

Good governance and preserving history: why Hong Kong needs an archives law

妥善管治和歷史存留： 香港為何需要制定檔案法

William Waung discusses the implications and significance of introducing an archives law to ensure the preservation of history and good governance for the benefit of Hong Kong people

王式英先生討論制定檔案法的意義和重要性，以確保檔案得到妥善管理，歷史得以為香港人的福祉而留存

What are public archives?

Archives are the original records of an event at the time it occurred and preserved for posterity. Public archives record birth and citizenship, confirm death and ownership, verify rights and obligations, detail government policies and decisions and serve legal, operational, research and cultural purposes. They are a repository of significant and factual information that helps us to understand the history and identity of a community, the workings of a government and its publicly funded bodies and enables us to benefit from the past.

Why are public archives important for society?

All responsible governments practising good governance need to document policies, decisions, transactions, activities and how they conduct business, spend public money, deliver services and evaluate outcomes, in order to sustain efficient operations, protect rights and obligations to ensure accountability and transparency.

Public archives should contain records created and used in government offices and public bodies for these purposes. Authorised professional archivists work with every department of the government to ensure that all public records, whether in respect of creation, management, transfer or archival preservation, comply with proper

甚麼是公共歷史檔案？

檔案是一事件發生時的原始記錄，並為後人而保存。公共檔案記錄了我們的出生和公民身份，確認死亡和擁有權，核實權利和義務，詳述政府的政策和決定，以及滿足法律、業務、研究和文化上的需要。它們是重要事實資料的儲存庫，幫助我們了解社會的歷史和身份，政府及其資助機構的運作，使我們從認識過去而受益。

為何公共歷史檔案對社會那麼重要？

任何實行良好管治的負責任政府，都需要記錄其政策、決定、交易、活動，以及如何經營事務、使用公帑、提供服務和評估結果，以維持高效率的運作，保護權利和義務，從而確保政府的問責性和透明度。

公共歷史檔案應涵蓋政府部門和公共機構為此等目的而產生和使用的檔案。獲授權的專業檔案管理人員透過與各政府部門的合作，確保所有公共檔案，不論在產生、管理、移交或保存方面，均達至



archival standards. These public records need to be appraised by professional archivists for enduring value and usefulness. The valuable records identified are then described, arranged and permanently preserved in special repositories for public access and use. The provision of open and fair access to public archives enables citizens to find out the reasons behind, and the processes of, government decision making and their impact on people's lives. Non-valuable records are also identified in the appraisal process so that specific permission can be granted by archivists to the particular government departments and public bodies for scheduled destruction.

The identification and protection of archival records are an important function of government and this is recognised by all societies, ancient and modern. In a modern state, it is part of a government's public duty to ensure the proper creation, management, protection, preservation and transfer of records, as it is well known that once records are damaged, lost or destroyed they are irreplaceable. Tampering, of course, renders the public record unreliable.

Archives in China

China has always placed the greatest importance on the creation, protection and preservation of records. We know from our study of Chinese history that high official posts of great importance were created for the keepers of official archives. The writing of a dynastic history was dependant on the existence of the official archives. Archives were considered national treasures as they conferred legitimacy on the possessor of the archives.

適當的歷史檔案標準。公共檔案需要由專業的檔案管理人員鑑定是否具有持久價值和用途。被確認具價值的歷史檔案隨後會被著錄、整理和永久保存於特定的儲存庫，讓公眾公開和公平地查閱及使用，從而了解政府決策背後的原因和進程，以及對民生所產生的影響。在鑑定過程中，檔案管理人員會識別沒有保留價值的檔案並授權政府部門和公共機構，按時限將它們銷毀。

歷史檔案的識別和保護，是政府的一個重要職能，這是任何古代和現今社會所公認的。現代國家均以確保檔案的適當建立、管理、保護、保存和移交為政府的公共責任的一部分。眾所周知，檔案一旦損壞、遺失或被銷毀，便無法彌補，而經竄改的公共檔案亦會失去公信力。

中國的歷史檔案

中國向來極度重視歷史檔案的建立、保護和保存。從對中國歷史的研究中，我們得知中國設立了非常重要的官職來監管官方檔案。撰寫一個朝代的歷史，需要依賴保存下來的官方檔案。由於歷史檔案賦予檔案擁有者合理和正統的地位，因此，它們一直被視為國寶。

現代的中國不單支持立法管理政府檔案的原則和實踐，並已在國家和地方層面制定檔案法。《中

Modern China not only supports the principle and practice of an archives law for government records, but has enacted archives legislation at both the national and regional levels. The Archives Law of the People's Republic of China was enacted in 1987 (amended in 1996) and the Criminal Law of the PRC applicable to the Archives Law was amended in 2006. Municipal governments in China enact their own related archives laws. An example of this is the Shanghai City Archives Regulations which were amended in 2004.

Archives legislation worldwide and the position in Hong Kong

To ensure that a country has a good system of archives, all modern states and jurisdictions have archives legislation. For example, in Australia, the Archives Act 1983 (Cth) and, in New Zealand, the Public Records Act 2005, provides for, *inter alia*, 'the preservation and use of archival resources' and 'the continuation of the repository of public archives' respectively. In Asia, countries and territories such as Japan, Korea, Taiwan, Singapore, Malaysia, Mongolia and Macau all have archives legislation. Hong Kong, however, is the only exception. Hong Kong currently does not have archives legislation and it seems that the government is in no hurry to pass such legislation. This is both surprising and exceedingly puzzling given that Hong Kong is a Special Administrative Region that prides itself on its judicial independence, its adherence to the rule of law and its unique achievements post-1997.

The limitations of the Government Records Service

Unlike other jurisdictions, where the management of the government's archives system is underpinned by legislation, the Government Records Service (GRS), a division of the administration arm of the Chief Secretary for Administration's Office, oversees the management of public records in Hong Kong through internal administrative arrangements. The GRS operates with serious limitations:

- the selection of records as archives takes place only when they are considered by a government department, bureau or office as being no longer required for use by that body and not by the GRS;
- the alleged need to retain records for continuing use is frequently employed by the aforementioned government bodies as an excuse not to permit access to records for archival appraisal and transfer records to the Public Records Office (PRO), which is the designated government archives incorporated into the GRS Division;
- the GRS has no power to perform a records audit (let alone implement what, as will be seen later, is regarded in Australia as proper archival management) and cannot identify what public records were created, how and where they are kept, whether they have been wrongly disposed of or, if they are in existence, whether they are still reliable or usable;
- the GRS does not have any statutory powers and cannot require nor can it ensure that any government department, bureau or office will make their records available for appraisal or transfer, and government bureaus and departments are free to disregard GRS guidelines; and

華人民共和國檔案法》於1987年頒布（並於1996年修訂），而適用於該檔案法的《中華人民共和國刑法》亦於2006年作出修訂。中國各市政府亦制定了相關的地方檔案法規，其中一個例子是於2004年作出修訂的《上海市檔案條例》。

檔案法於世界各地以香港的情況

所有的現代國家和司法管轄區都制定了檔案法，以確保能建立一個良好的檔案管理制度。例如澳洲的《1983年檔案法》及新西蘭的《2005年公共記錄法》，就分別以條文規定「檔案資源的保護和利用」、「公共檔案儲存庫的延續」以及其他項目。亞洲的各國和地區，例如日本、韓國、台灣、新加坡、馬來西亞、蒙古和澳門等，亦已制定檔案法，香港是唯一的例外。香港目前並沒有檔案法，而政府似乎並不急於立法。香港是一個特別行政區，並經常為其所享有的司法獨立、對法治的堅持，以及在1997後所取得的獨有成就感到自豪，因此政府的如此態度實在令人感到驚訝和不解。

政府檔案處的局限性

有異於其他司法管轄區以立法作基礎管理政府檔案，香港政府檔案處（以下簡稱檔案處，乃政務司司長辦公室的行政署轄下的一個單位）是藉內部的行政安排來管理香港的公共檔案的。檔案處的運作因而受到嚴重的局限：

- 只有在在政府部門、決策局或辦公室認為不需再使用某些檔案時，檔案處才有機會作檔案鑑定；
- 上述的政府機構經常以需要保留有關檔案作持續使用為藉口，不允許它們的鑑定或移交予歷史檔案館（政府檔案處轄下指定保存政府歷史檔案的資料館）；
- 檔案處無權對政府部門、決策局或辦公室作檔案審核（更不消說可以像稍後談及澳洲所實行的妥善檔案管理），也不知道政府部門產生了哪些公共檔案、它們怎樣產生及在何處保存、是否被錯誤處置，如檔案倘尚存在，它們是否依然值得信賴或可以使用；
- 檔案處沒有任何法定權力，也不能要求或確保任何政府部門、決策局或辦公室提供檔案作鑑定或移交用途，而政府的各決策局、部門或辦公也可以漠視檔案處所發出的指引；
- 公職人員如不適當地建立、管理或保存檔案，或在沒有通知檔案處的情況下篡改、損壞、丟失或銷毀檔案，目前並沒有任何特定的程序處罰他們。

- there is no specified procedure for imposing penalties on public officers who do not create, manage or preserve records properly or doctor, damage, lose or destroy records without notifying the GRS.

Other deficiencies and bad governance

The position of the GRS Director, a post that was once filled by an experienced and qualified archivist of the Archivist Grade, is now occupied by an officer of the Executive Grade whose job requirements, by implication, do not include professional archival training or experience in the management of public records. Similarly, a number of key professional positions that used to be held by professional archivists are now filled by Executive Grade staff and para-professionals. Only two of the five Archivist Grade officers currently staffed at the GRS are professionally qualified in archives management.

The GRS has not issued a service-wide guidance or standard for the management and preservation of electronic records in government except for an interim guideline on the management of email which was issued almost a decade ago. This is a growing concern as information technology is increasingly being used in recordkeeping. Electronic records may be readily altered and are easily deleted. To ensure that electronic records remain authentic, accessibility and usability over time requires the most up-to-date records management system and professional expertise.

There is no legal obligation on any of the 200 plus public statutory bodies, such as the Hospital Authority, the Housing Authority, the Urban Renewal Authority, the Monetary Authority and the universities in Hong Kong to properly manage, protect and transfer (unless where it has its own archives) archival records to the PRO for preservation and public access. The activities of these publicly-funded bodies have a considerable impact on society and they should

其他的不足和管理不善之處

檔檔案處處長一職，過往是由一名富經驗和合資格的檔案管理人員來出任，現在已被行政職系的人員替代，而當局對處長的工作要求，亦意味著不包括必須接受過專業檔案工作訓練或具相關的經驗。同樣，一些過去由專業檔案管理人員出任的主要專業職位，現在均由行政職系的人員及輔助專業人員來填補。目前在檔案處的五名檔案職級人員中，只有兩人具檔案管理的專業資格。

檔案處並未就政府電子檔案的管理和保存頒佈服務指引或標準，有的也不過是一項約十年前發出有關電郵管理的臨時指引。現時越來越多的檔案是透過信息技術保存，電子檔案的管理問題，亦日益備受關注。由於電子檔案很容易被隨時修改或刪除，要確保電子檔案可長時間保持其真確性、並可隨時查閱和利用，我們必須建立最新的資料管理系統和具備相關的專門知識。

在香港的200多個公共法定機構中（包括醫院管理局、房屋委員會、市區重建局、金融管理局及香港的各所大學），並沒有任何一個有法律責任妥善管理、保護和移交歷史檔案給歷史檔案館（如已設檔案館者，當然沒需要移交檔案），作保存及公眾查閱之用。這些獲公帑資助的機構，其活動對社會有重大的影響，理應受到公眾監督。這方面的不足，會導致例如將來無法適當評估醫管局在2003年的SARS事件中所作的決定，以及各所大學的活動及其對香港的影響。

目前有超過10萬份已被鑑定為應作永久保存的歷史檔案，尚未被整理以供公眾查閱。許多政策局和部門暫借的歷史檔案，最終並沒有歸還歷史檔案館。也有數量不詳的歷史檔案現仍埋藏於黑暗角落，其重見天日將會是遙遙無期。

查閱歷史檔案，乃受《1996年政府資料檔案（取閱）則例》所規定。不過就算歷史檔案三十年的封存期已屆滿，政務司司長在聽取了檔案移存部門首長的意見後，仍有廣泛酌情權拒絕讓任何人士查閱（第3及第6條規則）。現時並沒有任何機制，可就政府不批准查閱檔案的決定提出上訴。此外，移交給歷史檔案館的機密檔案清單現已不獲公開（見歷史檔案館歷史檔案網上電子目錄），公眾要查閱該等機密記錄，已變成不可能的事。《取閱則例》不過是行政指引，很容易被政府修改，更何況這些則例均屬酌情性質，它們的落實情況，不單不為人所知，更遑論可依法強制執行。

香港為甚麼需要制定檔案法

正因為香港沒有檔案法，政府對檔案的對待可以為所欲為。尤其令人擔憂的是，自1997年以來，負責



be subject to public scrutiny. This deficiency will result in, for example, the inability in the future to properly assess the decisions of the Hospital Authority during the 2003 SARS incident or the activities of universities and their impact on Hong Kong.

More than 100,000 records identified for permanent retention as archives have not been processed to permit public access. Many archives on temporary loan to bureaus and departments are never returned to the PRO. There is also an unknown quantity of classified archival records buried in the dark somewhere without a known disclosure date.

Access to archival records is subject to the Public Records (Access) Rules 1996. The Chief Secretary, upon advice from the head of any government department which has deposited public records, has extensive discretionary powers to refuse access to public records even after the expiration of the closed period of 30 years (rr 3 and 6). There is no mechanism for appealing against decisions to withhold access. Furthermore, the list of confidential records transferred to the PRO is no longer available to the public (from the online electronic catalogue for archival records of the PRO), which makes public access an impossible task. Being administrative guidelines, the Access Rules can be easily amended by the government. Furthermore, their enforcement is unknown, and they are discretionary and not legally enforceable.

Why Hong Kong needs an archives law

With the absence of archives legislation, the Hong Kong government has a free hand with regard to the treatment of its records. What is particularly worrying is that key government departments and bureaus, where the most important decisions are being made (such as Chief Executive's Office, the Chief Secretary's Office, the Financial Secretary's Office and the Security Bureau) have not made policy records available for selection and preservation since 1997.

Moreover, major public offices such as the Chief Executive's Office, the Central Policy Unit and the Monetary Authority are not obligated to send their policy records to the PRO for archival appraisal or preservation. Without such records, the history of significant events such as the 1997 reunification with China, the introduction of the ministerial system in 2000 and how employment terms and conditions of political appointees were set and their selections made, will never be known.

Since 1997 and alarmingly so in the last five years, government departments and bureaus have been reluctant to turn over their records for selection and preservation by the PRO. The number of record items transferred has reduced from an annual average of 500,000 items between 2003-07 to 50,000 in 2008. According to the most recent statistics provided in 2011 by the government to the Legislative Council on Estimates of Expenditure 2011-12, the quantity of archival records transferred to the PRO dropped another 44% between 2008-09 and 2009-10.

Archives law is not a subject generally familiar to lawyers. It is therefore not surprising that both laymen and lawyers in Hong Kong often ask: What are archives and why is it so important to have an archives law? By understanding what a proper statutory archives system ought to be, such as those prevailing in other jurisdictions and comparing them to the system currently existing in Hong Kong, one

作出最重要決定的主要政府部門和政策局（例如行政長官辦公室、政務司司長辦公室、財政司司長辦公室及保安局），並沒有提供任何檔案，供鑑定和保存。

此外，主要的政府辦公室，例如行政長官辦公室、中央政策組及金融管理局，根本沒有義務將它們的政策檔案送交歷史檔案館作檔案鑑定或保存之用。沒有它們的檔案，一些重要歷史事件，例如97年香港回歸、2000零年實行的問責制，以及政治任命官員的聘用條款及細則是如何訂立、當局如何對他們作出甄選等，這些實情將永遠不得而知。

自1997年以來，特別是在過去的五個年份，政府的各個部門和政策局一直不願交出檔案讓歷史檔案館鑑定和保存。已移交的檔案數量，更從2003-07年間每年平均500,000項下跌至2008年的50,000項。根據政府於2011年向立法會提交的2011-12年度開支預算中的最新統計數字顯示，在2008-09及2009-10年間，政府部門向歷史檔案館移交的檔案數量，更進一步下跌百分之四十四。

一般而言，檔案法並非律師們熟悉的課題。因此，香港的普羅大眾，以及即使是律師，也經常會問及：甚麼是檔案？制定檔案法為何如此重要？不過只要我們明白甚麼是一個正確的法定檔案制度（有如在其他司法管轄區所實行般），並將它們與香港的現行的制度作一比較，便可以意識到香港需要制定檔案法的迫切性。

要說明這一點，最佳方法便是引用從「Records Authority 2010/00643150」（那是澳洲國家檔案館發表的一份報告，述及（根據法定權限）Land Councils在與澳洲原住民土地有關的檔案管理方面的義務）所作的節錄。該節錄的內容見第27-29頁，標題為「LC Records Authority」。

一個立法制度下的現代、專業和透明的政府檔案制度，與一個古舊、模糊和欠缺法律框架或權威的政府檔案制度之間所形成的對比，確是令人感到驚詫。香港現行制度的模糊之處，加上政府在制定檔案法方面所施加的阻力，引起人們對香港政府檔案的安全性和完整性，以及對香港長期維持良好管治能力的嚴重關注。

香港政府正計劃於2011年9月將其中央辦公室遷往位於添馬艦的新政府大樓。在任何主要的搬遷行動（香港政府有史以來的最大規模辦公室搬遷）開始進行時，許多的檔案有可能被處置。在搬遷期間，經常出現的情況是會將大量的物品丟棄或錯放。如一旦扔掉，這些重要的政府檔案便無法挽救。更令人擔憂的是，即使錯放或散失的檔案獲尋回，它們的完整性以及意味著所有檔案的完整性也會備受懷疑。

realises that there is a compelling necessity for archives legislation in Hong Kong.

The best way to illustrate the point is to use an extract from the 'Records Authority 2010/00643150', a report published by the National Archives of Australia. It sets out, under statutory authority, the obligations of the Land Councils in respect of its record management relating to aboriginal land in Australia. A copy of the extract, which hereinafter will be referred to as the 'LC Records Authority' has been reproduced on pp 27-29.

現時電子檔案的比重是越來越大，並在政府的檔案保存系統中扮演重要的角色。本質上，電子檔案容易被操縱或刪除。我們必須實行長期具策略性的規劃，以繼續保護該等檔案及其可供查閱。政府電子檔案的妥善管理的是必要的，並應納入政府檔案管理制度的法律框架內。

A review of the LC Records Authority

1. The overall authority for records management rests entirely with the archives authority (National Archives of Australia).
2. The archives authority is a statutory body and derives its power and its duties from the statute.
3. The driving force for proper records management (the keeping, destruction or transfer) derives from:
 - (a) the identification and analysis of the business of the particular government agency, taking into account not only the legal and organisational recordkeeping requirements but also the interests of all stakeholders; and
 - (b) a commitment of the archives authority and the individual government agencies to understand, create and manage the records of the activities of the government agency.
4. The foundation of proper records management is based on the premise that:
 - (a) government records must remain authentic and accessible over time, which is why government agencies are obliged to ensure the records in their care be appropriately stored, managed and preserved;
 - (b) the essential core records of a government agency must be retained as national archives, as they are considered to be the archives resources of the nation;
 - (c) different retention periods for different classes of documents should be imposed;
 - (d) the public has a right of access to the national archives; and
 - (e) constant vigilance on proper records management is necessary and this includes any amendments to a Records Authority and the imposition of freezes on destruction of records.
5. The obligation to comply with a Records Authority issued by the archives authority rests on the head of the relevant government department or agency and it is for that department head to ensure that there is compliance with the Records Authority. The person who signs the Records Authority is the head of the archives authority.
6. The Records Authority is given openly, regularly and is accessible on the archives authority's website.

LC Records Authority的評介

1. 檔案管理的整體權限完全屬於檔案管理機關（澳洲國家檔案館）。
2. 檔案管理機關是一個法定機構，並藉成文法而獲賦予權力和職責。
3. 以正確方式管理檔案（保存、銷毀或移交）的驅動力來自：
 - (a) 對特定的政府機構業務的識別和分析，這不單需要考慮在法律上和組織結構上的檔案保存規定，也需要考慮所有持份者的利益；及
 - (b) 檔案管理機關和個別政府機構在理解、建立和管理政府機構的活動檔案方面所須承擔的責任。
4. 正確的檔案管理建基於以下的前提：
 - (a) 必須長期保持政府檔案的真確性和可供查閱，因此政府機構須確保其所保管的檔案獲得妥善貯存、管理和保存；
 - (b) 政府機構的重要核心檔案，必須保留作為國家檔案，因它們乃國家的檔案資源；
 - (c) 不同類別的文件應規定不同的保存期限；
 - (d) 公眾有權查閱國家檔案；及
 - (e) 必須時刻警覺是否實行了正確的檔案管理，這包括對檔案保管期限表作出任何修訂，以及凍結銷毀檔案的行動。
5. 對檔案管理機關所發出的檔案保管期限表的遵從，是屬於相關政府部門或機構首長的責任，該首長有責任確保檔案保管期限表得到遵從，而簽署檔案保管期限表的人員是檔案管理機關的主管。
6. 檔案保管期限表是定期地公開，並可以透過檔案管理機關的網頁查閱。

It is astonishing to see the contrast between a modern, professional and transparent system of government archiving that exists under a legislative regime and one that is the archaic, opaque and without a legislative framework or authority. The opaqueness of the present system coupled with the government's resistance to archives legislation give rise to serious concerns for the safety and integrity of Hong Kong government records and the long term viability of good governance in Hong Kong.

The Hong Kong government plans to relocate its Central offices to the new Government Complex at the Tamar site in September 2011. When the major move takes place, the biggest Hong Kong government office move in history, many records are likely to be disposed of. It is typical that when people move house, large quantities of items are thrown away or misplaced. Once thrown away, these important government records will be irrecoverable. What would be even more alarming are the records that are misplaced or lost during the move, and are subsequently relocated and found again, raising doubts as to their integrity and by implication of all records.

Electronic records now comprise of an increasing proportion and they play an important part in the government's recordkeeping system. Electronic records are, by nature, easily manipulated or deleted. Long term strategic planning for their continuing maintenance and accessibility as archives is required. Proper management of governmental electronic records is essential and should also be brought within the legislative framework of a government records management system.

In light of the issues discussed above, it should be acknowledged that in the area of governing archives, Hong Kong has fallen badly behind and it is high time Hong Kong caught up with the rest of the world by enacting an archives law.

Archives legislation proposal

In 2008, a group, consisting of lawyers, archivists and historians, was formed to study the necessity of archives legislation in Hong Kong and later it became known as the Archives Action Group (AAG). After carrying out a study of the public archives situation in Hong Kong and in other countries, the AAG came to the conclusion that the prevailing system for managing government records in Hong Kong can only be changed by archives legislation. The AAG drafted a model archives law for Hong Kong after examining archives legislation in other jurisdictions such as Australia and New Zealand. In March 2010, the AAG completed the Draft Public Records Bill (the 'Bill').

While a detailed analysis is not possible in this article, what follows is an overview of the Bill structure:

| | |
|------------------|---|
| Part I 第I部 | Preliminary (ss 1-5) 前言 (第1-5條) |
| Part II 第II部 | Establishment, functions and appointment (ss 6-12) 設立、職能和任命(第6-12條) |
| Part III 第III部 | Recordkeeping and records management requirements of Public Offices (ss 13-15) 檔案保存及公共機構的檔案管理規定(第13-15條) |
| Part IV 第IV部 | Public access (ss 16-20) 公眾查閱(第16-20條) |
| Part V 第V部 | Exemptions (s 21) 豁免(第21條) |
| Part VI 第VI部 | Sanctions (ss 22-23) 制裁(第22-23條) |
| Part VII 第VII部 | Financial provisions (ss 24-27) 財務規定(第24-27條) |
| Part VIII 第VIII部 | Regulatory provisions (ss 28-32) 監管規定(第28-32條) |
| Part IX 第IX部 | Miscellaneous provisions (ss 33-38) 雜項規定(第33-38條) |



基於以上所討論的各項問題，我們應當承認在檔案管理的範疇中，香港是遠遠落後於人，而目前正是香港制定檔案法，趕上世界其他地區的關鍵時刻。

制定檔案法的建議

2008年，一個由律師、專業檔案管理人員和歷史學家組成的小組(後命名為檔案行動組)，一起共同研究香港制定檔案法的必要性。檔案行動組作出對香港和其他國家的公共檔案的研究，並達至結論以香港現行的政府檔案管理制度，只能透過立法來加以變更。檔案行動組參考了不同司法管轄區(如澳洲和新西蘭)的檔案法，於2010年3月完成《公共檔案條例草案》的擬備稿(下稱《條例草案》)。

在本文對該擬備條例草案進行詳細分析是不可能的，以下是對其架構的概述：

Archives management system under the Bill

To ensure an open and transparent archives management system, Part II of the Bill provides for the following:

1. the establishment of a Government Archives and Records Authority (the 'Authority') with certain functions and powers (ss 6 and 7);
2. an appointed Government Archivist (s 8) with certain powers and duties to carry out the functions of the Authority and with specific safeguards for the independence of the Government Archivist (s 9); and
3. the establishment of an Archives and Records Council (the 'Council') that acts an independent supervisory body of the Authority (s 12) which also serves as an appeals body in cases of disputed public access to records (s 19).

Members of the Council will consist of members appointed by the Chief Executive, the Chief Secretary, the Chief Justice, the Director of Audit, the Legislative Council, the Bar Association and the Law Society. The Council will be required to submit an annual report to the Chief Executive and the Legislative Council.

The Bill intentionally draws wide application (s 5), so that the legislation is applicable to not only the government but all public offices including any institution, body or individual, funded wholly or partly by public money (s 2).

Recordkeeping and record management under the Bill

Part III provides for the statutory recordkeeping and records management requirements of public offices.

Pursuant to s 13, the heads of public offices are responsible for:

- (a) creating and maintaining proper public records and ensuring safe custody and conformity with the standards, guidance and recommendations issued by the Government Archivist; and
- (b) ensuring that no public records are tampered with.

The heads of public offices must prepare and implement proper records retention and disposal schedules, as directed by the Government Archivists, and ensure that no public records are disposed of without the prior written consent of the Government Archivist (s 14). They must also effect proper transfer of public records as directed by the Government Archivist. Public records must be transferred as early as practicable, and no later than 20 years from the date of their creation (s 15).

Access and sanctions under the Bill

Part IV of the Bill provides for public access to the public records (ss 16, 17 and 18) and for appeals to the Council in cases where access is disputed. Part V provides for legal sanctions of fines and imprisonment for breach of a statutory duty under the legislation. The sanctions range from a fine of HK\$100,000 or 12 months' imprisonment for public officers in respect of Part II offences (ss 13, 14 and 15) to a fine of HK\$200,000 or 24 months' imprisonment for

草案內的歷史檔案管理系統

為了確保一個公開透明的檔案管理制度，《條例草案》第二部規定了以下的內容。

1. 設立一個政府檔案管理局，並賦予其若干職能和權力（第6及7條）；
2. 委任一名政府檔案管理局局長（第8條），賦予其若干權力和職務執行管理局的職能，並特別保障檔案管理局局長的獨立性（第9條）；及
3. 設立一個檔案委員會，作為管理局的一個獨立監督機構（第12條），並為公眾要求查閱記錄的爭議上擔當上訴機構（第19條）。

委員會的成員將包括由行政長官、政務司司長、終審法院首席法官、審計署署長、立法會、大律師公會及律師會等委任的成員。委員會需要向行政長官和立法會提交年度報告。

《條例草案》旨在廣泛應用（第5條），因此該法例不僅適用於政府，也適用於所有公共機構，包括任何獲公帑全部或部分資助的機構、團體或個人（第2條）。

草案內的檔案保存及檔案管理

第三部作出了公共機構的法定檔案保存及檔案管理規定。

根據第13條，公共機構的首長負責：

- (a) 建立和維持妥善的公共檔案，並確保其獲得安全保管，以及符合政府檔案管理局局長所發布的標準、指引和建議；及
- (b) 確保沒有任何公共檔案被竄改。

公共機構的首長必須制定和實施政府檔案管理局局長所指示適當的檔案存廢時限計劃，並確保並無任何公共檔案在未經政府檔案管理局局長的事先書面同意前被處置（第14條）。此外，他們必須實行政府檔案管理局局長的指示，適當地移交公共檔案。公共檔案必須在可行情況下盡早移交，最遲不得超過自產生日期起計的20年（第15條）。

草案內的取閱和制裁

《條例草案》第四部規定公眾有權查閱公共檔案錄（第16、17和18條），以及在查閱資料方面若發生爭議，有權向委員會提出上訴。第五部訂立了違反條例所規定的法定義務時所施加的罰款和監禁等法律制裁。制裁的範圍，包括從公職人員違反第二部所述罪行而可被罰款10萬港元或監禁12個月（第13、14和15條），至擅自轉移或銷毀檔案，或是將

unauthorised removal or destruction of records, or export of public records outside of Hong Kong (s 22). Improper denial of public access to records attracts a fine of HK\$100,000 or 12 months' imprisonment (s 23).

Views sought from the legal community

The detailed merits of the Bill would be a matter suitable for discussion by the Hong Kong legal community. What is of critical importance is for the Hong Kong legal community to share their views on:

1. whether there is a case for archives legislation in Hong Kong and whether it is urgent; and
2. if the answer is yes, what should be the core provisions in such archives legislation, such as those referred to earlier.

An archives legislation will ensure that Hong Kong will have the benefit of regular published reports from the Authority and the Council about the archives on record, whether retained or disposed of, and more importantly it will ensure transparency on how government records are handled, which is an essential aspect of good governance.

Good governance and preserving history

The lack of archives legislation in Hong Kong poses a serious risk that our public records are not secure and cannot be relied upon. The Hong Kong government's persistent resistance to the enactment of an archives law is unfathomable. The long term negative significance and impact of this for Hong Kong can only be speculated upon. When the legal community has had the opportunity to consider the issues that have been raised, it is hoped that members of this community will express their views about the necessity for archives legislation in Hong Kong to ensure the good governance of archival government records so that history can be preserved for future generations.

William Waung
Founding member of the Archives Action Group
Adjunct Professor, The University of Hong Kong
Former Judge of the Court of First Instance, HKSAR

A copy of the Public Records Bill is available on request by email to: archivesaction@gmail.com.ra/2010-00643150.pdf.

公共檔案輸出到香港以外地方，可被罰款20萬港元或監禁24個月（第22條）。至於不當地拒絕讓公眾取閱檔案，可招致罰款10萬港元或監禁12個月（第23條）。

徵詢法律界的意見

《條例草案》孰優孰劣，是一個可供香港法律界討論的適合題目。但至關重要的是，期望香港法律界就以下各點發表意見：

1. 香港是否具有充分理由制定檔案法，而此舉是否具有迫切性；及
2. 答案如為肯定的，此檔案法規的核心條款應該是甚麼（如較早之前所提及的）。

檔案法可保證香港獲得管理局及委員會定期發表有關檔案記錄的報告（不論是對其加以保留或是作出處置），而更重要的是，此舉可確保政府檔案管理的透明度，這是良好管治必要的一環。

妥善的管理和歷史的存留

因為香港沒有檔案法，導至我們的公共檔案蒙受不安全和不可靠的嚴重風險。而香港政府持續反對檔案法的制定，確令人大惑不解。我們亦只能推測其可能對香港帶來長遠的負面影響。法律界如有機會考慮上述提出的各項問題時，期望各成員會就香港制定檔案法的必要性發表其意見，以確保政府的歷史檔案得到妥善管理，歷史得以為我們的後代而存留。

王式英
檔案行動組創會成員
香港大學客座教授
香港特別行政區原訟法庭前法官

如欲索取《政府資料記錄條例草案》的副本，可電郵至：archivesaction@gmail.com。

INTRODUCTION

The National Archives of Australia has developed this Records Authority; in consultation with Land Councils ('the Councils') to set out the requirements for keeping or destroying records of the Councils. It represents a significant commitment on behalf of the Councils to understand, create and manage the records of its activities.

This Authority is based on the identification and analysis of the business of the Councils. It takes into account the Councils legal and organisational records management requirements, and the interests of stakeholders, the Councils and the National Archives of Australia.

The Authority sets out those records that need to be retained as national archives and specifies the minimum length of time that temporary records need to be kept. This Authority gives the Councils permission under the *Archives Act 1983*, for the destruction of the temporary records described after the minimum retention period has expired. Retention periods for these temporary records are based on: an assessment of business needs; broader organisational accountability requirements; and community expectations, and are approved by the National Archives of Australia on the basis of information provided by the Councils.

As changes in circumstances may affect future records management requirements, the periodic review of this Authority is recommended. All amendments must be approved by the National Archives.

APPLICATION OF THIS AUTHORITY

1. This Authority supersedes Records Authority (RA) 801 (1991) issued to Northern Land Council and Tiwi Land Council and RA 1326 (1997) issued to the Central Land Council. The superseded RAs can no longer be used to sentence records after the date of issue of this Authority.
2. This Authority applies to Land Councils established under the *Aboriginal Land Rights (Northern Territory) Act 1976*. At the time the Authority is issued it applies to the records of the Northern Land Council, the Central Land Council, the Tiwi Land Council and the Anindilyakwa Land Council. The Authority can be used by Land Councils established under the *Aboriginal Land Rights (Northern Territory) Act 1976* in the future.
3. This Authority is to be used to sentence records. Sentencing involves the examination of records in order to identify the individual disposal class to which they belong. This process enables sentencers to determine how long records need to be kept. Advice on sentencing is available from the National Archives.
4. This Authority should be used in conjunction with general records authorities such as:
 - the Administrative Functions Disposal Authority (AFDA) and/or AFDA Express issued by the National Archives to cover business processes and records common to Australian Government agencies;
 - encrypted records; and
 - source records that have been copied.
5. The Normal Administrative Practice (NAP) provision of the Archives Act gives agencies permission to destroy certain records without formal authorisation. This usually occurs where records are duplicated, facilitative or for short-term use only. NAP does not replace arrangements agreed to in this Authority but can be used as a tool to assist in identifying records for destruction together with an agency's Record Authority or Authorities, and with AFDA and AFDA Express. The National Archives recommends that agencies develop and implement a Normal Administrative Practice policy. Advice and guidance on destroying records as a normal administrative practice and on how to develop an agency NAP policy is available from the National Archives' website at www.naa.gov.au

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6. Where the method of recording information changes (for example from a manual system to an electronic system, or when information is migrated from one system to a new system) this authority can still be applied, providing the records document the same core business. The information must be accessible for the period of time prescribed in this Authority. The Councils will need to maintain continuing access to the information, including digital information, for the periods prescribed in this records authority or until the information is transferred into the custody of the National Archives.
7. Records coming within 'Retain as national archives' classes in this Authority have been determined to be part of the archival resources of the Commonwealth under section 3C of the Archives Act. The determination of Commonwealth records as archival resources of the Commonwealth obliges agencies to transfer the records to the Archives when they cease to be current and, in any event, within 15 years of the records coming into existence, under section 27 of the Archives Act.
8. In general, retention requirements indicate a minimum period for retention. A Council may extend minimum retention periods if it considers that there is an administrative need to do so, without further reference to the National Archives. Where a Council believes that its accountability will be substantially compromised because a retention period or periods are not adequate, it should contact the National Archives for review of the retention period.
9. From time to time the National Archives will place a freeze on some groups of records relating to a particular topic or event which has gained prominence or provokes controversy. While the freeze is in place no records relating to the topic or event may be destroyed. Further information about disposal freezes and whether they affect the application of this Authority is available from the National Archives website at www.naa.gov.au
10. Records which relate to any current or pending legal action, or are subject to a request for access under the *Archives Act 1983* or any other relevant Act must not be destroyed until the action has been completed.
11. Records in the care of agencies should be appropriately stored, managed and preserved. Agencies need to meet this obligation to ensure that the records remain authentic and accessible over time. Under Section 31 of the *Archives Act 1983*, access arrangements are required for records that become available for public access including those records that remain in agency custody.
12. Appropriate arrangements should be made with the National Archives when records are to be transferred into custody. The National Archives accepts for transfer only those records designated as national archives.
13. Advice on how to use this Authority is available from the Councils records managers. If there are problems with the application of the Authority that cannot be resolved, please contact the National Archives.

CONTACT INFORMATION

For assistance with this authority or for advice on other records management matters, please contact National Archives' Agency Service Centre.

Queen Victoria Terrace

Tel: (02) 6212 3610

Parkes ACT 2600

Fax: (02) 6212 3989

PO Box 7425

Email: recordkeeping@naa.gov.au

Canberra Mail Centre ACT 2610

Website: www.naa.gov.au

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AUTHORISATION**RECORDS AUTHORITY 2010/00643150****Person to whom notice of authorisation is given:**Heads of the Land Councils established under the *Aboriginal Land Rights (Northern Territory) Act 1976*.**Purpose:**

Authorises arrangements for the disposal of records in accordance with section 24(2)(b) of the Archives Act 1983.

Determines records classed as 'Retain as national archives' in this Records Authority to be part of the archival resources of the Commonwealth under section 3C of the Archives Act 1983.

Application:

All core business records relating to:

- Advocacy Management
- Economic Development and Commercial Services Management
- Land and Sea Claims and Acquisitions Management
- Land Council Management
- Land, Sea and Natural Resources Management
- Land Trust Administration
- Native Title Management

This authorisation gives permission for the destruction, retention or transfer to the National Archives of Australia of the records described. The authority will apply only if these actions take place with the consent of the agency responsible for the core business documented in the records.

Authorising Officer**Date of issue:**

1 March 2011.

Ross Gibbs
Director-General
National Archives of Australia

A full copy of this report is available at: www.naa.gov.au/naaresources/ra/2010-00643150.pdf.