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A problem of submersion: Internal Affairs' response to the 1994 Review of National Archives by McDermott Miller

Julienne Molineaux

PEER REVIEWED: *This article continues the article in the October 2009 issue of Archifacts*

In 2009 the State Services Commission (SSC) launched a 'machinery of government' review of Archives New Zealand. Machinery of government is a term that refers to the structure of agencies, their location within the state sector and their governance relationships. Overseeing the machinery of government, and advising the government on possible changes to it, is part of the SSC's role.

The SSC has both efficiency and effectiveness concerns about the large number of small agencies in the New Zealand state sector. The SSC argues that small agencies, all requiring their own Chief Executive, reporting and policy capacity, HR and IT units, increase the costs of running the state sector, and complicate its coordination. Small agencies may also have difficulty attracting and retaining staff of high calibre.¹ Many policy areas are complex and connected to other policy areas. Fragmentation of the state sector into many smaller agencies, as was the trend for about a decade until the mid-1990s, led to problems with policy coordination and a disconnect between policy development and the provision of services. As a response to these problems, the SSC has moved to increase coordination, sometimes by the merger or amalgamation of agencies.

With an annual budget of around \$23m and staff of 128, Archives New Zealand is a small department and thus a prime candidate for a review of its organisational design options. In the terms of reference for the 2009 Archives New Zealand machinery of government review, the SSC listed some possible amalgamation partners for Archives New Zealand. One potential department

host is the Department of Internal Affairs. The terms of reference note that Archives New Zealand (formerly National Archives) was previously located within Internal Affairs, but do not mention the difficult history between the two agencies.²

This article examines one difficult event in that history: the reaction of Internal Affairs to the 1994 McDermott Miller review of National Archives. While this article deals with a very specific episode, a general lesson can be drawn: that amalgamating one agency within another has the potential to submerge the interests of the individual policy area beneath the preferences and priorities of the larger organisation. This is especially so if one of the policy areas is smaller or less well-understood than the rest of the organisation.

This article details the bureaucratic argument around one episode of archives reform, contrasting the values of the archiving professionals with the managerial imperatives of the time. Many of the official documents used by the author for this article were obtained under the Official Information Act. For the most part file numbers were not provided by the supplying agency. Where the documents were obtained as a result of file searches by the author, file numbers are provided in the reference list.

Introduction

From 1948 until 2000, National Archives was part of the Department of Internal Affairs, a conglomerate government department. Initially, housing a small organisation within a larger one made sense; in 1948, with a staff of one, there was an obvious need for administrative support from another part of the bureaucracy. It could also be argued that a sympathetic host could represent the interests, and generally make visible, such a small component of government. But there was no guarantee that the priorities of National Archives were the priorities of the Department of Internal Affairs. Grouping archives with such disparate policy areas as wildlife, the fire service, passports, gambling and building legislation was not an environment with much understanding or support for archiving concerns. Whether Archives' priorities were at the top or bottom of Internal Affairs' agenda depended on whether the head of Internal Affairs was sympathetic to archives, whether the Chief Archivist generally

found favour with Internal Affairs and was skilled at lobbying. It also depended on how pressing Internal Affairs' other priorities were. With the exception of two periods – the few years following the establishment of National Archives in 1957, and the late 1980s when Chief Archivist Ray Grover was supported in his quest for more resources by a sympathetic Internal Affairs Secretary Peter Boag and Minister of Internal Affairs Michael Bassett – the effective consequence of placing the Archives within the Internal Affairs bureaucracy was one of burial beneath other more-pressing or larger issues. The priorities of National Archives were not the priorities of the Department of Internal Affairs.

It was for these reasons, and a belief that the Chief Archivist needed a higher profile within the public service consistent with the position's statutory powers, that archiving stakeholders supported institutional independence for the Archives.

McDermott Miller Review

A review of National Archives by consultants McDermott Miller in 1994 proposed radical structural change for the Archives. This review criticised the placement of the Archives within Internal Affairs, as senior Archives managers were too focused on wider departmental business instead of having a clear organisation-specific focus. The remedy for this, the reviewers recommended, would be to separate out the archives business (those parts of National Archives that provided archival services) into a new, free-standing agency taking the form of a Crown entity. Crown entities are government-owned statutory authorities, each agency with its own enabling legislation that specifies its purpose and the relationship with its responsible minister. While there is considerable variation in the structure and governance arrangements of Crown entities, they are outside the legal Crown and in general are subject to less ministerial direction than government departments experience. Crown entities were a favourite organisational form in the New Zealand state sector in the later 1980s and in the 1990s.³ This was an era during which the role of the state was reduced, corporate management practices were introduced wherever possible in the public sector, and optimum conditions for the functioning of markets were promoted.

The other main criticism the McDermott Miller reviewers

had of the Archives' structure related to its multiple functions. The Chief Archivist and National Archives performed a range of functions: they were regulator, policy advisor, competitor (in the appraisal and records storage markets), and provider of archives services. The McDermott Miller review argued that this mix of functions contributed towards the lack of clarity in the core business and resulted in conflicts of interest. For example, the market for appraisals was competitive, with National Archives competing for contracts with private providers. Yet the Chief Archivist had a statutory monopoly over the approval or rejection of all appraisal reports, including those from National Archives' rivals. Further, National Archives combined policy advice and the provision of services. The reviewers complained that, 'archives policy and practice remains provider-driven, and accountable to internal standards rather than objectively determined output and outcome criteria.'⁴

McDermott Miller stated that these functions needed separating out from each other if conflicts of interest were to be removed (a type of fragmentation known as 'functional separation' or 'policy/provider/purchaser splits'). Their proposed new Archives would be a provider organisation, delivering outputs that were negotiated with a purchasing agency. The purchaser would be a separate organisation, perhaps a unit within an existing government department. The purchasing agency would purchase services for film and television archives, as well as the official records of government. It would provide policy advice for the government, set standards for archival practice, and address professional training matters. It would also negotiate performance measures with the Archives and monitor their delivery. This arrangement would, the reviewers claimed, protect the government's purchase interest (whether the government received value for money and whether services were delivered as agreed). They suggested that the Crown Company Monitoring Advisory Unit (CCMAU) of Treasury work to ensure the government's ownership interest in the Archives was being protected.⁵ Ownership interest refers to the future viability of the organisation. In the case of Archives, it would refer to the growth and preservation of the collection, plus the continuing financial soundness of the 'business' operation.

While archivists welcomed the recommendation that the Archives become a Crown entity, they were opposed to the functional separation. The reaction of the Department of Internal Affairs to the McDermott Miller report, however, was a worst case scenario for the archivists and their supporters: a functional separation *within* Internal Affairs and no institutional independence. The remainder of this article details the battle between the archivists and Internal Affairs over post-McDermott Miller restructuring.

Internal Affairs' response

The final McDermott Miller report was delivered on the 25th of November 1994. Acting Internal Affairs Secretary Ralph Stockdill did not immediately act on the recommendations of the McDermott Miller report⁶ but proposed further investigations. He told his Minister that the steering group supported 'in principle' the functional separation, but he commented that the McDermott Miller report did not 'present a robust analysis of the financial implications of such changes, and considerable further work is needed to evaluate the costs and benefits of the various options.'⁷

In December 1994 a summary of recommendations from the report went before Cabinet's Expenditure Control and Revenue Committee (ECR). An accompanying paper for the Cabinet ECR Committee was written by the Minister of Internal Affairs, based on a draft written by the Secretary of Internal Affairs. This Cabinet paper promoted an immediate functional separation of the Archives within Internal Affairs, but also further work on the Crown entity option. Although the McDermott Miller report had recommended an Establishment Board be set up to prepare the Archives for Crown entity status, such a board was never created.⁸ The accompanying papers commented that:

Officials support in principle the need to separate the purchaser and provider functions and to work towards improved policy co-ordination in the information and heritage sectors. ... Officials believe further work is required on aspects of the reviewers' recommendations before a final decision can be made on the future form and structure of National Archives. The reviewers prefer the Crown entity

option but have not considered the costs (including exit costs) and benefits of the various options. Considerable further work is required to substantiate whether the savings in the report are able to be realised. ... It is considered too soon to make a final decision on the organisational form of National Archives.⁹

The paper recommended that the Cabinet agree to the appointment of an Advisory Board to advise the Secretary of Internal Affairs on:

- strategic development options for National Archives
- management of the growth of National Archives
- the most appropriate organisational form and structure for National Archives
- the preferred option for the future of the Records Centres
- an appropriate financial structure
- measures necessary to ensure a purchaser/provider split
- possible synergies between the National Library and National Archives.¹⁰

In April 1995, Dr Roger Blakeley, the Secretary for the Environment, became the new Secretary of Internal Affairs. Blakeley came to Internal Affairs with a reputation as an enthusiastic promoter of the new management philosophies and reforms that were fashionable during this time.¹¹ Like previous heads of Internal Affairs, Blakeley was concerned about the unwieldiness of his department and its poor reputation. In 1995 the department answered to five ministers. It consisted of 11 business groups and 52 business units,¹² and was the umbrella department for many Crown entities, trusts and other statutory bodies.¹³ Blakeley 'hit the ground running', meeting almost all 1160 staff in the Department in his first six weeks on the job, confirming a review of the structure of the department and flattening its management structure in his first 100 days.¹⁴

The Blakeley Plan

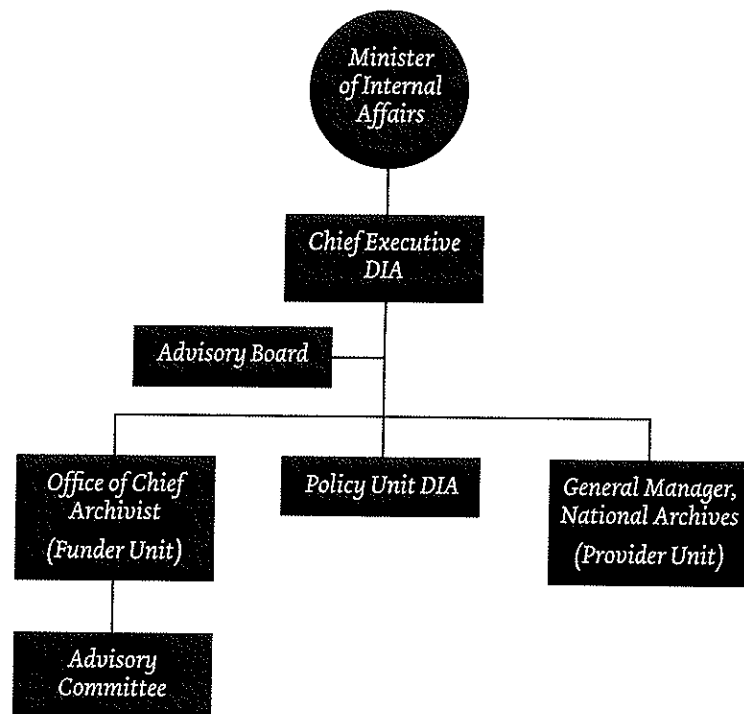
In July 1995, without consulting National Archives or its stakeholders, Blakeley announced a restructuring plan for the Archives.¹⁵ In effect the plan implemented the functional separation recommended by McDermott Miller. The Archives'

existing business was to be divided among three units, but all three of these units were within Internal Affairs. Internal Affairs argued that an in-house functional separation could provide the benefits of the external functional separation advocated by McDermott Miller:

The structure is in line with other models through the public service providing a clear distinction between policy, purchaser and provider roles. This approach is seen as ensuring greater efficiency, transparency and accountability.¹⁶

Internal Affairs stated that once implemented, further investigation into institutional design issues, such as the Archives business becoming a Crown entity, could continue.¹⁷

Proposed internal functional separation 195¹⁸



Both the Chief Archivist and the General Manager of the new business unit (National Archives) would report directly to the Chief Executive of Internal Affairs. The Internal Affairs policy unit was to provide policy advice to the Chief Executive, including advice on new archives legislation. An Office of the Chief Archivist was to be a funder unit, purchasing archival services from National Archives and any other providers in the market. National Archives was a provider of archival services, but would be competing in a contestable market for contracts from the Chief Archivist. The Chief Archivist would be responsible for setting and monitoring standards. Under the 1957 Archives Act the Chief Archivist was charged with approving the recommendations in appraisal reports regarding the transfer or disposal of records. Because the legislation had not been changed, the Chief Archivist retained that function. Plans were made to physically separate the three units. The policy unit was located with the Internal Affairs head office in Waring Taylor Street, Wellington. The Office of the Chief Archivist was to move out of Archives House in Mulgrave Street.¹⁹

Two new advisory bodies were established. In Blakeley's initial plan National Archives Advisory Board was to report directly to the Chief Executive of Internal Affairs. It was concerned mainly with National Archives business unit. The second advisory body was National Archives Advisory Committee. It comprised a large group of stakeholder representatives whose role was to advise the Chief Archivist.²⁰

Officials accepted that there would be transitional costs associated with the structural change,²¹ but there was no new funding for Blakeley's proposals. The restructuring of the Archives was to be financed by reprioritising existing Internal Affairs budgets. Addressing concerns of staff, Blakeley went on the record stating that there would be no redundancies or cuts to existing National Archives' services.²²

The Chief Archivist protests

The Chief Archivist in 1995 was Kathryn Patterson. She expressed concerns about Blakeley's proposal to senior Internal Affairs management, claiming that the new structure removed from the Chief Archivist all her statutory power except 'those relating

to authorising disposal or destruction of public archives.²³ Her statutory duty for the '...custody, care, control, and administration of all public archives deposited in National Archives' was given to a General Manager, who reported directly to the Secretary of Internal Affairs.²⁴ While section 7 of the 1957 Archives Act did stipulate that the Chief Archivist could delegate her powers, 'from time to time', section 6 stated that the Chief Archivist operated under the 'general direction' of the Secretary of Internal Affairs. Patterson argued, however, that 'it is uncertain whether the Secretary's powers of general direction extend to requiring the Chief Archivist to delegate statutory powers.'²⁵

Patterson wrote that the new model involved her, as a funder and principal, to use purchase agreements to delegate statutory powers to the general manager of the Archives, who was a provider and agent. However, the general manager was then not responsible to the Chief Archivist for how that contract was carried out.²⁶ This was problematic because section 7(5) of the Archives Act stated that 'every delegation under this section shall be revocable in writing at will [by the Chief Archivist], and no such delegation shall prevent the exercise of any power by the Chief Archivist.' In the mid-1990s New Zealand state sector, purchase agreements were meant to function like contracts, with the principal taking a hands-off approach as to how the agent chose to meet the specified outputs. In this case, the argument for the functional separation was to remove a conflict of interest by divesting the Chief Archivist – as monopoly setter of standards – of her management of the provision of services that met those standards. The law in this case, however, gave the principal the right to intervene as she saw fit, undermining a key logic of the structure.

The right of the Chief Archivist to intervene at will related to the responsibility the Archives Act gave the Chief Archivist for outcomes. Kathryn Patterson's interpretation of her section 7(5) responsibilities were that:

The Chief Archivist remains accountable to the Secretary for the performance of the statutory responsibilities assigned under the Archives Act irrespective of whether any statutory powers have been delegated. A direction from the Secretary

to delegate, in opposition to the view of the Chief Archivist on the appropriateness of such a delegation, would thus be contrary to the Act since the Chief Archivist could not escape being accountable for the consequences of making that enforced delegation. It follows that the proposed arrangement is dependent on the willing co-operation of the Chief Archivist, and this must be founded on an assurance that the holder(s) of this delegation will exercise these powers appropriately. Since the recipient of any delegation remains accountable to the person who has given the delegation, the General Manager must be accountable to the Chief Archivist (and not the Secretary) for the exercise of any statutory powers delegated by the Chief Archivist.²⁷

Internal Affairs' initial legal advice was that the proposed restructuring was consistent with the Archives Act.²⁸ Internal Affairs established both the advisory groups. In November 1995 it advertised National Archives' General Manager position.

While Kathryn Patterson argued behind the scenes against the restructuring promoted by Blakeley, she was required, as a public servant, to publicly promote the new structure. In October 1995 Patterson sent out a memo to all Archives staff, answering their questions:

Q. *Why could not the OCA [Office of the Chief Archivist] be established within National Archives?*

A. What is being looked for is a **clear** division. It is believed that locating the new unit within the same building would not achieve this transparency and neither would having both units responsible to the Chief Archivist.²⁹

Despite the desire for a clear division, and the transparency it was designed to bring, Patterson's answer to the following question demonstrated the impracticality of a tidy split:

Q. *In several areas the split is proposed between policy and operational aspects of a given area with responsibility going to the Office of the Chief Archivist and National Archives business respectively. How cleanly can such divisions be made in areas such as IT development v IT systems maintenance, liaison*

with government departments, access policy v reference service provision? How is the demarcation between policy development and operational refinement to be determined and monitored?

- A. It is not possible to make such splits and demarcations absolutely clear. This makes it very important that there is continuing liaison between the two units and with the Policy unit. I would envisage that the General Manager would be aware of the areas being covered at any time by the Office of the Chief Archivist and that there would be regular meetings between the two. There may be also times when a person is seconded for a short time to the Office of the Chief Archivist to work on a particular project where the split is not clear and where operational input is essential. Alternatively proposals developed would be passed to National Archives Business for commentary. I would see part of the role of the Chief Archivist and the General Manager would be to keep such communication channels wide open and part of the task of the Advisory Committee would be to alert me to real, perceived or potential problems.³⁰

Stakeholder objections

News of the new structure was not well received by stakeholders, who had not been consulted during its design.³¹ Their concerns ranged from echoing Kathryn Patterson's observations about the role of the Chief Archivist being undermined and the legislation breached, to general disapproval of the ideology underlying the functional separation, to claims that the reforms did not suit such a small organisation and would be costly.

Blakeley made two comments around this time that further antagonised the archiving stakeholders. First, he commented that the Archives (business) could be run privately. Certainly, the new model was designed to facilitate more competition in the provision of archival services. In many cases in the 1980s and 1990s in New Zealand, Crown-owned agencies were privatised after first being commercialised (made to operate on a commercial basis), so commercialisation was viewed by some stakeholders as a stepping stone to privatisation. In response

to stakeholder outcries, the Minister of Internal Affairs, Warren Cooper, made a public pledge on August 23 1995 that the Archives were not for sale.³² Blakeley's second antagonistic comment was 'There is no particular reason why National Archives should be the only keeper of National Archives.'³³ With this sentiment Blakeley echoed the response of Treasury and the State Services Commission to McDermott Miller's assessment that the archives was best served by a monopoly. Cooper, too, aroused suspicion of the stakeholders with a comment reported in the press that the restructuring of the Archives was justified by the 'avalanche of paper'³⁴ it was accumulating. He described the archives as being 'too zealous' in their work, 'costing the taxpayer a fortune.'³⁵

Opposition to Blakeley's plans by stakeholders saw the previously low-profile National Archives receive unprecedented publicity. In August 1995 about 45 users of the Archives picketed outside National Archives building in Wellington. The picketers claimed to represent groups with membership of over 50,000: historians, genealogists, and Māori researchers.³⁶ Representatives from fifteen organisations met in Wellington on the 23rd of August to discuss a strategy for opposing the restructuring. Media coverage included radio stories, letters to newspaper editors and articles. On September 7th a claim was lodged with the Waitangi Tribunal stating that, 'there has been no adequate or appropriate participation and consultation with Maori, regarding the development of proposals outlining the restructuring of National Archives.'³⁷

In September, Blakeley began a belated consultation exercise with stakeholders, who remained unconvinced as to the merits of the proposal and the genuineness of the consultation. The lead article in the November 1995 Newsletter of the Professional Historians' Association of New Zealand (PHANZA), *Phanzine*, commented:

Virtually all key user groups, PHANZA amongst them, criticised the lack of public consultation that preceded the Cabinet decision – including the McDermott Miller Report, which largely failed to seek the views of historians and other core users, not even bothering to seek the views of the Department's own Chief Historian. They also condemned

the absence of any cost benefits analysis and the apparent pointlessness of engineering a costly funder-provider split for an organisation of just 70 people. ...

While we welcomed participation in this belated 'consultation', no one went away feeling reassured about the wisdom of the proposals. Dr Blakeley ... made it apparent that it would take a great deal to persuade him to advise Cabinet to reconsider its still-undocumented decision. Details were noticeably lacking and it was apparent that no cost benefits analysis had been undertaken to prove the 'efficiency' of the proposal; indeed, the news that the Chief Archivist, housed in splendid isolation, would need a staff of eight professionals plus support staff, suggested that the whole exercise was going to be very expensive.³⁸

Former Chief Historian and Archives and Records Association Life Member, Ian Wards, wrote of the September consultation Blakeley held with stakeholders:

... the Secretary could provide no hard evidence that his plans either should or could work. Instead, those assembled were enjoined to have faith. New Zealand led the world in public sector reform, and where New Zealand led others would ultimately follow.³⁹

Stakeholders claimed that Blakeley's restructuring plans had a variety of flaws. No cost-benefit analysis had been done for the new structure. Stakeholders were of the view that the reforms were official-driven, not the result of political instruction, therefore it was not necessary for them to proceed. They also pointed out that the new structure entrenched rather than removed conflicts of interest. These flaws will be discussed in turn.

The McDermott Miller report was criticised by Internal Affairs officials for its lack of a rigorous cost-benefit analysis of the recommendations and for not presenting an analysis of the risks associated with their recommendations. It contained no costings for the functional separation. Blakeley's opponents pointed out that Internal Affairs was making a similar mistake with its new proposal.⁴⁰ It did not include a cost-benefit analysis of the new

structure; officials recommended that the change should happen first and then it would be evaluated.⁴¹ As a result, opponents of the restructuring labelled it as ideological, based on a belief in functional separation, but not grounded in evidence relevant to this particular case.⁴² Internal Affairs claimed that the functional separation was successful elsewhere in the public service. During this debate they did not address the problems with functional separations which were apparent at this time and raised by the National Library's representative on the Steering Committee during the McDermott Miller review.⁴³

Liz Springford of the State Services Commission defended this gradual restructuring. She wrote in July 1995 that,

this incremental approach (unfashionably C E Lindblom) may mean some improvements in the meantime, get managers and staff used to better accountability arrangements, and perhaps mean better information may be available for the next report to ECR by 15 December 1995.⁴⁴

Archiving stakeholders believed that Blakeley's desire for Internal Affairs to be a leader on public sector reform, rather than the best interests of the Archives, was the main driver of the restructuring.⁴⁵ They questioned whether Internal Affairs was indeed required to proceed with the restructuring.⁴⁶ Blakeley claimed that he was simply implementing government policy, as public servants are required to do. He was required to report to the Cabinet State Sector Committee by 16 February 1996 on 'progress on implementing the policy-purchaser-provider split over National Archives, and on examining long-term options for the organisational form of National Archives.'⁴⁷ Progress, of course, did not mean actual implementation; he had the scope, for example, to report that further investigation had shown the functional separation ran contrary to the 1957 Archives Act, or that it was unsuitable for an organisation of this size.

Political reaction and lack of support

Opponents claimed that the Minister of Internal Affairs, Warren Cooper, was ambiguous on the proposal, saying he awaited advice from the Department as to its merits.⁴⁸ Cooper commented on National Radio that the restructuring was 'a possible change' and

that Internal Affairs 'are going to report back.'⁴⁹ His comments in Parliament conveyed a cynical attitude towards the restructuring process:

*We are into what we could call that political theory time where one has to have a funder/provider split. In a few years' time we will not be in that. We will be trying something else and all the officials will still be employed.*⁵⁰

Removing conflicts of interest was the key justification given for the functional separation. Ian Wards reported that Blakeley often commented that 'the Chief Archivist cannot be "referee, coach and player" in his market environment.' [sic] As Wards pointed out, Blakeley '...apparently sees no incongruity in assuming all of these roles himself, for this will be the practical effect of the restructuring, all three units created reporting directly to him.'⁵¹ Blakeley's internal functional separation did address one concern of the McDermott Miller reviewers; it lessened the power of the Chief Archivist and her staff. This, presumably, would diminish opportunities for professional capture. 'Capture' was a concern to public management reformers in New Zealand, who believed that professionals would, if allowed, put their own interests before those of the public, the wider public sector, or the government. One justification for functional separations was to reduce the opportunity for capture.

With the Secretary for Internal Affairs retaining ultimate power over all archiving units, and the Crown entity proposal on hold, the statutory independence of the Chief Archivist was undermined. In effect, power shifted from professional interests to technical managerial interests.

Opposition politicians asked a series of questions in the House of Representatives about the cost of the extra staff required, and whether the archives would be privatised.⁵² Labour MP and former historian Michael Cullen moved that

*vote: Internal Affairs be reduced by \$150,000 from the appropriation of \$10.419 million for output D1: National Archival Services. This is so that the money will not be available to pay for the cost of this restructuring of National Archives.*⁵³

The motion was lost by eight votes. While he voted against the motion, Minister Cooper was on record as saying 'I could almost vote for this.'⁵⁴ Cooper's attitude reinforced the archiving stakeholders' views that the reforms were official-driven, not politically-driven.

Cullen had earlier called the reforms an 'extreme and absurd application of fashionable theories of state organisation.'⁵⁵ He elaborated on this claim when he addressed the 1998 Archives and Records Association of New Zealand conference:

Where there are broad ongoing matters of policy development and debate of significance and, usually, controversy, such a [functional separation] can at times have a purpose. It is in no way essential but it can be useful under certain circumstances.

Equally, it should often be approached with caution and ruled out if the circumstances are not appropriate. This surely is the case with respect to National Archives. The policy issues involved are not, and should not be, matters of continuous revision and controversy. The underlying principles, that I will come to in a minute, have considerable durability and permanency. It is, indeed, of the essence of the archival role that it is about permanence and solidity, a firm historical, legal, institutional and constitutional rock to which the record of government and public affairs can be tethered.

But the creation of separate policy units or ministries has the opposite effect. Their job, in order to justify their continued existence, must be to be in a permanent state of policy evolution, a bunch of free market Maoists let loose upon whatever bit of the body politic they are directed at. Once stability has been achieved they can be downsized or abolished.

We see this phenomenon most clearly in the education sector in such organisations as the New Zealand Qualifications Authority (NZQA) and the Education Review Office (ERO). NZQA must keep proliferating qualifications and so they proliferate. ERO must have lots of bad reports to justify its ongoing role and existence. And so it does.

A policy unit separate from National Archives is a recipe for instability and witless change. For once, so-called professional capture, that is archivists daring to have and express views about how to organise and run archives systems, is preferable. And as for purchasing oversight, as the Treasurer/Minister of Finance in waiting, I have to ask what Treasury is for if it cannot manage to bully meek and mild archivists into providing some coherent justification for the money they are seeking.⁵⁶

Legal opinion sought

Following their protests and the consultation with Blakeley, the Archives and Records Association of New Zealand (ARANZ) asked a Queen's Counsel for an opinion about the legality of the new structure. They were concerned that the Chief Archivist would lose some of her statutory powers under the new arrangement. This legal opinion was 'unequivocal' – the restructuring was illegal:

The three principal concerns [Gillespie Young and Watson acting for ARANZ] have are as follows: 1. That the proposed division of National Archives into separate units is itself illegal and contrary to the scheme of the 1957 Act. 2. That the delegation of the Chief Archivist's powers as proposed in the scheme is illegal and contrary to the scheme of the Act. 3. That the function of the Chief Archivist as set out in s6 may not be delegated.

The Queens Counsel from whom we have obtained the opinion has suggested that if Cabinet is not prepared to reverse its present Cabinet Minute, or if new legislation authorising the proposal is not enacted, then it would be appropriate to issue a notice of proceeding seeking a declaratory judgement.⁵⁷

ARANZ reported this legal opinion to the State Services Commission, who in turn referred the matter to the Solicitor-General John McGrath. The Solicitor-General acknowledged that the issue was difficult and he was not surprised that there were differing legal opinions about the restructuring. The key question was, how much power did the Secretary of Internal Affairs have

to direct the Chief Archivist to delegate some of her powers to a manager of an archives provision unit? Section 6 of the 1957 Archives Act stated that the Chief Archivist,

shall be an employee of the Department of Internal Affairs and, under the general direction of the Secretary for Internal Affairs, shall be charged with the custody, care, control, and administration of all public archives deposited in National Archives and the performance of any other duties prescribed by this Act.

The Solicitor-General outlined his opinion thus:

In the present case I consider the line should be drawn on the following basis. The power given the Secretary of Internal Affairs extends to giving direction to the Chief Archivist as to the manner in which National Archives are administered. A direction may include a requirement that within the relevant section of the Department the Chief Archivist must differentiate in the allocation of duties to subordinate officials between the specification of the standards to be met and the provision of those services. What however cannot, in my view, be done is to require that the discharge of any aspect of the statutory functions be removed from the Chief Archivist's responsibility. In other words the Chief Executive can direct the manner in which the Chief Archivist should discharge her responsibilities but cannot give directions of a kind that would require her to abdicate the statutory functions stipulated in the Act.⁵⁸

The Solicitor-General went on to recommend that the General Manager of Archives Business report directly to the Chief Archivist, not the Secretary for Internal Affairs. He said that it was up to the Chief Archivist to decide how much of her statutory powers she would delegate to the General Manager:

A direction from the Secretary of Internal Affairs as to the manner in which National Archives is to be administered by the Chief Archivist will inevitably affect the scope of that officer's free choice in exercise of his or her functions. The direction may also leave the Chief Archivist with little

*choice but to delegate some of the statutory functions. These intrusions are implicitly contemplated by the Act. In my view whether there is to be a delegation should be the decision of the Chief Archivist who will have to decide whether there are practical alternatives to delegation that will better meet the requirements of the direction she has been given.*⁵⁹

Blakeley responded to this opinion by re-stating his case to the Solicitor-General. He linked the functional separation to the requirement he faced under the State Sector Act and the Public Finance Act to protect the government's ownership interest in the Archives. Ownership interest referred to the future viability and long-term value of the asset. Blakeley said that the government's ownership interest in Archives had two components: the collection itself (whose growth had to be managed) and the business that administered them. He asserted that the protection of the government's ownership asset required the separate management of the business and the administration, to avoid conflicts of interest. Blakeley wrote that having the General Manager report to the Chief Archivist perpetuated,

...the current situation where the Chief Archivist is placed in a position of conflicting interests as the regulator, the purchaser and the principal service provider in the public archives sector. In logic the accountability for specification and delivery should not flow through one person. At the higher level the Secretary for Internal Affairs and Chief Archivist have statutorily separate responsibilities in key areas.

*Unless the 'ownership interest' is attended to, either in the manner we had envisaged or some other way, a further conflict of interest will continue to arise as the Chief Archivist continues to be the statutory regulator of both the activities and the services that she is accountable for delivering, and those activities undertaken, or services provided by other providers of archives appraisal, storage or administration.*⁶⁰

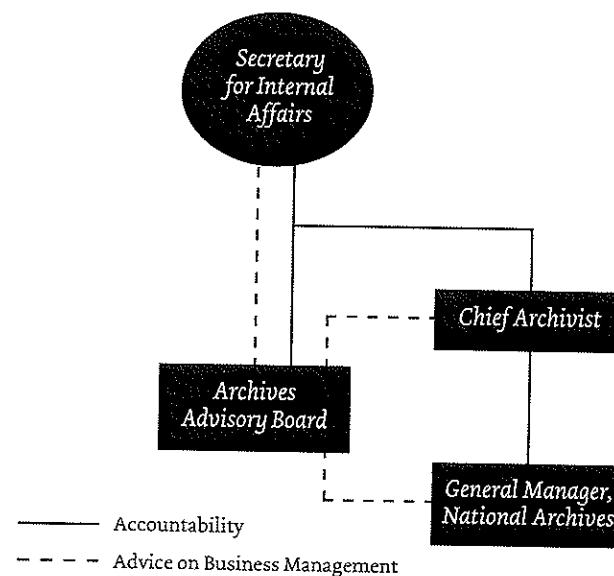
The Solicitor-General's reply to Blakeley was clear: the scope of the Chief Archivist's powers under the Archives Act – being responsible for the custody, care, control and administration of all

public archives deposited in National Archives – encompassed the 'business management of the human, physical and financial assets of National Archives Business.'⁶¹ Consequently, McGrath said the chain of command must go from the Chief Executive, to the Chief Archivist, then to the General Manager. Any functional separation had to take place below the Chief Archivist, with all units reporting to her. The Chief Executive could direct the Chief Archivist to implement a functional separation *within* National Archives, but the Chief Archivist would have the statutory power 'to decide how to implement that direction.'

McGrath's other comment on Blakeley's proposal was to question the line relationships between the Advisory Board and the Chief Archivist. He did not consider it appropriate for the Advisory Board to provide advice to the General Manager, as he or she would be subordinate to the Chief Archivist, and to also report to the Chief Executive, who was the Chief Archivist's superior. The Advisory Board needed to report to the Chief Archivist.

The Solicitor-General's proposed structure for the Archives is reproduced below.

New structure proposed by the Solicitor-General⁶²



McGrath also criticised Blakeley and Internal Affairs for trying to subvert the existing law, with which as public servants, it was their jobs to comply:

*I have read the draft directions and charter. I have problems with the way a number of passages are expressed. An unfortunate impression is conveyed that the statutory requirements are seen to be inconvenient.*⁶³

The Solicitor-General's legal advice left Internal Affairs with no choice but to have the General Manager report to the Chief Archivist, or to change the archives legislation to fit the new public sector management paradigm.

A New Archives Bill

The low political priority given to a new archives bill became a major hindrance for Blakeley. He claimed that the 1957 Act 'entrenches practices and relationships that are neither practical nor appropriate in modern public sector accountability regimes'.⁶⁴ A new Archives Bill had been drafted and circulated in 1992 and again in 1994. In June 1995 the manager of Internal Affairs' new policy unit stated that while the new Bill was an improvement upon the 1957 Act,

*... its proposed institutional framework is inconsistent with what is currently being proposed. ... it would in my view be inappropriate to advance the present Bill in light of the concurrent policy developments. Instead we should give priority to a new Bill that combines the proposed new institutional framework (when approved) with the provisions in the Bill that advance good archives management consistent with the new framework.*⁶⁵

The Internal Affairs policy unit had formally taken responsibility for the new archives legislation in 1996. In practice, Internal Affairs officials and archives staff had always worked together on the new drafts; it had never been the domain of one group of staff. Tim Horner, the policy unit manager, outlined the advantages of having a specialised policy unit. Such a unit had a wider perspective than those involved in the activity, so the advice would be better. The Government increasingly wanted advice that took into account

wider Governmental objectives and this could be more effectively achieved by a larger unit; and small units that did not have regular contact with Ministers or the legislative process found it difficult to provide quality advice.⁶⁶ While this is an argument for strategic policy advice, it is also an argument against professional capture.

A new draft archives bill was circulated for comment in June 1996. The Archives Advisory Committee made substantial submissions on it; submissions were also received from over forty government agencies and other interested stakeholders and individuals. The draft bill did not specify an institutional structure for the Archives except to keep it within the Department of Internal Affairs. It did, however, change the relationship between the Secretary of Internal Affairs and the Chief Archivist. The Chief Archivist was no longer responsible for the 'custody, care, control and administration' of archives, although she remained under the general direction of the Secretary:

*(1) Subject to the control of the Minister and subject to the general direction of the Secretary, the Chief Archivist shall be charged with the general administration of this Act. (2) The Secretary shall provide such administrative services as may be necessary or desirable for the efficient carrying out of the functions of the Chief Archivist under this Act. (3) Nothing in subsection (1) or subsection (2) of this section derogates from any of the powers specifically conferred on the Chief Archivist by this Act.*⁶⁷

The 'general direction' of the Secretary was not to impinge on professional issues, but it effectively gave the Secretary more power: he or she took over the provision of administrative services 'necessary or desirable' for the Chief Archivist to carry out her professional duties.

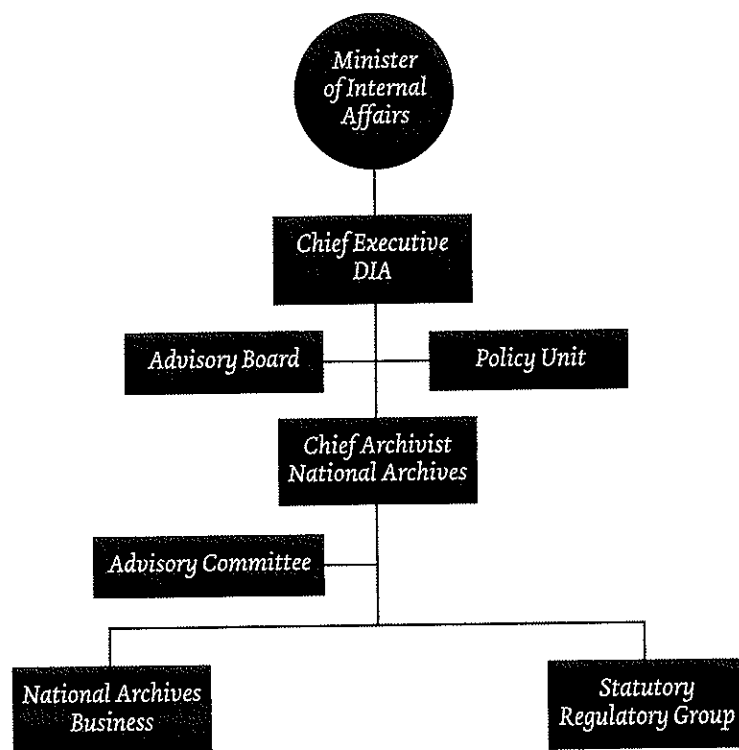
The archives bill, however, did not contribute in any obvious way to the government's Strategic Result Areas, and so it was not given a priority on the legislative agenda. The 1996 general election saw the formation of a National-New Zealand First coalition government. A detailed coalition agreement was negotiated and policies that contributed to the agreement were given priority over policies that did not. Tim Horner claimed that archives failed to make that agreement.⁶⁸ Unable to easily

change the statutory constraints on the restructuring, Internal Affairs restructured the Archives along the lines advocated by the Solicitor-General.

New structure

Despite Blakeley telling McGrath that in 'logic the accountability for specification and delivery should not flow through one person',⁶⁹ the new model proposed just that. The functional separation took place below the Chief Archivist. ARANZ withdrew its threat of legal action and the new structure was implemented in 1996.

Implemented structure, 1996⁷⁰



Two new management positions were created, a manager of Archives Business and a manager of the new Statutory/Regulatory Group. Both reported to the Chief Archivist. Archives Business was to act as a provider of archival services while the Statutory/Regulatory Group was a standard-setting and monitoring unit. Its duties included assessing appraisal reports prepared by the Business unit and private archival consultants, liaising with government agencies, and advising the Chief Archivist on 'operational' policy.⁷¹ 'Policy' policy, including new legislation, was to continue with the Internal Affairs policy unit.

This model addressed a number of concerns. The creation of the Statutory/Regulatory Group lessened the previous conflict of interest between the Chief Archivist being both regulator and provider, making the provision of private archival services more viable. Both groups reported to the Chief Archivist enabling some co-ordination between policy and delivery. Theoretically, the appointment of a General Manager freed the Chief Archivist from daily management of the Archives to focus on more strategic issues, such as promoting electronic records management standards and protocols across all agencies.⁷² All groups were housed in Archives House, Mulgrave Street, so the Chief Archivist was no longer physically isolated from the business of archiving.⁷³

In a draft press release to announce and explain the new structure, Roger Blakeley wrote that,

the principle of separation of service provision from policy and regulatory functions was now common place under public sector reforms of the last decade. The benefits of such separations have been the avoidance of conflicts of interest, improved customer service, reduced costs and higher quality policy advice to the government.⁷⁴

Blakeley's press release also commented that he was 'confident that the benefits sought in the original management changes would still be achieved under the new arrangements.'

No new funding was available for the new structure. The Statutory/Regulatory unit was created with a manager and two staff instead of the proposed complement of twelve staff. The position of General Manager of National Archives Business was advertised, and the job description specified business skills as a

priority over archival skills. There was a dearth of applicants with suitable skills and the position remained unfilled for over a year. Chris Hurley, who had been the head of the Public Record Office in the Australian state of Victoria, was finally appointed in 1997.

The new model met with some approval. Chief Archivist Kathryn Patterson wrote that the quasi funder-provider split that resulted had its strengths: the statutory/regulations group was able to focus on standard setting, an activity that the Archives 'should have been doing all along.'⁷⁵ ARANZ President Sheryl Morgan wrote to Blakeley saying that ARANZ saw much to commend the new structure, 'provided ultimate administrative responsibility remains with the Director and Chief Archivist.'⁷⁶

Conclusion

Those familiar with the history of the Archives will be aware that this new institutional arrangement was barely in place before Internal Affairs announced a new round of restructuring and rebranding, which relocated the Archives within a Heritage grouping. Once again stakeholders went into battle on behalf of the Archives, and once again they used the 1957 Archives Act to defend the position and powers of the Chief Archivist.

The recent history of the official Archives in New Zealand is one of instability. Outsiders – the Treasury, the Department of Internal Affairs and the SSC – have all suggested new arrangements for the Archives that solve *their* problems, but are not driven by a desire to strengthen archiving goals or solve archiving problems. With an eye to cost-cutting, Treasury proposed a merger between the Archives and the National Library, assuming more synergies between the agencies than actually existed. The investigation of this merger proposal led to the 1994 McDermott Miller review. Internal Affairs' response to McDermott Miller was motivated more by a desire to retain the Archives within the Internal Affairs umbrella, than to explore what the Archives needed. More recently the SSC has been moved to re-amalgamate Archives New Zealand into the Department of Internal Affairs. While this reform has been promoted as creating synergies in digital technology, papers reveal that the SSC's motivation was to streamline its coordination of the state sector

and reduce overhead costs. This latest MOG review had input from the former Chief Archivist and former Minister of Archives New Zealand, Dianne Macaskill and Richard Worth respectively. They were able to amend the terms of reference so that any new organisational design will be tested against archiving goals.⁷⁷ It is because of the independence of the Chief Archivist and her ability to take her concerns directly to a Minister, that such input to the review was possible. However, so long as external needs drive the institutional design of the Archives, its design will be unstable: every time there is a change in the needs of the wider state sector or the host agency, the Archives will face changes.

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Private Letters on Public Issues: Personal Correspondence to the Early Colonial Governments

Heidi Kuglin

Introduction

The theme for the 2009 Archives and Records week was personal correspondence. Most researchers immediately think of letters in collecting archives. However, Archives New Zealand holds a wonderful collection of personal correspondence. The Inwards Correspondence to the early Colonial governments contains a wealth of information about well known citizens – settlers such as de Thierry, the Williams families, the Wakefields, and Charles Heaphy. Even more interesting to this author are the personal letters written by the common people, the people whose lives will never be reflected in historical tomes. Their value goes far beyond the search for ancestors to flesh out a family history. They add rich context to the values of society. And it is interesting to see the range of activities for which settlers had to apply to government. Not only do the letters provide valuable information for tracking political and financial trends and social values, they can also raise new questions for research.

Each government department saved their inwards correspondence in a chronological annual single number format. This continued until the revision of government recordkeeping in the early 20th century which changed most filing systems into subject based multiple number systems. Clerks diligently entered into registers the arrival of each letter, recording when it was written, when it was received, who wrote it, where they lived, what the subject of the letter was, and what happened to the letter. At the same time, they created an index to the registers to make for