

The Archives Council
Te Rua Wānanga

Annual Report 2009/10

Table of Contents

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Establishment and Functions	3
Council Membership	3
Meetings	3
Council Charter	4
Activities During the Past Year	4
Status (Mana) of the Chief Archivist	4
Independence of the Chief Archivist	4
Reporting.....	5
Possession and Control of Public Records.....	5
Administrative Support to the Council.....	5
Other Issues	5
Funding and Secretariat Services	6
Expenditure Items.....	6
Appendix - Council Charter	7

The Archives Council *Te Rua Wānanga*

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The following report is provided in accordance with section 15(3) of the Public Records Act 2005 which requires that the Council must report to the Minister each year on the performance of its functions during the preceding year.

Establishment and Functions

The Archives Council Te Rua Wananga is an unincorporated body established under the Public Records Act 2005 (part 1, section 14, 15 and 16). Its role is to provide advice to the Minister Responsible for Archives New Zealand on recordkeeping and archiving matters generally, including those for which tikanga Maori is relevant. The Council also advises the Minister on authorisations to dispose of public records of Archives New Zealand, the approval of other repositories for public archives, and on appeals made to the Minister.

The Department of Internal Affairs provides administrative services to the Archives Council.

Council Membership

The Council consists of seven members:

- Richard Nottage CNZM (Chairperson)
- Barry Holdaway
- Ani Pahuru-Huriwai
- George Reedy
- Dame Anne Salmond FNAS, FRSNZ, FAH NZ, DBE
- Mel Smith CNZM (Deputy Chairperson)
- Stuart Strachan QSO

Members from September 2006 to March 2010 were:

- Richard Nottage CNZM (Chairperson)
- Theresa Graham
- Rachael Lilburn
- Ani Pahuru-Huriwai
- Mel Smith CNZM (Deputy Chairperson)
- Dr Monty Soutar
- Stuart Strachan QSO

In accordance with section 14(3)(b) of the Public Records Act 2005, two Council members have knowledge of tikanga Maori.

Council members hold office for a term not exceeding three years and may be reappointed.

Meetings

The Council met on five occasions during the past 18 months:

- 26 August 2009
- 20 April 2010

- 20 July 2010
- 20 September 2010
- 2 December 2010

Council Charter

In terms of section 16(1) of the Public Records Act 2005 the Archives Council “may regulate its own procedure”. To this end the Council has adopted a Council Charter which is annexed to this Report. It is also available electronically at <http://archives.govt.nz/council-charter>.

Activities During the Past Year

Although the Council was not consulted nor had the opportunity to offer advice on the decision by government to merge Archives New Zealand, the National Library and Department of Internal Affairs, we nevertheless undertook the following specific activities. We also addressed other important matters, as described below.

- We were consulted on and provided feedback to the Minister Responsible for Archives New Zealand on the State Sector Management Bill.
- We provided feedback to the Chief Executive of the Department of Internal Affairs on a number of matters related to the restructuring proposals for the new department.

The Council was grateful for the opportunity to meet with the Minister to discuss its views on the Bill, and to provide feedback to the Chief Executive. The advice we provided, which relates quite specifically to archive and recordkeeping matters, is summarised below.

The Council advised the Minister that, although we acknowledged the project savings and some advantages to be gained by digital integration, we did not consider them to be of overwhelming force and were in any case largely offset by our serious concerns related to the mana and independence of the Chief Archivist.

Status (Mana) of the Chief Archivist

Since its creation as a stand alone department and with a fresh, wider mandate given by the Public Records Act 2005, Archives New Zealand has not only lifted the level of government record keeping generally but it is now recognised internationally as one of the leading agencies of its kind in the world, particularly in relation to the management of electronic information. It also has an appropriately higher profile within government generally.

We noted that experience overseas and within New Zealand has shown that to be effective in fulfilling his or her recordkeeping responsibilities it is essential that the Chief Archivist is able to deal equally and independently with all other state agencies and their chief executives. In our submissions we expressed the view that the merger with the Department of Internal Affairs would put the gains of the last 10 years at risk because the loss of the ability of the Chief Archivist to meet with chief executives on equal terms would diminish the ability of the Chief Archivist to influence and persuade this important group.

Independence of the Chief Archivist

The Council also raised the issue of the Chief Archivist needing to retain the power to act independently on matters of disposal, standards, preservation and access to public archives held by Archives New Zealand. The Council expressed concern that although the Bill preserved the independence of the Chief Archivist in relation to public office and local authority records it did not afford the same level of protection to public records currently held by Archives New Zealand. While this was not so much of an issue while the Chief Archivist was also Chief Executive we felt it would become one with the disestablishment of Archives New Zealand as a separate independent entity. Further, the Councils expressed concern was that in practice, as a third tier manager in the Department of Internal Affairs, the Chief Archivist may not have the requisite independence and managerial authority to carry out effectively his or her constitutional and statutory responsibilities.

Our submission recorded our view that there should not be a distinction between records held by public offices and local authorities and public records held in the repository Archives New Zealand. We advised that not including section 11 (c) of the Public Records Act 2005 in the Bill would mean that a Chief Executive of the Department of Internal Affairs could override the

decision of the Chief Archivist in relation to these records and that the independence of the Chief Archivist in relation to all recordkeeping matters would not be retained.

Reporting

The Council noted that as a separate entity Archives New Zealand was required under the Public Finance Act to report on its future operating intentions in a Statement of Intent and on its performance against those intentions in the Annual Report. Once Archives New Zealand was merged with the Department of Internal Affairs information on recordkeeping matters and Archives performance in relation to its outcomes and associated performance measures would be, of necessity, very much reduced. The Council expressed the view that this was not desirable as it would result in insufficient information on the performance of Archives New Zealand being publicly available. The Council recommended that the Government give careful consideration to amending Section 32 of the Public Records Act which requires the Chief Executive to make an annual report to the Minister on recordkeeping matters to require the Chief Archivist to also report independently on the exercise of his or her statutory functions.

Possession and Control of Public Records

The Public Records Act 2005 provides for a range of circumstances¹ where public records are transferred to the control of the Chief Archivist and possession of Archives New Zealand. The State Sector Management Bill changes the current provision so that public records are transferred to the control of the Chief Archivist and possession of the Department (meaning the Department of Internal Affairs). The Council was concerned about the implications of this change, which could mean that the public records could be stored in any location specified by the Chief Executive. The Council expressed the view that it would be preferable for the Bill to be changed to provide for records to be transferred to the control of the Chief Archivist and possession of the repository of Archives New Zealand as this simple change would provide stakeholders with added reassurance around the future care and control of public records by professional archivists. The Council is appreciative that this was accepted by the Government.

Administrative Support to the Council

The Council sought in its submission to the Minister Responsible for Archives New Zealand that section 16 of the Public Records Act be amended to ensure that the Department of Internal Affairs provides appropriately qualified administrative support to the Council and is required to provide information that the Council may reasonably be required to fulfil its functions. This recommendation was not accepted as it was outside the scope of Cabinet's decisions. The September 2010 organisational design of the new department consultation document indicated that the Council would be supported by a dedicated team in the Chief Executive's office. The implementation has modified this and the Council will now be supported by the Secretariat Support team within the Shared Services Branch.

Other Issues

In addition to those activities related to the machinery of government changes, over the year the Council reviewed and endorsed new policies on Approved Repository Application Processes and the Loan of Archives between Archives New Zealand Offices, provided comment on to 2010/11 Statement of Intent and discussed issues such as the record keeping implications of Auckland's local government reorganisation and the recordkeeping audit of Archives New Zealand. We advocated for the creation of a Government Digital Archive and applaud the Government's provision of substantial funding for it.

Notwithstanding the concerns expressed by the Council to the Minister and Chief Executive we are appreciative of the opportunity of commenting on the draft State Sector management Bill before its introduction and we remain committed to fulfilling the Council's functions over 2010/11 and future years. We will be monitoring developments with interest.

¹ Sections 22(2)(b)(i), 22(3)(a), 26(2)(d), 38(4)(a), 58, 64(2)(d) and 65(2)(d) and (h)

Funding and Secretariat Services

Funds for the operation of the Council are provided from the budget of Archives New Zealand. The Council expresses its appreciation to Acting Chief Archivist and Chief Executive Greg Goulding for his support and for making staff, in both National and Regional offices, available to assist the Council's deliberations and also for the services of its secretary, Françoise Lafferty-Hancock followed by John Wilson.

Expenditure Items

Expense	Expenditure
Remuneration	4795.76
Travel of members	5379.38
Other (catering, accommodation, representation)	2743.90
Total	12919.04

Appendix

Council Charter

Functions of Archives Council

- (1) The function of the Archives Council is to provide to the Minister, on the request of the Minister or on its own initiative,-
- (a) advice concerning recordkeeping and archives matters including (without limitation)-
 - (i) recordkeeping and archive matters in which tikanga Māori is relevant:
 - (ii) the Orders in Council that may be made under section 5:
 - (iii) authorisations to dispose of public records under section 20(3):
 - (iv) the approval of repositories under section 26:
 - (v) appropriate criteria for the independent audit of Archives New Zealand conducted under section 34:
 - (b) recommendations under section 55 on appeals to the Minister.
- (2) For the purpose of performing its functions under this Act, the Council has full powers, rights, and privileges.
- (3) The Council must report to the Minister each year on the performance of its functions during the preceding year.
- (4) The Minister must, as soon as practicable after receiving a report under subsection (3), present the report to the House of Representatives.

Council Governance Process

1 The Council's relationship with the Minister

A 'No Surprises' policy. The Minister will be kept informed of the Archives Council's activities and any matter that is likely to be controversial. The Chairperson or, in his/her absence, the Vice Chairperson will speak for the Council.

2 Council Procedures

- 2.1 The Archives Council will ensure that its work encourages the spirit of partnership and goodwill envisaged by the Treaty of Waitangi as provided for by section 7 of the Public Records Act.
- 2.2 Members will use their best endeavours to attend Council meetings and to prepare thoroughly. Members are expected to participate fully, frankly, and constructively in Council discussions and other activities and to bring the benefit of their particular knowledge, skills and abilities to the Council table. Members unable to attend will advise the Chairperson at a date as early as possible and confirm in writing to the Secretary.
- 2.3 Council discussions will be open and constructive, recognising that genuinely held differences of opinions can, in such circumstances, bring greater clarity and lead to better decisions. The Chairperson will, nevertheless, seek a consensus in the Council but may, where considered necessary, provide the Minister with differing opinions. All discussions and their record will remain confidential unless there is specific direction from the Council to the contrary, or disclosure is required by law.

- 2.4 The Chief Archivist and other Archives New Zealand staff, as appropriate, may attend Council meetings at its invitation.
- 2.5 The Council has sole authority over its agenda and exercises this through the Chairperson. Any member may, through the Chairperson, request the addition of an item to the agenda. The Chairperson in consultation with the Secretary will set the agenda.
- 2.6 The Council will normally hold 4 meetings per annum and will hold additional meetings as the occasion requires. At each normal meeting the Council will consider:
- matters raised by the Chief Archivist
 - matters raised by the Minister
 - issues and opportunities for the Council

In addition the Council will, at intervals of not more than one year:

- review the Council's focus
 - approve its annual report to the Minister
 - undertake a Council evaluation
 - review Archives New Zealand's risk management strategy
 - review customer and other stakeholder relations
- 2.7 Members are entitled to have access, at all reasonable times, to all relevant Council information.

3 Chairperson and Vice Chairperson

- 3.1 The Council will appoint one of its members as Vice Chairperson.
- 3.2 The Chairperson has a responsibility for promoting a productive and positive Council culture.
- 3.3 The Chairperson has primary responsibility for representing the Council to the Minister and stakeholders.
- 3.4 The Chairperson is responsible for ensuring the integrity and effectiveness of the governance process of the Council
- 3.5 The Chairperson is responsible for maintaining regular dialogue with the Chief Archivist over substantive and operational matters and will consult with the remainder

of the Council promptly over any matter that gives him or her cause for major concern.

- 3.6 The Chairperson will prepare the agenda and manage the meeting process to ensure that no member dominates discussion, that appropriate discussion takes place and that relevant opinion among members is forthcoming. The Chairperson will ensure that discussions result in logical and understandable outcomes. Where consensus cannot be achieved the Chairperson will ensure minority opinions are conveyed to the Minister.

4 Provisions of Business or Professional Services by Members

- 4.1 Council Members should avoid conflicts of interests so far as possible. Where a conflict or potential conflict arises, at a minimum, Members must disclose it to the Council.
- 4.2 Members who are conflicted regarding a particular issue should absent themselves from discussion and decision-making relating to that issue.
- 4.3 A Member who has a continuing conflict of interest of a material nature, that cannot be satisfactorily resolved after consultation with the Chairperson, should consider resignation as a Member, in particular where the continuing conflict of interest prejudices his or her ability to contribute to the affairs of the Council to the same extent as the other Members.
- 4.4 Because a conflict of interest (actual or perceived) may be created, Council Members should not, generally, provide business or professional services of an ongoing nature to the Council.
- 4.5 Notwithstanding the general rule, the Council is at liberty to engage the services of any Member, having special expertise in the particular field for the purpose of a special assignment, so long as the terms of engagement are competitive, are clearly recorded and all legal requirements for disclosure of the engagement are properly observed.

5 The Secretary

- 5.1 The appointment of the Secretary is made on the recommendation of the Chief Archivist and must be approved by the Council.
- 5.2 The Secretary is responsible for ensuring that Council procedures are followed, that the applicable rules and regulations for the conduct of the affairs of the Council are complied with and for all matters associated with the maintenance of the Council or otherwise required for its efficient operation.
- 5.3 All Members, particularly the Chairperson, have access to the advice and services of the Secretary for the purposes of the Council's affairs.

6 Council Relationships

- 6.1 Between Council meetings the Chairperson will maintain an informal link between the Council Members, the Minister and the Chief Archivist.
- 6.2 The Council will foster relationships with relevant external groups.