

EXECUTIVE SUMMARY

This report responds to Terms of Reference determined by the Chief Archivist following Archives New Zealand mistakenly giving a journalist access to certain papers of the late The Right Honourable David Lange.

Among the papers were documents that should not have been made publicly available for reasons such as prejudice to the security or defence of New Zealand and others by the need to protect the privacy of individuals.

The Chief Archivist conducted an immediate investigation and set in place proper and appropriate measures to mitigate immediate risks in respect of such papers held generally by Archives. This review was comprehensive and the measures then put in place were germane to the issues that were identified both immediately and into the future.

A review conducted by a senior archivist on the initiative of the Chief Archivist revealed a number of systemic failures and omissions in the process for acceptance of deposits of archival papers, including vetting for security or other classified material, visual confirmation of papers before being made available, and a lack of process to distinguish between restricted records and those for which access is open. These issues have now been identified and are in the process of being rectified, including the development of a risk management plan.

There was a chain of mistakes within government, the last of which occurred at Archives New Zealand, that allowed security classified papers to be accessed from the archives of The Right Hon. David Lange.

Archives New Zealand is not the only repository of public records and significant holdings have been deposited by current and former Ministers in other repositories. There are also public records that are retained by former Ministers (and possibly senior public officials) in their own personal custody. There are currently no comprehensive measures to avoid the risks associated with such arrangements including an incident such as the Lange case.

At present, protection of information that is held in ministers' papers after they leave office has depended on the good faith of ministers who are able to control access. However the issue is whether the security of often sensitive information should rely on good faith alone, or should additional protections be put in place.

The Chief Archivist has planned for the implementation of the provisions in section 26 (approved repositories) and Sub-part 3 of the Act (standards, inspection, reporting and audit) as a matter of priority in the Archives New Zealand Statement of Intent 2006-2009. It must be noted however that these provisions when implemented will not absolutely avert the risk associated with public records being improperly made available nor cover in any way public records that are held in a non approved repository or in private storage.

A Memorandum of Understanding is now in place between the Chief Archivist and New Zealand's two security intelligence agencies to permit the scrutiny of deposited papers to ensure that if there is any security classified material then such material is dealt with appropriately. Similar arrangements exist with the Ministry of Foreign Affairs and Trade which would benefit from being codified in a Memorandum of Understanding. This arrangement should also be explored with the Ministry of Defence and the New Zealand Defence Force.

There are several significant matters of policy that need to be determined and if accepted will require amendment to the law, including:

- Whether all public records created by any public office as defined in the Public Records Act should be deposited in Archives New Zealand. It is noted that this is the requirement in Australia.
- How papers that are public records and subject to the Official Information Act whilst held by a Minister in office and for which there may be a conclusive reason for withholding pursuant to section 6 of the Official Information Act 1982 and may fall within section 4(c) of that Act to protect official information to the extent consistent with the public interest, should be controlled when a Minister leaves office. The issue of a person ceasing office and leaving with what is defined as a public record (although that may be a copy of such a document) and the potential consequences thereof, applies equally to any public official. The present inconsistencies create an unacceptable level of risk to security, good governance and the government of the day.
- Conflict and inconsistency exists between guidance provided in the Cabinet Manual and relevant Cabinet Office Circulars (neither of which have the force of law) about how public records are to be dealt with when a Minister leaves office, and the definition of Ministers' papers in the Public Records Act, and the provision in that Act that gives former Ministers ownership and control over such papers. Former Ministers actions in respect of public records are thereby removed from other controlling law, eg the Official Information Act, and permit a former Minister an unfettered discretion to give any person full and open access to such papers whether such papers be held in Archives New Zealand or elsewhere.

Cabinet and other official papers should be held independently of other papers in any Minister's office in an appropriately designed secure records system to ensure that papers are safe and secure and on leaving office such records are in an appropriate order should they be deposited with Archives New Zealand.

That consideration needs to be given to forms of electronic imaging of papers that are in their original state public records and how the use of such imaging needs to be controlled .

Archives New Zealand lacks an appropriate secure storage facility and specific processes to ensure security of access and control. The Chief Archivist should be authorised now to proceed to investigate such requirements and be provided with appropriate funding for this development.

Subject to processes being implemented as outlined in the report to ensure that public records are properly maintained and secured in Ministers' offices (including any electronic imaging) and, where appropriate, archived in Archives New Zealand in specially designed secure facilities with access processes in place, I am satisfied that the processes for managing public records, including any security classified material, will be sufficiently robust, will meet all obligations under the Public Records Act, will ensure that the reasonable expectations of all stakeholders are met, and that the Nation's historical records are properly and securely maintained and appropriately available.

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