

2012

THE LEGISLATIVE ASSEMBLY FOR  
THE AUSTRALIAN CAPITAL TERRITORY

**Report No 3 to the ACT Legislative Assembly on the  
Effectiveness of amendments made to the  
*Territory Records Act 2002* and standards either revised or  
issued under the Act, in response to the Review of the  
Operation of the *Territory Records Act 2002*.**

Tabled by  
Andrew Barr MLA  
Treasurer

## 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, the Minister will report to the Legislative Assembly 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 Government 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*.

The Government met the second recommendation on 30 June 2011 when the Treasurer tabled *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*.

This Report addresses the third recommendation.

**THE EFFECTIVENESS OF AMENDMENTS MADE TO THE  
*TERRITORY RECORDS ACT 2002* AND STANDARDS EITHER  
 REVISED OR ISSUED UNDER THE ACT, IN RESPONSE TO THE  
*REVIEW OF THE OPERATION OF THE TERRITORY RECORDS ACT 2002.***

In making its recommendations, the Committee noted (in Paragraph 4.12) that the Review of the operation of the Act had found that:

There was universal agreement that the Act was important for the people of the ACT and facilitated good administration, accountability of government to people and access to records for historical and cultural purposes. There was also universal agreement that the Act was in general operating well and its implementation and operation had not resulted in any major problems for the Territory or its people.

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 in the increasingly digital environment in which Government operates.

Table 1 is derived from the Government’s Report No.2 to the Committee and shows the status of each of the 20 recommendations contained in the Review of the Act.

**Table 1. Status of Recommendations contained in the Review of the  
*Territory Records Act 2002***

<b>Recommendation</b>	<b>Action cited in Report No.2</b>	<b>Status</b>
1. That consideration be given to renaming the ACT the Territory Records and Archives Act.	Consideration was given to renaming the Act. The Act was not renamed.	Completed. No further action

Recommendation	Action cited in Report No.2	Status
2. That a fourth purpose, that of supporting the management and operation of Territory agencies, be added to the Act.	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
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 given effect to the intent of this recommendation. No further action in relation to health records and the legal practice records of the Legal Aid Commission.	Completed. No further action
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 <i>Legal Aid Act</i> .	The Government has given effect to this recommendation.	Completed. No further action
5. That consideration should be given to bringing Executive Documents under the <i>Territory Records Act 2002</i> .	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
6. That new definitions be provided in the Act, or in another act if more appropriate, of: <ul style="list-style-type: none"> <li>• Record</li> <li>• Territory record</li> <li>• record of an agency</li> <li>• Territory archive.</li> </ul>	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.	Completed. No further action

<b>Recommendation</b>	<b>Action cited in Report No.2</b>	<b>Status</b>
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 <i>Territory Records Act 2002</i> .	The Government has given effect to this recommendation.	Completed. No further action
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.	The Director's functions have been extended to include the ability to further suspend, amend or repeal Records Disposal Schedules as well as to approve them. These functions are Notifiable instruments.	Completed. No further action
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.	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
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 has given effect to this recommendation.	Completed. No further action
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.	The Government has given effect to his 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

<b>Recommendation</b>	<b>Action cited in Report No.2</b>	<b>Status</b>
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.	This recommendation is being pursued.	<b>Ongoing. Liaison is continuing</b>
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 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
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.	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
15. That the Act be amended to include a specific function for the Director of Territory Records of suspending records disposal schedules.	The Government has given effect to this recommendation. The Director has a specific function of suspending records disposal schedules.	Completed. No further action
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.	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	Action cited in Report No.2	Status
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.	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
18. That the Territory Records Office ensures that its standards and guidelines reflect all legal requirements for the evidential validity of electronic records.	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> .	<b>Ongoing. Further action will be identified as needs emerge</b>
19. That the Territory Records Office assists agencies by assessing electronic document and records management systems and/or business systems against the <i>Territory Records Office Standard for Records Management No.6 – Digital Records</i> or any replacement standard(s).	The Territory Records Office is meeting this recommendation.	<b>Ongoing</b>
20. That the benefits and costs of eventually transferring custody of Territory archives to the Territory Records Office be examined.	The Government will continue to assess the benefits and costs of eventually transferring custody of Territory archives to the Territory Records Office.	<b>Ongoing consideration</b>

## **THE EFFECTIVENESS OF COMPLETED AMENDMENTS**

All evidence to this point indicates that the completed amendments have been most successful. A number of the changes found immediate practical application. A good example was the ability to transfer the required ACT records to the Australasian Health Practitioners Regulation Agency (AHPRA) along with similar records from all other jurisdictions to facilitate a national approach in this area.

The Act is now more comprehensive and comes closer to providing a single reference point for the management of all records of ACT government and its agencies. The Act now includes the provisions of the repealed *Executive Documents Release Act 2001*, and it has clarified the relationship with certain legal aid records and health records that were previously exempt.

The Act now better serves Directorates, authorities and agencies in meeting their business requirements while at the same time meeting community needs of preserving transparency and heritage. The fourth purpose that was added to the Act, of supporting the management and operation of Territory agencies, in practice has given effect to what was happening anyway, but the change has provided increased recognition that records are created for the legal obligations and for the business purposes of government. Clarification of certain definitions related to a “record” has helped agencies records management. Reports from Directorate and agency Records Managers confirm that the amendments have been appreciated and have been incorporated into agency recordkeeping practices.

Feedback obtained via public users of ArchivesACT has also been positive. In addition, the release of a year’s worth of records to public access on Canberra Day, 12 March 2011, received positive publicity in The Canberra Times and on local radio. Agencies found a single release date of both Cabinet and administrative records easier to accommodate in planning work schedules. Planning has commenced for the 2012 release.

The Territory Records Advisory Council has made clear Council’s appreciation for the successful outcome of the legislation review. The Council’s Chairman, Mr Steve Stuckey, noted the “very satisfactory conclusion” to the review shown by the amendments to the



Act. (Minutes of the Council meeting of 26 November 2010 at <http://www.territoryrecords.act.gov.au/trac/minutes> )

The Chairman's satisfaction was derived from the total of the legislative changes, and there were two that specifically applied to Council. Council is now specifically charged with advising the Director about access to records that are open to members of the public. In practice the Council had already been providing advice in the public interest about good management of public records. The role is now formalised. Also, a fifth appointed member of the fourth Council, now represents organisations interested in governance and public accountability.

Some amendments will require time before their impact becomes evident. The legislation amendments provided greater emphasis on the Director's regulatory role regarding records and records management. The greater emphasis on compliance stemmed from the first recommendation of the Auditor-Generals Report No.3 of 2008: Records Management in ACT Government Agencies, that:

The Territory Records Office should increase its compliance activities to ensure agencies comply with their approved Records Management Programs and the *Territory Records Act 2002* and to provide input to the required review of the *Territory Records Act 2002*.

The Director now has a specific function of monitoring the disposal of records by agencies, and may now amend a Records Disposal Schedule as well as approving it. He may now apply a S.28 Declaration to a class of records as well as to a particular record.

The full impact of the legislative amendments will emerge gradually. Evidence from the first year of operation suggests that the changes have been most effective in improving a records regime that was already robust. The completed changes have been incremental and evolutionary – and effective.

## THE EFFECTIVENESS OF AMENDMENTS THAT ARE ONGOING

The implementation of four recommendations of the Review of the Act remains incomplete. These four recommendations fall into three topics: FOI exemption categories, management of electronic/digital records and the custody of archival records.

### FOI exemption categories

Recommendation 12 of the Review of the Act asked:

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.

Part 3 of the *Territory Records Act 2002* establishes as a right, except in certain circumstances, access to government records that are over 20 years old. All records will open unless a Section 28 Declaration has been made under the Act. The effect of the *Territory Records Act 2002* is to override the *Freedom of Information Act 1989* in relation to access to those records; the Section 28 Declaration reactivates the FOI Act for a limited number of exempt categories. Consequently the *Territory Records Act 2002* preserves the appeal provisions of the FOI Act and ensures that those people who would have had access under the FOI Act continue to have access.

Of the 16 categories contained in the FOI Act, the Territory Records Act relies on five categories of exemption for records that may, even after a record is 20 years old, continue to require closure from public access:

- (a) Documents affecting relations with Commonwealth and States (S34(1) FOI Act);
- (b) Documents affecting enforcement of the law and protection of public safety (S37 FOI Act);
- (c) Documents affecting personal privacy (S41 FOI Act);
- (d) Documents subject to legal professional privilege (S42 FOI Act); and
- (e) Documents disclosure of which would be contempt of Legislative Assembly or a court (S46 FOI Act).

Of these five categories, personal privacy is generally the most frequently used.

The Review of the *Territory Records Act 2002* noted that the sensitivity of information usually diminishes with time, so the application of these categories may require re-evaluation as records age. Material that was once sensitive should not be kept from public access once the sensitivity has passed. This formed the basis of Recommendation 12.

The Review of the Act also noted that any change to the FOI Act could have repercussions for the Territory Records Act. The Treasury Directorate through the Territory Records Office is liaising with the Justice and Community Safety Directorate to ensure that any amendments to the FOI Act take into account the access provisions of the Territory Records Act. The *Freedom of Information Amendment Bill 2011* currently before the Assembly preserves the access provisions of the *Territory Records Act 2002* and enhances this as a key approach to government information.

## **Management of digital records – a Digital Pathway**

Recommendations 18 and 19 of the Review applied to the ongoing management of digital (electronic) records.

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

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).

From a short-term perspective, these recommendations have been met. *Territory Records Office Standard for Records Management No.9 – Records Digitisation and Conversion* provided sufficient legal clarification for agencies to convert records to digital format, and, where appropriate, dispose of the original records. Combined with Standard No.6 – Digital Records, agencies have the tools to manage digital records effectively. It is no longer necessary “for documents to be captured in paper as the ‘official’ record.” (Review, p.26). Agencies also have access to advice from the TRO, including advice relating to records management and business systems. The TRO is actively working with those areas of Government seeking to move their operations and records management to a significantly increased digital environment. A specific example of TRO-agency

cooperation in establishing digital records management systems relates to the ACT Teacher Quality Institute, which was established by the ACT Government under the [ACT Teacher Quality Institute Act 2010](#) to raise the standing of the teaching profession in the ACT and to strengthen the quality and sustainability of the teaching workforce. This new body is planning from its inception to take advantage of the digital services available.

Despite these initiatives and activities, the status of the recommendations regarding digital records management is considered to be ongoing. The practice of records management is constantly changing to reflect the fast moving digital environment. Technological developments, society's use of digital information, community expectations of information accessibility and timeliness, and judicial interpretations of digital evidence require adjustments to the way in which agencies meet their recordkeeping responsibilities. As the Review of the Act pointed out, "The solutions to these issues are long term ones and they are related. They were identified by the Auditor-General." (Review, p.27)

The continuing growth in the use and importance of digital records makes their management probably the most critical issue facing ACT's records management regime, the regime's developers, and agency records managers.

To address this important development area, the Director of Territory Records commissioned a widely recognised authority on records, and digital records in particular, to advise on practical directions for the development of digital records management in the ACT.

Judith Ellis has advised the records management industry in Australia and overseas for over 30 years, through her company Enterprise Knowledge Pty Ltd. She is a member of the Victorian Public Records Advisory Council and a member of various academic advisory boards. She has chaired Standards Australia IT21 Technical Committee for 19 years, and remains in that role. She is considered excellently placed to provide advice on the task facing ACT in managing its digital records.

Appendix 2 contains Judith Ellis's report, *Digital Recordkeeping Pathway*, completed in August 2011. The report "provides a high-level pathway for implementing digital recordkeeping across the ACT Public Service." The report identifies that considerable work needs to be done, and recognises that, "compared to other Australian governments, ACT is at the lower end of capability in relation to electronic recordkeeping leading to preservation of digital archives." (Section 3.5). The report takes care not to recommend any specific software or hardware solution but does recommend maintaining existing systems and in the medium term prepare a system specification to go to tender to select whole-of-government software for digital recordkeeping noting the rapid developments since any of the current systems were implemented (page 17 of the report).

Judith Ellis's report identifies two key principles that should guide ACT's digital records management:

1. Authentic and reliable digital records of government business need to exist.
2. Government information (contained in digital records) needs to be found and used for as long as required.

She established objectives within each of the two principles.

Principle 1: Authentic and reliable digital records of government business need to exist.

*Authentic and reliable digital records are required to support the business of government, to enable the government to account for its actions to its stakeholders.*

*Digital records need to be:*

- *Created - as a full and accurate record of government business*
- *Controlled - in a systematic, compliant and reliable manner, for as long as the records are required.*

Objective 1: The ACT Government has a sound, modern practice framework for digital recordkeeping

Objective 2: The ACT Government has appropriate technology support for digital recordkeeping (including information retrieval from digital records)

Objective 3: Digital recordkeeping in the ACTPS is consistent, compliant and continuously improved

Principle 2: Government information (contained in digital records) needs to be found and used, for as long as required.

*Digital records need to be locatable, retrievable and able to be read and used, whenever needed and over time. This requires the controls noted in Principle 1 above, as well as technology, tools and processes to enable access to those records, and access into the future for records deemed to be Territory archives.*

Objective 4: The community has smooth, timely and consistent access to Government information (from digital records) – as a right, and on demand

Objective 5: The ACT digital preservation strategy sustains and provides access to government digital information for as long as needed

Section 5 of her report, *Digital Recordkeeping Pathway*, identifies actions to achieve each objective.

The implementation of ACT's digital pathway will occur gradually, and has already commenced. The size of the task should not be underestimated. Further cultural changes will occur in both the ACTPS and the community. Processes will change further. Legal requirements will evolve. Recordkeeping, business and technical systems will respond to demands placed on them. Partnerships with the Government Information Office and Shared Services ICT will also be established.

Implementation priorities and timing will evolve as the pathway evolves. The report, *Digital Recordkeeping Pathway*, establishes a guide for the continuing development of ACT's digital records management.

## **Custody of Territory archives**

The *Review of the Operation of the Territory Records Act 2002* noted that:

“The ACT, unlike other Australian jurisdictions, leaves custody of records as forever the responsibility of the controlling agency.... this can result in agencies being responsible for records for which they have no current functional responsibility and no business interest. Archival management and access becomes, perforce, a function of every agency and perforce a distraction from what the agency would see as its primary tasks as well as an internal competitor in budget allocations.

The alternative, applied in other jurisdictions is to transfer custody to the State archives, in this case the Territory Records Office, so that management of and access to the Territory's archival records is the responsibility of the agency with the business interest and the specialist skills to undertake that task." (p.27).

The Review recommended:

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

Judith Ellis's report noted that archival records are typically 3 – 5% of all records that are created. The issue of a repository for archival records is related to custody of the records.

The Review noted that, based on overseas experience, centralised custody of archival records would be cheaper for the Territory as well as providing a better service to users of the Territory archives (p.28).

Options for managing archival records will continue to be considered by the Government, both in the context of the Centenary of Canberra celebrations and beyond.

## CONCLUSION

In making its third recommendation (*Review of Auditor-General's Report No. 3 of 2008: Records Management in ACT Government Agencies in the Legislative Assembly*), the Standing Committee on Public Accounts noted that

“The responsible Minister in his tabling speech [for the *Review of the Operation of the Territory Records Act 2002*] highlighted as the most important issues identified by the Review as relating to: (i) electronic records, (ii) coverage of the Act and (iii) custody of archival records.” (Paragraph 4.13).

Of these issues, concerns about the coverage of the Act were addressed by the legislative amendments that became effective on 26 November 2010. These amendments reinforced the competence and application of the Act. All but one recommendation related to these legislative changes are fully operational and yielding improvements to the records management regime and operations of the ACT Government. The single outstanding recommendation awaits a review of ACT's FOI Act.

The remaining two issues are not so easily dealt with, and provide the major part of work that is outstanding from the Review.

The custody of archival records remains an important issue. Present arrangements can continue to function satisfactorily until a changed records management environment or other changed circumstances allow. Partnerships with the Government Information Office and Shared Services ICT will enhance this outcome. A future centralised repository for the Territory's archival records will complement a mature, self-governing ACT, and will provide a better, more cost effective service for all users both in the ACT and elsewhere.

Management of digital records is a key issue for every Directorate and every agency of Government. Ignoring digital records is not an option. The Government's already considerable use of digital media for day-to-day business purposes will increase, and the demand exists now for a corresponding focus on digital records management. The report at [Attachment 2](#), *Digital Recordkeeping Pathway*, outlines, in broad terms, how our



digital records management must progress if we are to meet the Government's ongoing business needs.

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. The Territory's records management regime is meeting the demands of good governance, of our day-to-day business needs, and of preserving our community's cultural heritage.