

INFLUENCE, PERSUASION AND ACCOUNTABILITY: QLD REVIEW OF ARCHIVES LEGISLATION

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The Electoral and Administrative Review Commission was established in the wake of the Fitzgerald Inquiry's findings of widespread corruption at all levels of the Queensland government, its brief relating to the requirements of honesty, impartiality and efficiency in the public administration of the State. Under its first Chairman, Tom Sherman, a review of Queensland's archival legislation began, a strong link being made between good recordkeeping, the regulation of disposal and accountable public administration. However, along the way to drafting new archival legislation for Queensland, an 'ambush at the pass' occurred, resulting in a Bill which focuses on the custodial and heritage role of the archival authority. In this article, Glenda Acland and Philip Taylor analyse how progress along the 'accountability trail' lost way, with particular reference to the influence of archivists and records managers involved in the consultative process.

Accountability has become the focus of public activity for the Goss Government in Queensland now enjoying its second term of office in a state whose voters swept aside decades of National Party rule for the promise of a more accountable system under a Labor government. Debate on government accountability usually centres on the prescription of those measures which need to be taken by government agencies to ensure that their actions are responsible, reasonable, explainable, justifiable and auditable. The measures of accountability are frequently encapsulated in such pieces of legislation as freedom of information (FOI), judicial review, privacy, companies, securities, public finance and sometimes archives acts.

However, while accountability is often perceived as establishing processes to ensure that a government uses its powers reasonably and appropriately, full accountability can only be achieved by adequate and effective public consultation in the establishment of those processes, and by adequate response to the products of those consultations. A government's responsiveness to pressure from lobby groups such as conservationists, the gun lobby or various industrial groups is frequently quite evident and measurable, but how responsive is government to the ideas, suggestions and issues formulated by public consultation mechanisms?

Archival and records management issues rarely cause headlines in the media or attract wide public debate. Such issues fall a long way from the 'vote winner' categories and in this country seem to attract few friends in high places. Archivists and records managers have presented themselves neither as a cohesive group nor as a powerful political lobby. So it was with much surprise and considerable delight that we greeted the news of Queensland's move to review its archives legislation, through the mechanism of the Electoral and Administrative Review Commission, and with some enthusiasm that we entered the consultative process. We must now ask ourselves what, if anything, did we achieve?

Queensland, in the area of reform of the administrative process of government, established the Electoral and Administrative Review Commission (EARC) to review and recommend appropriate remedial action in the aftermath of the Fitzgerald Inquiry. EARC reports to the Parliament and the Parliamentary Committee for Electoral and Administrative Review (PCEAR) then examines each report, preparing its own report and recommending any action to the Parliament. A new era of public consultation was seen to have emerged with EARC adopting consultative operational machinery from which to derive its recommendations for reform to the government. But how measurable is this process? Can a government body such as EARC absorb, understand, synthesise, rationalise and comprehensively report the products of its own consultative machinery? How

responsive is it to exploring new territory such as archives legislation and to the views of the professional archival community?

The purpose of this article is to provide, in the case of Queensland's archival legislation, some measure of the government's accountability to the products of its own consultative processes. This has been undertaken for academic rather than political purposes and three questions are posed:

1. Can we, as professionals, influence government decision making in our sphere of speciality?
2. Do our submissions influence government policy or affect policy outcomes, and if so, to what extent?
3. What advances can be achieved by such participation in the journey towards the realisation of 'a vision of archives as arsenals of democratic accountability and continuity in our societies'?'¹

This article examines the Queensland EARC consultative machinery and through analysis of submissions from four professional sources, looks at their impact on the outcome of the review and the resultant draft Archives Bill. While the Queensland Parliament, at the time of writing, has still to debate and pass the archives legislation, the processes are sufficiently advanced to enable this analysis of what is essentially the impact of the archival and record management lobbies.

The EARC consultative mechanism

The consultative machinery for review of administrative processes as used in the review of archives legislation is as follows (with the date for the archives review given at each stage).

1. EARC investigates an issue identified by Fitzgerald or, in the case of the review of archives legislation, identifies the issue to be investigated.²
2. EARC prepares and releases an *Issues Paper* to identify the areas of principal concern together with its recommendations for action to be taken (21 September 1991).
3. Public comment on the *Issues Paper* is invited by the call for submissions (closing date 29 November 1991).
4. A public seminar is held at which distinguished speakers are invited to present papers on the issues identified and public debate is encouraged (held 9 December 1991).
5. The public submissions on the *Issues Paper* are published (December 1991) and public comment invited by the call for comment (closing date 24 January 1992).
6. The *Record of Proceedings of the Public Seminar* is published (February 1992).
7. EARC prepares and publishes its report on the issue to the Parliamentary Committee for Electoral and Administrative Review (PCEAR) (June 1992).

8. PCEAR invites public submissions on the EARC report and draft bill (17 July 1992).
9. PCEAR undertakes additional research and any consultations it thinks advisable.
10. PCEAR reports to the Legislative Assembly with proposed Bill (27 November 1992).

The consultative machinery stops at this point. However, it is possible to make a further submission to the Attorney-General and/or Cabinet Office, but it is not a usual consultative channel.³

The submissions

A total of sixty-four 'public' inputs to the process can be identified. Details of these are provided in Appendix I, Tables 1-4, which categorize the interest group represented by each submission for each stage of the process. The submissions analysed in this paper, from which we measure the professional influence, are those of the:

1. Australian Society of Archivists, Incorporated (ASA);
2. Records Management Association of Australia (RMAA);
3. Australian Council of Archives (ACA);
4. Authors of this article (a joint submission).

We have not analysed the submissions originating from the State's archival authority believing these to fit more appropriately into the government rather than professional sphere of influence.

Methodology

The PCEAR report is the end of the public consultative process for issues reported by EARC, and from this, legislation is introduced to the Parliament. This report was therefore used as the basis from which to measure the success of the consultative process, ie had the views expressed in the inputs from the four sources been incorporated into the EARC report and were they accepted in the PCEAR report?

EARC in its final report and the PCEAR each presented a draft Archives Bill which would be expected to place in legislative context the issues canvassed by or submitted to the review. The key clauses of the draft legislation presented by PCEAR were identified and then listed. The submissions to PCEAR from the four sources — ASA, RMAA, ACA and Acland/Taylor — were then examined to identify how each submission had addressed the issues relating to each of these clauses, and a numerical ranking was given on a five point scale. The same issues were then identified in the EARC final report and ranked. To complete the picture the point of origin of the issues relating to each clause of the draft bill (eg EARC *Issues Paper*) was tabulated. Appendix 2 provides the summary of this analysis.

Thus a range of comparisons could be made and the points of influence measured. In addition all of the available 'public' inputs were examined to gain a 'feel' for the total spectrum of public input.

Comment

The EARC report

There were forty-two recommendations in the EARC report. Three of these recommendations were contrary to the views expressed in the four professional submissions. These related to the model to be used for access clearance, the powers and composition of an Advisory Council and powers granted to the archival authority to acquire records from private sources. In each case EARC held rigidly with its initial view outlined in the *Issues Paper*.

On the remaining thirty-eight recommendations substantial agreement is evident. This commonality of views on what, in many cases, are minor issues is measurable but provides little opportunity for analytical comment. No debate appeared to be necessary on matters such as making provision for public access, freedom from ministerial direction or presentation of an annual report to Parliament. Most of these issues are fundamental to basic accountability in Australia's current political climate. Conservatism was, however, to win the day on the issue of reducing the open access period from thirty years to twenty-five years. Two of the subject submissions supported a twenty-five year period, but both EARC and PCEAR opted to retain it at thirty years.

The PCEAR report

PCEAR in its report made three recommendations against the recommendations put forward by EARC. These recommendations arose from consideration of issues raised in submissions. The first related to amending the Archives Bill to include reference to the administrative, legal, informational and evidential value of archives as well as their historical and heritage value (Rec. 3.10). The second provided for the Bill to be amended to delete the requirement that the archives authority adopt a policy of decentralisation (Rec. 3.22), essentially in recognition of the significance of this issue for resource allocation. The third was that the draft Bill be amended to allow for whole series rather than individual document by document access clearance (Rec. 3.35).

The last issue was identified as the one of major concern to the Parliamentary Committee. It reported that the access clearance issue was also the one of major concern in the submissions, but that judgement is not one with which this analysis can agree. It was increasingly raised by government officials as the process proceeded, which is perhaps not surprising given that at that time Queensland was leading up to the introduction of FOI legislation. The government and parliamentary libertarians were for document by document clearance as in the FOI model, the profession steadfastly pointing out both the impracticality of such an approach as well as the benefits of its

alternative model. In the end it was the economic rationalist rather than professional argument which won the day (and there is some oral history needed to infill that debate some day) and whole series clearance was pragmatically recommended by PCEAR. While this could be regarded as a measurable indicator of the success of the professional submissions there is rather a twist in the tale. While other core issues to the profession were not picked up by PCEAR, in the three areas discussed above the professional submissions would seem to have influenced the Committee.

While it was by no means expressed in a unanimous way, there was strong support in the subject submissions for refocusing the archival authority as a public records authority with appropriate emphasis on managing the continuum of public records as well as on custodial and post-custodial activities. It was therefore astonishing that the EARC report did not tackle this fundamental issue in its context but rather offered the comment in Chapter 4 *Preservation of Public Records* that 'very few submissions addressed this issue (ie the preservation of public records) in any detail'. PCEAR (4.9) on the other hand, having received strong representations on the issue concluded that while it 'sees some merit in this suggestion, it views the matter as essentially administrative which should be addressed by any Archives Authority after it has been established' (3.11). For the international archival community this issue is one of continuing debate and indeed can be viewed as the core of the key archival issue of the decade, the basis for a professional shift of emphasis into the non-custodial management of archival resources and an essential element in the process of democratic accountability and continuity. Clearly we did not engender any understanding of this issue in either EARC or PCEAR or the latter could not have concluded that the issue was essentially an administrative matter and perhaps one which might be sorted out by an authority once established with a quite different charter.

The EARC draft Archives Bill

It had been expected that the EARC recommendations would provide the skeleton and indeed much of the flesh for the draft legislation. That was how it was supposed to work. However, this proved not to be the case. This is particularly noticeable in the areas of the powers and functions of the Archives Authority and the Advisory Council. In EARC draft Bill, Division 2, Clause 9, fifteen sub-clauses set out the functions of the Authority. Predominant in these clauses is a view of 'historical significance'. This concept is repeated in Clause 10 which deals with the *Powers of the Authority*, and indeed permeates the entire Bill.

From the perspective of the EARC draft Bill it can be said that the focus of archives legislation is to preserve the 'historical' records of the

State. This is in sharp contrast to the body of the EARC report which on the whole reflected an accountability flavour. Indeed EARC recommendation 2.31 stated that ‘archives legislation set the functions of the Archives Authority in wide terms similar to those in Section 5 of the *Archives Act 1983* (Cwlth)’. A comparison of the two sections reveals only a fleeting resemblance. It is noticeable that the *Archives Act 1983* (Cwlth) does not use the term ‘historical’ at all. While PCEAR considered this dichotomy which was raised in all the subject submissions, it did not acknowledge that any other clauses may need to be amended or recast. The question left unanswered is how a review which had its genesis in the Commission’s recognition of a need for accountability in the archival arena, could end up presenting to Parliament a draft Bill substantially lacking the essential components of that accountability, substituting instead a quaint notion that ‘archival’ equates to ‘historical’.

The draft Bill provided for the Archives Authority to consist of three members: a Chairperson appointed by Governor in Council, the State Librarian and the State Archivist. Yet EARC did not raise or invite comment on the membership of the Authority (Clause 7). While EARC canvassed the establishment of such an Advisory Council it did not canvas or examine in any detail the composition, functions or responsibilities of such a body. Nevertheless its draft Bill set out full details of these in Clauses 15-18. We are left wondering by what process the content of these clauses was derived?

The composition and membership of the Archives Authority and the powers and composition of the Advisory Council are key clauses in the Bill, of major significance to the profession and critical to the processes of accountability and continuity. Consequently there followed a unanimous objection, in the professional submissions to PCEAR, to the EARC three person Authority, particularly to the inclusion of the State Librarian, while representations were also made concerning the powers and composition of the Advisory Council. It is startling that PCEAR dismissed these objections, fully supporting the EARC proposals. There was no attempt at striking a compromise. The professional view on these core issues clearly went unheeded.

Conclusion

This case study attempted to find evidence to suggest that the EARC consultative mechanism which produced new archives legislation in Queensland was responsive to public input as represented by four professional submissions. This analysis began with the assumption that the EARC consultative process could be measured. However, it soon became apparent that there were a range of influences at work beyond the ‘seen’ consultative processes.

Our profession is small and has limited resources, yet we approached

this particular opportunity for input into the processes of accountability full of optimism, willing to share our experience and expertise for the common good to provide some building blocks for those arsenals referred to earlier. Consultation carries with it an expectation that the views expressed will be heard and taken into account when arriving at the final position.

While being far from clear-cut, nevertheless this analysis has revealed an ambush at the pass. The EARC draft Bill when compared against submissions, and indeed with the body of the EARC report itself, reveals a number of significant issues either not canvassed or discussed during the public consultative processes or, if discussed, that discussion bearing little resemblance to the relevant section of the legislation. It needs to be asked why the EARC draft legislation did not match the body of the report in the core areas previously identified, and what influences brought about that dichotomy. Where there was common agreement at the outset by all parties the process was fine, but on the core issues the bureaucracy would appear to have had its way. The exception to this was the issue of access clearance and in this change was achieved. However, we should not fool ourselves that we succeeded, rather the day was won by that essential issue to all governments, the pragmatism of the effect on the public purse.

While we have focused primarily on the draft archival legislation and the process used to produce it, there is a broader, more vital question for the archival profession in the process. Archival legislation itself has a pivotal role in accountability mechanisms. Indeed Tom Sherman, Chairman of EARC, stated at the *Public Seminar on Archives Legislation* in December 1991

the proper keeping of records and the proper disposal of records . . . is crucial to good public administration . . . it's becoming more important as the various accountability mechanisms recommended by this Commission are being implemented. Records . . . are the life-blood of institutions . . . Records . . . are important because they form an important basis for all government decision-making . . . I don't see archives as a collection of musty documents, but the whole process of document management. Archives are not the end of the line. The proper control of records really starts at the creation of the records . . . agencies which don't have good records management systems will not survive the new accountability era.⁴

Archival legislation provides the rules by which many accountability measures are judged, for example, by providing guidelines on the responsibilities of public authorities to create and manage their records and by providing powers to control the destruction of public records. Terry Eastwood warned the Australian archival community in 1989 that there would be 'formidable obstacles in the way of realising archives as arsenals of democratic accountability and continuity'.⁵ It is

significant that Sherman expressed a vision close to Eastwood's, a vision being increasingly voiced in the international archival community. Yet the yawning gaps between the first EARC Chairman's ideals and the EARC report, and between the EARC report and the draft legislation suggest that there is still a long way to go along the accountability trail before the vision is realised. In a rapidly changing and evolving political climate Queensland's draft Archives Bill is essentially cast in the past.

ENDNOTES

1. Terence M. Eastwood, 'Reflections on the Development of Archives in Canada and Australia', *Papers and Proceedings of the 8th Biennial Conference of the Australian Society of Archivists, Inc.*, Hobart, June 1989, p. 80.
2. The Chairman of EARC, Mr Tom Sherman, noted on 9 December 1991 at the *Public Seminar on Archives Legislation*: 'the Commission's review of archives legislation did not arise out of the *Fitzgerald Report*. It arose from some strange circumstances that this Commission encountered last year in its review of the electoral system of Queensland, where we discovered much to our dismay, that the filing cabinet which contained the entire records of the previous redistribution committee was lost. It struck us as being very strange that you could have such an important set of documents being lost to the community generally and we decided that at an appropriate time we would conduct a review of archives legislation in Queensland'. See Tom Sherman, 'Opening Address', *Record of Proceedings, Public Seminar on Archives Legislation*, 9 December 1991.
3. This was a strategy successfully used in February 1992 by a joint Queensland Universities' submission and a University of Queensland submission in relation to the inadequacy of provision in the FOI Bill to protect research in progress.
4. Sherman, *Op. cit.*
5. Eastwood, *Op. cit.*, p. 81.

Appendix I

Public Inputs to the Review of Archives Legislation

**Table 1 — Public Submissions on Issues Paper
(Closing date 29 November 1991)**

Professional associations — Archives/Records	3
Professional associations — Other	2
Practising professionals	4
Interested individuals	4
State public service	4
Local government	4
Other public organisation	6
Historical societies	4
Total submissions	31

Public Inputs to the Review of Archives Legislation (cont.)**Table 2 — Public Comments in Response
(Closing date 24 January 1992)**

Professional associations — Archives/Records	1
Interested individuals	2
State public service	2
Local government	2
Other public organisation	1
Total comments	8

Note: The Commission itself categorized the 39 submissions and comments in response as follows:

State government bodies	13
Local authorities	7
Federal government bodies	3
Other organisations	8
Individuals	8

The difference in categorization results both from different perspectives but also, perhaps, from a different understanding of the capacity in which some submissions were made.

**Table 3 — Public Seminar Archives Legislation
(9 December 1991)**

Practising archivists	*5
State public servants	*3
Solicitors	*2
Historians	1
Total speakers	9

* The State Archivist is categorized as both a practising archivist and state public servant; one solicitor is also a state public servant.

**Table 4 — Public Submissions to the Parliamentary Committee on Electoral and
Administrative Review
(Closing date 17 July 1992)**

Professional associations — Archives/Records	3
Professional associations — Other	1
Practising professionals	1
Interested individuals	5
State public service	2
Other public organisation	2
Historical societies	2
Total submissions	**16

** 18 submissions (16 actual; 1 letter of intent seeking extension of time; 1 supplementary comment).

Appendix II

Table of key clauses of the draft Archives Bill giving point of origin and ranking (*) submission comments

Clause of draft Archives Bill	Point of origin of issue	Submissions			Acland/ Taylor	EARC Final Report	
		ASA	RMAA	ACA			
3	Objects						
3 (a)	to ensure that complete and accurate records of public administration are made, and preserved, as part of Queensland's heritage (#)	Draft legislation	2	5	5	5	1
3 (b)	to make appropriate provision of public access to those records	Draft legislation	1	1	1	1	1
3 (c)	to encourage and contribute to the preservation and management of other archival materials	Draft legislation	1	1	1	1	1
3 (d)	to establish an independent statutory authority . . .	EARC Report	1	1	1	1	1
4	Definitions (#)						
4 (1)	public record	EARC Report	1	2	1	2	1
4 (1)	record	EARC Report	1	2	1	2	1
6	Establishment of the Authority	EARC Issues Paper	1	1	1	1	1
7	Members of the Authority	EARC Final Report	4	4	4	4	1
9	Functions of the Authority	EARC Issues Paper	3	4	4	4	4
10	Powers of the Authority	EARC Issues Paper	3	4	4	4	4
11	Ministerial direction	EARC Issues Paper	1	4	4	4	1
14	Annual report	EARC Final Report	1	4	4	4	4
15	Establishment of the Advisory Council	EARC Issues Paper	1	1	1	1	1
16	Composition of the Advisory Council	EARC Issues Paper	1	1	2	1	1
18	Functions of the Advisory Council	EARC Issues Paper	2	3	4	4	4
19	The Queensland State Archives	EARC Issues Paper	4	4	4	4	4
21	Regional divisions of the State Archives (#)	EARC Issues Paper	1	1	4	4	1

Table of key clauses of the draft Archives Bill giving point of origin and ranking (*) submission comments (cont.)

Clause of draft Archives Bill	Point of origin of issue	Submissions				EARC Final Report
		ASA	RMAA	ACA	Acland/Taylor	
22	Custody of records outside the State Archives					
	EARC Issues Paper	5	4	5	4	1
24	Property in public records	1	1	1	4	1
26	Standards	1	1	1	1	1
27	Public authority to make and preserve adequate records					
	EARC Report	1	1	1	1	1
28	Transfer of records to the Authority	1	1	4	4	1
30	Standards governing destruction or disposition					
	EARC Report	1	1	1	1	1
31	Destruction etc. of public records	1	1	1	1	1
32	General principles of access (#)	1	1	1	1	1
33	Discretionary access	1	1	1	1	1
37	Right of inspection	1	1	4	4	1
38	Recovery of public records	4	4	4	4	1
39	Reciprocal arrangements	1	1	4	2	1
41	Powers of the Ombudsman and the Criminal Justice Commission					
	EARC Report	5	5	4	4	1
42	Offences and breaches of discipline by officers and employees					
	Draft legislation	4	5	4	4	1
43	Acquisition of records from private sources					
	EARC Report	5	5	4	4	1

(*) A five point scale was used:

- 1 Full support
- 2 Partial or qualified support
- 3 Optional
- 4 Neutral
- 5 Opposed

(#) Amended by PCEAR Report.