

# Public Records Bill

## Explanatory Notes

### Short title

The short title of the Bill is the Public Records Bill 2023.

### Policy objectives and the reasons for them

In May 2022, the Queensland Government announced an independent review of the *Public Records Act 2002* (the Review). The Review was led by retired Supreme Court Judge the Honourable John Byrne AO RFD and was supported by a panel of experts.

A comprehensive review of the Act was required to meet public expectations and to ensure the legislative framework enables contemporary information and recordkeeping practices that support good governance and decision making by government.

Until 2022, the Act had not been reviewed since commencement. During the last two decades public authorities have increasingly used digital technologies and platforms to undertake the business of government. This has driven a dramatic increase in the volume and types of information, data and records created by government. The Act now requires review to support legislative effectiveness within this digital environment and to enable efficient recordkeeping for digital channels.

On 31 August 2022, Justice Byrne AO RFD provided the *Report of review of the Public Records Act 2002* (the Report) to the Queensland Government. The Report and the *Queensland Government response to the Report of review of the Public Records Act 2002* (Government response to the Report) were released on 16 February 2023, along with a Consultation Regulatory Impact Statement for public feedback. An analysis of the consultation outcomes found that modernised legislation would be the most effective approach to supporting public authorities and the community. The Public Records Bill has been developed in response and implements the majority of the 25 recommendations for legislative change detailed in the Report.

In alignment with the recommendations of the Report, the policy objectives of the proposed reforms are to:

- provide a framework for making, managing and allowing access to public records in a way that benefits present and future generations
- minimise public authorities' ambiguity regarding the meaning of a public record under the *Public Records Act* (the Act)
- minimise the chance for relevant public records to be inappropriately managed

- recognise the importance of public records for Aboriginal peoples and Torres Strait Islander peoples
- ensure mechanisms are in place that promote continued and efficient involvement and consultation with Aboriginal peoples and Torres Strait Islander peoples
- reduce the risk of permanent loss of public records
- ensure the risks of unlawful disposal, alteration and deletion of public records are balanced with costs in managing such risks
- reduce confusion with regards to terminology, application, and best practices under the Act
- enable efficient monitoring of public authority records management performance, and
- provide a mechanism for increased access to public records.

The Bill also makes additional changes to the Act including:

- enabling the State Archivist to temporarily suspend disposal authorisations for public records in an efficient manner
- protecting public records that are required to be kept permanently and protecting records over 25 years old
- including or excluding an entity from being a public authority using a regulation
- expanding the circumstances in which a regulation may prescribe when the State Archivist can refuse access to public records in the custody of the archives (e.g., when it is not in the public interest or when access would inappropriately reveal culturally sensitive information or personal information).

## **Achievement of policy objectives**

Rather than amend the Act, a new Bill has been developed to provide greater flexibility for drafting the changes, and improving the overall outcomes for modernisation, clarity and consistency.

To achieve its objectives, the new Bill will strengthen the legislative frameworks governing public authority recordkeeping and public access to records by:

- adopting a new purpose and principles for administering 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, which provides advice to the 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
- 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 three 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 public authorities must comply with
- adopting a pro-disclosure approach for access to records in the custody of Queensland State Archives through the setting of restricted access periods (where needed) and the requirement for public authorities to advise why they have refused access to these public records
- specifying 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 the restricted access periods (if needed) of the Ministerial records of Ministers and Assistant Ministers in the custody of the Archives and dispose of temporary Ministerial records in the custody of the Archives with the advice of the Public Records Review Committee
- 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.

## **Alternative ways of achieving policy objectives**

There are no alternative ways to achieve the policy objectives other than by legislative amendment.

## **Estimated cost for government implementation**

Most of the recommendations being implemented clarify existing practices or requirements under the Act. Where public authorities are already complying with the Act, it is anticipated compliance costs will be minimal.

Mandatory standards will be developed in consultation with public authorities and will go through a regulation approval process. Additionally, costs for mandatory transfers of public records would be limited given this would only take place if the public records were permanent value, or at risk of loss or damage and no longer needed for business purposes.

A 12-month transition period is proposed to assist public authorities with implementation.

## **Consistency with fundamental legislative principles**

The Bill is generally consistent with fundamental legislative principles in the *Legislative Standards Act 1992*. Potential breaches of fundamental legislative principles are addressed below.

### **Consequences proportionate and relevant to the actions to which they are applied**

For legislation to have sufficient regard to the rights and liberties of individuals, the consequences imposed by legislation should be proportionate and relevant to the actions to which they are applied.

### ***Offence provisions***

The Bill includes new and amended provisions relating to offences in the Act:

- clause 22 for special protection of permanent value public records (amended from public records more than 30 years old) – maximum penalty of 100 units
- clause 23 which creates a new offence of attempted unlawful disposal (with timeframes the same as unlawful disposal) – maximum penalty of 165 penalty units
- Schedule 3 which amends the definition of *disposal* to include altering and deleting
- clauses 22 and 83 by expanding time allowable to prosecute for unlawful disposal from one year to three years after the offence was committed, with the action to be brought either one year after the offence is committed or within six months of coming to the complainant's knowledge
- clause 84 which establishes an offence for assaulting an officer performing a function under the Bill – maximum penalty of 100 units
- clause 85 which establishes an offence for obstructing an officer performing a function under the Bill, including a requirement to warn that obstruction is an offence – maximum penalty of 100 units.

The Act previously relied on section 52(1) of the *Justices Act 1986*, which provides for prosecution to take place within one year from date of offence. Typically, the identification of unlawful disposal takes more than 12 months due to time taken to seek access to records or to investigate suspected unlawful disposal.

The penalty level for an offence, including whether it is proportionate to the level of seriousness of the offence and consistent with other similar offences, is relevant to whether the offence has sufficient regard to the rights and liberties of persons who may be subject to it.

The penalties for new and amended offences under the Act are proportionate and relevant to the actions to which they apply, considering comparable existing offences, including those already within the Act. The penalties are sufficiently high to deter non-compliance and thereby support the effectiveness of the Act in achieving its objectives.

***Power to enter premises – authorised officers***

The Act already allows for an authorised officer to enter into a public authority's place of business or another place it occupies if they have consented to entry, or if consent has not been provided but particular notice requirements have been satisfied. Rather than restricting authorised officers to only examining public records and the procedures for making and managing public records, the changes will enable authorised officers to ask questions and take copies of public records or the system used to make or manage public records. Previously copies could only be taken with the consent of the public authority. Protection from self-incrimination for individuals is incorporated. Provisions relating to exercise of an authorised officer's powers at the Governor's official residence, or a court or a Ministerial office continue to apply.

The amendments are limited in their scope and do not authorise the search and seizure of property. An authorised officer must be issued with an identity card and must produce it when exercising a power. A place of business, for an agency, does not include a part of the place where a person resides. The amendments are justified on the basis that they are needed to support the effective operation of the Act by allowing for the monitoring and investigation of compliance of records management and thereby contribute to its effectiveness.

**Sufficient regard to the institution of Parliament**

For legislation to have sufficient regard, it must only allow delegation of legislative power in appropriate cases and to appropriate persons, subject to the exercise of delegated power to the scrutiny of the Legislative Assembly and authorise the amendment of an Act only by another Act.

The Bill establishes:

- the ability to include or exclude an entity from being a public authority, or a particular function or power of a public authority, by regulation (clause 8(2) and (3))
- a regulation-making power (clause 17(5)) to prescribe an entity to be given control of public records that is different from the receiving entity mentioned in subsection (2)
- an ability for the State Archivist and a public authority to agree to a different trigger for when restricted access periods start where the date of last action on the public record is unable to be worked out or the recording of information for the public record is ongoing (clause 31(2) to (4))
- a regulation-making power (clause 40) to prescribe the circumstances, procedures, matters to be considered, and maximum periods of time when restricting access under the clause by the State Archivist
- a regulation-making power (clause 46) for the State Archivist to make standards about matters regulated under the Bill with which public authorities must comply.

***Inclusion or exclusion of an entity from being a public authority***

The ability to include or exclude an entity from being a public authority, or for a particular function, through regulation provides flexibility to capture or exclude the appropriate entities or their functions under the jurisdiction of the Act (clause 8 (2) and (3)). Oversight is provided through the regulation making process.

***Prescription of an entity to be given control of public records***

The Bill establishes a regulation-making power (clause 17(5)) to prescribe a public authority to be given control of public records that is different from the entity mentioned in subsection (2). This regulation making power provides flexibility to appoint an entity other than the Department of Justice and Attorney-General (DJAG) (which has responsibility for the *Commissions of Inquiry Act 1950*) where appropriate. Oversight is provided through the regulation making process.

***A different trigger for restricted access periods***

Unless agreed otherwise under clause 31, a restricted access period will start from the date of the last action on the public record. The Bill establishes an ability for the State Archivist and a public authority to agree to a different trigger for when restricted access periods commence where the date of last action on the public record is unable to be worked out or the recording of information for the public record is ongoing. This ability recognises that the date of last action cannot always be determined, or is not always appropriate, and enables efficient and timely access to public records. Safeguards to the ability are provided through the requirement for agreement and through the ability being subject to review processes.

***Prescription of circumstances, procedures, matters to be considered and maximum periods of time***

The Bill establishes a regulation-making power (clause 40) to prescribe the circumstances, procedures, matters to be considered, and maximum periods of time when the State Archivist can restrict access under the clause. This power will enable the State Archivist to appropriately protect public records from being accessed. The power recognises that limited categories of information may require different circumstances, processes, matters to be considered, or maximum periods of time to the standard framework established in Part 3. This is consistent with the existing regulation power under section 18(4) and (5) of the Act. Oversight is provided through the regulation making process.

**Standards made by the State Archivist**

The Bill establishes a power (clause 46) for the State Archivist to make standards about matters regulated under the Bill with which public authorities must comply, with those standards being approved by regulation. This power will enable the State Archivist to better achieve the purposes of the Bill, improve compliance and consistency in records management maturity, and support good governance while preserving oversight through the regulation making process.

**Consultation**

The independent review of the *Public Records Act 2002* (the Review) was completed in August 2022, and the final report from the independent panel set out 25 recommendations for legislative reforms to support a contemporary recordkeeping framework for Queensland. The

Queensland Government supported or supported in principle all 25 recommendations. The panel also made two operational recommendations that do not require legislative reform.

The Review undertook consultation and engagement activities with a range of stakeholders and the wider Queensland community. This was a broadscale consultation and interested stakeholders contributed through an online survey, written submissions, interviews, and workshops. Nine key themes were:

1. definition of a record
2. recognition of the rights of First Nations peoples
3. accountability and transparency
4. administration of the Act
5. regulatory effectiveness
6. digital transformation and savings
7. practices and information management
8. alignment with other legislation, and
9. relationships with the public (community).

A Consultation Regulatory Impact Statement (C-RIS) was published, along with the Report and the Queensland Government response to the report, on 16 February 2023 for public feedback. Consultation was open until 20 March 2023, with local governments and councillors provided with additional time following online workshops.

Targeted consultation was undertaken with key stakeholders. This included webinars, fact sheets, and information packs for local governments, First Nations representative bodies, and Queensland Government departments. Information sessions were also provided to the tertiary education sector, the Local Government Association of Queensland, the Interim Truth and Treaty Body, and the Public Records Review Committee. A survey was also issued to all Queensland Government departments to obtain feedback.

In total 23 formal written submissions and six survey responses were received to the C-RIS. As with the Report, stakeholders broadly supported the need for reform to the Act to provide a contemporary recordkeeping framework. Key themes of consultation included:

1. supported recognition of the rights and interests of First Nations peoples,
2. administration of the Act,
3. regulatory effectiveness,
4. practices and information management and relationships with the community,
5. the need to update the definition of a record,
6. accountability, transparency, digital transformation and savings (varied in support).

All stakeholders agreed that the Act should be modernised to provide for a contemporary approach to recordkeeping in Queensland and the interests of Aboriginal peoples and Torres Strait Islander peoples be supported.

## **Consistency with legislation of other jurisdictions**

The introduction of new legislation in Queensland will align with Australia's other jurisdictions which have existing legislative safeguards regarding the management of public records.

# Notes on provisions

## Part 1 Preliminary

### Division 1 Introduction

#### Short title

*Clause 1* provides the short title of the Act will be the *Public Records Act 2023*.

*Clause 2* states the Bill will start on a day fixed by proclamation.

*Clause 3* provides the main purpose of the Act is the establishment of a framework for making, managing and accessing public records in a way that benefits current and future generations.

The principles set out in Schedule 1 of the Bill support the purpose of the Act and demonstrate the importance of public records.

*Clause 4* provides that public records are made, managed and accessed consistently with the principles in schedule 1. Schedule 1, Part 1 sets out principles for public records relating to Aboriginal peoples and Torres Strait Islander peoples. These principles seek to recognise:

- The knowledge of Aboriginal peoples and Torres Strait Islander peoples gained from governing their lands, seas, waters, air and resources for at least 65,000 years prior to British colonisation of Queensland is unique and a priceless asset for Queensland.
- The nature, volume and content of public records relating to Aboriginal peoples and Torres Strait Islander peoples and their knowledge is different to that of other Queenslanders.
- These public records may contain content that is sensitive, inaccurate, or offensive and may have been used in the past in a way that disrupted Aboriginal and Torres Strait Islander cultural practices and communities.
- These public records should be managed and accessed with care to—
  - (i) support Aboriginal peoples and Torres Strait Islander peoples to participate in truth-telling and treaty negotiations; and
  - (ii) contribute to reframing the State government's relationship with Aboriginal peoples and Torres Strait Islander peoples; and
  - (iii) otherwise support revitalisation of culture and reconnecting communities and families.

*Schedule 1, Part 2* sets out the principles for public records generally:

- Public records are important for preserving the history of Queensland.
- Making and keeping accurate public records is important for ensuring the integrity, accountability and good governance of public authorities.
- Public records should be managed and accessed in a way that protects and promotes human rights, recognising that:



- (i) the public has a right to access information kept by public authorities in public records; and
  - (ii) the disclosure of public records should be facilitated in an equitable and consistent way; and
  - (iii) the sensitivity of public records declines with the passage of time but it may be contrary to the public interest or otherwise inappropriate to disclose a particular public record due to the sensitivity of information contained in the record.
- Public records should be managed and accessed in a way that promotes economic development, innovation and research.

*Clause 5* states the Act binds all persons, including the State.

*Clause 6* establishes the relationship between the Act and other legislation about the status of an entity as a public authority; the status of a record as a public record; the disposal of or access to a record; or access restrictions for records. If there is any inconsistency between this Act and another Act in relation to these matters, the other Act applies. See, for example, section 325 (8) of the *Police Powers and Responsibilities Act 2000*; section 47 of the *Births, Deaths and Marriages Registration Act 2003*; or section 55D (3) of the *Vegetation Management Act 1999*.

## **Division 2 Interpretation**

*Clause 7* refers to the dictionary in schedule 3.

*Clause 8* provides a definition for a public authority and includes each of the following:

- (a) the Governor in their official capacity
- (b) the Executive Council
- (c) a Minister
- (d) an Assistant Minister
- (e) the registrar or other officer of a court with responsibility for official records of the court
- (f) a commission of inquiry under the *Commissions of Inquiry Act 1950*
- (g) an entity, other than the parliamentary service, that
  - (i) is established by an Act; or
  - (ii) is created by the Governor in Council or a Minister
- (h) a department
- (i) a government owned corporation
- (j) a rail government entity under the *Transport Infrastructure Act 1994*
- (k) an entity established by the State and a local government
- (l) a local government

An entity can be included or excluded from being a public authority by a regulation.

The Bill provides flexibility by being able to include or exclude an entity, or a function of an entity, from being a public authority. This allows the appropriate inclusion or exclusion of the wide variety of possible entities or their functions from being subject to the Bill. It will also allow for greater clarity in circumstances where it is unclear whether an entity should be a public authority.

*Clause 9* defines a public record and reflects the increasingly digital environment in which public records are created and stored. The definition of a public record covers a digital ecosystem, while still accommodating existing and future physical records.

A public record is information recorded on, in or by using any medium, made, received, or kept by a public authority in the course of its business activities and provides evidence of its activities, affairs or business. A Ministerial record is also public record.

A public record includes information that identifies or contextualises the record, a copy of a public record, a part of a public record, or a copy of a part of a public record. Examples include metadata, photocopies or scans of paper records, an email or extract of an email stored in various network locations, exports from business systems, decision making algorithms, or audit logs about a digital record.

A public record can be in any medium, including digital and analogue formats. This could be a map, a digital photograph, a film, a register or a database.

Certain records of the Governor are only public records if agreed by the Governor.

*Clause 10* defines a Ministerial record. A Ministerial record is defined as information recorded on, in or using any medium that is made or received by a Minister in the course of carrying out portfolio responsibilities, or by an Assistant Minister in the course of carrying out official duties. A Ministerial record does not include information relating to personal activities, party political activities, or activities in the capacity of being a member of the Legislative Assembly and the representative of an electorate. Ministerial records can be created in any format and include emails, text messages, social media interactions, diaries, photographs, videos, and data held in business systems.

## **Part 2 Public record requirements**

### **Division 1 Preliminary**

*Clause 11* provides that where a public authority is not an individual, the chief executive of the public authority is responsible for ensuring that the public authority complies with the requirements under the Bill. This is because some public authorities are not legal persons (such as departments), and compliance with the provisions in the Bill would not be enforceable against a non-legal entity. The provision specifically excludes individuals because public authorities that are individuals are already responsible as natural persons.

*Clause 12* sets out mandatory or optional obligations of a public authority for making or managing public records. Public authorities must comply with standards issued by the archivist and have regard to any policies or guidelines issued by the archivist. These standards, policies or guidelines are made under clause 46.

*Clause 13(1)* provides that ownership of public records of a local government vests in the local government. *Clause 13(2)* provides that in other cases, the responsible public authority with custody of the record has ownership of the record, otherwise ownership is vested in the

State. The provision ensures public records cannot be unlawfully removed from government ownership, abandoned, sold or given away.

## **Division 2 Making and managing public records**

*Clause 14* places a requirement on public authorities to make public records that accurately show the actions or decisions of a public authority, including contextual information. Complete and reliable public records tell the full story about actions and decisions and can be trusted by the organisation and the public. Public records should be accurate, authentic and usable in whatever format they are created.

Public records made by the public authority are required to be kept by the public authority. The requirement in this clause to make and keep public records does not prevent the disposal of public records, as set out in clauses 20 and 23 of the Bill.

*Clause 15* requires public authorities to look after and preserve public records they have responsibility for. This includes public records that may not be in the physical custody of the public authority, for example, stored with a third-party storage provider. A public authority is responsible and accountable for the management, preservation and accessibility of its public records regardless of where they are located or stored. A public authority can make arrangements for another entity to have custody of its public records if they are safe, preserved and accessible.

These requirements remain in place unless authorisation for the disposal of public records has been given by the archivist, as set out in clauses 20 and 23 of the Bill.

Failure to ensure the safe keeping and preservation of public records may result in the unlawful disposal or damage of public records.

*Clause 16* provides for the transfer of public records to another public authority if a function has been transferred. This allows for records to follow the function they relate to and be handed over to the public authority with responsibility for the function. This may happen, for example, during a machinery-of-government change where responsibility for a function is moved from one department to another. Control of the records about that function must be given to the new department. Likewise, if a local government merges with another, the records of both local governments are transferred to the new entity. *Function* includes power as defined in schedule 3 of the Bill.

*Clause 17* establishes arrangements for the ongoing management of public records when a public authority ceases to exist or has ceased to exist. This clause does not apply to Ministers or Assistant Ministers.

If the public authority is a commission of inquiry, control of the public records of the inquiry should be transferred to the department with responsibility for administering the *Commissions of Inquiry Act 1950*.

If a function is to be carried out by another public authority, control of the public records should be transferred to the public authority taking over the function.

Alternatively, the archivist may decide which public authority should be given responsibility for public records, including the archivist. This may be used in situations where it is not appropriate for public records relating to a particular function to be handed over to another public authority, for example, records of an investigation handed over to the public authority being investigated.

This clause provides an option to prescribe a public authority or the archives to be given control of public records through a regulation.

This clause requires that information about responsibility for the control of public records, where the archivist has made the decision, must be made available on the archives website. This requirement does not apply retrospectively (see clause 101).

*Clause 18* establishes the transfer provisions for public records of Ministers and Assistant Ministers when they cease to be in office, or their portfolio responsibilities change or cease.

If a Minister ceases to hold office because of a change of political party, the records of a Minister or Assistant Minister are to be given to the archives. If there is no change of political party and the responsibilities are given to another Ministerial portfolio, the records of the Minister or Assistant Minister are to be given to the new Minister or Assistant Minister. If neither of these circumstances apply, the records of a Minister or Assistant Minister can be given to the archives.

*Clause 19* provides that public authorities with responsibility for public records (under clause 15), must ensure public records that require certain equipment, systems or technology remain accessible. This includes digital records created and maintained using proprietary software, for example, software to ensure CAD drawings can be accessed and used.

This clause aligns with the requirements to maintain the integrity of electronic written documents (section 20 of the *Electronic Transactions (Queensland) Act 2001*) and electronic communications (section 21 of the *Electronic Transactions (Queensland) Act 2001*) in an accessible form for subsequent reference.

*Clause 20* empowers the archivist to authorise the disposal of public records if a public authority has applied for or consented to the disposal of the records.

The disposal of public records includes determining whether a record should be kept permanently or if it can be destroyed or deleted after an agreed period of time. Authorisation by the archivist is also required if public records are to be permanently donated or given to another entity that is not a public authority, for example, temporary value records given to a historical society when they are not required to be transferred to the archives as permanent value records. Public records cannot be abandoned, for example, a public authority leaving physical records behind following an office relocation, nor can they be sold. *Disposal* is defined in schedule 3.

When authorising the disposal of public records, the archivist must have regard to the main purpose and principles for administering the Act, the appraisal statement of the archives, and

any professional standards. Examples of relevant standards are the *Australian Society of Archivists Code of Ethics* and *ISO 15489.1:2017 Information and documentation – Records Management - Part 1: Concepts and principles*.

This clause also requires the State Archivist to ask the Public Records Review Committee for their advice before disposing of a public record in their control under clause 17 or 18. This ability ensures public records are not kept for longer than required and allows for the disposal of temporary value public records held by the archives while also providing oversight.

For court records, the registrar, or other officer of the court with responsibility for official records of the court, can apply for or consent to their disposal.

### **Division 3 Protecting public records**

*Clause 21* requires public authorities to give notice to the archivist of public records in their custody that are older than 25 years old or where the public authority knows, or should know, that the records have permanent value and are at risk of loss or damage. Records at risk of loss or damage may include those stored in areas prone to flooding or digital records in a business system that is no longer supported or being decommissioned.

This clause ensures the protection of public records that have significance to the State and their availability to the public. Knowing what records are held by public authorities will allow the archivist to plan future transfers of records to the archives and identify future storage requirements, both digital and physical.

*Clause 22* stipulates an offence that a person must not damage a public record more than 25 years old or of permanent value, unless they have legal authority or a reasonable excuse. Damage can include alteration or neglect that causes harm to the integrity or condition of a record as well as wilful damage. For example, it could be considered neglectful to store a permanent record in a basement where active mould is present.

This clause applies to any person as defined under section 36 of the *Acts Interpretation Act 1954*, including public servants, private individuals and organisations. It could apply to a researcher tearing out a page from a register in the reading room at the archives, a truck driver dropping records onto a road because of an unsecured load, or a hacker accessing a secure business system and altering records.

The clause does not apply to damage to a public record resulting from the application of an accepted archival or conservation practice by the archivist or archives staff. This could include the removal of harmful inserts from a paper file and replacing them with an archival substitute, or digital preservation processes that remove a virus from a digital record that causes some loss of accessibility to the record.

*Clause 23* stipulates an offence that a person must not dispose, or attempt to dispose, of a public record unless authorisation for the disposal has been given by the archivist, is allowed under another legal authority, or the person has a reasonable excuse, for example, under the *Criminal Code 1899*. Authority for the archivist to authorise the disposal of public records is established under clause 20 of the Bill.

*Clause 24* allows the archivist to suspend a disposal authorisation for public records by declaring a protection notice for a class of public records and publishing it on the archives' website. The term class is used to refer to a group of records and is not limited by record classes defined in a retention and disposal schedule. For example, public records which are relevant to, or may become relevant to, an allegation of child sexual abuse.

The power allows the State Archivist to suspend disposal authorisations to protect records required for a particular purpose, such as a Commission of Inquiry or other review. A protection notice could be issued, for example, to protect public records relating to Aboriginal peoples and Torres Strait Islander peoples in support of the upcoming Truth-telling and Healing Inquiry under the *Path to Treaty Act 2023*. It provides the flexibility needed to protect records from disposal where the amendment or repeal of a disposal authorisation would not be appropriate due to circumstances, such as matters of urgency or other practical considerations.

The protection notice must include information about the public records the notice applies to, the day the notice takes effect, and the period it covers. This period cannot be longer than is reasonably necessary for the investigative entity to conduct its inquiries or investigation. The archivist is also required to take all reasonable steps to ensure a public authority likely to be affected is aware of it. This could include writing to the chief executive of the public authority and/or to an employee of a public authority responsible for managing the authority's public records, and publishing the notice on the Queensland State Archives website.

## **Division 4 Giving custody of public records to archives**

### **Subdivision 1 Giving custody**

*Clause 25* sets out the requirements for a public authority to transfer permanent value public records to the archives. Permanent value public records can be transferred with the authorisation of the State Archivist if the public authority no longer needs custody of the records, or the authority or the archives considers that the record is at risk of loss or damage. The transfer of permanent records may be refused in certain circumstances, for example, there is insufficient or unsuitable storage space at the archives or access to a particular digital record cannot be provided.

Once public records have been transferred to the archives, the archivist must make sure they remain available to the public authority. A reasonable charge can be imposed for access, for example, through the file issue service.

*Clause 26* sets out the actions the archivist may take regarding public records in the custody of a public authority that are more than 25 years old, or for public records in the custody of a public authority that are of permanent value, regardless of age, and are at risk of loss or damage and no longer needed in the custody of a public authority. The archivist can compel a transfer of public records to the archives, take a copy of a public record, or give directions about the custody or preservation of the public record or the maintenance of systems for accessing the public record.

The archivist can only take action under this clause after giving notice to the public authority. The notice must state the archivist considers this clause of the Bill applies to the public records covered by the notice, ask the public authority to consider transferring the records to the archives within a reasonable timeframe (if the archivist proposes to take custody of the records), and invite the public authority to make submissions about the archivist's proposed action. The archivist must also give the notice to the responsible public authority for the public record, if this is not the same authority that has custody of the record (e.g., the records have not yet been transferred as part of a machinery-of-government change). Before taking any action under this clause, the archivist must consider any submissions provided by the public authority.

This clause enables the archivist to protect public records in circumstances when they are at risk of permanent loss or damage, for example, the continued storage of public records damaged during a flood and rectification has not been carried out, or the risk of loss of digital records due to a service provider going into administration.

*Clause 27* allows for a public record to be removed from the archives in certain circumstances. This may include a legal discovery or a Right to Information request, or to support current business activities of the public authority. This clause does not prevent the disposal of a public record under a disposal authorisation.

## **Subdivision 2 Working out access for public records**

*Clause 28* establishes the framework for providing access to public records in the custody of the archives. Public records given to the archives are open to the public by default unless a restricted access period is applied to the records in a restricted access notice given to the archivist by the responsible public authority. Public authorities are required to indicate whether a public record is a regulated record or if it contains restricted information. The length of a restricted access period must be determined using division 4, part 2 of the Bill.

The archivist can make access decisions about public records under their control covered by clauses 17 and 18.

*Clause 29* provides the criteria for establishing a restricted access period for a regulated record, including regulated records that also contain restricted information under schedule 2. Specific restricted access periods apply to regulated records, including Executive Council, Ministerial and Cabinet records.

*Clause 30* provides the criteria for establishing the restricted access period for a public record, other than a regulated record, that contains restricted information. The assigned restricted access period is calculated depending on the sensitivity of the information contained in the record and should consider the principles in schedule 1. Sensitivity is determined by factors such as the risk of adverse consequences for an individual or those associated with the individual if the information was disclosed. For example:

- local government rates and valuation records contain personal information, such as addresses, and would be assigned a restricted access period of 30 years

- apprenticeship files contain medium sensitivity personal information, such as employment details, and would be assigned a restricted access period of 65 years
- corporate files contain emergency response and recovery plans that include security information and would be assigned a restricted access period of 65 years
- mental health files contain high sensitivity personal information, such as medical details, and would be assigned a restricted access period of 100 years.

*Clause 31* establishes when a restricted access period starts and ends. In the context of public records, the last action in relation to a record is the last substantive recording of information for the record, rather than date of last access or minor edit (which does not change the nature of the record). For example, if a spelling error was fixed in a document, this would not be considered a substantive change to the record. If a new paragraph was added which changed an existing decision or included new information for consideration, this would be considered a substantive change and would update the date of last action of a public record. The date of last action cannot always be established, or the public record may have information recorded on an ongoing basis, for example, a school admission register.

If the date the last action happened cannot be worked out or the recording of information for the public record is ongoing, the public authority and the archivist can agree on a suitable day. For example, the date a record was created or the date the record was transferred to the archives could be used. The determination of a different suitable date for the restricted access period enables access or earlier access to limited categories of public records.

*Clause 32* provides a framework for reviewing and replacing restricted access notices. A public authority with responsibility for the public records can change a restricted access notice at any time by replacing it with a new notice and giving that notice to the archivist (for matters stated under clause 28(1)).

The archivist can also request a public authority to review or change a restricted access notice at any time. A review of a restricted access notice may be requested by the archivist in cases where a restricted access period should be shortened or increased, for example, where similar records held by the archives have inconsistent access periods applied by different public authorities, or where the release of personal information could negatively impact on a person's privacy.

If the archivist and responsible public authority do not agree about changing the original notice, the archivist or the public authority can refer the matter to the Public Records Review Committee for resolution. The archivist and the public authority must comply with the decision of the committee.

A new restricted access notice replaces the notice originally given to the archives.

## **Part 3 Accessing public records in custody of archives**

### **Division 1 Preliminary**

*Clause 33* provides that this part of the Bill applies to public records in the custody of the archives and does not prevent a person applying for access to a public record, or the archivist



giving access to a public record in the custody of the archives, under other legislation such as the *Right to Information Act 2009*.

## **Division 2 Access to open records**

*Clause 34* requires the archivist to provide access to a public record if the public record is an open record.

## **Division 3 Access to restricted records**

*Clause 35* provides this division of the Bill applies to public records in the custody of the archives where a restricted access period has not ended. This division does not apply to Ministerial records. Public records covered by this division are restricted records.

Access to the Ministerial records of a Minister or an Assistant Minister is available through the *Right to Information Act 2009*.

*Clause 36* establishes a person may apply to the archivist for access to a restricted record in the custody of the archives.

*Clause 37* provides a mechanism for giving access to restricted records. An applicant may only be given access to a restricted record by the archivist if access is approved by the responsible public authority or if access is allowed under another law, such as the *Right to Information Act 2009*. The responsible public authority can impose conditions about access, which the archivist must abide by. For example, conditions could include restrictions relating to copying, sharing or publishing the record.

*Clause 38* sets out that a public authority can approve access, impose reasonable conditions on access or refuse access to a restricted record following a notice from the archivist. A responsible public authority must respond to the archivist within 35 business days of receiving the notice or within a longer period agreed by the archivist.

If the responsible public authority refuses access to a restricted record or imposes a condition for access, the responsible public authority must advise the archivist about why it has done so.

If the archivist and responsible public authority do not agree about access to a restricted record or conditions for access, the matter can be referred to the Public Records Review Committee for resolution by the archivist or the public authority. The archivist and responsible public authority must comply with the decision of the committee.

## **Division 4 Other restrictions on access**

*Clause 39* allows the archivist to refuse access to public records in the custody of the archives if the record's preservation would be detrimentally affected by giving access, the record can be purchased from a public authority (for example, birth, death or marriage records), or access to the records can only be given using particular equipment or information technology that the archives do not have access to.

*Clause 40* allows for a regulation to prescribe the circumstances in which the archivist may refuse access to public records in the custody of the archives, even where the responsible public authority has approved access. The regulation may also provide that the archivist can also restrict access to a public record for longer than 100 years. The regulation can prescribe the processes, matters to consider, or maximum restricted access periods. Circumstances may include if the archivist was satisfied that access would not be in the public interest, or if access would inappropriately reveal culturally sensitive information or personal information. *Culturally sensitive information* and *Personal information* are defined in schedule 3 of the Bill.

*Clause 41* sets out the ways access to a public record can be given. Access can be given by allowing a person to view the record, by giving them a copy or in another way. Original records can, for example, be viewed in person in the reading room or a digitised copy can be provided on request. Arrangements can also be made to hear sounds or view audio-visual material or provide a transcript.

If a person requests access to a public record in a particular and reasonable way, access must be given in that way. Access can be provided in another way if access would unreasonably impact on the operations of the archives, if it would be detrimental to the preservation of the record, is inappropriate because of the nature of the record, or would infringe copyright laws.

The archivist can impose reasonable conditions and charge to access records. Where the person and the archivist agree, access to a record may be given to a person in another form.

## **Part 4 State Archives**

### **Division 1 Archives**

*Clause 42* continues the position of the State Archivist and the office of the Queensland State Archives, which is made up of the archivist and staff of the archives. The State archivist and staff of the archives are appointed and employed under the *Public Sector Act 2022*.

*Clause 43* provides the archivist is to control the archives and repositories, subject to the direction of the Minister. The archivist and the staff of the archives are not subject to the direction of the Minister for decisions about the disposal of public records or when preparing the annual report required under clause 89 of the Bill.

The Minister can give a direction to the archivist or staff of the archives in writing. Any direction must not be inconsistent with the Act.

The archives can be part of a department to receive administrative support to carry out its functions and powers.

### **Division 2 Archivist's functions and powers**

*Clause 44* establishes the functions of the archivist including:

- (a) to develop and promote efficient and effective methods, procedures and systems for making, managing and accessing public records
- (b) to identify public records of permanent value and make decisions about their retention, whether or not the records are in the custody of the archives
- (c) to make decisions about the disposal of public records
- (d) to manage public records in the custody of the archives
- (e) to provide public access to public records in the custody of the archives
- (f) to conduct research and give advice, assistance and training about making and managing public records
- (g) to audit, monitor, investigate and report on compliance with this Act
- (h) to perform another function given to the archivist under this or another Act
- (i) to do anything else that—
  - (i) is incidental or complementary to another function; or
  - (ii) is likely to enhance the effective and efficient performance of another function.

*Clause 45* provides the authority for the archivist to:

- (1) The archivist has the power to—
  - (a) establish and manage an archives repository
  - (b) copy public records
  - (c) publish public records
  - (d) acquire public records by purchase, gift, bequest or loan
  - (e) authorise the disposal of particular public records or classes of public records.

This clause does not limit the archivist’s powers as part of the executive government of the State.

*Clause 46* gives the archivist the ability to issue mandatory standards about matters covered by the Bill, which public authorities must comply with. Standards will be approved by a regulation.

The archivist can also issue policies that a public authority must have regard to, and guidelines that public authorities may have regard to, in relation to matters regulated under this Act. For example, standards, policies and guidelines could cover matters such as storage, metadata, the disposal of paper records after digitisation, or managing records about vulnerable persons.

*Clause 47* allows the archivist to make an appraisal statement that identifies records to be retained in the archives. The appraisal statement identifies the characteristics considered for a record to be of permanent value.

*Clause 48* allows for the storage of permanent value public records outside of the archives. This strategy is referred to as a ‘distributed custody model’ and allows for the protection and access to public records not held by the archives.

Examples may include the archivist making an arrangement with a public authority to store digital records at its own premises or create its own archive so permanent public records can be stored in suitable conditions outside of the archives.

*Clause 49* provides for the delegation of the archivist's functions or powers to an appropriately qualified member of the staff of the archives or an officer or employee of a public authority.

### **Division 3 Public Records Review Committee**

#### **Subdivision 1 Establishment**

*Clause 50* requires the Minister to establish a Public Records Review Committee. The committee is made up of nine members representing local government, the judiciary, state government, and the records management profession.

One member is to be an Aboriginal person nominated by the Minister administering the *Aboriginal Cultural Heritage Act 2003* and one Torres Strait Islander person nominated by the Minister administering the *Torres Strait Islander Cultural Heritage Act 2003*.

Three other appropriately qualified members are to be nominated by the Minister.

The committee members are to be remunerated.

*Clause 51* outlines the functions of the Public Records Review Committee to advise the archivist and the Minister about issues relating to the administration or enforcement of the Bill, to decide matters under the Bill, to review decisions of the archivist not to authorise the disposal of public records, and to advise on the disposal of public records where the archives has control of the records under clause 17 or 18.

*Clause 52* establishes that the Minister must appoint a committee member as chairperson of the Public Records Review Committee.

*Clause 53* provides that the maximum term of office for a member of the Public Records Review Committee is three years as decided by the Minister and stated in the member's appointment letter.

*Clause 54* provides that Public Records Review Committee members and the chairperson can resign from their position by signed notice given to the Minister.

#### **Subdivision 2 Committee proceedings**

*Clause 55* gives the Public Records Review Committee the ability to decide when and where committee meetings will be held. The chairperson can call a meeting at any time and must call a committee meeting if asked by at least five members of the committee.

*Clause 56* provides for the conduct of Public Records Review Committee meetings. Unless required by a regulation, the committee can conduct meetings as it considers appropriate.

When present at committee meetings, the chairperson must preside over a meeting. When the chairperson is absent, another member of the committee must be selected by the members attending to chair the meeting.

The quorum for committee meetings is five members with questions decided by a majority of the votes of members present. If a vote is equal, the chairperson has the casting vote.

*Clause 57* allows for Public Records Review Committee meetings to be run using technology that enables remote participation.

*Clause 58* provides that minutes of the Public Records Review Committee proceedings must be kept.

*Clause 59* requires that Public Records Review Committee members cannot disclose deliberations of the committee. Proceedings and deliberations of the committee can be published.

*Clause 60* provides that the archivist may attend and take part in meetings of the Public Records Review Committee but cannot take part in a decision of the committee. The archivist cannot attend parts of the meeting where the committee is deciding a disagreement with or decision of the archivist.

### **Subdivision 3 Committee's review of archivist's decisions**

*Clause 61* outlines the process for conducting a review of disposal decisions made by the archivist. A public authority can apply in writing to the Public Records Review Committee for a review of a decision by the archivist to refuse to approve the disposal of public records.

The application must be submitted to the committee within 14 days of the notification of the archivist's decision or a longer period agreed by the committee. The committee must notify the archivist of the application, stating a reasonable period in which the archivist must provide reasons for the decision.

*Clause 62* requires the archivist to give written reasons to the Public Records Review Committee for refusing to authorise the disposal of public records within an agreed time period.

*Clause 63* empowers the Public Records Review Committee, following its review of a decision of the archivist, to confirm or amend the decision, or revoke the decision and substitute it with a new decision. The decision of the committee is taken to be the decision of the archivist and cannot be further reviewed by the committee.

### **Division 4 First Nations Advisory Group**

*Clause 64* requires the archivist to establish a First Nations Advisory Group to advise the archivist about public records relating to Aboriginal peoples and Torres Strait Islander peoples, and any other matter relating to the archivist's functions or powers.

*Clause 65* provides the membership of the First Nations Advisory Group is decided by the archivist and members must be Aboriginal persons or Torres Strait Islander persons. One of

the members of the advisory group must be a member appointed to the Public Records Review Committee.

The archivist decides the term of the membership, with conditions provided in the person's letter of appointment. Members of the advisory group can be paid remuneration and allowances as decided by the archivist.

*Clause 66* allows the First Nations Advisory Group and the archivist to decide how meetings and the business of the advisory group will be run.

## **Part 5 Monitoring and enforcement**

### **Division 1 General provisions about authorised officers**

*Clause 67* describes the subject and purpose of the part.

*Clause 68* establishes the functions of an authorised officer to investigate, monitor and enforce compliance with the Act, investigate or monitor whether an occasion has arisen for the exercise of powers under this Act, and facilitate the exercise of powers under this Act.

### **Division 2 Appointment of authorised officers**

*Clause 69* establishes the archivist as an authorised officer.

*Clause 70* provides the archivist the ability to appoint a member of the staff of the archives or another public sector employee under the *Public Sector Act 2022* as an authorised officer.

*Clause 71* outlines the conditions and limits on powers of authorised officers, other than the archivist. These conditions and limits are to be stated in the officer's letter of appointment, or in a signed notice given to the officer, or in a regulation.

*Clause 72* outlines when the period of appointment of an authorised officer (other than the archivist) ends.

*Clause 73* provides that an authorised officer, other than the archivist, can resign by giving a signed notice to the archivist. If holding office as an authorised officer is a condition of holding another office, the authorised officer cannot resign as an authorised officer without also resigning from the other office.

### **Division 3 Identity Cards**

*Clause 74* requires the archivist to issue identity cards to authorised officers. All identity cards must indicate that the person is an authorised officer, contain a recent photo of the authorised officer, a copy of the officer's signature, and an expiry date for the card.

*Clause 75* requires the production or display of an identity card by an authorised officer when exercising powers under the Bill.

*Clause 76* requires the authorised officer to return the identity card to the archivist within 21 days of ceasing duties as an authorised officer unless they have a reasonable excuse.

#### **Division 4 General powers**

*Clause 77* establishes the powers of an authorised officer under the Bill. An authorised officer can enter a public authority's premises, inspect public records in the custody of the public authority, and examine the public authority's procedures for making and managing its public records. Reasonable notice of the officer's intent to access the premises or public records must be given.

*Clause 78* requires an employee of a public authority to comply with an authorised officer's request for inspection. This includes answering questions relating to the making or managing of public records, producing a public record, giving access to a record or copy of a record, allowing the officer to examine any system used by the public authority for making or managing public records, or allowing the officer to take a copy, including photos or video, of a public record or system for making or managing public records.

An individual can refuse to answer a question or produce a record if it may incriminate an individual or expose them to a penalty for an offence under clauses 22 or 23 of the Bill relating to the damage or unlawful disposal of public records.

*Clause 79* establishes restrictions on the exercise of powers for particular premises. 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.

In relation to a Ministerial office of a Minister or Assistant Minister, access may be given only after giving the Minister or Assistant Minister reasonable notice of the intended exercise of power.

#### **Division 5 Specific powers**

*Clause 80* provides for the archivist to issue a public authority with a notice to report if the archivist believes it is necessary to audit or monitor compliance under the Bill. Under a notice to report, a public authority may be required to provide information about the public authority's practices, procedures or systems relating to the making or managing of public records, or information about public records in their custody. For example, if voluntary engagement by the public authority is not forthcoming or appropriate, the archivist could direct a public authority to provide information about suspected poor records management following a complaint.

A notice to report must include a reasonable period for the public authority to comply with the notice. The public authority must comply with the notice by the period stated in the notice, or a longer period agreed by the archivist.

*Clause 81* empowers the archivist to recover public records unlawfully in the custody of a person. The archivist is required to give notice to the 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 section 50 of the *Magistrates Act 1921* for an order to direct the recovery of the records.

*Clause 82* 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.

## **Division 6 Proceedings**

*Clause 83* establishes how proceedings for damage and disposal offences (clauses 22 and 23) are to be heard. Proceedings for damage and disposal offences may be tried and heard summarily before a Magistrate under the *Justices Act 1886*. Proceedings must start within the later of the following periods to end, either one year after the offence was allegedly committed; or 6 months after the offence comes to the complainant's knowledge, but within 3 years after the offence was allegedly committed.

## **Part 6 Miscellaneous**

*Clause 84* provides that a person must not be assaulted when performing a function or exercising a power under this Act.

*Clause 85* provides that a person (an officer) must not be obstructed when performing a function or exercising a power under this Act. If an officer is obstructed and the officer decides to proceed with the performance of a function or the exercise of a power, the officer must warn the person that it is an offence to obstruct the officer unless the person has a reasonable excuse; and the officer considers the person's conduct to be an obstruction.

*Clause 86* provides that where another Act or regulation restricts disclosure of information the archivist or staff of the archives must not disclose or give access to that information, other than to the extent authorised under this Act or necessary to perform the function.

*Clause 87* provides that where access to public records is given in line with the Bill, protection against actions for defamation or breach of confidence is given to the State and officials, including the author of a public record, or other person who lawfully gave the record to a public authority or the archives.

*Clause 88* aligns this Act with the *Evidence Act 1977* and provides for the conditions under which a public record, or information contained in a public record, is admissible as evidence in legal proceedings. To be accepted as evidence, a public record must be produced from proper custody; and the public record is in the custody of the archives. Proper custody includes production of the public record or a copy or extract from the archives. Certification as to the origin, history, nature or contents of a public record in the archives custody can be given by the archivist or authorised officer, and is admissible as evidence in a legal proceeding.



*Clause 89* requires the archivist to report annually to the Minister on the administration of the Act. The annual report must be produced within four months of the end of the financial year and the Minister must table a copy of the report in the Legislative Assembly within 14 sitting days after they receive the report.

The annual report must include details about the following:

- any direction given by the Minister under clause 43(3); and
- any notice to report that was given by the archivist under clause 80; and
- any failure by a public authority to comply with the Act and any measures that were taken or recommended to prevent or reduce further noncompliance with the Act; and
- the number of times, if any, that access to a restricted record under part 3, division 3 was refused by a public authority.

*Clause 90* states the Governor in Council may make regulations under this legislation.

## **Part 7 Repeal**

*Clause 91* states the *Public Records Act 2002*, No. 11 is repealed.

## **Part 8 Transitional provisions**

### **Division 1 Preliminary**

*Clause 92* provides the definitions for this part of the Bill in relation to the use of *existing public record* and *repealed Act*.

### **Division 2 Responsible public authorities and existing public authorities**

*Clause 93* specifies that any relevant or responsible public authority prescribed before commencement of this Bill continues to be taken to be the responsible public authority for the existing period. It also provides that the entity is taken to be the responsible public authority under this Act for the existing public record until the earliest of the following (a) a function to which the record relates is transferred to another public authority; (b) the entity ceases to exist; or (c) a regulation prescribes a different entity to be given control of the record.

*Clause 94* provides that the clause applies in relation to public records given by the Health department to the archives before 1 July 2012. Despite clause 16, the department remains the public authority with control of these public records regardless of if the records related to a function or power transferred to a Hospital or Health Service.

*Clause 95* provides that any existing public records before commencement remain public records after commencement. It also provides that restricted access periods that applied prior to commencement of the Bill continue in existence. These former restricted access periods are taken to be the restricted access period under the Bill and may be amended, reviewed, disputed or otherwise managed under the Bill.

### **Division 3 Officials**

*Clause 96* provides for the person who was the archivist appointed in accordance with the *Public Records Act 2002* immediately prior to the commencement of the legislation to continue in that position under this Bill.

*Clause 97* provides that persons appointed as a member of the Public Records Review Committee in accordance with the *Public Records Act 2002* continue their appointment, as set out in the member's instrument of appointment.

*Clause 98* provides that a person who, immediately before the commencement of this Bill, held an appointment as an authorised officer under the *Public Records Act 2002*, continue their appointment as an authorised officer.

### **Division 4 Continued applications and proceedings**

*Clause 99* provides that where any existing access and review applications were made but not decided before the commencement of this Act, the provisions under section 17 or 39 of the *Public Records Act 2002* continue to apply.

*Clause 100* provides that if a recovery notice was given by the archivist under section 49(2) of the *Public Records Act 2002*, and this notice had not been complied with upon commencement of this Act, the provisions of the *Public Records Act 2002* continue to apply in relation to the notice, and any proceeding started, or entitled to be started, by the archivist to enforce compliance with the notice.

### **Division 5 Miscellaneous**

*Clause 101* provides that the archivist is not required to list public authorities that have ceased to exist (as required by clause 17(4) of this Bill) prior to the commencement of this Bill.

*Clause 102* identifies that an authority to dispose of a public record given by the archivist under the repealed Act continues.

*Clause 103* provides that an agreement made under the *Public Records Act 2002* relating to an agreement made under section 50 (reciprocal agreements) continue under section 82 of this Bill.

*Clause 104* identifies that reference in a document to the repealed Act, may if context permits, be taken to be a reference to the new Act.

### **Part 9 Amendment of this Act**

*Clause 105* provides for this part amending the Act.

*Clause 106* provides for the amendment of the long title of the Act.

## **Part 10 Amendment legislation**

*Clause 107* identifies that Schedules 4 and 5 amends the legislation it mentions.

### **Schedule 1 Public record principles**

#### **Part 1 Public records relating to Aboriginal peoples and Torres Strait Islander peoples**

The principles listed in *Schedule 1 Part 1* reflect contemporary views and recognition of the importance of public records relating to Aboriginal peoples and Torres Strait Islander peoples.

#### **Part 2 Public records generally**

The principles listed in *Schedule 1 Part 2* reflects the importance of public records to the administration of government business, and the value public records provide to the community.

### **Schedule 2 Restricted access periods**

Part 1 of Schedule 2 defines specific types of restricted records. Part 2 of Schedule 2 defines the minimum period that specific types of regulated records are closed from public access. Part 3 of Schedule 2 defines the maximum period that specific types of restricted information can be closed from public access.

### **Schedule 3 Dictionary**

Schedule 3 is the dictionary and sets out the definition for words used in the Bill.

### **Schedule 4 Amendment of legislation referring to Public Records Act 2002**

Schedule 4 provides for consequential amendments to update references to the *Public Records Act 2002* within various legislation.

### **Schedule 5 Other amendments**

Schedule 5 provides for consequential amendments to update other references to the *Public Records Act 2002* within other legislation.