



ArchivesACT

TERRITORY RECORDS

2002 – 2012

**THE FIRST TEN YEARS OF THE
TERRITORY RECORDS ACT 2002
TO 4 JUNE 2012**

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Introduction

The *Territory Records Act 2002* (the Act) passed the Legislative Assembly on 4 June 2002 having been introduced by Bill Wood MLA, then Minister for Urban Services. It was notified on 13 June 2002, and became effective on 2 July 2003 (apart from Part 3, Public Access).

The initiative for the Act began in February 1998 when the ACT Government decided to undertake an inquiry and feasibility study into the establishment of an ACT Archives for the protection of historical documents and objects. In April 1999 the ACT Government released the ACT Archives Project [Issues and Options Paper](#) to seek the advice of the community in relation to the wide range of issues that needed to be considered in relation to the creation, management, access and preservation of the records of the ACT Government. A seminar was held in the Legislative Assembly Building in May 1999 organised by the [Australian Society of Archivists](#) and the [Records Management Association of Australasia](#) to focus attention on the issues under discussion in the Issues and Options Paper.

Professional associations, community organisations and individuals responded to the community consultation. The ACT Archives Project used all of these community responses in the development of policies to provide a whole of government approach to archives and records management throughout the ACT Government. On 16 May 2000, Brendan Smyth MLA, the then Minister, announced that the ACT Government would implement a whole of government approach to archives and records management. A brief summary of events leading up to the Act's passage are available at the Territory Records Office (TRO) website:

<http://www.territoryrecords.act.gov.au/background>.

The Act filled a gap in the administrative regime of the Territory. In the period between the coverage of the Commonwealth *Archives Act 1983*, which ended with ACT self-government in 1988, and the *Territory Records Act 2002* several widespread trends affected the ACT as well as the rest of Australia. These included:

- The creation of an Australian Standard for Records Management, AS 4390;
- Existence of archival legislation in the Commonwealth, all States and the Northern Territory;
- The emergence of digital records as a significant component of Government recordkeeping, and of issues surrounding the management of these records;
- Recognition of the need for transparency in disposing of records;
- The value of using a common thesaurus for record titling;
- The wish for preservation of records and access to these records, and
- The need to maintain the evidential value of records.

In addition, the Records Act deliberately created a rather different recordkeeping regime from that which had existed prior to self-government. Whereas Commonwealth legislation had been created for a large and dispersed public service, the ACT *Territory Records Act 2002* was designed for a government that was:

- Relatively concentrated in geographical extent;
- Narrower in scope (not having Foreign Affairs and Defence responsibilities in particular);
- Physically close to the community it served; and
- Closely interwoven with the recipients of its services.
- A wider community concern with government accountability, and a public right of access to government records.

Stakeholders

Ministers with responsibilities for Territory Records

1998 - 00	Brendan Smyth MLA
2001 - 04	Bill Wood MLA
2005 - 07	John Hargreaves MLA
2008 - 10	Jon Stanhope MLA
2011	Simon Corbell MLA/Katy Gallagher MLA/Andrew Barr MLA
2012	Andrew Barr MLA

Legislative Assembly and Assembly Committees

The Public Accounts Committee (PAC) paid particular attention to Territory records during the period that the PAC was dealing with the Auditor-General's performance review of records management and the Government's response to that review, between 2009 and 2012. The Chair of the PAC attended a public consultation meeting on 4 February 2010 facilitated by consultant Paul Macpherson as part of the required review of the Act.

The Assembly as a whole focussed on Territory records at times of peak interest, notably during the passage and amendment of the legislation, the presentation of Annual Reports, consideration of the Auditor-General's performance review of records management in ACT Government agencies, consideration of the PAC's response to the Government's submission in relation to the Auditor-General's report, and tabling of the Government's responses to the PAC's recommendations.

Territory Records Advisory Council

The Territory Records Advisory Council (the Council) was created under S.42 of the Act, and by 2012 had the following functions:

“The functions of the council are to advise the director about—

- (a) the development and review of standards and codes for agency records management; and
- (b) the disposal of agency records; and
- (c) the preservation of agency records about Aboriginal and Torres Strait Islander heritage; and
- (d) issues relating to the access to records that are open to public access under section 26 (Access to records).”

Council held its inaugural meeting on 29 April 2003, and has met four times each year since then. Over the nine years of Council's existence, statements of its strategic directions have become more explicit. In the early years, the focus was clearly on participating in the establishment of the regime with the development of the Standards, Guidelines and Records Disposal Schedules which was the period before Part 3 of the Act relating to Access came into effect.

For an advisory body to function effectively, its relations with interested parties is inevitably critical. Without formally stating it as a strategic priority, Council sought to identify and work effectively with its stakeholders – the Minister and Legislative Assembly, agencies, the community, and professional recordkeeping bodies. More recently, Council has explicitly identified strategic priorities for itself, and these are discussed before dealing with the most recent, and final, part of the Act to become effective – Public Access.

Having held its inaugural meeting on 29 April 2003, Council met the Minister for Urban Services, Bill Wood MLA, on 20 May 2003. Council members were present a week later, on 27 May, when Mr Wood publicly launched the five Territory Records Standards, which, together the accompanying Guideline for each Standard, make up the backbone of ACT's records regime. The Act came into operation on 2 July 2003. Mr Wood spoke of the high hopes he had for the Council in improving recordkeeping across the ACT Government. Mr Wood (Labor) also paid tribute to the work done towards the Act by his predecessor, Brendan Smyth MLA (Liberal).

In the early years, there was much work to be done by Council and agencies, so another meeting with the Minister did not occur until 7 July 2006, when the Act had been in operation for three years. Council met John Hargreaves MLA, who was at the time Minister for Territory and Municipal Services (TAMS).

On 26 June 2009, Council met the Chief Minister, Jon Stanhope MLA, who had responsibility for TAMS, of which TRO was a part at the time. This was a most important meeting as it came at the time of a confluence of events:

- S.58 of the Act required the Act to be reviewed. The results of the review had to be tabled by 30 June 2010, so this meeting came shortly before the review's commencement. Council was eager to present its views to the Chief Minister, and stress that, in the view of Council, the Act must apply comprehensively across the ACT Public Service.
- The Auditor-General's performance review of recordkeeping in the ACT Government had been tabled on 25 August 2008. That review, together with the Government's response, had been forwarded to the Public Accounts Committee (PAC) of the Assembly.
- Early preparations had commenced for consideration of projects to celebrate Canberra's centenary in 2013. Council sought support for a repository for records that were to be Retained as Territory Archives (RTA). The Chief Minister was informed that the ACT was the only Australian jurisdiction that did not have a dedicated archives repository.
- Part 3 of the Act, dealing with Public Access, had commenced on 1 July 2008, and Council emphasised to the Chief Minister the high value placed on this initiative by the community.

On 19 August 2011, Council met the new Treasurer and Minister with responsibility for Shared Services, Andrew Barr MLA. TRO was by then part of Shared Services. As well as expressing Council's appreciation of the amendments to the Act that had passed the Assembly in November 2010, Council emphasised the importance of a repository for archival records. Council also discussed with the Minister the increasing importance of digital records to all enterprises, and the need for Government to manage its digital records as carefully as its paper records.

Representation on Council

Nominations for Council membership frequently come from an organisation. However, Council members are appointed by the Minister as individuals and not simply as representatives of an organisation. Councillors have universally acted to advance the general cause of ACT recordkeeping and preservation, and have devoted considerable time and expertise in doing so. The skills, abilities, experience and advice of Councillors have provided considerable support to the Director.

Council's founding Chair (2003 to 2007), George Nichols, formerly Director-General of the NAA, was followed by Steve Stuckey (2008 to the present), formerly Assistant Director-General of the NAA. Other members have been Judith Baskin, Alyssa Blackburn, Anne Buttsworth, Jill Caldwell, Jill Downer, Lawrence Gilbert, David Headon, Andrew Kefford, Sigrid McCausland, June Penny, Veronica Pampa, Phillip Tardif, Joanne Taylor, Meredith Whitten and Greg Wood. David Wardle (Director of Territory Records) has attended every meeting.

Community

It has not been Council practice to invite members of the community to attend Council meetings. Rather, Councillors have liaised with their constituencies and brought feedback to Council. This has proved to be an important source of information. While the Minutes of Council meetings have always been made available on the TRO website, the Agenda for Council meetings is now available on the website prior to Council meetings.

The Council was actively involved with a seminar organised by the Australian Society of Archivists during Information Awareness Month in May 2007 which was held in the Corroboree Park Hall, Ainslie. The seminar was to promote the impending commencement of Part 3 of the Act initiating public access to Territory Records. Council also supported a public meeting with consultant Mr Paul Macpherson at the Manuka Services Club on 4 February 2010 during the review of the Territory Records Act.

In addition, community feedback is available directly to TRO through ArchivesACT, and through the social media websites that reference ArchivesACT. TRO and ArchivesACT deal with individual members of the public as required.

ACTPS

The Act places responsibility for Territory records on the Principal Officers of agencies to which the Act applies.

The Act covers the administrative records and the specific business records of all agencies. Some provisions of the Act also apply to health records covered by the *Health Records (Privacy and Access) Act 1997*. Other Acts may also apply to records, notably the *Freedom of Information Act 1989*, the *Privacy Act 1988*, the *Copyright Act 1968* and the former *Executive Documents Release Act 2001*, which has now been incorporated in the Records Act.

Public servants have certain obligations placed on them by the Act and in return receive certain protections as they undertake their daily responsibilities. The consistency of the regime across the ACTPS enables officers to move between agencies with greater ease and it also enables functions to move between agencies with little recordkeeping disruption to ongoing business.

Council ensured that from time to time it met the Executive responsible for the TRO. Without chronicling all these meetings, the usual format was to attend a Council meeting to provide Council with updates, which Council members appreciated. These most recent Executives have been Anthony Polinelli in TAMS and Andrew Whale in Shared Services. On occasion, the relevant Chief Executive has also attended Council meetings.

Professional organisations

Professional organisations associated with recordkeeping have always shown interest in the ACT's records regime, and have kept in close contact with Council members. These organisations have included the Australian Society of Archivists, the Records Management Association of Australasia (RMAA) now known as the Records and Information Management Professionals Australasia (RIMPA). In addition, local branches of organisations such as the Heraldry and Genealogy Society of Canberra, the Canberra and District Historical Society and the National Trust of Australia (ACT), have been eager and appreciated allies in the cause of good recordkeeping.

In 2004, ACT was admitted as a full member of the Council of Federal, State and Territory Archives, represented by the Director of Territory Records. This later became the Council of Australasian Archives and Records Authorities (CAARA), with members from all Australian jurisdictions and New Zealand. From the outset, the extent of CAARA's support for the ACT's records initiative has been outstanding. As well as freely given advice, the support has included secondment of staff from the National Archives of Australia (NAA) during the establishment phase, and access to IP as required. The significance of this assistance and encouragement is difficult to overstate. For its part, ACT has contributed as it has been able to projects of national scope, including digital records management, the Documenting a Democracy project, and recordkeeping for outsourced Government functions.

In addition, Council acknowledged CAARA statements of principles. An important principle in 2004 was "Access to records of Indigenous Australians affected by past separation policies", to facilitate access to records held by the ACT Government to assist Aboriginal and Torres Strait Islander people in accessing these records. Actions such as this addressed the third function with which Council was specifically charged. Another important example was the 2011 introduction of the second non-functional Records Disposal Schedule (RDS) for preserving records containing information that may allow people to establish links with their Aboriginal or Torres Strait Islander heritage.

Rigorous regime

The ACT's records regime may be seen as having two aspects – regulation and agency support.

Regulation

Section 18 of the *Territory Records Act 2002* allows the Director of Territory Records to approve Standards or Codes for agency records management. Under section 17 of the Act, an agency's Principal Officer may only approve a Records Management Program that complies with the Standards and Codes set by the Director of Territory Records. In approving Standards or Codes, the Director must consult with the Council and with agencies.

The ACT's regulatory regime comprises Territory Records Standards that are approved under the Act, and each Standard has an accompanying Guideline to amplify what is required by the Standard. Additional information is disseminated through the publication of Records Advices.

Standards, Guidelines and Records Advices

There are now nine Standards for Records Management.

- Standard No. 1 : Records Management Programs
- Standard No. 2 : Appraisal
- Standard No. 3 : Records Description and Control
- Standard No. 4 : Access
- Standard No. 5 : Recordkeeping and Outsourced Government Business
- Standard No. 6 : Digital Records
- Standard No. 7 : Physical Storage of Records
- Standard No. 8 : Business Continuity and Records Management
- Standard No. 9 : Records Digitisation and Conversion

This regime has responded to the emerging demands of agencies. The most notable change has been the increasing emphasis on digital records as government business has become increasingly electronic. The regime was, from the outset, media independent. So the backbone of the regime as it was initially formulated has remained stable. What was needed was additional advice about handling digital records, and this was provided in Standards 6 and 9.

Over the ten years since the Act commenced, 67 Records Advices have been produced, some of which have been superseded. Records Advices are provided to Council for information and comment. All current Records Advices are available on the TRO website.

Standards and codes are required to be reviewed within 5 years. The first five Standards and Guidelines were reviewed by a Melbourne company, Records Solutions, in 2008. The results of the review, and the relatively small changes proposed, were discussed and agreed by Council on 28 November 2008.

In reporting the results of the review, the reviewer stated “I believe the Territory Records Office Guidelines are exceptional documents. Having carefully reading through each guideline I believe they have “stood the test of time” and provide the effective advice and instruction to agency staff. As a platform to assist agency staff in developing and implementing an effective Records Management Program I believe they are unsurpassed within the Australian government context. The style and manner in which they are written is also commendable as they are clear, precise and most importantly, written in a style that is accessible for a wide variety of agency staff including those with minimal or no records management experience. I could find only minor changes required and have suggested in the following pages additional information that may be incorporated to further expand on existing information and/or instructions”.

Records Disposal Schedules (RDSs)

Functional RDSs

Underpinning RDSs that are consistent across government requires the use of a common thesaurus of terms used for titling records. The common whole of government thesaurus employed is the Territory Version of Keyword AAA (TVKAAA), which is used under licence from State Records, NSW. The common thesaurus is mandated through its use as the structure of the RDSs which defines the retention/disposal treatment of classes of records.

TVKAAA is a functional classification of records based on the functions of Government. Accordingly, RDSs are also functionally based.

From the outset, 17 functions of government, related to the administration of government, such as finance and personnel records, were recognised to apply in multiple agencies. An RDS was developed for these 17 functions, which ensured common treatment of like records across the ACTPS. This RDS was the Territory Administrative Records Disposal Schedule, known as TARDiS. Following a review of TARDiS in 2008 these common administrative functions were separated out into their own Records Disposal Schedules.

The task for an agency was then to create functionally specific RDSs to apply to the records of their agency and this process then evolved to consider functions that would apply in more than one agency. Council played a major role in encouraging agencies in this direction, and working through the detail of many Records Disposal Schedules. RDSs are presented to Council in draft form for comment. Council then reviews each RDS at a subsequent meeting after agency and Councillors' comments had been incorporated.

For the first three years of the Council, it turned out that about four RDSs were considered at each Council meeting. Generally, this seemed to be a practical limit to the capacity of agencies, TRO staff and Council. By 2012 there were over 80 functional RDSs in operation covering the major functions of government.

By 2012 there are relatively few new RDSs to consider. However, with experience being gained from the use of the RDSs, there emerged a need for a process to review the Schedules and apply amendments flowing from their use in the practical sentencing of records and functional and legislative changes across government.

Non-functional RDSs

While the majority of Records Disposal Schedules will always be functionally based there will occasionally be the need to adopt a non-functional approach.

The first occurred in conjunction with Standard and Guideline 9: Records Digitisation and Conversion. Records that had been properly converted to digital form and were not required to be Retained as Territory Archives (RTA) could be disposed of. The basis of these decisions were not centred on any specific government function but applied to all agencies and records. The RDS for Source Records was agreed by Council on 26 November 2010.

The second situation applied with records that may assist people with Aboriginal or Torres Strait Islander heritage to pursue that heritage. This again was not related to any specific government function, but applied to every record. The RDS "For Preserving Records Containing Information That May Allow People to Establish Links with Their Aboriginal or Torres Strait Islander Heritage" was approved by Council on 11 February 2011.

Agency support

Agency responses and situations

Before the passage of the Act and following ACT self-government there was no legislative basis for the creation and management of records. Instances of the failure of records management were increasing at an alarming level. The majority of reports from the ACT Auditor-General drew attention to the lack of effective records management as a serious concern. The absence of records

to provide support for the operations of government and where the evidential validity of records was open to question was a serious concern. Also, there was no mechanism by which records could be disposed of, so agencies were faced with ever-increasing costs of records storage.

Agencies recognised that although there could be an increased workload associated with effective recordkeeping, it offered them a high level of protection and increased efficiency in ensuring that records could be found easily to support the operation of the agency.

By the time of the amendment of the Act in November 2010, it was acknowledged that agency Records Management Programs and relevant RDSs were still providing a sufficiently robust structure that provided the protection required by agencies, without compromising the comprehensiveness of the Act.

At the same time, it was understandable and inevitable that the quality of the responses to the Act would improve over time as systems became firmly bedded down across each agency. This process is continuing as new demands emerge, most notable the demands of increasingly digital recordkeeping practices. The surge of revisions to RDSs is an example of this, and is an example that has pleased TRO and Council as it has meant that the RDSs are being utilised by agencies. Feedback between agencies about different approaches has also contributed to improved practices.

In general, agencies take their compliance responsibilities seriously. So far it has not been necessary to name any agency for non-compliance in the Director's Annual Report.

Records Managers Forum

The Records Managers Forum was established by the TRO to give TRO a means of communicating directly with agencies, and to put agencies in touch with others as a means of self-help, support and sharing of information. The multi-way communication has proved invaluable, including early informal feedback to the TRO of issues that were emerging for agencies.

The Forum meets at least four times each year with additional meetings scheduled as required. Meetings were originally scheduled in the week following Council meetings to allow the results of Council meetings to be disseminated to agencies quickly and widely. As systems have matured, the meetings have come to be scheduled a couple of weeks before Council meetings to enable agency advice to be incorporated into papers to be considered by Council.

Director's monitoring of compliance

Section 33 of the Act sets out the Director's functions. Several functions relate to the Director providing advice, assistance and encouragement to agencies. Two other functions are:

- (f) to monitor the disposal of records by agencies;
- (g) to examine the operation of the records management program of an agency and the agency's compliance with this Act and the program and report on the operation and compliance;

Although there can be tension between the provision of encouragement and advice and the monitoring of compliance, this has rarely occurred. While the Director regularly monitors compliance and has conducted surveys to this effect, agencies are also encouraged to self assess and processes have been established to assist them in doing so.

In the early years of the Act, aspects of advice and encouragement were clearly to the fore. After about five years, the TRO began placing greater emphasis on monitoring compliance. This increased emphasis on compliance has continued, but without overshadowing advice and encouragement. The arrangement has worked well, and continues to enable the records regime to adjust to changing circumstances while allowing reassurance that compliance issues are not forgotten.

In addition to the responsibilities under provisions of the *Territory Records Act 2002*, the Director also has administrative responsibilities for sections of the *Copyright Act 1968* as it applies in the ACTPS.

Auditor-General

In November 2007, over five years after the passage of the legislation, the Auditor General announced the commencement of an audit of records management in a sample of agencies “to determine whether agencies’ record keeping policies, systems and procedures are in accordance with relevant legislation, government policies and accepted record keeping standards and principles”.

Four agencies were investigated: ACT Planning and Land Authority (ACTPLA), ACT Public Cemeteries Authority (Cemeteries), the Department of Education and Training (DET), the Department of Treasury (Treasury), as well as the TRO. The Performance Audit Report titled ‘Records Management in ACT Government Agencies’ was tabled in the Assembly on 25 August 2008. There were a total five areas assessed – Creation and custody of records, Protection of records, Sentencing and disposal of records, Monitoring and review, and Training and communication. In the total of the 20 areas assessed over the five agencies, 6 were rated as satisfactory, 12 as partially met, and two as unsatisfactory.

Despite this, the overall audit opinions on P.5 of the report were encouraging:

- All audited agencies had taken action to comply with the legislative requirements of the *Territory Records Act 2002*, but progress towards full compliance varied between agencies.
- Each of the audited agencies was at a different stage in addressing their recordkeeping responsibilities. All required improvement in the development of their recordkeeping framework, and the implementation of recordkeeping policies and procedures.
- None of the audited agencies consistently demonstrated better practice in records management. Some fell significantly short of this mark.

While the comments made by the Auditor-General were not unexpected, the report recognised the progress that agencies had made towards complying with the legislation. The report endorsed the importance of good records management. Certainly, its 11 recommendations, all of which were accepted by Government, provided incentive for all agencies to improve their records management.

Public Accounts Committee of the Legislative Assembly (PAC)

After tabling, reports of the Auditor-General are considered by an Assembly Committee. The Records Management Audit Report was considered by the PAC at about the same time that the

required review of the Act was being undertaken (see below). The PAC decided to delay its response to the Government's submission on the Auditor-General's Report until after the legislative review had been completed. Accordingly, the PAC's consideration of records management included both the Auditor General's report and the legislative review of the Act, providing a more comprehensive overview of records management in the ACT.

The PAC tabled its "Review of Auditor-General's Report No 3 of 2008: Records Management in ACT Government Agencies" in the Assembly on 25 August 2010. The Review contained three Recommendations for Government. The Government accepted the three recommendations that:

1. The Minister report to the Assembly by the end of December 2010 on the progress and effectiveness of the implementation of the Auditor-General's recommendations that have been accepted.
2. The Minister report to the Assembly by the end of June 2011 on the progress and effectiveness of the implementation of the recommendations of the Review that have been accepted.
3. The Minister report to the Assembly by the end of February 2012 on the effectiveness of amendments made to the Act, and on standards either revised or issued under the Act, in response to the Review.

PAC Recommendation 1

The Government, by the end of December 2010, outlined for the PAC, those actions undertaken and in progress with implementing the recommendations of the Auditor-General's report. The submission outlined the changing environment faced by Records Managers, and said that the most pressing have been increasing levels of demand for:

- Access to digital records, for both new records and the ability to access paper records electronically
- Certainty regarding the evidential value of digital records
- Public access to records
- Higher standards for records management and storage, and
- Greater efficiency in all aspects of records management

The Government expressed its confidence that all agencies would continue to strive for better practice in records management while addressing emerging demands for efficiency and effectiveness in business practices.

PAC Recommendation 2

The Government, by the end of June 2011, outlined for the PAC, that it had accepted the recommendations of the *Review of the Operation of the Territory Records Act 2002* and had quickly and effectively implemented the intent of the great bulk of the recommendations. Matters that remained under active consideration were:

- 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 TRO (Recommendation 20)

In essence, the changes had been too recent to give more than a brief assessment of their effectiveness. The amended Act had come into operation on 26 November 2010. The important *Standard for Records Management Number 9 -Records Digitisation and Conversion* was notified on 25 March 2011.

The legislative changes were warmly received. Some were administrative, but others had a very real impact as the following few examples illustrate. The Digitisation Standard (No.9), in particular, had 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 match its state counterparts. The ability to close classes of records improved the privacy and security of personal information while reducing the effort required by agencies.

PAC Recommendation 3

The Government, by the end of February 2012, reported to the Assembly on the effectiveness of amendments made to the Act (made in November 2010), and Standards either revised or issued under the Act, in response to the Review. The report found that the Act was now more comprehensive. It included the provisions of the repealed *Executive Documents Release Act*, and it also ensured that certain aspects of health-related records were appropriately covered by the Act.

Issues that remained outstanding were:

- The suitability of FOI exemption classes, which awaited a review of the FOI Act.
- The management of digital records, which was recognised as an ongoing task reflecting a changing business world. To address this, the report included in full a report from Judith Ellis on a *Digital Records Pathway* for the ACT, which established principles and objectives for ongoing digital records management.
- The matter of a repository for Territory archives.

Strategic directions for Council and TRO

As the ACT's records regime became firmly established in all agencies, Council found its business was less focussed on detailed provisions, such as the content of RDSs, and more absorbed with general themes.

At its meeting on 3 June 2011, the Council's Chair, Steve Stuckey, provided background to new members regarding previous meetings with Ministers. At the Chair's last meeting with the Chief Minister on 26 June 2009, Steve Stuckey had made it clear that Council had several strategic priorities. As the minutes of that June 2011 Council meeting recorded:

1. In the (then) upcoming legislative review of the *Territory Records Act 2002*, Council's concern was to ensure that the Act maintained comprehensive coverage of all ACT Government records. He [the Chair] understood that some agencies wanted to be removed from the Act. Council considered accountability to be the most critical issue and he alerted the Chief Minister to Council's clear view that all agencies of government must be covered by the provisions of the Act and the current exemptions removed. Although the result of the review was a strengthening of the comprehensiveness of the Act, Council's concern for accountability and comprehensive legislative coverage remain.
2. The Chief Minister was made aware that the ACT was the only jurisdiction that does not have a purpose-built repository for archival records of Government. Although some progress was subsequently made with the costing of a design brief the proposal for an ACT archival repository has still not been advanced by government. The need remains to ensure the survival of the ACT's archival heritage, and the matter remains a Council priority.
3. Digital records are already vital to Government functioning and will continue to be. They cannot be ignored. The Chair had pointed out that people now entering the workforce had lived their entire lives in a digital environment. Council would maintain a watching brief over the numerous challenges of creating, securing, preserving and maintaining access to digital records.

These priorities had evolved steadily since about 2005, and this was a clear statement of priorities that remained in 2012 and are likely to continue, with changes of emphasis as circumstances require.

Legislation

Legislation as a Council and TRO priority arose from two sources. The most obvious was that the Act contained a sunset clause requiring a review of the Act five years after commencement. This would have required commencement on 1 July 2008, with tabling of the results of the review in the Assembly by 30 June 2009. However, as part 3 of the Act, dealing with public access to records, was to commence on 1 July 2008, Government agreement was obtained to delay the legislative review for 12 months. The review commenced on 1 July 2009.

As has been mentioned above, the Standards and Guidelines were reviewed in 2008. There was no reason to delay the review of the codes created under the Act. The first five Standards stood the test of time very well. Independent external assessment found that only minor modifications were required. Council supported the amendments, as did widespread agency consultation. Five amended Records Management Standards and Guidelines were notified on 9 January 2009. In fact, having the review of the subordinate legislation completed before the review of the Act itself was convenient and allowed a clear focus on the legislation itself when the main review commenced in 2009.

The second reason for Council's great interest in the review was that, with experience of the workings of the Act, Council members considered that the legislative regime could be improved. As the Chair indicated to the Chief Minister in 2009, Council's greatest concern was with the comprehensiveness of the Act. Having several pieces of legislation dealing with government records was seen by Councillors as a source of confusion and compromise of the regime's rigour.

The legislative review was undertaken by Paul Macpherson, Manager, Records and Archives Office, University of NSW, and involved widespread consultation with agency Chief Executives, records managers, the Council and the general public.

Unsurprisingly, the three most important issues identified by the review were similar to those identified by Council:

- Electronic records,
- Coverage of the Act, and
- Custody of archival records.

The review made 20 recommendations, all of which were accepted by Government. The most important changes were:

- A fourth purpose, of supporting the management and operation of Territory agencies, was added to the Act.
- Part 2 of the Act now applies more widely to other records.
- Executive documents were brought under the Territory Records Act.
- The Director of Territory Records may now amend records disposal schedules as well as approve them and that such suspensions are Notifiable Instruments.
- Territory records may now be transferred to other jurisdictions.
- As one measure to help protect “sensitive information” from inappropriate public access, the Act now allows for the closure of classes of records.
- The Act now includes as a specific function of the Director of Territory Records the function of monitoring the disposal of records by agencies.
- The Act now includes an additional function for Council of advising the Director about access to records which are open to public access.
- The minimum number of appointed members of the Territory Records Advisory Council was increased to 5 and a fifth representational category was added so that the Minister must appoint at least 1 person to represent organisations interested in public administration, governance or public accountability.

Several recommendations were not able to be implemented immediately. The appropriateness of the application of the exemption categories of the *Freedom of Information Act 1989* to the Territory Records Act will be considered at the time of the next review of the FOI Act.

The management of digital records will be an ongoing task as the electronic business environment continues to change and develop. The immediate needs of ensuring evidential validity of electronic records, and converting paper records to digital form, have been addressed.

Finally the eventual transfer of custody of Territory archives to the Territory Records Office appears likely to be a long-term goal.

The Council’s Chairman, Steve Stuckey, noted the “very satisfactory conclusion” to the review shown by the amendments to the Act, and the Council made clear its appreciation for the successful

outcome of the legislation review. The Chairman's satisfaction derived from both the total of the legislative changes, and the two that specifically applied to Council. Council was 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 had been formalised. Also, a fifth appointed member of the fourth Council would represent organisations interested in governance and public accountability.

Repository

Council's second stated priority of care of archival records which are those assessed as "Retain as Territory Archives" (RTA) in the Records Disposal Schedules arose fundamentally from the desire to protect the ACT's documentary heritage. However, it arose from several strands.

One strand was agency efficiency. Archival records are not considered vital to the performance of current agency functions, so there is little incentive for agencies to devote resources to preservation. A second strand was the need to create a function of government for the preservation of documentary heritage. It makes more sense for TRO to have that responsibility by augmenting the present functions of the TRO, so that preservation of records is part of its core business.

A further strand was that older records require certain physical conditions to endure, including a controlled physical environment of temperature and humidity. Digital records have other requirements also, including the maintenance of software and hardware systems able to access and migrate older digital records. These responsibilities would be more easily met through the provision of a centralised repository. A final strand was to ensure continued public access to ACT's documentary heritage.

Council members have expressed the hope that commitment to a Repository could be an initiative as part of Canberra's Centenary celebrations in 2013.

Digital recordkeeping

Digital recordkeeping is now a fundamental part of daily business life, with electronic communication occurring at all levels. The move by agencies to rely ever more frequently on digital records as they conduct their everyday business will only increase. Initiatives such as the recently established open Cabinet meetings with the community, which are being conducted via social media are but one example.

At the same time, Council members have recognised that in some ways digital records are as fragile a medium as any. The aspects of digital recordkeeping that will require special attention are still emerging, as are the opportunities it presents for widespread and rapid community involvement.

One of the most pressing needs for agencies was to be able to convert paper records to digital format while retaining the evidential value of the records. This need was addressed through *Standard for Records Management Number 9: Records Digitisation and Conversion*, which commenced on 25 March 2011. This Standard has provided agencies with the means by which, under certain circumstances, records may be converted to digital format and the source record may be disposed of.

The Territory Records Office sought external advice on how best to progress its responsibilities in relation to digital recordkeeping. Judith Ellis from Enterprise Knowledge in Melbourne worked with the Director to prepare an approach which has been published as the Digital Recordkeeping Pathway which is now available on the TRO website. This approach, has been accepted by the government and tabled in the Legislative Assembly, will both influence and guide the future direction of digital records management across the ACT Government. It recognises the role of the TRO in conjunction with the ACT Government's newly established Government Information Office to drive the new digital environment.

Digital recordkeeping will remain a priority of Council for the foreseeable future.

Open government

On 6 April 2011, the Chief Minister, Katy Gallagher, MLA presented a Statement on Open Government to the ACT Legislative Assembly. She stated that: "I am pleased to have an opportunity today to brief the Assembly on the Open Government reforms I am driving across a number of areas of government and administration. These are reforms that, along with the structural changes to create a single public service, are significantly enhancing how the Government can serve, speak with and respond to the community.

"In the Ministerial Statement on Open Government I made in June this year I committed my Government to some important principles. I said I would promote even greater transparency in process and information. I said I would encourage and enable participation by Canberrans in the business of government. And I said I would work with the community, drawing on its skills and expertise, to find solutions to issues that we collectively confront as a city.

"In that same statement, I set myself, my Ministers, the heads of Directorates, and every single public servant, a new default position. I said there ought to be a presumption that information available to the Government should also be made available to the community.

"All of the work of recent months in relation to Open Government has been made much easier by the fact that for the past few years our Territory Records Office has been busily developing standards and guidelines for digital record-keeping. Most recently, over the past six months, the Office has developed a 'Digital Record Pathway' to improve strategic digital record keeping right across the Government. The Pathway recommends mandating digital formats for long-term records, and the use of open standards, consistent with policy of the National Archives. This work by our own Records Office puts us in a good position to really push forward with a number of our Open Government initiatives. The groundwork is laid."

Public access

Part 3 of the Act, Agency Records – Access, commenced on 1 July 2008. Part 3 establishes as a right, except in certain circumstances, of 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 turn off the *Freedom of Information Act 1989* in relation to those records and the Section 28 Declaration has the effect of reactivating the FOI Act for a limited number of exempt categories, the most important being personal privacy. 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. Although created for

the business purposes of government, these records are a community resource and an important part of the ACT's documentary heritage.

Process to ensure correct release

A significant task for all agencies in the period leading up to the commencement of Part 3 was to scrutinise their records to ensure that

- Records that should not be released to the public have a S28 Declaration approved.
- Finding tools are available so that members of the public, officers of the agency, and the ACT Reference Archivist could identify files and records that are available.

In practice, this work has continued after July 2008. Overall feedback during the first years of public access has been very positive. Agencies have been proactive in preparing their records for public access and the government remains confident in the approach as no inappropriate records have been released into the public domain.

Public assistance – ArchivesACT

ArchivesACT is the first point of contact for requests to access older ACT Government records. Through the Refracker portal on the ArchivesACT website, enquirers request the material that they wish to access. The ACT Reference Archivist then identifies the appropriate agencies to receive the query, and seek the relevant record or files from the agency. This service requires a wide knowledge of the recordkeeping systems used across the ACTPS and enables researchers to have a single point of access to all government records wherever they are held.

The government is proud of this service initiative and at the most recent Annual Report Hearings, the Public Accounts Committee asked the Treasurer to provide additional material on the use being made of this service by members of the public. In particular they asked about the use of the research guides and finding aids located on the ArchivesACT website at http://www.archives.act.gov.au/home/how_to_find_a_record/publications

There has been a noticeable increase in the use of social media to access ArchivesACT following recent notifications by followers on Twitter. There has also been a rise in interest following the release of documents on Canberra Day in both 2011 and 2012. Over 2100 photos are now available online on Flickr.

Work continues on describing and sentencing records from previous administrative eras mostly prior to ACT self-government. Originally, there were estimated to be some 5 ½ shelf-kilometres of records to be appraised, and this is continually being reduced.

Section 28 Declarations

As explained above, S28 declarations are the means by which records that should not be open for public access remain restricted from public access.

In November 2011, Council initiated a discussion on the issue of whether the Canberra community could be confident that records were not being inappropriately closed. Personal privacy was the

overwhelming reason for issuing S.28 Declarations, accounting for 64% of all Declarations. The Director said that, in his opinion, agencies were not closing records unnecessarily.

Council discussed the aggregated reasons for records remaining closed after 20 years, and which agencies were most represented in closures. Council's view was that it would help TRO's presentation of openness and legitimacy if information about record closures was made more readily available. This would demonstrate to the community, not only that community advice has been sought, but that it has been incorporated and acted upon as far as possible. In summary, the community wants to know, and has a right to know:

- (a) that Government is collecting the right information;
- (b) how long each type of information is kept; and
- (c) the level of accessibility to each type of information.

Council considered that it has a role in encouraging each of these aspects, including overview and summary information, and that TRO should be proactive in informing the community on these matters including the fact that records do lose their sensitivity over time and could be released at a later date.

Raising public awareness

Council has strongly endorsed TRO's view that it has a legitimate role in raising public awareness of the availability of Territory records. Both Council members and TRO staff speak to professional and community groups when opportunities arise and can be met.

Particular attention is paid to issues associated with those interested in their Aboriginal and Torres Strait Islander heritage. In conjunction with State Records and NSW the "In Living Memory" exhibition is scheduled to open on 3 July 2012 in the exhibition area of the Civic Library.

ArchivesACT also releases a "Find of the month" to draw attention to recent items of interest and this is promoted by the Director in a regular spot on local ABC radio 666.

Conclusion

Overall the first ten years of the Act have been a comprehensive success in records management terms:

- The backbone of the regime, the first five Standards and Guidelines, has proved remarkably robust, resilient and timeless.
- An additional four Standards and Guidelines have addressed emerging challenges for ACT recordkeeping. Evidence so far suggests they are operating as successfully as the first five Standards and Guidelines.
- The functional basis of classification has proved its worth time and again. Organisation restructures have been accommodated relatively easily in recordkeeping terms with minimal disruption to those delivering services to the community.
- A recent broadening out beyond functional responsibilities in those cases where developments have applied across all records has been most successful. This has assisted records migration to digital format, and recordkeeping to assist ATSI constituents. It represents a maturing of the regime, without compromising functionality as its basis.
- The model of distributed responsibility for records has proved to be very well suited to a geographically concentrated jurisdiction whose public service is closely interwoven with the recipients of its services. It has not always provided the quickest and easiest means of recordkeeping advancement, but it has been a process that has taken all stakeholders on the journey.
- The contribution of experts in the community, in the form of the Territory Records Advisory Council, has been very successful. The wide expertise and dedication of interested community members has helped produce the excellent regime that exists today. There has been considerable voluntary input of effort from Council members over the decade. Having two experienced chairmen, George Nichols and Steve Stuckey, combined with the efforts and skills of the other Councillors, all of whom have worked for the overall good of the ACT's documentary heritage and provided continuing support for the Director.
- The support provided by other State and Territory and New Zealand records authorities, both through the Council of Australasian Archives and Records Authorities and bilaterally, has been generous and gratefully received. The support has been ongoing and has included the use of Intellectual Property and specific assistance.
- The implementation of the Act has withstood an Auditor-General's performance inquiry and an inquiry by the Public Accounts Committee of the Legislative Assembly. These inquiries served to strengthen the Act's implementation.
- The Act itself has withstood a review that was required by the Act itself. External reviews in 2009 and 2010 of both the Act and its subordinate legislation (the Standards and Guidelines) resulted in recommendations that strengthened the Act. Notably, the Act has become more comprehensive in its application to agencies, and more coherently integrated with other

Acts, such as the Executive Documents Release Act (now subsumed within the Records Act), the Health Records (Privacy and Access) Act and the Freedom of Information Act.

- The goodwill on the part of all participants has been exemplary.

Overall, the Act has enabled a consistent and stable records management regime that has noticeably contributed to the creation of an integrated ACT public service that meets its day-to-day obligations in a manner that both withstands legal scrutiny when required, and also protects the community's documentary heritage. The developments have been considerable from a ten-year perspective while the progress has been both incremental and evolutionary.

Naturally, there are challenges already facing the regime and doubtless others will emerge from the changing business environment and changing community expectations. Some of the challenges that are identifiable at present are as follows:

- The ACT Government is becoming more "Open" in its focus and the regime created by the Territory Records Act will become the driver for so much of this initiative. This focus will be pushed by the government and demanded by the community. It will be necessary to work through how this is to be achieved while safeguarding the needs and rights of all individuals affected, and how it is to be provided to those with a lack of digital access.
- The community is becoming increasingly digital in its method of operation. Recordkeeping will continue to evolve around the greater use of digital records. The TRO will need additional resources to provide leadership and support to agencies as they make this transition.
- Records that are to be retained as Territory Archives will become a responsibility for the whole of government not just the agencies that created them. The case remains for a repository to secure these records and increase the community's access to its documentary heritage. How best to preserve these archives in both paper and digital formats is a challenge to be worked through over the next decade of the Act.

The first ten years of the *Territory Records Act 2002* has produced a solid foundation for consistent and effective records management across all levels of government. This foundation will be the basis for an equally effective and challenging second decade.