Queensland Government

Queensland Treasury

RIA Ref: QSA0854-1022
File Ref: 05029-2022

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Dear Ms Robinson

Consultation Regulatory Impact Statement – *Public Records Act 2002*

Thank you for your enquiry of 17 November 2022 regarding the adequacy of the Consultation Regulatory Impact Statement (CRIS) 'Review of the *Public Records Act 2002'*.

Background

The Department of Communities, Housing and Digital Economy (the department) notes that the *Public Records Act 2002* (the Act) seeks to ensure that the public records of an estimated 500 Queensland public authorities are made, kept, and, if appropriate, preserved in a useable form for the benefit of present and future generations. The Act also establishes the Queensland State Archives (QSA) and the role of the State Archivist, plus ensures that public access to records is consistent with the *Right to Information Act 2009* and the *Information Privacy Act 2009.*

An external review of the Act was commissioned to consider whether reforms are needed to enhance or update the Act. The review panel received 22 public submissions between 1 June - 6 July 2022 in addition to conducting an online survey, stakeholder workshops, and interviews with public sector representatives and industry experts. The review recommended 23 amendments to the Act, complemented by four recommendations for operational improvements.

The proposed legislative amendments include recognising the special interests and needs of First Nations peoples in relation to public records, amending the definition of 'record' to include digital material, increasing the time limit on prosecution for unlawful disposal of records from one to three years, and that local government councillors be regulated by the Act. Further, the review recommended that the State Archivist be empowered to direct public authorities to transfer records, to make mandatory records management standards, and to monitor, audit, and report on compliance with the Act.

Proposal

The CRIS presents three options for stakeholder consideration:

Option 1: Status quo.

Option 2: Non-legislative responses including greater consultation with First Nations people and an expansion of the QSA's education and guidance activities.

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Option 3: Amending the Act to implement the external review's recommendations, supported by targeted education and training.

The cost-benefit analysis presented in the CRIS estimates that the net present value of the quantified costs of Option 2 until 1 July 2033 is $87.61 million in 2022 dollars, while Option 3 is estimated to cost $165.01 million. While the costs will be borne directly by public authorities and the QSA, benefits such as reduced mismanagement and corruption, reduced physical storage and management costs, reduced duplication, and increased gross state product growth (from data availability) are expected to accrue to both the regulated parties and the broader community under each option.

An ability for the proposed legislative amendments, including new auditing powers and offences, to incentivise much greater compliance with the Act is cited as to why Option 3 is expected to have significantly greater benefits than Option 2. Option 3 is therefore presented as estimated to have the greatest net benefit to the Queensland community and this option is recommended.

Assessment

In making its assessment of a CRIS, the Office of Best Practice Regulation (the OBPR) has regard to the adequacy criteria specified in *The Queensland Government Guide to Better Regulation* (the guidelines).

The OBPR recognises that the CRIS presents the department's assessment of the problem, including the available evidence regarding its magnitude. The impact analysis identifies those stakeholders likely to be affected and the nature of potential impacts on them while acknowledging where there is uncertainty. The CRIS presents an analysis of the costs and benefits of each option relative to the status quo and are quantified where possible, and presents a recommended option based on the results of this analysis. Given these points, the OBPR considers the CRIS is adequate for the purposes of consultation.

Consultation should enable testing of the options, the assumptions used to estimate costs and benefits, and the scope for unintended outcomes. To be considered adequate for decision-making purposes, the Decision RIS will need to:

- discuss the anticipated change in rates of compliance with the Act
- identify any stakeholders who may experience intense or disproportionate impacts
- articulate implementation timeframes and associated issues or risks
- specify performance indicators for monitoring, and evaluation timeframes.

Please contact Tim Elliott, Senior Economist, on (07) 3035 3488 if you require additional information or guidance concerning the above comments or the guidelines in general. Please note that in accordance with Cabinet Handbook requirements, this letter of advice should be attached to relevant Cabinet submissions.

Yours sincerely



Dr Karen Hooper
Productivity Commissioner

23 November 2022