Archival and Related Legislation

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In the present sitting of Parliament two important reports by the Senate Standing Committees on Constitutional and Legal Affairs and on Education and the Arts will be published dealing with the Freedom of Information and the Archives Bill, both introduced into the Federal Senate on 9 June 1978. It is important to the future reform, and successful operation, of both Bills that the Senate reports be widely discussed and that worthwhile suggestions for reform be promoted. The need for reform is best understood if, before discussing the Government's legislative response to the problems of community access to official information, we consider first the attitude evinced by the Government and its leaders towards "information" in general. I shall draw upon examples in the last year or so since the Bills were introduced.

The most revealing indication must be the continuing failure of the Prime Minister to hold general Press conferences — a failure that is stark against his own revelation that "I want an unhindered flow of information to the Media". But if this behaviour indicates an attitude of disregard, other happenings that suggest disdain might include Senator Withers' admission in 1978 that he "may have" misled the Senate; the attempts to quieten Major-General Stretton and Mr Renouf and stop the discussion by them of non-sensitive matters of definite public interest; the Government's refusal to reveal anything about the staffing or funding of ASIO and ASIS, other than a one-line appropriation; Mr Killen's temporary black-ban on a journalist whose only misgiving was to have revealed the importance which the Minister's own department had placed upon concealing information from him; and the same Minister's opinion that it was "against the interests of the Nation and its people" for the same journalist to reveal that plutonium — which was admitted to be "extremely toxic" and in a recoverable form — was buried in Australia and was insufficiently guarded.

Though some of the most publicised, these examples of the Government's attitude to the management of information are not isolated. For instance, the Government's recently tabled guidelines on the appearance of public servants before parliamentary committees provide, in uncompromising generality, that privilege may be claimed for material whose publication would be "injurious to the national interest", or for communications between officers, and between officers and third parties relating to the formulation of policy; one Government member (Senator Wright) felt compelled to resign in 1978 over secrecy when a contentious bill on parliamentary superannuation had been enacted within two days of first being unveiled; crucial statistical information on such issues as foreign ownership is no longer collected, while surveys are still published on the frequency of everyone's pay packet — according to industry, sex, occupation and State!; the Government still refuses to compile or reveal information (either as to the past or in the future) on the number of inter-departmental committees (despite that some departments already have extensive lists covering selected areas); the compilation of statistics from the National Census is still delayed; there are interminable delays in the tabling of official reports, such as the Bowen Report on Conflicts of Interest (of considerable relevance to a growing number of ex-Ministers) that was rumoured to have been completed last year and is still not tabled; and there is the delay in the publication of regulations that will allow the commencement of the Act that codifies administrative law, the *Administration Decisions (Judicial Review) Act*, that was enacted in June 1977 and has been inoperative since.

The most direct evidence, however, of the Government's and the Administration's attitude towards information is afforded by the growing list of secret documents that is known. Representative examples reported in the past year or so include a Government report allegedly indicating that only one percent of drug smugglers are caught; the terms of reference for IAC enquiries; the IAC draft report on the sugar industry; applications to the Foreign Investment Review Board; a consultant's report on the cost-inefficient Mandata Computer System; the list of pecuniary interests of Ministers; regular economic forecasts of the Treasury/Reserve Bank/Bureau of Statistics forecasting committee; a report on the inability of Australian manufacturers to meet defence equipment needs; Social Security statistics on child care expenditure; details of AIDC funding to TNT Bulkships; information on public service staff ceilings; corporate submissions to the Government on trade practices regulation; expenditure details given to the Australian Broadcasting Tribunal on children's television programming; and a Department of Health report summarising 80 years of cannabis research.

These examples are admittedly isolated, yet there are other indications to suggest that the examples are in fact representative evidence of a smothering blanket of secrecy. On the 5th of April last year Senator Missen placed on the notice paper 34 questions enquiring whether

specified documents had earlier been withheld in response to requests made by this writer in late 1977, and if so, whether the denials could now be justified under the Government's Freedom of Information Bill. It took over four months for most questions to be answered, and eight were answered as late as October — a delay that itself is indicative of the priority attached to requests for information, and the correlative objective of public accountability. Close to thirty percent of the earlier denials were reversed in whole or in part — an encouraging development, but at the same time a disturbing reminder that departments were wont to make unjustifiable and insupportable refusals to disclose. The most revealing factor, however, is that over seventy percent of the earlier denials were confirmed. If the requests had sought sensitive defence secrets, or highly personal or sensitive trade secrets, the repeated denials could be understood. Instead, the documents included IDC reports on unemployment benefits, seas and submerged lands policy, FM broadcasting, applying the Trade Practices Act to governmental activities, and the devolution of power to the Northern Territory Legislative Assembly; a "Handbook of Hate" on racial discrimination in Australia; internal studies on proportional personal income tax; and reports of the Medibank Review Committee and on implementing the Coombs Report on Government Administration.

Results such as this are not atypical, and this writer found exactly the same responses this year after writing to each department seeking access to its reports relating to the development of freedom of information policies and the review of secrecy provisions in legislation. The most disturbing outcome this time was that responses varied from department to department, despite the introduction of a Freedom of Information Bill which established at least a hope that requests will be treated alike by all departments in accordance with ascertainable criteria that decide what is to be withheld and what is to be disclosed. Some departments clearly thought that documents on freedom of information were not sensitive, and either willingly disclosed their material or invited the writer to inspect the departmental file. Others refused outright — and, in almost every case, for a reason that could not qualify the document for exemption under the FOI Bill. For instance, the reasons for non-disclosure included that studies are still under way, that no definitive analyses have been prepared, documents were prepared for another department, they involve comment on Cabinet decisions, there is little there of any interest, it is inappropriate to release the reports before the legislation is enacted by Parliament, and the documents are available from another source. At least these responses indicated that the nature of the requests was ascertainable. Other departments either ignorantly or disingenuously said that they did not know what documents were encompassed by the request, or indicated that they were not prepared to allocate staff resources to undertake the time-consuming work of isolating the relevant documents. Added to this was again the factor of delay. The earliest substantive response was received two months after

the request was made; a third took at least four months; and one department took at least eight months to make up its mind whether it was even prepared to search for the documents requested.

Freedom of Information Bill 1978

This has been the most publicised and the most criticised of the two new Bills, as it is the one that most directly affects the public. By now the criticisms of the FOI Bill are familiar and it is unnecessary for me to restate them. A more sensible course is for me to outline five basic principles that any good open records legislation should seek to implement and to indicate whether the Bill at present embodies those principles. These may also be useful for later analysis of the report on Freedom of Information of the Senate Committees.

First, above all legislation should give an enforceable right of access to official documents. The very objective of this statute is to replace the present system of discretionary secrecy under which disclosure is regulated by the whim and disposition of Ministers and senior departmental managers. The Bill does to some extent embody this principle, since it provides for a right of appeal to the Administrative Appeals Tribunal against a refusal to disclose a document on certain grounds listed in the Bill. However, the embodiment of the principle in the Bill is incomplete, for two reasons. First, in certain areas a Minister has a power to issue a certificate deciding conclusively that disclosure of a document is against the public interest. This occurs where disclosure of a document is said to adversely affect national security, international relations, defence, federal-state relations, or would disclose communications from other governments, or Cabinet deliberations or decisions. Secondly, the Bill provides that an internal working document can be withheld only if disclosure would be against the public interest. However, appeal can be made to the Tribunal on the basis that the document is not an internal working document, yet not on the additional basis that public interest does not favour disclosure. Both of these restrictions are of course inconsistent with the more enlightened principle expressed by the High Court in *Sankey* v. *Whitlam*, that it should always be for a judicial tribunal to decide ultimately whether the disclosure of any document sought in connection with legal proceedings would be against the public interest.

Secondly, legislation should contain precise and ascertainable criteria for determining what shall be released and what shall be withheld. Instead, most of the FOI exemptions are in fact broad and elastic, perhaps elusive. For instance, standards that are employed for determining whether disclosure is required include whether a document includes "matter in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of the deliberative process"; or whether disclosure would substantially

adversely affect "the financial, property or staff management interests of the Commonwealth, or of an agency or would otherwise have a substantial adverse effect on the efficient and economical conduct of the affairs of an agency." Some of the exemptions also incorporate by reference common law standards developed by the courts (such as the law on legal professional privilege) which means that a person wanting to ascertain their rights may have to refer to legal textbooks or to costly legal advice. In addition, the Bill contains what might be termed de facto exemptions by which an agency can effectively deny temporary access to a document. Again, the criteria in question are vague and imprecise. For instance, an agency can defer giving access to a non-exempt document "where it is reasonable to do so in the public interest or having regard to normal and proper administrative practices"; and it can refuse to answer a request defined by reference to the subject-matter of a document, if compliance "would interfere unreasonably with the operations of the agency."

A third principle is that the legislation should establish one set of rules that applies to all documents. This is necessary so that people who are not overly familiar with government are not deterred by the complexity of the legislative scheme. Whilst most of the rules (restrictive as they are) are contained in the FOI Bill itself, there are some exceptions that are bound to cause confusion. The Bill only applies to documents created after the date it commences operation. I wager that many initial requests will be for prior documents, and many people will be discouraged from again exercising a right that appears to be non-existent. There are also some very important matters, such as the charges that can be levied, of which nothing is said in the Bill, and which will be controlled exclusively by the regulations which are often hard to find, even for trained lawyers or librarians. Another matter which will be listed in the regulations is the address of the agency to which the request must be sent. Failure to send to the prescribed address can mean that the agency does not have to process the request within the time limited stated in the Bill. Lastly, nothing is said by the Bill about the security classification system, and theoretically a classification marking on a document is irrelevant to the question of whether the document has to be disclosed. However, it is unlikely that this matter will be heeded or readily accepted by all levels of officers within agencies, and one can expect that many officers will have reference to these markings as their prime criterion.

Fourthly, a good statute must on its face reveal a presumption of openness, since it is designed to reverse strongly entrenched conditions of confidentiality and discretion. Enough examples have already been given to indicate that this is not the case — for instance, the conclusive certificates, restrictions upon access to prior documents, and the broad procedural discretions. There are many other examples. The Bill does not contain any general exhortation to departments and offices to be open; it does not confer upon public servants in general the power to disclose non-exempt documents, but reserves this role to officers expressly

authorised so to do by departmental heads; and there is no reform of section 70 of the Crimes Act (which is the legislative underpinning of the present "if in doubt — withhold" atmosphere) which makes it an offence with a two-year jail penalty for a present or former officer to disclose any information learnt officially.

Lastly, legislation should contain inexpensive and simple procedures by which requests are made and answered. Instead, a person must express that a request is made in pursuance of the Act; if a request does not cite a particular document, but is defined by reference to the contents of the document, the request may be refused; departments have up to two months to answer requests; there is no provision for the waiver of search fees where information is sought for a purpose of general community benefit or public interest; and applicants who successfully appeal a denial to the Administrative Appeals Tribunal must still pay their legal costs incurred in the appeal.

Archives Bill 1978

The Archives Bill is much more than a public access statute. Much of the Bill is concerned with the records management functions of the Australian Archives, and to that extent the Bill is intended to replace current administrative processes and place them on a statutory basis. However, the access provisions of the Bill are an integral part of the Commonwealth archival scheme (since the main reason for preserving records is to make them publicly available) and it is here that the Bill is more than a codification of existing practices and is intended to create or confer new rights upon the public. In the following remarks I shall concentrate upon those provisions of the Bill and will isolate what I think to be the main features and the main defects of the access provisions in the Bill.

Thirty-Year Rule. Whether the draftsman is being sardonic — or simple — is not clear, but the Archives Bill speaks of records that have been secret for thirty years entering an "open-access period". It is with the same sense of self-delusion that addicted smokers "give up smoking" for half a day or less, or hordes of Australian inebriates speak of "keeping dry" before lunch.

On close analysis of the Bill, the archival period is one that is not of central importance, since many exemptions in fact have an in-built time limitation that may expire before thirty year elapses — for instance, if disclosure would no longer imperil law enforcement, damage trade secrecy, or invade personal privacy. Even so, much of the public debate on the Bill has focussed on the thirty-year rule, and in my opinion properly so. The selection of thirty years does represent a legislative judgement that the sensitivity of documents may continue until or expire beyond this point. That judgement, for instance, will bar earlier access to Cabinet documents (though, strictly speaking, these documents are not even subject to the Bill) and it is further likely that in many cases officers

will be persuaded to the view that it is against the public interest to make an earlier release of internal working documents. Even in areas like defence, national security and international relations, where the criteria governing disclosure should be expressed in terms of damage to a particular interest, we can expect confidently that many officials will cautiously opt for the protection and certainty of an arbitrary demarcation between secrecy and disclosure that has been supplied by the legislature, instead of making an independent and realistic judgement every time a request for a document is received.

If the fixed archival rule functions in this way, it will go a long way towards preventing public knowledge of recent history and allowing for history to be censored, and manufactured or distorted in the interim while Ministers and senior officials have a unique opportunity to present their own version of what happened. The thirty-year rule means also that we accept an enormous drain on taxpayers' funds to maintain secret records that are not available to the public for an extended period. What makes our archival period less tolerable is that, whilst it approximates roughly that adopted in most other countries, the justification underlying it has been disproved in those instances where earlier access is available. For instance, Sweden has archival periods as low as 2, 5, 10 and 25 years for some categories of documents (though as high as 75 for others). In the United States the practice also varies for different categories. Fifteen years is the guideline adopted for law enforcement records; the National Archives informally encourages agencies to release internal working documents after 10 years; the Presidential Records Act 1978 specifies a 12-year period; while the security classification system requires the de-classification of most documents by the age of 6 years, and presumes that other documents requiring protection for a longer period will be available after 20 years unless a very senior officer makes a determination that an even longer period is required. Lastly, in the few instances when the earlier release of Cabinet papers has been required (pursuant to the decisions in the *Crossman Diaries* Case and in *Sankey* v. *Whitlam*) experience indicates that publication has been beneficial for the public and has not been attended by the unhealthy developments that are often forecast.

The best way to reform the archival period is not, it seems to me, to reduce it arbitrarily, for that does not overcome the basic administrative hurdle that documents have to be transferred to Archives en masse, at a time when they are no longer needed by departments, so that the documents can be examined by Archives and prepared for release during the open access period. The preferable solution is to remove the archival period entirely from the Archives Bill and to have the Freedom of Information Bill lay down all the rules that affect access to records (whether those records are retained by agencies or have been transferred to the Archives). For instance, the FOI Bill could stipulate an archival period of, say, 10 or 15 years applying to Cabinet documents and internal working papers, incorporate a de-classification system for security

documents, and for many other exemptions incorporate realistic criteria that are sure to expire after a while or at least be overriden by the public interest in access at an appropriate time. The only complication in this approach is that different access procedures would have to be established for records that have already been transferred to Archives — for instance, it might be unrealistic to impose strict time limits upon access to these records, and the Archives should be given a discretion in respect to records less than 25 years old to allow the originating agency to decide whether access should be given.

Exclusion. Talk of archival periods is of course academic in relation to some of the most important categories of documents in Australia, namely records of the Governor-General, of the Parliament and of the Parliamentary departments, court records, and records of the Cabinet and the Executive Council. These records are excluded entirely from the access provisions of the Bill.

Defenders of the Bill are quick to point out that these records may nonetheless be made available to the public apart from the Bill, and in fact that only a handful of Cabinet records are presently withheld beyond thirty years. As an exercise in bureaucratic casuistry, this is unconvincing. It is surely inconsistent for some supporters of the Bill, on the one hand, to welcome and herald it because it places existing practices on a legislative footing and confers rights on the public where previously discretion reigned, yet on the other hand, explain away exclusions from the Bill on the basis that rights in these areas are already safeguarded by existing administrative practices. But the errors in logic transcend this. It is pointless to construct elaborate legal guarantees for the preservation of our national history and for the facilitation of public access to records connected with it, unless this guarantee is extended to records created by the Cabinet, Head of State, Parliament and the courts. Certainly the great majority of historians and researchers who appeared before the Senate Standing Committee on Constitutional and Legal Affairs were not content with any indication that these records would be made available on an administrative basis, and insisted that they be made subject to the access provisions of the Bill.

By and large the only arguments in rebuttal are ones premised upon constitutional traditions or conventions (the latitude, for instance, that is typically given to Executive, Legislative and Judicial officers to govern their own affairs). However, it is considerations such as these — born as they are of tradition, long-standing governmental practice and special privilege — that have hitherto provided the underlying rationale for the system of discretionary secrecy that the FOI and Archives Bills are designed to overcome. To respect these principles in a Bill that is in fact designed to overthrow them is a further embodiment of the shaky logic that permeates the Archives Bill.

Exemptions. The long title of the Archives Bill describes it as, *inter alia*, an Act relating to the "use of archival resources", and indeed the primary reason for establishing an archival rule (or open access period)

in the Bill, is to engender an expectation in the mind of the public that nearly all documents will be available when they reach a pre-determined age. There can be no assurance of this nature in a Bill that lists nine exemptions pursuant to which documents can be withheld for longer than 30 years. A legislative apologist may say that some of the exemptions are inserted for abundant caution and that their application to documents is not immediately intended or anticipated. Be that as it may, legal history is replete with examples of statutory discretions that were borne of caution but were used with alacrity. What better example can be found, indeed, than the constitutional discretionary powers invoked in 1975 by the Governor-General.

The same may be true of these exemptions. No official spokesman has (to my knowledge) cited an example of a document whose suppression must endure beyond three decades in the interests of Federal-State relations, yet I expect that an archivist administering the Bill, who is legislatively alerted to the fact that such documents presumably exist, will somewhere find some examples! Equally, there may be reasons why other categories of records initially require protection — for instance, the Commonwealth's legal interests (exemption 5), financial and property interests (exemption 4), and confidences with members of the public (exemption 6) — but it is very hard to accept that these interests will not in every case be outweighed by the public interest in access by the time 30 years has elapsed. There are two other general faults with the exemptions that should also be highlighted. First, there are apparently inexplicable variations between the exemptions in the Archives Bill and those in the FOI Bill. The exemptions in the Archives Bill for defence, security and international relations, Federal-State relations, documents from other governments, and financial and property interests of the Commonwealth, are not qualified by a public interest criterion as they are in the FOI Bill; the law enforcement exemption in both Bills is similar but with some textual differences (though interestingly the formulation in the Archives Bill is identical to a formulation in one of the earlier drafts of the FOI Bill — deliberate or an oversight?); and the equivalent of the trade secrets exemption in the Archives Bill is in some respects wider than that in the FOI Bill in that it protects documents of *all* undertakings, not just those of business, commercial and financial ones.

The other general fault is that, in respect of four of the nine exemptions in the Archives Bill, the same practice of conclusive certificates found in the FOI Bill is repeated. This applies again to documents relating to defence, national security, international relations, Federal-State relations, or documents received confidentially from other governments. (In addition, under clause 35, the Director-General of Archives may determine that a record is to be withheld from public access "for the purpose of ensuring the safe custody and proper preservation of any record", and there is no right of appeal from his decision.) Even if it be thought that Ministers and senior departmental officers have some part to play in the administration of the archival

system, and that they should offer advice as to whether national security and so forth would be damaged by a particular disclosure, why is it necessary to accord conclusive weight to their views? This reflects a surprising vote of "no confidence" in the judiciary that is at odds with the approach elsewhere taken in Australia where provision is made for review of Ministerial decisions. It is also an assessment of judicial incapacity that certainly was not shared by the High Court in *Sankey* v. *Whitlam*.

There are also other features of the system of conclusive certificates that could lead to their abuse. For instance, certificates can be issued independently of a request for access, thereby raising the danger that they will be applied to whole categories of documents. Or a practice could arise whereby certificates earlier issued under the FOI Bill were automatically renewed under the Archives Bill.

The only safe approach, as earlier mentioned, is to separate the question of exemption from the Archives Bill. That is, the FOI Bill should list the exemptions and in respect of each indicate the time for which it endures. By the time documents reach the Australian Archives it is expected that most would already be public.

Access Procedures. The Bill establishes three methods by which a person may gain access to a document. The first may be termed normal access, and is the procedure by which any person may request access to any document that is thirty years or more in age. If the document is not exempt, access must be granted. I have only three suggestions for slight amendment here. First, a charge may be levied on access, though a person cannot it appears appeal to the Tribunal against the quantum of the fee imposed on access. This right of appeal is given under the FOI Bill, and should also be given under the Archives Bill. Secondly, after records are transferred to the Archives and before they reach the open access period, they will be examined by the Archives staff in order to determine whether they are exempt, in accordance with arrangements entered into between the responsible Minister and Director-General of the Archives. It seems to me that, in the interests of open government, the Bill should require that these arrangements be reduced to writing, published in the *Gazette* and be tabled at a meeting of the Advisory Council of the Australian Archives (whose membership will include people representing the public). Thirdly, records which have reached the open access period are indexed in an Australian National Guide to Archival Material, unless a record is one protected by a Ministerial certificate (that is, it relates to security, etc). As one critic has termed it, this exclusion is censorship of the act of censorship! If conclusive certificates are to remain in the Bill, a document should be indexed if this can be done without the disclosure of sensitive material, so that the public knows what documents are conclusively exempt, can seek review of the matter politically if necessary, and can appreciate at least the nature of the missing links in our national history.

The second method of access is accelerated access by which the Minister, in accordance with arrangements approved by the Prime Minister, can cause all records in a class of Commonwealth records that have not reached the age of thirty years to be made available for public access. The only comment I would make here is that the Advisory Council should clearly be given a central role in reviewing arrangements for accelerated access and in making proposals for the release of categories of records by this method.

Special access is the third method by which an individual may be given access to an exempt record "for a purpose specified in the regulations as a purpose for which access may be given", whether the record is greater or less than thirty years. Conditions may be imposed upon access and contravention of a condition can attract a maximum fine of $200. The first criticism is that the Bill does not confer upon an applicant who has been denied special access a right of appeal to the Tribunal, nor can a person who has been granted access subject to conditions appeal against the imposition or the terms of those conditions. To my mind, the Tribunal could well perform the concrete function of determining whether a person had adequately proved that they met a special purpose outlined in the regulations, or whether a particular condition was fair. Unless this right of appeal exists, it is not unlikely that dissatisfied applicants will regard the special access power as one by which the Archives can practise censorship or dispense favours. Indeed, it is not inconceivable that this could in fact occur. Admittedly, problems of judicial review could arise if an appellant had been refused special access to a very large volume of records. However, these problems are not unknown to judges, and various judicial techniques exist to lessen any burden (for instance, affidavits, preparation of detailed indexes and inspection of sample documents). The other problem with the special access procedure is that it is, in part at least, at odds with a fundamental principle that underlies the FOI Bill. Under the latter, equal access must be given to all applicants, and no person need evince a special interest. If, however, special access is sought under the Archives Bill to a document less than 30 years old, proof of a special interest or purpose might be the paramount consideration. So that the Archives Bill cannot be used to discriminate in favour of some applicants, and so that the FOI Bill is not displaced, a register should be kept of all instances in which special access is given and this register should be available to the public. I know that some may object to the outside possibility that such a register would enable one person to "spy" upon the format of the research project of another. However, protection of the principle of equal public access to all records should be an overriding concern, and in any case, the Archives Bill already requires the establishment of an Australian National Register of Research Involving Archives.

Review of Decisions. A person who has been denied access to a document may initially seek an internal review of that decision, and if the decision is still unfavourable an appeal to the Administrative Appeals

Tribunal is thereafter possible. The only comment I shall make concerns the Tribunal review. I have earlier commented on the fact that the Tribunal does not presently have power to determine whether a document which is the subject of a conclusive certificate should be available, whether the quantum of a fee imposed upon access is proper, or whether access in any form would physically jeopardise a record. Another restriction upon the Tribunal's power is that it cannot decide that access should be given to a record which is in fact protected by one of the exemptions. The Tribunal is similarly confined under the FOI Bill to deciding whether a document is protected by one of the exemptions, although there is less reason why its power under the Archives Bill should terminate at this point. The records in dispute will be at least 30 years old, and the Tribunal should be well equipped to decide whether there is any overriding public interest that requries the release of a document. After all, the High Court in *Sankey* v. *Whitlam* decided that any judicial officer (including a magistrate) could exercise this power in respect of current documents. Lastly, it should be questioned whether the Tribunal is the body best fitted to hearing appeals under the Archives Bill, where the problems may occasionally be less of a legal nature and more of a historical or political nature. One alternative would be to establish a new Appeals Tribunal representing historians, social scientists, archivists, and so on; or to appoint a sub-committee of the Advisory Council on Australian Archives to hear appeals. However, the Administrative Appeals Tribunal does provide for the appointment of non-lawyers to the Tribunal, who can hear appeals in designated areas, and in the short term it may be worthwhile appointing one or two non-lawyers with knowledge of archival problems to sit on the bench when appeals under the Archives Bill are heard.