

**JOINT COMMITTEE OF PUBLIC ACCOUNTS AND AUDIT**

**ATTORNEY-GENERAL'S PORTFOLIO**

**GOVERNANCE IN THE STEWARDSHIP OF PUBLIC RESOURCES: INQUIRY  
INTO AUDITOR-GENERAL'S REPORTS 11, 31, 39, (2019-20) AND  
2 AND 9 (2020-21)**

**National Archives of Australia**

**JCPAA21-01 – Advice on Updating the Archives Act**

**Mr Julian Hill asked the following question on 14 April 2021:**

Mr HILL: Have you sought legal advice on this question? Take the scenario of a public servant from a government department. You get a government issued phone and your data is paid for by the government. You might not be using one of the corporate suite of apps—that's normal; I think everyone around the country would get that—but you've got an app downloaded onto your government phone and the data is paid for and you're producing the record in the course of your business. Are you absolutely sure that's not a government record? Are you concerned that there is a gap or have you sought advice on this?

Mr Fricker: I have sought advice on this and we have sought advice on a better formulation for the definition. I'm being quite narrow in my answer because I'm talking about 'as defined in the Archives Act'. There are many other legal processes which can take place—the Auditor-General has legal powers et cetera—but the powers in my office, under the Archives Act, are limited to those records which are the property of the Commonwealth.

Mr HILL: Have you provided advice to any minister or the Attorney-General or the parent department, or has any advice been requested on this issue?

Mr Fricker: Yes, we have. We are in active discussion about this and a range of amendments to the Archives Act to bring it into the 21st century. But the definition of a record is definitely high on that list.

Mr HILL: Can you take that on notice and provide us with details as to the dates and the subject matter of any briefs or correspondence with government that touch on these issues.

Mr Fricker: Yes, I will take that on notice. David Tune did a functional efficiency review of the National Archives which has just been released in March, and that's a feature of his review. So it is in the public domain in a recently published report by David Tune which goes to the issue of the need for legislative change.

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

Over the past five years, the Director-General and the National Archives of Australia's Advisory Council has provided advice to government on the *Archives Act 1983* (Archives Act), including in the context of the Functional and Efficiency Review (Tune Review) released in March 2020.

This has been done through correspondence, ministerial submissions, reports and reviews, parliamentary inquiries and issues that have arisen during this period.

## **Director-General**

Briefing to the Honourable Christian Porter MP as Attorney-General:

- August 2018 – Draft Position Paper and proposed reform to the Archives Act provided to the Attorney-General's Department and Office of the Attorney-General
- October 2018 – GRA38 Policy – Ministers Records – highlighted legislation reform
- February 2020 – Tune Review Report – highlighted legislation reform
- August 2020 – Revised Position Paper and proposed amendments provided to the Attorney-General's Department and Office of the Attorney-General

## **Advisory Council**

Since 2016, the Council Chair has written to the Attorney-General after 19 Council meetings and on 4 other occasions – where specific reference was made to legislation matters.

Correspondence to the Attorney-General Brandis:

- February 2016: Legislation (Ref: AC123)
- May 2016: Legislation (Ref: AC124)
- September 2016: Legislation/ Digitisation of Collection (Ref: AC125)
- December 2016: Legislation (Ref: AC126)
- February 2017: Legislation/Building (Ref: AC127)
- May 2017: Legislation (Ref: AC128)
- June 2017: Correspondence with Draft National Archives Bill
- September 2017: Legislation/Funding Digital Archives Program/Building (Ref: AC 129)

Correspondence to the Attorney-General Porter:

- December 2017: Legislation/Funding (Ref: AC130)
- March 2018: Legislation/Funding/Building/Productivity Commission Report (led to establishment of ONDC) (Ref: AC131)
- June 2018: Legislation/Taskforce/Funding/Building (Ref: AC132)
- August 2018: Correspondence with Position Paper, Draft National Archives Bill and supporting documentation
- September 2018: Legislation/Building/Taskforce and Funding/WWII Service Records (Ref: AC133)
- November 2018: Legislation/Funding and Transformation/At-Risk Collections/Building/WWII Service Records (Ref: AC134)

Correspondence to the Attorney-General Porter:

- March 2019: Tune Review/Funding/At-Risk Collections/Legislation/Building (Ref: AC135)
- May 2019: Tune Review/Funding/Cyber security/Digital Preservation/Legislation/Building (Ref: AC136)

Correspondence to Prime Minister/Attorney-General Porter:

- July 2019: Tune Review/Funding/Cyber security/Digital Preservation/Legislation/Building
- November 2019: DC2020 – Check-Up Results – Report to Minister/Prime Minister - – highlighted legislation reform

Representations to the Attorney-General Porter:

- November 2019: Tune Review/ANAO Cyber Audit/WWII Funding shortfall (Ref: AC137)
- February 2020: Tune Review/Funding/At-Risk Collections/APS Reform/WWII Service Records funding/Legislation (Ref: AC138)
- September 2020: Legislation/Tune Review/At-Risk Collections/WWII Service Records funding/Building (Ref: AC139)
- December 2020: Council Membership/Tune Review/Legislation/Digital Information Appraisal/At-Risk Collections/WWII Service Records funding/Governance culture/Building (Ref: AC140)

Correspondence to Assistant Minister Stoker:

- February 2021: Council Membership/Tune Review/Legislation/Digital Information Appraisal/At-Risk Collections/WWII Service Records funding/Building (Ref: AC141)

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**National Archives of Australia**

**JCPAA21-02 - WhatsApp, Signal or Telegram records**

**Mr Julian Hill asked the following question on 14 April 2021:**

Mr HILL: Sure, I got that.

Mr Fricker: Can I also say that we don't require every single WhatsApp or Telegram message, but we do require the important stuff. Public servants no when something is leading to a decision—this is a keeper.

Mr HILL: Ministers have two hats: they're parliamentarians and they're part of the executive and have public administration obligations on them in that category. Do the same obligations sit with ministers if they're giving instructions to secretaries?

Mr Fricker: Yes.

Mr HILL: Stuff comes into the Archives from agencies. How many records are sitting in your agency from departments or ministers that contain WhatsApp, Signal or Telegram records?

Mr Fricker: I would be very surprised if we have yet received any transfers of WhatsApp messages or that generation of technology. We have already accumulated petabytes of digital archives within the Archives.

Mr HILL: Can you take that on notice?

Mr Fricker: Yes.

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

The National Archives of Australia has not yet received any transfers of social media records from Commonwealth government agencies or ministerial offices, however initial planning discussions are underway with some agencies. Future transfer of social media records will be undertaken in accordance with disposal authorisations issued by the National Archives.

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**JCPAA21-03 – Implementation of new policy**

**The JCPAA asked the following question on 20 April 2021:**

NAA notes that the 2019 survey identified 'an estimated one-third of agencies were not expected to meet all requirements of the DC 2020 policy by December 2020' (*Submission 6*, p. 8). What arrangements has NAA established to assist entities in meeting all the requirements of this policy, as well as the requirements of the new policy? How will NAA effectively target entities requiring additional assistance to implement the new policy?

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

Since the release of the DC 2020 policy, the National Archives of Australia (National Archives) has developed and made available to agencies a range of products, tools and advice to support policy implementation. Following the 2019 survey, an agency implementation support project was developed with the aim of providing specific assistance to agencies in the final year of the policy. Through a series of round table sessions and other discussions with agencies, the National Archives prioritised the type and level of support it provided so that it would best meet the needs of agencies, within its available resources.

There are a number of factors identified by agencies and through our observations that impede the information management maturity across Commonwealth agencies: Inadequate resourcing, the absence of appropriate systems, insufficient prioritisation, cultural issues such as not valuing information as an 'asset', and the lack of professionally skilled staff all hinder the effective management and governance of the Commonwealth's information assets.

The DC 2020 policy concluded in December 2020. The new *Building trust in the public record* policy took effect from 1 January 2021. Advice and guidance has been developed to assist agencies to implement the new policy and to build on the maturity levels achieved at the end of DC 2020.

The National Archives will assess agency information management maturity based on the results of its most recent survey, which closed in March 2021. Consistent with earlier assessments, it is anticipated that there will be a number of agencies who have not met the DC 2020 targets.

Advice for the *Building trust in the public record* policy will be made available in accordance with a series of public release schedules over the first years of the policy. The first tranche of advice was released prior to the commencement of the policy on 1 January 2021, and another tranche is being prepared for release by 30 June 2021.

The National Archives is currently finalising plans to monitor, evaluate and report on the implementation of the new policy. This will focus on the National Archives' delivery of the policy and associated support, agency implementation of the policy, and an overall evaluation of the policy's success in achieving its objectives. A critical part of the monitoring function will be the identification of entities that might require additional assistance. This will be based on the National Archives' regular agency surveys, agency enquiries, and periodic outreach activities such as Government Agency Information Network meetings and agency roundtable discussions. The Agency Advisory Group established to guide policy development will also play a key part in implementation and provide further advice in relation to agency requirements.

Agencies identified as needing additional assistance will be provided with support in the most efficient and effective way within the resources available to the National Archives. This may include further roundtables with agencies at a particular maturity level to discuss particular issues and identify solutions or by creating opportunities for lower maturity agencies to learn from higher maturity agencies.

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**JCPAA21-04 – Implementation of new policy**

**The JCPAA asked the following question on 20 April 2021:**

NAA notes that 'resource constraints limit our capacity to provide the level of support agencies require', and that it will seek to address capability gaps identified through its annual survey by continuing to assist and guide agencies 'within its available resourcing' (*Submission 6*, p. 9). Will these resource constraints affect NAA's role in effectively monitoring and assisting entities to meet policy targets for the new digital continuity policy?

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

The capacity of the National Archives of Australia (National Archives) to monitor policy implementation and to assist agencies is directly related to available resources.

The National Archives' regular survey of agency information management capability (normally annual but disrupted in 2020/21 due to COVID) is the principal means by which the National Archives can monitor the implementation of its policies. The survey is carried out by a specialist contractor with the skills to undertake the survey and analysis. It is intended that this arrangement will continue but it remains subject to competing funding priorities and budget constraints.

Additional monitoring of agency progress occurs through other communication with agencies including agency enquiries, and periodic outreach activities such as Government Agency Information Network meetings and agency roundtable discussions. The extent to which these activities can be carried out is also subject to available resources.

The principal means by which the National Archives assists entities to meet policy requirements is the production of advice. Agency consultation carried out by the National Archives has identified a high demand for advice across a wide range of topics and for that advice to be made available as soon as possible. The consultation has also indicated that there is considerable variation across agencies when it comes to identifying which advice should be prioritised.

The challenge for the National Archives is to produce the advice that will meet the needs of most agencies, within an acceptable timeframe, and within the available resources. Taking all this into account, the National Archives has released the first of a series of annual public release schedules, which will set out what advice will be issued in each year of the policy. In

accordance with this first schedule, the first tranche of advice was released prior to the commencement of the policy on 1 January 2021, and another tranche is being prepared for release by 30 June 2021.

As indicated in its submission to the Joint Committee, the number of staff available to support agency information management has reduced by half in the last few years. As a consequence, former activities such as the delivery of training have been discontinued or significantly reduced, as is the case with small group and one-on-one discussion. However, the National Archives continues to assess ways in which we can provide consultation and outreach in the most efficient and effective way.