



# Public Records Act 2002

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Queensland

# Public Records Act 2002

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# Public Records Act 2002

**An Act about making, managing, keeping and preserving public records in Queensland, and for other purposes**

## Part 1 Preliminary

### 1 Short title

This Act may be cited as the *Public Records Act 2002*.

### 2 Commencement

- (1) Part 7 of this Act commences on assent.
- (2) The remaining provisions commence on a day to be fixed by proclamation.

### 3 Purposes

The main purposes of this Act are to ensure—

- (a) the public records of Queensland are made, managed, kept and, if appropriate, preserved in a useable form for the benefit of present and future generations; and
- (b) public access to records under this Act is consistent with the principles of the *Right to Information Act 2009* and the *Information Privacy Act 2009*.

### 4 Definitions

The dictionary in schedule 2 defines particular words used in this Act.

## **5 Act binds the State**

This Act binds the State.

# **Part 2 Public records**

## **Division 1 Preliminary**

### **6 What is a *public record***

(1) A *public record* is any of the following records made before or after the commencement of this Act—

- (a) a record made for use by, or a purpose of, a public authority, other than a Minister or Assistant Minister;
- (b) a record received or kept by a public authority, other than a Minister or Assistant Minister, in the exercise of its statutory, administrative or other public responsibilities or for a related purpose;
- (c) a Ministerial record;
- (d) a record of an Assistant Minister.

*Editor's note—*

See also section 52 (Application of Act to certain of Governor's records).

(2) A public record includes—

- (a) a copy of a public record; and
- (b) a part of a public record, or a copy of a part of a public record.



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## **Division 2                      Making, managing, keeping and preserving public records**

### **7                      Making and keeping of public records**

- (1) A public authority must—
  - (a) make and keep full and accurate records of its activities; and
  - (b) have regard to any relevant policy, standards and guidelines made by the archivist about the making and keeping of public records.
- (2) The executive officer of a public authority must ensure the public authority complies with subsection (1).
- (3) In this section—

*executive officer*, of a public authority, means—

- (a) if the public authority is a department—the chief executive of the department; or
- (b) if the public authority is a local government—the chief executive officer of the local government; or
- (c) if the public authority is not an authority mentioned in paragraphs (a) and (b)—a person (whatever the person's position is called) who is—
  - (i) a member of the governing body of the public authority; or
  - (ii) concerned with, or takes part in, the public authority's management.

### **8                      Custody and preservation of public records**

- (1) A public authority is responsible for ensuring the safe custody and preservation of records in its possession.
- (2) Without limiting subsection (1), an arrangement between a public authority and another person for the person to have custody of a record of the public authority must include

arrangements for the safe keeping, proper preservation and return of the record.

- (3) If a public authority ceases to exist, the records of the public authority must be—
  - (a) if the functions of the public authority are to be carried out by another public authority—given to the other public authority; or
  - (b) if the functions of the public authority are not to be carried out by another public authority—given to the public authority that is the relevant public authority under a regulation; or
  - (c) in any other case—given to the archives or disposed of in accordance with a decision of the archivist.
- (4) If a function or power of a public authority (the *original public authority*) is transferred to another public authority, the records of the original public authority relating to the function or power must be given to the other public authority.

## 9 Ownership of public records

- (1) If a public record is a record of the State or a State instrumentality, ownership of the record vests in the State.
- (2) Ownership of public records of another public authority vests in—
  - (a) if the records are in the authority's possession—the authority; or
  - (b) in any other case—the State.
- (3) In this section—

*State instrumentality* means a public authority other than a local government.

## 10 Public records more than 25 years old

- (1) If a public record in a public authority's possession is more than 25 years old, the public authority—

- (a) must give written notice of the record's existence to the archivist; and
  - (b) if the public authority no longer needs the record to be readily available in its own custody, may, if authorised by the archivist, give the record to the archives.
- (2) If the record is not given to the archives under subsection (1)(b), the archivist may take possession, or a copy, of the record or give directions about the storage of the record.
- (3) A public record in the custody of the archives that is more than 25 years old may be removed from the archives only if the archivist is satisfied—
- (a) the record is reasonably needed by the public authority; or
  - (b) there is another adequate reason for allowing it to be removed.
- (4) This section does not prevent the disposal of a public record by, or under an authority given by, the archivist.

## **11 Transfer of other public records to archives**

- (1) This section applies to public records that are 25 years old or less.
- (2) If a public authority no longer needs a public record to be readily available in its own custody, it may, if authorised by the archivist, give the record to the archives.
- (3) The archivist must ensure all public records given to the archives by a public authority are made available as reasonably needed by the public authority.

## **12 Special protection of public records over 30 years old**

- (1) A person must not damage a public record more than 30 years old, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (2) This section applies to a public record whether or not it is in the custody of the archives.
- (3) This section does not apply to a person who is a member of the staff of the archives to the extent the person necessarily damages a public record in carrying out an accepted archival or conservation practice in relation to the record.
- (4) In subsection (1)—  
*damage*, a public record, means—
  - (a) change the record in a way that causes, or is likely to cause, damage to the record; or
  - (b) neglect the record in a way that causes, or is likely to cause, damage to the record; or
  - (c) otherwise damage the record.

### **13 Disposal of public records**

A person must not dispose of a public record unless the record is disposed of under—

- (a) an authority given by the archivist; or
- (b) other legal authority, justification or excuse.

Maximum penalty—165 penalty units.

### **14 Public authority must ensure particular records remain accessible**

- (1) This section applies if a public record is an article or material from which information can be produced or made available only with the use of particular equipment or information technology.
- (2) The public authority controlling the record must take all reasonable action to ensure the information remains able to be produced or made available.

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## Division 3                      Access to public records

### 15            **Meaning of *responsible public authority***

The *responsible public authority*, for a public record, is—

- (a) the public authority that gave the public record to the archives; or
- (b) if the public authority that gave the record to the archives no longer exists, but there is another public authority carrying out the functions of the former authority—the other authority; or
- (c) if the record relates to a function or power of a public authority that has been transferred to another public authority—the other authority; or
- (d) in any other case—the public authority prescribed under a regulation for this definition.

### 16            **Meaning of *restricted access period***

- (1) Subject to subsection (2), the *restricted access period* for the following records starts on the day the record is made and ends 30 years after the day of the last action on the record—
  - (a) a public record classified by a public authority as containing information that potentially is exempt information under the RTI Act, schedule 3, section 3;
  - (b) a Ministerial record;
  - (c) a record of an Assistant Minister.
- (1A) Subject to subsection (2), the *restricted access period* for a public record classified by a public authority as containing information that potentially is exempt information under the RTI Act, schedule 3, section 2 starts on the day the record is made and ends 20 years after the day of the last action on the record.
- (2) If a public record mentioned in subsection (1) or (1A) is also classified by the responsible public authority for the record as

containing information about the personal affairs of an individual, whether living or dead, the ***restricted access period*** for the record is the longer of the following periods—

- (a) the period starting on the day the record is made and ending—
  - (i) for a public record mentioned in subsection (1)—30 years after the day of the last action on the record; or
  - (ii) for a public record mentioned in subsection (1A)—20 years after the day of the last action on the record;
- (b) the period starting on the day the record is made and ending on—
  - (i) if subparagraph (ii) does not apply, the day stated in a written notice given to the archivist by the responsible public authority for the record when the record is given to the archives; or
  - (ii) the day stated in the latest written notice given, under section 19, to the archivist by the responsible public authority.
- (3) The ***restricted access period*** for any other public record starts on the day the record is made and ends on—
  - (a) if paragraph (b) does not apply, the day stated in a written notice given to the archivist by the responsible public authority for the record when the record is given to the archives; or
  - (b) the day stated in the latest written notice given, under section 19, to the archivist by the responsible public authority.
- (4) The day stated in a notice mentioned in subsection (2) or (3) must not be later than—
  - (a) for a record classified by a public authority as containing information about the personal affairs of an individual, whether living or dead—the last day of the

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year that is not more than 100 years after the day of the last action on the record; or

- (b) for a record classified by a public authority as containing information that potentially is exempt information under the RTI Act, schedule 3, section 7, 8, 9 or 10—the last day of the year that is not more than 65 years after the day of the last action on the record; or
  - (c) for another public record—the last day of the year that is not more than 30 years after the day of the last action on the record.
- (5) Subsections (1), (1A), (2) and (4)(a) and (b) apply as if the public authority in all cases were an agency under the RTI Act.

## **17 Application for access to public records**

- (1) A person may apply to the archivist for access to a public record in the custody of the archives.
- (2) The application must be accompanied by the fee prescribed under a regulation.
- (3) For subsection (1), a public record is taken to be in the custody of the archives if the record is the subject of a direction by the archivist under section 10(2).

## **18 Public access to public records**

- (1) If the restricted access period for a public record has ended, the archivist must allow the applicant access to the record.
- (2) However, if the restricted access period has not ended, the applicant may have access to the public record only if—
  - (a) access is given under the IP Act or RTI Act; or

*Note—*

The IP Act, chapter 3 and the RTI Act, chapter 3, set out formal procedures for being given access to documents and about reviewing decisions about access under those Acts.

- (b) the responsible public authority gives the archivist a written notice stating—
  - (i) the public authority has classified the record as a record to which unrestricted access is allowed; or
  - (ii) access to the record may be given on conditions stated in the notice.
- (3) Also, the archivist may refuse to allow access to a public record if—
  - (a) giving access to the record would be detrimental to its preservation; or
  - (b) the record is reasonably available for purchase by members of the community under arrangements made by a public authority; or
  - (c) information in the record can be produced or made available only with the use of particular equipment or information technology and the archives does not possess, and can not reasonably obtain access to, the equipment or information technology; or
  - (d) giving access to the record is restricted under a regulation under subsection (4) or (5).
- (4) Access to a public record may be restricted under a regulation if—
  - (a) the record is more than 100 years old; and
  - (b) the record contains information concerning the personal affairs of a person; and
  - (c) access to the record would not, on balance, be in the public interest.
- (5) Access to a public record may also be restricted under a regulation if—
  - (a) the record is classified by the responsible public authority for the record as containing matter that is information that potentially is exempt information under the RTI Act, schedule 3, section 9 or 10(1)(h), (i) or (j)



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because its disclosure could reasonably be expected to—

- (i) endanger the security of a building, structure or vehicle; or
  - (ii) prejudice a system or procedure for the protection of persons, property or the environment; or
  - (iii) facilitate a person's escape from lawful custody; or
  - (iv) damage the security of the Commonwealth or a State; and
- (b) access to the record would not, on balance, be in the public interest.
- (6) A restriction under a regulation may include the imposition of a condition on access.

## **19 Reviewing and changing responsible public authority's notice about access**

- (1) This section applies to a notice (a *restricted access notice*) given by a public authority under section 16(3)(a) about a public record mentioned in section 16(4).
- (2) The responsible public authority for the record may, by written notice given to the archivist, change the restricted access notice.
- (3) Also, the archivist may ask the responsible public authority to review or, by written notice given to the archivist, change the restricted access notice.
- (4) If a dispute arises between the archivist and the responsible public authority about the restricted access notice, the archivist or the public authority may refer the dispute to the committee for resolution.
- (5) The archivist and the public authority must comply with the committee's decision on the dispute.

## **20 Forms of access**

- (1) Access to a public record may be given to the applicant—
  - (a) by allowing the applicant a reasonable opportunity to inspect the record; or
  - (b) by giving the applicant a copy of the record; or
  - (c) if the record is one to which subsection (2), (3) or (4) applies—by the form of access stated in the subsection.
- (2) Access may be given by making arrangements for the applicant to hear the sounds or view the images or writings if the record is something from which sounds or visual images or writings are capable of being reproduced.
- (3) Access may be given by giving the applicant a written transcript of the words recorded or contained in the record if the record is one—
  - (a) by which words are recorded in a way in which they are capable of being reproduced in the form of sound; or
  - (b) in which words are contained in the form of shorthand writing or in a codified form.
- (4) Access may be given by giving the applicant a written document containing the information if—
  - (a) the record is not a written record; and
  - (b) the archivist or the responsible public authority could create a written document containing the information in the record using equipment that is usually available to it for retrieving or collating electronically stored information.
- (5) If the applicant asks for access in a particular and reasonably practical way, access must be given in that way.
- (6) However, access may be given in another way decided by the archivist if giving access to the record in the way requested by the applicant—
  - (a) would interfere unreasonably with the operations of the archives or the responsible public authority; or

- (b) would be detrimental to the preservation of the record;  
or
  - (c) would be inappropriate, having regard to the physical nature of the record; or
  - (d) would involve an infringement of copyright of a person other than the State.
- (7) The archivist may—
- (a) impose reasonable conditions on access to a public record; and
  - (b) if access is given by way of a copy or transcript of a public record—impose a reasonable charge for the copy or transcript.
- (8) This section does not prevent the archivist giving access to a public record in another form agreed to by the applicant.

## **Part 3                      State Archivist and Queensland State Archives**

### **Division 1                General**

#### **21            State Archivist and Queensland State Archives**

- (1) There is to be a State Archivist.
- (2) An office called the Queensland State Archives is established.
- (3) The archives consists of the archivist and the staff of the archives.

#### **22            Appointment of archivist and staff**

The archivist and staff of the archives are to be appointed and employed under the *Public Sector Act 2022*.

## **23 Control of the archives**

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

## **Division 2 Functions and powers**

### **24 Functions of archivist**

The archivist has the following functions—

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

### **25 Powers of archivist**

- (1) The powers of the archivist include the following—

- (a) to establish and manage repositories and other facilities to store, preserve, exhibit and make available for use public records and other materials;
  - (b) to copy public records and other materials;
  - (c) to publish public records and other materials;
  - (d) to acquire records by purchase, gift, bequest or loan;
  - (e) to authorise the disposal of particular public records or classes of public records;
  - (f) to make policy, standards and guidelines about the making, keeping, preserving, managing and disposing of public records.
- (2) This section does not limit the archivist's powers as a part of the executive government of the State.

## **26 Archivist may authorise disposal of public records**

- (1) The archivist may authorise the disposal of particular public records or classes of public records if the public authority that has control of the records has applied for, or consented to, the disposal of the records.
- (2) In authorising the disposal of the records, the archivist must have regard to—
  - (a) any relevant professional standards; and
  - (b) the purposes of this Act.
- (3) To remove any doubt, it is declared that the registrar or other officer of a court with responsibility for official records of the court may apply for or consent to the disposal of the court's records.

## **27 Independence in relation to disposal decisions**

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

- (2) Subsection (1) has effect despite section 23.

## **28 Arrangements for storage of records outside archives**

The archivist may make arrangements with public authorities and other entities about the storage of public records in a place other than the archives.

*Examples of arrangements the archivist may make—*

- 1 The archivist may make an arrangement with a public authority that the authority will store its electronic records at its premises rather than the archives.
- 2 The archivist may make an arrangement with a public authority that creates its own permanent archives that the authority may store its public records in the authority's archives rather than the archives.

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

### **Subdivision 1 Establishment**

#### **29 Public Records Review Committee**

- (1) The Minister must establish a Public Records Review Committee.
- (2) The committee has the following functions—
  - (a) to advise the archivist and the Minister about issues affecting the administration or enforcement of this Act;
  - (b) to decide disputes referred to the committee under section 19(4);
  - (c) to review decisions of the archivist not to authorise the disposal of particular public records or classes of public records.
- (3) The committee is to consist of the following members—
  - (a) 1 person nominated by the Minister who administers the *Local Government Act 2009*;

- (b) 1 person nominated by the Chief Justice;
  - (c) 1 person nominated by the Minister who administers the *Public Sector Act 2022*;
  - (d) 1 person, nominated by the Minister, who has knowledge of, and experience in, the management of information and records;
  - (e) 5 persons who have knowledge of, and experience in, any area considered by the Minister to be relevant to the functions of the committee.
- (4) A committee member may be paid the remuneration and allowances decided by the Governor in Council.

### **30 Chairperson**

The committee's chairperson is the committee member appointed by the Minister as chairperson.

### **31 Term of office for committee members**

A committee member is appointed for the term, of not more than 3 years, decided by the Minister and stated in the member's instrument of appointment.

### **32 Resignation**

- (1) A committee member may resign from office as a member by signed notice of resignation given to the Minister.
- (2) The committee's chairperson may resign from office as chairperson by signed notice of resignation given to the Minister.

## **Subdivision 2      Committee proceedings**

### **33      Time and place of meetings**

- (1) Meetings of the committee are to be held at the times and places it decides.
- (2) The committee's chairperson—
  - (a) may call a committee meeting at any time; and
  - (b) must call a meeting if asked by at least 5 members of the committee.

### **34      Conduct of proceedings**

- (1) The committee's chairperson must preside at all meetings at which the chairperson is present.
- (2) If the chairperson is absent, the committee member chosen by the members present must preside.
- (3) At a committee meeting—
  - (a) a quorum is 5 members; and
  - (b) a question is decided by a majority of the votes of the members present and voting; and
  - (c) each member present has a vote on each question to be decided and, if the votes are equal, the chairperson has a casting vote.
- (4) Unless otherwise prescribed under a regulation, the committee may conduct its proceedings, including its meetings, as it considers appropriate.

### **35      Participation in meetings by telephone etc.**

- (1) The committee may hold meetings, or allow members to take part in meetings, by using any technology allowing reasonably contemporaneous and continuous communication between members taking part in the meeting.



- (2) A member who takes part in a meeting under subsection (1) is taken to be present at the meeting.

### **36 Minutes**

The committee must keep minutes of its proceedings.

### **37 Committee member's duty about committee's deliberations**

- (1) A committee member has a duty not to publicly disclose any part of the committee's deliberations.
- (2) Subsection (1) does not prevent the committee publishing its decisions.

### **38 Archivist may attend committee meetings**

- (1) Subject to subsection (2), the archivist may attend and take part in a committee meeting but must not take part in a decision of the committee.
- (2) The archivist must not be present during the part of a committee meeting at which the committee is deciding—
  - (a) a dispute referred to the committee under section 19(4);  
or
  - (b) an application made to the committee under section 39.

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

### **39 Application for review of archivist's decision about disposal**

- (1) A public authority may make written application to the committee for a review of a decision made by the archivist refusing to authorise the disposal of particular public records or classes of public records.

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- (2) The application for review must be made to the committee within 14 days after the public authority is notified of the archivist's decision or, if the committee allows a further period in which to make the application, the further period.
- (3) On receiving the application, the committee must give written notice of it to the archivist.

#### **40 Archivist to provide reasons**

Within the period stated in the committee's notice, the archivist must give the committee written reasons for refusing to authorise the disposal of the particular public records or classes of public records.

#### **41 Decision by committee**

- (1) After reviewing the archivist's decision, the committee may—
  - (a) confirm or amend the decision; or
  - (b) revoke the decision and substitute a new decision.
- (2) The committee's decision is taken to be a decision of the archivist.
- (3) However, a decision mentioned in subsection (2) can not be reviewed under section 39.

### **Division 4 Miscellaneous**

#### **42 Delegation**

- (1) The archivist may delegate the archivist's powers under this Act to—
  - (a) an appropriately qualified member of the staff of the archives; or
  - (b) an appropriately qualified officer or employee of a public authority.

(2) In subsection (1)—

*appropriately qualified*, for a member of the staff of the archives or an officer or employee of a public authority, includes having the qualifications, experience or standing appropriate to exercise the power.

*Example of standing—*

the person's classification level in the archives or the public authority

## **Part 4 Powers of enforcement**

### **Division 1 Authorised officers**

#### **43 Appointment of authorised officer**

The archivist may appoint a member of the staff of the archives as an authorised officer.

#### **44 Identity card**

- (1) The archivist must give each authorised officer an identity card and may issue an identity card to himself or herself.
- (2) The identity card must—
  - (a) contain a recent photograph of the authorised officer; and
  - (b) be signed by the officer; and
  - (c) identify the person as an authorised officer for this Act; and
  - (d) include an expiry date.
- (3) A person who ceases to be an authorised officer must return the person's identity card to the archivist as soon as practicable (but within 21 days) after the person ceases to be an authorised officer, unless the person has a reasonable excuse.

Maximum penalty for subsection (3)—10 penalty units.

#### **45 Production or display of authorised officer's identity card**

- (1) An authorised officer may exercise a power in relation to someone else only if—
  - (a) the authorised officer first produces his or her identity card for the person's inspection; or
  - (b) the authorised officer has the officer's identity card displayed so it is clearly visible to the other person.
- (2) However, if for any reason it is not practicable to comply with subsection (1) before exercising the power, the authorised officer must produce the identity card for inspection by the person as soon as it is practicable.

## **Division 2 General powers**

#### **46 Power of entry and inspection**

- (1) For the administration and enforcement of this Act, an authorised officer is entitled to full and free access, at all reasonable times after giving the public authority reasonable notice of the intended access, to all public records in a public authority's possession.
- (2) Without limiting subsection (1), an authorised officer may—
  - (a) enter a public authority's premises; and
  - (b) examine the public authority's procedures for the making, management, keeping and preservation of its public records; and
  - (c) examine the public authority's records.

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## 47 Public authority to comply with request

- (1) An officer or employee of a public authority who is responsible for the management of the authority's records must, if asked by an authorised officer—
  - (a) produce the authority's records, or a particular type or sample of records, for the officer's inspection; and
  - (b) give the officer access to the authority's records, or a particular type or sample of records in the reasonable way requested by the officer; and
  - (c) allow the officer to examine the authority's systems for making, keeping and preserving records.
- (2) However, an authorised officer may exercise powers under this part in relation to—
  - (a) the Governor's official residence or a court only by agreement with the Governor's secretary or the registrar or proper officer of the court; or
  - (b) a Ministerial office only after giving the Minister reasonable notice of the intended exercise of the powers.
- (3) A person mentioned in subsection (2)(a) or (b) must not unreasonably withhold agreement.
- (4) In this section—

*Ministerial office* means an office, other than an office that is part of the Minister's residence, normally used by the Minister in administering the Minister's portfolio.

## 48 Obstruction of authorised officer

A person must not obstruct an authorised officer in the exercise of a power under this part, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

## Division 3                      Specific powers

### 49            Recovery of public records

- (1) This section applies if the archivist believes, on reasonable grounds, that a person is in unlawful possession of public records, including records to which an agreement under section 50 applies.
- (2) The archivist may, by written notice given to the person, require the person to give the records to the archivist or someone else stated in the notice within the reasonable time stated in the notice.
- (3) The person must comply with the notice, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

- (4) Also, if the person does not comply with the notice, the archivist may apply to a Magistrates Court for an order directing the person to comply with the notice.
- (5) If the Magistrates Court is satisfied the person is in unlawful possession of public records, the court may order the person to give the records to the archivist.
- (6) The order is declared to be an order of the court for the *Magistrates Courts Act 1921*, section 50.

### 50            Reciprocal agreements

- (1) The archivist may enter into an agreement with an entity (the ***reciprocating entity***) with corresponding functions under a law of another State or the Commonwealth (the ***reciprocating jurisdiction***).
- (2) The agreement may provide for—
  - (a) the archivist to take action in Queensland to recover public records of the reciprocating jurisdiction and give them to the reciprocating entity; and

- (b) the reciprocating entity to take action in the reciprocating jurisdiction to recover public records of Queensland and give them to the archives.

## Part 5 Miscellaneous

### 51 Secrecy provisions in other laws

- (1) If another Act prohibits the disclosure of a matter contained in a public record or restricts access to a public record, the archivist and the staff of the archives must not disclose a matter in the public record or otherwise give access to the record, other than to the extent necessary to perform their official duties.
- (2) However, subsection (1) does not apply to a public record, or a matter contained in a public record, if—
  - (a) the restricted access period for the record has ended under this Act or access to the record is allowed under section 18(2); and
  - (b) access to the record is not restricted under a regulation under section 18(4) or (5).
- (3) For subsection (1)—  
*official duties*, of the archivist and the staff of the archives, do not include allowing access to public records under section 18.

### 52 Application of Act to certain of Governor's records

- (1) The following are not public records—
  - (a) records that are correspondence between the Governor and the Sovereign;
  - (b) records that are correspondence between the Governor and the Governor-General;

- (c) records that are correspondence between the Governor and the Governor of another State.
- (2) However, the Governor may agree that a particular record of a type mentioned in subsection (1) is a public record.

### **53 Protection against actions for defamation or breach of confidence**

- (1) This section applies if access is given to a public record under this Act.
- (2) No action for defamation or breach of confidence lies against—
  - (a) the State or an official because of the giving of the access; or
  - (b) the author of the public record or another person because the author or other person supplied the record to a public authority or the archives under a requirement of this Act.

### **54 Protection from civil liability**

- (1) An official does not incur civil liability for an act done, or omission made, honestly and without negligence under this Act.
- (2) If subsection (1) prevents a civil liability attaching to the official, the liability attaches instead to the State.

### **55 Evidence in legal proceedings**

- (1) This section applies if—
  - (a) a public record, or information in a public record, is admissible in evidence in a legal proceeding on its production from proper custody; and
  - (b) the public record is in the custody of the archives.



- (2) If the archives produces the public record, or a copy of or extract from the public record, it is taken to have been produced from proper custody.
- (3) The archivist, or a member of the staff of the archives authorised by the archivist, may give a certificate about the origin, history, nature or contents of a public record in the custody of the archives.
- (4) The certificate is admissible in evidence in a legal proceeding as evidence of the matters stated in the certificate.

## **56 Annual report**

- (1) Within 4 months after the end of each financial year, the archivist must give to the Minister a report on the administration of this Act during the year.
- (2) Without limiting subsection (1), the report may include details of the extent to which public authorities are complying with the Act, including, for example, instances of noncompliance, if any, and measures taken, or the archivist recommends be taken, to prevent, or reduce, noncompliance with the Act.
- (3) The Minister must table a copy of the report in the Legislative Assembly within 14 sitting days after the Minister receives it.

## **57 Regulation-making power**

The Governor in Council may make regulations under this Act.

## **58 Libraries and Archives Act 1988 references**

In an Act or document, a reference (whether express or implied) to the *Libraries and Archives Act 1988* or a provision of the Act that was repealed by, and remade as a provision of, this Act may, if the context permits, be taken to be a reference to this Act or the provision of this Act, as the case requires.

## Part 6 Transitional provisions

### Division 1 Transitional provisions for Public Records Act 2002

#### 59 State Archivist to continue in position

- (1) This section applies to a person who, immediately before the commencement of this part, was the State Archivist under the *Libraries and Archives Act 1988*.
- (2) On the commencement, the person is taken to be the archivist under this Act.

#### 60 Notice for recovery of public records

A notice given to a person under the *Libraries and Archives Act 1988*, section 62(1), and in force immediately before the commencement of this part, is taken to be a notice given under section 49.

#### 61 Existing notices about access to public records

- (1) This section applies to a notice (the *original notice*) given by a public authority under the repealed *Libraries Act 1943*, or the *Libraries and Archives Regulation 1990*, section 23, that—
  - (a) imposes prohibitions, conditions or restrictions on access to, and inspection of, the public authority's public records given to the archives; and
  - (b) is in force immediately before the commencement of this section.
- (2) The original notice is taken to be a notice given, under a following provision, to the archivist by the responsible public authority for the record—

- (a) if the notice prohibits or restricts access to the record for a period—section 16; or
  - (b) if the notice imposes conditions on access to the record—section 18(2)(b)(ii).
- (3) If the period stated in an original notice mentioned in subsection (2)(a) is not longer than the restricted access period for the record, the period stated applies, unless changed under section 18 or 19, as if it were the restricted access period.
  - (4) If the period stated in an original notice mentioned in subsection (2)(a) is longer than the restricted access period for the record, the period stated applies for 1 year after the commencement and unless changed under section 18 or 19 as if it were the restricted access period.
  - (5) If subsection (4) applies, the responsible public authority for the record must, within 1 year after the commencement, give the archivist a notice under section 16 or 18(2)(b) for the record.
  - (6) For a notice mentioned in subsection (5) and given under section 16, the record for which the notice is given is taken to have been given to the archives when the notice is given to the archivist.
  - (7) On the giving of a notice mentioned in subsection (5) for a record, the original notice mentioned in subsection (4) for the record ceases to have effect.

## **Division 2                      Transitional provisions for Information Privacy Act 2009 and Right to Information Act 2009**

### **62            Omitted references to Freedom of Information Act 1992**

- (1) This section applies to a provision (the *relevant provision*) of this Act if—

- (a) immediately before the commencement of this section, the relevant provision included a reference (the *FOI reference*) to a particular provision of the *Freedom of Information Act 1992* or to that Act generally; and
  - (b) on the commencement of this section, the relevant provision was amended to omit the FOI reference and to replace the FOI reference with a reference to—
    - (i) a particular provision of the RTI Act; or
    - (ii) information about the personal affairs of an individual, whether living or dead; or
    - (iii) the RTI Act generally; or
    - (iv) the IP Act and the RTI Act generally.
- (2) In relation to anything done or taking effect under the relevant provision before the commencement of this section, the relevant provision, as in force immediately before the commencement of this section, continues to have effect after the commencement as if—
- (a) the relevant provision still included the FOI reference; and
  - (b) the provision had not otherwise been amended; and
  - (c) the *Freedom of Information Act 1992* had not been repealed.

*Example—*

A restricted access period established for a record before the commencement of this section continues to be the restricted access period for the record after the commencement of this section.

## **62A Establishing restricted access period for record made before commencement**

If a public record was made before the commencement of this section, but its restricted access period was not established under section 16 before the commencement, its restricted access period must be established as if the IP Act and RTI Act had not been enacted.

*Example—*

The restricted access period for a record containing potentially exempt information under the RTI Act, schedule 3, section 2 (Cabinet information brought into existence on or after commencement) will be 30 years if the record was made before this section commenced.

## **Division 3                      Transitional provisions for Hospital and Health Boards Act 2011**

### **62B      Definitions**

In this division—

*commencement* means the commencement of this division.

*department* means the department in which the *Hospital and Health Boards Act 2011* is administered.

*Hospital and Health Service* see the *Hospital and Health Boards Act 2011*, schedule 2.

### **62C      Responsible public authority for public record**

- (1) Subsection (2) applies to a public record given by the department to the archives before the commencement.
- (2) Despite section 15, the department remains the responsible public authority for the record even if the record relates to a function or power transferred to a Hospital and Health Service.

## **Part 7                              Validation provision**

### **63              Validation of certain actions**

- (1) This section applies to an act done before the commencement of this section by a person acting, or purporting to act, as the State Archivist under the *Libraries and Archives Act 1988*.

- (2) The act is taken to have been, and always to have been, as valid as it would have been if it were an act done by the State Archivist under that Act.

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## Schedule 2 Dictionary

## section 4

**archives** means—

- (a) the Queensland State Archives established under section 21(2); or
- (b) a repository or facility mentioned in section 25(1)(a).

**archivist** means the State Archivist established under section 21(1).

**Assistant Minister** means a member of the Legislative Assembly appointed as an Assistant Minister under the *Constitution of Queensland 2001*, section 24.

**authorised officer** means—

- (a) the archivist; or
- (b) a person who is appointed under section 43 as an authorised officer.

**committee** means the Public Records Review Committee established under section 29(1).

**court** includes—

- (a) a court of record; and
- (b) any other entity established by an Act as a court of record.

**disposal**, of a record, includes—

- (a) destroying or damaging the record, or part of it; or
- (b) abandoning, transferring, donating, giving away or selling the record, or part of it.

**IP Act** means the *Information Privacy Act 2009*.

**Ministerial record** means a record created or received by a Minister in the course of carrying out the Minister's portfolio responsibilities but does not include—

- (a) a record related to the Minister's personal or party political activities; or
- (b) a record the Minister holds in the Minister's capacity as a member of the Legislative Assembly.

**official** means the archivist or a member of the staff of the archives.

**parliamentary service** means the parliamentary service as defined under the *Parliamentary Service Act 1988*, section 4.

**possession**, of a public record, includes having control of the record.

**public authority** means—

- (a) the Governor in his or her official capacity; or
- (b) the Executive Council; or
- (c) a Minister; or
- (d) an Assistant Minister; or
- (e) the registrar or other officer of a court with responsibility for official records of the court; or
- (f) a commission of inquiry under the *Commissions of Inquiry Act 1950*; or
- (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; or
- (h) a GOC; or
- (i) a department; or
- (j) an entity established by the State and a local government; or
- (k) a rail government entity under the *Transport Infrastructure Act 1994*; or
- (l) a local government; or



- 
- (m) an entity declared under a regulation to be a public authority for this Act.

***public record*** see section 6(1).

***record*** means recorded information created or received by an entity in the transaction of business or the conduct of affairs that provides evidence of the business or affairs and includes—

- (a) anything on which there is writing; or
- (b) anything on which there are marks, figures, symbols or perforations having a meaning for persons, including persons qualified to interpret them; or
- (c) anything from which sounds, images or writings can be reproduced with or without the aid of anything else; or
- (d) a map, plan, drawing or photograph.

***record of an Assistant Minister*** means a record created or received by an Assistant Minister in the course of carrying out the Assistant Minister's official duties but does not include—

- (a) a record related to the Assistant Minister's personal or party political activities; or
- (b) a record the Assistant Minister holds in the Assistant Minister's capacity as a member of the Legislative Assembly.

***responsible public authority***, for a public record, see section 15.

***restricted access period***, for a public record, see section 16.

***RTI Act*** means the *Right to Information Act 2009*.