

MINISTERIAL BRIEFING NOTE

Subject: Ministerial Recordkeeping Policy
Decision/Action by: 21 December 2017
Reasons for Urgency: Advice to incoming government Ministers is being sent on 21 December 2017 by the Queensland State Archivist.
Briefing type: Unrequested briefing note for noting
Responsible Area: Digital Productivity and Services
Electorate: Statewide
Contact Officer: Andrew Spina – (07) 3719 7733

PURPOSE

To advise the Minister that the Queensland State Archivist will send Ministers and Assistant Ministers a letter on Thursday, 21 December 2017, to advise them of their recordkeeping responsibilities under the *Public Records Act 2002* (the Act).

RECOMMENDATION

It is recommended that the Minister:

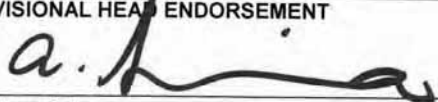

- Note that the Queensland State Archivist will be sending a letter to Ministers and Assistant Ministers on 21 December 2017, in relation to their responsibilities relating to the management of ministerial records (Attachment 1).

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 Productivity and Services Date: 21/12/17	COMMENTS
DIRECTOR-GENERAL ENDORSEMENT Christine Castley A/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: 18/1/18	COMMENTS

CONTEXT

- Under the Act, Ministers and Assistant Ministers have a statutory obligation to make and keep full and accurate records of activities related to their ministerial portfolio responsibilities.
- Ministerial records include emails, social media interactions and text messages relating to a Minister's portfolio responsibilities that are sent or received, even if this occurs through a private account.
- New guidelines on the identification and treatment of ministerial records have been prepared to improve records management in ministerial offices.

KEY ISSUES

- On Thursday, 21 December 2017, the Queensland State Archivist will send Ministers and Assistant Ministers a letter to advise them of their recordkeeping responsibilities under the Act (Attachment 1).
- This is standard advice that State Archivists have sent to previous incoming Ministers to advise them of their recordkeeping responsibilities under the Act.
- Relevant public records are likely to be created almost immediately on being sworn in as a Minister.
- The key message is to convey the importance of putting in place appropriate recordkeeping procedures as soon as possible.
- The new Ministerial records policy seeks to provide guidance to avoid issues associated with use of private email or other systems (including the CCC finding that the use of private email systems presents a corruption risk).

ELECTION AND GOVERNMENT COMMITMENTS

- Not applicable

FINANCIAL IMPLICATIONS

- Not applicable.

CONSULTATION

- Corporate and Government Services, Department of the Premier and Cabinet.

FUTURE STEPS

- Not applicable

COMMUNICATIONS/MEDIA OPPORTUNITIES

- Not applicable

Released under RTI - DCHDE

Josephine Marsh
QSA13/454-03
Government Recordkeeping
07 3037 6605

21 December 2017

Hon Michael de Brenni MP
Minister for Housing and Public Works
Minister for Digital Technology
Minister for Sport
PO Box 2457
BRISBANE QLD 4001



Queensland
Government

Department of
Housing and Public Works

Dear Minister de Brenni

Ministerial recordkeeping responsibilities

I am writing to you in your role of Minister for Housing and Public Works; Minister for Digital Technology; Minister for Sport, to outline some of the key responsibilities that are relevant to you and your Ministerial office regarding the management of ministerial records.

As the Minister for Housing and Public Works, Minister for Digital Technology, Minister for Sport, you are considered a public authority under the *Public Records Act 2002* (the Act). You are also considered the executive officer of your public authority and have statutory obligations under the Act to:

- a) make and keep full and accurate records of your activities as a Minister, and
- b) have regard to any relevant policy, standards and guidelines made by the State Archivist about the making and keeping of public records.

These obligations extend to ensuring that staff within your office also meet these requirements.

A ministerial record is defined in the Act as '*a record created or received by a Minister in the course of carrying out the Minister's portfolio responsibilities*'. A Minister's portfolio is the area of responsibility assigned as a member of Cabinet and identified in the Administrative Arrangements Orders.

For your convenience, I have attached the Ministerial records policy which details the policy requirements for the management of ministerial records by Ministers and ministerial staff.

The policy requirements outlined in the *Ministerial records policy* are as follows:

1. Ministers and ministerial staff are aware of and fulfil their recordkeeping obligations under the *Public Records Act 2002*
2. Ministers must make full and accurate ministerial records
3. Ministers and ministerial staff must keep all ministerial records for as long as they are lawfully required to be kept.

If you require further advice about your responsibilities under the *Public Records Act 2002* in regard to the management of ministerial records, please contact my Director of Government Recordkeeping, Ms Josephine Marsh on telephone 07 3037 6605 or email Josephine.Marsh@archives.qld.gov.au.

Yours sincerely



Mike Summerell

**Executive Director and State Archivist
Queensland State Archives**

Enc.

MINISTERIAL RECORDS POLICY

A recordkeeping policy for Ministers and Assistant Ministers

December 2017

Security classification: Public



Department of Science,
Information Technology
and Innovation



Table of contents

Table of contents	2
Purpose	3
Policy statement	3
Policy benefits.....	3
Applicability	3
Authority	4
Definitions	4
Policy requirements.....	5
Policy requirement 1.....	5
<i>Accountability</i>	5
Policy requirement 2.....	5
<i>Ministerial records</i>	5
<i>Private email and social media accounts</i>	6
<i>Procedures</i>	6
Policy requirement 3.....	6
<i>Retention and disposal of ministerial records</i>	6
<i>Transfer of ministerial records to Queensland State Archives</i>	7
<i>Ministerial diaries</i>	7
<i>Management of other records</i>	7
<i>Access to records at Queensland State Archives</i>	7
Further information	8
Attachment 1: Examples of ministerial records.....	9
Minister for Industry XYZ.....	9

Purpose

This policy establishes requirements for the management of ministerial records and the records of Assistant Ministers by Ministers, Assistant Ministers and ministerial staff in accordance with the *Public Records Act 2002*.

Policy statement

Ministers and Assistant Ministers will make and keep full and accurate records of activities related to their ministerial portfolio responsibilities or Assistant Minister duties.

Policy benefits

Records are the cornerstone of an accountable and democratic society and allow scrutiny from the public of the decisions made by those who are elected to act on their behalf.

By implementing this policy Ministers, Assistant Ministers and ministerial staff will be able to:

- Make informed policy and business decisions
- Protect the rights and entitlements of citizens
- Contribute to democratic and accountable government
- Respond quickly to requests for information including Right to Information requests
- Share accurate information
- Locate evidence of decisions and actions
- Answer correspondence consistently and efficiently
- Provide confidence in the authenticity and integrity of information
- Support open data
- Promote collaboration and communication
- Support efficient and transparent business practices

Applicability

This policy applies to all Queensland Government Ministers, Assistant Ministers and ministerial staff.

This policy should be used in conjunction with the *Ministerial Recordkeeping Procedures*, the *Queensland Ministerial Handbook* and the *Ministerial Information Security Policy* published by the Department of the Premier and Cabinet.

Queensland Government departments may find it useful to refer to the policy when managing ministerial records on behalf of their portfolio Minister.

Definitions

The definition of a ministerial record under the *Public Records Act 2002* is 'a record created or received by a Minister in the course of carrying out the Minister's portfolio responsibilities'.

A Minister's portfolio is the area of responsibility assigned as a member of Cabinet and identified in the Administrative Arrangements Orders.

For the purposes of this policy, reference to a ministerial record also includes a record created or received by an Assistant Minister in the course of carrying out their official duties.

Ministerial records do not include the following (unless they relate to the Minister's portfolio responsibilities or Assistant Minister's duties):

- personal activities and interactions with family and friends
- party political membership or activities
- constituency or electorate activities
- responsibilities as a member of the Legislative Assembly.

Authority

This policy is issued under section 25(1)(f) of the *Public Records Act 2002* which enables the State Archivist to make policy, standards and guidelines about the making, keeping, preserving, managing and disposing of public records.

Authorised by State Archivist: **Mike Summerell**

Date: **13/12/2017**

Policy requirements

Policy requirement 1

Ministers, Assistant Ministers and ministerial staff are aware of and fulfil their recordkeeping obligations under the *Public Records Act 2002*

Accountability

Ministers and Assistant Ministers are public authorities for the purposes of the *Public Records Act 2002*.

As public authorities, Ministers and Assistant Ministers have a statutory obligation under section 7 of the *Public Records Act 2002* to make and keep, full and accurate records of activities related to their ministerial portfolio responsibilities or Assistant Minister duties. There is also an obligation to ensure compliance with policies, standards and guidelines made by the State Archivist including *Information Standard 40: Recordkeeping* and *Information Standard 31: Retention and disposal of public records*.

Ministers and Assistant Ministers are responsible for:

- allocating resources for the creation, capture, keeping and disposal of ministerial records
- endorsing the disposal of ministerial records in accordance with authorisations issued by the State Archivist
- implementing procedures that ensure the appropriate management of ministerial records
- ensuring the safe custody and preservation of ministerial records
- ensuring ministerial staff attend recordkeeping training

While overall accountability for recordkeeping rests with the Minister or Assistant Minister, recordkeeping obligations outlined in the *Public Records Act 2002* extend to anyone who manages ministerial records including ministerial and portfolio department staff.

A Minister or Assistant Minister can delegate the actions of creating, maintaining and disposing of ministerial records to a suitably qualified or skilled person in the same way as financial or human resource activities can be delegated.

Policy requirement 2

Ministers and Assistant Ministers must make full and accurate ministerial records

Ministerial records

Ministers, Assistant Ministers and ministerial staff create and receive a lot of records, not all of which are ministerial records. If a record is created or received because of an individual's role as a Minister or Assistant Minister, then it is a ministerial record. If a record has been created or received in any other role solely as a Member of Parliament or membership of a political party - it is not a ministerial record.

Private email and social media accounts

Ministerial records can be created in both digital or paper formats and include emails, text messages, social media interactions, diaries, photographs, videos, and data held in business systems.

Ministerial records include **emails, social media interactions and text messages** relating to a Minister's portfolio responsibilities that are sent or received from a private account.

If a ministerial record is received in a private email account, processes must be in place to forward the email from the private email account to the official ministerial email account within 20 days of receipt or creation of the email.

If a response is required to an email received in a private email account, a ministerial email account should be used to respond.

If a Minister has access to and continues to use a private email account that predates the ministerial appointment, it is prudent to activate automatic or standard replies, that direct people to send correspondence related to ministerial portfolio responsibilities to the official ministerial email account.

Social media interactions relating to ministerial portfolio responsibilities or Assistant Minister duties that are required to be kept must be captured whether they are sent from a private or an official account. This includes social media posts and comments or responses to posts.

Procedures

Documented procedures must be in place for the management of ministerial records that are created and received by Ministers, Assistant Ministers and ministerial staff.

Some business interactions may result in the automatic creation of a ministerial record (e.g. when sending or receiving an email). In other cases, specific action will need to be taken to create a ministerial record for example creating a file note or sending a follow up email to document the decisions or outcomes agreed in a text message or a meeting.

Policy requirement 3

Ministers, Assistant Ministers and ministerial staff must keep all ministerial records for as long as they are lawfully required to be kept

Retention and disposal of ministerial records

Ministerial records can only be disposed of or destroyed with the authorisation of the State Archivist. This authorisation is usually given in a retention and disposal schedule or other disposal authorisation from the State Archivist and determines the length of time ministerial records need to be kept.

The retention and disposal schedules and other disposal authorisations applicable to records of Ministers, Assistant Ministers and ministerial staff can be located at <https://www.forgov.qld.gov.au/search-retention-and-disposal-schedule>

Transfer of ministerial records to Queensland State Archives

Ministerial records identified as permanent by the State Archivist in a retention and disposal schedule or other disposal authorisation must be transferred to Queensland State Archives. They can be transferred at any time during a Minister's term of office but must be transferred on a change of Minister or government.

Ministerial staff should contact Ministerial Services to discuss the ongoing storage of ministerial records identified as temporary in a retention and disposal schedule or other disposal authorisation on a change of Minister or government.

Ministerial diaries

Ministerial diaries must be kept permanently, which means they must be transferred to Queensland State Archives on a change of Minister or government.

Ministerial diaries should be in electronic form e.g. Microsoft Outlook calendars and the full diary must be captured. This means that all attachments that are relevant to the meeting such as meeting agendas, meeting reports and details of attendees must be captured in conjunction with the diary.

Any entries in the ministerial diary that relate to personal or party political matters should be removed before transferring the diary to Queensland State Archives. If these entries are not removed prior to transfer they will remain part of the ministerial diary.

Extracts from diaries of ministers published on the Queensland Government website are not sufficient to meet this requirement.

Management of other records

Other ministerial records related to the portfolio department such as briefing notes, parliamentary briefs and correspondence actioned by the department must be returned to the portfolio department for retention or disposal.

Cabinet documents are treated differently to ministerial records and must be returned to the Cabinet Secretariat for disposal. Information about this can be found in the *Queensland Cabinet Handbook*.

Administrative records such as finance and human resource records must be returned to Ministerial Services for safekeeping.

Access to records at Queensland State Archives

Following transfer to Queensland State Archives, ministerial records have a restricted access period of 30 years after the date of the last action on the record.

Anyone seeking access to ministerial records held in the custody of Queensland State Archives during the 30 year restricted access period must apply under the *Right to Information Act 2009* or *Information Privacy Act 2009*. This includes former Ministers (including the Minister who created the records), members of the public and Ministers of a different party.

Further information

More information about recordkeeping can be found at forgov.qld.gov.au/recordkeeping

For recordkeeping implementation advice please contact Ministerial Services on 07 3003 9900.

For recordkeeping advice from Queensland State Archives, please go to forgov.qld.gov.au/contact-queensland-state-archives.

Released under RTI - DCHDE

Attachment 1: Examples of ministerial records

If a record is created or received because of an individual's role as a Minister or Assistant Minister then it is a ministerial record.

How long to keep ministerial records is determined by disposal authorisations issued by the State Archivist.

Procedures issued by the Department of the Premier and Cabinet also provide guidance on identifying ministerial records.

Minister for Industry XYZ

Use the examples of records created or received by the fictitious Minister for Industry XYZ to help identify ministerial records.

In the *Administrative Arrangements Orders* the Minister for Industry XYZ is responsible for a number of pieces of legislation, including the *Industry XYZ Support Act 2016* and has oversight for the Department of Industry XYZ Regulation.

The Minister is also the shareholding minister for the Government Owned Corporation IndustryTechQ. The Minister has a Chief of Staff, 2 Senior Policy Advisors and an Executive Assistant. The Minister is the Member of Parliament for the electorate of Bristown.

Example	Ministerial record?
<u>Portfolio related</u>	
An email to the Director-General of the Department of Industry XYZ Regulation requesting an update on the progress of the new strategy for industry development	Yes
An email received by the Minister congratulating them on their appointment as the Minister for Industry XYZ	Yes
An email received by the Minister congratulating them on their Ministerial appointment, and requesting a meeting to explain how their private company can assist with potential government initiatives	Yes
An email sent by a family friend recommending their grandson for a role in the new Ministry	Yes
An email sent by a lobbying organisation requesting a meeting to discuss the future of industry XYZ in Queensland	Yes
An email from a long-time colleague attaching an article of interest relating to industry XYZ in New Zealand	Yes

Example	Ministerial record?
An email from the president of the Industry XYZ Engineers Union requesting an update on pay negotiations with IndustryTechQ	Yes
An email from a fellow Member of Parliament requesting an investigation for development of a new industry XYZ centre of technology in their electorate	Yes
Response to a social media post from a constituent complaining about proposed new policy on industry XYZ	Yes
Emails with a marketing firm relating to the development of a newsletter promoting industry XYZ that is issued by the Minister	Yes
Email from a long time business associate providing advice on the latest draft of a new policy on industry XYZ licensing	Yes
Email subscription providing latest updates on US industry XYZ activities	Yes
Text message to Director-General of the Department of Industry XYZ Regulation requesting DG to meet with representative from industry XYZ (the details might be captured elsewhere in a follow up email or file note and therefore the text message would not require further capture)	Yes
Email from a member of the public providing information on their new industry XYZ invention	Yes
Invitation from an international government for a visit to discuss and view innovation on industry XYZ in their jurisdiction	Yes
Email from the Minister's Executive Assistant with details of the Minister's trip to Gladville to open a conference on industry XYZ technology	Yes
Email from the Minister's Chief of Staff requesting 2 days leave	Yes
Photos of the Minister presenting the key note speech at an industry XYZ conference in Queensland	Yes
Email from an industry association providing input into proposed government policy on industry XYZ technology development in Queensland	Yes
Invitation from CEO of IndustryTechQ to attend football match	Yes

Example	Ministerial record?
Emails with NSW Minister for Industry ZYX discussing differences in government policy between the two states	Yes
<u>Personal</u>	
An invite to dinner on Saturday night from a family member	No
Email subscription advising of travel specials from local travel agent	No
Notifications of updates on Minister's personal Facebook account	No
Text message to family member asking what they want for dinner	No
Comments made on posts about world travel expo in Queensland using personal Twitter account	No
Invitation from brother to attend football match	No
<u>Electorate/parliamentary/party political</u>	
A submission by a constituent of Bristown on the proposed changes to the main road in the Minister's electorate	No
An invitation to open new classrooms in Minister's electorate of Bristown	No
Emails with party candidates in the lead up to an election proposing policy ideas for advancing the Queensland space industry	No
Text message from fellow caucus member regarding party nominations for next election	No
Social media post congratulating Minister on re-election as Member of Parliament for Bristown	No
Circular from union sent to its members	No
Advice on dates from the Clerk of the Parliament on the induction for new Members of Parliament	No
Email with party officials regarding election of new party leader	No

Example	Ministerial record?
<u>Cabinet documents (are public records but require management by returning to Cabinet secretariat for disposal)</u>	
Email from Cabinet Secretariat circulating cabinet documents for next Monday's cabinet meeting	No
Cabinet agenda	No
Correspondence between the Minister and the Premier proposing matters to be raised in Cabinet	No

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 MC) ☒ **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

MINISTERIAL BRIEFING NOTE

Subject: Recordkeeping Transformation Program
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 – (07) 3037 6601

PURPOSE

To provide the Minister with an overview of the Recordkeeping Transformation Program launched by Queensland State Archives in November 2017, which aims to achieve 95 per cent% minimum compliance with recordkeeping standards by public authorities by 2022.

RECOMMENDATION

It is recommended that the Minister:

1. ~~Note-Agree~~ the approach taken to improve recordkeeping compliance through the Recordkeeping Transformation Program (Refer to **Attachment 1**).
2. Note the future steps of the program that will require Ministerial approval.
3. ~~Note-Agree~~ the letter to be sent to public authority chief executives by the State Archivist about the Recordkeeping Transformation Program and reduction in some operational services (Refer to **Attachment 2**).

Noted	Approved	Not approved

Yes	No

Media Release Required

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

DIVISIONAL HEAD ENDORSEMENT <u>Endorsed</u> Andrew Spina Assistant Director-General Digital Capability, Information and Transaction Based Services Date: 28 /02 /18	COMMENTS
DIRECTOR-GENERAL ENDORSEMENT Liza Carroll Director-General Department of Housing and Public Works Date:	
MINISTERIAL APPROVAL Mick de Brenni MP Minister for Housing and Public Works Minister for Digital Technology Minister for Sport	COMMENTS

Date: / /	
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CONTEXT

- Despite dedicated legislation for the management of public records being in place since 2002, the standard of recordkeeping across Queensland public authorities remains low. Data from Queensland State Archives' (QSA) 2015 recordkeeping survey shows that only 15% per cent of the approximately 500 Queensland public authorities are compliant with what QSA would deem a minimum standard of recordkeeping practice. The poor standard of government recordkeeping practice has been reported by QSA for many years with little improvement noted. Large scale change is required to transform the standard of recordkeeping across the Queensland Government. The Recordkeeping Transformation Program was launched by QSA in November 2017 and aims to achieve 95% per cent compliance with minimum recordkeeping standards by 2022.

KEY ISSUES

- Under the *Public Records Act 2002* (the Act), a public authority must make and keep full and accurate records of its activities, and have regard to any policy, standards and guidelines issued by the State Archivist about the making and keeping of public records. Responsibility for compliance with the Act lies with the executive officer of a public authority and in the case of Ministerial records, the relevant Minister.
- While paper recordkeeping practices tend to be relatively well established, technological advances since the introduction of the Act have resulted in vast numbers of digital records being created, challenging traditional recordkeeping practices. Government's increased digital service delivery has outpaced its ability to capture, manage and preserve the digital evidence of its business activities as it continues to rely on outdated paper-based recordkeeping practices.
- Recordkeeping practices across the Queensland Government require significant improvement to support transparent and accountable government and strengthen decision making and efficient government business.
- Information gathered during the 2017 independent investigation into allegations that the Honourable Mark Bailey MP, Minister for Main Roads, Road Safety and Ports and Minister for Energy, Bio-Fuels and Water Supply had unlawfully disposed of public records demonstrated the lack of recordkeeping awareness and good recordkeeping practices in Ministerial offices that is also evident across government.
- On 16 November 2017, QSA launched the Recordkeeping Transformation Program (the Program) which aims to transform the standard of government recordkeeping practices.
- The Program aims to achieve 95 per cent% compliance with minimum recordkeeping standards by public authorities by 2022.
- Compliance is dependent on public authorities applying the minimum recordkeeping standards within their business, noting that under the current legislation adherence to the standards issued by QSA is not mandatory and non-compliance does not incur any penalties.
- The Program will drive the behavioural change required to transform recordkeeping through a five-year strategy that will focus on increasing the value of information across government, transforming recordkeeping legislation, building digital capability in public authorities and engaging with agencies. (refer to **Attachment 1**).
- ~~It is proposed that the Program will This will include:~~
 - ~~reviewing the Act to ensure it supports effective recordkeeping for the public sector in the digital age;~~

- exploring innovative solutions and tools to promote practical and efficient recordkeeping practices;
 - developing new minimum standards in recordkeeping practice for public authorities and monitoring performance against them;
 - publicly reporting levels of recordkeeping practice across the public sector;
 - developing a digital maturity framework to build digital capability and help agencies plan and improve their digital recordkeeping practices;
 - implementing more effective and efficient methods for the authorisation and disposal of public records;
 - developing online training for agencies to improve recordkeeping capability;
 - releasing a digital transition strategy that will govern the transition of public authorities from paper-centric to digitally capable;
 - engaging with agencies through social media including blog posts, newsletters and Twitter;
 - progressing priority amendments to the Act to clarify the management, disposal of and access to ministerial records; and
 - reviewing and developing improved recordkeeping practices for Ministers.
- ~~In addition, consideration should be given to a review of the Act. A further brief will come to you~~ being prepared outlining a range of options for the Minister's review with regard to this matter ~~seeking or consideration of this issue.~~
 - QSA participated in a joint initiative with the Queensland University of Technology (QUT) in December 2017 to reimagine the future of recordkeeping. The initiative produced a conceptual 'QSAbot' technology which would ensure recordkeeping compliance by default by attempting to make recordkeeping happen 'behind the scenes'. The technology would significantly minimise the level of user involvement currently required and revolutionise recordkeeping in a world first.
 - The Program is closely aligned with the Digital Archives Program. While the Digital Archives Program will not solve the issues of recordkeeping compliance outlined above, it will ensure the preservation of permanent value digital records that will be transferred into the digital archive.
 - QSA's operational resources are insufficient to lead and progress the Program without some reduction in the current services provided by QSA. This includes the provision of operational recordkeeping advice to agencies and the development and review of agency-specific retention and disposal schedules. QSA's intention is to maintain only minimal operational services during the life of the Program, to enable key resources to be redirected to transformation initiatives. A draft letter to be sent by the State Archivist to public authority chief executives advising of this change is attached (refer to **Attachment 2**).

ELECTION AND GOVERNMENT COMMITMENTS

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

FINANCIAL IMPLICATIONS

- Requests for extra resources within the Government Recordkeeping team at QSA required to progress the Program and develop the 'QSAbot' technology are currently being progressed through ~~the budget funding process~~ separate CBRC submissions.
- For the Program to succeed, chief executives will need to dedicate resources towards digital recordkeeping within their own agencies as part of their statutory obligation under the Act to make and keep full and accurate records of their activities.

CONSULTATION

- Not applicable.

FUTURE STEPS

- ~~If endorsed, a whole-of-government and public consultation about the review of the Act can occur as early as is anticipated to commence in early March 2018.~~
- The State Archivist proposes will to write to public authority chief executives to advise them about the Program and the subsequent changes to QSA's government services.
- Informal whole-of-government consultation on the new minimum requirements for recordkeeping is currently underway. The new requirements will replace the two existing Information Standards: *Information Standard 40: Recordkeeping* and *Information Standard 31:*

Retention and disposal of public records. As the requirements will continue to be a part of the Queensland Government Enterprise Architecture (QGEA) consultation will follow the Queensland Government Chief Information Office framework.

- ConsiderationSubmission of a proposal to the Minister of legislative changeregarding a review of the Public Records Act. Priority amendments to the Act are being identifiedprogressed. Identification of legislation to attach the amendments to will be required to progress through the Cabinet process. A separate Ministerial Briefing Note will outline the proposed changes and seek approval to proceed. Identification of legislation to attach the amendments to will be required to progress through the Cabinet process.
- QSA is currently developing revised disposal authorisation for ministerial records which will be subject to consultation with Ministers, Assistant Ministers and the Department of the Premier and Cabinet.
- Exploration of partnerships to further the development of the 'QSAbot'.

COMMUNICATIONS/MEDIA OPPORTUNITIES

- Not applicable.

BACKGROUND

- Approximately 500 public authorities are required to comply with the Act, including state government departments, local governments, statutory authorities, Ministers and Assistant Ministers and Government Owned Corporations.
- Poor recordkeeping contributes to ineffective public administration and can have consequences under whole-of-government legislation, such as the *Public Records Act 2002*, the *Criminal Code Act 1899*, the *Evidence Act 1977*, the *Crime and Corruption Act 2001* and the *Health Ombudsman Act 2013*.

Attachment 1: Recordkeeping Transformation Program

Valuing Information

Disposal Authorisation

DELIVERABLE: A new method of authorising disposal and a review of authorisation responsibility and delegation.

Information Value

DELIVERABLE: An effective approach to the way we assign value to business information created across the spectrum of agencies.

Digital Appraisal

DELIVERABLE: An effective approach to the way we identify and appraise the value of digital records

Ministerial Records

DELIVERABLE: Processes for the management of ministerial records.

Building Digital Capability

Digital Transition Strategy

DELIVERABLE: A 5 year strategy that governs the transition of agencies from paper-centric to digitally capable.

Digital Maturity Framework

DELIVERABLE: Strategy to support a phased approach to improving agency recordkeeping maturity through the establishment of clear performance goals that align with recordkeeping principles.

Minimum Requirements

DELIVERABLE: An revised recordkeeping standard to replace IS40 and IS31.

Agency Baseline

DELIVERABLE: An accurate current state of recordkeeping. Agencies will be baselined against new digital capability requirements and surveyed annually to measure compliance.

Engaging Agencies

Client Engagement

DELIVERABLE: A transformation of the way we engage with all stakeholders.

GOAL:

A shared and aligned view of the value of business information across the spectrum of government agencies shaped by our clients

GOAL:

95% of Queensland government agencies meet minimum digital recordkeeping standards

GOAL:

An agile and transformative client engagement model that supports a positive information culture within the Queensland government

Recordkeeping Training

DELIVERABLE: Online training to improve recordkeeping capability.

Attachment 2 – draft letter to CEOs re Recordkeeping Transformation Program

Recordkeeping Transformation Program

The development of effective recordkeeping practices by agencies is vital as the business of government becomes increasingly digital. To strengthen recordkeeping across government, Queensland State Archives has launched the Recordkeeping Transformation Program. This ambitious program aims to significantly improve recordkeeping across the Queensland public sector.

Good recordkeeping underpins transparent and accountable government and strengthens decision making and efficient business. From surveys conducted by Queensland State Archives we know that only 15 per cent of Queensland government agencies meet an acceptable level of recordkeeping practice.

The Recordkeeping Transformation Program will introduce a number of new policies that will help your agency build its recordkeeping capability. These will include new minimum recordkeeping standards and a digital recordkeeping maturity framework that will map a pathway for agencies to become digital by default. Effective recordkeeping in your agency will strengthen sound policy decisions, meet legislative and reporting obligations, provide evidence of decisions and actions and consolidate trusted customer relationships.

The Recordkeeping Transformation Program delivers a strategic recordkeeping agenda for government. To ensure its success QSA will:

- focus on increasing digital recordkeeping capability across government
- reduce operational recordkeeping advice to agencies
- suspend the development and review of retention and disposal schedules for agencies
- explore new methods for authorising the disposal of public records.

More information about the Recordkeeping Transformation Program can be found on our website at xxx (to be provided)

If you would like to hear more about the program and what opportunities it might present for your agency, please contact Josephine Marsh, Director Government Recordkeeping on 07 3037 6605 or email Josephine.marsh@archives.qld.gov.au

Attachment 2 – draft letter to CEOs re Recordkeeping Transformation Program

Recordkeeping Transformation Program

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MINISTERIAL BRIEFING NOTE

Subject: Recordkeeping Transformation Program
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 – (07) 3037 6601

PURPOSE

To provide the Minister with an overview of the Recordkeeping Transformation Program launched by Queensland State Archives in November 2017, which aims to achieve 95 per cent minimum compliance with recordkeeping standards by public authorities by 2022.

RECOMMENDATION

It is recommended that the Minister:

1. ~~Note/Agree~~ the approach taken to improve recordkeeping compliance through the Recordkeeping Transformation Program (Refer to **Attachment 1**).
2. Note the future steps of the program that will require Ministerial approval.
3. ~~Note/Agree~~ the letter to be sent to public authority chief executives by the State Archivist about the Recordkeeping Transformation Program and reduction in some operational services (Refer to **Attachment 2**).

Noted	Approved	Not approved

Yes	No

Media Release Required

☐ **Routine** (Straight to MO)

☒ **Non-routine** (DG to endorse)

DIVISIONAL HEAD ENDORSEMENT <u>Endorsed</u> Andrew Spina Assistant Director-General Digital Capability, Information and Transaction Based Services Date: 28/02/18	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	COMMENTS

Date: / /	
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CONTEXT

- Despite dedicated legislation for the management of public records being in place since 2002, the standard of recordkeeping across Queensland public authorities remains low. Data from Queensland State Archives' (QSA) 2015 recordkeeping survey shows that only 15% per cent of the approximately 500 Queensland public authorities are compliant with what QSA would deem a minimum standard of recordkeeping practice. The poor standard of government recordkeeping practice has been reported by QSA for many years with little improvement noted. Large scale change is required to transform the standard of recordkeeping across the Queensland Government. The Recordkeeping Transformation Program was launched by QSA in November 2017 and aims to achieve 95% per cent compliance with minimum recordkeeping standards by 2022.

KEY ISSUES

- Under the *Public Records Act 2002* (the Act), a public authority must make and keep full and accurate records of its activities, and have regard to any policy, standards and guidelines issued by the State Archivist about the making and keeping of public records. Responsibility for compliance with the Act lies with the executive officer of a public authority and in the case of Ministerial records, the relevant Minister.
- While paper recordkeeping practices tend to be relatively well established, technological advances since the introduction of the Act have resulted in vast numbers of digital records being created, challenging traditional recordkeeping practices. Government's increased digital service delivery has outpaced its ability to capture, manage and preserve the digital evidence of its business activities as it continues to rely on outdated paper-based recordkeeping practices.
- Recordkeeping practices across the Queensland Government require significant improvement to support transparent and accountable government and strengthen decision making and efficient government business.
- Information gathered during the 2017 independent investigation into allegations that the Honourable Mark Bailey MP, Minister for Main Roads, Road Safety and Ports and Minister for Energy, Bio-Fuels and Water Supply had unlawfully disposed of public records demonstrated the lack of recordkeeping awareness and good recordkeeping practices in Ministerial offices that is also evident across government.
- On 16 November 2017, QSA launched the Recordkeeping Transformation Program (the Program) which aims to transform the standard of government recordkeeping practices.
- The Program aims to achieve 95 per cent% compliance with minimum recordkeeping standards by public authorities by 2022.
- Compliance is dependent on public authorities applying the minimum recordkeeping standards within their business, noting that under the current legislation adherence to the standards issued by QSA is not mandatory and non-compliance does not incur any penalties.
- The Program will drive the behavioural change required to transform recordkeeping through a five-year strategy that will focus on increasing the value of information across government, transforming recordkeeping legislation, building digital capability in public authorities and engaging with agencies. (refer to **Attachment 1**).
- ~~It is proposed that the Program will This will include:~~
 - ~~reviewing the Act to ensure it supports effective recordkeeping for the public sector in the digital age;~~

- exploring innovative solutions and tools to promote practical and efficient recordkeeping practices;
 - developing new minimum standards in recordkeeping practice for public authorities and monitoring performance against them;
 - publicly reporting levels of recordkeeping practice across the public sector;
 - developing a digital maturity framework to build digital capability and help agencies plan and improve their digital recordkeeping practices;
 - implementing more effective and efficient methods for the authorisation and disposal of public records;
 - developing online training for agencies to improve recordkeeping capability;
 - releasing a digital transition strategy that will govern the transition of public authorities from paper-centric to digitally capable;
 - engaging with agencies through social media including blog posts, newsletters and Twitter;
 - progressing priority amendments to the Act to clarify the management, disposal of and access to ministerial records; and
 - reviewing and developing improved recordkeeping practices for Ministers.
- ~~In addition, consideration should be given to a review of the Act. A further brief will come to you~~ being prepared outlining a range of options for the Minister's review with regard to this matter ~~seeking or consideration of this issue.~~
 - QSA participated in a joint initiative with the Queensland University of Technology (QUT) in December 2017 to reimagine the future of recordkeeping. The initiative produced a conceptual 'QSAbot' technology which would ensure recordkeeping compliance by default by attempting to make recordkeeping happen 'behind the scenes'. The technology would significantly minimise the level of user involvement currently required and revolutionise recordkeeping in a world first.
 - The Program is closely aligned with the Digital Archives Program. While the Digital Archives Program will not solve the issues of recordkeeping compliance outlined above, it will ensure the preservation of permanent value digital records that will be transferred into the digital archive.
 - QSA's operational resources are insufficient to lead and progress the Program without some reduction in the current services provided by QSA. This includes the provision of operational recordkeeping advice to agencies and the development and review of agency-specific retention and disposal schedules. QSA's intention is to maintain only minimal operational services during the life of the Program, to enable key resources to be redirected to transformation initiatives. A draft letter to be sent by the State Archivist to public authority chief executives advising of this change is attached (refer to **Attachment 2**).

ELECTION AND GOVERNMENT COMMITMENTS

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

FINANCIAL IMPLICATIONS

- Requests for extra resources within the Government Recordkeeping team at QSA required to progress the Program and develop the 'QSAbot' technology are currently being progressed through ~~the budget funding process~~ separate CBRC submissions.
- For the Program to succeed, chief executives will need to dedicate resources towards digital recordkeeping within their own agencies as part of their statutory obligation under the Act to make and keep full and accurate records of their activities.

CONSULTATION

- Not applicable.

FUTURE STEPS

- ~~If endorsed, a whole-of-government and public consultation about the review of the Act can occur as early as is anticipated to commence in early March 2018.~~
- The State Archivist ~~proposes will to~~ write to public authority chief executives to advise them about the Program and the subsequent changes to QSA's government services.
- Informal whole-of-government consultation on the new minimum requirements for recordkeeping is currently underway. The new requirements will replace the two existing Information Standards: *Information Standard 40: Recordkeeping* and *Information Standard 31:*

Retention and disposal of public records. As the requirements will continue to be a part of the Queensland Government Enterprise Architecture (QGEA) consultation will follow the Queensland Government Chief Information Office framework.

- Consideration Submission of a proposal to the Minister of legislative change regarding a review of the Public Records Act. Priority amendments to the Act are being identified progressed. Identification of legislation to attach the amendments to will be required to progress through the Cabinet process. A separate Ministerial Briefing Note will outline the proposed changes and seek approval to proceed. Identification of legislation to attach the amendments to will be required to progress through the Cabinet process.
- QSA is currently developing revised disposal authorisation for ministerial records which will be subject to consultation with Ministers, Assistant Ministers and the Department of the Premier and Cabinet.
- Exploration of partnerships to further the development of the 'QSAbot'.

COMMUNICATIONS/MEDIA OPPORTUNITIES

- Not applicable.

BACKGROUND

- Approximately 500 public authorities are required to comply with the Act, including state government departments, local governments, statutory authorities, Ministers and Assistant Ministers and Government Owned Corporations.
- Poor recordkeeping contributes to ineffective public administration and can have consequences under whole-of-government legislation, such as the *Public Records Act 2002*, the *Criminal Code Act 1899*, the *Evidence Act 1977*, the *Crime and Corruption Act 2001* and the *Health Ombudsman Act 2013*.

MINISTERIAL BRIEFING NOTE

Subject: Recordkeeping Transformation Program
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 – (07) 3037 6601

PURPOSE

To provide the Minister with an overview of the Recordkeeping Transformation Program launched by Queensland State Archives in November 2017, which aims to achieve 95 per cent minimum compliance with recordkeeping standards by public authorities by 2022.

RECOMMENDATION

It is recommended that the Minister:

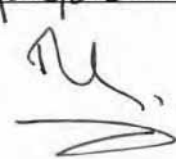
1. ^{None} Note the approach taken to improve recordkeeping compliance through the Recordkeeping Transformation Program (Refer to **Attachment 1**).
2. Note the future steps of the program that will require Ministerial approval.
3. ^{None} Note the letter to be sent to public authority chief executives by the State Archivist about the Recordkeeping Transformation Program and reduction in some operational services (Refer to **Attachment 2**).

Noted	Approved	Not approved

Yes	No

Media Release Required

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

DIVISIONAL HEAD ENDORSEMENT Endorsed Andrew Spina Assistant Director-General Digital Capability, Information and Transaction Based Services Date: 28/02/18	COMMENTS <i>Andrew + Mike Sorry for more changes. I think the meter needs to sign off on his program of work. Also the legislative process needs to be put to the meter as a proposal.</i>
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

- Despite dedicated legislation for the management of public records being in place since 2002, the standard of recordkeeping across Queensland public authorities remains low. Data from Queensland State Archives' (QSA) 2015 recordkeeping survey shows that only 15 per cent of the approximately 500 Queensland public authorities are compliant with what QSA would deem a minimum standard of recordkeeping practice. The poor standard of government recordkeeping practice has been reported by QSA for many years with little improvement noted. Large scale change is required to transform the standard of recordkeeping across the Queensland Government. The Recordkeeping Transformation Program was launched by QSA in November 2017 and aims to achieve 95 per cent compliance with minimum recordkeeping standards by 2022.

KEY ISSUES

- Under the *Public Records Act 2002* (the Act), a public authority must make and keep full and accurate records of its activities, and have regard to any policy, standards and guidelines issued by the State Archivist about the making and keeping of public records. Responsibility for compliance with the Act lies with the executive officer of a public authority and in the case of Ministerial records, the relevant Minister.
- While paper recordkeeping practices tend to be relatively well established, technological advances since the introduction of the Act have resulted in vast numbers of digital records being created, challenging traditional recordkeeping practices. Government's increased digital service delivery has outpaced its ability to capture, manage and preserve the digital evidence of its business activities as it continues to rely on outdated paper-based recordkeeping practices.
- Recordkeeping practices across the Queensland Government require significant improvement to support transparent and accountable government and strengthen decision making and efficient government business.
- Information gathered during the 2017 independent investigation into allegations that the Honourable Mark Bailey MP, Minister for Main Roads, Road Safety and Ports and Minister for Energy, Biofuels and Water Supply had unlawfully disposed of public records demonstrated the lack of recordkeeping awareness and good recordkeeping practices in Ministerial offices that is also evident across government.
- On 16 November 2017, QSA launched the Recordkeeping Transformation Program (the Program) which aims to transform the standard of government recordkeeping practices.
- The Program aims to achieve 95 per cent compliance with minimum recordkeeping standards by public authorities by 2022.
- Compliance is dependent on public authorities applying the minimum recordkeeping standards within their business, noting that under the current legislation adherence to the standards issued by QSA is not mandatory and non-compliance does not incur any penalties.
- The Program will drive the behavioural change required to transform recordkeeping through a five-year strategy that will focus on increasing the value of information across government, transforming recordkeeping legislation, building digital capability in public authorities and engaging with agencies. (refer to **Attachment 1**).
- This will include:
 - reviewing the Act to ensure it supports effective recordkeeping for the public sector in the digital age;
 - exploring innovative solutions and tools to promote practical and efficient recordkeeping practices;
 - developing new minimum standards in recordkeeping practice for public authorities and monitoring performance against them;
 - publicly reporting levels of recordkeeping practice across the public sector;
 - developing a digital maturity framework to build digital capability and help agencies plan and improve their digital recordkeeping practices;
 - implementing more effective and efficient methods for the authorisation and disposal of public records;
 - developing online training for agencies to improve recordkeeping capability;

It is proposed
not the
Program

- releasing a digital transition strategy that will govern the transition of public authorities from paper-centric to digitally capable;
- engaging with agencies through social media including blog posts, newsletters and Twitter;
- progressing priority amendments to the Act to clarify the management, disposal of and access to ministerial records; and
- reviewing and developing improved recordkeeping practices for Ministers.
- QSA participated in a joint initiative with the Queensland University of Technology in December 2017 to reimagine the future of recordkeeping. The initiative produced a conceptual 'QSAbot' technology which would ensure recordkeeping compliance by default by attempting to make recordkeeping happen 'behind the scenes'. The technology would significantly minimise the level of user involvement currently required and revolutionise recordkeeping in a world first.
- The Program is closely aligned with the Digital Archives Program. While the Digital Archives Program will not solve the issues of recordkeeping compliance outlined above, it will ensure the preservation of permanent value digital records that will be transferred into the digital archive.
- QSA's operational resources are insufficient to lead and progress the Program without some reduction in the current services provided by QSA. This includes the provision of operational recordkeeping advice to agencies and the development and review of agency specific retention and disposal schedules. QSA's intention is to maintain only minimal operational services during the life of the Program, to enable key resources to be redirected to transformation initiatives. A draft letter to be sent by the State Archivist to public authority chief executives advising of this change is attached (refer to **Attachment 2**).

ELECTION AND GOVERNMENT COMMITMENTS

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

FINANCIAL IMPLICATIONS

- Requests for extra resources within the Government Recordkeeping team at QSA required to progress the Program and develop the 'QSAbot' technology are currently being progressed through the budget funding process.
- For the Program to succeed, chief executives will need to dedicate resources towards digital recordkeeping within their own agencies as part of their statutory obligation under the Act to make and keep full and accurate records of their activities.

CONSULTATION

- Not applicable.

FUTURE STEPS

- ~~If endorsed, whole-of-government and public consultation about the review of the Act can occur as early as March 2018.~~
- The State Archivist proposes to write to public authority chief executives to advise them about the Program and the subsequent changes to QSA's government services.
- Informal whole-of-government consultation on the new minimum requirements for recordkeeping is currently underway. The new requirements will replace the two existing Information Standards: *Information Standard 40: Recordkeeping* and *Information Standard 31: Retention and disposal of public records*. As the requirements will continue to be a part of the Queensland Government Enterprise Architecture, consultation will follow the Queensland Government Chief Information Office framework.
- ~~Priority amendments to the Act are being identified. A separate Ministerial Briefing Note will outline the proposed changes and seek approval to proceed. Identification of legislation to attach the amendments will be required to progress through the Cabinet process.~~
- QSA is currently developing revised disposal authorisation for ministerial records which will be subject to consultation with Ministers, Assistant Ministers and the Department of the Premier and Cabinet.
- Exploration of partnerships to further the development of the 'QSAbot'.

COMMUNICATIONS/MEDIA OPPORTUNITIES

- Not applicable.

* In addition consider should be given to a revised of the act. A further brief will be sent to you seeking consideration of this issue

consider of legislative change

BACKGROUND

- Approximately 500 public authorities are required to comply with the Act, including state government departments, local governments, statutory authorities, Ministers and Assistant Ministers and Government Owned Corporations.
- Poor recordkeeping contributes to ineffective public administration and can have consequences under whole-of-government legislation, such as the *Public Records Act 2002*, the *Criminal Code Act 1899*, the *Evidence Act 1977*, the *Crime and Corruption Act 2001* and the *Health Ombudsman Act 2013*.

Released under RTI - DCHD

Attachment 1: Recordkeeping Transformation Program

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Valuing Information

Disposal Authorisation

DELIVERABLE: A new method of authorising disposal and a review of authorisation responsibility and delegation.

Information Value

DELIVERABLE: An effective approach to the way we assign value to business information created across the spectrum of agencies.

Digital Appraisal

DELIVERABLE: An effective approach to the way we identify and appraise the value of digital records

Ministerial Records

DELIVERABLE: Processes for the management of ministerial records.

GOAL:

A shared and aligned view of the value of business information across the spectrum of government agencies shaped by our clients

Building Digital Capability

Digital Transition Strategy

DELIVERABLE: A 5 year strategy that governs the transition of agencies from paper-centric to digitally capable.

Digital Maturity Framework

DELIVERABLE: Strategy to support a phased approach to improving agency recordkeeping maturity through the establishment of clear performance goals that align with recordkeeping principles.

Minimum Requirements

DELIVERABLE: An revised recordkeeping standard to replace IS40 and IS67.

Agency Baseline

DELIVERABLE: An accurate current state of recordkeeping. Agencies will be baselined against new digital capability requirements and surveyed annually to measure compliance.

Transforming Legislation

Public Records Act Review

DELIVERABLE: A modern and relevant Act to support the creation, discoverability and flow of information within Government.

Priority Amendments

DELIVERABLE: Essential amendments to the Act and regulations to allow for critical Government processes.

Research Sprint

DELIVERABLE: Research paper to inform the Public Records Act review.

GOAL:

A modern and relevant Act shaped by our clients and the community

Research Sprint

DELIVERABLE: Research paper to inform the development of an audit and assessment framework.

Engaging Agencies

Client Engagement

DELIVERABLE: A transformation of the way we engage with all stakeholders.

Recordkeeping Training

DELIVERABLE: Online training to improve recordkeeping capability.

Attachment 2 – draft letter to CEOs re Recordkeeping Transformation Program

Recordkeeping Transformation Program

The development of effective recordkeeping practices by agencies is vital as the business of government becomes increasingly digital. To strengthen recordkeeping across government, Queensland State Archives has launched the Recordkeeping Transformation Program. This ambitious program aims to significantly improve recordkeeping across the Queensland public sector.

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The Recordkeeping Transformation Program delivers a strategic recordkeeping agenda for government. To ensure its success QSA will:

- focus on increasing digital recordkeeping capability across government
- reduce operational recordkeeping advice to agencies
- suspend the development and review of retention and disposal schedules for agencies
- explore new methods for authorising the disposal of public records
- ~~overhaul recordkeeping legislation.~~

More information about the Recordkeeping Transformation Program can be found on our website at xxx

If you would like to hear more about the program and what opportunities it might present for your agency, please contact Josephine Marsh, Director, Government Recordkeeping on 07 3037 6605 or email Josephine.marsh@archives.qld.gov.au.

Attachment 1: Recordkeeping Transformation Program

<div><h2>Valuing Information</h2><div><h3>Disposal Authorisation</h3><p>DELIVERABLE: A new method of authorising disposal and a review of authorisation responsibility and delegation.</p></div><div><h3>Information Value</h3><p>DELIVERABLE: An effective approach to the way we assign value to business information created across the spectrum of agencies.</p></div><div><h3>Digital Appraisal</h3><p>DELIVERABLE: An effective approach to the way we identify and appraise the value of digital records</p></div><div><h3>Ministerial Records</h3><p>DELIVERABLE: Processes for the management of ministerial records.</p></div></div>	<div><h2>Transforming Legislation</h2><div><h3>Public Records Act Review</h3><p>DELIVERABLE: A modern and relevant Act to support the creation, discoverability and flow of information within Government.</p></div><div><h3>Priority Amendments</h3><p>DELIVERABLE: Essential amendments to the Act and regulations to allow for critical Government processes..</p></div><div><h3>Research Sprint</h3><p>DELIVERABLE: Research paper to inform the Public Records Act review.</p></div><div><h3>Research Sprint</h3><p>DELIVERABLE: Research paper to inform the development of an audit and assessment framework.</p></div></div>
<div><h2>Building Digital Capability</h2><div><h3>Digital Transition Strategy</h3><p>DELIVERABLE: A 5 year strategy that governs the transition of agencies from paper-centric to digitally capable.</p></div><div><h3>Digital Maturity Framework</h3><p>DELIVERABLE: Strategy to support a phased approach to improving agency recordkeeping maturity through the establishment of clear performance goals that align with recordkeeping principles.</p></div><div><h3>Minimum Requirements</h3><p>DELIVERABLE: An revised recordkeeping standard to replace IS40 and IS31.</p></div><div><h3>Agency Baseline</h3><p>DELIVERABLE: An accurate current state of recordkeeping. Agencies will be baselined against new digital capability requirements and surveyed annually to measure compliance.</p></div></div>	<div><div><div><div><div><div>GOAL:</div><div>A shared and aligned view of the value of business information across the spectrum of government agencies shaped by our clients</div></div></div><div><div>GOAL:</div><div>A modern and relevant Act shaped by our clients and the community</div></div></div><div><div><div>GOAL:</div><div>95% of Queensland government agencies meet minimum digital recordkeeping standards</div></div><div><div>GOAL:</div><div>An agile and transformative client engagement model that supports a positive information culture within the Queensland government</div></div></div></div><div><h2>Engaging Agencies</h2><div><h3>Client Engagement</h3><p>DELIVERABLE: A transformation of the way we engage with all stakeholders.</p></div><div><h3>Recordkeeping Training</h3><p>DELIVERABLE: Online training to improve recordkeeping capability.</p></div></div></div>

MINISTERIAL BRIEFING NOTE

Subject: Recordkeeping Transformation Program
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– (07) 3037 6601

PURPOSE

To provide the Minister with an overview of the Recordkeeping Transformation Program launched by Queensland State Archives in November 2017 which aims to achieve 95% minimum compliance with recordkeeping standards by public authorities by 2022.

RECOMMENDATION

It is recommended that the Minister:

1. **Note** the approach taken to improve recordkeeping compliance through the Recordkeeping Transformation Program
2. **Note** the future steps of the program that will require Ministerial approval.
3. **Note** the letter to be sent to public authority chief executives by the State Archivist about the Recordkeeping Transformation Program and reduction in some operational services (Attachment 2).

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: / /	
MINISTERIAL APPROVAL Mick de Brenni MP Minister for Housing and Public Works Minister for Digital Technology Minister for Sport Date: / /	COMMENTS

CONTEXT

- Despite dedicated legislation for the management of public records being in place since 2002, the standard of recordkeeping across Queensland public authorities remains low. Data from Queensland State Archives' (QSA) 2015 recordkeeping survey shows that only 15% of the approximately 500 Queensland public authorities are compliant with what QSA would deem a minimum standard of recordkeeping practice. The poor standard of government recordkeeping practice has been reported by QSA for many years with little improvement noted. Large scale change is required to transform the standard of recordkeeping across the Queensland government. The Recordkeeping Transformation Program was launched by QSA in November 2017 and aims to achieve 95% compliance with minimum recordkeeping standards by 2022.

KEY ISSUES

- Under the *Public Records Act 2002* (the Act), a public authority must make and keep full and accurate records of its activities and have regard to any policy, standards and guidelines issued by the State Archivist about the making and keeping of public records. Responsibility for compliance with the Act lies with the executive officer of a public authority and in the case of Ministerial records, the relevant Minister.
- While paper recordkeeping practices tend to be relatively well established, technological advances since the introduction of the Act have resulted in vast numbers of digital records being created, challenging traditional recordkeeping practices. Government's increased digital service delivery has outpaced its ability to capture, manage and preserve the digital evidence of its business activities as it continues to rely on outdated paper-based recordkeeping practices.
- Recordkeeping practices across the Queensland Government require significant improvement to support transparent and accountable government and strengthen decision making and efficient government business.
- Information gathered during the 2017 independent investigation into allegations 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 of public records demonstrated the lack of recordkeeping awareness and good recordkeeping practices in Ministerial offices that is also evident across government.
- On 16 November 2017, QSA launched the Recordkeeping Transformation Program (the Program) which aims to transform the standard of government recordkeeping practices.
- The Program aims to achieve 95% compliance with minimum recordkeeping standards by public authorities by 2022.
- Compliance is dependent on public authorities applying the minimum recordkeeping standards within their business, noting that under the current legislation adherence to the standards issued by QSA is not mandatory and non-compliance does not incur any penalties.
- The Program will drive the behavioural change required to transform recordkeeping through a five-year strategy that will focus on increasing the value of information across government; transforming recordkeeping legislation; building digital capability in public authorities and engaging with agencies. (refer to **Attachment 1**)
- -This will include:
 - reviewing the Act to ensure it supports effective recordkeeping for the public sector in the digital age
 - exploring innovative solutions and tools to promote practical and efficient recordkeeping practices
 - developing new minimum standards in recordkeeping practice for public authorities and monitoring performance against them
 - publicly reporting levels of recordkeeping practice across the public sector
 - developing a digital maturity framework to build digital capability and help agencies plan and improve their digital recordkeeping practices
 - implementing more effective and efficient methods for the authorisation and disposal of public records
 - developing online training for agencies to improve recordkeeping capability
 - releasing a digital transition strategy that will govern the transition of public authorities from paper-centric to digitally capable

- engaging with agencies through social media including blog posts, newsletters and Twitter
- progressing priority amendments to the Act to clarify the management, disposal of and access to ministerial records
- reviewing and developing improved recordkeeping practices for Ministers.
- QSA participated in a joint initiative with QUT in December 2017 to reimagine the future of recordkeeping. The initiative produced a conceptual 'QSAbot' technology which would ensure recordkeeping compliance by default by attempting to make recordkeeping happen 'behind the scenes'. The technology would significantly minimise the level of user involvement currently required and revolutionise recordkeeping in a world first.
- The Program is closely aligned with the Digital Archiving Program. While the Digital Archive Program will not solve the issues of recordkeeping compliance outlined above, it will ensure the preservation of permanent value digital records that will be transferred into the digital archive.
- QSA's operational resources are insufficient to lead and progress the Program without some reduction in the current services provided by QSA. This includes the provision of operational recordkeeping advice to agencies and the development and review of agency specific retention and disposal schedules. QSA's intention is to maintain only minimal operational services during the life of the Program, to enable key resources to be redirected to transformation initiatives. A letter to be sent by the State Archivist to public authority chief executives advising of this change is attached (refer to Attachment 2).

ELECTION AND GOVERNMENT COMMITMENTS

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

FINANCIAL IMPLICATIONS

- Requests for extra resources within the Government Recordkeeping team at QSA required to progress the Program and develop the 'QSAbot' technology are currently being progressed through the budget funding process ~~separate CBRC submissions.~~
- For the Program to succeed chief executives will need to dedicate resources towards digital recordkeeping within their own agencies as part of their statutory obligation under the Act to make and keep full and accurate records of their activities.

CONSULTATION

- Not applicable.

FUTURE STEPS

- If endorsed, a whole-of-government and public consultation about the review of the Act can occur as early as is anticipated to commence in early March 2018.
- The State Archivist proposes will to write to public authority chief executives to advise them about the Program and the subsequent changes to QSA's government services.
- Informal whole-of-government consultation on the new minimum requirements for recordkeeping is currently underway. The new requirements will replace the two existing Information Standards: *Information Standard 40: Recordkeeping* and *Information Standard 31: Retention and disposal of public records*. As the requirements will continue to be a part of the Queensland Government Enterprise Architecture (QGEA) consultation will follow the Queensland Government Chief Information Office framework.
- Priority amendments to the Act are being identified ~~progressed. Identification of legislation to attach the amendments to will be required to progress through the Cabinet process. A separate Ministerial Briefing Note will outline the proposed changes and seek approval to proceed. Identification of legislation to attach the amendments to will be required to progress through the Cabinet process.~~
- QSA is currently developing revised disposal authorisation for ministerial records which will be subject to consultation with Ministers, Assistant Ministers and the Department of the Premier and Cabinet.
- Exploration of partnerships to further the development of the 'QSAbot'.

COMMUNICATIONS/MEDIA OPPORTUNITIES

- Not applicable.

BACKGROUND

- Approximately 500 public authorities are required to comply with the Act, including state government departments, local governments, statutory authorities, Ministers and Assistant Ministers and Government Owned Corporations.
- Poor recordkeeping contributes to ineffective public administration and can have consequences under whole-of-government legislation such as the *Public Records Act 2002*, the *Criminal Code Act 1899*, the *Evidence Act 1977*, the *Crime and Corruption Act 2001* and the *Health Ombudsman Act 2013*.

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: 13/03/18	COMMENTS
MINISTERIAL APPROVAL  Mick de Brenni MP Minister for Housing and Public Works Minister for Digital Technology Minister for Sport Date: 21/4/18	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.

Subject Immediate actions to be undertaken by Queensland State Archives to affirm recordkeeping obligations of all public authorities

Approval required by: 8/3/2017

RECOMMENDATION

- It is recommended that the Director-General **note** Queensland State Archives proposed course of action to issue guidance to all Queensland public authorities to remind them of their recordkeeping obligations.

BACKGROUND

- The main purpose of the *Public Records Act 2002* (the Act) is to ensure the public records of Queensland are made, managed, kept and, if appropriate, preserved in a useable form for the benefit of present and future generations.
- Under the Act, the functions and powers of the Archivist include the development and promotion of efficient and effective methods, standards, guidelines, procedures and systems for making, managing, keeping, storing, disposing of, preserving and using public records.
- Fundamental principles of the Act require that a public authority must make and keep full and accurate records of their activities, and have regard to any relevant policy, standards and guidelines made by the Archivist about the making and keeping of public records.
- Additionally a public authority is responsible for ensuring the safe custody, preservation and appropriate retention and disposal of its public records.
- Minimum retention periods are set out in Retention and Disposal Schedules approved by the State Archivist; it is important to note that different records will have different retention periods, from the very short term to permanent.
- Exceptions to the minimum retention periods include records which:
 - are, or are reasonably likely to be, subject to a judicial proceeding including any legal action or a Commission of Inquiry, noting it is an offence under the *Criminal Code Act 1899* (s.129) 'for a person, who knowing something is or may be needed in evidence in a judicial proceeding, damages it with intent to stop it being used in evidence'
 - are subject to a request for access under the *Right to Information Act 2009*, the *Information Privacy Act 2009* or any other relevant Act
 - are subject to a disposal freeze issued by the State Archivist.

KEY ISSUES

- A public record is any form of recorded information, created or received by, or created on behalf of a Queensland public authority in the transaction of government business.
- This includes Ministerial records which are records created or received by a Minister in the course of carrying out Ministerial portfolio responsibilities, but does not include:
 - a record related to personal or party-political activities; or
 - a record held in their capacity as a member of the Legislative Assembly.
- There is a current matter before Parliament and in the Media regarding the Minister for Main Roads, Road Safety and Ports and Minister for Energy, Biofuels and Water Supply, Mark Bailey.
- Minister Bailey has a private email account that allegedly contains emails related to his work as a Minister, and that he has allegedly undertaken actions regarding this account which are potentially in breach of the *Public Records Act 2002*.
- The Director-General of the Department of the Premier Cabinet has been asked by the Premier to investigate this issue.

- The State Archivist is supportive of this review and considers the management of these records to be the responsibility of public authorities on a day to day basis, consistent with the *Public Records Act 2002*.
- The State Archivist will monitor this situation to assess whether it is in the public interest for an independent review by the Archivist of any potential breach of the *Public Records Act 2002*.
- The State Archivist is concerned this issue may be symptomatic of a lack of understanding and awareness of recordkeeping requirements in this area and this has prompted Queensland State Archives to issue immediate guidance to all Queensland public authorities, including Ministers and Assistant Ministers, to remind them of their general recordkeeping obligations relating to this matter.
- The State Archivist will issue this advice under Section 25(f) of the *Public Records Act 2002* (refer **Attachment 1** and **Attachment 2**).
- This incident has raised a number of significant questions for which Queensland State Archives is seeking legal advice as to any further actions it may be required to take to ensure the ongoing integrity and completeness of Queensland public records now and in the future.

FINANCIAL IMPACTS

- There are no financial impacts.

Endorsed

Noted / Approved / Not Approved

Andrew Spina
Assistant Director-General

/ /

Jamie Merrick (or the Director on behalf of)
Director-General

/ /

Director-General or Director comments

Audience: To CEOs of all Qld Public Authorities

Topic: Advice on their responsibilities and definition of a public record

Dear ***

Responsibilities for making and keeping public records

I am writing to you in your role as the Chief Executive Officer of a Queensland public authority to outline key information management and recordkeeping responsibilities that relate to the management of records that may have been created outside of a public authority's official Information & Communication Technology (ICT) network.

Under the *Public Records Act 2002* (the Act), all public authorities are required to make and keep full and accurate public records of its activities and to have regard to any policy, standards and guidelines made by the State Archivist. As the CEO, you are responsible for ensuring compliance with these requirements.

We have previously issued advice on the creation and management of records and we would like to take this opportunity to remind you of some key recordkeeping principles.

A public record is any form of recorded information, created or received by, or created on behalf of a Queensland public authority in the transaction of government business. The definition of a public record is technology neutral and therefore public records can exist in all formats including emails, text messages and social media interactions that are related specifically to, or include, the transaction of government business.

A public record is also not defined by where it is created, stored or managed. Ideally, all government transactions should be managed through appropriate government channels. However we are aware some public authorities may create what may be defined as public records outside of official ICT networks. These may include government business interactions and exchanges conducted through:

- private or non-government email, and drop box accounts
- private mobile and smart devices including text messages
- private social media applications e.g. Twitter, Facebook, Snapchat
- external websites e.g. blogs, comment sections.

It is important you have processes in place to capture, manage, and preserve potential public records that are created outside your official ICT network. This would include awareness for staff on the use of these channels and the need to ensure potential public records are managed and kept as full and accurate records.

You are responsible for ensuring all public records are kept for their authorised minimum retention periods. These minimum retention periods are set out in Retention and Disposal Schedules that have been approved by the State Archivist. It is important to note that different records will have different retention periods, from the very short term to permanent. Exceptions to the minimum periods include records which:

- are, or are reasonably likely to be, subject to a judicial proceeding including any legal action or a Commission of Inquiry, noting it is an offence under the *Criminal Code Act 1899* (s.129)

'for a person, who knowing something is or may be needed in evidence in a judicial proceeding, damages it with intent to stop it being used in evidence'

- are subject to a request for access under the *Right to Information Act 2009*, the *Information Privacy Act 2009* or any other relevant Act
- are subject to a disposal freeze issued by the State Archivist.

For further advice and assistance on your responsibilities and all recordkeeping matters, please contact Ms Anna Morris, the A/Director, Government Recordkeeping on anna.morris@archives.qld.gov.au.

Yours sincerely

Mike Summerell

Executive Director & State Archivist

Released under RTI - DCHDE

Audience: To all Ministers, including Assistant Ministers and their Chief of Staff

Topic: Advice on their responsibilities and definition of a public record

Dear ***

Responsibilities for making and keeping public records

I am writing to you to outline key information management and recordkeeping responsibilities that relate to the management of records that may have been created outside of a public authority's official Information & Communication Technology (ICT) network.

Under the *Public Records Act 2002* (the Act), all public authorities are required to make and keep full and accurate public records of its activities and to have regard to any policy, standards and guidelines made by the State Archivist. You are responsible for ensuring compliance with these requirements.

We have previously issued advice on the creation and management of records and we would like to take this opportunity to remind you of some key recordkeeping principles.

A public record is any form of recorded information, created or received by, or created on behalf of a Queensland public authority in the transaction of government business. This includes Ministerial records which are records created or received by a Minister in the course of carrying out Ministerial portfolio responsibilities, but does not include:

- a record related to personal or party-political activities; or
- a record held in their capacity as a member of the Legislative Assembly.

The definition of a public record is technology neutral and therefore public records can exist in all formats including emails, text messages and social media interactions that are related specifically to, or include, the transaction of government business.

A public record is also not defined by where it is created, stored or managed. Ideally, all government transactions should be managed through appropriate government channels. However we are aware some public authorities may create what may be defined as public records outside of official ICT networks. These may include government business interactions and exchanges conducted through:

- private or non-government email, and drop box accounts
- private mobile and smart devices including text messages
- private social media applications e.g. Twitter, Facebook, Snapchat
- external websites e.g. blogs, comment sections.

It is important you have processes in place to capture, manage, and preserve potential public records that are created outside your official ICT network. This would include awareness for staff on the use of these channels and the need to ensure potential public records are managed and kept as full and accurate records

You are responsible for ensuring all public records are kept for their authorised minimum retention periods. These minimum retention periods are set out in Retention and Disposal Schedules that have been approved by the State Archivist. It is important to note that different records will have different retention periods, from the very short term to permanent. Exceptions to the minimum periods include records which:

- are, or are reasonably likely to be, subject to a judicial proceeding including any legal action or a Commission of Inquiry, noting it is an offence under the *Criminal Code Act 1899* (s.129) 'for a person, who knowing something is or may be needed in evidence in a judicial proceeding, damages it with intent to stop it being used in evidence'
- are subject to a request for access under the *Right to Information Act 2009*, the *Information Privacy Act 2009* or any other relevant Act
- are subject to a disposal freeze issued by the State Archivist.

For further advice and assistance on your responsibilities and all recordkeeping matters, please contact Ms Anna Morris, the A/Director, Government Recordkeeping on anna.morris@archives.qld.gov.au.

Yours sincerely

Mike Summerell

Executive Director & State Archivist

Released under RTI - DCH/DL

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.

MINISTERIAL BRIEFING NOTE

Subject: Confirmation of processes by Ministers and Assistant Ministers to manage public records in private email accounts

Decision/Action by: N/A

Reasons for Urgency: N/A

Briefing type: Unrequested briefing note for approval

Responsible Area: Queensland State Archives

Electorate: Statewide

Contact Officer: Departmental contact: Mike Summerell (07) 30376601

PURPOSE

To advise of the State Archivist's intention to write to Ministers and Assistant Ministers seeking confirmation that ministerial office processes are in place to manage public records received or sent from private email accounts.

RECOMMENDATION

It is recommended that the Minister:

1. Note the State Archivist's intention to write to Ministers and Assistant Ministers seeking confirmation that ministerial office processes are in place to manage public records received or sent from private email accounts.

Noted	Approved	Not approved
	Yes	No
		X

Media Release Required

☐ **Routine** (Straight to MO)

☒ **Non-routine** (DG to endorse)

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

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.
- In September 2017, the State Archivist presented his final report of the investigation to the CCC who accepted all the recommendations made.
- The final report included a recommendation 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.'*

KEY ISSUES

- 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.
- The investigation also highlighted wider issues related to the standard of recordkeeping practices across government including Ministers and Assistant Ministers and their staff, and a lack of awareness of responsibilities and requirements relating to the management of public records.
- The State Archivist made a recommendation in the report to conduct a review of processes for all current Ministers and their staff in managing public records sent or received in private email accounts.
- 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 public perception that the use of such accounts is done for a corrupt purpose.
- In March 2018 the Public Service Commission released a *Private Email Use Policy* which prohibited the use of private email accounts of public service employees for government related business.
- The *Ministerial Handbook* requires that Ministers and Assistant Ministers must ensure all ministerial portfolio-related business is conducted through their ministerial email account.
- The State Archivist issued the *Ministerial Records Policy* in December 2017 which outlines the recordkeeping requirements that Ministers and Assistant Ministers must follow including the management of public records in private email accounts.
- The State Archivist proposes to write to Ministers and Assistant Ministers seeking assurance that ministerial records are being managed appropriately including procedures for the management of ministerial records received or sent from private email and social media accounts.

ELECTION AND GOVERNMENT COMMITMENTS

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

FINANCIAL IMPLICATIONS

- Not applicable

CONSULTATION

- Not applicable.

FUTURE STEPS

- The State Archivist will write to Ministers and Assistant Ministers about their current recordkeeping processes.

COMMUNICATIONS/MEDIA OPPORTUNITIES

- A media release is not required.

Subject State Archivist's independent investigation of Minister Mark Bailey's private email account

Approval required by N/A

RECOMMENDATION

- It is recommended that the Minister:
 - Note** the independent actions to be carried out by the State Archivist regarding the deleted and restored email account of the Honourable Mark Bailey MP, Minister for Main Roads, Road Safety and Ports, and Minister for Biofuels and Water Supply.

BACKGROUND

- In February 2017 it became publicly known that Minister Mark Bailey, Minister for Main Roads, Road Safety and Ports, and Minister for Biofuels and Water Supply, held and utilised a private 'yahoo' email account under the account name mangocube6@yahoo.co.uk.
- It also became known that this private email account had been closed, and due to this deactivation, records sought under a Right to Information request could not be retrieved.
- The Premier directed her department to conduct a review of this matter on 28 February 2017 and simultaneously the matter was also referred to the Crime and Conduct Commission (CCC) for investigation.
- There may be emails and documents within this private email account that may be considered 'public records' under the *Public Records Act 2002*, if the emails pertain to Minister Bailey's role as a government Minister and the business of government.
- It is an offence under the Public Records Act to unlawfully dispose of public records.
- The State Archivist has an obligation under the Public Records Act to investigate any unlawful disposal of public records and report the investigation to the Minister for Science, Technology and Innovation as the Minister responsible for the Public Records Act.
- The CCC have acknowledged the State Archivist's statutory obligations to investigate this matter.
- The CCC have requested that the State Archivist support the Department of Premier and Cabinet (DPC) in their review of this matter and expressed a preference that the State Archivist's investigation commences once the CCC have had time to consider the DPC review findings.

KEY ISSUES

- It is the role of the State Archivist under the *Public Records Act 2002* to independently investigate any unlawful disposal of public records.
- The State Archivist is currently assisting DPC in their investigation.
- The State Archivist will formally commence his review following completion of the DPC review and CCC consideration of its findings.

ELECTION/CABINET/PUBLIC COMMITMENTS/LEGISLATION

- Unlawful disposal of public records is an offence under the *Public Records Act 2002*.

CONSULTATION

- The State Archivist has consulted with the CCC, Crown Law and DPC as part of a separate investigation into this matter for which an interim report is due to the CCC by 15 June 2017.
- The State Archivist has sourced independent legal advice from Clayton Utz partner, Jamie Doran, to obtain clarity on elements of law and the obligations of the State Archivist to investigate this matter.

Subject **State Archivist's independent investigation of Minister Mark Bailey's private email account**

COMMUNICATIONS/MEDIA OPPORTUNITIES

- QSA have been in consultation with the Media team and anticipate further media interest and consultation in this matter.

FUTURE STEPS

- The State Archivist will prepare a brief and report for the Minister with the independent findings and recommendations from this investigation.

Endorsed

Noted / Approved / Not Approved

Jamie Merrick (or Director on behalf of)
Director-General
/ /

Leeanne Enoch (or Chief of Staff on behalf of)
**Minister for Innovation, Science
and the Digital Economy and
Minister for Small Business**
/ /

Minister or Director-General comments

Media release required: Yes ☐ No ☐

Electorates: Statewide

SECURITY CLASSIFICATION: OFFICIAL

BRIEFING NOTE – MINISTER

Subject Confirmation of processes by Ministers and Assistant Ministers to manage public records in private email accounts

Approval required by: 2 April 2021

Reasons for Urgency: There is no specific timeframe required

RECOMMENDATION

It is recommended that the Minister:

1. Approve the State Archivist to write to Ministers and Assistant Ministers seeking confirmation that ministerial office processes are in place to manage public records received or sent from private email accounts (**Attachment 1**)

Noted	Approved	Not approved

BACKGROUND/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.
- In September 2017, the State Archivist presented his final report of the investigation to the CCC who accepted all the recommendations made.
- The final report included a recommendation 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.'*
- In September 2018, the State Archivist informed the Director-General of Housing & Public Works (HPW) of his intention to write to all Ministers and Assistant Ministers seeking confirmation of the processes they have in place to public records created or received in Private email accounts.
- The Director-General of HPW refused permission for the State Archivist to contact Ministers and Assistant Ministers on this matter.
- At present there is widespread public interest in the management of public records in the private email accounts of Ministers and the State Archivist considers it in the public interest to obtain confirmation of these processes to ensure the ongoing integrity of the Queensland public record.

KEY ISSUES

- The 2017 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.
- The investigation also highlighted wider issues related to the standard of recordkeeping practices across government including Ministers and Assistant Ministers and their staff, and a lack of awareness of responsibilities and requirements relating to the management of public records.
- The State Archivist made a recommendation in the 2017 report to conduct a review of processes for all current Ministers and their staff in managing public records sent or received in private email accounts.
- 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 public perception that the use of such accounts is done for a corrupt purpose.

- In March 2018 the Public Service Commission released a *Private Email Use Policy* which prohibited the use of private email accounts of public service employees for government related business.
- The *Ministerial Handbook* requires that Ministers and Assistant Ministers must ensure all ministerial portfolio-related business is conducted through their ministerial email account.
- The State Archivist issued the *Ministerial Records Policy* in December 2017 which outlines the recordkeeping requirements that Ministers, and Assistant Ministers must follow including the management of public records in private email accounts.
- The State Archivist proposes to write to Ministers and Assistant Ministers seeking assurance that ministerial records are being managed appropriately including procedures for the management of ministerial records received or sent from private email and social media accounts.

ELECTION/CABINET/PUBLIC COMMITMENTS/LEGISLATION

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

FINANCIAL IMPACTS

- There are no financial impacts.

HUMAN RIGHTS IMPACT ASSESSMENT

- There are no implications for human rights under the *Human Rights Act 2019*.

CONSULTATION

- Not applicable.

COMMUNICATIONS/MEDIA OPPORTUNITIES

- Not applicable.

FUTURE STEPS

- The State Archivist will write to Ministers and Assistant Ministers about their current recordkeeping processes.

DEPUTY DIRECTOR-GENERAL ENDORSEMENT Andrew Spina Deputy Director-General Services Delivery and Operations Date: / /	COMMENTS
DIRECTOR-GENERAL ENDORSEMENT Clare O'Connor Director-General Department of Communities, Housing and Digital Economy Date: / /	COMMENTS
MINISTER'S OFFICE LeeAnne Enoch MP Minister for Communities and Housing Minister for Digital Economy Minister for the Arts Date: / /	COMMENTS

Electorates: Statewide or Electorate/s (search address at <https://www.ecq.qld.gov.au/electoral-boundaries/where-is-my-electorate>)

Released under RTI - DCHDE



Queensland
Government

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

Our Ref: HPW [SystemRefNo]
Your Ref: QSA21/21

Hon Leanne Enoch MP
Minister for Communities, Housing and Digital Economy
GPO Box 2457
BRISBANE QLD 4001

Dear Minister Enoch

Review of practices used to manage ministerial records held in private email accounts

I am writing to all current Ministers and Assistant Ministers to identify what practices are in place to manage any ministerial records that may be held in private email accounts.

As the Minister for Communities, Housing and Digital Economy you are no doubt aware that you are considered a public authority under the Public Records Act 2002 (the Act). You are also considered the executive officer of your public authority and have statutory obligations under the Act to:

- a) make and keep full and accurate records of your activities as a Minister; and
- b) have regard to any relevant policy, standards and guidelines made by the archivist about the making and keeping of public records.

These obligations extend to ensuring that staff within your office also meet these requirements.

With this in mind, could you please advise what processes you have in place to ensure that ministerial records created or received in private email accounts are captured in an official ministerial system and are not unlawfully disposed of?

Please note that ministerial records do not include records of the following (unless they relate to the Minister's portfolio responsibilities):

- personal activities and interactions with family and friends
- political party membership or activities
- constituency or electorate activities
- responsibilities as a member of the Legislative Assembly.

The results of my review of current practices in ministerial offices will inform me of future work that may need to be undertaken in order to ensure that ministerial records contained within private email systems are identified, captured, managed, kept and preserved in accordance with the requirements of the Act.

To assist with a timely resolution of this matter, I ask that you provide your response to the request above to my office by [date].

I would like to thank you for your assistance with this important review. Ministerial records are some of the most important records created in government and are the cornerstone of

an accountable, democratic and transparent society. These public records provide evidence of the highest level of Queensland Government deliberations, decisions and actions which ultimately influence the administration of government and the people of Queensland. It is critical that the public records of Ministers are handled and managed in a manner which best ensures they are kept and preserved for the benefit of current and future generations.

For further advice and assistance please contact my office on telephone 07 3037 6727 or email officeofthestatearchivist@archives.qld.gov.au.

Yours sincerely

Mike Summerell
Executive Director and State Archivist
Queensland State Archives

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 Bréni.

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) [REDACTED] 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)

- [REDACTED]
- [REDACTED]. 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) [REDACTED] 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 [Redacted]
[Exempt Sch 3(7)]
[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] 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.

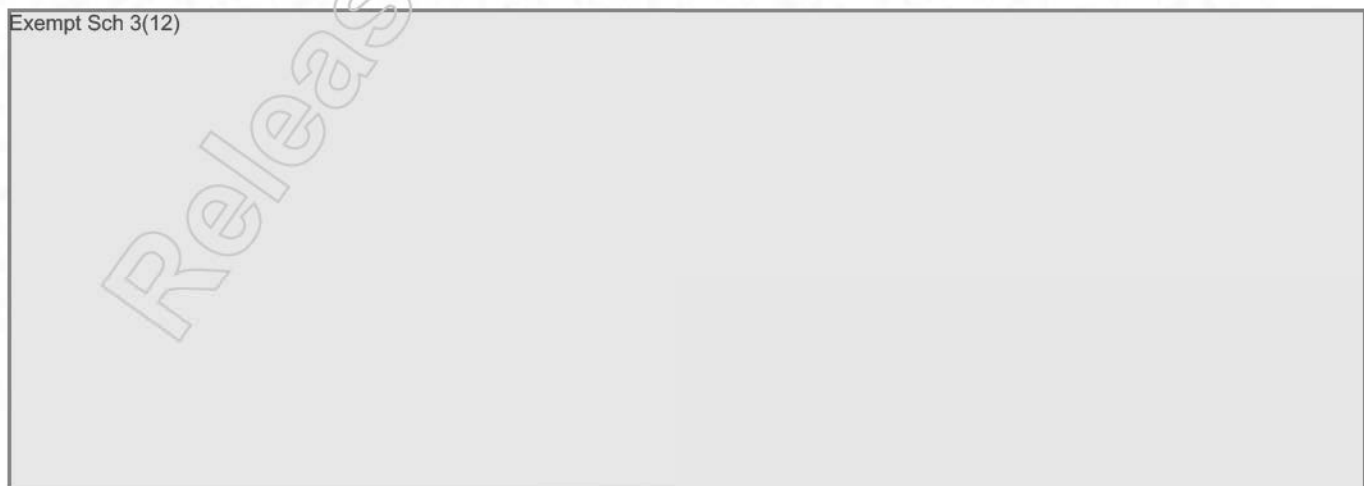
- The Crime and Corruption Commission advised no finding of corrupt conduct was found and the matter can be investigated by QSA.
- Further assessment by DHPW Legal of this matter is underway before contact with QPS is made. The matters referred to by the complainant extend beyond the remit of the Act.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



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 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:

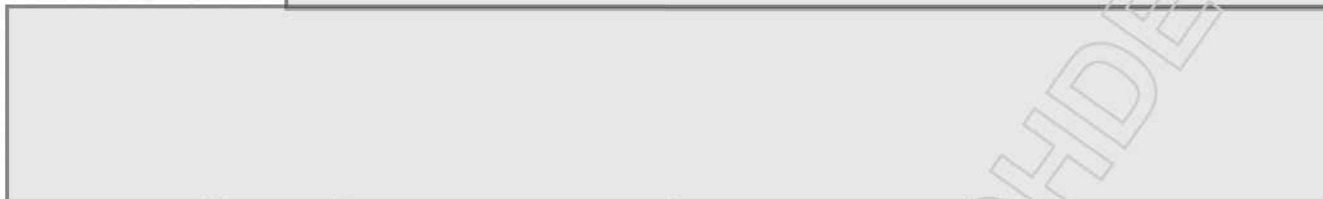
- The archivist and the staff of the archives are not subject to the control or direction of a Minister or a department in relation to making decisions about the disposal of public records.

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:



During Estimates hearing in July 2017, during the active stage of the Minister Bailey investigation, the DG of DSIT 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

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] 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]

Exempt Sch 3(7)

[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.