

The Continuing Legislation Project: Workshop held in St Kitts on 17th October 2005

Background

The Archival Legislation Project began in 1999 with a study by Dagmar Parer (Australia). Its objective is to provide Commonwealth countries with a report on modern best practice archival legislation principles, which archivists can draw upon when modernising records and archives legislation or introducing freedom of information and privacy legislation, and with opportunities to discuss experiences and developments in the interfaces between these developments. The report has been backed up by a series of workshops, which have been held in Seville, Spain (2000), Wellington, New Zealand (2003) and now St Kitts.

Proceedings

Kelvin Smith opened the workshop with a presentation on the principles and relationships of records and archives legislation.

Why have legislation?

No government can operate without records because they document its actions. Additionally, government and civil servants must account for their actions to the citizens. Government must also protect the rights of its citizens, the environment, land rights and territorial integrity. Past records must be used to plan for the future of the nation and serve as part of its heritage.

What is the objective of legislation?

Records and archives legislation is an essential component of the wider legislative base of accountable and effective government. It provides the essential framework that enables a national records and archives service to operate with authority in its dealings with government departments and agencies.

Two approaches can be taken when framing national records and archives legislation:

- Detailed prescriptive primary legislation
- General framework established by primary legislation to which detail is added by secondary legislation and other documents ("enabling")

In practice most records and archives legislation is a combination of the two. It is important, however, to strike the right balance between the options. When new primary legislation is being drafted, secondary legislation and supporting documents essential for its implementation must be drafted concurrently so that they can be put in place as soon as the primary legislation has been enacted.

Three recent developments have had a major impact on approaches to new legislation:

- Greater recognition of the importance of records management
- Electronic ways of working
- Greater access to information brought about by freedom of/access to information regimes

A very important aspect of the United Kingdom FOI legislation is the requirement to issue a code of practice on the management of records under the Act. This code sets out broad principles and procedures for the effective management of records, without which public authorities would be unable or hard pressed to implement the FOI Act.

Michael Hoyle (International Records Management Trust) gave a presentation on the development and implementation of the Public Records Act in New Zealand, in which he played a pivotal role during his employment by Archives New Zealand (1996 – 2005).

Discussions on new archival legislation in New Zealand – to replace the Archives Act 1957 - began as early as 1975. Its development was affected by a number of

issues over the years, such as access to information legislation in the 1980s, a Privacy Act in the 1990s, and increasing privatisation of public sector functions. These developments, plus changes in traditional business rules, the task of preserving current and non-current records, and new technology, persuaded the authorities that a new Act was urgently needed.



Some of the participants

The objectives of the new legislation were to:

- Promote accountability between the Crown, the public and Government agencies
- Enhance public confidence in the integrity of public records
- Enhance and promote historical and cultural heritage
- Encourage partnership and goodwill envisaged by the Treaty of Waitangi in relation to public records

The legislation covers all activities in which the Crown has an interest and includes:

- The legislative, executive and judicial branches of government
- Agencies and their branches
- Departments
- All Crown entities (including tertiary institutes and universities, State school board of trustees, and district health boards)
- State-owned enterprises

The legislation also includes definitions of records and public records:

Records are defined as *any information that is compiled, recorded or stored in any format*. Public records are defined as *records that are created or received by a public office in the conduct of its affairs*.

Core provisions of the Act are that all public offices are required to create and maintain records, which are available and accessible over time, and all public offices must obtain the authority of the Chief Archivist for the disposal of public records; there is no exemption from these two provisions. The Chief Archivist can set mandatory standards and guidelines, as well as voluntary standards, to ensure that recordkeeping outcomes are met.

A key provision of the legislation is the audit role of the Chief Archivist whereby independent audits of recordkeeping in public offices can be commissioned. Audits commence five years after enactment and each public office will be audited every 5 to 10 years thereafter. A report on audit results and a report on the overall state of recordkeeping will be presented to Parliament annually.

The third presentation was given by **Charles Gibson** (Belize) whose theme was records as documentary evidence to support good governance.

From the 1950s until the mid 1990s governments regularly made important decisions without records being available or supporting such decisions. The focus of Caribbean archives legislation was as a service as a repository of historical information. There was no business dimension to enactments. Between 1971 and 1993 7 out of 15 countries in the Caribbean passed archives legislation; in 1993 six countries had no legislation at all. At CARBICA 5 a resolution was

passed that new legislation be enacted (where there was none) and existing legislation be strengthened. A survey was undertaken in 1995 but no progress made until another resolution at CARBICA 7 (1997). At that time ACARM began the survey of legislation in the Commonwealth that led to Dagmar Parer's report in 1999. Following the workshop in Seville a further survey of Caribbean legislation (archives and access to information) was undertaken. The response was varied, for example:

- Anguilla - no legislation; archives function part of the libraries function
- British Virgin Islands – drafting new legislation, using the UK Public Records Act 1958 as a model
- Dominica – no National Archives and no legislation
- Grenada – no National Archives and no legislation; archives kept in some public libraries
- St Vincent – a National Archives but no legislation
- Trinidad and Tobago – a good National Archives but no legislation
- Turks and Caicos – no National Archives and no legislation

The Belize Freedom of Information Act 1994 led to a demand for greater transparency in government. The Electronic Evidence Act 2003 has increased the profile of records management. Information is increasingly seen as a key strategic resource in public sector reform. This has been reflected in several recent projects/reports undertaken by the International Records Management Trust (IRMT), notably in Belize, St Kitts,

Grenada, Guyana and British Virgin Islands. The project in Belize (in 1998) recommended new legislation to replace the 1984 Archives Act and the inclusion

of electronic records in the enactment. Eventually a new Archives and Records Service Act was passed in 2004. New initiatives in conjunction with the legislation include a revision of the 2002 records management manual, the production of a new brochure and posters, and generally increased marketing of the services of the Archives and Records Service.

For the last session of the workshop participants broke into groups to study and discuss a records management scenario where key records issues were raised in the context of new legislation.

The subsequent discussions raised many issues, including:

- Closer cooperation between units/divisions within public bodies to ensure better corporate recordkeeping
- Closer cooperation between countries
- Definition of the 'corporate record' – is it paper, electronic or a combination of both?
- Ways of ensuring compliance with legislation and standards
- Relationship between policy and legislation
- Audit principles and procedures
- Oversight of records and archives training – by National Archives or central training services?
- Disposal scheduling

All the participants had a very pleasant stay on St Kitts. They were made very welcome and the Association has cause to be very grateful to Victoria O'Flaherty, who took care of all the administrative arrangements – liaison with the hotel, invitations, equipment, etc.

We hope that the next workshop will be in Botswana in 2006.

Kelvin Smith ■