

JOINT COMMITTEE OF PUBLIC ACCOUNTS AND AUDIT

ATTORNEY-GENERAL'S PORTFOLIO

JCPAA INQUIRY INTO GOVERNANCE IN THE STEWARDSHIP OF PUBLIC RESOURCES—BASED ON AUDITOR-GENERAL REPORT 11, 31, 39 (2019-20), AND 2 AND 9 (2020-21)

National Archives of Australia

The JCPAA asked the following question on 19 August 2021 (Hansard pages 2-3):

1. **Mr Watts:** I do have a number of questions around that. Could you come back on notice on the timeline for Top Four compliance further to the previous evidence, and also how many times you've written seeking funding and special appropriations to reach that? You were very clear with the committee the last time you appeared that you had to prioritise what was going on based on funding availability. I'm not casting aspersions at you whatsoever. You've been very, very clear on this, and I understand fully, but the Tune Review in January 2020 was explicit in saying: 'Archives has digital capability and cyber security vulnerabilities which need urgent attention.' That's more than 18 months ago now, and there hasn't been a funding injection since then for cyber-resilience.

Mr Fricker: We will get back with that detail for you, Mr Watts. Certainly, if I could just reinforce what Ms Arumugam was saying: at our appearance at that time, we did have a cyber-resilience road map, which we had developed in response to the ANA report. I'm very confident reporting to this committee that we have made very solid progress along that resilience road map. We've made significant investments and implemented resilience improvements. I always say in these conversations that it never stops. The day I say that all our vulnerabilities have been addressed is the day you should be talking to somebody else, because you just can't ever get complacent about these things.

Mr Watts: It doesn't work that way, does it?

Mr Fricker: No

Mr Watts: The Tune review was explicit, saying that: 'progress on implementation' of the recommended essential mitigation strategies 'is slow because of funding pressures.' That was in January 2020.

Mr Fricker: Yes. If we could take that on notice, Chair, we can present some detailed advice on significant milestones that we have achieved and also go to Mr Watts's other question on seeking funding.

The response to the honourable member's question is as follows:

The Australian National Audit Office (ANAO) report on Cyber Resilience was published on 28 June 2018. At the time of the audit, National Archives was not compliant with the Top Four mitigation strategies, but was assessed as "internally resilient", with sound ICT controls in place but vulnerable to external attack and not "cyber resilient".

Since the ANAO audit, a number of significant improvements have been made maximising the opportunities within the NAA financial appropriations.

National Archives developed a cyber resilience framework and a comprehensive supporting plan to effectively implement the Essential Eight and all of the Australian Cyber Security Centre (ACSC) recommended controls required for managing cyber threats.

A comprehensive approach was needed to establish a secure, stable and contemporary ICT environment that supports the business of the National Archives.

The National Archives' Cyber Resilience Framework was approved and a Cyber Governance Committee established in January 2019 to oversee the implementation with a focus on implementation of Essential Eight within the affordability of the budget.

Progressing maturity across all of the Essential Eight was a priority and two independent external audits since the ANAO audit recognised the positive progress made by the NAA since the ANAO audit.

NAA also improved the cyber resilience through the following measures.

- Transitioned to a 24x7 monitored and certified Secure Internet Gateway in December 2019. This significantly improved the capability to protect NAA from cyber threats originating from the internet.
- Improved Essential Eight maturity across a number of measures by June 2020 using NAA resources and resources provided through the Cyber Capability uplift program
- Invested and implemented a Vulnerability scanner in 2019 to detect and address vulnerabilities in the NAA environment.
- Moved a number of platforms on legacy hardware/software to supported systems including transition of the NAA corporate website to GovCMS
- Conducted a security risk assessment and completed certification of the NAA corporate network in 2020.

Request to progress a business case to improve cyber security and digital capability was supported in 2018 but subsequently paused when the functional efficiency review of the NAA was commissioned.

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National Archives of Australia

The JCPAA asked the following question on 19 August 2021 (Hansard pages 7-8):

2. **Mr Hill:** Thank you. In relation to supplementary submission 41C, where I asked, 'Is the director aware of any legal advice on this matter provided to the archives or any other Australian government department or agency?' can I tease that out? You had legal advice on the palace letters before your decision to contest the case on the basis that the letters weren't the property of the Commonwealth. Your catalogue states that, after the High Court ruling, you received further legal advice in August 2020 that other governors-generals' correspondence with the Queen could be considered Commonwealth records—that is, the property of the Commonwealth—and released according to the Archives Act. That's correct?

Mr Fricker: That's right. The other documents, which came to us under the same circumstances, are those of Sir John Kerr. These would be embraced by the ruling of the High Court. From the date of that judgement, we'd be treating those records in our custody as Commonwealth records, for the purposes of the act.

Mr Hill: As that litigation is over, could you now release legal advice on both of those matters? Particularly given your comments about the need to modernise that act, it would be of assistance—given the court case has passed—if that advice could be made public so that those interested could understand the nuance and detail of these pretty arcane areas.

Mr Fricker: Here, Mr Hill, we get into legal privilege. It's not the practice to release that level of advice, which is protected under legal privilege.

Mr Hill: Yes, legal professional privilege provides a degree of protection around compulsion, but that's not what I'm asking. I'm asking: given the court case is over and the matter has been resolved by the High Court—there's no possibility of further appeals; we knocked off the Privy Council a while ago, thanks to Bob Hawke, so the matter is closed—why would you not release the legal advice, just in the interests of transparency? Agencies do. There are many of examples of agencies choosing to release legal advice on technical or complex matters. And the taxpayers have paid for the legal advice—quite a lot, actually, as we know.

Mr Fricker: Can I take that on notice, Chair? I'm always interested in the maximum level of transparency on this. We want the Australian public to be clear on what the rules are and the way we are treating this and to be confident that we are applying an egalitarian perspective and transparent treatment.

The response to the honourable member's question is as follows:

Legal advice relating to the decision made on the Palace Letters and on the status of the correspondence between other former Governors-General and the Queen was requested by the National Archives of Australia. Officials generally do not disclose the content of legal advice.

As the Minister responsible for the National Archives, disclosure of the legal advice is a matter for the Assistant Minister to the Attorney-General.