

2011

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**REPORT NO 2 TO THE ACT LEGISLATIVE ASSEMBLY
ON THE PROGRESS AND EFFECTIVENESS OF THE
IMPLEMENTATION OF THE RECOMMENDATIONS OF
THE REVIEW OF THE OPERATION OF THE
*TERRITORY RECORDS ACT 2002***

**Presented by
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INTRODUCTION

On 26 August 2010, the Chair of the Standing Committee on Public Accounts (the Committee) tabled the Committee's report on Review of Auditor-General's Report No. 3 of 2008: Records Management in ACT Government Agencies in the Legislative Assembly. The Committee's report made three recommendations:

- a) by the last sitting day in 2010, the Minister will report to the Legislative Assembly on the progress and effectiveness of the Department of Territory and Municipal Services' implementation of the Auditor-General's recommendations that were accepted. This should include: (i) a summary of action to date, either completed or in progress (including milestones completed), and (ii) the proposed action (including timetable), for implementing those recommendations;
- b) by the last sitting day in June 2011, the Minister will report to the Legislative Assembly on the progress and effectiveness of the Department of Territory and Municipal Services' implementation of the recommendations of the *Review of the Operation of the Territory Records Act 2002* that have been accepted. This should include: (i) a summary of action to date, either completed or in progress (including milestones completed), and (ii) the proposed action (including timetable), for implementing those recommendations; and
- c) by the last sitting day in February 2012 on the effectiveness of: (i) amendments made to the Territory Records Act 2002, and (ii) standards either revised or issued under the Act, in response to the *Review of the Operation of the Territory Records Act 2002*.

The Committee's recommendations essentially require the Government to keep the Legislative Assembly informed of progress in implementing better records management in the Territory.

The Minister met the first recommendation on 9 December 2010 when the Minister tabled a *Report to the ACT Legislative Assembly on the Progress and Effectiveness of Records Management in the ACT*.

Recommendations 2 and 3 relate to the *Review of the Operation of the Territory Records Act 2002* that was tabled on 1 July 2010.

This Report addresses Recommendation 2, and is structured to follow the 20 recommendations made in that Review.

THE PROGRESS AND EFFECTIVENESS OF THE IMPLEMENTATION OF THE RECOMMENDATIONS OF THE *REVIEW OF THE OPERATION OF THE TERRITORY RECORDS ACT 2002*

In reviewing the operation of *Territory Records Act 2002* (the Act), the Reviewer, Mr Paul Macpherson concluded that:

“In all the consultations undertaken, there was universal agreement that the Act:

- was and would remain important to the people of the ACT
- was in general operating well
- had not caused any major problems to those specifically concerned with implementing it or to the administration of the Territory.” (P.6)

Accordingly, the recommendations made by the Review concerned a number of specific matters to improve the operation of the Act, plus a small number of significant issues that have emerged as a result of experience with the Act and the increasingly digital environment in which Government operates.

Recommendation 1

That consideration be given to renaming the Act the Territory Records and Archives Act

In considering the renaming of the Act, the Parliamentary Counsel’s Office advised that the title of an Act should reflect the substantive content of the Act. As the Territory Records Act is presently framed in terms of records rather than archives, a significant re-writing of the Act would be required to accommodate a concept of archives that was separate from records. Since this major work would add little or nothing to the efficiency or effectiveness of the Act, the advice from the Parliamentary Counsel was accepted. The name of the Act has not been changed.

Action to date	Proposed action
Consideration was given to renaming the Act. Completed The Act was not renamed.	No further action

Recommendation 2

That a fourth purpose, that of supporting the management and operation of Territory agencies, be added to the Act.

Action to date	Proposed action
A fourth purpose has been added to the act, “to support the management and operation of Territory agencies” to ensure that recognition is provided that records are created in the first instance to support the business operations of government. Completed	No further action

Recommendation 3

That the Act be amended so that Part 2 applies to the health records, the legal practice records of the Legal Aid Commission, and records of complaints to the Human Rights Commission currently totally exempted from the Act under Section 6.

The Government has largely given effect to this recommendation. The Act now enables agencies holding health records to have an integrated Records Management Program that covers all records for which the agency is responsible. Records managers of health records are now able to manage records consistently under the Standards, Guidelines and Records Disposal Schedules developed under the Act. This enables certainty in the length of time that health records are to be kept, and protection to records managers when they dispose of records according to the directions established in the relevant Records Disposal Schedules.

To ensure that the Legal Aid Commission has an integrated Records Management Program dealing with all of the Commission’s records it was considered preferable to amend the *Legal Aid Act 1977* to reflect the management of the legal practice records of the Legal Aid Commission and the relationship of these records to the *Territory Records Act 2002*.

A major concern of the ACT Health Services Commissioner was that recordkeeping responsibilities needed to be consistent, whether records were held in the public or the private sector. The concerns of the Health Services Commissioner have been met, at the same time as ensuring that government record keepers are not confused about whether

they need to maintain different record keeping regimes for health-related records and other records.

Action to date	Proposed action
The Government has given effect to the intent of this recommendation in relation to health records and the legal practice records of the Legal Aid Commission. Completed	No further action

Recommendation 4

That the exemption of Legal Aid records in Section 6(3) be amended to include records that relate to the affairs of any person who has sought legal services under parts 5 or 5A of the *Legal Aid Act*.

The Review of the Act recognised that the people who have sought legal services from the Legal Aid Commission should have their lawyer-client relationship protected, as it is in other circumstances. S6 (2) of the Act provides this protection.

Action to date	Proposed action
The Government has given effect to this recommendation. Completed	No further action

Recommendation 5

That consideration should be given to bringing Executive Documents under the Territory Records Act.

Action to date	Proposed action
The management of records of the Executive have been incorporated into the Act, and the <i>Executive Documents Release Act 2001</i> has been repealed. Completed	No further action

Recommendation 6

That new definitions be provided in the Act, or in another act if more appropriate, of:

- Record
- Territory record
- record of an agency
- Territory archive.

Action to date	Proposed action
<p>The definition of “record” has been amended to be consistent with the definition contained in the International Standard AS ISO 15489 on Records Management. The meaning of a Territory record has been clarified with the separation of the definition of a record from its controlling agency. A record that is to be retained as a Territory archive is identified through the relevant Records Disposal Schedule.</p> <p>Completed</p>	<p>No further action</p>

Recommendation 7

That the definition of health record in the Health Records (Privacy and Access) Act be examined and, as appropriate, amended to ensure that it does not inadvertently remove significant quantities of records from the coverage of the Territory Records Act.

The Government has ensured that significant quantities of records have not been removed from the coverage of the Act. This has been achieved by having an agency’s Records Management Program apply to all records, including health records. Accordingly, the regime under which health records are managed is available for scrutiny, without compromising the security and confidentiality of the records themselves. No amendment is required to the definition of a health record.

Action to date	Proposed action
<p>The Government has given effect to this recommendation. Completed</p>	<p>No further action</p>

Recommendation 8

That the Act be amended to ensure that the Director of Territory Records may amend records disposal schedules as well as approve them and that such suspensions are Notifiable instruments.

Action to date	Proposed action
The Director's functions have been extended to include the ability to suspend, amend or repeal Records Disposal Schedules as well as to approve them. These functions are Notifiable instruments. Completed	No further action

Recommendation 9

That Guideline No. 1 issued under the Act be amended to include best practice advice relating to the publication of Records Management Programs on agency websites.

Action to date	Proposed action
Territory Records Guideline No.1 – Records Management Programs has been amended. The change promotes best practice by encouraging agencies to make their Records Management Program available to the public via the agency's website, in addition to inspection of a physical document. Completed	No further action

Recommendation 10

That the Act be amended to allow the transfer of Territory records to other jurisdictions, but that this be done as part of a unified approach with all State and Territory record authorities.

The Government recognises that inter-Government cooperation occurs frequently, and that ACT's records' regime should reflect this reality, while retaining its responsibilities for transparent and accountable government. The Director may transfer possession or ownership of a record, on reasonable grounds. This has already occurred with the establishment of the Australian Health Practitioner Regulation Agency as a national function with the relevant ACT records having been transferred. The Director may also enter into an inter-government records agreement where a function is being carried out

jointly with another Government or in cooperation with a public body established for the purpose. Any such agreement must be reported to the Legislative Assembly.

Action to date	Proposed action
The Government has given effect to this recommendation. Completed	No further action

Recommendation 11

That the Act be amended to provide that records come into the open access period from the end of the year (ending on a specified date) 20 years after the year in which the record came into existence.

Canberra Day 2011 saw the first release of Territory records at 20 years of age and Cabinet records at 10 years of age.

Action to date	Proposed action
The Government has given effect to this recommendation specifying that a record of an agency is open to public access on the next Canberra Day after the end of 20 years after the record, or the original of which it is a copy, came into existence. Completed	No further action

Recommendation 12

That the appropriateness of the application of the exemption categories of the Freedom of Information Act to the Territory Records Act be kept in mind if the FOI Act is amended.

The Director of Territory Records is liaising with the Department of Justice and Community Safety on the consideration of exemption categories of the *Freedom of Information Act 1989* (the FOI Act) and their applicability to the *Territory Records Act 2002*. The FOI Act has not been amended since the release of the Review of the Act however current developments are being closely monitored.

Action to date	Proposed action
This recommendation is being pursued. Ongoing	Liaison is continuing

Recommendation 13

That consideration be given as to how best to protect “sensitive information” in care and protection records from inappropriate public access under the Act and if considered appropriate to amend the Territory Records Act to allow for the closure of classes of records.

The ACT Government protected “sensitive information” in care and protection records from inappropriate public access by pursuing the approach adopted by NSW, which allows classes of records to be closed to public access. Under ACT’s Act, closure to public access occurs by means of a S.28 Declaration which re-applies the exemption provision contained in the FOI Act.

Action to date	Proposed action
The Government has given effect to this recommendation. The Director may complete a S.28 Declaration for a record or class of records. Completed	No further action

Recommendation 14

That the Act be amended to include as a specific function of the Director of Territory Records the function of monitoring the disposal of records by agencies.

Action to date	Proposed action
The Government has given effect to this recommendation. The Director has been given the specific function of monitoring the disposal of records by agencies. Completed	No further action

Recommendation 15

That the Act be amended to include a specific function for the Director of Territory Records of suspending records disposal schedules.

The action of including a specific function for the Director of suspending Records Disposal Schedules complements the amendment made following Recommendation 8 above that Records Disposal Schedules may be suspended.

Action to date	Proposed action
The Government has given effect to this recommendation. The Director has a specific function of suspending records disposal schedules. Completed	No further action

Recommendation 16

That the Act be amended to include an additional function for Council of advising the Director about access to records which are open to public access.

Action to date	Proposed action
The Government has given effect to this recommendation. The Territory Records Advisory Council now has a function to advise the Director about access to records that are open to public access. Completed	No further action

Recommendation 17

That the Act be amended to provide that the minimum number of appointed members of the Territory Records Advisory Council be 5 and that a fifth representational category be added so that the Minister must appoint at least 1 person to represent organisations interested in public administration, governance or public accountability.

Action to date	Proposed action
The Government has given effect to this recommendation. The Territory Records Advisory Council now requires a minimum of five appointed positions, one of whom represents organisations interested in public administration, governance or public accountability. Completed	No further action

Recommendation 18

That the Territory Records Office ensures that its standards and guidelines reflect all legal requirements for the evidential validity of electronic records.

The AS/ISO Standard for Records Management 15489 defines a Record as: information created, received, and maintained as evidence and information by an organization or person, in pursuance of legal obligations or in the transaction of business.

As the government now operates actively in the digital environment, the evidential value of digital as well as paper records is becoming an increasingly important focus for agency records managers especially as citizens are ready to use new ways of interacting with government.

While no absolute guarantee can be provided that every record including those in a digital format will always be acceptable to a court, the environment that has been developed by the Territory Records Office aims to provide the government and the courts with the confidence that records in whatever format have been managed in a structured recordkeeping environment utilising current standards established within the appropriate legal framework.

In this context, the Director of Territory Records has acted to create a records management regime that is rigorous and robust. The *Standard for Records Management Number 6 – Digital Records* sets principles and minimum standards for the management of digital records across the ACT Government. This is to ensure compliance with all legislative and best practice recordkeeping requirements applicable to the ACT Government so that all digital records remain accessible and useable for as long as they are required.

With further work required to reduce the reliance on the paper record, the Director of Territory Records, utilising work already developed in New Zealand and Victoria, developed the *Standard for Records Management Number 9 – Records Digitisation and Conversion* for the ACT Government, with widespread consultation and input from agencies and the Territory Records Advisory Council. The Standard was notified on 25 March 2011. It seeks:

“To set principles and minimum standards for the management of records across the ACT Government that have been converted from their original format to a different format and to ensure compliance with all legislative and best practice recordkeeping requirements applicable to the ACT Government so that:

- records that are worth preserving as Territory Archives in their original or undigitised or source format as part of the Territory’s archival heritage are preserved
- records that need to be retained in their original or undigitised or source format for a specified period to satisfy legal, financial or other requirements of public administration, are retained in accordance to defined prerequisites

- original or source records of converted records that do not fall into the above two categories may be legally disposed of.”

Each agency is able to establish a process that meets its requirements while adhering to service-wide principles and minimum standards. It is believed from the wide consultation undertaken across government that the two Standards, 6 and 9, will together form the flexible and robust digital regime that is required to meet appropriate legal requirements.

The Government also recognises that it must be an evolving regime, and will report further to the Committee before the last sitting day of February 2012 regarding the effectiveness of its digital records regime.

In recognition of this evolving environment, the Director of Territory Records is working with a consultant to develop a digital pathway for the next stage of operation of the ACT Government in the digital environment.

Action to date	Proposed action
The Government has given effect to this recommendation by means of <i>Standard for Records Management Number 6 – Digital Records</i> and <i>Standard for Records Management Number 9 –Records Digitisation and Conversion</i> . Ongoing	Further action will be identified as needs emerge

Recommendation 19

That the Territory Records Office assists agencies by assessing electronic document and records management systems and/or business systems against the Territory Records Office *Standard for Records Management No.6 – Digital Records* or any replacement standard(s).

The Territory Records Office works actively with agencies wishing to move their operations and records management responsibilities to a fully electronic environment. Recent examples include the enhancement of the Skilled and Business Migration Program in November 2010 and the Teacher Quality Institute in March 2011.

Action to date	Proposed action
The Territory Records Office is meeting this recommendation. Ongoing	Ongoing

Recommendation 20

That the benefits and costs of eventually transferring custody of Territory archives to the Territory Records Office be examined.

The Government appreciates the arguments raised in the Review of the Operation of the *Territory Records Act 2002* of the benefits of centralised management of archival records. Archival records no longer required for active business purposes are often not considered to be the core business of agencies with their day-to-day operational responsibilities. Further, community demands for access can more easily be met from centralised location.

The current regime where agencies have life long responsibility for the records relating to their business activities works well and this is a longer term issue and the Report recognises this. The dual responsibility with the agency locating the requested archival records and the reference archivist through ArchivesACT undertaking the management and supervision of the public access requirement works satisfactorily in the current environment.

Action to date	Proposed action
The Government will continue to assess the benefits and costs of eventually transferring custody of Territory archives to the Territory Records Office. Ongoing consideration	Ongoing consideration

CONCLUSION

In summary, the Government accepted the recommendations of the *Review of the Operation of the Territory Records Act 2002*. The Government has quickly and effectively implemented the intent of the great bulk of the recommendations.

Matters that remain under active consideration are as follows:

- The appropriateness of the exemption categories of the *Freedom of Information Act 1989* to the *Territory Records Act 2002* (Recommendation 12)
- The evidential validity of the electronic records regime (Recommendation 18)

- The appropriateness and timing of transferring the custody of Territory archives to the Territory Records Office (Recommendation 20)

The Committee's second recommendation, which the present response addresses, asked about the effectiveness of the implementation of the changes that have been introduced as a result of the Review. In essence, the changes have been too recent to give more than a brief assessment of their effectiveness so far.

The present version of the Act came into operation as recently at 26 November 2010. The important *Standard for Records Management Number 9 –Records Digitisation and Conversion* was notified only on 25 March 2011. Meeting the recommendations contained in the Review led to a need for consequential changes. For instance, these and other changes required a further five Records Advices so that records managers would be in a position to interpret some of the changes. In fact, it became clear that a thorough-going review of all Records Advices was needed to ensure consistency and clarity in the now-current records regime. So, in addition to the new Advices, 57 Records Advices have been reviewed, re-written as appropriate, and commented on by records managers and the Territory Records Advisory Council. These took effect on 11 February 2011.

The final meeting of the third Territory Records Advisory Council took place on 11 February 2011. The fourth Council will be responding to the revised legislation.

The release of records for public access on Canberra Day 2011 required the development of new processes, which affected most agencies.

A number of the legislative changes have created work for agency records managers, particularly those responsible for health records. The digital records regime, now incorporating the new digitisation Standard and the ability to dispose of certain source records, affects every agency.

The importance of the Records Managers Forum in achieving the changes cannot be overstated. The nominated Records Manager for every agency is invited to attend the Forum, which meets approximately every eight weeks. It serves to allow communication:

- From the Director of Territory Records to all agencies, which includes updated information and assistance
- From all agencies to the Director, which includes important and early feedback on problems and suggestions for improvements
- Between all agencies, which facilitates self-help and advice flowing between those on the front line of records management, both at the Forum itself and bilaterally as needed away from the Forum.

Following the amendments to the Act, early evidence indicates that the changes have been warmly received. Some of the legislative changes were administrative, but others have made a very real impact as the following few examples illustrate. The digitisation Standard (No.9), in particular, has been eagerly awaited by agencies looking to move further towards a digital operating environment. The ability to appropriately transfer records between jurisdictions has allowed the ACT to be consistent with its counterparts. The ability to close classes of records has improved the privacy and security of personal information while reducing the effort required by agencies.

The Government's response to the Committee's third recommendation, due by the last sitting day in February 2012, will be better timed to comment on the effectiveness of the changes that have been made. The amendments to the Act will have been in place for over a year, and a more balanced view of the usefulness of the changes will be possible.

Members of the Legislative Assembly and the ACT community can continue to be confident that the Territory's records management regime is robust and responsive, and that our records management practices are meeting the demands created by our recognition of the importance of good governance, by the day-to-day business needs of Government, and by our wish to preserve appropriate parts of our community's cultural heritage.