

Recordkeeping Legislation and its Impacts: The PARBICA Recordkeeping for Good Governance Toolkit¹

Danielle Wickman

Danielle Wickman has worked with the National Archives of Australia for 14 years and is currently its Director, Asia and Pacific Projects. She spent 2006 working in Solomon Islands as part of the Machinery of Government Programme of the Regional Assistance Mission to Solomon Islands (RAMSI). Danielle has qualifications in journalism and librarianship, and in 1999 completed a Masters of Information Management (Archives and Records) at Monash University. She is currently studying for a Graduate Diploma in Arts (Museums and Collections) at the Australian National University. She is a past Managing Editor for the ASA and convened the ACT Branch between 1999 and 2001.

Most Pacific Island nations have laws that at least touch on the issue of recordkeeping, yet recordkeeping in Pacific Islands governments is almost universally poor. This paper presents a brief survey of recordkeeping in the Pacific and traces the development by the Pacific Regional Branch of the International Council on Archives (PARBICA) of the Pacific Recordkeeping for Good Governance Toolkit.

Introduction

Perhaps it is just my white Anglo-Saxon Protestant upbringing, but if someone says to me 'That's against the law,' it usually gives me pretty serious pause for thought. The context is, of course, important. It might not be enough to stop me travelling that little bit above the speed limit,

but it does, and has, prevented me from buying some beautiful tortoise shell earrings and bringing them back to Australia. Why is it, though, that people seem to regard breaking laws that relate to recordkeeping as closer to a minor speeding offence than, say, killing an endangered animal?

I didn't buy the beautiful tortoise shell earrings not just because it is against Australian law, but also because I support the outcome that law attempts to bring about - preventing the killing of endangered species by reducing the market for their products.

There is also an element of getting caught - what is the likelihood that Customs officials would have found those earrings in my bag? From my experience, the likelihood is probably fairly low. Laws rely to a greater or lesser extent on our willingness to comply - hence all those gross ads on TV of people with giant bugs in their cabin luggage, now that that Quarantine can't use Steve Irwin anymore.

Pacific archives and records legislation

Most Pacific Island nations have laws that at least touch on the issue of recordkeeping, yet recordkeeping in Pacific Islands governments is almost universally poor. This paper does not propose to provide the definitive answers on the adequacy of archives and records legislation in the Pacific. Neither does it provide significant insights into Pacific cultural responses to western forms of regulation and law-making. What is fairly obvious, though, is that most existing recordkeeping legislation around the Pacific has had little impact. In response, PARBICA - the Pacific Regional Branch of the International Council on Archives - has begun to produce other tools for improving the state of government recordkeeping in the region. Ross Gibbs presented a paper on this work at the Pacific Public Service Commissioners' Conference in Samoa in July 2007, and this paper also makes use of that report.²

In her introduction to the *PARBICA Compendium of Pacific Archives Legislation*, Nancy Lutton describes the evolution and key features of archives laws in the region.³ Of the 22 member nations included in the *Compendium*, only three had no laws pertaining to archives. This remains the case today, although Samoa and Tonga have made moves towards establishing and legislating for archival institutions. The legislation in most countries bears a resemblance to the laws and traditions of the

western powers they have been most influenced by. Thus, the former American colonies such as the Commonwealth of the Northern Marianas and the Federated States of Micronesia have distinctly American-style, codified laws. The laws of the two French territories appear to be broadly similar and based in the French tradition. The former British colonies have tended to follow a British legislative convention.

This last group is more similar than might first be assumed. Fiji's 1970 *Public Records Act* was to some extent a direct copy of New Zealand's 1957 legislation. Other former British colonies, including Cook Islands, Kiribati and Tuvalu, adopted locally-amended versions of the Fijian act. The archives legislation in Solomon Islands is similar to these, while Papua New Guinea has a more home-grown law which bolts legislation for its National Library to a New Zealand-inspired archives law.

Lutton also notes that almost all of the Pacific Islands laws provide for some form of intervention in government recordkeeping. They generally include a power to inspect public records in government offices and to give instructions or advice on their preservation and management. There is also usually a prohibition against destroying records without the consent of the Archivist. The Fijian legislation has been updated more recently to strengthen the Archives' role in records creation.⁴ In American Samoa the archivist has specific responsibility for records management in its entirety.⁵ The Micronesian State of Yap allows the archives to issue regulations and policies relating to records management. The powers of the archivist in some of the other American-influenced laws are significantly weaker. Samoa (formerly Western Samoa) has no archives law, but has developed a detailed *Code of Best Practice on Records Management* as 'a guideline for the efficient management of public records in all Government Ministries of Samoa'.⁶

Many of the laws also provide for penalties for improperly dealing with official records. While it is hard to compare the severity of fines when a range of currencies are involved, Yap probably has the most impressive penalties - a \$5 000 fine and up to one year in prison. The fine is presumably in US dollars, Yap's official currency, rather than the giant stone money that is still in use for traditional transactions such as buying land and canoes.⁷

If Chris Hurley's three generations of archives legislation⁸ is the de facto standard for classifying archives laws, the Pacific acts are in very much

the same situation as the Australian laws were at the time of Hurley's survey in 1994. Generally speaking they establish an archives authority, prohibit destruction without its consent, enable archival custody of records, and provide for public access. Some also allow for some regulation of recordkeeping by the Archives, which might place them at the one-and-a-half generation point.

At the Australian Society of Archivists (ASA) conference in 1999 Anne-Marie Schwirtlich pondered how we might measure the success of archives legislation:

Is the appropriate creation, management and retention of full and accurate records ... a hallmark of success? Is regulated disposal a hallmark of success? Is the articulation of rights of public access and the facilitation and enforcement of such rights a hallmark of success?⁹

It is probably fairly safe to say that few jurisdictions in the Pacific are currently exhibiting these hallmarks of legislative success. Clearly, there have been a number of legal approaches to inserting archivists into records management processes around the Pacific. While the approaches may differ, the outcomes appear to be largely the same. Pat Jackson described for the ASA conference in 1999 the state of the National Archives and of recordkeeping in Kiribati,¹⁰ much of which is similar to what I observed in Solomon Islands.¹¹ The same kinds of issues have been documented in the past in government departments in Fiji.¹²

Vern Harris would not be surprised by this, noting as he did in 2000 that even in countries which have progressed to 'second generation' archival laws:

the question remains - does the archival authority have the status in government, the resources and the expertise, required to give effect to such law? ... Given the realities in countries of the periphery, I have little confidence in the capacity of their archival authorities to achieve success in this area.¹³

One might ask why archivists feel the need for legislation to regulate recordkeeping anyway. Schwirtlich reflects that 'legislation is the basis of our societal framework and archival legislation presents our functions and our organisations as credible and authoritative and vests them with

some power.¹⁴ Ted Ling came to a similar conclusion, that 'the law of the land carries significant weight ... It provides a safety net, or bulwark, against capricious whims of government or individuals'.¹⁵

No one would argue that passing perfect recordkeeping laws alone would achieve perfect recordkeeping. State Records New South Wales illustrates this neatly with its 'pyramid model' which sees legislation as one layer only of a range of strategies that must operate together to influence recordkeeping behaviour. Underneath legislation lie standards, codes of best practice, guidelines and manuals, and training, services and support.¹⁶

Over the years conferences of the Australian Society of Archivists have heard a wide range of reports on the combinations of strategies government and other archives have used to encourage compliance with recordkeeping laws. For example, in 2003 speakers from the State Records Authorities in both South Australia and New South Wales presented papers. Both described multi-pronged approaches that acknowledged that, while managers in particular might give in-principle support to abiding by records management laws, they needed both encouragement and assistance to fully comply with them in practice.¹⁷

While it is safe to say that the law of the land carries weight in Australia, this may not be a safe assumption in the Pacific, where the law of the land as we know it is a relatively recent construct superimposed over centuries of traditional laws and ways of recording, remembering and sharing. Western-style archival laws - of any generation - are simply not enough in this context. Our concept of the rule of law only applies when the members of a society tacitly agree that it should.¹⁸ This is true in any society, as I've tried to illustrate with the tortoise shell earrings. There are certainly examples in the Pacific where significant sections of society have overturned western legal arrangements in the name of traditional conceptions of law.¹⁹ There are arguments that legal systems that combine western and customary understandings are more easily accepted and have a greater chance of success.²⁰

What hope then for improving recordkeeping in the Pacific, where archives laws are second generation at best, where the rule of law may sometimes be a choice between western and customary norms, and where oral cultures predominate over written ones?

There is a need to rebuild recordkeeping capabilities, cultures and infrastructures in many Pacific Island governments. To do that archivists, records managers and government officials require tools and guidelines that reflect the needs and circumstances of Pacific Island governments in the 21st Century. These tools must be able to help government officials, archivists and records managers to deliver good recordkeeping outcomes to citizens.

The Pacific Regional Branch of the International Council on Archives - known as PARBICA - has begun to address this need. It is developing tools that will help archivists to support Pacific Islands governments' efforts to achieve good governance.

The 11th PARBICA conference, held in Nadi, Fiji, in 2005, had the theme *Reinventing Archives - Supporting Recordkeeping for Good Governance*. This theme recognised 'the extreme importance of well managed recordkeeping systems as a fundamental pillar for good governance'.²¹ It also acknowledged that the creation and management of records as evidence of decisions and actions is essential to accountability, transparency and efficiency. The conference heard from speakers from the International Records Management Trust, Transparency International, the Fiji Human Rights Commission, the Fijian Auditor-General, and archivists from around the Pacific. Many of these speakers emphasised the importance of records to their work in holding governments and other organisations accountable.

Of particular note, the Deputy Auditor-General of Fiji, Mr Kaveni Takalevu, had the following to say about the importance of recordkeeping to his work:

Authentic and trustworthy records - and convenient access to them - provide the fundamental means by which the transparency, accountability and effectiveness of government ... can be accomplished, demonstrated and measured. Governments keep records as a fundamental basis for conducting business, serving the public, measuring progress and outcomes and protecting their own and others' rights.²²

He went on to describe a few of the 289 instances of poor recordkeeping that his office had reported on in the previous five years. These included occasions where documents had been removed from files to hide

fraudulent behaviour. There had also been a case where the accounting records of an office were kept on a computer system which the Auditor labelled as 'hopelessly inadequate.' The Auditor found that this system could not 'be relied upon to protect the integrity or the accuracy of data and records of funds entrusted to the Office.'²³

At the Nadi conference members accepted that the recordkeeping systems in some Pacific countries were inadequate. They called on PARBICA to develop basic templates, guidelines and tools for recordkeeping in Pacific organisations. These tools might cover recordkeeping capacity assessment, benchmarks, basic manuals for recordkeeping, and training packages and modules.²⁴

Pacific Recordkeeping for Good Governance Toolkit

This resolution is what prompted the development of the *Pacific Recordkeeping for Good Governance Toolkit*. The objective of the Toolkit is to provide a suite of practical tools that can be used by Pacific Islands Governments to improve the state of recordkeeping in their administrations. This in turn will help to underpin public sector efficiency and accountability. It will also assist Pacific Island governments to ensure that they meet their legal obligations, and protect the rights and entitlements of their citizens.

The Toolkit includes printed and web-based materials that highlight to government officials the importance of good recordkeeping and their recordkeeping responsibilities. It will include guidelines for Pacific Island archivists and records managers on how to identify, document, communicate and fulfil public sector recordkeeping requirements in government agencies. It is envisaged that the Toolkit will grow over time, but the first phase concentrates on three main products, along with some supporting materials. The first phase of the Toolkit has been developed using significant support from the Australian Agency for International Development (AusAID).

The process for developing the Toolkit has been a highly consultative one. It had its origins in the discussions of the representatives of PARBICA members from 13 countries around the Pacific. The broad outline of the Toolkit was devised in these discussions. The decision on which elements

would make up the first phase of the Toolkit was made by PARBICA's governing Bureau.

The first products in the Toolkit were developed through consultation with a Reference Group made up of representatives from Fiji, Papua New Guinea, Tonga, Tuvalu, Yap, Palau and Samoa. The Reference Group met at a three-day workshop in Brisbane, Australia in April 2007. The workshop looked at:

- who the best audiences for the Toolkit products are;
- what the key messages to these audiences should be;
- what formats the products should be in to gain the attention of this audience; and
- what design elements will be most attractive to this audience.

At the end of the workshop, a group of volunteers agreed to form a smaller Working Group to continue to oversee the development of this phase of the Toolkit. This group continued to provide comments, feedback and suggestions on the drafts of the Toolkit, and they were a significant guiding force in its development.

With the development of the first Toolkit products now complete, the first of three workshops to help archivists in the Pacific region to learn how to use the tools was held in Vanuatu in November 2007, and a second in Palau in February 2008. These events were preceded by a training workshop on how to use the Toolkit in conjunction with PARBICA's 12th biennial conference in New Caledonia in 2007. The Vanuatu workshop in particular demonstrates the traction PARBICA is gaining by targeting decision-makers with its message. Mr Felix Thomas, then Acting Secretary of the Vanuatu Public Service Commission attended the Public Service Commissioners' Conference in Samoa at which Ross Gibbs delivered a paper on the importance of recordkeeping for good governance.²⁵ As a result Thomas was persuaded to attend PARBICA's New Caledonia conference. This in turn led to an invitation from the Vanuatu Government to hold a Recordkeeping for Good Governance workshop in Port Vila.

The need for promotional materials was highlighted by the Fijian National Archivist and PARBICA President Setareki Tale in his paper at the

Australian Society of Archivists' conference last year. At the conference he said:

It is noted that many problems that affect recordkeeping in Fiji and the Pacific such as limited resources, lack of training, tendency of staff to leave after training etc are related to the lack of recognition of the profession. ... Vigorous awareness and marketing programmes properly planned for specific target audiences are avenues that can be utilised to address these issues and to propel the profession forward.²⁶

The Toolkit responds to this need. The first of its main products is a brochure that explains to senior government officers how good records management can help them to meet good governance standards. The Brochure emphasises three key ideas:

- records can help you to be efficient;
- records can protect the government's interests; and
- records can protect the community's interests.

One of the key issues PARBICA members identified during the brochure's development was the importance of talking to people about governance issues. It is not enough to just give someone a brochure and hope that they read it. PARBICA members want to be able to talk to senior government officers and explain to them about how records management can help them in their work. Because of this need to speak directly to government officials about the brochure, the Toolkit also includes PowerPoint slides. PARBICA members can use these to develop their own information sessions that explain the message of good records and good governance. Ross Gibbs' paper at the Pacific Public Service Commissioners' Conference²⁷ was also part of this strategy to speak to key decision-makers about recordkeeping, and PARBICA continues to pursue opportunities to influence decision-makers to take up the recordkeeping cause.

The second main product is a Recordkeeping Capacity Checklist. This Checklist can be used by anyone who wants to see if their organisation has in place the things it needs to manage records well. The Checklist consists of ten simple 'yes or no' questions that will help agencies to make a self-assessment about their recordkeeping capabilities. If an organisation cannot answer 'yes' to all of the questions in the checklist, it

probably does not have the ability to meet its basic recordkeeping requirements. The Checklist also provides suggestions on how to improve, and information on where to get help.

The third product is a guide on how to identify recordkeeping requirements, which is to some extent steps A and B of DIRKS²⁸ melded together and significantly simplified. This was a particularly interesting product to develop, as it needed to be understandable in a range of jurisdictions. Describing in a simple way the range of sources that might be available to a range of audiences who may or may not have an Auditor-General, a Public Service Commission or an Ombudsman was challenging. Even finding inclusive terminology where some readers will refer to a Congress and others to a Parliament is a test.

A key issue will be the ability to adapt the content of the Toolkit to local conditions. All of the Toolkit products are being developed in common software so that PARBICA members will be able to change the text to suit their own requirements. It is worth noting here that the Reference Group made an early decision that it would not be possible for the Toolkit to cater for the French territories. This is not only an issue of language. PARBICA's past experience with developing Pacific-wide tools revealed that, even after translation into French, the French administrative tradition is too different to that of the rest of the Pacific for recordkeeping guidance developed for other jurisdictions to be meaningful.

Future Plans

In the future, PARBICA plans to build on these products by developing more parts to the Toolkit. PARBICA members have consistently asked for practical tools that will have immediate benefits for the way records are managed in their countries. The first phase of the Toolkit sets the groundwork for improvement by helping archivists to identify and communicate to government agencies their specific records management needs. The next phase will commence development of the practical tools that will allow them to start to address those needs. PARBICA has received funding from AusAID to develop a Record Plan for common government administrative functions, and a model records management policy that Pacific Islands governments can consider and adapt for their own use.

The same cooperative approach is planned for phase two of the Toolkit as has been used in phase one. The record plan and model policy will be developed through a series of workshops involving Pacific-based archivists, records managers and other relevant administrators. At the workshops archivists will also develop skills in business analysis that can help them to develop similar plans for core government functions. Once the record plan and the model policy are complete, a further workshop will train archivists in their implementation. It is envisaged that later parts of the Toolkit development process will focus on a model disposal schedule for administrative records around the Pacific, based on the record plan.

Recordkeeping legislation only has an impact when people are willing to obey those laws. We know this well enough in each of our jurisdictions. In response to this many of us have developed other strategies that are intended to support the law and encourage compliance. We often try a combination of strategies that try to convince people that supporting the law is a good thing, while threatening sanctions against those who do transgress. Governments need to use these combined strategies for any function that requires general community support - from archives laws to quarantine.

The PARBICA *Recordkeeping for Good Governance Toolkit* is attempting to answer these same needs. Spread as it is across a range of jurisdictions, the Toolkit needs to be broad enough to cover all of these administrative traditions, while being specific enough to provide meaningful and usable guidance. As it evolves in the future it may be able to have an impact on recordkeeping and good governance in the Pacific in a way that legislation alone has not been able to achieve.

Whether the impact is greater than the current legislative one will be hard to measure. At present PARBICA intends to measure the success of the Toolkit in terms of the extent of its take-up by Pacific Islands archives. While this is a measure of the usefulness of the Toolkit to archivists, it does not necessarily reflect the influence it may have on recordkeeping outcomes. Just as for legislation, the development of a self-assessment tool or a record plan alone does not make good recordkeeping. Because recordkeeping is the responsibility of all actors within an organisation, archives often find it difficult to measure their success in terms of factors that are within their control. This is all the more true for PARBICA, which is another step removed from the people within each government who

ultimately must deliver good recordkeeping. It is only through a combination of tools and strategies that real impacts can be made.

Endnotes

- ¹ An earlier version of this paper was presented at the 2007 Australian Society of Archivists conference, *Initiatives, Ideas and Interaction: Sharing Our Stories in Alice Springs*.
- ² Ross Gibbs, "The Pacific Recordkeeping for Good Governance Toolkit", paper presented at the Pacific Public Service Commissioners' Conference, Mulifanua, Samoa, 18 - 20 July 2007.
- ³ Nancy Lutton (ed), *PARBICA Compendium of Pacific Archives Legislation*, Pacific Regional Branch of the International Council on Archives (PARBICA) [Canberra] 2001.
- ⁴ Setareki Tale, 'Canoeing in Cyberspace: Recordkeeping in the Pacific - a Fiji Case Study', p5, paper presented at Connections and Conversations: *Australian Society of Archivists Conference 2006*, available at http://www.archivists.org.au/sem/conf2006/Tale_ASAConference2006.pdf, accessed 2 August 2007.
- ⁵ Lutton, op cit, p7.
- ⁶ Government of Samoa, *Code of Best Practice - Records Management*, [Apia], April 2007, [p1].
- ⁷ Geert Cole et al (eds) *South Pacific and Micronesia*, Lonely Planet [Footscray, Victoria], 2006, p310.
- ⁸ Chris Hurley, 'From Dust-Bins to Disk-Drives: A Survey of Archival Legislation in Australia', first published in *The Records Continuum: Ian Maclean and Australian Archives' first Fifty Years*, Ancora Press in Association with Australian Archives, Clayton, 1994. Available at <http://www.sims.monash.edu.au/research/rcrg/publications/dustbins.html>, accessed 8 August 2007.
- ⁹ Anne-Marie Schwirtlich, 'Overview of Archival Legislation in Australia', paper presented at *Australian Society of Archivists 1999 Conference*, available at <http://www.archivists.org.au/events/conf99/schwirtlich.html>, accessed 2 August 2007.
- ¹⁰ Pat Jackson, 'Archives in Kiribati', paper presented at *Australian Society of Archivists 1999 Conference*, available at <http://www.archivists.org.au/events/conf99/jackson.html>, accessed 2 August 2007.
- ¹¹ Danielle Wickman, 'Records management capacity in the Solomon Islands', paper presented at *Connection and Conversations: Australian Society of Archivists Conference 2006*, available at http://www.archivists.org.au/sem/conf2006/Wickman_ASAConference2006.pdf, accessed 2 August 2007.

¹² Lesley J Boye, 'The Fiji Experience: A case study' in Records Management Association of Australasia, *From Concept to Reality: Proceedings 12th to 15th September 2004 21st International RMAA Convention*.

¹³ Vern Harris, 'Law, Evidence and Electronic Records: A Strategic Perspective from the Global Periphery', paper presented at the International Council on Archives Congress, Seville, August 2000, p7. Available at <http://www.archivists.org.au/sem/misc/harris.pdf>, accessed 8 August 2007.

¹⁴ Schwirtlich, op cit.

¹⁵ Ted Ling, 'Setting Standards: Archival Legislation and Recordkeeping Principles', paper presented at *Convergence 2001: Joint National Conference of the ASA and RMAA*, Hobart September 2001, p 98, available at <http://www.rmaa.com.au/StaticContent/StaticPages/pubs/nat/natcon2001/section009.pdf>, accessed 8 August 2007.

¹⁶ David Roberts, 'Government Recordkeeping: What Role for a Government Archives and Records Authority?' paper presented at *A Government Archival Program for the ACT*, 26 May 1999, available at: <http://www.archivists.org.au/sem/actarchives/droberts.html>, accessed 8 August 2007.

¹⁷ Amanda Barber, 'Promoting the Importance of Recordkeeping to Governments and Regulatory Authorities ... the Experience in New South Wales', *Australian Society of Archivists 2003 National Conference: GLAM Galleries, Libraries, Archives and Museums*, Australian Society of Archivists [Adelaide] 2003, pp76 - 84, and Fran Wharton, 'Promoting the Importance of Recordkeeping to Governments and Regulatory Authorities in South Australia', *Australian Society of Archivists 2003 National Conference: GLAM Galleries, Libraries, Archives and Museums*, Australian Society of Archivists [Adelaide] 2003, pp85 - 89.

¹⁸ See Augusteto Zimmermann, 'The Rule of Law as a Culture of Legality: Legal and Extra-legal Elements for the Realisation of the Rule of Law in Society', *eLaw Journal* vol 14(1) 2007, pp10 - 31, available at <https://elaw.murdoch.edu.au>, accessed 2 August 2007, for a discussion of how culture interacts with law to effect the rule of law.

¹⁹ See for example Jon Fraenkel, *Manipulation of Custom: From Uprising to Intervention in the Solomon Islands*, Victoria University Press, Wellington, 2004.

²⁰ Brenda Heather-Latu, 'Good Governance in the Public Sector Pacifica Style', paper presented at the *Pacific Public Service Commissioners Conference*, July 2007, Apia, Samoa, p10.

²¹ Pacific Regional Branch of the International Council on Archives, Resolutions of PARBICA's 11th General Conference, available at <http://www.parbica.org/Documents/Resolutions-PARBICA11.pdf>, accessed 28 May 2007.

²² Kaveni Takalevu, 'Key Issues for Recordkeeping in Good Governance - Presentation on Assessing the State of Recordkeeping: Measuring Progress Towards Better Systems', unpublished paper presented at the 11th Conference of the Pacific Regional Branch of the International Council on Archives, Nadi, Fiji, 19 - 23 September 2005, p6.

²³ Ibid. p10.

²⁴ Pacific Regional Branch of the International Council on Archives, op cit.

²⁵ Ross Gibbs' attendance at the conference was funded by AusAID, another example of the importance which AusAID now attaches to recordkeeping as a key factor in good governance initiatives.

²⁶ Tale, op cit, p8.

²⁷ Gibbs, op cit.

²⁸ DIRKS stands for Designing and Implementing Recordkeeping Systems, and has come to signify the methodology recommended in the International Standard on Records Management, AS ISO 15489.