

Pages 1 through 14 redacted for the following reasons:

Exempt Sch 3(6)

Released under RTI - DCHDE

MINISTERIAL BRIEFING NOTE

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

Decision/Action by: N/A

Reasons for Urgency: N/A

Briefing type: Requested briefing note for noting

Responsible Area: Queensland State Archives

Electorate: Statewide

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

PURPOSE

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

RECOMMENDATION

It is recommended that the Minister:

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

Noted	Approved	Not approved

Yes	No
	x

Media Release Required

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

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

CONTEXT

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

KEY ISSUES

- The investigation into allegations of unauthorised disposal of public records highlighted the potential for the widespread creation and receipt of public records in the private email accounts by Ministers and their staff.
- While the use of private email accounts is not a breach of the Act, without implementation of appropriate processes to manage public records created or received in private accounts, there is a risk that future breaches of the Act will occur.
- Following the completion of the CCC investigation the CCC reported that the use of private email accounts, and particularly the deletion of records in those accounts, could give rise to a significant perception that the use of such accounts is done for a corrupt purpose.
- The use of private email accounts for official purposes is also symptomatic of a much wider issue related to the standard of recordkeeping practices across government and a lack of awareness of responsibilities and requirements relating to the management of public records.
- A number of recommendations specific to the actions of Minister Bailey were made to the CCC, along with several key recommendations relating to improving the standard of government recordkeeping and the management of ministerial records. Recommendations related to recordkeeping practices made by the State Archivist were accepted by the CCC. These recommendations were repeated in the independent report provided to the former Director-General of DSIT.
- The common recommendations made relating to improving the standard of government recordkeeping and the management of ministerial records are as follows:
 - That the State Archivist undertakes an urgent review of the processes in place for all current Ministers and Ministerial staff in managing public records created or received within their private email accounts.
 - That the State Archivist contact former Ministers of the last two Governments to request that they review their private email accounts for public records that may be in their possession.
 - That the State Archivist urgently reviews the guidance provided by Queensland State Archives on the management of public records within email, private email and social media accounts.
 - That the Department of the Premier and Cabinet (DPC) urgently reviews the training and support it provides to Ministers and their staff in managing public records. DPC should work closely with the State Archivist in developing and delivering this training and support.

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

ELECTION AND GOVERNMENT COMMITMENTS

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

FINANCIAL IMPLICATIONS

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

CONSULTATION

- Not applicable.

FUTURE STEPS

- Work will continue on implementing the recommendations from the State Archivist's investigation.

- Further ministerial briefing notes will be prepared relating to specific recommendations including priority amendments to the Act.

COMMUNICATIONS/MEDIA OPPORTUNITIES

- Not applicable.

Released under RTI - DCHDE

Karen Newton

From: Office of the State Archivist
Sent: Monday, 29 January 2018 5:34 PM
To: Cathy Cross
Subject: FW: HPE CM: Re: DMView_1516864194810_00105-2018_64815_Ministerial briefing note on recommendations arising from investigation into alleged disposal of public records by Minister Bailey - mS edit

Hi Cathy

We attached Mike's approval email to you

Regards Heather

From: Mike Summerell
Sent: Friday, 26 January 2018 5:36 AM
To: Cathy Cross <Cathy.Cross@dsiti.qld.gov.au>
Cc: Office of the State Archivist <Officeofthe.StateArchivist@archives.qld.gov.au>
Subject: HPE CM: Re: DMView_1516864194810_00105-2018_64815_Ministerial briefing note on recommendations arising from investigation into alleged disposal of public records by Minister Bailey - mS edit

Hi Cathy

Yes it is fine

Guideline is correct...the inability to enforce is one of the issues
Mike

From: Cathy Cross
Sent: Thursday, 25 January 2018 5:16:34 PM
To: Mike Summerell
Cc: Office of the State Archivist
Subject: DMView_1516864194810_00105-2018_64815_Ministerial briefing note on recommendations arising from investigation into alleged disposal of public records by Minister Bailey - mS edit

Hi Mike

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

Anyway some food for thought, and it's coming back to you in MECS for another review.(sorry)

Have a great weekend.

Cathy

Cathy Cross

Executive Officer
Office of the Assistant Director-General
Digital Capability, Information and Transaction Based Services
Department of Housing and Public Works

P (07) 3719 7730

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

Level 14, Terrica Place,
140 Creek Street, BRISBANE QLD 4000
GPO Box 2457, BRISBANE QLD 4001

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

Karen Newton

From: OADGDPS
Sent: Thursday, 1 February 2018 11:56 AM
To: 'Department of Housing and Public Works'
Subject: your item 298-18 MBN - State Archivist's update on progress of recommendations resulting from the independent investigation into alleged unauthorised disposal of public records by a Minister

Good morning

As discussed with Cynthia, could you please not progress 298-18 at this point in time, it has been decided that rather than sending in dot point form it will have a table inserted showing recommendations and status.

Many thanks

Cathy Cross

Executive Officer
Office of the Assistant Director-General
Digital Capability, Information and Transaction Based Services
Department of Housing and Public Works

P (07) 3719 7730

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

Level 14, Terrica Place,
140 Creek Street, BRISBANE QLD 4000
GPO Box 2457, BRISBANE QLD 4001

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

Karen Newton

From: Office of the State Archivist
Sent: Monday, 29 January 2018 5:34 PM
To: Cathy Cross
Subject: FW: HPE CM: Re: DMView_1516864194810_00105-2018_64815_Ministerial briefing note on recommendations arising from investigation into alleged disposal of public records by Minister Bailey - mS edit

Hi Cathy

We attached Mike's approval email to you

Regards Heather

From: Mike Summerell
Sent: Friday, 26 January 2018 5:36 AM
To: Cathy Cross <Cathy.Cross@dsiti.qld.gov.au>
Cc: Office of the State Archivist <Officeofthe.StateArchivist@archives.qld.gov.au>
Subject: HPE CM: Re: DMView_1516864194810_00105-2018_64815_Ministerial briefing note on recommendations arising from investigation into alleged disposal of public records by Minister Bailey - mS edit

Hi Cathy

Yes it is fine

Guideline is correct...the inability to enforce is one of the issues
Mike

From: Cathy Cross
Sent: Thursday, 25 January 2018 5:16:34 PM
To: Mike Summerell
Cc: Office of the State Archivist
Subject: DMView_1516864194810_00105-2018_64815_Ministerial briefing note on recommendations arising from investigation into alleged disposal of public records by Minister Bailey - mS edit

Hi Mike

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

Anyway some food for thought, and it's coming back to you in MECS for another review.(sorry)

Have a great weekend.

Cathy

Cathy Cross

Executive Officer
Office of the Assistant Director-General
Digital Capability, Information and Transaction Based Services
Department of Housing and Public Works

P (07) 3719 7730

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

Level 14, Terrica Place,
140 Creek Street, BRISBANE QLD 4000
GPO Box 2457, BRISBANE QLD 4001

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

Karen Newton

From: OADGDPS
Sent: Thursday, 1 February 2018 11:56 AM
To: 'Department of Housing and Public Works'
Subject: your item 298-18 MBN - State Archivist's update on progress of recommendations resulting from the independent investigation into alleged unauthorised disposal of public records by a Minister

Good morning

As discussed with Cynthia, could you please not progress 298-18 at this point in time, it has been decided that rather than sending in dot point form it will have a table inserted showing recommendations and status.

Many thanks

Cathy Cross

Executive Officer
Office of the Assistant Director-General
Digital Capability, Information and Transaction Based Services
Department of Housing and Public Works

P (07) 3719 7730

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

Level 14, Terrica Place,
140 Creek Street, BRISBANE QLD 4000
GPO Box 2457, BRISBANE QLD 4001

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

MINISTERIAL BRIEFING NOTE

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

Decision/Action by: N/A

Reasons for Urgency: N/A

Briefing type: Requested briefing note for noting

Responsible Area: Queensland State Archives

Electorate: Statewide

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

PURPOSE

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

RECOMMENDATION

It is recommended that the Minister:



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

Noted	Approved	Not approved
✓		
✓		

Yes	No

Media Release Required

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

DIVISIONAL HEAD ENDORSEMENT Andrew Spina Assistant Director-General Digital Capability, Information and Transaction Based Services Date: 05 / 03 /2018	COMMENTS
DIRECTOR-GENERAL ENDORSEMENT  Liza Carroll Director-General Department of Housing and Public Works Date: 7/3/18	COMMENTS
MINISTERIAL APPROVAL  Mick de Brenni MP Minister for Housing and Public Works Minister for Digital Technology Minister for Sport Date: 7/4/18	COMMENTS

CONTEXT

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

KEY ISSUES

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

ELECTION AND GOVERNMENT COMMITMENTS

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

FINANCIAL IMPLICATIONS

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

CONSULTATION

- Not applicable.

FUTURE STEPS

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

COMMUNICATIONS/MEDIA OPPORTUNITIES

- Not applicable.

Released under RTI - DCHDE

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

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

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

MINISTERIAL BRIEFING NOTE

Subject: Proposed amendments to the *Public Records Act 2002* for mandatory compliance and penalties for breaching the Act

Decision/Action by: Click here to enter a date

Reasons for Urgency: N/A

Briefing type: Unrequested briefing note for approval

Responsible Area: Queensland State Archives

Electorate: Statewide

Contact Officer: Mike Summerell – (07) 3037 6601

PURPOSE

To seek approval from the Minister for proposed amendments to the *Public Records Act 2002* to introduce mandatory compliance with key recordkeeping standards and policies with penalties for non-compliance and penalties for not ensuring the protection and safe custody of records in line with recommendations resulting from an investigation into the alleged unauthorised disposal of public records by the Honourable Mark Bailey MP, former Minister for Main Roads, Road Safety and Ports and Minister for Energy, Bio Fuels and Water Supply.

RECOMMENDATION

It is recommended that the Minister:

1. Approve an amendment to the *Public Records Act 2002* to make compliance with key recordkeeping standards and policies mandatory and introduce penalties for non-compliance.
2. Approve an amendment to the *Public Records Act 2002* to introduce penalties for not ensuring the safe custody and preservation of public records.

Noted	Approved	Not approved

Yes	No

Media Release Required

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

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

CONTEXT

- In March 2017, the Crime and Corruption Commission (CCC) tasked the State Archivist with investigating an allegation of unauthorised disposal of public records by the Honourable Mark Bailey MP, former Minister for Main Roads, Road Safety and Ports and Minister for Energy, Bio Fuels and Water Supply, when he deleted his private email account mangocube6@yahoo.co.uk.
- The State Archivist's investigation found that Minister Bailey was likely in breach of several sections of the *Public Records Act 2002* (the Act) including section 7 which requires public authorities, including Ministers, to make and keep, full and accurate records of its activities and have regard to policies, standards and guidelines issued by the State Archivist and section 8 which requires public authorities to ensure the safe custody and preservation of public records in their possession.
- The Act currently provides no penalties for a breach of either section which are, in the State Archivist's view, the most important statutory requirements placed upon public authorities by the Act. The absence of penalties is a significant weakness of the Act and a major factor in the poor standards of recordkeeping across government.

KEY ISSUES

- Following the completion of the investigation into Minister Bailey in September 2017, the State Archivist made several recommendations to the CCC including amendments to the Act for mandatory compliance with key recordkeeping standards and policies issued by the State Archivist and penalties for non-compliance.
- All the recommendations arising from the investigation were supported by the CCC including the introduction of mandatory compliance.
- The CCC investigation and the State Archivist's findings during the investigation highlighted a failure to meet recordkeeping responsibilities legislated by the Act by a Minister and his staff.
- The State Archivist noted that recordkeeping failures are likely to be commonplace across the whole of Government based on current standards of reported recordkeeping practices by public authorities.
- The CCC noted in media statements that even though technically breaches of the Act had been made by the Minister including the failure to manage public records appropriately, no provisions for actions arising or penalties for breaches are contained in the Act.
- To support these amendments a mechanism will be put in place for the Public Records Review Committee to approve mandatory standards and guidance to ensure appropriate limitations to the statutory powers of the State Archivist.
- By introducing limited mandatory compliance and penalties for breaches of key sections of the Act, public authorities will be encouraged to take their recordkeeping responsibilities more seriously and help ensure adequate resourcing is available to implement effective recordkeeping. It will also help to prevent corruption and promote accountability of public sector employees as evidenced by the recent corruption cases against a number of local governments where poor recordkeeping is often cited as an enabler of corruption.
- The proposed amendment will help reinforce the purpose of the Act which is to ensure that public records of Queensland are made, managed, kept and if appropriate, preserved in a usable form for the benefit of present and future generations.

ELECTION AND GOVERNMENT COMMITMENTS

- With the government's significant investment and commitment to the Digital Archive Program, effective recordkeeping is key to ensuring permanent value records are created and preserved for future generations and managed in the digital archive.

FINANCIAL IMPLICATIONS

- Not applicable.

CONSULTATION

- The CCC were provided with the recommendations as part of their investigation and provided full support for all of the recommendations.
- Consultation on the proposed amendment will take place as part of the Cabinet process.

FUTURE STEPS

- Queensland State Archives to work with the Department of Housing and Public Works Cabinet and Legislative Liaison Officer (the CLLO) to place the amendment to Section 7 of the *Public Records Act 2002* on the Cabinet forward timetable.
- Develop an Authority to Prepare as part of the Cabinet process for the amendments to the Act

COMMUNICATIONS/MEDIA OPPORTUNITIES

- Not applicable.

BACKGROUND

- There are approximately 500 public authorities covering agencies such as Ministers, Assistant Ministers, departments, universities, local governments, courts, Government Owned Corporations, statutory bodies and statutory authorities.
- The Minister was previously advised about this issue in MBN HPW 000682-2018 which provided information on the recommendations arising from the investigation and progress to date.
- The last biennial whole of government recordkeeping survey conducted by Queensland State Archives in 2014/15 found that 85% of public authorities are not compliant with minimum recordkeeping standards. The investigation confirmed these findings.
- Section 7 (1) of the Act requires public authorities to
 - Make and keep full and accurate records of its activities;
 - Have regard to any relevant policy, standards and guidelines made by the State Archivist about the making and keeping of public records
- The executive officer of a public authority must ensure compliance with section 7 (1) of the Act.
- Section 8 of the Act states that a public authority is responsible for ensuring the safe custody and preservation of records in its possession.
- The sections of the Act that have penalty points applied to them are:
 - Section 12 – A person must not damage a public record more than 30 years old, unless the person has a reasonable excuse – 100 penalty points
 - Section 13 – A person must not dispose of a public record unless the record is disposed of under an authority given by the archivist or other legal authority, justification or excuse – 165 penalty points
 - Section 44 – A person who ceases to be an authorised officer must return the person's identity card to the archivist as soon as practicable (but within 21 days) after the person ceases to be an authorised officer, unless the person has a reasonable excuse – 10 penalty points
 - Section 48 – a person must not obstruct an authorised officer in the exercise of a power unless the person has a reasonable excuse – 100 penalty points
 - Section 49 – a person must comply with a notice unless the person has a reasonable excuse – 40 penalty points.

Pages 33 through 44 redacted for the following reasons:

Exempt Sch 3(6)

Released under RTI - DCHDE

DIRECTOR-GENERAL CONFIDENTIAL BRIEFING NOTE

Subject: Summary of investigations into alleged breaches of the *Public Records Act 2002* and known perceived deficiencies in the *Public Records Act 2002*.

Decision/Action by: N/A

Reasons for Urgency: N/A

Briefing type: Requested Confidential briefing note for noting

Responsible Area: Queensland State Archives

Electorate: Statewide

Contact Officer: Mike Summerell – (07) 3037 6601

PURPOSE

To provide the A/Director-General with a summary of investigations that are currently in progress or have been completed by the State Archivist into alleged breaches of the *Public Records Act 2002* (the Act) and known perceived deficiencies in the Act.

CONTEXT

- The main purposes of the Act are to ensure that public records of Queensland are made, managed, kept and, if appropriate, preserved in a useable form for the benefit of present and future generations; and to support the *Right to Information Act 2009* (s.3). Amongst the key statutory obligations in the Act that public authorities must follow is the requirement to make and keep full and accurate records of its activities (s.7(1)(a) and not to dispose of a public record unlawfully (s.13).
- Since 2017, Queensland State Archives (QSA) has opened 16 separate investigations (six completed, ten still open) into alleged breaches of the Act by public authorities. Prior to 2017, records indicate no investigations into potential breaches had been undertaken by the State Archivist.
- Four of these investigations were referred to QSA by the Crime and Corruption Commission (CCC); four were referred to QSA from members of the public; two were referred to QSA in the form of a Public Interest Disclosure (PID); two potential breaches of the Act were identified in media articles; one was a consequence of an earlier State Archivist investigation; and two were referred to QSA by Complainant [REDACTED].
- A major factor throughout these investigations have been apparent deficiencies in the Act itself.
- A process to review the Act commenced in 2014 and continued until 2018, when it was put on hold by Minister De Bréni as he did not consider Review of the Act a priority.

KEY INVESTIGATIONS UNDERTAKING SINCE 2017

Investigation into the alleged unlawful disposal of public records from a private email account by Minister Bailey

- In March 2017, reports from *The Australian* alleged that the Honourable Mark Bailey, Minister for Main Roads, Road Safety and Ports and Minister for Energy, Bio Fuels and Water Supply had unlawfully disposed public records within a private email account in response to a Right to Information (RTI) request from *The Australian*.
- The State Archivist commenced an independent investigation into these allegations in March 2017 in the context of potential breach of the Act. The State Archivist obtained legal advice
Exempt Sch 3(7)
- In March 2017, Department of the Premier and Cabinet (DPC) were requested to investigate the matter by the Premier.
- In March 2017, the CCC commenced a related potential corrupt conduct investigation into the actions of Minister Bailey.
- Given multiple investigations and the central allegation that related to potential breaches to the Public Records Act, the CCC requested the State Archivist work with DPC to initial identify whether Minister Bailey had potentially disposed of public records without authorisation.
- In June 2017, following a report by the State Archivist and DPC which concluded that Minister Bailey had potential disposed of several hundred public records without authorisation, the CCC requested the State Archivist conduct a further investigation to confirm whether Minister Bailey had breached the Public Records Act and to identify records which could be of interest to the CCC in regard to potential corruption.
- In September 2017, the State Archivist presented his final report to the CCC.
- In October 2017, the State Archivist presented his independent report to the Director-General of the Department of Science, Information Technology and Innovation (DSITI). The State Archivist's independent report related only to potential breaches of the Public Records Act.
- In both reports, the State Archivist concluded that the actions of Minister Bailey resulted in multiple breaches to the Act, specifically s.7, s.8, s.13 and s.14. The State Archivist ultimately concluded it would be not possible to take successful action against Minister Bailey for these breaches due to deficiencies in the Act and the CCC's decision not to take action against Minister Bailey.
- In his report, the State Archivist made a number of recommendations specific to the actions of Minister Bailey along with several key recommendations related to improving the standard of government record-keeping and the management of ministerial emails.
- Key among the recommendations of this investigation was that the government consider urgent amendments to the Act.
- The CCC publicly accepted all of the State Archivist's recommendations in a media statement in September 2017.
- Of the recommendations made that, were not specific to the Minister Bailey investigation, four have been completed, with a remaining six recommendations not able to progressed as they are not seen as a priority by Minister de Brenni (including the recommendation to consider urgent amendments to the Act).
- Both the CCC investigation and the independent State Archivist's investigation highlighted the potential for the widespread creation and receipt of ministerial records in the private email accounts of Ministers, Assistant Ministers and their staff. It also highlighted wider issues related to the standard of recordkeeping practices across government and a lack of awareness of responsibilities and requirements relating to the management of public records.

Investigation into potential breaches of the Act by five Government Ministers identified during the State Archivist's investigation into the actions of Minister Bailey

- In March 2018, the State Archivist informed the Director-General (DG) of DHPW of his intention to contact Five Ministers to confirm their treatment of public records that they had created or received in their private emails accounts. These records were identified during the State Archivist's investigations into the actions of Minister Bailey in 2017. One of the Ministers to be contacted was Minister de Brenni. There was no suggestion of corrupt conduct in any emails related to Minister de Brenni, the records were purely of a technical nature in terms of their classification as a public record.
- The creation and receipt of public records in a private email account is not a breach of the Act.
- The failure to appropriately manage public records created or received in a private email account is however a potential breach of the Act. The State Archivist intended to contact the Ministers to confirm that they had treated the identified public records in an appropriate manner.
- The follow up investigation to confirm the appropriate treatment of the records by the Ministers was a recommendation supported by the CCC in September 2017. The CCC had been provided copies of all the relevant emails for all the Ministers to consider if they were relevant to their investigations.
- The DG of DHPW directed the State Archivist not to contact the Ministers.
- The State Archivist sought advice from Crown Law Exempt Sch 3(7)

The request for Crown Law advice has never been progressed by the Department.

- The investigation remains technically open. A number of the public records are still required to have been retained.

Investigation into potential breaches of the Act by Logan City Council councillors and employees

- In December 2018, the CCC requested the State Archivist to review correspondence that took place between a number of Logan City Council councillors and employees in private messaging accounts.
- Following his investigation, the State Archivist identified that a number of the messages were considered public records, and that the actions of the councillors to delete these messages prior to capture in Logan City Council systems may have resulted in a number of potential breaches to the Act.
- Given the potential breaches to the Act that were identified during assistance provided to the CCC, the State Archivist undertook his own independent investigation as Exempt Sch 3(7) he had a statutory obligation to do so.
- The State Archivist found that the actions of the Logan City Council councillors and employees resulted in multiple technical breaches of the Act, specifically sections 7, 8, 13 and 14.
- Under the Act, the responsible authority for these breaches is in fact the CEO of Logan City Council, not the councillors or employees. Given the content of messages was allegedly an attempt to dismiss the same CEO, the State Archivist considered action against the CEO as completely inappropriate.
- The State Archivist made a number of recommendations in response to the findings of his investigation, including the need for legislative amendments to the Act. A number of these amendments were consistent with those previously identified following the investigation into the actions of Minister Bailey.

- While the recommendation relating to legislative amendments have not progressed, all other recommendations have been completed.

Investigation into potential unlawful disposal of records by the Queensland Police Service (QPS)

- In February 2019, the *Brisbane Times* published an article about the Queensland Police conducting an investigation into how filing cabinets containing police documents came to be found at a waste facility in Cairns.
- QSA contacted QPS to seek further information regarding the potential unlawful disposal of records by Cairns Police.
- The QPS advised that all material had been recovered, however a formal complaint had been lodged with the Ethical Standards Command and the CCC and that the matter was subject to an internal investigation.
- To date QPS has not advised QSA about the outcome of their internal investigation.
- The State Archivist's view is that given that all records were recovered that action for potential breach of the Act was not appropriate.

Investigation into the unlawful disposal of records by a former employee of the Public Service Commission (PSC)

- On the advice of the CCC, the Commission Chief Executive of the PSC wrote to the State Archivist in February 2019 regarding the alleged unlawful disposal of public records of a PSC employee.
- The Commission Chief Executive advised that an investigation into the actions of the former PSC employee identified a small number of public records were allegedly permanently deleted. These records were however able to be recovered.
- Given the concerns around a potential repeat of the issue in the future, the State Archivist sought confirmation from the Commission Chief Executive about any preventative measures that the PSC had put in place to minimise the risk of unlawful disposal of public records re-occurring.
- The Commission Chief Executive was able to outline a range of initiatives that had been put in place to ensure their future compliance with the Act.
- The State Archivist view was that given actions taken by PSC and the fact that all records were recovered, action for potential breach of the Act was not appropriate. The State Archivist was satisfied that the PSC had put processes in place to minimise the future risk of unlawful disposal of public records.

Investigation into the Queensland Building and Construction Commission's (QBCC) failure to create records of decisions

- In March 2019, QSA received a complaint from a member of the public requesting an investigation into alleged breaches of the Act by the QBCC.
- The complainant alleged that the QBCC failed to make and keep full and accurate records of its activities (i.e. decisions that were made) and as a result, failed to comply with their requirements under s.7 of the Act.
- The State Archivist wrote to the QBCC to seek further information in relation to their recordkeeping practices and actions that the QBCC has taken to prevent a re-occurrence of a similar incident occurring.
- Based on the information provided by the complainant and the QBCC, the State Archivist considers that a technical breach of s.7 of the Act occurred. However under the Act, there are no penalties for this breach and therefore it was not clear what, if any, action the State Archivist would be able to take.
- The State Archivist requested Crown Law advice

Exempt Sch 3(7)

This request for Crown Law advice has never been progressed by the Department

- The need to review and amend s.7 of the Act had been identified during both the investigation into Minister Bailey and the investigation into Logan City Council. The current situation in effect means that if you create a public record that is required to be retained under the Act, and then dispose of it without authorisation you can potentially be prosecuted under s.13 of the Act. However if you fail to create the records at all, this is a breach of s.7, but the Act provides no penalties for breach of s.7, thus the Act can be avoided by simply making no records at all.
- Following a request for Crown Law advice from the Public Records Review Committee (PRRC) in Dec 2019 ^{Exempt Sch 3(7)}

The department is currently considering a committee or procedure for the investigation of complaints under legislation and potential prosecutions. As of November 2020, this committee or procedure has not been established.

- The State Archivist is awaiting the forming of this committee or procedure to refer this matter to in relation to actions to be taken response to breach of s.7 of the Act.
- In June 2019, the State Archivist referred the matter to the CCC for consideration. Following a review by the CCC, they referred the matter to the QBCC to manage and deal with.
- QSA has not received any further information from the QBCC regarding actions that they have taken in response to this complaint.

Investigation into the unlawful disposal of public records from Metro North Hospital and Health Service

- In June 2019, the State Archivist became aware of a potential breach of the Act by the Metro North Hospital and Health Service following media reporting of an incident where public records were provided to a contractor for destruction and accidentally spilled onto an inner-city Brisbane road.
- This action may have resulted in a breach of s.8 and s.13 of the Act.
- The State Archivist wrote to the CEO of Metro North Hospital and Health Service to seek further information in relation to the incident that had been reported in the media.
- Following a review of the incident, Metro North Hospital and Health Service made a number of recommendations for improving the management of waste and advised the State Archivist that all recommendations had been accepted and were being implemented.
- The State Archivist was satisfied with the steps being taken to minimise the risk of further similar breaches of the Act and the matter is closed. There was insufficient evidence to conclude that a breach of the Act had occurred.

Investigation into the alleged unlawful disposal of public records of the Premier's Chief of Staff

- In November 2019, the Deputy Leader of the Opposition wrote to the State Archivist to request an investigation into media reports regarding the potential unlawful disposal of the resignation letter of David Barbagallo, the Premier's Chief of Staff.
- As the matter was also subject to an investigation by the Crime and Corruption Commission, QSA contacted the CCC to inquire whether an investigation by the State Archivist into the matter would conflict with the CCC's investigation. The CCC advised it had no objection to an investigation by the State Archivist proceeding.
- Following discussions with the DG of DHPW, the State archivist was initially advised to contact Mr Barbagallo's lawyer about the missing letter through Filly Morgan, DPC.
- DPC then advised direct contact with Mr Barbagallo's lawyer could be made directly which was made.
- Mr Barbagallo's lawyer advised a copy of his resignation letter was placed in his out tray for the attention of his executive assistant. It may have been inadvertently disposed of during a clean up of his office following his resignation.
- The State Archivist followed up with the Premier's Chief of Staff who advised the executive assistant could not recall seeing the letter.
- This matter indicates technical breach of section 13 of the Act related to unauthorised disposal and potentially breach of section 7 which requires public authorities to make and keep full and accurate records.

- Exempt Sch 3(7)
[REDACTED] This request has not been progressed by the Department.
- Exempt Sch 3(7)
[REDACTED] The department is currently considering a committee or procedure for the investigation of complaints under legislation and potential prosecutions. As of November 2020, this committee or procedure has not been established.
- This matter is outstanding. The State Archivist is awaiting the forming of this committee or procedure to refer this matter to, in relation to actions to be taken response to breach of s.7 of the Act.

Investigation into the alleged unlawful disposal of public records by the Queensland Police Service (QPS)

- In April 2020, QSA received notification from a member of the public requesting an investigation into alleged breaches of the Act by the QPS.
- The complainant alleged that the QPS breached s.13 of the Act and s.129 of the *Criminal Code 1899* and destroyed records that the complainant allegedly had been provided to the Southport Police Station.
- Given the potential for the unlawful disposal of public records, the State Archivist undertook a review to establish whether any breaches of the Act occurred.
- The State Archivist wrote to the Police Commissioner to seek further information in relation to their recordkeeping practices and actions that were alleged in the complaint.
- Based on information provided by both the complainant and the QPS, the State Archivist was unable to establish beyond a reasonable doubt, the unlawful disposal of public records by the QPS.
- The State Archivist informed the complainant of his findings. However, the complainant has sent further correspondence requesting a review of the matter. If any new evidence is received, the State Archivist will review the matter further.

Investigation into the alleged unlawful disposal of public records by the Queensland Police Service (QPS)

- In May 2020, QSA received notification from a member of the public requesting an investigation into the potential unlawful disposal of public records by the QPS.
- The complainant alleges that the QPS unlawfully destroyed public records relating to them.
- Following further correspondence with the complainant, the State Archivist was provided with a list of documents that are subject to the complaint.
- Given the allegation also involves a number of other Queensland Government agencies, the State Archivist sought advice from the DHPW Integrity Services Unit regarding appropriate actions to take in response to the complainant's allegation.
- Given the nature of the allegation and the potential for corrupt conduct (as defined by the *Crime and Corruption Act 2001* (CC Act)), the complaint was referred to the Corrupt Conduct Intake & Assessment Committee for review.
- Following review the matter was referred to the Crime and Corruption Commission for assessment for corrupt conduct.
- The Crime and Corruption Commission advised no finding of corrupt conduct was found and the matter can be investigated by QSA.
- Further assessment by DHPW Legal of this matter is underway before contact with QPS is made.

Investigation into the alleged unlawful disposal of ministerial records

- In May 2020, the Deputy Leader of the Opposition wrote to the State Archivist to request an investigation into media reports regarding the potential unlawful disposal of ministerial records by former Deputy Premier, Jackie Trad.
- Given the subject of this complaint potentially involved corrupt conduct as defined by the CC Act, the matter was referred to the CCC by the Assistant Director-General, Corporate Services. Advice was also sought from the CCC whether it would be appropriate for the State Archivist to investigate given the CCC had an ongoing investigation involving Jackie Trad MP.
- In their response, the CCC advised that they considered that there was insufficient evidence to raise a reasonable suspicion that corrupt conduct occurred.
- CCC provided approval for the State Archivist to proceed with his investigation. Following this approval, the DHPW Corrupt Conduct Intake & Assessment Committee via the DHPW Integrity Services Unit requested the State Archivist to submit a plan prior to commencing an investigation.
- Following approval of the State Archivist's investigation plan, the State Archivist wrote to the Director-General of the Department of Education to request copies of specified records to establish whether any unlawful disposal of public records occurred.
- The Director-General of the Department of Education advised that due to the ongoing investigative processes of the PSC, they were not in a position to assist the State Archivist with his investigation at this point in time.
- The State Archivist has requested that following the completion of the PSC, the Department of Education assist the State Archivist with his investigation.
- The State Archivist has not received any further correspondence from the Department of Education and cannot currently progress this investigation further until the PSC releases it's report into the matter.

Public Interest Disclosure (PID): alleged unlawful disposal of Public Records

Exempt Sch 3(12)

Investigation into the alleged unlawful disposal of public records by the Queensland Police Service (QPS)

- In September 2020, QSA received correspondence from a member of the public requesting an investigation into the potential unlawful disposal of public records in the form of body worn camera footage by the QPS.
- The complainant alleges that the QPS unlawfully destroyed public records that relate to them and is required for an ongoing investigation.
- The matter has been referred to DHPW's Integrity Service Unit who advised further information from the complainant could be requested.

- The complainant has provided further supporting information in relation to their complaint.
- QSA is currently assessing this matter in conjunction with the Integrity Services Unit and Legal Services.

DEFICIENCIES IN THE PUBLIC RECORDS ACT 2002

A feature of many of the investigations noted above are actual or perceived deficiencies in the Public Records Act. A number of these issues are potentially in the public domain through statements made by the CCC in 2017 following the conclusion of their investigation of the actions of Minister Bailey. However the CCC statements related to the deficiencies in the Act were not discussed in detail. Some issues have been raised by experts on archives and public record keeping, however many of the issues noted that follow are not in the public domain. However they are significant factors in the investigations above and more importantly what has led to them. The view of QSA is very much that the Act currently is no longer fit for purpose and that is undermining its reason for existing - the maintaining the integrity of the public record for the benefit of the Queensland public. What follows are known or perceived deficiencies and show context as to what the Act sought to achieve.

Making and keeping records

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

There have been several examples above where the failure to make and keep public records has been identified as a significant issue. Apart from the practical impact on the efficient operation of government, the failure to make and keep public records (whether deliberate or otherwise) has the real potential to impact people's lives. The Royal Commission into Institutional Responses to Child

Sexual Abuse (RCIRCSA) recognised that inadequate records and recordkeeping practices contributed to delays or failures to identify and respond to risks and incidents of child sexual abuse. The problem was identified as continuing in present day institutions. A practical mechanism is required to enforce this section of the Act otherwise public authorities can openly fail in terms of making and keeping public records without repercussion.

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

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

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

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

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

Non mandatory nature of policies, standards and guidelines

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

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

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

Enforcement of public authority compliance with the Act

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

In 2020 investigations and complaints under the Act have been required by DHPW to be referred to the Integrity Services Unit for consideration by the Corrupt Conduct Intake and Assessment Committee. The Committee assesses any complaints for potential corrupt conduct under the *Crime and Corruption Act 2001*. Current departmental processes require any liaison with the Crime and Corruption Commission to be through the Assistant Director-General, Corporate Services. Correspondence with the CCC indicates that they regard the State Archivist having independence under the Act to undertake investigations and make recommendations about potential actions.

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

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

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

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

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

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

The current Act relies primarily on facilitation and persuasion techniques such as awareness raising and education, as well as monitoring (e.g. via self-assessment surveys) and independent dispute resolution (e.g. via the Public Records Review Committee). This model relies upon public authorities 'doing the right thing' due to the limited availability of enforcement mechanisms. QSA has previously reported on the state of recordkeeping in Queensland to Parliament on a bi-annual basis, the last survey completed in 2015 (s.56 of the Act) but does not currently require the State Archivist to 'name and shame' public authorities that are not compliant with the requirements of the Act. Attempts to conduct a survey since 2017 are discussed below.

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

In addition to section 7 of the Act, a number of other sections of the Act create statutory obligations but contain no penalty and therefore no avenue for prosecution for non-compliance. Section 8 of the Act requires public authorities to ensure the safe custody and preservation of records in their possession which is a statutory obligation. There have been examples of technical breaches of this section uncovered during QSA investigations including Logan City Council where councillors retained public records in private messaging applications rather than transferring them to official council recordkeeping systems. As this section does not require a person to take a specific action rather a provision to generally ensure the safe custody and preservation of records, prosecution under other legislation such as the *Queensland Criminal Code* is unlikely.

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

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

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

Independence of the State Archivist

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

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

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

- a) To establish and manage repositories and other facilities to store, preserve, exhibit and make available for use public records and other materials;
- b) To copy public records and other materials;
- c) To publish public records and other materials;
- d) To acquire records by purchase, gift, bequest or loan;
- e) To authorise the disposal of particular public records or classes of public records;

- f) To make policy, standards and guidelines about the making, keeping, preserving, managing and disposing of public records.

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

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

Section 23 of the Act complicates this however by stating:

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

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

Crown Law advice

Exempt Sch 3(7)

The wording of the Act, section 23 in particular, relating to direction and control is problematic. It is inconsistent with practices across all archives in Australia and New Zealand, potentially inconsistent with the intent of the Act itself, as the independence of the State Archivist was apparently a major consideration during the development and passing of the Act.

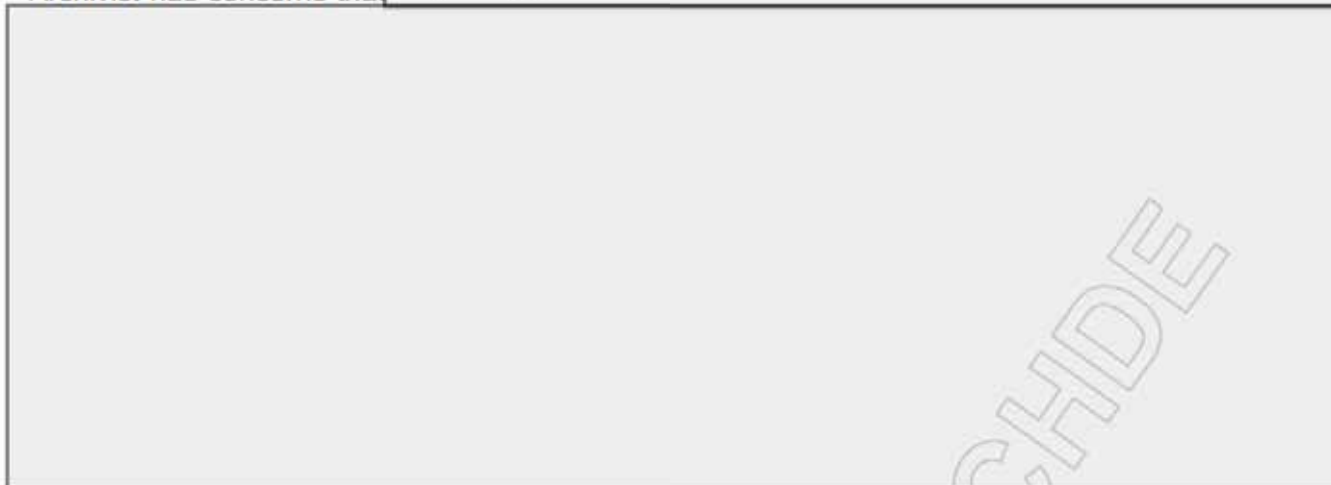
Exempt Sch 3(7)

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

Act does not apply Schedule 1

Direction of the State Archivist is in itself not a concern, it is completely expected of a member of executive of a department and frequently such direction adds significant value. However the State

Archivist has concerns that Exempt Sch 3(7)



These matters were a significant factor in the State Archivist's concerns in the direction not to investigate other Ministers following the Minister Bailey investigation, the QBCC investigation and in general the failure to progress requests for Crown Law advice noted in the investigations above.

Annual report

A related matter in regard to the independence of the State Archivist is raised in the implementation of section 56 of the Act, which requires the State Archivist to give an annual report on the administration of the Act to the Minister to provide to Parliament. The Act states that this report "may include details of the extent to which public authorities are complying with the Act including for example instances of non-compliance and any measures taken or the State Archivist recommends be taken to prevent or reduce noncompliance with the Act."

DHPW directed the State Archivist to remove certain content from this 2017-18 and 2018/19 Annual reports that related to the administration of the Public Records Act and key activities undertaken during the year. The excluded content was essentially material that could be perceived negatively. The result was in the State Archivist's opinion a misleading picture provided to the Minister and Parliament of compliance with the administration of the Act by public authorities and excluded the recommendations of the State Archivist to improve compliance with the Act.

The State Archivist had significant concerns that DHPW were potentially in breach of the Act by directing him on the content of the Annual report and in particular to remove content directly related to the administration of the Act. The State Archivist's view was that the content being removed could be perceived as being motivated by political considerations and is thus potential a breach of the QPS Code of Conduct.

Attempts by the State Archivist to obtain Crown Law legal advice Exempt Sch 3(7) have been made since 2018, however these requests for legal advice have not been progressed by the Department. In December 2019, as noted above, the PRRC requested advice Exempt Sch 3(7) In May 2020 Crown Law provided legal advice that stated:

Exempt Sch 3(7)



These matters ultimately all relate to a lack of clarity and consistency with the Act itself. S.23 and its interpretation has caused and continues to cause concern for many parties.

Disposal of public records in a digital context

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

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

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

Transfer of public records not mandatory

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

Management of Ministerial records

The Act is ambiguous about the management of public records of former Ministers. Under the Act, Ministers and Assistant Ministers are identified as public authorities for the purposes of the Act. However this only applies while a Minister or Assistant Minister remains in office. Once a Minister or Assistant Minister leaves office they are no longer a public authority. In effect means there is no entity identified that can make decisions about access to or the disposal of Ministerial records in QSA's custody. The impact of this means access to Ministerial records held at QSA can only be applied for under Right to Information and Privacy legislation. This includes former Ministers accessing records they created while in office. It also means temporary value Ministerial records held at QSA cannot be destroyed and remain available for access under the above legislation even though former Ministers may have expected them to have been destroyed. In addition if former Ministers continue to hold public records that relate to the time as a Minister they are potentially in unlawful possession of public records. However if they destroy the records they are potentially in breach of s.13 of the Act. The State Archivist has sought to address these deficiencies through urgent amendments on many occasions with no success.

Baseline recordkeeping survey

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

QSA's previous survey monitoring revealed that levels of record-keeping compliance had been demonstrably poor, with the 2014-15 survey revealing that 85 per cent of public authorities did not meet the minimum standard of records management practice that QSA deemed appropriate.

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

The survey was initially planned for release in 2017 but to date it has progressed for release. The survey progressed to the Minister's office in 2019, however it has not approved for release and no reasons have been provided for this decision. Given the last record-keeping survey was undertaken in 2015, this is a significant issue. It is now 3 years overdue. The survey is a key part of strategy to improve record-keeping, however we are unable to progress the survey. The other key part of the Record-keeping Transformation Program was review of the Act itself, as noted in detail that has also not progressed since 2018.

WHY THE PUBLIC RECORDS ACT WAS DEVELOPED

Many of these perceived deficiencies should be read in the context of what led to the drafting of the Public Records Act in 2002. The Act was intended to address a number of issues and interpretation of sections of the Act cannot be made without considering the intent of those who drafted it. The current dominant interpretation of the Act being applied by DHPW relates to Crown Law advice provided in 2018. There is no doubt that the literal interpretation being applied by Crown Law has validity, however as noted it is not consistent with earlier interpretations or indeed other archival legislation and practice in Australia and New Zealand.

The Archives in Queensland commenced regulatory life under iterations of the Libraries Act from 1943 and then The Libraries and Archives Act 1988, but did not achieve standalone legislation until 2002 following key Queensland reviews that looked at corruption, the archival legislation and freedom of information.

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

The Electoral and Administrative Review Commission (EARC) were established as a result of the Fitzgerald Inquiry to provide reports to the Chairman of the Parliamentary Committee for Electoral and Administrative Review, the Speaker of the Legislative Assembly and the Premier, with a view to achieving and maintaining efficiency in the operation of the Parliament; and honesty, impartiality and efficiency in (i) elections; (ii) public administration of the State and (iii) Local Authority Administration.

The EARC reviews of the Freedom of Information Legislation and the Queensland Legislative Assembly Electoral System, determined that there needed to be a review of the archives legislation and the administrative practices and resources of QSA and deemed that the powers, practices and procedures of the Queensland State Archives were important matters.

EARC released their Review on Archives Legislation in June 1992. Their Review recommended that there should be specific archives legislation to provide for the establishment of an independent archives authority, with this authority to be constituted as a statutory corporation and independent agency within a ministerial portfolio. The archives legislation was to provide that the Archives Authority not be subject to external direction, whether ministerial or otherwise.

The EARC reviews were just an initial recommendation in this space. There followed a series of positions taken relating to the independence of the State Archivist and its functions. The following table details some of these:

Background - Intent of the Act	<ul style="list-style-type: none">• The Legal, Constitutional and Administrative Review Committee on Freedom of Information in Queensland in 2000 also recognised the link between effective freedom of information legislation and good recordkeeping.
The <i>Public Records Bill 1999</i>	<ul style="list-style-type: none">• The <i>Public Records Bill 1999</i> provided that the State Archivist would not be appointed under the <i>Public Service Act 1996</i>. Clause 21 stated that the Archivist is to be appointed by the Governor in Council and that the <i>Public Service Act</i> does not apply to the appointment of the Archivist.• The intent of this arrangement was to further the perception of the independence of the State Archivist in respect of making decisions in relation to the disposal and retention of public records.
Second reading speech, 12 December 2001	<ul style="list-style-type: none">• If the statutory body or person controlling Archives lacks independence, in the sense of being free of direction, there will always be the possibility that political pressure will be brought to bear to approve, inter alia, which records should be preserved and which should be destroyed. The effect of this would be that Archives would cease to be a mechanism for accountability and a haven for the heritage of the state• If the State Archivist is not independent of the minister, then no believable public assurance can be given that decisions made by the State Archivist are not influenced by the responsible minister.

<p>Queensland. Electoral and Administrative Review Commission report</p>	<ul style="list-style-type: none"> • The Commission considers that an archives authority should be established in Queensland along the same lines as the NSW Archives Authority. It should be independent of a government department and constituted as a statutory corporation and independent agency within a ministerial portfolio. Clause 11 of the draft Archives Bill 1992 provides for this. The relevant minister should be responsible for ensuring adequate resources for the Authority, but be unable to direct it as to its administration of the archives legislation. <p>Recommendations</p> <ul style="list-style-type: none"> • ...archives legislation provide for the establishment of an independent archives authority, such authority to be constituted as a statutory corporation and independent agency within a ministerial portfolio • ...archives legislation provide that the Archives Authority not be subject to external direction, whether ministerial or otherwise <p>Conclusions</p> <ul style="list-style-type: none"> • Such legislation will provide an independent mechanism to ensure that the essential records of Queensland's history are created and preserved for the benefit of the present and future generations. • The main features of the archives legislation recommended in this Report are: <ul style="list-style-type: none"> ○ The present QSA be reconstituted as a new independent statutory corporation with functions and powers relating not only to the collection and preservation of public records of ongoing value, but also to the proper management of public records by government agencies, and the provision of public access to those records. ○ The statutory authority ("the Archives Authority") proposed will be independent of Ministerial direction, have wide ranging functions of training, guidance and enforcement in relation to records management, to provide public access to records of a certain age held by the Archives Authority and to collect and preserve records having value as historical records or otherwise having value as part of Queensland's or Australia's heritage ○ A central function of the Archives Authority will be to establish record management standards governing the making, management, preservation and destruction of public records. These standards will include an obligation on public authorities to make complete and accurate records of their operations
<p>Archives Society of Archivists (ASA) submission to the Scrutiny of Legislation Committee 2002</p>	<ul style="list-style-type: none"> • A good and effective archival regime in a State has to start with recordkeeping practices within agencies. The quality of processes within an archives are largely irrelevant if records have not been created by an agency in the first place or properly cared for by the responsible public authority • Consistent approaches adopted to define the powers of parties and not for example by stating that the archivist has a power in one section then severely qualifying it in a subsequent section

(RIMPA) Records and Information Management Professionals of Australasia Submission on the draft Qld Archives Bill 1999	<ul style="list-style-type: none"> We support the intent of the Bill to give the Queensland State Archivist powers to make decisions without fear of interference from the Government. This is paramount requirement if the role is to provide an independent view on the management of public records especially those relating to disposal decisions.
Published articles on recordkeeping and accountability for a healthy democracy	<p><i>Sue McKemmish (1993) - Recordkeeping, Accountability and Continuity: The Australian Reality</i></p> <ul style="list-style-type: none">lack of recordkeeping is symptomatic of certain types of behaviour, of a disregard for the formal procedures and processes that provide the safeguards against systemic corruption The Act focuses more on the custodial and heritage role of QSA than the records management standard-setting, granting of inspection powers and the role of an accountability mechanism The test of whether we have succeeded in spiriting 'an understanding of the archives as arsenals of democratic accountability . . . into society' will be when we observe our governments upholding and defending this role - not seeking to dismiss or suppress it. <p><i>Bob Sharman (1993) – The Hollow Crown</i></p> <ul style="list-style-type: none"> Referencing the report from the WA Inc Royal Commission...records provide the indispensable chronicle of a government's stewardship. They are the first defence against concealment and deception. Departmental officers and ministers hold responsibility for record creation, maintenance and retention, but overall responsibility for those matters cannot be left with those officials.

Unfortunately the Act contains multiple elements which to a large extent contradict and limit each other. The Act at present is in the opinion of the State Archivist unfit for purpose.

OTHER MATTERS RELATING TO RECORD-KEEPING OUTSIDE OF THE ACT

Changes in legislation impacting on record-keeping

A range of legislative obligations with record-keeping implications have been introduced over the past 12 – 24 months. Most notably, these include the introduction of the *Human Rights Act 2019* and legislative amendments made in response to recommendations from the Royal Commission into Institutional Responses to Child Sexual Abuse. The new and amended legislative obligations emphasise the importance of good record-keeping and keeping complete and reliable records that provide evidence that public authorities have taken all reasonable steps to ensure the proactive protection of vulnerable persons. This includes the introduction of a 'reverse-onus' on institutions to prove that they took all reasonable steps to prevent abuse; removal of limitation periods in relation to commencing action for civil damages in relation to child sexual abuse; records that demonstrate that acts or decisions are made in a way that is compatible with human rights; and providing a positive human right for access to government information. The changes in legislation highlight and strengthen the importance for the need for good record-keeping in public authorities and the need for the Act to reflect this level of importance. In its current form, the Act is powerless to deliver on the expectations established by these legislative amendments.

WHY DOES THIS MATTER?

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

Successful open government relies on sound recordkeeping practices to support public accountability and transparency. Under the Act, Queensland public authorities are required to manage public records responsibly to ensure that information is complete, reliable, accessible, and usable for as long as they are needed.

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

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

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

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

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

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

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

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

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

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

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

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

The time for a review of the Public Records Act is arguably now well overdue. It is no longer fit for purpose and its consequences are becoming very clear.

Released under RTI - DCF/DL

From: [Mike Summerell](#)
To: [Josephine Marsh](#); [QSA Office of the State Archivist](#)
Subject: RE: Progress on the recommendations
Date: Wednesday, 9 December 2020 9:47:16 AM
Attachments: [Bailey recommendations status v2.docx](#)
[image001.jpg](#)
[image002.jpg](#)
[image003.jpg](#)

Made a couple of tiny changes...so you have the same one

Mike

From: Josephine Marsh <Josephine.MARSH@archives.qld.gov.au>
Sent: Wednesday, 9 December 2020 9:42 AM
To: Mike Summerell <Mike.SUMMERELL@archives.qld.gov.au>; [QSA Office of the State Archivist](#) <Officeofthe.StateArchivist@archives.qld.gov.au>
Subject: RE: Progress on the recommendations

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

Let me know if you need more.

Josephine

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

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

Mike

Mike Summerell

Executive Director & State Archivist

Queensland State Archives | Department of Communities, Housing and Digital Economy

435 Compton Road, Runcorn QLD 4113

PO Box 1397, Sunnybank Hills QLD 4109

P 3037 6601 M 

Mike.summerell@archives.qld.gov.au

archives.qld.gov.au facebook.com/qldstatearchives twitter.com/qsarchives

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





OUR VISION IS TO INSPIRE ALL QUEENSLANDERS TO DISCOVER THE STORIES
CONTAINED WITHIN THE RECORD OF THE QUEENSLAND GOVERNMENT – ANYTIME, ANYWHERE

Released under RTI - DCHDE

Status of recommendations from State Archivist's report

Recommendation	Status	Summary
Recommendation 1: The State Archivist to seek assurance from current Ministers that Ministerial records are managed appropriately including procedures for the management of Ministerial records created or received within private email accounts and social media accounts.	On hold/Closed	Letters prepared but not approved for issue by DHPW DG
Recommendation 2: The State Archivist to explore appropriate ways of seeking permanent value Ministerial records that may be in the possession of former Ministers including those contained within private email accounts.	On hold/Closed	Letters prepared but not approved for issue by DHPW DG
Recommendation 3: The State Archivist to issue new guidance for Ministers and their staff on the management of Ministerial records.	Completed	<p><i>Ministerial Records Policy</i> for Ministers, Assistant Ministers and their staff published.</p> <p>Ministers and Assistant Ministers reminded of their recordkeeping responsibilities in letter from the State Archivist sent 19 December 2017.</p>
Recommendation 4: The State Archivist to issue a revised retention and disposal schedule to cover Ministerial records. This revision will be focused on making the process far more practical for Ministers and their offices.	Open	<p><i>Revised Office of a Minister of the Crown and Parliamentary Secretaries Retention and Disposal Schedule</i> developed. Meetings with Ministerial Services have not progressed to allow implementation.</p>
Recommendation 5: The Department of the Premier and Cabinet to review training, IT systems and advice provided to Ministers and their staff on the management of Ministerial records to ensure compliance with State Archivist guidance.	Completed/Ongoing	<p>Following consultation with Department of Premier and Cabinet (DPC) QSA delivered training to approximately 250 ministerial staff on the management of ministerial records over multiple sessions on 30 January 2018 and 7 February 2018 by QSA.</p> <p>Ongoing recordkeeping advice is being provided to Ministerial Services by QSA.</p>
Recommendation 6: The Department of the Premier and Cabinet to review and update the <i>Ministerial Handbook</i> and the <i>Information Security Policy</i> regarding the management of Ministerial records created or received within	Completed	<p>Input into the review of the <i>Ministerial Handbook</i> and the <i>Ministerial Information Security Policy</i> provided to DPC by QSA.</p>

Recommendation	Status	Summary
private email accounts or social media accounts to ensure compliance with State Archivist guidance.		Updated documents published by DPC in April 2018.
<p>Recommendation 7: Government to consider urgent amendments to the <i>Public Records Act 2002</i> including:</p> <ul style="list-style-type: none"> • Clear and contemporary definition of the disposal of public records. • Appropriate penalties for breaches of key sections of the <i>Public Records Act 2002</i> in particular non-compliance and unauthorised disposal. • Compliance with mandatory recordkeeping guidelines. • Public records contained in private email or social email accounts to be forwarded/transferred to official systems within 20 days of receipt or creation. • Establishment of a relevant and responsible public authority for Ministerial records. 	On hold/Closed	The State Archivist did not receive approval by the Minister for Housing and Public Works, Minister for Digital Technology and Minister for Sport to proceed beyond project initiation phase for this recommendation.
Recommendation 8: The State Archivist to review and update guidance for all public authorities on the management of public records within email, private email and social media accounts.	Completed	Public Service Commission released <i>Private Email Use Policy</i> in March 2018. Recordkeeping advice updated on QSA website in April 2018 in relation to management of public records within email, private email and social media accounts.
Recommendation 9: The State Archivist to issue new minimum standards for recordkeeping for all public authorities that replace <i>Information Standard 40: Recordkeeping and Information Standard 31: Retention and disposal of public records</i> . With the aim of these becoming mandatory requirements once the <i>Public Records Act 2002</i> is amended.	Completed	Release of <i>Records Governance Policy</i> in June 2018, replacing Information Standards 31 & 40. RGP issued by the State Archivist under the Queensland Government Chief Information Office Queensland Government Enterprise Architecture.
Recommendation 10: The State Archivist to develop an auditing regime to monitor compliance with the <i>Public Records Act 2002</i> .	Open	Recordkeeping Maturity Assessment Tool issued. Approval to conduct baseline Recordkeeping Survey of public authorities not given by DHPW.

Pages 69 through 75 redacted for the following reasons:

Exempt Sch 3(7)

Released under RTI - DCHDE

From: [Irene Violet](#)
To: [Clare O'Connor](#)
Cc: [Paul O'Driscoll](#); [Ben E Green](#); [Andrew Spina](#)
Subject: updated draft
Date: Tuesday, 27 April 2021 10:38:00 AM
Attachments: [20210427_draft_response.docx](#)

Hi Clare

Further to our discussion on Thursday, we've edited the draft response to the CCC re the update on the actions from 2017.

Please find the draft response attached for your endorsement.

Any queries, please give me a call.

Kind regards

Irene

Irene Violet

A/State Archivist

Department of Communities, Housing and Digital Economy

P 07 3037 6601 M [REDACTED]

E irene.violet@hpw.qld.gov.au W chde.qld.gov.au

435 Compton Rd, Runcorn QLD 4113

Released under RTI - DCHDE

To: Dylan Jones
Senior Review Officer
CCC
By email:

Thank you for your email of 1 April 2021 in which you request an update on the implementation of recommendations arising out of the Queensland State Archivist's 2017 audit into the use of private emails by Minister Bailey, Minister for Transport and Main Roads.

You have also noted that you have concurrently requested an update on these recommendations from the Department of the Premier and Cabinet (DPC).

- As you may be aware, the former State Archivist concluded his contract of employment with the Department of Communities, Housing and Digital Economy on 5 March 2021, and since that time I have been acting State Archivist. I have reviewed the recommendations to which you refer and have made enquiries as to the key actions consistent with the objectives of the recommendations.
- In addition to progressing actions to improve record keeping practices during this period, there have been machinery-of-government changes to the administration of the *Public Records Act 2002* and the Queensland State Archives (QSA) from 2017 to 2021, with the QSA most recently being administered by the Department of Communities, Housing and Digital Economy (the renamed Department of Housing and Public Works).
- Since 2017 the QSA and its administering departments have worked hard to ensure there was a clear, appropriately resourced role to be undertaken by the QSA that aligns with its purpose under the *Public Records Act 2002* and is focused on public authorities achieving compliance with the Act.
- I am pleased then to report that the QSA has, since the recommendations of 2017, undertaken a number of actions in response that are aligned with QSA educative, guidance, support and compliance role. These include:
 - The *Ministerial Records Policy* was developed under section 25 (f) of the Act. Queensland State Archives (QSA) provided this policy to all Ministers in December 2017; and to all CEOs/Directors-General in January 2018
 - QSA contributed towards the update of the *Ministerial Handbook*, which is the responsibility of DPC. The Handbook was updated in April 2018.
 - QSA contributed towards the update of the Public Service Commission's *Private Email Use Policy*, which is for public servants. This was released in March 2018.
 - General record-keeping advice as per section 25 (f) is also made available to public servants on the forgov website. This is updated on a regular basis; however, it was specifically updated in April 2018 in response to the considerations regarding private email usage
 - QSA supported DPC in reviewing and delivering training for ministerial staff. In January and February 2018, approximately 250 staff participated in this updated training.
 - QSA continues to provide ongoing record-keeping advice to Ministerial Services in DPC, as we do with other client agencies. This advice includes, but is not limited to,

guidance on retention and disposal schedules, record keeping systems and processes.

- Amendment of legislation is not within direct responsibility of the State Archivist. The Archivist has remained committed to increasing compliance with the Act as it stands. Any proposed amendments to the Act and attendant changes to processes and procedures remain under consideration by government.
- QSA continues to support all public authorities with their responsibilities under the Act, which can include complaints about record keeping. Complaints are reviewed by QSA, with support from the Department of Communities, Housing, and Digital Economy, having regard to the powers of the State Archivist as described in section 25 of the Act.
- From time to time, to provide this support to public authorities, QSA works with agencies such as your own, the Information Commissioner, Integrity Commissioner, Auditor-General, Ombudsman and Public Service Commissioner. Since 2017, QSA has jointly published record keeping advice with such agencies, for example, *Council records: a guideline for mayors, councillors, CEOs and government employees* was published with CCC in July 2019; *Public records: advice for all employees of public authorities* was published with CCC in April 2020; and *Your social media and you*, published with the Office of the Independent Assessor and the Local Government Association of Queensland in April 2019.

I trust that this information satisfactorily updates the CCC as to the resolution of the 2017 recommendations. QSA continues to review and update its record keeping guidance, advice and support provided to public authorities, in line with its remit outlined in the Act.

Released under PMCA

From: [QSA Office of the State Archivist](#)
To: [Irene Violet](#)
Subject: RE: 20210427_draft response
Date: Wednesday, 28 April 2021 10:13:00 AM
Attachments: [State Archivist Letter to CCC - Update on the Implementation of Recommendations Arising Out of the Queensland State Archivist's 2017 Audit.docx](#)
[image001.jpg](#)

Hi Irene,

I've popped the email into a letter format for you. I haven't changed to a PDF yet, until you are happy with the title of the letter and the formatting of the bullet points.

The new letter template is a Times New Roman font, and so it looks a little different (unfortunately a little bit more officious, but maybe that's a good thing).

Please could you have a quick look and see if you like it? Once you are happy we can send it off as a PDF.

Many thanks.

Kind regards, Cemon

Cemon Aveyard

A/g Senior Project Officer | Office of the State Archivist
Queensland State Archives | Department of Communities, Housing and Digital Economy
435 Compton Road, Runcorn QLD 4113
PO Box 1397, Sunnybank Hills QLD 4109
ph 07 3037 6749 | email cemon.aveyard@archives.qld.gov.au
www.hpw.qld.gov.au

www.archives.qld.gov.au | www.facebook.com/qldstatearchives | www.twitter.com/qsarchives

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

I acknowledge the traditional custodian's past and present on whose land I walk, I work, I live and respect.



From: Irene Violet <Irene.Violet@archives.qld.gov.au>
Sent: Wednesday, 28 April 2021 9:48 AM
To: QSA Office of the State Archivist <Officeofthe.StateArchivist@archives.qld.gov.au>
Subject: 20210427_draft response

Hello

As the DG has now endorsed this response, can you please convert the attached into a PDF letter, with my electronic signature. I would like to review it again, just one last time, before it's sent please.

Thanks

Irene

Irene Violet

A/State Archivist

Department of Communities, Housing and Digital Economy

P 07 3037 6601 M [REDACTED]

E irene.violet@hpw.qld.gov.au W chde.qld.gov.au

435 Compton Rd, Runcorn QLD 4113

Released under RTI - DCHDE



Queensland
Government

Department of
**Communities, Housing
and Digital Economy**

Author: Irene Violet
File number: QSA17/213
Queensland State Archives
Phone: 07 3037 6661

28 April 2021

Mr Dylan Jones
Senior Review Officer
Crime and Corruption Commission
GPO Box 3123
BRISBANE QLD 4001

By email: 49 Sch 4

Dear Mr Jones,

Update on the Implementation of Recommendations Arising Out of the Queensland State Archivist's 2017 Audit

Thank you for your email of 1 April 2021 in which you request an update on the implementation of recommendations arising out of the Queensland State Archivist's 2017 audit into the use of private emails by Minister Bailey, Minister for Transport and Main Roads.

You have also noted that you have concurrently requested an update on these recommendations from the Department of the Premier and Cabinet (DPC).

- As you may be aware, the former State Archivist concluded his contract of employment with the Department of Communities, Housing and Digital Economy on 8 March 2021, and since that time I have been acting State Archivist. I have reviewed the recommendations to which you refer and have made enquiries as to the key actions consistent with the objectives of the recommendations.
- In addition to progressing actions to improve record keeping practices during this period, there have been machinery-of-government changes to the administration of the Public Records Act 2002 and the Queensland State Archives (QSA) from 2017 to 2021, with the QSA most recently being administered by the Department of Communities, Housing and Digital Economy (the renamed Department of Housing and Public Works).
- Since 2017 the QSA and its administering departments have worked hard to ensure there was a clear, appropriately resourced role to be undertaken by the QSA that aligns with its purpose under the Public Records Act 2002 and is focused on public authorities achieving compliance with the Act.
- I am pleased then to report that the QSA has, since the recommendations of 2017, undertaken a number of actions in response that are aligned with QSA educative, guidance, support and compliance role. These include:

page 1 of 2

- o The Ministerial Records Policy was developed under section 25 (f) of the Act. Queensland State Archives (QSA) provided this policy to all Ministers in December 2017; and to all CEOs/Directors-General in January 2018
 - o QSA contributed towards the update of the Ministerial Handbook, which is the responsibility of DPC. The Handbook was updated in April 2018.
 - o QSA contributed towards the update of the Public Service Commission's Private Email Use Policy, which is for public servants. This was released in March 2018.
 - o General record-keeping advice as per section 25 (f) is also made available to public servants on the forgov website. This is updated on a regular basis; however, it was specifically updated in April 2018 in response to the considerations regarding private email usage
 - o QSA supported DPC in reviewing and delivering training for ministerial staff. In January and February 2018, approximately 250 staff participated in this updated training.
 - o QSA continues to provide ongoing record-keeping advice to Ministerial Services in DPC, as we do with other client agencies. This advice includes, but is not limited to, guidance on retention and disposal schedules, record keeping systems and processes.
- Amendment of legislation is not within direct responsibility of the State Archivist. The Archivist has remained committed to increasing compliance with the Act as it stands. Any proposed amendments to the Act and attendant changes to processes and procedures remain under consideration by government.
 - QSA continues to support all public authorities with their responsibilities under the Act, which can include complaints about record keeping. Complaints are reviewed by QSA, with support from the Department of Communities, Housing, and Digital Economy, having regard to the powers of the State Archivist as described in section 25 of the Act.
 - From time to time, to provide this support to public authorities, QSA works with agencies such as your own, the Information Commissioner, Integrity Commissioner, Auditor-General, Ombudsman and Public Service Commissioner. Since 2017, QSA has jointly published record keeping advice with such agencies, for example, Council records: a guideline for mayors, councillors, CEOs and government employees was published with CCC in July 2019; Public records: advice for all employees of public authorities was published with CCC in April 2020; and Your social media and you, published with the Office of the Independent Assessor and the Local Government Association of Queensland in April 2019.

I trust that this information satisfactorily updates the Crime and Corruption Commission as to the resolution of the 2017 recommendations. QSA continues to review and update its record keeping guidance, advice and support provided to public authorities, in line with its remit outlined in the Act.

Yours sincerely



Irene Violet
Acting State Archivist

From: [Mike Summerell](#)
To: [QSA Office of the State Archivist](#)
Subject: Fwd: My contract
Date: Thursday, 18 February 2021 1:49:01 PM
Attachments: [Confidential DG Briefing Note - Update on summary of investigations into potential breaches of the Public Records Act 2002 and deficiencies in the Act.docx](#)

Please ark this one

Mike

Get [Outlook for iOS](#)

From: Mike Summerell <Mike.SUMMERELL@archives.qld.gov.au>
Sent: Thursday, February 18, 2021 1:13 pm
To: Chris Fechner
Subject: RE: My contract

No one was else has seen this it was a confidential briefing update that Trish asked for to be given solely to her whilst she was Acting DG following our discussion on the 2019/20 Annual report.

Clearly the deficiencies that are related to the Act are our view and others may disagree...hence why I think it is important to have full public consultation on the Act so that it can drafted with all views represented. Our views are our views – we don't claim to be infallible or that alternate views don't have equally validity. But they do represent fully the view of QSA in terms of our experiences in trying to administer it in recent times.

If you are looking to start with a clean slate...then this update is essentially the "slate"

Mike

From: Chris Fechner <Chris.FECHNER@hpw.qld.gov.au>
Sent: Thursday, 18 February 2021 12:58 PM
To: Mike Summerell <Mike.SUMMERELL@archives.qld.gov.au>
Subject: Re: My contract

Thanks Mike,
I'm happy with the messaging around you moving on after a long and valuable contribution. I'd like the report given to Trish. Did anyone else know about it? I know I didn't.

I will leave you alone until Monday and then I think Andrew and I will discuss transition arrangements.

Thanks,
Chris

Get [Outlook for iOS](#)

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

Sent: Thursday, February 18, 2021 1:53:29 PM

To: Chris Fechner <Chris.FECHNER@hpw.qld.gov.au>

Subject: RE: My contract

I think the easiest option on wording is that after 5 years at QSA I am moving back to NZ to look at new opportunities

The LT across QSA are very well aware of all the issues it been our world for 3 years. HPW never sought to address the issues, it largely caused them. I think it is impossible to resolve them in 2 weeks. Josephine in particular is very up to speed on all details as they are primarily issues in her world.

For me the way forward is very much to recommence the process to review the Public Records Act that was stopped in 2018 by Minister de Brenni. The next stage in that process (it had been running for 3 years by 2018 and started before I was appointed) was to go out for public consultation on potential improvements etc on the Act. I think that is the only path to address many of the issues definitively. Many of the issues (for me) all ultimately relate to the Act and its interpretation, hence why I say they are not things that will be resolved in 2 weeks.

Trish Woolley as Acting DG following Liza's resignation requested a full confidential brief on the investigations that occurred over the last few years and our view on deficiencies and the impacts of the deficiencies in the Act. I am happy to provide you a copy of that. It covers things in a lot of detail (21 pages)

Mike

From: Chris Fechner <Chris.FECHNER@hpw.qld.gov.au>

Sent: Thursday, 18 February 2021 9:59 AM

To: Mike Summerell <Mike.SUMMERELL@archives.qld.gov.au>; Andrew Spina <Andrew.SPINA@hpw.qld.gov.au>

Cc: Sandi Bardsley <Sandi.BARDSLEY@hpw.qld.gov.au>

Subject: Re: My contract

Hi Mike,

Firstly, let me say I understand and respect that you are taking active control of your career and I appreciate the information you have provided.

I would like to point out that I have been able to guarantee the conditions of the non-renewal of your contract at the extension if that makes any difference in the timing of your decision.

I would like to give you a call to just talk a little more on messaging to the team and next steps. I have identified ^{49 Sch 4} as suitable to act in the interim with HR.

I would still be very keen to provide a clean slate platform for the new archivist.

Kind Regards,
Chris

Get [Outlook for iOS](#)

From: Mike Summerell <Mike.SUMMERELL@archives.qld.gov.au>
Sent: Wednesday, February 17, 2021 6:55:39 PM
To: Andrew Spina <Andrew.SPINA@hpw.qld.gov.au>; Chris Fechner <Chris.FECHNER@hpw.qld.gov.au>
Cc: Sandi Bardsley <Sandi.BARDSLEY@hpw.qld.gov.au>
Subject: My contract

Hi Both

49 Sch 4



Clearly with no prospect of renewal of my contract post June I need to move on with certainty and I think it's better for QSA if I move on quickly to allow transition to a new direction and leadership. I think a "lame duck" period would not be productive for all concerned.

I do appreciate your consideration of a temporary arrangement, however it's clear that it is not something that will work given my need to find a permanent role quickly.

I therefore will plan to work until the simple expiry of my contract on 8 March 2021.

Regards

Mike

Get [Outlook for iOS](#)

DIRECTOR-GENERAL CONFIDENTIAL BRIEFING NOTE

Subject: Summary of investigations into alleged breaches of the *Public Records Act 2002* and deficiencies in the *Public Records Act 2002*.

Decision/Action by: N/A

Reasons for Urgency: N/A

Briefing type: Requested Confidential briefing note for noting

Responsible Area: Queensland State Archives

Electorate: Statewide

Contact Officer: Mike Summerell – (07) 3037 6601

PURPOSE

To provide the A/Director-General with a summary of investigations that are currently in progress or have been completed by the State Archivist into alleged breaches of the *Public Records Act 2002* (the Act) and known or perceived deficiencies and inconsistencies in the Act.

CONTEXT

- The main purposes of the Act are to ensure that public records of Queensland are made, managed, kept and, if appropriate, preserved in a useable form for the benefit of present and future generations; and to support the *Right to Information Act 2009* (s.3). Amongst the key statutory obligations in the Act are that public authorities must follow is the requirement to make and keep full and accurate records of its activities (s.7(1)(a) and not to dispose of a public record unlawfully (s.13).
- Since 2017, Queensland State Archives (QSA) has opened 16 separate investigations (six completed, ten still open) into alleged breaches of the Act by public authorities. Prior to 2017, records indicate no investigations into potential breaches had been undertaken by the State Archivist.
- Four of these investigations were referred to QSA by the Crime and Corruption Commission (CCC); four were referred to QSA from members of the public; two were referred to QSA in the form of a Public Interest Disclosure (PID); two potential breaches of the Act were identified in media articles; one was a consequence of an earlier State Archivist investigation; and two were referred to QSA by Complainant [REDACTED]
- A major factor throughout these investigations have been apparent deficiencies in the Act itself.
- A process to review the Act commenced in 2014 and continued until 2018, when it was put on hold by Minister de Brenni.

KEY INVESTIGATIONS UNDERTAKING SINCE 2017

Prior to 2017 State Archivist had never been required to undertake any investigations into alleged breaches of the Act. Since 2017 the amount of complaints or incidents related to potential breaches of the Act have increased significantly, with the rate of increase rising during 2020. The following are key investigations undertaken since 2017, we have sought to protect the identity of complainants in most cases.

Investigation into the alleged unlawful disposal of public records from a private email account by Minister Bailey

- In March 2017, reports from *The Australian* newspaper, alleged that the Honorable Mark Bailey, Minister for Main Roads, Road Safety and Ports and Minister for Energy, Bio Fuels and Water Supply had unlawfully disposed of public records within a private email account in response to a Right to Information (RTI) request from *The Australian*.
 - The State Archivist commenced an independent investigation into these allegations in March 2017 in the context of potential breach of the Act. The State Archivist obtained legal advice
- Exempt Sch 3(7)
- The State Archivist's independent investigation was placed on hold at the request of the CCC whilst their investigation was open.
- In March 2017, the Department of the Premier and Cabinet (DPC) were also requested to investigate the matter by the Premier.
 - In March 2017, the CCC commenced a potential corrupt conduct investigation into the actions of Minister Bailey.
 - Given multiple investigations and the central allegation that related to potential unauthorised disposal of public records, the CCC requested the State Archivist work with DPC to initially identify whether Minister Bailey had potentially disposed of public records without authorisation.
 - In June 2017, following a report by the State Archivist and DPC which concluded that Minister Bailey had potential disposed of several hundred public records without authorisation, the CCC requested the State Archivist conduct a further investigation to confirm whether Minister Bailey had breached the Public Records Act and to identify records which could be of interest to the CCC in regard to potential corruption.
 - In September 2017, the State Archivist presented his final report to the CCC.
 - In October 2017, following approval from the CCC to recommence his independent investigation, the State Archivist presented his independent report to the Director-General of the Department of Science, Information Technology and Innovation (DSITI). The State Archivist's independent report related only to potential breaches of the Public Records Act.
 - In both reports, the State Archivist concluded that the actions of Minister Bailey resulted in multiple breaches to the Act, specifically s.7, s.8, s.13 and s.14. The State Archivist ultimately concluded it would be not possible to take successful action against Minister Bailey for these breaches due to deficiencies in the Act and the CCC's decision not to take action against Minister Bailey.
 - In his report, the State Archivist made a number of recommendations specific to the actions of Minister Bailey along with several key recommendations related to improving the standard of government record-keeping and the management of ministerial emails.
 - Key among the recommendations of this investigation was that the Government consider urgent amendments to the Act.
 - The CCC publicly accepted all of the State Archivist's recommendations in a media statement in September 2017.

- Of the recommendations made that, which were not specific to Minister Bailey, four have been completed, with a remaining six recommendations not able to be progressed as they are not seen as a priority by Minister de Brenni. This included recommendations to consider urgent amendments to the Act.
- Minister de Brenni has never spoken to the State Archivist about matters relating to the administration of the Public Records Act.
- Both the CCC investigation and the independent State Archivist's investigation highlighted the potential for the widespread creation and receipt of ministerial records in the private email accounts of Ministers, Assistant Ministers and their staff. It also highlighted wider issues related to the standard of record-keeping practices across government and a lack of awareness of responsibilities and requirements relating to the management of public records.

Investigation into potential breaches of the Act by five Government Ministers identified during the State Archivist's investigation into the actions of Minister Bailey

- In March 2018, the State Archivist informed the Director-General (DG) of DHPW of his intention to contact Five Ministers to confirm their treatment of public records that they had created or received in their private emails accounts. These records were identified during the State Archivist's investigations into the actions of Minister Bailey in 2017. One of the Ministers to be contacted was Minister de Brenni. There was no suggestion of corrupt conduct in any emails related to Minister de Brenni, the records were purely of a technical nature in terms of their classification as a public record.
- The creation and receipt of public records in a private email account is not a breach of the Act.
- The failure to appropriately manage public records created or received in a private email account is however a potential breach of the Act. The State Archivist intended to contact the Ministers to confirm that they had treated the identified public records in an appropriate manner.
- The follow up investigation to confirm the appropriate treatment of the records by the Ministers was a recommendation supported by the CCC in September 2017. The CCC had been provided copies of all the relevant emails for all the Ministers to consider if they were relevant to their investigations.
- The DG of DHPW directed the State Archivist not to contact the Ministers.
- The State Archivist sought advice from Crown Law Exempt Sch 3(7)

The request for Crown Law advice has never been progressed by the Department.

- The investigation remains technically open. A number of the public records are still required to have been retained.

Investigation into potential breaches of the Act by Logan City Council councillors

- In December 2018, the CCC requested the State Archivist to review correspondence that took place between a number of Logan City Council councillors in private messaging accounts.
- Following his investigation, the State Archivist identified that a number of the messages were considered public records, and that the actions of the councillors to delete these messages prior to capture in Logan City Council systems may have resulted in a number of potential breaches to the Act.
- Given the potential breaches to the Act were identified during assistance provided to the CCC, the State Archivist undertook his own independent investigation as Exempt Sch 3(7) he had a statutory obligation to do so.
- The State Archivist found that the actions of the Logan City Council councillors resulted in multiple technical breaches of the Act, specifically sections 7, 8, 13 and 14.
- Under the Act, the responsible authority for these breaches is in fact the CEO of Logan City Council, not the councillors. Given the content of messages was allegedly an attempt to dismiss the same CEO, the State Archivist considered action against the CEO as completely inappropriate.

- The State Archivist made a number of recommendations in response to the findings of his investigation, including the need for legislative amendments to the Act to amend who were deemed responsible authorities. A number of these amendments were consistent with those previously identified following the investigation into the actions of Minister Bailey.
- While the recommendation relating to legislative amendments have not progressed, all other recommendations have been completed.

Investigation into potential unlawful disposal of records by the Queensland Police Service (QPS)

- In February 2019, the *Brisbane Times* published an article about the Queensland Police conducting an investigation into how filing cabinets containing police documents came to be found at a waste facility in Cairns.
- QSA contacted QPS to seek further information regarding the potential unlawful disposal of records by Cairns Police.
- The QPS advised that all material had been recovered, however a formal complaint had been lodged with the Ethical Standards Command and the CCC and that the matter was subject to an internal investigation.
- To date QPS has not advised QSA about the outcome of their internal investigation.
- The State Archivist's view is that given that all records were recovered that action for breach of the Act was not appropriate.

Investigation into the unlawful disposal of records by a former employee of the Public Service Commission (PSC)

- On the advice of the CCC, the Chief Executive of the PSC wrote to the State Archivist in February 2019 regarding the alleged unlawful disposal of public records by a PSC employee.
- The PSC Chief Executive advised that an investigation into the actions of the former PSC employee identified a small number of public records were allegedly permanently deleted. These records were however able to be recovered.
- Given the concerns around a potential repeat of the issue in the future, the State Archivist sought confirmation from the PSC Chief Executive about any preventative measures that the PSC had put in place to minimise the risk of unlawful disposal of public records re-occurring.
- The PSC Chief Executive was able to outline a range of initiatives that had been put in place to ensure their future compliance with the Act.
- The State Archivist view was that given actions taken by PSC and the fact that all records were recovered, action for breach of the Act was not appropriate. The State Archivist was satisfied that the PSC had put processes in place to minimise the future risk of unlawful disposal of public records.

Investigation into the Queensland Building and Construction Commission's (QBCC) failure to create records of decisions

- In March 2019, QSA received a complaint from a member of the public requesting an investigation into alleged breaches of the Act by the QBCC.
- The complainant alleged that the QBCC failed to make and keep full and accurate records of its activities (i.e. decisions that were made) and as a result, failed to comply with their requirements under s.7 of the Act.
- The State Archivist wrote to the QBCC to seek further information in relation to their recordkeeping practices and actions that the QBCC has taken to prevent a re-occurrence of a similar incident occurring.
- Based on the information provided by the complainant and the QBCC, the State Archivist considers that a technical breach of s.7 of the Act has occurred. However, under the Act, there are no penalties for this breach and therefore it was not clear what, if any, action the State Archivist would be able to take.

- The State Archivist requested Crown Law advice [Exempt Sch 3(7)]
[Redacted]
[Redacted] The request for Crown Law advice has never been progressed by the Department.
- The need to review and amend s.7 of the Act had been identified during both the investigation into Minister Bailey and the investigation into Logan City Council. The current situation in effect means that if you create a public record that is required to be retained under the Act, and then dispose of it without authorisation you can potentially be prosecuted under s.13 of the Act. However, if you fail to create the records at all, this is a breach of s.7, but the Act provides no penalties for breach of s.7, thus the Act can be potentially avoided by simply making no records at all. This is clearly completely inconsistent with the purpose of the Act.
- Following a request for Crown Law advice from the Public Records Review Committee (PRRC) in Dec 2019 [Exempt Sch 3(7)]
[Redacted]
[Redacted] The Department is currently considering a committee or procedure for the investigation of complaints under legislation and potential prosecutions to be referred to. As of November 2020, this committee or procedure has not been established. The role of the PRRC is to advise the Minister and the State Archivist on matters related to the administration of the Act.
- The State Archivist is awaiting the forming of this committee or procedure to refer this matter to in regard to actions to be taken response to breach of s.7 of the Act.
- In June 2019, the State Archivist referred the matter to the CCC for consideration. Following a review by the CCC, they referred the matter to the QBCC to manage and deal with.
- QSA has not received any further information from the QBCC regarding actions that they have taken in response to this complaint.

Investigation into the unlawful disposal of public records from Metro North Hospital and Health Service

- In June 2019, the State Archivist became aware of a potential breach of the Act by the Metro North Hospital and Health Service following media reporting of an incident where public records were provided to a contractor for destruction and accidentally spilled onto an inner-city Brisbane road.
- This action may have resulted in a breach of s.8 and s.13 of the Act.
- The State Archivist wrote to the CEO of Metro North Hospital and Health Service to seek further information in relation to the incident that had been reported in the media.
- Following a review of the incident, Metro North Hospital and Health Service made a number of recommendations for improving the management of waste and advised the State Archivist that all recommendations had been accepted and were being implemented.
- The State Archivist was satisfied with the steps being taken to minimise the risk of further similar breaches of the Act and the matter is closed. There was insufficient evidence to conclude that a breach of the Act had occurred.

Investigation into the alleged unlawful disposal of public records of the Premier's Chief of Staff

- In November 2019, the Deputy Leader of the Opposition wrote to the State Archivist to request an investigation into media reports regarding the potential unlawful disposal of the resignation letter of David Barbagallo, the Premier's Chief of Staff.
- As the matter was also part of an investigation by the CCC, QSA contacted the CCC to inquire whether an investigation by the State Archivist into the matter would conflict with the CCC's investigation. The CCC advised it had no objection to an investigation by the State Archivist proceeding.
- Following discussions with the DG of DHPW, the State archivist was initially advised to contact Mr. Barbagallo's lawyer about the missing letter through Filly Morgan, DPC.
- DPC then advised direct contact with Mr. Barbagallo's lawyer could be made.

- Mr. Barbagallo's lawyer advised a copy of his resignation letter was placed in Mr. Barbagallo's "out tray" for the attention of his Executive Assistant.
- The State Archivist followed up with the Premier's Chief of Staff who advised the Executive Assistant could not recall seeing the letter.
- This matter indicates technical breach of s.13 of the Act related to unauthorised disposal and potentially breach of s.7 which requires public authorities to make and keep full and accurate records. The responsible authority for this under the Act is the Premier.
- Exempt Sch 3(7)
[REDACTED] This request has not been progressed by the Department.
- Exempt Sch 3(7)
[REDACTED]
[REDACTED] The department is currently considering a committee or procedure for the investigation of complaints under legislation and potential prosecutions. As of November 2020, this committee or procedure has not been established.
- This matter is outstanding. The State Archivist is awaiting the forming of this committee or procedure to refer this matter to, in relation to actions to be taken response to breach of s.7 of the Act.

Investigation into the alleged unlawful disposal of public records by the Queensland Police Service (QPS)

- In April 2020, QSA received notification from a member of the public requesting an investigation into alleged breaches of the Act by the QPS.
- The complainant alleged that the QPS breached s.13 of the Act and s.129 of the *Criminal Code 1899* and destroyed records that the complainant allegedly had been provided to the Southport Police Station.
- Given the potential for the unlawful disposal of public records, the State Archivist undertook a review to establish whether any breaches of the Act had occurred.
- The State Archivist wrote to the Police Commissioner to seek further information in relation to their recordkeeping practices and actions that were alleged in the complaint.
- Based on information provided by both the complainant and the QPS, the State Archivist was unable to establish beyond a reasonable doubt, the unlawful disposal of public records by the QPS.
- The State Archivist informed the complainant of his findings. However, the complainant has sent further correspondence on a number of occasions requesting a review of the matter. If any new evidence is received, the State Archivist will review the matter further. The complainant has referred this matter to multiple Queensland integrity agencies and continues to pursue the matter.

Investigation into the alleged unlawful disposal of public records by the Queensland Police Service (QPS)

- In May 2020, QSA received notification from a member of the public requesting an investigation into the potential unlawful disposal of public records by the QPS.
- The complainant alleges that the QPS unlawfully destroyed public records relating to them.
- Following further correspondence with the complainant, the State Archivist was provided with a list of documents that are subject to the complaint.
- Given the allegation also involves a number of other Queensland Government agencies, the State Archivist sought advice from the DHPW Integrity Services Unit regarding appropriate actions to take in response to the complainant's allegation.
- Given the nature of the allegation and the potential for corrupt conduct (as defined by the *Crime and Corruption Act 2001* (CC Act)), the complaint was referred to the Corrupt Conduct Intake & Assessment Committee for review.
- Following review, the matter was referred to the Crime and Corruption Commission for assessment for corrupt conduct.

- The Crime and Corruption Commission advised no finding of corrupt conduct was found and the matter can be investigated by QSA.
- Further assessment by DHPW Legal of this matter is underway before contact with QPS is made. The matters referred to by the complainant extend beyond the remit of the Act.
- The complainant continues to contact QSA frequently seeking updates on this matter.

Investigation into the alleged unlawful disposal of ministerial records

- In May 2020, the Deputy Leader of the Opposition wrote to the State Archivist to request an investigation into media reports regarding the potential unlawful disposal of ministerial records by former Deputy Premier, Jackie Trad.
- Given the subject of this complaint potentially involved corrupt conduct as defined by the CC Act, the matter was referred to the CCC by the Assistant Director-General, Corporate Services. Advice was also sought from the CCC whether it would be appropriate for the State Archivist to investigate given the CCC had an ongoing investigation involving Jackie Trad MP.
- In their response, the CCC advised that they considered that there was insufficient evidence to raise a reasonable suspicion that corrupt conduct by the Minister occurred. The CCC report however, highlighted potential multiple breaches of the Act by the Department of Education. The report also referred the matter to the PSC for investigation in terms of the actions of Department employees.
- CCC provided approval for the State Archivist to proceed with his investigation. Following this approval, the DHPW Corrupt Conduct Intake & Assessment Committee via the DHPW Integrity Services Unit requested the State Archivist to submit a plan prior to commencing an investigation.
- Following approval of the State Archivist's investigation plan, the State Archivist wrote to the Director-General of the Department of Education to request copies of specified records to establish whether any unlawful disposal of public records occurred.
- The Director-General of the Department of Education advised that due to the ongoing investigative processes of the PSC, they were not in a position to assist the State Archivist with his investigation at this point in time.
- The State Archivist has requested that following the completion of the PSC, the Department of Education assist the State Archivist with his investigation.
- The State Archivist has not received any further correspondence from the Department of Education and cannot currently progress this investigation further until the PSC releases it's report into the matter.
- There is potential that the actions of DHPW and the Department of Education could be perceived as technical obstruction of the investigations of the State Archivist and a breach of s.48 of the Act, however the State Archivist is comfortable that no such intent existed in terms of DHPW actions.

Public Interest Disclosure (PID): alleged unlawful disposal of Public Records

Exempt Sch 3(12)

- In September 2020, QSA received correspondence from a member of the public requesting an investigation into the potential unlawful disposal of public records in the form of body worn camera footage by the QPS.
- The complainant alleges that the QPS unlawfully destroyed public records that relate to them and is required for an ongoing investigation.
- The matter has been referred to DHPW's Integrity Service Unit who advised further information from the complainant could be requested.
- The complainant has provided further supporting information in relation to their complaint.
- QSA is currently assessing this matter in conjunction with the Integrity Services Unit and Legal Services.

DEFICIENCIES IN THE PUBLIC RECORDS ACT 2002

A feature of many of the investigations noted above are actual or perceived deficiencies or inconsistencies in the Public Records Act which have significantly impacted the investigations of the State Archivist, QSA and others. A number of these issues are potentially in the public domain through statements made by the CCC in 2017 following the conclusion of their investigation of the actions of Minister Bailey. Some issues have been raised by experts on archives and public recordkeeping, however many of the issues noted that follow are not in the public domain. The view of QSA is that the Act is potentially no longer fit for purpose and that its deficiencies and inconsistencies are causing considerable confusion and ultimately undermining its central purpose in maintaining the integrity of the public record for the benefit of the Queensland public. What follows are known or perceived deficiencies and inconsistencies. They provide an additional level of context to the investigations noted earlier.

Making and keeping records

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

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

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

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

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

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

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

Non mandatory nature of policies, standards and guidelines

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

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

The lack of a penalty applied to this section has been a factor in several investigations conducted by QSA including Minister Bailey, Logan City Council and the QBCC. A core recommendation of the State Archivist following the Minister Bailey investigation was that certain key guidelines should be mandatory, whilst some remain non mandatory. This is consistent with practice in NSW, where mandatory guidelines are independently approved by their equivalent of the PRRC.

Enforcement of public authority compliance with the Act

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

Since 2020 investigations and complaints under the Act have been required by DHPW to be referred to the Integrity Services Unit for consideration by the Corrupt Conduct Intake and Assessment Committee prior to investigation by the State Archivist. The Committee assesses any complaints for potential corrupt conduct under the *Crime and Corruption Act 2001*. Current departmental processes require any liaison with the Crime and Corruption Commission to be through the Assistant Director-General, Corporate Services. Correspondence with the CCC indicates that they regard the State Archivist having independence under the Act to undertake investigations and make recommendations about potential actions.

Action for non-compliance with the Act at present can only be taken under the *Justices Act 1886*, which has its own set of limitations. For example, if it is suspected that a public record has been unlawfully disposed of under s.13, the offence is classified as a summary offence under the *Justices Act* which means any legal action must be taken within 12 months of the offence occurring. This

raises difficulties when determining an exact date of the unlawful disposal and becoming aware of the offence within the 12-month period.

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

S. 204 of the Code establishes the offence of 'disobedience to statute law' which provides as follows: *'Any person who without lawful excuse, the proof of which lies on the person, does any act which the person is, by the provisions of any public statute in force in Queensland, forbidden to do, or omits to do any act which the person is, by the provisions of any such statute, required to do, is guilty of a misdemeanor, unless some mode of proceeding against the person for such disobedience is expressly provided by statute, and is intended to be exclusive of all other punishment. The offender is liable to imprisonment for 1 year.'*

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

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

The current Act relies primarily on facilitation and persuasion techniques such as awareness raising and education, as well as monitoring (e.g. via self-assessment surveys) and independent dispute resolution (e.g. via the Public Records Review Committee). This model relies upon public authorities 'doing the right thing' due to the limited availability of enforcement mechanisms. QSA has previously reported on the state of recordkeeping in Queensland to Parliament on a bi-annual basis, the last survey completed in 2015. These surveys do not currently require the State Archivist to 'name and shame' public authorities that are not compliant with the requirements of the Act.

From 2009 to 2015, Queensland State Archives monitored agency compliance with the Act against *Information Standard 40: Record-keeping* and *Information Standard 31: Retention and Disposal of Public Records*. In June 2018, the information standards were repealed and replaced by the *Records Governance Policy*.

QSA's previous survey monitoring revealed that levels of recordkeeping compliance had been demonstrably poor, with the 2014-15 survey revealing that 85 per cent of public authorities did not meet the minimum standard of records management practice that QSA would deem appropriate.

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

The survey was initially planned for release in 2017 but to date it has not progressed for release. The survey progressed to the Minister's office in 2019, however it has not been approved for release and no reasons have been provided for this decision. It is currently still waiting to be released. Given the last record-keeping survey was undertaken in 2015, this is a significant issue. It is now 3 years overdue. The survey is a key part of the strategy to improve record-keeping, however QSA is unable to progress the survey. The other key part of the Recordkeeping Transformation Program was review of the Act itself, which as noted has also not progressed since 2018.

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

In addition to s.7 of the Act, a number of other sections of the Act create statutory obligations but contain no penalty and therefore no avenue for prosecution for non-compliance. S.8 of the Act requires public authorities to ensure the safe custody and preservation of records in their possession which is a statutory obligation. There have been examples of technical breaches of this section uncovered during QSA investigations including Minister Bailey and Logan City Council where individuals retained public records in private applications rather than transferring them to official government recordkeeping systems. As this section does not require a person to take a specific action rather a provision to generally ensure the safe custody and preservation of records, prosecution under other legislation such as the *Queensland Criminal Code* are unlikely to be successful.

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

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

Independence of the State Archivist

S.24 of the Act details the statutory functions of the State Archivist:

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

S.25 of the Act details the statutory powers of the State Archivist:

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

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

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

S.23 of the Act complicates this however by stating:

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

Since 2002 all State Archivists have operated with an assumption of independence in regard to all the statutory functions and powers noted in the Act. This practice is consistent in principle with the operation of all government archives within Australia and New Zealand.

Crown Law advice

Exempt Sch 3(7)

The wording of the Act, s.23 in particular, relating to direction and control is problematic. As noted, it is inconsistent with practices across all archives in Australia and New Zealand, which provide independence protections for the Archivist. In Queensland, the independence of the State Archivist was apparently a major consideration during the development and passing of the Act.

The inconsistency and confusion related to s.23 in regard to direction and control, led to the State Archivist seeking the advice of the Integrity Commissioner in October 2017 in regard to attempts to change the content of his independent report on the Minister Bailey investigation. The State Archivist sought advice relating to the potential conflict of following the direction of the Director-General versus his statutory obligations. Advice provided by the Integrity Commissioner included:

Act does not apply Schedule 1

During Estimates hearing in July 2017, during the active stage of the Minister Bailey investigation, the DG of DSITJ referred to the independence of the State Archivist in response to a question:

question.

Mrs SMITH: Can you advise how widespread the use of private email accounts for ministerial business is in the Palaszczuk government ministry?

Mr Merrick: I thank the member for the question. I think it is important to note in relation to the functions and powers of the State Archivist, conferred under the Public Records Act, that matters relating to the disposal of records or records management are covered under the independent statutory role of the State Archivist. I am not in a position personally to answer that question. That is a matter for the State Archivist. In relation to such matters, I would reinforce that the State Archivist is independent from any direction from either me or the minister in relation to those sorts of issues.

It should be stated that direction of the State Archivist is in itself not a concern, it is completely expected of an executive of a department and frequently such direction adds significant value. However, the State Archivist has concerns that [redacted] Exempt Sch 3(7)

A related matter in regard to the independence of the State Archivist is raised in the implementation of s.56 of the Act, which requires the State Archivist to give an annual report on the administration of the Act to the Minister responsible for Archives to provide to Parliament. The Act states that this report "may include details of the extent to which public authorities are complying with the Act including for example instances of non-compliance and any measures taken or the State Archivist recommends be taken to prevent or reduce noncompliance with the Act." During the 2nd reading of the Act prior to its passing, the Minister responsible for the Act stated in response to questions around independence of the State Archivist:

"Clause 27 guarantees the independence of the Archivist. That is a fundamental clause of the bill. Clause 56 provides for the Archivist to make an annual report. The bill also has a provision for a Public Records Review Committee."

This response arguably creates a perception that the Annual report was very much intended to be a means to ensure the independence of the State Archivist.

Prior to 2018, there are no known attempts to interfere with the State Archivist's commentary within his or her annual report. Since 2018, DHPW have directed the State Archivist to remove certain content from his 2017-18 and 2018/19 Annual reports that related to the administration of Act and key activities undertaken during the year. The excluded content was essentially material that could be perceived negatively. The result was that the State Archivist was not provided a means to accurately inform the Minister and Parliament of compliance with the administration of the Act by public authorities and to make recommendations to improve compliance with the Act. As noted above, since 2017 the State Archivist has never met with the Minister to provide his view on compliance with the Act or potential measures to improve it. The Annual report provides currently the only means available to the State Archivist to do so.

The State Archivist had significant concerns that DHPW were potentially in breach of the Act by directing him on the content of the Annual report and in particular to remove content directly related to the administration of the Act.

Attempts by the State Archivist to obtain Crown Law legal advice [redacted] Exempt Sch 3(7) have been made regularly since 2018, however these requests for legal advice have not been progressed by the Department. In December 2019, the PRRC requested advice [redacted]

[redacted] In May 2020 Crown Law provided legal advice that stated:

There is no doubt the central cause of these issues is the wording of the Act itself. The Crown Law interpretation of s.23 may indeed be a valid literal interpretation, despite its inconsistency with prior practice. Addressing this matter should be a major factor in a review of the Act. It has the potential to cause considerable ethical dilemma and conflict for many individuals and should be addressed within the Act itself to provide absolute clarity.

Disposal of public records in a digital context

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

Another issue not considered by the Act is the 'intent' to destroy public records. In a digital environment, a person may intend to destroy digital public records, but they can often be recovered (potentially at great expense). Under the current Act, the intent to deliberately destroy records is not a consideration while records can be recovered.

The ability to recover digital records was an issue in QSA investigations relating to Minister Bailey and Logan City Council which both involved the deletion of public records in private email accounts or messaging apps. In both cases the records were recovered by the CCC as part of their investigations which negated the act of disposal of the records by the individuals involved. In the case of Minister Bailey, the CCC concluded that as the emails had not permanently been deleted due to their recovery, it would be difficult to prove beyond reasonable doubt that a breach of s.13 had occurred. The act of recovering the records for investigation essentially removed the possibility of prosecution of breach of s.13. Somewhat ironically if the CCC recovery had been delayed by a further 10 days the records could not have been recovered as they would be automatically permanently deleted by the email service provider.

Transfer of public records not mandatory

The transfer of permanent value records to QSA helps to ensure that records of an historical or cultural nature are appropriately protected, securely stored and accessible to the public. The Act does not mandate the transfer of records by public authorities to QSA instead relying on public authorities to decide when records are transferred with QSA's agreement. The Act only provides for the transfer of public records more than 25 years old under section 10. This may be appropriate for records in stable formats such as paper or microfilm but can be problematic for records in less stable formats such as digital and audio-visual records. Technological obsolescence means these types of records can deteriorate or become unreadable after a few years due to the speed of technology advances. Waiting too long for digital records may mean that it is too late to ensure the ongoing usability and integrity of the records. The lack of mandatory transfers also means that public authorities can refuse to transfer records to QSA and keep them within their own agencies or communities. This lack of access to a wider audience limits the available of records to all Queenslanders and QSA has no visibility of records held by these public authorities, even though they may be permanent value public records of significant interest to Queenslanders.

Management of Ministerial records

The Act is ambiguous about the management of public records of former Ministers. Under the Act, Ministers and Assistant Ministers are identified as public authorities for the purposes of the Act. However, this only applies while a Minister or Assistant Minister remains in office. Once a Minister or Assistant Minister leaves office they are no longer a public authority. In effect, this means there is no entity identified that can make decisions about access to or the disposal of Ministerial records in QSA's custody. The impact of this means access to Ministerial records held at QSA can only be applied for under Right to Information and Privacy legislation. This includes former Ministers accessing records they personally created while in office. It also means temporary value Ministerial records held at QSA cannot be destroyed and remain available for access under the above legislation even though former Ministers may have expected them to have been destroyed. In addition, if former Ministers continue to hold public records that relate to their time as a Minister they are also potentially in unlawful possession of these public records. However, if they destroy the records, they are potentially in breach of s.13 of the Act. The State Archivist has sought to address these deficiencies through urgent amendments on many occasions with no success.

WHY THE PUBLIC RECORDS ACT WAS DEVELOPED

Many of these perceived deficiencies and inconsistencies should be read in the context of what led to the drafting of the Public Records Act in 2002. The Act was intended to address a number of high-profile issues and interpretation of sections of the Act arguably should not be made without considering the likely intent of those who drafted it. The current dominant interpretation of the Act being applied by DHPW relates to Crown Law advice provided in 2018. There is no doubt that the literal interpretation being applied by Crown Law has validity, however as noted it is not consistent with earlier interpretations or indeed other archival legislation and practice in Australia and New Zealand.

The Archives in Queensland commenced regulatory life under iterations of the Libraries Act from 1943 and then The Libraries and Archives Act 1988, but did not achieve standalone legislation until 2002 following key Queensland reviews that looked at corruption, the archival legislation and freedom of information.

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

The Electoral and Administrative Review Commission (EARC) were established as a result of the Fitzgerald Inquiry to provide reports to the Chairman of the Parliamentary Committee for Electoral and Administrative Review, the Speaker of the Legislative Assembly and the Premier, with a view to achieving and maintaining efficiency in the operation of the Parliament; and honesty, impartiality and efficiency in (i) elections; (ii) public administration of the State and (iii) Local Authority Administration.

The EARC reviews of the Freedom of Information Legislation and the Queensland Legislative Assembly Electoral System, determined that there needed to be a review of the archives legislation and the administrative practices and resources of QSA and deemed that the powers, practices and procedures of the Queensland State Archives were important matters.

EARC released their Review on Archives Legislation in June 1992. Their Review recommended that there should be specific archives legislation to provide for the establishment of an independent archives authority, with this authority to be constituted as a statutory corporation and independent agency within a ministerial portfolio. The archives legislation was to provide that the Archives Authority not be subject to external direction, whether ministerial or otherwise.

The EARC reviews were just an initial recommendation in this space. There followed a series of positions taken relating to the role of the State Archivist and its functions.

The following table details some of these:

Background - Intent of the Act	<ul style="list-style-type: none"> The Legal, Constitutional and Administrative Review Committee on Freedom of Information in Queensland in 2000 recognised the link between effective freedom of information legislation and good recordkeeping.
The <i>Public Records Bill 1999</i>	<ul style="list-style-type: none"> The <i>Public Records Bill 1999</i> provided that the State Archivist would not be appointed under the <i>Public Service Act 1996</i>. Clause 21 stated that the Archivist is to be appointed by the Governor in Council and that the <i>Public Service Act</i> does not apply to the appointment of the Archivist. The intent of this arrangement was to further the perception of the independence of the State Archivist in respect of making decisions in relation to the disposal and retention of public records.
Second reading speech, 12 December 2001 (Opposition response)	<ul style="list-style-type: none"> If the statutory body or person controlling Archives lacks independence, in the sense of being free of direction, there will always be the possibility that political pressure will be brought to bear to approve, inter alia, which records should be preserved and which should be destroyed. The effect of this would be that Archives would cease to be a mechanism for accountability and a haven for the heritage of the state. If the State Archivist is not independent of the Minister, then no believable public assurance can be given that decisions made by the State Archivist are not influenced by the responsible minister.

<p>Queensland. Electoral and Administrative Review Commission report</p>	<ul style="list-style-type: none"> • The Commission considers that an archives authority should be established in Queensland along the same lines as the NSW Archives Authority. It should be independent of a government department and constituted as a statutory corporation and independent agency within a ministerial portfolio. Clause 11 of the draft Archives Bill 1992 provides for this. The relevant Minister should be responsible for ensuring adequate resources for the Authority, but be unable to direct it as to its administration of the archives legislation. <p>Recommendations</p> <ul style="list-style-type: none"> •archives legislation provide for the establishment of an independent archives authority, such authority to be constituted as a statutory corporation and independent agency within a ministerial portfolio • ...archives legislation provides that the Archives Authority not be subject to external direction, whether ministerial or otherwise <p>Conclusions</p> <ul style="list-style-type: none"> • Such legislation will provide an independent mechanism to ensure that the essential records of Queensland's history are created and preserved for the benefit of the present and future generations. • The main features of the archives legislation recommended in this Report are: <ul style="list-style-type: none"> ○ The present QSA be reconstituted as a new independent statutory corporation with functions and powers relating not only to the collection and preservation of public records of ongoing value, but also to the proper management of public records by government agencies, and the provision of public access to those records. ○ The statutory authority ("the Archives Authority") proposed will be independent of Ministerial direction, have wide ranging functions of training, guidance and enforcement in relation to records management, to provide public access to records of a certain age held by the Archives Authority and to collect and preserve records having value as historical records or otherwise having value as part of Queensland's or Australia's heritage ○ A central function of the Archives Authority will be to establish record management standards governing the making, management, preservation and destruction of public records. These standards will include an obligation on public authorities to make complete and accurate records of their operations
<p>Archives Society of Archivists (ASA) submission to the Scrutiny of Legislation Committee 2002</p>	<ul style="list-style-type: none"> • A good and effective archival regime in a State has to start with recordkeeping practices within agencies. The quality of processes within an archives are largely irrelevant if records have not been created by an agency in the first place or properly cared for by the responsible public authority • Consistent approaches adopted to define the powers of parties and not for example by stating that the archivist has a power in one section then severely qualifying it in a subsequent section

(RIMPA) Records and Information Management Professionals of Australasia Submission on the draft Qld Archives Bill 1999	<ul style="list-style-type: none"> We support the intent of the Bill to give the Queensland State Archivist powers to make decisions without fear of interference from the Government. This is paramount requirement if the role is to provide an independent view on the management of public records especially those relating to disposal decisions.
Published articles on recordkeeping and accountability for a healthy democracy	<p><i>Sue McKemmish (1993) - Recordkeeping, Accountability and Continuity: The Australian Reality</i></p> <ul style="list-style-type: none">lack of recordkeeping is symptomatic of certain types of behaviour, of a disregard for the formal procedures and processes that provide the safeguards against systemic corruption The Act focuses more on the custodial and heritage role of QSA than the records management standard-setting, granting of inspection powers and the role of an accountability mechanism The test of whether we have succeeded in spiriting 'an understanding of the archives as arsenals of democratic accountability . . . into society' will be when we observe our governments upholding and defending this role - not seeking to dismiss or suppress it.
	<p><i>Bob Sharman (1993) – The Hollow Crown</i></p> <ul style="list-style-type: none"> Referencing the report from the WA Inc Royal Commission...records provide the indispensable chronicle of a government's stewardship. They are the first defence against concealment and deception. Departmental officers and ministers hold responsibility for record creation, maintenance and retention, but overall responsibility for those matters cannot be left with those officials.

Ultimately the exact intent of drafters of the Act cannot be known definitively, however it is clear that the Act is a major issue impacting the standard of government recordkeeping in Queensland and in the ability to take action to address non compliance with the Act. It is in effect at present, largely unenforceable and it is hard to believe that anyone would have drafted an Act intended to be unenforceable.

Changes in legislation impacting on record-keeping

A further reason for changes to the Act are simply consistency with a range of legislative obligations with record-keeping implications which have been introduced over the past 12 – 24 months. Most notably, these include the introduction of the *Human Rights Act 2019* and legislative amendments made in response to recommendations from the Royal Commission into Institutional Responses to Child Sexual Abuse. The new and amended legislative obligations emphasise the importance of good recordkeeping and keeping complete and reliable records that provide evidence that public authorities have taken all reasonable steps to ensure the proactive protection of vulnerable persons. This includes the introduction of a 'reverse-onus' on institutions to prove that they took all reasonable steps to prevent abuse; removal of limitation periods in relation to commencing action for civil damages in relation to child sexual abuse; records that demonstrate that acts or decisions are made in a way that is compatible with human rights; and providing a positive human right for access to government information. The changes in legislation highlight and strengthen the importance for the need for good recordkeeping in public authorities and the need for the Act to reflect this level of importance. In its current form, the Act is powerless to deliver on the expectations established by these legislative amendments.

WHY DOES THIS MATTER?

Ultimate why do the apparent deficiencies and inconsistencies in the Act matter? - For Archivists, and many others, public records form the cornerstone of government accountability. Good records support effective business practice, improve government accountability and efficiency, and the records themselves provide unique evidence and context of the actions and decisions taken by governments over time. Records are central to a government's ability to efficiently and effectively provide goods and services, protect the community, and demonstrate delivery on its commitments.

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

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

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

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

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

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

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

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

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

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

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

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

The time for a review of the Public Records Act is arguably well overdue. It is arguably no longer fit for purpose and the consequences of this are becoming very clear. Whilst our own investigations highlight a group of issues, the number of reports from other integrity agencies highlighting poor recordkeeping as a major factor should be far more concerning. Poor recordkeeping is a major problem and the review of the Act should be a core element in actions taken to address the current deficiencies in government recordkeeping.

In 2015 85% of public agencies did not meet what QSA would deem to be a minimum standard of recordkeeping practice. QSA has no evidence to indicate that this has improved, in fact evidence from its investigations and the investigations of other agencies actually indicate the opposite is potentially happening. Poor recordkeeping has major consequences both for individuals and for the accountability of those elected or employed to serve the Queensland public. Concerted and coordinated action arguably is required, action which should include a review of the Public Records Act.

Pages 107 through 110 redacted for the following reasons:

Exempt Sch 3(7)

Released under RTI - DCHDE

From: djhamill [49 Sch 4]
To: Office of the State Archivist; "David Reed"; "Dr David Solomon"; jennifer.clark [49 Sch 4]; Maria Samios; "Kate Blackford Slack"; "Linda O'Brien"
Cc: "Karen Baines"; "Linda Hammond"
Subject: RE: Draft Public Records Review Committee meeting minutes
Date: Wednesday, 14 March 2018 7:28:12 AM
Attachments: image001.jpg
DRAFT - PRRC Meeting #39 minutes - 1 March 2018.docx
Importance: High

Dear Heather

I have marked up a couple of amendments to the draft minutes

Regards

David

From: Office of the State Archivist <Officeofthe.StateArchivist@archives.qld.gov.au>
Sent: Monday, 12 March 2018 4:24 PM
To: David Reed <David.Reed@psc.qld.gov.au>; Dr David Hamill <[49 Sch 4]>; Dr David Solomon <[redacted]>; jennifer.clark <[redacted]>; Maria Samios <julie.steel@justice.qld.gov.au>; Kate Blackford Slack <[redacted]>; Linda O'Brien <[redacted]>
Cc: Karen Baines <Karen.Baines@justice.qld.gov.au>; Linda Hammond <[redacted]>
Subject: Draft Public Records Review Committee meeting minutes

Good afternoon everyone

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

Apologies for the delay in getting these out

Please advise me of any changes you require

Regards Heather

Heather Rayfield

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

www.archives.qld.gov.au | www.facebook.com/qldstatearchives | www.twitter.com/qsarchives

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

WhiteRibbonEmailFooter (003)



This E-Mail is intended only for the addressee. Its use is limited to that intended by the author at the time and it is not to be distributed without the author's consent. Unless otherwise stated,

the State of Queensland accepts no liability for the contents of this E-Mail except where subsequently confirmed in writing. The opinions expressed in this E-Mail are those of the author and do not necessarily represent the views of the State of Queensland. This E-Mail is confidential and may be subject to a claim of legal privilege. If you have received this E-Mail in error, please notify the author and delete this message immediately.

Released under RTI - DCHDE

PUBLIC RECORDS REVIEW COMMITTEE

Meeting No. 39

Thursday 1 March 2018

**Lecture theatre 1
Queensland State Archives, Runcorn
1:00pm – 3:00pm**

DRAFT MINUTES

Attendance

Dr David Hamill (Acting Chair), Ms Linda O'Brien, Ms Kate Blackford-Slack, Mr David Reed and Ms Jennifer Clark

Mr Mike Summerell Executive Director & State Archivist, Ms Heather Rayfield (PRRC Executive Officer QSA), Ms Kit Kugatoff (Director Collections and Access) and Ms Kylie Good (Acting Director) Government Recordkeeping)

1 WELCOME AND APOLOGIES

1.1 Welcome

Opened 12:52pm - Dr David Hamill welcomed members to Queensland State Archives at Runcorn and the 39th meeting of the Public Records Review Committee.

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

He welcomed Mike Summerell the State Archivist of Queensland State Archives, Kit Kugatoff Director Collections and Access, Kylie Good Acting Manager Government Recordkeeping and Heather Rayfield, our Executive Officer.

1.2 Apologies

Dr David Solomon and Ms Julie Steel

2 DRAFT MINUTES OF PREVIOUS MEETING

Dr Hamill provided an update to the minutes and asked members if there were any changes required to the previous minutes. He

asked if anyone would like to move that the minutes of the previous meeting be adopted as a record of the meeting of 25 May 2017.

Moved - Linda O'Brien

Seconded – David Hamill

3

BUSINESS ARISING FROM PREVIOUS MINUTES

Dr Hamill advised that all business arising from the previous meeting had been completed or will be discussed in today's meeting.

4.

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

4.1

State Archivist investigation into allegations of unauthorized disposal of public records by Minister Mark Bailey

This paper provides an overview of the State Archivist's investigation into allegations of unauthorised disposal of public records by Minister Mark Bailey.

Mr Summerell spoke to the paper providing members with an update in respect of his report on the alleged deletion of Minister Bailey's private email account. He provided members with a copy of the final report which was provided to the Director-General DSIT.

Mr Summerell provided members with an overview of the timeline for the investigation and the perceived interference with the final content of the report. He advised he initially lodged the report on 27 September however was asked to withdraw it and make changes. The report and investigation highlighted the State Archivist's inability to take action in respect of breaches of the Act.

He advised he had met with the Chairperson Mr Don Mackenzie prior to his resignation to become a Magistrate of the Courts, to discuss the possible implications for the Committee and the statutory functions of the State Archivist.

Mr MacKenzie advised him to bring this matter to the Committee.

Mr Summerell provided the Committee with some context for the paper.

The Committee advised they would discuss the matter, QSA staff left the room to allow the Committee to deliberate.

The Committee provided the following:

1. The Public Record Review Committee ('the Committee') met on 1 March 2018 and were provided a copy of the State Archivist's report to Jamie Merrick, Director General,

Department of Science Information Technology and Innovation ('DSITI') titled, "Statutory Investigation into Allegations of Unauthorised Disposal of Public Records by Honourable Mark Bailey MP, Minister for Main Roads, Road Safety and Ports and Minister for Energy, Bio-fuels and Water Supply - 24 October 2017 a. The Committee was also provided with a letter from the Queensland Integrity Commissioner Dr Nikola Stephanov dated 23 October 2017 ("the documents")

2. The Committee considered the documents and resolved that they raised matters which affected the administration and enforcement of the *Public Records Act 2002* ("the Act").
3. The Committee is obliged, pursuant to s 29(2)(a) of the Act, *"to advise the Minister about issues affecting the administration or enforcement of this Act"* In exercising that function, the Committee wishes to draw the following matters to the attention of the Minister:
 - a. The Committee considers that the review of the Act has become critical and recommends that the Minister pursue it as a matter of priority.
 - b. Within the scope of that review, the Committee urges the Minister to:
 - i. reaffirm the independence of the State Archivist and clarify the powers, duties and responsibilities of that office; and
 - ii. reaffirm the independence of the Committee and clarify the powers, duties and responsibilities of the Committee.
 - c. Although various sections of the Act create obligations regarding the management of public records, the majority of these provisions fail to provide a mechanism to ensure that these obligations are met and fail to establish any appropriate sanctions in the event that these provisions are breached.
 - d. The review ought to consider mechanisms to improve compliance with the requirements of the Act, particularly with respect to the management of public records and specifically, to ensure that public records created in private media can be preserved in the public record.

~~The Committee requested the Executive Officer to provide the draft statement to allow them to work on exact wording.~~

4.2

Recommendations and progress update on the recommendations from CCC following the email investigation

This paper outlines the progress on the recommendations made following the email investigation into unlawful disposal of public records by Minister Bailey.

Ms Good advised that QSA has been providing recordkeeping training to Ministerial staff. Around 200 staff have been provided training on their obligations to keep records. There is only about 15 staff still to be trained. She provided the Committee with an overview of the response and questions she received from Ministerial staff.

E.g. Ministerial staff advised Ms Good that they do not get a great deal of support or assistance from Ministerial Services Branch. The Committee discussed disposal schedules and advice being provided to staff.

QSA's view on the use of private email accounts is you cannot control who sends an email to you however if it is a record you are required to forward it to an official ministerial email account. Ministerial Services advice is to not use private account

The Committee noted the report

4.3

Government Recordkeeping Transformation program

This paper provides an update on the launch of the Recordkeeping transformation program which aims to achieve 95% compliance with minimum recordkeeping standards by public authorities.

Ms Good advised the Government recordkeeping team have looked at the best way to transform recordkeeping. The recordkeeping transformation program aims to increase the compliance to 95% by 2022. The perception is that recordkeeping is too complex, QSA is helping agencies with compliance.

The team are looking at what minimal compliance is, they are working at setting a baseline through understanding the current maturity levels of agencies. This will allow QSA to help agencies increase the maturity over the next 4 years

Dr Hamill asked why this work which QSA advised would be completed by June 2017 had not been completed.

Mr Summerell responded to the question that the staff who would have completed this work were offline with the Minister Bailey email investigation. QSA has done the preliminary work, however in changing departments means a whole new approval round with Department of Housing and Public Works.

The program was released in November 2017.

The Committee noted the paper.

4.4

The *Public Records Act 2002* review

This paper provides a summary of the review of the *Public Records Act 2002* underway in the Government Recordkeeping Unit. It should be noted that the review of the Act is relevant to the first two papers.

Dr Hamill asked why the discussion paper was not released in February as it says in the paper.

Mr Summerell advised this is another key priority for QSA currently the briefing note seeking Ministerial approval to release the discussion paper is in the Ministers office and is one of 130 briefs awaiting approval. The Minister does not see the Review of the Act as a priority as he has such a large portfolio.

The Committee discussed the review of the act and the discussion paper. The Committee mentioned some key points the discussion paper must include. The Act needs

- to be contemporary;
- to include areas on minimising RAPs i.e. open by default; and
- clarify State Archivist powers; include an ability to prosecute non-compliance.

Dr Hamill has asked whether after the Committee's discussion there are areas in the discussion paper which needs to be changed prior to its release.

Dr Hamill suggested that the committee recommends the State Archivist review the paper prior to it being released to ensure it is comprehensive and includes the priorities discussed.

The Committee noted that the discussion paper should be circulated internally as well.

The Committee noted the paper.

ACTIONS

The State Archivist to review the Discussion paper prior to its release to ensure all priorities included.

QSA to provide a report on the progress of the review of the Act.

4.5

Opening of closed records initiative

Ms Kugatoff updated the Committee on the work that has taken place at QSA around the opening of closed records. She discussed the project team's efforts over the last year.

QSA has developed a strong relationship with DATSIP and have used this to discuss the closed MABO records. QSA is continuing to work with the Courts (Julie Steel) around how to bundle court records so that when transferred to QSA not all of them will be closed.

There has been limited success with other agencies given their limited resources. Work will continue with DHPW now that QSA is part of this department.

Ms Kugatoff advised that QSA has undertaken a trial of only allowing the transfer of records that have a RAP that is open or less than 30 years. It has been very successful and it is proposed to make this the working model. Over the last 6 months only 60% of records being transferred to QSA have been closed compared to prior to the trial when it was up to 90% closed.

The trial has given QSA staff more confidence as they have the backing of State Archivist to negotiate with the agencies on the RAPs on the records. She discussed some ideas for future works including using volunteers to help agencies identify what records could be opened as the agency does not have the time to do this themselves.

The Committee discussed the digital archive and how it will have an influence on records being transferred. If the records are not open it is just a storage device with no benefit of access.

The Committee noted the paper.

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

Dr Hamill advised there are no disputes

6. **APPLICATIONS MADE TO THE COMMITTEE UNDER SECTION 39**

Dr Hamill advised there are no applications

Meeting closed 2.35pm

Pages 119 through 256 redacted for the following reasons:

Exempt Sch 3(6)

Released under RTI - DCHDE