



Public Records Bill 2023

Report No. 38, 57th Parliament
Community Support and Services Committee
November 2023

Community Support and Services Committee

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All web address references are current at the time of publishing.

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Chair's foreword

This report presents a summary of the Community Support and Services Committee's examination of the Public Records Bill 2023.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament. The committee also examined the Bill for compatibility with human rights in accordance with the *Human Rights Act 2019*.

On behalf of the committee, I thank those individuals and organisations who made written submissions on the Bill. I also thank the Department of Treaty, Aboriginal and Torres Strait Islander Partnerships, Communities and the Arts, the State Archivist, and our Parliamentary Service staff for their assistance.

I would like to thank the Chair, Corrine McMillan MP, and members of the committee for their hard work and valuable contribution to the examination of the Bill.

I commend this report to the House.



Chris Whiting MP

Acting Chair

Recommendations

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Report Summary

This report presents a summary of the committee's examination of the Public Records Bill 2023. The Bill was introduced by the Honourable Leeanne Enoch MP, Minister for Treaty, Minister for Aboriginal and Torres Strait Islander Partnerships, Minister for Communities and Minister for the Arts on 12 October 2023. The Bill was referred to the Community Support and Services Committee for detailed consideration.

The committee recommends the Bill be passed.

The Bill would replace the *Public Records Act 2002* and implement public record keeping legislation more suited to contemporary technology, community expectations, and cultural attitudes. To achieve this, the Bill proposes a modern public records framework that is prepared for future technological transformation and a pro-disclosure stance for accessing public records. The Bill proposes requirements for making, maintaining and storing public records. The Bill also proposes to recognise the importance of First Nations peoples' knowledge and history, and the sensitive nature of their public records. If passed, the Bill would:

- provide principles for public records relating to Aboriginal peoples and Torres Strait Islander peoples
- establish a First Nations Advisory Group to work with the State Archives
- ensure membership of the Public Records Review Committee includes at least one Aboriginal Person and one Torres Strait Islander person.

The Bill also proposes to increase the independence of the State Archivist, enable the State Archivist to issue standards by Regulation, investigate compliance, and extend restricted access periods for public records.

The committee considered the views expressed in submissions and by witnesses at the committee's public hearing, as well as briefing material from the Department of Treaty, Aboriginal and Torres Strait Islander Partnerships, Communities and the Arts and the State Archivist.

The committee is satisfied that sufficient regard has been given to fundamental legislative principles, to the rights and liberties of individuals and the institution of parliament, and that any limitations of human rights, as set out in the *Human Rights Act 2019*, are reasonable and justifiable.

The committee makes one additional recommendation, in relation to Indigenous Data Sovereignty.

The committee acknowledges and thanks all those who provided submissions for its consideration, and stakeholders who appeared at the public hearing, including Dr Rose Barrowcliffe, First Nations Archives Advisor to the Queensland State Archives.

1 Introduction

1.1 Policy objectives of the Bill

The Public Records Bill 2023 (the Bill) repeals and replaces the *Public Records Act 2002* (the 2002 Act). The policy objectives of the Bill relate to:

- adopting a new purpose and principles for administering a new Public Records Act (the Act), including recognition of the importance of public records for Aboriginal peoples and Torres Strait Islander peoples
- recognising the valuable contribution of Aboriginal peoples and Torres Strait Islander peoples by providing for representation on the Public Records Review Committee (PRRC), which provides advice to the Minister for the Department of Treaty, Aboriginal and Torres Strait Islander Partnerships, Communities and the Arts (Minister), and the creation of a new First Nations Advisory Group to advise the State Archivist
- the clarification of definitions to ensure their appropriateness in the digital world including the definition of public record
- protecting permanent public records at risk of loss or damage by directing the transfer of those records to Queensland State Archives (State Archives)
- enabling the State Archivist to audit, monitor, investigate and report on compliance with the Act, including a power to direct a public authority to report on matters related to making and managing public records
- clarifying the functions of the State Archivist to include the provision of assistance and training to public authorities
- increasing the time limit for prosecution of a contravention for unlawful disposal from one year to 3 years, including a new sanction for attempted unlawful disposal and expanding the definition of disposal to include 'altering' and 'deleting' to clearly encompass digital records
- enhancing the general powers of authorised officers to obtain copies of a public authority's public records, systems, and records management procedures, and to ask questions about them
- empowering the State Archivist to issue records management standards that public authorities must comply with
- adopting a pro-disclosure approach for access to records in the custody of State Archives through setting restricted access periods (where needed) and requiring public authorities to advise why they have refused access to these public records
- specifying that the State Archivist is generally subject to the direction of the Minister while retaining independence for decisions about the disposal of public records
- requiring any direction by the Minister about the State Archivist's performance of a function or the exercise of a power under the Act be in writing, consistent with the Act and included in the State Archivist's annual report
- clarifying access to records of Ministers and Assistant Ministers will continue under the *Right to Information Act 2009* (RTI Act)
- empowering the State Archivist, as the responsible public authority, to extend restricted access periods for Ministerial records in the custody of the State Archives, and to dispose of temporary Ministerial records in the custody of the State Archives with the advice of the PRRC

- simplifying the process for establishing a public authority to take control of the records of another public authority that ceases to exist and where no other public authority will take over its functions
- other amendments to align with the RTI Act and the *Information Privacy Act 2009* (IP Act), including adopting the definition of personal information (rather than referring to personal affairs) and incorporating sensitive information within the restricted access period provisions.¹

1.2 Background

In May 2022, the Queensland Government announced an independent review of the 2002 Act. The review was led by retired Supreme Court Judge, the Honourable John Byrne AO RFD. Justice Byrne completed the *Report of review of the Public Records Act 2002* (PR Act Report) in August 2022. The Queensland Government released the report and the government response in February 2023.² The PR Act Report made 27 recommendations, 25 of which were for legislative reform.³ Key matters considered included:

- First Nations peoples' public records
- digital technology advances and impacts
- community expectations for accountability and transparency of government
- the diversity of public authorities under the 2002 Act.

The Bill proposes to address 20 recommendations relating to legislative reform. The explanatory notes state that the recommendations not progressed in the Bill are:

- Recommendation 2b – further evaluation of the concepts of Indigenous Data Sovereignty, Indigenous Data Governance and Indigenous Cultural and Intellectual Property, which is continuing in a separate review
- Recommendation 19 – access to Ministerial records to continue through the RTI Act rather than by decision of the State Archivist
- Recommendations 21 to 23 – to include local government councillors within the definition of a public authority and the creation of a new definition for councillor records – these recommendations will not be progressed at this time (refer to section 2.6.1 of this report).

1.2.1 Consultation

According to the explanatory notes, public consultation was undertaken at multiple stages, including during the independent review by Justice Byrne. Consultation was again undertaken at the release of the Consultation Regulatory Impact Statement (C-RIS) in February 2023. Targeted consultation also occurred with key stakeholders and a survey was issued to all Queensland Government departments seeking feedback on the C-RIS.⁴

In October 2023 the Department of Treaty, Aboriginal and Torres Strait Islander Partnerships, Communities and the Arts (the department) released the Decision Regulatory Impact Statement (D-

¹ Explanatory notes, pp 2-3.

² Queensland Government, Department of Communities, Housing and Digital Economy, *Report of review of the Public Records Act 2002* (PR Act Report), 31 August 2022, yoursay.housing.qld.gov.au/public-records-act-review; Queensland Government, *Queensland Government Response to the review of the Public Records Act 2002* (Response to report), n.d., yoursay.housing.qld.gov.au/public-records-act-review.

³ PR Act Report, pp 8-11.

⁴ Explanatory notes, pp 2-3.

RIS), informed by feedback on the C-RIS. The D-RIS provides analysis of the consultation outcomes and proposed refined reform options to address the review recommendations and stakeholder feedback.⁵

The explanatory notes state that Dr Rose Barrowcliffe, Queensland State Archives First Nations Archives Advisor, held workshops with First Nations stakeholders in July 2023 about the recommendations relating to First Nations peoples in the Report.⁶

1.3 Legislative compliance

The committee's deliberations included assessing whether the Bill complies with the Parliament's requirements for legislation as contained in the *Parliament of Queensland Act 2001*, *Legislative Standards Act 1992* (LSA) and the *Human Rights Act 2019* (HRA).

1.3.1 *Legislative Standards Act 1992*

The committee is satisfied that the Bill complies with the LSA.

In reaching this conclusion, the committee considered several issues relating to fundamental legislative principles (FLPs), including:

- whether the proposed penalties for offences are proportionate to the relevant offences and consistent with other penalties within legislation
- whether the proposed power for authorised officers to enter premises and inspect public records have sufficient regard for the rights and liberties of individuals⁷
- whether the reversal of the onus of proof resulting from the evidentiary provision in the Bill,⁸ and for certain offences,⁹ are justified and have sufficient regard to the rights and liberties of individuals
- whether the delegations of legislative power in the Bill, to allow for regulation to prescribe that certain entities are not public authorities¹⁰ and prescribe the circumstances in which the State Archivist may refuse access to a public record,¹¹ has sufficient regard to the institution of Parliament.

The explanatory notes tabled with the Bill contained the information required by Part 4 of the LSA. They included a sufficient level of background information and commentary to facilitate understanding of the Bill's aims and origins.

Committee comment

The committee is satisfied that the Bill complies with the LSA.

1.3.2 *Human Rights Act 2019*

The committee is satisfied that the Bill is compatible with the HRA.

The committee's assessment of the Bill's compatibility with the HRA considered the following potential limitations on human rights:

⁵ Explanatory notes, p 3.

⁶ Explanatory notes, p 3.

⁷ Bill, cls 77, 79.

⁸ Bill, cl 88.

⁹ Bill, cls 22, 23, 76, 81, 85.

¹⁰ Bil, cl 8.

¹¹ Bill, cl 40.

- whether the proposal to replace the term ‘personal affairs of an individual’ with ‘personal information’ is consistent with the right to freedom of expression
- whether enabling public authorities to set restricted access periods for specified information is consistent with the right to take part in public life
- whether enabling authorised officers and the State Archivist to take actions that may result in the accessing of personal information, is consistent with the right to privacy and reputation
- whether the proposed power to issue restricted access notices in relation to records that contain culturally sensitive information is consistent with the cultural rights of Aboriginal and Torres Strait Islander peoples.

A statement of compatibility was tabled with the introduction of the Bill as required by section 38 of the HRA. The statement contained a sufficient level of information to facilitate understanding of the Bill in relation to its compatibility with human rights.

Committee comment

The committee is satisfied that the Bill is compatible with the HRA as the identified potential limitations on human rights are reasonable and demonstrably justified, having regard to section 13 of the HRA.

1.4 Should the Bill be passed?

The committee is required to determine whether or not to recommend that the Bill be passed.

Recommendation 1

The committee recommends the Public Records Bill 2023 be passed.

2 Examination of the Bill

This section discusses key issues raised during the committee’s examination of the Bill. It does not discuss all consequential, minor or technical amendments.

2.1 Principles, purpose, and recognition for First Nations peoples

The Bill is intended to establish ‘a framework for making, managing and accessing public records in a way that benefits current and future generations’.¹² Citing changed community expectations and digital advancements as driving factors for reform, the department noted the reforms proposed in the Bill adopt a ‘pro-disclosure’ approach to reflect contemporary attitudes about transparency, accountability, and integrity.¹³ The Bill recognises public records as shared resources that serve ‘community members, researchers, historians, journalists and government officials alike’.¹⁴

The Bill (proposed Schedule 1) articulates public records principles, acknowledging in relation to First Nations peoples:

- the unique value of Aboriginal and Torres Strait Islander peoples’ knowledge
- that the nature, volume, and content of First Nations peoples’ public records differs from those of other Queenslanders
- that the content of these public records may be sensitive, offensive or inaccurate, ‘and may have been used in the past in a way that disrupted Aboriginal and Torres Strait Islander cultural practices and communities’.¹⁵

Further, the proposed Schedule 1 states that the management of public records relating to Aboriginal and Torres Strait Islander peoples should:

- support their participation in truth-telling and treaty negotiations
- help reframe the Queensland Government’s relationship with them
- ‘otherwise support revitalisation of culture and reconnecting communities and families’.¹⁶

The Bill proposes that the State Archivist establish a First Nations Advisory Group. This group would function to advise the State Archivist about public records relating to First Nations peoples, or at the State Archivist’s request, any other matter concerning the State Archivist’s powers or functions.¹⁷

2.1.1 Stakeholder views and department response

Stakeholders were broadly supportive of the intent, objectives, and reforms in the Bill. The Records and Information Management Practitioner’s Alliance (RIMPA Global) noted that the Bill ‘provides a solid framework and makes good progress towards making, managing, protecting, and accessing public records in the digital age’.¹⁸ The Australian Society of Archivists submitted ‘the Bill constitutes an important step forward for Queensland providing more independence for the Archives’.¹⁹ The Office of the Information Commissioner (OIC) welcomed the Bill, ‘which stands to modernise

¹² Explanatory notes, p 8.

¹³ Public briefing transcript, Brisbane, 23 October 2023, pp 1-2.

¹⁴ Public briefing transcript, Brisbane, 23 October 2023, pp 1-2.

¹⁵ Bill, Schedule 1, Part 1.

¹⁶ Bill, Schedule 1, Part 1.

¹⁷ Explanatory notes, p 21; Bill, cl 64.

¹⁸ Submission 2, p 1.

¹⁹ Submission 4, p 1.

Queensland's public records governance framework and better harmonise' it with other legislation.²⁰ In particular, the OIC commended the Bill for its pro-disclosure stance, which is in accordance with the presumption that government-held information is to be available to the community, unless this is contrary to public interest.²¹ Queensland's Crime and Corruption Commission (CCC) declared the changes 'will assist, strengthen, modernise and simplify public records regulation within Queensland'.²² QLeave welcomed 'the modernisation of contemporary information and recordkeeping practices'.²³

The Bill's acknowledgement of First Nations peoples was also well received.

In support of the Bill, Mick Gooda, Co-Chair of the Interim Truth and Treaty Body (ITTB) said:

Through the inclusion of the proposed guiding principles, the bill recognises the importance of public records to the full documentation and preservation of the history of Queensland, understanding that to date this history is not complete and has been told from a predominantly non-Indigenous colonial worldview. It recognises that the current historical record is absent, or biased, in its representation of the 65,000 years prior to colonisation and that record-keeping practices have been, for the most part, one-sided and in many cases used to the detriment of First Nations people.²⁴

The submission of the ITTB stated that the Bill 'appears to offer a solid platform to build and support First Nations recognition and involvement in Queensland Government public record keeping practices'.²⁵ RIMPA Global supported the establishment of the First Nations Advisory Group and the provisions in the Bill relating to managing First Nations peoples' public records.²⁶ The OIC was similarly supportive, and suggested the changes may substantively aid Stolen Generations survivors and their family members to access records.²⁷ The Local Government Association of Queensland (LGAQ) welcomed changes related to First Nations peoples, and the creation of a First Nations Advisory Group proposed by the Bill.²⁸

The ITTB, which is guiding the implementation of policies, processes, and data-management systems for the First Nations Treaty Institute²⁹ to be established in early 2024, stated that the First Nations Treaty Institute will 'play a key advisory role on public record management'. It suggested a formal relationship should be established between the Institute and the First Nations Advisory Group.³⁰

The ITTB commended the Bill for introducing rights-based principles that specifically support the treaty process. The ITTB suggested the HRA and the *United Nations Declaration on the Rights of*

²⁰ Submission 5, p 1; the OIC believes the proposed legislation better aligns with the *Information Privacy Act 2009*, and the *Right to Information Act 2009*.

²¹ Submission 5, p 1.

²² Submission 8, p 1.

²³ Submission 7, p 1.

²⁴ Public hearing transcript, Brisbane, 13 November 2023, p 7.

²⁵ Submission 6, p 2.

²⁶ Submission 2, p 2.

²⁷ Submission 5, pp 1-2.

²⁸ Submission 1, p 1.

²⁹ Submission 6, p 2; The *Path to Treaty Act 2023* established the First Nations Treaty Institute. Its role is to prepare a treaty negotiation framework with Aboriginal peoples and Torres Strait Islander peoples, and to support their participation in treaty negotiations. The *Path to Treaty Act 2023* also establishes the Truth-telling and Healing Inquiry. This inquiry will consider the persistent impacts of colonisation upon First Nations peoples; *Path to Treaty Act 2023*, preamble.

³⁰ Submission 6, p 4.

*Indigenous Peoples*³¹ might be utilised to determine specifically *how* record keeping practices can support treaty processes.³² Such principles could include:

- prioritising First Nations peoples' self-determination and data sovereignty
- ensuring decisions affecting First Nations are made without coercion, and with free, prior and informed consent
- respecting First Nations laws and traditions
- preventing harm
- treating First Nations peoples with equality, inclusivity, diversity, accountability, transparency, integrity, and non-discrimination.³³

RIMPA Global acknowledged the valuable role the proposed First Nations Advisory Group will play in Queensland's truth-telling.³⁴ Following input from the First Nations Advisory Group, RIMPA Global suggested it 'would expect to see the rights of First Nations peoples included in Schedule 1, Part 1 in due course'.³⁵

Linda Shave submitted that the Bill does not address technological 'future drivers and needs'.³⁶ Ms Shave attested to 'a digital dilemma with the warp speed of technology advancements that are accelerating storage formats, digital data formats and technology becoming obsolete'.³⁷

The department noted the broad support for the Bill, including the OIC's support of its 'pro-disclosure stance', and the support of the LGAQ, RIMPA Global, OIC, and ITTB relating to recognising First Nations peoples in the proposed Act.³⁸

The department acknowledged the ITTB's recommendation that the method of administering public records be informed by human rights principles (including prioritising self-determination; ensuring decisions are made with free, prior, and informed consent; and respecting First Nations peoples' laws and traditions). The department also acknowledged the ITTB's suggestion that more protections for cultural rights and knowledge should be fostered, such as through consultation, benefit sharing, and protections.³⁹

The department advised that the State Archivist will work with First Nations stakeholders as part of the planned review on Indigenous Data Sovereignty, Indigenous Data Governance and Indigenous Cultural Intellectual Property, as recommended in the PR Act Report⁴⁰. Part of the work of this review will be to consider how to protect the cultural rights and knowledge of First Nations peoples.⁴¹ The department noted that additional policy considerations may emerge from this review, which is due

³¹ The *UN Declaration on the Rights of Indigenous Peoples* can be found at www.humanrights.gov.au/our-work/un-declaration-rights-indigenous-peoples-1.

³² Submission 6, p 3.

³³ Submission 6, p 3.

³⁴ Submission 2, p 2.

³⁵ Submission 2, p 2.

³⁶ Submission 10, p 14.

³⁷ Submission 10, p 15.

³⁸ Department of Treaty, Aboriginal and Torres Strait Islander Partnerships, Communities and the Arts, correspondence (DTATSIPCA), 10 November 2023, attachment, pp 1, 2, 5, 7, 8.

³⁹ DTATSIPCA, correspondence, 10 November 2023, attachment, pp 7-8.

⁴⁰ PR Act Report, pp 8.

⁴¹ DTATSIPCA, correspondence, 10 November 2023, attachment, p 7.

two years after the Bill passes, and will be informed First Nations stakeholders, the proposed First Nations Advisory Group, and the PRRC.⁴²

The Public Records Bill and the Path to Treaty Act are historic. Together they have the potential to bring to the fore laws that demonstrate a willingness to truly listen and respond to what First Nations people are saying. The ongoing momentum and progression through this work with parliament, government, the inquiry and the institute will reflect a maturity and respect that hopefully is meaningful for the lives of First Nations peoples.

Mick Gooda, Co-Chair, ITTB, public hearing transcript, Brisbane, 13 November 2023

2.2 Public records requirements

The Bill proposes to define obligations for making, managing, accessing and protecting public records.⁴³ The Bill provides ‘a framework for managing ownership of records when public authorities cease to exist, and an option to prescribe control of public records through regulation’.⁴⁴ The Bill would empower the State Archivist to authorise the disposal of public records, after consulting with the PRRC.⁴⁵

Under the proposed legislation, public authorities would be required to comply with relevant standards and policies determined by the State Archivist,⁴⁶ and ensure:

- public records accurately represent the actions, decisions, and any relevant contextual information that informed an action
- the safekeeping of public records
- custody of public records is properly transferred when public authorities change or end, or when a Minister’s or Assistant Minister’s office ends.⁴⁷

The Bill requires that for public records in the custody of a public authority, if they require specific equipment, technology, or systems, the Bill proposes that the public authority ‘must take all reasonable steps to ensure the public record maintains its integrity and remains able to be produced or made available’.⁴⁸ The State Archivist acknowledged the capacity for different public authorities to maintain public records will vary, and that the State Archives will provide guidelines and policies.⁴⁹

The Bill also provides that public records that are in the custody of the State Archives are open or unrestricted. In order to restrict a document, a public authority must provide a *restricted access notice*, which will authorise a *restricted access period* for the public record.⁵⁰ The State Archivist, Ms Louise Howard stated:

We acknowledge that there is a huge scalability to the public authorities who are governed by the act and who have records that need to be kept permanently. We work with everyone, from the Moreton Rabbit Board of four people through to Queensland Health with tens of thousands of staff. What we can do within the regions is work with them to understand what resources they have and what good record keeping looks like for them. It is not going to be the same for every agency. We might expect particular agencies to invest in electronic document and record management systems that have secure

⁴² DTATSIPCA, correspondence, 10 November 2023, attachment, p 8.

⁴³ Explanatory notes, pp 10-11.

⁴⁴ Explanatory notes, pp 11-12.

⁴⁵ Bill, cl 20; DTATSIPCA, Correspondence, 10 November 2023, attachment, p 7.

⁴⁶ Bill, cl 12(a)(b)(c).

⁴⁷ Bill, cls 14-18.

⁴⁸ Bill, cls (1)(a)(b) and (2).

⁴⁹ Louise Howard, State Archivist, public briefing transcript, Brisbane, 23 October 2023, p 3.

⁵⁰ Bill, cl 28.

cybersecurity, that have significant things because they hold highly confidential personal health data or similar things. When working with much smaller agencies, we would be working with them to understand what secure records management and preservation of records looks like for them.⁵¹

Additionally, the Bill permits the creation of a regulation that could prescribe whether an entity is, or is not, a public authority.⁵²

2.2.1 Stakeholder views and department response

Stakeholder feedback about the new standards and requirements for public records was largely positive. RIMPA Global praised the addition of contextual information such as logs and metadata in the definition of a public record.⁵³ However, it noted the definition still lacks clarity.⁵⁴ To refine the definition, RIMPA Global recommended a definition similar to that in New Zealand's *Public Records Act 2005*.⁵⁵

The OIC generally supported maximising open access to public records but noted the importance of balancing openness with suitable protections—especially in consideration of sensitive and/or personal information. The OIC noted that, under the 2002 Act, the State Archivist provides guidance to determine restricted access periods for public records. The OIC stated that it is important that the State Archivist continue to provide this guidance 'and ensure balance between openness and appropriate protections'.⁵⁶ Further, the OIC recommended that transparency and efficacy could be enhanced if, when applying for a restricted access period, the restricted access notice include the reasoning for limiting access.⁵⁷

Regarding restricted records, the University of Queensland sought clarification as to whether the provisions in the Bill (Part 3, Division 3 and Schedule 2) only apply to public records held by the State Archives, or could be broadly adopted by public authorities.⁵⁸

Additional recommendations from submitters included:

- QLeave suggested future standards or subordinate legislation clarify what constitutes an authorised records management system⁵⁹
- the CCC noted that cl 8(1)(k) of the Bill defines 'an entity established by the State and a local government' as public authorities. It raised concern that this language is ambiguous and could

⁵¹ Public briefing transcript, Brisbane, 23 October 2023, p 3.

⁵² Bill, cl 8(2).

⁵³ Submission 2, p 1.

⁵⁴ See also Submission 9, p 1. The submitter recommended greater specificity about various media, including data, documents, audio, video, images, artefacts, and text.

⁵⁵ New Zealand *Public Records Act 2005*, s 4 states:

record means information, whether in its original form or otherwise, including (without limitation) a document, a signature, a seal, text, images, sound, speech, or data compiled, recorded, or stored, as the case may be,—

(a) in written form on any material; or

(b) on film, negative, tape, or other medium so as to be capable of being reproduced; or

(c) by means of any recording device or process, computer, or other electronic device or process.

⁵⁶ Submission 5, p 2.

⁵⁷ Submission 5, p 3.

⁵⁸ Submission 3, n.p.

⁵⁹ Submission 7, p 1.

be interpreted as meaning this would only apply to entities established by *both* State and local government⁶⁰

- Somerset Regional Council recommended the definition of a public record be refined to avoid public record retention becoming onerous, specifically with regard to saved copies and duplicate records.⁶¹

In response to RIMPA Global's suggestion that the Bill adopt a more prescriptive and detailed definition of 'public record', the department advised that the proposed definition was intentionally broad and specifically designed to be adaptable to a changing digital landscape. The department added that the Bill 'already acknowledges a public record is information recorded on, in or by using any medium'; as such, it is unnecessary to add specific formats to the definition.⁶²

In relation to the OIC's submission that when managing restricted access periods openness should be balanced with suitable protections, the department advised that the State Archives will provide guidance to public authorities to ensure a balance between transparency and the need to protect sensitive information (such as highly sensitive personal information, or information that might impact public safety).⁶³

The department acknowledged the OIC's suggestion that restricted access notices should include reasons for limiting access. The department advised that currently, when submitting restricted access period notices, public authorities are required to indicate the category of information to justify restricting access, and it is anticipated that a similar process will be adopted should the Bill be passed. These categories include 'personal affairs, information about legal professional privilege, information whose disclosure would be a breach of confidence, national or State security information'.⁶⁴

In response to QLeave's suggestion that subordinate legislation might clarify what is meant by 'authorised records management system', the department confirmed that the State Archivist would review existing policies, guidelines and standards if the Bill is passed. At this time, consideration might be given as to whether 'authorised records management systems' need to be defined in policy, guidelines, and standards.⁶⁵

The department acknowledged Somerset Regional Council's suggestion that the definition of 'public record' be amended so that it does not include a copy, or a copy of a part, of a public record. The department advised that copies of public records, if unchanged, do not need to be captured by a recordkeeping system and can be disposed of when their business use ceases. If the record is changed, it is considered a new public record that must be retained.⁶⁶

2.3 Accessing public records

On introducing the Bill to Parliament, Hon Leeanne Enoch Minister for Treaty, Minister for Aboriginal and Torres Strait Islander Partnerships, Minister for Communities and Minister for the Arts, stated that 'embracing a pro-disclosure approach to public records is fundamental in upholding the values of transparency and accountability in government'.⁶⁷ The proposed legislation provides guidelines for making public records accessible to the public. It requires that the State Archivist must allow access

⁶⁰ Submission 8, p 2.

⁶¹ Submission 11, pp 1-2.

⁶² DTATSIPCA, correspondence, 10 November 2023, attachment, pp 1-2.

⁶³ DTATSIPCA, correspondence, 10 November 2023, attachment, p 5.

⁶⁴ DTATSIPCA, correspondence, 10 November 2023, attachment, p 6.

⁶⁵ DTATSIPCA, correspondence, 10 November 2023, attachment, p 6.

⁶⁶ DTATSIPCA, correspondence, 10 November 2023, attachment, p 10.

⁶⁷ Record of Proceedings, 12 October 2023, p 3,053.

to open (unrestricted) records upon request, and that individuals can apply for access to restricted records in the custody of the State Archivist⁶⁸.

The State Archivist noted that prior to the Bill, individuals did not have an opportunity to challenge a refusal of access to a restricted public record. The Bill would require that public authorities explain their decisions to refuse access to public records and provides an escalation process in which disputes are resolved by the PRRC.⁶⁹ The Bill proposes that a referral can be made for this escalation process by the State Archivist or the responsible public authority when they disagree about changing a restricted access notice.⁷⁰

The Bill provides for a regulation to prescribe circumstances in which the State Archivist may refuse access to public records in their custody.⁷¹ According to the State Archivist, this reflects a need to ensure a balance between transparency and protecting sensitive information.⁷²

Notably, the Bill does not provide for access requests to Ministerial public records. While the PR Act Report (Recommendation 19) recommended that *if* the State Archivist were to decide on applications to Ministerial records, the Act should be amended to allow a right of appeal to this decision, for review by the PRRC,⁷³ the department advised that access requests for Ministerial records will not be decided by the State Archivist, as people will need to apply under the *Right to Information Act 2009*.⁷⁴

2.3.1 Stakeholder views and department response

RIMPA Global was broadly supportive of the Bill's proposal to prescribe circumstances to restrict access to public records by regulation, noting 'these provisions provide a clear and transparent basis on which access restrictions may be applied'.⁷⁵

The Australian Society of Archivists supported the Bill. It recommended a clause be included to allow members of the public to challenge restricted access periods, and an escalation process for such decisions to be decided by the PRRC.⁷⁶ Similarly, the OIC highlighted that the review mechanism outlined in the Bill 'does not appear to accommodate the interests of the applicant requesting access to a given restricted record',⁷⁷ suggesting it could reduce the need for people to make formal Right to Information requests if applicants had more information about the reason for refusal, and a means to challenge a refusal.⁷⁸

As noted in 2.2.1 (above), the OIC generally supported making public records more easily available but stressed the importance of balancing this with appropriate protections. The OIC endorsed provisions regarding accessing restricted records and noted that they 'will help to strengthen Queensland's pro-disclosure information access architecture, thereby fostering open and transparent government'.⁷⁹ The OIC raised concern, however, that since there is no provision in the Bill for people to apply to the

⁶⁸ Bill, cls 34-5.

⁶⁹ Louise Howard, State Archivist, public briefing transcript, Brisbane, 23 October 2023, p 5.

⁷⁰ Bill, cl 32(4).

⁷¹ Explanatory notes, pp 16-17.

⁷² Louise Howard, State Archivist, public briefing transcript, Brisbane, 23 October 2023, p 5.

⁷³ PR Act Report, p 10.

⁷⁴ DTATSIPCA, Correspondence, 10 November 2023, attachment, p 2.

⁷⁵ Submission 2, p 3.

⁷⁶ Submission 4, n.p.

⁷⁷ Submission 5, p 3.

⁷⁸ Submission 5, p 4.

⁷⁹ Submission 5, p 3.

State Archivist for Ministerial public records, they will be forced to make Right to Information requests to access them. The OIC suggested:

It would be consistent with the openness and transparency aims of the Bill, and the intent of Parliament under the RTI Act to make government information available, to include Ministerial records within the Bill's access mechanism.⁸⁰

The ITTB drew attention to complex social and cultural factors that need to be considered when accessing First Nations peoples' public records, noting that culturally sensitive information is not always made available to everybody in a group; for example, factors such as gender and age may determine who can access materials in First Nations cultures.⁸¹ While supportive of the changes, the ITTB suggested 'much more thought' will be required to enable First Nations 'self-determination and empowerment, including but not limited to informing treaty making.'⁸²

The department noted the ITTB's support for embedding rights-based principles, RIMPA Global's support for a regulation making power to determine restricted access periods, and the OIC's support for a pro-disclosure stance.⁸³

In response to suggestions from the Australian Society of Archivists and the OIC that a process for individuals to challenge decisions be imbedded in the legislation, the department advised that clause 38⁸⁴ of the Bill contains a review mechanism by which a public authority must advise the State Archivist why access was refused. When there is disagreement between the State Archivist and public authority, this can be escalated to the PRRC.⁸⁵

The department acknowledged the OIC's suggestion that provision to access Ministerial public records should be included in the Bill, but advised that Ministerial records differ from other records held by the State Archives as there is no responsible public authority to decide upon access requests. When a Minister ceases to hold a portfolio or ceases being a Minister, they also cease to be a public authority and cannot make access decisions relating to these records. The department advised that the RTI Act offers a 'robust mechanism for access to ministerial records' and avoids 'duplication and inclusion of RTI-like criteria within the Bill'.⁸⁶

The department responded to the ITTB's call for greater protections and rights (see also 2.1.2) and advised continuing engagement and reform will be pursued as part of the review on Indigenous Data Sovereignty, Indigenous Data Governance and Indigenous Cultural Intellectual Property.⁸⁷

Committee comment

The committee notes the Bill's emphasis on improving standards of transparency and accountability.

2.4 Functions and powers of the State Archivist

The Bill outlines the State Archivist's administrative functions and powers. These include managing the State Archives, issuing mandatory standards (by regulation), and storing public records outside of

⁸⁰ Submission 5, p 3.

⁸¹ Submission 6, p 4.

⁸² Submission 6, p 5.

⁸³ DTATSIPCA, correspondence, 10 November 2023, attachment, pp 4, 5, 7.

⁸⁴ As noted above (2.3 and 2.3.1) this provision for review would be limited to disputes between the State Archivist and the public authority. It would not be available to the public. Challenges would be at the discretion of the State Archivist.

⁸⁵ DTATSIPCA, correspondence, 10 November 2023, attachment, pp 5-7.

⁸⁶ DTATSIPCA, correspondence, 10 November 2023, attachment, p 6.

⁸⁷ DTATSIPCA, correspondence, 10 November 2023, attachment, p 8.

the State Archives.⁸⁸ The Bill establishes a new PRRC, representing local government, state government, the judiciary, records management professionals, and one Aboriginal and one Torres Strait Islander representative.⁸⁹ The Bill empowers the PRRC representatives to confirm or amend the State Archivist's decisions.⁹⁰ The Bill requires the State Archivist to establish a First Nations Advisory Group.⁹¹

The Bill also empowers the State Archivist to appoint 'authorised officers' who can 'investigate, monitor and enforce compliance'.⁹² The proposed powers of an authorised officer include inspecting public records (including those kept on the premises of a public authority), examining public authorities' procedures, and questioning an employee of a public authority.⁹³

Division 5 of the Bill gives the State Archivist further powers, including:

- issuing a 'notice to report', whereby a public authority may be required to report on their practices, procedures, systems, and/or records
- recovering public records which are being unlawfully held
- applying to the Magistrates Court to recover unreturned public records
- recovering public records from reciprocal jurisdictions.⁹⁴

The Bill takes steps to allow a degree of autonomy for the State Archivist. The State Archivist's role is still subject to the direction of the Minister, but is afforded independence in the following matters:

- the State Archivist and staff of the State Archives will not be subject to Ministerial control when making decisions about the disposal of public records, or when preparing the annual report (as per clause 89)
- Ministerial directions to the State Archivist must be given in writing
- Ministerial directions must be consistent with the Act
- the State Archivist and staff of the State Archives are only subject to their departmental chief executive in relation to providing administrative support to the State Archives.⁹⁵

2.4.1 Stakeholder views and department response

Stakeholders generally supported the strengthening of legislation related to monitoring and enforcement. RIMPA Global commended the addition of 'attempted disposal' as unlawful.⁹⁶ The CCC also supported this change and welcomed that 'altering' and 'deleting' have been included in definitions relating to digital records.⁹⁷

RIMPA Global suggested several changes to language in the Bill to strengthen its meaning and ensure public authorities do not interpret their compliance responsibilities as being optional. Specifically,

⁸⁸ Explanatory notes, pp 18-19.

⁸⁹ Explanatory notes, p 20; these representatives are to be appointed respectively by the Minister administering the *Aboriginal Cultural Heritage Act 2003* and the *Torres Strait Islander Cultural Heritage Act 2003*.

⁹⁰ Explanatory notes, p 21.

⁹¹ Explanatory notes, p 21.

⁹² Bill, cl 68(a).

⁹³ Bill, cls 77-8.

⁹⁴ Bill, cls 80-2; explanatory notes, pp 23-24.

⁹⁵ Bill, cl 43.

⁹⁶ Submission 2, p 3.

⁹⁷ Submission 8, p 2.

RIMPA Global found the wording ‘have regard to’ found in cls 12(b)(c) and 46(1)(b)(c) might be interpreted as being discretionary. RIMPA Global proposed ‘take all reasonable steps to comply’ as an alternative.⁹⁸

The CCC supported the State Archivist retaining their investigative powers. The CCC had been named as a potential alternative to conduct such investigations but believed the State Archivist ‘is the subject matter expert’ who is most appropriately tasked with these duties.⁹⁹

Stakeholders were supportive of increased independence for the State Archivist. The Australian Society of Archivists believed ‘the Bill constitutes an important step forward for Queensland providing more independence for the Archives’.¹⁰⁰ Several submitters, however, raised concerns that the Bill does not go far enough, suggesting that ‘the separation of government and agency is important and the State Archivist should be given the same independence as an Ombudsmen or the Auditor General’.¹⁰¹ RIMPA Global made the same suggestion.¹⁰² Submitter Kevin Lindeberg concurred, and added that it is essential that the State Archivist can perform their statutory function ‘with neither fear of reprisal by intimidation nor favour towards another, including the executive or parliament’.¹⁰³ Mr Lindeberg suggested any reference to decisions being ‘in the public interest’ is currently fraught, because the perception of what is in the public interest may vary between the department and the executive. As such, ‘the State Archivist must always lawfully function “in the public interest” according to law’.¹⁰⁴

Justice Byrne also noted the State Archivist’s employment is under the *Public Service Act 2008* and with regard to their employment in that department, they are ‘subject to the direction of the chief executive’.¹⁰⁵ While the consultation process for the PR Act Report revealed support for more archival independence, the PR Act Report also noted that an ‘appropriate degree of archival immunity from departmental and ministerial direction has been debated for years’, and that ‘the primary justification for more independence is to better enable the State Archivist to perform the functions of the office, unhampered by the prospect, or the fact, of inappropriate intervention by superiors’.¹⁰⁶ The Bill reflects the PR Act Report’s recommendations, including:

- the State Archivist remain subject to ministerial direction, but have independence in respect to public record disposal decisions and reporting
- Ministerial directions must be in writing, consistent with the Act, and included in the State Archivist’s annual report (Recommendation 17).¹⁰⁷

The department responded to RIMPA Global’s suggestion that changes to language in the Bill should be made to ensure public authorities do not interpret their compliance responsibilities as being optional. It advised that the Bill provides for mandatory policies and standards that *must* be complied with, and guidelines that *may* be complied with. This variance, it stated, provides ‘a flexible and scalable framework for the wide variety of public authorities’.¹⁰⁸

⁹⁸ Submission 2, p 2.

⁹⁹ Submission 8, p 2.

¹⁰⁰ Submission 4, n.p.

¹⁰¹ Submission 9, n.p.

¹⁰² Submission 2, p 2.

¹⁰³ Submission 12, pp 2-3.

¹⁰⁴ Submission 12, p 3.

¹⁰⁵ PR Act Report, p 50.

¹⁰⁶ PR Act Report, p 50.

¹⁰⁷ PR Act Report, pp 51-2.

¹⁰⁸ DTATSIPCA, correspondence, 14 November 2023, attachment, p 3.

The department noted RIMPA Global's support for making the State Archivist's role more independent. In regard to recommendations from submitters that the State Archivist should be allowed independence similar to an Ombudsman or the Auditor General, it advised that the independence afforded to the State Archivist is consistent with recommendations in the PR Act Report. The response stated the Bill addresses potential or perceived conflicts of interest from Ministers and departments while 'preserving appropriate oversight and accountability mechanisms'.¹⁰⁹

Committee comment

The committee notes that the independence of the State Archives is a recurring theme found in stakeholder submissions and raised during consultation for Hon Justice Byrne's PR Act Report. The committee recognises the proposed legislation takes steps to minimise opportunities for tampering and provides a framework for open and accountable record keeping, and the committee believes the Bill adequately addresses these issues raised.

2.5 Public Records Review Committee

The Bill requires the Minister to establish a new PRRC. The PRRC functions include:

- advising about issues related to administering and enforcing the Act
- deciding certain matters under the Act
- reviewing the State Archivist's decisions not to authorise disposing of public records
- advising on the disposal of public records when a public authority, a Minister's office, or an Assistant Minister's office ends.¹¹⁰

The PRRC would be 9 members, representing state government, local government, the judiciary, and the records management profession, one Aboriginal person (nominated by the Minister who administers the *Aboriginal Cultural Heritage Act 2003*), and one Torres Strait Islander person (nominated by the Minister who administers the *Torres Strait Islander Cultural Heritage Act 2003*).¹¹¹

2.5.1 Stakeholder views and department response

The OIC noted the PRRC would have the capacity to decide disputes between the State Archivist and a public authority, pointing out that there is no analogous process for members of the public (see also 2.3.1, above).

The LGAQ supported the appointment of First Nations peoples to the PRRC.¹¹²

The ITTB supported the requirement for an Aboriginal person and a Torres Strait Islander person to be members of the PRRC.¹¹³ Further, it encouraged the PRRC to establish linkages with the First Nations Treaty Institute and the Truth-telling and Healing Inquiry (see also 2.1.1, above). This is essential, it suggested, because 'government mechanisms are insufficient alone to support the range of requirements needed to adequately involve First Nations leadership and consultation in public record management'.¹¹⁴

¹⁰⁹ DTATSIPCA, correspondence, 14 November 2023, attachment, pp 2 and 9-10.

¹¹⁰ Explanatory notes, p 20; Bill, cls 17-8.

¹¹¹ Explanatory notes, p 20.

¹¹² Submission 1, p 2.

¹¹³ Submission 6, p 4.

¹¹⁴ Submission 6, p 4.

Other submitters were broadly supportive of First Nations peoples' recognition in the Bill (see also 2.1.1, above).¹¹⁵

The department noted the support of the LGAQ, and ITTB regarding the required appointment of an Aboriginal person and a Torres Strait Islander person on the PRRC.¹¹⁶

2.6 Further review

The department advised that it is intended that, should the Bill be passed, the State Archivist report to government on implementation after a period of 2 years. During this time, the State Archivist is also expected to review the recommendations from the PR Act Report that have not been addressed by the Bill.¹¹⁷

2.6.1 Records management obligations of local government councillors

Records management for local government councillors is currently limited to broad provisions within the *Local Government Act 2009* (LG Act). Under the 2002 Act, local government councillors are not considered public authorities, although they do create and keep public records relating to council business.¹¹⁸

The PR Act Report recommended the definition of 'public authority' be changed to include local government councillors.¹¹⁹

During consultation, the LGAQ and local government councillors raised concern about these changes. They suggested that including local government councillors as public authorities, and regulating records produced by local government councillors, might have an adverse impact, particularly upon remote and regional councils.¹²⁰ The department confirmed further consultation will occur with the local government sector and the LGAQ. The State Archivist's report, which would be due two years after the Bill passed, will report on progress towards implementing the PR Act Report's recommendation.¹²¹

2.6.1.1 *Stakeholder views and department response*

The LGAQ welcomed what it considered to be the 'commonsense decision of the State Government to further consider the recommendations relating to provisions to define local government councillors as public authorities'.¹²² The LGAQ highlighted that it is important to recognise the practicalities of local government councils' record keeping practices, and that a deeper understanding of the challenges and realities of the sector is needed before changes are made.¹²³

The department acknowledged the LGAQ's approval of its decision not to include local councillors in the definition of a public authority. It reaffirmed its commitment to further consultation with the sector and proposed to reconsider the matter after 2 years, should the Bill be passed.

¹¹⁵ Submissions 1, 2, 3, 5, 6.

¹¹⁶ DTATSIPCA, correspondence, 14 November 2023, attachment, pp 1 and 7.

¹¹⁷ DTATSIPCA, Correspondence, 10 November 2023, attachment, p 2.

¹¹⁸ DTATSIPCA, Correspondence, 10 November 2023, attachment, p 2.

¹¹⁹ PR Act Report, 10.

¹²⁰ DTATSIPCA, Correspondence, 10 November 2023, attachment, p 4.

¹²¹ DTATSIPCA, Correspondence, 10 November 2023, attachment, p 4.

¹²² Submission 1, p 1.

¹²³ Submission 1, p 1.

2.6.2 Indigenous Data Sovereignty, Indigenous Data Governance, and Indigenous Cultural and Intellectual Property

The PR Act Report recommended that the government: ‘include evaluation of any potential for concepts of Indigenous Data Sovereignty, Indigenous Data Governance and Indigenous Cultural and Intellectual Property to contribute to meeting those special needs and interests’.¹²⁴

The department confirmed that the Bill honours ‘concepts of Indigenous data sovereignty and Indigenous cultural and intellectual property’.¹²⁵ The evaluation and implementation of these concepts, however, is ongoing. The department advised, ‘these are complex and significant matters, [and] further work and consultation is required’.¹²⁶

The State Archivist advised that Indigenous data sovereignty does not necessarily require records to cease being public records, but provides a way to reflect the nature and content of certain records, and what they mean to First Nations peoples.¹²⁷ The State Archives are considering implementing tradition knowledge labels on public records and working to include metadata that makes records easier to find, ‘but also to make that metadata culturally meaningful and to use words, terms and taxonomies that mean something to First Nations people that they will come looking for those records for’.¹²⁸ The State Archivist advised:

Indigenous data sovereignty is really recognising that there is information contained within the records that essentially belongs to Indigenous people. When there is any governance or decisions that are going to be made over that particular record, there should be a process where there is engagement, consideration and self-direction from First Nations people over what will happen with those.¹²⁹

2.6.3 Stakeholder views and department response

As it did not relate to the Bill itself, there was limited feedback on the review on Indigenous Data Sovereignty, Indigenous Data Governance and Indigenous Cultural Intellectual Property, or the requirement for the State Archivist to report on the implementation of the Bill after two years.

The ITTB did, however, make comments and recommendations that might inform the review. As noted above (2.1.1), it suggested a potential role it might play in the review.¹³⁰ It recommended the need for rights-based principles to underpin the implementation of the Bill, such as First Nations peoples’ self-determination and data sovereignty, uncoerced decision-making, respect for laws and traditions, prevention of harm, and equality and non-discrimination.¹³¹

The department noted the comments and recommendations of the ITTB relating to its own potential involvement in implementing the reforms, and the principles that should inform practices. The department confirmed that stakeholder consultation with First Nations peoples is ongoing, and considerations about protecting cultural rights and knowledge may be considered as part of the independent review on Indigenous Data Sovereignty, Indigenous Data Governance and Indigenous Cultural Intellectual Property.¹³²

¹²⁴ PR Act Report, p 8.

¹²⁵ Public briefing transcript, Brisbane, 23 October 2023, p 2.

¹²⁶ DTATSIPCA, Correspondence, 10 November 2023, attachment, p 2.

¹²⁷ Public briefing transcript, Brisbane, 23 October 2023, p 6.

¹²⁸ Public briefing transcript, Brisbane, 23 October 2023, p 2.

¹²⁹ Louise Howard, State Archivist, Public briefing transcript, Brisbane, 23 October 2023, p 6.

¹³⁰ Submission 6, p 4.

¹³¹ Submission 6, p 3.

¹³² Public briefing transcript, Brisbane, 23 October 2023, pp 7-8.

Recommendation 2

The Committee notes the further work needed towards establishing Indigenous Data Sovereignty and recommends the Department of Treaty, Aboriginal and Torres Strait Islander Partnerships, Communities and the Arts inform the Committee of any progress.

Appendix A – Submitters

Sub #	Submitter
001	Local Government Association Queensland (LGAQ)
002	Records and Information Management Practitioners Alliance (RIMPA) GLOBAL
003	The University of Queensland
004	Australian Society of Archivists
005	Office of the Information Commissioner
006	Interim Truth and Treaty Body
007	QLeave
008	Crime and Corruption Commission
009	Kaye England
010	Linda Shave
011	Somerset Regional Council
012	Kevin Lindeberg

Appendix B – Officials at public departmental briefing

23 October 2023

Department of Treaty, Aboriginal and Torres Strait Islander Partnerships, Communities and the Arts

- Belinda Drew, Deputy Director-General Communities
- Louise Howard, Queensland State Archivist

Appendix C – Witnesses at public hearing

13 November 2023

Australian Society of Archivists

- Adrian Cunningham

Records and Information Management Practitioners Alliance (RIMPA) GLOBAL

- Peta Sweeney, Information and Content Specialist

Office of the Information Commissioner

- Shiv Martin, Acting Right to Information Commissioner
- Jim Forbes, Principal Policy Officer
- Toni Lake, Acting Assistant Information Commissioner

Interim Truth and Treaty Body

- Michael Gooda, Co-Chair
- Katie Kiss, Executive Director

Dr Rose Barrowcliffe, First Nations Archives Advisor to the Queensland State Archives

Statement of Reservation



PUBLIC RECORDS BILL 2023 LNP STATEMENT OF RESERVATION

From the evidence heard by the committee, the *Public Records Act 2002* remains central to maintaining public records and is fundamental to transparency, accountability, and the preservation of our cultural legacy. The Act also safeguards the rich cultural and historical narratives of Queensland for the benefit of generations to come.

The Queensland State Archives holds more than 3.5 million records reflecting our state's history since 1823.

There have been many issues plaguing the Government in relation to transparency and accountability, particularly in response to community expectations that we can do better in governance. Transparency and accountability in capturing actions and decisions in the form of public records is essential for the integrity of government.

The integrity of public records is a vital part of democracy. Those acting on behalf of the public should be fully transparent and accountable to the public they serve. Legislation needs to ensure that is the case and those seeking to ensure integrity regarding public records should be supported and protected.

This Bill is in part a result of the 2017 Crime and Corruption Commission (CCC) investigation into Hon Mark Bailey, then Minister for Main Roads, Road Safety and Ports and Minister for Energy, Biofuels and Water Supply, which found he had breached the Ministerial Handbook (the rules, enforced by the Premier, that govern integrity issues), in using a private e-mail account for official business.

The investigation found the Minister deleted work-related emails containing public records without proper legal authority, including several missives from Union officials including the Electrical Trades Union boss.¹³³

We know that in September 2017 the Minister was back in Cabinet after being stood down despite the corruption watchdog slamming the deletion of a private email account, considered a foolish, injudicious and technical breach of the law.

Then CCC chairman Mr Alan McSporran QC said Minister Bailey's "very foolish" deletion of his mangocube6@yahoo.co.uk account was a clear breach of the

¹³³ Queensland Crime and Corruption Commission, *No criminal action relating to Mark Bailey's email account*, 22 September 2017, <https://www.ccc.qld.gov.au/news/no-criminal-action-relating-mark-baileys-email-account>.

Ministerial Handbook and a technical breach of the *Public Records Act 2002*, but could not be punished because of a gap in the law at that time.¹³⁴

No penalties are prescribed for breaches of sections 7, 8 and 14 of the Act, and no action was taken by the CCC.¹³⁵

In the September 2017 independent report into Minister Bailey's actions, the State Archivist expressed the view that the management of public records through his private e-mail account resulted in multiple breaches of the *Public Records Act 2002*, namely:

Section 7 – making and keeping public records

Section 8 – custody and preservation of public records

Section 13 – disposal of public records

Section 14 – public authority must ensure particular records remain accessible.¹³⁶

The State Archivist made recommendations to the CCC that they should consider criminal prosecution for all four breaches.

There was confusion between the CCC and the State Archivist over section 13 of the *Public Records Act 2002*. As section 13 did not have a clear definition of 'disposal', it was deemed unlikely the CCC prosecution would get a conviction.

The State Archivist pointed out at the time that schedule 2 of the Act had a clear definition of 'disposal' which includes abandonment, transfer, or donation. The State Archivist clarified that a threshold of clear and permanent destruction was not required for disposal to occur.

The breaches of sections 7 and 8 were potentially more significant. These breaches could have resulted in Minister Bailey breaching section 204 of the *Criminal Code*. They also could have set a significant precedent for other Ministers and Ministerial Staff that could have been in breach of these sections of the Act if they were using private e-mail accounts without appropriate processes in place to manage and correctly archive the public records created.

The role of the State Archivist is important, and there was a time when the Government did not hold the State Archivist in very high esteem. I remind the House of the Queensland Parliament's Estimate hearings of July 25, 2017, when the Government blocked attempts to have the State Archivist appear before estimates. At the time, the State Archivist was investigating whether then stood aside Minister Bailey had breached the *Public Records Act 2002* by deleting his private email account.

¹³⁴ Sarah Volger, 'Cleared MP returns to cabinet after probe', *The Courier Mail*, 23 September 2017.

¹³⁵ Queensland Crime and Corruption Commission, *No criminal action relating to Mark Bailey's email account*, 22 September 2017.

¹³⁶ Queensland State Archivist, *State Archivist report to Hon Leanne Enoch MP, Minister for Innovation Science and the Digital Economy and Minister for Small Business*, 5 September 2017, <https://documents.parliament.qld.gov.au/tp/2022/5722T185-0482.pdf>.

*In helping the member understand, the State Archivist is not a witness today because it is convention for the DG and the direct reports and CEOs of related entities to be listed. The State Archivist is neither a direct report or a CEO of a related entity and according to standing orders, schedule 7, and I will refer the member to that, the State Archivist is not listed as a person who can be directly questioned anyway.*¹³⁷

This is despite the Integrity Commissioner's advice to the State Archivist in 2017, that as a statutory office holder, the Archivist is a designated person under S.12(1)(b) of the *Integrity Act 2009* (Qld).¹³⁸

The *Report of the Review of the Public Records Act 2002*, widely referenced, did not deal with the independence of the State Archivist. As shown in part 16(a) of the report, under 'Supervision', the State Archivist remains generally subject to direction by the Minister.

This issue of the State Archivist's independence has many times come into focus; in particular, the conflict over their statutory duty when required to investigate independently without direction or interference.

In March 2022, John McKenna QC released a report into allegations by the former State Archivist. The former State Archivist alleged that he was asked to remove information from the Annual Reports for 2017-18, 2018-19, and 2019-20. He alleged he was told to remove mention of Minister Bailey's investigation, of other investigations, the standard of Government record keeping, and other matters which could be perceived negatively in those annual reports.

Mr McKenna's report concluded (in Part 14) that the State Archivist was genuinely concerned about fulfilling his statutory role in an honourable, vigorous, and independent manner.

In Part 15 of his report Mr McKenna also accepted that the State Archivist was right to insist that the final text of the annual reports was his responsibility alone, and that others had no legal right to change the text of his reports or direct him to do so. Part 16 highlighted the need for the State Archivist to be independent of Ministers or departmental influence, as Mr McKenna stated, in part:

... the position of State Archivist has never been an independent statutory office. The State Archivist has always been a member of the public service.

The independence of the State Archivist was supported by submissions from Records and Information Management Practitioners Alliance (RIMPA Global), who recommended: That the State Archivist be afforded the same independence as an Ombudsmen or the Auditor General.

In a submission to the Bill, the Australian Society of Archivists supported more independence for the Queensland Archives.

¹³⁷ Hon Leeanne Enoch MP, *Estimates—Innovation, Science and the Digital Economy*, transcript, 25 July 2017, p 83.

¹³⁸ Private correspondence dated 23 October 2017.

Submissions 09 and 12 also strongly advocated for the independence of the State Archivist.

Regarding the origins of the Bill

In May 2022, the Minister announced a review into the *Public Records Act 2002*. The Minister stated that the review will make sure our legislation is up to date and will give Queenslanders confidence in robust public records management practices. In an additional statement, several drivers for the review were identified, including public interest, technological changes, and the Government's commitment to Path to Treaty.

We see the rationale behind adding Division 4 to the Bill, which would provide for a First Nations Advisory Group. This provision responds to recommendations in the *Report of review of the Public Records Act 2002*. The main reason for changing the Act is highlighted on page 8 Part A, recommending these reforms as part of the process in the Path to Treaty. In addition, we note that part 4 would provide that two of the nine members of the Public Records Review Committee (PRRC) be Indigenous persons.

The committee received some valuable information in submission 10 regarding technological advancements, which have not been addressed in the Bill. What we have in the Bill before us is not up to date with the principles of capturing, managing, protecting, and disposing of digital data. All records started from the same conception of managing paper. Then digital records emerged as an output of business and Government activities, such as the creation of documents in word processing systems like, Excel, Power Point, Email, Websites, and other business systems.

Submission 10 states:

Why is it so important for me to highlight these technology advancements? I believe that in order to make an informed decision you need to understand that what is being proposed is not up to date with the principles of capturing, managing, protecting and disposing of digital data assets. All Federal, State and Local Records Acts started from the same concept of managing analog (physical paper) and then 'born digital' records as an output of business activities, the creation of documents in word processing systems, Excel, PowerPoint, Email, Websites, and business systems etc.

The proposed Public Records Bill 2023 does nothing to address the future drivers and needs. In fact, QSA is not alone in the problem of recordkeeping. The National Archives of Australia (NAA) is facing the same dilemma, and this has been recently published in the Mandarin.¹³⁹

During the public briefing, Peta Sweeney, Information and Content Specialist for RIMPA Global, confirmed the challenges and threats posed by digital transformation:

Mr BENNETT: *I am glad that you raised the digital transformation we are going through. How do you see record keeping picking up what could be misinformation, mal-information or misuse? How will you determine what is to*

¹³⁹ Submission 10, p 14.

be archived or stored as opposed to false facts or whatever else we hear about? It is going to be prolific, right?

Ms Sweeney: *Absolutely, it is prolific. It is not going to be prolific; it is prolific now. We need to recognise that our current practices cannot keep up. We cannot do this by ourselves. We need to embrace technology. We need to embrace mechanisms such as AI and machine learning, because that will be part of our process and our changing practice that gives us the ability to work out what is truthful and what is the integrity of the record. A vital part of what we do as professional information managers is help our organisation to determine that.*

Mr BENNETT: *We are not there yet.*

Ms Sweeney: *No, we are definitely not there yet.*¹⁴⁰

Submission 10 highlighted the difficulties of managing digital data, and the dilemmas stemming from a rapidly advancing technological environment. It is argued that the rapid evolution of technology will make storage formats obsolete, and data will not be accessible for the generations that follow.

There is merit in acknowledging this information from submission 10 and RIMPA Global, and in acting on the growing rise of Disinformation, Misinformation, Malinformation, and their impacts. How do we identify what is real information and what is false information? Especially when it comes to archiving and preserving information for future generations. Good examples would be what happens in this Parliament every day, and the many references made to ‘disinformation’ during the Referendum on the Voice.

What is Disinformation?

Disinformation is false or inaccurate information that is deliberately created and spread to harm a person, social group, organisation, or country.

What is Misinformation?

Misinformation is false or inaccurate information that is not created with the intention of causing harm.

What is Malinformation?

Malinformation is accurate information inappropriately spread with the intent to cause harm, particularly to the operation of democratic processes. Malinformation is largely a feature of coordinated disinformation campaigns.

The committee received several submissions and most made informed suggestions. The committee also received some serious questions and comments, for example:

- How do we identify fake from real information, especially when it comes to archiving and preserving information for future generations?

¹⁴⁰ Public hearing transcript, Brisbane, 13 November 2023, p 3.

- What is needed is a framework that allows us to find, preserve, and archive information that is trustworthy, ethical, non-biased, honest, and righteous for future generations.
- What is the truth? The original message is passed on, becomes distorted and often radically changed from the original message/ story as it is being told.

During the public briefing, Dr Rose Barrowcliffe, First Nations Archives Adviser to the Queensland State Archives, highlighted the scope of records held by the State Archives, and the need for these to be made more discoverable and accessible:

*QSA holds over 3.5 million records and just seven per cent have ever been accessed. Imagine what could be achieved with better discoverability and accessibility for QSA records. Technology and Indigenous rights have evolved markedly since the 2002 Public Records Act was adopted, and it is time that we had legislation that meets the modern needs of our society including our Aboriginal and Torres Strait Islander citizens.*¹⁴¹

Dr Barrowcliffe was asked about her observations since working with the State Archives:

Mr BENNETT: *Dr Barrowcliffe, in the inaugural role that you took on in 2021—and you mentioned the emergence of technology—could you give a brief overview of what you observed in the changing dynamic? Mr Gooda talked about the colonialisation of the records in our past. What are your observations since you have been in the role?*

Dr Barrowcliffe: *I have lots of observations, to be honest with you. Obviously, we are trying to make the technology work for us. We are a state that has a very spread-out population. Obviously not everyone is able to make it down to the south-east corner to access the records that we have at QSA. We have had in process for a few years now the prioritisation of records that relate to Aboriginal and Torres Strait Islander people. We are trying to do our best to make the technology work for the needs of Aboriginal and Torres Strait Islander Queenslanders but, as I mentioned, we have over 3.5 million records. It is a very big process that will take a long time to make a dent in that.*

Submission 12 to the committee cites a 1980 quotation from a highly respected North Carolina archivist, Mr HG Jones, in respect to how he saw ‘public records’ and their role in a democracy. It was provided as an authoritative statement to assist in understanding how important this legislation is for good governance of Queensland:

Public records are public property, owned by the people in the same sense that citizens own their own courthouses or town hall, sidewalks and streets, and funds in treasury. They are held in trust for the citizens by custodians... As public property, public records may no more be altered, defaced, mutilated, or removed from public custody than public funds may be embezzled or misappropriated. Indeed, because records document the conduct of public business – including the protection of rights, privileges, and property of individual citizens – they constitute a species of public records of a higher value

¹⁴¹ Public hearing transcript, Brisbane, 13 November 2023, p 10.

*than buildings, equipment and even money, all of which usually can be replaced by the simple resort of additional taxes. It is the unique value and irreplaceable nature of records that give them sanctity uncharacteristic of other kinds of property and that accounts for the emergence of common-law principles governing their protection.*¹⁴²

The public do not have a high level of trust in government and public office. To overcome this, persons elected to public office, and public servants, have made commitments to understand the ethical principles clear in all relevant documents, codes, and orders. These issues should shape decision making with ethical principles setting the tone of how our government works.

The public expects transparency and honesty.

A handwritten signature in black ink that reads "Stephen Bennett". The signature is written in a cursive style with a large, stylized initial "S".

Stephen Bennett

A handwritten signature in blue ink that reads "Mark Robinson". The signature is written in a cursive style with a large, stylized initial "M".

Mark Robinson

¹⁴² Submission 12, pp 1-2.