

PUBLIC RECORDS BILL 2001

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the legislation

Public records are the corporate memory of Government. They provide evidence of actions, decisions and communications and are the cornerstone of Government accountability. Effective recordkeeping systems, practices and programs support:

- Business continuity;
- Efficient public administration;
- Delivery of Government business and services;
- E-government;
- Accountability; and
- The preservation of Queensland's cultural heritage.

The policy objectives of the *Public Records Bill 2001* are to:

- (a) Facilitate the documentation, management and preservation of Government business through full and accurate records, irrespective of the technological or administrative environment in which Government business is conducted or the custodial arrangements for public records; and
- (b) Better align access principles for public records in the custody of Queensland State Archives (QSA) with certain access principles in the *Freedom of Information Act 1992*.

Reasons for and achievement of policy objectives

For over a decade, new public records legislation in Queensland has been proposed by a succession of bodies and governments as the most appropriate policy instrument for enabling accountability through improved public recordkeeping.

In 1990 the Public Sector Management Commission (PSMC) recommended in its *Report on the Department of the Premier, Economic and Trade* (Report to Cabinet) that QSA be administered under its own legislation, with administrative responsibility for QSA to be transferred to the then Administrative Services Department.

In 1992 the Electoral and Administrative Review Commission (EARC) in its Review of Archives Legislation also recommended that archives legislation be separated from libraries legislation. In its 1992 report EARC noted:

*...the proper protection and preservation of public records so that they may be made available for use by government agencies and by the public is a matter relating to honesty, impartiality, and efficiency in the public administration of the State.*¹

...the potential for QSA to fulfill its functions will not be realised unless...an improved legislative framework is put in place to facilitate the carrying out of those functions....

The Parliamentary Committee on Electoral and Administrative Review (PCEAR) supported EARC's recommendation for a review of archives legislation.

The Legal and Constitutional and Administrative Review Committee's discussion paper on Queensland's Freedom of Information (FOI) regime published in 2000, and submissions made during its public hearings on FOI in May 2000, noted that the effectiveness of Queensland's FOI legislation depended on good recordkeeping practices and obligations to preserve public records.

The EARC Report contained draft archives legislation which later formed the basis of the *Archives Bill 1995*. The *Archives Bill 1995* lapsed when the Legislative Assembly was prorogued at the time of the change of Government in early 1996. The *Public Records Bill 1999* was prepared and introduced into the Legislative Assembly in late 1999. Although the *Public Records Bill 1999* was largely based on the *Archives Bill 1995* it contained some modifications, including the separation of the link between Queensland State Archives and the Library Board of Queensland. The *Public Records Bill 1999* lapsed when the Legislative Assembly was dissolved prior to the announcement of a State election in early 2001.

¹ Electoral and Administrative Review Commission, *Report on the Review of Archives Legislation, June 1992*, p.1.

The proper management of public records and provision of public access to public records is critical to government accountability. This Bill supports the policy objectives of proper recordkeeping and improved public access to public records. The Bill also seeks to strengthen and clarify the roles, responsibilities and rights of government and citizens in relation to public records. Its associated policy framework will enable public authorities to meet the challenges of a rapidly changing technological environment.

The *Public Records Bill 2001* replaces Part 7 (ss. 56 – 67) of the *Libraries and Archives Act 1988* and the *Libraries and Archives Regulations 1990* with a new statute devoted specifically to the management of public records.

A consistent and equitable approach for access to Government information is an essential part of the democratic process. The framework proposed in this Bill for classifying restricted access periods for records in QSA's custody has been aligned with the provisions dealing with exempt matter under the *Freedom of Information Act 1992*². The Bill also recognises that the sensitivity of most information declines with the passage of time and that it is appropriate at some point for older records to be available for public inspection.

New public records legislation has also been made necessary by the rapidly changing technological and administrative environment in which public recordkeeping takes place. The Bill provides the legislative framework for Queensland State Archives to establish policies, standards and practices reflecting national and international best practice in electronic recordkeeping. The Bill complements the requirements of the *Electronic Transactions (Queensland) Act 2001* for producing, recording, retaining and providing access to records generated in the course of electronic communications³.

Alternatives to the Bill

The major policy alternative to introducing this Bill is to continue to manage the State's public records under the current *Libraries and Archives Act 1988* and the *Libraries and Archives Regulations 1990*. Under the *Libraries and Archives Act 1988* the State Archivist would continue to be

² Section 36 (Cabinet matter), s.37 (Executive Council matter), s. 42 (law enforcement or public safety), s. 43 (legal proceedings), s. 44 (personal affairs) and s. 46 (matter communicated in confidence) of the *Freedom of Information Act 1992*.

³ Sections 20 – 21 *Electronic Transactions (Queensland) Act 2001*.

responsible to both the Chief Executive of the Department and the Library Board of Queensland and would not have a legislative requirement to develop and implement a comprehensive recordkeeping policy framework for Queensland public authorities.

The existing archival legislation and regulations would not be aligned to the access principles in the *Freedom of Information Act 1992*.

Consultation

Extensive consultation with key stakeholders undertaken over the past decade demonstrates community and Government support for the introduction of new public records legislation.

Since 1991 all public authorities, the Criminal Justice Commission, the Parliamentary Commissioner for Administrative Investigations, the Information Commissioner, the Governor's Office, the Australian Society of Archivists, the Records Management Association of Australia, historical societies, Public Records Access Now (PRAN) and individuals have been consulted on the development of public records legislation. EARC, PCEAR and the PSMC consulted widely in the preparation of their reports. Thirty-nine public submissions⁴ were received by EARC and 250 participants attended a public seminar on archives legislation held on 9 December 1991. Subsequent to EARC's consultation on the review of the archives legislation, additional consultation was undertaken in the development of the successive versions of new public records legislation.

During the development of *Information Standard 40: Recordkeeping* and *Information Standard 41: Managing Technology-Dependent Records* in 2000/2001 public authorities and members of the historical research community were invited to comment on these standards and the application of the *Libraries and Archives Act 1988*, the *Libraries and Archives Regulations 1990* and the *Public Records Bill 1999*. All State Government Agencies, Statutory Authorities and Local Governments, the Australian Society of Archivists, Records Management Association of Australia and the Professional Historians Association (Qld) were consulted, with over 100 submissions received.

⁴ This included submissions from 7 Local Authorities, 13 State Government bodies, 3 Federal Government bodies, 8 other organisations and 8 individuals.

Estimated cost of Government implementation

There are no significant additional costs anticipated for Government in introducing this legislative framework.

Consistency with Fundamental Legislative Principles

The Bill has been drafted with regard to fundamental legislative principles as defined in s. 4 of the *Legislative Standards Act 1992*.

NOTES ON PROVISIONS**PART 1—PRELIMINARY**

Clause 1 is the short title of the Statute (Public Records Act 2001).

Clause 2 provides that the Bill will commence on a day to be determined by proclamation. Part 7 will commence on assent.

Clause 3 sets out that the purpose of the Bill is to:

- Provide a regulatory framework for the creation, management, preservation and use of public records; and
- align access to public records with the principles of the *Freedom of Information Act 1992*.

Clause 4 provides for a dictionary in Schedule 2 that defines specific terms used in the Bill, including commonly used terms such as *archives*, *archivist*, *disposal*, *Ministerial record*, *public authority* and *record*.

Clause 5 provides that the legislation binds the State of Queensland, including all public authorities as defined in Schedule 2 – Dictionary. Entities that are not part of the “State” as defined in s.13 of the *Acts Interpretation Act 1954* but are referenced under the definition of “public authority” in Schedule 2 – Dictionary (for example, Local Governments) are also bound by this legislation.

PART 2—PUBLIC RECORDS

Division 1—Preliminary

Clause 6 defines “public record”. A public record, including an ephemeral record or copy of a record, is a record created or received by a public authority in undertaking its business activities or in the conduct of its affairs. In this Bill the term “public record” may refer to various levels of aggregation. For example, it may describe a group of records, series of records, class of records, an individual record or part of a record.

A public record is any form of recorded information that provides evidence of the decisions or actions of a public authority in undertaking its business activities or in the conduct of its affairs. The Bill includes all records irrespective of the form, the custodial arrangements and the technology used to generate, manage, preserve and access records.

Copies of a public record and copies of part of a public record are also regarded as public records. A copy of a record means any reproduction of a record in any form. For example, a photocopy of a paper document, a transcript of a sound recording or a duplicate copy of an image are regarded as copies of a record.

Ministerial records are records generated or received in the administration of portfolio responsibilities. For the purposes of this Bill, records generated in the course of undertaking political party and electoral activities are not regarded as public records.

Under clause 52 certain types of records created by the Governor are regarded as public records for the purposes of this Bill.

Division 2—Making, managing, keeping and preserving public records

Clause 7 provides that a public authority must make and keep “full and accurate” records of its activities and have regard to policies, standards and guidelines issued by the Archivist. The Chief Executive Officer (or equivalent) of a public authority is responsible and accountable for ensuring that the public authority complies with these requirements.

Clause 8 requires that each public authority is responsible and accountable for ensuring that arrangements are made for the proper

management and preservation of any records in its possession. Where a public record passes outside of the physical custody or physical control of the responsible public authority⁵ (e.g. outsourcing or loan arrangements) the responsible public authority is required to ensure that those records are adequately managed, preserved and made accessible for as long as those records are outside its physical custody or physical control. The responsible public authority is also required to ensure the safe return of those records to the responsible public authority or Queensland State Archives (QSA).

Irrespective of the custodial arrangements of public records, the disposal of public records must be undertaken in accordance with clause 13 of the Bill.

Where a public authority ceases to exist, either in full or in part, or ceases to perform a particular function or activity, then the public authority is responsible for ensuring that the records of that public authority are either:

- (a) Transferred to the successor public authority responsible for the administration of the functions and activities to which the records relate (the “responsible public authority” as defined in clause 15). For example—
 - Where a Local Government is merged with another, the records of each partner in the merger must be transferred to the new Local Government entity; or
 - Where an Administrative Arrangements Order is issued and a new department is formed to administer particular functions and legislative instruments, all the records relating to those functions and legislative instruments must be transferred to the new department.
- (b) Transferred to another public authority as stipulated in a regulation; or
- (c) Disposed of in accordance with a decision of the Archivist as set out in clauses 13, 26, 27 or 39.

Clause 9 vests the ownership of public records in the State. Where public records are in the possession or control of a public authority, then ownership is vested in that public authority. Public records created or

5 As defined in clause 15 of the Bill.

accumulated by a Local Government are owned by that Local Government or its successor.

Clause 10 requires each public authority to inform the Archivist of all records older than 25 years in its possession. To implement this requirement the Archivist will issue to public authorities a broad survey of record series or classes within 18 months of the commencement of the Act. A reporting schedule will then be developed and implemented.

The Archivist may take possession of public records, copy public records or give directions about the storage of records. Public records may only be removed from QSA under certain conditions. These conditions include legal discovery and to support current business activities. The disposal of a record more than 25 years old is permitted where it has been authorised by the Archivist (Clause 13).

For the purposes of this Bill the term “disposal” refers to the final decision concerning the fate of records, including the retention of all or part of a public record, the destruction, deletion, migration or conversion of a public record or part of a public record; or abandoning, transferring, donating or selling a public record or part of a public record (Schedule 2 – Dictionary).

Clause 11 deals with the transfer of public records that are 25 years old or less. A public authority may transfer the custody of its public records to QSA. However, in certain circumstances determined by the Archivist (for example, if there is insufficient storage space at QSA) the transfer of public records to QSA may be refused. Where records are transferred to QSA and the responsible public authority demonstrates a reasonable need to access those records, QSA must make those records available to the public authority.

Clause 12 provides that a person must not damage a public record that is over 30 years old. Damage includes alteration or neglect that causes harm to the integrity or condition of a record. This clause applies whether or not a record is in the custody of QSA and includes public records stored by both private or government storage providers. This clause applies to any person as defined under s.36 of the *Acts Interpretation Act 1954* and includes government officials, private individuals and organisations.

This clause excludes any damage that results from the application of accepted archival or conservation practice by archives staff. For example, it will not be considered to be inflicting “damage” to a record under this clause when archives staff remove and replace a file enclosure (that causes

long-term harm to a record) with an archival enclosure that enhances the long-term preservation of the record.

Clause 13 provides that a person may not dispose of public records unless those records are disposed of under the authority of the Archivist or the Public Records Review Committee or other legal authority (such as an Act), justification or excuse (such as those permitted under the Criminal Code). The authority for the Archivist to dispose of public records is established under clause 26 of the Bill.

Clause 14 provides that controlling or responsible public authorities (as defined in clause 15 of the Bill) must take all reasonable action to ensure the accessibility of public records that may only be produced or made available with the use of particular equipment or information technology. This includes technology-dependent records such as computer-generated records and audio-visual records. In providing access to such records public authorities must also ensure the integrity and usability of the record is maintained. This clause aligns with the requirements to maintain the integrity of electronic written documents (s. 20 of the *Electronic Transactions (Queensland) Act 2001*) and electronic communications (s. 21 of the *Electronic Transactions (Queensland) Act 2001*) in an accessible form for subsequent reference.

Division 3—Access to public records

Clause 15 defines “responsible public authority” as the public authority currently responsible for administering the function or activity from which a record was generated.

Clause 16 defines “restricted access period” so that the access provisions under this Bill are aligned with information categories defined in ss. 36 – 37, ss. 42 – 44 and s. 46 of the *Freedom of Information Act 1992*.

This clause applies to all public authorities as defined under this Bill irrespective of whether or not a public authority is regarded as an “agency” under the *Freedom of Information Act 1992*.

The purpose of this clause is to provide a framework for ensuring that all public records are made available for reference at some point in time. All restricted access period determinations made by public authorities under this clause must be given to the Archivist in writing. Public authorities will not be permitted to restrict access to records indefinitely, although

restrictions of greater than 100 years may be obtained by regulation as detailed in clause 18 (4) or 18 (5).

The responsible public authority, on occasions in consultation with the Archivist, determines access periods in accordance with relevant regulations, legislation and standards. At the time of transferring public records to QSA the responsible public authority must advise the Archivist in writing of the restricted access periods for those records.

Restricted access periods are based on the premise that sensitivity to information contained in records declines over time. All restricted access periods commence from the day of the last action on a record. Depending on the sensitivity of a record, restricted access periods may be up to 30 years, up to 65 years, up to 100 years or beyond where set by a regulation in accordance with the conditions set out in clause 18 (4) or 18 (5) of this Bill.

Cabinet and Executive Council documents and Ministerial records have a set restricted access period of 30 years. This provision preserves the storage and access arrangements in the “Interim Arrangement for Access to Ministerial Records”.⁶

A record, including Cabinet and Executive documents and Ministerial records classified by a public authority as containing matter affecting personal affairs under

s. 44 of the *Freedom of Information Act 1992* carries a restricted access period of up to 100 years. The restricted access period commences on the day the record is made. The restricted access period ceases at the end of the calendar year up to 100 years after the day of the last action on the record.

Records classified by a public authority as containing matter mentioned in s. 42 (law enforcement of public safety), s. 43 (legal proceedings) or s. 46 (matter communicated in confidence) of the *Freedom of Information Act 1992* carry a restricted access period of up to 65 years. The restricted access period commences the day the record is made. The restricted period ceases at the end of the calendar year up to 65 years after the day of the last action on the record.

With the exception of Cabinet and Executive Council documents and Ministerial records, a public authority may nominate a restricted access period of up to 30 years for any other record. The restricted access period

⁶ The Interim Arrangement for Access to Ministerial Office Records is a 1999 agreement between the Premier and the then Leader of the Opposition setting out the storage and access conditions for Ministerial records.

commences the day the record is made and ceases at the end of the calendar year up to 30 years after the day of the last action on the record.

Clause 17 broadly outlines the process for providing public access to records in the custody of QSA. A person may apply to the Archivist for access to a public record in the custody of QSA. Where a fee for access is required under a regulation, then the fee must accompany the application for access. Where a record is older than 25 years and is not in the possession of QSA but has been the subject of a direction issued by the Archivist concerning the storage of those records (as set out in clause 10 (2)) then that record is considered to be “in the custody of QSA” and, therefore, subject to this clause. This means that the Archivist may provide access to records older than 25 years (irrespective of retention status) outside the physical custody of QSA that have been identified and managed in a distributed custody arrangement.

Clause 18 provides a mechanism for gaining access to public records.

The Archivist must allow an applicant access to a public record if the restricted access period for the record has ended.

If the restricted access period has not ended, access may be obtained under the *Freedom of Information Act 1992* in accordance with ss.21 – 35 of that Act. Alternatively, an applicant may gain access to a record if the responsible public authority has agreed in writing to provide the applicant access to those records⁷. The public authority may impose conditions on administrative access.

The Archivist may refuse access to a record where:

- Providing access would be detrimental to the preservation of the record; or
- The record is reasonably available for purchase (for example, birth, death and marriage records and land title records); or
- The information in the record may only be produced with the use of particular equipment or information technology that cannot reasonably be accessed by the Archivist.

Access to a public record may be restricted by regulation where the following three conditions exist:

- The record is more than 100 years old; and
- The record contains highly sensitive personal information; and

⁷ This type of access is generally referred to as an “administrative access arrangement”.

- Access to the public record is not in the public interest.

Access may also be restricted by regulation where a record contains information that is potentially exempt from disclosure under s. 42 (g) – (i) of the FOI Act and disclosure would compromise public safety or law enforcement. For example, the disclosure of a prison plan may be detrimental to public safety.

Conditions for restricting access to such records are to be explicitly provided in such regulations.

Clause 19 provides that the Archivist may request a public authority to review or alter a restricted access determination in accordance with clause 16 (3). The Archivist may refer any disputes with public authorities over the determination of restricted access periods under clause 16 (4) (a) or (b) to the Public Records Review Committee for resolution. The Archivist and public authority must comply with the decision of the Public Records Review Committee.

Clause 20 deals with the forms in which access to a public record may be given to an applicant. Access conditions include the nature of the record, the preferences of the applicant for gaining access to the record and the capacity of the Archivist to provide access to the record.

Access to public records may be given by allowing the applicant to either inspect the original record or a copy of the record.

Where a record is not in a written form, access to the information contained within that record may be provided in the form of a written document. When possible, access should be given to the original record in its native format, including computer generated records and audio-visual records. However, a transcript of text may be given where the original record is a sound recording or comprises codified text such as shorthand or Braille.

Access to electronically stored information may be provided by generating a representation of that information in the form of a written document. For example, a report generated from a database. As provided in clause 55 of this Bill, to be accepted as evidence in accordance with the requirements of the *Evidence Act 1977*, the authenticity and integrity of the record must be verified by the entity providing access to the record. That is, either the Archivist or public authority where the Archivist has issued a directive relating to the storage of public records more than 25 years old in accordance with the clause 10 (2).

A person seeking access to a public record may nominate their preferred form of access (e.g. paper-based transcript of a sound recording). The Archivist must meet this request unless the requested form of access:

- Would unreasonably impact on the operations of QSA; or
- Is detrimental to the preservation of the record; or
- Is inappropriate for the physical nature of the original record (e.g. providing a sound recording of a silent motion picture film); or
- Infringes copyright laws, where copyright ownership rests with a person or organisation other than the State.

The Archivist may impose reasonable access conditions to records. The Archivist may levy a reasonable fee for providing an access copy of a record. For example, where additional material, equipment and service costs are incurred by QSA for producing a copy of a motion picture film.

Where the applicant and the Archivist are in agreement, access to a record may be given in another form. For example, a digital image of a paper-based record or a contact print of a photographic negative.

PART 3—ARCHIVIST AND QUEENSLAND STATE ARCHIVES

Division 1—General

Clauses 21 and 22 establish the position of the Archivist and the office of Queensland State Archives (QSA). QSA is comprised of the Archivist and QSA staff who are appointed and employed under the *Public Service Act 1996*.

Division 2—Functions and powers

Clause 23 provides that, subject to the Bill, the Archivist controls QSA. The Archivist is subject to the direction of the Minister responsible for administering the Bill and the Chief Executive Officer of the parent department of QSA.

However, as set in clause 27 of the Bill, the Archivist and staff of QSA are not subject to the direction of the Minister, Chief Executive Officer or any other person in relation to making decisions about the disposal of public records.

Clause 24 establishes the functions of the Archivist. These functions include, but are not limited to:

- Developing and promoting methods, procedures and systems for the creation, capture, management, storage and preservation, use and disposal of public records;
- Identifying records of enduring value and ensuring the continued accessibility and usability of those records whether or not they are in the custody of archives;
- Determining the disposal of public records;
- Managing, retaining and preserving records of public authorities and other entities;
- Providing public access to public records;
- Conducting research and providing advice about the creation, capture, management, storage and preservation, use and disposal of public records; and
- Undertaking other activities that complement or enhance the Archivist's performance of other functions identified in this Bill.

Clause 25 provides the authority for the Archivist to undertake, with due regard to existing legislation, regulations and standards, the following activities:

- Establish and manage repositories and other facilities to store, preserve, exhibit and provide access to public records and other materials;
- Copy public records and other materials;
- Publish public records and other materials;
- Acquire public records by purchase, gift, bequest or loan;
- Authorise the disposal of specific public records or classes of public records; and
- Set policies, standards and guidelines on the creation, capture management preservation and disposal of public records. For example, policies and standards on current recordkeeping,

managing records of webpages and websites, and best practice guides to managing-technology dependent records.

Clause 26 empowers the Archivist to authorise the disposal of particular public records or classes of public records where the responsible public authority has applied for or consented to the disposal of those records. In authorising disposal, the Archivist must give due consideration and regard to relevant professional standards (for example the Records Management Association of Australia, *Code of Ethics* and the International Standards Organisation, *ISO 15489-1: Information and documentation - Records Management - Part 1:General*) and to the purposes of the Bill. In accordance with clause 13 of the Bill, the disposal of public records must not take place without the prior authorisation of the Archivist or in accordance with another legal authority, justification or excuse.

Clause 27 provides for the independence of the Archivist and the staff of QSA in relation to disposal decisions. The Archivist and the staff of QSA 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.

Clause 28 allows for the storage of public records outside QSA. This strategy is referred to as the “distributed custody model”. Examples include when the Archivist may make an arrangement with a public authority:

- Where the public authority stores its electronic records at its premises rather than QSA;
- That creates its own permanent archives so that the authority may store its public records in its archives rather than at QSA; or
- Where records storage is out-sourced to a third party.

Division 3—Public Records Review Committee

Subdivision 1— Establishment

Clause 29 requires the Minister to establish a Public Records Review Committee and outlines the Committee’s functions and composition.

The functions of the Committee are to advise the Archivist and the Minister about issues relating to the administration of the Bill, to hear appeals submitted by public authorities against certain disposal decisions

made by the Archivist and to resolve disputes between a public authority and the Archivist regarding the classification of records.

The Committee consists of nine members drawn from the judiciary, State Government, Local Government, the information management profession and five others determined by the Minister to have experience and knowledge that is relevant to the functions and activities of the Committee. The Archivist is not a member of the Committee but may attend meetings in accordance with clause 38 of the Bill.

The Governor in Council will determine remuneration and allowances to be paid to members of the Committee.

Clause 30 provides that the chairperson of the Committee must be a member of the Committee and be appointed by the Minister.

Clause 31 provides that the maximum term of each Committee member is up to three years. The term and conditions of each Committee member's appointment is determined by the Minister and stated in the member's instrument of appointment.

Clause 32 provides that Committee members may resign from their position in writing to the Minister.

Subdivision 2—Committee Proceedings

Clause 33 allows the Committee to determine the time and place of Committee meetings. The chairperson may also call a Committee meeting at any time but must call a meeting of the Committee if requested to do so by five or more members of the Committee.

Clause 34 provides for the conduct of Committee meetings. Unless prescribed otherwise by regulation, the Committee may conduct its proceedings as it considers appropriate. When present at Committee meetings, the chair must preside over a meeting. When the chair is absent from a meeting, a member of the Committee must be selected by the members present at that meeting to chair the meeting for the duration of the chairperson's absence.

The quorum for Committee meetings is five members. Decisions or resolutions of the Committee are determined by the majority of the members present and voting. The Archivist does not vote in the decisions and resolutions of the Committee. Each member present at a meeting of

the Committee may vote on each question under the Committee's consideration. If the votes are equal, the chairperson has the casting vote.

Clause 35 provides that members of the Committee may participate in Committee meetings using teleconferencing and other forms of continuous communication. A Committee member is regarded as being present at a meeting of the Committee when using such communications to participate in Committee meetings.

Clause 36 provides that minutes of the Committee's proceedings must be kept.

Clause 37 requires that Committee members have a duty not to disclose the deliberations of the Committee. However, this does not prevent the publication of the Committee's proceedings and decisions.

Clause 38 provides that the Archivist may attend meetings of the Committee but must not be present during deliberations regarding appeals lodged to the Committee under clause 39 relating to disposal decisions made by the Archivist or during the resolution of disputes between public authorities and the Archivist regarding restricted access period classifications of records.

Clause 39 outlines the process for conducting a review of disposal decisions made by the Archivist. Specifically, a public authority may make written application to the Committee for a review of a decision by the Archivist to refuse to approve the disposal of particular public records or classes of public records.

The application for review must be submitted to the Committee within 14 days of the notification of the Archivist's decision. A longer period for lodging an application may be authorised by the Committee. Where the Committee receives an application for review it must notify the Archivist in writing of the application for review.

Clause 40 requires the Archivist to give reasons to the Committee for refusing to authorise the disposal of particular public records or classes of public records. The Archivist must provide these reasons in writing within the period nominated by the Committee.

Clause 41 empowers the Committee, following its review of a decision of the Archivist, to confirm or amend the decision, or to substitute it with a new decision. The decision of the Committee is taken to be the final decision. A decision made under this clause cannot be reviewed under clause 39 of the Bill. The Committee's decision is to be regarded as the decision of the Archivist under clause 13 of the Bill.

Division 4—Miscellaneous

Clause 42 provides for the delegation of the Archivist's powers to an appropriately qualified member of QSA's staff or officer or employee of a public authority. The criteria for assessing the appropriateness of a person's suitability as a delegate of the Archivist is based on qualifications, experience and standing (i.e. public sector classification).

PART 4—POWERS OF ENFORCEMENT***Division 1—Authorised officers***

Clause 43 empowers the Archivist to appoint a member of staff of QSA as an authorised officer under the *Public Service Act 1996* to undertake the powers of enforcement as provided in this part.

Clause 44 requires the Archivist to issue identity cards to authorised officers appointed under clause 43. All identity cards must indicate that the person to whom the identify card has been issued is an authorised officer under this Bill. All identity cards must show an expiry date, be signed by the authorising officer and include a recent photograph of the authorised officer. The authorised officer is required to return to the Archivist the identity card within 21 days of ceasing duties as an authorised officer under this Bill.

Clause 45 requires the production or display of an identity card in the course of an authorised officer exercising certain powers under the Bill (e.g. entry and inspection of public records and recovery of public records).

Division 2—General powers

Clause 46 provides authorised officers with the power of full and free access to a public authority's premises to inspect public records and examine the public authority's procedures for creating, capturing, managing, preserving and disposing of public records. A public authority's premises include, but are not limited to, commercial and non-commercial

storage space provided by other public authorities and private organisations. Prior to entry, the authorised officer will give the Chief Executive Officer of the public authority reasonable notice of the intention to enter and inspect public records in its possession.

Clause 47 requires a public authority to comply with an authorised officer's request for inspection. Where an authorised officer is exercising the power of entry and inspection within the Governor's residence, then the authorised officer must gain the agreement of the Governor's secretary prior to entry and inspection. The Governor's secretary must not unreasonably withhold agreement.

Where an authorised officer is exercising the power of entry and inspection within a court of the State of Queensland, the authorised officer must gain the prior agreement of the registrar or proper officer of the court. The registrar or proper officer of the court must not unreasonably withhold agreement.

The authorised officer must give reasonable notice when proposing to enter and inspect records in Ministerial offices. With the exception of the Minister's private residence, a Ministerial office is the usual place or places where the Minister's portfolio is administered (e.g. a Minister's office at Parliament House).

Clause 48 provides that an authorised officer must not be obstructed in the exercise of powers under this part.

Division 3—Specific powers

Clause 49 empowers the Archivist to recover public records unlawfully in the possession of a person. The Archivist is required to give written notice to this person and request the transfer of those records to the Archivist or other person nominated by the Archivist. Where a person does not comply with the Archivist's request, the Archivist may apply to the Magistrates Court under s. 50 of the *Magistrates Act 1921* for an order to direct the recovery of the records.

Clause 50 permits the Archivist to use the power of recovery in reciprocal agreements with other States or the Commonwealth for the recovery of public records (i.e. estrays) of that jurisdiction. For example, the Archivist could enter into an agreement with the New South Wales Government whereby the Archivist could use the powers of recovery as defined in this Bill to recover public records of New South Wales which are

unlawfully in the possession of a person in Queensland, and return them to a person nominated by the New South Wales Government. The agreement could be reciprocated to allow for public records of Queensland, in the unlawful possession of a person in New South Wales, to be recovered and returned to the Archivist.

PART 5—MISCELLANEOUS

Clause 51 provides that where another Act or regulation restricts disclosure of information the Archivist or staff of QSA must not disclose that information. Disclosure by the Archivist or staff of QSA is permitted where it is necessary for the performance of their official duties, excluding the provision of public access to public records under clause 18.

However, disclosure of information by the Archivist or staff of QSA is permitted under clause 18 where:

- The restricted access period applied under clause 16 has ended or access has been permitted under clause 18(2); and
- Access is not restricted by a regulation under clause 18 (4) or 18 (5).

Clause 52 provides that the inclusion of the following records as public records, for the purposes of this Bill is at the discretion of the Governor:

- Correspondence between the Governor and the Sovereign;
- Correspondence between the Governor and the Governor-General; and
- Correspondence between the Governor and the Governor of another State.

Clause 53 provides that where access to public records is provided in accordance with this Bill, protection against actions for defamation or breach of confidence is given to the State and officials, including the author of a public record, a person who supplied a public authority with a public record, the Archivist, and the staff of QSA.

This section does not limit the operation of clause 54 (civil liability) of this Bill or s. 16 of the *Defamation Act 1889*.

Clause 54 provides an officer of the State with personal protection from civil liability in certain circumstances in performing the roles and responsibilities identified in this Bill.

Clause 55 aligns this Bill with the *Evidence Act 1977* and provides for the conditions under which a public record is admissible as evidence in legal proceedings. To be accepted as evidence, a public record must be produced from proper custody. Proper custody includes production of the public record or a copy or extract from QSA. Certification as to the origin, history, nature or contents of a public record in QSA's custody can be given by the Archivist or authorised officer, and is admissible as evidence.

Clause 56 requires that the Archivist report annually to the Minister on the administration of the legislation. The annual report must be produced within four months of the end of the financial year. The annual report may include details of the extent to which public authorities are complying with the legislation, including instances of non-compliance.

Clause 57 states that the Governor in Council may make regulations under this legislation.

Clause 58 provides, where relevant, existing references to the *Libraries and Archives Act 1988* in another Act or document are to be treated as a reference to this legislation.

PART 6—TRANSITIONAL AND CONSEQUENTIAL PROVISIONS

Clause 59 provides for the person who was the Archivist appointed in accordance with the *Libraries and Archives Act 1988* immediately prior to the commencement of the legislation to continue in that position under this legislation.

Clause 60 provides for a notice for recovery of public records under section 62 (1) of the *Libraries and Archives Act 1988* to continue to have effect under clause 49.

Clause 61 provides that notices relating to restricted access periods given to the State Archivist under regulation 23 of the *Libraries and Archives Regulations 1990* prior to the commencement of this Bill are recognised as valid for the purposes of s.16 or s.18 (2) (b) of this Bill.

However, where access periods given to public records do not correspond with the restricted access periods given under clause 16 of this Bill, then the public authority must realign its access decision with clause 16 of this Bill and provide the Archivist with written notification of the revised access decision within 1 year of the commencement of this Bill. This revised restricted access period notice supersedes all prior notices.

Clause 62 amends the Acts mentioned in Schedule 1.

PART 7—VALIDATION PROVISION

Clause 63 recognises and validates any action taken by the Archivist under the *Libraries and Archives Act 1988* and the *Libraries and Archives Regulations 1990* prior to the commencement of this section of the Bill. This includes all prior disposal authorisations and recommendations relating to the management of public records.

SCHEDULE 1

AMENDMENTS

Schedule 1 makes consequential amendments to the following Acts:

- *Agricultural and Veterinary Chemicals (Queensland) Act 1994*;
- *Business Names Act 1962*;
- *Cooperatives Act 1997*;
- *Crime Commission Act 1997*;
- *Criminal Law (Rehabilitation of Offenders) Act 1986*;
- *Education (General Provisions) Act 1989*;
- *Electricity Amendment Act (No.3) 1997*;
- *Evidence Act 1977*;
- *Freedom of Information Act 1992*;

- *Gladstone Power Station Agreement Act 1993;*
- *Land Act 1994;*
- *Land Title Act 1994;*
- *Libraries and Archives Act 1988;*
- *Meat Industry Act 1993;*
- *Queensland Competition Authority Act 1997;*
- *School of Arts (Winding Up and Transfer) Act 1960;* and
- *Sugar Industry Act 1999.*

SCHEDULE 2

DICTIONARY

The dictionary defines certain terms in the Bill as provided for in clause 4.