

Proposed Public Records Bill: Summary of Submissions

Background

1. At the end of May a Discussion Paper on the Proposed Public Records Bill was distributed to over 1000 of Archives New Zealand's stakeholders including government agencies, local authorities, records and archives associations, genealogists, historians and members of the public. A copy of the paper was also placed on the Archives New Zealand web-site.
2. The Discussion Paper complemented input from meetings of an Ad Hoc Advisory Committee and individual consultations with specific agencies and institutions.
3. A total of 195 comments and submissions were received. Archives New Zealand received 62 letters that were the same as, or a minor variation on, a letter posted on the New Zealand Society of Genealogists' website and 27 comments in relation to that website posting. Excluding these, the submissions include:
 - 39 from government agencies, SOEs, CRIs etc.
 - 15 from local authorities
 - 8 from associations
 - 24 from individuals
 - 20 from others.
4. Some additional comments were made orally. It should be noted that some individuals from agencies and associations made responses on a personal basis and indicated that this was their own view and not necessarily that of their organisation.
5. This document is an initial summary only, and broadly summarises the responses received. Submissions received from agencies, genealogists and individuals up to the 6th of July have also been included in this initial summary.

Summary of responses

6. The majority of responses reflected the need to update the current Act and were positive to a review of legislation or the contents of the Discussion Paper. As was to be expected submissions ranged from answering all key questions or points in the discussion paper to commenting on only specific points of interest or experience. There were 62 submissions that specifically mentioned the consultation process with 45 of these welcoming the opportunity to comment.
7. Some were concerned by the time-frames for consultation (10 comments). In addition, there were 22 comments about the approach taken for the proposed legislation. These were evenly split between those who asked why a "blue sky" approach appeared to have been favoured over the 1996 departmental draft bill and those who supported the approach taken.

Ambit - Departments and Agencies

8. Overall there is support for a comprehensive ambit and the need to clarify the scope of the legislation with 12 submissions recorded against the proposal. In addition, 11 submissions opposed the idea of enabling variation to the ambit, because of concern that this would weaken the regime. The few submissions from universities included both strong opposition to their coverage, but an acceptance that administrative records (as opposed to teaching, research and library materials) are a proper concern of the Bill. Other tertiary educational institutions (Polytechnics, Colleges of Education) were supportive of inclusion. Concern about coverage of State Owned Enterprises (SOEs) was expressed, by SOEs, although the majority of other responses favoured their coverage.

Ambit - Records

9. The Discussion Paper started with the premise that a wide ambit could exclude some records as was currently the case and asked what if any records should be excluded in new legislation. Twenty six submissions stated there should be no exclusions although 37 additional comments indicated strong support for a comprehensive coverage of records with some continuing exclusions. Tax returns, ballot papers, statistical schedules, security, trial and the records of SOEs were mentioned as candidates for exclusion, although several submissions raised concerns about the possible inclusion of ephemera and publications. Submissions and other comments from genealogists overwhelmingly supported the importance of covering census returns in the legislation's ambit.
10. Government agencies tended to couch their concerns in terms of access rather than ambit issues.
11. Powers to effectively pursue estrays of national importance were generally supported (31 of 38), several with the proviso that individual rights be respected. Of the 20 comments received regarding whether or not these powers be retrospective 5 said that they should not. There was some concern surrounding how to determine if a record is an stray and mention that the Courts or Crown Law may be best suited to settle any disputes.

Recordkeeping and Appraisal

12. Comments made it clear that there was some confusion about the use in the Discussion Paper of the term 'disposal' to encompass retention by archives, transfer of management responsibility, or destruction. In many cases the term had been interpreted as only meaning destruction. In relation to appraisal, there was strong support from records managers, local and central government agencies of the need to streamline practice and allow for general (multi-agency) disposal schedules. Genealogists were opposed to any changes which would see less direct examination of individual documents.
13. There was strong support (41 of 49) for an obligation on agencies to make and keep records with some stating that this should not be part of legislation. Two, however, argued that if this obligation was to be set it should not be located in Archives legislation, but should be a central agency responsibility. There was also strong support for mandatory recordkeeping standards or to empower Archives New Zealand to undertake a standard setting role (37 of 54), although there was concern that standards should not necessarily be set in legislation or issued without consultation. Concern was also expressed about possible resourcing or compliance costs.

Custody

14. There was strong support for the proposed continued custodial role of Archives New Zealand.
15. Views were mixed on the best approach for electronic records. Some expressed the view that Archives New Zealand was the agency that would focus on obligations to maintain records. More generally, comments on electronic recordkeeping issues reflected different levels of understanding of the matters involved. Some concerns were raised about the costs of electronic recordkeeping.
16. There were 33 comments received on the Approved Repository provisions. The majority of these (30) were generally supportive of the proposals, but 3 indicated that deposit of records in approved repositories could create barriers to access and that great care should be taken that their use did not undermine Archives New Zealand's custodial role and capability.

Access

17. There appeared to be some misunderstanding as to the access regime outlined in the Discussion Paper. In addition, there was some division on the appropriate role of Archives New Zealand. Agencies were generally supportive of the approach aiming to achieve better alignment and integration with the Official Information Act (OIA), Privacy Act and other existing access regimes. One submission noted that there is an extensive statutory regime for access to Births, Deaths and Marriages records, and argued that any archival access regime must respect that existing system.
18. Some submissions expressed concern at using OIA as a mechanism for access. They argued for a more active role for Archives New Zealand and the Public Records legislation in requiring the release of records.
19. One issue raised in a few submissions which was not covered in the Discussion Paper, and which will require consideration, is the possible inclusion of a right of access without cost to records under archival access.

Compliance

20. Several submissions indicated a need for more detail in this area before they could comment fully or noted that they would be commenting separately on the Compliance Paper that was posted on the Archives New Zealand website. Submissions received were supported in most instances by a recognition that whatever compliance regime was introduced, it would need some incentive for agencies to comply.

Local Government

21. Submissions from local authorities came both from archivists and records managers (9), and from Council executives or policy groups (6) and were focused specifically on local government issues. There was strong support from both groups for the proposals in the Discussion Paper.
22. Generally, local authorities supported keeping the relevant provisions in the Local Government Act (13 of 15) but several saw a need to cross reference these with the proposed Public Records Bill. Most also considered the proposed new legislation as supportive of their recordkeeping needs or as an aid to build closer links between local and central Government (5).

Maori

23. There was a general recognition of the need for on-going consultation with Maori. Submissions were split between 24 comments in favour of specifically recognising Maori interests and 17 that thought generic provisions could provide sufficient protection to material of interest to Maori. Several submissions indicated that operational or administrative approaches may be preferable to setting legislation in this matter. Five additional comments suggested that if an advisory board or committee was to be established Maori should have some representation or that a specific Maori Advisory Committee be established.

Other Roles and Functions

24. There was majority support for an advisory committee reporting to the Minister responsible for Archives New Zealand from the 35 comments received on this matter. Several submissions queried whether this was just adding another layer of administration and 6 submissions thought there should not be a board or that it should not be established through legislation. There were varying views on a national role for Archives New Zealand although most considered that it should be empowered to provide leadership. There was good support for a strong Public Records Bill regarding conflict of laws situations. Several believed it should override all other obligations.

Summary statement

25. The level of response to the Discussion Paper has been satisfying. While it is natural to concentrate on the negative comments, the majority of the responses were broadly supportive. As would be expected, the different stakeholder communities raised a wide range of issues reflecting the diversity of their interests.