

## FREQUENTLY ASKED QUESTIONS FOR *PUBLIC RECORDS ACT 2023*

### **Q1 – Do public authorities need to be fully compliant on 5 December 2024?**

Yes, all public authorities need to comply with all the provisions of the *Public Records Act 2023* and work towards greater maturity.

QSA can confirm the Mandatory Standards will not commence before 1 July 2026. In the meantime, you **must have regard to** the re-issued [QSA Records Governance Policy](#) made by the State Archivist under section 12(b) of the *Public Records Act 2023*.

### **Q2 – What happens to existing restricted access periods (RAPs)?**

A restricted access period made under the *Public Records Act 2002* for records in QSA's custody remains in effect until updated (section 95 *Public Records Act 2023*).

Section 32 of the *Public Records Act 2023* allows a public authority to change the restricted access period at any time. The State Archivist can also, at any time, ask a public authority to review or change the restricted access periods.

Over time, QSA will work with public authorities to review their restricted access periods to align them with the new pro-disclosure approach and the provisions in the new Act.

### **Q3 – Do public authorities need to review and update their delegates for making decisions about access to restricted records and providing restricted access notices?**

Yes, new delegations are required from 5 December 2024 under the new Act. You can update your delegates for restricted access decisions and providing restricted access notices for records in QSA's custody using [this form](#).

### **Q4 – Do we need to change our Retention and Disposal Schedule for the new Act?**

No - A disposal authority in effect on 4 December 2024 continues under the transitional arrangements in section 102 of the *Public Records Act 2023*. This means if your public authority had a specific Retention and Disposal Schedule in place on 4 December 2024 it will continue under the new Act.

If the preamble to your schedule refers to the *Public Records Act 2002* this will be taken to be a reference to the new Act. This is because the transitional arrangements in the new Act also provide that a reference in a document to the repealed Act may, if the context permits, be taken as a reference to the new Act (section 104).

**Q5 – If we get an application on 30 November 2024 for access to a restricted record, which process applies? What happens if they apply again on 6 December 2024?**

Applications made on 30 November 2024 continue under the *Public Records Act 2002*. If an applicant makes the same application on 6 December 2024, the new Act applies including the new 35 business days statutory timeframe for making a decision about access.

**Q6 – Do I need to tell QSA about records at risk of loss or damage (e.g. due to flooding over the storm season)?**

A public authority must notify the State Archivist about a public record that the authority knows, or reasonably ought to know is

- of permanent value, regardless of its age and
- is at risk of loss or damage (s21(b)) *Public Records Act 2023*

This requirement starts from 5 December 2024.

**To report records at risk of loss or damage, email [discovery@archives.qld.gov.au](mailto:discovery@archives.qld.gov.au).**

Section 21 of the *Public Records Act 2023* focuses on **preventative** action - about protecting records, both physical and digital. If QSA is aware of records at risk, QSA can provide advice (e.g. about improving storage conditions or facilitating a transfer to QSA where appropriate). QSA is committed to working with your agency to ensure public records are properly preserved and protected.

Section 21 protects public records of significance to the State to enable the records to be preserved and accessible by the public. 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 is being decommissioned.

The notification requirements in section 21 should be read together with:

- section 15 requiring public authorities to ensure the safe keeping and preservation of a public record it controls
- sections 25 and 26 about actions the State Archivist can take including directing the transfer of public records to QSA in specific circumstances.

It is important that public authorities ensure staff are aware of new obligations and offences under the *Public Records Act 2023* which also reflect the significance of irreversible loss or damage to public records.

**Q7 – When do we need to notify the State Archivist under s21(b) about permanent value records at risk of loss or damage?**

All public authorities are required to notify the State Archivist under section 21(b) of the new Act. We expect public authorities to be assessing and managing their recordkeeping risks. For example, as part of your public authority's business continuity planning and/or regular monitoring and review of recordkeeping systems, including appropriate storage.

**If those records are in imminent danger of being lost or damaged, public authorities must notify the State Archivist as a matter of urgency from 5 December 2024 to protect the records.** Otherwise, all public authorities should ensure that they notify the State Archivist of permanent records at risk of loss or damage by **no later than 31 March 2025**.

Notifications should be made to [discovery@archives.qld.gov.au](mailto:discovery@archives.qld.gov.au).

#### **Q8 – Do we need to tell QSA about public records we have that are over 25 years old?**

The Act will continue the notification requirement for public records that are more than 25 years old that was in section 10 of the *Public Records Act 2002*. This information may therefore also be requested; however we do not expect the State Archivist will request this information in 2025.

Knowing what records are held by public authorities will allow the State Archivist to plan future transfers of records to the archives and identify future storage requirements, both digital and physical.

#### **Q9 – When will audits start?**

QSA is developing an Assurance Framework which includes auditing, monitoring and investigating compliance with the Act. Initially QSA intends to take an educative focus to lift capability under the new Act. QSA has a three-year implementation plan for the new Act and will formalise the Assurance program in 2026.

QSA can undertake audits at any time. The State Archivist can also issue a notice to report to a public authority for auditing or monitoring compliance with the Act (section 80).

#### **Q10 – How will the new Act interact with other legislation that restricts access or legislates privacy and confidentiality?**

Section 6 of the new Act provides guidance about interaction with other Acts including about access and disposal.

For example, the *Public Records Act 2023* would generally be subject to another Act providing for disposal of, or access to a record, or access restrictions for records. However, this would be different if there was a specific provision about the interaction between the *Public Records Act 2023* and the other Act. It's important to consider the circumstances in each case.

#### **Q11 What are the new reporting requirements about non-compliance and when do they start?**

The State Archivist's Annual Report must now include details of 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. This is an important new public reporting function.

QSA is considering where it may be appropriate to provide contextual information to assist with understanding and accuracy of the information.

Non compliances that occur from commencement include failure to meet new statutory timeframes for access to restricted records.

The reporting period commences from 5 December 2024. The Annual Report on the administration of the Act must be given to the Minister within 4 months after the end of the financial year.

The new Act does not introduce new annual reporting requirements for public authorities, however you should check whether relevant guidance for your sector has changed.

### **Q12 What other reporting requirements about public authorities are required in the new Act?**

The State Archivist's Annual Report must also include:

- any notice to report that was given by the State Archivist under section 80 and
- the number of times that access to a restricted record under part 3, division 3 of the Act was refused by a public authority

The State Archivist may also report on other information relevant to the administration of the Act including the statutory functions of QSA such as:

- identifying public records of permanent value and making decisions about their retention, whether or not they are in the custody of the archives
- making decisions about the disposal of public records
- providing public access to public records in the custody of the archives
- giving advice, assistance and training about making and managing public records and
- auditing, monitoring, investigating and reporting on compliance with the Act.

### **Q13 What are the changes relating to offences in the Act?**

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

- section 22 for special protection of permanent value public records (amended from public records more than 30 years old)
- section 23 which creates a new offence of attempted unlawful disposal (with timeframes the same as unlawful disposal)
- Schedule 3 which amends the definition of disposal to include altering and deleting
- section 84 which establishes an offence for assaulting an officer performing a function under the Act
- section 85 which establishes an offence for obstructing an officer performing a function under the Act.

The new Act also has longer time periods for the commencement of prosecution of offences against section 22 or 23 (section 83 of the new Act).

#### **Q14 What happens to relevant and responsible public authorities under the 2002 Act?**

The new Act provides transitional arrangements for important aspects to continue under the new Act. Relevant and responsible public authorities set out in the Public Records Regulation 2014 continue on until specified events occur (section 93 of the new Act).

#### **Q15 Will the Records Governance Policy and the Mandatory Standards be part of the Queensland Government Enterprise Architecture (QGEA)?**

No. All parts of the new Recordkeeping Policy Framework under the *Public Records Act 2023* (mandatory standards, policies, advice and guidance) will be made under the *Public Records Act 2023* separate to the QGEA. However QSA will continue to work closely with the Queensland Government Customer and Digital Group (QDCDG) and have clear linkages between the two frameworks.

#### **Q16 How long do public authorities have to respond to the State Archivist about whether to give access to restricted records?**

A responsible public authority must respond to QSA 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.

Public authorities should respond to QSA by completing the Access to Restricted Records Authorisation form and emailing this to [info@archives.qld.gov.au](mailto:info@archives.qld.gov.au). A copy of this form is available on the ForGov website. If you believe you are unable to provide a response within 35 business days, please contact the Access Services team at QSA on (07) 3037 6777 or at [info@archives.qld.gov.au](mailto:info@archives.qld.gov.au) to discuss your options.

The request for access to a restricted record will also be visible in **your ArchivesGateway dashboard** under the 'My Restricted Access Requests' tab. On this dashboard you will be able to see the item requested, the name of customer, the date of the request and the due date for your response as well as the status of this request. The status will show as 'awaiting agency approval' until we have processed your response.