

Submission by the Archives and Records Association of New Zealand (ARANZ) to the National Archival and Library Institutions Ministerial Group

Executive Summary

ARANZ has read the five consultation questions and our detailed response is below. In respect to the three organisations involved in this submission our recommendations are as follows:

Archives New Zealand:

ARANZ believes the Chief Archivist should be made an Officer of Parliament. The Chief Archivist should also remain within the organisation of Archives NZ to continue to carry out their regulatory roles and manage the business of Archives NZ. A Deputy Chief Archivist role may need to be established to support the Chief Archivist.

National Library of New Zealand

ARANZ believes the National Library of New Zealand should be reinstated as an Autonomous Crown Entity or stand-alone government department outside of the Department of Internal Affairs (DIA). While there are some similarities between the National Library and Archives NZ in the organisational services they use, there is a significant difference in their functions. Archives NZ is a regulatory body that monitors and records though collections the evidence of Government activities. The National Library collects heritage collections of social history for all New Zealanders and provides access to knowledge as a function of civil democracy. These two organisations need to be separate and independent. They should not be amalgamated into a new department.

Nga Taonga Sound and Vision

ARANZ believes Nga Taonga should either stay under their current Charitable Trust structure with more financial support from government, or become an Autonomous Crown Entity reporting through to their own Board. These options means Ngā Taonga would maintain their own identity, independence and budget, and can remain a trusted and secure repository for collections outside of the machinations of a governing department. Two thirds of Nga Taonga's collections are Government record so Nga Taonga should continue to work closely with the Ministry for Cultural Heritage in whatever structure is finalised. Nga Taonga should not be merged with either the National Library or Archives NZ.

Questions

1. What are the key challenges for the National Library, Archives NZ and Ngā Taonga Sound and Vision?

- Authority of the Chief Archivist to carry out her or his function as the regulator of government recordkeeping and records disposal.

- Independence of Head Librarian and Ngā Taonga Sound and Vision from Minister's policies.
- The Chief Archivist's independence to keep an authentic record of the memory of government free from interference from public service managers and ministers' political ideologies. When the Chief Archivist position sits under an Executive branch of government Department, there is a conflict of interest, resulting in a limitation of Archives reach across all three branches of Government and a diminishing of the Archives status to be able to wield any influence.
- Recognition of the constitutional function of an official government archive that is context and provenance is captured and maintained as part of guaranteeing authenticity and integrity of the record when it leaves the systems of the creating agency.
- Stable governance structures for all three organisations that acknowledges each one's independence and allows for cross-agency collaboration.
- Visibility and accessibility of all three institutions in their own right, not subsumed under another department's branch.
- Adequate funding for Archives NZ, National Library and Ngā Taonga Sound and Vision.
- Balancing the power of the Executive Government.
- Transparent and accountable government decision making.
- Maintaining citizen's rights.
- Describing and preserving born digital archives so they are authentic and accessible.
- Online delivery of archives.

What is the most urgent challenge (National Library, Archives NZ and Ngā Taonga Sound and vision)?

- Setting up a governance structure for Archives that gives the Chief Archivist the authority and independence to carry out her or his function as the regulator of government recordkeeping and records disposal and the Head Librarian and Ngā Taonga Sound and Vision, independence from Minister's policies.
- All three organisations need to maintain their independence and identity to maintain the trust of New Zealander's and the government. All three need to be better resourced by increased budgets, further staffing and new collection repositories, so the high level of access and collection storage can be maintained.

2. Does the position of Chief Archivist have the independence and authority necessary to be an effective regulator of records and information management within its broad regulatory mandate?

The Chief Archivist's authority and independence to be an effective regulator appears to be compromised when you study the Annual Reports on the State of Government Recordkeeping.

Chief Archivist Marilyn Little's Annual Report on the State of Government Recordkeeping 2014-15 said it was "disappointing that barely half of the public offices audited by Archives New Zealand had an appropriate level of record-keeping maturity, 10 years after the Public Records Act came into force".

In her Annual Report 2015-16 she says Archives New Zealand took important steps to address these concerns however there is no percentage given of public offices now with the appropriate level of record-keeping. Reference <http://archives.govt.nz/chief-archivists-annual-report-state-government-recordkeeping-2015-16-html>

The Chief Archivist's functions keep changing to reflect the Minister's-of-the day policy decisions. For example, in the last 20 years the Chief Archivist's functions have been through the following permutations:

- restructuring the organisation itself to incorporate a quasi-policy / provider split including the decentralising appraisal services.
- the Chief Archivist functions changed so the possession of archives resides with the department (DIA) but control of the same material resides with the Chief Archivist to possession and control under Archives NZ department and then split again under DIA. See Public Records Act Section 21 *Mandatory transfer of public records*.
- the position of Chief Archivist being changed from being an employee under a CEO of a government department to being a CEO of an independent department under a Minister and back to being an employee under a CEO of a government department.
- being a third-tier manager to being a CEO and back to being a third-tier manager.

These changes ARANZ asserts, have adversely affected the independence and especially the authority of the Chief Archivist's role to:

- verify that mandatory and voluntary record keeping and disposal standards are being met by public entities.
- exercise her of his regulatory role across all government departments in records creation and disposal.
- hold all machinery of government accountable to Parliament.

Why the Chief Archivist does not have the independence and authority to be an effective regulator ARANZ asserts is because

- the position sits in a government department subject to Ministerial policy decisions.
- authority over government CEOs and their senior leadership teams is compromised as currently the position is third-tier.
- the number of restructurings provides little stability and interferes with the ability to carry out functions.
- the position does not have the power to check or regulate the powers of the public entities of the Executive Branch of Government with regard to the creation and disposal of its records. It is worth mentioning here the Ombudsman, as an Officer of Parliament, only makes recommendations, however in most cases the prestige of the office is enough to lead any public agency to comply with any such recommendation addressed to it. Reference <https://www.parliament.nz/en/visit-and-learn/how-parliament-works/parliamentary-practice-in-new-zealand/chapter-7-officers-of-parliament-and-other-officers-and-bodies-associated-with-parliament/>
- the position, unlike an Officer of Parliament does not have the authority to be able to carry out its own inquiries and provide of assistance to select committees.

2. Does the position of National Librarian have the independence and authority necessary to carry out the responsibilities of that position? Why/why not?

The National Librarian does not have the independence and authority necessary to carry out her or his responsibilities. The National Library has an important role to provide leadership and support to libraries across the country. This is defined in the National Library Act. Currently this position does not have the autonomy or resources to do this work effectively. They are a unit in a Government department, and so subject to Minister's policies and Senior management priorities. The National Library needs to be made an Autonomous Crown entity (ACE) so they have a clear, independent legal status. Failure in this area, will have a knock on effect to citizens access to information, literacy, and the free flow of ideas.

3. What changes, if any, would you suggest to the role or structure of Archives NZ or the National Library?

ARANZ recommends the following roles and structure of Archives NZ:

- Chief Archivist be made an Officer of the NZ Parliament for a term not exceeding seven years, appointed by the Governor-General on the recommendation of the House of Representatives. The Chief Archivist report on their activities to the House of Representatives. As retired Professor of Accountancy and economic consultant, Dr Donald M Gilling stated in his submission, Submission on the State Sector Management Bill (Bill No 193-1), *the role of the Chief Archivist in preserving public archives as a means of ensuring public accountability, is no less important than the role of the financial watchdog*, referring here to the Auditor General.
Reference: https://www.parliament.nz/resource/en-NZ/49SCES_EVI_00DBHOH_BILL10301_1_A138090/95675ffbbddf5caabec116351cc771d49aca30f0
- She or he is responsible for auditing public entities record keeping and disposal, carrying out inquiries, encouraging good records management, providing advice to public entities. Also advice to Parliament, working with the archival profession. Their mandate and responsibilities are set out in legislation.
- She or he is independent of executive government and Parliament in discharging the functions of the statutory office, but is answerable to Parliament for stewardship of the public resources entrusted to her.
- The Chief Archivist provides independent assurance that public entities are operating in keeping with Parliament's intentions.
- Under legislation the Chief Archivist would audit all public entities, including the Crown, government departments, crown entities, state-owned enterprises, local authorities and their subsidiaries, district health boards, tertiary education institutions, schools, statutory boards and other public bodies.
- The Chief Archivist employs staff in one business unit with no separation of policy-making from operational functions, because of its weaknesses in coordination and consultation between policy makers and implementers. Reference: Comment Archives and Records: Who Cares? J. E. Traue School of Communications and Information Management, Victoria University, Archifacts April 1999, pp45 – 58
- The National Library and Ngā Taonga Sound and Vision are both made Autonomous Crown entities (ACEs) so they have a clear independent legal status.

Further, Officers of Parliament typically have watchdog powers and functions so the role and structure of the Chief Archivist fits.

As well this structure meets the Finance and Expenditure Committee's five criteria to consider for the creation of an Officer of Parliament, in particular the two criteria, an Officer of Parliament must only be created to provide a check on the arbitrary use of power by the executive and an Officer of Parliament must only discharge functions that the House itself, if it so wished, might carry out.

The New Zealand Labour Party Manifesto 2017 states, *it wants to protect the independence of Archives New Zealand and the National Library. ... merge Archives New Zealand and National Library into the Department of Internal Affairs has undermined the independence and influence of these institutions that are crucial parts of our constitutional and democratic infrastructure. The Chief Archivist and the National Librarian are currently third tier managers who are not part of the leadership team at DIA, with no guaranteed access to Ministers. Archives NZ play the ultimate accountability role for government. It is their job to make sure records are kept and retained. They play a key part in our constitutional infrastructure. The National Library is a key force in our historical and democratic processes. Both need independence and influence to do their job properly, and that is currently being compromised. Labour will Commit to Archives New Zealand and the National Library being re-established as independent and separate entities outside of the Department of Internal Affairs Investigate the National Archivist being an Officer of Parliament.* Reference

https://d3n8a8pro7vhm.cloudfront.net/nzlabour/pages/8546/attachments/original/1504586800/Internal_Affairs.pdf?1504586800

Given the support in the NZ Labour Party Manifesto for the arguments put forward in this submission this further backs the move for change.

The Chief Archivist being made an Officer of Parliament and Archives NZ the delivery of those functions will:

- give the Chief Archivist the authority and independence from Ministerial policy making to fulfil on her or his functions.
- entrench the main powers and functions of the Archives as answerable to the Legislature branch of Government, Parliament not the Government of the day.
- make it harder for upcoming governments and the State Services Commission to undo this reform.
- provide a stable structure, ending the frequent restructuring in the archives policy area, prevents waste and ensures the efficient use of resources, and loss of productivity resulting from staff changes.
- Acknowledges the constitutional function of an official government archive. Archives New Zealand is the regulator of government record making, keeping, and disposal. It has an important constitutional role by providing the foundation of democratic accountability: records provide evidence of government activity and of citizens' relationship with the state. Records underpin the Official Information Act, the work of the Ombudsman, Courts and commissions of enquiry.
- Ensures the Chief Archivist and the Archives are not organised and rearranged at the whim of a Minister or the State Services Commission, but report directly to the whole parliament, as the Auditor-General does.

4. What opportunities exist for the national archival and library institutions to work more effectively together in collecting, preserving and providing access to New Zealand's documentary heritage? In particular, what opportunities exist in relation to digital preservation and access?

Opportunities for the archival and library institutions are

- Digital preservation as a service.
- Common Web platform.
- Databases with API functionality for public to access and reuse information.
- Digitisation.
- Preservation and access to physical archives.

5. What does the public need in the next 30 years from the national archival and library institutions?

- An independent, trusted and accessible government archive that has the authority to regulate the Executive Branch of Government, preserve citizens' rights and keep a check on Ministers' powers.
- An independent, trusted and accessible National Library and Nga Taonga that are not subject to a Minister's policies.
- An authentic and trusted record of the memory of society and government.
- Institutions are well-known by the general public – they know why they are important, what they hold and they receive exceptional customer service.
- Transparency of government decision-making.
- Well-managed cultural institutions each with targets and cross-agency targets that include preservation of digital and hardcopy, disposal, and access to holdings/collections.
- Assurance in the democratic institutions and citizens' rights are preserved.
- A sound records management regime is a key foundation of our democracy because it provides the evidence necessary for organisational and democratic accountability.

On a final note, it is worth considering J. E. Trau's statement in his article, *Archives and Records: Who Cares? We do not have the instruments of direct democracy that were available to the Greeks to control the performance of our governors...but we have developed alternatives appropriate to modern societies, and one of those is comprehensive and reliable recordkeeping for the short-term auditing of governance. We need, quite simply, to make a greater public investment in National Archives to enable it to fulfil its proper constitutional role, prevent costly litigation cases.* Reference Comment Archives and Records: Who Cares? J. E. Trau School of Communications and Information Management, Victoria University, Archifacts April 1999, pp45 - 58