of QSA to effectively monitor public authorities reduces its ability to promote compliance with the PR Act and their understanding of records management practices in Queensland. It contributes to poor records management practices, for which public authorities are not held accountable. Analysis of the data from the 2014-15 survey of the state of records management indicated that only 15 per cent of public authorities met minimum requirements.[31]

Where only minimum requirements are met, there are flow-on impacts including to the public's ability to access public records through mechanisms such as the *Right to Information Act 2009*. For example, 11 of the 23 reports tabled by the Queensland Audit Office, Queensland Ombudsman, Office of the Information Commissioner, and Crime and Corruption Commission about public authorities in 2012-22 specifically mentioned inadequate recordkeeping practices which impacted government performance, transparency and/or accountability in the following areas:

- monitoring hospital emergency department patient wait times
- reducing corruption risks in relation to gifts and benefits
- regulating animal welfare services
- targeting risks to dam safety

[29] 140 publicly available reports covering 732 public authorities tabled in the last five years by the Queensland Audit Officer, Queensland Ombudsman, Office of the Information Commissioner, and Crime and Corruption Commission. Available on parliamentary website.
[30] Queensland Audit Office, *Queensland Health's new finance and supply chain management system,* available at Queensland Health's new finance and supply chain management system | Queensland Audit Office (qao.qld.gov.au), September 2020.
[31] *2014-201 Report on the Recordkeeping Survey of Queensland Public Authorities* previously available on QSA website and can be provided on request.

- ensuring compliant procurement and contract management processes
- safeguarding personal information collected by council surveillance systems
- ensuring accuracy and reliability of the financial statements of public sector entities
- managing contracts for new infrastructure projects, and
- dealing with allegations of corruption involving misuse of public resources.

Other jurisdictions in Australia and New Zealand utilise a range of monitoring options, including self-assessment surveys. Recent reviews, including New South Wales' 2020 Review of the State Records Act 1998, recommended that monitoring powers be strengthened through a mandatory requirement to self-investigate and report back to the archives when directed.[32]

Government objectives

Government objectives include:

- reducing risk of permanent losses to public records
- ensuring the risks of unlawful disposal, alteration and deletion are balanced with costs in managing such risks
- reducing confusion with regards to terminology, application and best practices under the PR Act, and
- enabling efficient monitoring of public authority performance with regards to records management.

The C-RIS seeks your feedback in relation to problem identification and calibration of government objectives regarding possible inefficiencies within the public records management system. Questions to prompt this consultation process include:

1. Are there any other sections/parts of the current *Public Records Act* which may contribute to operational efficiencies?
2. Are there any incentives or reasons which may motivate public authorities to retain records that have been identified as suitable for transfer to QSA for preservation?
3. Does the current lack of offence for attempted disposal of a public record provide significantly more motivation to attempt such disposal than if penalties existed? If so/if not, are there any case studies/evidence in other jurisdictions or in similar areas of regulation to suggest this?
4. To what extent is compliance to policies, standards and guidelines in preserving, managing or disposing of public records driven by terminology of section 7 of the PR Act, as opposed to other possible incentives including, but not limited to: financial/economic costs to public authorities and knowledge/familiarity of rules?
5. Does the current lack of ability to compel information regarding recordkeeping from agencies under the PR Act contribute to a lower compliance rate in any regulatory requirement when compared with similar legislation?
6. Are the above government objectives adequate in ensuring that public records are made, managed, kept and preserved in a usable form for the benefit of present and future generations? If not, what are some alternative objectives?

Where possible, please provide evidence/case studies to support your feedback.

[32] 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).

Lack of Transparency

Problem identification

Transparency in public records management has been undermined by a risk-averse approach among public authorities to granting access to records and the treatment of local government councillors under the PR Act framework. Open government is underpinned by sound recordkeeping practices to support public accountability and transparency. Under the PR Act, Queensland public authorities are required to responsibly manage public records to ensure that information is complete, reliable, accessible, and usable for as long as they are needed.

The current PR Act, in part, does not promote transparency which undermines the effectiveness of the records management framework. This lack of transparency results from public authorities having limited knowledge of the rules about when to release public records, which can result in potentially excessive restriction periods. This can limit public access for longer than is necessary. Moreover, the risk, for public authorities, of a sanction in relation to granting or refusing access to records is minimal. The risk, for local government councillors, of a sanction in relation to non-compliance with their records management duties, is also minimal as they are not public authorities under the PR Act.

Access to records

Under the PR Act, one of QSA's significant roles is to provide access to the public records held in its custody. These are records with particular significance that are no longer in use by the responsible public authority. Under the PR Act, members of the public can access these records, in certain circumstances, on application to the responsible public authority, but if access is refused, there is no mechanism for review. Between 2020 and 2021, QSA received approximately 456 applications to access restricted records, 84 per cent of which were approved.[33] The public authority may also set conditions for access, for example, the record can only be viewed in person and cannot be copied or further distributed.

Public authorities determine restricted access periods for records upon transfer to QSA and these periods can be up to 100 years. Any restriction after 100 years can only be applied through a regulation under the PR Act. Factors in setting a restricted access period include if the record:

- contains personal information
- is classified as containing exempt information under the *Right to Information Act 2009* (30 years)
- is a Ministerial or Assistant Minister record (30 years), and
- is a Cabinet record (20 and 30 years dependent on the date of creation of the record).

Some legislation may also restrict access to certain records with limited exceptions such as adoption or births, deaths and marriages records.

In consideration of storage limitations, QSA deliberately seeks to take in open records wherever possible. Currently, 63 per cent of the records in the archival collection are open to the public.[34] However, a lack of clarity for public authorities, about when to release records to the public, can lead to records being closed for longer periods than is necessary. A 2018 review of the archival collection identified that 51 per cent of public authorities had records with potentially excessive restrictions, which contributed to 18 per cent of the entire collection being completely undiscoverable by the public due to restricted metadata.

There is a resourcing element to the blanket application of potentially excessive restrictions. QSA is aware that some agencies apply restricted access periods to a whole series of records, such as all the records relating to a particular topic or function, rather than applying appropriate restricted access periods to individual records. An example of this would be where a series of building plans, where a blanket restricted access period of 65 years has been applied because the series may contain information about schools, prisons and court houses.

[33] QSA Internal Reporting Data.
[34] Ibid.

Even if a building has been demolished, the 65 year restriction still applies even though the building no longer exists. A review of the restriction is conducted if a member of the public requests access to that particular record, but it is not conducted proactively.

Agencies can also apply excessive restricted access periods if they are risk averse and concerned about reputational or political ramifications for releasing records. This can apply where there is no specific restricted access period for the records and agencies can choose what restricted access period to apply. There are also instances where agencies apply the maximum restricted access period of 100 years to discourage applicants from accessing the records for no charge at QSA when the agency can impose a charge for access.

Under the PR Act, the State Archivist can refuse access to a record if:

- providing access would cause damage to the record
- the record can be purchased from the public authority
- equipment or technology is not available to provide access to the record, and
- a regulation restricts access.

The State Archivist can request a responsible public authority to change a restricted access period, and if a dispute arises, it can be referred to the PRRC. To date, no dispute has ever been referred. Members of the public do not have a right to appeal to the PRRC in relation to setting or reducing restricted access periods.

Under the PR Act, restricted access periods begin from 'the last action on the record'. This phrase is not defined in the PR Act but is understood to exclude extrinsic or management activities, such as any actions applied to the record for its preservation or organisation within the collection. Any amendment or annotation to a record, such as under the *Information Privacy Act 2009*, resets an access period. This type of legally permitted annotation or amendments to records were not in existence when the PR Act was first drafted, and result in potentially excessive restriction periods which, in turn, can limit access for longer than is necessary.

During the Review, 91 per cent of the survey respondents were of the opinion that the criteria for the setting of restricted access periods should be revised. Meanwhile, 85 per cent of survey respondents were of the opinion that access mechanisms in the PR Act should be amended to align with relevant state and federal legislation.

Local Government

The records management obligations of local government councillors are limited to broad provisions contained within the LG Act. Under the PR Act, they are not public authorities, although they will make and keep public records relating to the administration of council business.

As the responsible officer under the PR Act for ensuring compliance, the CEO is placed in the position of being responsible for ensuring councillors are compliant with their records management responsibilities, without being able to direct them to do so, and being generally subject to their direction.[35] If a councillor deliberately attempts to bypass processes and procedures put in place by the council and CEO to make and keep public records, it would be inappropriate for action to be taken against the CEO for the actions of councillors.

This often leads to poor recordkeeping practices among councillors, particularly with the use of social media. This issue is further compounded by ambiguity about the meaning of 'record' under the PR Act.

By contrast, Queensland Government Ministers and Assistant Ministers are treated as public authorities under the PR Act that are individually responsible for records created and received, with an exemption for records pertaining to personal or party-political matters.

[35] The *Local Government Act 2009*, s 170.

Government objectives

Government objectives include:

- providing a mechanism for increased access to public records, and
- reducing the risks caused by a lack of accountability and transparency within local government recordkeeping.

The C-RIS seeks your feedback in relation to problem identification and calibration of Government objectives regarding possible lack of transparency.

1. Are there further case studies/evidence/example of types of records for which the State Archivist may be motivated to request a change in the Restricted Access Period?
2. Are there any metrics to suggest Queensland's relative position on transparency in public authority operations in comparison to other jurisdictions?
3. To what extent does your public authority keep emerging technologies in alignment with the Queensland Government's *Records Governance Policy*? How does this compare to other public authorities, and are there any constraints limiting your ability to keep records creating through emerging technologies?
4. Are the above government objectives adequate in ensuring transparency in public authority operations? If not, what are some alternative objectives?

Where possible, please provide evidence/case studies to support your feedback.

Options

This review identifies three broad options for reform:

1. Status Quo (No Change)
2. Non-Legislated Response, and
3. Legislated Response.

Option 1 involves making no changes to the PR Act and maintaining the status quo.

Option 2 also involves making no changes to the PR Act but involves a number of measures focused on education and guidance and consultation with First Nations peoples to promote understanding and compliance with the existing legislative framework.

Option 3 involves a suite of measures to strengthen the application of and compliance with contemporary recordkeeping practices and standards. This option would be supported by non-regulatory approaches such as education and training. This option includes:

- formal mechanisms to recognise and consult First Nations peoples
- clarifying the meaning of 'record'
- giving the State Archivist the ability to compel the transfer of records
- updating the definition of disposal and introducing new offences
- establishing a power to publish mandatory standards
- empowering the State Archivist to monitor, audit and report on compliance
- giving investigative functions to another agency
- introducing an appeals mechanism and powers to make regulations regarding the operation and duration of restricted access periods, and
- including local government councillors in the definition of public authority.

Option 1: Status Quo (No Change)

The current provisions of the PR Act would be maintained. This would involve making no amendments or clarifications, with QSA and Queensland public authorities required to comply with the requirements under the existing PR Act.

Definition of a record

Maintain the current definition of a 'record' within the PR Act as follows:[36]

> '…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.'

[36] PR Act (n 1) schedule 2.

Recognition of First Nations peoples

Maintain a lack of any specific provisions related to:

- decisions for the management of or access to records about First Nations peoples
- processes for consulting with First Nations peoples, and
- recognition of the importance of public records for First Nations peoples.

This means the PR Act would remain inconsistent with the UNDRIP and the requirements of the HR Act as it omits recognition of First Nations peoples.

Transferring of records

QSA still requests other public authorities to transfer public records to the Archives. QSA is unable to compel agencies to transfer records.

Meaning of 'disposal'

Maintain the meaning of disposal under the PR Act, which defines disposal as including 'destroying or damaging a record, or part of it, or abandoning, transferring, donating, giving away or selling a record, or part of it'.

Requirement to 'have regard to'

Maintain section 7 of the PR Act which only requires a public authority to 'have regard to any relevant policy, standards and guidelines made by the State Archivist about the making and keeping of public records.

Monitoring powers

Maintain the limited powers under the PR Act for QSA to monitor the records management activities of public authorities and is reliant on publicly released or volunteered information.

Access to Records

Maintain the current provisions of the PR Act, or lack thereof, that:

- do not allow members of the public, or public authorities, to challenge access decisions by a responsible authority, and
- do not expressly require a public authority to respond to a request for access to records help by QSA.

Local Government

Maintain the current provisions of the PR Act that make the CEO of the local government responsible for ensuring local government councillors are compliant with their records management responsibilities.

Option 2: Non-Legislated Response

The second option involves a number of non-legislated options to address the key problems identified in this review. This does not involve making changes to the PR Act but instead involves measures that promote understanding and compliance with the existing framework for records management and storage.

Undertake consultations with First Nations peoples

Undertake consultations to better involve First Nations peoples in decisions relating to the administration and management of records about First Nations peoples in the PR Act. This would include how records are owned, accessed, used, and collected.

Initial engagement with the Interim Independent Body will be undertaken to consider overarching principles of consultation regarding decision making on this issue. Issues relating to accountability and identification are expected to be uncovered through this process.

Education and publication of guidance

QSA could undertake a series of education and training programs to promote understanding of and compliance with the existing PR Act. This could be undertaken alongside further detailed guidance on QSA websites to better inform public authorities, to which the PR Act applies, about the best practices expected of them under the existing PR Act. This could be used to:

- educate public authorities on the contemporary meaning of a record and the exigencies of dealing with digital materials
- educate public authorities on the importance of public records and the risk of permanent damage to public records
- educate public authorities on the meaning of 'disposal' in relation to digital records
- provide public authorities with further guidance on the ambiguous terminology in the PR Act, its applicability and best practices
- encourage public authorities to provide QSA with regular updates on their records collection and help them understand why this is important, and
- help local government councillors to better understand their recordkeeping practices.

Options 3: Legislated-Response

The third option considers a range of amendments to the PR Act to strengthen the application of and compliance with contemporary recordkeeping practices and standards. This option would be supported by non-regulatory approaches such as targeted education and training.

Amend the purpose of PR Act to recognise First Nations peoples

Amend the main purposes expressed in Part 1 of the PR Act to include a statement recognising the importance of the state's public records and ready access to those records for First Nations peoples, in particular in supporting rights and entitlements, in connection with culture and community and in relation to reconciliation.

Require the inclusion of First Nations peoples on the PRRC

Amend the PR Act to require that:

- two of the nine members of the PRRC be First Nations persons with relevant expertise and experience to guarantee continued and efficient involvement and consultation with First Nations peoples, and
- 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.

Establish a First Nations advisory group

Establish an advisory group comprised of First Nations persons to consult with the State Archivist concerning issues relating to QSA's collection of records about First Nations peoples. To minimise the risk of inconsistent advice and foster information sharing between the advisory group and the PRRC, the advisory group should include at least one of the two First Nations members of the PRRC.

There is potential to achieve this outcome without a legislative response; however, the intent of embedding this concept in legislation is to provide a clear signal of enduring intent about the importance of First Nations peoples perspectives to actions related to the management of records relevant to First Nations peoples.

Clarify the meaning of record

To better reflect contemporary practices in records creation and storage, the definition of 'record' in the Schedule 2 Dictionary could be replaced with words to accommodate the digital forms in which public records are created and preserved and the application of future technology. The new definition should 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 the transfer of public records

The State Archivist could be empowered by amendment of the PR Act to direct a public authority to transfer to QSA a public record that is in the authority's possession or power. The direction to transfer would only be given in the situation where the State Archivist is persuaded of the necessity, and after consultation with the authority holding the records. This could help avoid permanent loss of public records and improve accessibility to public records.

Update definition of disposal and update offences

To reduce the risk of disposal of public records contrary to public interest, the following measures could be introduced:

- increase the time limit for prosecution of a contravention of section 13 of the PR Act from one year to three as QSA often does not learn of unlawful disposals within the year
- introduction of an offence for unlawful attempted disposal of public records
- introduction of an offence for unlawful intentional alterations to, and deletions of, public records, and
- amendment to the definition of disposal so that it clearly comprehends digital material. At the least, this involves the addition of 'deleting' in paragraph (a) of the Schedule 2 Dictionary definition of disposal.

Establish power to publish mandatory standards

To reduce confusion with regards to terminology within section 7 of the PR Act, including its application and best practices, the State Archivist could be permitted and empowered to promulgate and prescribe record standards with which public authorities subject to the PR Act must comply. The standards can be adapted to a public authority's circumstances and subject to the prospect of direction by the Minister administering the PR Act.

Support the State Archivist power to monitor, audit and report on compliance

Under section 56 of the PR Act, the State Archivist currently reports on compliance with the PR Act in the annual report. The annual report is tabled in Queensland Parliament by the responsible Minister.

The PR Act does not currently explicitly set out monitoring, auditing and reporting on compliance as a function of the State Archivist.

To support consistent information sharing with public authorities regarding the adequacy of records management and compliance with the PR Act, the functions of the State Archivist could be clarified to explicitly include the ability to monitor, audit and report on public authority compliance with the PR Act, consistent with existing practices under section 56.

The State Archivist may consider a number of monitoring methods, including self-assessment surveys for public authorities, independent audit programs, or make ad hoc requests for public authorities to report on records management.

This would be expected to have a positive impact on compliance with the PR Act. The proposed amendment would not change current reporting practices.

Introduction of an appeals mechanism and powers to make regulations regarding operation and duration of restricted access periods

To address issues relating to a lack of access to public records, the following amendments to the PR Act could be made:

- a public record transferred to QSA is to be accessible at the time of transfer unless the public record contains information which under the *Right to Information Act 2009* or the *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
- if access to the public record is to be restricted, the responsible public authority must set a restricted access period
- in fixing the duration of the restricted access period, the responsible public authority:
    - 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)
        - is to have regard to:
            - the HR Act, and
            - the needs and interests of any affected First Nations persons
- the PR Act authorise the making of regulations, including with respect to the operation and duration of restricted access periods, and
- the PR Act provide a mechanism for challenging a refusal of access to public records in the custody of QSA.

Include local government councillors in definition of public authority

To improve recordkeeping practices at a local government level, the definition of 'public authority' in the Schedule 2 Dictionary could be amended to add local government councillors to reduce the risk of records mismanagement and corruption at a local government level.

This would relieve the chief executive officer of local governments of the responsibility for records management of councillors and instead make councillors directly accountable.

The C-RIS seeks your feedback in relation to these options. Questions to prompt this consultation include:

1. Are there any other options which could address problems/achieve government objectives?
2. What is your preferred option with regards to consultation with First Nations people, particularly regarding who should be consulted, how frequently consultation should be undertaken and what media of communication or mechanism should be used in consulting? (i.e., e-mail, online meeting tools, in-person meetings)
3. Are there any other improvements to the aspects of the above options? (E.g., could there be enhancements to educational approaches to improve compliance?) If so, please provide details.

Where possible, please provide evidence/case studies to support your feedback.

Impact analysis

This section assesses the impacts of the three options identified. Where information was available, impacts have been assessed quantitively. Other impacts have been assessed qualitatively. To support stakeholder feedback, all the assumptions used in the analysis are clearly stated, and discussion questions are included throughout the section to highlight where additional information or evidence would be valued.

The following limitations in the analysis are noted:

- the availability of quantitative information was limited due to the current legislative framework which does not provide explicit reference to monitoring, auditing and reporting on compliance and non-compliance
- while efforts were made to identify, quantify and monetise possible impacts to stakeholders, many of the impacts are assessed qualitatively given the limited time available to prepare this Consultation RIS. Stakeholder consultation directly linked to this Consultation RIS has also been limited, and
- benefits of the anticipated reforms are largely due to a combination of factors and reforms. As such in most cases there are uncertainties in attributable benefits to individual reforms.

During public consultation, stakeholders are encouraged to provide further information to assist in quantifying the anticipated impacts of each option. For example, this could include the number of additional FTEs they may require in order to comply with “best practice” records management standards; “willingness-to-pay” for government data and records in the Australian context identified through a stated or revealed preference survey, as well as a clear statement on whether there have been any benefits/costs which have not been identified on a net societal level.

To guide stakeholders, this section includes a range of specific discussion questions where additional information is sought.

Methodology

A Cost-Benefit Analysis (CBA) is a systematic, evidence-based method to measure the economic, social and environmental costs and benefits of a proposal, and provides an analysis on which option (including the base case) generates the greatest net benefit to the Queensland community.

The CBA assesses the costs and benefits through monetising (where feasible) the individual impacts of each reform. Where monetisation is not possible, costs and benefits have been stated qualitatively.

This CBA has been undertaken in alignment with Queensland guidelines including:

- the Department of State Development, Infrastructure, Local Government and Planning’s Cost Benefit Analysis Guide
- the Queensland Government Guide to Better Regulation
- the Office of Productivity and Red Tape Reduction (OPRTR)’s Guidance Note: Impact Assessment, and
- Queensland Treasury’s Guidelines for estimating the net benefits of regulatory reforms.

Given the limitations with data, the analysis contained is provided to support a relative assessment of the options and should be considered alongside the qualitative impacts. The Net Present Value (NPV)[37] provided at the end of each section should only be used as an indicative figure to guide consultation and further discussion.

[37] The Net Present Value (NPV) is an indicator of the quantified net benefits/costs of the proposal; the NPV is obtained from estimating the annual impacts of a proposal, and then “discounting” benefits/costs into the future (this reflects the fact people prefer to receive a dollar’s worth of goods and/or services currently as opposed to in the future).

Summary of Benefits and Costs of each option

The following table provides a summary of the benefits and costs (relative to the 'base case', which is the most likely outcome without further Government intervention) for Option 2 (additional educational policies only) and Option 3 (additional educational policies and regulatory change). Over the period of evaluation (until 1 July 2033), the quantified costs of Option 2 and Option 3 are $87.61 million (in present value, 2022 dollars) and $165.01 respectively.

Table 1.1 – Summary of benefits and costs of the proposal in comparison to the base case (million AUD, 2022)

	Option 2	Option 3
Quantified costs:		
Increased costs to local councils in complying with best practices	-$8.30	-$15.40
Increased costs to other public authorities in complying with best practices	-$55.22	-$102.50
Increased costs to public authorities (auditing, monitoring and compliance)	$0	-$1.31
Increased costs to QSA (auditing, monitoring and compliance)	$0	-$1.07
Educational costs (QSA)	-$1.17	-$1.17
Quantified NPV:	-$64.68	-$121.45
Qualitative benefits:		
Improved decision-making framework regarding First Nations records	Would help to ensure processes are in place for consulting with First Nations peoples in decisions relating to the administration of the PR Act. However, does not guarantee representation and continued involvement and consultation with First Nations peoples.	Establishes a clear commitment and guarantee in representing First Nations peoples through the PRRC and the establishment of a First Nations advisory group. Provides a statutory means for First Nations peoples to contribute to matters concerning QSA's collection of records about First Nations peoples.
Improved records availability	The option motivates public authorities to comply with best practice records management principles in order to increase the number of records available to the public, as well as to improve the conditions of such records. The extent of improved records management and availability would depend on the compliance rate of Option 2 (when compared to Option 3).	The option motivates public authorities to comply with best practice records management principles in order to increase the number of records available to public, as well as to improve the conditions such records are in. While an example taken from US/UK, OECD notes 'data access and sharing can help generate social and economic benefits worth between 0.1 per cent and 1.5 per cent of gross domestic product (GDP) in the case of public-sector data'. [38]
Improved integrity of public authorities	Option could help councillors to better understand practices and to achieve alignment with best practice recordkeeping; however, there is unlikely to be a significant change in Option 3 where there is fundamental change in incentives.	Improvements to recordkeeping practices at a local government level could result in reduced mismanagement and corruption risks within local government recordkeeping. Legislative changes support transparency, accountability and integrity in public administration through an incentive change to councillors.

[38] OECD, *Enhancing Access to and Sharing of Data : Reconciling Risks and Benefits for Data Re-use across Societies*, 2019.

	Option 2	Option 3
Operational savings from reduced records with minimal use value being kept	The extent of improved records management and availability would depend on the compliance rate (regarding lawful disposal and transfer of public records) under Option 2 (when compared to Option 3).	The extent the change will reduce operational costs is unknown; however, public authorities' self-reporting shows 44 per cent of such authorities are either not undertaking disposal or only undertaking disposal occasionally, consistent with anecdotal reports of a low rate of disposal of records past their disposal date. Given that physical storage and management costs for the State amassed to $111 million in 2020-21, there is anticipated to be an opportunity to reduce this cost.
Efficiencies from streamlining decision challenging mechanisms	Benefit does not incur under Option 2 due to this option being non-legislative.	Removal of duplication in processes between requesting access under the *Public Records Act* and *Right to Information Act*. Historical efforts show 320 requests for access to records in QSA's custody have been denied since July 2020, which implies approximately 137 requests per annum at maximum which could have duplicative efforts between the Act.
Qualitative costs:		
Costs in establishment of an advisory group	Cost does not incur under Option 2 due to this option being non-legislative.	Establishment anticipated to incur running costs (both time and monetary): 5 advisory group members (community), 5 QSA staff, to meet on a quarterly basis.
Reduced flexibility in composition of PRRC	Cost does not incur under Option 2 due to this option being non-legislative.	Legislating two specific slots for Aboriginal or Torres Strait Islander people provides less flexibility but is likely to be of minimal cost given ability to consult external professionals if needed.
Time costs from increased clarifications	Same as Option 3; increase in clarification uncertain, as well as whether public authorities would need more clarification under a legislative or non-legislative approach.	Could incur opportunity costs both to QSA and public authorities to extent of increased efforts needed to clarify intent and operations of the PR Act, although this may subsequently lead to benefits including improved records availability and reduced operating costs from records with minimal use being adequately destroyed. QSA notes that between 1 July 2017 to 30 June 2022, QSA received 549 queries regarding the definition of a public record (averaging to 109.8 queries per annum).

Note – figures may not exactly add up due to rounding

Assumptions

The following central parameters were used to undertake the CBA. Stakeholders are encouraged to provide further information which may update these assumptions to improve the rigour of analysis for a Decision RIS.

Table 1.2 – List of Assumptions used for the cost-benefit analysis

Item	Assumption	Source/Rationale
Community of interest	Queensland	Base assumption
Base date for NPV	1 July 2022	Base assumption
Real discount rate	7 per cent per annum	Consistent with common Australian and State guidelines as in (Commonwealth) OBPR's Cost benefit analysis guidance note
Evaluation period	Until 1 July 2033	Base assumption - one year for implementation of any regulatory or non-regulatory change, with evaluation undertaken for following 10 years, provided uncertainties in future shape of recordkeeping.
Salaries (Agencies)	$95,273 per annum (AO5 Band 2) + on-costs	Guidelines for estimating the net benefits of regulatory reforms; QRIC wages determination (since September 2022)
Salaries (Public Authority)	$43.31 per hour (estimated using hours worked data and salary distribution for 'Archivists, Curators and Records Managers' for Qld using Census data)[39]	Guidelines for estimating the net benefits of regulatory reforms; ABS Tablebuilder (adjusted for inflation)
Leisure Value of Time	$23.62 per hour (Half of economy-wide average hourly earnings).	Guidelines for estimating the net benefits of regulatory reforms; Employee Earnings and Hours, Australia, May 2021 (adjusted for inflation)
On-Costs	On-costs have been estimated at 1.165 the hourly salary value.	Guidelines for estimating the net benefits of regulatory reforms
Effectiveness of intervention – Option 2	The number of public authorities making material changes to their actions under Option 2 (educational policies only) were assumed to be 53.9 per cent as much as in Option 3 (educational and regulatory policies)	Base assumption. Constructed through estimates of compliance with IS40 Principle 1 ('Public authority recordkeeping must be compliant and accountable') per the 2014-15 Recordkeeping Survey of Queensland[40] , and internally tested through a 'table of eleven' compliance framework[41].

[39] Hourly rate used to reflect the underlying skill sets of the staff performing the key tasks.
[40] Score obtained from weighted average of compliance indices ranging from "fully compliant" = 100%, "working towards compliance" = 50%, and "non-compliant" = 0%.
[41] Option 2 thought highly likely to target "1. Knowledge of regulation" and "3. Degree of acceptance of regulation", and moderately target "4. Loyalty and obedience of the regulate", "6. informal report probability", "8. Detection probability", "10. chance of sanctions" and "11. Risk of sanctions" as opposed to Option 3 highly likely to target 1., 3., 4., 6., 10., 11., while moderately likely to target all others bar "5. Informal monitoring".

Reforms to improve transparency

Educational costs incurring to QSA

Options 2 and 3 will both incur additional resource costs to QSA from further educational and training policies (e.g., publication of guidance); QSA at this time anticipates in total such additional resource requirement to be 1.5 FTEs. Given such costs are incurred over both the 'reforms to improve transparency', as well as the 'reforms to realise operational efficiencies', these costs have been split over the reform sections commensurate to their estimated costs incurred to public authorities (i.e., QSA expends educational effort for 'operational efficiency' significantly more than that for 'transparency' given the higher magnitude of transition [in dollar terms] by public authorities). Given such 1.5 FTEs are of AO5 Band 2 (i.e., $95,273 per annum; $110,993 when 16.5 per cent on-costs are included), the additional resource costs incurred to QSA for educational policies relating to transparency are provided in the Table below.

Table 1.3 – Additional resource costs to QSA (million AUD, 2022)

Item	Option 2	Option 3
NPV	-$0.15	-$0.15
Undiscounted costs	-$0.22	-$0.22

Increased costs to local government

To the extent local governments do not undertake such functions already, the non-regulatory and regulatory reform options will increase costs to councils from requirements to keep records for councillors. The costs have been estimated in line with the following assumptions:

- councils will experience a spectrum of anticipated additional resources required; QSA notes councils with less experience and capability may need up to two additional FTEs to manage their records, whereas councils which have a mature records management system will not require any FTEs due to their broad compliance with requirements. This will also be impacted by the size of the local government and number of councillors for the local government area, with smaller local governments likely to experience a smaller increase in resourcing needs
- QSA notes larger councils are likelier to have the capacity to absorb such costs; therefore, Category 4-8 councils and Brisbane City Council were not thought to incur additional resource costs in complying with best practices of records management (due to availability of 'councillor advisors/councillor administrative support staff' under Section 197A of the *Local Government Act 2009*)[42], and
- the above assumptions lead to an estimated 25.28 FTE additional worth of effort required per annum across 62 local councils in Queensland anticipated to undertake records management at fully compliant standards (15 councils were assumed to be already broadly compliant). The additional FTE worth of efforts required for each council ranged from 0~1.44, with the average FTE required for Category 1 councils at 0.25 FTEs, Category 2 councils at 0.47 FTEs, and Category 3 councils at 0.89 FTEs.

[42] The additional FTEs required by each council (which is not at or above Category 4, or is Brisbane City Council) was therefore determined by the following formula:

$$FTE = \frac{2 \times Employee\ expenses_{Council}}{Employee\ expenses_{Threshold}}$$

Where $Employee\ expenses_{Threshold}$ is the lowest employee expenses for councils anticipated to be fully compliant in the 2020-21 financial year (approximately $71.2 million), and $Employee\ expenses_{Council}$ is the employee expenses for the council of interest.

- The average resource cost per annum for public authorities is that of the median values for the 'Archivists, Curator and Records Managers' in Queensland estimated from 2021 Census statistics (Tablebuilder), (through dividing median range salary by the average hours worked) which equates to $86,723 (2022) including on-costs (16.5 per cent of salary value) and adjusting for inflation.

The quantified value of such costs, both undiscounted and in terms of NPV, are provided in the table below.

Table 1.4 – Additional resource costs to Local Councils (million AUD, 2022)

Item	Option 2	Option 3
NPV	-$8.30	-$15.40
Undiscounted costs	-$11.81	-$21.93

Reforms to improve transparency: Summary of Quantified Costs

The following table provides a summary of the net present value of the quantified impacts of the options for reforms to improve transparency. As noted previously, given the limitations with data, the analysis contained is provided to support a relative assessment of the options and should be considered alongside the qualitative impacts. For the reforms to result in a 'net positive' outcome for Queensland, the qualitative benefits stated below must be over $32.39 million for Option 2 and over $60.13 million from time of analysis (November 2022) until 1 July 2033.

Table 1.5 – NPV of options – changes to improve transparency relative to base case (million AUD, 2022)

Item of interest	Option 2	Option 3
NPV of Costs	-$8.45	-$15.55

Reforms to improve transparency: Qualitative Benefits

Improvements in recordkeeping induced from both increased access to, and adequate management of, records can result in benefits of use to consumers and businesses, as well as savings from removal of efficiencies.

While not explicitly captured in the Cost-Benefit Analysis, past literature regarding the field may indicate that such use value is a significant driver of benefits should it be monetised in a CBA. OECD notes 'data access and sharing can help generate social and economic benefits worth between 0.1 per cent and 1.5 per cent of gross domestic product (GDP) in the case of public-sector data'; in Queensland's context, this would equate to $368.98 million per annum in benefits to users and businesses.[43]

While this benefit has not been included in the main CBA for the difficulty in estimating the anticipated increase in availability of public records due to the anticipated reforms, given the above estimates of $368.98 million, a 1.2 percentage point improvement in availability of public information – especially when such information is provided free of charge – will make the proposal NPV positive for Option 2, and a 2.3 percentage point improvement in availability of public information will make the proposal NPV positive for Option 3.

Similar to the Queensland Government, the Australian National Audit Office (ANAO) has recognised records management as a significant risk to Australian Government agencies. The ANAO recommends that agencies should develop records authorities to determine the retention, destruction and transfer requirements in accordance with the Archives Act. It has been noted that multiple and confusing sources of requirements can make it difficult for public authorities to be aware of and apply

[43] OECD, *Enhancing Access to and Sharing of Data : Reconciling Risks and Benefits for Data Re-use across Societies*, 2019.

requirements, resulting in inefficiency and ultimately impacting on the integrity and authenticity of the record.[44]

Improvements to recordkeeping practices at a local government level could result in reduced mismanagement and corruption risks within local government recordkeeping. Extending the obligations and duties of local councillors to comply with the section 7 records management duties in the PR Act would support transparency, accountability and integrity in public administration. This step would conform with responsibility that councillors already accept through their Code of Conduct to 'keeping clear, concise and accessible records of decisions'.[45] Such benefit would be less likely to be realised under Option 2 (rather than Option 3), as educational approaches do not change the fundamental incentives faced by local government councillors; however, the educational approach may help increase understanding of best practice recordkeeping practice and their rationale, to subsequently motivate Councillors to assist in achieving compliance.

The legislative changes in Option 3 may also remove current duplications in effort required to challenge decisions by a responsible authority in respect of records in QSA's custody, through alternatively seeking access under the *Right to Information Act 2009*. Historical efforts show 320 requests for access to records in QSA's custody have been denied since July 2020, which implies approximately 137 requests per annum at maximum which could have duplicative efforts between the Acts.

The Consultation RIS seeks your feedback in relation to the impacts of the proposed options for reforms to improve transparency.

1. Do you think the options will have the expected costs and benefits outlined in the analysis?
2. In your opinion, how would the benefits and costs of Options 2 and 3 be distributed by stakeholder groups? Would certain stakeholders face a significant adverse impact over others?
3. Are there alternative measures/parameters/estimates/assumptions which could inform the analysis? (e.g., for salaries?)
4. How many FTE equivalent worth of **additional** effort would your local council require to comply with changes outlined in Options 2 and 3?
5. How effective would non-regulatory approaches outlined in Option 2 be compared to a regulatory & non-regulatory approach (in Option 3) in addressing the underlying problem?
6. Are there any additional costs and benefits which should be considered?

If possible, please quantify/monetise any anticipated impacts and provide evidence to support your feedback.

Reforms to realise operational efficiencies

Educational costs incurring to QSA

Options 2 and 3 will both incur additional resource costs to QSA from further educational and training policies (e.g., publication of guidance); QSA at this time anticipates in total such additional resource requirement to be 1.5 FTEs. Given such costs are incurred over both the 'reforms to improve transparency', as well as the 'reforms to realise operational efficiencies', these costs have been split over the reform sections commensurate to their estimated costs incurred to public authorities (i.e., QSA expends educational effort for 'operational efficiency' significantly more than that for 'transparency' given the higher magnitude of transition [in dollar terms] by public authorities). Given such 1.5 FTEs are of AO5 Band 2 (i.e., $95,273 per annum; $110,993 when 16.5 per cent on-costs are included), the additional resource costs incurred to QSA for educational policies relating to transparency are provided in the Table below.

[44] Australian National Audit Office, *Records Management in the Australian Public Service,* available at 201112 Audit Report No 53.pdf (anao.gov.au), 2012.
[45] Department of Local Government, Racing and Multicultural Affairs, *Code of Conduct for Queensland Councillors* (4 August 2020) p. 5.

Table 1.6 – Additional resource costs to QSA (million AUD, 2022)

Item	Option 2	Option 3
NPV	-$1.02	-$1.02
Undiscounted costs	-$1.45	-$1.45

Increased effort to QSA – audit, monitoring and compliance

The increased costs to QSA to undertake audit, monitoring and compliance activities under any legislative changes have been estimated subject to the following assumptions:

- costs to QSA of monitoring activities for public authorities incur once every two years, with costs of monitoring activities (surveys) to be consistent with that for historical figures provided by QSA (approximately $80,000)
- costs to QSA of auditing functions are anticipated to be undertaken by multiple members but in ad hoc nature throughout the year, totalling one FTE equivalent of effort at AO5 Band 2 (i.e., $95,273 per annum; $110,993 when 16.5 per cent on-costs are included), and
- such audit, monitoring and compliance activities would not be undertaken under the 'educational' scenario.

The quantified value of such costs, both undiscounted and in terms of NPV, are provided in the table below.

Table 1.7 – Increased efforts to QSA of audit, monitoring and compliance (million AUD, 2022)

Item	Option 2	Option 3
NPV	$0	-$1.07
Undiscounted costs	$0	-$1.51

Increased effort for Public Authorities – audit, monitoring and compliance

The increased costs to Public Authorities to assist in audit, monitoring and compliance activities under any legislative changes have been estimated subject to the following assumptions developed in consultation with QSA:

- each monitoring activity - provided these are surveys in nature will take time to complete;
- on average, public authorities' efforts to comply with audit activities take two FTE equivalent worth of effort to be diverted from activities for the period of audit. Each audit activity (from QSA side) takes one day's worth of efforts from the two FTEs, noting that this allows for 5 x 90-minute sessions of engagement
- the average resource cost per annum for public authorities is that of the median values for the 'Archivists, Curator and Records Managers' in Queensland estimated from 2021 Census statistics (Tablebuilder), (through dividing median range salary by the average hours worked) which equates to $86,722.5 (2022) including on-costs (16.5 per cent of salary figures) and adjusting for inflation. In terms of hourly resource costs, this is equivalent to $50.46 per hour provided that the average hours worked for 'Archivists, Curator and Records Managers' is 32.94 hours per week according to the 2021 Census (Tablebuilder), and
- such audit, monitoring and compliance activities would not be undertaken under the 'educational' scenario.

Table 1.8 – Increased efforts to public authorities of audit, monitoring and compliance (million AUD, 2022)

Item	Option 2	Option 3
NPV	$0	-$1.31
Undiscounted costs	$0	-$1.86

Increased effort for public authorities – best practice recordkeeping

The costs from increased effort required by public authorities in complying with best practice records management practices have been estimated under assumptions that:

- public authorities (except for local councils) will experience a spectrum of anticipated additional resources required; QSA notes less mature public authorities may need up to two additional FTEs to manage their records, whereas public authorities which have a mature records management system will not require any FTEs as they are already broadly compliant with requirements
- the additional effort which goes into compliance will depend on the average score for compliance ratings (where 1 stands for 'Compliant', 2 stands for 'Working towards compliance', and 3 stands for 'Not compliant') with key recordkeeping standards as per the 2014-15 Recordkeeping Survey of Queensland (i.e., those assumed to be 'fully compliant' with all key principles would need no extra effort, while public authorities assessed as 'not compliant' will need one additional FTE worth of effort if they employ less than 1,000 FTE staff, and 2 additional FTE worth of effort if they employ 1,000 or more FTE staff)[46]
- the above assumptions lead to an estimated 168.3 FTEs required per annum across 413 public authorities (bar Local Councils) to undertake records management at fully compliant standards, and
- the average resource cost per annum for public authorities is that of the median values for the 'Archivists, Curator and Records Managers' in Queensland estimated from 2021 Census statistics (Tablebuilder), (through dividing median range salary by the average hours worked) which equates to $86,722.5 (in 2022 dollars) including on-costs and adjusting for inflation.

Table 1.9 – Costs from increased effort by public authorities (million AUD, 2022)

Item	Option 2	Option 3
NPV	-$55.22	-$102.50
Undiscounted Costs	-$78.62	-$145.94

Reforms to realise operational efficiencies: Summary of Quantified Costs

The following table provides a summary of the net present value of the quantified impacts of the options for reforms to realise operational efficiencies. As noted previously, given the limitations with data, the analysis contained is provided to support a relative assessment of the options and should be considered alongside the qualitative impacts. For the reforms to result in a 'net positive' outcome for Queensland, the qualitative net benefits must be over $55.22 million for Option 2 and over $104.88 million from time of analysis (November 2022) until 1 July 2033.

[46] In mathematical terms, the additional FTEs required by each Public Authority was determined by the following mathematical formula:

$$FTE = \left(1 + I_{more\ than\ 1{,}000\ staff}\right) \times \frac{\left(Average\ Compliance\ Rating_{Public\ Authority} - 1\right)}{2}$$

Where $I_{more\ than\ 1{,}000\ staff} = 1$ if the Public Authority employs 1,000 FTE staff and 0 otherwise, and $Average\ Compliance\ Rating_{Public\ Authority}$ stands for the average score for compliance ratings under IS31 and IS40 headings.

Table 1.10 – NPV of options – changes to improve transparency (million AUD, 2022)

Item of interest	Option 2	Option 3
NPV	-$56.23	-$105.90

Reforms to realise operational efficiencies: Qualitative Benefits

As with the 'reforms to improve transparency' section, reforms to resolve any operational inefficiencies could result in benefits to consumers and businesses through improved access and adequate management of records. This can arise from reductions in inadequate or unlawful use (deletions, alterations, disposals, transfers) of records.

Given the above estimates of the net social and economic benefits of a transparent and fully accessible public records system at $368.98 million, a 2.1 **percentage point** improvement in availability of public information –when such information is provided free of charge – will make the proposal NPV positive for Option 2, and a 4.0 **percentage point** improvement in availability of public information will make the proposal NPV positive for Option 3.

Another possible benefit of reforms to resolve any operational inefficiencies is the reduction in costs from increased disposal of public records with minimal use value. Public authorities' self-reporting shows 44 per cent of such authorities are either not undertaking disposal or only undertaking disposal occasionally, consistent with anecdotal reports of a low rate of disposal of records past their disposal date.

With over $111 million in costs to Queensland in 2020-21 for physical records storage and management, the cost to public authorities and the community is significant. At the Commonwealth level, the 2019 Tune Review of the National Archives of Australia 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.

These benefits are likely to be realised under Option 2 and Option 3. However, Option 2, unlike Option 3, does not guarantee compliance with measures relating to the lawful disposal and transfer of public records. The potential benefit would not be realised under Option 1 (base case).

Reforms to realise operational efficiencies: Qualitative Costs

The reforms to realise operational efficiencies ultimately seek to realise benefits in the use value of records and savings in operation costs from reduced number of records kept with minimal use value, through increasing compliance with best practices of records management.

The reform options are therefore anticipated to increase the number of clarifications with regards to the best practices of records management (as well as definitions of public records), leading public authorities and QSA to divert staff effort which would have otherwise been used for alternative work.

Although QSA notes that between 1 July 2017 to 30 June 2022, QSA received 549 queries regarding the definition of a public record (averaging to 109.8 queries per annum), such costs have not been quantified due to uncertainties regarding the number of increased clarifications.

Provided feedback in relation to anticipated increases in clarifications, this variable may be quantified in the Decision RIS in a similar manner to the method used to clarify audit, monitoring and compliance costs to public authorities.

The Consultation RIS seeks your feedback in relation to the impacts of the proposed options for reforms to realise operational efficiencies:

1. Do you think the options will have the expected costs and benefits outlined in the analysis?
2. In your opinion, how would the benefits and costs of Options 2 and 3 be distributed by stakeholder groups? Would certain stakeholders face a significant adverse impact over others?
3. Are there alternative measures/parameters/estimates/assumptions which could inform the analysis? (e.g., for salaries?)
4. How many FTE equivalent worth of **additional** effort would your public authority require to comply with changes outlined in Options 2 and 3?
5. How many FTE equivalent worth of **additional** effort, and for how many days, would your public authority require to assist with audit, monitoring and compliance activities?
6. How effective would non-regulatory approaches outlined in Option 2 be compared to a regulatory & non-regulatory approach (in Option 3) in addressing the underlying problem?
7. Are there any additional costs and benefits which should be considered?

If possible, please quantify/monetise any anticipated impacts and provide evidence to support your feedback.

Reforms to improve recognition of First Nations peoples

Reforms to improve recognition of First Nations peoples: Qualitative Benefits

The inclusion of First Nations peoples and perspectives in the PR Act would afford due recognition to the special interests, needs, rights and responsibilities of First Nations peoples in relation to public records management in Queensland.

The inclusion of First Nations voices in the PR Act is consistent with the UNDRIP, the requirements of HR Act, and the Path to Treaty process. Efforts to incorporate the perspectives of First Nations peoples demonstrates a clear commitment to reconciliation outcomes.

The inclusion of First Nations voices in the PR Act also aligns with QSA's response to the Tandanya-Adelaide Declaration, which was the first international archives declaration on the rights of Indigenous peoples and matters. QSA's Statement of Intent declares:[47]

> "We acknowledge that the records we manage, keep and 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".

The potential benefit would not be realised under Option 1 as First Nations peoples are not acknowledged in the current PR Act.

Option 2 would help to ensure processes are in place for consulting with First Nations peoples in decisions relating to the administration of the PR Act. However, this option does not support an enduring intent in relation to continued and efficient involvement and consultation with First Nations peoples.

The potential benefit could be fully realised under Option 3. Option 3 recognises the importance of public records and ready access to them for First Nations peoples. This option establishes a clear commitment and an enduring intent to representation of First Nations peoples through the PRRC and the establishment of a First Nations advisory group.

This option provides a statutory means for First Nations peoples contribute to matters concerning QSA's collection of records about First Nations peoples.

[47] Queensland State Archives, Department of Housing, Communities and Digital Economy, *Statement of Intent* (Statement, 31 May 2021).

Reforms to improve recognition of First Nations peoples: Qualitative Costs

The establishment of an advisory group would incur running costs (both time and monetary). The advisory group would likely consist of five people, five QSA staff, and meet on a quarterly basis. Given the transition to hybrid working environments, travel costs incurred are likely to be minimal. Material and remuneration costs are unlikely. Most costs incurred are likely to be administrative.

Changes to the composition of the PRRC could result in reduced flexibility, however the impacts are likely to be minimal and can be amended in future reforms. The State Archivist does not direct the PRRC. The PRRC is responsible for setting the agenda for meetings and can consult external professionals if required. If the PRRC required the State Archivist to gather information, the cost would be attributed to the State Archivist.

The Consultation RIS seeks your feedback in relation to the impacts of the proposed options for First Nations reforms:

1. What impact will the proposed First Nations reforms have on your experiences utilising Government records, or your experiences complying with the *Public Records Act*?
2. How effective would non-regulatory approaches outlined in Option 2 be compared to a regulatory & non-regulatory approach (in Option 3) in addressing the underlying problem?
3. How will this differ through the different options suggested?

If possible, please quantify/monetise any anticipated impacts and provide evidence to support your feedback.

Conclusion and recommended options

In presenting options, we consider that government action, through both a combined regulatory and non-regulatory approach, is, on balance, the most cost-effective and efficient option to provide stakeholders with clarity about the intent and operation of the legislative framework and how it should be applied in order to support compliance by public authorities.

The existing framework is now 20 years old and continues to provide a clear framework. However, the environment in which public authorities make, manage, and preserve public records has changed significantly.

Recommendations and proposed action reflect the need for modernisation, streamlining and clarification so that the framework can continue to support public authorities in meeting their compliance obligations under the PR Act.

The Independent Panel undertook a comprehensive review of the existing legislative framework for records management under the PR Act. This included consideration of archival, public records, recordkeeping, records management and information management legislative frameworks from other Australian jurisdictions and New Zealand.

The Independent Panel were assisted by other Queensland and Australian reviews about accountability and transparency, recordkeeping and records management. The Independent Panel also considered the practical real-world experience of QSA and stakeholders over the past 20 years and community feedback for the Review to inform recommendations for potential reforms, focusing on opportunities to modernise, strengthen and streamline the PR Act.

The proposed reforms are designed to deliver better outcomes for both public authorities regulated by the PR Act, and the community who are impacted by how public records are created and managed.

On balance, Option 3 is considered the most effective and efficient approach to supporting public authorities and the community.

It is expected that the total net benefit for Option 3 (i.e., the cumulative for all the individual Option 3 proposals) will be greater than that for Option 1 or 2, despite Option 3 having the highest qualified gross costs, because approaches considered under Option 2 (non-regulatory approaches such as education and training) are not currently driving measurable growth in compliance with the PR Act by public authorities or meeting community expectations about access to public records.

Option 2 will not provide an enduring statement of intent for First Nations peoples that is supported by legislation.

The proposed auditing powers and offences to incentivise much greater compliance by public authorities is considered to have greater net benefits than Option 2 as it will provide a legislative framework that supports and enables more effective targeting of recordkeeping service provision, such as advice, assistance and training.

The C-RIS seeks your feedback in relation to options investigation. Questions to prompt this consultation process include:

1. Overall, which option is your preferred option and why?
2. Are there any other impacts associated with your preferred option?

Where possible, please provide evidence/case studies to support your feedback.

Consistency with fundamental legislative principles

Legislation must have regard to rights and liberties of individuals and the institution of Parliament; this means whether for example, the legislation:

- makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review
- is consistent with principles of natural justice
- allows the delegation of administrative power only in appropriate cases and to appropriate persons
- does not reverse the onus of proof in criminal proceedings without adequate justification;
- confers power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer
- provides appropriate protection against self-incrimination
- does not adversely affect rights and liberties, or impose obligations, retrospectively
- does not confer immunity from proceeding or prosecution without adequate justification
- provides for the compulsory acquisition of property only with fair compensation
- has sufficient regard to Aboriginal tradition and Island custom, and
- is unambiguous and drafted in a sufficiently clear and precise way. [48]

Whether a Bill has sufficient regard to the institution of Parliament depends on whether, for example, the Bill:

- allows the delegation of legislative power only in appropriate cases and to appropriate persons
- sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly, and
- authorises the amendment of an Act only by another Act.[49]

The proposed reforms under Option 3 do not breach fundamental legislative principles. Drafting of legislation to implement proposed reforms will further consider the application of fundamental legislative principles in accordance with Queensland drafting practices.

[48] *Legislative Standards Act 1992* (Qld), section 4(2) and (3).
[49] Ibid, section 4(4).

Implementation, compliance support and evaluation strategy

Implementation

The implementation of the proposed changes will require regulatory and non-regulatory actions. These actions will likely be implemented in stages to give stakeholders time to prepare for and adjust to new requirements. This will be particularly relevant for the public authorities that may need to update their systems and processes.

The proposed legislative reforms can be delivered through regulatory methods. This would be delivered using whole-of-government processes required to approve, develop and deliver legislation. This is true for both primary and subordinate legislation that may be developed to realise relevant reforms.

Key steps include the drafting of a Bill, first reading, committee consideration, committee report, second reading, consideration-in-detail where the Legislative Assembly debates the clauses of a Bill, third reading, and finally Royal Assent, including notification via the Government Gazette.

Quasi-regulatory reforms, which might include instruments or standards by which government influences business and the community to comply may also apply. Public authorities may be subject to new requirements, and the production of guidelines and policies will be produced to support this. The development of these guidelines and policies are to be factored into implementation.

Education and communications will be an important component of supporting the uptake of reforms and improving public authority understanding of the changes. Education and communication programs detailing the changes, through fact sheets, online guides and general interactions, will support the regulatory and non-regulatory and operational implementation.

Compliance

The PR Act requires public records are made, managed, kept and preserved for current and future generations. It ensures that public access to records is consistent with the principles of the *Right to Information Act 2009* and the *Information Privacy Act 2009.*

In line with Part 4 Division 1 of the PR Act, the State Archivist may appoint authorised officers to administer and enforce the PR Act. This means that an authorised officer is entitled to full and free access, at all reasonable times after giving the public authority reasonable notice of the intended access, to all public records in a public authority's possession.

Proposed reforms to support the role of the State Archivist and QSA in monitoring, auditing and reporting on compliance will support better outcomes for compliance by public authorities regulated by the PR Act as it will contribute to more informed and better targeted assistance, education and training that can be provided by QSA.

Evaluation

The proposed changes to the PR Act will be reviewed at an appropriate time in the future to ensure that the reform measures are achieving the desired outcomes for the Queensland community. This review will be supported through data collected by the Department, the State Archivist and other relevant government agencies.

Ongoing engagement will be undertaken to gauge the experiences of public authorities, and other members of the Queensland community, as reforms progress. This information will be subject to comparative analysis with baseline information collected in advance of implementation, including the submissions and comments received in the response to this C-RIS, and evidence provided during Parliamentary Committee consideration of the amending legislation.

The evaluation strategy for the reforms will consider:

Goal based

- deliverables that can be established in a program can be assessed at the point of delivery or during the timeline for delivery, to ensure that the outcome will be met
- longer term objectives could include measuring public authority work programs for recordkeeping and information management, and

Process based

- effectiveness of processes that will be implemented to support the recommendations, through post implementation reviews, and

Outcomes based

- the broader impacts of changes – and whether net benefits were realised as a result of the reforms – will be assessed through post implementation reviews.

The C-RIS seeks your feedback in further refining the implementation, compliance and evaluation strategies detailed above. Questions to prompt this consultation process include:

1. Would the proposed non-regulatory and/or regulatory options require an adjustment period for public authorities? If so, what is the duration at which this should be set?
2. What are some SMART (Specific, Measurable, Achievable, Relevant and Time-Bound) objectives which could be used to evaluate subsequent government intervention?

Where possible, please provide evidence/case studies to support your feedback.