Review of the *Public Records Act 2002*

Decision Regulatory Impact Statement

May 2023

Published by the Queensland Government, Treaty, Aboriginal and Torres Strait Islander Partnerships, Communities and the Arts, 1 William Street, Brisbane Qld 4000, Australia.

Contents

Overview

The Queensland Government is committed to modernising and strengthening the legislative framework that governs public authority recordkeeping. An updated framework should reflect developments in technology, community expectations regarding transparency and accountability in decision-making and support robust information management and recordkeeping practices.

The *Public Records Act 2002* (**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.

In 2022 the Queensland Government invited Queenslanders and public authorities to consider how the PR Act should function, with a review of the PR Act. Undertaken by an independent panel, the review considered 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 since the commencement of the PR Act, 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.

In February 2023, the Queensland Government released the report on the review, the Queensland Government response to the 27 recommendations and a Consultation Regulatory Impact Statement (**C-RIS**) to encourage feedback about:

- whether the proposed recommendations would achieve the intended benefits
- what the potential impacts on public authorities might be
- any unintended consequences of acting, or not acting
- other issues that government should consider.

To guide stakeholders, the C-RIS contained a series of call-out boxes with discussion questions on specific issues. The C-RIS was open from 16 February until 20 March 2023, with submissions received by email or post. The C-RIS, final report on the 2022 review and the Queensland Government response to the review recommendations was available on both the former Department of Communities, Housing and Digital Economy (DCHDE) Your Say webpage and the Queensland Government's Get Involved webpage.

Targeted consultation with key stakeholder groups was also undertaken between February 2023 and April 2023. Targeted consultation included online forums for local government, Queensland Government agencies and the tertiary education sector.

An information session was provided to the Public Records Review Committee with direct engagement made to First Nations representative bodies including the Interim Truth and Treaty Body, Queensland's Land Councils, and the Torres Cape Indigenous Council Alliance.

Stakeholders were provided with a range of material including information fact sheets setting out the proposed reform and potential benefits or impacts and recordings of online information sessions were distributed to ensure stakeholders could access information on the review. Queensland Government agencies also completed a survey to explore the potential benefits and impacts of the proposed reforms.21 formal written submissions were received along with stakeholder feedback through the online forums (refer to Attachment 1 - Submissions and survey responses received). The C-RIS package on the DCHDE Your Say webpage saw 1055 visits with over 300 unique downloads of the documents, while the Queensland Government's Get Involved webpage saw 86 visits.

The Queensland Government has considered the impact of the proposed reforms, informed by feedback on the C-RIS.

This Decision Regulatory Impact Statement (D-RIS) provides analysis of the consultation outcomes and proposed refined reform options to address the review recommendations and stakeholder feedback. This D-RIS also provides a cost-benefit analysis of the recommended reforms.

Table of proposed reforms (summary) and final positions to show change/no change based on consultation

	Position proposed in C-RIS	Final position
Definition of record		
	Amend the PR Act to update the definition of record to clearly accommodate a digital environment	Amend the PR Act to update the definition of record to clearly accommodate a digital environment
First Nations		
	1. Consider legislative approaches to support recognition of the special interests and needs of First Nations peoples regarding public records 2. Consider legislative approaches about Indigenous Data Sovereignty, Indigenous Data Governance and Indigenous Cultural and Intellectual Property 3. Set out in the purposes of the PR Act a statement of the importance of public records and access to them for First Nations peoples to support rights and entitlements in connection with culture, community, and reconciliation 4. Amend the PR Act to provide that two members of the Public Records Review Committee must be First Nations persons with relevant expertise or experience 5. Consider legislative approaches to establishing a First Nations advisory group	1. Amend the PR Act to provide for recognition of the needs and interests of First Nations peoples regarding public records 2. Before proceeding with legislative approaches, further engagement with First Nations representative bodies and communities is necessary, reflecting consultation feedback, to ensure alignment with the Queensland Government's broader Path to Treaty processes and to provide for co-design with representative bodies and communities 3. Amend the PR Act to set out statement of the importance of public records and access to them for First Nations peoples 4. Amend the PR Act to set out that two members of the Public Records Review Committee must be First Nations persons with relevant expertise and experience 5. Amend the PR Act to set out that it is a function of the State Archivist to establish a First Nations advisory group to provide advice to the State Archivist and to the relevant Minister about records held at QSA relevant to First Nations peoples, noting

	Position proposed in C-RIS	Final position
		consultation feedback on approaches and functions for the advisory body
Addressing and improving existing operational inefficiencies		
	Transfer of records – provide a mechanism to enable the State Archivist to compel the transfer of significant records at risk of loss or damage	Amend the PR Act to provide that the State Archivist has the power to compel the transfer of significant permanent value records that are at risk of loss or damage noting (from consultation): – Consultation with the relevant public authority must occur – Records in business use will not be subject to mandatory transfer
	Consider options to reduce the risk of unlawful disposal of records	Amend the PR Act to set out that the attempted unlawful disposal of records is an offence
	Consider options to improve compliance with standards issued by the State Archivist	Amend the PR Act to provide that standards issued by the State Archivist must be complied with public authorities noting (from consultation): – Consultation with public authorities is to occur before the State Archivist issues a mandatory standard
	Consider providing the State Archivist with clear authority to monitor, audit and report on compliance with the PR Act	Amend the PR Act to set out that it is a function of the State Archivist to monitor, audit and report on compliance with the PR Act noting (from consultation): – Consultation will occur with public authorities before establishing a risk-based monitoring and auditing framework – Reporting on compliance will occur through the annual report produced by the State Archivist
	Identify options for a legislative framework to improve access to records, including the operation of restricted access periods and appeal of decisions about access	Amend the PR Act to set out that: – public authorities should apply a pro-disclosure model when setting restricted access periods, considering the application of the *Right to Information Act 2009* and the *Information Privacy Act 2009*, the public interest or access restrictions under other laws – public authorities must have regard to the *Human Rights Act 2019* and the needs and interests of any affected First Nations persons when setting the duration of a restricted access period – regulations may be made about restricted access periods – if access to a record held at QSA is refused, the public

	Position proposed in C-RIS	Final position
		authority must provide a reason for refusal – if access to a record held at QSA is refused, options for appeal of the decision should be clear
Local government		
	Set out that local government councillors are public authorities for the purposes of the PR Act	Amend the PR Act by adding local government councillors to the definition of public authority
	Set out a definition of record of a local government councillor to clarify which records are relevant for the purposes of the PR Act, excluding personal and party-political records	Amend the PR Act by including a new definition of record of a councillor that excludes personal and party-political records

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

Executive Summary

The PR Act demonstrates a commitment by government to good recordkeeping. The legislative framework was developed to "facilitate the documentation, management and preservation of Government business though 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 applies to more than just government agencies – approximately 500 public authorities are governed by the PR Act. Creating and keeping good records is acknowledged as an important part of providing accessible, trustworthy information for a range of organisations. 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 C-RIS focussed 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 regarding 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.

[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.

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

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

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

The C-RIS recommended 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 approach 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.

The C-RIS set out that it was 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 would 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 were 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 D-RIS sets out the consideration of stakeholder feedback and final options for reforms.

Summary of Benefits and Costs of each option

The table below provides a summary of the incremental 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 $67.30 million (in present value, 2022 dollars) and $124.97 million respectively.

Key changes between the C-RIS and D-RIS

This section summarises the insights from the consultation feedback that have been incorporated into this D-RIS, including changes to the quantified costs of the schemes, key considerations from stakeholders and a summary table of the benefits.

Changes to quantified costs

The principal drivers of change between the C-RIS and the D-RIS were the higher FTE provision for education and a change to the QSA staff salary category to carry out this function. The Net Present Value (NPV) of this cost item was originally forecast at $1.17 million and is now at $2.66 million. Overall, these changes have increased the cost of Option 2 by 4.05 per cent and have increased the cost of Option 3 by 2.90 per cent.

One analytical tool used in this section is the breakeven analysis, which highlights the incremental improvement attributable to the scheme that is required to recover the direct costs. Given the higher costs in this D-RIS, the breakeven points for Options 2 and 3 increased slightly in comparison to the C-RIS, but this change was considered immaterial.

The overall results did not change the final assessment of the preferred option.

Other considerations following feedback on the C-RIS

The feedback from stakeholders was varied. Barring a few limited examples, most stakeholder feedback reinforced the model assumptions and outputs with respect to the additional FTE requirements to improve records management. Many stakeholders are already operating in compliance with best practice guidelines and would not require additional labour, while others may require a more substantial effort to manage their records. At an aggregate level, the costs to local councils, public authorities and QSA appear to be consistent with stakeholder expectations. The main cost driver that has been updated in this D-RIS is the education allocation. This was in recognition of the commentary from both local government and other public authorities, which expressed that there would be an improvement in operational efficiency if records managers received better

guidance and support from QSA, particularly with respect to lawful disposal and opportunities to transfer records to QSA.

Given the source data driving the FTE allocation was collected in 2014 – 15, we considered whether the advances in record keeping may warrant a modification of the assumptions relating to the current self-assessments for compliance provided by the public authorities. However, whilst systems may have improved, the scale of the impact is unknown. Technological advancement may have positively impacted current record keeping, but legacy records (which is a central focus of this RIS) may still be in retention without good reason. Stakeholders did not indicate that the estimates were too low or too high, and as such they were maintained at their current levels.

In considering the stakeholder feedback, it was acknowledged that the true costs and benefits of the proposal may be lower if a number of local councils and public authorities are already compliant. Not enough stakeholders provided quantifiable responses that could inform a meaningful reflection on how many local councils and public authorities would incur no additional costs and accrue no additional benefits (because they are already compliant), and how many would incur a greater cost and deliver a greater societal benefit from improved records management. As such, the CBA below should be considered with these challenges in mind.

Cost and benefit summary

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	-$8.44	-$15.67
Increased costs to other public authorities in complying with best practices	-$56.20	-$104.33
Increased costs to public authorities (auditing, monitoring and compliance)	$0	-$1.24
Increased costs to QSA (auditing, monitoring and compliance)	$0	-$1.07
Educational costs (QSA)	-$2.66	-$2.66
The education provision is the principal change between the C-RIS and the D-RIS, reflecting the importance of QSA support in understanding record-keeping obligations. The NPV of this cost item was originally forecast at $1.17 million and is now at $2.66 million.		
Quantified NPV:	-$67.30	-$124.97
Qualitative benefits: *The benefits are listed in an order which qualitatively reflects the relative magnitude of the benefit and its impact on broader society.*		
Operational savings from reduced records with minimal use value being kept	This option is expected to yield some benefit in operational savings over the base case as public authorities are more aware of the capacity for lawful disposal and transferal of records to QSA, saving time in maintaining and retrieving minimal use records.	This option provides similar benefits to option 2. The exact extent to which the change would 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 across the life of the Queensland Government Standing Offer Arrangement, which is from 26 January 2020 to 31 January 2028, there is anticipated to be an opportunity to reduce this cost.
Improved records availability	Motivates public authorities to comply with best practice records management principles to increase the number of records available to the public, as well as to improve the conditions of the records. The extent of improved records	Motivates public authorities to comply with best practice records management principles to increase the number of records available to public, as well as to improve the conditions such records are in. Although the example is taken from

	Option 2	Option 3
	management and availability would depend on the compliance rate of Option 2 (when compared to Option 3).	the US and UK contexts, the 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'.[2]
Improved integrity of public authorities	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 comparison to what would be expected under 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.
Efficiencies from streamlining decision challenging mechanisms	Benefit does not accrue 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 be causing duplicative efforts between the Acts.
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 clearer commitment and guarantee in representing First Nations peoples through the PRRC and the establishment of a First Nations advisory group. Unlike Option 2, this response provides a statutory means for First Nations peoples to contribute to matters concerning QSA's collection of records about First Nations peoples.
Qualitative costs:		
Costs in establishment of an advisory group	Cost does not accrue 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	No cost incurred under Option 2 due to this option being non-legislative.	Legislating two specific positions for Aboriginal or Torres Strait Islander people provides less flexibility but is likely to be of minimal cost given the 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

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

Overview of the Proposed Reforms

It is well documented that good records management practices support effective, efficient business practice and improve organisational accountability. Records provide evidence of the actions and decisions of organisations. They are central to a governments or private organisation's ability to provide goods and services, protect the community, and demonstrate delivery on stated commitments. Without records, appropriate information sharing procedures that support the improvement of government funded services cannot take place. Transparent operations that support community confidence, 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 considered 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 explored the costs and benefits of reform options against the abovementioned policy objectives.

The proposed reforms will modernise the legislative framework and strengthen the importance of public records for Queensland. The recordkeeping environment has changed significantly since the PR Act commenced, and Queensland's records management legislation must keep pace.

The reforms and options outlined in this D-RIS are designed to support effective recordkeeping practices by public authorities who are governed by the PR Act, by providing a clear and modern framework and supporting the QSA to provide assistance, advice, and guidance.

The D-RIS explores the costs and benefits of the reforms and options to assist decision makers.

Definition of record

The PR Act's definition for a record was designed to be technology neutral. The PR 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.

C-RIS definition of record reform options
1. the status quo
2. undertake an enhanced education and awareness program to improve compliance by public authorities about the management of public records
3. amend the PR Act to update the meaning of 'record'

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.

The proposed reform is for the definition of record to be re-designed along the lines of:

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 complied, recorded, or stored, in any means in any form, that is capable of being communicated, analysed, or processed whether by a person, a computer or other electronic means.

It is expected that this reform will 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.

Options in the C-RIS were to keep the definition as it was, or to amend the definition.

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.

Several stakeholder submissions supported the need to reform the current definition of 'record' to capture a digital environment. Additionally, several stakeholders submitted other matters that should be

included in a definition to support a contemporary framework.

The additional matters included whether there is a need to consider records that may be samples, primary materials, or other artifacts. The term 'evidence' was seen as being broad.

The proposed wording of the definition included in the final report was seen as repetitive by one stakeholder who suggested that the wording might be streamlined.

Stakeholders agreed with the premise of the C-RIS where it was anticipated that this reform may contribute to resource or cost impacts on QSA and public authorities. The resource and cost impacts advised by stakeholders related to education and training to understand the scope of a new definition along with work that might be needed to update any internal policy or guidelines. Some stakeholders noted that impact would be limited as they were already working with the concept of digital records.

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.

Final recommendation

- amend the definition of record to set out a definition that clearly contemplates a digital ecosystem, while still accommodating existing and future physical records.
- Consultation will continue with public authorities as the definition is developed.
- Implementation of changes will provide for a transitional period to give public authorities time to update documents or other materials or systems to reflect the revised definition.

Stakeholder feedback is reflected in the decision to undertake amendments while completing further consultation on the final approach and to introduce a significant transition period of up to one year to support public authorities to prepare for the change,

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.

C-RIS definition of record reform options
1. the status quo
2. undertake an enhanced education and awareness program to improve awareness and understanding of the importance of public records, and access to such records, for First Nations peoples and promote the continued inclusion of First Nations peoples as relevant
3. amend the PR Act to expand the purposes of the PR Act to recognise First Nations peoples, set out an enduring statement of intent by amending the PR Act to provide for two members of the Public Records Review Committee to be First Nations persons and establish a First Nations advisory body.

Summary of regulatory impacts of recommended option:

The amendments to the PR Act 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.

Stakeholders who provided feedback on these proposed reforms universally supported the proposed reforms. There was clear agreement by all stakeholders who provided feedback on these reforms that they were necessary to support a contemporary legislative framework and improved outcomes for Aboriginal peoples and Torres Strait Islander peoples with respect to access to public records.

Stakeholder feedback also emphasised the importance of ensuring alignment with the Queensland Government's broader Path to Treaty processes. Stakeholders such as the Interim Truth and Treaty Body considered that to adequately recognise and respect the Queensland Government's responsibility to take appropriate account of First Nations rights in public record keeping and holding, that there should also be requirements for processes to be in place for consulting with First Nations peoples. This could be supported by the establishment of a First Nations advisory body.

Stakeholder feedback noted that additional options should be explored to support optimal outcomes for First Nations peoples, including reporting annually on initiatives to address First Nations concerns to either the advisory body or the Public Records Review Committee (**PRRC**).

Another suggested option was for the State Archivist, in consultation with the advisory body or PRRC, to have the power to override access restrictions set by public authorities and the *Right to Information Act 2009* and the *Information Privacy Act 2009* to enable family/kinship access to records and to recognise and enforce restrictions defined by First Nations communities on specific cultural knowledge.

Other proposed stakeholder recommendations included a default of free access (or to waive fees for access) for First Nations peoples, extend the personal right to annotation currently in the *Right to Information Act 2009* to ensuring that the ownership of content stays with the author or Community and facilitate access to alternative narratives, and to facilitate QSA to take records and digitally return them to Country by viewing by Community members.[3]

These recommendations reflect a significant extension of the proposed reforms developed by the independent panel's 2022 review and were not examined in the C-RIS. Further consultation with stakeholders would be required before further reforms could be considered.

An option to capture the concepts of Indigenous Data Sovereignty, Indigenous Data Governance and Indigenous Cultural and Intellectual Property was also suggested by the Jumbunna Institute, using standards that could be set by the State Archivist, will be considered as part of the ongoing development of options to address these concepts.

Stakeholder feedback is reflected in the progression of reforms for the recognition of First Nations peoples. The proposed changes to the PR Act will set out principles for the PR Act, including the rights and special interests of First Nations peoples. The amendments will also set out the m, the membership arrangements for the PRRC. The PRRC supported this proposal.

Further the amendments will establish that the State Archivist must establish a First Nations advisory body to inform the State Archivist or Minister on approaches to the management of public records relevant to First Nations peoples.

Reflecting stakeholder feedback from the ITTB and the Jumbunna Institute, further consideration is being given to how the concepts of Indigenous Data Sovereignty, Indigenous Data Governance and Indigenous cultural and intellectual property should develop, in co-design with broader Path to Treaty processes.

[3] Jumbunna Institute for Indigenous Education and Research (Monash University) submission, pp. 3-4

Final recommendation

- Amend the PR Act to set out principles by which public records must be made and managed, including the recognition of the importance of public records to First Nations peoples
- Amend the PR Act to set out that two members of the PRRC must be First Nations persons with relevant experience or expertise
- Amend the PR Act to provide that the State Archivist must establish a First Nations advisory body to provide advice and guidance to the State Archivist and the Minister responsible for administering the department where QSA is located, with policies to support the functions of the advisory body.

Operational Inefficiencies

Misalignment of incentives providing risk of permanent losses to public records

The PR Act does not allow the State Archivist to compel the transfer of public records from a public authority to the Archives, does not contemplate the attempted disposal of records, nor make it clear that standards issued by the State Archivist must be complied with.

Further the PR Act does not explicitly set out that the State Archivist can monitor and audit compliance with the PR Act, although the State Archivist is able to include information about non-compliance, including measures taken or recommended to be taken to prevent or reduce non-compliance with the PR Act in the annual report[4].

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.

C-RIS definition of record reform options
1. the status quo
2. undertake an enhanced education and awareness program to improve awareness and understanding of the operation of the PR Act
3. amend the PR Act to: • **clarify that unauthorised disposal includes altering or deleting a public record by amending the definition of disposal**

[4] Section 56, *Public Records Act 2002* (QLD)

- **clarify that the attempted disposal of a record, even where that record can be forensically recovered later, is unlawful disposal unless properly authorised by setting out a new offence of attempted unlawful disposal**

Establish a supporting education and training program to improve public authorities understanding of compliance with the PR Act.

Section 13 of the PR Act makes it clear that disposal (of a record) without authorisation, is an offence. A maximum penalty of 165 penalty units applies. Section 13 does not contemplate or address attempted disposal.

Stakeholder feedback varied. For those stakeholders who provided formal feedback on the proposed reform, some did not consider a new offence necessary because public authorities should be aware of and understand their obligations with respect to disposal. A few stakeholders set out the processes, policies or guidelines that apply within their organisation to support that a public authority with a robust records management framework would not require an offence of attempted unlawful disposal to be set out.

If the reform was to progress, and a new offence introduced, stakeholders suggested that consideration should be given to safeguards and actions undertaken with a reasonable excuse.

At the other end, one stakeholder in the local government sector considered that penalties under the PR Act are not sufficient and should be expanded to capture additional non-compliance such as failing to keep a record of a decision, while another in the same sector considered that there should be higher consequences for the deliberate or unauthorised disposal applied to an organisation.

More broadly, stakeholders supported amending the current definition of disposal under the PR Act to include the terms altering and deleting.

Other submissions considered that any new offence should provide safeguards (referring to the *State Records Act 2000* (Western Australia)), and the use of existing statutes for prosecution.

The provision of a new offence under the PR Act and the amendment of the definition of disposal, will not necessarily result in increased prosecutions under the PR Act. As with investigations to date where poor recordkeeping is identified as a factor, prosecutions may continue to be brought under other legislation. The proposed reforms will provide both an increased awareness of obligations under the PR Act about disposal, and a clear path that can be used where action under the PR Act is seen to be in the public interest.

One stakeholder in the government sector considered that advice would be needed on what the penalty would be, and how acts of non-compliance would be considered – for example, scanning to create a copy of a physical record then destroying the physical record would technically be illegal in the absence of a compliance source records procedure.

Stakeholders consistently agreed that any new offence, or amended definition of disposal, had to be adequately supported by education and training from QSA to provide a holistic approach to enforcement and compliance. Stakeholders agreed that simply relying on offences or penalties to improve compliance would not provide the stated outcome of the objective of government action.

One stakeholder submitted that a new offence was not necessary, as it should be clearly understood by public authorities that an attempt to dispose of a record was the same as disposal in terms of the final outcome (a record is lost). However, most stakeholders did not hold the same view and simply provided feedback on what considerations should be applied to an offence of attempted unlawful disposal, as opposed to stating that one was not required.

The proposed option for legislative changes to update the definition of disposal and to clarify that it is an offence to attempt to dispose of records, even when the records can be recovered, will reflect stakeholder feedback in implementation through:

- the development and promulgation of education and training by QSA to public authorities about disposal
- the use of a transitional period to enable public authorities to ensure organisational understanding of disposal, in accordance with the PR Act

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.

C-RIS definition of record reform options
1. the status quo
2. undertake an enhanced education and awareness program to improve awareness and understanding of the application of standards, policies or guidelines that are issued by the State Archivist for public authorities
3. amend the PR Act to set out that standards issued by the State Archivist for public authorities are mandatory and must be complied with

The PR Act sets out that the State Archivist has the power to issue policies, standards, and guidelines about the making, keeping, preserving, managing, and disposing of public records. The PR Act sets out that public authorities must have regard to any relevant policy, standards and guidelines made by the State Archivist about the making and keeping of public records.

Stakeholder feedback consistently highlighted that the use of mandatory standards must consider:

- the variance in public authorities (size, resourcing, and maturity levels for compliance with the PR Act now)
- mandatory standards should provide public authorities with flexibility to account for variances between public authority needs and capabilities and provide public authorities with variable paths to compliance
- that a "one size fits all" approach to standards would not support public authorities or improve compliance with the PR Act
- the intersection between standards issued by the State Archivist and the QGCDG and the operation and application of the Records Governance Policy to ensure consistent approaches
- standards frameworks in another jurisdiction such as Victoria
- the use of FAIR – information should be findable, assessable, interoperable, and reusable

Stakeholders were asked to provide feedback on the areas that mandatory standards could cover. Feedback included:

- a focus on high-value, high-risk records, and data sets
- metadata requirements
- de-commissioning of business systems
- email use
- digital migration
- accountability and what loss or inappropriate disposal might look like for digital and physical

records

- responsibilities within recordkeeping frameworks
- archival standards

The interest in providing subject matter for potential standards would indicate a level of interest by public authorities in having access to standards that could make their recordkeeping obligations easier, more consistent, and defensible.

One stakeholder indicated that standards might be problematic to implement due to significant inconsistencies between the content of principles with the Records Governance Policy (RGP) and details in the RGP implementation guidelines. Further the stakeholder suggested that 'must' is rarely used in QGEA ICT policies, standards, and implementation guidelines, with RGP a component of QGEA. The stakeholder also considered that although the QGEA generally only applies to depts under *Public Sector Act 2008*, some government bodies may be directed to comply or have specific QGEA docs that apply to them. It was noted in this context that the Queensland Government Customer and Digital Officer is not a prescribed statutory office and has no enforcement powers.

The need to impose mandatory standards at all was challenged by one stakeholder, who considered that education and training would be a preferable approach.

A stakeholder identified that the terminology in section 7 of PR Act was confusing, and that giving archivist power to issue mandatory standards may reduce confusion, provided that the development of standards was done in consultation with affected public authorities

The phrasing of section 7 of the PR Act was also raised with respect to proposed reforms for local governments.

Consistently, stakeholders advised that mandatory standards, if poorly designed and implemented, would impose costs and resource impacts. The amount of feedback received about the factors that should be considered and the topics that could be the subject of standards, showed a high level of stakeholder interest in this proposal.

The preferred final reform option, to provide the State Archivist with the power to issue mandatory standards, will be developed with consideration to the points raised in consultation. Ongoing consultation will occur with stakeholders in the development of topics covered by mandatory standards and the implementation of such standards, including transition time for public authorities. Section 7 of the PR Act will be reviewed to provide greater clarity and reduce confusion for public authorities.

Reflecting stakeholder feedback for the need for support, implementation of this amendment will occur with ongoing consultation with public authorities to ensure that any mandatory standards are flexible (to provide for the variety of public authorities) and that any mandatory standards are about matters that genuinely require a mandatory approach to support compliance.

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.

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:

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

C-RIS definition of record reform options
1. the status quo
2. undertake an enhanced education and awareness program to improve awareness and understanding of the importance of effective recordkeeping for public authorities
3. amend the PR Act to clarify that the State Archivist: • **can monitor, audit and report on compliance by public authorities with the PR Act** • **can compel the transfer of records at risk of loss or damage**

Monitor, audit, and report on compliance

Stakeholder feedback provided a wide range of approaches that could be considered when designing a potential monitoring and auditing framework. Option suggested included:

- timeframes ranging from annual to three- or four-year rolling cycles
- focus on high-risk areas
- internal self-assessable audit tools for public authorities
- annual conferences for public authorities led by QSA
- formal assessments by QSA to support self-assessable options
- alignment to existing audit processes undertaken by agencies such as the Queensland Auditor-General
- improved education and training materials including real-life cost-effective strategies for compliance and the management of workflows in digital systems

Stakeholder feedback did note that any potential monitoring and auditing framework should be developed in consultation with public authorities, including the tools proposed and the schedule that may be considered. Stakeholders also noted that processes for the management of non-compliance, or systemic system issues, need to be developed so that public authorities can clearly understand the approaches and outcomes that are being delivered by a monitoring and auditing framework.

A collaborative approach was offered by stakeholders as the best way to achieve engagement and support improved compliance over time. It was noted that a collaborative approach might be effective in encouraging public authorities to be 'honest' about systemic issues if they believed the purpose of monitoring and auditing was to identify needs and provide solutions.

Stakeholders agreed with the argument that if the State Archivist was able to work with public authorities to monitor and audit recordkeeping practices with the aim of finding opportunities and solutions, rather than with the aim of finding blame, QSA would be able to develop more effective and targeted education and training options.

Stakeholders also raised the need for existing policies, procedures, and guidelines, such as the GRDS, to be reviewed and rationalised, posing that a simpler structure would assist compliance.

The preferred option, to progress development of a monitoring and auditing framework, would place cost and resource impacts on QSA. Existing systems and materials would be reviewed and updated. Consultation with other agencies, such as the QAO, would inform approaches.

Consultation with public authorities would occur before the roll-out of a framework, including on the potential timing, information sought, and outcomes needed by public authorities.

Compel transfer of records

Stakeholders generally understood and agreed with the importance of ensuring that records are preserved and maintained to provide enduring information for future generations. Individual

submissions ranged from seeking to understand more clearly how mandatory transfer would support public authorities to comply with sound recordkeeping practices, while another submission noted the importance of making sure records that should be preserved are transferred, and **not** held locally unnecessarily, exposing them to risk of loss or damage.

Another submission considered that the State Archivist, within the existing powers to protect and preserve records, can already compel transfer and that an ongoing joint commitment should be made for the management of Queensland's records.

Stakeholders identified several considerations for the proposal to establish a power for the State Archivist to compel the transfer of records:

- the need for public authorities to access their records in a timely manner once transferred
- the need for support from QSA about transfer, potentially including cost support
- the need to maintain existing transfer processes for records rather than have a separate transfer process for at risk records

Stakeholder feedback also provided guidance on the criteria that could apply when the State Archivist considers if a record should be transferred to QSA. Criteria included:

- employing a risk-based approach to make decisions about which records should be transferred
- maintenance of local versions of the records to provide business access if needed
- type of record – such as records associated with national interests like the national redress approaches
- a public interest test
- the age of records
- restricted access periods (for example, records without restricted access periods that are open for access)

Robust recordkeeping practices must use a holistic approach to records. This includes the managing and preserving of records. If the State Archivist is given the power to, in consultation with a relevant public authority, identify significant permanent value records that are at risk or loss or damage, and set out how those records can be preserved, this meets the requirement of the PR Act for the State Archivist and public authorities to ensure that records are managed and preserved. This supports public authorities to meet their compliance obligations under the PR Act and to manage the risk of loss or damage to records.

It was clear from stakeholder feedback that the transfer of records can only occur in consultation with a relevant public authority. There is no aspect of the reform that would provide the State Archivist with the power to arbitrarily instruct a public authority to transfer records. The reform would set out the criteria for triggering the action, which would include consultation with the public authority.

It is not the case that public authorities consistently apply a pro-active approach to the transfer of significant permanent value records to QSA. Often, QSA becomes aware of an issue with records through a complaint that a record is lost or damaged or through understanding that records are impacted by severe climate events. In these situations, QSA contacts the relevant public authorities and commences negotiation with them about potential transfer. Even in these circumstance, public authorities may still not prioritise transfer and the records continue to be subject to loss or damage and the State Archivist cannot compel the transfer.

An ongoing joint commitment to the management of Queensland's records is already contemplated by the PR Act as it sets out the obligations for public authorities, and the State Archivist, to work together to be custodians of Queensland's public records.

However, an ongoing risk to records exists and the proposed reform will clarify for public authorities that, where appropriate and necessary to preserve significant records, the State Archivist can work with public authorities to compel transfer.

It is acknowledged that there are costs associated with this reform. For example, public authorities and QSA will need to direct resources to the discovery of records, the maintenance of local versions of records if needed, metadata work that needs to be completed before transfer and the time associated with the action of transfer itself.

In progressing amendments to the PR Act to set out that the State Archivist can direct transfer the

following criteria and conditions will be set out to address stakeholder feedback:

- The power will only apply to significant permanent value records that are at risk of loss or damage
- In assessing a record to be significant or permanent value, the record must meet significance criteria (refer to Attachment 2 for indicative criteria)
- Loss or damage considers factors such as storage conditions, age of the record, the nature of the record, the public benefit in preserving the record
- Public authorities can provide feedback to the State Archivist if they believe the record should not be transferred which will be considered in a final decision, and the State Archivist must provide a final decision in writing setting out the reasons for transfer and

The power will **not** apply to records that are in active business use.

To enable QSA and public authorities time to prepare for the amendments, a significant transition period of up to one year will be provided. This reflects stakeholder feedback on the need for support and time to accommodate changes.

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.

Final recommendation

- Amend the PR Act to set out that the State Archivist, in consultation with public authorities, may compel the transfer of significant permanent value public records that are at risk of loss or damage
- Amend the PR Act to set out that the State Archivist may issue mandatory standards
- Amend the PR Act to set out that the State Archivist can work with public authorities to monitor or audit compliance with the PR Act to be able to report on compliance by public authorities and for QSA to be able to develop more effective and targeted education and assistance for public authorities to support improved compliance
- Amend the PR Act to clarify that disposal can also include altering or deleting a record, or part of it, and that attempted disposal without authorisation is an offence under the PR Act.

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 from the review, an overwhelming majority believed 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.

C-RIS definition of record reform options
1. the status quo
2. undertake an enhanced education program to improve awareness
3. amend the PR Act to provide for improved access to public records, including a pro-disclosure model for access to public records held in the custody of QSA, setting restricted access periods at the time of transfer of records to QSA, providing reasons for refusal of access and an appeal mechanism for access decisions

Stakeholders understand the need for access to public records. Of the eleven written submissions that spoke to this recommendation specifically, all eleven supported the intent of the reform to improve access to public records and provide improved transparency around decision-making actions by public authorities. Stakeholder feedback on aspects of the proposed reform varied however, reflecting the breadth of matters considered in the recommendation:

The *Public Records Act 2002* be amended to make public records accessible to the public according to the following:

a. a public record transferred to Queensland State Archive is to be accessible at the time of transfer unless the public records 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

b. if access to the public record is to be restricted, the responsible public authority must set a restricted access period

c. in setting the duration of the restricted access period, the responsible public authority:

   i. should be pro-disclosure, restricting access for only for as long as giving access to the record would, on balance, be contrary to the public interest

   ii. is to have regard to:

   the *Human Rights Act 2019* and

   the needs and interests of any affected First Nations person

d. The *Public Records Act 2002* authorise the making of regulations including with respect to the operation and duration of restricted access periods.

e. The *Public Records Act 2002* provide a mechanism for challenging a refusal of access to public records in the custody of Queensland State Archives.

Stakeholders identified several points for consideration:

- Whether a pro-disclosure model, supported by the reform, would increase the risk of accidental disclosure of information
- The potential for an increase in vexatious applications
- Whether there needs to be a process to allow individuals to request their personal information

be restricted or removed from a record

Some stakeholders supported the need for refusal of access to be challenged noting that there are existing mechanisms that may be applicable, for example, administrative appeals.

Stakeholders strongly supported the need to review and manage criteria for the setting of restricted access periods.

One stakeholder felt that in addition to the considerations under part c of the recommendation, consideration be given to whether there is other legislation that should be specified. However, this conflicted with other stakeholders who felt that part c set out a complex decision-making test for restricting access like the approach taken by the *Right to Information Act 2009* which was seen as overly complex.

Summary of regulatory impacts of recommended option:

All stakeholders who responded to this reform indicated that it was likely to impose additional cost and resource implications for their organisation as the reforms were developed and embedded.

The proposed reform does not change the existing process where public authorities determine what restricted access period should apply to their records at the time the records is transferred to QSA. Public authorities are already considering issues such as the information held in the record to determine an appropriate restricted access period, and when considering applications for access.

Reforms to improve access to public records will deliver benefits to consumers and businesses through improved access and adequate management of records. This is particularly relevant for supporting access to records for and about affected Aboriginal peoples or Torres Strait Islander peoples to support healing, truth-telling, and reconciliation.

Improving transparency about restricted access periods supports engagement with human rights, in that a positive human right is the ability access government-held records that provide evidence of decision-making.

Improved transparency about why an access application was refused and clarity about appeal processes that are available support accountability and good governance for public authorities.

The use of regulations to set out the operation and duration of restricted access periods should provide public authorities with an uplift in maturity and flow on to reduced resource costs in the longer term as public authorities work with a streamlined regulatory framework.

To support public authorities, a significant transition period is proposed of up to one year, to allow time for public authorities to prepare.

Final recommendation

- Amend the PR Act to set out that public authorities, when determining a restricted access period for their records, must have consideration of an ‘open’ model at the time of transfer, and restrict access only for as long as giving access to the record would, on balance, be contrary to the public interest, while having regard to the *Human Rights Act 2019* and the needs and interests of affected First Nations persons
- Amend the PR Act to provide for the making of regulations about the operations and duration of restricted access periods
- Amend the PR Act to clarify that public authorities must explain a refusal of access and set out how an applicant might appeal an access decision, if appropriate to do so.

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.

C-RIS definition of record reform options
1. the status quo
2. undertake an enhanced education and awareness program for local governments
3. amend the PR Act to: • **clarify that local government councillors are public authorities for the purposes of the PR Act** • **establish a new definition of 'record of a councillor'** **Develop a targeted local government education program to support local government records managers, chief executive officers and councillors to meet their obligations under the PR Act**

Stakeholder feedback on the proposed reforms broadly supported the intent of the reforms, with only two stakeholders who provided feedback on these reforms expressing concerns about the proposal to include local government councillors as public authorities. Nine formal submissions were made by the local government sector.

Webinars were offered to local government records managers, chief executive officers and Mayors and local government councillors. Engagement was also undertaken with the Local Government Association of Queensland (LGAQ).

Several councils noted that they already capture the records of the local government councillors. This is consistent with advice provided by QSA for the past twenty years, that records created by local government councillors providing evidence of decision-making, are public records. One council considered that having the definition of public authority explicitly include local government councillors would support and improve council business needs, by allowing council to include the councillors in specific polices, guidelines and procedures to support council outcomes and chief executive offer obligations (as set out in section 7 of the PR Act) without councillors questioning the relevance of the approach.

One council stated that discussions and agreements between councillors and members of the public about the administration of Council and business-related activities should be documented. Another considered that the definition of record of a councillor should capture a wide range of digital interactions with constituents about local issues. It became evident through feedback that larger councils are already mature in their capacity and capability to capture relevant records of their councillors, with one council advising that they had implemented new software to capture all councillor activity on social media.

However, it was clear that not all councils have the resourcing or capacity to implement system changes easily. Councils did note that in some circumstances, they anticipated a need to adapt existing recordkeeping systems to accommodate the records of local government councillors, due to a range of factors.

For example, one council advised that while they capture records that have input from local government councillors in their records system, councillors do not currently have direct access to that system and consideration to providing access and training for councillors, would have resource and time costs.

Another council noted that guidelines to assist councillors and support council staff with awareness and in determining the types of records that should be captured would be essential. This was consistent with feedback from another council that stated there should be no ambiguity about recordkeeping to ensure that all organisations are accountable and held to the same standards, and

that the biggest challenge facing this council was distinguishing between business activity and campaigning activity. A definition setting out what is a public record for local government councillors and supporting guidelines will assist councils to navigate this issue effectively. Feedback was also if training material for councillors about recordkeeping should be mandatory.

It was raised by one council that the operation of section 7 of the PR Act needs consideration. Section 7 requires the chief executives of a public authority (being the chief executive of a local government) to ensure that the public authority complies with subsection (1). Subsection (1) requires a public authority to make and keep full and accurate records of its activities and have regard to any relevant policy, standards and guidelines made by the state archivist about the making and keeping of public records. The council considered that this provision operates without the chief executive having any real ability to achieve compliance.

The proposed reforms would work together to provide chief executives with that authority. This would be achieved by setting out that a local government councillor is a public authority and therefore, have obligations under subsection (1) as do all public authorities. That sets out a clear obligation that a chief executive of a local government can enforce because it puts beyond doubt that councillors must make and keep accurate records.

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.

The C-RIS cost benefit analysis contemplated that, to the extent that local governments do not already undertake such functions, both non-regulatory and regulatory approaches would increase costs to local government from requirements to keep records for councillors.

In addition to the C-RIS, QSA undertook significant targeted consultation with Queensland's local government, with online information sessions and information packs provided to local government records managers, chief executive officers and councillors. QSA also engaged with the Local Government Association of Queensland (LGAQ).

Some councils advised that they did not consider that the proposed reforms would impose any significant costs (resources or system costs) as they were already capturing the records created by their local government councillors. However, it was clear that smaller councils with less resources were likely to see an increase in the time needed to capture records, noting that such councils were those with less councillors overall. Further some of the smaller councils noted that it was likely they may need to consider system changes to capture a diverse range of councillor records (such as paper and digital including social media for instance).

One council noted that, while the analysis did consider that local governments would experience a spectrum of anticipated additional resources, the ability to estimate the extent of the costs was difficult due to the inability to estimate volumes of records likely to be captured by the proposed reforms. As such, the council did not think that the costs and benefits outlined in the C-RIS analysis would be realised.

The C-RIS sought feedback from stakeholders to inform potential costs. One stakeholder provided extensive feedback to inform analysis:

- estimated activities would include the design, development and implementation of education and training material which may incur costs for consultants or salaries to backfill existing FTE's
- the review of all policies, administrative directives, guidelines, procedures, and work instructions to ensure compliance with requirements
- collection, capture, indexing/metadata, storage, and access costs
- costs to prepare records for transfer

The LGAQ and one major Queensland council were significantly opposed to the proposed reforms.

The LGAQ position was that the proposed reforms for local government councillors would

significantly add to costs for local governments but provide limited benefit and not achieve the aim of the review. The LGAQ considered that there are key differences between the roles of local government councillors and other government officials who are currently already captured by the PR Act (State government Ministers and Assistant Ministers). The LGAQ consider that local government councillors do not have decision-making capabilities and that decisions of a council are not decisions of councillors.

The council who provided feedback stating that they could not support the reforms in their current form, also referred to councillors having some key difference to the other government members currently captured by the PR Act, noting that while all State Ministers and Assistant Ministers are Members of the Parliament (MP's) not all MPs are Ministers or Assistant Ministers. The PR Act does not capture all MP's as public authorities.

The PR Act does not capture all MP's as public authorities because records created by MP's are managed through other avenues, such as the *Parliament of Queensland Act 2001* and the Code of Ethical Standards, which acknowledges that the Parliamentary Service is committed to following the principles contained in legislation and information standards for the management of records. This provides for the capture of records contributing to decision making by government without requiring the application of the PR Act to MP's.

This council also identified concerns with the operation of section 7 of the PR Act, in that section 7 requires the chief executive officers of local governments to be responsible for ensuring that councillors comply with records management responsibilities under the PR Act, without any ability to compel councillors to do so. If it was clear that councillors are public authorities, it would put beyond doubt their obligations under the PR Act for the purposes of section 7 and provide chief executives with a clearer path for compliance within their local governments.

Stakeholder feedback made it clear that alongside any legislative options, QSA would need to drive and deliver guidelines and education for local governments to support improved compliance. In addition, a significant lead in time for legislative reforms would be necessary to enable councils time to assess and implement any changes commensurate with the resources of their organisation, the number of councillors, expected volume of records that might be captured and training.

Final recommendation:

- Amend the PR Act to set out that local government councillors are public authorities
- Amend the PR Act to set out a definition of *record of a councillor* to clarify that personal or party-political records are not public records for the purposes of the PR Act

Implementation and consultation

This D-RIS builds on stakeholder feedback that informed the 2022 review and consultation undertaken through the C-RIS and targeted consultation with stakeholders.

The implementation of the final recommendations and proposed options for delivery, will require regulatory and non-regulatory actions.

Stakeholder feedback has highlighted the need for implementation to occur with significant lead-in time to allow public authorities a period in which to assess and set in place any system, support or resource needs to support their compliance. It is expected that these actions would be implemented in stages to give stakeholders time to prepare for and adjust to new requirements.

In this context it is important to again note that the proposed reforms and the final recommendations to deliver them, are not significant changes to the current legislative framework.

There are no new requirements set out in the reforms or the final recommendations. The reforms and the final recommendations clarify existing practices and put beyond doubt some areas where public authorities have had difficulty complying because elements of the legislation were seen to be unclear.

The reforms speak to the purposes of the PR Act to make, manage, keep, and preserve public records in a usable form for the benefit of present and future generations and to support appropriate public access to records.

Stakeholders, both in the 2022 independent panel review phase, and again in the 2023 consultation phase, consistently agree that reform is needed. In setting out the proposed reforms and the final positions a balance has been developed to ensure the delivery of the proposed reforms will provide for a contemporary framework while recognising that public authorities will require extensive support to continue to meet their obligations under the PR Act.

Implementation approaches

To support public authorities, reflecting consistent feedback about the need for support and adequate time for public authorities to prepare for the proposed reforms the following implementation approaches will be used:

- guidance, training, and education tools for public authorities about the proposed reforms that will be embedded prior to the reforms taking effect
- a significant lead in period of up to one year will apply to the commencement of the reforms to provide public authorities with time to prepare for the reforms, before the reforms have effect
- a staggered approach to the commencement of reforms – that is, not all reforms will commence or have effect at the same time

Consultation approaches

Where stakeholders have indicated further consultation would be desirable, for example, mandatory standards and access mechanisms, the following consultation approaches will be used:

- stakeholder forums to engage with public authorities to develop key reforms around measures including mandatory standards, access mechanisms
- Stakeholder surveys to assess maturity of public authorities as the reforms roll out, with follow up assessments to ensure the reform are achieving the intended benefit, and to provide for data to adapt implementation approaches as needed to support public authorities

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*.[5]

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:

- 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. 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.[6]

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.

[5] PR Act, section 3 Purposes.

[6] Office of the Information Commissioner Queensland, available at *Community members | Office of the Information Commissioner Queensland (oic.qld.gov.au)*.

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.[7]

(n) 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, who's primary functions are regarding 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.

[7] 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.

As at March 2023, there are 3,820,683 physical items in the collection and 137,565 digitised copies of records. This represents a growth in physical items of 1.68 per cent and of 21 per cent for digitised copies. 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.[8]	Permanent

Most 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 several offences:

- section 12: damaging a public record more than 30 years old (maximum penalty 100 penalty units)
- section 13: unauthorised disposal of a public record (maximum penalty 165 penalty units)
- section 44: failure by an authorised officer to return an identity card (maximum penalty 10 penalty units), and
- section 48: obstruction of an authorised officer exercising a power of entry or inspection (maximum penalty 100 penalty units)
- section 49: recovery of public records (maximum penalty 40 penalty units).

[8] 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-

Enforcement powers established by the PR Act include:

- 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.[9]

In the 2022-23 financial year, QSA had 77 FTE staff. Remuneration for the Public Records Review Committee (PRRC) established by the PR Act, is in line with government standard rates.[10]

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 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.

[9] PR Act s 23.
[10] 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 State Archivist and QSA currently provide advice and guidance to public authorities regulated by the Act through:

- General information and advice https://www.forgov.qld.gov.au/information-and-communication-technology/recordkeeping-and-information-management/recordkeeping
- E-learning modules commissioned by QSA https://www.forgov.qld.gov.au/information-and-communication-technology/recordkeeping-and-information-management/recordkeeping/resources-and-tools-for-records-management/recordkeeping-and-you-elearning
- Subject specific information and guidelines https://www.forgov.qld.gov.au/__data/assets/pdf_file/0025/182725/recordkeeping-examples-for-mayors-and-councillors-v3.0.pdf

The above listed items are all published/shared via the ForGov platform. However, this platform does not easily support public authorities in that while the PR Act requires public authorities to "have regard to standards issued by QSA", the format of the ForGov platform does not enable standards "issued/authorised by the State Archivist" to be identified as such. This makes it difficult for public authorities to between information seen as an example, or information that is a requirement/obligation for compliance.

QSA also delivers face to face or virtual training either at the request of a public authorities where resources permit. These sessions are hugely beneficial to client agencies because QSA does not charge a fee and contribute to genuine compliance improvements as it enables targeted discussion relevant to individual public authorities and their specific needs.

Other agencies offer training, on a fee-for-service basis, that covers recordkeeping as a supporting activity (the why) but not "the what/ how" in terms of compliance with the PR Act.

The current situation means that it is hard for agencies to know who the lead/authority agency for recordkeeping in Queensland is and where they should be going for advice and training.

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

What we heard through consultation

2022 review

Consultation and engagement activities were undertaken with several 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).

2023 C-RIS and targeted stakeholder consultation

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.

The C-RIS was published on 16 February 2023 and was open until 20 March 2023. Along with the C-RIS, the Queensland Government response to the review recommendations and the final report on the review were also made available for stakeholders.

From 20 February 2023, targeted consultation with key stakeholder groups commenced. This included webinars, fact sheets and information packs for local governments, First Nations representative bodies and Queensland Government departments. Information sessions were also provided to the tertiary education sector, the Local Government Association of Queensland, the Interim Truth and Treaty Body, the Public Records Review Committee, and the Statutory Authorities Digital Leadership Group. In additional a survey was issued to all Queensland Government departments.

23 formal written submissions were received. Six survey responses were received.

As with the 2022 independent panel review, stakeholders broadly support the need to reform the PR Act to provide public authorities with a contemporary recordkeeping framework. Key themes of consultation that were supported included recognition of the rights and interests of First Nations peoples, administration of the PR Act, regulatory effectiveness, practices and information management and relationships with the community.

Feedback from stakeholders about other key themes, including the need to update the definition of a record, accountability and transparency and digital transformation and savings, varied in support. Of the 22 formal submissions:

All stakeholders agreed that the PR Act should be modernised to provide for a contemporary approach to recordkeeping in Queensland.

All stakeholders who provided feedback on the recommendations to support the needs and interests of First Nations peoples, supported the proposed reforms

Of the 13 stakeholders who provided feedback about the proposed reform to update the definition of record, 11 supported. The other two stakeholders did not state either supported or not supported but provided considerations for the context of the definition of record and the matters it could contemplate.

Of the 13 stakeholders who provided feedback about the proposed reform for mandatory standards, 10 stakeholders generally supported while one stakeholder opposed the reform, considering that QSA should not be empowered to set mandatory records management standards but invest in effective education, training, and support programs to achieve the cultural change objectives sought by the reform. Two stakeholders did not indicate either supported or not supported but noted the need for mandatory standards to be consistent with the principles of other key recordkeeping policies.

Of the 15 stakeholders who provided feedback about the proposed reforms for the mandatory transfer of significant records at risk, all 15 stakeholders supported the intent of the recommendation, to protect and preserve significant permanent value records for current and future generations. In supporting the intent, stakeholders observed that there should be alignment between this approach and any other existing policies, such as the Records Governance Policy. Further, stakeholders considered that there should be clear criteria set out to support a decision of the State Archivist to compel transfer, so that public authorities had a clear framework to operate within. One stakeholder considered that there was already sufficient statutory authority for compelling transfer, however it should be noted that not all public authorities hold this position. Stakeholders were concerned about being able to access records once transferred; noting records transferred under a mandatory direction can digitised and the digital copy provided back to the public authority for local access.

Of the eight stakeholders who provided feedback about the proposed reforms to improve access to public records, feedback was nuanced. All stakeholders supported improved access mechanisms while acknowledging the challenges the proposed reform might present for some public authorities. Stakeholders supported some aspects of the proposed reform while not supporting other aspects; for example, one stakeholder supported 15(a) and (b) setting out that records should be open at the time of transfer, and that public authorities must set restricted access periods. However, this stakeholder did not support 15 (c) or (e), where the public authority should have regard to the Human Rights Act

2019 and the needs and interests of any affected First Nations persons when setting a restricted access period, or that there be a mechanism to challenge a refusal of access to a record in the custody of the QSA. Conversely, another stakeholder supported 15(e) but did not support 15 (a)-(d).

Of the nine stakeholders who provided feedback about the proposed reforms for local government councillors, seven indicated general support for the proposed reforms. The LGAQ and one major South-East Queensland opposed the reforms about local government councillors. It should be noted that feedback also indicated the need for support from QSA for the local government sector, particularly about education and training on recordkeeping, which would be increased should the proposed reforms for local government councillors proceed. The LGAQ also noted the need for support.

It was clear from feedback that some larger, more resourced local governments are already managing records created by their councillors, and this reflects the fact that it is already a requirement for local government councillors to make and keep records. The proposed reform for the PR Act is not a new regulatory requirement – it serves to put beyond doubt that certain records of local government councillors are public records, providing clear guidance to stakeholders.

However, feedback did show that this was not the norm. The proposed reforms would require some local governments to adapt or extend existing records management systems, in addition to any training or education necessary to support records managers, chief executive officers and Mayors, and local government councillors to understand the application of the reform.

Problem Identification

The problems discussed in the 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.

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:[11]

> '…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

[11] PR Act (n 1) Schedule 2.

public authority or another person.[12]

The transition from easy-to-identify, discreet physical objects such as records to digital formats, which are far broader and include several steps or stages such as code, algorithms, or other digital processes, has been challenging. 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.[13]

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 the consultation.

[12] For example, s 8.
[13] 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.[14] 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 regarding 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.[15]

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 sought feedback in relation to problem identification and the calibration of government objectives for the proposed reform to amend the definition of record. Questions to prompt this process included:

- to what extent does your public authority keep digital records at a level comparable and/or compliance with best practices under the Queensland Government's Records Governance Policy? (Understanding current maturity of public authorities to determine how significant the change may be).
- are there any barriers (outside of the definition) which may restrict your public authority's capability and capacity to keep digital records? (Understanding current practices of public authorities and potential gaps in readiness).
- 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? (Understanding whether the proposed reform provides public authorities with an effective approach to managing records).

Public authorities were also asked to provide, where possible, any evidence, data, or case studies to support their feedback.

[14] *State Records Act 1998* (NSW), section 3 Definitions
[15] 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.

Stakeholder feedback on these questions indicated:

- Public authority maturity about the management of digital records is very varied
- Stakeholders considered resourcing and system limitations to be barriers to the capability or capacity of public authorities to manage digital records
- Stakeholders considered the government objectives were reasonable noting that the capacity or capability of public authorities to manage digital records now and in the future was highly sensitive to the willingness of public authorities to adequately invest
- Clarification of the meaning of definition would provide a measure of support for public authorities to better understand and comply with digital recordkeeping approaches

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.[16] 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.[17] 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.

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 interests of First Nations peoples may assist to address this issue.

[16] Department of Communities, Housing and Digital Economy *Annual Report 2021-22*, p. 10.
[17] Ibid.

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.[18]

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 several Indigenous stakeholders, believed the PRRC membership composition required under the current PR Act is not suitable.

Furthermore, 79 per cent of the survey respondents believed 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.[19]

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 asked stakeholders to consider whether:

Current public recordkeeping practices under the PR At result in adverse outcomes for First Nations peoples, and if so, in what way (understanding the extent ofany constraints within the existing framework)

To what extent are such adverse outcomes due to the current regulatory framework as opposed to the implementation of the framework (understanding where the issues are truly located).

Are the above government objectives adequate in addressing current problems with the management of public records, especially those regarding First Nations peoples? If not, what are some alternative objectives? (Identifying options)

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? (Understanding the broader context to support options).

Stakeholders were asked to provide evidence, case studies or other data to support their feedback.

[18] PR Act s 29.
[19] *Public Records Act 2005* (NZ) s 14.

Stakeholder feedback on these questions indicated:

- All stakeholders who provided feedback on the reforms to support the special needs and interests of First Nations peoples supported the proposed objectives
- Stakeholders considered the proposed reforms about Indigenous Data Sovereignty, Indigenous Data Governance and Indigenous cultural and intellectual property should be developed in co-design with the broader Path to Treaty processes to support the reframing of the Queensland Government's relationship with Aboriginal peoples and Torres Strait Islander peoples
- All stakeholders who commented on the reform for the membership of the PRRC, including the submission from the PRRC, supported reframing the PR Act to provide that two members of the PRRC should be of First Nations culture
- All stakeholders who provided feedback on the reform to establish a First Nations advisory body supported the proposal.

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.[20] The State Archivist can give directions about the storage of a record but cannot direct an agency to transfer the record.[21]

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.

[20] PR Act (n 1) s 10.
[21] Ibid s 10(2).

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 records to ensure their protection and preservation.

During the Review, 81 per cent of survey respondents believed 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.[22]

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.[23] 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,[24] and
- authorise disposal, subject to the conditions in the PR Act.[25]

[22] 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.
[23] Internal QSA data 2017-2022: Not published.
[24] PR Act (n 1) s 7(2).
[25] Ibid s 26.

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.'[26]

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.

During the Review, 80 per cent of survey respondents believed public authorities need to do more than merely 'have regard to' the directions of the State Archivist. Of this, 95 per cent believed public authorities need to 'take reasonable steps' to comply with directions of the State Archivist, while 79 per cent believed 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.[27] 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.[28] 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.[29]

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

[26] Ibid s 7.
[27] 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.
[28] 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.
[29] *2014-201 Report on the Recordkeeping Survey of Queensland Public Authorities* previously available on QSA website and can be provided on request.

- targeting risks to dam safety
- 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.[30]

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 asked stakeholders to consider whether:

- There are other sections or parts of the current PR Act which contribute to operational efficiencies (understanding the scope of potential issues)
- There are any incentives or reasons that may motivate public authorities to retain records that are suitable for transfer to QSA for preservation (understanding why public authorities retain records when they don't need to)
- The current lack of an offence for the attempted unlawful disposal of a public record provides a motivation to attempt such disposal (understanding why this action might occur)
- polices, standards and guidelines as opposed to other incentives such as financial or economic costs and risks drives improved compliance (understanding the options that will result in the best outcomes)
- the above government objectives are adequate in ensuring that public records are managed effectively and if not, what some alternate objectives may be (informing options)

Stakeholder feedback indicated:

- There are other sections of the PR Act, not considered by the review, that could benefit from review and modernisation – an example being section 7 and its obligation on chief executives of local governments to ensure compliance, without providing a clear path to doing so
- The lack of incentives or reasons to keep records in accordance with the PR Act might lead to some public authorities only doing the least amount they can to manage their records, which leads to increased risk of records being lost, personal information being exposed or a public authority being unable to demonstrate decision-making
- The lack of an offence explicitly for the attempted unlawful disposal of a record was not seen as leading to increased non-compliance, but the lack of clarity about what a record is and what constitutes disposal in a digital environment, was
- A strong focus of the need for education and support for compliance

[30] 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.[31] 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.[32] 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.

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

[31] QSA Internal Reporting Data.
[32] Ibid.

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 believed the criteria for the setting of restricted access periods should be revised. Meanwhile, 85 per cent of survey respondents believed access mechanisms in the PR Act should be amended to align with relevant state and federal legislation. Consultation through the C-RIS and targeted consultation activities demonstrated consistent feedback from stakeholders for the review of restricted access periods (for simplification) and alignment with other relevant 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.[33] 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.

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

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

recordkeeping.

The C-RIS asked stakeholders whether:

- there were case studies or evidence for the types of records that would be in scope for changes to restricted access periods (understanding the extent of impact this reform may have)
- there were any metrics to understand Queensland's relative position on transparency in public authority operations (understanding need for change)
- public authorities keep emerging technologies in alignment with the Queensland Government's Records Governance Policy, their position relevant to other public authorities and constraints limiting a public authority's ability to keep records that are driven by changing technology (understanding potential impacts)

the above government objectives are adequate to ensure transparency in public authority operations or alternatives (informing options)

Stakeholder feedback indicated:

- There were no case studies or evidence for other types of records that may be in scope for changes to restricted access periods – stakeholders understood the need for supporting access to records, particularly for First Nations peoples, but noted the resource implications that might be associated with having to expend more effort on determining restricted access periods at the time of transfer of a record to QSA
- Stakeholders did not provide any metrics on transparency, other than in a general context around how their agency currently met recordkeeping requirements
- It was clear from the feedback that the ability of a public authority to manage records in alignment with factors like new technology and the Records Governance Policy varied and was largely related to the size of a public authority in some cases, where a larger public authorities might be able to employ more resources. Smaller public authorities have less resources available and this was reflected in feedback about limitations on how public authorities use and adapt systems to manage records.
- Stakeholders who provided feedback supported the need for reforms to ensure transparency.

Options

The C-RIS proposed 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 several 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:[34]

> '…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.'

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

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

- 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 several 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.

Option 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.

All stakeholders who provided feedback on the reforms to support the special needs and interests of First Nations peoples supported the proposed objectives

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.

The recommendations also included proposed reforms about Indigenous Data Sovereignty, Indigenous Data Governance and Indigenous cultural and intellectual property, membership of the PRRC and the establishment of a First Nations Advisory Body. Stakeholder feedback in relation to these matters indicated:

- the proposed reforms about Indigenous Data Sovereignty, Indigenous Data Governance and Indigenous cultural and intellectual property should be developed in co-design with the broader Path to Treaty processes to support the reframing of the Queensland Government's relationship with Aboriginal peoples and Torres Strait Islander peoples
- the membership of the PRRC, including the submission from the PRRC, supported reframing the PR Act to provide that two members of the PRRC should be of First Nations culture
- support for the establishment of a First Nations advisory body.

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 several 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.

Impact analysis

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

The following limitations in the approach in the C-RIS analysis were 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 linked to this Consultation RIS has also been limited; and
- benefits of the anticipated reforms are due to a combination of factors and reforms. As such in most cases there are uncertainties in attributable benefits to individual reforms.

The C-RIS asked stakeholders to provide any further information to assist in quantifying the potential impacts of each option. Stakeholders were also encouraged to respond to a separate survey asking targeted more questions about the potential costs and benefits of the proposed options. The responses recognised that the scheme would carry costs, although many stakeholders were reluctant to provide exact estimates of the additional FTE requirements that may be needed to meet best practice requirements. Many of the benefits were discussed in a qualitative manner, which supports the approach adopted in this D-RIS. Accordingly, stakeholder comments are reflected where they are relevant to the development of the model assessing the costs and benefits of the options.

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)[35] provided at the end of each section should only be used as an indicative figure.

[35] 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 table below provides a summary of the incremental 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 $67.30 million (in present value, 2022 dollars) and $124.97 million respectively.

Key changes between the C-RIS and D-RIS

This section summarises the insights from the consultation feedback that have been incorporated into this D-RIS, including changes to the quantified costs of the schemes, key considerations from stakeholders and a summary table of the benefits.

Changes to quantified costs

The principal drivers of change between the C-RIS and the D-RIS were the higher FTE provision for education and a change to the QSA staff salary category to carry out this function. The NPV of this cost item was originally forecast at $1.17 million and is now at $2.66 million. Overall, these changes have increased the cost of Option 2 by 4.05 per cent and have increased the cost of Option 3 by 2.90 per cent.

One analytical tool used in this section is the breakeven analysis, which highlights the incremental improvement attributable to the scheme that is required to recover the direct costs. Given the higher costs in this D-RIS, the breakeven points for Options 2 and 3 increased slightly in comparison to the C-RIS, but this change was considered immaterial.

The overall results did not change the final assessment of the preferred option.

Other considerations following feedback on the C-RIS

The feedback from stakeholders was varied. Barring a few limited examples, most stakeholder feedback reinforced the model assumptions and outputs with respect to the additional FTE requirements to improve records management. Many stakeholders are already operating in compliance with best practice guidelines and would not require additional labour, while others may require a more substantial effort to manage their records. At an aggregate level, the costs to local councils, public authorities and QSA appear to be consistent with stakeholder expectations. The main cost driver that has been updated in this D-RIS is the education allocation. This was in recognition of the commentary from both local government and other public authorities, which expressed that there would be an improvement in operational efficiency if records managers received better guidance and support from QSA, particularly with respect to lawful disposal and opportunities to transfer records to QSA.

Given the source data driving the FTE allocation was collected in 2014 – 15, we considered whether the advances in record keeping may warrant a modification of the assumptions relating to the current self-assessments for compliance provided by the public authorities. However, whilst systems may have improved, the scale of the impact is unknown. Technological advancement may have positively impacted current record keeping, but legacy records (which is a central focus of this RIS) may still be in retention without good reason. Stakeholders did not indicate that the estimates were too low or too high, and as such they were maintained at their current levels.

In considering the stakeholder feedback, it was acknowledged that the true costs and benefits of the proposal may be lower if a number of local councils and public authorities are already compliant. Not enough stakeholders provided quantifiable responses that could inform a meaningful reflection on how many local councils and public authorities would incur no additional costs and accrue no additional benefits (because they are already compliant), and how many would incur a greater cost and deliver a greater societal benefit from improved records management. As such, the CBA below should be considered with these challenges in mind.

Cost and benefit summary

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	-$8.44	-$15.67
Increased costs to other public authorities in complying with best practices	-$56.20	-$104.33
Increased costs to public authorities (auditing, monitoring and compliance)	$0	-$1.24
Increased costs to QSA (auditing, monitoring and compliance)	$0	-$1.07
Educational costs (QSA)	-$2.66	-$2.66
The education provision is the principal change between the C-RIS and the D-RIS, reflecting the importance of QSA support in understanding record-keeping obligations. The NPV of this cost item was originally forecast at $1.17 million and is now at $2.66 million.		
Quantified NPV:	-$67.30	-$124.97
Qualitative benefits: *The benefits are listed in an order which qualitatively reflects the relative magnitude of the benefit and its impact on broader society.*		
Operational savings from reduced records with minimal use value being kept	This option is expected to yield some benefit in operational savings over the base case as public authorities are more aware of the capacity for lawful disposal and transferal of records to QSA, saving time in maintaining and retrieving minimal use records.	This option provides similar benefits to option 2. The exact extent to which the change would 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 across the life of the Queensland Government Standing Offer Arrangement, which is from 26 January 2020 to 31 January 2028, there is anticipated to be an opportunity to reduce this cost.
Improved records availability	Motivates public authorities to comply with best practice records management principles to increase the number of records available to the public, as well as to improve the conditions of the records. The extent of improved records management and availability would depend on the compliance rate of Option 2 (when compared to Option 3).	Motivates public authorities to comply with best practice records management principles to increase the number of records available to public, as well as to improve the conditions such records are in. Although the example is taken from the US and UK contexts, the 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-

	Option 2	Option 3
		sector data'.[36]
Improved integrity of public authorities	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 comparison to what would be expected under 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.
Efficiencies from streamlining decision challenging mechanisms	Benefit does not accrue 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 be causing duplicative efforts between the Acts.
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 clearer commitment and guarantee in representing First Nations peoples through the PRRC and the establishment of a First Nations advisory group. Unlike Option 2, this response provides a statutory means for First Nations peoples to contribute to matters concerning QSA's collection of records about First Nations peoples.
Qualitative costs:		
Costs in establishment of an advisory group	Cost does not accrue 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	No cost incurred under Option 2 due to this option being non-legislative.	Legislating two specific positions for Aboriginal or Torres Strait Islander people provides less flexibility but is likely to be of minimal cost given the 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 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

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

	Option 2	Option 3
		per annum).

Note – figures may not exactly add up due to rounding

Assumptions

The following central parameters were used to undertake the CBA. Stakeholders were encouraged to provide further information to update these assumptions and improve the rigour of analysis for the purposes of this D-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 10 years after the passage of legislation, providing for uncertainties in the future shape of recordkeeping.
Salaries (Agencies)	$95,273 per annum (AO5 Band 2) + on-costs $108,362 per annum (AO6 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)[37]	Guidelines for estimating the net benefits of regulatory reforms; ABS Tablebuilder (adjusted for inflation). Two stakeholders provided a more granular range of staffing levels based on individual responsibilities under the record keeping process. This was considered in the assumptions driving the model
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) was 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,[38] and internally tested through a 'table of eleven' compliance framework.[39]

[37] Hourly rate used to reflect the underlying skill sets of the staff performing the key tasks.

[38] Score obtained from weighted average of compliance indices ranging from "fully compliant" = 100%, "working towards compliance" = 50%, and "non-compliant" = 0%.

[39] 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 the additional resource requirement to be 3 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 the 3 FTEs are in AO6 Band 2 (i.e., $108,362 per annum; $126,241.73 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	-$0.35	-$0.35
Undiscounted costs	-$0.49	-$0.49

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; early consultation with QSA and the Department of State Development, Infrastructure, Local Government and Planning indicated that councils with less experience and capability may need up to two additional FTEs to manage their records if there were a change to the requirements under the *PR Act*, whereas councils which have a mature records management system will not require any additional 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 and with more remote local governments requiring an additional provision in recognition of the greater outsourced support that may be required.
- 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*);[40] 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.
- 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.

[40] 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:

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

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

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	-$8.45	-$15.68
Undiscounted costs	-$12.01	-$22.32

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.

A qualitative approach that illustrates the trade-off between costs and benefits associated with transparency is supported by the inconsistency of stakeholder positions. Whilst a number of stakeholders noted that many public records had already been made public under the status quo and that increased costs associated with transparency are likely to be marginal, other stakeholders may require a more considerable increase in efforts to achieve the same level of transparency. This may be a function of the level of maturity in recordkeeping of the public authority, or of the nature of the records being kept by that public authority.

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	-$8.78	-$16.01

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 inefficiencies.

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 if it is 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'.[41] In Queensland, 0.1 per cent of the state's economic activity was $368.98 million and this would accrue as benefits to users and businesses requiring access to public records.

While not included in the CBA due to the difficulty of estimating the anticipated increase in availability of public records resulting from the anticipated reforms, a breakeven analysis does show how effective the option needs to be to offset the anticipated costs. A breakeven point can be calculated by dividing the annualised NPV of costs associated with increasing transparency by the above monetised estimates for the value of public records of $368.98 million.

Accordingly, a **0.34 per cent** 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 **0.62 per cent** improvement in availability of public information will make the proposal NPV positive for Option 3. These improvements are considered modest and achievable within the scope of the scheme.

The modest improvements in the availability of records outlined above are encouraging given the current levels of maturity among stakeholders. According to stakeholders, the capacity of Option 2 or Option 3 to drastically improve on the base case should be considered in the context of existing mechanisms for transparency of administrative decisions.

Like 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 requirements, resulting in inefficiency and impacting

[41] OECD, *Enhancing Access to and Sharing of Data: Reconciling Risks and Benefits for Data Re-use across Societies*, 2019. Note that for the purposes of that report, the term "data" covers only electronic versions of data (digital data) and distinguishes between raw data and information as defined in other OECD publications. This is a subtle distinction from the view of data taken in this RIS, where there is a significant interest in records that are not kept in an accessible digital format. The central benefit of making this public data more accessible was identified as greater transparency, accountability and empowerment of users.

on the integrity and authenticity of the record.[42]

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'.[43] 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.

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 the additional resource requirement to be 3 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 the 3 FTEs are in AO6 Band 2 (i.e., $108,362 per annum; $126,241.73 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.

The QSA position of increasing the FTE for education and training was unanimously supported by stakeholders, who commented that it was central to realising the benefits of the scheme. It was stressed that there would be an ongoing necessity for training of records managers, as well as a short-term increased effort during the implementation of the scheme.

A number of stakeholders commented that they already have a requirement for staff to participate in mandatory induction and refresher training provided by the QSA. One stakeholder indicated that public authorities would benefit from QSA identifying and tailoring scalable generic assistance which is aligned to what is mandatory and what are better practice options, including cost-effective real examples of managing records (especially managing records in place) given the digital landscape is continually evolving. This would minimise some of the impact of the changes to legal requirements.

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

Item	Option 2	Option 3
NPV	-$2.31	-$2.31
Undiscounted costs	-$3.29	-$3.29

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.

[42] Australian National Audit Office, *Records Management in the Australian Public Service,* available at 201112 Audit Report No 53.pdf (anao.gov.au), 2012.

[43] Department of Local Government, Racing and Multicultural Affairs, *Code of Conduct for Queensland Councillors* (4 August 2020) p. 5.

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.

A number of stakeholders commented that the audit interval would have implications for the burden on businesses. It was suggested that the most practical interval between audits would be between two and five years. This recognises the significant disruption auditing can cause on business-as-usual activities and provides public authorities time to remediate issues identified in previous compliance checks. The earlier sections of this D-RIS considered that feedback and the relevant quantifiable assumptions have been included below:

- 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; early consultation with QSA and the Department of State Development, Infrastructure, Local Government and Planning indicated that 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. This view was broadly supported by stakeholders, who commented that many organisations already operate under the QSA best practice guidelines and that the proposed changes would merely make their current approach to records management a legal requirement.
- 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).[44] Stakeholders ranging from local governments to government departments responded to the assumptions developed for this cost item in varying ways, but broadly the quantification was validated. Some indicated that it would be difficult to know the cost imposition of any additional requirements arising from the scheme. One large government department suggested that two additional FTE would be sufficient to meet the best practice requirements. Another proposed a sliding scale to accommodate for the specific needs and requirements of departments with lower levels of compliance or bespoke needs depending on the nature of the records being maintained. The model developed in the RIS considered the current state self-assessments of compliance with record-keeping best practice guidelines.[45] The total FTE figure provided recognizes that some public authorities will have a greater FTE requirement than others to reach a compliant level depending on the current state of maturity. In other words, some public authorities will require a greater proportion of the total FTE estimate. Broadly, the consultations supported the estimated FTE level. Given the deidentified nature of the source data, it is not possible to verify the estimates with specific consultation responses. A qualitative judgement across the responses has been adopted and determined that the allocation is appropriate at an aggregate level.

- The FTE allocation for the scheme recognizes the additional labour required to bring all departments into compliance. Whilst every effort has been made to make allowances for unique circumstances where public authorities have characteristics that make best practice record-keeping more costly, it is not practical to make a meaningful reflection. That is several public authorities may require increased effort in the initial stages of the scheme to bring their practices into alignment with the required standards.
- 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	-$56.20	-$104.33
Undiscounted Costs	-$78.62	-$145.94

Reforms to realise operational efficiencies: Summary of Quantified Costs

Both state agencies and local government stakeholders were hesitant to provide estimates for the costs of the options due to the various unknowns that may be associated with the changes, although there was general agreement that the options would incur some 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.

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

Item of interest	Option 2	Option 3
NPV	-$58.53	-$108.96

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.

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

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

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

[45] Recordkeeping Survey of Queensland Public Authorities, 2014-15 - Recordkeeping Survey of Queensland Public Authorities, 2014-15 - Open Data Portal | Queensland Government

As above ('Reforms to improve transparency: Qualitative benefits'), a breakeven analysis provides a minimum threshold which the options would need to surpass to offset the costs of the scheme. By dividing the annualised NPV of the costs associated with realising operational efficiencies by the estimates of the net social and economic benefits of a transparent and fully accessible public records system at $368.98 million, a **2.3 per cent** 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 **4.2 per cent** improvement in availability of public information will make the proposal NPV positive for Option 3.

When interpreting the two breakeven points, it should be noted that the OECD report specifically monetised the benefit of improving access to public records. An improvement in operational efficiency would yield monetary benefits for local governments and public authorities, which would effectively lower the breakeven point. As such, the above estimates are indicative only.

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 $111 million anticipated in costs to Queensland from 26 January 2020 to 31 January 2028 for records storage, retrieval and destruction services, 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).

One stakeholder commented that the proposed reforms would support a whole of government approach to records management with benefits in streamlining the management of public data, information, and records, and investigating the digitisation of records. It was noted that the benefits accruing to the scheme may be contingent on the degree of cooperation between QSA and QAO, given the potential economies of scale that may be achieved.

For one local government, storing records off-site has become the standard practice due to existing on-site storage being full. They suggested that the capacity to transfer eligible inactive records to QSA would provide noticeable savings over time. Equally, it was noted that transferring records would minimize the risk of damage or loss of public value records that are stored on-site.

Several stakeholders commented that clarifying the requirements under the Act will yield an efficiency gain. For example, regarding records relating to First Nations peoples, one local government commented that it was not clear what constituted an appropriate record. As discussed below, the number of queries with respect to the Act currently incurs a cost to QSA.

Reforms to realise operational efficiencies: Qualitative Costs

The reforms to realise operational efficiencies seek to realise benefits in the use value of records and savings in operation costs from the 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 about 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.

In some cases, stakeholders were reluctant to provide more than a qualitative appraisal for the costs associated with operational efficiencies due to the unknown difference between the adopted standard and the current standard expected by QSA.

The prevailing concern among public authorities was the perceived difficulty in accessing records held by QSA and therefore the cost and inconvenience this would incur. It should be noted that the policy intention is not to compel the transfer of records that still have a functional use in the operations of the public authority (see the 'Access to records' section). That is, there is no aspect of the reform that would provide the State Archivist with the power to arbitrarily instruct a public authority to transfer records. Therefore, this is not anticipated to incur a significant cost and is not quantified in the D-RIS.

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:[46]

> "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 contribution to matters concerning QSA's collection of records about First Nations peoples.

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 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.

Stakeholders responded positively to the assumptions outlined in the C-RIS. They confirmed that the costs would be minimal and that promoting the importance of First Nations peoples' records in the community was in line with current local government values already.

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

Conclusion and recommended options

In presenting options in the C-RIS, we considered that government action, through both a combined regulatory and non-regulatory approach, would be, 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 to support compliance by public authorities.

The existing framework is now more than 20 years old and continues to provide a largely functional 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 of the legislation, 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 plus 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 were developed by the independent panel 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 was considered to present the most effective and efficient approach to supporting public authorities and the community.

Option 3: Legislated Response

The third option considered 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.

First Nations

All stakeholders who provided feedback on the reforms for recognition of First Nations peoples, the importance of public records and access to them and support for the needs and interests of First Nations peoples, universally supported amendment of the PR Act to deliver these reforms.

Further, it was clear from stakeholder feedback that ongoing engagement with First Nations peoples would be critical to ensure the successful delivery of the reforms, in particular the reforms speaking to the concepts of Indigenous data sovereignty, data governance and cultural and intellectual property. To address this, QSA proposes to deliver reforms to the PR Act and undertake further engagement with First Nations stakeholders.

Clarify the meaning of record

All stakeholders who provided feedback about the proposed reform for the definition of record agreed that the PR Act needed to be contemporary to support a changing recordkeeping environment. Feedback from stakeholders also indicated that in developing a final approach to the definition, there would need to be consideration of how the definition might apply to types of records, such as specimens. To address this QSA proposes to amend the definition of record in consultation with public authorities to ensure that the final proposal for the definition meets needs. The implementation of the reform will also provide lead in time for agencies to ensure that both QSA and public authorities can update internal documents or other material to reflect the updated definition.

Updating the definition of record will assist public authorities to clearly understand what a record is for the purposes of the PR Act. Setting out clear guidance may reduce the amount of time a public

authority has to spend on determining if something is a record for the purposes of the PR Act, leading to improved recordkeeping practices.

Ability to compel the transfer of public records

Stakeholders supported the intent of the reform, to ensure the protection of significant permanent value records. Some stakeholders did consider that this reform would potentially create a cost or resource impact on public authorities.

Between just two and five per cent of records created by public authorities are likely to be assessed as having permanent value to the State, so the number of records likely to be affected by mandatory transfer is small. Cost savings for agencies can be realised through reduced storage costs where permanent value public records move from commercial storage to QSA. Cost savings may also be realised with less right to information access applications once public records are open and accessible at QSA. Accessibility concerns may be resolved through the digitisation of records and provision of a local copy for public authorities, negating any possible cost of accessing records in the custody of QSA. Records in active business use are not suitable for transfer to QSA and would not be subject to mandatory transfer.

On balance, given the small number of records that are likely to be identified and considered suitable for mandatory transfer, it is not likely that the proposed reform will reasonably impose a significant cost on public authorities.

Update definition of disposal and update offences

Stakeholder feedback was reasonably neutral. Some stakeholders considered that the current framework was inadequate and should be strengthened. Other stakeholders felt that the current framework was sufficient, understanding that an attempt to dispose of a record was an offence.

The proposed reforms seek to provide a contemporary approach to the management of offences under the PR Act. By providing for a longer period in which to manage a possible offence, the reform recognises the potential complexity of recordkeeping non-compliance. The clarification that an attempt to dispose of a record, even when that record may be later recovered, provides a clear signal to public authorities of the importance of public records and the management of them.

By updating the definition of disposal, strengthened guidance is available for public authorities about their recordkeeping obligations.

The reforms together work to provide clarity and guidance for public authorities.

Establish power to publish mandatory standards

Generally, stakeholders support the application of mandatory standards but did consider that mandatory standards could not be a one size fits all approach, reflecting the variation in the size, maturity and recordkeeping needs of the approximately 500 public authorities regulated by the PR Act.

The development of mandatory standards will occur in consultation with public authorities to ensure that the needs of public authorities are recognised and reflected – both through ensuring that the topics covered by mandatory standards are those that can provide the greatest benefit to public authorities and QSA and that the application of mandatory standards reflects the variance in public authorities. For example, a larger organisation that is well resourced may be expected to meet certain criteria under a mandatory standard, where a much smaller organisation would not be able to but could meet compliance obligations in another way. That flexibility will provide public authorities with an improved chance of achieving compliance without significantly imposing costs, for example smaller regional or Indigenous councils would not have the same level of recordkeeping capacity that might be realised at larger councils.

Monitor, audit and report on compliance

Stakeholders who provided feedback on the proposed reforms for monitoring, auditing, and reporting broadly supported the intent of the reforms, while observing the need to develop a monitoring and auditing framework that recognised the wide variety of public authorities and embedded flexibility for monitoring and auditing approaches. Some stakeholders provided feedback on potential approaches including the timing that could apply to an auditing framework and the types of tools that could be employed (e.g., self-assessment surveys provided every two years to monitor and measure the maturity of public authorities regarding recordkeeping).

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

Stakeholders provided comprehensive feedback on this reform. Of all proposed reforms this raised the most comprehensive comments from stakeholders.

Stakeholders considered that the proposed approach would create significant cost and resource implications while supporting the intent of the reform, to improve access to public records that are in the custody of QSA.

When transferring records to QSA a public authority should determine whether the record can be opened, or whether a restricted access period should apply. Risk averse approaches to open public records have seen records closed for significant periods of time, that far outweigh the benefit of having the record open.

The proposed reform does not stop public authorities from setting restricted access periods. The conditions that inform potential restricted access periods will still apply. Public authorities will be required to have consideration to the *Human Rights Act 2019* and the needs and interests of affected First Nations peoples in setting restricted access periods – neither of these requirements are new. The *Human Rights Act 2019* has been in effect for some four years and includes consideration of cultural rights.

It is reasonable that if a public authority has not been applying consideration of these factors to date, then application of these factors may have cost or resource implications, however the broader framework already requires the consideration of human rights in all decision making for most public authorities who are regulated by the PR Act.

The proposed reform requiring public authorities to provide reasons for refusal of access to records held at QSA may impose some cost or resource implications in that it will require agencies to provide a reason to an applicant where access is refused. However, to determine whether access should be given, the public authority currently should assess the record and make a decision about access – the reform will just require a public authority to provide a reason for refusal to the applicant. This supports transparency and accountability for access to public records.

Local government

The local government sector submissions on the proposed reforms to formally recognise local government councillors as public authorities supported the proposed reforms, with two key exceptions. The submissions saw that the clarity that could be offered by amending the PR Act to set out that local government councillors are public authorities would contribute to improved delivery of advice within local governments by removing any residual doubt that local government councillors create and keep records for local government. This obligation exists under the *Local Government Act 2009*, but there has been continued confusion over whether records are public records. The proposed reform sets this clearly and would remove any possible confusion as to whether certain records created by local government councillors are public records. Several councils felt that this clarity would reduce confusion and improve recordkeeping practices.

The LGAQ and one major Queensland council did not support the proposed reforms. Although the requirement for local government councillors to keep records is not a new requirement, the LGAQ felt that the proposed reform would place a significant burden on local governments. Submissions from councils indicated that some councils are already mature in their approach to the records of local government councillors, but it should be noted that this maturity would vary widely across councils and

smaller, regional, or Indigenous councils may not have the same capacity to manage records. That does not alter the fact that it is already a requirement for local government councillors to keep records but does reflect that some councils may need to update or increase systems or capacity to manage these records.

The potential for section 7 of the PR Act to contribute to difficulties about local government councillor records was also raised, in that the section places a requirement on the chief executive officer of councils to enforce recordkeeping obligations with not real power to do so. Amending the PR Act to put beyond doubt that certain records created by local government councillors are public records would support chief executive officers by providing a clear legislative obligation under the PR Act.

It was expected that the total net benefit for Option 3 (i.e., the cumulative for all the individual Option 3 proposals) would 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.

Over the period of evaluation (until 1 July 2033), the quantified costs of Option 2 and Option 3 are $67.30 million (in present value, 2022 dollars) and $124.97 million respectively.

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 these approaches 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 asked for feedback in relation to the options investigation:

- Overall, which option is your preferred option and why?
- Is there any other impact associated with your preferred option (that have not been identified)?

Stakeholders generally provided feedback on specific recommendations setting out the proposed reforms, that were of interest or relevance to their organisational needs. Stakeholders broadly supported the need for change and the proposed reforms, offering guidance to inform delivery options and implementation approaches. There were stakeholders who opposed reforms while still supporting others.

While supporting the intent of the recommendations, aside from reforms that were opposed by a minority of stakeholders, some suggestion was made that a non-regulatory or support approach could achieve the intent of the independent panel review recommendations.

For over twenty years QSA has been supporting public authorities through advice and assistance, guidelines, policies, and standards, such as the Records Governance Policy. There is little evidence that this educative approach is driving the level of compliance that is necessary to protect and preserve Queensland's public records.

Between the 2013 and 2022 fiscal years, records management issues were identified in 93 of 225 reports tabled by the Queensland Audit Office, Queensland Ombudsman, Office of the Information Commissioner and the Crime and Corruption Commission. Issues included ineffective records management practices and systems, systems and technology limitations, inadequate training and awareness, and falsified records. This is despite the support and guidance offered by QSA to public authorities.

On balance and supported by feedback from consultation where overall stakeholders do support reforms to the PR Act in recognition that a singular educative approach will not drive compliance on its own, it is proposed to deliver legislative reforms to support the work of the State Archivist and QSA and provide public authorities with clarity about how they can meet their obligations under the PR Act. Recognising stakeholder feedback about the need to provide adequate time to implement any necessary changes to support the reforms, a significant lead in period will be established to support implementation both for QSA and public authorities.

Option 3 has been determined as the preferred option in this D-RIS. Although it incurs the highest cost at an aggregate level, it provides a comprehensive range of measures giving the greatest capacity to deliver benefits for the Queensland community into the future. This position is broadly supported by stakeholders, who generally expressed comfort with the additional costs that might be experienced at

an individual level under the preferred option and recognised the importance and benefits of the reforms. Both options ensure that records managers are well educated and supported in their obligations to manage records. However, Option 3 distinguishes itself as the preferred option as it is expected to provide operational efficiencies in the way public records are managed and to improve access to public value records, particularly as duplicative and unnecessary processes are removed. Crucially, it provides an incentive mechanism for greater integrity in records management and makes a commitment to ensuring Indigenous representation in the decision-making process for managing records belonging to First Nations peoples.

The positions proposed in the C-RIS, and the final position informed by consultation, are set out in the table below:

	Position proposed in C-RIS	**Final position**
Definition of record		
	Amend the PR Act to update the definition of record to clearly accommodate a digital environment	Amend the PR Act to update the definition of record to clearly accommodate a digital environment
First Nations		
	6. Consider legislative approaches to support recognition of the special interests and needs of First Nations peoples regarding public records 7. Consider legislative approaches about Indigenous Data Sovereignty, Indigenous Data Governance and Indigenous Cultural and Intellectual Property 8. Set out in the purposes of the PR Act a statement of the importance of public records and access to them for First Nations peoples to support rights and entitlements in connection with culture, community, and reconciliation 9. Amend the PR Act to provide that two members of the Public Records Review Committee must be First Nations persons with relevant expertise or experience 10. Consider legislative approaches to establishing a First Nations advisory group	6. Amend the PR Act to provide for recognition of the needs and interests of First Nations peoples regarding public records 7. Before proceeding with legislative approaches, further engagement with First Nations representative bodies and communities is necessary, reflecting consultation feedback, to ensure alignment with the Queensland Government's broader Path to Treaty processes and to provide for co-design with representative bodies and communities 8. Amend the PR Act to set out statement of the importance of public records and access to them for First Nations peoples 9. Amend the PR Act to set out that two members of the Public Records Review Committee must be First Nations persons with relevant expertise and experience 10. Amend the PR Act to set out that it is a function of the State Archivist to establish a First Nations advisory group to provide advice to the State Archivist and to the relevant Minister about records held at QSA relevant to First Nations peoples, noting consultation feedback on approaches and functions for the advisory body
Addressing and improving existing operational inefficiencies		
	Transfer of records – provide a mechanism to enable the State Archivist to compel the transfer of significant records at risk of loss or damage	Amend the PR Act to provide that the State Archivist has the power to compel the transfer of significant permanent value records that are at risk of loss or damage noting (from consultation): – Consultation with the relevant public authority must occur

		– Records in business use will not be subject to mandatory transfer
	Consider options to reduce the risk of unlawful disposal of records	Amend the PR Act to set out that the attempted unlawful disposal of records is an offence
	Consider options to improve compliance with standards issued by the State Archivist	Amend the PR Act to provide that standards issued by the State Archivist must be complied with public authorities noting (from consultation): – Consultation with public authorities is to occur before the State Archivist issues a mandatory standard
	Consider providing the State Archivist with clear authority to monitor, audit and report on compliance with the PR Act	Amend the PR Act to set out that it is a function of the State Archivist to monitor, audit and report on compliance with the PR Act noting (from consultation): – Consultation will occur with public authorities before establishing a risk-based monitoring and auditing framework – Reporting on compliance will occur through the annual report produced by the State Archivist
	Identify options for a legislative framework to improve access to records, including the operation of restricted access periods and appeal of decisions about access	Amend the PR Act to set out that: – public authorities should apply a pro-disclosure model when setting restricted access periods, considering the application of the *Right to Information Act 2009* and the *Information Privacy Act 2009*, the public interest or access restrictions under other laws – public authorities must have regard to the *Human Rights Act 2019* and the needs and interests of any affected First Nations persons when setting the duration of a restricted access period – regulations may be made about restricted access periods – if access to a record held at QSA is refused, the public authority must provide a reason for refusal – if access to a record held at QSA is refused, options for appeal of the decision should be clear
Local government		
	Set out that local government councillors are public authorities for the purposes of the PR Act	Amend the PR Act by adding local government councillors to the definition of public authority
	Set out a definition of record of a local government councillor to clarify which records are relevant for the purposes of	Amend the PR Act by including a new definition of record of a councillor that

	the PR Act, excluding personal and party-political records	excludes personal and party-political records

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]

Stakeholder consultation did not identify any potential fundamental legislative principle issues, however it should be noted that the proposed reform providing for a regulation-making power to establish regulations about the operations and duration of restricted access periods may engage section 4 of the Legislative Standards Act 1992, in that a regulation which could possibly amend or impact the operation of provisions of an Act, may raise a question of appropriate sub-delegation of power. This will be addressed during drafting of proposed reforms.

[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.

QSA will work with public authorities to establish a mechanism to monitor implementation progress. This may include self-assessable surveys that are completed by public authorities.

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. QSA will develop targeted guidance for public authorities about the reforms and embed new information with public authorities in a transition period, that can occur pending government consideration of proposed legislation, and that legislation taking effect,

Stakeholder feedback has made it clear that these methods of implementation will be essential to support public authorities. Support is critical to support compliance.

In addition to education, training and communication approaches, implementation will also reflect a staggered approach to the commencement of proposed reforms, and a significant lead in period will apply of up to twelve months, to provide public authorities with a reasonable amount of time in which to prepare for the proposed reforms.

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.*

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.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.

To support public authorities, it is proposed to use stakeholder surveys alongside the introduction of the proposed reforms. The surveys will assess a level of maturity as the reforms are rolled out, and use of surveys over time will measure improvements in compliance or identify where further implementation assistance is needed.

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 legislative review will be supported through data collected by the Department, the State Archivist and other relevant government agencies.

Ongoing engagement will be undertaken with public authorities 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.

Use of evaluation tools such as surveys and self-assessment options will be established, so that a maturity baseline at the commencement of reforms can be established, and then measured again at regular points as the implementation of reforms progresses. The last formal assessment of recordkeeping maturity and compliance took place in 2014/15 and identified 15% of public authorities met minimum recordkeeping requirements. These findings will be used as the baseline. The 2014/15 assessment was undertaken using previous information standards in place at that time. These information standards have been superseded by the Records Governance Policy[47] which links to the Recordkeeping Maturity Assessment Tool (RMAT)[48].

The RMAT has been in place since 2018 for public authorities to use to evaluate their recordkeeping maturity and enables public authorities to take full advantage of records and information and achieve their strategic goals more efficiently and effectively. This tool is publicly available on the QSA website and is scalable and flexible to the diverse range of public authorities regulated by the PR Act.

This tool will be the primary tool used to monitor and evaluate recordkeeping maturity and compliance in the future. The RMAT will be reviewed in consultation with public authorities to ensure the tool remains useful for both public authorities and QSA. QSA intends to use the RMAT every two years to evaluate public authorities' recordkeeping maturity and compliance. The results of the RMAT assessment will then further inform implementation approaches (including education, training, and advice) with the aim of improving compliance by public authorities with the PR Act QSA will also undertake a more fulsome evaluation of recordkeeping maturity and compliance in five years to assess the effectiveness of the reforms. QSA anticipates improved levels of recordkeeping maturity and compliance within public authorities to be evident now.

Throughout implementation, QSA will continue to monitor and support public authorities to mitigate the impact of risks which may affect public authorities' ability to focus on improved recordkeeping compliance (e.g., machinery-of-government changes). Local government sector has identified they may experience a greater impact than other public authorities. This impact will be factored into QSA's ongoing monitoring and support provided to the sector.

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 because of the reforms – will be assessed through post implementation reviews.

[47] QSA, *Records Governance Policy*.
[48] QSA, *Recordkeeping Maturity Assessment Tool*.

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.

To address stakeholder feedback, it is proposed to use an extended lead in period for public authorities. This will provide public authorities with a reasonable period, of up to twelve months after the commencement of the legislation, before reforms have effect.

To then evaluate government intervention and potential benefits or ongoing risks, the evaluation tools noted above will be employed.

Attachment 1 – Submissions and survey responses received

No.	Submitter
1	Jumbunna Institute for Indigenous Education and Research (Monash University) (submission)
2	Public Records Review Committee (submission)
3	Interim Truth and Treaty Body (submission)
4	Logan City Council (submission)
5	Noosa Council (email submission)
6	Brisbane City Council (submission)
7	Ipswich City Council (submission)
8	Moreton Bay Regional Council (submission)
9	South Burnett Regional Council (submission)
10	Redland City Council (submission)
11	Central Highlands Regional Council (submission)
12	Charters Towers Regional Council (email submission)
13	Local Government Association of Queensland (submission)
14	Department of Education (submission)
15	Department of Children, Youth Justice and Multicultural Affairs (submission)
16	Department of Health (submission)
17	Department of Communities, Housing and Digital Economy (submission)
18	Department of Agriculture and Fisheries (submission)
19	Department of Resources (submission)
20	Department of Tourism, Innovation and Sport (submission)
21	Department of Regional Development, Manufacturing and Water (submission)
22	Queensland Government department (de-identified) (submission)
23	Queensland Corrective Services (submission)
24	Department of Transport and Main Roads (survey)
25	Department of Children, Youth Justice and Multicultural Affairs (survey)
26	Department of Education (survey)
27	Department of Health (survey)
28	Queensland Treasury (survey)
29	Queensland Corrective Services (survey)

Attachment 2 – Significance Criteria

Significance Category	Significance Sub-Category	Criteria	Example
Historical	Contemporary	• Was the record considered significant at the time of its creation? • Is the record representative of the state of political, cultural, or social conditions and/or beliefs at the time?	• Series ID 19294 *The Proclamation of Queensland document, Office of the Governor of Queensland*
	Causal	• Did the record (or the event, person, or activity it documents) cause changes to the shape and future of Queensland (or the nation)?	• Series ID 19711 *Commission of Inquiry Report, Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct* (Fitzgerald Inquiry)
	Pattern	• Is the record representative of the beginning, alteration or end of a broad theme, pattern of activity or social development?	• Series ID13176 *Register of Ships' Arrivals, Inspector of Pacific Islanders, Maryborough*
	Rarity	• Is the record format considering a historical rarity? • Does the record have exceptionally unique or aesthetic qualities that distinguish it from other items?	• Series ID 173 *Photographic Negatives (A1 Series), Lands Department* (Glass plate negatives)
Rights and Entitlements	Personal	• Does the record include personal and/or identifying information of an individual or group of people? • Is the record representative of an individual's experience and/or life story?	• Series ID 4429 *Personal Files, Chief Protector of Aboriginals Office / Director of Native Affairs Office*

	Community	• Is the record held in community esteem? • Is the record representative of the evolution, culture and/or collective experience of a community?	• Series ID 1264 *Films of Sister Kenny's Work on Treating Infantile Paralysis, Medical Board of Queensland*
	Ethical	• Would the loss of the record allow, or be in itself, an injustice? • Does the record hold evidential value of government accountability?	• Series ID 3602 *Commission of Inquiry into Abuse of Children in Queensland Institutions (Forde Inquiry) - Operational Files*
Present and Future	Immediate	• Does the record provide meaning and relevance to current events or concerns?	• Series ID 4353 *Savings Bank Ledger Cards, Chief Protector of Aboriginals* Office
	Prospective	• Could the record provide meaning and relevance to future events or concerns?	• Item ID 620409 *Flood map of Brisbane and suburbs, delineating the extent of the January 1974 Brisbane River flood.*