https://groups.google.com/forum/#!forum/archives-and-records-australia

MUSINGS FROM THE LIST 2017 – 2021

These are selected postings to the Google Groups *Archives-and-Records-Australia List* between June 2017 and June 2021. Edited comments made by other listers that form part of my thread of argument are **<<emboldened and shown in parenthesis with embedded links back to the online List Archive>>**. Minor corrections have been made to spelling and grammar and, in a few cases, for sense.

2017, June 1: (Un)broken links

Those of you with sufficiently long memories will recall the aus-archivists listserv that operated under the control of the ASA from 1995. When ASA irresponsibly decided not to support it any longer, it disappeared overnight sometime in the 00s. This googlegroups list was hurriedly inaugurated to take its place (on the welcome initiative of Tim Robinson). Aus-archivists passed through 2 stages: firstly hosted by U. of Melbourne (1995-2003) and secondly by an ISP (2003-????). At the time the list went down, I recall that it was stated that the list archive was no longer available and I have always taken that to be the case. It is possible that it is true (if at all) only of the second stage and not of the first because cultural vandals oftentimes miss stuff (thankfully). It was a typical listserv with a lot of meaningless chatter but also with some useful discussion on important issues and sometimes lengthy analysis. As an unabashed exponent of lengthy analysis on lists I have missed being able to refer back to some of the postings.

https://groups.google.com/forum/#!forum/archives-and-records-australia

The other day I had occasion to refer to one of my conference papers from a decade or so ago that is now held on-line and a link to the old list was embedded there. I looked at it and said to myself, "hhmmmm; I wonder what would happen if I pressed this?" I did and the list thread appeared. You can do the experiment yourself by clicking on the link:

http://www.asap.unimelb.edu.au/asa/aus-archivists/maillist.htm .

Not only is the thread still there, but you can click on it see the actual postings gloriously preserved in all their magnificence and dottiness. If only as evidence for the cultural history of a small group of self-regarding semi-professionals from the 1990s, I would appraise it as permanent.

I don't know how much of the archive has survived or how much of its functionality still works, but it appears to be complete for 1995 to 2003 when it ceased to be hosted by U. of Melbourne and went to the ISP:

- beginning with "Subscription stats – Day 1" Tue, 19 Dec 1995 09:06:48 EST-11
  Dear Aussie-Archivists – Thank you all for responding with subscriptions to this new lisrserv. All we need now is something to discuss etc..
- ending with "Aus-archivists listserv news" Tue, 24 Jun 2003 17:06:28 +1000 announcing the transition
  Dear Listservers – The ASA Council has established a new arrangement with an ISP for the provision of Internet services. As a result the aus-archivists listserv will be moving to the new ISP. This transfer will occur tomorrow and there are few changes for list subscribers. The main thing is the new address for posting messages. This is **aus-arc...@archivists.org.au**. …..Once the change over has been effected an email will be generated by the new ISP for each list member containing their own list membership password and general subscription details.

What became of the 2003+ archive I have no idea but its fate may have been dire. I surmise that the earlier portion may have survived through the good offices (or oversight) of the University while the latter is now lost as the result of a deliberate policy which overlooked the existence of the earlier portion. I would implore someone with the technical ability to save the 1995-2003 archive – now – fast – before it disappears.

<<Angela McGing: I thought the old List-Serv survived until around 2010 when Archives Live was established? I miss it too…I do recall emailing the then Executive Officer about it but did not receive a response.>>

<<Katie Bird:You can also find the aus-archivists listserv messages up until August 2007 at http://web.archive.org/web/20070829235144/http://lists.archivists.org.au/pipermail/archivists.org.au/aus-archivists/ **>>** Didn't know about that link either. As to content, the link referred to by Katie seems to be complete back to 1995 but it is less friendly as to format (it seems to me).

THE FIGHT FOR SURVIVAL

How archives end and the fight to save them. Assaults on State Records authorities in Western Australia and NSW. Burning the books. Defunding and other threats. Are our government archives accountable to us for how they spend taxpayer funding? National Archives under review. Must things change in order to stay the same?

2017, Jun 28: Check out "SMH Photo Archive for sale" on Archives Live Fairfax photo archives

2017, Jly 5: … changes at the State Records Office WA Assault on State Archives WA

2018, Mar 5: Two items Budget cuts to archives and libraries at ABC and NAA

2018, Jly 16: NAA spends up big How can we best spend taxpayer dollars? Steering or rowing?

2019, Aug 22: Imagining Assault on State Archives NSW

2019, Sep 25: Thomas Cook Archives Trying to rescue business records

2019, Nov 18: How collections end Erosion, loss, and decay (e.g. Sulpician Archives, Canada.)

2019, Dec 8: Where will all the archives be? Do we still have a role?

2020, Mar 19: Safe haven Putting records behind bars in time of peril

2020, Apr 3: Something else to worry about Sinking ground and other risks to archives buildings ✓

2020, Aug 23: Impossible things just happen Missing episodes of *Dr Who*

2021, Mar 8: Delenda est biblioteca Burning the books

2021, Mar 13: Tune Review released Future of National Archives of Australia

2017, June 28: Check out "SMH Photo Archive for sale" on Archives Live

Following this story would make a good comprehension test for Peter Dutton to use on hapless immigrants. Disclaimer: I was a user of this archive in younger days. My recollection is that (for at least more recent years) you made your selection from small prints mounted in big albums on open display or available "from the back" if called for. There were some thematic volumes but most were chronological. Prints to your specification were then generated from negatives held in storage referenced from the small prints in the volumes. The timeline seems to be as follows:

- 2013: Fairfax Media "gave" the archive to US businessman John Rogers who relocated it to Arkansas with a promise to 3ealized w/o charge. He would retain ownership of the "hard copies". What hard copies? Under the deal, Rogers could sell "originals" (what originals?) on eBay. Fairfax retained the negatives and copyright. Rogers' company collapsed and the First Bank of Arkansas came to own the photographs.
- "at about this time" (what time?): Daniel Miller bought the SMH archive from receivers (what receivers?) He says he wants to "get these things back to Australia into the hands of institutions". He has already sold some pictures to the Bradman Museum and is "spruiking" to other GLAM institutions to buy job lots. He says "I'm not selling copyright, I'm selling pieces of paper" (but if Fairfax still holds copyright, he couldn't sell anything else). The article states that Fairfax "has retained copyright to images by its photographers taken after 1955." How does that work? Did non-staff photographers retain their copyright? Why 1955?
- 2017: Fairfax expresses no regrets and are "pleased the *SMH* photo archives have been successfully 3ealized3, returned and preserved in perpetuity". Returned to where? It's not clear from the article that the archive, now in Miller's hands, has been entirely 3ealized3. It seems unlikely that the negatives (which we assume Fairfax still holds) will be entirely 3ealized3 any time soon.

Should we be concerned that the archive is now in the hands of someone intending to break it up into small lots and sell it piece-meal to GLAM institutions who should know better? Should we instead take the view that the "originals" (what originals?) now held in the US and Bowral are no archive at all, just a tatty work tool of no archival value?

Assuming the negatives are still with Fairfax, on what terms and conditions are they available for public access? What long term disposition plan does Fairfax have for them once their current business use is ended? Will they ever be mounted in their entirety onto Fairfax Photos? Will they ever be lodged (in their entirety) with a proper archives?

Meanwhile, what of the American digitization project? Are those "originals" a complete copy of all the negatives supposedly retained by Fairfax? Have they been digitized in their entirety? On what terms and conditions can public access to those digitisations be obtained? If Fairfax retains copyright (for at least some) does it allow public access to digitisations to be provided by someone else? If not, what is the basis for their satisfaction?

<<Andrew Waugh: Can't answer most of your questions, but one I can. Copyright in photographic images was (and is) different to other forms of copyright. Photographs taken before 1955 are now out of copyright. Copyright for images taken by non-staff photographers after 1955 would depend on the contract or agreement used by Fairfax…Which is the record? *If* the original negatives are safe, why should anyone care about the fate of the access copies (i.e. the photographic prints)? If the digitised copies are surrogates of the negatives, which copy should we care about, and do we need to keep three versions?...It's long been accepted that some things have so much cultural value that their export from

Australia is subject to ministerial control. Why wasn't this collection subject to this question? Was it, and the assumption was that it would come back? Or wasn't it, perhaps because they were records and not real objects? Note that the Mitchell Library got the Fairfax archive. It's not clear if this includes the negatives…>> We can distinguish, I think, between the Company Archives of Fairfax Media and its predecessors and the News Archive comprising the resources that were used in producing the publications. The News Archive would include a Photographic Archive, comprising many images – some of which would actually appear on the pages of a newspaper when taken, some would appear later as "archival" or stock photos, and some might never be published. Newspapers also used to have Libraries (printed reference volumes, government publications, and clippings files from their own and other newspapers) that journalists could use when fact checking and researching their reportage. (Don't know how much of that goes on these days; they probably take their cue from Greg Hunt and rely more on Google & Wikipedia and much of what we read now is just re-booted from service providers). The true Media Archive would be archival copies of the newspapers themselves, possibly for one of each for each of the daily editions, and master tapes of broadcasts. Of course, the News Archive for broadcasting would be multi-media. The "Fairfax Media Archive" is described on the Mitchel Library site in terms that do not tick all of these boxes:

> The State Library of New South Wales has recently acquired what must certainly be the most significant and comprehensive media company archive in Australia. The Fairfax Media Limited's company archive consists of over 2000 boxes of company records, ranging in date from the 1830s until 1991…Through this enormous archive we obtain an incredible and rare insight into the boardrooms, offices and press rooms of this iconic company. This is a rich collection full of events, drama, and intrigue, with characters from the world of finance, politics and media empires. Over the coming months we will bring you highlights and stories from the collection as we work our way through it.

This seems to include the business records of the corporation (the Company Archives). There is nothing to suggest it includes what I have called the News Archive or the library resources. I doubt that archival copies of newspapers and broadcasts were included, much less the News Archive that supported broadcasting activities. If this is so, I think calling it the "Fairfax Media Archive" is a bit misleading. I'm not sure I have used the correct terminology, but the conceptual distinctions are clear enough – certainly clear enough to distinguish between the Fairfax Company Archives and the Fairfax Media Archive, but if the negatives are included the name would be more justifiable.

PS. I know something about this because my late mum used to work in the "library" at the Packer Press at Park & Elizabeth.

2017, December 10: Destruction of Fairfax archives
<<Joanna Sassoon: Photographs from the Sydney Morning Herald archives up for auction …>>

2017, December 12: We've been here before. My understanding is that what went o'seas was prints to be digitised and that the negatives remained here. These on auction appear to be off-prints from the digitisation. None of this is clear and my recollection may be faulty. The really interesting questions (to my mind) are –

- What is the fate of the negatives?
- On what terms will the digitised prints be made generally available (if at all)?

Does anyone know? How weird is it that selected prints from an archive are being auctioned in an art house (of all places)? **<<Andrew Waugh: The glass plate negs (at least) are at the NLA. Copies of images can also be obtained from Fairfax. I'm not sure of the licensing arrangement>>** Wouldn't it be funny if some of the images being auctioned were already available via Fairfax or NLA?

2018, June 27: Fairfax Photographic Archive
This topic has come to the fore from time to time on this list. The last news of which I am aware was a year ago. That story was spun as good news that an American collector had "rescued" the archive following the collapse of the 2013 deal Fairfax made with "Little Rock entrepreneur and conman John Rogers". The story couldn't disguise the fact that what was happening was that the archive was being

broken up and sold off piece-meal and, moreover, that "[i]t seems a large portion remain missing." Does anyone have more recent (and/or more accurate) information?

2019, March 9:<<Andrew Waugh: Another chapter in the ongoing story. The Canberra Museum and Gallery have purchased the original prints relating to Canberra. The cost for the 3,500 images was $20,000,,,>>
<<Joanna Sassoon: Two things could be done by CMAG, the provenance could be preserved and the backs 5ealized5 …>> I'm puzzled every time this story comes up. As a lad, I was a user of these images when Fairfax ran a "Photo Sales" Department in Hunter St, Sydney (later moved to Broadway). They had recent prints in huge albums that you could rifle through. You could select an image and order it to be made to your specification as to size and in glossy or matt finish. Obviously, your order was filled by them going to the negatives and running it off. It took a few days. The organisation of the images on display was poor but each image bore an identity code that (I assume) controlled the archive. My memory is that what was mounted in albums was only portion of what was available for sale and that you could also select from negative images for excess material not mounted in albums. I doubt that these were original negatives but rather that they were use copies run off as duplicate negatives for ease of handling. But that was only the public-facing sales operation. Yes, Joanna, the sales prints were captioned in the albums but not (from memory) on the backs because they were mounted. I think the negatives were inscribed in white along the bottom (but I may be remembering incorrectly). I have a clear recollection, however, that they were all identified somehow.

When a print image was delivered to order and paid for there was nothing inscribed on it but the details were on the invoice/receipt. The back was rubber stamped with the Fairfax claim to ownership and copyright. I don't know how far back the sales albums + sales negatives went but my memory was that you could search back quite a few years. Don't know what arrangements were in place (if any) for finding even older images not on view in Photo Sales. I imagine the prints that have fetched up in California were kept behind the sales office or elsewhere in the organisation for reference purposes by Fairfax staff and re-generated when needed from master negatives using the same reference codes. Is it possible there was some kind of registration and/or indexing system sitting behind all this? There must have been to keep the numbering system in place.

So, what are these "photographs" that have undergone this saga?

- Have both prints and master negatives survived? How many duplicates, in one form or other, exist pre-digitisation?
- Has it all now been digitised? If not, will it ever?
- Are the bits being sold off piece-meal duplicates made for sale leaving the archive intact or plundered portions of whatever it is that now remains?
- If the latter, how ethical is it for a "collection" to abet the plunder and dismemberment? Even if oblivion is the alternative (the Elgin defence)..
- If there were control records originally, have these survived? How much description of each image can now be recovered?

There is no doubt in my mind that this is (was?) a major cultural artefact that should never have been allowed to leave the country if that could have been prevented. When are steps going to be taken to get it back? Instead of congratulating the Gallery, perhaps Gordon Ramsay should hang his head in shame for being the last in a long line of Arts Ministers to do nothing about it. In the meantime, does anyone have information on what "it" is that we are actually talking about?

2019, March 10: <<Joanna Sassoon:…This is a good example of the complexity of photographic archives of picture agencies and explains how their histories are embedded in the items they contain…as Chris says understanding which 'it' you have, returns you to the archival questions about production, function and circulation. These are questions that go well beyond the image content, but in the absence of control documentation, they can be asked of, and occasionally be answered by looking at the prints themselves including their backs…In one sense the horse has bolted, but the finger should now be pointed at those who support the plundering of this archive rather than its return in toto – and this

includes institutions purchasing bits and pieces and those public officials such as Ambassadors and Ministers, who should be acting in the national interest…>>

2019, March 11: <<Andrew Waugh: The official Fairfax position in 2015 …answers some of the questions raised by Joanna…Clearly, despite the wishful legal thinking in the article, Fairfax wasn't able to reclaim the Sydney photographic prints sent to the US. Note that there is little mention of any control records in the article. It does infer that there were metadata on the back of the prints. Hopefully this was duplicated somewhere and tied to the negatives, otherwise the negs would be useless.>>

2017, July 5: ASA response to the changes at the State Records Office WA

<<Julia Mant: The WA Government has announced that the State Records Office (SRO) would become part of the State Library of Western Australia (SLWA) with effect from 1 July 2017. As a directorate within the State Library structure, the SRO will…continue to support the State Records Commission and function in accordance with the State Records Act 2000. The Australian Society of Archivists (ASA) has protested the Machinery of Government (MOG) changes made by the McGowan Government, which have set aside recommendations of the Royal Commission into WA Inc. and Commission on Government on the operation of an independent archives authority. Please read the ASA's press release to see the full text>> The press release states, inter alia, that

> The ASA will conduct a campaign to have the decision reversed and the independence of the State Records Office of WA maintained.

What is the ASA's on-going position regarding NT and Tasmania?

If the argument for independence and separation is support for accountability, what is the objection to giving the Library management of the "collection" and delivery of user services and maintaining SRO's r/keeping operations separately as an independent body w/o custodial responsibilities (as distinct from maintaining the status quo)? For that matter, what is the argument against a library exercising the r/keeping function? If an archives with "collection" responsibilities can manage both roles, why not a library?

Shades of the GLAM debate? I'm not arguing for or against the model of an archives authority w/o custodial responsibilities; nor am I saying that defence of the custodial role is hopeless. But I read the press release as saying things should stay as they are for purely non-GLAM reasons without any argument in favour of the continuing conjunction of heritage and r/keeping functions. Whatever happens in Perth, we can't always rely on politicians being too stupid to ask the right questions. One day we may have to have an answer in Brisbane, Sydney, Melbourne, Adelaide (again), and Canberra.

2017, July 6: <<Mark Brogan: There is no discussion in WA about optimal models for the delivery of archival services…if your post is directed at exploring hybrid delivery models and their effectiveness, don't expect the merger of SRO (WA) with LISWA to illuminate the argument in any way…The Government's intent is to reduce expenditure…So let's not guild the lily with lofty discussion of alternative delivery models…Whether SRO (WA) should be an independent office and not subordinated to LISWA was a question investigated by the Commission on Government (COG) established after the WA Inc. Royal Commission. It concluded that it should be independent…Yes it is indeed likely that someday we will have to have an answer in Brisbane, Sydney, Melbourne, Adelaide (again), and Canberra. The apogee of the discourse on evidence, recordkeeping and accountable, ethical government was in the 1990s…The past decade has seen a retreat from these ideas… Information culture itself mostly prioritizes Internet information sources, at the expense of traditional memory stores. Governments of all persuasions, benefit from malleable rather than fixed archival memory, and are no friends of archives. Libraries are facing a similar existential crisis…ASA Council has a budget line for advocacy in 2017/18 and will use this budget to promote what we consider to be the common good of a continuing, viable government records and archives sector. In SA we demonstrated that we can win. Whether we are successful or otherwise in WA, ventilating the issues publicly will bring benefits...>>

2018, June 1: Having signed the petition to save SROWA, I now get Change.Org notifications. The latest reports on ASA's release about funding:

> 29 May 2018 — … SROWA will be operating with $918,000 less than in 2016-17, representing a 30.7% reduction in real funding over three years…Not only is the WA Government declining to re-invest in a

service that is essential to the proper and accountable operation of government, but it is actively working to reduce its resources and hence its effectiveness…due to changed financial circumstances arising largely from reductions in Government revenues from mining and the GST. But is the burden of changed financial circumstances being shared equally? In the same portfolio…over the same three year period:

- *Public Library Services [increase] from $14.275 million in 2016-17 to an estimated $14.54 million in 2018-19
- *Library Literacy and Community Engagement [increase] from $9.8 million in 2016-17 to an estimated $10 million in 2018-19
- *Museum Services to the Regions [increase] from $5.656 million in 2016-17 to $6.06 million in 2018-19

…The WA Branch of ASA Inc. is providing public briefings on the State Library 'administrative change', funding and operation of the state archives and information management as part of its lobbying efforts.

Unfortunately, I won't be making the briefing, but I would like to know exactly how the funding cuts issue and the Library/Archives merger issue are related. In my time, I've seen many protests over cuts and neglect of archives come and go. The institutions themselves, of course, have to fight the bureaucratic struggle endlessly. Our community has to calculate how best to assist (or avoid impeding) them but we need to make our own decisions on what to do and what position(s) to adopt.

- In the past, some have felt that it is invidious for us to argue for the relative merit of archives vs galleries, museums, and libraries. The SROWA release suggests a different approach arguing the relative importance of archives not just their intrinsic importance. I support this approach even if it violates the we're-all-in-this-together (GLAM) rhetoric, which is the flavour of the Submission on National Institutions. Yes, the things we care about are mixed up in GLAM but the things we care about suffer if we aren't also clear about the differences with GLM and why archives matter more (even when our affairs are mixed up with theirs).
- On a larger front: are archives more important than defence? Or, in terms of State-based funding, more important than roads, health & welfare, or education? I've actually had that question put to me (more than once). These comparisons can be dismissed out of hand. They compare apples and oranges. Spending on archives is not a big ticket item and no basis for comparison exists. We're in there squabbling with other small fry for scraps from the table. I think at that level we do need to clarify our ideas about our relative importance outside GLAM. Are we brave enough to rate ourselves in importance compared to (say) sport, legal aid, environment protection, etc.? And to defend that rating?
- I understand why there is an appeal to "accountable government" because that enjoins a certain kind of support for our cause (one that distinguishes us from GLAM) but it is a false emphasis and possibly counter-productive. Our mission is also cultural (part of GLAM). I would want to argue that archives are evidence of human activity on a par with museums and that libraries and galleries come second (that's the philistine in me) even at the cost of buying a glamorous fight. Moreover, I would say that, more so than museums, our value lies in the present as well as the past (hence the nexus between accountability and culture).
- The Submission on National Institutions tries another gambit: digital r/keeping. Paradoxically, compared with the SROWA Submission, the emphasis here is on digital heritage rather than accountability. Is that really a winner? If it were me, I'd be talking about the woeful mess the IT industry is making of managing legacy data.
- Ours is, therefore, a complex message to craft but not beyond the ability of potential stakeholders to understand. At least, I saw it that way (to some extent) in NZ when I was there – but perhaps Kiwis are smarter than Aussies. Not the least of the complexities lie in stakeholder management. Some of our stakeholders are the same as GLM's and some are not. Crafting a message that they can all understand and buy into isn't easy. Of course, if the glamorous are prepared to support us without our having to have a fight, so much the better.
- As always, success in advocacy depends on two things: consistency and persistence. There is a tendency for archivists to keep on changing their message. There is also a tendency to give up when a battle is lost and not to go on fighting the war (not suggesting there's evidence of that

here). PS. The argument I have woven here is also the case against the SROWA merger (a nexus!).

As ever, I wish this campaign (these campaigns) well.

2018, June 2: **<<Mark Brogan: …the funding of SROWA is very much an issue related to the amalgamation proposal. Some of the proposals for a 'merged' service delivery model include co-location and resource sharing, in areas such as reference. The WA State Government expects to achieve savings (aka an 'efficiency dividend') from resource sharing and contrary to its public claim that the merger is 'purely administrative', it has a service rationalization vision which will see some State Library staff performing work formerly done by SROWA staff…In as much as the change.org posting framed cuts within the general landscape of penury that characterizes WA Government finances in the wake of the collapse of commodity prices, I concede that this additional back story ought to have been told…some of the evidence found in the WA Government's red tape enquiry and elsewhere, also suggests that the WA Government rejects the need for an agency like SROWA altogether, preferring instead a small 'heritage collection' with no legislatively mandated WoG oversight of government recordkeeping of the kind envisaged by the State Records Act 2000.**

Taking your point that arguments that involve appeals to accountability and archives as essential to the integrity of government, do not always work in our favour, I agree that care needs to be exercised in crafting the message and that some of our esoteric proofs or relevance may be counter-productive…In a post truth world, where the electorate is tolerant of lying politicians and routinely confuses belief with knowledge, it is hard to make the case for the relevance and importance of programs aimed at promoting, reliable accessible memory of government. But try we must. The official report of the red tape enquiry showed that we were effective in blunting the attack on the State Records Act 2000 contained in the enquiry briefing paper. I remind readers of this thread, that representations made to the WA Government by ASA Inc. (WA) were broadly based and suggested many practical justifications for why it should believe in, and support SROWA.>>

2018, October 15: *For things to remain the same, everything must change (Lampedusa)*. I've had solar panels now for about 2 years and next week I become the proud owner of a PowerWall Solar Battery. So I'm fascinated by this article in the SMH:

> … Australia has been installing around 100 megawatts of new solar power every month in 2018 and there are predictions that the country could become the first country in the world where the grid cannot handle the excess level of distributed electricity generated. That would mean the power generated would be wasted as it could not be transported to where it could be used … "It's feast or famine with renewables …," EnergyAustralia director Mark Collette told Fairfax Media … We'll hit a point where there is no point in putting any more solar power into the system without something changing…" …AEMO chief Audrey Zibelman said an average six rooftop solar panels are is installed in Australia every minute, adding the equivalent of a new coal-fired power station every year. According to Green Energy Markets data, in July, rooftop and large-scale solar accounted for around 4 per cent of the country's total electricity generation … Renewable energy campaigner Simon Holmes á Court said the energy market operator has forecast solar to grow right through to 2040. "This idea of a peak all hinges on the pretext of if we do nothing, but we're not doing nothing," Mr Holmes á Court told Fairfax Media. "I don't see us sitting still, yes, there is a lot of work to do in the grid but we're going to do it." …

Apart from the satisfaction I derive from being part of this problem and not part of the solution, it illustrates one of Napoleon Bonaparte's maxims for success on the battlefield (but transferable to any organized human activity): viz. flexibility of tactics in pursuit of a clearly articulated goal. The others include force concentration, calculated risk (if war were nothing but the avoidance of risk, glory would become the prey of mediocre minds), and focused leadership (one bad general is better than two good ones). What has all this to do with r/keeping? I see it as an almost perfect metaphor for dealing with change in any arena. Without pre-judging any of these issues in our world, here is a list of just a few of the roles and responsibilities issues that come up from time to time where the "problem" we face may be the assumptions we make when dealing with them:

- When enduring funding cuts, what role(s) should we promote – old ones "on the pretext [that] we do nothing [new]" or ones we weren't assigned in the first place, e.g. publication via digitization.

- Should we assume that the revered stand-alone archives is the model for the future?
- Should we go on defending criminalization of poor r/keeping in the public sector?
- Is the fusion of our r/keeping accountability role and our heritage role a status quo we should still be defending?
- Are "traditional archives" redundant? Should archiving be part of a business process? IT is thinking about this; clumsily, to be sure, but they're thinking about it (basic idea: continuum vs life-cycle).
- If so, what happens to archiving integrated into business processes when the business process (or enterprise) folds? Is that what we should be thinking about?

2018, November 26: Follow the money
Posted to the NZ List – analysis of the budgetary consequences of amalgamation.

2019, July 21: Update on advocacy SROWA
<<Mark Brogan (July 18: On 13 June, 2019, Greens MLC Alison Xamon made a Statement to the WA Parliament on the 2019-20 budget allocation for the WoG records and archives function and the apparent disappearance of SROWA from budget papers as an allocation entity … Further evidence that 'Culture and the Arts' can be a budgetary blackhole for the archives function.>> The incredible shrinking, disappearing records office –

> "The State Records Office has been completely buried in this latest budget. It has disappeared as an independent entity from the 2013–14 state budget. The service provided by the State Records Office has gone from being "government record keeping and archival services" to "state information management and archival services". In this budget, that service has entirely disappeared and has been subsumed into "corporate and asset and infrastructure support to the culture and arts portfolio and government". The associated note says that it is due to difficulties calculating these measures, those being key performance and other performance indicators..

Some quite profound issues here for us. How far are these developments a manifestation of cruel fate at work and how far do they derive from confusion of mind and purpose on our part?

Update on Advocacy: What is it that we are advocating for? Is it clear even to ourselves? And if so, how do we make it clear to a public whose support is necessary if we are to prevail over Them (whoever they may be)? A public, I fear, more interested in tax cuts than anything much further beyond self-interest (at my age, I'm allowed to be cynical). Mark's post links the importance of an "independent" service to recordkeeping integrity issues going back to WA Inc. How persuasive is this? When They slashed the health inspectors, the rats came back. As the SRO disappears, where is the evidence that corruption (WA style) is returning? If not, how can we convincingly argue that there is mischief afoot? Not disputing it, just asking how we prove it. How do we demonstrate that good governance depends on good r/keeping (that one is impossible without the other)? And how do we convince the public of this? How many of them remember WA Inc? Is an appeal to the conclusions of a Royal Commission from decades ago enough? How do we keep our issues green and urgent in the public consciousness? Where are the other good governance allies we enlist in our support?

Government record keeping and archival services: The word "and" is a conjunction of two different things. For the cognoscenti, archival services are not different, they are subsumed within recordkeeping. But we can't expect the public or Them to understand this. Our case is weakened by the seemingly improbable conjunction of culture and governance – art and accountability. Either we need to-

a) develop a better argument than I have ever heard in support of the proposition that an archives (and an "independent" archives at that) is the only (or, at any rate, the best) vehicle for recordkeeping within government, or
b) refine our case by plumping for one and annihilating the other from our argument.

But the logic of (b) is accepting that the two functions can be exercised independently of each other – viz. that the r/keeping authority can be exercised independently of the archives authority. Do we like the sound of hat?

Government record keeping or state information management: The word "or" indicates alternatives. Like r/keeping and archives, we must be clear on the implications of distinguishing records and information or subsuming one within the other. It may not be likely that we can sustain a distinction for the public or for Them, but it is still relevant to ask if it makes a difference to us. Because an agency charged with responsibility for "state information management" would certainly have wider, less focused, responsibilities than one charged with responsibility for "government record keeping". The State might legitimately feel the need for an agency with the larger remit, in which case we would have to decide whether we saw the r/keeping responsibility as one that should operate alongside or within such an agency. That decision would be a tactical as well as an intellectual one – always assuming our views would count in any material way.

Unable to calculate key performance and other indicators: Well! There's the challenge for us and we should be grateful for having it so clearly expressed. Bear in mind though that there are other areas of deep public concern where shockingly vivid measures of social dysfunction are possible but They simply refuse to compile and disclose them. I'm thinking aged care, building safety, income inequality, criminalisation of drugs, etc. And if measures do exist that disturb vested interests (or complacency) they are simply disputed (e.g. school funding, global warming). Leaving aside the challenge of getting others to care, how clear have we been in articulating the measure of good r/keeping? How measurable are the standards we are so proud of? How well do they serve as predictable tests of success or failure? How strictly have they been applied? Are they enforceable or "aspirational" (to recall ASA's worthless Appraisal Standard)? Are our standards of the kind that measure outcomes? Or, are they the other kind - the ones that prescribe setting up systems and processes that, if implemented, might improve matters but are audited only to see if they have been put in place, not whether they in fact result in anything worthwhile.

2019, July 22: <<Peter Crush: …our profession serves many different record creators and advocacy for one type doesn't necessarily ring any bells with the others ... focussed advocacy requires substantial and persistent resources from those in the know (us)…>> Granted that we are a diverse lot, it follows that focussed advocacy must be tailored to each issue and we must be varied and nimble when re-fashioning our message(s) to meet each case. And we must just hope that we don't end up saying something in one cause that embarrasses us when it is recalled in another fight. Example: the Australian Conservation Foundation is scrambling to review its previous support for alternative energy to see if they've ever dismissed the threat wind farms pose to bird-life (to the delight of the Murdoch press).

That's not what I see as our major problem. I'm not so much fussed by what divides us; my questions are around what unites us. It's an old problem: how diverse can you become without sacrificing your identity. Eventually you lose identity or morph into something else. Too dangerous a topic (probably) for me to make parallels with Australian Multi-Culturalism and the place of Aborigines and Torres Strait Islanders within our society and likely to get me into hot water just for alluding to it. Vegemite and cricket remain of course, but who can doubt that our society is "different" to the 1950s when I was a lad. But that is "difference" that is actually change over time (evolution). That's not what Peter's talking about. Managing "difference" within the same time frame is a much more difficult thing – as the turmoil over identity politics and populism sheweth.

Look back to Western Roman Empire in its last days when its absorption of outsiders (which had been going on for centuries) reached a tipping point and Roman-ness itself began a long decline into extinction because the society became so diverse and the power relationships so unbalanced that the unifying element was lost. I have argued, from time to time, that r/keeping as we know it is doomed to

go the way of Roman-ness. But (on the bright side), and because I believe mankind is a recordkeeping mammal, it will re-emerge (like Roman-ness) as something else when the need for documented evidence is sought by people who think they are discovering it for the first time. As dinosaurs evolved into birds, "we" will become something else. Just as Roman-ness can today be seen as part of Western Civilisation (but not like anything that Tacitus or Cicero would have recognised).

What has this to do with us and the treatment of our differences now? Well, in order to postpone our extinction, I would like us to find an underlying purpose that binds diverse "records creators" into a single frame of mind, a unifying identity, a shared source for the varied and nimble advocacy. It's what Joanna called, a few months ago, a way of thinking about documentary materials that differentiates us from others. This question lies at the boundary not in the pith of who we are. I don't disagree that there is diversity under the r/keeping umbrella but in advocating myself for a broad view I have always sought out the boundaries that unify us while populating the areas within those boundaries with an understanding of what differentiates us. When arguing over many years, for example, that mss librarians are archivists, my argument has always been that this is because manuscripts are archives and not library collectables and should therefore be treated according to the way that archivists think. And to anticipate the facile quibble: If a librarian treats mss the way an archivist thinks, then that librarian, whether he/she realises it or not, is an archivist.

Does this matter? Many of the Listers think not. Refer back to the heat generated over the term "collection" when discussing toxic assets. My view, which doesn't in any way dispute Peter's point about how to encompass "different" record creators in an advocacy strategy, is that each different perspective ought to rest on some more fundamental foundation that shapes and directs our efforts. We have the same problem as the ACF – how to unite around the principle of supporting renewable energy without becoming accomplices in the slaughter of the eagles.

<<Mark Brogan: …If we have failed to protect and grow our important institutions, programs and collections, is this a problem with us? Is it a problem with the political, social or economic context in which these programs operate? Or, perhaps, a combination of both?...>>

2019, July 24: **<<Diversity of perspective can be vital to problem solving>>** Agree – this is our understanding of ourselves.

<<renewal>> Agree – this too.

<<and demonstrating relevance>> Not so sure – this is about communicating our understanding of things to others.

<<I look at the stuff the GLAM people are doing and take heart>> The GLAM people have an easier job advocating their cause because what they are communicating is a message rooted in an understanding that they share with those with whom they are communication- the wider public, the community, the target of their advocacy already know what the GLAMorous are talking about. They don't have to explain what libraries, galleries, and museums are, what they do, and why they are (thought to be) important. At worst, they have to convince sceptics who don't value GLAM - but they don't have to explain or dispel misconceptions. I think our threshold problem is that we do have to explain what it is that we are about before we can start communicating – and, if we want to promote r/keeping, dispel misconceptions for those who aren't focused on solving "our" problems or on "our" renewal and need to be convinced that they should be.

And it's worse than that because we have allowed ourselves to become the "A" in GLAM. We've acquiesced in the idea that we are collectors and that our importance, our purpose, our value add to society is aligned with the role of the cultural collections. Some of us even glory in that alignment and seem impervious to the danger. So, when it comes to communicating our message to others (not to having an internal debate amongst ourselves), we have to begin by explaining that well, yes, we are part of GLAM, but, well, we're sort of not only that. For that reason, our message is confused – just like I said. "Explain to me again why a cultural collection should be responsible for government r/keeping?" I think NAA, ArNZ, and a couple of the State programmes have had some fluctuating successes in

bificturation – blending the two into a "memory" theme – but in-house archives tend to subordinate the archives to the r/keeping, still together maybe but the balance is not level. We seem to agree this is an important issue. Why isn't it more discussed?

2020, July 7: I don't wish to be a pain, I really don't, but I have to keep asking: what is it we are advocating? Is it the status quo (where our records authorities are almost all conjoined with management of heritage resources) or a pure accountability model (in which the accountability mechanism may be organisationally separate)? Is GLAM an essential component of what we want or a disposable extra? If they're after savings from a merger of offices, reading rooms, repositories, and reference services, why not give those things up as a trade off for independent accountability mechanisms. I accept, if you say so, that an opportunity to trade is not on offer in WA at the moment but if we are going to re-live this farce in a world that has moved on since the 1990s shouldn't we have a clear idea of what we are going to advocate in that changed environment? Perhaps it was too easily accepted back then that the 1990s model for delivery of archival services was the right place to locate r/keeping accountability responsibilities. If the world has moved on, maybe it's time we did also. Note: WA did, in fact, separate the accountability role in two – a kind of purchaser (Commission) and provider (SRO) split; it is a small step to further divide the SRO into a r/keeping provider and an archival heritage arm.

Successful advocacy requires two things above all: focus and persistence. Focus involves having a clear view of what it is we're fighting for and then sticking to it through hell and high water (without foregoing devious tactical flexibility when called for). If GLAM is an essential part of what we are fighting for, so be it. If it is a disposable extra, that's OK too. But if we want our advocacy to succeed, now and in the future, we have to be clear about what our goals are. Despite the questions posed in the foregoing paragraph, I hold (as indicated in previous postings) that the conjunction of r/keeping and the management of archival heritage is essential. You seem to be suggesting that the defence of SRO(WA)'s independence at this time should be based purely on the accountability argument. I think that is a different argument to keeping SRO(WA) independent in its present form. You say there is no need to consider this because the WA Govt is uninterested in discussing alternative models and that might well justify the tactics you propose. I'm in no position to dispute that judgement. But I think it a poor reason for not biting the bullet and deciding for now and for the future where we stand on the strategic question and, if we believe that the GLAM+r/keeping model is what we want, being forearmed with arguments in support.

PS. All this suggests I believe there are two distinct and un-related roles. Adrian has suggested the possibility of a unity rather than a conjunction of r/keeping and archival heritage. I don't dispute that, of course, but I haven't yet heard the argument convincingly put that this necessarily involves making the archives organisationally responsible for r/keeping accountability.

2020, July 20: <<Mark Brogan: A *Statement of Position* has been produced by ASA Inc. on the merger. This is to be presented to the Director General, Culture and the Arts, Duncan Ord, AO, today. Thursday, 20 July…Having considered all of the available information, it is my conclusion that the current WA Government approach involves serious questioning of the requirement for a whole of government recordkeeping function and related agency. More information will become available after the meeting today, when the Society's President, Julia Mant, will present our position to D/G Duncan Ord… At its AGM on Thursday, 20 July, ASA (WA) Branch voted to embark on a campaign of continuing action in support of the positions described in the paper…>>

2018, March 5: Two items

Forgive me if these items have already been noticed on this list. I am catching up with things and I may have missed them being posted.

ABC Sound & Reference Libraries …

… closed in Adelaide, Hobart, and Perth with loss of 10 specialist librarians

NAA Cuts …
… loss of 40 jobs over two years

2018, May 29: ASA Submission [to] Inquiry into Canberra's National Institutions

<<Katie Bird: The Australian Society of Archivists calls on the Australian Government to quarantine Australia's national cultural institutions from the efficiency dividend measures … Our national archival institutions have been subject to staff cuts over some years … The challenge for our national institutions should be how they can create, protect and make accessible Australia's collective memory in the face of major digital and technological change and development, rather than simply doing more with less. We call on the Australian Government to adequately fund our key archival institutions to ensure:

- **born-digital records are captured, managed and made accessible over time,**
- **archival audio and video analogue formats are migrated for access and preservation before 2025,**
- **sustainable digital archives and repositories are built, funded and supported thereby providing Australian citizens with continued access to key cultural and historical resources,**
- **and national institutions are able to employ professionally trained and specialist staff with relevant skills for the 21st century.>>**

2018, July 16: NAA spends up big

In the Weekend Oz there was a story about NAA's spending (nearly $1m in one year!) in defending disputed access cases (including Jenny Hocking's fight to gain access to the Kerr Papers) :

> The National Archives, which has recently lost staff due to budget cuts, has spent nearly $1 million fighting the release of information including John Kerr's letters to Buckingham Palace and documents on Australian spying in East Timor. The agency released the figures this week in response to a question on notice from Centre Alliance senator Rex Patrick, who is set to push for changes to freedom-of-information laws via a private member's bill in the next sittings of parliament. The agency said it had spent $926,474.89 from the 2015-16 financial year until May 31 this year fighting the release of records and information…Archives chief David Fricker said recently government cuts to the 13ealized1313at would leave it less able to give access to records. "There's been a decline in our capacity to provide access to records," Mr Fricker told Senate estimates in May. "There's also been a decline in our capacity to transfer records. So there has been a decline in our capacity to carry out our preservation activities." The agency has let go of a number of staff since budget cuts and plans to shed even more staff this financial year. "We are on a steady path of downsizing the 13ealized1313at in terms of our full-time equivalents employed at the archives," Mr Fricker said.

Perhaps it's as well that NAA can't transfer and evaluate more records for access. It may mean they spend less $$$ on defending their decisions in future.

On a more serious note (not that I think $1m out of NAA's budget is a joke), it raises again the question of distributed archives – not distribution of "custody" (a red herring, really) but obliteration of the archival boundary. As Bearman once said, "custody is a good idea, someone should do it." While involved in drafting legislation in the '70s, '80s, '90s, and '00s, I became thoroughly convinced that the model in my brief was dumb. The model being minimal "interference" by archives before transfer and nearly total responsibility afterwards. The respective roles of the archives and agencies were defined by the whereabouts of the records. Stupid!!!! Stupid!!!! Stupid!!!! We gave archives some role in r/keeping pre-transfer (e.g. disposal regulation, standards, etc.) and agencies some residual responsibilities post-transfer (far too few) but the correct model would be function-based: identify and assign responsibilities between archives and agencies functionally responsible for activities records deal with irrespective of age or location. Archives would take over full responsibility only for orphans (viz. records for which no current agency could be found to take responsibility). They did something like it in the ACT, not necessarily for the right reasons (*The last temptation is the greatest treason, to do the right thing for the wrong reason*). On that model, $1m defending access decisions would come out of agency budgets, not the archives because decisions on access restriction/release would certainly be made by the responsible agency, not the archives.

The most fatuous objection to the distributed model was that with functional diaspora over time it would become increasingly difficult to assign distributed responsibility. Wrong again, dummy. Say after me:

custody isn't the issue. You don't have to move the records to where the responsibility lies. You have to move responsibility to where the records are.

PS. The same edition of the Oz carried a story about the Government's response to the loss of control over Cabinet papers that ended up with the ABC. Conclusion: they are going to beef up security of Cabinet papers by introducing a more rigorous regime for controlling the whereabouts of filing cabinets! Perhaps someone doesn't understand the distinction between Cabinet and cabinet.

<<Andrew Waugh: …IMVHO the problem with the distributed custody model is simply that preservation of records after administrative use has ceased is simply not a agency priority *and will never be*. The priority when allocating budgets in agencies is: 1) the specific business of the agencies (collecting tax, running the military, hosting cocktail parties in foreign embassies); and then 2) running the business of delivering 1) (e.g. finance, hr, buildings). Preserving and making available records that no longer support 1) or 2) is normally not even on the spending radar…The advantage of an archive is that keeping old records *is* one of their core functions. I agree with you, though, that it's about responsibilities. In this case the cost of legal action to defend closures should be the responsibility of the agency that made the decision to keep the records closed. If the decision is made by the archive, the archive pays. If the decision is made by the agency, they pay.>> I'm sorry, Andrew, you're still missing the point.

1. Distribution of responsibility isn't about records surviving in agencies. It's not about where they are. That's an idea that's still trapped inside custodial thinking. The distributed model is agnostic about that. They might be in an agency, in a centralised store, in a network of stores, in the cloud, on Mars, in an archives repository even. It just doesn't matter. Once agencies have to pay for it and take responsibility they will make a choice on what best suits them (so long as they meet their obligations).
2. Distribution of responsibility isn't about agencies deciding whether or not to prioritise archival obligations either. Agencies don't just allocate budgets to (1) and (2). They also have to spend money on meeting public sector obligations that all agencies have in addition to their operational functions whether they like it or not (FOIA, privacy, OH&S, harassment, diversity, security, etc., etc., etc.). The distributed model simply makes archiving one of those obligations.

You may say that archiving will suffer because it is an obligation they won't take as seriously as the others. That's a matter of internal discipline within the public sector. How does government make it so? Instead of applying its budget to transferring records and clearing them, it would be the special responsibility of the archives authority to expend its resources on finding ways to facilitate and on ensuring that agencies did in fact discharge their archiving responsibilities (time for a I – steering, not rowing). All public sector obligations struggle when up against operational priorities. The distributed model doesn't answer how to ensure that archiving is done well once it becomes a public sector obligation instead of the sole responsibility of the archives authority. It doesn't have to, since that is part of a larger question::viz. how to ensure agencies discharge their public sector responsibilities (all of them, not just archiving). It is a question which must be answered seriatim not singly. The archival part of the question that interests us is whether a custodial approach is more or less likely to achieve a better outcome. We have it from no less an authority than David Fricker, testifying before Senate Estimates, that maybe it don't. I can't believe we're still debating Archival Methods 101.

P.S. Richard Cox once asked "why should agencies care about their archives if we take them away and give them no say in how they're managed? Good question.

2019, May 15: Funding for Archives?

According to Luke Buckmaster the Coalition Arts Policy is so thin as to be transparent and Labor's Policy is flawed because it doesn't deal adequately with local content. I'm assuming (alas) that if a politician says anything about archives it's going to be in an Arts Policy (ugh!). Looking at Labor's the only thing I could see that is remotely relevant is a section on Collecting Institutions (ugh!!!!!).

> Labor values Australia's national collecting institutions and the role they play in protecting and celebrating Australian stories. Australia's collections are world class and share their skills and resources to help each other and other institutions in the region. Labor will continue to support our collecting institutions so that

> Australia's cultural material is made available, maintained and shared wherever possible. Labor also supports programs and policies that promote best practice for collecting cultural material and ensuring ethical collecting in Australia continues, especially in regard to First Nations' cultural material. Labor will also commit $20 million to strengthen Bundanon as a collecting institution by building a new gallery to showcase more art. The work of our creatives needs to be communicated to fellow Australians and to the world.

Nothing I could see about reversing cuts to the institutions, much less anything about funding the archival enterprise outside of them. And, of course, nothing about r/keeping more broadly. Perhaps if we turned recordkeeping into a "creative" endeavour (recasting the record according to a script, perhaps, or to celebrate a "vision") it would attract more attention from our polies.

Interestingly, the Labor Policy has a section on Health Innovation (it's about art therapy) which I would have put in my Health Policy if I had one, so maybe there's something about r/keeping where you wouldn't expect to find it. Did anyone discover anything in another policy (from either side)? Justice and Law? Government Administration? Privacy and Access? Come to think about it, those are the places where I would expect to find it. I've already voted, so my interest is purely academic.

2019, May 17: You're voting for who?

Or is it whom? Disenchanted, like many, with the political process, I've been trawling the minor parties – mainly to weed out the nutters (there' a lot of them). And I've found one I rather like. I don't agree with everything the Pirate Party advocates but overall it aligns better with my views than any of the others. I won't be specific about what I do and don't agree with so as not to inflame the list over extraneous matters, but there are three items with a r/keeping flavour that bear upon what we do :

Privacy - The snooper's honeypot

> Metadata retention laws force ISPs to collect a vast database of amounts of detail on the private lives of individuals to be perused by the state without any judicial oversight. This is a honeypot not just for officials, but for hackers and criminals. Mass surveillance does information on their customers. This includes records of all emails sent and received, websites visited, locational information from phones, and much more. Data is stored for two years, allowing immense not prevent terrorism or aid in combating it. But it does create a terrible precedent for state intrusion into every corner of private life and civil society. EU courts have thrown out similar schemes due to their gross incompatibility with basic rights; that this hasn't happened here is testimony to the inadequacy of Australian privacy laws … Australia needs a comprehensively higher standard of legal protection for privacy. Such a standard should include tougher legislative requirements on organisations which retain data, and improved options for individuals seeking to protect their personal privacy. Pirate Party Australia also proposes a new privacy tort to curb future averse changes to the law and prevent misuse of private information.

Copyright - Create an Orphan Works Office

- Create an Orphan Works Office with the power to declare whether a work has been abandoned by its creator ('orphaned').
- Provide that individuals, groups and corporations will be able to apply to the Orphan Works Office to have a work declared as orphaned.
- Require creators or rights holders to demonstrate that the work continues to be published in a manner accessible in Australia.
- Allow the Orphan Works Office to declare a work as being orphaned if it can be demonstrated that the work is no longer published in a manner accessible in Australia.
- Provide that a work enters the public domain if the Orphan Works Office declares it has been orphaned.
- Provide that the Administrative Appeals Tribunal will hear appeals relating to decisions of the Orphan Works Office
- Require the Orphan Works Office keep a public register of orphan works.

Culture and Media - Develop a network of facilities to support development of art and culture

……

- Mandate that any DRM protected product for sale in Australia has an obligation to hand over keys or other mechanisms required to access it in its totality, after either termination of copyright or termination of sale.

- The disclosure will be to the National Archives until termination of copyright, and held in confidence until it enters the public domain.

I'm so much more comfortable with being part of a Culture and Media Policy instead of an Arts Policy.

2020, January 14: NAA website <<Joanna Sassoon: Has anyone noticed that the wonderful Fact Sheets produced by the National Archives of Australia are no longer available on the refreshed NAA website. Anyone know why this is the case? And see what common website you get when looking for the wonderful resource Uncommon lives.>>
<<Tim Sharratt:…they were victims of the recent website migration. The content of some fact sheets is still there and some addresses do redirect, but many give 404 errors. The demise of Uncommon Lives was particularly disappointing. I and others have raised this with the NAA, but to no avail. There's a post about the development of Uncommon Lives (with links to versions in the Internet Archive) on Kate Bagnall's blog. You might also note that direct links into RecordSearch (created for example by Zotero) will now be broken as the script that handles them has not been redirected….The whole migration process doesn't seem to have been very well managed.>>
<<Andrew Waugh: Yes NAA is always breaking its website URLs. I've been teaching digital preservation at Charles Sturt Uni for a number of years and every year, even when there is no wholesale website migration, there are a broken links. I've almost completely given up referring to any NAA material for that reason.>>

2020, January 31: <<Tim Sharratt: …Just to quantify the great NAA fact sheet cull of 2019, I grabbed the most current index from the Wayback Machine and tried retrieving all of the fact sheets. Only 15 of 266 still seem to survive in some form. The other 251 return 'Not Found' errors…>> This thread provides a nice illustration of the accountability discussion. To whom is NAA accountable? And how might we use direct action to make them so? The public likely to have a direct interest in this issue would be relatively small - ourselves and researchers who use the NAA website.Not too hard to organise?

But what if NAA has metrics to demonstrate low use of the Fact Sheets? I can't see that there would be much cost to preserving the Fact Sheets even if they didn't produce new ones. But, if they give quality assistance to only a minority of users, so what? This harks back to the service delivery issue raised by Laura Tingle. Is it NAA's job to provide demand-driven services or services appropriate to their mission.

2019, August 22: Imagining

I went last night to the NSWASA Branch meeting at which the Exec Director of State Records spoke. There was talk of consultations preparatory to possible revision of the Act – behind closed doors and in the open. These days, I'm unlikely to hear about such things in either case. There was much discussion of Collection Management (CM) and Recordkeeping (RK) but no mention (that I heard – I'm also a bit deaf now) of a postcustodial model (PM) which was, at least in part, behind the drafting of the current legislation – imperfectly applied (I've called it a 2½ generation Act) but there all the same.

Those at the meeting seemed comfortable that they knew what CM and RK meant, though perhaps (upon examination) it would be found there was less consensus about what those terms implied (but that wasn't tested). I feel that, had it been brought up, there would have been little agreement about what PM means or what it implies. The Q&A format is not conducive to exposition so, for my own satisfaction, I have spent some of the intervening hours setting out what PM might (I say might) look like in concrete terms.

Separation of CM and RK. Give them to separate agencies. In separate departments. On different planets if possible. The conflation of the two confuses our own thinking and everyone else's understanding of our purpose.

RK to Focus on "Make and Keep": This begins with functional appraisal – to identify records that need to be made in the first place and then kept; not those which, having been made, should survive. Under this approach, archival records (those required to be made and kept forever or for just a little while) "exist" before they are created. These are all we care about. The rest don't matter.

RK Sets the Standards: The most important would be the migration protocols and the identification of metadata requisite for moving archival records on. The biggest obstacle to the r/keeping standards regime at present is that they often apply before appraisal occurs and, as a result, are more onerous than they need be.

Who's Responsible for Carrying Them Out?: Agencies would be functionally responsible for archival records regardless of location and regardless of age. Thus, Col Sec records would remain the responsibility of Pr&C. Forever. Yes, as functions fragment this becomes problematic but it would be for the CM descriptive system to sort this out (see below). Orphans (such as colonial era defence records) would become the responsibility of CM or get transferred to the Feds.

Execution of Appraisal Decisions: Appraisal would be a priori (formed or conceived beforehand) not post hoc. Whether records are made or kept is decided upon before they exist. Responsibility then lies for both making and keeping with agencies (including CM for the records they hold) under Plans (to be approved and monitored by RK on the WA model) to implement appraisal outcomes for archival records in their charge in accordance with standards set by RK.

Who Pays? Fiscal responsibility (regardless of location or age) would lie with responsible agencies. Forever. This eliminates Treasury-inspired nonsense about cross-charging and collection valuation.

Monitoring Performance: Someone other than RK or CM would audit performance. Enforcement is something else again.

Elimination of Obligation to Transfer: Richard Cox once wrote that because we assert imperium over the archival record, it is no wonder agencies care little for them. Why should they when we tell them it's exclusively our business? A case where we needed to be more careful about what we wished for. If agencies are obliged to shoulder their archival responsibilities (or pay CM or trusted third parties to provide storage and access) it follows that ….

"Collection" Becomes an Obsolete Idea: Hallelujah!! CM no longer obsesses on what they hold. Their remit applies to the entirety of archival records – throughout Government. Estrays too maybe. From Day 1, not 30 years later. Thereafter - forever and ever. Amen. The descriptive system, which also assigns functional responsibility, registers archival records from the moment they are identified during appraisal (before they even exist) and thus becomes a registry-of-registries rather than an access-facilitation device.

Access Becomes a Different Idea: At the borders of imagination, it would also serve as a foundation stone (or keystone) for a federated access system linking discovery systems maintained (according to RK access standards) by every agency holding archival records (including CM) - opening the door, maybe, to a clever marriage between contingency and ubiquity.

Is all or any of this possible? Many will say that PM is not practical and never was owing to fiscal and political "realities". We'll never know because twenty-five years have been frittered away in pursuit of other ideas. Despite David Bearman, we've remained trapped inside methodologies inherited from our own past from which we have seemed unable to break free – conceptually or actually. Actual enslavement may have been unavoidable, but conceptual enslavement is unforgivable. It's worth remembering that those who allow conceptual thinking to be polluted by perceived obstacles will always live in the past. The antonym for practical is impractical (not theoretical). The antonym for theoretical is applied. Application is a different conversation. No worthwhile change has ever taken place except by those able to imagine the impossible.

2020, July 28: 'Just nuts': Historian decries archives merger proposal

<<Joanna Sassoon: …in at least one other state, there is a merger between archives and another organisation being conducted inch by inch and under the radar. I've not seen anything in the public domain as to the existence of a strong business case to support this proposal.>>

https://groups.google.com/forum/#!forum/archives-and-records-australia

2020, July 30: <<Alan Ventress:…What is remarkable is this proposal was presented to the Parliamentary Inquiry as a 'done deal" without any business case, as a thought bubble tacked onto other valid proposals for changes to the State Records Act 1998. The Hon Don Harwin MLC whose idea this is, was on the Board of State Archives and Records NSW for many years, but the core role and functions of the agency seem to have gone in one ear and out of the other…Don Harwin is appearing tomorrow afternoon and…Adam Lindsay, the current Director is appearing for a second time!…>>

Indefensible Bastion?

A J P Taylor once quipped that those 19th century monarchies which adopted the double-headed eagle as an emblem never seemed to know which way they were going. The two-faced Janus is sometimes used as an emblem for History's handmaiden and even for Archiving. David Bearman once quipped that custody is a good thing – someone should do it. But for 25 years we have maintained the notion of a duality of record-keeping **and** custody put into a single role instead of preferring recordkeeping (**subsuming** custody). Taking custody of archival "collections" is how we still think of fulfilling our long-term recordkeeping goals. Good governance through record-keeping can appear to be a mechanism for identifying the miniscule proportion of records that are to be incorporated into the collection. The fundamental conflict between being the recordkeeping authority while simultaneously taking on operational responsibility for managing the archival remnant has been papered over (you can't regulate your own behaviour).

We ourselves are confused and divided over this duality (cf. earlier threads dealing with the concept of collection and the balance of duty between the record and the user). Is it any wonder that we have difficulty in explaining it to others? Is it surprising that, as the Internet expands our user base exponentially, many amongst our stakeholders now value content over context? Is it not predictable that those wishing to subsume us (for whatever reasons) choose to recalibrate this febrile duality, which hardly anyone understands, to our disadvantage? Have we anyone to blame but ourselves that in 2020 we are being called upon to defend ourselves as if curatorial achievement was all that mattered? Even if the accusations -

- refusal to open our minds to contemporary or progressive approaches to the management of our Collection,
- insular and covetous approach to management of the Collection,
- poor public awareness of one of the State's most valuable cultural assets,

are correct (and I don't concede that they are), they do not argue for putting the State Archives into the hands of a curator or for it to be merged with a heritage body. Rather they support, if true, the proposition that the State Collection should be given to a curator and the Recordkeeping Authority placed into the hands of a recordkeeper with oversight of all State records (including the State Collection).

We have not properly learned (much less successfully communicated to others) that recordkeeping requirements can be achieved by choosing from an array of alternative methods. Taking custody is one, but not the only one. An alternative would be giving custody to someone else under supervision (control) by the recordkeeping authority. In a small way, this is already done using places of deposit. In some statutes, I think the entire "collection" could, under existing provisions, be devolved in this way but that would clearly be beyond the intent of legislation and probably would need some review, very different from the one being undertaken in NSW. To say nothing of funding.

The SARA website lists its functions as a single blended list. It is already the case that not all State archives are held in the "State Archives Collection". It is already the case, on a small scale, that arrangements for dealing with State archives must extend beyond the Collection to access arrangements for 30+ records held elsewhere and for those in places of deposit (including oversight of description). Imagine now that instead of these functions belonging to one agency they were assigned to two. Imagine the **State Archives Collection** is just one more agency subject the Act, to standards

under the Act, and to regulation by the **Recordkeeping Authority**, just like any other government department or office –

Recordkeeping Authority	State Archives Collection
1.setting and monitoring standards for the creation, management and disposal of State records	1.providing centralised and cost-effective storage and retrieval services for the semi-active records of public sector agencies
2.providing practical advice, guidance and training to NSW public sector agencies in all aspects of records management	2.storing the State Archives Collection in appropriate environments and ensuring that those stored elsewhere are also stored to the necessary standards
3.identifying State records that should be retained as State Archives and authorising the disposal of those which should not	3.using micro-preservation and macro-preservation techniques to preserve the State Archives Collection
4.guiding public sector agencies in administering public access to those State records for which they are responsible including those which are more than 30 years old	4.documenting and cataloguing State Archives in their functional and administrative context
5.making the best use of information technology and communications to improve our services and business.	5.making State records in the Collection ~~more than 30 years old~~ available for public access and use
	6.interpreting, promoting and enhancing public awareness of the State Archives Collection
	7.making the best use of information technology and communications to improve our services and business.

I have indicated by underlining and strike through the adjustments that would need to be made. Despite my personal misgivings, I have left documenting the State Archives (in their entirety) with the Collection rather than the Authority. If this had already been done, the Parliamentary Committee would have two questions to answer not one – the future of the Authority and that of the Collection.

This separation would take time and we've run out of time. It is something we should been working towards for years. But we fluffed it. When the Opera House opened (after the Large Hall was re-purposed) some wag said that Sydney had a world-class Concert Hall and all that was needed now was a decent venue for the opera. I don't say that we have world class archives programmes and that we still need good recordkeeping regimes. We have good recordkeeping regimes but they continue to be imperilled by misunderstanding of their role and function. The simplest and most effective way to remedy this and fend off future assaults (at least of this kind) would be to hive off the collections from those that are working effectively in the recordkeeping role and to establish new recordkeeping authorities for those which aren't. But that won't happen. No one wants it. Not even us.

2020, July 31: <<Adrian Cunningham: I agree that we have not been good at explaining the dual nature of the roles and responsibilities of government archives and records authorities and that we should not be surprised that bureaucrats and politicians struggle to appreciate such complexities and subtleties. Separation of the roles into two separate agencies could clarify matters and could indeed work very well in practice. But I doubt that such separation would give us any greater levels of protection against the kinds of thought bubbles and brain farts that we have been seeing lately from politicians and bureaucrats…Under the separation model outlined by Chris I could well imagine the bean counters saying that the roles of the recordkeeping authority could and should be performed by [others]…Or they may decide that it is a role that can be dispensed with entirely. Similarly, the custodial role could well be given to [someone else]…I see arguing for separation (while it may have an attractive logic), is a high risk one...the question is - is there any logical model that stands a better than even chance of being sustainable in the face of bureaucratic ignorance and thought bubbles?...>> That is indeed the question and I agree that separation involves its own risks that recordkeeping could be absorbed into another agency. The function originally belonged, after all, to the old Public Service Board in Canberra. But what is it that we care about, sustaining the function or the office? My argument is a utilitarian one – not

philosophical – relating to the current situation. It's the stuff they want to get their hands on, the recordkeeping not so much. Separation enables us to put the collection out as a kind of *enfants perdus* to engage the enemy's attention while we develop deep defence for the recordkeeping. How apposite that in Dutch *verloren hoop* translates as "heap".

We agree, you and I, that the complexity of the duality role makes it difficult to argue, incomprehensible to the public and to obtuse politicians, and it is easily distorted by calculating bureaucrats. Arguments that curatorial responsibilities have been neglected don't logically require merger with anyone. And if they did, it wouldn't need to be with this other heritage body as proposed (I forget its name). It could just as easily be a re-merger with the State Library, or with the Museum, or the Gallery – as you say. If you come at it from the curatorial end, that's the kind of fight you're in.

But if you come at it from the recordkeeping end, it's a different tactical argument. The collections of these other GLAM outfits are not regulated by the Recordkeeping Authority. Uniquely, the State Archives Collection is. That's the difference. Different role, different governance arrangements. I don't say it's a winning argument – because intellectually any GLAM institution could still be given custody of the State Archives Collection under supervision (control) of the Recordkeeping Authority. But it would be a different argument to the one taking place in Macquarie Street just now and the tail wouldn't be wagging the dog.

When all is said and done, however, you are right to say that there is ultimately no guaranteed winning argument. The separation I propose is already in place (up to a point) in Western Australia and has been for many years and that didn't prevent merger proposals there. I was personally involved in NZ when a purchaser/provider split did not help against a proposed takeover into a larger heritage unit within D. of Internal Affairs. The ACT regime is the driest, most collection-free of all so there is really nothing to squabble over there.

2020, August 4: In relation to Joanna's original posting, a version of the article referred to on the website of CAMD (Council of Australian Museum Directors) makes the following claim –

> A parliamentary committee is reviewing the proposal by NSW Arts Minister Don Harwin to merge State Archives and Records, home to 14 million items, and Sydney Living Museums.
> National Archives of Australia, the Sydney Opera House, Museums and Galleries of NSW and the Art Gallery of NSW have endorsed the merger as a way to optimise public engagement with the state's past. They are also united that public access to the archives needs to be expanded through wider digitisation, with records to become available after 20 years, not the existing 30…In no other state had a similar amalgamation been contemplated, according to the Federation of Australian Historical Societies, "presumably because it is such an uneasy and even illogical fit". But amalgamation has been opposed by archivists, historians and former administrators…[also]… Former City of Sydney historian Shirley Fitzgerald ...[and]…Professor Stephen Garton, the University of Sydney's senior deputy vice-chancellor…

The Proposal is supported by Chair of the Sydney Living Museums, Naseema Sparks and Former Greater Sydney chief commissioner Lucy Turnbull. Can anyone confirm that

1. NAA has indeed "endorsed" the merger? And that support seems to be coming from institutions, politicians, and bureaucrats rather than users?
2. The Sydney Opera House, Museums & Galleries of NSW, and the Art Gallery of NSW have policies on access to public records?
3. Someone (presumably including these four bodies) has or is developing proposals in concert to reduce the closed access period?

Does ASA have a position on the merger and what do we, as a profession feel about NAA's alleged endorsement of it?

<<Alan Ventress: In answer to your question 1 all the evidence/transcripts etc can be found here. David Fricker did endorse the proposal. In relation to questions 2 and 3 I don't know perhaps Catherine Robinson at SARA could enlighten us?>>

<<**Michael Piggott**: **Here it is** **(my emphasis):**

> The Hon. BEN FRANKLIN: Can I broaden that? Let me go back step. You are internationally accredited and acclaimed as an expert on these matters and we are very grateful for your participation today. Do you have any comments about the relationship and the partnership between SARA and Sydney Living Museums from what you have witnessed over the last couple of years?
> Mr FRICKER: As I said in my submission, I think many benefits can be obtained by any sort of collaboration or joining up of resources between memory institutions generally so I think an important part of an archives is access and it is having those public programs that make sure that the archival collection is promoted; that all citizens of New South Wales are aware that this fantastic asset exists; and that access to the collection is made as enjoyable and as engaging as is possible, including outreach into education programs to get younger citizens engaged and involved with the history and their identity. **I think that is a very important benefit that can flow from these collaborative arrangements and from the joining up, the consolidation, of those two institutions.** In my submission I pointed to one distinction that I think should be maintained, to make sure that the archival collection was not seen as something which was sort of picked, which is not a curated collection.
> The Hon. BEN FRANKLIN: Absolutely.
> Mr FRICKER: The archival record needs to be accumulated on very neutral and objective criteria to make sure that it follows the rules of evidence, if you like. It does not sort of become constructed to suit one particular narrative of history.
> The Hon. BEN FRANKLIN: I think we are all in vicious agreement on that.
> Mr FRICKER: That is right. Very briefly, in my submission I pointed to what I thought was the strength of the paper in terms of establishing those committees and having a committee which was given the authority to make sure that that archival collection was being collected and maintained in a proper way.
> The Hon. BEN FRANKLIN: Thank you Mr Fricker. I will pick up on that point with Mr Hinchcliffe who talked about opportunities for exhibition.

<<Michael Piggott: I'm still shaking my head in disbelief .... and the implications. So why not join up the National Archives and National Museum .... and for even more collaboration and synergies with also the Sound and Film Archive and the National Maritime Museum and the Australian War Memorial? >> It's enough to make you want to spit. Maybe this is what happens when you think about archives as a collection. Better still, Michael, why don't we write to Christian Porter to suggest he starts thinking about merging the D-G's position with that of Karen Quinlan [Director of the National Portrait Gallery].

<<Michael Piggott: Good idea, Chris. As to your question earlier today (Does ASA have a position on the merger...?) no point…writing a submission [that] can be discounted by a retort…"but the President of the ICA himself has ...". Interesting times.>>To surrender in the face of "pathetic futility" is to forfeit the opportunity for

> ... searching analysis … as illumination for the future. Only by sturdy self-examination and self-criticism can the necessary habits for detached and wise judgment be established and fortified so as to become effective when the … process is again subjected to stress and strain …

ASA is a member of ICA (or used to be). Nothing stopping them posting to the ICA List denouncing the views of the President concerning the takeover virus. Come to think of it. I'm a member of ICA myself. Nothing stopping me from doing the same, I suppose. Just 'cause Donald Trump is President, it doesn't mean we don't listen to Dr Fauci. Even in interesting times. Especially then perhaps.

Walking in the footsteps / Of society's lies / I don't like what I see no more
Sometimes I wish that I was blind / Sometimes I wait forever

2020, August 5:<<Cassie Findlay:…ASA Advocacy Committee made a submission to the Parliamentary Committee looking at the merger (and other aspects of the State Records Act), Julia Mant and Tim Robinson gave evidence at a hearing and a response was made to a committee question on notice.>> Thanks, Cassie. It is clear that ASA spoke for the profession. And spoke well. In what guise was David Fricker speaking?

1. For himself?
2. For NAA?
3. For the Commonwealth Government?
4. For ICA?

Regardless of whether or not he spoke in any formal sense for ICA doesn't the position need to be clarified (by ICA) that his views are his own and not those of the profession?
<<Andrew Waugh:…He makes it quite clear that he is appearing in his capacity as DG of the NAA. He does mention that he is president of the ICA, but at no time does he represent that he is speaking on behalf of the ICA. He also specifically cautions the Committee that as a Commonwealth public servant he will not comment on NSW government policy.>> This is a question of hats. There is a well-established, well -understood formula for dealing with this: *I appear today as D-G and my views should in no way be taken as representing the international body whose president I am.* You use those words or leave the situation open to ambiguity and doubt - carelessly or deliberately people are left with idea that he is speaking as the head of the profession. It's not rocket science, this.

<<I think it is misrepresenting his evidence to say that he supported the merger.>> C'mon. Finesse it any way you like, how can the words "*I think that is a very important benefit that can flow from these collaborative arrangements and from the joining up, the consolidation, of those two institutions"* be interpreted any other way? This is a political exercise. Proponents of the merger are scrambling to create the impression that it is supported by the great and the good. Fricker is savvy enough to know this. It is news to me that a public servant is interdicted from honest commentary on the policies of another government, but if he felt so constrained he need not have appeared. You're not suggesting, I suppose, that he lied to the committee, that he really opposes the merger, but feared to say so from a sense of public service rectitude?

2020, August 6: <<Andrew Waugh: Just goes to show how different people can read different things into words.>> Certainly does. I think this is about meanings, not about words. Meaning attaches to words as a result of context, Archivists should know that. The context of the words that are objected to (*very important benefit that can flow from … the joining up, the consolidation, of those two institutions*) comes in response to a request from Ben Franklin for comment on *the relationship and the partnership between SARA and Sydney Living Museums.*

<< the government has made a policy decision to merge the two institutions, and Fricker does not consider that he should pass judgement on that decision.>> But he does pass judgement, doesn't he? He approves of it (*important benefit can flow from consolidation*). Not just harmony, not just collaboration, but "joining up". Not just joining up with other heritage programmes to improve access but merging it with this one, as proposed, here and now. Those words in response to that question can't be anything else but a judgement on the specifics of this amalgamation.

Is he the helpless victim, as you say, of a policy decision already made? If so, why did he bother going? Why turn up if you don't approve the policy? I think you may be correct that he wanted to pass over the specifics and talk motherhood. That is what is in the written submission – an orthodox defence of the Indefensible Bastion, of the duality that enables those in his position to simultaneously urge record-keeping and custody along two different tracks. Like they're two different things. Oh, let's all be glamorous together but don't forget the record-keeping because that's important too. As if they can be separated like that conceptually.

But the politicians were too wily for him. They could see the flaw in the duality argument. They needed to pin him on the custody issue. In oral testimony, they pushed him to the wall (beyond the written brief) and demanded to hear the opinion of an "internationally accredited and acclaimed … expert ,,, about the relationship and the partnership between SARA and Sydney Living Museums". And they got what they wanted. They forced him into a corner where he couldn't stand on motherhood and offered him a choice. And he made the wrong one.

How strange that politicians can see the flaw in the duality argument when we cannot. You don't "ring fence" the archives. The archives have to be protected like the rest of the public record and in the same way. You don't do that by discriminating between good and bad GLAM institutions to identify ones that can be trusted to manage the archives (as if their manner of curating satisfied r/keeping requirements).

They are not to be entrusted with making their own r/keeping decisions (any more than public offices are) except within the recordkeeping framework - so it matters not a jot what their curatorial practices are. They need to be compelled to handle the archives in accordance with r/keeping demands not their own curatorial practices. The statutory exclusion of the state collections from archives law recognizes (rightly or wrongly) that the recordkeeping regime does not apply to their holdings and that they are different.

But no, Andrew, you (and David Fricker by your account) are happy to separate these things and you have left all that other stuff outside in the realm of "improved" recordkeeping practices in NSW. What goes on inside fortress archives has nothing to do with what goes on outside it apparently. You actually incorporate the duality into your two heads of argument in defence of David Fricker. You have to separate them conceptually to make your case. Meanwhile the archives are left in a curatorial safe place – a custody realm that you can approve of and that looks, by your account, to be a different world altogether from "improved" recordkeeping in NSW. But hang about; isn't that what I was arguing for – separation of record-keeping and custody? No it was not. I was talking about recordkeeping that subsumes custody. Not "two points to make to the committee" but one.

If you're confused into thinking that because you're the recordkeeper the archives are safe in your hands you're going to get very muddled when someone wants to merge you with someone else. Am I angry about all this? You bet I am. They tried to merge me with a heritage outfit twice in my career, once in Melbourne and once in Wellington, so I know whereof I speak. And no, I'm not reliving my past, I'm sharing insights you get only from plumbing the depths. Records (including archives) deserve to be in the custody of someone, curatorial or operational, who will be part of a recordkeeping regime. Who will do, to be blunt about it, what they are told. You don't abandon the archives to a curator on the basis that you approve their practices any more than you abandon public records to agencies you like. You make sure they're being kept by someone who obeys the rules. Bringing them together with some heritage outfit that thinks they understand the recordkeeping rules is probably the worst outcome.

<<Deborah: should we presume you refer to archives principles and practices rather than government legislation which is subject to change?>> Kinda. Recordkeeping principles and practices is better but, so long as we eschew the word "collection", I won't quibble over words. As I say meanings are what matter. So yes, the principles and practices are our mystery, our thing. They are, as Joanna said once on this list, how archivists "think" not just what archivists do. That's what we care about. That's what we should care about, anyway. That's what any self-respecting "internationally accredited and acclaimed… expert …" should be standing up for. They aren't enduring these principles and practices – Bearman and Cook taught us that, as have Scott, McKemmish, Upward and many, many others.

But they evolve within a tradition, our tradition, they serve an abiding purpose. The selection of methods we use to achieve unchanging goals is what we struggle over – and sometimes contend for. That, at any rate, is how I'd like it to be. When I read the old books, I find there out-dated principles and practices that I cannot apply but they are infused with a spirit, a sense of direction, that makes me feel I belong. I can say I am of these people. They knew. Didn't mean to wax lyrical.

The legislation is another matter. It is a means to an end. We defend it when they want to change it in ways that are inimical to our abiding purpose. As here.

<<Andrew Waugh: One dimension to the response to this policy decision is to either approve or disapprove. But irrespective of whether you approve or disapprove, there is a second dimension to the response: what safeguards need to be in place to ensure the integrity of the archives if it goes ahead. In my view, Fricker has chosen not to respond to the first dimension, and to focus on the second. In making this choice, even the DG of the NAA is not a free agent, and would answer to the Federal government>> This has now become pointless. I say "*I think that is a very important benefit that can flow from these collaborative arrangements and from the joining up, the consolidation, of those two institutions*" is a response in the affirmative to the first dimension. You say it isn't. Let's leave it at that.

2020, August 8: Now. Advice to defence attorneys: If the facts are on your side argue the facts; if the law is on your side argue the law; if both are against you confuse things as much as possible. Since he refuses to admit the smoking gun, let us look instead at Andrew's theory of the crime.

> **<<5 Aug: Fricker says right up front to the committee that he will not discuss the policy decision behind the merger. That is, the government has made a policy decision to merge the two institutions, and Fricker does not consider that he should pass judgement on that decision.>> <<6 Aug: The starting position is that the merger of the two institutions is a policy decision of the NSW government ... I can see that excessive focusing on the approve/disapprove dimension is potentially counterproductive as it means that the witnesses forgo the opportunity to shape the merger if it goes ahead.>>**

Theory A It is not yet decided to merge SARA with anyone and the committee is hearing evidence on whether or not a merger should take place at all. But no, according to Andrew the policy is settled and it would be improper for a Commonwealth bureaucrat to assist the committee in this way. But if the policy is settled, those arguing against a merger of any kind were wasting their time as, under this theory of the crime, Fricker would have been had he been free to express an opinion on any kind of merger (which Andrew says he wasn't and he didn't). If the policy is already settled and the committee isn't able to advise against it, this Theory is a red herring – refer now to Theory C below.

Theory B: It is settled Government policy to merge SARA with someone and the committee is hearing evidence to assist them in advising Government on who it should be. But according to Andrew the government has already "**made a policy decision to merge the two institutions**". Not any two institutions but "**the**" two institutions. So, this doesn't wash.

Theory C: It is settled Government policy to merge SARA with Historic Houses and the committee is hearing evidence to assist them in advising Government whether that policy should be implemented. Under this theory, according to Andrew, Fricker shouldn't even be there since the question at issue is one on which propriety prevents him from having a useful opinion. Pretty much the same as Theory A and just as much of a red herring, so far as the Fricker defence is concerned, unless the committee could be persuaded to recommend against the merger and for Government to change its policy.

Under the only tenable theory of the crime (in Andrew's account of it) – "*I can't speak to the merits, I can only advise on the requirements"* - the D-G went to argue in a motherhood kind of way (and in the service of recordkeeping, God save us all) for the kind of qualities any heritage outfit to which SARA might be yoked should have. But if the decision had already been made. And Fricker knew it. And he couldn't argue the merits. What was the point of that?

Further advice to defence attorneys, then: the only way to make this fly is to argue (Theory D) that he was there to advise on how the merger should take place. But, even assuming this is an edifying posture for an "internationally accredited and acclaimed … expert" to adopt, he wasn't asked that, was he? He was asked whether it had merit. And he said it did. Gets us back to the smoking gun which we have now argued to the point of exhaustion but which (if yielded) would move us back into another "dimension".

<<Alan Ventress: More on the proposed merger This is the best paragraph

> Now Premier Berejiklian and her disgraced Arts Minister Don Harwin are proposing to merge the State Archives and Records (SARA) with Sydney Living Museums. Why not chuck in the Rabbit Protection Board, the Whale Watching Review Committee and the Sydney Haberdashers Society?>>

<<Michael Piggott: …It's a strong article, and incidentally the sentence following the two you quote goes: "The Government has gained endorsement for the proposal from the National Archives of Australia, the Sydney Opera House, Museums and Galleries NSW and the Art Gallery of NSW – all bodies in thrall to the Coalition Governments in Canberra and Sydney." If the NAA D-G didn't actually mean to or intend to take a position on NSW government policy, he's utterly failed by creating the exact opposite impression in many many minds...I had thought this thread had come to a natural end, but Chris earlier today has teased out additional implications. To adopt his legal analogy, in a profession practising open and frank dialogue we'd hear direct from the accused, not only the NAA D-G/ICA President, but also from the

person who happily took up the position of Executive Director of Sydney Living Museums in July 2019 -- none other than the Executive Director of the State Archives and Records Authority, a development it described as "signalling the start of a very exciting partnership, one that has enormous potential for both institutions". To adapt the words of a famous German Lutheran pastor, first they came for partnership, then they came for amalgamation.>>

2020, September 3: <<Max: The transcript for the third and final hearing of the inquiry is now posted. A sobering read, and one that illustrates the poor understanding of our dual-purpose mission (what Chris referred to in another thread as "glamour" and "order"). The Minister laid out his objective to create "a state cultural institution with a history focus embedded in its legislated mission and that is focussed on its collection." Sounds glamorous (as another committee member pointed out "there has been so much reference to sexy in this Committee"). Of course, we get the usual assurances about government recordkeeping… Even as the focus remains on creating a cultural/history museum. Perhaps none of this is surprising as the Minister characterizes State Records, presumably based on his previous Board experience, as having a "narrow approach, which was storage focussed, ignoring public engagement." Who would support that? Might as well make a museum out of it…>> The Law of Inverse Relevance**:** "The less you intend to do about something, the more you have to keep talking about it." *Yes, Minister* S.1 Ep.1. But I doubt these yokels have the intelligence to form an intention of doing nothing about it. So, the usual assurances will do well enough, I suppose. And "... pray that there's intelligent life somewhere up in space, 'cause there's bugger all down here on Earth" Galaxy Song

2020, October 17: Report tabled – State Records Act 1998 and the policy paper on its review

2020, October 18: **<<Alan Ventress: It will be interesting to see the new legislation!>>** Yes, indeed.
Predictably, this Report focuses on custody. For some time now, I have been advocating the separation of the custodial and accountability roles of our government record authorities. Such a separation would (in my view) be an obstacle to merging the recordkeeping responsibilities, as is proposed here, within an enlarged entity having curatorial responsibilities for more than government archives since all the arguments in favour of the merger are on the cultural side. No one that I can see actually argued that the merger would result in a better r/keeping regime except for suggested changes to the Act which could be done regardless of any merger. Separating the two roles conceptually would also support the proposition that, **if** government archives are to be lodged with a curatorial entity having larger responsibilities for more diverse historical materials, the government archives therein must be managed according to recordkeeping policy under codes and standards established by a r/keeping authority and not according to cultural policy - i.e. that when dealing with government archives cultural purposes must be **subordinate** to recordkeeping purposes.

Had the profession adopted this position long since, I believe it would have been easier to rebut the merger proposals and to critique them now. But we didn't.

For of all sad words of tongue or pen, The saddest are these: 'It might have been!' John Greenleaf Whittier

When draft legislation does appear, it is still not too late (instead of fighting a rear-guard action against the merger) to focus on the proper location administratively of the r/keeping functions.

I do not like the phrase "It might have been!" It lacks force, and life's best truths perverts:
For I believe we have, and reach, and win, Whatever our deserts. Ella Wheeler Wilcox

In essence, the Report concludes that SARA's cultural role needs to be transformed and its recordkeeping role maintained.

> The committee notes the particular concerns raised by inquiry participants that the replacement of SARA and SLM with a new entity may result in the diminution of existing functions, particularly with regard to government recordkeeping and archiving. The committee acknowledges, in particular, the evidence from the National Archives of Australia on the distinction between government records and private deposits, and maintaining strict standards in legislation for the archival of government records …. the committee seeks to ensure that a strong legislative framework is maintained to uphold government accountability and transparency through government recordkeeping. Therefore the committee recommends that the NSW Government ensure that the legislation giving effect to the new cultural institution clearly defines the

> government recordkeeping and archival functions of the institution, based on the existing functions of the State Archives and Records Authority of New South Wales. Paras 2.182 – 2.184

Leaving aside the misleading suggestion that the purpose of government recordkeeping is to create an historical artefact - an archival record (as that term is generally understood) - the question remains whether the recordkeeping function should be assigned to the merged entity regardless of what happens to the stuff. While many witnesses urged that the recordkeeping role was an obstacle to the merger none (so far as I can see) was prepared to canvass the argument that the merger raises different issues for the two functions with the attendant logical possibility that the merger of SARA's cultural role might proceed while merger of the recordkeeping role should not. To make that argument, you have to be open to the possibility of separating the two roles administratively as I have long argued which (so far as I can see) most of the hostile witnesses were not.

But a change is nevertheless being proposed in the Report –

> … the Policy Paper states that the ability for SARA to monitor and enforce compliance with the Act is 'limited', as the Act contains no mandatory mechanism to audit or monitor compliance with its provisions or standards. The Policy Paper explains: The Authority's existing monitoring activities rely on the cooperation of the public office under scrutiny, and the extent of this cooperation impacts compliance verification and the quality of the Authority's responses to complainants …. In addition, 'the financial penalties for breaches of recordkeeping requirements are not practically enforceable' … it is proposed that SARA (or the new entity) be granted a 'monitoring' power to compel public offices to audit their own recordkeeping practices in whole or in part and to report back on the findings of their investigation. According to Mr Lindsay, this proposal will strengthen the regulation of recordkeeping by enabling public offices to be more accountable ... Ms Tydd, Chief Executive Officer and Information Commissioner, Information and Privacy Commission NSW, shared this view, stating that the requirement to compel a public office to self-audit and then report back 'would actually enhance the ability to regulate'. She added that the proposed reform would also 'shift the burden in an appropriate position, then apply the expertise that exists within SARA to a determination as to the adequacy of that self audit' ... Ms Tydd described self-auditing as a 'very powerful tool' as it places the onus on the regulated entity to ensure compliance while building their own knowledge … Mr Fricker, National Archives of Australia, … asserted that compliance as 'an obligation on all government officials' is 'a very strong point', as it provides a legislative basis upon which compliance can be tested. He stated: … [I]f the legislation made it clear that it was an offence to engage in conduct that leads to the loss or alteration of a record other than by an authorised action, that represents a good level of practice.355 3.50 Mr Hinchlcliffe expressed a similar view, stating: 'As a strong deterrent, consideration should be given to make deliberate and wilful non-compliance a criminal offence'. Paras 3.34 – 3.50

There is great obscurity (not to say confusion) here over notions of criminality, compliance, monitoring, reporting, auditing, and self-audit. The existing legislation is strong but (we are told) unenforceable. Or is it weak and inappropriate? The existing Act already provides for regulation by offence or injunction. If the Report is implemented and the existing powers are not simply maintained in any redrafted legislation but "enhanced" these people will need watching to make sure existing powers (some of them listed below) are not watered down. Someone needs to tell David Fricker that the offence provisions he advocates are already part of the NSW Act. Existing provisions include –

> s.10 **Chief executives to ensure compliance with Act** The chief executive of each public office has a duty to ensure that the public office complies with the requirements of this Act and the regulations and that the requirements of this Act and the regulations with respect to State records that the public office is responsible for are complied with.
>
> s.11 **Obligation to protect records** Each public office must ensure the safe custody and proper preservation of the State records that it has control of …
>
> s.12 **Records management obligations** Each public office must make and keep full and accurate records of the activities of the office … establish and maintain a records management program for the public office in conformity with standards and codes of best practice from time to time approved under section 13 … make arrangements with the Authority for the monitoring by the Authority of the public office's records management program and must report to the Authority, in accordance with arrangements made with the Authority, on the implementation of the public office's records management program.

> s.13 **Standards and codes of best practice for records management** The Authority may from time to time approve standards and codes of best practice for records management by public offices. Records management extends to include all aspects of the making, keeping and disposal of records …
> s.20 **Reports by Authority about compliance** The Authority may report to the Minister responsible for a public office any failure by the public office to comply with the requirements of this Act or the regulations or any other matter of concern to the Authority with regard to the public office's obligations under this Act or the regulations.
> s.21 **Protection measures** A person must not abandon or dispose of a State record, etc., etc. … Maximum penalty—50 penalty units. None of the following is a contravention of this section …. (c) anything done by or with the permission of the Authority or in accordance with any practice or procedure approved by the Authority either generally or in a particular case or class of cases (including any practice or procedure approved of under any standards and codes of best practice for records management formulated by the Authority) … Anything done by a person (***the employee***) at the direction of some other person given in the course of the employee's employment is taken for the purposes of this section not to have been done by the employee and instead to have been done by that other person ...
> s.72 **Injunctions to prevent contravention of Act** If a person has contravened, is contravening or is proposing to contravene a provision of this Act, the Supreme Court may, on the application of the Authority, grant an injunction restraining the person from doing so or requiring the person to do any act or thing necessary to avoid or remedy the contravention …

PS. There is a very much more subtle question arising out of David Fricker's argument that government archives are inherently different to "private" archives (a proposition I have refused to concede the whole of my professional life and will not yield on now). Shades of Powell/Hurley. On its face, saying they're different seems to argue against this merger and saying they're the same seems to argue there is no problem. Its resolution lies in the oft stated proposition that archives in libraries, museums, and galleries should be managed as archives not as artefacts or bibliographical tools. And that is true of both government and "private" archival materials.

2020, October 21: Amusing as it is to see bad recordkeeping figuring in the exposure of bad governance, we can only reflect that such sensationalism trivialises recordkeeping regulation, associating it in the minds of the public and, what is worse, in the minds of politicians, with the political weaponization of anti-corruption measures – the "gotcha" moment. Instead of systematically uncovering flaws and calmly taking corrective action, it all becomes a lurid tale of crime and punishment. Recordkeeping lapses are portrayed as instances of individual dereliction instead of systemic failure. They seem incidental to wrong-doing of a more stimulating kind. The "flies to the carcass" dimension is a legitimate one, but most corruption is routine, low-key, and often undetected.

As a result, lapses are perceived by the public as dramatic interludes. The idea that recordkeeping regulation is a regular part of good governance is undermined by the high stakes involved in spectacular cases. Either scalps are successfully claimed, which rather dulls the focus on good housekeeping as the instrument of such retribution, or else high crimes and misdemeanours aren't proved, and the whole thing is soon forgotten, along with an understanding of why recordkeeping is important. In the public mind, data governance is associated with privacy (no bad thing but not the same as anti-corruption). Worse still, politicians (understandably seeing poor recordkeeping as a trap used to ensnare them and a danger to their well-being) become leery of accountability mechanisms.

Data fights corruption by upholding good governance ("the legal and institutional arrangements and relationships that shape the way decisions are made and authority is exercised") and there are lessons to be learned (I believe) in sustaining the integrity of recordkeeping as part of good governance, provided the link between good recordkeeping and good governance can be established in the first place. It is often assumed and proclaimed in generalized terms, but seldom demonstrated as to specifics. So that is our first task – to make an argument that recordkeeping should be part of the anti-corruption debate, free of bickering about the State's history.

That done, how do we articulate a role for recordkeeping? The problem with standards is that monitoring and reporting takes place in relation to implementation of the standard, not in relation to

performance and outcomes (cf. aged care sector). Our reporting and monitoring systems, therefore, need to –

- Routinely detect and expose recordkeeping failures,
- Evaluate their significance and guide their correction,
- Incentivize, prioritize reforms, and monitor progress,
- Test 'what works' and continuously update standards and monitoring systems.

That's a big job. It would require focus and purpose to advance such a role. It would require an entity capable of discharging the role undistracted by the task of "enhancing access to the stories of our State's history" (laudable though that secondary goal may be). More than that, it would require an entity whose success would depend on making its role and purpose clear to the public without confusion as to another curatorial task. Monitoring the performance of a merged entity having that curatorial task would be but one part of the recordkeeping role. On the principle that you can't audit your own performance, the two roles **could not** belong together.

2019, September 25: Thomas Cook Archives

<<Joanna Sassoon: … Appeal to preserve Thomas Cook archive as company ceases trading>> The efforts described are typical of what happens in these cases. Alarm is raised when the crisis occurs, those who can make a decision have other things to think about, our efforts are ad hoc and seemingly self-interested (who gets the stuff). But there's a lot more to it than that. BAC is a responsible outfit and I'm sure they and others have given thought to how these matters should be handled. What is lacking (so far as I'm aware) is a Protocol endorsed by r/keepers and stakeholders (in this case historians have been asked to "testify" as to the value of Th. Cook Archive). But an established, documented Protocol would have several virtues:

- It would concentrate our own thinking ahead of crisis-management, ensuring the issues were clearly thought-out and tactics developed in advance;
- It could be presented on the basis of social responsibility rather than self-interest;
- It would be something we could socialise amongst stakeholders in advance (including a responsible corporate audience) so they would be dealing with something that had status not just a knee-jerk reaction.

Leaving aside the issue of government subsidy, ownership, or control (which may bring in questions of public ownership and control) and the possibility of legal dispute over private ownership, the cases that arise generally fall into 3 categories (not necessarily mutually exclusive) and the way forward differs for each.

- Legacy records (including the archives if any) are part of the assets of the business and are managed as a necessary basis for continuing operations. This is the case, for example, with insurance, banking, health and care providers, social welfare, etc. where the records and the customer-base are integral to the future operation of the business.
- Legacy records are "part of the furniture" regarded by liquidators or new owners only as to their monetary sale value or as a tax write-off. A liquidator, for example, taking this attitude would need to decide how to handle a saleable asset to the benefit of creditors and whether they were entitled to simply give it away.
- Legacy records are recognised as a social obligation the handling of which has moral and reputational dimensions for any business taking over the defunct concern.

What should be done involves a spectrum of possibilities (selling it, donating it, depositing it but retaining management, depositing it and divesting day-to-day management under agreed protocols, giving it away altogether, etc. etc.) Just framing the issues this way would take most companies a long way towards a better understanding of what they are dealing with. A fourth issue has to do with what I'll call "formed archives" (though I hate the term and the idea). This occurs when

- A business swallows the entire archives of another company (or union, NGO, etc.) and maintains them intact w/o addition or depletion.

- A business lives long enough (as with Th. Cook) to form an archives programme distinct from other business operations.

In both these cases, it is relevant to ask whether a distinction should be made between the formed archive and other business records many of which would still be used in ongoing business operations. This was the case with SBV in 1990, when the formed archive went to CBA (to be lodged with PROV) but a huge quantity of records (some of which would have come to SBV Archives in due course) remained scudding about in the infrastructure taken over by CBA. The result is that SBV's formed archives halt abruptly, not with cessation of SBV operations in 1990 but with the 1990 intakes into SBV Archives (PROV accepted no further deposits) and the pre-1990 archives that never made it to SBVA (if they survive) are now most likely with CBA Archives or in a basement somewhere. Yet another kind of situation arises when a business downsizes, divesting itself of part of its business (usually by sale) but remaining in operation in other areas. If a formed archive is involved this can give rise to issues of splitting and allocation of future responsibility for management, public access, intellectual property, legal liability and dispute, residual claims, as well as future costs.

None of these things is simple and even if we think we know the answers others may not agree. Sorting them out as part of managing a particular crisis is not a good way to go about it. What I think is needed there and here is a more formal Protocol worked out in advance of any particular crisis. Involving r/keepers and stakeholders but also some of our more thoughtful corporate citizens. This would set out the issues (as above) and document desirable outcomes anticipating as many situations as possible. This Protocol could be promoted amongst businesses and other organisations known to have significant deposits and be at hand when each new crisis arises. A Joint Working Party (representing r/keepers, stakeholders, and - one hopes - corporations) could be on-call to manage our end of the business when crises occur. Bear in mind that for every Th. Cook Saga, there are others where the archives just slip away unnoticed. Bear in mind also that corporations will sometimes resent our intrusion at such times and perceive it to be unwarranted interference in their sensitive business affairs.

It is worth noting (in response to the cry: who's going to do this?) that development and promulgation of such a Protocol (and even facilitation of a Joint Working Party) seems to fall within NAA's national remit:

- 5(2)(b) encourage and foster the preservation of all other archival resources relating to Australia;
- 5(2)(g) With the approval of the Minister, to accept and have the care and management of material that, though not part of the archival resources of the Commonwealth, forms part of archival resources relating to Australia and, in the opinion of the Minister, ought to be in the care of the Archives in order to ensure its preservation or for any other reason;
- 5(2)(h) conduct research, and provide advice, in relation to the management and preservation of records and other archival material; and
- 5(2)(l) develop and foster the co-ordination of activities relating to the preservation and use of the archival resources of the Commonwealth and other archival resources relating to Australia.

In case it has slipped your mind "other archival resources relating to Australia" is a broader term than "archival resources of the Commonwealth". The narrower term means, inter alia,

> 3(2) … such Commonwealth records and other material as are of national significance or public interest and relate to:
> (a) the history or government of Australia;
> (d) the history or government of a Territory; or

and is limited (as a result of turf wars when their Act was being drafted) e.g.

> but do not include:
> (f) material that, in the opinion of the Minister, ought to be in the archives of another country or in the archives of an international organization;
> (g) material that relates only or principally to the history or government of a State or the Northern Territory or of a Colony that became part of the Commonwealth, not being:
> (h) material, other than Commonwealth records, relating only to a place that has been, but has ceased to be, a Territory;

Even under that limited definition, NAA has a role in the non-government sector in relation to "material of national significance or public interest" that are not Commonwealth records. But we made the operation of "other archival resources relating to Australia" even broader so as to give effect to the responsibilities assigned to NAA under 5(2)(b), 5(2)(g), 5(2)(h), and 5(2)(i) – viz. documenting the history of Australia and taking part (if not leading) efforts to preserve and document its archival heritage.

<<Andrew Waugh:…The legal responsibility of a receiver or liquidator is to achieve the best (monetary) outcome for the creditors…the legacy records can *only* be considered as assets by receivers and liquidators…Neither receivers or liquidators can simply give assets away…The effect is that Thomas Cooks' archive would be extremely difficult to save unless some organisation is willing to buy them - and in this case they may be outbid by a dealer in ephemera. It would need a legal change to safeguard such archives. A simple change would be to assign a nominal value to such archives (e.g. a tax credit) that could be unlocked by the liquidator by passing ownership to a recognised archive. You'd still need to find an archive willing to accept the records, but this would mean that the archives would have a simple value and there would be an incentive for the receiver/liquidator to find a home for them.>> Even so, sometimes the legacy records are seen as having no market value (are even seen as a liability). Market value is different to business usefulness for an ongoing concern or purchaser. And another issue for an ongoing business or purchaser may be reputational damage arising from perceived mishandling of the archives. But all of this needs to be thought through and set out beforehand, not in the midst of a crisis.

2019, October 1:

<<Adrian Cunningham: More about the Thomas Cook archives in the UK edition of The Conversation...>>
<<Michael Piggott:…I notice one of the article's links go to a UK group called the Organisational History Network which is trying to rally support for the Thomas Cook Archive. A couple of blog posts in response made me smile (thinking of the state of Australian business archives, and that wonderful word 'should'):

- **'There should surely be a legal requirement that long established companies maintain, or hand over to the government archive system, their significant archives. For instance the respected and longstanding company Costain apparently destroyed all their prewar archives, greatly frustrating historical research.'**
- **'The archives should go to the British Library or the National Archive at Kew to ensure they remain available to future historians.'>>**

2019, October 2:

In an earlier post, I suggested setting in place arrangements to deal with these crises before they occur. From the *Conversation* article, it appears the BAC has done just that. Good on 'em.

> **<<-'There should surely be a legal requirement that long established companies maintain, or hand over to the government archive system, their significant archives. For instance the respected and longstanding company Costain apparently destroyed all their prewar archives, greatly frustrating historical research.'>>**

This would be very difficult under our system of law which views such records as property. Property rights are not absolutely sacred (as one who may soon be losing his house to compulsory resumption for road-widening, I can testify to that!) but, in principle, interference with private property is (rightly) frowned upon. There needs to be some over-riding public good (eminent domain) and compensation must be paid (in the case of the C'wealth it's in the Constitution - on "just terms" cf. *The Castl*e). This all makes it very difficult to draft replevin clauses in our archives laws for dealing with official estrays (leaving aside the question of proof that an estray still belongs to the Government).

For public records, estray provisions may involve compulsory acquisition (return to official custody) or merely the imposition of limitations on what the possessor of the estray can do with it. In Victoria, a "prescribed" record must be offered to PROV and if not acquired, it may be sold or gifted, but on each subsequent occasion PROV must be offered it again. NSW provisions are somewhat more draconian but in both cases it can be argued that Govt is entitled to interfere in dealings with what are (or were) its own property. Of course, in recent times, all sorts of statutory limitations on dealings with official documents have been developed but that has more to do with content and secrecy than the materiality

of the stuff. The question of property vs cultural ownership and control (leaving aside the whole question of copyright) is highly vexed (cf. Elgin Marbles, Aboriginal artefacts in museums, cultural appropriation, etc.). Perhaps we could make a case that mishandling business records is cultural misappropriation of the heritage of post-industrial Western entrepreneurs.

Interference with dealings in non-government records would be more akin to heritage protection laws in the public interest rather than identity protection, e.g. preservation orders on buildings. These apply to heritage sites (both Aboriginal and European). Export controls do exist on art, artefacts, and documentary materials I believe (but I'm hazy) and I doubt they're often applied to records. As far as I'm aware, little has ever been done to protect movable cultural heritage (as it's sometimes called) in the same way as the built environment. And, of course, protecting our natural environment is a big issue. I suppose that now we are **re-**moving statues of historical figures who are no longer seen as cool, even heavy statuary comes under the term movable cultural heritage.

Someone once told me that some of the European countries have heritage protection laws applicable to records in the private sector, but I never followed it up.

2019, November 18: How collections end

<<Joanna Sassoon:…a new collection in the BJHS entitled 'How collections end'

> "Collections are made and maintained for pleasure, for status, for nation or empire building, for cultural capital, as a substrate for knowledge production and for everything in between. In asking how collections end, we shift the focus from acquisition and growth to erosion, loss and decay, and expose the intellectual, material and curatorial labour required to maintain collections.">>

On the question of erosion, there's been a lot of fuss in the last month or so about what the Tasmanian National Trust has been doing with its collection – specifically selling off unwanted donations made to them over the years, The latest broadside is in today's *Oz*:

> Tasmania's National Trust has quietly tried to sell more than 50 heritage items in its collection, sparking outrage from members, supporters and heritage experts, some of whom see it as a "betrayal". Those concerned at the sell-off … criticise the process as "secretive" and lacking consultation. They believe the sale … is an insult to the people who donated them … They were concerned the sale fell short of best practice for disposal of unwanted collection items, known as deaccessioning. Margaret Birtley, a museum and heritage consultant and member of several National Trust Victoria advisory committees, said this meant prior consultation with the public, members and donors or their heirs, and attempts to house the items in other public institutions ...

In my experience, museums are far more likely than archives and libraries to demand transfer of title., Perhaps this is why.

2020, August 21: Posted on the Canadian List

> … the Sulpician archives in Montreal has made all its professional archive staff redundant - a total of six positions. This leaves one of the most important collections in Canada, bearing witness to the history of New France, at extreme risk … Here is the link to the article in Le Devoir:
> Taken from the article:
> … The employees had to immediately hand over the numbered combinations of the vaults and the archives. Six employees were escorted to the door, flanked by a security guard who does not normally work there … Many documents and objects require control and monitoring, especially in this season when large variations in temperature lead to high humidity levels …

What protocols are there (or should there be) for the dissolution and/or disbursement of archival "collections" or their handover to philistines? Many endings are abrupt and poorly planned. There's been chatter on this list about Thomas Cook and the Fairfax photos. I have been involved in a few – notably the State Bank of Victoria Archives from both ends. I was in my last days at PROV when CBA took over SBV and there was a public outcry that the SBV Archives must not go to Sydney – with the result that the "collection" was put on permanent loan to PROV. What didn't seem to be properly considered was that the "collection" was fed from the recordkeeping process at SBV which was still in operation and continued well after the transfer while the business was being wound up. No

arrangements were made to continue feeding SBV records into the “collection “ now held at PROV. The result was that the uncollected material sloshing about in the subsumed entity and beyond while the affairs of SBV were being finalised remained in the hands of CBA. No arrangements were made to continue feeding this material into the SBV Archive so that, in due course, some of it found its way, while I was in charge there, into CBA Archives in Sydney where a sort of phantom SBV Archives began to grow – including the so-called National Money Box Collection assembled by SBV but not, apparently, made part of the SBV Archives holdings prior to the takeover. The same thing happened after 1960 when CBA 1 split into CBA 2 and RBA and the RBA took the formed Archives. But a lot of pre-1960 stuff remained (including some stuff about other merged entiities) which, like the SBV residue, became part of CBA Archives.

By way of contrast. the CML Archives, acquired by CBA in 2000 and kept separate within CBA Archives, nevertheless had a strong relation to other CBA Archives holdings derived from the continuation by CBA of business under the "Colonial" brand. But the distinction between the formed CML Archives and CBA's Colonial-brand records still had to be kept since there was no business continuity because there had been an intervening merger between CML and State Bank NSW (formerly Rural Bank). Interestingly, Rural Bank itself had been hived off from the NSW Government Bank that went bust in the Depression and was absorbed at that time by CBA 1 (minus the Rural Bank). It's all enough to make your head spin.

<<Deb Leigo:…We know how change should be managed. Do you see a way for the situation to change from ad hoc and unplanned?>>.

2020, August 22: Frog-marching you to the door and taking your keys! That is what corporations do if they fear you are disgruntled enough to harm their assets. How could they have so misread the archival ethos? It seems too crazy to be true. But, even if the reportage is exaggerated, the power and incomprehension are familiar enough. Closure, merger, and dissolution aren’t always ad hoc and unplanned as the process now under way in NSW clearly shows, but the incomprehension is there all the same. And the outcome is more or less the same in any event. How do we deal with that? Do we mitigate (as some have argued we should) or do we fight?

We’re up for a fight as the ASA submission to the NSW Committee demonstrates, but we’re also prepared to collaborate to get a better deal (if Andrew’s interpretation of the D-G’s evidence is correct). We’ve had some wins in the past and we’ve had some losses. I worry a bit that we seem to adhere too defensively to the status quo when dealing with ill-informed threats. For us to embrace right-thinking change is just as necessary as it is for us to oppose wrong-headed change when needed. And tactically that is a way to take the initiative.

In my little presentation to the archives students on activism, I identified two qualities needed to uphold our ethos – focus and persistence. How unfocussed we are has been demonstrated in evidence before the NSW Committee. What ensues there may now test our persistence. If the merger goes ahead, do we resist or collaborate? Past experience suggests that, having lost, collaboration is our most likely response to being trampled on. So perhaps the mitigators are right, after all.

God have mercy on such as we – baa, baa, baa.

2020, August 27: For the benefit of those who don't subscribe to the Canadian List -

> "Minister Nathalie Roy is taking action. As announced last week, the Minister of Culture and Communications has just requested the classification not only of the archives of the Company of the Priests of Saint-Sulpice, but also the rare books and movable goods that the Sulpicians have since collected. their arrival in Montreal in 1657.
>
> The government confirmed on August 25 that Minister Roy " recently signed a notice of intent to classify to ensure they are protected" under the Cultural Heritage Act...."

2019, December 8: Where will all the archives be?

Faith in our government r/keeping systems is predicated on the idea that a “full and accurate record” can be maintained and preserved under a regulatory mandate. But does evolutionary change in the

way public business is conducted invalidate the premiss on which that regulatory mandate is based? Archives laws are written on the basis of assumptions about the way institutions function. Is the role of the public service being reduced to “service-delivery” while policy-making is undertaken beyond the reach of transparency and archiving? Laura Tingle thinks so.

> Shortly after the federal election, I had a conversation with a figure at the very centre of the Government. [Had the PM] detected a weariness with the ideological wars of politics among disconnected voters, and recognised political self-interest in shaping both the Government's message, and its agenda, around the basics of government service delivery? Did this mean the Government might abandon some of its ideological warfare against institutions? "Don't be ridiculous," this person snorted. "If anything, this Government is more ideologically driven than Abbott. They want to win the culture wars they see in education, in the public service, in all of our institutions,
>
> … while people have talked about the growing role of ministerial offices and advisers for decades, this week's announcement really crystallises a trend to the sidelining of the public service as a frontline provider of policy advice ….The Prime Minister [has] reflected on how he had told public servants soon after the election "about having a very strong focus on the delivery of services because that's what Government is there to do". "I want a public service that's very much focussed on implementation....Whether... they're preparing research, the policy they're developing, services they're delivering on the ground and ensuring that could be done efficiently and keep Australians connected to them in the work they do each day."
>
> .. The underlying message from the Prime Minister is really a reflection of the fact that policy is largely driven by ministers and their offices these days, rather than a clear line of process that involves public servants, and/or the people who have been commissioned by the Government itself to advise it …Once things are decided in a minister's office, the scope for even the parliament to find out what has happened is immediately constrained …
>
> If these new changes mean even less policy flows out of the public service, what hope have we of knowing who is making the decisions, and on what rationale, in areas that the Government doesn't feel like talking about or prioritising, like the arts? It is hard to see any discussion coming up in Estimates, for starters. Public servants are now supposed to be the facilitators of policy rather than its authors, but, in fact, particularly under Coalition governments, they have often become little more than post boxes for the outsourcing of contracts to the private sector. There's too little transparency.

<<Adrian Cunningham: …The trend towards Ministers' offices carrying out more and more of the really important work of government has been going on for many years. In the Commonwealth the Archives Act is deeply unsatisfactory in its handling of the records of official business that are (or should be) created in Ministers' offices. This gap desperately needs to be fixed, but I don't sense any appetite to do so...In Queensland the (more recent) Public Records Act very definitely and explicitly includes Ministers' offices within its scope…[but]…The Qld Act is vague on enforcement… So, it is good that people like Laura Tingle are drawing attention to the issue. We need to build a public groundswell to address the problem to help give us a truly healthy, transparent and accountable democracy. But pigs might fly too.>> The roles that our government archives have themselves adopted change over time.

1. **Stage 1**: Their origins are as memory institutions – not as a memory for citizens or the “nation” (itself a concept only a couple of centuries old) but as a memory for government of precedent and of favours bestowed and duties owed.
2. **Stage 2**: More recently, following the precedent set by the French revolutionaries, they now proclaim themselves to be guardians of the nation’s memory – enter historians and other third-party users – available as a mechanism for scrutinising government activity and (by extension) upholding accountability. The records supporting this claim are “policy” and transactional records of general or public interest. Particular instance data is embedded in records with a different primary purpose (e.g. accounts and charters).
3. **Stage 3**: In the last two centuries, the involvement of government with the daily doings of individuals (persons and corporations) has extended comprehensively so that for the last 100 years it has been scarcely possible to escape. This has led to an explosion of particular instance recordkeeping which are the focus now of interest by individuals about themselves.

Pre-Tudor, records survive because of their rarity. Until more regular processes emerged in the 19th century, many policy and transactional records are classified as State Papers and ended up in esoteric repositories such as muniment rooms and libraries. Then came the apogee of the historical archives – e,g, Colonial Office archives bearing witty marginalia made by well-educated clerks on incoming governors' despatches and internal memoranda.

Prior to 1800, inter-actions with government were slight. There was no income tax. Revenue was raised by excise or customs that left transactional records but not data pertaining to individuals. Private corporations could only be established by Royal Charter or Act of Parliament. Births, deaths and marriages were documented by the Church. A regular Census has been conducted in the UK only since 1801. In the pre-digital age, the most extensive use of surviving particular instance data was by genealogists. They were sometimes looked down upon as distracting from our work supporting what were once called genuine or serious researchers. Digitisation has changed all that.

Government archives have been furiously digitising their particular instance records and striking sweetheart deals with Mormons and Ancestry thereby aggressively adopting a service-delivery role. Born digital records will open new vistas for greater retention and exploitation of particular instance data (with privacy the most likely obstacle for everyone except government archives which have wangled a special status for themselves) but born-digital may soon become available using new delivery channels that could do the archives out of any kind of role.

The purpose of this potted history is to suggest that, despite the rhetoric that government archives fulfil a memory and/or accountability role, they may have imperceptibly (and possibly without realising the implications for themselves) adopted a service-delivery role which may set them up well for an era of de-institutionalisation, as practised by Morrison and like-minded subverters of our democratic freedoms. To suggest also that our government archives need to think very hard about what they wish to be and, as the old adage says, to be careful what they wish for.

2019, December 9:

<< We need to build a public groundswell to address the problem to help give us a truly healthy, transparent and accountable democracy. But pigs might fly too>> This just in:

> Australia's civil rights rating downgraded as report finds world becoming less free
>
> The world is becoming less free and, in Asia, almost nobody lives in a country where civil rights are not being eroded or repressed, a new civil rights report has found. And the 2019 CIVICUS Monitor, a global research collaboration that tracks fundamental freedoms in 196 countries, has downgraded Australia from an "open" country to one where civil space has "narrowed", citing new laws to expand government surveillance, prosecution of whistleblowers, and raids on media organisations.
>
> … In 12 countries assessed across the Pacific, including Australia, more than half were rated as "open" by CIVICUS … But CIVICUS said "the most alarming deterioration in civic space [across the Pacific] is occurring in Australia, which has been downgraded from 'open' to 'narrowed'". Australia has seen the recent criminal justice examples of the prosecution of whistleblower Witness K, who exposed Australian bugging of ally East Timor's cabinet room under the guise of a benevolent aid project, and the secret trial of Witness J, who was tried, convicted, and sentenced on national security charges in complete secrecy.
>
> … CIVICUS said freedom of the press was under particular threat in Australia, with raids on journalists' homes and on media organisations. Whistleblowers are targeted for exposing government wrongdoing and face prosecution under the Intelligence Services Act. Technology companies are facing an environment of increasing surveillance with new legislation passed which will force IT companies to hand over user information even if it is encrypted. "New laws in Australia are creating a chilling effect on freedom of expression, especially for journalists and whistleblowers seeking to expose issues of public interest," CIVICUS UN adviser Lyndal Rowlands said. "Other new legislation seems to give the government inappropriate powers to allow for unjustified encroachments on Australians' right to privacy."

It might be argued that archivists can whittle and chew gum at the same time – that service-delivery does not preclude support for memory/accountability. Indeed, I once thought that myself and have more recently heard that argument put by some government archivists. Agreed, though I have now long advocated a separation of the two roles. There are three issues at stake: how well we perform both

roles, how well we ourselves understand the balance between them, how well our duality is perceived and valued by others. Is it likely, do you think, that Morrison, Dutton, Porter, et al would understand it or value it if they did? How much more likely that they would want to de-institutionalise the memory/accountability mechanism in favour of the service-delivery role.

In the current political climate, if I were a government archivist, contemplating changes to my enabling legislation is the last thing I would do, Unless, of course, I was minded to transition more boldly into service-delivery (or else too stupid to understand the implications).

<<Adrian Cunningham: …the first question is what should be good for the nation?...I would say…:

- **in the Commonwealth it is not good that there are no clear requirements on Ministerial offices to make and keep good records**
- **in Queensland is good that there is a clear requirement for Ministerial offices to make and keep good records**
- **In Queensland it is not good that there is no proper enforcement regime for the above provision.**

…Legislation needs to be clear about how enforcement should be pursued and by whom. Whoever has the enforcement role needs sufficient power, resources and independence to pursue their role without the risk of being constrained by those who they are meant to police. How should government archives fit into this? They certainly don't have to be the enforcers,,,>> In *Political pressure and the archival record revisited*, I set out a table of possible roles that could be assigned to a government archives authority – viz. ordainer, preceptor, mentor, facilitator, provider, enabler, monitor, watch-dog, enforcer, and auditor. Some of these are mutually exclusive. It is axiomatic, for example that auditors are never enforcers and that the ordainer cannot be the auditor (because the ordainer's performance is also subject to audit scrutiny as well as the performance of those subject to the ordainer's edicts).

<<At present in Qld the PR Act implies that QSA is the enforcer (it has powers of inspection and can report to Parliament - providing both the DG and the Minister approve the reports in question).>> I would not describe this as enforcement. In my table this role would fit more appropriately under "monitor" or "watch-dog" where the archives authority detects lapses but someone else must act. The role of "enforcer" goes further -

> Watch-Dog with Teeth : Involves compulsion or inflicting penalties – directing others, detecting transgressions, altering behaviour by punishment/sanction.

<< I wish for a proper regime of enforcement - not necessarily that the govt archives should be that enforcer.>> It seems to me that the more relevant question (and in many ways the prior question) is how r/keeping requirements are enforced rather than who does it. Many of our laws have criminal penalties and little else beside. But, unlike most laws with criminal sanctions, archives laws are directed at misbehaviour by public officials not the citizenry. It turns out that governments hate prosecuting ministers, advisers, or officials for bad r/keeping (which they don't regard as all that serious in the first place) and that proving misdemeanours to the standard required for criminal offence is extremely difficult. What is needed is a powerful regime that modifies behaviour on an on-going basis rather than punishing past lapses. Past lapses should be punished (short of criminal conviction) only where the possibility exists of sinister intent (e.g. an intention to deceive, mislead, or obscure wrong-doing such as fraud or malfeasance).

2019, December 13: Further to the relationship between r/keeping and the way government business is conducted, with particular reference to the role and accountability of advisers, comes this Friday 13th announcement –

> The Morrison government has rebuffed a recommendation that it establish a legislated code of conduct for ministerial advisers, professing itself happy with the status quo. The recommendation to bring ministerial advisers into a clearer accountability framework is contained in the long awaited Thodey review of the public service, which was released by the prime minister, Scott Morrison, on Friday … The Thodey review referenced debates in recent years that ministerial advisers … should be made more accountable through parliamentary scrutiny in the same way public servants are held to account by committees, like Senate estimates ...

> But the prime minister pushed back … The government argued the current expectation was that "all ministerial staff to uphold the highest standards of integrity" and appropriate behaviour was already enforced …

Is this the moment for a press release from ASA urging that advisers and their activities be brought unambiguously within the scope of the archives laws? And explaining why.

2020, March 19: Safe Haven

Some subscribers to the History Channel who are following Portillo's Hidden History of Britain will have learned in episode 3 (just screened) something I didn't know. Shepton Mallet Prison (now closed) was used to store documents from the PRO (as it then was) during WWII.

> With the outbreak of war the prison also took into protective storage many important historical documents from the Public Record Office in London, including Domesday Book. the logbooks of HMS Victory, the Olive Branch Petition (1775), and dispatches from the Battle of Waterloo. In all about 300 tons of records were transported to Shepton Mallet. Some documents, but not Domesday Book, were moved out of Shepton Mallet on 5 July 1942 due to concern at the concentration of important items being held in one place, especially with German bombs falling on nearby Bath and Bristol. During their time at Shepton Mallet the archives were still able to be accessed.[45] The archives were returned to London after the end of the war, between 10 July 1945 and 1 February 1946. Wikipedia

A nice addition to the unresolvable debate over whether artefacts are safer collected or distributed.

2020, April 3: Something else to worry about

Time at home gives us an opportunity to look about the Internet. Dangerous, of course, because there's a lot of nutty stuff out there and packaging your own interpretation of the data without the necessary expertise is the very stuff of fake news. I came across stories about how Jakarta is sinking. Really badly. Thought about the effects of that on Indonesia's memory palaces. That led me ask myself about how vulnerable archives buildings are elsewhere. A list of cities at risk includes Washington and Beijing.

I'm sure our institutions include flooding and rising water tables in their risk assessment plans. Archives aren't easy to move and it would be interesting to know which are most vulnerable. NAUK is situated along the river where the risk is substantial. There are maps showing areas of greatest risk. And, comparing the London map with the location map for NAUK (snugly situated in a bend in the river), it looks to me as if they are at risk of inundation at some point.

I wonder if there is any survey of institutions world-wide that are in a similar situation. Risk assessment undertaken singly is all very well but might it not be useful (should an international effort ever be mounted) to have the data that would enable relative risk to be assessed? Not just a retrospective evaluation of the memory-of-the-world but a prospective view of its future survival? Come to think of it, a comprehensive evaluation of risks of all kinds would be valuable alongside registration. Perhaps it already exists?

<<Elizabeth: The closest thing I know is this project>> It is "the first to our knowledge to investigate the spatial variability of climate risks to libraries and archives and detail how this may change in the future under expected climate change." Good work! But it illustrates the complexity and the difficulty involved. The answer will always depend upon how the question is framed. If you ask "how will climate change affect archives" this is the kind of answer you get. But, serious though that is, it may not be the best answer. The list of cities at risk doesn't suggest that climate change is the only problem:

- Jakarta : " rising sea levels and the over-extraction of groundwater"
- Houston : "like Jakarta, the over-extraction of groundwater is partly to blame"
- Lagos : "the coastline has already been eroding. As sea levels rise due to global warming, the city is increasingly at risk"
- New Orleans : "vulnerable to rising sea levels because it was built on loose soil and was positioned so close to on the coast"
- Beijing : "the cause of the sinking was depleting groundwater, similar to the situation in Jakarta and Houston"

- Washington : “unlike Jakarta, Washington's sinking has nothing to do with aquifers or rising sea levels -- it's actually because of an ice sheet from the last ice age … When the ice sheet melted, thousands of years ago, the land settled back down. The researchers now believe that the area is gradually sinking, a process that could last thousands of years.”

So, what are the variables:

- **Natural vs Human**? Climate change, earthquake, tsunami, land slip, groundwater depletion, fire, flooding, etc. etc. require a different evaluation to security (arson, terrorism, ethic cleansing, civil war, and so forth).
- **Local vs Global?** Will the impact be widespread geographically or localised. NANZ in Wellington is below sea level on land reclaimed from the harbour and on the North/South fault line running down a country pone to earthquakes. A common risk in that country but not the same risk factor everywhere else. [When I was there, I suggested the only safe place for NZ’s cultural heritage was Australia but that wasn’t thought feasible.]
- **Impact vs Probability?** The standard risk assessment tool for co-ordinating impact and likelihood.

Lots more variables to be considered, I’m sure. What we need, by way of a beginning, is a risk evaluation template for archives. Don’t hold your breath.

2020, April 30: The ICA is conducting a survey to register risks to documentary heritage. It seems to focus rather more on status quo than the kind of existential threats mentioned at the beginning of this thread (global warming, sea levels, subsidence, rising water tables, etc.). I take "flood" to mean inundation and overflowing rivers, king tides and the like. The survey seeks data on

Previous events

- Damages: Fire; Moisture; Falling debris; Dust; Insect, pests, microorganisms; Lack of maintenance; Building or structural damages; Damages to the electric system; Damages to the hydraulic system; Interruptions [sic] of communications (telephone, computers, internet, access to digital records); Loss of staff; Lack of security measures; Lack of budget to operate; Other
- Disasters: Earthquake; Flood; Storms; Hurricane; Fire; Chemical damage; Civil disturbance; Theft; Illicit trafficking of documentary heritage; Armed conflict; Earthquake; Flood; Storms; Hurricane; Fire; Chemical damage; Civil disturbance; Theft; Illicit trafficking of documentary heritage; Armed conflict; Other

Future hazards

- Meteorological: Storm / rain / cyclone; Hurricane; Typhoon; Tornado; Ice storm; Dust storm
- Hydrological: Flood; Tsunami
- Geological: Volcanic, Earthquake
- Biological: Pest infestation (rodents, animals, insects, others); Microorganisms (bacteria, virus, mould); Diseases
- Human induced: Fire; Pollution; Social or political conflict; War; Technological hazard
- Chemical: Radioactive; Nitrate (film, cellulose)
- Other(s)

The Survey seeks information about measures taken for prevention, response, and recovery

2020, August 23: Impossible things just happen

From ABC News

> … about 97 episodes of Doctor Who are currently missing — not through time or space, but from the BBC's own archives ... the disappearance of these early episodes — filmed during the 1960s and '70s — was less nefarious than it was routine. Faced with limited storage space, the BBC regularly deleted archived content, consigning thousands of hours of programming to the memories of television buffs ...
>
> In the same period, copies of the programs were sent around the world to other broadcasters (including the ABC). While the BBC had ordered they be returned or destroyed, over the years a variety of episodes thought to have been lost forever have resurfaced ... In a storeroom in Jos, a little-known tourist town in

> Nigeria's Middle Belt, Philip Morris's heart skipped a beat … It was 2013, and Morris, the director of Television International Enterprises Archive — a company that helps TV stations search for lost footage — had just stumbled upon a slice of history: nine missing episodes of the iconic series, buried away in a local television relay station. "He found those because there was an old shipping transcript that had said that the BBC had sent these episodes to Africa, but there was nothing to ever say they'd been returned," … Of the 50 episodes recovered since 1978, 15 have been reclaimed from Nigeria, while another 24 have been returned from broadcasters in countries including Cyprus, the United Arab Emirates and even Australia ...
>
> Enter: Paul Vanezis, a freelance producer, director and archive consultant, who has worked on Doctor Who since the mid '90s. Based in the United Kingdom, Vanezis has been actively involved in the search for missing episodes — a quest also being undertaken in Australia ... Before these early episodes could be broadcast to local audiences, they were sent to the Film Censorship Board for classification and approval … For decades, the fate of these censored clips remained a mystery. That is, until 1996, when Vanezis's colleague Damian Shanahan tracked them down to the National Archives of Australia ... More than a decade later, another lost episode with ties to Australia would again resurface — this time in the hands of a film collector in the United Kingdom. "It turned out to be the original ABC print that was returned by the ABC in 1975, and then thrown away by the BBC because it had been [censored]," Vanezis says.
>
> Australia's role in the long-running series piqued Vanezis's curiosity. For two decades, he'd been aware of a mysterious film languishing in the National Archives, simply titled Doctor Who ... While it wasn't a missing episode, the footage — now being released by the ABC's RetroFocus program — shows a young(ish) Tom Baker being interviewed by school children for an episode of Behind the News ... The rediscovery of this clip, some 40 years after it was filmed, begs the question: could other long-lost episodes still be in Australia?
>
> Vanezis points to the Dalek's Master Plan, the mostly-missing third serial of Doctor Who, which aired in the United Kingdom from November 1965 to January 1966. While the ABC had purchased the series, the Film Censorship Board recommended so many cuts "it would have rendered it unwatchable". And so, the episodes were relegated to a storage room at the ABC's Gore Hill studio, which was sold off in 2003 ... Missing episodes were stored at the ABC's Gore Hill studio, which was sold off in 2003 … And while the fate of these films remains uncertain, Whovians hope they may one day re-emerge …

2021, March 8: Delenda est biblioteca

Sydneysiders may be interested to know that the excellent Abbey's Bookshop has remaindered *Books on Fire: the Destruction of Libraries throughout History* for $15. Giving an account going back to Alexandria (and before that) up to the destruction of Iraq's libraries by the Coalition-of-the-Willing (Bush 2, Blair, and Howard) it makes for depressing reading. Other examples include the purge of Chinese writings in 3rd century BC, successive sackings of Rome, iconoclasm, the Tudor Reformation, Louvain (twice), the Chinese Cultural Revolution, the Balkan cleansings in the 1990s, and many, many more. Aargghh!

Having discovered Polastron's book quite by accident while browsing this morning in Abbey's, I have now browsed about on the Internet and discovered three more titles that I will be pursuing and that others too might be interested in –

- *Burning the Books: A History of the Deliberate Destruction of Knowledge* by Richard Ovenden (Amazon: $18.88) The director of the famed Bodleian Libraries at Oxford narrates the global history of the willful destruction—and surprising survival—of recorded knowledge over the past three millennia.
- *Burning Books and Levelling Libraries: Extremist Violence and Cultural Destruction* by Rebecca Knuth (Amazon: $21.99) In her previous book *Libricide*, Rebecca Knuth focused on book destruction by authoritarian regimes: Nazis, Serbs in Bosnia, Iraqis in Kuwait, Maoists during the Cultural Revolution in China, and the Chinese Communists in Tibet. But authoritarian governments are not the only perpetrators. Extremists of all stripes—through terrorism, war, ethnic cleansing, genocide, and other

forms of mass violence—are also responsible for widespread cultural destruction, as she demonstrates in this new book.

- *Libricide: The Regime-Sponsored Destruction of Books and Libraries in the Twentieth Century* by Rebecca Knuth (Amazon: $13.50) Where they have burned books, they will end in burning human beings, declared German poet Heinrich Heine. This book identifies the regime-sponsored, ideologically driven, and systemic destruction of books and libraries in the 20th century that often served as a prelude or accompaniment to the massive human tragedies that have characterized a most violent century.

2021, March 9: <<Chris Gousmett: There is also a marvellous story about the struggle to save the Islamic books and manuscripts of Timbuktu from the Islamists who wanted to destroy them. Charlie English. The book smugglers of Timbuktu. The quest for this storied city and the race to save its treasures. William Collins, 2017.>>
<<Michael Piggott: Perhaps worth noting that Chris' 2017 title followed a 2016 treatment of similar territory by Joshua Hammer (*The bad-ass librarians of Timbuktu*, Allen & Unwin), the former however being more historical than the latter, though both are by journalists and both drew on contemporary informants too. Their books highlight a larger point worth noting that often accompanying accounts of book burning, cultural genocide etc are stories of incredible efforts at resistance and rescue. Even when archives are neglected or abandoned or threatened during conflict rather than explicitly targetted these efforts should be acknowledged. An example, introduced to me by Jeannette Bastian, is described by Kirsten Weld in her *Paper Cadavers; the archives of dictatorship in Guatemala* (Duke, 2014). Another is provided by Trudy Peterson in the current *ICA Section on Archives and Human Rights Newsletter*>>

2021, March 13: Tune Review released

<<Michael Piggott: Given the standing and role of the NAA at the centre of the Australian archival system and democratic accountability, I urge everyone to read the Tune Review report. It contains very important and relevant observations and recommendations. And also to think upon the timing of its release (forced by an FOI application?), over 13 months after it was handed to the Attorney-General and the Archives, the credit for which is now claimed by both *The Guardian* and Senator Patrick (in today's *Canberra Times*).>>
Apart from despair over the silence on NAA's neglected national and leadership role under its Act, I had a quiet chuckle over that part of the Tune Report dealing with the definition of "record" (section 7.2) -

> To keep pace with technological developments and seize opportunities for efficiencies across government, the most notable deficiencies in the current Act are:
>
> - The definition of a 'record' in the Act – 'a document, or object' that contains information – does not have practical application in the era of cloud computing, where it is impossible to identify the object that contains the information.
> - Owing to its pre-digital origins, the Act does not foresee that a record can be archived while it is still in active use by the creating agency. This leads to delays of several years before the transfer of digital records, increasing the risk of loss through neglect and technological obsolescence
> - The definition of a Commonwealth record is limited to a record that is the property of the Commonwealth. This definition is unreliable in an age of third party, non-Commonwealth digital platforms and telecommunications providers. Similarly, where private contractors increasingly deliver government services, a stronger definition is required as to what records serve as evidence of Australian Government actions

Good luck with that. If they can get around the constitutional difficulty and dump the dreaded property test, well and good. Otherwise ……

All archives laws operate at the intersection of ambit (whose actions are regulated by the law's provisions) and interpretation (what constitutes a record and hence what is a government record to which such regulation applies). The claim that archives laws uphold accountability is threadbare because we have seen over the years that, when there are political egos or skin in the game, there is scant enforcement and the words of the statute count for little. No drafting is proof against quibbles over meaning or legal loopholes. Three recent cases about whether or not documents created by the Executive are government records illustrate the point:

- The Hocking Case where the High Court had to decide that they were.

- The Annastacia Palaszcuk Case where the Queensland Solicitor-General decided they were not (mostly).
- The Gladys Berejiklian Case where it was decided (apparently) that it doesn't much matter one way or the other.

In cases such as the Queensland emails, a Premier truly devoted to democratic accountability would have reacted to the advice she received by concluding there was a defect in the Act which needed fixing – not by breathing a sigh of relief at escaping scrutiny. But that is not how things work in a climate of the 24-hour news cycle, political spin, and the nightly diet of gotcha moments.

Tune mentions coverage of ministers and their offices in passing (section 2.6) but doesn't, so far as I can see, grapple with grey areas (e.g. advisers, consultants, "private" emails).

You don't start with an evaluation of the existing definitions but with an analysis of what we want to achieve. Who and what do we want covered? Then, so far as possible, you draft it into lawyer-proof language. But, when political interest or reputations are at stake, there will always be a way around the drafting, however robust it is. After thinking about it for nearly 50 years, I have concluded that we need more than statutory language, more than a black-letter definition fixed in stone for lawyers to get their teeth into (strange mixed metaphor, that).

In addition to a statutory definition, we need a mechanism to adjust the interpretation part of the intersection to meet changing and unforeseen circumstances. This would be a power, for example, to expand and alter the definition as cases demonstrated that it was not working as intended. The updated interpretation could not, of course, operate retrospectively to make unlawful actions that had already occurred, only prospectively to prevent them happening again. But doubts about records already in existence might be resolved (subject to the usual qualifications re property and other entitlements).

It could not be a tool for making new law but something employed unilaterally for the avoidance of doubt in relation to future actions by servants of the Crown. There would be a countervailing fairness argument vs the over-riding public interest claim. The lawyers wouldn't like the "uncertainty" and I have some doubts myself that the archives authorities would be capable of making effective use of such a device in view of the way they mucked up the NAP (a similar adjustment mechanism that they failed to use properly). But it may be worth thinking about.

PS The second dot point in the quote from Tune is quite wrong. The access provisions, for example, apply regardless of whether the records are "active" or with Archives. If there is a flaw, it is that the Act doesn't deal adequately with the option of leaving "inactive" records with agencies.

PPS I cannot forebear from noting that it is advice from the current Queensland Solicitor-General upon which the Qld Premier now relies and that it was advice from a former Queensland Crown Solicitor that fired the starting gun in the Heiner Affair.

WHO DO WE THINK WE ARE?

What is our role now and in the future? Do we understand how the nature of recordkeeping is changing around us? How do we identify ourselves and who with? What should we call ourselves? Appraisal methodology - theory and practice.

2017, 5 Dec: Where have all the file clerks gone? Tales of recordkeeping in changing times

2018, Mar 12: When is an archives a nuisance? Things we do to get by

2018, Dec 12: Vladimir Putin, recordkeeper? Sometime fraternal socialist with Stasi

2019, Jly 17: Distressed recordkeepers When it all gets too much for us

2019, Aug 9: …article that everybody is talking about Appraisal, universals, the whole damn thing

2020, Apr 17: An adumbration of archivists? What do we call ourselves?

2020, Apr 20: Collaboration and leadership Distributed access in NZ

2020, June 19: The proper study of mankind Do we belong with Data Quality?

2021, Jan 24: RM theory & digital records Managing emails - theory vs application

2017, December 5: Where have all the file clerks gone?

A report in the Weekend Australian on the results of the 2016 census concerning Jobs compares occupations that are increasing as a percentage of the workforce and those that are in decline. There's no category for archivist or recordkeeper but there has been a drop of 25% in **Filing or registry clerks** since 2011 – down by 4,029 to 12,271. The largest drop was for **Charter and tour bus drivers** which I find surprising and perhaps suggests that the statistical variation is in how people choose to 41ealized4141at themselves rather than how people are actually employed (but I'm no statistician).

> … Most growth is delivered in the largest single job category, sales assistant (general), which added 69,100 workers over five years to reach a base of 526,000 workers in 2016. Other big-growth jobs include aged or disabled carer, up 24,100 workers between 2011 and 2016; chef, up 23,100 workers; domestic cleaner, up 20,700 workers; and kitchen hand, up 17,200 workers. These five occupations added 154,000 workers during the past five years, or about 30,000 net extra jobs per year…At the opposite end of the ranking is a collection of skills that are contracting. Most losses apply to the job of secretary, down 19,200 or 36 per cent over five years to 34,000 in 2016…The reason secretaries are shrinking is because senior management has finally learnt how to type. Plus, with email there is an audit trail of who said what to whom, and so the traditional role of secretary has changed. But this does not mean that there are 19,000 unemployed secretaries resentfully sitting at home and fomenting revolution. The agile life form of secretaries is adapting to environmental change…Jobs with the fewest workers include bungy jump master (we have a total of eight in the workforce), hunting guide (nine) and trekking guide (21). Ten new jobs were added to the workforce classification this census, including kennel hand (1221), archeologist (426) and intellectual property lawyer (736). Interestingly, we have 495 historians, down from 527 in 2006, but not a single futurist…

Perhaps file clerks are disappearing for the same reason as secretaries – viz. because "with email there is an audit trail of who said what to whom, and so the traditional role … has changed". So, now we know: we no longer need secretaries (or file clerks) because email systems keep meticulous records!!!!

2018, March 9: Alas! I'm only an expert

Aficionados of *Yes Minister* will recall the character of Dr Cartwright who knows everything about local government but will rise no higher because "Alas, I'm an expert". Also the episode in which an expiring contract goes wrong under Scottish law because the official in charge many years ago (Sir Humphrey) wasn't a lawyer and didn't know the difference; he explains that he would never have been put in charge of the legal section if he had been a lawyer. In an episode of *The Games*, Brian (who knows about transport) has to fend off a gaggle of amateurs (who know nothing about it or, seemingly, much about anything else) who are screwing up planning for transportation at the Olympics. When I was in Victoria in the 1980s in charge of PROV, I once had a lecture from the departmental head of the day on why a professional archivist should not head up a government archives programme – "we don't want engineers in charge of planning the construction of bridges," he said (in all seriousness).

An article in today's SMH resonates:

> The NSW government decision to buy more than $2 billion in new trains that are unable to fit through tunnels in the Blue Mountains would have been better thought through if the government had embraced engineering safeguards that have been proposed for several years. Believe it or not, anyone in NSW can call themselves an engineer and there is no requirement that engineering advice be taken into account during the conception and development of major projects like this one….This week, Roads and Maritime Services sent an instruction to staff saying technical engineering standards on road projects may need to be "traded off" in order to meet other demands. The email says that: "not all technical standards are absolutes, they involve trade offs" and that some standards "have trade offs in terms of cost, speed of construction and customer impact".

Up to a point, this is true. Yes, all risk management is a trade-off. The thing of it is that risk assessment is work for experts and they need to be listened to. The article continues:

> .. This government has relegated engineering advice and standards to an afterthought when they should be central to decisions to make sure mistakes don't happen. Cost blow-outs are one consequence of non-engineers making engineering decisions on major projects, but far more concerning are the public safety risks. Our power systems, water systems, buildings, roads and rail, all rely on engineers. As you read this, major projects across the state are happening under the guidance of people who are not qualified engineers, putting the public at risk …

As a regular user of a railway bridge across the Hawkesbury that is routinely reported to be dangerously decayed and on which regular repair and maintenance work appears to have been "traded off" under less than absolute standards, I have a vested interest in this matter.

PS. Civil War buffs will recall that McClellan's long-delayed Peninsula Campaign broke down on the first day when it was found that the barges carrying troops down the Potomac were just a bit too wide to fit through the locks. McClellan was a superb organiser but slow to move and Lincoln had chafed for months at the delays. He is said to have remarked drily that he supposed that, with all the organisation that had been going on, someone might have found the time to measure the locks.

PPS. Recordkeeping examples abound. You will all know what I mean. To take but one example. Over forty years I have had the all-or-nothing (aka things-are-sometimes-more-complicated-than-you-might-suppose) discussion with non-experts (often consultants, ministerial advisers, or IT folk) over and over and over again. Take disposal. The amateurs want a single, simple, global disposal rule (e.g. for email). You try to tell them: you don't appraise format, you appraise content (better still you appraise function and process). Huh? That requires classification and redesign (and maintenance). But we want to set-and-forget and move on to the next project; besides, classification is out of scope. Sorry, but Risk, Compliance, and Archives all agree that some emails must be kept for longer than 7 years (but not all need to be kept that long). How can we tell which is which? You need classification. But classification is out of scope. And so it goes. Sometimes they just can't be bothered and end up retaining all emails for 100 years or so and leave it at that until storage runs out and the important stuff is buried in sludge. But you don't have to do that, you say; the quantity of email traffic that needs to be kept is relatively small and keeping more than you have to creates other kinds of risk. How can we know? Well, you need classification of some kind. Hmmmm. Classification is out of scope. ☹

<<Michael Piggott: Chris' post reminds me of recent troubles at Apple's clever new building in California, again where expert advice was dismissed. Thus:

> **"**Employees in Apple Park, Apple's grand new spaceship-style headquarters in California, keep walking into glass doors and windows. Despite warnings from a building inspector that people would not be able to tell where the door ends and the wall begins, at least three Apple employees walked or ran into the ultra-transparent glass hard enough to require emergency medical treatment during the first month of occupation, according to recordings of 911 calls obtained by the San Francisco Chronicle."

2018, May 4: What's in a name?

Remember when arguments bubbled along about whether to separate "record" and "keeping" – viz record keeping vs recordkeeping? Browsing google for something else I stumbled on a page that suggests honours are almost evenly drawn. Page 1 results shown below for search on "recordkeeping"

U. of Tasmania Records Management Unit FAQs : What is a recordkeeping system?
Dictionary.com : definition of recordkeeping (claims the term originated in 1960-1965)
ATO : Record keeping for small business
English Language & Usage (StackExchange) : Recordkeeping, record keeping, or record-keeping?
goes on to discuss *E-mail* vs *Email* vs *e-mail* vs *email* vs *E mail* vs *e mail*?
Business Queensland : Record keeping for business
Business Queensland : Electronic and manual record keeping
Recordkeeping Innovation : Recordkeeping by design
Business.gov.au : Record keeping for small business owners
Business.gov.au : Record keeping systems: digital or manual?

Queensland Government : Recordkeeping

Still, I suppose you could argue that if a search for "recordkeeping" turns up a page 1 result that is 50/50 with "record keeping", it's not honours drawn after all. Interestingly, Gov.Qld is having a bob each way.

<<Michael Piggott: Chris has drawn attention to one of the more arcane and I think interesting sidelights of our little world. I've always thought – who cares?, but apparently people do, eg dear old Verne Harris, from memory, and definitely the editors of Archivaria. If, as a great linguistic philosopher said, the limits of our language are the limits of our world, what difference does the difference make. Perhaps we need new terms? Maybe record making v record keeping?>>

2018, May 8: Curator of killed images

What a terrific job title! Story in the Guardian about an exhibition of censored images from the 1930s.

> … Each of the photographs, printed for the first time … bears an eerie black spot … created when the negatives were censored in the 1930s by clipping them with a metal punch. Many of the 175,000 photographs in the Farm Security Association archive became defining images of the Great Depression … However, thousands more images were censored, judged not to meet the strict criteria the photographers had been given for the type of images sought – a tricky brief to show the scale of the problem the association was trying to tackle, but without obliterating all hope … The censored and approved images all ended that looked too staged were rejected, as were those showing FSA officials …

Nothing sinister about this, of course. The number of discarded negatives in any series must usually outweigh those retained I suppose – just another appraisal/disposal process really. What is interesting is when the discards survive and unexpectedly become useful or interesting later on. Such cases are a disturbing and educative lesson in how problematic the appraisal process is. In this case, information about the discards also better contextualises the surviving records – e.g. not spontaneous, working to a brief.

2018, July 11: Archivist on €50,000 salary fails to do a day's work for ten years…

Spanish civil servant who had €50,000 salary but failed to do a day's work for ten years banned from post

> Every weekday morning, Carles Recio, an archives director in Valencia's provincial government, would turn up at his office only to clock in and head straight out again, before coming back at 4pm to clock out…Mr Recio has repeatedly claimed that he was not to blame for his absence, for which he has offered varying explanations. When the criminal case against him was dropped in March, he said that he had in fact been "working like a slave" away from his desk… "I do documentation work out of the office, the work of a slave,"…

<<David Povey: An archivist hero. When I went to the Library and Archives stream information session at UNSW in 1989, Peter Orlovich saw me talking to the librarian stream people, and asked me if I enjoyed reading the newspaper. I responded positively and he then urged me to consider archiving as a profession, where I would have sufficient leisure to peruse the papers to my heart's content. It was a variation of the old "join the navy and see the world" trick. Our Spanish colleague however seems to have struck the jackpot. My reality is more like the second story Chris posted today.>>

2019, January 14: How do you identify?

What trade do you enter on official forms (census, tax returns, passenger cards)? Archivist, recordkeeper, record keeper, chronicler, annalist, recorder, collector, curator, pack rat, custodian, preserver, guardian, protector, steward, glam-a-phile, hunter/gatherer, magpie, squirrel, research-abettor, guidance counsellor, ubiquity-enabler, access facilitator, keeper-of-memory or destroyer-of-memory (depending on how involved you are in appraisal), ….? If we got our act together and all said the same thing we might qualify for the list of weirdest jobs with the lowest pay. Sounds like we might belong with that crowd.

> Sailmakers are among the nation's rarest workers. A total of 171 people listed the trade as their primary occupation when they filled out their tax return in 2015/16, Australian Taxation Office data shows. Other rare jobs include bungy jump masters (six, all of them male) along with white water rafting guides (24 people), mountain or glacier guides (31), gunsmiths (59), civil celebrants (63), traditional Chinese medicine practitioners (182), composers (251), and illustrators (257)… Gunsmiths and illustrators earn

> about $53,000 on average annually, and composers make just under $43,000, the remainder of these other professions earn below $35,000. However, some of these jobs are primarily carried out part-time, which may reduce the median. Median annual taxable-income figures include not only the job's salary, but any possible additional earnings from rent, bank interest, dividends and bonuses. They are based on the amounts people stated as their earnings before tax but after deductions on their 2015/16 tax returns. The median figure for each job includes everyone who listed it as their primary source of income, so it will include full-timers, part-timers and casuals. If your occupation has a lot of part-time staff it might have driven down the median income, making the amount listed as the full-time median a better guide to its expected earnings

Last time I travelled o'seas I don't think I had to fill out a passenger card. Can't remember if I had to tell the airline my avocation, though.

> PS. In case someone asks an "annalist" is a writer of annals *Meriam-Webster*. Annals: 1) a record of events arranged in yearly sequence 2) historical records 3) records of the activities of an organization. It's what I've been doing my whole professional life. I think I'll put it down on my next tax return and see what happens.

<<Michael Piggott: "Annalist" has a lot going it…>>

2019, January 16: Wouldn't Data Annalist make a great job title? I may change my domain name from www.descriptionguy.com to www.dataannalist.com. And when I fully retire, I might set up shop as a Consulting Data Annalist (I bet I'd be the only one).

2019, March 13: We need a pay rise

Recent article by Kate McClymont on the release of jailed Union Boss Michael Williamson:

> … Michael Williamson has been released from jail and is living with his ex-wife in a waterfront house bought and renovated using stolen union funds. His former wife Julieanne received the house in the divorce settlement she struck with her husband before he went to jail. … In October 2013 Williamson agreed to plead guilty … As part of his plea deal he signed an undertaking to repay the HSU $5 million … But that very same day Williamson declared himself bankrupt. Because Mrs Williamson had already filed for divorce, her share of the couple's assets were protected from her husband's bankruptcy trustee. Apart from some of his defined benefit super scheme, all that was left in the coffers was a dinghy … Many of Williamson's criminal charges related to his desperate attempts to thwart the police investigation. During a police raid on the union's headquarters, Williamson was caught with a suitcase full of documents which he had asked his son Chris to smuggle out. Inside the suitcase were forged invoices which he had planned to use to cover his tracks. Both the police and the union's investigator, barrister Ian Temby QC, were interested in $340,000 which had been paid to a company Canme, an acronym formed from the names of the Williamson's five children, which was run by Mrs Williamson. Williamson lied when he claimed his wife had been paid to do the union's archiving. Mrs Williamson declined to be interviewed by Mr Temby about her supposed "archiving". Instead, she wrote an angry letter to him saying she should have been paid more. "I felt I should have been charging $200 per hour, as the work was downright disgustingly filthy." …

As practitioners of this "downright disgustingly filthy" work, perhaps we should ask our employers to pay us more.

2019, December 10: Corporate memory <<Andrew Wilson: From an article in Inside Story, "Long Knives, short memories" by James Murphy about public service restructures, this on Daniel Andrews' creation of a mega-department of Economic Development, Jobs, Transport and Resources in 2015:

> "Units and authorities were split up or abolished, fragmenting or even losing expertise, documentation and institutional memory. Ask a department to turn over records from their previous incarnation and they will tell you they don't know where they are, how the filing system worked or who they could possibly ask about it. As Laura Tingle pointed out in her Quarterly Essay, *Political Amnesia,* endless turnover — of senior bureaucrats and in departmental structures — shatters the capacity of the public service to remember, and thus to learn." **Whither recordkeeping?>>**

<<Michael Piggott: … The sad reality is that much (not all) of this churn is our old friend administrative change isn't it? And don't government records organisations anticipate these restructures and departmental secretary sackings and have systems and processes ready to document them and manage the records involved? Surely it would be a core function??? And don't they have staff who have

cultivated contacts in ministers' offices so that their records too are on the radar when change occurs - as they must know it will and will again?>>

Short term memory loss is just as much a problem in the private sector and I think it goes beyond the "administrative change" of yore. It has to do with changed attitudes to corporate behaviour and responsibility - both public and private. I struggle to put it into words but it involves a loss of corporate concern for continuity. It has to do with churn and rapid staff turnover. Also the crumbling of career paths shaped by corporate structures and greater focus on personal development. Changes in the nature of work driven, in part, by technological effects on the way work is done. Customary r/keeping in the paper world was a standard business practice but, as we know, computerisation and the decline of middle management, whose task r/keeping was, changed all that. Processes and skill requirements changing more rapidly. And, yes, the focus on service-delivery accompanied by a devaluation of expertise. Someone needs to research all this. Perhaps someone has?

In my observation administrative change used not to have such deleterious effects. In archives where I have worked, long runs of archival materials that have survived successive transitions give evidence of it. Records adhered to a continuity of function. What changed was not so much the exercise of the function but the envelope in which it was carried forward. As I once remarked, agencies are episodes in the life of a function. But now changing what is done and how it is done have become the focus of management attention. Whether this is good practice or merely a fetish is arguable.

2018, March 12: When is an archives a nuisance?

When defining the word "archives", it is customary to distinguish between the building (or institution) and the material housed therein –

> a place in which public records or historical materials (such as documents) are preserved : an *archive* of historical manuscripts, a film *archive*
> *also* : the material preserved —often used in plural reading through the *archives*

The distinction is highlighted in a current news story from abroad in which an archives building is being hired out for events. Apparently NAUK is hiring out its Richmond/Kew premises as a licensed venue and is now seeking to extend the hours in which it can operate as licensed premises.

> The National Archives is applying to become a fully licensed venue, with live music and extended opening hours for the whole week. The application seeks to allow, every day of the week, for the sale of alcohol from 12pm to 11pm, the premises to play films, live and recorded music from 9pm to 11pm, and to extend opening hours to 11.30pm. There is currently a bar in the venue, which opens at 5pm on a Friday only, but this is and will be run separately. When making the decision the planning committee must decide whether the change will be a "public nuisance", cause "crime and disorder", decrease public safety or cause harm to children. Neighbours are not happy with the proposal and are specifically concerned with noise pollution and parking … "We know the noise impact from the NA from the few events held throughout the year…." Another resident said: "When the venue has held events in the past year we can hear the music from inside our house because the National Archives building does not have sufficient sound insulation fitted to limit the impact on nearby residents." Parking was also an issue, with some concerned that residents would be "battling for spaces" when events are on…

If approved, the licensed premises could operate every day of the week from noon to 11pm (but NAUK suggests it would only be on special occasions). It is worth noting that opening hours for less potentially annoying activities (? Such as research) are 9-7 (Tue & Thu), 9-5 (Wed, Fri, Sat), and closed Sundays and Mondays.

2018, December 12: Vladimir Putin, recordkeeper?

From SBS News

> Russian President Vladimir Putin's then identity card issued by East Germany's Stasi secret police in 1986 has been found in German archives. The card was issued in 1986 when Putin was a mid-ranking KGB spy stationed in Dresden … It has lain in archives since at least 1990, when the two Germanys were reunified. Found in archives by US historian Douglas Selvage, the card was trumpeted by the Bild newspaper as evidence that Russia's now long-serving president was also working for the hated East German security service, wound up in 1990 … the authority in charge of the Stasi archives said it was

> common for KGB agents stationed in the fraternal socialist German Democratic Republic to be issued passes giving them entry to Stasi offices … When the Berlin Wall fell in 1989, Putin, who held the rank of major, said he brandished a pistol to stop an angry crowd from ransacking his intelligence agency's offices in Dresden and purloining its files, a tactic that worked …

2019, July 17: Distressed recordkeepers

<<From Wendy Duff (14 July, 2019: I am writing to request your participation in a survey of archivists … conducted by a team of researchers at the University of Toronto … to collect preliminary data on the experiences of archivists who work with records that elicit emotional responses…>> On the Canadian list there is an announcement of the results of research into secondary trauma affecting r/keepers entitled "Not `Just My Problem to Handle': Emerging Themes on Secondary Trauma and Archivists." Secondary trauma, which might also be described as vicarious trauma (but isn't), is when you are troubled by the distress of others.

One's first instinct is to ask how on earth can we be so affected. Having myself been monstered by Hartog Berkeley (then Solicitor-General) back in my Victorian days, I have no trouble believing that we can be traumatized directly. After a brief skim, the article seems to be identifying two kinds of secondary trauma for us: experience of frightful records (Khmer Rouge records are cited and the recent photo of father and child drowned on the banks of the Rio Grande would be another example) and dealings with involved parties traumatized by the subject of records we handle (Stolen Generation and Children in Care, I imagine). Both seem fairly plausible to me. What I didn't find was strong evidence that we are in fact being traumatized in this way (i.e. secondarily) to anything like the extent I imagine other professionals are (health professionals, for example).

PS. I would have said that the trauma we experience when dealing with distressing records is direct, not secondary, but it's probably not worth quibbling about.

PPS. I have been traumatized twice in my life (if you don't count the time I was shot). Once was with Hartog Berkeley and the other was when I was sent to a Catholic boarding school. After all that, life held no further terrors for me.

2019, August 9: Canadian article that everybody is talking about

There's a lively debate on the Canadian List – the liveliest and longest I've seen there for a long time. It started with attacks on a forthcoming article on appraisal in *American Archivist*. The article, by Frank J Boles, argues that appraisal should not be based on "social" concerns or aim at remediating bias in the record. The debate has pursued a tortuous path:

- it began with attacks on the content and quality of the piece;
- coupled with criticism of the peer review process which allowed it through;
- there has been dispute over the scheduling (and subsequent cancellation) of a brown bag session;
- the whole thing has been linked to inclusion of minorities and people of colour within the profession (and society);
- there's been a lot of debate about the debate – ideological or not, de-platforming ("censorship"), power structures within society and the profession, etc. etc.

For my part, I thought the article was OK and I am in sympathy with the author on some of the points he makes. Certainly, the question of the motives of the appraiser is an issue too little discussed. Not having a North American perspective, I had no inkling (until it came up on the List) that objections to his thesis could be linked to racism and privilege. How naïve was I? Arguments about tempering debates (of any kind) to spare the sensitivities of the downtrodden tend to leave me cold; I think you tackle power structures by challenging them openly and directly, not by tempering debate. This includes challenging power structures that attempt to control the terms of a debate (any debate) under the guise of inclusion or on any other ground.

The whole discussion (which is still going on) is fascinating, partly because of the professional issue that launched it (appraisal) but more so because of the fault lines it exposes within the North American profession (which I would guess have parallels elsewhere, at least within the Anglophone areas) around populism, dogma, and the way public discourse is conducted nowadays. Don't know if the Canadian List has an archive but (if so) it would be worth tuning in if you don't subscribe. Luciana has a comment which exposes the existence up North of "closed" lists - something I should have been aware of but wasn't :

> I wish [some] readers could access the very thoughtful conversation that is going on the SAA Fellows list, which of course you cannot read because the general Archives and Archivists list was cancelled in the same spirit in which the brown bag lunch was, and now the SAA has multiple lists to which only its members can subscribe and have access to. The open discussion has then moved from the AA list to the Arcan-L list, not because people love Canadians more, but because there are no other outlets for a professional open discussion on any topic and involving people who are not members of one or the other association. I did not think it was right to cancel the AA listserv then and I can see now the segregation of interest groups listservs, where only the fellows, aggregated only by the fact of being fellows, are able to present a large variety of perspectives and interests. This way the profession as a whole lose.

Hear! Hear! Thank God for the Oz-Archivists. Long may it thrive. How strange that the Internet, which was supposed to break down barriers to unfettered exchange of information, has become an instrument for limiting it. A timely reminder that human nature, not technology, shapes our destiny.

2019, August 11: <<Joanne Evans: … As it happens on a Sunday afternoon reading Cook's 'Evidence, memory, identity, and community: four shifting archival paradigms' from 2013 published in Archival Science (https://link.springer.com/article/10.1007/s10502-012-9180-7), which makes for an excellent companion/alternate read. Although behind a subscription wall a quick Google reveals that more open access versions are available. In terms of the need for debates and discourses, Cook writes

> 'Not only are the paradigms open-ended, overlapping, and constantly evolving, the community of archivists that has emerged through these different and overlapping paradigms is itself bound together as a community by the symbiotic interaction of continuity and disruption, continually constructing and deconstructing our mythologies. This process may lead to an increased capacity in our archival community to harbour plurality, diversity, and difference (both in terms of our own divergent practices, across space, time, and traditions, and in terms of the very different social and cultural communities with which we engage). To return to the opening epigram of this essay, we can view our paradigms and mythologies as bastions of identity, in which case we become defensive and they rigidly destructive, or we can see them as liberating, authorizing us to develop new directions in light of the astonishing challenges to archiving today from theory, technology, and society, and the expectations and demands each occasions. Seeing archival paradigms as changing through time, as each era interprets anew evidence and memory, and thus redefines archival identity and its relationship with social communities, liberates us to embrace new directions yet again for the digital era.' (p. 117-8)

And much more to excite and inspire!>>

2019, August 11: <<Andrew Waugh: …Boles completely misses the points being made by the archival movement he is criticizing…>> Maybe I'm more concerned about some of those "points" than I am enthusiastic (or uncritical) about the arguments Boles employs against them. But looking at the wood rather than the trees, the way I read it, he is arguing against the idea that we have a professional obligation to shape an archival record that is "universal" (based on shared notions of social obligation and morality) and positing instead that a better result would be achieved through local autonomy and diversity. What appeals to me in this idea is this: because appraisal standards change over time (as everyone seems to acknowledge) the imposition of a single, homogeneous, "universal" view, which we know will itself become out-dated as all such views must, may distort the record rather than clean it up. Which appraisal method produces a better result in the long term: universality or diversity? It harks back (almost) to Jenkinson's view that records formation should be natural - allowed to take its course w/o interference by archivists. Of course, Jenkinson's view is unsustainable but the question is whether a heavily purposive dogma, universally applied, should govern proactive appraisal.

The good news, I think, is that archivists are too unorganised, disorderly, and muddled to get their act together in any focussed or sinisterly systematised way. There may be a lot of chatter in the professional literature about documentation but my feeling is that practitioners just aren't collaborative enough (or maybe they just don't have the time) to develop and apply a refined, shared notion of what we should select and preserve. There's been chatter here (I believe) about developing a national documentation strategy. Perhaps we'll see if that develops in any promising direction. My own view is that such debates are pointless until we have a shared (non-purposive) framework within which to have them. I have suggested the barebones outline for such a framework but no one has taken me up on it.

The issues raised by Boles fly off in all directions. One leads back to the (discredited) notion of objectivity (which is not the same as impartiality). How are we to understand the records we deal with? How do we free ourselves of dogma (Acton again)? It can be in something as (seemingly) simple as the language we use. I once had a brawl with Sue McKemmish and Marg Burns over their wish to use the word "patriarchal" in the PROV finding aids. It was interesting that I wasn't bothered by the idea that they were wanting to introduce into our account of the Executive VRG but only the word they wanted to employ in order to do so. Maybe that tells us something about light and heat. At that time I thought we should try to find language that was as value-free as possible or at least not anachronistic. Of course, no language is value-free but there are degrees to which language and ideas can be finessed in order to obviate the "emotional response". I have moved away a bit from that view now and towards a more literary and imaginative approach but that is still basically where I stand. For anyone interested, I can't recall how the argument ended but with those two I seldom prevailed.

2019, August 12: **<<Mike Jones:… Boles' implication that archives are (or should be) neutral spaces is both regressive and impossible >>**

- Objectivity: freedom from bias
- Neutrality: not engaged on either side

There's a difference.

<<Mike Jones: I understand the difference. Just as it is not possible to be free from bias (no matter how elf-aware one might be), similarly there is no space we can occupy which is somehow free from engagement with the "sides". Our position is always entangled.>> It certainly isn't possible if we don't even try. But objectivity and bias are not binary. To paraphrase Evelyn Waugh: You've no idea how much more biased I'd be if I were not being objective.

<<Mike Jones: I certainly agree with taking a non-binary perspective. However, I do not agree with the suggestion that these are ideals for which we should be striving - and not because they are unattainable…"trying" in this context comes through universalising a particular perspective, concealing (or denying) its tendentiousness to such an extent that it stops looking like a side and starts to look like not taking sides. One of the tactics for doing so is "othering" - pushing other perspectives to the periphery in the interests of clearing a space.…it only looks less like a side to those who occupy that position. Those on the periphery can see it for what it is - just another side,..Groups who have been marginalised through this process have started to point this out, vocally and increasingly insistently…I think Boles is trying to clear out that space again - to push other "sides" back out to the periphery…But, in a non-binary world, there are plenty of sides to choose from.>> If I'm accused of taking a binary position on Truth vs Dogma, I plead guilty to that. Knowing what is True, in my view, requires a devotion to objectivity tho' the two of us honestly and objectively seeking the Truth, may well reach different conclusions but that is very different from abandoning the effort (for whatever reason). So, I happily plead guilty to "othering" also - othering those who are slaves to Dogma. And surely you agree with me about that when you decry "universalising a particular perspective". We seem to be at one there and, in my simplicity, I rather thought that was one of the points Bols was making also. But somehow we find ourselves at odds. Why? Perhaps, as William Blake put it "*The Vision of Christ that thou dost see Is my Vision's Greatest Enemy...Both read the Bible day & night, But thou readst black where I read white.*" Rather than retread a well-worn path, let me just repeat what I said in February (The moving finger writes ...)

Increasingly, however, historical discourse is being drawn into the world of post-truth populism. You are correct, therefore, in detecting a whiff of suspicion (on my part) that the motives expressed (on their part) may be compromised by ideology. But that wouldn't lead me to argue that ADB shouldn't be touched. I certainly reject the postmodern view that a proper scepticism about our ability to think and write objectively is a licence to dispense altogether with the aim of trying to be objective. If that makes me a history warrior, so be it. In this case, I prefer to believe, lacking evidence to the contrary, that ADB will preserve the high standards of scholarship that are its legacy. If I'm going to sit on the fence on an issue like this, I may as well be sanctimonious about it. We laugh at Acton now for aspiring to produce a compendium history in which the reader could not tell where one pen left off and another began, forgetting that his noble aspiration did not imply an uncritical assumption that it could be easily done. I don't think he meant that history should be bland and even-handed, that the historian should abstain from taking a view but rather that we should strive not to be enslaved by prejudice and ideology – to be enslaved (as Ranke might have it) by evidence rather than belief. I share your contempt for those who believe history is just a stringing together of facts and I believe Acton would have also because he believed that history means "judging men and things". But he may have been wiser than we allow when he wrote:

- A Historian has to fight against temptations special to his mode of life, temptations from Country, Class, Church, College, Party, Authority of talents, solicitation of friends.
- The most respectable of these influences are the most dangerous.
- The historian who neglects to root them out is exactly like a juror who votes according to his personal likes or dislikes.
- In judging men and things Ethics go before Dogma, Politics or Nationality. The Ethics of History cannot be denominational.

So, at any rate, I believe and I will not be shamed out of that ethical position by those who ridicule my failure or that of anyone else to fully live up to it. A proper scholarly disposition ("Ethics go before Dogma …") cannot be based on human frailty (that's what forgiveness is for). We go on striving even if we fail; we don't build a philosophical position on a foundation of failure. When Evelyn Waugh was criticised for adopting Christianity and still being a nasty so-and-so with it his reply was: "but you've no idea how much worse I'd be if I were not a Christian."

2019, August 13: <<Andrew Waugh: … like everyone, when I read a text I read it through the lens of my own experience and perception. That wasn't the message I got from the paper, and if that was the intended message, he certainly didn't make that clear…Boles presents no evidence that his approach of 'local autonomy and diversity' would result in a more diverse archive record...local autonomy and diversity is what we have now and it hasn't resulted in a diverse set of records…Where are the resources to come from to create new archives dedicated to these diverse views?...they would be located precariously on the margins of the archival space, and would just give the established, mainstream, archives a license to continue to not include the records of particular groups in society. Sounds to me like this is just reinforcing the exclusion from mainstream society. If he meant that it should be up to individual archives to decide what they include, why should we expect this to generate diversity?…The archives themselves have a long embedded culture which is self reinforcing. Both sets of characteristics suggest that individual achives will make the same type of decisions about appraisal, with minor variations.>>

<<Michael Piggott: The strangest thing to me about the Boles pre-print is the almost complete discounting of the efforts of community archives…the failure to reference the large literature on community archives produced by Andrew Flinn, Jeannette Bastian, Anne Gilliland, Michelle Caswell and many others…is odd. Aren't communities documenting their struggles and diverse experiences additional to and despite professional archivists' efforts? To subvert Boles paraphrasing Verne Harris (p 6), there are activist citizen and community archivists including 'smartphone activists' pursuing any and every political agenda, and we should be thankful and supportive. Hong Kong for example.>>

<<he certainly didn't make that clear>> Agree with that.

<<local autonomy and diversity is what we have now and it hasn't resulted in a diverse set of records>> I don't know what Boles means by diversity but I meant non-uniform rather than diversity in the cultural sense.

<<Where are the resources to come from to create new archives dedicated to these diverse views?>> Not an issue if "diversity" means non-uniform. It would be how existing archival programmes appraise not just the new ones. I wouldn't want non-uniform (the part of the Boles thesis I detect and you don't) to imply that we should not expand our appraisal criteria to include marginalised and, yes, downtrodden and hitherto excluded sections of society and to the extent Boles is arguing against that I disagree with him as strongly as everybody else.

<<they would be located precariously on the margins of the archival space, and would just give the established, mainstream, archives a license to continue to not include the records of particular groups in society. Sounds to me like this is just reinforcing the exclusion from mainstream society>> I don't subscribe to that. The problem is how do we broaden the archive to incorporate the excluded?

<<If he meant that it should be up to individual archives to decide what they include, why should we expect this to generate diversity? ... The archives themselves have a long embedded culture which is self reinforcing. Both sets of characteristics suggest that individual achives will make the same type of decisions about appraisal, with minor variations.>> Quite so. But aren't we talking about two different things? You can only appraise what is before you and archives working within the mainstream will have before them records reflecting the mainstream. We can adjust our criteria to produce a more socially diverse result in the preserved records that survive under our hand. I have no problem with that but it doesn't address the issue whether or not these adjusted criteria should be applied universally. But I have always supposed that advocates for a more socially diverse archival record were arguing something quite different - viz. that we should look more broadly to find different sources and new ways to add to the totality of the archival record materials that would not in the normal way be incorporated.

On that view, there might be an adjustment to appraisal criteria (universal or not) but the biggest adjustment would be in where we find alternative materials and how we deal with them. Michael has given us the example of community archives (and there were some splendid examples on show in Glasgow - see my earlier report) and the social activists (if I may call them that) who now appear regularly at our conferences have been offering for years new ideas and exciting examples of how to do it.

2019, August 14: In response to Luciana's earlier remarks on the closure of the American lists, this has now appeared on ARCAN_L:

> Actually an outlet was created shortly after SAA killed the A&A listserv. it is a google group called Archivists&Archives. It has 477 members. sadly very little discussion takes place on it. It is an independent group much like the original A&A listserv was before being taken over by SAA. it is open to anyone interested in archives and archivists. membership in a professional association is not necessary. Here is the link

Yay!

2020, April 17: An adumbration of archivists?

James Lipton, sometime host of *Inside the Actors Studio* and author of *An Exaltation of Larks* (the indispensable guide to collective nouns) died last month (2 March). My edition (Penguin, 1991) contains no collective noun for archivist or recordkeeper. Obvious contenders such as “file” or “series” are overlooked. It offers “shush of librarians” and “trove of libraries” and they are welcome to them. A “march of museums” (it’s a long march from the Louvre, to the Prado, to the Hermitage, etc. or maybe because you need to walk a lot when you’re inside one) seems a trifle strained.

I have long held that philosophically archivists are Aristotelians (… an inductive, analytical empiricism, or stress on experience, in the study of nature … leading from the perception of contingent individual occurrences to the discovery of permanent, universal patterns …) rather than Platonists (… a belief in unchanging and eternal realities, which Plato called forms, independent of the changing things of the world perceived by the senses…) and “category of Aristotelians” contrasted with “form of Platonists” makes the distinction rather well. Description for us, not classification.

PS One possibility ("coffle") would be too politically incorrect. The book tells us that "coffle" is a term once in common use for a line of slaves, chained together, from the Arabic "qafila" (caravan).

2020, April 21: **<<Michael Piggott: … here's my nomination inspired by the whimsical 'coffle'. It's 'hamper', ie a hamper of archivists. Several relevant and layered meanings, mentioned in Jenkinson, and interesting etymology. Perhaps the challenge would be simpler if the word archives wasn't used in so many different ways. A millionth example of appropriation, kindly drawn to my attention by Dr Andrew Wilson, is the very trendy and environmentally correct shirt label Archivist Studio! >>**

2020, April 24: I've waited four days, Michael, for someone else to ask this question but I can contain myself no longer. Which of the two possible meanings of "hamper" did you have in mind?

- large, rectangular container with a lid (bin, coffer, safety container, carton, type 1 box, USB, etc.) as in where we put the stuff for safekeeping, or
- to prevent someone doing something easily (avoid, bar, block, derail, scuttle, create a bottleneck, smother, be a drag, hogtie, etc.) as in the obstacles we create for users by destroying more than we keep, writing arcane and unhelpful finding aids, redaction and access restrictions.

Can you expand on "… relevant and layered meanings mentioned in Jenkinson…"

2020, April 25: <<Michael Piggott:…I had proposed 'hamper' - a hamper of archivists - only half frivolously in response to a thread which seemed both serious and frivolous. Partly because any term from Hilary Jenkinson has to have some additional cachet. Not sure if he ever used adumbration. In his 'Manual' he explains (1966 reissue of the revised 2nd ed., p 23-4) he uses the term file 'as a generic term for a sack or box or hamper or other receptacle' and in a footnote mentions that 'the "Hanaper" (hamper) gave its name to a whole Archive Department'. And 'hanaper' also conjures an historic English office, the Clerk of the Hanaper whose duties included the physical custody of records. (Thomas Cromwell of renewed fame thanks to Hilary Mantel was once such a Clerk). About its layered meanings, Chris pretty much read my mind: the various obstacles we deliberately and inadvertently create, though I'd add we hamper, or try to, the deterioration of records, ie their so called inherent vice, through preservation strategies, physical and digital.>> James Thurber, in *Here Lies Miss Groby*, recounts how he annoyed his school-teacher when she was trying to teach him about metonymy,

> a figure of speecn in which a thing or concept is referred to by the name of something closely associated with that thing or concept.

A common example, the one Miss Groby was trying to teach to young James, is container for the thing contained (e.g. "lend me your ears"). The lad Thurber was very pleased with himself when he thought up an example of thing contained for the container ("stand back or I'll hit you with the milk" – this from when milk still came in bottles). It occurs to me that hanaper is an example of metonymy in action: a shift in meaning where the word for the container came to mean the thing contained -

> **HANAPER**, used particularly in the English Chancery of a wicker basket in which were kept writs and other documents, and hence it became the name of a department of the chancery, now abolished, under an officer known as the clerk of the hanaper, into which were paid fees for the sealing of charters, patents, &c., and from which issued certain writs under the Great Seal. From "hanaper" is derived the modern "hamper." *Encyclopedia Britannica*, 1911,

Miss Groby would be pleased. This is not altogether removed from what I had in mind with adumbration (viz. description for the thing described)–

- "to produce a faint image or resemblance of; to outline or sketch …"
- "to suggest, disclose, or outline partially … "
- "the act of giving the main facts and not the details about something, or something that gives these main facts"
- "a sketchy or imperfect or faint representation"
  synonyms: "explanation", "hint", "manifestation", "suggestion", "trace"

Our descriptions are representations of the thing being described, not the thing itself. Like calendars and cartularies, a finding aid is no substitute for the record. We endeavour to represent reality faithfully and accurately but we are doomed to crafting a limited, faint, imperfect outline of what we

see and understand. The underlying basis for parallel provenance is that alternative observations of the same object are always possible and, because they are observations, very likely to be partial (in the sense of incomplete rather than biased). *The vision … that thou dost see is my vision's greatest enemy … thou readst black where I read white*. It follows that every description, however worthy or valuable, will always have no more than an imperfect resemblance to what we see. Which does not, of course, mean that any description is as good as any other – imperfect but not untrue. Indeed, truth may be said to lie as much in the multiplicity as in the rejection of falsehoods.

2020, April 26:<<Deb Liego: could 'hamper (container) of hanaper (contained) adumbrations (representations)' work in place of 'descriptions of boxed records'? >>

2020, April 27: Yes. But I fear that, once we're through teasing out the whimsy and the nuance, all we'll be left with is a collective noun. And possibly a new instance of C.F.T.T.C.

2020, April 20: Collaboration and leadership

On the NZ list, chatter following the announced closure of the Community Archives website has prompted a statement from the NZ National Archivist which reads (in part):

> … As Chief Archivist, I am aware of the sense of a lack of leadership for community-held collections. There is also duplication of effort and offerings which indicates we could benefit from a joined-up approach. To that end, I have, along with the National Librarian Bill Macnaught, been working closely with the leaders of documentary heritage organisations which have national mandates to set up and share the mechanisms for collaboration at a national level. Those organisations include Te Papa Tongarewa, Auckland War Memorial Museum and Ngā Taonga Sound & Vision. This work is known as the National Documentary Heritage Strategy (NDHS) working group.
>
> Our initial roundtable discussion in March 2019 supported in principle the notion of collaborating on a national documentary heritage strategy, with the aim of developing a collective action plan. This work includes a community-held collections focus. A number of further meetings have been held. The group is re-forming and re-focusing as the new chief executives at Te Papa and Ngā Taonga settle into their roles. I hope to be able to share more of this work in the coming months, and that a more coherent strategy provides the basis for more effective use of our current and any new resources. I note that, while the work has not concluded, Ministers have also started considering how to strengthen the contribution that national libraries and archives to New Zealand culture through the National Archival and Library Institutions Ministerial Group …

The Community Archive began many years ago as the National Register of Archives and Manuscripts (NRAM). The Chief Archivist's statement indicates the justification for its closure beyond technological obsolescence (in short, the reasons for not maintaining and migrating it to a new platform) and these are more interesting because they go to the essence of the thing rather than the mechanics.

> After 10 years since its inception, the website was increasingly difficult to maintain by us and by contributing organisations, and usage was very low by current standards. It does not connect people directly with the archives themselves and provides functionality readily available through other options.

Not sure what the other options may be but this makes depressing reading for a proponent of the *Modest Proposal* (MP). Does it demonstrate that if we built it they would not come?

- The *Modest Proposal*, first and foremost, would provide a structure (multi-layered and multi-faceted) into which contributions would be contextualised rather than an assemblage of offerings from participating contributors. The work to develop this contextual framework (as with any finding aid) would be far more challenging than the mere task of adumbration and compilation. Because, as with any finding aid, the value-add would lie not just in hosting content but in conferring meaning it would not be uncontested. Hence the need to build it on the principle of parallel provenance.
- The *Modest Proposal* would provide direct access to the source descriptions so far as the capability of the native programmes permitted. Indeed, the core proposition is that the MP gateway should displace the front-end for the majors so that entry into their own descriptive efforts would be via MP rather than any home-grown (necessarily partial) view of what they are

describing. MP would give their descriptions the same larger contextual framework within which to work as the one provided for community archives. At the same time, it would offer smaller players without the capacity to join up online the opportunity to contribute into an NRAM-like framework. Usage would not be very low because there would be nothing else to use.

- The *Modest Proposal*, therefore, requires much more from the national institutions than mere support, co-ordination, and encouragement for the efforts of others. It requires them to submit themselves along with everyone else to the same architectural framework and to thus truly integrate the national descriptive effort into a seamless search and discovery mechanism. This could incorporate built in labour-saving efforts (viz. SNAC) for sharing contextual data rather than developing ontological schema for distributed use. Thus eliminating duplication of effort.

But a "national documentary heritage strategy" is better than nothing, I suppose.

2020, June 19: The proper study of mankind

> *Know then thyself, presume not God to scan; The proper study of mankind is man.*
> *Plac'd on this isthmus of a middle state, A being darkly wise, and rudely great:*
> *With too much knowledge for the sceptic side, With too much weakness for the stoic's pride,*
> *He hangs between; in doubt to act, or rest; In doubt to deem himself a god, or beast;*
> *In doubt his mind or body to prefer; Born but to die, and reas'ning but to err;*
> *Alike in ignorance, his reason such, Whether he thinks too little, or too much:*
> *Chaos of thought and passion, all confus'd; Still by himself abus'd, or disabus'd;*
> *Created half to rise, and half to fall; Great lord of all things, yet a prey to all;*
> *Sole judge of truth, in endless error hurl'd: The glory, jest, and riddle of the world!*

I once heard of an eminent PhD who was asked for his advice on a medical matter. He replied, with withering scorn, "Madam, I'm not a tradesman!" How then do we respond to the proposal to favour vocational education in universities and double the fees for Arts students?

> ... The announcement by the education minister, Dan Tehan, on Friday that the Morrison government wants to double student fees for courses in the arts and humanities has horrified academics, and poses real questions about the future of our higher education system. Tehan and the employment minister, Michaelia Cash, are pitching the reforms as an increase in university places and a boost for students … Tehan will slash university fees for courses like nursing, agriculture, maths, science and information technology ... But fees for courses like creative arts, communications, history, economics, politics, society and culture will in some cases more than double …

It will be interesting to see how this develops. Will those benefiting welcome the "boost" or join with those deploring the move? Will those with a stake in education be swayed by philosophical considerations or by the grubby prospect of largesse for some and impoverishment for others? Indeed, as the issue shakes down, what will be the arguments in support of the ministers and in opposition? And who will make them?

And where do we stand in the pedagogical landscape. Is recordkeeping an art or a science? A trade or a profession? Should we be concerned about us (our intellectual cred) or for our users who have until recently been humanities focused: historians, genealogists, and other researchers plus hobbyists (not pejorative, but recognising that a lot of users don't look at archives as part of gainful employment). Presumably our user base is changing as a result of the Internet and demographics (growing numbers of retirees). Does this affect us? Apart from an understandable repugnance for Michaela Cash, should we care? Should a "purist" not even be bothered how archives are used?

Many years ago, I was Education Convener for RMAA (now RIMPA) in Victoria. At that time, the TAFE sector was in turmoil as a result of an earlier round of philistine "reforms" forever associated with the name of the man Dawkins. I got a phone call from someone on the staff of a course in motor engineering (car mechanics). They had been defunded but told that if they could reorganise themselves to teach something else by the following semester they could survive. From a list provided, they had chosen records management. You might not believe this, but I swear it actually happened. I dismissed the thought that it was some archivist or records manager playing a practical joke on me. Recordkeepers don't have that kind of wit.

2020, June 22: Should education be purely vocational? Should university graduates be job-ready? Does anyone read Newman now? Is there (should there be) a dichotomy between science and the arts? All this has echoes of the common culture debate and even (possibly) dualism. Does this move devalue the humanities and maybe pure science as well? It does not seem to align exactly (as one might have expected) with recently expressed concerns over a STEM crisis. So far, the commentary that I have seen is of a less exalted kind, accepting the Tehan/Cash assumptions about the need to focus on vocational training and "skills for new jobs"

> these reforms would incentivise students and universities to align with the needs of industry to meet the skill demands for the new economy that will emerge from the pandemic.

Who could argue with that? Universities seem happy to take the cash (no pun intended) and even to endorse the ideology. The government's move slots easily into the culture wars. The push back (such as it is) is taking the form of a disputes over equity and over the figures ("anomalies like charging more for a history course but less for librarianship").

2020, June 27: <<Mark Brogan:… Wondering if anyone has insight to share on implications of the Tehan changes for our accredited courses? Our largest cohort is at CSU, which in the past has benefited from the availability of low cost Commonwealth Supported Places (CSPs), something Library and Information Science (LIS) was able to access because of its placement in a Faculty of Education. It is unclear whether this connection with Education will shield LIS from Tehan's proposed fee hikes. If the changes proceed, Computing and IT is set to be be a beneficiary. May be timely for us to consider a sustainable computing and IT pathway to becoming an accredited professional.>> I have thought for some time that the best fit for us is with data quality.

> **Data quality** refers to the state of qualitative or quantitative pieces of information. There are many definitions of **data quality**, but **data** is generally considered high **quality** if it is "fit for [its] intended uses in operations, decision making and planning".

I have attended some of their conferences and recordkeeping could have been substituted for DQ in many cases. On the downside, DQ (to hear them talk amongst themselves) is itself a bit marginalised within ICT.

2020, June 28: <<Mark Brogan:.. Data quality sounds to me like a concept from data management and/or stewardship. The join here would be to courses in data science. However, data analytics and the cloud are the main thrust of most data science courses at the moment. Authenticity and reliability of records and data is also a big concern of archivists. The join here would be to digital forensics, usually taught in cyber security. A third shared concern is the persistence of digital memory, which we refer to as digital preservation. This is an acknowledged gap in the curriculum of most computing and IT courses and seems to me to be core knowledge that we would need in any approach to an accreditation pathway for IT professionals…>>

2021, January 24: Records management theory & digital records

<<Andrew Waugh: A great paper on the handling of email ... Lappin is attempting to build a theory of handling email 'in place'. Reviews the theory of records management (including the Australian series system and its extensions), and links these with Durranti & Bearman's approaches to digital records. I'm about 2/3rds of the way through, randomly going 'Yep' and 'But ... ' I'd be interested to hear Chris' take on the theory ...>> The authors identify three "models" – separation (Duranti), interventionist (Bearman), and in-place.

> *The in-place model is different in nature to the other two models. Duranti and Bearmans' models were aspirational and sought to achieve a form of perfection in the way records are managed, whereas the in-place model is resigned to the necessity of managing records in applications that are not designed with recordkeeping in mind.*

I'm not sure I would go along with how they describe the Duranti & Bearman models (and I suspect Luciana and David might have something to say also). I can well remember a late-night discussion during a Monash residential when David said that the hardest part of his message for archivists to accept was the idea that, having identified the functional requirements for evidence in recordkeeping,

you then needed to discard as many of them as you safely could when applying them to particular instances. Hardly an aspiration to perfection.

That said, I have always been drawn to the Bearman side of the argument because of a long-held conviction that EDRMS is a thing of the past and that the future of recordkeeping is the integration of r/keeping functionality into business applications. But at a practical level, architects are always going to be looking for storage alternatives for long-lived data, so separation of some kind (preferably physical rather than logical) may need some theoretical basis also – cf. Duranti.

We have, of course, been conspicuously unsuccessful in selling our case (so resignation of some kind is an appropriate posture but not an excuse for giving up). That is why I would like to see us join forces with the DQ (Data Quality) community. Theirs is essentially the same story as ours – selling standards with mixed success. I'm afraid, I can't find in the in-place "model" anything more sophisticated than an admonition to do the best you can within the limitations you've got – and defining what is "best" (i.e. identifying how far short of what is needed your expedients fall) depends on theoretical constructs that identify what is required.

RECORDKEEPING: HIT AND MISS

The good, the bad, and the ugly. Applied recordkeeping (and misapplied too, of course). Some very odd things going on in ministerial offices. Shock 'n' Orr. How effective are recordkeeping rules? Much ado about the NAP (normal administrative practice).

2017, Jly 24: ABC Rpt: "Minister under investigation by Qld State Archives" Archival regulation

2017, Nov 25: Heard of the WofG? Applied recordkeeping and what it is that archivists do

2018, Apr 30: Can I show you a document? Lethal evidence on display at Banking RC

2018, May 17: Breath-taking Ministers, emails, the NAP, criminal sanctions – the whole damn thing

2019, Jan 15: Mind boggling Federal court decision Machines can't think or make decisions

2019, Apr 10: GIS records Weather records and the "natural archives"

2019, Jly 22: Archives in the news A happy find in a digitized archives

2020, 26 Mar: Herd Immunity Beating the Virus with good recordkeeping.

2020, May 6: Recordkeeping and digital preservation in a crisis The "Ruby Princess" Affair

2020, May 14: It's in the files Delegating the power to sign

2020, Oct 12: File it? Classification of emails

2021, Jan 18: Rules & reality Are the recordkeeping rules enforceable?

2021, Feb 16: Is storage a "core" IT issue?

2017, July 24: ABC Report: "Minister under investigation by Qld State Archives"

Mark Bailey stood down over email scandal after CCC finds 'reasonable suspicion of corrupt conduct'
The CCC did not make a finding of misconduct but concluded *"… there is sufficient evidence to raise a reasonable suspicion of corrupt conduct relating to the potential destruction of public records by the Minister as this may be an offence under the Public Records Act 2002*". The article states that because "*CCC's jurisdiction only covers corrupt conduct as it relates to a criminal offence, it has referred the matter to the State Archivist to investigate*." What's going on? Does this mean the CCC will reopen its investigation into corruption if the State Archivist concludes the Minister committed a criminal offence? Hardly. The distinction between misbehaviour and crime is a real one. Coincidentally, today was supposed to see the release of the hitherto secret records of the incomplete Parliamentary Inquiry into the Murphy Affair. Murphy's defenders have always tried to blur that distinction on the argument that a

person is a fit and proper High Court Judge if not actually a convicted crim. But an archivist cannot convict, so where does it all go after the Archivist has investigated?

If it comes to that, why is the Archivist involved at all. The police are empowered to investigate possible offences. They are trained for that, resourced for it, and (most importantly) if you fail to co-operate you open yourself to a criminal charge. The Archivist has no such powers, no such training, no such resources and is not assigned an enforcement role under the Act. The Archivist has certain powers and responsibilities to perform under the Act but enforcement (including investigation) is not one of them. The Archivist's own performance under the legislation can give rise to questions of propriety on the Archivist's part which are themselves capable of investigation (cf. Heiner which is now being linked to this case via Ensbey) so any investigation into r/keeping failures is as much into the Archivist's performance as into that of an agency or minister (which is why the Archives cannot or should not be party to an audit of r/keeping within Government). So, if the CCC is ever to re-open the case of possible corruption against the Minister, it could only do so (it seems) after a successful prosecution initiated via the Police or DPP. It is difficult to see what use or relevance the Archivist's participation adds. Very curious. But then, curious things do happen in Queensland.

Meanwhile, on the other side of the continent, recordkeepers are fighting to preserve the independence of the State Archives, partly on the argument that it supports accountability in recordkeeping (quoting WA Inc. Royal Commission that an independent SROWA prevents "*corrupt, illegal and improper conduct*"). How? SROWA doesn't have powers of investigation and sanction either. The government archives in WA and elsewhere set standards, approve disposal (or recommend such approval), preserve memory, and advise and assist agencies and that is all very well. But, as the Queensland case illustrates, enforcement of those standards is a very different matter – and arguably a confused one. In parts of the non-government sector, enforcement responsibilities are actually clearer and carried out more effectively. Financial services are under constant invigilation by the regulatory authorities (including their r/keeping practices), bench-marks are set, obligations are imposed, sanctions can be given out, and banks can agree to self-imposed enforceable undertakings to satisfy the regulator. If we are going to credibly claim that the government archives uphold accountability in the public sector that approach (or something like it) is the bar against which our actual performance, and our capability to uphold accountability through regulation and enforcement thereby preventing "*corrupt, illegal and improper conduct*", will have to be measured. As in Queensland, the question will be: are we capable of doing so and empowered to do it and, if not, who is?

<<Mark Brogan: Since you have raised our position paper on the SROWA merger with SLWA in the context of this discussion, a couple of points. Firstly, the investigatory power in relation to breaches of the State Records Act (2000) can be found in s.60(c) where this power is attributed to the State Records Commission (SRC), a second new entity created with SRO as a consequence of the State Records Act (2000). Secondly, Section 73 provides that in relation to the exercise of this and other SRC powers, the SRC shall be supported by the SRO. Section 74(1) (f) says that the Director of State Records is charged with the function of reporting to the Commission about "any breach or suspected breach of this Act by any person or State organization." So whilst in the first instance, reference of a suspected breach of the kind being reported in QLD would likely be to the SRC, the Director, SRO nonetheless has a reporting role defined under the State Records Act. Whether it has the digital forensics or other digital investigative capabilities required to report meaningfully of its own volition on email breaches, is of course another matter.>> Not sure this gets us very much further, Mark. S.60(1)I makes it SRC's function to inquire "into breaches or possible breaches" of the Act; (1)(a) and (1)(b) give it a "monitoring" power. S.73 gives SROWA the power of entry and the task of "monitoring the organization's compliance with its record keeping plan and this Act".

Independence?: In WA, the investigator is not SROWA, so how does its independence support regulation and enforcement? If the roles given to SROWA are enshrined in statute, then surely those functions are beyond the reach of bureaucratic overlords and independence is not required to protect them? The logic of the WA and NSW Acts is that the archival authority lies not in the operational arm

but in a separate (independent if you like) statutory body supported by the Archives Office. In NSW (where the Archives Authority is the comparable body to SRC) that operational body (State Records) does not enjoy the kind of administrative "independence" ASA is arguing for in WA. So what – apart from the unfortunate history of WA Inc. – makes SROWA different? Not helpful to your case for me to have to put it like that at this time, but you did ask. The link between the NSW Authority and State Records is tighter than in WA and that makes it harder to separate them and their functions. In addition to powers of entry, the NSW Act also establishes a dispute resolution mechanism which at least takes matters a step further. If I had been asked to advise on drafting the WA Act, I would have suggested the NSW approach for reasons which must now be all too painfully obvious.

Effectiveness? : These WA powers, which are (I agree) when taken as a whole a bit more supervisory than in the Commonwealth and some other States are neither directive nor regulatory – as in the private sector example I have cited. The SRC can inquire. So what? What then? A stiff letter? You don't need statutory powers or "independence" for that. On the RIMPA list, a post has suggested that the sanction in WA is an adverse mention in the SRC Report. I speak as a sacked State Archivist myself who was removed for speaking out in my annual reports – not even about individual agencies but just about the poor state r/keeping generally – and for pursuing an "investigation" into illegal disposal (so I know something whereof I speak). I didn't say the Qld State Archivist couldn't investigate, I just doubted the effectiveness of such an inquiry absent police powers or the power to direct or sanction. I don't think your response impeaches that argument. The archives authorities can, at best, name and shame and the best thing that has happened in recent decades (since my own sacking) is that in some jurisdictions their monitoring/reporting/investigation functions are now enshrined in law. You say that in WA the breach would be reported to SRC and suggest (?) the inquiry might be undertaken on their behalf by SRO. Suppose that happened? An adverse report from SRC would have no more legal effect than an adverse opinion formed in the mind of the Qld Archivist. In neither State would such an adverse finding have any legal effect and the practical effect is questionable. In the instant case (the errant Minister's emails) what is needed is a result as to whether or not he has committed an offence. My point remains: how does an inquiry by the Archives (whether in WA or NSW or Qld) irrespective of its result take us any further towards that outcome?

I'm not trying to be difficult. But these are difficult issues and, if we keep arguing that archives are a bulwark of accountability, it's no use just waiting and hoping no one else ever asks them. We have to have the answers.

<<Mark Brogan: My understanding of operational procedure in WA is that SRC investigates a potential breach of the Act, after the State Archivist has reported it ... An investigation by the SRC can lead to the identification of an offence, which may then be referred for prosecution ... In addition, the SRC can report on breaches to Parliament, which is the 'name and shame' part … There are similar provisions in FOI and Ombudsman legislation, so I wonder if we would suggest that the lack of immediate prosecutorial powers makes them less effective as accountability agents of government. The State Records Commission Annual Report for 2016/17 reports 13 active investigations of section 60 (1) I breaches in 2014-15. Detail of prosecutions is not provided ... Laxity in pursuing prosecutions for breaches extends across multiple Australian jurisdictions.>> We can all agree about that. The larger question is whether prosecution is the right test of a regulatory regime for recordkeeping (or at any rate the only one). Perhaps the idea of imposing criminal sanctions and prosecuting agencies for breaching laws that regulate the internal operations of government was never a good idea – hence the laxity. Prosecution for crime is not the only regulatory model (though it may be a sanction of last resort).

<< In my view, this suggests a lack of commitment to tackling the problem of spoliation, rather than inadequate or ineffective legislation>> We only need squabble over the meaning and effectiveness of the legislation if we are agreed about what purpose the regulatory provisions (such as they are) is intended to achieve. Is it to punish malefactors or to improve r/keeping? Investigate + prosecute feeds into a model where action is taken after the event (rather than one where action is taken to modify future behaviour). The ingredients of an offence are stipulated in or under law and breaches are

punished after they occur. The only change this effects in future behaviour is the fear of such punishment being visited upon you. Behaviour is not changed if prosecutions are rare or non-existent, if the punishments are trivial, or if the law is left in abeyance for many years and then suddenly sprung on unsuspecting defaulters who had no idea it was being applied (reference our hapless dual citizens sitting in Parliament). Unenforced criminal sanctions in our archives laws seem to meet that description.

Either government agencies never offend (cf. Mikado – married men never flirt) or the prosecution sanction is not being enforced (maybe because it is the wrong regulatory mechanism). That suggests that it is largely irrelevant what the legislative provisions are under which archives authorities operate in this regard. You seem to be saying they are lax. But maybe, if the powers are there and they aren't being used, that's a pretty good argument for repealing those powers and maybe an indication that they are the wrong powers in the first place. Even if the archives authorities were not being lax (and I know from personal experience how difficult it is within the bureaucracy to formulate criminal charges against an agency and what obstacles you encounter when you try) I think my original point remains : they are not set up to conduct effective investigations in the first place. Maybe they should be, but they aren't. Suppose the legislation is adequate, as you are saying (and I'm not conceding that point), how can it be effective if it isn't being (and maybe can't be) used?

<< There are similar provisions in FOI and Ombudsman legislation, so I wonder if we would suggest that the lack of immediate prosecutorial powers makes them less effective as accountability agents of government.>> Are we aware of any prosecutions under the FOI or Ombudsman legislation? The Ombudsman is set up as an investigatory body. My point is that archives authorities aren't (whatever their legislation may suggest to the contrary). Both the Ombudsman and FOI legislation establish a process (investigation and/or appeal and semi-judicial hearing). That's not the model in archives laws so I think the analogy is unhelpful. But I suspect the results could be instructive if we were to examine how those regimes are set up to be more effective than the archival ones (if they are) and why. None of what I am saying should suggest that all the archives authorities have to do is issue standards and then give advice and assistance to agencies in carrying them out. Performance must be monitored and corrected where necessary. It can be audited (as it is in several jurisdictions) but the performance being audited is that of the archives authority as well as the agencies so the archives can have no part in that evaluation and that is a different kind of accountability mechanism. Auditing does not preclude (I would argue it demands) regulatory powers to monitor and correct but, for reasons stated, I'm not sure that investigation with a view to criminal prosecution is the correct way to do that.

Further to Mark's reference to the SRC Annual Report, and for those who may not be aware of it, SRC also publishes minutes of its meetings. They are meeting 3 times per annum, having previously reached a high water mark of 4 times per annum. In 2016, the latest Minutes I could find online, compliance monitoring was always Item 6 (see below). As with the raw numbers of investigations given in the Annual Report, there is little or nothing to say what matters are being investigated or how they are being resolved. Sometimes a glimpse of what's going on can be gleaned from "Matters Arising" Item 5 (see below) but not often and not very much more. So, perhaps it is presumptuous for either Mark or I to be commentating – presumptuous for the lack of detail, not for the want of respect. If we are going to agitate in defence of this system of compliance monitoring, maybe we need to know a bit more about it. Good things may be going on but in such darkness that we may never properly appreciate it. Who is watching the watchers? Bit of a worry that they refer in the SRC Annual Report to the government agencies they monitor as "clients". Couldn't find any naming and shaming in the 15/16 Report. Presumably if any of this monitoring has ever led to an actual prosecution, we would have heard about it. Information is being updated in a Register of Alleged Breaches apparently but I couldn't find that accessible online. Does anyone in WA know if that Register can be accessed?

https://groups.google.com/forum/#!forum/archives-and-records-australia

Extracts from Minutes of SRCWA Meetings: **1 August 2014**

p. MATTERS ARISING

……..

p.11 State Solicitor's Office Advice on RD 2013058 – Supreme Court of Western Australia

The Commission considered the advice and the State Records Office's (SRO) position on the matter and endorsed the approach to continue consultation with the Supreme Court to resolve matters of concern.

The Commission **APPROVED** the application for State archives to be retained by the Supreme Court.

10 March 2016

6. COMPLIANCE MONITORING – STATE RECORDS ACT

6.1 Organizational changes

6.1.1 Register of Government Organizations – Administrative Change – Extract

The Commission **NOTED** the register with updated information.

6.1.2 Register of Defunct Government Organizations – Extract

The Commission **NOTED** the register with updated information.

6.2 Inquiring into Breaches or Possible breaches

6.2.1 Register of Alleged Breaches – Extract

The Commission **NOTED** the register updating current inquiries.

12 August 2016

6. COMPLIANCE MONITORING – STATE RECORDS ACT

6.1 Organizational changes

6.1.1 Register of Government Organizations – Administrative Change – Extract

The Commission **NOTED** the register with updated information.

6.1.2 Register of Defunct Government Organizations – Extract

The Commission **NOTED** the register with updated information.

6.2 Inquiring into Breaches or Possible breaches

6.2.1 Register of Alleged Breaches – Extract

The Commission **AGREED** that the Department of the Attorney General be requested to provide formal advice that the matter has been concluded.

9 December 2016

6. COMPLIANCE MONITORING – STATE RECORDS ACT

6.1 Organizational changes

6.1.1 Register of Government Organizations – Administrative Change – Extract

The Commission **NOTED** the register with updated information.

6.1.2 Register of Defunct Government Organizations – Extract

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6.2 Inquiring into Breaches or Possible breaches

6.2.1 Register of Alleged Breaches – Extract

The Commission **NOTED** the register with updated information.

<< Lise Summers: …you can review earlier minutes and agendas as they are part of the State Archives collection. Also, a recent decision in WA means that investigation and prosecution powers for all accountability agencies will remain separate.>> Yes, the minutes and agendas are online as I indicated in my previous post but they tell us very little (as I also indicated in my previous post). The detail seems to be in a Register – which I can't find. SRCWA is set up to guide and monitor r/keeping practices. They do this by agreeing and signing off on "Plans" with agencies, they approve disposal arrangements, and they investigate breaches. So far, I have not been able to find or evaluate details of the investigations reported in the SRC Annual Reports so that leaves open questions about what things are being investigated, how they are investigated, and how matters are resolved. Are the breaches being investigated violations of the Act, are they just administrative and procedural lapses in the process of developing and carrying out the Plans, are they more serious interventions to deal with behaviours that were not contemplated when the Plans were drafted, or something else? Are matters resolved merely by upholding agreed behaviours already outlined in the previously agreed Plans, leaving SRC open to the charge that they are regulating an administrative process rather than r/keeping behaviour, or by intervening to change behaviours identified as reprehensible or in need of improvement regardless of whether they violate the terms of a pre-approved Plan? Perhaps the Register would provide the answers.

<<Lise Summers: … a recent decision in WA means that investigation and prosecution powers for all accountability agencies will remain separate … >> How does that work in this case? It's not clear to me

that SRCWA or any other archives authority in Australia had prosecutorial powers in the first place. I don't suppose this affects the investigatory role Mark has alluded to. Leaving aside the quality of the regulatory investigations being undertaken and reported in the SRC Annual Reports and also the apparent lack of transparency, there are systemic issues that still need to be considered:

- SRCWA has no operational capability of its own according to its annual report; they rely for such support from SROWA.
- SROWA is an archives; I return to my main point – archivists do not have the training and capacity to carry out investigations and lack the relevant powers to do so. It's even further removed from library work.
- Regulation is only one of SROWA's roles and not I imagine what takes up most of its time and resources, in respect of which SROWA must maintain a cordial and mutually helpful relationship of cooperation with agencies. Without that SROWA will fail in its other (non-regulatory) roles.
- Agencies are "clients", so described in the annual report. The two relationships conflict. The setup in WA establishes what is called a system of mutual dependence which is hostile to robust regulation.

In short, the system is designed (badly) to produce an unresolvable conflict with the potential for regulatory capture.

If SROWA remains within a Library environment which I hope it doesn't (I've signed the petition and made a contribution) this might be the time to address these systemic issues, to separate the SRC and the SRO completely, to take r/keeping away from SRO, to locate it entirely within SRC, and to give SRC its own investigatory staff. This is what I thought was going to happen when SRC was first set up and, when it didn't, I think I made these same points way back then (but I may be deluding myself).

> **Mutual dependence** is need of collaborative partners for each other, reduced resource and environment uncertainties by using collaboration strategies.
>
> **Rule-making**: In administrative law, **rule-making** is the process that executive and independent agencies use to create, or promulgate, regulations in general, legislatures first set broad policy mandates by passing statutes, then agencies create more detailed regulations through rulemaking … Most modern rulemaking authorities have a common law tradition or a specific basic law that essentially regulates the regulators, subjecting the rulemaking process to standards of due process, transparency, and public participation.
>
> **Regulatory capture** is a form of government failure that occurs when a regulatory agency, created to act in the public interest, instead advances the commercial or political concerns of special interest groups that dominate the industry or sector it is charged with regulating.

Update: 9 October 2017 When deletion is not disposal

Earlier this year, Qld Minister, Mark Bailey, stood down over deletion of emails dealing with official business from a private email account. Last month, the Qld Crime & Corruption Commission issued its findings:

> <BEGINS> In June 2017, the Crime and Corruption Commission (CCC) indicated it did not identify any evidence to support allegations the Hon. Mark Bailey MP had used his personal email account to engage in conduct that would amount to corrupt conduct as defined in the *Crime and Corruption Act 2001*. The use of a private email account in itself is not a criminal offence. The CCC was of the view the use of a personal email account for ministerial purposes is in breach of both the *Queensland Ministerial Handbook* and the *Ministerial Information Security Policy*. As these breaches are not criminal offences, they do not amount to corrupt conduct within the jurisdiction of the CCC.
>
> The CCC was also of the view the potential destruction of public records by Mr Bailey may be an offence under the *Public Records Act 2002* (the PRA) … the potential destruction of public records was referred to the State Archivist to investigate subject to close monitoring by the CCC … The CCC has determined not to commence a criminal prosecution against Mr Bailey for the use of a private email account and his treatment of public records contained in that email account … The State Archivist found 1199 records in the private email account that were considered public records. Under the existing Queensland State Archives (QSA) approved Retention and Disposal schedules, 539 of these emails were able to be

> disposed of by Mr Bailey. The remaining 660 records could only be disposed of with 61ealized6161ati of the QSA. The QSA has not provided any such 61ealized6161ati … The remaining consideration in determining whether Mr Bailey disposed of public records contrary to section 13 of the PRA was then limited to the meaning of the word 'dispose' … The CCC … formed the view there must be a permanency to the disposal of a public record to meet the offence. Considering the public records contained in Mr Bailey's private email account were able to be recovered, and have now been recovered … there has been no permanent disposal. Therefore, there is no basis to pursue criminal conduct against Mr Bailey for the disposal of public records contrary to section 13 of the PRA.
>
> The CCC acknowledges the timing of the deactivation of the private email account proximate to an RTI request raises questions about Mr Bailey's intentions at that time. However, the CCC has … found no evidence to suggest the intention of Mr Bailey in deactivating the account was to conceal corrupt conduct made out by the content of any email … The State Archivist has made a number of recommendations with respect to the creation, maintenance and disposal of public records by Ministers which will be progressed separately by his office. The CCC supports the recommendations made by the State Archivist. CCC Chairperson Alan MacSporran QC remains of the strong view that it is undesirable for Members of Parliament or their staff to generally use private email accounts to conduct parliamentary business. It is equally undesirable for any person in the public service to use private emails to conduct official business. As this case amply demonstrates, the use of private email accounts and particularly the deletion of records in those accounts can give rise to a significant perception the use of such accounts is done for a corrupt purpose. <ENDS>

Related story

2017, November 25: Heard of the WofG?

I suppose they didn't want to call it WOG for obvious reasons but they might have considered WHOG as a contraction for Whole Hog. Read about it in IDM for 25 August, 2017. There's been some commentary about it in the RIMP List from Linda Shave.

> The Department of Finance is moving further ahead on its plan to introduce an entirely new Whole of Government (WofG) Digital Records Platform for the Australian federal government, replacing the predominant standard currently in place being HPE TRIM. Finance is specifically keen to explore a solution that will automate the capture and classification of records … A report commissioned from consulting firm ThinkPlace … analysed 23 tasks undertaken by users within TRIM (16), SharePoint (4) and Objective (3). It found that the typical user was frustrated by the large amount of manual effort involved in managing recordkeeping. It also notes, "There is widespread and persistent use of paper-based processes. 8 out of 26 processes described by users involved at least one significant step involving hard copy … A Feasability Study published by Finance in May 2016 found that … EDRMS implementations in government are not being used efficiently and effectively, and many agencies have not harnessed the productivity gains that digital record keeping offers. "In many cases, EDRMS are being used as paper filing systems or as storage repositories and not as the sophisticated information management tools that they are … Without 61ealized6161at records management, government is facing a bloat of records of unknown value, while paying a premium price for systems designed to avoid such an outcome …"
>
> "Finance will deliver a Platform to become the basis for a WofG system of information management. The solution will use technologies such as cognitive computing, keyword extraction and auto-indexing to ensure that all information is automatically captured and 61ealized6161a, indexed, managed and disposed of with minimal interaction by the end user. Initially, the solution will manage only unstructured data." Following a Request for Information process in early 2016, Finance determined that the market was not yet ready to provide a service capable of automating the record capture and lifecycle tasks. However, it now feels that technology may have advanced sufficiently to provide a successful solution. It is now specifically seeking information from vendors who may have innovated or enhanced their records management offerings in the last 18 months, and wants the solution to be cloud based as either Software-as-a-Service (SaaS), or Platform-as-a-Service (PaaS).
>
> The Position Paper does note that the planned Whole Of Government RmaaS "will be available to Corporate agencies to use, but will not be mandated for use."

Whew!

https://groups.google.com/forum/#!forum/archives-and-records-australia

2018, May 3: Auditing process not outcomes

ABC News has a great story about Aged Care. Why should this matter to r/keepers (I hear you ask)? Because it is really a story about the way performance is measured, about failed systems for monitoring and evaluating performance (any performance) and that could just as easily apply to r/keeping audits. Some of the gems from this story:

- If you want to find out the number of times each year that nursing home staff administer the wrong drugs or physically restrain residents, it's likely no-one will tell you. Instead you'll be assured the aged care facility has all the appropriate processes in place to ensure your loved one is given the best 24/7 care and medical support. And most of them will point to a near perfect federal accreditation score. That's because, despite a litany of scandals, less than 1 per cent of nursing homes had their accreditation revoked or varied last year.
- [The reason for this?] Because the system seems to largely measure processes, not actual clinical outcomes, as another government-commissioned review stated last year. "All too often, the review heard about accreditation … that was focused on processes rather than outcomes and appeared to be a 'tick-the-box' exercise," the Review of National Aged Care Quality Regulatory Processes concluded.
- Mark Brandon, the former CEO of the then Aged Care Standards & Accreditation Agency, explained it this way in 2010: "We do not measure nutrition levels. We look at standards which we expect will stop malnutrition actually happening." In other words, the agency checks that a facility has processes for ordering, cooking and then distributing food. It doesn't measure whether residents are adequately nourished. Process, not outcome
- You would think the Federal Government, which tipped $12 billion into residential aged care last year, would want to know whether Australia's nursing homes have high or low rates of key clinical indicators like malnutrition or pressure sores, both of which can be fatal… the good news is that the Government has launched a voluntary program for nursing home providers to collect the data, as well as the incidence of physical restraint…The bad news is that less than 9 per cent of aged care services are participating — just 230 out of 2,677 nursing homes.
- There's clear evidence that collecting such data can dramatically improve outcomes for nursing home residents. We know that because the Victorian Government, which runs 178 nursing homes, has been collecting data on five clinical care indicators since 2006: pressure injuries, the use of restraint, falls, unplanned weight loss and the use of nine or more medications. Its figures, released for the first time to the ABC, show that over 12 years the rate of pressure ulcers dropped by 75 per cent; the rate of severe pressure injuries by 85 per cent; and physical restraint use plunged by 91 per cent.
- … despite innumerable reports, reviews, and promises by successive federal governments, consumers are still waiting for the clinical care data that would give them a clearer guide about how to choose the safest nursing home for their loved one.

Conclusion? Auditing works – provided it's done properly.

2018, May 24: So transparent it can't be seen

This story about a senator's voting record throws light on the Register of Interests and its availability. Amazing that illegible entries can be put up on line in the first place, that the on line register isn't searchable, and that a public interest group (apparently) seeking to make it so has to ask that the register be made legible.

> **David Leyonhjelm supported Adani in Parliament after investing in Abbot Point coal port**
>
> A crucial crossbench senator repeatedly voted in support of Adani in Parliament while owning a corporate bond issued by the group's Abbot Point coal terminal.,,In September 2016, Senator David Leyonhjelm sought to disclose he was an investor in a corporate bond issued by the Adani Abbot Point coal terminal company through "investment vehicle" Amavid Pty Ltd…Senators are required to disclose shareholdings, real estate, liabilities, bonds and other potential conflicts on the register of interests. However, the rules governing the register are not clear on how much information is required for disclosures around investment vehicles, nor how legible the information must be. In his disclosures following the 2016 election, Senator Leyonhjelm included an annexure listing the investments of Amavid but the page was illegible.The legibility of the scan only improved following a request as part of a community journalism project known as 'Burn The Register' to make the register of interests searchable.The investment in the Abbot Point port was only revealed when Senator Leyonhjelm's disclosures were updated with better quality scans earlier this year.

https://groups.google.com/forum/#!forum/archives-and-records-australia

2018, July 11: Pittsburgh's recordkeeping system is a mess …

Re-posted from Archives Live –

Pittsburgh's recordkeeping system is a mess, but 2 bills — and 1 man — aim to fix that

"Now, we don't really know exactly what's in these basements, and we should."

Funny that this should be in the home of the Pitt Project and the functional requirements.

2018, October 13: Crowd-sourced Register

The parliamentary Register of Interests is managed in such a slip-shod way and is so inaccessible that suspicious minds have harboured the thought that it is deliberately made virtually unusable in order to assist politicians escape scrutiny. From *The Guardian's* page on the Transparency Project –

> BURN THE REGISTER is a project established by Jackson Gothe-Snape, supported by a team of journalists … that aims to fix the Interests Register of Australian Federal Parliamentarians. By crowd-sourcing the transcription of thousands of pages of handwritten PDFs, BURN THE REGISTER will make the Interests Register searchable.

2019, April 3: It's in the files

Maybe. From the Guardian

> The Philippine supreme court on Tuesday ordered the release of police documents on the killing of thousands of suspects during the president's drug crackdown, in a ruling that could shed light on allegations of extrajudicial punishment…Supreme court spokesman Brian Keith Hosaka said the court ordered the solicitor general to hand the police reports to two rights groups which had sought them…More than 5,000 people have died, mostly at the hands of police, between July 2016 and the end of November 2017, according to official figures released by the Philippine drug enforcement agency (PDEA). The official toll falls well short of estimates given by human rights groups and campaigners for victims…Solicitor general Jose Calida had earlier agreed to release the voluminous police documents to the court but rejected the requests of the two groups, the Free Legal Assistance Group and the Center for International Law, arguing that such a move would undermine law enforcement and national security…Joel Butuyan, president of the Center for International Law, said: "This is an emphatic statement by the highest court of the land that it will not allow the rule of law to be trampled upon in the war on drugs. It is a very important decision."

I hadn't supposed that they would actually keep records of this lawless, murderous, state-sponsored mayhem. The fact that the government opposed release suggests that maybe they do. One never ceases to be amazed.

2019, May 15: Biometric records?

There's an article in SMH predicting replacement of travel documents by biometrics. It is being called "seamless" travel for no good reason that I can see.

> There's an old truism of travel: as long as you've got your passport, you'll be fine … [but] … What if the only thing you'll need to travel the world in the near future will be your face? … Pretty soon you'll be able to conduct your entire travel experience with your face and fingerprints ... No passport. No boarding pass. No credit cards. The travel experience, changed forever ... Advertisement And the interesting thing is that the seamlessness will soon continue after you've left the airport ... There's apparently an increase in people having RFID implants – that is, having a chip implanted under their skin to act in the same way a PayWave card or ApplePay phone does, allowing identification through near-field technology ... Already, you don't need a wallet. You don't need an air ticket. And pretty soon you won't need a passport or any other form of ID. Just your face. Try not to lose it.

Just how silly is this? A passport is a certificate of identity (that you can carry with you) issued by competent authority that is accepted as *prima facie* proof unless there is reason to doubt it. Any ID works because it certifies that you are who the document says you are on the authority of the issuing body. Faces and fingerprints don't replace that. They simply present physical features belonging to the person involved as a means of verification. They don't establish who that person is unless there is a point of reference linking that face or those fingerprints to an Identity that is registered in some way. Such systems can be used to capture the data as well as check it, but that is a different issue.

You can have a cute argument about whether a passport, ID, driving licence, credit card, etc. are "records" and whether people become records under a biometrics regime but that is an issue for Trivial Pursuit at an ASA Dinner. If biometrics are used to establish identity, the significant change is that your biometrics are replacing documents that you have to carry about. A somewhat weightier question might be a suggestion that it is easier to falsify a passport, driver's licence, etc. than it is to falsify a face or fingerprint (except under singularly gruesome circumstances). But the r/keeping dimension remains unchanged; all that changes are the methods that might be used to establish a false ID.

What they want to know at the airport gate is not whether or not you have a face but who that face belongs to. The ID of that face must be recorded somewhere, somehow, and the link between the Identity and the Person must be protected from falsification or error. It is r/keeping that provides the means by which the doings of the person attached to the face (and increasingly, alas, that person's words and thoughts) can be tracked and checked.

When they want to know all about you, it's not you they go to, it's your record.

<<Andrew Waugh: Your 'certificate of identity' is stored in a computer somewhere. That's where the record is. The biometrics - your face or fingerprints - are simply identifiers used to retrieve the record…If the person checking doesn't have access from their computer to the computer somewhere, you don't have your passport, driver's license, etc…>> I would guess that there are more people checking ID who don't have access to the registration data than otherwise (and wouldn't ever be entitled to). I have been told that a NSW Driver's Licence is accepted nearly everywhere as valid ID (on its own or as one of two required). The article doesn't explore this at all. The licence is accepted at face value by those who aren't linked because it is assumed to be valid.

The other examples given in the article (car rentals, hotels, merchants) must presumably capture the 'certificate of identity' singly and for their own use in systems under their own control. So, alongside what has become a de facto suite of universal IDs (passports, licences, Medicare cards, Benefits cards, etc.) mostly under government control, there would be a proliferation of certifications under private control. These would give rise to some of the risks you identify, but others might say that anything that weakens Big Brother is a good thing – even if it risks the ID system. Remember, we beat "them" back on the Australia Card but "they" now have MHR.

And here's another scary thought. If there is a proliferation of "private" ID verification systems, how long will it be before they club together to pool their data in a shared non-government Identity Database.

2018, April 30: Can I show you a document?

From the *Weekend Oz* **Iron Orr a test of mettle for the toughest**

> "Can I show a document?"
> They are the five apparently harmless words spoken by counsel assisting the banking royal commission, Rowena Orr QC, that should strike fear into the heart of any witness. Time and again over the past two weeks, banker after banker has been caught in Orr's trap.
> If you lie to Orr, the chances are that somewhere in the royal commission's vast collection of documents lies a digitised piece of paper that will reveal the truth. For the steely Orr and her team of youthful assassins, including baby-faced QC Michael Hodge and lean junior Mark Costello command of the database is key.
> Each financier comes to the stand a master or mistress of the universe, clad in an armour of obfuscation that has so far protected them from the consequences of the industry's misdeeds, only to be stripped

bare by a few words. The banking bullshit … falls away and the grubby reality emerges … financial adviser, Sam Henderson [had] a shareholding in a company that ran funds into which he tipped a pile of clients. "Did you disclose that interest to your clients?" "I did."

"Can I show you a document?" …

2018, May 17: Breath-taking

… it was possible for a public servant to direct another official to prevent disclosure of information without committing an offence … if the official who destroys the information is unaware the information is subject to a freedom-of-information request

And if the official who destroys the information is aware that there is no authority to do so under the State Records legislation???? Makes you wonder why we have laws regulating the disposal of public records at all ….

Technology chief 'directed staff to delete information'

The information chief at Peter Dutton's new Home Affairs super ministry allegedly ordered the deletion of a government record relevant to a request under freedom of information laws when he was a senior executive at NSW's transport agency. Tim Catley, who began his high-ranking role at Home Affairs in February, is accused of directing staff at Transport for NSW to delete government information in 2016, in witness statements given during an investigation by the state's Information and Privacy Commission. Mr Catley vehemently denies he asked anyone to delete government records. "The allegation that I asked anyone to delete an email is not true and it is not technologically possible to do that anyway [at the transport agency]. Professionally and ethically I wouldn't do anything like that," he told the *Herald*.

Following a referral from the Independent Commission Against Corruption, the state's Information Commission launched an investigation behind closed doors into the deletion of a record at Transport for NSW to avoid public disclosure 18 months ago … A preliminary report on the Information Commission's investigation, seen by the *Herald*, found that a Transport for NSW executive issued directions to delete government information relevant to a request under the Government Information (Public Access) Act (GIPA), the state's freedom of information legislation. "The investigation has found that the executive directed the deletion of records that were germane to a GIPA access application and that staff acted on that direction," the report, by Information and Privacy commissioner Elizabeth Tydd, said. Ms Tydd's report did not name Mr Catley as the executive who directed the deletion. But the witness statements to the commission assert that it was Mr Catley who gave the direction.

Despite her finding about the direction, Ms Tydd determined there were no grounds to refer the matter to the Director of Public Prosecutions or the Attorney-General. Her analysis of the GIPA Act found it was possible for a public servant to direct another official to prevent disclosure of information without committing an offence. According to Ms Tydd's analysis, if the official who destroys the information is unaware the information is subject to a freedom-of-information request, the person who directed them to delete that information did not commit an offence. And because other staff at Transport for NSW later ensured the deleted document was retrieved, the commissioner found the government agency had not failed in its duty…

2018, May 18: Elizabeth Tydd, the Information Commissioner who took 18 months to reach a "preliminary" decision (if the story is true) is on the NSW State Archives Board "representing NSW Government departments" and cannot credibly claim to be unaware of provisions in the State Records Act. If she doesn't like the "preliminary" decision she felt obliged to make in respect of prosecutions under GIPA, why doesn't she raise the issue there? Is it because she feels "there are no grounds" for referring the matter to the DPP under the State Records Act either? Is this also the view of the entire Board? Can't they initiate inquiries of their own on the basis of the published facts? Have they? If not, what are they waiting for? We are entitled to know.

'Glaring deficiencies': Push to close 'loophole' in state's FOI laws

Labor and the Greens are pushing the Berejiklian government to close a "loophole" in the state's freedom-of-information laws that makes it possible for a public servant to direct another official to prevent the disclosure of documents without committing an offence.

https://groups.google.com/forum/#!forum/archives-and-records-australia

2018, May 19: Feel like I'm having a conversation with myself here. These are some 4.00am thoughts (old men do a lot of their thinking in the wee small hours). Assuming we're not going to get a helpful response from State Records, let's consider the question of legal action on unauthorised destruction.

1. **The laws are arcane**. To my knowledge action has never been taken. To do so now would be like prosecuting a motorist for impeding horse traffic on Parramatta Road. Most laws are directed at controlling the behaviour of society at large. These laws apply internally to government. They have statutory form only because governments are lazy and habitually express their wishes in statutory form. But the prohibitions are more like internal directives in a private company. We need to find another way.
2. **The environment has changed since they were drafted**. In a digital world, "destruction" (authorised or not) is a slippery concept. The Queensland Minister who deleted his emails w/o permission got off (inter alia) because they were recoverable. Well, what data deletion might not be recoverable? If deletion of data from the record (however defined) does not need authorisation so long as the data can be recovered somehow, in some form, what use is a law forbidding it?

So. What to do. What to do.

3. In the ICAC era, **make prohibition of unauthorised destruction an internal disciplinary matter** within government – make it corruption, not an offence. Use the anti-corruption processes and pray to God that the media and right-wing commentator campaigns to undermine them fail. The codes of practice could be based on statute, but their enforcement would be disciplinary, not criminal. No police, no DPP, no jail time – just (possibly) dismissal and loss of pension.
4. And we already know the answer to the digital "destruction" problem. **Refocus away from the artefact and onto the record**. It doesn't matter a hoot whether the data is recoverable. Let nit-picking lawyers obsess about that. It's the structure and context in which the data is formed, maintained, and used that define whether its destruction must be authorised. It's the destruction of the record, not the data, that matters. Of course, nit-picking lawyers will find ways around that also, but it's our job to make it as difficult as possible for them.

Lot more thinking to be done about this. Musing really, since experience tells us that there is no political will to DO anything. Our archives laws present a reassuring façade giving an appearance that they deal with unauthorised destruction. But they don't. We could think our way to a better 66ealized but what would be the point of sweating our guts just to construct another façade? 4.00am thoughts tend towards the gloomy side, also.

2018, May 20: **<<Andrew Waugh: I agree that making it a crime to destroy records is a dead letter. It's never prosecuted, so it's not a deterrent. Personally, I would look at ensuring that destroying records has consequences for the government. Not administrative consequences, or consequences for the person that ostensibly destroyed them, but practical legal and economic ones for the government itself. For example, if the government is sued by someone, and the agency cannot produce the necessary records, the court is required to assume that the records would be the most adverse to the government's case. The plaintiff does not have to prove what was in the destroyed or lost records…>>**

2018, May 21: The NZ, Commonwealth and State statutory provisions are sufficiently similar for them to be considered together –

- Victoria *Public Records Act 1973 s.19*
- Commonwealth *Archives Act 1983 s.24*
- Tasmania *Archives Act 1983 s.20*
- South Australia *State Records Act 1997 s.17*
- New South Wales *State Records Act 1998 s.21*
- Western Australia *State Records Act 2000 s.78*
- Queensland *Public Records Act 2002 s.13*
- New Zealand *Public Records Act 2005 s.61*

I have no idea what government archivists do when they meet but they could profitably spend some of their time developing a joint submission to all these governments on uniformly revising the enforcement provisions along the lines Andrew or I have suggested (or along any other lines our community might agree upon). It would be good, at any rate, if some of the stakeholders – recordkeepers, auditors, ombudsdmen, anti-corruption bodies, transparency and FOIA advocates, etc. etc. – were to accept that there is a problem, that what we have here is a failure of regulation, and that there is a need to fix it.

Assuming there is a problem, there are two elements to be considered:

- What is/are the solution(s)? The subject of this chain of posts.
- Why should they be uniform?

The argument for statutory uniformity is that the outcome should be the same regardless of jurisdiction – to establish a single "national" approach in important matters governed by multiple jurisdictions (e.g. defamation, succession, guns, consumer protection) or to facilitate activity across jurisdictional boundaries (e.g. commerce, shipping, evidence). Government r/keeping is not an obvious "national" issue but it does underpin (in the view of some) fairly fundamental rights. It would therefore be argued that it is unfair if the guarantee of these rights available to some Australian citizens is different for others merely because of where they live. It could also be argued that uniform provisions assist citizens to exercise their rights by simplifying understanding of the law's provisions, instead of requiring them to investigate variant approaches to what is essentially the same thing. It could also be said that r/keeping provisions apply a set of principles that are more expansive than the local application(s) and that an agreed uniform approach upholds those principles better than parochial implementations. The same arguments can, of course, apply to access to government information and to privacy but that would bring in other kinds of legislation and other kinds of stakeholders. I think we can agree that, at least in the first instance, imagining a better approach to 67ealized6767 destruction of records is ***our*** business (though we would need to engage the stakeholders if ever there was to be progress). Note: The carrying out of the uniform provisions would still be done within each jurisdiction by competent authority; it is the statutory basis for their sundry actions that would be uniform.

It would at least be a comfort to hear a few more voices raised on this list about it, even if only to say it's not an issue of any concern for them. I sometimes wonder how many subscribers there actually are here.

2018, May 26: <<Michael Piggott: … What also happened this week was an announcement from Victoria's Andrews government, reported as follows from the ABC:

> Victoria's Labor Government has promised to introduce laws targeting employers who underpay their workers, with penalties of up to 10 years in jail. The new laws, which will be announced at this weekend's Labor Party conference, would also introduce fines of almost $200,000 for individuals and almost $1 million for companies that deliberately withhold wages, fail to pay superannuation or other entitlements, or do not keep proper employment records.

Notice that last bit? Seems some quaint souls still think recordkeeping behaviour is an area worth legislating to control. What are the chances anyone ever gets fined though?>>

2020, June 22: Lack of records

<<Andrew Waugh: The ACT Auditor General cannot rule out criminal behaviour over land deal because of a complete lack of records on the meetings…>>

> **Softcopiesyes** Comments on this article: "How far back does this go, are we talking typing pools where everything was hardcopy, but even then do all pieces of paper 'disappear'? Like, what about electronic records, where be those?"

Like, what about lost manuscripts – the history of the Etruscans by the Emperor Claudius, for example – where be those? Missing records are as old as the lost pages from the diary of John Wilkes Booth and go back a long time before that. In Umberrto Eco's *Name of the Rose*, the wowser librarian (Venerable Jorge) tries to suppress Aristotle's book of *Poetics* because he thinks laughter is sinful (or, more broadly, Eco's title resonating with the great mediaeval poem *Romance of the Rose*, because he thinks literature should be uplifting not pleasurable). Some politicians would probably prefer if records

were facilitative not evidential. Is Softcopiesyes suggesting it is easier or harder to "lose" hardcopy? What do we think? It's probably harder to obliterate data than it was to "lose" paper files.

As this and other stories suggest, politicians aren't really friends of accountable r/keeping except when it gives them a tool to thwack the other side. Slack accountability allows a more flexible approach to the conduct of public business. Until it leads, as it always does, by almost imperceptible degrees, to outrageous over-reach. At which point a pious chorus of vote-catching bloviation ensues. Thank God, for honest auditors (and ombudsmen and other instruments of accountability). If I were in Canberra, I wouldn't be too concerned about the lack of a Federal/Territory ICAC – the parliamentary and assembly committees seem to be better at ferreting than in the corresponding State parliaments.

The problem is that a situation that can be explained away as carelessness can't really serve as evidence of criminality or as the basis for disciplinary action. I'm always surprised when pollies own up to email deletion and then try to defend it instead of resorting to the Nixon defence for the lost 18.5 minute gap ("my finger slipped"). Whatever the solution is (if there is one) we should remember Dick Goodwin's response when asked if he was dismayed that corruption resurged within 20 years of Watergate. "No," he said, "corruption is like cockroaches; you gotta keep spraying." Repetitive, cumulative exposure may be the best (or at least the only effective) tool we have.

2020, January 29: The "Bermuda Triangle" of police files

<<Michael Piggott: This sorry story … is worth a notice here … It is mainly about the management by Victoria Police of their records, the context being a Royal Commission into its management of informants…. >>

<<Andrew Waugh: People don't really care about accountability … If a failure of accountability is egregious enough, and people's noses are rubbed in it, they'll care for a short time about *that* specific failure … But people won't generalize a specific failure to systematic failures, and they'll forget almost as quick as you can say 'look, squirrels'… This is why the old view of records – as the organic accretion of documentation as a side effect of doing work – is still the correct view. Doing work creates a documentation trail, even today (especially today). The trail is just not in an equivalent of the traditional twentieth century files organized in a business classification scheme.>>

2020, January 31: Yes. How records are made – documenting event or circumstance (through structure & context) – is the most important thing. How they are kept is secondary because it only supports that primary purpose.

Some years ago, I heard a radio interview with one of the Watergate investigators. He was asked if he despaired that corruption had crept back into Washington. His reply was along the lines: "Oh, no, corruption is like cockroaches – you have to keep spraying." That's what we have to do – keep on spraying. You combat corruption using a process not a mechanism.

You're right, Andrew. It seems unrealistic to expect the public to think much about or to value integrity as an abstract idea. Still less to value r/keeping because of a perceived connection. As you say, they value bread-and-butter issues, self-interest, and things that occasionally outrage or offend them (bush fires, inaction on climate change, bank rip-offs, rorting with taxpayers' money, child abuse cases, maltreatment of the elderly) These are things people can fit into their frame of experience and sometimes that rises to an aggregated disquiet. When this looks like happening, politicians react, first by denying there's a problem at all (nothing to see here) and, If that fails, they expend mighty efforts to spin, obfuscate, misdirect, and even deny culpability, waiting for public ire to subside which it usually does.

What then is the purpose of keeping on spraying? What is the end in view?
A target audience for us is the overseers of accountability (auditors, royal commissioners, committees of inquiry, royal commissions, ombudsmen) but according to a World Bank publication (Accountability Through Public Opinion) the best approach would be "direct accountability" (the ability of citizens to directly hold their own governments accountable). There is a telling quote from Frederick Douglas

Power concedes nothing without a demand. It never did, and it never will.

The book begins with accountability mechanisms used in monitoring grants to developing countries but moves on to larger issues. It is too dense to summarise here and ultimately it is inconclusive (some might say naïve). I find its thesis compelling – that check mechanisms to identify and repair accountability failures are less effective than direct accountability (if that could be achieved). It offers a new way of thinking about how to achieve accountability arguing that this will be in the "domain of both politics and governance".

> How can individual incentives and institutional mechanisms be designed and used to generate genuine demands for accountability? … for public opinion to generate bottom-up demand for political accountability? …

Ultimately, it is an argument against accepting the way things are now that provides a context (I believe) in which we could rethink the role of r/keeping. Of course, government will say that direct action is catered for in focus groups and advisory panels. Well, they would say that, wouldn't they?

This book doesn't provide the answers to Andrew's pessimism, but it may be a good place to begin. It is worth noting that the Index contains not a single reference to "archives", "documentation", or "records".

2020, February 28: Friday reading

<<Joanna Sassoon: Some dismal Friday reading …

> Outgoing Health Department secretary Glenys Beauchamp has told an inquiry she destroyed all the notes and notebooks from her public service career in recent weeks, including notes of meetings held early last year on the controversial sports grants program… But Ms Beauchamp said they were simply notebooks in which she kept her "scratchings" which she later used, as necessary, to create official records. They were not necessarily a record of meeting outcomes, she said. Under questioning from Senator Gallagher, she said she was aware of official record keeping rules covering government information. She also said she had not sought legal or other advice before destroying the notebooks, prompting Senator Gallagher to accuse her of making a unilateral decision about which documents met the definition…>>

Time to use the NAP?

To quote Shakespeare freely: If not now it is to come, if not to come it must be now, if not now yet it could come (we may hope) –

> **24 Disposal, destruction etc. of Commonwealth records**
>
> **(p)** Subject to this Part, a person must not engage in conduct that results in:
>
> **(p)** the destruction or other disposal of a Commonwealth record; or …
>
> l damage to or alteration of a Commonwealth record.
>
> (2) Subsection (1) does not apply to anything done: …
>
> l in accordance with a normal administrative practice, other than a practice of a Department or authority of the Commonwealth of which the Archives has notified the Department or authority that it disapproves; …

The so-called NAP – s.24(2)l – was intended as a mechanism to narrow the scope of practices caught by the phrase "in accordance with normal administrative practice". This was a loophole deliberately included in the Archives Act to avoid the possibility that "innocent" office practice could expose public servants or ministers to prosecution. The intention was to give NAA the power to close these loopholes – one by one – as they came to light. In a monumental misunderstanding of the drafting, NAA has, instead, used it to schedule practices of which it approves – thus broadening the loophole instead of narrowing it as intended. The NAP has become a kind of de facto disposal schedule. Daft! If ever there was a moment to use the NAP correctly – to outlaw the casual destruction of "scratchings" – this is it.

2020, March 4: <<Michael Piggott:… some at least may not appreciate how common normal administrative practice (NAP) is across Australasian government archival scene. NAP is a National Archives of Australia (NAA) invention so it claims, and through the Council of Australasian Archives and Records Authorities, the idea was rendered into a policy in 2007 which all CAARA members apparently follow. This policy includes NAP concepts, defines 'ephemeral records' [or 'ephermeral' as it states in the policy title], and specifies strategies and principles. … one is struck how vague idealistic trusting and prescriptive it is, and ultimately how much leeway it gives the individual government official … at Senate estimates last week, having elicited from the outgoing Health Department Secretary Glenys Beauchamp

that she'd destroyed 'all my notebooks and notes' (including the 'sports rorts' related 'scratchings'), Senator Gallagher announced she would raise all this potential illegality with – not NAA, or its parent department Attorney-General's, but the Australian Public Service Commissioner [who responded] that the APS Commission 'does not hold any evidence that there are widespread or on going issues in the service relating to the destruction of documents' …>>

<<Adrian Cunningham: I think the key question is whether or not there are formal minutes of the meeting in question? If there are then it would usually be fair enough for the Secretary to dispose of her rough notes of that meeting under NAP – though given the controversy swirling around the sports rorts affair, one might argue that it would have been prudent for her to ensure that her rough notes were kept, even if there was a formal record of the meeting elsewhere. If there is no formal record of the meeting then the more important question is – why not?? This brings us back to the issue discussed earlier on this list that the Archives Act has no requirement in the Act for officials to create records in the first place – it only prevents them from disposing of them (if they exist) without authorisation (unless of course you cite NAP)>> S.24(2)I gives NAA one power and one power only – to disapprove of administrative practices thought to be "normal" and used to destroy records w/o NAA's consent. If NAA becomes aware of such a practice and does not, by default, wish to see it continue then it must say so. If NAA wishes to approve a practice, it has power to do so under s.24(2)(b) –

> 24 (2) Subsection (1) does not apply to anything done:…
> (b) with the permission of the Archives or in accordance with a practice or procedure approved by the Archives;

But "normal administrative practice" is the phrase used in connection with dis-approvals under 24(2)I not in connection with approvals under 24(2)(b). So far as I can see, NAA has conflated

- 24(2)(b) – the power to authorise destruction in accordance with an "approved practice" and
- 24(2)I – the power to disapprove of a practice NAA thinks should be outlawed.

Endorsement by CAARA not withstanding, at least one State Archivist (who shall remain nameless) agreed with me in conversation that the NAP Policy was a nonsense but he felt he had to go along. And, no, it wasn't my friend John Cross who said that to me.

Rough notes were exactly the problem Charles Comans (our draftsman) had in mind on a hot summer's afternoon in Canberra when we wrote this clause. His practice was for us to go through the wording of each clause on a separate sheet of paper and as we made changes he would ask "the girl" to come in and type up a new version, the previous drafts being screwed up and binned as we went along. He thought that it should not be necessary to seek formal NAA approval or for NAA to have to explicitly itemise such ordinary practices because they were "normal" and he had a lawyer's touching faith that public servants would not stretch the phrase beyond reason. He was persuaded, however, that NAA should be able to stamp out any abuses by disapproving of practices it didn't like. It was a more innocent time (he wouldn't be able to talk like that about "the girl" today) and public servants were then assumed to want to do the right thing – but just in case…

> ... the NAP exists to overcome the very mischief to which the sports rorts matter gives rise by disallowing abuses as they come to notice. The drafting of such NAP disapproval might be politically fraught in these circumstances but not technically difficult. Besides a bit of creative uncertainty and the possibility of being caught out and one's actions being disapproved of by NAA might have a salutary effect on the bureaucrats regardless of any impact it might have on the career prospects of a D-G brave enough to do it..

Adrian has provided what could be one element of a NAP disapproval in this case: viz. if no "formal" record of a meeting is kept then NAA disapproves of destruction of any "rough notes". So there. Such a disapproval – issued as a general notice to all departments and agencies in response to the outgoing Secretary's testimony – would have prospective effect, not just a rap on the knuckles for what has already occurred.

2020, March 4: <<Andrew Waugh: From The Guardian today: …"The national archivist can't say whether or not the law has been broken, as it is unaware of what might have been in the notebooks"…>> So, here's a recordkeeping question for the national archivist: Should the disposal outcome depend upon

the content of the notebooks or on the circumstances in which the notebooks were created?. A NAP could be issued (could have been issued many years since) disapproving of the disposal of any notes of meetings (regardless of content) where no other record has been made. Records (by my definition) are evidence of event or circumstance not just carriers of information.

2020, March 11: **<<Adrian Cunningham: The Qld Act has no NAP. So the way it is handled there is that there is a class in the GRDS for transitory, ephemeral and facilitative records. They can be disposed of as soon as their facilitative use finishes. Moreover, no metadata about the existence of disposal of such individual records needs to be kept – unlike for other records>>** This is precisely correct. The way it should be done and the way that the C'wealth Act provides for as "a practice approved by the Archives" under 24(2)(b). You authorize disposal using a disposal authority. Duh.

<<At least it doesn't give carte blanche To agencies to declare anything they like to be NAP and then rely on the Archives to know what everyone is doing and disallow particular malpractices>> I suppose I can understand the distaste for NAP in light of the way it has been misapplied. But I can't see what people object to (provided it is used properly). It was never designed to give a permission on top of disposal procedures of the kind Adrian has outlined. The phrase "normal administrative practice" in 24(2)(c) clearly applies only to disallowed behaviour. It was designed to give Archives a simple, unimpeachable, and direct way of stamping out unruly practices. It only does harm when it gives agencies the idea that they can decide for themselves and w/o archives consent what to discard and when. When it encourages them, in other words, to look elsewhere than the disposal authorities for guidance.

Surely it would be useful – even in Queensland – to be able to disallow practices of which Archives became aware that involved undesirable loss of data that agencies didn't believe violated the Act? What would Archives do? Write them a letter? Become bogged down in protracted disputation? Who would arbitrate? Litigate? Call in the cops? How much simpler to exercise a statutory power to disallow the practice. End of story.

But I suppose all this is academic. After 40 years of misuse and embedded misunderstanding they can hardly start using it correctly now.

2020, September 25: **I was hoping you wouldn't ask me that …**
ICAC is investigating whether MP Daryl Maguire misused his parliamentary office for his own financial interests. The hearings then took a dramatic turn

> Corruption watchdog officials escorted a government staffer into State Parliament on Wednesday to remove a hard drive she had been secretly storing, despite being instructed by a former NSW MP to make it disappear …. Ms Cartwright worked for the former MP when he held the position of government whip from 2011 to 2014. She still works in the office of current government whip and Terrigal MP Adam Crouch … the hearing took a dramatic turn when Ms Cartwright revealed she was in possession of Mr Maguire's parliamentary computer hard drive … the revelation forced an urgent adjournment so Ms Cartwright could be escorted to Parliament House to collect it from her workspace in Mr Crouch's office…
>
> … She said she received an email from Parliament House IT services saying that the hard drive of her former boss would be delivered to her to pass on. "I phoned him and asked him how he wanted it sent to him, and he said [words to the effect of] post it, but it gets lost in the post." …

2020, October 14: Here we go again (shades of Hillary). When does email deletion become suspicious? Answer: when it becomes suspicious later on in the light of subsequent developments or when the circumstances are inherently dodgy.

> Gladys Berejiklian's career hinges on the evidence of her former partner, disgraced ex-MP Daryl Maguire, when he fronts a corruption hearing on Wednesday … Mr Maguire is expected to be questioned about his relationship with the Premier and instances where he took a "tipsy" property developer into her office and distributed her personal email address to a landowner wanting to lobby Ms Berejiklian … Documents tendered to the Independent Commission Against Corruption on Tuesday revealed an email sent by

> racing heir Louise Raedler Waterhouse to Ms Berejiklian was deleted from her personal account before corruption investigators could retrieve it.
>
> Evidence before the commission has revealed Mr Maguire told his then-partner Ms Berejiklian over the phone on November 15, 2017 to expect an email from Ms Raedler Waterhouse. The email was sent at 6.51pm. Documents tendered to the ICAC show the Premier's office could not locate the email, including in Ms Berejiklian's "deleted items folder". An email to the commission from the Premier's chief of staff Neil Harley on September 10 this year said the Premier "had no recollection of deleting the email". Mr Harley said to the best of Ms Berejiklian's knowledge "the Premier is the only person who had access to and the ability to delete items" from the account around the time the email was sent … Prime Minister Scott Morrison also defended Ms Berejiklian for a second day, insisting the Premier has his "absolute support".

The last person to receive Scott Morrison's absolute support was Malcom Turnbull shortly before the former PM's downfall. To paraphrase what was said about "Robbo" (the sleazy minister in charge) in an episode of *The Games* – expressions of Robbo's full support are often the last words you hear before a nice man pulls a bag over your head as you stand on the gallows.

2020, October 21: "… the documents were relevant …"

> Health Department lawyers say Chief Health Officer Brett Sutton told them they did not need to hand the hotel quarantine inquiry a series of emails that are now casting doubt over his claims he didn't know about the hiring of private security guards. The emails, which weren't provided to the inquiry until the past week, contradict Professor Sutton's evidence about when he found out private security was being used in the bungled hotel quarantine program. In a letter to the inquiry, Department of Health and Human Services lawyers said Professor Sutton told them the emails did not change his evidence to the inquiry and did not need to be disclosed … "Professor Sutton further instructed us that he did not consider he needed to clarify his evidence and therefore the email did not need to be provided to the board for that reason." …
>
> Counsel assisting the inquiry Tony Neal, QC, told Tuesday's extraordinary hearing of the inquiry that the documents were relevant, containing matters that occupied a "considerable amount of the board's time" and go to the time at which Professor Sutton knew private security was involved …
>
> The documents released on Tuesday place pressure on Professor Sutton to both explain the contradictions between his evidence to the inquiry and what the emails show and why he believed the information should not have been handed over.

It's the old, old story. Regardless of whether the emails prove culpability, it's the attempted cover-up that now becomes the story. Nixon didn't have to resign because he ordered a break-in, he had to go because he tried to thwart the investigation of it.

Oh! What a tangled web.

> Scott Morrison's office says preliminary searches have not located any correspondence from the disgraced New South Wales MP Daryl Maguire during Morrison's time in the immigration portfolio, or while he has been prime minister. During a hearing last week in the NSW independent commission against corruption, Maguire admitted to receiving thousands of dollars in cash to his parliamentary office from a former business associate, Maggie Wang, in relation to a "cash-for-visa" scheme the two established.
>
> With controversy persisting on Tuesday about the role of commonwealth officials in a controversial land sale at Leppington Triangle related to the second Sydney airport, Morrison was also asked by Labor during question time whether Maguire had made any representations to the government about visas … The prime minister's office later issued a non-definitive statement saying the home affairs department had advised that "a first, complete search of its database did not identify any correspondence from Daryl Maguire or the business G8wayinternational Pty Ltd … in his former role as immigration minister". The statement said additional searches carried out by the office indicated the prime minister had "not received any such correspondence in his current role".
>
> Morrison told parliament on Tuesday police should investigate all of the issues associated with the government's controversial Leppington Triangle land purchase – a transaction that has been excoriated by the Australian National Audit Office – "absolutely thoroughly"…The Australian federal police has

> indicated it will contact the NSW Icac and review more than 800 files supplied by the audit office, as part of its criminal investigation into the purchase of a block valued at $3m for $30m. Explaining the planned outreach to Icac at a Senate estimates hearing on Tuesday, the AFP's deputy commissioner, Ian McCartney, said the AFP would seek to satisfy itself that Maguire did not have any role in the purchase. "That would be our primary focus of engaging Icac at the minute," McCartney said …
>
> Icac has been exploring a different, proposed major land sale worth $330m involving racing heir Louise Raedler Waterhouse and a large plot near the proposed Western Sydney airport, known as SmartWest – but this is not currently part of the AFP investigation …

Meanwhile, back in Sydney, Gladys Berejiklian is using the Sergeant Schultz defence: "I know nothing. I see nothing!" Most of the salacious media reporting and nearly all of the spin is about the propriety (or otherwise) of her relationship with a corrupt colleague. This focuses away from the relevant issues:

1. Who deleted the Premier's emails and why?
2. Was the Premier guilty of misprision of felony?

> **316 Concealing serious indictable offence**
>
> (1) An adult—
>
> (a) who knows or believes that a serious indictable offence has been committed by another person, and
>
> (b) who knows or believes that he or she has information that might be of material assistance in securing the apprehension of the offender or the prosecution or conviction of the offender for that offence, and
>
> (c) who fails without reasonable excuse to bring that information to the attention of a member of the NSW Police Force or other appropriate authority,
>
> is guilty of an offence.
>
> *Crimes Act (NSW) 1900*

2020, October 23: NSW recordkeeping in the Premier's Office

<Andrew Waugh: <In relation to the 'Stronger Communities Fund', a senior policy advisor in the Premier's office gave the Premier a list of projects, on which the Premier indicated those that she was comfortable with. The advisor then sent a series of emails to the chief executive of the office of local government using text along the lines of "The Premier has approved" and "The premier has signed off further funding". Despite this wording, the advisor is adamant that the Premier did not actually approve anything, just indicated her comfort. The advisor then disposed of the written list of projects, with the Premier's annotations, "in line with my normal record management practices" as the emails now documented the Premier's comfort. The original Word file of the written list is not available, as the advisor believed she deleted them "as part of her normal record keeping process."…The senior policy advisor…states that the Premier didn't approve the projects; merely indicating her degree of comfort. Approval was by the CEO of the office of local government. The CEO disagrees…>>

2020, October 24: 22 Normal administrative practice

> (1) Something is considered to be done in accordance with normal administrative practice in a public office if it is done in accordance with the normal practices and procedures for the exercise of functions in the public office.
>
> (2) However, something is not considered to be done in accordance with normal administrative practice if—
>
> (a) it is done corruptly or fraudulently, or is done for the purpose of concealing evidence of wrongdoing, or is done for any other improper purpose, or
>
> (b) it is conduct or conduct of a kind declared by the regulations to be unacceptable for the purposes of this Part, or
>
> I it is done in accordance with a practice or procedure declared by the regulations to be unacceptable for the purposes of this Part, or
>
> (d) it is done in accordance with a practice or procedure that the Authority has notified the public office in writing is unacceptable for the purposes of this Part.

> (3) The regulations may prescribe guidelines on what constitutes normal administrative practice. The guidelines do not limit what constitutes normal administrative practice and do not affect the operation of subsection (2).
> *State Records Act 1998 (NSW)*

Time for State Records to act under 22(2)(d) I'd say. If you're going to have a NAP in the first place, the **unavoidable corollary** is a process to disallow bad practice. I would be interested to know the exact number of disallowances that have in fact been made **ever** in jurisdictions which have this statutory provision.

Memorandum for
(1) Head of Premier's Department
(2) Office of the Premier

In accordance with s.22(2)(d) you are hereby notified that the following practice or procedure is unacceptable for the purposes of Part 2 of the *State Records Act*.

In any approval process involving public expenditure, where any documentary material exists in any form (including a white-board) that documents

1. heads of expenditure being considered,
2. alternative ways or itemisation of disbursement and/or recipients (including disbursements to recipients not made),
3. the identity of those involved in the deliberative process (irrespective of whether or not that involvement amounted to a decision),
4. the outcome of any deliberative process,

it is unacceptable for that documentary material not to be incorporated into the record of the decision-making process and retained for the same period applying to the record of the decision until the record is disposed of in accordance with authorisation under the *State Records Act*. Where the documentation incorporates annotations or other indications of involvement by any party, it is unacceptable for that documentation to be treated as incidental or disposed of under the normal administrative practice rule. This notification applies to any action that precedes a decision (or an outcome to defer a decision, to reach an alternative decision, or not to proceed).

A regulation is being drafted for issuance under s.22(2)I for declaring this practice or procedure to be unacceptable in all public offices dealing with expenditure of public money.

Adam Lindsay Executive Director

<<Andrew Waugh: So your belief is that the Crown should prosecute the senior policy advisor for a contravention of 22(1) 'pour encourager les autres'? Based on the evidence so far, I doubt that you'd be able to sustain a prosecution under any of the parts of 22(2)>> My point exactly. We have to use the tools available to ratchet down the heat and pursue routine administrative correctives rather than criminal prosecution. The records authority is neither an investigator nor a prosecutor. Those decisions are for others to make. Our task is to operate a framework for good r/keeping. Nothing in s.22 creates an offence. An offence, if offence there be, would be in unlawful disposal. Disposal contrary to a notification of what is unacceptable under NAP might be prosecutable (that is not our business) but it would clearly be bad practice once the notification is issued. The argument about whether unauthorised disposal of any kind (in violation of a NAP disallowance or in any other circumstances) should be criminal is a whole other issue.

2020, October 28: <<Adrian Cunningham: Today's Sydney Morning Herald has more on this continuing story. A former NSW Auditor-General, Tony Harris, feels that the 'shredding' of the documents relating to the $250mill council grants was likely to be a breach of the State Records Act and should end Gladys Berejiklian's leadership…NSW Labor agrees (not surprisingly) and has … written to the Information Commissioner asking that she investigate 'serious and systemic' breaches of the State Records Act… no one seems to have asked the State Archivist for their opinion. A spokeswoman for the Premier said that

'the Premier's Office complies with its obligations under the State Records Act'…As has already been pointed out, the Office could regard such disposal as NAP, unless State Archives specifically rules it out. Another good argument for not having NAP in your legislation if you ask me…>>
<<Alan Ventress: there has never been a successful prosecution under the NSW State Records Act 1998. Even a serious case of unauthorised destruction of the original transcripts of hearing records by ICAC, no less in 2002 (SR NSW Annual Report 2002-2003 p80) resulted in a slap on the wrist. At the time the Premier's Department made it clear that they did not want the adverse publicity this would have generated.. So State Records NSW were told to stop rattling the cage and get back into our box. The final outcome was just the naming and shaming in the annual report…>>
<<Michael Piggott: … And anyway, no less a reliable source than the Premier herself has reassured us all's ok.

> During Wednesday's coronavirus press conference, Ms Berejiklian denied being aware of documents being shredded in her office and argued there were still records available, but would not comment on what those records were. "I'm advised my office fully complied with all matters of the State Records Act," she said. "Do you support the shredding of documents and will that continue to occur?" one reporter asked the Premier. "As I said, I expect my office and every office to comply (with the State Records Act)," she said. The reporter then asked: "Is shredding documents a practice you endorse?" "I endorse complying with the State Records Act," she said.

As for naming and shaming in an annual report, that can have a momentary impact, IF over a number of years' negative reports the media prominently reports its comments. >>

What to do? What to do?

<<there has never been a successful prosecution under the NSW State Records Act 1998.>> Nor, you might add, under any other archives statute – not for wrongdoing by ministers or officials anyway. In my view there never will be. And if there were, the difficulty in obtaining a conviction and the resulting rarity would make it an ineffective tool anyway. If it cost NAA $2m to defend the Palace Letters closure, how much would it cost to convict a Premier? Bad recordkeeping needs to be a disciplinary matter not a criminal matter.

<<naming and shaming in an annual report … can have a momentary impact, IF over a number of years' negative reports the media prominently reports its comments. >> But it wouldn't be like an Auditor's or an Ombudsman's report because they have a statutory obligation to investigate and reach findings. The archives authorities do not and they don't have the expertise to do so, anyway.

<<As has already been pointed out, the Office could regard such disposal as NAP, unless State Archives specifically rules it out. Another good argument for not having NAP if you ask me. >> This is old territory but since Adrian has resurrected it I will speak up again for the NAP if properly used. The NAP is a two-edged sword. It provides an excuse for improper disposal and it provides the Archives with a tool to correct improper behaviour (not to punish it) by disallowing that kind of impropriety as instances come to notice. If a body of notifications had been built up in Canberra (since 1983) and Sydney (since 1998) the "NAP defence" would have been progressively eroded and eroded further in a continuing process. Instead, neither authority seems to have done the job that the legislation requires of them.

Archives don't investigate, they don't prosecute, and they don't reach findings. What they can do is disallow bad practice. It is then up to others to do something about it.

Many years ago, when I was Keeper in Victoria, I had a discussion with the Ombudsman. He said he was coming across bad recordkeeping all the time. But he couldn't do much about it because bad recordkeeping was not against the law and wasn't a breach of any code of practice to which he could refer and say what kind of violation had occurred. He then said to me (in effect) "But you have the power to set standards. If you give me the standards, I can make an adverse finding."

Well, I did my best, but having come from Canberra and been recently drafting the Commonwealth Act (including the NAP), I began to see its virtues. I have described how the NAP was conceived in Charles Comans' office on a sweltering summer's day. We had to concede the exception to satisfy the lawyer but we were able to have the disallowance power included as a corrective. At the time, I thought it an unhappy compromise. Later, I recognised the power inherent in building up a body of disallowed

behaviour, especially when the chance came to incorporate the shared experience of other archives jurisdictions which later adopted the NAP (Victoria didn't have it and, so far as I know, still doesn't).

Instead, the NAP has been used (wrongly) as a kind of General Schedule for ephemera, etc. Imagine where we would be now if the intervening years had been used by those archives that had this tool at their disposal (no pun intended) to build up decades' worth of disapprovals as and when bad practice (or even the suggestion of bad practice) had come to notice. Today's newspapers would not be discussing the possibility that the Premier's Office may have breached the Act, they would be discussing the fact that SARA had boldly proclaimed to Gladys and her staff that the kind of action being disclosed in evidence must never happen again. Such a notification would not have to await a finding or even to be based on established fact. It would not be a condemnation of the Premier's Office but bench-mark for them to follow.

But on this, we disagree Adrian and I and, since the NAP has not been properly used, the question is moot. But perhaps I do them wrong. Maybe a body of adverse notifications has built up over the last 20/30 years and I just haven't heard about it. If our archives authorities deigned to participate in professional debate, this would be a good time for them to say so. Would it be worth lodging an FOI request to find out? ……. Naaah.

<<Adrian Cunningham: For the reasons given by Alan and Chris it is extremely unlikely that any criminal action is likely to come out of this affair…NAP gives officials a 'get out of jail free' card…in my time at the NAA I can recall at least one instance of a NAP practice being formally and explicitly disallowed. It related to the disposal of source records that had been digitized. The NAP disapproval was subsequently made redundant by the issuing of a GDA on the disposal of source records that had been copied, converted or migrated – which gave approval for such disposal under certain tightly defined conditions, and explicitly disallowed disposal that did not meet those conditions. But…Chris is right in saying that the NAP provisions have never been properly applied. Regardless of whether or not the archival authorities like NAP, where it is law the archives should have made every effort to make it work – and they deserve to be criticized for not doing so… while NAP is in the statute book, it does behove the archival authority to do their best to make it work properly…I certainly agree with the comments made by Chris a week or two ago that public records laws should aim to encourage routine administrative good practice – rather than seek high-profile 'gotcha' moments. But from time to time it is helpful to have some high-profile cases that help raise awareness of the need to have routine, administrative good practice. As opposed to routine administrative malpractice.>>

<<Adrian Cunningham: it is also worth pondering why the archives seem to be unwilling or unable to make NAP work. My guess is because it amounts to forever slamming stable doors after horses have bolted. Sincere and valiant attempts to build up a body of NAP disapprovals are always likely to contain loopholes and – over time – probably also unworkable ad hocceries and inconsistencies. A kind of thankless task to take on – so perhaps not surprising that they have rarely bothered to do so. >> I think that is fair comment. And, as Alan has suggested, there might also be "pressure" brought to bear not to be so bolshie.

I receive a Word-A-Day from Wordsmith. Lately, they have been putting up words that have a sly reference to the American elections. Today's word is "double-talk". That got me to thinking about possible obstacles to the issue of notifications under the NAP.

Suppose the NAP had been available when I was in Victoria? What shifty arguments would they have used to silence me? I've had some experience of shifty arguments in public administration – directly in Canberra, Melbourne, and Wellington and indirectly in Sydney and Brisbane. I can say that universities and banks are innocents in this regard and that, amongst governments of my experience, Victoria is (or was) far and away the most toxic.

Playing Devil's advocate for a moment, then, what kind of double-talk might the slippery (and late) Hartog Berkeley (sometime Victorian Solicitor-General) have used to thwart my suggested use of NAP? I've referred to my dealings with Hartog before on the list (as an example of an experience, along with attendance at a Catholic boarding school, that puts an end to fear). Here is one possible scenario-

> *You have the power to notify a public office of a practice of which you disapprove. But this is not a general power to identify hypothetical behaviours or possible misdemeanours. There must be grounds to conclude that the behaviour of which you disapprove has in fact occurred. Otherwise there is an implication of wrong-doing for which you have no proof. Parliament can never have intended to empower you to adversely criticize public offices and, in some cases, individuals by implication merely and without evidence. Natural justice requires they be given a chance to defend themselves. You are not empowered to issue notifications disapproving actions unless you have conclusive evidence that they have in fact occurred and that there is a reasonable likelihood of them occurring again.*

In the instant case, of course, the evidence subsists in testimony given to ICAC but I think Hartog would have been able to find a way around that one.

Issuing a disapproval of this kind amidst adverse publicity surrounding the actions of the Premier and her staff would be "courageous" in the sense used by Humphrey Appleby and possibly career-ending. For this reason, my friend, John Cross, used to argue with me that the statutory powers are better placed in the hands of a corporation (such as the NSW Authority) and preferably one on which a Supreme Court Judge sits, rather than with a single statutory officer (as is the case in most other jurisdictions). I suppose these matters are more easily discussed on the list by those of us who have retired and no longer have a career to worry about (or, in some cases, a reputation to defend). Notwithstanding that, I cherish the hope that, when they close the book on me, it will be said that I never had much respect for authority.

<<Mark Brogan:…I don't think we should let our pessimism about successful prosecution get in the way of our collective voice… After all, archivists have been banging on about the importance of records and data for 'accountability' for years. To turn away now, is rank hypocrisy. At a functional level, records legislation is only one of a number of instruments that work to promote completeness and reliability of the public record. It may not be the most effective. But in my experience, at an operational level, there is widespread appreciation that records and archives legislation suggests a code of conduct in relation to right and wrong disposal. Public sector employees at all levels have high awareness of this. Remaining silent, will come at a cost. NSW is the crucible of concern at the moment. However the degradation of archives and recordkeeping regulation (and infrastructure) is a national phenomenon. In WA we have been at war with WA Government since 2017 over the accountability significance of the State Records Act, 2000, for government recordkeeping and data management. ASA Inc maintains a log of this activism…We may not win. But the consequences of not joining the contest are truly frightening…The win we have had so far, is that the WA Government has been unable to progress plans to repeal the Act. In so doing, we have avoided thus far, further harm to an already compromised regulatory framework. Not much. But it is a start. I very much hope that our collective professional voice will be heard in NSW. But I'm not hearing it at the moment…>>

2020, October 29: <<Adrian Cunningham: A couple more thoughts about NAP.... It could be argued that if a jurisdiction had a comprehensive suite of records disposal authorisations, then if someone was disposing of records inappropriately under NAP that they would be breaching the minimum retention period for the class of record in question…Of course, disposal authorisations can be open to interpretation, so there may still be a role for NAP disapprovals being used to rule out misinterpretations of disposal authorisations. Such a regime may be workable and might even convince me that NAP is worth having. Another issue about NAP…is that it usually happens behind closed doors. There is no requirement for agencies to disclose their NAP practices publicly. Sometimes, such as the current case, they come to light…But usually they remain dirty little secrets. It is difficult for an Archives to disallow a practice that it is unaware of…and doing so hypothetically would run into the kinds of problems described by Chris. Giving agencies carte blanche to run a secret regime of NAPs is not in the best interests of public sector integrity and accountability.>> Just by googling "normal administrative practice" you can see that there are now numerous pages about this. I gave up after page 3 but the hits (as they say) just keep on coming for pages and pages after that. They include (naturally) the recordkeeping authorities themselves (some only listed here) –

- Council of Australasian Archives and Records Authorities (of course)
- Commonwealth Guidelines and also a Policy and mentioned in NAA's 2007 publication Check-up 2.0
- New South Wales (twice)

- Victoria (which so far as I know doesn't even have NAP in its Act)
- Australian Capital Territory
- South Australia with another for napping an EDRMS

and it's dealt with or mentioned not only by some agencies falling under archives laws

> e.g. ASIC (in regard to its own records), University of NSW, Australian Charities and Not-for-profits Commission, Department of Education Victoria, University of Melbourne, University of Newcastle, NSW Mental Health Commission, RMIT, University of Adelaide (twice), District Council of Robe (no longer there), Monash University, City of Victor Harbour

but even by some that don't

> e.g. Catholic Education Office

Aaaaah, As Eccles used to say, "It's all the rage!" There's an interesting 2007 "Note for File", 70 pages long (70 pages long!), called *A Report on Recordkeeping in the Australian Public Service* (spelt as one word, Michael). It is issued by the Management Advisory Committee of the Australian Public Service Commission. It deals with NAP in relation to "low status records". And there is/was even a course on NAP given by Recordkeeping Innovation. There's a PhD thesis here waiting for someone to analyse how these statements align and deviate from each other.

PS. If you google "NAP" you get hits on sleepy, dozing, and insensible.

<<Michael Piggott: Good digging Chris. The spread of entities using it unexpected and interesting. Would love to see the chronology: who first used it and when? Terry Eastwood once commented on our "truly remarkable eagerness and facility … to profit from experience elsewhere". Was NAP home grown? I'm sure lots outside Australia use routine/administrative activities/practices/records, but it's the varying degree of laissez faire v approvals and naming which gives such surveys their value.>>

2020, October 31: As so often happens, the cover-up becomes the story

> The Premier's department repeatedly tried to discourage an inquiry from calling a senior adviser whose later testimony of shredding documents led to calls for a police investigation. The Greens and Labor have accused the Department of Premier and Cabinet of trying to mislead parliament over the level of assistance Sarah Lau could provide before she told a hearing that she had likely shredded briefing notes and deleted electronic records indicating the Premier's approval of certain council projects.

2020, November 11: NSW Archives investigates Premier's Office over shredding

2020, November 12: <<Cassie Findlay: The ASA issued a statement on this matter today & has alerted the SMH and Guardian journalists covering it…>>

2020, November 26: Assuming the shredding was wrongful, when does wrongful disposal occur?

> 1. If the outcome of the process is "recorded" in an email, is it necessary to keep the "working papers" until they themselves are lawfully disposed of? The NAP defence.
> 2. If the intention was that the documents should never see the light of day and action was taken to give effect to that intention but they failed in their purpose because the documents could (despite their best efforts) be recovered anyway, does that absolve them of guilt? The no-harm-was-done defence.

The documents were shredded …

Documents which Premier Gladys Berejiklian used to approve millions of dollars in grants to local councils were later shredded, a NSW parliamentary inquiry has heard. One of the Premier's senior policy advisers, Sarah Lau, told the inquiry she also deleted electronic copies of the notes. The inquiry is investigating the allocation of $250 million worth of grants under the Stronger Communities Fund amid accusations of pork-barrelling …

Ms Lau said she prepared two working advice notes on which the Premier marked her approval of the grants. She said she later destroyed the notes because she had sent an email recording the outcome … The Premier's former chief of staff, Sarah Cruickshank, was asked whether it was routine practice in

the Premier's office to destroy documents related to the spending of millions of dollars in public money. "No, I would say it's not," she replied …

… but that wasn't the end of it

Copies of shredded and deleted documents at the centre of pork barrelling accusations against NSW Premier Gladys Berejiklian have been recovered through a forensic data search…Ms Berejiklian's office carried out the data search under the orders of the parliamentary inquiry examining the grants program…

Two senior staff from the Premier's office were last month called to give evidence to the parliamentary inquiry about how the grant money was allocated and approved. Senior policy adviser Sarah Lau told the inquiry she prepared two "working advice" notes on which Ms Berejiklian marked her approval of the grants. Ms Lau said she later destroyed the notes because she had sent an email recording the outcome of the decision.

Mr Shoebridge [who is leading the parliamentary inquiry] said the documents were recovered through a forensic data search and were provided to Parliament last night. "These documents have only been produced following a forensic document recovery process," he said. "The originals were deleted, both electronically and in paper, and they never would have seen the light of day if we hadn't been pressing the case in the upper house inquiry." …

<<Adrian Cunningham: When does wrongful disposal actually occur is indeed a good question. Some years ago, in Queensland, Minister Mark Bailey was investigated by the Crime and Corruption Commission (CCC) and the State Archives for deleting his personal Yahoo email account that included a number of emails relating to official business...When the investigations concluded that there was a prima facie attempt at wrongful disposal of public records, legal advice was sought. The investigation was able to reach its findings because the CCC had been able to retrieve the deleted emails…Had the emails gone forever it would have been impossible to determine whether or not they included any public records that should have been kept. The legal advice came back saying that because the emails had been retrieved, no actual disposal had occurred – therefore no offence could have been committed…therein lies a catch-22 with wrongful disposal. If records are really disposed of, it may be impossible to determine what (if anything) was disposed of. If you can determine what someone tried to dispose of because the records are retrieved, no disposal has taken place….>>

2019, January 15: Mind boggling Federal court decision

<<Andrew Waugh: Going by the article (and not having read the decision itself...) The majority of the learned judges said that 'the automated letter to remit the general interest charge was not a "decision" at all because there was no mental process accompanying it.' In other words, a letter only binds the ATO if a human wrote it…One judge, who wrote a dissenting opinion, seems to be more on the ball: "Justice Kerr disagreed with the majority that this was likely a one-off, noting, "the growing interdependency of automated and human decision making."…>>

2019, January 16:

<< a letter only binds the ATO if a human wrote it>>. An alternative line of reasoning might be that an automated mail-out triggered by a programmed event does not rise to the definition of a decision and the same reasoning would apply to a mail-out triggered by the same event even if it was conducted manually. But surely, as Andrew suggests, the "mental process" lies in the mind designing the mail-out (automated or not) so that it behaves in the way it is designed to when a stipulated event occurs. The notion that no mental process lies behind an automated mail-out (if that is what the judgement says) is indeed bizarre. The basic principle that an offer made to the world can be binding goes back to the Carbolic Smoke Ball case.

We used to think that savvy, young lawyers would catch up with the implications of the digital. They have to some extent, but the legal mind is trained to look for precedent and to distinguish novelty from precedent. The line of legal reasoning too often tracks back to the days of telephones, facsimile, photocopying, microfilm, etc. - sometimes quaintly described generically by lawyers as "machines".

Computers are just another type of "machine"! Similarly, the courts and commissions seem to be more concerned with discovering documentation than with its quality. Rather than asking "is it complete?" they ask "is that all there is?" (a very different matter). Witness the Banking RC. They used 000,000s of documents but focused on content rather than structure, authenticity, and accuracy (which tend to be assumed). Shock-'n'-Orr and her team targeted the banking not the r/keeping (tho' it started to come up at the end).

Perhaps instead of bemoaning cases like this we (assuming there is a We, Michael) could try to do something. Maybe offer to give a talk to the Law Societies in each State & Territory on r/keeping and the law, maybe write an article for their journals, maybe offer to present at the Law Schools, maybe search out tuned in lawyers and collaborate on a text book - giving the r/keeping message as it applies to the law. If the ASA is reluctant to risk contagion from those "sterile" r/keeping values bemoaned by Adrian perhaps RIMPA could organise it.

If you google "record keeping and the law" a lot of sites come up (including many of our archives authorities) but they are mostly just dreary statements about what to keep and for how long. Maybe the lawyers themselves have something more interesting to say about how to keep records which isn't apparent from a google search but I would not be surprised if their interest lay in finding out what their clients have to do rather than how they need to do it. A couple of years ago I did an Internet search and found a couple of law firms whose sites gave very good r/keeping advice going way beyond what-and-for-how-long but until that ethos arrives on the bench we may just have to go on waiting and whining. Bearman used to suggest that we hire ourselves out as expert witnesses on r/keeping and make people a lot of money (ourselves too) while advancing the cause that way.

2019, May 21: Can bots be trusted?

The broad scope of automated information-handling is set out in an article in today's Fin Review – everything from reading laws correctly, apparently, to "capturing" annotations (whatever that means).

> Westpac Banking Group has engaged law firm Allens to review the work done by artificial intelligence compliance software and ensure it can trust bots to read laws accurately ... the bank [is] keen to use the AI-powered regtech solution known as Red Marker, which is a platform that flags any communication that may breach regulations, but had decided on a partnership with a legal specialist as a way to use start-up products without risking problems … "We have to keep traditional notions of accountability and governance when using innovative things," Ms [Rebecca] Lim [Westpac's group executive of legal and secretariat] told the ASIC annual forum in Sydney last week … "So much [financial crimes] work has historically been done manually, and now there are new solutions allowing it to be done with a greater level of accuracy." Her message to Red Marker founder Matt Symons and Allens partner Simun Soljo was, "Provide me with an opinion that the way this has been built is consistent with the Corporations Act and regulatory guides"…
>
> Mr Soljo said Allens, a long-time legal adviser to Westpac, was looking for ways to improve its service, as traditional document review tasks became automated … Red Marker's Artemis platform reads written material and uses an automated risk-detection engine to determine when information is not complete or could be misleading. Human teams can then review the matter in real-time, and it also captures annotations such as lawyers' mark-ups to documents … Ms Lim and Mr Symons both said the Australian Securities and Investments Commission could do more to help banks consume artificial intelligence technology, including providing the market with guidance on digital record keeping … Repetitive compliance tasks can be "incredibly boring work, it is not value added and humans aren't good at it, as they make mistakes they get distracted"…

Wasn't I told once (or did I imagine it) that data analysis can discover information but cannot, of itself, reach conclusions or make decisions? Does AI really change that? Does AI sift the stuff according to programmed rules and present the "human teams" with quarry like a hunting dog bringing back downed prey between its jaws? If so, good luck building AI consistent with everything that's in "the Corporations Act and regulatory guides". The term "regulatory guides" is nicely vague (or maybe just precisely un-specific). It presumably covers off the specific codes applicable in each industry (each different from all of the others). These remarks were made before a sophisticated audience, so I don't imagine that they

were unaware that Financial Services doesn't only bow to ASIC. **<<Andrew Waugh: … It's…likely that the journalist had no understanding, and the legal review is about checking if there are any legal issues with using an AI in this fashion. This links with the desire to have ASIC issue guidance on the use of AIs. I read this as a request by Westpac and the developers to cover their nether regions - if ASIC says using AIs in a particular way is OK they won't get into trouble. IMHO ASIC would be extremely foolish to issue such a guidance given the lack of knowledge about how to properly apply AIs. It just moves the risk from Westpac and the developers to ASIC.>>**

2019, August 19: When is a tram a train?

That question was asked when the St Kilda train line was closed many years ago and trams, which run on tram tracks at either end, began to mount the disused train tracks for a quick dash from the Yarra to Fitzroy St. The official answer is that they are neither; they are light rail. My answer was (and still is) that they are trams when travelling on city streets and trains when travelling on the disused railway tracks. The key difference between a tram and a train is that trains are controlled by signals the object of which is separation; trams are not. The signals on the disused tracks of the St Kilda line had been pulled out. So, in the sense that the St Kilda line was **not** controlled by signals any more, it was just like any other tram line. But, at speed, heavy vehicles have a lot more momentum and the best safety lies in separation. Trams move more slowly and are allowed to run up against each other (the famous Melbourne tram jams). So, in the sense that fast-moving vehicles travelling along the St Kilda line **needed** to be controlled by signals or some other method to achieve separation, they were trains even if steps were not actually taken (still haven't been so far as I know). A retired train man wrote to *The Age* predicting there would be an end-to-end collision - and there was. By chance, I was on board that tram/train the first time it happened.

So, what defines a mechanical entity? Its features or its function? Now, a court has tackled this issue by ruling that a smartphone is not a computer.

> Australian federal police are fighting a federal court ruling that a smartphone is not considered a computer, making a warrant it was using to force a suspect to unlock a phone invalid…The federal court last month overturned the magistrate's decision to grant a warrant forcing the man to provide assistance in unlocking the phone…judge Richard White found that the … phone was not a computer or data storage device as defined by the federal Crimes Act. The law does not define a computer, but defines data storage devices as a "thing containing, or designed to contain, data for use by a computer". White found that the phone could not be defined as a computer or data storage device…In the appeal filed earlier this month, obtained by Guardian Australia, the AFP argued that level of specificity was not required under the law, and White erred in stating that the phone was not a computer because a smartphone "performs the same functions and mathematical computations as a computer and is designed to contain data for use by a computer".

2019, April 10: GIS records

Found an article online titled "**Murray-Darling Basin records driest two-year spell in century**". So I asked myself what is the source of the data that enables them to make such claims? I looked at the MDBA site but it was unhelpful in pointing to hard data going back very far to support the raft of conclusions, reports, recommendations. It appears there isn't that kind of record on which we can rely. Or is there?

> **Troy Whitford** A Wider View of History is Required to Understand the Murray Darling Basin
> **Published November 12, 2017**
> … little attention is given to the methodology used to calculate the volumes of water that are required to restore natural flows to the Basin';s river system. Whereas historical inquiry has been central to the development of the Basin Plan, the historical methodology used is insufficient to make an informed decision regarding water allocations. The recently released *Guide to the Murray Basin Plan* acknowledges that history has a role in attempting to assess the hydrological character of the Murray Darling Basin… In drafting a guide to the Basin Plan, the Murray Darling Basin Authority has settled on climate conditions between 1895-2009 as the basis for calculating sustainable diversion limits. .. the method adopted by the Murray Darling Basin Authority is somewhat narrow and superficial. Absent from the historical analysis is an attempt to understand the conditions of the rivers prior to 1895.

> Certainly, accurate rainfall data is difficult to obtain prior to Federation and the establishment of the Bureau of Meteorology in 1906, but there are other historical accounts which also can provide an understanding of river conditions and environmental flows. Through examining primary source material generated during the colonial period it is possible to suggest that perhaps the river system within the Murray Darling Basin always has been contentious and unreliable and that the river flows always have been uneven.
>
> Explorer Charles Sturt';s own account of the Murrumbidgee and Murray Rivers in the 1820s indicated that water levels varied dramatically… Evidence on the conditions of the river system also can be found in the work of Historian G.L Buxton in his history *The Riverina 1861-1891*… … What is required is a more substantial historical analysis which uses a greater time period and adopts a range of source material ... The current historical methodology featured in the *Guide to the Murray Basin Plan* is inadequate considering what is at stake.
>
> CSIRO **Assessment of Historical Data for the Murray-Darling Basin Ministerial Council's End-of-Valley Target Stations** (October 2002)
>
> Detailed analysis of large-scale catchment salinisation processes has been made difficult by the irregular and inconsistent nature of historic stream salinity measurement. A lack of broad-scale detailed data in semi-arid, sparsely populated areas often makes it difficult to achieve a rigorous statistical analysis. These problems of large-scale historical assessment are further complicated in Australia, due to the high stream flow variability (Finlayson and McMahon, 1991) … In order to re-evaluate the current Basin management strategy, a broad analysis of stream salinity was necessary to assist predictions of the increase in the effect and extent of dryland salinity. However, the intermittent and sometimes sparse water quality data set available created certain challenges in establishing sub-Basin and Basin-wide stream salinity trends, which were resolved with the application of modern regression techniques (Morton, 1997). Supplementations of the trends with calculations of catchment salt balances at the same sites adds confidence in the assessment of the historical trends. These techniques will be presented in greater detail further in this report.

They appear to have two problems with the data:

1. Lack of it
2. What we want to know now doesn't always match the structure of what little we do know.

SEARCH (South Eastern Australian Recent Climate Change History) is digitising early GIS records from archives and early narratives.

> To date, there has been limited exploration of Australian historical meteorological records for pre-20th century weather information. But the information held in these early records is essential for evaluating the historical context of extreme events such as the current drought gripping southern Australia, and defining our range of pre-industrial climate variability. This project will digitise and extend some of south-eastern Australia's key meteorological records held by the Bureau of Meteorology, National and State Archives and a range of pre-Federation observatories and historical societies. Some of the key meteorological records the SEARCH team is examining, include:
>
> - Lieutenant William Dawes' Weather Journal
> - Lieutenant William Bradley's Weather Journal
> - The State Library of Victoria's Government Gazettes

2019, November 11: Since records began

<<David Povey:…Weather records are the subject of an article in this week's The Spectator Australia (9 November 2019) by Pauline Hanson, where she queries why our weather records are restricted to those of the recent past … Parramatta saw very high temperatures from 1788 to 1802 (including the loss of thousands of "flying foxes"). Those weather records were complied by first class observational astronomers and military officers and yet play no part in our weather record, although now more than ever those records would help inform our current debates about rising temperatures. Ms Hanson urges the wider availability of the colonial weather records, a sensible call for digital prioritisation and points out that the UK weather record, the Central England Temperature database (HadCET), has data from 1659. The argument that weather records weren't accurately recorded is fallacious, given the accuracy of the

mercury thermometer used by colonial era meteorologists and the consistency and longevity of their observations. In selecting what we "make digital" … >>

2019, November 12: <<Joanna Sassoon:…While I think we should put our collective heads together as to how to encourage…improved funding for national and state archives where meteorological records created by government agencies, pastoral stations and others are held, we now have another article on record keeping and the Bureau of Meteorology to try to get our heads around…"A Liberal Senator has again accused the weather bureau of deliberately changing temperature records to fit a global warming agenda.">>

2019, November 13: Another take on all this may be found in *The Fate of Rome* (Princeton University Press, 2017) by Kyle Harper. This book (which is a solid read) examines climate change and infectious diseases as factors in the Fall of the Roman Empire – not something much discussed by Gibbon. It's also a corrective to the idea that climate has ever been stable – not only in geologic chronology but even during recent centuries - and he uses what the author deliciously refers to as "natural archives". On p. 192, Harper characterises the Huns as "armed climate refugees on horseback" (love it). He explains –

> The migration of the Huns is shrouded in the obscurity that inevitably surrounds the history of a letterless people. But the natural archives have a contribution to make, because [their] migration … deserves to be considered, among other things, as an environmental event … When the North Atlantic Oscillation is positive, the westerly jetstream steers north and leaves central Asia arid. When the NAO is negative … rains rumble across the steppe. The Medieval Climate Anomaly (AD 1000-1350) … was cruelly dry in the interior of Asia. In the fourth century, the elements were in place for a prolonged drought on the steppe. One of the best high-resolution paleoclimate proxies is a series of Juniper tree rings from Dulan-Wulan on the Tibetan plateau … [showing that] … the fourth century signal … was a time of megadrought. The two decades from ca. AD 350 to 370 were the worst multidecadal drought event of the last two millennia … The climate did not act alone, simply displacing a menace from one side of the steppe to the other … But precisely in the middle of the fourth century, the center of gravity on the steppe shifted from the Altai region … to the west.

2019, November 12: And the natural archives just keep on giving ….

> The Neo-Assyrian empire … dominated the near east for 300 years before its dramatic collapse. Now researchers … have a novel theory for what was behind its rise and fall: climate change ... scientists say the reversal in the empire's fortunes appears to coincide with a dramatic shift in its climate from wet to dry … "Nearly two centuries of high precipitation and high agrarian outputs encouraged high-density urbanisation and imperial expansion that was not sustainable when climate shifted to megadrought conditions during the seventh century BC," the authors write.
>
> … To investigate the possible influence of climate, a team of scientists analysed two stalagmites taken from Kuna Ba cave in northern Iraq, looking at the ratio of two different types of oxygen atoms, known as isotopes, within the mineral deposits formed as water trickled into the cave. This ratio sheds light on levels of rainfall. The team combined the results with thorium-230 dating to reveal that between 925BC and 550BC there were two distinct phases in the climate.
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> …. Prof Ashish Sinha of California State University, a palaeoclimatologist and the first author of the study, said that while the Neo-Assyrian empire was vast, computer models and modern rainfall data show much of it would have been affected by similar conditions as the Kuna Ba cave …. The climate trends were backed up by patterns in carbon isotope data, with a range of data from various caves and lakes across what was the empire offering broad support – albeit with some variation around dates. What is more, modern satellite data revealed crop productivity over northern Iraq is highly sensitive to small changes in rainfall when levels are low, and plummets across the region during droughts.
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> … "In the 20th century, the human [climate] forcing may be riding on top of the natural variability," said Sinha. "That is why we think that the modern droughts are about as severe as, or maybe even getting more severe than, these droughts at 600BC." Prof James Baldini, an expert in analysing stalagmites … said the study left little doubt that the Neo-Assyrian empire enjoyed abundant rainfall followed by a megadrought almost certainly a catalyst for the fall of the empire," … Baldini added that the past can hold

> important lessons for the present – where fossil fuel use drives climate change ... "Hopefully we can learn from history, and rise to the challenges presented by climate change better than previous civilisations were able to."

2019, December 21: Taking Sonnblick Observatory in Austria as a reference point, *a Washington Post* story tells how meteorological records are being used to document global warming.

> … How can it be possible to take Earth's temperature, not just for this week or this year, but for decades and centuries? The answer begins with nearly 1,500 weather stations already operating by the time Sonnblick began recording … In recent decades, meteorologists have relied on those records — and thousands more like them — to compare how the world's climate used to be with how it is now. And as more observations from the past are retrieved from dusty archives worldwide, they point to the possibility of even more precipitous warming.
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> … There is such an abundance of reliable data now that any incremental adjustment or new method of computation can't alter the overall number ... What could alter the overall level of warming, however, and show that the planet has heated up even more than we now know, are records from more than a quarter-million ship logs and weather diaries stored in archives worldwide ... thousands of people are working to recover and digitize these rapidly decaying records so they can be incorporated into existing data sets. Also imperiled are records throughout Africa, Asia and other former colonial outposts that are in danger of being destroyed.
>
> Some climate scientists theorize that they may discover additional warming when they incorporate these extensive records of weather between 1780 and 1850 or so, a period during which people already were burning some fossil fuels and clearing land of trees. They suspect documenting old temperatures may reveal as much as a fifth of a degree Celsius of added warming. "There are literally billions of observations which are still in paper format in various archives and libraries all over the world," says Ed Hawkins, a climate researcher at the University of Reading in the United Kingdom.
>
> And half a million weather observations vanish every day, estimates Rick Crouthamel, who rescued data at NOAA and later formed the nonprofit International Environmental Data Rescue Organization (IEDRO) to continue the quest. "The paper is deteriorating, it's rotting, it's being eaten by rodents, the inks fade." The rescuers are keen to peer into enormous amounts of unretrieved and archived records in Africa, "proverbially a data desert," as Thorne put it. And Hawkins is eager to transcribe logbooks of ships from the English East India Co., which plied trade on routes between Europe, Asia and India for decades in the 18th century.
>
> Almost all of this laborious deciphering needs to be done by hand, not by machine: The documents can be quirky and unpredictable, featuring sometimes complex notations and symbols. To rescue these records, researchers have used the sophisticated searchability of this era's Internet to recruit volunteers passionate about the weather, as well as an earlier era's efforts to measure and forecast it …

2021, February 28: Scientists are using "proxy measurements" to reach conclusions about climate change because experimental data and data derived from direct climatological observation over long periods is unavailable. So, they are inferring results from other evidence: e.g. "marine sediment composition, tree rings, ice core chemistry … that make up the bread and butter of the niche-within-a-niche field of paleoceanography". This is not really new; Darwin's Theory had to make inferences from what was (then) a spotty fossil record. What is interesting is how much closer this brings some scientific reasoning to the historical method where, however abundant the documentary evidence, in the end conclusions must also be inferential. These days, historians too are looking beyond the written documents. The idea that evidence tells you what it was never formed with the purpose of showing us is an old one in historical thinking.

- The Atlantic Meridional Overturning Circulation, or AMOC for short … is critical to the wider climate. New research has provided important long-term context for scientists' observations of these Atlantic currents … Computer modelling and theory predict a steady reduction in the strength of the AMOC and its heat-delivery service in response to human-induced changes in rainfall, river runoff and the melting of Arctic sea ice and the Greenland ice sheet. Additionally, they show that the AMOC is one of the global climate "tipping points". If reduced beyond a

certain, currently uncertain, limit it may collapse suddenly, with huge implications for our lives. Our best observational estimates, based on oceanographic data back to 1871, show that there has already been an approximate 15% reduction in AMOC strength. What is missing, though, is longer-term context: is the present decline part of a long natural cycle, or is it due to human influence?

- Research published in the journal Nature Geoscience this week has provided this context ... using a combination of 11 different "proxy measurements" that indirectly infer the AMOC strength. These proxies include marine sediment composition, tree rings, ice-core chemistry and other exotic measurements that make up the bread and butter of the niche-within-a-niche field of paleoceanography.
- On their own, any single such record should be interpreted with caution, but nine of these 11 proxies show a reduction in the AMOC strength since the late 1800s, with an even greater weakening since the 1960s. Importantly, they also show that prior to about 1850, the approximate start of human industrial influence, the AMOC strength was relatively steady right back to before 400 AD.
- This provides critical observational evidence linking human influence to the decline in the AMOC strength, backing up what climate models have been showing for decades …

2019, July 22: Archives in the news

Prince Friedrich Solms-Baruth V is trying to recover family property allegedly seized by the Nazis in the aftermath of the July Plot. Now, archival documents may help him establish his claim.

> His mission has also been to prove that his grandfather was the victim of a cruel strategy led by the head of the Gestapo, Heinrich Himmler, to hide the seizure of land … "We have now found incontrovertible evidence to uncover the truth. There was a major cover-up by the Nazis of what they knew themselves was an illegal action," he said … In 2003, the family was awarded a portion of land by the federal German government. But Prince Friedrich V has been unable to convince German authorities that his family should have the remaining forestry estate handed back. Courts have ruled that he cannot prove that his grandfather was coerced into giving away his land ...
>
> For years, Prince Friedrich has been trying to prove the Solms-Baruth estate was "stolen" as part of a plan by Heinrich Himmler to loot Germany's wealth for the Gestapo. In 2017, a researcher working on the Solms-Baruth case made a "fluke" discovery. The documents were found by chance in online government archives ... "It was top-secret. In this Himmler decree, it states point-for-point, how to take properties from enemies of the state, without confiscating it officially in the deeds book," Prince Friedrich said. "If you compare the decree and the methods that were deployed against my grandfather, they just went down the list and did it exactly according to this Himmler decree." …
>
> Another discovery made by Prince Friedrich's researchers could have major implications for other German families who lost their estates. At the Brandenburg State archives, experts set out to prove the instructions to destroy the Solms-Baruth title deeds were drawn up before the Nazis surrendered in May 1945. They found that the ink on the documents contained amounts of iron. In documents drawn up after the fall of the Nazi regime, the iron is missing. Prince Friedrich sees this as the smoking gun for many German families ... German landowners who were told their properties were seized by Soviet occupiers following World War II cannot win back their estates. In 2005, the European Court of Human Rights ruled that Germany could not be held responsible for the actions of Soviet occupiers ... The Solms-Baruth case has stretched 20 years; it's now reached the Federal Constitutional Court and the Federal Administrative Court in Germany. If Prince Friedrich V fails there, he would like to have the case heard at the European Court of Human Rights …

2020, March 26: Herd Immunity

According to *Daily Sabah*, there are three ways for the pandemic to end (apart, I suppose, from annihilation of the human race):

1. herd immunity
2. vaccination
3. mutation.

These are not mutually exclusive (vaccination boosts herd immunity, for example). There is theoretical speculation that

- many more people are being infected than the data suggests because their symptoms are too mild for them to be showing up in the dreadful statistics that are being broadcast;
- having been infected, we may all develop an active immunity ("usually long-lasting immunity that is acquired through production of antibodies within the organism in response to the presence of antigens") but there is no evidence yet about that one way or the other;
- on the supposition that immunity may follow infection and that more people have been infected w/o adverse consequences than we know about, a measure of herd immunity may arise faster than a vaccine is developed.

But "Most respiratory viruses only give you a period of relative protection. I'm talking about a year or two. That's what we know about the seasonal coronaviruses". According to a Wikipedia article, even if herd immunity arises it may be self-defeating:

> Since the adoption of mass and ring vaccination, complexities and challenges to herd immunity have arisen. Modeling of the spread of infectious disease originally made a number of assumptions, namely that entire populations are susceptible and well-mixed, which do not exist in reality, so more precise equations have been developed. In recent decades, it has been recognized that the dominant strain of a microorganism in circulation may change due to herd immunity, either because of herd immunity acting as an evolutionary pressure or because herd immunity against one strain allowed another already-existing strain to spread.

In other words, mutation may be a blessing or a curse. As with most things in life, there's a r/keeping dimension

> Another difficulty is raised by [vaccination] campaigns, carried out widely in recent years for polio and measles, that may keep no records of individual vaccinations, only total numbers of doses administered [34]. Among the important insights of the smallpox program was the recognition that it is often the same people who receive multiple (unnecessary) vaccinations, whereas others are repeatedly left out. Sound knowledge of one's population is a requirement for sound policy.

2020, April 28: CovidSafe app records

<<Michael Piggott: Reporting about the government's CovidSafe app we are all encouraged to download has referred to data, information and metadata. There is also code - source code and the encrypted reference code it generates unique to each individual. An ABC report noted that 'Using Bluetooth technology, the app "pings" and records information', which is nice. But what of records I hear you ask - records in the ordinary sense as understood by archivists, ... personal records, Commonwealth records, state records.>>

<<Joanne Evans: It was interesting to see in looking at the PIA for the App that one of the issues raised was the Archives Act 1983 getting in the way of the deletion of data. Apparently addressed in the interim direction and to be dealt with in the May legislation…>> The statutory prohibition on destruction does not apply to an act "required by any law;" - 24(2)(a). Parliament can simply nullify the obstacle if it wishes and take NAA out of the loop. A destruction authority might not do the trick if reassurance of perpetual confidentiality is the object because a DA can be revised or revoked. But how are they going to ring-fence the records generated when the data captured by the App is activated and used? Using the captured data gives rise to another secondary process that also produces records does it not? And if the data is used in the way suggested, that would involve transmission of some kind. Yet more records?

<<Andrew Waugh: <<I'd be interested if anyone could mount an argument that these were public records - either commonwealth or state. Is are created by your personal device, and are never in the possession of any government.>> The records may be created in your personal device (I haven't a clue about that) but is it true that they are created by the device? They're created in the device by the operation of an application downloaded to it. Aren't the records "created" by whoever establishes the system for capturing the data irrespective of who generates it or how it is stored? Suppose BDM deployed an App to gather data from you for registration of your newborn infant, your marriage, or the death of a loved one; or Titles used an App to collect data on your sale/purchase of property? Registrations begin with

data being captured into a system. At what point would the data submitted on my device for upload into the official registers become government records? When you're submitting a paper form attesting to such data to be kept on files that support the registrations, when does it cease to be yours? I don't have a device, by the way, just an old-fashioned mobile with buttons, so the issue is strictly academic for me.

Might the question be: how does this application differ from other Apps used by government to connect with willing citizens in the conduct official business? This App is designed and deployed by Government to gather data for what is clearly a public health purpose. Does it matter where it is stored? Does it matter that it is activated by a citizen-user who opts to participate in the process that the App is designed to support? Would it make a difference if its use was compulsory?

Records NSW offers advice on management of Apps created by government agencies, It identifies salient features:

> Social media information strategies need to be proactive, not reactive. Strategies need to be proactive because in general social media applications are
>
> - third party owned
> - located in the cloud
> - subject to regular change
> - unable to be relied upon to maintain business information for as long as it may need to be kept.

Would any App deployed by any government agency for any official purpose having those characteristics generate official records when used by willing citizens to capture private data? In determining whether the data gathered is owned or controlled by the government agency deploying the application I would have thought that ownership or possession of the device employed by a user of the App was the least relevant consideration. The more worrying question raised by the SRNSW advice (for this or any other social media application) is the status of third-party owned applications in the cloud. This I take to be the purpose of the advice – to alert agencies to the danger that they may not have ownership/control over records generated in a social media application unless steps are taken.

You could argue that until the data stored on your device is uploaded (which appears to be the next level described by Andrew) it remains private - a notification form awaiting to be lodged to pursue the BDM example. The functionality of the App provides the equivalent of a form and its activation is the digital equivalent of submitting it with your implied consent (not mine, though, cos I don;t have a device). And of course, that pesky ownership test in the C'wealth Act raises yet another complication.

2020, May 1: The other side of this

Recordkeeping is a social activity. Our work as recordkeepers, our values, our purpose is unavoidably coloured (at least to some extent) by the society we serve – in short, by its context. Speculation is already afoot about what life will be like afterwards. Will our society "snap back" or be profoundly changed. An article by Kyrill Hartog in *The Guardian* summarises one view -

> … The Austrian economic historian Walter Scheidel argues that throughout history, from the stone age onwards, pandemic is one of the only four events capable of bringing about greater equality. War, state collapse and revolution are the other three ... The pandemic has already exposed the limits of the market and highlighted the importance of effective state intervention and strong public healthcare provision ... But Scheidel cautions that, while disasters are not uncommon, tectonic shifts are historical anomalies. In other words, it may take a disaster to usher in more equality, but not every disaster does ...
>
> "What I'm very sceptical about is the idea that ideology, or rhetoric, or just political agitation by itself can change things. What you need is essentially a combination of a certain kind of ideas being out there, and then a shock to the established order that allows those ideas to become mainstream." … But there's an important caveat; much of the coronavirus's levelling potential will depend on our willingness to suffer significant economic losses in the short and medium term ...
>
> … could the coronavirus crash do what the 2008 crash didn't? Not if there's a swift recovery but, says Scheidel: "If we're entering a more long-term depression as a result of Covid-19, I think all kinds of more

> radical policies will be on the table for the first time in a very long time." … The real clash of interests, he predicts, will be between those determined to go back to the status quo even at the price of making existing inequality worse and those who want a reset ...

There's been chatter about suitable lockdown reading. How about *Day of the Triffids*?

2020, May 20: Herd mentality

Forget about herd immunity. This is not so much about records, I guess, but it's a lovely piece all the same. I suppose with libraries (and presumably archives search rooms) opening soon there may be some relevance.

> After 12 years as an event planner, I know how difficult it can be to convince crowds of people to behave the way you'd like them to … I'm great at creating guidelines that would work really well ... if everyone would just, please, follow them. They never all do ... "We'll just add signs" are famous last words in the event planning business … As a rule of thumb, planning for what people will be naturally inclined to do, rather than fighting it, works best.
>
> … When I absolutely need event attendees to follow a rule they wouldn't normally, I throw out the signs and use a human; it's the only way. Humans listen to other humans pretty well, but adding extra staff to enforce COVID-19 rules, therefore increasing the total number of people at potential risk, presents its own challenge ... I'm no more knowledgeable about respiratory virus transmission than the general public, and to try to keep people safe, I'll have to rely on state-mandated rules — rules created on pieces of paper by government officials far away from the crowds themselves.
>
> … I've seen crowds unite to help people who've been injured, and I've seen them shield vulnerable strangers from drunken aggressors. All the examples I can think of involve people coming closer together to help, not staying further apart. Unfortunately, everything we're supposed to do and not do right now to stay safe goes against our basic instincts. The rules are new for everyone; relying on people to "do the right thing" is likely not going to be enough.
>
> Jessica Carney is a nonfiction writer and event planner from Iowa.

2020, May 27: COVID-19 collecting and recordkeeping

<<Michael Piggott: The current pandemic continues to prompt…cultural heritage institutions to invite documentation…Australia Post has partnered with - curiously - the National Archives of Australia to encourage people to (literally) write letters addressed to "Dear Australia" and have them preserved by NAA. Australia Post says "This will enable all Australians to record their impressions of this remarkable time" … They've been told where they can send a letter or upload their stuff. Problem solved.>>

2020, May 28: Records are timebound in the sense that their meaning is contingent upon what we know now about the circumstances of their formation then (even if then was only 10 seconds ago). Over thirty years ago, David Bearman reminded us of the long term consequences of discontinuity and how perilous such knowledge can be even in the present.

> Accustomed as we are to viewing the record as physically fragile and in need of preservation, archivists were unprepared for Foote's two case studies suggesting the intellectual impermanence of recorded memory. The first case reviewed the efforts of an unusual interdisciplinary deliberative body, the Human Interference Task Force of the U.S. Department of Energy, which was charged with developing means to inform persons living 10,000 years from now of the presence of radioactive materials buried by our society. This group of semioticians, linguists, historians and scientists considered every possible way in which to notify the future of the simple fact of the danger of a radioactive site, and while it recommended a combination of markers and written records for such communications, it raised serious doubts about the value of either. The fundamental reason we cannot design a means to assure communications with the future is that human history, human languages, human cultures are too tentative to support communications across such distances of time. Like the electro-mechanical technologies that limit transportability of data in our own era, social technologies and constructs are likely to turn our best constructed messages to noise.
>
> Dr. Foote's second argument was based on case studies of how societies purposefully forget, how they manufacture stigma and efface material evidence in order to erase the past. He examined instances in which the psychological health of a community depended upon forgetting, as in Salem following the witchcraft trials. Foote noted that Germany has eradicated all Nazi party sites because, he suggested, they are far more dangerous to the present society than concentration camps since they reaffirm that the

> Nazis rose to power through democratic political mechanisms, however skewed and manipulated. One effect of Dr. Foote's work is to bring into crisp focus the shortness of civilized time in the scale of human history, just as paleobiologists so crudely alert us to the brevity of human time in the scale of life. David Bearman, *Archival Methods* (1989) ch. VI

Many years ago, I intervened in a list-serv debate over the impermanence of storage media for electronic records by reporting an archaeological find of ancient correspondence between two court officials named Ham-u-let and Hor-e-teo. Enough could be deciphered for archaeologists to surmise that the officials were lamenting the loss of important data that had been consigned to clay tablets. Repeated references to a “cursed spite” led scholars to hypothesize that a spite was a container for housing clay tablets which became cursed when the necessary religious incantations were incorrectly pronounced over it with the result that tablets crumbled to dust within it. Disparaging references were made to the efforts of a team of despised copyists from Gaza who spent their time duplicating writings from one tablet to another

2020, May 28: Lock down activities

… They are now beginning to talk about mortality displacement:

> … a temporary increase in the mortality rate (number of deaths) in a given population, also known as **excess mortality** or **excess mortality rate**. It is usually attributable to environmental phenomena such as heat waves, cold spells, epidemics and pandemics, especially influenza pandemics, famine or war.
>
> During heat waves, for instance, there are often additional deaths observed in the population, affecting especially older adults and those who are sick. After some periods with excess mortality, however, there has also been observed a decrease in overall mortality during the subsequent weeks. Such short-term forward shift in mortality rate is also referred to as **harvesting effect**. The subsequent, compensatory reduction in mortality suggests that the heat wave had affected especially those whose health is already so compromised that they "would have died in the short term anyway".[1]
>
> Death marches can also lead to a significant mortality displacement, such as in the Expulsion of the Valencian Moriscos in 1609 throughout the Kingdom of Valencia and Spanish-held Algeria, the American Indian Trail of Tears, the Armenian Genocide, and the Bataan death march, wherein the oldest, weakest, and sickest died first.

The policy argument that is now emerging is that we should discount some of the deaths from the virus because they would have happened anyway – especially amongst the elderly and those with medical conditions and they should not be counted as “excess deaths” (what a concept!). You can see where that is heading. Such a calculation (pleasing, no doubt, to Trump and his supporters) reduces the total number of deaths that need to be counted and supports arguments that the restrictions should be lifted sooner rather than later. Not only will we be discounted, my friend, but our early demise might actually serve a useful social purpose because of the harvesting effect (a “compensatory reduction in mortality”).

PS I see there are now lists being put up on the Internet of suitable reading while stuck at home. Some of these lists include *The Decameron*. An odd choice because the frame story (a group of refugees from the plague holed up in a secluded villa) would actually violate our social distancing rules. But then, no one enjoyed much privacy in the Renaissance.

2020, July 25: “Diarising” the pandemic

Health care workers are using WhatsApp to diarise how they see their health system’s response to coronavirus.

> The Health Worker Voices channel, launched by the Nossal Institute for Global Health at the University of Melbourne, aims to use these real-time audio messages to create a global database of stories. Workers are encouraged to record their thoughts as often as they would like, for up to five minutes …
>
> Dr Dan Strachan, senior technical advisor at the Nossal Institute, says we’ve only recently understood the importance of consulting frontline health workers during crises – those who are not involved in policy making but who have a unique insight into what’s really happening in the thick of it. “In the past, the experiences and insights of health workers in epidemics have only been captured after the event,” he

says. “But the recent Ebola outbreaks in Africa have showed us how testimony from health workers is key to shaping local response.”

Public health experts analysing the Ebola outbreaks saw how ground staff understood the community’s healthcare needs within logistical, historical and social contexts. In the Democratic Republic of Congo, for example, they could demystify why clinics full of foreigners in PPE suits were taking locals away to die.

Dr Oliver Johnson, co-author of Getting to Zero: A Doctor and a Diplomat on the Ebola Frontline, says local health workers are the most important asset in the medical response to an infectious disease outbreak, whether that be Ebola or coronavirus ...

2020, May 6: Recordkeeping and digital preservation in a crisis

This from the Inquiry into the Ruby Princess Affair-

> … At one point the ship's booking for an ambulance was cancelled but then reinstated because there was concern a passenger had already been diagnosed with coronavirus. Mr Beasley [Counsel Assisting] said tracking the phone calls between NSW Ambulance, NSW Ports, Carnival and officers claiming to be from Australian Border Force and Home Affairs was difficult. "That confusion is such that even listening to tapes of the calls where they exist does not make what happened easy to follow," he said …

And from another report-

> Kelly-Anne Ressler, a NSW Health senior epidemiologist, said the testing regime on board the ship was “unsatisfactory” and revealed that, once on shore, test results were delayed because the laboratory forgot to process them as a priority ... Ressler … told the inquiry of a conversation with the ship’s doctor, Ilse von Watzdorf, on 8 March ... She and von Watzdorf began communicating over Whatsapp because they had technical difficulties using satellite phones, she said … Counsel assisting, Richard Beasley SC, told the inquiry von Watzdorf sent Ressler a Whatsapp message on 8 March saying “thank you for your cooperation, hopefully they’ll [the passengers] behave this cruise”, which included an “emoji looking like an exasperated doctor”. Ressler said it meant “hopefully they won’t become unwell” ...
>
> In Sydney, Beasley also revealed that the ship’s log was out of date and the true number of people suffering influenza-like illnesses was “to a significant degree higher” than what was reported to NSW Health. Earlier, the inquiry was told NSW Health had developed guidelines on 19 February, that if “a respiratory outbreak” affected 1% of a ship’s passengers, that could prompt it to be labelled medium- or high-risk … The log given to NSW Health before docking said 2.7% of the people on board had presented with acute respiratory disease, and 0.94% had recorded influenza-like illness. But when an updated log was provided to NSW Health on 20 May, those figures rose to more than 1% of passengers for both respiratory issues and influenza-like illness ...

2020, May 14: It’s in the files

Based in part on material held at the National Archives, a British court has ruled that an internment order made against Gerry Adams during NI’s Troubles was illegal-

> Five justices ruled that because the then secretary of state for Northern Ireland, Willie Whitelaw, had not personally considered whether to intern Adams, the requirements of the Detention of Terrorists (Northern Ireland) Order 1972 were not satisfied … “It was clearly intended that the making of an [interim custody order] ICO, as opposed to the signing of the order, had to be the outcome of personal consideration by the secretary of state. In this case, a minister in the Northern Ireland Office had made the ICO. That minister could have signed the order, but he could not validly make it.” … Documents released to the public records office under the 30-year rule revealed that the British prime minister at the time, Harold Wilson, knew there had been procedural irregularities in the detention of Adams and other republicans …

An earlier report states-

> The regulations required that Northern Ireland secretary be involved personally in making any such decision. Documents released to the public records office under the 30 years rule have since revealed that the government knew there had been a procedural irregularity … A note for the record found in the files, dated 17 July 1974, … explained that “… an examination of the papers … revealed that applications for interim custody orders … had not been examined personally by the previous secretary of state for Northern Ireland during the Conservative administration. It now appeared that the [previous] Conservative administration had left both tasks to junior ministers in the Northern Ireland office …

> The supreme court has been asked to decide whether it was parliament's intention that only the secretary **of** state for Northern Ireland should have the power to make an interim custody order. The director of public prosecutions for Northern Ireland, who is the respondent in the case, has successfully argued in the Northern Ireland courts that the Carltona principle – based on a 1943 test case – allows that "where parliament specifies that a decision is to be taken by a specified minister, generally that decision may be taken by an appropriate person on behalf of the minister."

2020, October 12: File it?

Don't bother.

> …the worst news last week…came from a piece of research into a seemingly innocuous topic: emails…all my vain attempts to keep my inbox under control by filing emails in folders are actively making me less productive. It apparently takes up 10% of the time spent on emails (ie, 10% of our lives) to do this filing. Worse, apparently our filing efforts do nothing to improve the speed at which we can re-find emails when needed...But…we email filers are very stubborn. Just like the anti-vaxxers out there, I shall be studiously ignoring the science as well as the news.

2020, October 13: <<Andrew Waugh: … the research is quite old - a decade - but is still worthy of an article…it emphasises how fixated we all are on a recordkeeping innovation of the early twentieth century - filing in a structured classification scheme…this is not the only method of organising records…one of the causes of the 'problem' of managing email is our persistent attempts to bang the square peg of email into the round hole of the filing system. The underlying journal article …focuses on email threading as a retrieval mechanism. As archivists, if you take a step backwards and squint slightly, you will realise that threading is actually just a near reincarnation of that classic 19th century recordkeeping system of top numbering…As a records management system, top numbering had a number of advantages…we're doing some work at the moment in examining management of email and we're focussing on threading as a tool to aid record keeping. There are significant benefits.>>
<<Chris Gousmett: Emails in Outlook and possibly other systems…have a unique ID number for a thread as well as for each separate email. In theory it should be easy to identify a thread of emails by the ID number and capture those into a record-keeping system, and to add subsequent emails in that thread to those already captured. This is the electronic equivalent of top numbering…>>
<< What's missing, of course, is the actual top numbering ability; the ability to relate the bundles of correspondence together >> Yes. Underlying the top numbering process is registration. It is the assignment of a unique identifier enabling the item (email) to be tracked that is the key. The placement of top numbered dockets into bundles or proto-files as their final resting place was incidental and not actually necessary. The "file" already existed logically from the outset in the registers and indexes. The dockets didn't need to be brought together through top numbering except for convenience.

Registration enables the document to be viewed in more than one way - a variety of ways not dictated by placement. Lotus Notes email was designed that way (you didn't send the email, you sent a link to the email in the email repository). This is an ideal approach for IT systems and permits close integration of r/keeping processes with business so that the (re)application of registry techniques can be driven by an integration of r/keeping functionality into business systems rather than as stand-alone RKMS.

> Determining aggregation levels, sequencing and classification for recordkeeping is not simply a matter of ensuring retrieval but it is, above all, a way of conceptualizing and organizing work … we inherited a system of recordkeeping known as the registry system … While it mutated over the course of its period of influence … Analysis of its essential features shows great relevance to the translation of recordkeeping thinking into the electronic world. Indeed, technological advances are enabling us to return to many of the basic precepts of these systems …
>
> The registration process involved assigning the next available number, recording the originator of the correspondence, the creation and/or received date, a precis of the document and an annotation of where the correspondence as sent for action. It was also indexed by topic and/or author in separate volumes … On completion of the action. Copies of outbound letters were made into a set of Outwards … Letter Books … outwards correspondence might be independently registered with sequential numbers, including a reference to the inwards correspondence to link the transactions together … this separation was necessitated by limitations of the technology available … The physical document moved around the

> organization, collecting annotations or authorizations … but all were sent through the dissemination system controlled by the Registry, thus enabling a continuous representation of the stages of the work to be compiled in registers within the transmission system.
>
> Once action was completed, correspondence was sometimes stored in the strict numerical order determined by the register, but were often sorted into physical containers reflecting a subject, or … provenance … Thus the physical storage … often reflected another means of accessing the correspondence, a means which provided the basis for the later development of files.
>
> Where a piece of correspondence linked to an earlier transaction, it was registered sequentially as normal, the index was used to locate the prior correspondence and the previous correspondence was … physically connected to the latest piece of correspondence and the register was linked with its new location (top numbering). The two (or more) items then travelled through the work processes together and were stored together at the conclusion of business …
>
> From the registers, one finds the linked transactions and, tracking the top-numbering through, the latest entry determines the physical location of the correspondence … Over time the individual registration and tracking of documents became onerous and the notion of the topic bundle or file became the dominant locus of control …
>
> Barbara Reed, "Chapter 5 – Records" in *Archives: Recordkeeping in Society* (2005) ed. McKemmish, Piggott, Reed, Upward, pp. 114-117

2021, January 18: Rules & reality

<<Michael Piggott: Two recent items on an age-old phenomenon: what laws and rules say people should and shouldn't do, and what people actually do … there is an acknowledgment that noncompliance with the Presidential Records Act carries little consequence for Trump … In tossing out one suit last year, US circuit judge David Tatel wrote that courts cannot "micromanage the president's day-to-day compliance". The act states that a president cannot destroy records until he seeks the advice of the national archivist and notifies Congress. But the law does not require him to heed the archivist's advice ... Home Office 'working to restore' lost police records (BBC News, 17 Jan 2021) … Around 400,000 records were lost, according to The Times … Home Secretary Priti Patel said the issue was "a result of human error" … >> Most of our archives laws prohibit, on pain of criminal sanction (no less), unauthorised destruction of records and (what is often over-looked) other forms of disposal unless authorised. Yet, to my knowledge, there has never been a prosecution – let alone a successful conviction – for violation of any of these statutory obligations. Most laws operate to provide authority for government action (e.g. police, defence, welfare) or to regulate and control the activities of the world at large (e.g. Crimes - don't spit on the pavement – Tax, etc.). Archives laws belong to a select group that regulate and control the activities of the Crown itself (e.g. Audit, FOIA, Procurement, etc.). By and large, they look inwards rather than outwards.

And amongst this select group, archives laws are further set apart by the fact that one of its primary obligations is not to do something (don't dispose of records w/o authorisation) whereas most of the others (as well as the r/keeping provisions of the archives laws themselves for that matter) oblige officials to do something (e.g. manage money correctly, release information unless there is good reason not to, conduct fair and open tenders). What if our archives laws enabled the archives authority to issue commands instead of permissions in relation to disposal? What if the US national archivist had the power to order the US President to keep his tweets and failure to do so was a crime? That might impose strict liability that the court could not side-step so easily.

I cannot forebear from remarking that a pro-active power to forbid (in effect a command to keep) was the key element of the NAP as originally conceived. But even then, I suppose, as Michael's second example indicates, there are always accidents.

PS. It is interesting that the data retention laws operate pro-actively and not through a system of permissions.

PPS. Some aspects of archives laws look outwards, of course – e.g. public access rights and (conceivably) malicious destruction of a public record by insurrectionist citizens. The latter possibility seemingly less implausible than heretofore in light of recent events.

2021, February 11: Full and accurate records "No justification in the paperwork".
What is it about "handwritten note" that sounds sinister? The issues in this story boil down to two:

- Should a minister have the power to allocate grants regardless of guidelines?
- Should there be an adequate record of their reasons for doing so?

Home Affairs Minister Peter Dutton personally slashed millions in grant funding from organisations that were strongly recommended by his department to improve community safety, and used the funds to support his own handpicked list that did not follow his department's recommendations.

Key points:

- The Home Affairs Department recommended funding a list of 70 community safety projects using a merit-based assessment
- Peter Dutton reduced the funding for 19 of the highest-scoring applications and redirected the funding to projects of his choice
- The funding guidelines state the minister can override the department's merit-based assessments

> … Under the grant guidelines for round three of the Safer Communities program, the home affairs minister must take into account the assessment of each project, but he can effectively overrule his department's own merit-based assessments ... on January 31, 2019, Mr Dutton reduced funding for 19 of the highest-scoring grant applications, in a handwritten note, by a combined total of $5.59 million …
>
> None of the councils contacted by 7.30 were provided with any reasons for why their funding was reduced … Unknown to the councils, it was Mr Dutton's intervention in the scheme that reduced their project funding. The ministerial briefings do not outline any explanation from Mr Dutton for the reduction of the funding for these organisations. He sets out to the department in a handwritten briefing note: "When funding is NOT approved in full ... Negotiate within scope of original project." … the department had warned Mr Dutton about not following its merit guidelines …
>
> 7.30 is not suggesting that these projects approved by Mr Dutton were not eligible for funding, but rather that some more highly valued projects assessed on merit were overlooked. Geoffrey Watson SC, a barrister and a director of the Centre for Public Integrity, told 7.30: "In any scheme like this, the way in which the money is allocated must be carefully considered, so that it's going to the most needy place, where it will work the best. "Any departure from that would need to be justified. And I see no justification on the paperwork." …
>
> Mr Dutton also announced community safety grants for two local councils before they had even been assessed, and then later ignored his own department's recommendations not to fund them because they did not represent value for money …

Geoffrey Watson SC, quoted above. Is the controversial former counsel assisting ICAC. Whether the controversy results from crossing the line or ruffling feathers is open to opinion.

2021, February 16: Is storage a "core" IT issue?

In the digital age there has been a temptation to devalue "storage" as a r/keeping issue. I've been as guilty as anyone. Does it actually matter if you contract it out - under arrangements that leave your data (supposedly) secure and still wholly under your control?

> The Australian Defence Department has quietly extended a contract with a Chinese-owned company to continue storing data in its Sydney facilities, despite a push to end the arrangement by 2020. For a decade, sensitive military files have been stored by Global Switch, but concerns were raised four years ago when a Chinese consortium bought half of its British parent company … in December 2016 …
>
> In 2017, then-treasurer Scott Morrison confirmed strict new conditions had been placed on the Australian operations — and that Defence would begin to shift its data back to a government-owned hub once the contract expired …. Now, the ABC has confirmed the Defence Department has been forced to delay its exit from Global Switch, signing a new deal with the company last year ...

> "Defence has extended its property lease to provide for Defence access to the Global Switch Ultimo (GSU) data centre facility beyond the original lease expiry date of 30 September 2020," a Defence spokesperson told the ABC. "Defence has migrated part of its holdings to an alternative data centre. This was completed in mid-2020." The Department says it has also developed a plan to fully migrate its remaining data to another storage centre over the next three to five years …
>
> Global Switch's group director Asia-Pacific Damon Reid said the company had signed a long-term renewal with the Department of Defence. "Across the many international markets in which we operate, Global Switch partners with governments and leading organisations to house their mission critical IT infrastructure," he said. "All our data centres provide our customers with world class reliability, security and flexibility. "Global Switch has no access to any customer data, we simply build and operate high-quality real estate with the right power, cooling and physical security, so that our customers are able to focus on their core IT requirements ….

What are the issues?

1. If you outsource storage, does it matter that the supplier is part-owned by the Chinese? Aren't the security issues the same whoever builds and operates the "high-quality real estate"? The argument is that a Chinese corporation is effectively a servant of the State and can't be trusted to act according to ordinary commercial rules (which would make assuring your customers that their data is secure a priority in order to stay in business). Same argument applies to letting them buy the Port of Darwin, I suppose. Either you buy this argument or dismiss it as paranoia.
2. But then, how does any client know that any supplier isn't able to access their data? Is it a question of trust or does the client – in this case DoD(A) – monitor and detect security breaches just as they would in their own data storage centre. Others more technically literate than I will be able to explain how Global Switch can guarantee "world class … security" without being able to access the data. This must also be an issue for banks, health services, etc. who outsource storage.
3. Many years ago, when we were investigating security at PROV, the consultant said there are basically only two strategies: prevent break-ins or detect them (and deal with them) when they occur. Most systems have elements of both. If you're worried about unauthorized access and proceed on the basis that all data can be hacked, it may not be all that safer to have your own data centre. Indeed, it could be argued that large-scale commercial operators specialising in storage are likely to have better security than most clients could ever hope to achieve. So, you may be better off outsourcing – provided the critics aren't correct and politically suspect vendors aren't being given the keys to the kingdom.

WHAT'S ON THE PUBLIC RECORD?

Why is there so much confusion about what is an official record? What is (or should be) the status and the fate of executive records (e.g. Presidents and Governors-General)?

2017, Jun 10: Public records and the Comey notes Status of notes, tweets, etc.

2017, Jly 31: NSD1843/2016 Hocking v NAA The Palace Letters.

2021, Jan 9: Twitter, Trump & public records What becomes of the President's tweets?

2017, June 10: Public records and the Comey notes

<<Andrew Waugh:…Trump is going hard to discredit/destroy Comey. The first attack is Comey passing his notes of the meeting to the press. This article comments on the legal arguments that could be mounted. Note the analysis' conclusion that Comey's notes are unlikely to be public (government) records – points 3, 5, & 7.>> Points 3, 5, & 7 are directed to different ways in which the notes might be regarded as public records. A cumulative anti-Trump case is being made that in each and every way they aren't. But because these are different ways of looking at the same artefact, the answer could have been that they are public records in some ways and not in others. It's just that this legal academic wants to show that they aren't in any way. The article states –

> …Trump's argument, somewhat confusingly articulated by his lawyer on Thursday, is that Comey violated the law by "leaking" sensitive material to the press…Trump's lawyer Marc Kasowitz phrased it differently, accusing Comey of "unilaterally and surreptitiously" making "unauthorized disclosures to the press of

> privileged communications with the president"…. "This should not be called a leak," [Fordham law school professor] Shugerman said of Comey's decision to pass a personal memo to the media through a friend. "The word 'leak' refers to revealing secret and classified information. It is a misuse of the term 'leak' to apply that in any way to what Comey described in his testimony."

The analysis mixes up the concepts of classified information, confidential information, evidence, and public records. The concept of "document" varies when viewed in its different legal aspects. The concept of leaking is primarily about the handling of information rather than the handling of documents. The concept of public record is protean – what is a public record for one purpose may not be for another.

The conclusions at the end confusingly traverse legality, privilege, use of official forms (point 3), nondisclosure agreements, internal FBI rules, and privacy (point 7) as well as public property or records (point 5). It is only in few jurisdictions (such as the C'wealth of Australia) that documents as public property and public records are co-extensive; more generally these are two different tests applied for two different purposes and possibly leading to two different outcomes.

Here in Australia, r/keepers use the term to mean documents made or kept of official business or some such. According to Wikipedia Americans use it to mean "documents or pieces of information that are not considered confidential and generally pertain to the conduct of government" incorporating an access component into the definition. Interestingly, FOIA is not on Shugerman's list. Another question might be: if notes are made of a meeting between two officials pertaining to official business by one of the two participants (either at the meeting or subsequently) would the notes be subject to a FOIA request? Is the diary of George Brandis an official record? Are Malcolm Turnbull's tweets?

2017, June 13: Public records and tweets

<<Andrew Waugh: It's being argued that President Trump's tweets should be preserved as 'presidential records'. One Democrat congressman is proposing a new law - the 'Communications over various feeds electronically for engagement' law – requiring NARA to preserve them…>>

2017, June 14: It makes you wonder what the new law would be for-

1. Is it because existing laws regarding presidential records don't cover tweets?
2. Or, for the resolution of doubt and uncertainty to prevent anyone arguing they aren't?
3. Or, because although tweets are covered by existing laws NARA might appraise them as ephemeral and they want to stop that?

<<Andrew Waugh: Or 4) The Democrat is grandstanding. The relevant law was easily found via Wikipedia. It's the usual jumbled thinking about what a record is. In particular, it makes the cardinal mistake of defining a record by listing a mixture of documentary forms and examples…>>

2017, July 31: NSD1843/2016 Hocking v NAA

It seems the case to force a release of John Kerr's correspondence with HM Queen Elizabeth in the lead up to the 1975 dismissal is set for a hearing today. At issue is the status of the letters. Are they Commonwealth records, subject to the official access policy, or personal papers, subject to access rules agreed with the donor? Their mere presence amongst NAA's holdings determines nothing since NAA is entitled to accept deposits of personal papers (which may include C'wealth records, official documents that are not C'wealth records, or private and personal materials) under conditions set by the donor.

> s.6 (2) Where, in the performance of its functions, the Archives enters into arrangements to accept the care of records from a person other than a Commonwealth institution, those arrangements may provide for the extent (if any) to which the Archives or other persons are to have access to those records and any such arrangements have effect notwithstanding anything contained in Division 3 of Part V.
>
> s.6 (3) Where an arrangement entered into by the Archives to accept the care of records from a person other than a Commonwealth institution relates to a Commonwealth record, then, to the extent that that arrangement, in so far as it relates to such a record, is inconsistent with a provision of Part V, that provision shall prevail.

The test is not whether the letters are official, it is whether or not they are owned by the Commonwealth (i.e. Commonwealth records). Unlike most of the States, the Commonwealth has an ownership test. NAA may not, apparently, offer immunity from official access rules to any C'wealth records contained within such a deposit. When these provisions were first being drafted, what is now s.6(3) was not part of the mix. The intention was that NAA should be able to offer potential donors of "personal papers" an absolute assurance over control of access regardless of whether or not their deposit included documents over which the C'wealth could assert ownership. The logic of this was that donors of such material had a choice to place the documents anywhere they pleased and, if they chose to put them somewhere else, they would not be subject to the official access rules anyway. Unless NAA could offer similar terms to those afforded by alternative custodians, potential depositors could be deterred from placing their papers with NAA and nothing would be gained by way of making them accessible under official rules (some people perversely argued that the intention was lock official estrays away from public view).

Obviously, at some stage thereafter, this outcome was regarded as intolerable and hence s.6(3) which appears to prevent NAA from offering donors control over access to material they deposit insofar as that material is found to be C'wealth records (i.e. owned by the C'wealth). It was always a tricky area because if the C'wealth had an ownership claim it could be argued it should be enforcing that claim (replevin) rather than offering s.6(2) immunity from the access rules as an inducement to donate. Of course, it does not follow that documents once owned by the C'wealth are still so owned and it is certainly not the case that all "official documents", whatever that means, are or ever were C'wealth-owned. Another argument for the original drafting was that the pursuit of ownership claims is so fraught that it is best not pursued. I assume the issue now being heard in Federal Court is whether the letters are or ever were owned by the C'wealth. Pity the poor judge who has to decide that.

The article suggests the Monarch has the final say on access release, presumably because this was so stipulated in Kerr's agreement with NAA when making the deposit. If the Court decides the letters are not C'wealth records, I imagine this stipulation would remain unaffected by any future transition to a republic.

2017, September 6

According to Jenny Hocking, the "palace letters" case will conclude this week in Federal Court:

> These letters, between the governor general and the Queen, her private secretary and Prince Charles, in the weeks before the dismissal are held by our National Archives in Canberra … Lead barrister, Antony Whitlam QC, addressed the central question of the nature of "personal" as opposed to "commonwealth" records, arguing that correspondence between the Queen and her representative in Australia could not be considered "personal" … Thomas Howe QC for the National Archives, however, described the letters as Kerr's "personal property" for him to dispose of as he wished. The letters were deposited with the archives by Mr David Smith, the governor general's official secretary, after Kerr left office. However, Howe contended, in doing so Smith was acting as an "agent" of Kerr and on his instructions, "They are the property of Sir John Kerr personally, not the commonwealth or the official establishment."

Whatever the merits or the outcome of the case, Hocking's article is a useful reminder of the distinction under C'wealth law between a "Commonwealth record" and an official record. In earlier reporting:

> Tom Howe, QC, for the National Archives, said the Archives Act drew a sharp distinction between the governor-general "him or herself" and "the official establishment of the Governor-General". The "personal and private records" of the governor-general were "owned by him or her as opposed to being transferred into the records of the official establishment", he said. Mr Howe said previous governors-general had taken correspondence with the Palace with them when they left office. Sir John had acted on the basis of this "decades' long" convention when he corresponded with the Queen. "Now it's said ex post facto … you don't own the records," Mr Howe said. "We say that's a surprising way for the … law to work." The court heard Sir John's official secretary, Sir David Smith, lodged the letters with the director-general of the Commonwealth Archives Office in 1978. Mr Howe said he was "lodging them as agent for Sir John Kerr … on the instructions of Sir John Kerr" and if they had been Commonwealth records they would not be

subject to his orders. "It was not a transfer of ownership; it wasn't a gift of ownership of the records," Mr Howe said. "Sir John Kerr had the ultimate constructive custody of the records."

Section 6 of the Archives Act states:

"Commonwealth record " means:

(a) a record that is the property of the Commonwealth or of a Commonwealth institution; or

(b) a record that is to be deemed to be a Commonwealth record by virtue of a regulation under subsection (6) or by virtue of section 22;

"Commonwealth institution " means:

(a) the official establishment of the Governor-General;

I think this Commonwealth distinction between ownership of the artefact and the official purpose of the record is still unique in Australian archives law. The argument seems to turn on a distinction between activities of the G-G and his staff belonging to the "official establishment" (whatever that means) giving rise to Commonwealth ownership and activities outside the "official establishment" leaving the resulting artefact in private ownership. How they operated and on what conventions is immaterial except insofar as it bears on ownership. Now the Court is being asked to decide whether this Vice-Regal correspondence belongs to the official establishment or not. Are all records created by a GG personal to him/her unless "transferred into the records of the official establishment"? Where has such correspondence produced by the 17 GGs before Kerr and the 7 GGs after him (before the current one) actually ended up? The National Library has some – e.g. Tennyson; Stonehaven; Gowrie; Munro-Ferguson – that appear to contain official materials but nothing like "personal" correspondence with HM. Can the official secretary plausibly split himself in two and function as head of the official establishment in one moment and an "agent" for the former GG in the next? Previous GGs, previous Ministers, and previous senior bureaucrats may have been in the habit of taking official correspondence with them, and sometimes argue while still in office that papers dealing with official business are personal. Does that make it a decades long convention? Recent controversy over official emails suggests another view – viz. that official business is the test as to whether documents come within the scope of recordkeeping legislation (with the possible exception of the C'wealth Archives Act). But perhaps the GG is in a different category, at least as far as correspondence with the Monarch is concerned. One assumes there are no rule-books, guidelines, or procedures for GGs to follow and that convention, custom, and time-honoured practice are all the go, but there would have to be evidence that there was a decades long convention that correspondence with HM is not part of the official establishment. Was the decades long convention overturned by the 1983 Act? Did that Act operate retrospectively to invalidate an arrangement entered into between NAA and Kerr's estate in 1978? An archives law, by its very nature, reaches back to impose new controls over records already in existence. If Sir John Kerr "had the ultimate constructive custody of the records" in 1978, who has constructive ultimate constructive custody now? Whoever it is why don't they withdraw the records from NAA? Too late now, I suppose while litigation is on foot. So far as I know, FOIA doesn't use a property test; if the dates were right, perhaps that would have been be a better path to use; it wouldn't apply to privately owned records so the same issues would arise, but it might apply to official records. All will soon be made clear by the learned judge.

<<Andrew Waugh: In the bureaucratic speech of the 19th century (with which I am most familiar), the 'Establishment' means the approved/funded roles in an organisation – usually listed by job title, and/or by pay scale. So the 'official establishment of the Governor General' would be the roles that support the GG – the aide-de-camp, for example, and the secretary. It's probable that it's expressed in this way because the staff of the GG are anomalous; in their role they can't be considered members of the public service (i.e. the government), or of parliament. Separation of powers and all that. I wouldn't think the 'establishment' includes the GG themselves. I hardly think the 'establishment' of the office starts off with '1 Governor General, so and so salary'.>>

2017, September 7:

Andrew says **<<... the 'official establishment of the Governor General' would be the roles that support the GG ... I wouldn't think the 'establishment' includes the GG themselves>>.** Howe's argument, on behalf of NAA, goes beyond that – viz. "They are the property of Sir John Kerr personally, not the commonwealth

or the official establishment." NAA has to argue that because, even if not part of the GG's establishment, they would still be Commonwealth records because ".. a Commonwealth record is a record owned by the Commonwealth...".

On that argument, it would seem the office of GG is not part of the Commonwealth (only the establishment) and, by logical extension, his activities would be beyond the reach of Commonwealth law. But we know this is not the case. The GG's actions are bound by the Constitution and are reviewable by the High Court. He is bound by the law of the land (Australian law) in the exercise of his official activities. He is a creation of the Constitution, part of the Commonwealth, not a separate being. How can it be that documents created in the exercise of those official duties are not the property of the Commonwealth?

The only logical way to square that circle would be to argue the doctrine of the King's two bodies. The simplest way to understand it is this: the Queen's property is of two kinds – personal and official. Some of her wealth is hers personally and disposable by her just like you and me while other property (Buck House I imagine but I don't know) is State property and not hers to do with as she wishes. She has a personal fortune and the Civil List. NAA's argument must be along the lines that an analogous situation applies in the case of the GG ("... property of Sir John Kerr personally, not the Commonwealth..."). Some of his official documents are personal and some belong to the State unless they are running a more broad-ranging argument that –

1. official dealings between the GG and HM are different from the GG's official dealings with anyone else (including the Australian Government) and none of them are within the reach of Australian law, or
2. even more breath-takingly, that none of the GG's official records are Commonwealth property (unless filed with the establishment) and are his personal property to dispose of as he wishes.

The latter proposition, if sustained, would of course be analogous to the situation applying in Britain with regard to the Royal Archives. Note: the original drafting of the Archives Bill recognised the difficulty and would have allowed NAA to accept deposits of personal papers from persons who had held office (ex-GGs, ex-Ministers, ex-bureaucrats) and apply access in accordance with the donor's wishes irrespective of whether or not they included Commonwealth records but this elegant solution was not allowed to stand.

If it becomes available, the transcript will make fascinating reading.

2017, October 16: 'Volcanic' evidence of Queen's involvement in the 1975 dismissal uncovered?
From SMH:

> Representatives of the British government flew to Australia in the lead-up to the 1975 dismissal of the Whitlam government to meet with the then governor-general … Historian Jenny Hocking discovered files in the British archives showing Sir Michael Palliser, the newly appointed permanent under-secretary of the Foreign and Commonwealth Office, arrived in Canberra a month before the dismissal and held a joint meeting with Sir John Kerr and the British High Commissioner, Sir Morrice James, just as the Senate was blocking supply. Sir Michael later reported back to London that Sir John "could be relied upon" … Although Sir John's role in updating the Queen and the British government about the events is well known, what remains unclear is how active government and royal players in London were in trying to prevent the 1975 half Senate election from being called … Professor Hocking is also waiting for a Federal Court judgement on her application to have access to what are known as the 'Palace letters', the correspondence between Sir John Kerr and Buckingham Palace which she believes will – finally – reveal just what the Palace knew of Sir John's intentions in the lead-up to the dismissal. The letters are held by the National Archives of Australia which has deemed them "personal" – rather than official – correspondence that will not be released until 2027. They may never be released if Buckingham Palace decides to exercise its power of veto over their release …

If more details on the subject of the joint meeting (whatever it may have been) are not in files on open access at the National Archives (UK), how likely is it that those details will be on record in the Kerr

correspondence with Buck House? On the other hand, I doubt very much that if more detail exists on record it would be found on files now available for public access in the National Archives (UK).

2018, March 21: Hocking v NAA

The Federal Court has finally ruled in NAA's favour in the Kerr/Queen (Dismissal) letters case. The judgement approaches the result via a number of threads and it is unclear (to me) whether any one rationale was used to reach the result and how that rationale might apply to other materials (e.g. ministerial emails and unfiled papers). It is a lawyer's judgement (unsurprisingly) with arguments piled on so that if one prop is taken away the edifice still stands. The records in question were not examined by the court so it unclear also whether –

- some, had they been so examined, would be determined to be Commonwealth property, or
- the decision applies to whole deposit, irrespective of how ownership of some of its contents might be determined in other circumstances.

Threads in the Judge's arguments leading to his conclusion (viz. that '' at all relevant times, the documents comprising AA1984/609 were the personal property of Sir John Kerr and were not the property of the Commonwealth'') include –

- What the parties to the agreement thought and how they acted;
- Personal and private vs official;
- What is filed and what is unfiled;
- The implications of the phrase ''official establishment'' of the G-G;
- Implications of the legal concept of ownership.

Here is a summary of some of those arguments –

- Sir John considered that he, personally, owned the records.
- Sir John chose to consult The Queen in order to ascertain Her wishes.
- The Queen also appears to have considered that the subject records were owned by Sir John and were amenable to disposition in accordance with his instructions.
- it was Sir John's decision to place the correspondence to and from the Palace in the custody of Australian Archives.
- the caveat in the final paragraph of the letter of deposit regarding consultation even after 60 years had lapsed was added by Mr Smith after he had consulted with Sir Philip Moore, The Queen's Private Secretary at the time. Sir John Kerr was advised of the addition of the caveat in Mr Smith's letter dated 20 May 1980 to him ….. This is not inconsistent with Sir John viewing these papers as his personal property.
- the Commonwealth, through the then Director-General of Archives, 99ealized9999 that the subject records were Sir John's personal property.
- the circumstances surrounding the copying of Sir John's papers by Mr Smith at Sir John's request, and the subsequent provision of those copies to Sir John, are also consistent with Sir John's ownership.
- the records in AA1984/609 were dealt with differently from other forms of correspondence sent to and from Sir John after the events of 11 November 1975 and while he was still Governor-General.
- the passing of ownership of M4513 in accordance with the terms of Sir John's will, the ultimate disposition of those records by the executrix of Lady Kerr's estate (Ms Bashford), and correspondence passing between Ms Bashford and the Archives concerning that disposition (which make repeated reference to Sir John's "personal papers", "Sir John's papers", and "Sir John's material"), reflect a shared recognition of Sir John's original ownership of those records.
- the following material [listed in para 117 of the judgement] supports the view that, conventionally, correspondence between a Governor-General and The Queen has been regarded as unique and does not give rise to a property interest on the part of the Commonwealth.

- it is relevant to note that the construction advanced by Archives produces an outcome which is broadly consistent with the special archival arrangements concerning Royal correspondence in the United Kingdom.

In reaching his conclusion, the Judge also had this to say-

- I do not accept the applicant's core submission to the effect that the correspondence comprising AA1984/609 should be viewed as the property of the Commonwealth simply because its subject matter relates to the performance of the Governor-General's role and function.
- I accept Archives' submission that the personal and private correspondence between a Governor-General and The Queen does not involve the Governor-General exercising the executive power of the Commonwealth within the meaning of s 61 of the *Constitution.*
- I do not consider that resolution of the issues in these proceedings is assisted by reference to authorities in the United States of America.
- nor do I accept Archives' submission that the presumption of regularity has some meaningful operation in these proceedings.
- I do not consider that Archives' construction of the *Act* should be rejected because, on the applicant's submission, this construction means that the documents comprising AA1984/609 remain the property of Sir John Kerr forever and could, for example, be retrieved and then destroyed or otherwise disposed of.
- I do not accept the applicant's submission (as outlined in [59] above) that an inference should be drawn that Sir John considered that he could not withdraw AA1984/609 from Archives, in contrast with his retrieval of 11 cartons of other papers which he had lodged with Archives.
- it is both unwise and unnecessary to seek in these proceedings to exhaustively define what papers or records of a Governor-General are "Commonwealth records" on the basis that they are Commonwealth property. In light of the assumption that all the records in AA1984/609 comprise correspondence between Sir John Kerr acting in his capacity as Governor-General and The Queen (and/or Her Majesty's Private Secretary).

In paras 135-156 the judgement canvasses the legal arguments around whether the records are C'wealth records because they belong to the Commonwealth rather than to the official establishment of the G-G.

- the word "property" should be given the same meaning when juxtaposed with the concept of "the official establishment of the Governor-General" as it has when juxtaposed with the concept of "the Commonwealth". Accordingly, for the reasons given at [102] to [106] above, the reference to "property of" picks up the concept of ownership as ordinarily understood under the general law.
- It is significant that, in contrast with all the other "Commonwealth institutions" specified in s 3(1), the only one which has a qualification to it is that relating to "the official establishment of the Governor-General".
- I accept Archives' submission that the qualification "official establishment" refers to persons who assist and support the Governor-General's performance of official duties, namely the Official Secretary and his or her staff.
- The effect of this construction is that the Governor-General himself or herself is not relevantly a "Commonwealth institution" or "the Commonwealth" itself
- The first Bill, the *Archives Bill 1977*, proposed that a different approach be taken to the records of a Governor-General and his Office, and records of the executive government. It appears that a different view was taken in the *Archives Bill 1981* **[CH: you bet it was!!!!!]**. The opposition moved an amendment to subject all records of the Governor-General to the open access provisions, but this Bill was never passed
- The *Act* plainly draws a distinction between the records of the official establishment of the Governor-General and the Governor-General himself or herself. In my view, the intention was to have the provisions of the *Act*, dealing with such matters as the open access period, apply to

records of the official establishment of the Governor-General, but to leave to any particular Governor-General the option of placing his or her private or personal records with Archives under arrangements pursuant to s 6(2). **[CH: the purpose of the 1978 drafting was not to declare the G-G's records were not C'wealth records but to confer on the G-G, as well as certain other arms of Government, special privileges with regard to disposition, access, etc. but this clarity was subsequently tampered with]**

- I do not accept the applicant's submission that the *Act* should be construed by reference to what Senator Evans said in his Second Reading Speech, when he referred to the legislation not applying to the Governor-General's "private or personal records" and that this is a very limited category of documents, such as Christmas and birthday cards, bank statements etc. That approach fails to take account of the fact that there has generally been an acute appreciation of the special character of correspondence between the Governor-General and The Queen
- there are clear differences between the *FOI Act* and the *Act* when it comes to dealing with documents or records relating to the Governor-General. Most notably, the Governor-General is not a "prescribed authority" for the purposes of the *FOI Act*.
- it is appropriate to say something briefly concerning the phrase "administrative records" in the context of records of the official establishment of the Governor-General. As noted above, this phrase is not used in the *Act* although a similar phrase appears in the *FOI Act*, as discussed in *Kline*. The phrase does appear, however, in a document titled "Access Examination Manual" which is published by Archives (November 2014) for the guidance of its staff in making access decisions

All of the above just gives a flavour. For those interested, there is much more besides. Republic anyone?

2020, January 24: It's best I file it

An article in the last *Weekend Oz* by Troy Bramston says that Buckingham Palace has "backtracked" on a 1991 agreement to release (after 50 years) Vice-Regal correspondence with the Crown held at NAA. The Agreement apparently stipulates that access is subject to "a possible veto by the Queen's private secretary and the Governor-General's private secretary". The Queen's PS , it seems, is usually the Keeper of the Royal Archives but, so far as I can discover, the GG's PS has never been Director-General of NAA. It is unclear whether limits on access after 50 years are in accordance with any knowable criteria or are appealable or are simply a matter of whim without a basis for consistent application and outcomes. According to Bramston, it has now been exercised not simply to identify exceptions but to impose a blanket extension over everything beyond the 50-year period.

Reasons given include "privacy and dignity", fearless advice, and Australia/British relations. All sorts of questions arise, including:

- Why are two middle-ranking public servants making the decisions?
- Are the GG's letters with the Queen of Australia or the Queen of Britain?
- If not the latter, how could they harm Oz/UK relations?
- Is the correspondence part of our governance or dealings with a foreign power?

Apparently the Hocking Case (Kerr's letters re The Dismissal) is proceeding in the High Court next month. The issue there seems to be whether the correspondence in NAA's custody comprises "Commonwealth records" under the Act. But that point is a technicality and trivial in larger policy terms, the kind of petti-fogging detail lawyers fixate on to avoid larger issues. It wouldn't even matter if the letters were somewhere else. Bramston points out that similar material not held by NAA is made available (e.g. McKell papers at SLNSW). Perhaps this class of material would be more freely available if it was not deposited in the official archives-

> In an episode of *Yes, Minister* Jim Hacker wants to suppress a document:
> **Bernard Woolley:** Shall I file it?
> **James Hacker:** Shall you file it? Shred it!
> **Bernard Woolley:** Shred it?

James Hacker: Nobody must ever be able to find it again.
Bernard Woolley: In that case, Minister, I think it's best I file it.

No one familiar with the arbitrary nature of access to the Royal Archives in Britain will be surprised by any of this. Irrespective of their status under the *Archives Act*, the question is whether this class of material should be regarded as part of the official record of the way we are governed. The answer is, of course, "Yes". That being so, we are entitled (as citizens of this sovereign Commonwealth) to have consistent rules for their treatment, rules and guidelines with predictable outcomes. I am not here arguing for the release of this class of material only for a more consistent, predictable, transparent way of managing the access to it.

It has always been my view that there should be a clear distinction between official archives and personal papers and that, unless official estrays amongst personal papers are recovered, access to the latter (even when lodged with an official depository) should be at the discretion of the depositor. Thus, personal papers that include official estrays that are not pursued with recovery in view should not be subject to official access policy. If government is worried about confidentiality, the laws dealing with official secrecy, national security, and treason should suffice (and I have seen copyright law employed for this purpose as well). This was the position written into an early draft of the *Archives Act* when it was still under my hand, but it got fudged later on. The rationale for my position is this:

- It is impossible to satisfactorily distinguish official, personal, and private documents (content is another matter)
- There is not much appetite to pursue and recover official estrays, ownership is hard to prove at law, and criminal sanctions are seldom used in document-handling cases
- Official secrets are usually managed (instead) by the application of customary procedures or sub rosa after the event on a case-by-case basis
- Systematically, unless recovery is sought, depositors will be free to lodge them as they wish
- In which case, all custodians (including official archives repositories) should be able to offer their services on an equal footing.

2020, February 4: The Archives Act goes to the High Court ✓

<<Adrian Cunningham: This week…the High Court of Australia will deliberate on the Archives Act's definition of 'Commonwealth Record'. Constitutional lawyer Anne Twomey writes an explainer about the John Kerr Palace letters case in the Conversation. The main issue is the property-based nature of the definition of Commonwealth Record in the Act. The Act says that a Commonwealth Record is a record that is the property of the Commonwealth…>> It's not quite that simple.

<< Many former Commonwealth officials and office-holders have taken possession of records created or received in the course of carrying out their official duties that they claim to be their private property. Former Governor General, Sir John Kerr, was one of those … The National Archives has for tactical reasons often accepted at face value assertions of private ownership of records that some might regard as Commonwealth records>> Quite so. NAA's practice has been what we originally intended but without the statutory basis that the draft *Archives Bill* provided. The power to accept "personal papers" is contained in **s.6**. When that clause was being drafted, all the problems of dealing with such material deposited by former ministers and officials (leaving aside objections from NLA and others that Archives shouldn't be taking in such materials at all) came to be focused on access. There were many options but they boiled down to two:

- Compel ex ministers and officials to return any official records in their custody, leaving them with only personal and private material to do with as they wished, or
- Leave them in possession of their papers which could and usually did include official material and empower Archives to compete on equal terms with other prospective repositories to persuade depositors (in their absolute discretion) to put their papers in their entirety with Archives (or anyone else).

The rationale for Option 2 (as I've explained here before) was that distinguishing official documents from the rest was next to impossible, that it would lead to endless disputation, and that the pursuit of

official documents by using archives law would be unedifying and ultimately futile. Instead, we would offer them an opportunity to deposit with Archives on the same terms as every other repository – viz. that the depositor would retain control over access to all the material (official, personal, and private) contained therein. Hence **s.6(2)** –

> **s.6(2)** Where, in the performance of its functions, the Archives enters into arrangements to accept the care of records from a person other than a Commonwealth institution, those arrangements may provide for the extent (if any) to which the Archives or other persons are to have access to those records and any such arrangements have effect notwithstanding anything contained in Division 3 of Part V.

which says that the donor's wishes shall prevail over the access provisions applying to "Commonwealth records" (Division 3 of Part V). Unless my memory is playing me false (which at my age is possible) that was how things stood when I was involved in the drafting and defending the Bill before a Senate Committee. The 1983 Act, however, had an additional provision s.6(3)

> **s.6(3)** Where an arrangement entered into by the Archives to accept the care of records from a person other than a Commonwealth institution relates to a Commonwealth record, then, to the extent that that arrangement, in so far as it relates to such a record, is inconsistent with a provision of Part V, that provision shall prevail.

Clearly nullifying the effect of **6(2)** standing alone (so far as access is concerned) by imposing the access provisions applying to Commonwealth records amongst a deposit of personal papers. In the instant case, the only possible defence against the claim for access to Commonwealth records amongst the Kerr Papers is to argue that the records in question are not owned by the Commonwealth or an agency. That, I understand, is the issue being argued. The original drafting was intended to obviate the need for a court (or anyone else) to make that determination.

The wisdom of the original drafting is thus demonstrated. The provisions of Part V can only conceivably apply because Kerr chose to deposit his Papers with NAA. If he had put them somewhere else the issue wouldn't arise in the first place. And absent **6(3)** that would be the same result for a deposit with NAA. The original thinking was that a depositor should not face access restrictions over their papers by depositing at Archives that they would not incur by depositing them anywhere else. The only possible issue would be whether NAA was empowered by the provisions of **6(2)** to accept a former Governor-General's papers under that provision in the first place.

Had Kerr deposited with another repository (NLA for example) the issue would not arise. But why not? NLA is a Commonwealth institution and the access provisions apply to Commonwealth records in a Commonwealth institution –

> **s.31**(1A) This section applies to a Commonwealth record that:
>
> **(p)** is in the open access period; and
>
> (b) is in the care of the Archives or in the custody of a Commonwealth institution; and
>
> (c) is not an exempt record.
>
> **(p)** Subject to this Part, the Archives must cause the record to be made available for public access.

Which means that any Commonwealth records amongst Kerr Papers at NLA would also be subject to the Commonwealth Government's access provisions unless they were deemed to be

- exempt records, or
- not Commonwealth records at all.

"There's too much of this damned deeming" (A P Herbert). But Kerr's Papers at NLA (hypothetically) would not be exempt records because they would not be Commonwealth records in the first place. The definition of Commonwealth record has certain exclusions including "exempt material"

> s.3 ***"exempt material"*** means: …
>
> (b) material included in the collection of library material maintained by the National Library of Australia; …

So, under para (b) of the definition of materials which are not Commonwealth records, official records amongst Kerr Papers with NLA would not be subject to Commonwealth access provisions – exactly the same position that would now apply had **s.6(2)** of the original drafting of the *Archives Bill* gone forward without the accompaniment of **s.6(3).**

Now that I am rusticating and in my dotage, my own personal papers are in disarray but somewhere I have the material we presented to the Senate Committees holding hearings into the Archives and FOI Bills including copies if the Bills as they then were and lengthy testimony we gave – during which (I suspect) this issue came up. It's purely of academic interest now, I suppose, but if anyone is interested I will try to dig them out.

2020, February 5: <<Chris Gousmett: …"Would this person have created this record if they were not holding this official position?">> Like Adrian, I spent many years at NAA trying to reach a consensus about what was official and what was not – with officials (up to departmental head level) and even ministers. I collected samples from our deposits of personal papers and laid them out. Everyone came into the room with a formula like this. Many of them left convinced their formula worked. But, you know what? No two people ever (that's never) agreed on how to categorise all the documents on the table. That's what finally convinced me that (absent a court or tribunal ruling on every case) this approach was futile.

<<Adrian Cunningham: The High Court can only rule on the law as it stands, and a definitive interpretation of ownership is desperately needed>> And how will that help? The issue here is official vs personal – not who owns what. The ownership test is unique to C'wealth legislation because of the Constitutional clause re "on just terms" (cf. *The Castle*). Everyone else has made or received. Ownership is a dis-functional basis on which to manage official records but, as Adrian says, we are stuck with it. But it became another reason for the discarded solution. We don't want to manage C'wealth property, for goodness sake, we want to manage C'wealth records,

<<Adrian Cunningham: I don't think it is right to let former office holders claim records created in the course of performing their official duties and then do whatever they like with those records – destroy them, sell them, impose unreasonable access restrictions on them, etc.>> Good on yer. Unless the C'wealth consistently and relentlessly pursues official estrays (and the property test makes this almost impossible) what other mechanism than the one originally proposed is available using archives law? It may gratify pious pleadings about what is right but what would be the practical value? I have no problem with them managing and recovering official documents or with protecting security outside archives law. My problem is with trying to use archives law to do it. Our purpose was not to lay out the whole basis for managing official estrays but to 104ealized104 the limitations of the archives law we were drafting as the mechanism for doing so.

<<Adrian Cunningham: What happens if the Court rules that the Palace letters are indeed Commonwealth records? They are in the open period, so the NAA would be obliged to consult with the controlling agency (Office of the GG) on any closure of access. >> Not so. Under the Act, NAA is the decision-maker, not the controlling agency.

> 35.(1) The Director-General, in consultation with the responsible Minister or a person authorized by the responsible Minister, shall make arrangements for determining the Commonwealth records in the open access period that are to be treated by the Archives as being exempt records and may make arrangements for determining the extent to which access in part to Commonwealth records identified as exempt records may be given without disclosing the information or matter by reason of which the records are exempt records.
>
> (2) Except in the case of records exempted from transfer to the care of the Archives by virtue of a determination under section 29, an examination of records for the purposes of subsection (1) shall be conducted on premises of the Archives.

Consulting the controlling agency on the merits of the decision (rather than the arrangements for making it) is a practice that has evolved but NAA is under no legal obligation to do so.

<<Adrian Cunningham:… if an individual is prima facie guilty of removing official records from public hands then they should be prosecuted. A couple of successful prosecutions would deter others from doing similar things.>> Does anyone suppose that a string of prosecutions would be launched in support of the integrity of the archival record? Give me a break. If any such action were to be taken it would be selective and for immediate political purposes.

<<Adrian Cunningham: We live in a messy world. But such messiness does not change the simple fact that records created for official purposes should belong to the people of Australia, not to individual

office holders>> Good luck with that. The bottom line is this: what is the policy to be followed in dealing with estrays? What sort of a policy outcome is it that compels depositors with NAA to submit to official access rules when (at their absolute discretion) they can avoid that by depositing somewhere else? Crazy.

<<Michael Piggott: …what I wonder do we think the NAA should have done differently when offered the Kerr papers (incl the infamous letters)? >> Someone told me that NAA doesn't take personal papers any more. If true, this sort of nonsense is perhaps why they've decided not to. Does anyone know what the current policy is? Of course, and we don't know, he may have put them there on official advice – on the Bernard Woolley principle cited earlier.("I think it's best I file it"). I've just come across this in the Forbes Advocate – something I haven't seen before –

> The convention across Commonwealth nations was that communications between the Queen and her representatives were personal, private and not accessible by the executive.

Do they mean "was" (historically and, if so, how recently) or "is" (currently). The job of the High Court is to interpret and apply Australian law but a universal practice across the entire Commonwealth of Nations (all members or just monarchies?) might be persuasive even if it was not conclusive. But then, I'm guessing that no other Commonwealth country has a wretched property test like ours.

2020, February 13: <<David Povey: Today, so far as I am aware, the archives of the monarch are entirely separate from the archives of the state – physically, legally and morally>> Interestingly, the doctrine of the King's Two Bodies (the King is dead, long live the King) draws that very distinction between the office and the holder-of-the-office and relates above all to "property". The royal properties in UK are divided between those owned by Elizabeth Windsor (which she can bequeath) and those owned by the State.

2020, February 19: There is a helpful review of The Case online by Clayton Utz

> … The Archives Act 1983 defines a Commonwealth record as a record that is the property of either "the Commonwealth" or of a "Commonwealth institution" … The problem is that determining whether a document is a Commonwealth record can be a difficult question of statutory construction … the Full Federal Court [by a] 2-1 majority … ruled that the Palace Letters are the property of the person then holding the office of Governor-General – Sir John Kerr – and not the property of the Commonwealth … The Letters include letters … from 15 August 1974 and 5 December 1977, covering: the official duties and responsibilities of the Governor-General; personal and confidential correspondence; the events of the day in Australia; and contemporary political happenings in Australia.
>
> … The Official Secretary to the Governor-General lodged the Palace Letters with the National Archives of Australia, with instructions that the letters were to "remain closed until after 8 December 2037" (later revised to after 8 December 2027). If the letters were Commonwealth records, this direction would have no force … the majority [of the Full Court] remarked that: "We reject the approach that everything that a person who holds an office does is done by that person officially".

That remark does not address the question whether some of what a person who holds an office is done officially. Does the Court suppose that access must be given to the Palace Letters in their entirety or not at all? Can access, if required, be given selectively (i.e. to that material which is "official") or by means of redactions (viz. line-by-line, phrase-by-phrase)?

> In a strongly worded dissent, Justice Flick considered the Palace Letters to be Commonwealth records because of: the positions occupied by The Queen and the Governor-General; the Governor-General's functions; the nature and subject matter of the correspondence; and the importance of that subject matter to Australia's Constitutional system of government.
>
> This case raises fundamental questions of statutory construction and is likely to have an enduring effect on the interpretation of the Archives Act. If Justice Flick's view is upheld, the Palace Letters will be eligible for public access under the Archives Act … If the majority view prevails, public officials will have greater comfort that they are able to influence the conditions and timing of access to their personal papers after depositing them with the National Archives …

If public officials are denied that comfort, absent any systematized and enforceable process to compel them to deposit "official documents" with NAA, they can still "influence the conditions and timing of

access to their personal papers" by simply depositing them elsewhere beyond NAA's control (e.g. NLA, SLNSW, National Library of North Korea, etc.) whose collections are exempt from the Act or beyond its scope of operation. As we argued back in the day, such an outcome would become an inducement for them to do so unless they are willing to surrender control.
<<Adrian Cunningham: One question, which may or not be relevant, is whether the letters were deposited with the NAA before or after Archives Act came into force in 1983. Does anyone know?>> Subject to correction. The Act was expressed to apply to

- material of any date, but
- only to actions taken after commencement of the relevant provision(s) unless those actions bear upon the nature of the material – e.g. a record destruction undertaken w/o permission prior to 1983 would not be illegal but an undertaking of confidentiality to a foreign power might be.

All the commentary seems to be on the basis that this deposit is governed by the relevant provisions of the Act. The only way (so far as I can see) that the date of deposit would be relevant in this case, assuming the letters all came in at the same date, would be whether NAA's undertakings to Kerr (via the PS) were given under prior administrative arrangements for dealing with personal papers or under the relevant provisions of the 1983 Act. Any understanding as to access between the GG and the Palace arrived at prior to 1983 might be relevant if the Letters are C'wealth records but only in administering the exemptions to the access rules under the Act. But the contention here is that there is no need to consider the access exemptions because the Letters are not C'wealth records to begin with.

2020, May 19: National Archives responds to Jenny Hocking's article on the "Palace Letters"
<<Michael Piggott: [In]…"Australian Book Review"…the current May 2020 issue's freely available content includes the NAA Director-General David Fricker's response to Professor Jenny Hocking's article in the April issue… It's a masterly marshalling of arguments in my opinion, and as interesting for the areas it does not address as for those it does. He also quotes Jenny Hocking writing that NAA "Appears a broken institution …", and responds introducing five dot points by saying he would "let the facts speak for themselves…aspects of the…issue…remind one of the Cardinal Pell case…The cold technicalities of the law aside, both have/had multiple contexts, deep emotions, agendas, personal experiences etc etc swirling around them. Fixed opinions on both sides are hard to move. Walt Whitman, Song of Myself, Part 30 refers… I also understand that the report of the Tune Review of the Archives went to the Attorney-General in February. Should I hold my breath?>>

2020, May 20: Important for you to keep breathing, Michael. The on-going NZ Review makes for interesting reading. **<<Mike Jones: I asked the Attorney-General's Department about the Tune Review at the end of March. Here is their response:…"*The report is currently under consideration. Timing for release of the report is a matter for Government.*" I think holding your breath might be a bad idea.>>**

2020, May 22: The D-G's Defence
<<It's a masterly marshalling of arguments in my opinion, and as interesting for the areas it does not address as for those it does. >> Hmmmmm. I have hesitated before dealing with David Fricker's response to Jenny Hocking's assault on NAA because I think he should prevail. His heart is in the right place and her arguments should be refuted. But not like this (I finally decided).

How we should deal with private papers
The D-G argues, on the basis of legal advice and court rulings, that the Palace Letters are not "Commonwealth records". It follows that NAA is not (as claimed) influenced by a conspiracy to conceal or by ineptitude but is operating scrupulously in accordance with the access rules. It is the D-G's role to administer the law, not to wish it away. Quite correct. But consider where the law (as revised from its original drafting which gave donors an unfettered right to control access regardless of whether the papers contained Commonwealth records) has led us. The question of whether or not personal papers at NAA can be controlled by the wishes of the donor can now only be determined by lengthy court proceedings and no donor could reasonably be assured how the courts might ultimately decide in their case.

In order for the records to be used, they have to survive. The original purpose of the personal papers programme was to ensure that they survived for eventual use. Absent a statutory compulsion to deposit and an administrative will to pursue official estrays (with the result of splitting deposits), it is necessary to persuade depositors to lodge the entirety of their papers (and any C'wealth records amongst them) with NAA. They are free (absent compulsion) to lodge their papers with anyone else able to offer them unfettered control. To persuade them to deposit Into official custody, the official custodian has therefore to be able to offer deposit on similar terms – not on the basis of some arcane distinction based on a legal definition of "Commonwealth records" but on the public policy decision to forfeit official access control as the price to be paid to ensure ultimate survival for eventual public release. It's not enough to say "Your wishes will prevail because of a definition of Commonwealth record in your favour which a court may or may not eventually uphold in your case". But that is the position that the drafting places NAA in.

Archives are not purely about access

This tracks into the second (more contentious) arm of the D-G's defence – that NAA is committed to accessibility. This is an understandable response to scurrilous accusations to the contrary but it aligns the purpose of an archives (any archives) with libraries, galleries, and other GLAM-orous custodians and it is one of the reasons why that alignment is false. To put it as bluntly as I may, in full appreciation of the odium it will bring down, our first loyalty is to the record, not to the user. Unlike those others, our administration of access involves restriction, redaction, and concealment as well as release. Our understanding of access involves (or should involve) an appreciation of privacy, security, confidentiality, cultural sensitivity, ownership rights, and myriad other legitimate restrictions on use which our systems are designed to manage as part of the recordkeeping process in which we are involved. Our role is to extend the recordkeeping process not to supplant it.

I have said (jokingly) that it is wrong to describe archives as preservers of the nation's memory – since we destroy most of it. It is equally wrong to think of ourselves merely as access providers like any other memory institution. Out role is different. We manage records and control over the giving and denying of access and that cannot (or should not) be based solely on a predisposition towards open-ness. Ask yourself this: in a society characterized by falsehood and deceit, which is more important – that the evidence should be known or survive? Please God, it doesn't come that – but what if it did? Historically, the development of our archives systems was hampered in this country by just this perception on the part of bureaucracy: viz that glorified librarians could not be entrusted with the management of official records. Our predecessors had to fight against that prejudice to establish that we could administer responsible access rules (including those beyond the ken of mere bureaucrats). How odd it would be if, having prevailed, we should forget our roots and become what they accused us of.

2020, May 23: <<Adrian Cunningham: I, for one, believe that Jenny Hocking (notwithstanding her somewhat gratuitous attacks on the motives of the NAA) deserves commendation not disparagement for taking the trouble to contest the claim that records created by senior officials in the course of performing their public duties can be their personal property, rather than the property of the nation whose interests those officials were supposed to be serving …I don't believe that defence of the public record should involve allowing former officials to do whatever they like with the evidence of their official actions – including potentially destroying that evidence if they so wish. Surely a better defence of the record involves having the power, gumption and resources to assert public ownership of public records and to use the forces of the law to pursue anyone who might wish to remove such records from public custody and legitimate public scrutiny? As Chris says, the law at present is equivocal and open to various interpretations…the best we can hope for is some solid case law that gives us all a better basis for interpretation and implementation...If the High Court rules that the Palace Letters are indeed Commonwealth Records then the NAA's claims of being a 'pro-disclosure' organisation will really be put to the test. If they are Commonwealth Records the NAA will have the power to make the letters accessible. Doing so will incur the wrath of both the Office of the Governor-General and Buckingham Palace. Based on recent history I would not be at all confident that the NAA would adopt such a courageous position – but time will tell. Of course, a pro-disclosure decision by the NAA may be appealed

and overturned by the AAT – but at least we will have proof that the NAA does indeed have its heart in the right place and is truly pro-disclosure… Cutting to the question of the role and purpose of archives that Chris broaches. He says that 'our first loyalty is to the record, not to the user'. I would argue that our first loyalty is to the people of Australia. That requires protecting the record and enabling legitimate use of those records. Setting up a false dichotomy between loyalty to records and loyalty to users is in my view unhelpful. Chris wants us to be seen as sound people who can be relied upon by bureaucrats (who may or may not be craven, who may or may not have misdeeds to hide) – not as 'glorified librarians' (oh the shame!)...Whose side are we really on? One person's 'glorified librarian' may be another person's defender of the public interest.>> A dichotomy is "a division into two especially mutually exclusive or contradictory groups or entities". A contrast is "the difference or degree of difference between things having similar or comparable natures". A comparison is "an examination of two or more items to establish similarities and dissimilarities" A priority is "something given or meriting attention before competing alternatives". One cannot accurately be said to be making a dichotomy when arguing that users should not be given the first priority. I do not say that loyalty to the record and loyalty to the user are mutually exclusive. If I did, that would be a dichotomy. I make a comparison to say something about our values ("our first loyalty"). If it were a dichotomy, I would be saying we have no loyalty to our users and if Adrian were serious he would be saying that we have no loyalty to the record. He says it isn't a dichotomy and I agree. But a contrast there needs to be because real choices have to be made.

Adrian accepts that the D-G must follow the law ("NAA has no choice but to abide by the law") and so do I. The D-G says this is congruent with NAA's commitment to open-ness. But how if the law commands concealment. That creates a situation in which a choice needs to be made between conflicting principles. On the flip side, Adrian himself argues that a choice will have to be made if the Court upholds Hocking. In that case, "NAA's claims of being a 'pro-disclosure' organization will really be put to the test" he says.

A choice has also to be made between high principle and pragmatism. A real choice there is in how we want to be perceived. Nothing false about that and it is vital to our ability to do our job. Adrian would prefer "that we are seen as people who can be relied on to protect the public good by the wider community … which involves doing everything we can to preserve important public records and to administer access in a balanced and defensible manner." How comforting if it were so. But both Hocking and Cunningham are implying that NAA does not (or may not) administer access in a balanced and impartial manner either from incompetence or cowardice. If people (darn them!) assert that the right balance isn't being struck, we have to be able to say what the right balance is.

Of course, in the grubby world of debate, no one actually says that your administration of access is indefensible because of your devotion to protecting the record or that your trustworthiness as a record-keeper is compromised by your devotion to open-ness. There are other things going on and weasel words to camouflage such contrasts. But our answer to the critics must be understood (by ourselves at any rate) within that moral framework. We don't have to come flat out and say to users or to bureaucrats "Your interests come second". But we do have to know that they do. Frank Upward, thinking about how we navigate between our users and our bureaucratic masters, once described this to me as our secret motive.

I do not condemn the D-G for making the arguments he has in the circumstances in which he writes. He is making a case in response to an attack on NAA to an audience that is unlikely to be interested in our professional dilemmas and which would not warm to the suggestion that the integrity of the record should have priority over their needs. Even if the D-G believed that (and I've no reason to suppose he does), no useful purpose would be served by making that argument in that forum. And I could understand why someone in his position would not care to make it in our forum either. He would probably be attacked for making a false dichotomy.

2020, May 27: <<Andrew Waugh: This ties in nicely with the discussion…*Republicans sense rich pickings in Biden archive – but will it be made public?*>>

https://groups.google.com/forum/#!forum/archives-and-records-australia

2020, May 29: <<Andrew Waugh: Well, the High Court has ruled, unanimously, in favour of Professor Hocking and against the Commonwealth…The letters are Commonwealth records, not personal papers. And to…add insult to injury, NAA was order to pay full costs of the legal case from the first court case to this final appeal.>> On a trivial note and without wishing to distract from the significance of the decision, I can't help noticing that the accompanying photo in the SMH article shows Gough Whitlam (Prime Minister from Dec. 1972 – Nov. 1975) with this caption: "*Gough Whitlam, pictured in 1972, established the predecessor to the National Archives. Historian Jenny Hocking has long been seeking papers relating to his dismissal from office*". According to Wikipedia

> In March 1961 the Commonwealth Archives Office formally separated from the National Library of Australia and was renamed as the Australian Archives in 1975. The *Archives Act 1983* gave legislative protection to Commonwealth government records for the first time, with the Australian Archives responsible for their preservation. The agency was renamed the National Archives of Australia in February 1998.

As with the idea that it was Gough who took Australian troops out of Vietnam (it was McMahon who pulled out all the troops except for a handful of advisers in the years before Whitlam's election), the legend is always more powerful than the facts –

> The withdrawal of troops and all air units continued throughout 1971 – the last battalion left Nui Dat on 7 November, while a handful of advisers belonging to the Team remained in Vietnam the following year. In December 1972 they became the last Australian troops to come home …

Hardly anyone I have ever spoken to about it doubts that Whitlam withdrew our troops. They often credit him too with dismantling the White Australia Policy-

> After the Second World War, Arthur Calwell … began to relax the policy to allow refugees [and] migrants from other backgrounds in regulated numbers. This was the first of a number of steps that gradually eroded the policy until its basic dismantling by the Holt government in 1966. The Whitlam government completely eliminated it in the 1970s with the introduction of policies like the *Racial Discrimination Act 1975*.

American History's Biggest Fibs is a documentary series currently screening on Pay TV. Lucy Worsley, the series' saucy presenter, cheerfully punctures the fabrications of U.S. past – frequently by contrasting the legend with documentary evidence. She is shown a vial of tea leaves deposited in a local museum in 1840, purporting have been taken from the cargo thrown into the Harbour during the Boston Tea Party. There ensues the following interesting exchange with Nan Wolverton of the American Antiquarian Society:

> Worsley: *Do you believe it's the tea. I'm doubtful that it's the tea.*
> Wolverton: *Well, you should be doubtful. I think it's possible.*
> Worsley: *The point is that in 1840, when he gave it to this museum, he was wanting to remember this cornerstone of American history ….*
> Wolverton: *Exactly. Whether it's real or not doesn't really matter.*

Wouldn't it be ironic (after all this) if the Palace Letters turn out not to tell us anything we don't already know? In that case it might have been better for them to remain on close hold so we could continue to indulge our fancies. But, like the AWM on Vietnam and the Museum on White Australia, it is our job to uphold authenticity not fantasy, so we are on the side of Truth, albeit conflicted. And what a remarkable instance this has been of the clash (I won't say dichotomy) between preservation and use in that service-

Users' need to know how we are governed
vs
Custodian's need to keep faith with depositors

Lots of juice in this judgement and, as yet, we only have news reports to go on. But …

The C'wealth Act (uniquely) defines Commonwealth records in terms of property

> ***"Commonwealth record"*** means:
> **(p)** a record that is the property of the Commonwealth or of a Commonwealth institution ,,,

In common usage, ownership can be a narrow term and difficult to establish – e.g. having clear legal title to a material thing (land, a house, a document, goods and chattels) or an immaterial thing (copyright, patent, reproduction rights) or, more broadly, the power to control and dispose of.

The Guardian reports that the HC decision has provided a definition of ownership, viz.

> the existence of a relationship in which the commonwealth or a commonwealth institution had a legally endorsed concentration of power to control the custody of a record.

This seems to fall short of making intellectual property rights a benchmark (which is fair enough) but is consistent with the legal distinction between ownership, custody, and possession and I would say that by focusing on control over custody, if it goes on to say or imply that it does not require proof of exclusive title but only of better title than anyone else and that it can subsist alongside "split" proprietary rights, it actually gives clarity and strength to the definition.

> The 'bundle of rights' that property involves, acknowledges that rights in things can be split: for example, between rights recognized at common law ('legal' interests) and those recognized in equity ('equitable' or 'beneficial' interests); and between an owner as lessor and a tenant as lessee. Equitable interests may further be subdivided to include 'mere equities'. … 'possession' is a distinct and complex concept. Its most obvious sense is a physical holding (of tangible things), or occupation (of land). An example is when goods are in the custody of another, where things are possessed on account of another … For land and goods, property rights in the sense of ownership must be distinguished from mere possession … The particular right may be regarded as 'proprietary' even though it is subject to certain rights of others in respect of the same property: a tenancy of land, for example, gives the tenant rights that are proprietary in nature as well as possessory. ALRC Report 129

To what extent, for example, would an administrative order requiring that notes be kept of official meetings give rise to "a legally endorsed power to control" notes made by a servant or official of the Commonwealth and kept by them in a "private" diary?

The idea that ownership of a C'wealth record derives from a "relationship" is very pleasing and very much in tune with ideas about r/keeping, isn't it?

The Victorian Act has the curious concept of beneficial ownership

> "public record" … does not include—
> (c) a record which is beneficially owned by a person or body other than the Crown or a public office or a person or body referred to in section 2B …

which, so far as I could discover in my time there, was borrowed from commercial law

> a term in domestic and international commercial law which refers to the natural person or persons "who ultimately own or control a legal entity or arrangement, such as a company, a trust, or a foundation".[1] The legal owner (i.e. the owner on the record) may be described as the "registered owner", and if they are not the beneficial owner they may be described as a "nominee".

And introduced into the Act for reasons which no one could ever satisfactorily explain to me. This seems to jibe with the HC concept of "concentration of power to control" meaning that a person is a beneficial owner of an official record if, and only if, they "ultimately own or control" it - but not necessarily exclusively.

2020, May 30: <<Andrew Waugh: Professor Twomey on the decision and its implications. Alone among the commentators I've seen, she identifies that the letters still have to go through the NAA's normal access appraisal process. This may not be the last court case…>> Perhaps this is what Adrian had in mind when he posted on 23 May –

> If the High Court rules that the Palace Letters are indeed Commonwealth Records then the NAA's claims of being a 'pro-disclosure' organisation will really be put to the test. If they are Commonwealth Records the NAA will have the power to make the letters accessible. Doing so will incur the wrath of both the Office of the Governor-General and Buckingham Palace. Based on recent history I would not be at all confident that the NAA would adopt such a courageous position – but time will tell. Of course, a pro-disclosure decision by the NAA may be appealed and overturned by the AAT – but at least we will have proof that the NAA does indeed have its heart in the right place and is truly pro-disclosure.

<<Andrew Waugh: Indeed. But a no answer can also be appealed throught the AAT. And having gone all the way the High Court, the NAA could expect that Professor Hocking would do the same again should access be denied, or large sections redacted. Particularly if the reasons weren't *very* soundly based. I wouldn't want to be David Fricker, or the senior policy people at NAA, in negotiating this one. At least they will now be able to examine the letters and determine if the letters are clay, dynamite, or nitroglycerin.>>

<<Michael Piggott: …I'd like to offer another speculation by focusing for a moment on the arguments the High Court justices (in a six to one majority) used to explain why they concluded Sir John Kerr's so-called Palace Letters are Commonwealth records. It is a fascinating take on the idea of a property definition of a record…

> "Five Justices in the majority held that in the statutory context of the Archives Act the term 'property' connoted the existence of a relationship in which the Commonwealth or a Commonwealth institution had a legally endorsed concentration of power to control the custody of a record. Their Honours held that the arrangement by which the correspondence was kept by Mr Smith and then deposited with the Archives demonstrated that lawful power to control the custody of the correspondence lay with the Official Secretary, an office within the official establishment of the Governor-General, such that the correspondence was the property of the official establishment. The other Justice in the majority held that the correspondence was, by common law concepts of property employed in the Archives Act, the "property of the Commonwealth" because it had been created or received officially and kept by the official establishment of the Governor-General."

…The fact that the Office of the Official Secretary at Government House had the "capacity to control the physical custody of the record that is conferred and is exercisable as a matter of management or administration" (para 96), meant the correspondence Kerr [and convention, it must be admitted] said was "private and personal" was in fact the property of the Commonwealth and thus a Commonwealth record. On this logic, the supreme irony is that if Kerr had kept the letters in his personal custody in his office or a brief case and walked out of Government House with them the day he resigned in December 1977, they would not have been considered Commonwealth records…if they had never been kept in the custody of the official establishment but always kept, say, in a locked desk draw in his office? A different matter and result entirely.>>

2020, May 31: << if they had never been kept in the custody of the official establishment but always kept, say, in a locked desk draw in his office? A different matter and result entirely. >> I find it difficult to accept that it turns on which room and in whose desk the Letters were kept. If the distinction is between the Vice-Regal office and the "official establishment", why wouldn't the G-Gs desk in the G-Gs office at Yarralumla be part of the official establishment? And his bedroom for that matter.

<<"the correspondence was, by common law concepts of property employed in the Archives Act, the "property of the Commonwealth" because it had been created or received officially and kept by the official establishment of the Governor-General." >> This suggests that there are two tests

- created or received officially
- kept by the official establishment.

<<the Office of the Official Secretary at Government House had the "capacity to control the physical custody of the record that is conferred and is exercisable as a matter of management or administration" (para 96), >> If it comes down to a "matter of management or administration", doesn't this mean that it is the recordkeeping process rather than the physical arrangements that are most relevant? To take your hypothetical a step further, Michael, suppose the Letters had been kept by the Official Secretary and that Kerr had ordered Smith to hand them over and then "walked out of Government House with them the day he resigned in December 1977". Would that have been stealing?

I don't know if any of this was canvassed in argument during any of the court hearings leading up to this judgement, but, from what I know of the way administration works, I think it most likely that the Official Secretary managed all the paper work and deferred to the G-G's wishes. In the minds of both men, the "concentration of power to control" would have lain with Kerr. Smith would do what he was told.

But, of course, when you're compelled to contemplate r/keeping through the prism of the common law of property, you might well expect some curious twists and turns.

On another tack, an American report of the case repeats a claim that I have seen elsewhere –

> The convention across British Commonwealth nations is that communications between the queen and her representatives are personal, private and not accessible by the executive government.

I would like to know if this is correct. Professor Twomey has this to say in *The Frontiers of Public Law* at pp.410-411

> As for there being a convention that the correspondence between the Governor-General and the Queen is excluded from government records, this is difficult to substantiate…Commonwealth record keeping was at best haphazard and little regulated until the enactment of the *Archives Act* in 1983. Many vice-regal records appear to have been destroyed or lost. Some have been kept by family members and later handed to institutions such as the National Library. Some remain in private hands. Others remain on Government files in archives. It is therefore very difficult to ascribe a convention in relation to the handling of such records …
>
> It also appears that the Director-General of the National Archives, Professor Neale, was under the misconception that in Britain it was a convention that royal documents were not made available until 60 years from the date of their creation … [but] this does not appear to be the case. While the Royal Archives was excluded altogether from the application of the Public Records Act, there was no exemption from release for royal correspondence held on UK government files under the ordinary 30-year rule until the Freedom of Information Act 2000 was amended in 2010 as a consequence of the black-spider letters controversy …
>
> Even if a convention does exist, the critical question is how it could affect the application of the law …

And elsewhere –

> There was much discussion in the lower courts of the practice of past Governors-General taking such correspondence with them on leaving office. Griffiths J in the Federal Court observed that this was 'redolent of ownership'. But the practice of senior office holders, such as Prime Ministers, Ministers, and Governors-General, taking with them copies of documents that relate to their time in office, is relatively common. It does not necessarily involve a transfer of property from the Commonwealth to the officer concerned. These documents are often later deposited in a governmental institution, such as the National Library, a state library, the NAA, or a university. They usually contain a mix of private and official papers. Access to the papers is generally governed both by conditions imposed by the donor of the documents and conditions imposed by legislation in relation to the release of official documents …
>
> Mere possession of those records by individuals does not cause them to cease being the property of the Commonwealth. Nor does any practice or custom of an officeholder taking such records with him or her on leaving office have that effect. Equally, private lodgement of those documents with the NAA does not cause all the documents lodged to be regarded as non-Commonwealth records that are exclusively controlled by the wishes of the depositor …
>
> It would be a very poor policy choice for the Commonwealth to attribute personal ownership of critical constitutional correspondence of this kind to the Governor-General, so that it could be sold to the highest bidder at any time. Such documents deserve the protection of Commonwealth archives laws for a reasonable period, be it 20 or 30 years, or perhaps even longer. But they should also remain under the control of officials in Australia. To interpret the Archives Act in a manner that cedes all local control of these documents is contrary to the entire purpose of the Act and would be a perverse and unreasonable interpretation of it.

<< It would be a very poor policy choice for the Commonwealth to attribute personal ownership of critical constitutional correspondence … a perverse and unreasonable interpretation>> One in the eye for my preferred policy option (cf. my May 22 post). But it remains the case that, absent compulsion and the will to enforce it, vice-regal records, and any other personal papers containing official estrays for that matter, can still be deposited anywhere including the exempted collections of NLA and other Commonwealth institutions, in State Libraries, or overseas. I keep asking myself why the indignation that is visited upon the suggestion that donors with NAA should be able to control access to official records amongst their papers is not extended to deposits including official records that are held elsewhere where access is at the donor's absolute discretion. And, at the risk of dichotomizing, I ask myself which is worse: repression of access or loss of control? Why, at the very least, aren't these

people clamouring for the removal of exemption status from NLA and other national institutions in respect of official estrays they hold?

None of this really answers the question about what the practice is elsewhere within the Commonwealth of Nations but it does argue that convention can't prevail over the law. In any case, our bizarre property test must be unusual (if not unique) so any convention arising from what is done in other countries that do not have such a definition might be irrelevant anyway.

<<Adrian Cunningham: Thanks Chris – your research has highlighted some interesting opinions. An aspect of this case that is great interest to me is the extent to which the Court ruling precedent can be extended beyond the world of Vice-Regal records to other records of official actions and communications. My reading of the summaries suggests that the precedent is not limited to Vice-Regal records…It would be interesting to know about practices in the different States. My experience in Qld was that all the records of the Governors were transferred to QSA and treated as public records...As with other States in Australia, access to the records of the Governor at QSA are determined by the controlling agency – the Office of the Governor in this case. You ask about access and ownership arrangements when former GGs and other officials lodge their 'personal' papers at other institutions like the NLA. I worked at the NLA for 9 years and its Manuscript Collection includes numerous such acquisitions – including records of former GGs such as Bill Hayden and Lord Stonehaven. When I was there (practices may have changed since), it was always recognised that such acquisitions were likely to include Commonwealth Records, and that therefore access to such records was determined under the Archives Act – not by the 'donor'...Personally, I would not insist that all Commonwealth records have to be transferred to the NAA and and the NAA only – other reliable custodians should also be acceptable. But what I would insist on is that any records of official business and communications should be recognised as Commonwealth records and subject to the access laws that apply to such records.>> I don't for a moment doubt that it worked "well" and (for all I know) is still working "well". But can the same be said of every collection that donors may wish to endow and "well" simply means NLA is choosing to behave responsibly under a convention that it is not legally obliged to follow. One of the key questions throughout this entire imbroglio is whether access to official estrays should be governed by law or by convention.

I don't care – never have – whether official estrays policy prevents or allows donors to deposit with NAA or with someone else except insofar as the policy (whatever it is) fails to produce a coherent outcome. Incoherence, as we have seen in this case, results in muddle, uncertainty, and conflict. My point all along has been that, whatever the rules, they should apply equally to NAA and alternative custodians unless the deposit of estrays outside of official custody is prohibited and that prohibition is enforced. NAA must (on this view) be able to enforce deposit or compete for donation on equal terms.

Like Adrian, I have form on this question. I was involved in dealing with the consequences when distributed custody didn't work out "well" and donors were not persuaded to be reasonable. The records of a PM's Press Secretary contained files that were seamlessly continuous over four administrations (Menzies, Holt, Gorton, and McMahon). When the surviving principals' wishes were consulted, McMahon and Gorton (who hated each other) wouldn't agree. McMahon insisted that his "portion" be separated and sent to NLA along with his other papers. Neither custodian stood up to him. He was so petty that we had to temporarily relocate the records to NLA premises while the division took place before returning the remainder to NAA. I had the job of sitting at a table at NLA tearing apart file after file to implement this insane decision. I swore to myself that I would never again be party to such destruction. I concede that this dreadful experience probably underpins some of my attitudes on this issue.

<<Adrian Cunningham:…I have now checked the Qld Public Records Act and included within its definition of 'Public authority' is: *'the Governor in his or her official capacity'* So there is no doubt that in that State at least, Vice-Regal records are public records – notwithstanding any convention that might exist elsewhere in the Commonwealth of Nations regarding the treatment of such records. Remembering that Qld, unlike the Commonwealth, does not use property as the basis for its definition of public records.>>

https://groups.google.com/forum/#!forum/archives-and-records-australia

<<Michael Piggott: …"Convention" has been mentioned … What I suspect is not sufficiently appreciated in the context of the Palace Letters is that the convention related to access, not ownership…Referring now to Chris' post…My point was that…IF Governor-General Kerr had really believed the Palace correspondence was so extremely "personal and private" that accordingly he did not keep them as "institutional documents" (para 199) but created and kept them in an extremely private way including not going anywhere near the Office of the Official Secretary, maybe the conclusion and conclusions would have been different. There's a related point the four key justices themselves made: (paragraph 84)…>>

2020, June 1: Wow! Talk about false dichotomies.

Ownership = power to control (access amongst other things).

Possession may not (as Twomey says) be the same as ownership but, if the rights of ownership are uncontested, it makes no practical difference. Some of the States, I know, have powers of replevin and recovery – and use them. So far as I know, the C'wealth never has (but I'm open to correction on that). But as Adrian tells us, many more official records exist in personal papers than are ever pursued.

Adrian's post suggests an approach that, so far as I know, has never been explored in any sophisticated way.

> **Ownership**: *exclusive rights and control over property …[but] Ownership involves multiple rights, collectively referred to as title, which may be separated and held by different parties.*

Adrian's account of conventional practice at NLA (applying C'wealth access rules to official estrays placed by donors into in their custody) offers a clue. It might be possible for the law (not a convention) to "separate" rights of ownership – leaving the donors with a power to deposit where they please (one right of ownership) but denying them the power to set access rules over official estrays (another right of ownership). But the obsession with physical possession has, I believe, meant this has never been seriously considered – to my knowledge.

2020, October 23: <<Andrew Waugh: The cost to the NAA of the legal action (including costs) was reported in the Senate Estimates committee…The article, of course, ties this cost to the lack of budget for access determination.

> … Mr Fricker defended the legal action, saying he was bound to pursue the litigation to defend the archives' interpretation of its founding act…The delays at DFAT were a product of greater demand from a relatively small number of researchers… "People work very hard to make records publicly accessible but we do it lawfully. We're not going to go off on a frolic and just hand out stuff unless we've properly assessed it," Mr Fricker said. The archives is under funding pressure, with its council warning last year that its $90 million annual budget needed to be doubled for the institution to be sustainable and meet its legislative requirements…Australian National University professor Frank Bongiorno said the delays showed the public record process, by which government records are supposed to be released decades after their creation unless there is an exemption, had "broken down"… A review of the archives by former finance department secretary David Tune was completed in January but has not been made public by the government…**>>**

NAA's approach to access clearance has been the subject of criticism since the Lamb Report (and before). No government, especially in the straightened times a-coming after the COVID crisis, is going to pour money into functions that aren't absolutely necessary. Prioritizing preservation vs access is an old, old argument (not a dichotomy but a question of balance). Now, the picture is even more complicated. How do we juggle-

- Preserving the archival remnant
- Providing access for a "relatively small number of researchers"
- Maximising access to a small fragment of the archival remnant through digitization
- Providing entertainment and delight through display and story-telling (if we're in NSW)
- Regulating recordkeeping.

Does satisfying the needs of a "relatively small number of researchers" for access to records that can't be handed out "unless we've properly assessed [them]" represent a fair return on investment? After 30 years, how much risk is entailed from un-scrutinized release of all but a tiny fraction of the tiny fraction?

Is the system being run according to an over-abundance of caution? What incentives are there for the decision-makers not to be decision-delayers? What mechanism could be put in place to force (yes, that's right, force) decision-makers who are delaying decisions to pay a penalty for the delay or, at least, be called upon to justify the delay itself – not just the tired old under-resourcing response but to say exactly what are the apprehended dangers of un-scrutinized release of these particular records. And, if "prudence" is the answer, let them justify that. Yes, our archives programmes are under resourced, but that explains systemic consequences, not particular failures.

The access-clearance/declassification system is always fraught. Not all records requiring to be cleared are classified in the technical sense and many of them which are ought not to have been classified in the first place. Time limits on classification unless renewed periodically (with reasons) long before the 30 year threshold is reached is one possible approach. Make all government records "Confidential" for 10 years if not classified more highly at the outset with the proviso that the classification then ceases **and** the record is then open for public scrutiny **unless** action is taken **in advance of any request** to extend it. Bulk clearance (which I believe NAA already has and which is the norm in many other jurisdictions) is essentially an exercise in risk management and should be zealously applied.

It is to be hoped that the Tune Report, if ever released, tackles these issues.

PS. The Swedish model might raise the hackles of some of our allies but it should not be lightly dismissed. It would require a commitment to accessibility rather than an overly cautious approach.

PPS. The article cited by Andrew is backward-looking towards paper-based systems and access to born-digital records raises other issues – not least with dating and the whole idea of 30 years or any closed-access-period. The Swedes have an answer to that too.

2020, June 8: More commentary on the Palace Letters

<<Michael Piggott: …

- **"How the Queen and Kerr were blind-sided" by David Solomon, 5 June 2020 in Pearls and Irritations (kind alerted to me by John Waddingham)**
- **"Why my battle for access to the 'Palace Letters' should matter to all Australians" by Jenny Hocking, 8 June 2020 in The Conversation**
- **"High Court decision on palace letters" by Daniel Sleiman, 2 June 2020 in Eureka Street >>**

The Solomon article draws attention to two matters :

- the results of drafting changes made to the ***Archives Bill 1978*** to include the vice-regal office within the ambit of archives law;
- the significance given by the High Court to the process by which the Palace Letters were transferred (viz. they saw it, correctly, as a ***recordkeeping process*** rather than a property transaction – yay!).

Along those lines, and as I have already posted several times here, there was another change to the original drafting that bears on this case. In the ***1978 Bill***, access to personal deposits at NAA was if the Archives agreed (an important qualification) to be at the discretion of the donor irrespective of whether this included Commonwealth records. This was subsequently changed so that donor's wishes would prevail except in the case of Commonwealth records (as defined in terms of ownership) contained within a personal deposit. It has warmed my heart to discover online the ***Explanatory Memorandum*** for the earlier draft because it was substantially my work (I reckon the phrase "of cardinal importance" gives me away) and which sets all this out at length:

> Pages 7-9
>
> Under sub-clause 5(2)(f), the Archives may seek to obtain … the records of persons (e.g. ex-Ministers and officials) and organisations who are or have been closely associated with the Commonwealth and whose records often contain a high proportion of official material … It is open to the Commonwealth to seek to recover by legal means any Commonwealth records out of official custody … but such an action could not extend to records containing official information which were not the property of the Commonwealth. The Commonwealth's right to seek recovery of Commonwealth records under existing laws [will be] unchanged … the Archives [is], to some extent, in competition with other custodial institutions … for the custody of … such material. There is often some difficulty in distinguishing precisely

> between the private and official nature of records amongst this kind of material and it is of cardinal importance, in any case, that groups of records should not be divided arbitrarily on the basis of such distinctions. In law, persons and organisations having custody of any Commonwealth records will be prohibited (by clause 24) from depositing them elsewhere than in the Archives but in order that this should not have the result of undesirably separating such records from associated papers, and in order to meet the difficulty which might arise in having to establish in all cases that records of an official nature are also Commonwealth records … the Archives is empowered to take into custody whole groups of records containing or likely to contain official material … and not seek merely that portion which is of an official character … Records received from non-Government hands under this sub-clause will be accepted into custody in accordance with sub-clause 6(2).
>
> Pages 11-12 dealing with sub-clause (6)
>
> Under sub-clause (2) the Archives may accept custody of records which it receives from non-Government sources … on conditions laid down by the depositor. This could have the result that the conditions of access applying to official material amongst such records will be different from the conditions of access which will be applied to Commonwealth records received from Government agencies. It is important for the Archives to be able to offer potential depositors conditions of deposit which are comparable with those offered by other custodial institutions … it would be inappropriate for the Archives to be required, uniquely among such institutions, to apply the official access policy … The Archives is not, however, obliged to accept conditions laid down by the depositor and could refuse to take records on conditions which it judged to be inappropriate. The Commonwealth could then seek to recover by legal action those records to which it had a legal right. As a general rule, the Archives will seek, with the concurrence of the depositor, to ensure – as, under this legislation, it alone is able to do – that the official access policy is applied to material amongst such records which it judges to be of an official character …

Well, that sets out **the road not taken** and we are now where we are. As Solomon points out, however, the Palace Letters were not received by NAA from non-government hands. So, even if the original drafting had survived, it would have been open to the High Court to have reached the decision that it did on purely recordkeeping grounds ("the way the papers were taken into custody"). Take it from here, David Fricker.

2020, June 13: ✓

> A researcher in France has won a protracted legal battle for access to ex-President Francois Mitterrand's archives on the 1994 Rwandan genocide … The State Council, France's top administrative court, ruled on Friday the documents would allow researcher and author Francois Graner "to shed light on a debate that is a matter of public interest".
>
> Presidential archives are usually confidential for 60 years after they were signed, but under certain circumstances, such as public interest, can be made public earlier. "Protection of state secrets must be balanced against the interests of informing the public about historic events," the State Council said … Rwandan President Paul Kagame has accused France of being complicit in the bloodshed in which Hutu militias killed about 800,000 Tutsis and moderate Hutus …
>
> The Rwandan president, who had led the Tutsi rebel force that eventually overthrew the genocidal Hutu regime, broke off ties with France for three years … France's perceived foot-dragging on bringing genocide suspects living in the country to justice, has aggravated tensions …

2020, July 14: **Palace Letters & Sunday reads**

<<Andrew Waugh: Reading the Guardian live blog. This shows that Sir John was being a little cute here. Yes, he specifically did not inform the Queen before he made the actual decision; but what he didn't say was that he'd been discussing the possibility of dismissing the government with the Palace for several months.>>

2020, July 19: It seems to me that the letters tell us nothing we didn't already know.

The Palace was privy to the possibility of a dismissal. So was everyone else. We've known that all along. There were dozens of letters. What did we suppose they were writing about? The weather? The Opposition's urging of that course of action, based on the Ellicott opinion, was widely canvassed at the time. All the Palace had to do to learn it was a possibility was read the newspapers. The letters simply demonstrate that Kerr hadn't ruled it out. He didn't rule it out in conversation with Whitlam either – the

charge against him is that he didn't frankly alert Whitlam to his intentions. By the same token he didn't alert the Palace to his intentions either. The endorsement by the Queen's Private Secretary came after the event (and it's at best confused about whether he's endorsing the dismissal itself or Kerr's handling of it). We've known all along that Kerr sought the views of the law officers on the issue and that Whitlam provided them to him. We've known for some time that he also sought the views of his legal cronies (Barwick and Mason) without Whitlam's knowledge. As Kelly and Bramston concluded, however, based on interviews with participants as well as the documents available to them, the Palace was not privy to Kerr's intentions before the event and the letters uphold that view. It seems that Kerr did drop hints to Fraser in advance and we've known that too all along.

It is ironic that some who hyped up expectations that the Queen would be shown to have been privy to some kind of plot (that she improperly intervened to spur on the dismissal) are now critical that she did not improperly intervene to prevent or reverse it. The Queen may be formally Head of State but she does not exercise those powers. Those powers are vested in the Governor-General. They are exercisable by him (or her) alone and not subject to control in any way by the Monarch. For the Queen to have intervened to prevent or reverse the dismissal was simply beyond her power. It would have been just as improper for her to have prevented it as to have encouraged it. Like it or not, this is the Constitution we have. It's the one we wanted and not (as Paul Keating once stupidly asserted) one designed by the British Foreign Office.

This was made clear when a Motion of No Confidence was passed by the HoR in the brief interval between the dismissal and the prorogation of Parliament. This motion and a demand that Whitlam be reinstated was conveyed by Speaker Scholes to Kerr who refused to see him until Parliament was dissolved. Scholes later sought from the Queen a reversal of Kerr's actions and the Palace had to explain to him (and, since the response was made public at the time, to many uninformed Australians) that she had no power to do so. In 1975, I was one of those uninformed Australians and that was what turned me into a republican.

<<Andrew Waugh: "We've known that all along." No, we haven't actually. At the time, Kerr was very clear that he made the decision on his own and had not informed the Queen of his decision before taking action. It was only Professor Hocking's work in the archives much later that indicated that this wasn't the whole truth…What was interpretation before is now knowledge. We know that Kerr spoke the literal truth when he said that the Queen did not know of his decision before he took action. However, we know that Kerr discussed dismissal with the Palace over a period of months, and very clearly signalled where he was headed…My view? The Queen could have guided Kerr to many alternative outcomes. She didn't; she channelled him towards dismissal…None of these alternatives is a great argument for retaining the monarchy.>> At least we can agree about that. Regardless of whether the Monarch was intrusive or impotent in 1975, the case for retaining the Crown within our Constitution is a weak one. The real issue is how to remove it without giving greater power to politicians. Hence the debate over an elected Head of State who would (to a greater or lesser extent) be beyond their power. Good luck resolving that one.

<<Andrew Waugh: Apologies for not being specific enough. I meant Hocking's view, expressed in an article in the Guardian, that the 'palace' in the guise of Martin Charteris deliberately and knowingly encouraged Kerr to dismiss Whitlam.>>

<<Andrew Waugh: The Editor of the Monthly has a fairly unfavourable view of NAA's actions over the release of the 'palace letters'. Note in particular the third paragraph. Unlike Chris I subscribe to the Hocking view of what was going on in 1974-5.>> Impossible to say what the "Hocking view" is because she has so many views on so many things. You need to stipulate a conclusion – "… the Hocking view (?on what) …". I assume the premise is something to be found in the Palace Letters. If there are "sophisticated and informed readings" of the constitutional position in 1975 that differ from mine, I am prepared to argue the point. If there are "sophisticated and informed readings" of the political events of 1975, I have expressed no opinion and won't start doing so now.

My point is that "sophisticated and informed readings" of the events of 1975 are not the same thing as "sophisticated and informed readings" of the letters themselves. Post modernists and other believers in

the narrative will dispute this. This harks back to the distinction canvassed in other threads between the record and interpretations of the record. That the Queen was kept informed and that she wasn't told beforehand of the sacking seem to be undisputed. We've always known that and the Letters don't add to our knowledge. How she handled the situation and speculation about what she did or didn't do can only be an interpretation of the facts – facts that are not materially altered by what is in the letters. Of course, the Letters provide additional circumstantial corroboration for your views but also for different views to yours (corroborative detail intended to give verisimilitude to an otherwise bald and unconvincing narrative). At best though they just provide further grist for an interpretative mill that has been grinding along for the last 45 years.

2020, July 22: At just over 100 pages, the HC Judgement is worth reading in full. Towards the end (paras 241-266) the court canvasses issues of convention and practice as they affect the definition of Commonwealth record. As with many legal judgements, the reasoning is, for those unfamiliar with the peculiarities of the common law, a confusing admixture of high principle ("the vibe") and circumstance particular to the instant case.

> [242] … the exchange of correspondence was treated by Sir John Kerr as an official issue. Sir John was assisted by Mr Smith in the preparation of correspondence sent to the Queen and in discussing the correspondence received from the Queen. As Sir John observed in a letter to Mr Smith, he adopted a system "of the Official Secretary participating in the preparation" of what he described as "Palace correspondence" and providing comments on the replies from the Palace … [243] …it was correspondence "arising from the performance of the duties and functions of the office of Governor General" [244] Sir John's expression of the desire to preserve the documents given their historical import, understood in light of his duties of public loyalty, militates powerfully against the originals having been created or received by him personally …
>
> **Are the Letters Special?**
>
> [245] …the subsequent treatment of the "original" correspondence as institutional, that is, part of the official establishment of the Governor-General, is supported by a letter written by Prime Minister Malcolm Fraser to Sir John Kerr towards the end of Sir John's period as Governor-General and from which there is no suggestion of demur by Sir John. The Prime Minister referred in that letter to the draft Archives Bill and said that "Government House records … are part of the history of Australia and it is proper that they should receive all the care and protection possible". The Prime Minister continued: "For that purpose clause 21 provides that Australian Archives may enter into arrangements with a Governor-General to take custody of records under access rules which a Governor-General may lay down." In the draft of the Archives Bill that was current at the time that the Prime Minister wrote, cl 21 permitted those arrangements to be made for records of the Governor General that were exempt from the operation of Divs 2 and 3 of Pt V of the Archives Bill, concerning dealings with Commonwealth records and access to Commonwealth records. Although that draft of the Archives Bill contained no reference to the "official establishment of the Governor-General" as a category of Commonwealth institution, it was still contemplated that the records were Commonwealth records. The Prime Minister was referring to an exemption from the regime of dealings with Commonwealth records and access to Commonwealth records which assumed that those records were Commonwealth records that required exemption. Naturally, once there was express provision for the institution of the Governor-General and removal of the exemption from the Archives Bill when it was reintroduced in 1983 the inference that originals of the correspondence were created or received institutionally, and were therefore Commonwealth records, became even stronger.
>
> **Are the Letters Official?**
>
> 246 … Very shortly before Sir John's retirement as Governor-General took effect, on 18 November 1977 the Director-General of the Australian Archives wrote to Mr Smith, as Sir John's Official Secretary, confirming their agreement that both the originals and the "copies" would be transferred to the Australian Archives with the copies then to be sent to a London address for Sir John. After Sir John's retirement took effect, Mr Smith (who was then the Official Secretary to the new Governor-General, Sir Zelman Cowen) wrote to Sir John on 23 December 1977 and described photocopying that he had been undertaking on the instructions of Sir John of correspondence in the "original file" at Government House … [248] …it was an agreed fact that Mr Smith lodged the originals of the correspondence with the Australian Archives on

26 August 1978 (at which time the Governor-General was Sir Zelman Cowen) as the Official Secretary to the Governor-General …

Does Confidentiality Affect Title?

249 … some of the content of that correspondence might have been confidential, and some might have contained observations of a personal nature, akin to those in correspondence between State Governors and the Queen concerning "reports relating to affairs in the State", which were described as "most helpful to Her Majesty" when containing information "of a general nature, from … personal enquiries or experiences, and impressions gained during travel". Nevertheless, the agreed fact in this case was that the correspondence "relat[ed] to the official duties and responsibilities of the Governor-General". There was no convention that the correspondence was not official or institutional …

How did the Involved Parties Regard the Letters?

[251] … Sir John Kerr probably did not hold the view that he had title to the originals, as opposed to the copies, to the exclusion of the Commonwealth. For the reasons explained above, Prime Minister Fraser did not hold that view and Sir John had not demurred from the view of the Prime Minister in correspondence with him … [252] Sir Paul Hasluck also did not regard his correspondence with the Queen as part of his personal property. [253] As for the opinion of the Archives itself, the clearest expression of the opinion that such correspondence was not a Commonwealth record was made decades after the correspondence in issue. Earlier expressions of opinion are more equivocal…. [254] More fundamentally than any factual overstatement, the legal flaw in the respondent's submission is that a person does not obtain a property right by thinking they have a property right or merely by them or others expressing that belief….

Does it Matter?

255 … The convention could not contradict the effect of the Archives Act; it could only operate to establish a rule based upon the uniform consensus of the relevant persons that correspondence passing between the Governor-General and the Queen is never created or received by the Governor General officially nor retained institutionally … [257] … a convention that excludes from government records the correspondence between the Governor-General and the Queen is "difficult to substantiate" … [258] … the precedents in relation to the manner in which vice-regal records are handled are, at best, "thin" …]259] … there is also the lack of evidentiary support for the submission that the behaviour of the relevant actors is attributable only to a belief in an underlying norm that the original correspondence was personal and was not official. For instance, even if Sir Paul Hasluck believed that he held property rights to the exclusion of the Commonwealth in the personal and confidential correspondence between him and the Queen during his tenure as Governor-General, there is no evidence to suggest that he saw those property rights as arising due to an understanding that correspondence with the Queen must be treated as non-institutional. A similar point was made by the Director-General of the Australian Archives in evidence to a committee consideration of the draft Archives Bill about the practice of public servants and Ministers in treating official papers as if they were personal records …The Director-General said this: "The papers of Lord Bruce, for example, are called personal papers. They are copies of every cable sent by Bruce and received by Bruce while he was in office in London, every record of conversation he had with every ambassador and with every British official, and of records, of which he should never have made, of debates which took place in the British War Cabinet. There is nothing whatsoever private or personal about them. They are copies of official records and in the [Archives Bill] sense they are copies of Commonwealth records … Many other Ministers have followed this practice and they have kept in their offices complete sets of copies of correspondence crossing their desk". In the report of the Committee the view of the Australian Archives was recorded that "in many of the collections of personal papers of former ministers and officials there were records which might be the property of the Commonwealth".

Can Convention Outweigh the Law?

[260] … No coherent principle could justify a convention that title to the originals of final correspondence, created and received as part of official duties, should vest in a holder of high public office to the exclusion of the Commonwealth … [263] Confidentiality is not a reason that could justify a convention that correspondence passing between the Governor-General and the Queen is never created or received by the Governor-General officially nor retained as part of the institution of the official establishment of the Governor-General …the confidentiality of such correspondence is protected by the general law of confidence304. It is also protected by the categories of exemption to which Senator Hamer referred

> during the hearings concerning the Archives Bill before the Senate Standing Committee … [264] The labelling convention of "personal and confidential" is also not inconsistent with a 120ealized120120ation120 of the correspondence as official or with its retention institutionally … The law determines its character, not the will of the sender … [266] … it could hardly be supposed that confidences would be more likely to be protected if title to the correspondence were held privately, to the exclusion of the Commonwealth, so that the Governor-General personally could sell, publish or distribute the correspondence at any time ….

The judgement refers to the first *Archives Bill* (to which I have alluded several times). That drafting allowed access to personal papers deposited with NAA to be determined by the donor on the argument (inter alia) that, absent a ruling by a court or some quasi-judicial body, neither the Archives, nor the donor, nor anyone else could say definitively what was official and what was not. The fact that this case has gone through three tribunals, which could not agree, and at considerable trouble and expense validates that argument.

All the legislation in the drafting of which I have been involved (C'wealth, W.A., Queensland, NSW, NZ) has had to deal with what I call "precious" records (official records thought to be "different"). These include Vice-Regal records, court records, registration records (titles, identity, patents, etc.), municipal records, state-owned corporation records, even (God help us) police and military records – to name but some. This is to say nothing of the very special records held by houses of memory that are creatures of the government. Negotiating an outcome in each case has as much to do with politics as with principle. No wonder, then, that the results are incoherent. It will be seen that in developing the *Archives Bill* attempts were made to deal with Vice-Regal records not as "personal" but as "special". Once it is accepted, depending on the drafting, that official Vice-Regal records (however conceived) come within the ambit of the Act, NAA would really have no business treating them as "personal" in the first place.

The judgement establishes that this class of Vice-Regal records are Commonwealth records. The judgement may provide some basis in principle for dealing with other offers of personal deposit received by NAA in the future. If, on the basis of "the vibe" uncovered by this judgement, NAA concluded that what was being offered in a particular instance consisted unequivocally and in its entirety of Commonwealth records it would be wrong to accept them as "personal". If, on the other hand, the circumstances of future donations are sufficiently different from the Palace Letters case to enable that instant case to be distinguished, NAA remains in the same unenviable position – unable to say definitively what they are dealing with or how to treat them under the Act. Anyway, such deposits seldom consist (as did the Palace Letters) of a single class of material, being a mixture of official and not-so-clearly-official material. In an earlier post, I said that I have been told that NAA has abandoned its personal papers programme and I asked if this was true. There has been no answer to that question on the list. It can't be a state secret. Can it?

PS. Thinking about "special records" in relation to archives law has re-awakened, in all its horror, the memory of past experiences in dealing with them during legislative drafting. I thought I had put it all behind me into the category of recordkeeping-experiences-too-awful-to-be-recalled-with-equanimity. Two examples I overlooked, probably because they were even more dreadful than the others, were parliamentary records and statistical records (e.g. census).

The obtuseness encountered when dealing with the "specials" would make carving granite with a butter knife seem like child's play. *No. We're special. How dare you even suggest covering **US** in your legislation? Impertinence!* Many of them seemed incapable of distinguishing the archives law from their feelings of hostility and resentment (contempt even) against the archives authority that would administer it or to understand that the law's purpose was to control the activities of the authority just as much as theirs (more so, even).

It was no good explaining that any genuine special needs they had could be dealt with in the Act and that wholesale exclusion from its ambit was unnecessary to achieve their professed goal. *No. They had to be completely outside its provisions. How dare you?* I'm afraid I took malicious pleasure in pointing

out to them that a law dealing with the documentary record of government had, at least, to make provision for "their" records if and when they themselves were wound up. *Us? Disappear? Unthinkable!* At least Parliament had some justification for taking that view.

Forgive me. This has nothing to do with the Palace Letters. But this aspect of the case has let a genie out of its bottle for me and I just have to let off steam.

<<Michael Piggott: … Re Chris' … point … as to whether NAA has abandoned its personal papers programme … my sense is NAA long ago abandoned what it called its personal records service, ie a dedicated administratively differentiated activity with distinct and specialist staffing. This 'service' was last mentioned in its 2012-13 annual report. But NAA continues to seek and receive and manage personal records within broader agency services/government information roles. The current 2018-19 Annual Report states (p 93):

> 'The National Archives collects official Commonwealth government records, and the personal records of governors-general, prime ministers, ministers, federal and High Court judges and some senior Commonwealth public servants. Our collection grows through the transfer of records from the custody of government agencies and Commonwealth persons into the Archives'.

This formulation, repeated in several recent annual reports, will doubtless need to be redrafted for future reports. And, thinking of Chris' later PS post and understandably letting off steam, perhaps 'collects' will be reconsidered too. >>

2020, October 23: <<Andrew Waugh: The cost to the NAA of the legal action (including costs) was reported in the Senate Estimates committee…The article, of course, ties this cost to the lack of budget for access determination.

> … Mr Fricker defended the legal action, saying he was bound to pursue the litigation to defend the archives' interpretation of its founding act…The delays at DFAT were a product of greater demand from a relatively small number of researchers… "People work very hard to make records publicly accessible but we do it lawfully. We're not going to go off on a frolic and just hand out stuff unless we've properly assessed it," Mr Fricker said. The archives is under funding pressure, with its council warning last year that its $90 million annual budget needed to be doubled for the institution to be sustainable and meet its legislative requirements…Australian National University professor Frank Bongiorno said the delays showed the public record process, by which government records are supposed to be released decades after their creation unless there is an exemption, had "broken down"… A review of the archives by former finance department secretary David Tune was completed in January but has not been made public by the government…**>>**

NAA's approach to access clearance has been the subject of criticism since the Lamb Report (and before). No government, especially in the straightened times a-coming after the COVID crisis, is going to pour money into functions that aren't absolutely necessary. Prioritizing preservation vs access is an old, old argument (not a dichotomy but a question of balance). Now, the picture is even more complicated. How do we juggle-

- Preserving the archival remnant
- Providing access for a "relatively small number of researchers"
- Maximising access to a small fragment of the archival remnant through digitization
- Providing entertainment and delight through display and story-telling (if we're in NSW)
- Regulating recordkeeping.

Does satisfying the needs of a "relatively small number of researchers" for access to records that can't be handed out "unless we've properly assessed [them]" represent a fair return on investment? After 30 years, how much risk is entailed from un-scrutinized release of all but a tiny fraction of the tiny fraction? Is the system being run according to an over-abundance of caution? What incentives are there for the decision-makers not to be decision-delayers? What mechanism could be put in place to force (yes, that's right, force) decision-makers who are delaying decisions to pay a penalty for the delay or, at least, be called upon to justify the delay itself – not just the tired old under-resourcing response but to say exactly what are the apprehended dangers of un-scrutinized release of these particular records.

And, if “prudence” is the answer, let them justify that. Yes, our archives programmes are under resourced, but that explains systemic consequences, not particular failures.

The access-clearance/declassification system is always fraught. Not all records requiring to be cleared are classified in the technical sense and many of them which are ought not to have been classified in the first place. Time limits on classification unless renewed periodically (with reasons) long before the 30 year threshold is reached is one possible approach. Make all government records “Confidential” for 10 years if not classified more highly at the outset with the proviso that the classification then ceases **and** the record is then open for public scrutiny **unless** action is taken **in advance of any request** to extend it. Bulk clearance (which I believe NAA already has and which is the norm in many other jurisdictions) is essentially an exercise in risk management and should be zealously applied.

It is to be hoped that the Tune Report, if ever released, tackles these issues.

PS. The Swedish model might raise the hackles of some of our allies but it should not be lightly dismissed. It would require a commitment to accessibility rather than an overly cautious approach.

PPS. The article cited by Andrew is backward-looking towards paper-based systems and access to born-digital records raises other issues – not least with dating and the whole idea of 30 years or any closed-access-period. The Swedes have an answer to that too.

2021, January 9: Twitter, Trump & public records

<<Andrew Waugh: With the apparent permanent suspension of the 'realDonaldTrump' account, journalists have started to ask what happens to his tweets … To us they are, of course, obviously public records. But clearly not to this journalist. Perhaps NARA should be contacting Twitter and instructing them to hand them over...>> This raises questions about the process of formation. Is Twitter, in fact, the records-maker here? Is the archive authentic (or not) dependent on how they are "kept" and by whom? Assuming Andrew is correct, who is responsible for making the "public record" in the first place -

- the author (D J Trump personally) or
- the Office of POTUS or
- Twitter?

Does the status and authenticity change if the tweets are (were) harvested - e.g. by NARA, LC, or an outfit like the National Security Archive? Would a statutory mandate requiring or authorising a harvester to download and preserve them change things? Does there have to be a formal connection between the maker of the record and the keeper of the record for them to be authentic? What about a private citizen with time on his/her hands who'd been downloading them all these years? Would a harvester of the tweets assume the status of co-creator of THE record or be the creator of a different record? Do our standards say anything about the r/keeping protocols for harvesting or do we just disdainfully dismiss it as collecting?

PS Tweeting is clearly a release for him. I have to wonder if it's such a smart thing to block that release valve off while he still has the launch codes.

<< Andrew Waugh: The most important thing first. Reports are that Speaker Pelosi and the Pentagon have had discussions to prevent Trump from launching a nuclear attack…. As the head of executive government, he is tweeting the government's view; there is no one to gainsay him or approve his views. He's consequently tweeting in his role as POTUS, irrespective of whether he is using the official POTUS twitter account or his personal account … Authenticity is fairly clear; twitter is an immediate public experience. Any fake tweets from an impersonator would be immediately apparent to Trump himself … Integrity, on the other hand, is completely up in the air …>> Not sure that the possibility of “fake” tweets from an impersonator gets to the heart of the authenticity issue which is fundamentally about whether or not the record is what it purports to be and that is something that can almost never be deduced from what is on the face of the record and much less from what we surmise was the state of mind (or apprehension) of the tweeter. The distinction between the POTUS account and the Trump account is relevant. It’s the same distinction that NAA tried to make in the Hocking case between official and

personal – personal (that is) not private. As I understand it, one of the issues with the Trump Presidency has been the status of his twitter pronouncements via his personal account. Are they to be recognised and applied by those under his command or merely regarded as midnight ravings? Would the Joint Chiefs be bound to follow a policy issued via the private account rather than the POTUS account (suspending for a moment incredulity over whether a directive from the Commander-in-Chief could even be communicated in that way)? It is the questionable and confusing authenticity of the tweets on the private account as to their being official pronouncements rather than personal reflections that is the issue – not fakery. I'm still confused as to whether our High Court regards the subject matter or the circumstances of creation as the acid test.

To take another point that Andrew makes, the private account tweets are directed to the world, not to anyone in particular (though sometimes obliquely in the form of abuse). As I imagine are the POTUS tweets. When dealing with official records, the object and purpose of the record is implicit in the customary forms and conventions within which the record is formed and communicated, to say nothing of the purposeful identification of intended recipient(s) or audience whose role in relation to the records-maker is (or should be) ascertainable. Tweeting is, of course, a form of announcement rather than a vehicle for direction. But communication, publication, media release, etc. are the ways official policy is publicly recorded and issued – so their "authenticity" in the r/keeping sense and not just in the fakery sense is an important matter.

<<… whether the same tweets collected by different people/organisations are different records that gets a bit metaphysical for me …>> I have been banging on for years about the need, as I perceive it, for us to be clearer conceptually about the notions of original, copy, version, and rendition, particularly in relation to e/recordkeeping and digitisation (but they have been there for much longer in relation to microfilm, photography, and film archiving). I'm not in the loop anymore so perhaps this question has been satisfactorily resolved without my being aware of it. If not, it is possibly because it is all just too metaphysical.

2021, January 19: The Factbase website claims to have assembled a horde of Trumpiana, including Speeches, Tweets, and Policy – "Unedited, Unfiltered, Instantly". It has material from before his election, including stuff he himself has deleted. There is a page consisting only of deleted tweets. They say -

> … our goal is to make available, unedited, the entire corpus of an individual's public statements and recordings. We will locate, transcribe, index and make available this information to the public, linking directly to the originating source … You will not find news stories on Factba.se. What you will find … is everything a person has ever said on a particular topic, with links to the primary source. Transcripts. Books. Videos. Appearances. Court filings. If we can locate it on the Internet, it will be tagged, indexed and searchable ... Skip the spin. Go right to the source.

So, these are assembled source documents (mostly) issued by, on behalf of, or possibly just involving, the data subject. It contains their authentic creations but not in a form or structure chosen by them. The tweets most closely resemble DJT's own chosen form of communication - a string of short public comments issued serially.

I can't answer mattpe's interesting questions but here are some thoughts -

- **Since Trump was tweeting from his own account and not the official one, is it within the law to retain these tweets in the context of the POTUS (and any laws relating to White House rk)?** This could go either way, surely, depending on how the law is drafted, especially if there is prohibition on using private email to conduct official business (cf. Hilary Clinton). The difference being that email is business transmission between parties whereas tweeting is one-way broadcast or else simply debate. The question might be whether communication of the matter conveyed by the tweets, the intended audience, and the manner of communicating them rises to the level of conducting official business.
- **In relation to preserving tweets, in fact any social media, without the contextual tweets also being retained, wouldn't this make the retention rather pointless - just keeping them for the sake of it as no**

real meaning could come from them? No record exists in a vacuum and the full contextual knowledge is almost always missing from the face of the record. Without quibbling over whether or not a tweet can even BE a record, I don't think that the absence of contextual metadata in itself is critical because that is true of this form. Leaving aside questions of where and how the "record" should be kept and by whom. It's obviously not the job of Factbase to do that but their collection could conceivably end by being the best available horde (see below).

- **In the context of preserving social media threads and posts, can anyone point me to considerations and standard practices as this seems a little tricky to me as responses can be made to any post in a thread and to only include a single account - and if the platform was to be discontinued at some point in the future, how could these the retained posts be accessed to display them in their original context (ie as a response to a specific tweet in a thread) - to simple retain the posts in chronological order again seems like a fruitless exercise beyond doing so just for the sake of it.** I have no idea what policies and standards the archives authorities are using. Like mattpe, I would like to hear about it. Some of the issues go way back: do you preserve the page(s) or the content, how do you render changes, if it's interactive how do you deal with that? The tweets on Factbase (even the deleted ones) are linked to a source site but there is no indication as to how stable or enduring this is. Now that DJT has been cancelled, it will be interesting to see how long the source remains viable. The question has been raised earlier: assuming the tweets are records (which is debatable), who is the record-keeper – Twitter, DJT, POTUS????

ACCESS & USABILITY

Making records available and restricting access to them. Who gets to decide? Freedom of Information laws eroded and flouted. Privacy (e.g. the My Health Record saga). Are secrecy laws being used to protect us or to prevent us from knowing the truth about government misbehaviour. Should those law be obeyed if they are hiding evidence of crime?. How have we reached the point where crime and deception are protected by draconian secrecy laws in the name of public safety and where the ideology of extremists and terrorists has become the template for intolerant governments? Is any of this really new?

2017, Oct 9: Canadian SC ruling on IAP testimony records Victims controlling access to their stories

2017, Nov 15: Expungement Who controls the record?

2017, Nov 27: Insolence of office and the law's delay FOIA failings and access to public records

2018, Jan 22: … means of access & …research results Copying, digitization and ease of access

2018, Jly 13: Who controls your social footprint? Court ruling from Germany

2018, Jly 19: My Health records post-mortem Federated patient records [MHR]

2019, Jan 2: News item on Federal FOI processes Things are not going well

2019, Feb 13: Liability for on-line comment Freedom of speech on-line

2019, Mar 20: Did the shooter make a record? Access to material that disgusts or incites

2019, May 1: Paying for digital access How long will access to records remain free?

2020, 25 Feb: You Can't See That! Denying access to public safety information.

2020, May 30: To encourage the others Prosecution of "Witness K"

2021, Jan 8: FOI heading for a "train smash"? FOI is failing

2021, Mar 23: FOI and Privacy Is privacy a reason or an excuse for secrecy?

2017, October 9: Canadian Supreme Court Ruling on IAP testimony records

<<Joanna Sassoon: Unanimous decision from the Canadian Supreme Court to uphold the ruling that survivors have the say over whether their testimony in the Independent Assessment Process is

transferred to an archive or destroyed after 15 years, given the assurances of confidentiality that were part of the process. See http://www.cbc.ca/news/politics/indian-residential-schools-records-supreme-court-4343259 **and** http://www.iap-pei.ca/home-eng.php**>>** Interesting parallels with the Boston College case. In that case also recollections after the event were obtained on a promise of confidentiality. In the Canadian case, the survivors were relying on a promise from the Government made as part of a process to repair the damage and the courts are effectively saying that the promise must be kept. The Boston College tapes were obtained by archivist/researchers seeking to fill out the historical record but their promises had no Government or statutory basis and American courts have concluded there is a higher public interest in law enforcement. As Joanna says, getting the r/keeping right is paramount (and not always easy).

2017, November 15: Expungement

ABC News has a story about complications arising from the fact that, until about 20 years ago, Children's Courts charged neglected and abused children under a criminal process with the result that they acquired criminal records. The story refers to calls for these records to be "expunged". This got me thinking about what that actually means in Australia –

- simply nullifying the record of an arrest, prosecution, or conviction ("spent convictions") so that you no longer have "a criminal record" in the technical sense;
- sealing it from some uses so that it can no longer be routinely accessed except in specified extraordinary circumstances; or
- actually destroying the record (tossing it) so that it no longer exists?

Presumably, if you are going to seal a record for all uses in perpetuity, you might as well destroy it (if you really mean what you say); but I suppose maintaining a sealed record always allows for a subsequent change of heart. Does anyone know what the expungement process is in Australia? Does it provide for data-subject-initiated deletion from the official record? If records are sealed, does that last forever or can they become available for historical research later on? I imagine it varies from jurisdiction to jurisdiction.

An outline of the US situation is given on the Marshall Project site :

> Expungements are a legal process that can clear arrests, charges and minor convictions from someone's record … Though "expunge" and "seal" are often used interchangeably, expungement means to erase such documents while "sealing" simply means they are no longer public record. The law on who is eligible for either varies state by state, and there is no encompassing federal law on expunging adult crimes … If your record is approved for expungement, the court agrees to toss out its records. But what about Google? News archives? Mugshots.com? "It's impossible to expunge information in this cyber-age," said James Jacobs, a law professor at New York University and author of "The Eternal Criminal Record." "You can have an official expungement, but to actually erase the events from history, I don't think so."

On the latter point, there is an interesting article in the New York Times from ten years ago which argues, inter alia –

> In 41 states, people accused or convicted of crimes have the legal right to rewrite history. They can have their criminal records expunged, and in theory that means that all traces of their encounters with the justice system will disappear. But enormous commercial databases are fast undoing the societal bargain of expungement, one that used to give people who had committed minor crimes a clean slate and a fresh start…But real expungement is becoming significantly harder to accomplish in the electronic age. Records once held only in paper form by law enforcement agencies, courts and corrections departments are now routinely digitized and sold in bulk to the private sector. Some commercial databases now contain more than 100 million criminal records. They are updated only fitfully, and expunged records now often turn up in criminal background checks ordered by employers and landlords…Lida Rodriguez-Taseff, a lawyer in Miami, tells her clients that expungement is a waste of time. "To tell someone their record is gone is essentially to lie to them," Ms. Rodriguez-Taseff said. "In an electronic age, people should understand that once they have been convicted or arrested that will never go away."…

I wonder if anything has changed over there in the intervening ten years? I can remember being involved in this debate when the expungement/correction provisions of the C'wealth FOI and Archives Bills were being drafted. An argument against providing data subjects with a discretion to have their records actually deleted from the official record (as distinct from a right of correction) was that

knowledge of the crime, arrest, prosecution, and/or conviction may still be about in other information sources. Without a controlled official record to state authoritatively what occurred, speculation based on these other sources of information may be more damaging to a data subject than the continued existence of the official record.

2017, November 20: **<<Andrew Waugh: A number of years ago, I was working with a minority community that had been very harshly used by mainstream Australian society … An older member of the community, who had first hand experience of the harsh treatment and who would have been the subject of some of the records, wanted the records destroyed. A younger member, a future leader of the community if I was any judge, explained to me that the older member felt ashamed by what had happened, and didn't want their children or family to know specifically what had happened to them, or to read the judgments on them in the records. The records still hurt. The younger member said that he wanted the records to be preserved. If they were destroyed how was he, or the community, to know their history? … We can provide ideas on the issues that could be considered. We might represent the interests of the broader community, such as the need for the broader community to understand its history (although, remember, this broader community was the one that treated the minority community so badly). I do not believe we should make the final decision.>>**

What is "this type of record"? At its broadest, it could be any record containing information about any data subject – an individual, a group or community, a corporation. Should all data subjects have the final say? If not, in what circumstances –when they've been harshly treated, when they are worthy, when they are unworthy (e.g. criminals) but entitled to be forgotten anyway? If the archivist is excluded when the community is divided, what is the process for resolving the division? Isn't that when an umpire is needed? If the rationale is that the data subject has a better claim than anyone else to decide, then – in Andrew's example – it would seem that the older member's will (the one who was involved in the action) should prevail over the younger member's will (the one who wants a memory preserved).

Whose records are they? As Andrew indicates, we cannot assume that record subjects, their family, and their community will be of one mind but he seems to be suggesting we should step back and let them fight it out. But if a role is allowed to the younger member who wants to know his/her history, why not (as Andrew suggests) allow for the interest of the broader community in keeping alive a memory of the past? Doesn't mainstream Australia, which treated this community harshly, have a right to regard the records as part of their history also? Aren't the records "about" us as much as they are about the victims of harsh treatment?

Should decisions (whoever makes them) be systematic or ad hoc? However chaotic and incoherent our appraisal policies/practices are in fact, we archivists like to believe we are following a consistent, well informed approach which produces consistent and defendable outcomes across a variety of record types and situations. This is largely a delusion on our part, because the reality is that god-archivists keep on making ad hoc decisions all the time without submitting ourselves to standards that ensure predictable outcomes or enable our decision-making to be held to account (witness Heiner). But the aspiration to ensure predictable and consistent outcomes (regardless of who has the last word) is a laudable one if this community's records are to be treated like identical records from other communities. Otherwise each outcome will be different – decided solely on the voices case by case. This is OK if we decide that each affected community's will is paramount but that would, in itself, be a statement of appraisal policy. If competing wishes are in play, however, (as Andrew indicates) and the conflict cannot be resolved by agreement, then some process is needed, involving articulated appraisal standards, policies, and principles. [In fairness, I should say that when I was with N/A Archives NZ, I was astonished at how scrupulous they were about documenting appraisal decisions, appealing to precedent, and filing written justification for their decisions – but, in my experience, that was an exception that proved the rule.]

What is the role of the archivist? We get away with being god-archivists making ad hoc decisions because most of the time no one cares much and they are happy for us to take that role, until the proverbial hits the you-know-what. We are happy to accept the responsibility because it is a lot less troublesome than undertaking appraisal under a regime which tests the outcome of our decision-making against pre-set requirements and failure standards. If things get rough, we set up consultation mechanisms in which interested parties (who haven't a clue about the process – only a set of vested interests and narrow enthusiasms for records that pique their interest) help us make our ad hoc decisions. In a well-regulated appraisal regime neither the archivist nor an interested party would have the last word. We would all be involved in working through settled policies and procedures – however much they might be contested during their development.

Conclusion In short, I don't want to see the archivist or the interested parties shut out or given unfettered discretion. As I have been arguing for decades, I am nervous when a decision-maker – whoever it may be – simply gives a thumbs up or down without having to justify that decision. Particularly where the outcome is likely to be contentious, what is needed is a process guided by an articulated road-map saying how the decision is made, by whom, and on what basis. Such a road-map, might, of course, determine that "record subjects, their family, and their community … make decisions about these records" - whatever "these records" turn out to be, and defining that would an element of the road-map. I'm told that systematic, well-documented processes are too hard, too time-consuming. All I can say is that, in my experience, ad hoccery – blundering about in the dark – is even harder and more time-consuming in the long run.

2018, May 17: Redaction of birth certificates

<<Joanna Sassoon: An article showing what is going on in the wild west, from the most trustworthy of sources, the West Australian>>

2020, May 18: If true, the story raises an interesting (over-used word) issue that is too seldom discussed and may (I suspect) become hotter –viz. the bowdlerisation of records to remove "offensive" matter. Two strands-

- Avoid including "*offensive*" material in the first place (a records-making discipline that goes on all the time);
- Remove "*offensive*" matter afterwards (a records-keeping issue that tracks into history wars and the struggle for memory).

I italicize "offensive" because it is ideological and of no fixed meaning – what offends you may not offend me and what offends you today may not tomorrow. In the 19th century, the words "cretin", "moron", and "idiot" were legally defined terms; now they are "offensive" and merely terms of gratuitous abuse.

a document which may have historical detail like Aboriginality removed without their knowledge

Should redactions take place w/o a trace? Here, apparently, it is the issued copy (not the record itself) that is being redacted of information that remains unaltered on the face of the record itself. If the "offensive" term were removed from the original, there would be a case for leaving behind a trace or stump showing that it had been altered, by whom, when, and for what reason. But here issuing a "true" copy is in effect a fresh transaction, not the registration of a birth (say) but the subsequent release of information based on that registration. It's not altering THE record, it's exercising a discretion about how much of the record to release. No different to any other redaction or limits on how much of the content you can view in the search room. The Registrar couldn't be expected to say in each case that the record had been redacted to remove the word "Aboriginal" – that would defeat the purpose.

it was bizarre that the registrar of Births, Deaths and Marriages was determining what people could know about their ancestors

This makes it sound like the Registrar is exercising an unfettered discretion. If so, bad idea. Especially with access to information. As we know, there should be an access policy – at least guidelines or standards – which are known, which are binding on the Registrar, and under which particular decisions

can be appealed. At the very least, I would say that the "little-known" power should be made more widely known by

- advising all applicants that the copy they receive may not be a complete copy of the registration; and
- advising those applicants who receive a redacted copy that it has been redacted (w/o saying why).

No reason then for shock, horror, and dismay; though there may still be grounds for opposing that policy and urging it be dropped.

the registrar is tampering with history. "He's making, if you like, fake histories"

I don't like. That's far-fetched. At worst, he's behaving like unreconstructed bureaucrats did before the age of accountability. **<<Andrew Waugh:…It appears that the WA registrar has got their story a little more together: Essentially, some birth certificates included terms that would be considered offensive today, so the BDM instituted a blanket policy that *all* racially based descriptions would be removed…A birth certificate is a legal document, and it is a fundamental responsibility of the Registrar to certify that a copy of the certificate is accurate…while the omitted words may or may not be offensive to the person receiving the copy, it was certainly embarrassing to BDM that their officers once considered the use of these terms appropriate. The fact that the registrar could redact the birth certificate without any indication on the copy raises the question about the accuracy of all copies…>>**

Andrew says

> *They then appear to have gone to the Crown Solicitor who has apparently given a opinion that a 'true and accurate' copy of a register only needs to include information explicitly required by the contemporary Acts or Regulations. In this case, information about race was not required to be entered, so it is ok to remove it from copies (or, indeed, the originals). In my view, this opinion is alarming. It would appear to give the registrar (and anyone else) carte blanche to redact public records on the grounds that the information redacted was not legally required to be there. FOI anyone?*

Report says

> *In a statement on Thursday, the WA registrar of births, deaths and marriages, Brett Burns … said that there had never been a legal requirement in WA to include a person's race on their birth certificate, because "a government official simply could not tell from looking at someone what nationality they were … That has prompted the removal of all references to race, which were never required to be included in the first place, from the registry's records."*

As Andrew points out, not giving access and using, as your rationale, that there was no statutory requirement to collect the information in the first place, while it might be germane to a privacy case, has no place in an access regime.

I don't know what the situation is in the West, but in every other jurisdiction in which I've been involved in drafting Archives and FOI laws, there has been a "problems" basket – e.g. vice-regal records, statistician's records, court records, probate records, intelligence records, parliamentary records, military records, police records, etc. etc. etc.) … always the same .. always predictable. "We're special, we don't fit, we must be exempt." What I came to refer to as the *registration records* (births, deaths, marriages, land title, copyright, patents, trademarks, licencing and vehicles, businesses and providers, products, etc. etc. etc.) is a bundle in that basket. They have a case for some kind of special treatment under access laws, but not necessarily total exemption. Unlike most other agencies recordkeeping doesn't just support their core business, their core business is recordkeeping. But their approach was always the same old whine – "unthinkable, we must be completely excluded, from everything" (see Note below). They just didn't want to think about it, so they didn't – unless forced to. The fight resolved itself in different ways in different jurisdictions. If you exclude them totally from the Archives/FOIA regime then the principles underlying public access (expressed in FOIA and Archives laws) don't apply and they go on doing what they please and exercising unfettered discretions (they don't see it that way, they think they're carrying out their statutory duties). Once granted the immunity they ask for, they become psychologically less likely to consider the possibility of change, even if it isn't forced on them. Again, they will argue that the terms on which the public has access to the information they control is regulated by statute, but we see here what the consequences are – inappropriately technical

application of legal quibbles, not an access regime at all, and applied by whim and un-appealable whimsy.

Back in the day, we didn't have Information Commissioners. I would have supposed that one role for such an official should be to identify and sort out such anomalies and anachronisms. The registrars (some of them) were in my experience likable chaps (they were almost all chaps in my time) but very likely to be calcified in devotion to their legislation and likely to institute implacable and inappropriate policies. I had hoped things had changed – for the better.

Note: "unthinkable, we must be completely excluded, from everything": It was around this time that I developed my own private test of intelligence. You're dealing with intelligence when, if you challenge their assumptions, they recalibrate. If they just become even more abstruse, you're dealing with stupidity.

2017, November 27: Insolence of office and the law's delay

Once upon a time, Governments introduced FOIA with the intention of extending "as far as possible the right of the community to access to information in the possession of the Government" with a promise that "the provisions of [the legislation] shall be interpreted so as to further th[is] object … and that any discretions conferred … shall be exercised as far as possible so as to facilitate and promote, promptly and at the lowest reasonable cost, the disclosure of information" Victorian FOIA s.3.

The ABC reports :

> Lawyers for the accused Bourke Street driver have been refused quick access to his medical records as they investigate his mental state, in what a Victorian Supreme Court judge has labelled a ridiculous and absurd situation…. Defence barrister Dr Theo Alexander told the court he applied to the Department of Justice for his client's medical records in October under a Freedom of Information request (FOI), to allow psychiatrists to form a view on his mental state. But he said the department had responded that due to its current workload it could only process 150 pages per FOI. The document is 11,000 pages long…

2018, January 2: Archives/Privacy

Every now and again I try to figure out the relationship between archival access and privacy. New or revised legislation keeps on surfacing and the situation is bedevilled by the fact that there are both Commonwealth and State privacy regimes which may or may not over-lap (some say yes, some say no). I was drawn to it again by the release of 75-year old criminal records by PROV ("section 9 records" – viz. records withheld longer for privacy related reasons; 75yrs for adults and 99 years for minors). That release also brings to mind the regulation of spent convictions and similar statutory or regulatory attempts to wipe the slate clean (but let's not go into that now). How does it all fit together? Not just in Victoria but across the jurisdictions (also putting aside, for a moment, the conflict of laws issue). What I'd really like to know, but have not had the fortitude to pursue, is whether there is an accepted set of principles about the relationship between privacy and archival access that informs the approach taken in all jurisdictions (State and Federal). I think I can guess the answer.

In the instant case, the Victorian situation seems to be fairly simple (simplicity being a relative concept in this context). PROV administers a statutory scheme for providing discretionary access to public records in its custody. This is not third generation archives law so access provisions apply only to stuff held by PROV (gathered records) and not to un-transferred (ungathered) records. The Victorian Privacy & Data Protection Act 2014 (s.12) excludes "a public record under the control of the Keeper of Public Records that is available for public inspection in accordance with the **Public Records Act 1973** " from the operation of Victorian privacy law. The question is how does a public record held by PROV come to be available for public inspection without breaching privacy law? If privacy law doesn't apply to public records held by PROV that are available for inspection, doesn't it follow that privacy law does apply to public records held by PROV that have not yet been made so available? PROV does two things: it makes a decision to release a section 9 record and, once that decision is made, it provides the access. After the decision is made PROV is clear of privacy law, but before then privacy law does apply; so how does the decision get made without breaching privacy law? Embedded somewhere in the overall

scheme (assuming there is one) there must be something that enables PROV, without breaching privacy, to make a decision to release s.9 records in the first place.

- It can't be that any statutory scheme for the provision of access can operate regardless of privacy law otherwise there would be no need to mention the *Public Records Act* specifically in s.12, and in any case the principle of statutory interpretation is that later and more specific legislation overrides earlier and more general laws and Victoria's privacy law would appear to be both.
- It could be that privacy laws generally don't apply to the dead. Yet; privacy enthusiasts haven't given up on that I believe. It might then be assumed that the 75/99 year rule will necessarily mean that no released s.9 records will apply to living persons, even though one could not be certain in each and every case. We are all, of course, living longer.
- Or it could be something else.

There are other complications: such as Victoria's approach to "registers" and reference to the definitions in the *Copyright Act* (C'wealth) – the latter being a reference point whereby some archives (but not all) are given statutory recognition for copyright purposes which is then applied as a definition via State/Territory laws for other purposes (in some other C'wealth laws, too, for that matter). This latter practice has the result that these and similar laws lay down one principle for "libraries, museums, and galleries" (defined generically) and for some archives identified by name or sub-class but a different principle for all other archives. As one who is leery about getting too close to GLAM, I suppose I can't complain too much about being excluded from their company by law. Privacy is only one area in which the differentiation of public archives (most of them) and the rest of us makes it unlikely that there is, in fact, any cross-jurisdictional principle in operation for our industry as a whole in this area of the law or in any other – so much so that archives institutions operating with some kind of connection to a library are usually better off identifying as such for purposes of privacy law.

The other thing that makes it unlikely that a cross-jurisdictional approach is or could be taken is the disparity between the access release processes in our industry (even within the narrow confines of the government archives programmes). The Victorian approach (custodial) vs the Commonwealth approach (non-custodial) is a case in point. Notwithstanding, I would be interested in hearing from anyone who has made a study of this to learn if the lawmakers believe they are following a consistent approach across jurisdictions (Federal, State, and Territory) – even if it is only with regard to gathered records – or if they see any need to do so.

PS A couple of years ago I started asking colleagues how the several digitization initiatives shovelling personal stuff out via the Internet were able to circumvent privacy. The simple answer (then) was that you are OK if you are a government archives programme, a named institution, or you can pass yourself off as a library. In-house archives and non-government archives that are not libraries (or part of a library) had problems (then) because there wasn't (then) a generic legal definition of "archives" as there was (and still is so far as I can see) for "libraries, museums, and galleries". Of course, things may have changed since then. My knowledge of the situation I describe regarding recognition of archives in the *Copyright Act* is several years out of date. If things have changed, I would welcome information on that also.

2018, January 31: It's in the files!

ABC is reporting the discovery of confidential Cabinet files in a couple of filing cabinets bought second-hand in Canberra. The linked page (which gives access to them apparently) lists other high-level and egregious security breaches of a similar nature. When you consider all the nonsense that goes on when government bends over backwards (and then some) to prevent FOIA disclosures, you have to wonder if the public might not be better informed if we all just scoured the second-hand shops and the rubbish tips more diligently. **<<Michael Piggott: Somewhat related to Chris's post is an interesting item by Tim Sherratt in *Inside Story*, out today. (See "Withheld, pending advice"). It's a commendable and continuing effort of Tim's to try to get a sense of what overall picture emerges as a result of the**

application of the access rules coordinated by NAA under the 1983 Act. What strikes me is the relatively muted response (as far as one can gather) to the administration of the access regime by relevant stakeholders, including archivists, historians and journalists. The NAA does have an advisory council, which is required by law to received information about disposal and so-called "special access" …. but not all other types of access. So who IS asking the pertinent probing questions? Tim mentions the NAA DG's appointment of a reviewer to look at the access process, and his report is being implemented overseen by a reference group. In that case, clearly all's well.>>

<<Tim Sherratt: Further on this, I was just alerted to the fact that the Civil Law and Justice Legislation Amendment Bill 2017 includes some changes to the Archives Act, specifically relating to the time frames for access examination. I'm still trying to figure out what the changes mean, but I'm wondering if the 'withheld pending advice' category I've been tracking will no longer be used…>>

2018, June 1: Private & Confidential?

Privacy decision sets worrying precedent for what the Government can reveal about us

> Legal experts are warning a recent decision by the Privacy Commissioner sets a worrying precedent allowing the Government to reveal people's private information without their consent. This week the acting Privacy and Information Commissioner, Angelene Falk, determined that the Department of Human Services was justified in releasing the personal information of blogger Andie Fox to the media last year. In February 2017, Ms Fox wrote an opinion piece for Fairfax critical of Centrelink's automated debt-recovery system, commonly known as "robo-debt". Fairfax journalist Paul Malone subsequently wrote a follow-up article about Ms Fox which included details about her financial and personal affairs based on information provided by the Department of Human Services. The disclosures resulted in a complaint to the office of the Australian Information Commissioner, which ruled on Tuesday that the Government's actions were justified.
>
> But Anna Johnston, director of privacy consultancy Salinger Privacy and a former NSW deputy privacy commissioner, believes the commissioner's decision sets a terrible precedent … The commissioner's decision rests on section 6.2 of the Australian Privacy Principles which allows a government department to reveal personal information if the disclosure is directly related to the purpose for which it was collected, and within the reasonable expectations of the individual. Anna Johnston says it is hard to see how releasing Ms Fox's information fits this principle … Ms Johnston says it is especially hard to see how the requirements for disclosure could apply to Andie Fox's former partner, whose details were also revealed to Fairfax …

<<Andrew Waugh:…Indeed. The original press release by the Office of the Australian Information Commissioner,,,The meat is the link to the precedent (note this dates back to 2010). Essentially, the argument is that if you publicly criticize a government agency, then you should have a reasonable expectation that the agency will give your personal information to the media in response. Hence, APP 6.2(a)(ii) applies. There is an explicit statement in the (2010) Guidelines to the Information Privacy Principles:

> a person who complains publicly about an agency in relation to their circumstances (for example, to the media) is considered to be reasonably likely to be aware that the agency may respond publicly – and in a way that reveals personal information relevant to the issues they have raised.

…The information provided by the agency has to be confined to responding to the issues raised publicly by the complainant…In the Centrelink case, the agency provided information to the Minister's office, who provided it to a specific journalist,,.APP 6.2(a)(ii) requires that:

- the subject would reasonable expect the data to be released **AND**
- the secondary purpose (the release) is related to the primary purpose

The precedent purportedly covers the first part of the conjunction. But is the release related to the primary purpose of collecting the data?>> I suppose the Dept could argue that one of Centrelink's purposes in gathering the information is to be able to use it to monster and intimidate fractious clients who denounce them (thereby coming within PP2) and that any client should have a reasonable expectation that bureaucrats are b******s. But seriously…

If you read the article that started it all (link embedded in original post) it is not about criticizing Centrelink for the handling of Fox's own case and only the most wilful prevarication can be used to suggest otherwise. The article's hook is an account of debt recovery taken against Fox but what it is

about is what she discovered concerning Centrelink's systems and processes. It is not a "criticism" of what they did to her it is a howl of outrage about bureaucratic misconduct as it affects thousands. It is a denouncement of systemic wrong-doing, not a complaint about the handling of her own case. The 2010 statement is about pay-back against someone who "complains publicly about an agency in relation to their circumstances." It permits Centrelink to fight out a disputed case in public if the complainant chooses to go public. The article, on any reasonable reading, is not such a case. Whether you agree with Fox or not, the article's clear purpose is to expose Centrelink's allegedly flawed systems, its alleged procedural unfairness, and its alleged irresponsible use of power. To portray this as a public complaint about the author's own circumstances is simply duplicitous. The only legitimate way to defend against the allegations is to provide information refuting them about its systems, procedures, and use of power. It is not a legitimate defence against the allegations to do dirt on the accuser.

2018, July 21: Data privacy and sharing data

<<Andrew Waugh: …The Commonwealth is investigating a new law governing data sharing and release. The process of developing the law is being run out of Prime Minister and Cabinet, and they have released an issues paper: For data that is not 'open by default' and is not easily shared under existing legislation, this new law will allow data to be shared (both within the Commonwealth public service, with other State governments, and private bodies) … Essentially, the proposed law will give pretty much carte blanche to the sharing of sensitive and personal information whenever it is convenient for government. You can pretty much forget about any privacy.>> Well spotted, Andrew. We need to bear in mind, however, that sanctioned use of personal data held by third parties is already well entrenched. That horse has, so to speak, already bolted – making it harder and harder to protest each new encroachment. I generally don't subscribe to thin-end-of-the -wedge arguments but privacy protection in the brave new world of data gathering and re-use was always going to be one of the times when those arguments would be relevant. Once the pass is sold, it's very hard to stop. The best example of federally sanctioned re-use is at the ATO:

> Australian Taxation Office:
> We collect personal information from a number of sources. As well as obtaining your personal information directly from you, the law allows us to collect personal information about you from other people and entities…Sometimes you may not be aware that we have received this information about you. Some of the third parties we collect information from are listed below.
>
> - Employers…..
> - Banks, financial institutions and share registries…
> - Financial institutions must send us information about their customers' nvestments and investment income.
> - Super funds….
> - Treaty partners…
> - Government agencies and other statutory authorities…
> - Taxation forms … information about individuals associated with partnerships, trusts and companies when those organisations lodge returns…
> - Data-matching programs…

Unregulated snooping is also allowed for some law-enforcement and security agencies

> … the Privacy Act does not cover some Australian Government agencies that are involved in law enforcement, intelligence gathering and national security. The Inspector-General of Intelligence and Security oversees the following six Australian intelligence agencies.
>
> - The Office of National Assessments
> - The Australian Security Intelligence Organisation
> - The Australian Secret Intelligence Service
> - The Australian Signals Directorate
> - The Defence Intelligence Organisation
> - The Australian Geospatial-Intelligence Organisation

Of course, the list of agencies overseen by the I-GIS isn't the whole story. But there is a clear distinction (isn't there?) between data matching to catch out individuals in respect of tax obligations, in receipt of benefits, or suspected of transgressions and doing it for less specific ("public interest") purposes. What distinction, if any, is there between data-matching to investigate suspected transgressions and data-matching to discover them in the first place? It is not clear to me whether what is now being investigated by the Turnbull Government goes very far beyond what is already allowed under data-matching guidelines set out below (open to correction from those more knowledgeable). Two points seem to me to be relevant:

1. Would any future expansion be subject to the voluntary data-matching guidelines ("voluntary data-matching guidelines are not mandatory"!)
2. Would action taken under such an expansion be covert or publicly listed and acknowledged?

Australian Information Commissioner has data matching guidelines (my emphasis added)-

> … Agencies that carry out data-matching must comply with the *Privacy Act 1988* (Privacy Act)…The Data-matching Act and the Guidelines for the Conduct of Data-Matching Program (statutory data-matching guidelines) regulate how the Australian Taxation Office (ATO) and assistance agencies, including the Department of Human Services (DHS) and Department of Veteran's Affairs (DVA), use tax file numbers to compare personal information so they can detect incorrect payments. The Office of the Australian Information Commissioner (OAIC) oversees compliance with these guidelines. The Data-matching Act and the statutory data-matching guidelines require that statutory data-matching be conducted in accordance with written protocols and technical standards…**Agencies also conduct data-matching for a range of purposes other than detecting incorrect payments**…This can include matching their own data with data obtained from other Australian Government agencies, or from state government agencies or private sector businesses. For this kind of data-matching, the OAIC has issued Guidelines on Data Matching in Australian Government Administration (voluntary data-matching guidelines). The **voluntary data-matching guidelines are not mandatory** but have been adopted voluntarily by a number of agencies. Agencies can request an exemption from complying with some parts of the guidelines, if the agency believes that is in the public interest…

2018, November 13: Publish and be damned!

This list interests itself from time to time in the administration of FOI and how that freedom is apparently being chipped away by bureaucratic obstacles to release. But what about limitations on the use that can be made of the information when it is released (or escapes)? We don't seem as interested in how information that does get out (via FOI, leaks, or as a result of investigation) may be stifled by the dead hand of our defamation laws. There's not that much to know, possibly, because the news that isn't published is hard to find out about. Richard Ackland has begun a two-part series in the Guardian. A lot of it is about actions that have been launched involving celebrities, spats between politicians, and low-life journalism. Ackland cites data that doesn't specify whether the kind of published stories that are being prosecuted pertain to genuine public interest matters (as distinct from matters in which the public are interested). His conclusions are that the public interest defence is useless and that our defamation laws are amongst the worst in the so-called free world – more on that is promised in Part 2. I have always accepted the anecdotal assertions that our defamation laws stifle freedom of the press and that the "press" (an increasingly slippery entity) should have greater immunity than you or I to comfort the afflicted and afflict the comfortable.

> … Writing for the majority in *New York Times Co. v. Sullivan* (1964), Brennan declared that public officials may not sue news media for slander or libel unless the injurious statement is made with actual malice or reckless disregard for the truth … Brennan noted that the nation's interest in "uninhibited, robust, and wide-open" debate on public issues might include "vehement, caustic, and sometimes unpleasantly sharp attacks on public officials." The Constitution requires those officials to endure such criticism unless the statements were made with "actual malice — with knowledge that it was false or with reckless disregard of whether it was false or not." While *Sullivan* reduced public officials' protection from libelous statements, the Court believed that free discussion must include the freedom to criticize those in power … *The First Amendment Encyclopedia*

I'm with Brennan. Unfortunately, Part 1 of Ackland's article seems more about press freedom (or lack of it) to titillate rather than to expose wrong-doing on the part of public officials and private enterprises. Perhaps Part 2, by comparing us with other countries, will put up a better case for reforming our laws. Without wishing to re-open the "collections" thread, I would note that in collections already published information generally makes up a higher proportion than in r/keeping. Of course, published/unpublished is becoming more problematic and the whole issue of how published/distributed material is handled (collectable or record?) hasn't been raised here yet (at least not for a very long time).

On a related matter, the dead hand of our security laws (arguably a much greater threat to our freedoms) is still on display in the case of "Witness K" where the defence of truth is involved:

> Commonwealth prosecutors are seeking to hold parts of the trial of ''Witness K'', a former senior intelligence officer, and his lawyer Bernard Collaery in private. The pair have been charged with conspiracy to communicate ASIS information after they revealed Canberra had ordered the bugging of East Timor's cabinet offices in 2004 during negotiations with the fledgling nation over an oil and gas treaty. The government has never confirmed, nor denied, whether the operation took place. "If they want to convict Witness K and Collaery, they need to admit that they were in fact carrying out an espionage operation against East Timor," said Clinton Fernandes, a professor at the University of New South Wales, who has written about the case in a new book, *Island off the Coast of Asia*. "They want the hearing in secret to do so. They want to prevent the defence publicly making its case that the order to conduct the espionage was illegal." … Last month, a group of crossbenchers – Rex Patrick, Tim Storer, Andrew Wilkie and Nick McKim – also asked the Inspector-General of Intelligence and Security (IGIS) to investigate. They want to know whether the bugging operation, allegedly ordered by former Foreign Minister Alexander Downer, broke intelligence laws … The Attorney General's Department , in an emailed response to questions, said: "the Government is not seeking to have the whole trial heard in camera." …

I suppose the press isn't reporting this case as vigorously as I supposed it would because it's a security prosecution not a defamation case. And, let's not get into how copyright can be (mis)used ….

2019, May 2: Whose data is it?

<<Andrew Waugh: For over a decade the Queensland government funded farm lobby AgForce to undertake programs to improve farm practices to reduce sediment going out to the Great Barrier Reef. Last year the Queensland audit office found that the success of this program could not be evaluated because AgForce refused to hand over any of the data that showed whether farm practices had actually improved. The reason? The privacy of graziers and grain growers. The Queensland government is passing a law on run-off, and it included a clause to force AgForce to hand over the data. AgForce's response has been to destroy the data.>> Loads of r/keeping issues here. The "immense and far-reaching decision" to destroy the data was prompted, according to AgForce, to forestall impending legislation enabling the Government to get at the data.

- **Is legislation enabling government to obtain access to "private" records outrageous?** It may be, but it is not unprecedented. Tax laws, criminal investigations, sex offences, security legislation and lots more (federal, state, and municipal) enable governments to snoop into your records – to say nothing of your online data and on seized PCs. So, it may not be right but it's not without precedent.
- **Is destruction the way to protect privacy?** Obviously not, they are two different issues but many privacy advocates think it is. And the privacy principles limit use of personal information to the purpose for which it was gathered. So, it might be argued, what is the point of keeping it if it can't be used?
- **Is the data a public record anyway?** That will depend on the nature of the agreement between AgForce and the Qld Government outlining any obligations AgForce must comply with as a condition of receiving the grants. One assumes, from the tone of the article, that the grants were not made conditional upon Govt having access to the data (otherwise why have new legislation?). It would be usual, however, for a body in receipt of Govt funding to be required to keep records for inspection purely as evidence of any investigation (such as the Auditor's) of how taxpayers' money is being spent.

- **What is the Auditor's jurisdiction?** Did he ask AgForce for access as a favour or did he feel that he had jurisdiction over the records? I haven't read the Qld Audit Act but I assume that destroying records for the explicit purpose of denying the Auditor access to material to which he has a statutory entitlement carries severe penalties.
- **Is AgForce a Contractor?** The article states that the "best management practices program" is a "government program" administered by AgForce. That makes AgForce more than an "industry group". Rather, it is a contractor undertaking to carry out a government program (like 135ealized135135 prisons, etc.). The expenditure of funds is not then wholly at the discretion of the contractor and is auditable. We know that the r/keeping provisions of such contractual arrangements are often shaky but, even if we assume that the contract in this case does not explicitly establish government control over the records, at least it illustrates (yet again) that such outsourcing arrangements must be carefully crafted in the first place.

2018, January 22: Relationship between means of access … and nature of research results

<<Michael Piggott: Can anyone point me to citations recording research which has looked at the relationship between the ease of/nature of discovery and use/usability of archives (e.g. online gateways, digitized documents, rich metadata, "readability" etc) and the nature and quality of research outcomes?…>> I have come across several papers evaluating the impact of digitization (means of access) on the quality (nature) of research. Indeed, I think I posted a link to one of them about 6 months ago.

- Posted on the Canadian List a few hours ago. This is one of the questions I raised in Online access to archives (and other records) in the digital age delivered at Parramatta.
- https://www.forbes.com/sites/kalevleetaru/2017/09/29/in-a-digital-world-are-we-losing-sight-of-our-undigitized-past/#6a325676cd01 [https://specials-images.forbesimg.com/imageserve/589089299/640x434.jpg?fit=scale]<https://www.forbes.com/sites/kalevleetaru/2017/09/29/in-a-digital-world-are-we-losing-sight-of-our-undigitized-past/#6a325676cd01> In A Digital World, Are We Losing Sight Of Our Undigitized …<https://www.forbes.com/sites/kalevleetaru/2017/09/29/in-a-digital-world-are-we-losing-sight-of-our-undigitized-past/#6a325676cd01> www.forbes.com
  In today's interconnected always-online digital-first world, we tend to think that every piece of information in the world is instantly accessible at our …

To which Michael himself responded with a reference to the street light effect.

> Could not agree more with Chris and the Forbes article. Indeed have been guilty in the past of shaping funding bids ostensibly for digitization – who could be against digitization?, knowing that to prepare a collection/series for scanning, about 8 prior physical and intellectual processes were needed, not to forget arrangements for the management of the scans! Back to the bigger point, there's a parallel with what some have called the "streetlight effect", one version of which goes as follows:
>
> *A police officer sees a drunken man intently searching the ground near a lamppost and asks him the goal of his quest. The inebriate replies that he is looking for his car keys, and the officer helps for a few minutes without success then he asks whether the man is certain that he dropped the keys near the lamppost. "No," is the reply, "I lost the keys somewhere across the street." "Why look here?" asks the surprised and irritated officer. "The light is much better here," the intoxicated man responds with aplomb.*
> *https://quoteinvestigator.com/2013/04/11/better-light/*

The ones that catch my attention are jeremiads that point to the danger of unintended consequences – viz. that digitization can impoverish as well as enrich research. A google search just now led me to a 2011 NSLA Report whose themes are summarized on its front cover:

> *"Material that is not digitized risks being neglected as it would not have been in the past, virtually lost to the great majority of potential users." 1 "… [the] arcane and abstract nature of digitization projects makes it difficult to present them in a way that is compelling to a non-specialist…this failure is directly responsible for the relatively poor attention these projects command in the funding world." 2 "There is no formulaic answer or single approach to achieving sustainability." 3 "…digital collections represent significant potential economic and social value, provided they are made accessible in the best possible way."*

https://groups.google.com/forum/#!forum/archives-and-records-australia

This looks promising but like most of the others I have seen this is opinion rather than research – very little hard data on the effects (dangers) of digitization. I would be grateful if any replies to Michael's query could be posted to the list as I am interested in this topic also. **<<Michael Piggott: Thanks Chris. Definitely would appreciate research evidence rather than gut feel. Two quick additional points …:**

I. **The point in the 2011 NSLA report re material not digitized risks being neglected is just a heightened phenomenon of an old truth from the analogue world concerning unprocessed backlogs...**

II. **… there's an older and clearer debate in the rare book and textual studies world, championed by such eminent scholars as G Thomas Tanselle … (see "Not the real thing", *TLS* 24 August 2001).>>**

2018, July 13: Who controls your social footprint?

A court in Germany has ruled the parents of a deceased teenager can access her Facebook account.

> Germany's Federal Court of Justice has ruled the parents of a deceased girl can access her Facebook account, saying they had inherited the right to the social media data just like to her diary or letters…The parents sued for access to their daughter's Facebook account after the 15-year-old died after being hit by a subway train in Berlin in 2012. They are trying to determine if it was an accident or if she took her own life… What happens to social media accounts after a user's death is still very much a grey area, with access to the teenager's Facebook account already having been previously granted by one court before being denied by another. Last year, the BBC reported a first court in Berlin had rule in favour of the family, saying a social media account can be inherited just as letters are… Facebook argued that opening the account would compromise the privacy of the teenager's contacts. Facebook had turned the girl's profile into a so-called "memorial page", where access to the user data is not possible although the content still exists on Facebook servers.

2018, July 19: My Health records post-mortem

ABC reports that a decision has been made on retention of My Health records after death:

> "My Health Record information will be held for 30 years after your death. If that date isn't known, then it's kept for 130 years after your birth."

Both periods would result in retention into the open access period under the *Archives Act* (C'wealth) 1983. Presumably, the system is being set up on the basis that a My Health record is owned by the government (a Commonwealth record), not by the data subject and that it is not heritable (cf. earlier posting re ownership and control over Face Book pages post-mortem by family).

Open Access: There is a statutory obligation to release records after 30 years (s.31) This is not discretionary although there are exemptions. Presumably it is envisaged that My Health records will exempt from public access after 30 years although nothing that I could see says so in the propaganda. In any case, if that is based on a reading of the Act, it could only be an expectation since no could say what the decision will be until it is made and (possibly) appealed. This raises, yet again, the question of privacy of the dead and whether the privacy laws could be relied upon in such cases. The relevant provision in the *Archives Act* s.33(1)(g) does extend to the dead:

> (g) information or matter the disclosure of which under this Act would involve the unreasonable disclosure of information relating to the personal affairs of any person (including a deceased person);

Bear in mind that s.31 applies regardless of custody.

Conflict of Laws: If legislation is (or has been) passed concerning confidentiality of My Health records, this may nullify the public access rights conferred by the *Archives Act*, on the principle that later and more specific legislation over-rides earlier legislation that is more general in its application. The *Archives Act* (s.33) does contain a provision resolving conflict of laws in relation to taxation:

> (3) For the purposes of this Act, a Commonwealth record is an exempt record if:
>
> (a) it contains information or matter:
>
> (i) that relates to the personal affairs, or the business or professional affairs, of any person (including a deceased person); or
>
> (ii) that relates to the business, commercial or financial affairs of an organization or undertaking; and
>
> (b) there is in force a law relating to taxation that applies specifically to information or matter of that

> kind and prohibits persons referred to in that law from disclosing information or matter of that kind, whether the prohibition is absolute or is subject to exceptions or qualifications.

But I am aware of no such general over-riding provision as there is, for example, with disposal regulation – cf. s.24(2)(a). During drafting, we were told the new *Archives Act* would over-ride earlier legislation unless specifically provided for but not later legislation (especially but not only if later legislation was expressed to nullify the *Archives Act*). Nor could any guarantee be given that later nullifying provisions would be inserted into the *Archives Act* rather than into another statute (or even retro-fitted into another statute that pre-dated 1983). So it's entirely possible that post-mortem access to My Health records will be handled outside the public access provisions (viz. "notwithstanding anything in the Archives Act").

Special Access: The *Archives Act* allows for selective access (s.56) at any time for sufficient reason (e.g. medical research). Wonder how that might apply post-mortem?

Informed Consent: The propaganda suggests that once you opt in you are agreeing to use of your medical data for legitimate health care purposes. Presumably the scope of such purposes is defined somewhere so you know what uses you are agreeing to (does my podiatrist count? My pharmacist? My acupuncturist?). But the scope of legitimate health care purposes probably changes after you're dead (My mortitian?). In any case, a well-informed decision on whether to opt in/out should be based on some kind of explanation as to how the Government intends to administer the records post-mortem in relation to agreed purposes and to legislation concerning access in the archival period..

<<Katie Bird: Also, as I understand from this story unless you have specifically opted out from a My Health Record by October 15, you will automatically have one created for you.>>

It is reported in Crikey (for what that is worth) that

> The bureaucrat overseeing My Health Record presided over a disaster-plagued national health record system in the UK, and has written passionately about the belief people have no right to opt out of health records or anonymity. Tim Kelsey is a former British journalist who moved into the electronic health record business in the 2000s. In 2012, he was appointed to run the UK government's national health record system, Care.data, which was brought to a shuddering halt in 2014 after widespread criticism over the sale of patients' private data to drug and insurance companies, then scrapped altogether in 2016. By that stage, Kelsey had moved to Telstra in Australia, before later taking a government role. There was considerable about the lack of information around Care.data, and over 700,000 people opted out of the system. Kelsey criticism vehemently opposed allowing people to opt out — the exact model he is presiding over in Australia….

We can probably expect to hear more of this. None of the derogatory tone of Crikey's report is reflected in Kelsey's own Linkedin profile

> … Between 2012 and 2015 I was National Director for Patients and Information in NHS England – a role which combined the functions of chief technology and information officer with responsibility for patient and public participation. I was also chair of the National Information Board and led development of 'Personalised Health and Care 2020' – a framework for implementation of a modern information revolution in the NHS. In November 2015, George Osbourne, the Chancellor of the Exchequer, announced in the government's spending review that a minimum new investment of £1bn would be made available to support delivery of this strategy. I took up the post at NHS England in 2012 after serving as the British government's first Executive Director of Transparency and Open Data … I believe that digital and social media can transform the customer experience in public services. In 2007, I launched NHS Choices, the national online health information service (www.nhs.uk) which now reports around 50 million unique users per month. I was named a Reformer of the Year by the think tank Reform in 2012 and one of the 500 most influential people in the United Kingdom in 2014 by the Sunday Times. …

An article in the Conversation from 2016 raises other pertinent questions: What happens after My Health is scrapped (if it is scrapped) as care.data was in the UK? Will guarantees given for My Health carry forward if it is rebranded as something else? What about health data sources already subject to mandatory reporting requirements? Is there a "tent"; if so, who's inside it, who's outside, and can this change over time?

> … the UK government decided to pull the plug on care.data, a controversial NHS initiative to store all patient data on a single database [following a report by Dame Fiona Caldicatt]. This may seem like a victory for data-privacy advocates, but NHS data-sharing initiatives are still being planned and the goalposts are being moved on patient consent…Care.data was an initiative that aimed to add patient records from GPs' surgeries with existing data already collected by the NHS data centre, HSCIC. The resulting single database could then be used for medical research, NHS planning and maybe even commercial exploitation. The 2012 Health and Social Care Act ensured that any data sharing would be legal, even in the absence of patient consent … Caldicott's much delayed report said that the government should "consider the future of the care.data programme", but it didn't go as far as to say it should be axed. So how and why did the report lead to the care.data programme being scrapped? The answer lies in the recommendations made by Caldicott on opt-outs. They back-pedal significantly on … concessions made … in 2013. The easiest way for the government to recant [those] concessions is to withdraw the care.data programme they are associated with, and start with a clean slate…In Caldicott's new proposals, medical records from GPs' surgeries can be sent to HSCIC without patients' consent. The report argues that HSCIC is a safe haven for all medical data. Significant limitations on type 2 objections have also been proposed. For "legally mandatory" data collection for HSCIC, such as Hospital Episode Statistics (data on treatment in NHS hospitals), opt-outs won't apply. Also, opt-outs won't apply to any anonymised data passed on to HSCIC's customers, such as NHS divisions and research organisations. The new Caldicott consent model explicitly excludes the use of medical data for marketing and insurance purposes. But companies that do data analysis for the NHS are viewed as "inside the tent" of a partially privatised NHS and will not need patient consent to receive data … despite the end of care.data, medical data sharing is still firmly on the table … [viz.] the NHS's plans for care.data successors, one of which appears to be a "single GP dataset" – basically, care.data without the opt-outs … The mechanism proposed for "consent" consists of providing information, and then granting patients a few limited opt-outs. As this does not sit well with the new European data protection law's idea of consent (a "clear affirmative action"), we should expect further developments, both in the public debate and on the legal side.

We always knew r/keeping was complicated but … whew!

<<Michael Piggott: I'm lost in the twists and turns … yet again health/medical recordkeeping seems to be seen as something fundamentally different … what was/ is/ should be/should have been the NAA's role is all this; after all, isn't it the C'th government's expert policy and technical adviser on ....? [add bias here].>>

And it gets worse, Michael. news.co.au reports on difficulties experienced by those wanting to opt out – systems that refuse to process your data, long wait times, stringent ID requirements. These are problems when it's not an opt-in system. The opt-out system will just sweep up the poor, the indigent, and the technically un-savvy – also those without the time and patience to wrestle a system that may even have been designed to discourage opt-outs by making it hard. The ID issue is real. Not everyone has a passport or a driver's licence. My mum didn't and while I was her carer I encountered repeated difficulties in simply getting her entitlements without them. I am assured this is a common problem for the elderly and the cared-for, so how the un-cared-for manage I have no idea.

The website talks about cancelling your record, not deleting it. What does that mean? Does a cancelled record continue to exist and simply become non-operative? For those of us who already have a record (over 5 million of us, apparently) the process for cancelling an existing record seems to be different to opting out (requiring even more ID data). The process for cancelling includes providing your bank account details (the one into which Medicare payments go automatically). Does this mean that you lose this facility by cancelling? It sounds as if what you opt out of is future uploads from your GP but that already existing protocols for maintaining other health data about you are unchanged and that those records will continue to exist regardless of whether you opt out of My Health or not. So the sleeper here is what health data about you is the Government already keeping and is My Health just about expanding the scope of that to include GP data? In other words does a Health Big Brother already exist and this is simply about extending its reach? The current excitement is 138ealize on My Health but

maybe there's a bigger issue. A classic example of how information without context can be worse than useless.

On another front, just to reinforce this point and to warn us that we shouldn't run away with the idea that on-line use of our health data is something new, take note of the comments of the head of the AMA (as reported in the news.com.au story)

> … Australian Medical Association (AMA) president Dr Tony Bartone says the system will move the industry from a "prehistoric" way of information sharing and collate data that is already in the hands of the medical industry, albeit not linked or even 139ealized139. "It will bring data presently located in many different parts of the health system … and attempt to bring it into an online repository in the one place," he told news.com.au. "Your health data is already in various portals. What isn't there yet is this online, connected repository … that will facilitate a communication revolution." …

I would think so. Some would argue that a single "online repository in one place" (really?) is more secure than a network of disconnected systems and that privacy can be more safely controlled because harvesting from many systems is easier than cracking one big one – as the Russians and the Chinese can testify. But the suggestion is that Big Brother won't displace the disconnected systems, just suck up data from them and leave them doing what they already do.

<<Catherine: …I will certainly be taking this up with my federal MP and asking lots of questions.>>

When you do, don't forget to ask the archivist's question:

We are told that a My Health record will be created if we don't opt out. How? Where do they go

- to decide that I exist and to verify my identity,
- to decide that there should be a record about me, and
- to find and verify the data used to populate the record in the first instance?

In other words, to echo Michael's questions, what is the records-making process here? How does this process (and the pre-existing processes for gathering online health data for that matter) escape the privacy principle requiring informed consent from the data subject and limitation of use to the purpose for which the record was created? In short, how can the Government just create a personal record about me without my participation and (opt-in) consent? I'm sure there will be an answer to that question and I think you may find it chilling.

2018, July 24: More on My Health

Who Has Access to the Record?

The propaganda says you control who does. But will you really? In 1890, Edward, Prince of Wales, was involved in a scandal over alleged cheating at cards by one of the guests at a private party held at Tanby Croft. It was decided to hush it up and the offender agreed never to play at cards again if the affair was not spoken of in society. The culprit along with the other male guests, including the Prince, signed a paper to that effect. PoW expressed his confidence that the gentlemen would all keep their word. A wiser guest, Arthur Somerset, tried to disillusion him: "It is impossible, sir. Nothing in the world known to ten people was ever kept secret". I read somewhere that "secondary users" of My Health records could number as high as 900,000. Here is an ABC report on the latest loophole to cause concern:

> My Health Record is scrambling to put tough new restrictions on mobile phone apps that use its sensitive patient data, including an option to cancel if the companies damage the system's reputation. Companies Telstra, HealthEngine, Tyde and Healthi already have access to My Health Record information such as Medicare records, test results, scans and prescriptions, for their app users to view on mobile phones. The Australian Digital Health Agency (DHA) … has sent out a heavily amended agreement to the four app companies. The new agreement, obtained by the ABC, will mean that companies' contracts would be terminated if they damage My Health Record's reputation and will give the chief executive Tim Kelsey a five-day cancellation option if he "forms the view that this agreement … may be contrary to the public interest". … Mr Kelsey was unavailable for an interview. A spokesperson for the DHA said it was "best practice" to regularly review contracts with suppliers and partners and the app providers had undergone "strict assessment". The agency's contractual fix comes after the ABC reported on June 24 that one of the partner apps HealthEngine was passing on client information to personal injury lawyers and boasting

> to advertisers it could tailor advertising to patient's illnesses… The agency spokesperson said My Health Record had "the highest level of security and meets the strictest cyber security standards". … The new portal operator agreement shows companies will be given three days to notify the agency if they have had any My Health Record data breach. … The new contract also builds in the ability to terminate immediately if the company or associates "engage in any other conduct that we consider, in our absolute discretion, could adversely affect our reputation or the reputation of the My Health Record system or the Commonwealth of Australia or any of its agencies"….

What Kind of A Record is it?

Is My Health a centralised r/keeping system for storing "your" medical record(s) or is it a r/keeping system established by the Government for storing uploads (harvested data from systems actually holding your medical records) – in effect, copies of all or part of your "raw" medical data and therefore a different record altogether? Will you have one medical record (distributed across multiple systems) or two? What if some of those involved in your health care don't submit raw data to the centralised system and the My Health record is incomplete? Alternatively, what if data harvested from elsewhere is added to your My Health record by the Government and the source records are not kept up-to-date? In short, do we have two r/keeping systems or one? Here is some background on this from the Australian Privacy Foundation

> … These record systems need to enable health professionals to make better decisions, be intuitive to use, be adaptable and in no way make their jobs harder than they are already. Unfortunately, simplistic IT solutions that gather large amounts of raw, un-managed patient data, which can be matched with other data sources, which are onerous to use, and which are easily accessible over the internet, potentially by hackers, can create far more insidious problems than they solve. In our opinion the My Health Record falls into all these categories. It is also worth noting that My Health Record is a summary system, is not a real health record like the ones your GP and hospital might hold … because it is not really your health record but a less-reliable copy, the My Health Record has little value for either your clinicians or you as a patient … Most clinicians already use an electronic medical record system. These can be improved by better communication between existing systems, not by introducing another, less useful, less secure copy in a system that has some of the hallmarks of a scheme designed for surveillance and less-controlled disclosure, rather than your healthcare. It is not generally known but the government has several mechanisms by which they pay GPs to upload your health data. In other words, GPs are selling your health data to the government ... If you look at [the] advertising material or the government's website myhealthrecord.gov.au there are many claims about the alleged benefits of having a My Health Record. What you won't find is anything about the costs and risks. Neither will you see anything that tells you that you are responsible for your My Health Record – nobody else is. It is up to you to ensure that it is accurate, up-to-date and fit for purpose – i.e. it does what you want it to do…

It is well established that patients do not own their medical records. So, pace the APF, it would be even less apt to describe a My Health record as "your My Health record". The rule is that the physician/health provider owns "your" medical record (why then do I get left holding my own x-rays?) but you have certain rights to see and copy it. You will have similar access rights over your My Health record but you don't own it. The propaganda suggests that unlike current arrangements for sharing your medical record(s) - effectively in the hands of health professionals subject to certain limitations – control over access to your My Health records is with you. Does this mean I will be able to block **all** secondary use? If I do, what is the point of having one in the first place? Ownership over the harvested copy (with all that it entails) will vest in the owner (the records-maker) which, it would seem, is the Government. How comes it about, by the way, that there are already 6 million of these things in existence ("5.9 million Australians currently have a My Health Record")?

https://groups.google.com/forum/#!forum/archives-and-records-australia

2018, July 25: Access – regulation vs practice and discretion

The MHR debate is raising all sorts of juicy r/keeping issues (haven't had this much fun in years – testimony to how drab my life has become). A piece posted by the Commonwealth Parliamentary Library explores the distinction between administration of access restrictions to personal information based on statutory rule as distinct from an operational policy (in the case of government agencies or ministers exercising a statutory discretion) or a practice statement (in the case of medical practitioners, for example).

> **Law enforcement access to My Health Record data** ***Posted 23/07/2018 by Nigel Brew***
>
> My Health Record (MHR) was introduced in June 2012 by the Gillard Labor Government originally as an opt-in system … before legislative amendments in 2015 … laid the groundwork for it to become an opt-out system. Law enforcement access to MHR data is among the privacy concerns raised about the program, but this provision was in the original legislation and received little attention when the Bill was debated. The PCEHR/MHR has been operating for six years now since July 2012 …The MHR system is operated by the Australian Digital Health Agency (ADHA) as a 'secure online summary of an individual's health information'. However, under certain circumstances, MHR data may be provided to an 'enforcement body' for purposes unrelated to a person's healthcare. An 'enforcement body' is defined in section 6 of the *Privacy Act 1988* as the Australian Federal Police, the Immigration Department, financial regulatory authorities, crime commissions, any state or territory police force, anti-corruption bodies, and any federal or state/territory agency responsible for administering a law that imposes a penalty or sanction or a prescribed law, or a law relating to the protection of the public revenue. Section 70 of the *My Health Records Act 2012* enables the System Operator (ADHA) to 'use or disclose health information' contained in an individual's My Health Record if the ADHA 'reasonably believes that the use or disclosure is reasonably necessary' to, among other things, prevent, detect, investigate or prosecute any criminal offence, breaches of a law imposing a penalty or sanction or breaches of a prescribed law; protect the public revenue; or prevent, detect, investigate or remedy 'seriously improper conduct'… The general wording of section 70 is a fairly standard formulation common to various legislation—such as the *Telecommunications Act 1997*—which appears to provide broad access to a wide range of agencies for a wide range of purposes.
>
> While this should mean that requests for data by police, Home Affairs and other authorities will be individually assessed, and that any disclosure will be limited to the minimum necessary to satisfy the request, it represents a significant reduction in the legal threshold for the release of private medical information to law enforcement. Currently, unless a patient consents to the release of their medical records, or disclosure is required to meet a doctor's mandatory reporting obligations (e.g. in cases of suspected child sexual abuse), law enforcement agencies can only access a person's records (via their doctor) with a warrant, subpoena or court order. The Australian Medical Association's existing *Ethical Guidelines for Doctors on Disclosing Medical Records to Third Parties 2010 (revised 2015)* note: …..
>
> > In cases where there is a warrant, subpoena or court order requiring the doctor to produce a patient's medical record, some doctors and/or patients may wish to oppose disclosure of clinically sensitive or potentially harmful information. The records should still be supplied but under seal, asking that the court not release the records to the parties until it has heard argument against disclosure.
>
> It seems unlikely that this level of protection and obligation afforded to medical records by the doctor-patient relationship will be maintained, or that a doctor's judgement will be accommodated, once a patient's medical record is uploaded to My Health Record and subject to section 70 of the *My Health Records Act 2012*…Although it has been reported that the ADHA's 'operating policy is to release information only where the request is subject to judicial oversight', the *My Health Records Act 2012* does not mandate this and it does not appear that the ADHA's operating policy is supported by any rule or regulation. As legislation would normally take precedence over an agency's 'operating policy', this means that unless the ADHA has deemed a request unreasonable, it cannot routinely require a law enforcement body to get a warrant, and its operating policy can be ignored or changed at any time. The Health Minister's assertions that no one's data can be used to 'criminalise' them and that 'the Digital Health Agency has again reaffirmed today that material … can only be accessed with a court order' seem at odds with the legislation which only requires a reasonable belief that disclosure of a person's data is reasonably necessary to prevent, detect, investigate or prosecute a criminal offence…

It is a basic principle of administrative law that a decision-maker cannot decide to routinely deny requests where a law gives them a discretion. That is deemed to be divestment contrary to (and a violation of) parliament's intention which was to provide for a decision-making process to be applied on the merits of cases as they arise. This principle was litigated in the High Court many years ago over a challenge to the Two-Airline Policy). A blanket denial should be enshrined in the enabling statute itself (there is no point in giving someone a discretion to always say "No").

> Failure to exercise of discretion, means failure to make choices between the courses of action where such power to make a choice was vested upon the public authority by a statute. The courts in such situations have an authority to impose controls on the way in which the discretion can be exercised with a view to see that there is no failure to exercise discretion…The public authority would be said to have failed to exercise its discretion when:…….
> - It makes general rules and policies applicable to all without looking into merits of a special case in which the authority ought to exercise discretion.

Hence the CPL's conclusion that ADHA and the minister cannot give blanket assurances in advance about how requests for access by law enforcement agencies will be determined in all cases. That is not how a statutory discretion is supposed to work. The AMA's position on how to handle warrants, subpoenas and court orders, on the other hand, is a practice statement and not subject to such a principle because medical practitioners are establishing an ethical standard and not exercising a statutory discretion. **<<Andrew Waugh: As I thought, 'law enforcement' is much broader than the police…. there was a issue in the UK where it was discovered that, under a similar legislative regime, some local councils were using a law 'intended' to allow police to use covert video monitoring equipment to prosecute people misusing bins.>>**

2018, July 26: Just so.

> Greg Hunt's claims that a warrant will be required to access My Health Record has been contradicted for the second time in two days – this time by the Queensland Police Union. After taking legal advice, the union has written to its members – the very police who could gain power to access the records – warning them that investigators of police misconduct would have access without warrants. The union also openly discussed "the advantages this type of access may have" for police investigating other crimes. Access to My Health Record will not be limited to police, as the list of enforcement bodies who may access records includes the immigration department, anti-corruption commissions, financial regulators and any other agencies that impose fines or are tasked with the "protection of the public revenue". Hunt and the Australian Digital Health Agency have repeatedly said that "no documents will be released without a court order" but the claim has been contradicted by the parliamentary library and now the Queensland Police Union… *Guardian* 26/7/2018.

The propaganda talks about **you controlling access** but it is all about access by health care providers. It says nothing (that I could find) about your being able to control access by blocking statutorily mandated snoopers such as those listed by Andrew. Indeed, it is difficult to see how you could be given control over access by statutorily mandated snoopers when they are entitled under the Act to snoop into your affairs and the Act says nothing about your being able to block it. It's looking more and more like a surveillance system and less and less like a health care system.

<< It's looking more and more like a surveillance system and less and less like a health care system.>> If this is not the case then why is the disposal rule that you can cancel your MHR but not delete it until 30 years after death or 130 years after birth. Once the MHR is cancelled it ceases to be of use as a health care record but it continues to be available for surveillance purposes.

<< It may be accessed by us for maintenance, audit and other purposes required or authorised by law.>> The only continuing rationale for retention is surveillance. This is pure recordkeeping. It is heartland stuff for our profession. We understand this (or should do) better than anyone else. Maybe it's time for ASA and RIMPA to issue a statement explaining it to people.

2018, July 27: <<Andrew Waugh: This is a health system. It attempts to solve a real problem, and as the medical people have said could be very valuable. I don't believe it was set up as a surveillance system.>> I agree. It is a health system, it confers all the health care benefits that are claimed for it, it solves "a

real problem". It has been, for those reasons, enthusiastically endorsed by health care professionals, though some are now having second thoughts. Its utility as a clinical record on top of its insecurity has been questioned in the *Business Insider* (copied from or copied to the *Conversation*) so its virtues may not be all they are cracked up to be. Like climate change, however, I am prepared to accept the preponderance of technical (medical) opinion on that. But is it also a Trojan Horse? Can it save lives and chew gum at the same time? You don't have to be as paranoid as I am to harbour suspicions that as well as being a desirable health care initiative it also has a covert purpose. It is going to have near universal coverage and a universal identity system has been a goal of the bureaucracy for over thirty years. They've tried it twice before: in 1987 and in 2006.

Those of us who are old enough can recall the Australia Card, the Hawke Government's ill-fated attempt to introduce a national identity system. At the time it was mooted that the Medicare Card could be used as the vehicle instead, an idea later resuscitated by Joe Hockey as the Access Card. In the end, they used an augmentation of the tax file number. Be in no doubt: "they" want to keep track of us all. We don't all pay taxes, but we all (nearly all) use the health care system. What "they" really want is universal coverage and with statutorily mandated snooping into an MHR linked to your Medicare number "they" will hit the jackpot. Is it too far-fetched to suppose that MHR offered an opportunity for "them" to hitch the long desired goal of universal identification to a popular and desirable health care initiative expecting that it would sail through on the coat tails of this virtuous solution to a "real problem"? Bureaucrats have long memories too.

- S.70 type access is available to allow statutorily mandated warrant-less snooping into many other reservoirs of personal data. The current debate is highlighting that and (one hopes) might prompt a more wide-ranging discussion of the limitations that should be imposed not just here but elsewhere (though I doubt it). The response to MHR involves two components –
- The evil of s.70 type access in relation to MHR (and much more personal data besides). This could be fixed and a "clean" MHR introduced with better safeguards. But that would be less useful to "them" and conceding it might even raise the question of why similar safeguards couldn't be imposed in other areas where warrant-less snooping occurs. So there would be a bureaucratic push back. Nevertheless, that is the easier of the two components to deal with.
- The more difficult question is whether or not such a digitized reservoir of personal data, regardless of its virtues, represents per se an unacceptable risk to privacy. There can be no definitive answer to that and it is an issue that exists elsewhere than in the Australian context. It is a difficult question upon which honest differences can arise. Other countries have considered and rejected the MHR/EHR/EMR approach and there are alternatives here (i.e. equally acceptable solutions are possible without having a digitized data system that can support warrant-less snooping).

2018, August 1: MHR – a Small Victory

> << The health minister, Greg Hunt, has been forced to back down because of escalating controversy over My Health Records, saying legislation will be amended so no record can be released to police or government agencies without a court order. The adjustment, confirmed late on Tuesday night, follows general practitioners and social services groups calling for major changes to My Health Record to ensure it can only be used for medical purposes. The prime minister had signalled the government would make "refinements" to the scheme – but a growing backlash lead to calls for changes including requiring law enforcement agencies to get a warrant to access the records and dramatically narrowing the grounds to release information … "The amendment will ensure no record can be released to police or government agencies, for any purpose, without a court order," the health minister said … The RACGP president-elect Dr Harry Nespolon said Hunt's amendments were necessary. "Changes to the legislation that remove any questions about who may be able to access the records ensure that the records will be able to be used in line with the RACGP's position statement on My Health Records. When a patient steps into the office of one of our GPs, we want them to know that their health information is private and protected," he said. Digital Rights Watch was also positive. "This is excellent news, and vindication for the privacy experts, medical practitioners, concerned public and even members of the minister's own government, who have

> all outlined their privacy concerns with this rollout," said the group's chairman, Tim Singleton Norton … Last week the parliamentary library released advice, which was later taken down from its website, warning the law governing MyHealth Records represented a "significant reduction" in safeguards on police getting medical records because the operator could not routinely require them to get a warrant.>> The Guardian

1. "We "want them to know that their health information is private and protected". It is no such thing. The availability of the information and the wide-ranging definition of who can access it remains unchanged (apparently). All that will change is that the snoopers will need a warrant and (I suppose) that the basis for release, which gave wide-ranging discretion to the Authority, will have to be redrafted. Snooping will go on as before but it will be on a different footing. The story says "…changes including requiring law enforcement agencies to get a warrant …". What about the other snoopers listed in s.70, many of them not, by any stretch, law enforcement agencies? They also (one hopes) will need warrants.
2. The question why MHR should be available for snooping at all remains unaddressed. As Andrew Waugh (and others) have trenchantly argued, MHR is not a good health care record, it is a possibly incomplete and misleading copy of the clinical records, it is maintained for longer than is needed to meet health care requirements, and once created it cannot be deleted or redacted by the patient. If statutorily mandated snooping is to be allowed (and it already is) why not confine it to the source health care records and deny it altogether for MHR?
3. The reasons for allowing it for MHR at all are twofold:
   a. it will be so much easier to snoop into a centralised record,
   b. MHR will contain or link to more personal information than straight health care data (e.g. identity, bank details, address, relationships, etc.).

   These features (mainly resulting from the linkage to the Medicare card) make it more valuable as a surveillance system than just the primary health care records it summarises.
4. Once the snooper has obtained access to an MHR under a warrant, what prevents matching with other personal data bases not so protected? In other words, will a warrant limit the snooper to using the MHR data for the purposes stipulated in the application? Will it require the data be destroyed once that purpose has been fulfilled?

Apparently the site at which you can opt out is experiencing difficulties and cannot be accessed. I'm off to o/s next week and I'd like to get it done before I go

2018, November 14: MHR amendments

The MHR (My Health Record) opt out period expires tomorrow but the promised "safeguards" have still not been enacted.

> … After questions were raised about the ability of law enforcement agencies to access individual My Health Records without a court order, the Government introduced a bill making two key changes to the My Health Record legislation:
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> - Requiring law enforcement to have a court order to access My Health Record.
> - If someone cancels their record, the Australian Digital Health Agency (ADHA) must "destroy" it, rather than holding it for 30 years after your death.
>
> The amendment is set to be debated in the senate this week, but some experts still question when deleted is truly "deleted". Without knowing the technical details of the system's software, Robert Merkel, a software engineering lecturer at Monash University, said it would be important to understand how the ADHA is implementing the "permanent" deletion of records. He wants to know whether it means deleting them off the live system and ensuring backups are destroyed, or simply making it illegal to access a cancelled record. The ADHA said that, after the legislation is passed, the record and any backups will be "permanently deleted" if someone cancels their record … Health Minister Greg Hunt dismissed calls for an extension, but last week he announced additional changes to the legislation that are unlikely to be debated before the opt-out period ends:
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> - The penalties for improper use My Health Record will be increased.

- To protect those in family violence situations, a person will not be allowed to be the authorised representative of a minor if they have restricted access to the child, or may pose a risk to the child, or a person associated with the child.
- Employers will be prohibited from asking for or using an employee's My Health Record information.
- Insurers will be excluded from accessing health information or deidentified health data for research.
- The ADHA won't be able to delegate functions of the system to any authority other than the Department of Health and the Chief Executive of Medicare.

Dr Bruce Baer Arnold, a law and health expert at the University of Canberra, said the changes were "a band-aid on the My Health Record train wreck", particularly as the new bill's language is yet to be disclosed … Critics argue the nature of an opt-out system means that many Australians will have a My Health Record created, but never take control of it or even know it's there. Currently, users of My Health Record can apply an access code over the record or documents, so no one who doesn't have the code can see it. But they must opt in to these privacy controls, and it appears relatively few do so. As of Wednesday October 31, the ADHA said 18,288 record access codes and 3,991 limited document access codes had been created. More than 6 million Australians already have a record …

I have some questions. Here are three:

1.On what grounds will a court issue an "order to access"?

2.What is "destroyed" (whatever that term means) when a record is "cancelled" –

- the content merely and/or
- the metadata (the "stump") and/or
- the record of use as well.

Once a record is used (and leaving aside the fiendishly complex issues of documenting evidence of what was added, by whom, and when) a simple audit trail of who accessed my record, when they did so, and (if documented) for what stated purpose (especially which enforcement agencies have accessed my record, when, for what stated purpose, and details of the court order under which access was obtained) becomes part of the record. I can see several arguments (not all of them hostile to privacy interests of a data subject) for keeping the record of use and that probably means keeping the metadata.

3.As I understand it, MHR is not a system of record. Health care providers submit information from source systems where my real health record resides and continues to be updated. Nothing ensures that information is kept up to date in the MHR and nothing is done by ADHA to reconcile conflicting data from different health care providers. (I am open to correction on all of this). My question then is: what liability does ADHA and the Crown have for genuine mistakes made by health care professionals acting on incomplete or mistaken data derived from MHR? Very little would be my guess.

<<Andrew Waugh: …software engineering lecturers would have little or no expertise of the intersection of records and digital technology. Personally, I would have little concern if a delete meant a physical delete from the operational database, with the backups left to take care of themselves. We (records professionals) know that recovery of individual records from a backup is so expensive that, generally, it is simply not practical. This is exactly the reason that archival authorities have consistently given advice that backup systems are not archival systems...What I would be more concerned about is how the delete is going to be performed on the operational system. Bear in mind that this system exists already, and it does not have, and was not designed to have, the ability to permanently delete a person's record. Therefore the system owners are looking at adding a significant additional function. That is always expensive, with long lead times, and risky. Putting on my software developer's hat, I would be looking at simple methods of 'deleting' records…The very simplest method would be add a flag in the patient's information saying this person is 'deleted'. The access mechanisms would be altered to check this flag, and if it is set, simply not return any information. Of course this doesn't actually delete anything…The next simplest method would be to destroy the linkage in the system between you (as a person) and each medical record...The good thing about relational database design is that software engineers have long understood that redundant information is a bad thing (increasing storage cost and leading to inconsistencies in data). If the designers have implemented the database correctly, the linkage between a record and the person it relates to should only need to be destroyed in one place…neither of these

approaches actually detes the MyHealth record. This is contrary to what Minister Hunt is promising…>> If you are correct, Andrew :

1. The bad news is that the public is being hood-winked (I agree this probably results from ignorance and incompetence rather than malice or duplicity).
2. The good news is that a record (of sorts) remains, or could possibly be reconstructed, of usage and mis-usage (again as a result of ignorance and incompetence rather than benevolence).

Once a personal record has been used by a third party, the privacy interest of the data subject reverses itself to some extent. It then becomes material for the data subject to be able to find out how his/her private information was used, by whom, when and for what stated purpose.

Opt-out deadline extended!

> Federal Health Minister Greg Hunt has extended the deadline for opting out of the Government's contentious My Health Record system. He confirmed the delay on Twitter within hours of the opt-out website suffering issues and the Senate agreeing to an extension. "The opt-out period will be extended until January 31, 2019 … " he said. The opt-out website suffered issues on Wednesday morning as Australians tried to remove themselves from the scheme ahead of the previous deadline, which was set to expire at 3:00am (AEDT) on Friday. The Senate is currently debating the legislation, but already agreed to extend the opt-out deadline to the end of January….

2018, December 31: Careless not malicious

> A child has had an incorrect guardian assigned to their My Health Record in just one of a series of "data breaches" uncovered by the Australian Digital Health Agency. Seventeen people also had another person's medical details listed as their own – among 42 data breaches reported by the agency that oversees the medical records system … Australian Digital Health Agency revealed the 'breaches' in their annual report saying "in all instances" the records were later corrected. The agency's chief medical advisor, clinical professor Meredith Makeham stressed it was not a malicious attack that comprised the medical records system. "They constitute alleged fraudulent Medicare claims or human processing errors when there is an administrative error of some kind," she said. "There has been no purposeful attack compromising the integrity of the security of the My Health Record system." … Ms Makeham said those affected by the 'breaches' were notified in all circumstances and defended them as a "minuscule number" of "human processing errors." … More than one million Australians have opted out of the My Health Record so far. … The system will hold information on all Medicare funded visits to the doctor, medical tests and medications… Source: SBS News

This story doesn't make things at all clear; not to me at any rate. How do "fraudulent Medicare claims or human processing errors when there is an administrative error of some kind" give rise to "data breaches"? An article in Medical Republic entitled "What could a MHR data breach look like?" didn't help as much as its title suggests –

> Health information is …. An attractive target for offenders. They can use this to perpetrate a wide variety of offences, including identity fraud, identity theft, blackmail and extortion … Last year Australians' Medicare details were advertised for sale on the dark net by a vendor who had sold the records of at least 75 people. Earlier this year, Family Planning NSW experienced a breach of its booking system, which exposed client data of those who had contacted the 146ealized146146at within the past two and a half years. Further, in the first report since the introduction of mandatory data breach reporting, the Privacy Commissioner revealed that of the 63 notifications received in the first quarter, 15 were from health service providers. This makes health the leading industry for reported breaches. It's important to note that not all data breaches are perpetrated from the outside or are malicious in nature. Human error and negligence also pose a threat to personal information. The federal Department of Health, for instance, published a supposedly "de-identified" data set relating to details from the Medicare Benefits Scheme and the Pharmaceutical Benefits Scheme of 2.5 million Australians. This was done for research purposes. But researchers were able to re-identify the details of individuals using publicly available information. In a resulting investigation, the Privacy Commissioner concluded that the Privacy Act had been breached three times … There are also concerns about sharing data with health insurance agencies and other third parties. While not currently authorised, there is intense interest from companies that can see the value in this health data. Further, My Health Record data can be used for research, policy and

planning. Individuals must opt out of this separately, through the privacy settings, if they don't want their data to be part of this.

On the Avant Mutual site ("by doctors for doctors") matters are a little clearer-

> … your practice must notify the Australian Digital Health Agency … and the Office of the Australian Information Commissioner … of certain data breaches relating to the MHR. This is **separate from** your obligations under the Privacy Act … The [MHR obligation] does not apply to information that has been downloaded from the MHR and incorporated into your local practice records. If you download information to your practice records, that information becomes part of your practice record. Any breach related to your practice records would need to be considered under the Privacy Act's Notifiable Data Breaches Scheme .

What breaches do I have to notify? A MHR data breach is:

a. The actual or suspected 147ealized147147at collection, use or disclosure of health information in an individual's My Health Record

> **Example** … Dr Smith searches the system to see if her neighbour, a high-profile sports star who is a patient at the clinic, has a record. She finds the neighbour's record and – as her neighbour has not set access controls – views the information in it, including his MBS data and a file uploaded by a psychologist… As Dr Smith used the information in her neighbour's record and it was not for the purposes of providing healthcare to her neighbour, she has breached s59 of the My Health Records Act. When Dr Smith's neighbour next logs on to his My Health Record, he notices that the audit log shows that a doctor at the healthcare provider organization has accessed his record. He calls up the healthcare provider organization at to ask why someone has accessed his record. As soon as the healthcare provider organization becomes aware that a doctor has accessed the patient's record for purposes unrelated to providing healthcare, it is required to comply with the data breach notification requirements of s75 of the My Health Records Act. In addition, Dr Smith may be subject to a civil or criminal penalty under the My Health Records Act. Adapted from: OAIC Guide to mandatory data breach notification in the My Health Record system

b. An event or circumstance that has or may have occurred and that has or may have compromised or may in the future compromise the security and integrity of the MHR (this includes past, current and potential compromises of the system).

> **Example** A registered healthcare provider organization discovers that an external party has hacked into its IT system. As its IT system connects to the My Health Record system, there is a possibility that the hacker was able to use the organization's credentials to log in to the My Health Record system and access information in the system. This would be considered a circumstance that has arisen that may compromise the security and integrity of the My Health Record system. As such, the healthcare provider organization would be required to comply with s 75 of the My Health Records Act when reporting and responding to the potential breach. Source: OAIC Guide to mandatory data breach notification in the My Health Record system

But what is not clear is whether the reported "data breaches" are of this kind. If they are, then the process would seem to involve breaches reported to ADHA by concerned medicos or concerned patients rather than breaches "uncovered" by them. In that case, whether or not the number of breaches is "miniscule" depends on how effective this process is in identifying them. At this point, my head started to hurt – and it's not New Year's Eve yet!

2019, January 2: News item on Federal FOI processes

<<Andrew Waugh: As might be expected, the news is not good... But nothing that would surprise anyone on this list>> Why is it so? The article (and a related piece on the same site examining ludicrous refusals to release) suggests to me that what is driving it is not so much a growth in actual secrets but rather a growth in secrecy. Tho' increased involvement by governments with commercial operators since the 1980s is a probably a factor giving rise to greater sensitivity. But what seems to be driving it is the embarrassment factor – unwillingness to expose "what and how" to public scrutiny however unrelated the material is to one or more of the statutory grounds for exemption. Journos and others have become more expert at targeting requests but what has really changed is that what gets released is now sucked into the 24-hour news cycle, which didn't exist in the 1980s. The FOIA era has coincided with the rise of spin, fake news, and Trump-like (in)sensitivities. As is often remarked, instead of

debating issues and policies, our politicians now dispute the facts, seek to reframe the issues, go for the simplistic headline, and try to colour perceptions instead of changing opinions.

Perhaps it was ever thus, but I don't remember it being this bad when I was a lad. If your intent is to dispute the facts rather than to debate the issue, the last thing you want is unimpeachable documentary evidence getting loose and used against you. This was well demonstrated by Rowena Orr's deadly phrase: "May I show you a document?".

- **Resources**: The original proposition was that once agencies got used to FOIA, they would become more relaxed about releasing information and fewer resources would therefore be needed. There would be no need for full-time FOIA Officers to administer requests!!!!! They really said that (I was there when they did). Instead, agencies have sought inventive ways to withhold more and more, which is inevitably more resource intensive.
- **Culture**: The intended bias towards open-ness never took hold. The framers proclaimed that it was not the intention to set up quasi-legal processes that gave rise to precedents and technicalities. The informality was intended to speed things up but the spirit of open-ness never prevailed. The process quickly became adversarial. This had to be expected when the dispute resolution process before the AAT was conducted by lawyers (because a lawyer knows no other way to behave).
- **Scope**: The instinct to withhold flies in the face of the stated intention "to facilitate and promote public access to information, promptly and at the lowest reasonable cost" (s.3 C'wealth FOIA). The gulf between behaviour and the statutory intention has never been dealt with. Instead of narrowing the scope of secrecy, FOIA has enlarged it.

Perhaps the mistake was to make it subject to quasi-legal procedures. Maybe, instead of trying to make it less legalistic, the framers should have made it more so. Making agencies go before a proper court with powers to chastise, condemn, and correct might have produced a different result. It seems fairly clear that the situation will not improve unless one of two things happens: either the system must be overhauled and become less adversarial (returning to the presumption of open-ness and finding ways to limit agencies' discretion to withhold) or more resources must be provided to speed it up (by removing obstacles in the present system or expanding the courts to give them proper judicial over-sight). Then again, maybe the Jeremiahs were correct after all. Perhaps governments need secrecy to operate effectively.

The NT Government has refused an FOI request for vision of a disturbance at Don Dale Juvenile Detention Centre on law enforcement and privacy grounds :

> … NT [is] the worst-performing jurisdiction in the country on FOI. The territory government refused about 27% of all FOI requests it received last financial year, a rate seven times higher than Victoria and eight times higher than Western Australia. The NT opposition … attempt[ed] to secure footage of a disturbance in November, when two inmates attacked a guard and released other detainees from their cells … The opposition's FOI request asked for videos or pictures of the incident, including "moving pictures, closed circuit television transmissions, still pictures, photographs, videos, computer files, electronic mail attachments, mobile phone files, and multimedia texts"… The government argued the vision would "prejudice the maintenance of law and order in the territory" because the vision would interfere with a current police investigation and may be used "as evidence in an upcoming court hearing"… the opposition argues the eight detainees involved in the disturbance have already been charged, and so little impact is likely on the police investigation. The NT government said the footage also "identifies numerous third parties", posing a privacy risk. But the opposition said their identities could have been protected by the blurring of faces, a practice often used when privacy concerns arise… Labor came to power in 2016 pledging to improve accountability and integrity measures. It has acted on numerous fronts, including the setting up of an integrity commission, better disclosure of political donations and the registrable interests of MPs … The territory's refusal rate has been above 20% for four years running. There are often legitimate reasons for denying an FOI request, including that the documents do not exist or are lawfully exempt from release. *Guardian*

The privacy grounds for exemption indeed seem to be specious for this class of material. If they can redact large portions of text from documents released under FOI, surely blurring and pixelation of images achieves the same result? [Does anyone else remember the movie *Mr Deeds Goes to Town* in which Deeds is described by the Faulkner sisters as "pixelated", meaning not quite right in the head? Later in the movie the sisters are asked who else is pixelated and they reply "Why everyone, but us."]

The law enforcement exemption, in a well ordered world, ought to be of the most transitory kind. Once any possible breaches of the law have been dealt with, the material should be released. Of course, that exemption is open to abuse by authorities simply spinning out the period of "investigation" for as long as they please. Heiner raised the question when do pending legal proceedings begin? Cases like this raise the question when do they end?

> Queensland's freedom of information watchdog and the state's police service met quietly last year and agreed citizens should be blocked from accessing their personal data held in a controversial police records system … Justice Martin Daubney, the president of the Queensland Civil and Administrative Tribunal, launched an extraordinary criticism of the process when details about the meeting emerged during a recent hearing. "[The meeting is] starting to sound awfully like the police and the [Office of the Information Commissioner] sat down behind closed doors to set matters of policy," Daubney said ... Queensland has a set of information privacy principles that require agencies holding personal information to grant individuals access unless they are expressly exempted under law. Police previously granted individuals access to their personal data in the QPrime records system. A search indicates regular access was granted to people seeking their own information until June 2016. That month, social justice advocate Renee Eaves was granted access to her QPrime file. It revealed officers had accessed her records 1,400 times over eight years and sparked ongoing concern about the management and protection of data held by police. Several officers have been charged with computer hacking for conducting unauthorised or irrelevant searches. But most complaints do not result in punishment and concerns remain that audits of the system are retroactive and usually only occur when a complaint is made. Since June 2016, police have routinely refused access to people seeking personal information from QPrime on "public interest" grounds.
>
> David Vaile, the chairman of the Australian Privacy Foundation, said the ability for individuals to access their own information was "one of the few antidotes that can act as a restraint to abuse of power". "It may well be this is a policy that's designed to conceal large-scale problematic breaches of data," Vaile said, and noted that the policy could prevent crimes committed by police officers from coming to light ... Police insisted in a statement that freedom-of-information decisions – known as "right to information" in Queensland – were still made on an individual basis and that "there is no blanket refusal"… In the same statement police said they had conducted a review and "formed the view that disclosure of [QPrime activity reports] would likely be contrary to the public interest as it causes significant detriment to the QPS law enforcement activities". In the tribunal hearing, police lawyer Craig Capper said police had met with the information commissioner to discuss four specific right to information appeals. Capper said police conveyed the view that all QPrime records were "a class of documents that give rise to, and if revealed and if published, would give evidence that could be injurious to the public"… Capper also told the tribunal police "didn't even want to acknowledge the existence of any documents" in some cases …*Guardian* 17 Jan 2019

2019, February 13: Liability for on-line comment

The Voller Case is an action for defamation against three media organisations for allegedly defamatory comments made by trolls on a Facebook page maintained by the newspapers. The rule is, apparently, that a publisher may be liable if the offended party complains and the publisher takes no action. The troll may be liable in any case. At issue is liability if the commentary is un-monitored and no complaint is made. The case is closed and judgement is pending, the judge ruefully remarking that it's likely to be appealed however he decides.

The legal question at stake is whether the media organisations are "publishers" of comments made by third parties. The defence argues, in effect, that Facebook (and by extension other social media sites) go beyond traditional letters-to-the-editor, which are incidental to news reporting and that hosting third-party inter-action and commentary are "part and parcel" of their fundamental purpose. Restraint and/or

censorship (including national firewalls, content-control, removal, blocking, and filtering) is often urged on the platforms themselves (Google, etc.) on the basis of social responsibility, a supposed obligation to filter hate-speech, "offensive" speech, cyber-bullying, forbidden fruit (sex, drugs, and satire), bomb-making, and so on. This is (supposedly) different from Internet censorship imposed for social control purposes by big brothers of one kind or another including dictatorships like North Korea, China, and too many Middle Eastern countries to name (well, let us say countries displaying a more authoritarian character than western democracies like to acknowledge). Reporters Without Borders et al. define Enemies of the internet as countries that "mark themselves out not just for their capacity to censor news and information online but also for their almost systematic repression of Internet users" and include US and UK on that list and show Australia as being under surveillance. Curious concept, to be policing the censors.

Legal liability is another thing – in this case the liability in defamation of media users of the platforms rather than the platform owners themselves. Public perceptions on this issue are still forming. According to Wikipedia, 71% are in favour of "[Internet] censorship … in some form" while 83% see Internet access as a "basic human right" and 86% say they believe "freedom of expression should be guaranteed on the Internet"! It is possible to hold contradictory positions on this because the world is divided into two classes (those who believe in free speech and those who believe in free speech but….). Assuming Google is the publisher of this list (is it?) then does it have a liability if I defame one of you in a posting of mine - in addition to any liability I may have personally? What would be the implications of a favourable judgement in Voller for populist outbursts falling within the bounds of forbidden speech (hate/offence, vilification/denial, national security, defamation, #MeToo allegations, etc. etc.). As noted in my post of 25 January, the Telecommunications and Other Legislation Amendment (Assistance and Access) Bill 2018 now gives the security folks (and a few more besides) almost total control over Internet surveillance.

PS Actually, the two classes into which the world is divided are: those who divide the world into two classes and those who don't.

2019, March 20: Did the shooter make a record?

Is the tape made by the shooter in the Christchurch atrocity a record? Is it evidence? And should it be available for us to make a judgement? There is a consensus emerging that it should be suppressed. Media Watch had a lot to say on Monday night. This is a consensus about granting or withholding access to recorded information. This is a consensus being formulated in our back yard. An article by Denis Muller in *The Conversation* sums up four commonly expressed arguments for suppression. Muller is focused on publication and distribution, but I want to extend his argument onto our turf – onto access – and see what happens. And bear in mind that the only access the vast majority of people are ever likely to get is through publication and distribution.

1. **The footage was "supplied by the terrorist … and was obviously designed for propaganda purposes".** Does it matter that the footage was made by the gunman? Would it be any more acceptable if it had been made by someone else, a victim maybe (cf. the Paris attack where footage was made by someone else)? Is the purpose of the records-maker relevant to its subsequent use? Should we suppress *Triumph of the Will* because it was made by Nazis for a propaganda purpose?
2. **The footage is "obscenely voyeuristic and … grossly violated standards of public decency".** Definitely arguable as a ground for restricting or even forbidding news publication or distribution on social media (I have different views on censorship to Muller but I'm an extremist on that subject, not mainstream, so I don't expect my views to prevail). But that's not the professional concern. Our question must be what becomes of the record, will it be usable by anyone, and (if so) in what circumstances and under what conditions? It's worth noting that nearly all the virtuous commentary is from people who have watched the material and who are telling us what we should think about it.

3. We don't need to see the evidence for ourselves. "A voice-over drawing attention to the fact that the terrorist was … promoting white supremacy was all that was needed …" Really? How do we know that? Because Muller (who presumably has seen it) tells us so. But if our understanding of what we are facing in an increasingly terrifying world derives from others who have seen the evidence telling us what it means how could we really know? If that is how evidence is to be interpreted for us, what is to prevent others who have seen the footage reaching different conclusions about what it means and telling us to believe that? What is to prevent warriors in the culture wars putting whatever spin they please on evidence we are unable to see? The preservation of the evidence and the ability to see it and judge for ourselves can't be replaced by mere interpretation. It's true that most of the history we know is interpretation. We can't examine the sources ourselves (most of us), but interpreters must cite their sources and they must be sources we can examine if we want to.

4. The footage "handed the terrorist a propaganda victory. It is enough to know that the manifesto suggests the terrorist was radicalised during his travels in Europe and seemed determined to take revenge for atrocities committed there by Islamist terrorists. Publishing his words of hate was not necessary to an understanding of that". That may be Muller's conclusion and he wants us to be satisfied with that, but how can we be? He wants us to accept his interpretation of events and to be denied access to the evidence he has used to reach it. There is controversy around what the attack means, how it fits into the battles raging between right and left, populism and elitism, islamophobia and terrorism, free speech and offence/vilification. These are important issues for anyone who thinks. Preservation and availability of evidence are important issues for us (whether we think or not). Denying people the opportunity to see material evidence (especially by those who privilege themselves to see what they would deny to others) is the obscenity here. Even if the material itself is made unavailable to the haters, its suppression will only fuel their paranoia.

And, there's a really ugly under-tone, suggesting that the material should be suppressed not just because it's vile and rewards the perpetrator but also because the weak-minded mob may be influenced in ways that the elite interpreters judge to be dangerous. *We can't trust the people not to be corrupted.* So the censorious have always said. It's indefensibly arrogant but it does lead on to another argument for suppression which is more plausible (in my view) than any of Muller's.

5. The material should be suppressed, it is argued, because it may inflame and inspire isolated nut-jobs amongst the mob who thrive in the hate-speech world from which the perpetrator comes. It's not about denying the haters their jollies, that is just an unintended benefit (if wowserism is your bent). It's about not providing the trigger for another massacre. The majority of those in hate-speech-land will not act on such triggers. It's the isolated individual or group who escalates dogma into enterprise that is the danger. So, what is the access rule when handling online archival material that may also provide such a trigger? Do we deny access to material we manage that is otherwise available on a new ground of exemption from release – *access denied on grounds of stimulation (potential to incite)*? Should online archival access be made subject to the same suppressions that some are now arguing must apply to publication and distribution? Or should we just destroy it?

This harks back to the "Toxic Assets" thread a while ago. Some will say I am trivialising a tragic incident, but I don't think so. It's not an isolated incident and we do no honour to the victims of this one by denying ourselves and others every scrap of knowledge that may help us understand what happened to them and what is happening to us.

<<Elizabeth: The Chief Censor in NZ has classified the video as objectionable, "The footage, examined under the *Films, Videos & Publications Classification Act 1993*, is deemed objectionable because of its depiction and promotion of extreme violence and terrorism." The use of the noun 'promotion' does appear to fit within your point 5...>>

2019, March 22: <<Gene Metzack: I think this question ties in with some of the conversations that Michaela Hart and Nicola Laurent have been creating lately about trauma in archives, and the support

systems that are necessary to put in place, both for the people who are accessing traumatic records , and for the archivists working with them. I think one thing that the Muller article misses is the effect that this video in particular could have on already vulnerable and traumatised groups … This is where the difference between publication and recordkeeping comes in. In an archive, the video would be described, there would be context provided giving warnings about what the video showed, and that it would be distressing to watch. Even without making any decisions regarding access controls, this man could have made an informed decision about whether to watch the video, instead of just clicking on a link with no context.>> Yes. That would be for us to argue that we have taken reasonable steps when releasing or facilitating use of open access material to persons who might be distressed by it - that we offer warnings and they can decide not to watch/use it. The onus is on them provided we include the warnings (absolved of responsibility like tobacco manufacturers so long as health warnings are on the packet). But increasingly, our material is being made available online, just a click away from the user's screen and with no guarantee that our contextual warnings wouldn't be by-passed in some google-like search that pays no attention whatsoever to our carefully constructed finding aids. We would have to embed into the content itself some kind of flashing warning signal that would need to be acknowledged before the user was allowed to proceed.

<< even to know that the video is seen as an acceptable video to be made available to the public, would, in that context, just send [a] message >> Aye, there's the rub. People who are distressed not only by seeing it themselves but also by the idea of anyone else watching it, regardless of whether they can be characterised as "vulnerable and traumatised" may have many reasons for wanting to control the use of it by others. In my experience, this is not an uncommon reaction to distressing content. Communities who have experienced atrocities (or, even think they've been mistreated or abused in some way) are seldom of one mind about how the evidence is treated. Some would like it buried. Others want it promoted in a search for justice. Some want it on the record, some don't. Some want it quarantined for "approved" use. Others want to control the evidence as a way of shaping the memory. And the list of the motivations of the distressed is even longer. The responses to real distress (in my experience) are more likely to be fragmented than the faux outrage that brings ideologues together in one world view under the umbrella of identity politics. The ideologue has passion but no feeling whereas the truly "vulnerable and traumatised" are more likely to be genuinely ambivalent. I think this conflicted response over who can see it and how it is made available goes way beyond the question of personal distress. Different kind of distress maybe, but a much thornier issue. For us particularly.

Just two years ago, a Canadian court had to decide whether documents containing evidence provided by survivors of child abuse given under promises of confidentiality could be retained for archival purposes. Different issues but an indicator of some of the passions that are aroused by toxic records. The Canadian Court argued that -

> … disclosure of the documents could be "devastating to claimants, witnesses, and families. Further, disclosure could result in deep discord within the communities whose histories are intertwined with that of the residential schools system." … a lawyer representing the independent body that administered the assessment of compensation claims, told Fine of the *Globe and Mail* that … "[I]t is for the survivors … to control the fate of their extraordinarily sensitive and private stories … These highly personal documents will be kept for the next 15 years. If survivors do not opt to preserve their accounts during that time, the records will be destroyed.

<<Gene Metzack: Thanks for your nuanced response Chris, lots to think about. You're right, that community members and subjects of records don't all have uniform responses to what should happen with records. I guess this is part of what I was trying to grope towards: that as archivists and recordkeepers we have a responsibility to engage with the subjects of records and consider their rights and wishes with regards to their information…The opinions of those I've spoken to or read about happen to have been very strongly against making the video public, but I acknowledge that I've only encountered a small sample, and not those most closely affected, so, as you say, there may well be a diversity of opinions among those groups.>>

2019, March 25: Every scrap of knowledge

<<Michael Piggott: ... I am generalising, but in Australia, state and national libraries have traditionally preserved the minutes files and papers of the Liberals, Country Party and the Australian Labour Party, and one or two libraries have added the Australian Greens … Uncoordinated and opportunistic about covers it … I'd like to think … there was conscious national cooperation to cover such an important topic, but I'm not holding my breath. An ephemera librarian recently told me of efforts just to collect samples of a far-right group's leaflets and flyers. The response was suspicion and aggression. It's not easy, but it is important ...>> I think a case could be made for prioritising fringe groups over the mainstream. How much more insight, apart from the titillating bits, will we get from the records of the Liberals, Country Party, or ALP? How much more revealing would insight into Australia's dark political and social under-belly be? I'm sure there have been debates in the literature (which I can no longer recover since I've packed up my professional library) about the relative merits of appraisal preferencing the exceptional over the routine or at least giving it more weight:

> The archivist therein is especially attentive to those ''hot spots'' where the citizen objects to, or suggests variations from, the official narrative of the state (the structures). It is at these points that the best documentary evidence of ''society'' will be found. Terry Cook, "Macroappraisal in theory and practice" *Archival Science* (2005), 5:101-161, p.133

Off-topic but not unrelated, my direct experience of this was in PROV when we issued the (first-in-Australia) General Schedule for Municipal Records. We got a ferocious response from historians to a destruction sentence for health inspection records. This was before governments started dis-establishing this function and the rats came back. The historians were thinking about the early years when the records held invaluable data on social conditions especially in Melbourne and other urban communities – records they had all used extensively (hence the outrage). Our appraisal was based on more recent records. We were talking at cross-purposes because we were talking about different records (even though they were, administratively speaking, identical). The early records documented a regime set up to stamp out widespread and horrendous public health failures; that's what made them valuable. But all those records were now gone or in PROV. Once the programme had succeeded, the records became boring accounts of minor variations from a generally healthy and safe environment. The new records of these minor variations, unlike the ones before, said nothing about the state of public health. Any egregious breach would be fully reported in the Council minutes and associated papers. So, the appraisal values changed when the records went from exceptional to routine. The solution: put in a time bar for health inspectors' reports prior to ……

2019, April 8: Do we have the right to be kept ignorant?

What is the distinction between suppression of debate and suppression of the facts? Dystopian assertions about the dangers of unfettered Internet discourse invoke distinctions between *facts* and *argument*, or even more absurdly between *free speech* and *hate speech* (pace Sen. Wong). Now an article in the SMH says that, although facts haven't exactly been suppressed, they are being deliberately obscured for the public's own good. This same issue underlies Snowden/Wikileaks vs the National Security. When is it good for the public not to know? Who decides? And on what basis?

> … a fungus called *Candida auris*, preys on people with weakened immune systems, and it is quietly spreading across the globe … *C. auris* is so tenacious, in part, because it is impervious to major antifungal medications, making it a new example of one of the world's most intractable health threats: the rise of drug-resistant infections ... Antibiotics and antifungals are essential to combat infections in people, but antibiotics are also used widely to prevent disease in farm animals, and antifungals are also applied to prevent agricultural plants from rotting ... Yet as the problem grows, it is little understood by the public – in part because the very existence of resistant infections is often cloaked in secrecy ... In late 2015, Dr Johanna Rhodes, an infectious disease expert at Imperial College London, got a panicked call from the Royal Brompton Hospital outside London. *C. auris* had taken root there months earlier, and the hospital couldn't clear it ... It was spreading, but word of it was not. The hospital … alerted the British government and told infected patients, but made no public announcement. This hushed panic is playing out in hospitals around the world. Individual institutions and national, state and local governments have been reluctant to publicise outbreaks of resistant infections, arguing there is no point in scaring patients – or

> prospective ones … Health officials say that disclosing outbreaks frightens patients about a situation they can do nothing about … "It's hard enough with these organisms for health care providers to wrap their heads around it," said Dr Anna Yaffee, a former CDC outbreak investigator. "It's really impossible to message to the public." … On June 24, 2016, the CDC blasted a nationwide warning and set up an email address, candid...@cdc.gov, to field queries. Dr Snigdha Vallabhaneni, a key member of the fungal team, expected to get a trickle –"maybe a message every month." Instead, within weeks, her inbox exploded. **The New York Times**

2019, May 1: Paying for digital access

Time was, urban dwellers had their morning newspaper delivered to the front door and, in the evening, bought one of two or more “rags” to read on the way home from work. Quality journalism (always at risk) was in the hands of a cadre of professional reporters and editors and at the mercy of newspaper proprietors. News reporting on radio and subsequently on TV broadened, rather than threatened, our sources of information. When the Internet exploded the sources of news it seemed (at first) that we had good things in abundance. The “traditional” channels also went online in addition to their print and broadcast outlets and a whole lot of new players joined in who didn’t have the burden of infrastructure and who could specialise their focus. But the traditional channels have struggled. An article on the scoop.co.nz site chronicles the retreat of online news behind the dreaded paywall. A table illustrates the astronomical cost that you and I would bear if we paid for our news from more than a few sources:

Annual paywall prices in Australia and New Zealand

Title	Price in NZ$
NZ Herald (premium)	$199
Newsroom Pro (premium)	$348
The National Business Review	$420
The Sydney Morning Herald & The Age (premium)	$294
The Australian (premium)	$253
The Australian Financial Review	$374
The New York Times (normal)	$271
The Telegraph	$278

The same pressures forcing this change (with the result that sources are diminishing now rather than expanding) are forcing widespread sackings of journalists and a decline in the quality of professional reporting – hence and impoverishment of the quality of news. No, I don’t believe the proliferation on non-traditional sources raises the quality of news, but I don’t expect everyone to agree. I don’t pay for news, so increasingly I’m being forced to go to non-traditional sites. And I bet lots of others are too. As our sources of news change, there is fertile ground for looking at that old perennial – who do I trust?

But this List is about records, not news.

Access to Government Information

Time was FOIA was supposed to guarantee free (almost free) access to almost everything. Those days are gone. We have seen that right dwindle under the assault of restrictions, appeals, delay, and pricing that puts access to anything other information about oneself out of reach for most of us. The only ones who can use it are journalists backed by media outlets and those are the users of FOIA who are most under attack. Nowadays, the media operate in an echo chamber – instead of editorial rigour and fact-checking they just mostly repeat each other’s stories and use generic service reports. Meanwhile, Governments spin and distort and mislead – replacing raw information with blended concoctions meant to predigest information in ways that serve political ends. Bottom line: absent the diminishing number

of professional reporters to honestly interpret and fearlessly challenge the information being shovelled out, we rely on the proliferation of "non-traditional" sources who aren't that rigorous and aren't that trustworthy. The problem is not that there aren't honest folk amongst them, the problem is that many of them have agendas and there's no easy way to separate the rogues from those who are Valiant for Truth.

Access to Government Records

Now, transpose all this into our world, the world of records and access to them. So far, our archival programmes make access available both on site and on line free. But for how much longer will access to digitised records remain in the hands of the archival institutions who still seem to be focussed on custody as the basis for archival access!. How long will it be before governments avail themselves of a business model that puts a paywall between records not in archives and public use of them? How much longer after that will paywalls for archival institutions be on the agenda? Increasingly public benefit is confronting user-pays in the world of digital access. Will we be immune? The dam will not (I suspect) be broached by the naked introduction of pay walls on the sites of government archives, but I wouldn't be surprised if developments in the library world and in non-government sites and non-traditional channels for accessing records called our commitment to free access into question. And then, just as happens now in the world of news, the role of third-parties re-using the records (or data derived therefrom) either for altruistic or nefarious purposes will come into play. Already the development of third-party re-use raises issues that we haven't even begun to deal with about the authenticity of information derived from records and then made available online (in whole, in part, or re-contextualised) by someone else.

2020, February 25: You can't see that!

The fund of ridiculous reasons for denying us access to information appears to be inexhaustible – royal embarrassment, glorification of racism, being found in Bin Laden's luggage – and now exciting fire-bugs.

> The South Australian Government has been ordered to reveal documents about the fire risk posed by cladding on the Adelaide Convention Centre, with the state's independent umpire rejecting arguments that the release of the information could put the public building at risk of attack ...
> Attorney-General Vickie Chapman made an unusual intervention in the process, arguing they contained content that would lead to a "heightened risk of attacks" and have a "significant impact on the safety of the public, the buildings themselves, and the state's economy". But the South Australian Ombudsman Wayne Lines rejected her argument, ordering documents including board reports, minutes and emails be turned over. "The safety of the public is more likely to be assisted by release of information … secrecy is not the only option available to the Government to ensure the safety of those who use the Adelaide Convention Centre." … The convention centre is believed by authorities to be clad in the worst type of flammable aluminium panels, known as "black core".
> … In a statement, an SA Government spokesperson maintained the position that disclosing information posed a risk. "There is a risk that persons with criminal or politically motivated intent, could potentially use this information to deliberately target these buildings with the intent to start fires," the spokesperson said.

2020, May 30: To encourage the others

While devotees of open-ness celebrate court-led release of information about an old scandal [Palace Letters], they should note how they are being used to suppress the truth about a much more recent one.

> On Wednesday, in Canberra's labyrinthine new court complex, a procession of remarkable power made its way past the guards stationed outside Bernard Collaery's hearing … Collaery stands accused of sharing protected intelligence information by helping his client, the former spy Witness K, expose Australia's bugging of Timor-Leste government offices in 2004, while the two allies were negotiating to carve up lucrative oil and gas reserves in the Timor Sea …
>
> Anthony Whealy, a former judge who has presided over NSW's highest courts, has followed the case closely through its various twists and turns … The hearing is designed, largely, to work out what evidence

> can be heard publicly ... The commonwealth has intervened in the matter by invoking powers in the National Security Information Act, which strictly govern how sensitive information is handled by the courts.
>
> … as the Collaery case was heard on Wednesday, the same powers were being used to prevent the public airing of evidence in a defamation case brought by special forces veteran Ben Roberts-Smith, which is canvassing disputed allegations of war crimes by Australian troops in Afghanistan. Two years earlier, the commonwealth powers were used to prosecute and jail a former military intelligence officer, Witness J …
>
> The powers are designed to stop sensitive information finding its way into the wrong hands. The identities of intelligence officers, for example, or information about military tactics and capabilities… Whealy [says] "In the Collaery case, the commonwealth has adopted a neither-confirm-nor-deny approach," he said. "This means that for the purpose of arguing about national security they will neither confirm or deny the bugging has taken place, even though at the same time they are alleging that Collaery wrongly communicated information about the bugging." … The chief executive of Transparency International Australia, Serena Lillywhite, says the NSI Act is one element of what she sees as an "ever-increasing state of secrecy"…
>
> Witness K was among a number of intelligence officers involved in a mission to bug the government buildings of Timor-Leste during oil and gas treaty negotiations in 2004. The listening devices gave Australians the upper hand … Witness K became deeply uncomfortable about the operation, conducted at a time when Australian intelligence resources were needed to counter terrorist threats following the Bali bombings. He approached the intelligence watchdog and was given approval to talk to a lawyer, Collaery. Collaery later helped mount a case on Timor-Leste's behalf in the international courts.
>
> The scandal was revealed publicly, causing significant embarrassment to the Australian government. It responded by raiding Collaery's home office in Canberra, and seizing Witness K's passport, in effect preventing him from going to the Hague to give evidence … Whealy says the fact of Australia's bugging of Timor-Leste is now well known. "You could honestly say that horse has bolted now, it's been known for a long while that this happened," he said. "Even though the commonwealth won't admit it, it could hardly damage our international standing," he said …

2021, January 8: FOI heading for a "train smash"?

According to Senator Patrick –

> Australia's freedom of information system is heading for a "train smash" within two years because the office that reviews government decisions to withhold or redact information will soon be swamped by a massive workload, the independent senator Rex Patrick has warned. The FOI system, a crucial limb of government accountability, relies heavily on the Office of the Australian Information Commissioner, an independent umpire that reviews government decisions and hears complaints. The OAIC has repeatedly warned it will struggle to meet its workload without better resourcing ...
>
> Patrick said the resulting backlog would result in a "train smash" in the FOI system ... The loss of an efficient and timely appeals mechanism would allow government departments to deny documents on spurious grounds, knowing challenges would be likely to take years, Patrick said. "The government is secretly undermining the entire FOI regime," he said. "It tacitly approves, and perhaps even encourages, officials taking a cavalier approach to denying access to information, which then overloads an underfunded information commissioner." … The senator said the overloading of the regulator was part of a broader trend toward secrecy in Australia.
>
> "We've got a government that has expanded cabinet to broaden secrecy claims over all significant decisions, ignored the funding needs of the auditor general, reducing his performance audit capacity from 48 per annum to under 40, feigned interest in a real Icac and used the AFP to intimidate the media in its oversight role," he said ...

In the late 1970s, the A-Gs official responsible for piloting *FOIA* was Lindsay Curtis. Because *FOIA* was at that time cognate with our *Archives Bill,* I got to know him a bit. I remember some titanic struggles on an IDC (Inter-Departmental Committee) between him and Peter Scott. It is common civil service parlance, when you're calling someone else an idiot, to say "With respect …" I once witnessed an

exchange between them that went from there to "With great respect …" and then "With the greatest respect …" and finally "With the very greatest respect …"

Lindsay was an unusual combination of the hard-bitten and the idealistic. He always said (and I think truly believed) that *FOIA* had to be transformative or it wasn't worth the effort. If a new spirit of openness did not accompany its operation, no amount of legalistic drafting and no amount of ritualistic, technical apparatus (regardless of funding) would amount to very much. We've known for years that the system was degrading, or being degraded, and I think Lindsay would have said that the reason for that is not a want of resources (deplorable though that is) but a want of will.

2021, January 15:

> … The Australian Conservation Foundation audited FOI outcomes for environment-related information over five years, and found the system is increasingly opaque, slow and costly. The audit's preliminary findings … show that refusal rates had more than doubled from 12 to 25%, while the proportion of requests that were more than a month overdue stood at 60%. Costs for environment-related FOIs was double the average, and lengthy review processes were being used as "a key tool for denying access to information".
>
> The full ACF report, released on Friday, described the system as "dysfunctional" and called for targeted investigations by the information commissioner of the "negative trends in the outcome of requests for environmental information". The watchdog's investigation should, at the very least, examine the actions of ministers and the prime minister's office, the ACF said. The information commissioner has such powers, the report noted, yet had only used them twice between 2018 and 2020.
>
> …The ACF also called for a parliamentary inquiry into transparency laws in Australia, examining the changing nature of information, WhatsApp and phone use, the suitability of compliance options, and FOI training. As part of its research, the ACF analysed the use of exemptions to withhold FOI documents in part or in full, finding that their use had roughly doubled from 306 in 2015–16 to 593 last financial year...The use of the cabinet deliberations exemption has more than quadrupled in five years, from five cases in 2015–16 to 26 last financial year. The use of the "personal privacy" exemption has also increased from 66 cases in 2015–16 to 164 last financial year. The report also warned of the "aggressive" use of exemptions to withhold entire documents, instead of simply using smaller redactions to hide small portions of information…

2021, March 23: FOI and Privacy

It will surprise no one to learn that I have, for many months, been in dispute with a Commonwealth Government agency. I won't bore you with the details or the name of the agency. You'll have to take it from me that their incompetence borders on the heroic.

What is revealing is how they have used PRIVACY as a cloak for their incompetence and (now they have finally succumbed) as an excuse for it. The use of PRIVACY in this way is something we have become used to in dealings with FOIA requests. So, has the concept of FOI privacy been "expanded and distorted" to thwart public interest journalism or is FOIA used unscrupulously by the media to violate privacy in search of a sensational story?

Even more difficult to deal with is the pursuit of information for the purpose of harassment. The purpose for which information is sought is supposed to be irrelevant. But when it's weaponised????

REPORTING BACK FROM THE CONFERENCES

Washington DC (2018), Glasgow Scotland (2018), Perth Australia (2018), Adelaide Australia (2019)

2018, Aug 17: From Washington DC Technical debt; description; forgotten prophet; post-truth

2018, Aug 31: From Glasgow SCO Community archiving & outreach; systems & skills

2018, Sep 27: Perth 2018 Directory, Ubiquity, and Wikipedia

2018, Sep 29: Perth 2018 Description Quo Vadis? Part 1 How stands the glass around?

https://groups.google.com/forum/#!forum/archives-and-records-australia

2018, Sep 30: Perth 2018 Description Quo Vadis? Part 2 Why relationships matter

2018, Oct 1: Perth 2018 Description Quo Vadis? Part 3 Whither RiC? Whither Series System?

2018, Oct 2: Perth 2018 Description Quo Vadis? Part 4 What really matters (see Battle for Memory)

2018, Oct 3: Perth 2018 Description Quo Vadis? Part 5 (final) Where to from here?

2019, Oct 23: Adelaide 2019 – GOVSIG Metrics for digital (digitized) assets

2019, Oct 26: Adelaide 2019 – Session 4.3 AtoM Update and reflections

2019, Oct 26: Adelaide 2019 – Session 1.2 The descriptive tradition Change and equilibrium

2018, August 17: From Washington DC

… where I am attending the SAA Conference.

Technical Debt

> **Technical debt** (also known as **design debt**[1] or **code debt**) is a concept in software development that reflects the implied cost of additional rework caused by choosing an easy solution now instead of using a better approach that would take longer.[2] Technical debt can be compared to monetary debt.[3] If technical debt is not repaid, it can accumulate 'interest', making it harder to implement changes later on. Unaddressed technical debt increases software entropy. *Wikipedia*

Attended a panel session where a group of young archivists (well, they seemed young to me) explored how this concept, applied to quick-and-dirty methods, migration of digital assets and poor preservation, can be used in cost/benefit analysis, prioritization of work programmes, and in speaking to management (it is a concept they understand apparently). It enables you to identify a present cost of taking short-cuts by identifying future requirements (difficult to quantify but real all the same). Particularly useful, I imagine, when dealing with the we'll-worry-about-it-tomorrow argument. Also, when handling legacy problems, you can use the concept to balance a once-only work-around solution against a one that also takes care of future possibilities. A good session and one which I hope will be of value in my own work.

An idea whose time has come?

Attending the description sessions hasn't been the depressing experience I expected. They are making good progress in adapting the relational model (applied to three entity-types) to their descriptive ideas – cf. draft DACS Principle 4. They seem to think of it as three-entity model (with relationships). Dear me. They think it is an innovative concept developed by RiC. I decided that arguing the provenance of the idea would be counter-productive. So I bit my tongue. Sigh.

The existing Principle Four repeats the frightful multi-level rule

> an archival description may consist of a multilevel structure that begins with a description of the whole and proceeds through increasingly more detailed descriptions of the parts, or it may consist only of a description of the whole.

But the new draft says

> Archivists expose contextual significance by describing records, agents, events, and the relationships between them.

Yay! They're still very collection focused and vestiges of ISDIAH remain. But green shoots are appearing in the manure. There is comfort with de-accessioning. And even talk of documenting the archivist's work as part of the descriptive endeavour. Yay again!

The only earthly certainty is oblivion (Mark Twain)

Chatted over lunch with some v. young, bright, enthusiastic graduates – brimming with hope and ideas but (typical of their generation) tinged with hard edged realism and scepticism. Not yet soured though, like me. In discussion, it astonished me that they were wholly ignorant of the name and the work of David Bearman – until I remembered he is a prophet not honoured in his own country. I expounded a little and (being bright) they were intrigued, slightly appalled their teachers hadn't mentioned him, took notes, and said they'd be looking him up. A good day's work.

GLAM and the Search for Truth

The last session I attended was a panel – mostly about obstacles to GLAM-orous co-operation (routine stuff: funding, prioritization, professional differences, etc.). My worry remains that we'll be asked to surrender our speciality in pursuit of common ground. Sure enough, the archivist suggested we may have to relax descriptive standards in order to get along. He was an EAD guy, so perhaps his grasp of descriptive principles wasn't that secure to start with.

The best presentation was from the museum guy (Robert Stein). His argument was that the prior problem we face is public mistrust of information providers (including us) – the fake news, climate denying, flat earth, alien abduction, birther, antivax conspiracy theorists trust nothing and get their ideas from obscure Internet pages. Everyone else is confused by the noise. He argued that more than ever we can't take trust in our institutions for granted and that we need to work at restoring it for the resources we manage before useful co-operation can occur. I agree. I asked him afterwards if he thought this should be done globally (in the abstract) or granularly case by case. He thought this was a good question. So did I. I don't think it can be done in the abstract – that is beyond our power and our remit. But authenticity, reliability, accuracy are in our DNA, they are our core values, ones we share with curators and librarians. We can all make common cause presenting a shared persona as truth-tellers, insisting that accuracy matters and that we strive for it.

Michael Piggott has a great story about Bob Hawke and the reflecting pool at University House, Canberra. It's his story and I'll let him tell it. My example is James Thurber's *The Night the Dam Broke*. It tells how, one night, panic overtook the small town in which he grew up when a cry of alarm was raised that the dam had broken. People rushed from their beds and ran for the hills. But it was the Mid-West and there were no hills. If the dam had burst (it hadn't) the water would have risen only one inch. But in their panic people didn't stop to think about it. Michael's story also involves measuring the depth of the water.

My take out is this: GLAM can work collectively and aggressively to assert our shared credentials as truth tellers. When people are panicking, we need to be there for them, carrying rulers in our back pockets. PS. I'm not, of course, suggesting that our truths are settled and immutable. A professionally inspired process of revision is one of the things that makes them trust-worthy. Other sessions explored re-description and the exposure of flawed archival narratives.

2018, August 31: From Glasgow SCO

… at the ARA Conference which has many sessions focused on community archiving, outreach directed towards marginalized communities, and re-imagining archival methods accordingly.

Community Archives

The emphasis is on archives dealing with communities and organized by the communities themselves. There was a great panel session presented by –

- Jack Latimer (Community Sites) who interprets and adapts archival methods for community archives initiatives; showcasing the Yorkshire Dales History Project in a well-established part of England with long-lived local connections.
- Marion Kenny showcasing the Qisetna Project amongst the Syrian diaspora using storytelling to capture and preserve memories of the Syrian community spread around the world; something I thought might work for the Palestinians.
- Alan Butler (Plymouth LGBT Archive) outlining work that draws a formerly marginalized community together, giving a voice to older members of that community, and educating younger ones on how things were (many apparently unbelieving about what went on).

It seems that some of these endeavours are moving through a new phase. Finds in attics, garages, and sheds are becoming rarer and people no longer use letters, photos, and diaries as they once did. Increasingly the raw material is digital and this presents new challenges. In the second keynote of the

programme, which was less to my taste, Michelle Caswell made a case for what might be called weaponizing community archives.

Outreach
Another enthralling panel, with many cross-overs to community archiving, presented outreach efforts by established "collections" to reach marginalized audiences –

- Suzanne Rose and Anthony McCoubry of the Mass Observation Archive described their Out of the Box projects including work in prisons ("make sure you budget for biscuits").
- Stephanie Neild of Leonard Cheshire Disability showed how their archives are being used by the disabled and visually impaired as well as creating a wider audience for their material.
- Tamsin Bookey of the Tower Hamlets Local History Library & Archives told how they are dealing with a community that is demographically 55% black, Asian, or mixed but whose user base is 60% white and not from the borough.

There was insightful commentary on how barriers to access aren't always what archivists with comfortable middle-class backgrounds first think of (no home address, sight-impaired, can't read).

We have met the enemy, and he is us
Fascinating presentation from Jenny Bunn (UCL) entitled "Machines make records: the future of archival processing" – an ironic contribution to a conference whose theme is "People Make Records". Dense and cutting-edge argument that I couldn't take down fast enough to do justice in a posting like this. Get hold of it if you can. Instead I will put down some thoughts it provoked in me.

Bunn reminded us that at the dawn of our digital dilemmas (when some of us thought that doom was about to be visited on the r/keeping enterprise by an indifferent technology), David Bearman posed two problems:

1. We are too small to have any impact on the IT industry or to justify, in terms of financial return, any R&D into finding solutions to our particular requirements.
2. In any case, we have no clear understanding to communicate of what it is we want to achieve and how we want to achieve it.

R&D has been driven by other sectors (security, health, finance) but they are recordkeeping mammals too. Bunn points out, and I think many will agree, that the IT industry has moved on to the point that r/keeping (or something very like it) is now a generic requirement and systems capable of effectively supporting it to a large extent already exist. In other words, the IT world is close to annihilating the first of David's problems. It's not about accepting store-bought solutions, however. We still have a ways to go in articulating our special needs but a response can be much more easily incorporated into system design as it has developed – having already come a long, long way towards meeting them.

But what of the second problem? Are we any closer to a shared view of what we want and how we want to do it? The majors in Oz are deploying proprietary software but whether their articulation of our common requirements is any good (or even represents a coherent commonality amongst themselves) is a whole other question which I won't get into here. Outside of the majors, and inside them as well for that matter, my sense is that we are hardly further along than we were when David posed the second of his problems all those years ago. How ironic it will be if our inability to influence and take full advantage of what technology now has to offer arises from our own confusions. If doom does engulf us after all it would not be an uncaring technology but we ourselves who will have visited it upon us.

For smaller players, Bunn raised the question of tool kit vs systems.

From Hong Kong actually on my way home.
The last ARA session I attended was called "Let digits flourish: the skills archivists need and how to get them". I feel guilty about posting this because I said nothing. They were having a good time and I didn't want to be a wet blanket. But the real reason is that I'm old and I'm sick and tired of saying the same thing, unheeded, over and over.

It was the wrong question (out of context, anyway). Before asking what skills we need, you have to know what you need the skills for. Substitute "methods" for "skills" and it's the same issue Bearman posed thirty years ago. Many terms were used in this session to describe what we do but recordkeeping wasn't amongst them (at least, I didn't hear it). They seem to think the "theory" is OK. If they mean the theory found in the old text books, it's not. It isn't wrong, but it's not expansive enough. It was devised to support a set of skills that evolved in the pre-digital world. We need a larger theoretical understanding and the post-Bearman thinking that has been done on that is the most important professional development of my generation. That's what appalled me about the ignorance of the young graduates in Washington about David's name and work.

Should we still teach palaeography? This? That? Coding? Something besides? Recordkeeping applies the same knowledge to all formats – mediaeval mss, files and dockets, digital assets, it's all one. How to fit it into a one-year course? If it were me, I'd be designing a course that taught what it means to be a r/keeper. The skills needed to apply that knowledge into an increasingly diverse number of work situations are important and difficult to acquire in the right combination, but that's secondary. What, if anything, is a recordkeeper? Someone who understands about documented evidence of circumstance or action. Who values the importance of context (they knew about that in Glasgow). Who comprehends structure and relationships. Who discriminates on the basis of process and evaluates on the basis of integrity.

The same issue arose (sort of) in Washington about GLAM-orous co-operation. They were burbling on about how and what the obstacles are but it was the museums guy who asked why. We can be something more than r/keepers when we join with librarians and curators in a common cause as truth-tellers. At both conferences, the usual suspects stood up and attacked, with facility and insouciance, our values of objectivity (not neutrality), impartiality (not even-handedness), and accuracy (not abdication). When I hear this, I cringe: professional suicide I think. Yes, these are difficult concepts, in need of nuance and qualification, but they're the values that make us what we are. How's this for a slogan: guardians for truth. Twenty years ago, I would have said pompous over-reach. Not anymore. In a post-Trump world, it's what we need to assert about ourselves, to champion, and it's something to be proud of.

2018, September 27: From Perth 2018

Directory of Archives Project

The most depressing and muddle-headed session I attended. I questioned and received no coherent answer on what the functional requirements for this Project are. It is a cardinal error to supply answers to questions that haven't been formulated. Like putting the cart before the horse. Enthusiasm is no substitute for reflection.

Enduring Identity

It appears that entries for defunct repositories are to be deleted. That is not right. Once registered they must remain. Put dates around them and run a redacted version if you wish (but why would you want to?) but a register system endures. God forbid they start re-using the numbers. It never occurred to me to make enduring identity a requirement in the *Modest Proposal*. I just took it as read. An illustration that you can't assume **anything**. I'm not even sure if ISDIAH allows for time-bound relationships (previous/subsequent) and it would be too painful to look it up. If it does someone will tell me.

Including the Ungathered

They are using AtoM/ISDIAH and only wishing to notice "collections" or repositories. Requirement 4 calls for inclusion of the ungathered as well as the gathered. Examples of ungathered resources include land data, life data, geospacial data, statistical data, meteorological data, research data sets. They're unlikely ever to go to an archives repository. The objection to ISDIAH (in case you've forgotten) is that institutions registered under ISDIAH are, in fact, corporations that should be registered under ISAAR.

… And then some

These were the only two issues I got to raise (out of a very long list). But I had already concluded they weren't going to get to Dublin from here. There was talk of expanding its role to something like a directory of archival resources. Ye gods – revenge of the flatlanders!

Replicating the Replicants, or, do archivists dream of downloadable sheep?

This was almost a re-run of a similar session at Parramatta (under the heading of ubiquity) involving some of the same speakers. It's about "liberating" archives from structures and hierarchy and enabling enriched and more useful access via connections (relationships) that are random and unbounded. My response to the Parramatta presentation was along these lines

> It would have been possible to conclude that ubiquity, in and of itself, is an absolute good, virtuous in its own right … My response is [that] ubiquity is neither good nor bad in itself but only contingently – by reference to how it is used, what it is for, what purposes it serves, and what requirements it fulfils (or fails to fulfil) … contingency, limits, boundaries, and frameworks are virtuous in recordkeeping. It is how we include and exclude things and how we position them in relation to each other that supports (or imperils) evidence … Both approaches are based on relationships. There is potential, therefore, for congruence rather than contrast. Alongside limitless and random conjunction … defined relationships that 162ealized162162at recordkeeping (if only our descriptive practices were better employed) might thus powerfully deliver results that illuminate the character and meaning of the record. Meaning comes from a statement of what is and what is not; it comes from providing the user with information that this is important and that is not. Evidential relationships are relevant precisely because they are preferred over others, because they affirm the pertinence of one relationship over another – at source and prior to use. When all relationships have equal value, their meaning as testimony to the circumstances of their creation and use is vitiated: when everyone is some-body, then no one's any-body (W S Gilbert).

The problem with both sessions (today and two years ago) apart from the misleading impression that archival description has not abandoned hierarchy and singularity and has failed to embrace multiplicity, is that they do not contextualise themselves. Ubiquity enhances the role of the archivist as a custodian of heritage assets, but that is not the only role archivists fulfil. Making evidential records cannot be based on random and boundless associations – quite the opposite. And it is the work of the records maker that the records keeper inherits and must preserve. By a curious juxtaposition the concept of recordkeeping by design came up in the next session (13a: Thinking Machines, smart applications and recordkeeping innovations)

Ubiquity is fine within the role of archivist-as-heritage-curator but inimical to the archivist-as-recordkeeper role. There are yet more roles in the space in between – such as those that support communities and special needs (e.g. Find and Connect) where a blend of structure to support evidence and ubiquity to support discovery is required. Failure to clarify that different approaches are appropriate to different roles simply confuses things.

Keynote 4: Wikipedia loves Archives: Archives should love Wikipedia

The most enchanting session I attended – not least because it resonates so well with my *Modest Proposal* for a wiki approach to federated access. I went into this session feeling old and tired and I left (I swear to God) with a spring in my step – not because I thought Australian archivists would do something about it but because of the possibilities it disclosed.

It was all about how organised data can be incorporated into Wikidata and used not just by us but by everyone. That would include all of the higher-level structures I imagined would be needed for my wiki to provide a framework for contributions. My goodness! They may already be there. So far as I could tell, it would also accommodate the higher level contextual data from archival programmes themselves and provide protocols for resolving duplication (e.g. NAA's registration of the State of Victoria alongside PROV's registration of same).

With this resource available, how can archives programmes with budgetary restraints justify systems of their own to support such data? They would, of course, still have to maintain and update the data itself

but they wouldn't have to maintain the systems. (If you look up the Wikipedia entries for kingdoms, principalities, countries, and political offices you will find an entity/relationship approach which accommodates ours). For that matter why isn't SNAC in Wikidata? I managed to ask a question verifying that externally maintained taxonomies of the kind I proposed we would need to make use of, such as the ABS work classifications, could also be incorporated into WikiData.

And, of course, it would be ideal for hosting the upgraded *Directory*. With the advantage, supposinglad can bring itself to concede the requirements set out in the *Modest Proposal*, that programmes for both gathered and the ungathered records could be accommodated without any further nonsense derived from AtoM/ISDIAH and the GLAM-orous flatlander wheeze. **<<Lise Summers: … I'm glad you enjoyed the Wikemedia presentation, and hope that you will get a chance to engage with Wikimedia Australia or other wikimedians to look at what can and cannot not be done.>>**

2019, March 6: "… Wikipedia/Wikimedia in Australia in 2019" on Archives Live

I attended the Wiki-World session in Sydney last Monday. Lots of stimulating stuff and lots of unanswered questions. The three presentations are now viewable via Archives Live:

- Pru Mitchell – overview
- Tony Naar – Wikipedia and the Australian Paralympic History Project
- Toby Hudson – Using Wikidata for Chemistry, Education, Australia, and #FakeNews

Two lines of thought suggested themselves to me.

Using Wikipedia to do the job for us in the management of our content

- The Directory Project. Why not use Wikipedia as our platform the way the Tony Naar describes? The good news is that they know about persistent identifiers the way some archivists seem to struggle with. Many of our archival programmes are already there – e.g. NAA, State Records NSW, AWM, Geelong, etc. etc. and Wikipedia already contains lists of archives in the UK and in Canada.
- The Modest Proposal etc. I've already suggested a wiki approach to establishing a contextual gateway to resources across institutional boundaries. Most of the content needed to populate such a project would already be readily available – buried in the host systems and easily extracted. The main problem would a protocol for keeping it up to date. And volunteers (I'd volunteer for it in my retirement in a flash). PS Wikipedia loves digitised content.

Using Wikidata in the management of our data – e.g. for online "finding aids"

Wikidata holds data sets and uses techniques such as linked data to extract value as described by Toby Hudson. Most archival "finding aids" produce reports and lists (very 20th century) and these are, in effect, data sets. We are also using generic search-and-display protocols borrowed from libraries, et al. to respond to user queries. But what if we think outside the box for a moment and approach it from an enabler point of view? I suggested in an earlier post that access enablers may be the future model for reference archivists. Our structured search fields (place, name, topic, etc.) are all taxonomically controlled elements that could be linked to data set(s) to establish patterns that are effectively search results (I think – I'm very new to this). That would result in a completely different experience for the user than simply display-narrow-filter and one in which he/she would be more in control (I think – I'm very new to this). Global searching would present different challenges, but I'd like to hear from someone who is more across data sets and linked data to shoot this idea down. PS This idea does not preclude the development of archival systems; it is about use, reuse, and deployment of the data we manage BUT for those archival programmes that struggle with developing and funding archival systems their descriptive data at item and series level (generated in simple database or spreadsheet formats) could be exported as data sets and Wikidata used as their front-end (?maybe).

<<Lise Summers: …I have long thought that Wikidata might be a useful tool for small archives, which is why we had the Wikiworkshop and presentation at the 2018 conference. Wikisource and Wikicommons may also provide ways of making content available.There is a wikipedia and libraries facebook page - Wikipedia + Libraries. (Maybe we need a group for Wikimedia+Archives ?>>

2019, March 7: Count me in.

2019, July 3: Wikidata for archivists

Some months ago, both Lisa Summers and I speculated on this list about the potential of Wikidata for Archivists – especially the littlies and barefoot archivists. Developing SNAC–like shared contextual data is one possibility. Well, now there is a group for just that very thing

2018, September 29: Perth 2018 Description Quo Vadis? Part 1

Quo vadis? Can be rendered, inter alia, as "whither are we drifting?" or "and where are you off to?" This will be the first of a series of posts about it over the next week or so, deriving from sessions set up at the Perth Conference and at the Melbourne Conference a year ago – in particular from three sessions:

a) At Melbourne, a workshop that attempted to launch a collective approach by "small" archives to shaping AtoM into a series-friendly adaptation;
b) At Perth, a demonstration of Morty (Session 13b) purporting to be a proof-of-concept implementation of the Records-in-Context (RiC) conceptual model;
c) Also at Perth, a presentation (Session 17) by a panel of consultants of approaches at differing levels of conceptual and technical complexity and cost that might be used by "small" archives (but no reason why it couldn't be used regardless of size) to develop series-friendly projects.

To begin, I shall try to lay the groundwork for what is to follow.

Background

What are the features of the descriptive landscape (for the moment, in a fast-moving world)?

a) *Describing Archives in Context (DAIC)*: in the absence of anything else, it is believed by some to be an authoritative statement of Australian theory and practice. It emphasises (wrongly) that "separation" of agencies and series is the defining characteristic but contains (muted) reference to the true essence of our approach – viz. entity/relationships.
b) *ISAD Suite (ISAD+)*: the four currently approved international descriptive standards that incorporate the hierarchical multi-level rule although the implications of that have been softened and have become almost irrelevant through successive editions that have incorporated more series-friendly adaptations. Comprising ISAD(G); ISAAR (CPF); ISDF; and ISDIAH.
c) Software: e.g. *AtoM* developed by Artefactual and purporting to implement the ISAD+ Suite but very forgiving of breaches of the ISAD+ rules. Other Software, such as *ArchivesSpace*, etc. Some of these provide a measure of digital asset control but other dedicated software – e.g. *Preservica*, *Archivematica*, *MirrorWeb*, etc. – exist that may be integrated with descriptive software.
d) *Records-in-Contexts (RiC):* a purported normalisation of the four ISAD+ standards that has become something else altogether and could be the basis for a revolution in international descriptive thinking by replacing multi-level description with entity/relationship approaches.
e) Local Standards in Other Countries: e.g *US-DACS* which is currently being redrafted to abandon multi-level description in favour of an entity-relationship approach recommended by RiC (to say nothing of Australians who have advocated this approach over the last 50 years – and, believe me, they do say nothing; it's like we have been living on a different planet). Hold your breath – establishing this idea in North America would be a game changer.
f) *Morty*: a proof-of-concept implementation project revealed in Perth, the "concept" purporting to be RiC.
g) Emergence of ancillary descriptive support tools that can be used to enhance our endeavours (e.g. *SNAC* ; *ADB*; and *Wikidata*) and of federated access platforms (such as *Europeana*) that could be emulated here – some will think of *TROVE* in this regard but that is problematic for us in ways so complex that discussion needs to be held over. The rest of the archival world is getting a lot better than we are in deploying the results of description in imaginative and useful ways – honourable mention though for *AWM*.

Above all, as I alluded to in one my posts from Glasgow, the ground is moving beneath our feet. Just as it is no longer possible to think about stand-alone EDRM systems, it is no longer possible to think in terms of stand-alone descriptive systems. Description must be integrated conceptually and, so far as practicable, architecturally with the whole archival/r-keeping process (viva, Ian Maclean!). Even small archives that cannot do so in practical terms should learn to think conceptually of descriptive systems as merely one component of their architecture.

Disclaimer: Where Do I Stand?

My "friend" Barbara Reed stated in the Morty Session that I am an opponent of RiC. This is untrue. I am used to being misunderstood and misrepresented (poor me!) but, if portraying me thus can assist Barbara in whatever it is she is trying to do, I am happy to help in the role of a straw man and as a stock figure of the unworldly theoretician out of touch with "practical" matters. But for the record and for the purposes of the postings to follow I should give a more accurate account of my own bias:

a) Conceptually, I stand by my understanding of the so-called Series System.
b) That is no longer the same as the articulation given to it by Peter Scott, although it is true (I believe) to the underlying concepts deriving from his work and that of Ian Maclean.
c) I think I am not alone in this role as a *continuator* of "series" thinking, but I would not claim that others of that ilk are in agreement with me or with each other.
d) No archives in Australia (including NAA) still practices the "Series System" as articulated by Peter. There is no uniformity in Australian descriptive thinking or practice that can be embodied in any single implementation or proof-of-concept. Worse, there is no proper understanding or acknowledgement that this is the case.
e) I believe RiC is a great break-through but I am wary of becoming over-enthusiastic about the prospects of its being adopted internationally. We must wait and see. Its impact is equally uncertain: what effect would the replacement of ISAD+ by RiC have on AtoM which is ISAD+ compliant, for example? Will archives around the world reconfigure their data to comply with standards based on a new conceptual model? How about a proof-of-concept that such transitions can be facilitated? If posing difficult questions be opposition, so be it.
f) No software package can (alone) provide any archives with what is needed. Descriptive software can only ever be part of the design solution underlying archival processes. Accessioning, processing, repository control, preservation, lending/issue, and (lord-a-mercy) the whole of r/keeping back out into creation-space, through the processes of migration, normalisation, replication, rendition, and digitisation, and then forward into secondary-user-space (including rights management and redaction) must now be aligned.
g) I agree, therefore, with Piers Higgs in the Consultants' Session that there is no magic bullet and that a variety of "solutions" (scaled up or scaled down depending on circumstance) rather than a single implementation model is likely needed – utilising a smorgasbord of software offerings and approaches to implementation design.

Just to underscore the point that AtoM is "very forgiving of breaches of the ISAD+ rules" here, for those not on the AtoM Listserv, is a response to a recent question from the Artefactual guru Dan Gillean:

> AtoM is purposefully designed to be very flexible and permissive, to allow for infinite customization and different uses depending on local conventions. I have seen users create collections that include fonds-level descriptions below them; I've seen users use repository records as collection-level records; Australians use the series as their top-level; and we have to account for users creating new custom level such as sub-sub-sub-fonds. Because we can't predict how users might want to implement AtoM based on their local conventions or how they might customize the levels of description, we don't organize the levels of description in any hierarchical manner that would restrict users from adding lower levels however they choose.

2018, September 30: Perth 2018 Description Quo Vadis? Part 2

Why Relationships Matter

The original impetus for *ISAD(G)* was to standardise archival descriptions to facilitate federated searching (it wasn't called that back then). I know, I was there. If all descriptions were alike they could

be inter-sorted much like the old-fashioned union catalogues as described in the *Modest Proposal*. Unfortunately, this vision was driven by library-type thinking, Flatland thinking. It was Flatland thinking mixed up in an unholy gallimaufry along with recordkeeping thinking in the standards they drafted. In Flatland, each asset is singly described and carries almost all of the metadata needed for its discovery. Federated discovery requires an alignment of the metadata and the technology has become very much better at doing that without the need for as much standardisation as was once thought necessary.

In Flatland, aligning metadata was achieved using "authority files" (e.g. *LC Headings*). An authority file controls the value of the characteristics of an asset. Following the library model, the ICA Descriptive Standards folks, when they began to accept a degree of separation between Doers and Documents, entitled the standard for describing Doers – *ISAAR(CPF*) – an authority record. To some degree they continued to think of *ISAAR* like that. I know, I was there. The emphasis was on bringing descriptions into alignment *a posteriori* by (essentially) building relationships as you search – just like ubiquity does in Flatland. This is what happens when archivists dream only of downloadable sheep (Session10) and it can produce some amazing and valuable results.

But evidential recordkeeping relies on *a priori* relationships, established at creation or identified as part of archival description, and preserved (in the service of evidence) thereafter. These relationships support different kinds of alignments – particular, contingent, and structured, not ubiquitous. Customarily, this was achieved by grouping assets together when they had a common relationship:

a) Items were grouped by reference to the Series to which they belong;
b) Series were grouped by reference to the Agency that creates them;
c) Documents were grouped by reference to the Activity that generates them;
d) etc. etc. etc.

The common device used was the dreaded hierarchical list which gave rise to:

- entrapment of entities within a singularity (you had to choose the group an entity belonged to);
- interdependence of descriptions (an Item description didn't make sense unless read in conjunction with the description of the Series to which it belonged).

The ICA folks sought to overcome these defects by borrowing the idea of authority records from Flatland. I know, I was there. In my time with them, the notion that such authorities could be used for the double purpose of separating descriptions of different entity-types, thereby placating the pesky Australians, had just begun to glimmer. They were genuinely puzzled why it didn't placate me.

> Disclaimer: This is not (or ought not to be) a binary analysis – on/off, good/bad, yes/no. Ubiquity and structure should augment each other. They both work and uphold different aspects of the recordkeeping enterprise.

Relationships lie at the heart of the "Series System". The singularity is broken when we allow Series to belong (descriptively) to more than one Fonds. Initially, as formulated by Peter, that (along with the separation of Provenance and Ambience) was the only point of separation. He and I had ferocious arguments over whether or not one Item could belong to two Series. He was concerned, I think, to preserve as much as possible from traditional thinking so as to avoid further charges of heresy. But the logic of the S/system requires that we break-up singularity at all points – everything can be related to anything else – giving rise not only to multiple provenance but to simultaneous multiple provenance and parallel provenance as well (at all "levels").

Now, this may sound very much like ubiquity but it isn't because our kind of multiplicity supports a recordkeeping view derived from the actual, observed circumstances of creation and use (and preserved thereafter) and not from a Flatland view in which anything can be related to anything. The challenge for us, so far unmet as far as I can see, is how to

- incorporate r/keeping relationships into federated searching;
- support alignment of entities across the boundaries of Ambience (at all "levels").

Maybe that's one problem, not two. Note: we must stop thinking of Ambience, Provenance, etc. as defining characteristics of an entity-type. It is relationships that determine what role an instant entity

plays. The same entity may confer Ambience or Creation depending on the relationships forged, not upon its essence.

All of which makes relationships so important. *RiC* has 800 or so of them, piled on, one after the other, in a riotous display of intellectual virtuosity (see how clever I can be!). If ever there was a case of the wood being lost in the trees, this is it. In the Morty Session, I ventured to suggest a way of dealing with this. They used the term relationship types to characterise the *RiC*list. If you read *Documenting for Dummies*, you will see that I made the point there that entities must be grouped into entity-types in support of scaleability. Thus Items, Sub-Series, Series, Super-Series, Sous-Fonds, and Fonds are all instances of the Document Type. The (as yet unproven) hypothesis is that we can construct rules around entity-types that apply more or less equally to all instances belonging to that type. Anybody: know about a proof-of-concept for that?

I asked the Morty folk to consider replacing their use of the term relationship type with the idea of instances of a relationship-type, but they didn't get it. They thought than when I said I could reduce the *RiC* list to about 15 I meant eliminating 785 relationships from the list. Quite the contrary. No one outside of Bedlam would dream of implementing 800 relationships. But it doesn't really matter if they're only instances of 15 types – the number could grow to 8,000 and it still wouldn't matter so long as we are clear about how many relationship-types they fit into. An implementation will choose which instances best fit the circumstances and then apply rules based on the relationship-type to which the chosen instances belong. That's the theory, anyway.

Take outs:

- r/keeping relationships differ from ubiquitous relationships – everything can be structurally related to anything but anything cannot be ubiquitously related to anything;
- we still have a long way to go in understanding how r/keeping relationships work and how they can best be used.

2018, October 1: Perth 2018 Description Quo Vadis? Part 3

Whither RiC?

RiC is a conceptual model in search of a concept – cf. *RiC at Riga*. The drafting Committee (EGAD) was asked, in effect, to normalise *ISAD+* along the lines I suggested in *Documenting for Dummies*, saying the same thing about dating entities in all four standards, that sort of thing. They've produced something quite different, but hardly a conceptual model – yet. Apart from a few conceptual ideas (approving the entity/relationship approach, for example) it consists mostly of tables of possible entities and relationships about which I have already had my say – cf. *Records in Context (RiC) 1.0 – Comments on First Draft (2016)*. As for what kind of conceptual model might emerge over time, we must wait and see.

Now, for a happy thought. When draft *ISAD(G)* was launched we made a lot of fuss and I was made a member of the drafting Committee. At that time, *ISAD(G)* was accompanied by a *Statement of Principles*. At my first meeting, I was told the *Statement* was no longer open for discussion and they moved straight on to drafting *ISAD+*. I have told this story in *RiC at Riga*and elsewhere. Suppose, just suppose, that *RiC* is not intended to replace *ISAD+* but, instead, to subsume it.

Twenty-five years ago, I struggled to convince the internationals that it was not our intention to displace multi-level description in favour of a series-friendly approach. It was always my contention that an agreed set of descriptive principles could support alternative approaches that could be written into the standards. I'm not sure they believed me. After a lifetime of crushing disillusionment, I have come to believe that it is next to impossible to persuade someone of the correct answer to a question they haven't yet formulated for themselves. Could it be that what will emerge is a *RiC* that fills the gap left by the abandoned *Statement*? That after twenty-five years (!) EGAD stands on the cusp of repairing the damage done when the *ISAD+* path was taken without principles – not by abandoning *ISAD+* but by redirecting it?

It would not then be necessary to urge that *RiC* be made series-friendly. The international descriptive discourse would become (as I have always believed it should be) a song made harmonious with many melodies. Should this occur (God, I'm being optimistic here) the concept that would have to be proved is that they have succeeded in fashioning a conceptual model that can, in fact, accommodate series-friendly description (along with others). But for that we must wait and see.

Whither the Series System?

Peter Scott published what were effectively implementation guidelines for the S/system as it developed under his hand at NAA. The files there groan with many other unpublished memoranda. The whole experience came to be embodied in the *CRS Manual*, which I am told is still accessible on the web. Whether the *Manual* is still maintained I know not. I am certain, however, that neither its most recent version nor NAA's current practice still follow Peter's precepts. Nor do any other applications currently being maintained by *inheritors* of the system.

As for a coherent conceptual statement, where are we to go?

- There is the work of the *continuators* – those academics and writers (including myself) who have extended Peter's thinking and expressed themselves in articles, research studies, and metadata models. It's all good stuff (most of it) but homogeneous it is not.
- There is *DAIC* – which purports to be a conceptual presentation of the S/system but which can only be marked as C+. It was written in a muddle (and rewritten, and rewritten, and rewritten) and then issued in desperation to be rid of it. I know, I was there.

It follows that exercises in implementation now (such as *Morty*) must be guided by one person's interpretation of the S/system since no coherent agreed interpretation is available. We are all more-or-less operating in the same space and facing in the same direction but not with precision – no, not with that. The question is, would it be worth revisiting *DAIC* and coming up with a better conceptual model of the S/system? Would it, indeed, be possible?

2018, October 3: Perth 2018 Description Quo Vadis? Part 5 (final)

A year ago, in Melbourne, a workshop looked at possibilities for enhancing AtoM as a more series-friendly implementation in "small archives". It was announced in the Consultants' Session (Session 17) that this didn't really go anywhere. No more one size fits all. Instead, they took a new tack in this Session by providing guidance and examples of tools to assist small archives in going about the business.

Stand-Alone Descriptive Software

Proprietary products, even if they are Open Source, aren't cost-free. They take up time and resources to deploy and to maintain. They are technologically dependent and I have yet to hear of an instance in which the archivists don't need IT support of some kind. AtoM seems (to me) to suffer from being developed on the run and there are other problems – e.g. download issues related to Linux (good for universities, bad for banks). I am a lurker on the AtoM User List and a day does not go by when there aren't a dozen or more postings about bugs, problems, and queries. Artefactual are very good at maintaining this List and offering free advice but it suggests to me that small and sole archivists would need support. That is available from Artefactual itself at a cost or from someone else who would also need to be paid or budgeted for. I should also add that many archives (including ANU) seem to have installed AtoM without (apparent) difficulty but that may prove the point because I suspect they had in-house support.

Integrated Descriptive Solutions

As alluded to in earlier posts (and in the Consultants' Session), stand-alone descriptive systems are becoming a thing of the past. Even small archives need to look at the possibility of integrated approaches and the Consultants' Session was basically about how to go about this. I approve the approach taken and have nothing to add. But there is another aspect to integration. As alluded to in my session at Parramatta two years ago, the focus on digital (and digitized) assets runs the risk of

sidelining the as-yet-un-digitized physical assets, for the foreseeable future the overwhelming proportion of the assets we manage. Our descriptive efforts must continue to ensure that their existence is noticed and that access is given to as much information about them as possible in ways that are integrated with, not separated from, access to digital/digitized content.

Meanwhile, What About Standards?
I am still not clear about what Morty is about, but anything that makes standards more series-friendly is a good thing because it means standards-compliant software (like AtoM) will be more useful for us.

And, What About Really, Really Small Archives
These are the ones I call the barefoot archivists: tin shed, uncertain electricity, and Internet only three days a week. Community archives, historical societies, back office on Thursdays, that sort of thing. Requirement 3 is for them to be included somehow. They may still need a product that truly is simple and cost-free like *Tabularium* was. Tabularium wasn't actually free, of course, it was just done as a labour of love by David Roberts.

Federation?
The default position is that our descriptions are essentially available in one of three ways

- seriatim, knowing where to look and searching the on-line tools provided by each archives;
- looking in TROVE to see if the assets have been harvested (or contributed);
- doing a Google search and hoping something shows up.

The last two are searches in Flatland. Ubiquity, if I understand it correctly, points towards clever, purposeful, targeted harvesting as an alternative route to the same end.

In the *Modest Proposal* I tried to get a conversation started on what the requirements are for federated searching in our world. I suggested a wiki approach to illustrate one possible implementation model (not the only possible one) but my first concern is clarifying what we want and need, not how to get it (that comes later). There has been very little interest shown. Do we think it's an issue? Do we care? The Directory Session threw out a possibility that the *Directory* might be used to prompt searchers (somehow) towards institutions – for a seriatim search (I suppose). In Hobart, Michael Piggott et all threw out the possibility of a resources-assessment approach that I thought could be integrated into the wiki proposal. But I have no sense that federated searching is a live issue amongst us at the moment. Am I wrong?

2019, October 23: Adelaide 2019 – GOVSIG

On Monday, in a presentation by one of the Oz archives authorities, one of the slides presented some interesting metrics. It went something like this:

- Total holdings expressed as kilometres. I assume that means non-digital holdings and (although this is not a thought I imagine has yet passed through the mind of the institution concerned) I take this to refer to assets held or under control.
- Digital holdings (ditto re held or control) expressed as terabytes. Unclear whether this means digitised assets (digital or scanned renditions of portion of total non-digital holdings) or digital assets (born digital material now held or under control) or both.
- Assets online expressed as a %. My question was a percentage of what? A figure of 4.6% was offered but 4.6% of what remained unclear. It could be that 4.6% of total holdings has been digitised and is now online. Or, it could be that 4.6% of what has been digitised is online (and inferentially that 95.4% of what has been digitised is not on line). Or it could mean that 4.6% of digital holdings is on line. Or it could mean that 4.6% of digitised + digital is on line.

Once upon a time, archival statistics were compiled and published under the hand of the excellent Peter Crush. I am told this no longer happens or (if they are compiled) that they are no longer published. I may be misinformed. Anyway, I would like to know these numbers for NAA, Archives NZ, and for each of the State and Territory Archives. I could apply to them severally but it would be so much easier if they were just to post them to this list. What I want to know:

1. What is the volume of non-digital assets you hold or control?
2. What percentage has been digitised?
3. What is the quantity of digitised assets as a percentage of your non-digital assets?
4. What percentage of your digitised assets is available publicly on line?
5. What is the volume of born-digital assets you hold or control?
6. What percentage of your born digital assets is available publicly on line?

My continuing interest is the impact and implications if digitisation on our public archives programmes. Failing a response on the list, I will look for annual reports and, failing that, I'll write to them direct and post the responses (if any). Don't hold your breath. **<<Damien (SROWA): The stats are published annually …The data goes back a ways i.e. the spreadsheets incorporate earlier stats. Fascinating stuff.>>**

2019, October 24: Wow! How prompt is that. Thank you, Damien. I will scrutinise them when I get back to sleepy Gosford. Fascinating indeed. Do you compile them for CAARA or are you just a numbers nut like me? What a pity we don't have regularly updated metrics for the entire sector since ACA was abolished. I've been thinking some more about the terminology (i.e. the conceptualisation) used when "measuring" the digital. I use

- "digitised" for scans or digital renditions of non-digital assets and
- "digital" for born digital

but I don't have a term for the two of them combined. Maybe digitised and born-digital would be closer to our current usage with digital used to describe them combined - but I see room for confusion and sloppy thinking with that. And the question arises: what do we count? If we say we hold XXX terabytes (or whatever) what does that mean? Replication (exact or otherwise), rendition, and redaction/enhancement (to say nothing of re-use and re-contextualisation) are features of managing data. Does a holding figure include or exclude multiple renditions of the same thing? What modifications make it something new and eligible to be counted again? Are terabytes the best unit of measurement for both structured data and unstructured records? Surely other people have grappled with this and maybe come up with solutions.

Many years ago, the film archivist at Archives NZ made what I thought was a profound comment - drawing attention to parallels between the techniques of film archiving (with its focus on the content carried rather than carrier) and data archiving. The source film stock, the master copy, the first generation copies (from which other copies are made), and the multiplicity of use copies are all one thing - a moving image existing in many replications (copies) or renditions (change of format, edits, etc.). Preserving the film stock is unimportant unless that has a specific purpose beyond its transitory utility as host for the image. Maybe there are clues to be found there.

2019, October 26: Adelaide 2019 – Session 4.3 AtoM

Situation not much changed from last year. Some penetration in Australia but not yet ubiquitous amongst medium-to-small. SROWA the only government archives wholly committed but limited use and dabbling by some of the others. Realistic assessments of pros and cons. Continuing lament about lack of fit with Series System (whatever that means). No one present able to predict how RiC might affect ISAD-based AtoM. There is now a Foundation formed (or forming) independent of Artefactual (apparently) to consider suggestions for improvement.

Fit with Series System:

This always saddens me. When I joined the ICA Commission developing the ISAD suite (at ASA's expense and to represent the Australian view), there was a widespread misconception amongst the internationals and amongst some in Australia that I was trying to get them to replace Fonds-based description with Series-based description in the Rules. This was not my brief and it would have been ludicrous to try but I gave up trying to persuade people of this. My task (as I saw it) was to re-jig the draft Rules so they were equally and simultaneously supportive of both approaches. Perhaps naively, I have always thought this was (or would have been) easily done. After all, there aren't two different ways of dating things (tho' there may be debate over which things to put dates on). What I foresaw then

was that, without such fusion, software development would lead to just such a situation as we have now – confliction and confusion in a space where we should (and could have been) working together. Some convergence there was over the years and RiC might take that even further but it has all been … well, untidy. And unnecessary. A lost opportunity if ever I saw one. Sigh!

User Front End
The realisation is growing that this needs attention. I don't disagree. But this can be said of the whole archival enterprise. It is our most neglected area and our biggest failure. And you can't just single out AtoM for blame. Everyone is at fault. More of this anon.

Relationships
This is the area where the disjunct between Fonds- and Series- based description is (still) most striking. Well, I would say that wouldn't I? But it is far from unresolvable. A simple understanding of the difference between reciprocal relationships and non-reciprocal connections would do the trick. Meanwhile, there is insufficient understanding that as well as formal, documented relationships between entities, we have hidden relationships in the narratives and lists. Once they are identified and unpacked, we may see the last of those dreadful lists.

2019, October 26: Adelaide 2019 – Session 1.2 The descriptive tradition

> *We shall not cease from exploration / And the end of all our exploring / Will be to arrive where we started / And know the place for the first time.* T S Eliot "Little Gidding" (*Four Quartets*)

One of the less pleasing things about conferences is pronunciamientos from the platform of insights that give us new tools to work with and enrich our users' experience but are presented as breaks with our tradition, repudiations of past practice, sometimes as denunciations of our predecessors' obtuseness and wrong-headedness. Indeed, as I age, I feel more and more like I'm becoming a predecessor and sometimes a target. Presentations of new ideas is what you come to conferences for. But the accompanying razzmatazz can be irksome. There have been truly revolutionary moments in our world and I have no doubt there will be again. But they are few and far between. The over-hype is irritating and the lack of modesty is embarrassing.

There is a tradition (my particular interest being our descriptive tradition) and things must change if they are to stay the same. Tradition is the glue that holds us together and the foundation for moving on. I am conscious that in much of my own work I could be accused of trashing it (I don't think that's true but I am blushing a little as I write this). I hesitated, therefore, about raising it because I know I am vulnerable. The over-blown claims to which I take exception are graceless and untrue and if that were all I would keep my grumpy self to myself. But larger issues are in play.

Tradition is a long, winding path made up of stepping stones, used to build on previous insights when taking the next step. These new steps may involve insights of which our predecessors were ignorant or to which they were blind or (increasingly) they may involve technological developments not available to them. The temptation for young innovators in search of fame and admiration is to ignore the tradition in which they work and repudiate those who pioneered it. Their excitement in discovery should not be curbed but they also need to be counselled in the true nature of progress.

Repudiation and disrespect of tradition denies to innovators themselves the value of earlier work as a foundation and direction-finder for what they are doing (or even just a point of departure conceptually) distorting their understanding of their own innovatory ideas and inviting their audience to launch off along a fork in the road rather than recognise how a professional discipline should (and for the most part does) develop step by weary step within a constantly evolving mainstream. To the extent they are believed, we are all losers because we come to devalue (at worst, to disrespect) tradition. The next generation of innovators, when today's innovators have become tomorrow's fuddy-duddies, will lose the strength that tradition bestows, will be more likely to roam far and wide outside the direction it sets, will find it harder to get a secure footing on the next step (standing on the shoulders of giants). Far-roaming can liberate but it can also stifle.

A case could be made for trashing tradition and roaming far and wide outside it – particularly in times of dramatic technological developments like now. I think this case stands or falls on whether enough tradition-trashers are in fact coming up with insights that are truly revolutionary. On that basis, I don't think the argument can be sustained. I will use Session 1.2, not because the presentations were especially egregious but because I was there and they help to make my point.

Ubiquity and Structure

This reprised presentations at other conferences. I won't repeat my earlier analysis except to say that my plea to understand ubiquity and structure as complementary rather than alternative methods of description makes my point. Ubiquity can be understood (I think without violence to its conceptual integrity) as a new approach to reference guides. What is novel about it is that it multiplies the opportunities, puts the users in charge instead the archivist, and permits a new approach to discovery that is essentially iterative. This is all truly new, truly valuable, and truly exciting. But revolutionary?

City of Sydney User-Based Finding Aids

They did surveys and found their user base comprised skimmers, delvers, and deep divers. We used to call them serious researchers and genealogists (how dumb was that). They claim to have discovered that most of our users want item-level access. Well, yeah. We've kind of known that for quite a while now. They've figured out that the structure of the descriptive data doesn't have to limit the design of the user interface. If they'd asked their colleagues there are plenty around who could have told them that but I suppose validation from the surveys does no actual harm. Some of us would have confirmed their conclusion that poor user interface design is the profession's biggest failure and some robust tradition busting on that front is badly needed. They want user feedback to guide future development. Not a bad idea (or a new one, for that matter) but …

- User surveys are good at discovering what they think but bad at discovering what they might think if they knew more.
- There is no need to be binary. Clever design can yield an interface that satisfies all, not just the largest user group.
- The distinction between user wants and user needs remains valid (they want McDonald's but they need vegetables).
- You may be trapped when your user base changes and lock out potential users who haven't yet voiced their wants and needs.

2019, December 16: <<**Public release of Records in Contexts - Ontology v0.1 and Records in Contexts – Conceptual Model v0.2 preview (December 13)** >> Here's the comment I've made on RiC 0.3 -

Since I'm now in my dotage, I no longer have the attention span to do this thing justice. I'll limit myself, therefore, to a few cursory comments (based on an equally cursory reading). If I get it wrong please chastise me. The definition of THING is bewildering. **E01 THING**

- **E02 Record Resource**
  - E03 Record Set
  - E04 Record
  - E05 Record Part
- **E06 Instantiation**
- **E07 Agent**
  - E08 Person
  - E09 Group
    - E10 Family
    - E11 Corporate Body
    - E12 Position
    - E13 Mechanism
- **E14 Event**
  - E15 Activity
- **E16 Rule**
  - E17 Mandate
- **E18 Date**
  - E19 Single date
  - E20 Date range
  - E21 Date Set
- **E22 Place**

Is it

a. "all possible concepts, material things, or events within the realm of shared human experience and discourse" OR
b. something exclusive "of entities that are not explicitly identified and described in RiC [which] are commonly the responsibility of allied cultural heritage communities, academic and research communities, or specialized or expert communities." OR

c. "all of the entities that are of primary interest to records managers and archivists, as well as other entities **used** (my emphasis) in the description of the primary interest entities [including] all other possible entities that are not explicitly identified in RiC as entities [that is] the subject of a Record Resource, or associated with an Activity"?

Why I think this is important will become clearer below (I hope).

a. **All possible concepts, things, or events** … i.e. a universality, everything, whatever is or might be. Like the Universe, it is meaningless to ask what lies beyond. If anything lies beyond, it is (by definition) part of the Universe and therefore it does not lie beyond. It follows that there'll only ever be one THING and that it will be everyTHING. It is like Le Grand K, one of the seven fundamental measures, the ultimate recordkeeping datum, a reference point for everything descriptive - until it is redefined in RiC 0.3 of course. Not unlike what I once described as the BIG 1 – a universal ambient entity conferring context on everything else. If BIG 1 were ever actually implemented it would, naturally, annihilate parallel provenance.
b. **Cosa Nostra (our THING) but not Theirs**. Entities which are (or could be) described in RiC but not those which are the responsibility of "allied" communities. To say nothing, I suppose, of entities for which non-allied communities are responsible. This limits the concept considerably to a boundary that comprehends recordkeeping purposes but no others. Our THING exists in a world of many THINGS but the others are of no use or interest to us. The question remains how we identify our THING. Once, when Terry Cook was expounding top-down-appraisal, I asked "How do you know when you're at the top?" He didn't answer but he thought it was a good question. Still is. (Query: Perhaps we are meant understand that our THING is one of many *hypostases* consubstantial in one universal entity?)
c. **That THING we do:** The Cosa Nostra might be understood as a pure concept, a Platonic Ideal – something that encapsulates "the true and essential nature of things, in a way that the physical form cannot". Under interpretation (c), the THING is an applied concept, one which is to be "used in the description of the primary interest entities". An entity definition that is to be employed in any application such as AtoM. An architectural definition of actual descriptions used in portraying THINGS that are observed. A utilitarian device derived from Aristotelian Empiricism – with each real-world implementation of the RiC THING being another instantiation of it.

It's still a hierarchy of sorts harking back to the dreadful Multi-Level Rule, perhaps to reassure the unenlightened. The entity-types are represented as "levels". Goodness me, aren't we past that yet? The hierarchy is starting to break apart (Person is not the child of Family thankfully) but it all needs to go much further, Otherwise structuration built into the conceptualisation queers the Relationships. It's axiomatic. If you place one thing in subordination to another then you are forming a relationship in advance. Entity-Types need to be conceptually autonomous, not bound to each other in any defined way – e.g. Document, Deed, and Doer. They need to be connected purely by means of Relationships - contingently. Binding them conceptually or ontologically usurps the work of Relationships. The recordkeeping character of any Entity-Type derives not from how it is defined but from how it is used.

Some of the Entity-Type definitions give rise to similar problems – e.g. E 18 Role. Role definition is usually (not always) best expressed as a Relationship. A loan, for example, involves a lender, a borrower, and a guarantor which is a situation best understood as a set of Relationships subsisting between three Doers, not as characteristics of the Entities involved (i.e. their respective Roles). The author, the recipient, and the custodian of a letter (or chain of correspondence) are best represented as Doers standing in three different kinds of Relationship to the same Document.

I won't comment on the list of Relationship-Types. There's fewer of them and that's good and, besides, I've already had my say. It's a start but we've still got a long way to go. It's the conceptual imprecision around THING (see above) that bothers me most. Most of the Relationship-Types in this model will operate OK (sort of) within the boundary of a THING, but the model depicts all other Entity-Types already standing in a definitional relationship with the THING and this confuses matters. And,

unless the THING is a universality - option (a) – trying to craft a Relationship with an Entity outside the boundary of the THING will run foul of the predetermined Relationships already hard-wired into the hierarchy. There are two reasons you don't want that to happen –

- It cripples your ability to deal with parallel provenance, and
- It limits your scope to provide for scaleability.

Scaleability allows you to show a Series, for example, as an Ambient entity in one kind of relationship (to a letter in a file, for example, where the letter's Author - its Creator - is shown as its Provenance and the Author is shown within another Ambience altogether while the Series is simultaneously represented as a creation of the Doer to whose fonds it belongs. In other words, the Role of any Entity depends upon the Relationships crafted for it with other Entities and instances of the same Entity-Type can perform almost any role that can be depicted.

ODDS 'n' ENDS

Curiousities and Not-Otherwise-Classified.

2017, Jun 14: ATTN AtoM users – help wanted Exterior context: How are repository codes assigned?

2017, Jly 31: A return to consecutive thought? Amazon bans PowerPoint

2017, Aug 28: James Lindsay Cleland (1928 – 2017) A valediction

2018, Oct 11: Fun with maps Artefacts that got it wrong

2018, Nov 26: Some things of passing interest Odd socks: FOIA, trans-gender, & trigger warnings

2018, Dec 9: Holiday reading Oral history, informal networks, and climate

2018, Dec 9: Diaries, tweets, and records Documenting ourselves, publicly and privately

2018, Dec 23: For the want of a comma Meaning hangs on punctuation

2019, Jan 22: ARANZ is looking for records held about care … Historic records search(es)

2019, Mar 13: Archiving the Web This blog won't make the NLA archive but NSW steps in

2019, Jly 10: Periods in description Another way in

2019, Sep 29: One for the books Heart-warming story about public libraries

2020, Apr 24: Who controls the price of admission? Management of Internet domain names

2020, May 5: What does "records continuum" mean? A revised definition from North America

2020, Sep 15: Resource request … Australian Joint Copying Project (AJCP)

2020, 9 Jan: Parallel Provenance An explanation of the concept.

2020, Dec 11: What, if anything, is a handbag? Classification and description

2020, Dec 24: The Gobbler mincer the season

2021, Jan 10: Emotional "evidence"

2021, Apr 3: Banks change but people don't it seems Banking during the COVID Pandemic

2021, Apr 4: What, if anything, is a listserv? Are they social media for old folks?

2017, June 14: ATTN AtoM users – help wanted

On the Artefactual demo site, the instruction for Description Id is (from ISAD) to –

> Provide a specific local reference code, control number, or other unique identifier. The country and repository code will be automatically added from the linked repository record to form a full reference code.

The instruction for the Archival Institution Id on the "linked repository record" is (from ISDIAH) to –

> Record the numeric or alpha-numeric code identifying the institution in accordance with the relevant international and national standards.

Can someone who is using AtoM please advise which "relevant" standards Australian AtoM users are applying to formulate country and repository codes in their Repository Identifiers? Specifically, have agreements been reached amongst you, of which we haven't heard, regarding –

1. The source or standard Australian AtoM users are employing for country code? There are numerous standards from which country codes can be derived. The country code "AU" appears to be in use. Have Australian archival/recordkeeping programmes agreed on which one to use and if so which one? Is there an international agreement amongst archives/recordkeeping programmes as to the source of country codes to be used? Is ICA doing this?
2. The standard or register of Australian repository/programme codes being employed? Repository codes are being used (e.g. "NBAC', "WA", etc.) but where do they come from? Is there a national agreement amongst Australian archives/recordkeeping programmes on a system for assigning repository codes? Who maintains the register, manages changes, and assigns codes to new participants? To whom do we apply for ours?

2017, June 26: <<Joanna Sassoon: The silence is resounding on your question, but it is one that students doing archival description units raise every semester. Is this yet another sign of the lack of an Australian archival system? …>> After the silence had resounded for a while, we posted the same question about country and repository codes to the AtoM User Group and received the following replies:

> From Dan Gillean (AtoM Program Manager)
> In AtoM, the country code is automatically assigned…As for repository codes…Ultimately this varies…Sometimes there is a national body providing control, or an aggregator (like Trove) takes on the role; sometimes repository codes are self-assigned.

We're testing AtoM at the moment for item level control and it doesn't seem to quite work in the way Dan describes. I have just created a test repository description and populated the contact area with Australia from the pick list as directed. "AU" was not then automatically assigned in the Id area as expected. A devil then prompted me to split an infinitive and manually assign a country code "NZ" and it was accepted.

> From Maggie Shapley (ANU)
> The repository code is up to you here in Australia. It's important to note that it will appear between the country code AU and your series numbers so you need something fairly obvious and not too long. We went with NBAC for Noel Butlin Archives Centre which is followed by various alphanumeric and numeric identifiers for those collections. For the University Archives we use ANUA (Australian National University Archives) as that was already the series prefix so that's now followed by the single number that is the series number. I guess you'd want to avoid anything that might get you confused with any other archives in Australia. To set it up all you do is enter it as the Identifier in the repository record.

It appears, then, that there is no national registration control and you just make it up. If we proceed, we'll try to grab CBA before we lose it to the Centre for Backyard Astrophysics.

2018, January 10: AtoM Repositories

Some months ago, I asked if AtoM users in Australia had agreed a registration system for repository codes. The answer, I believe, was "No, we're individually making them up." Now, the ASA is updating its (once defunct?) Directory. The link on the ASA site takes you to an AtoM record which I assume ASA is using as the platform for the updated Directory (there's nothing said but that is what I surmise). The entry for Commonwealth Bank is based on information submitted some years ago and has an "identifier" (daa/62) which could conveniently serve as an AtoM repository code if Australian AtoM users agreed amongst themselves to make use of the Directory in this way. Might a poor warmint make so bold as to ask if Australian AtoM users have given any consideration to this possibility (may already have decided to do so)? After many years condemn'd to hope's delusive mine in the field of 175ealized175175ation, my mind recoils from even contemplating international co-operation in the

matter of repository registration. You will observe that I am using my semi-retirement to reacquaint myself, inter alia, with Dickens and Johnson.

2018, January 13: <<Lise Summers:… With respect to the repository identifier, how it is used is really a question for all archives, not just those using AtoM. The repository identifier comes from ISDIAH, which states institutions with archival holdings should use a nationally recognised identifier, if one exists. So, if we all agreed to use the identifier, it could be used in any system, including TROVE, or ANDS, or Wkipedia, where the standard might apply. I think that the code, its implications and use, could be part of a broader discussion …>>

2018, January 14: So, the answers to my questions would appear to be:

1. Q. Might a poor warmint make so bold as to ask if Australian AtoM users have given any consideration to this possibility (may already have decided to do so)?
   A. Nope. Not yet at any rate (though there is nothing stopping them/us from doing so).
2. Q. After many years condemn'd to hope's delusive mine in the field of standardisation, my mind recoils from even contemplating international co-operation in the matter of repository registration.
   A. And it still recoils from doing do. The form of the ASA's Directory identifier code "if we all agreed to use [it]" would conform to internationally approved practice. But we haven't agreed (yet). If we did, it would still only be a national registration system based on international rules.

The biggest issue that I see is the need for change management rules. The work in progress is now picking up old data that is (in some cases) long out of date. For example, CBA Archives needs an identifier to show the location of Trust Bank records it has on permanent loan with TAHO, but there is no entry for TAHO (that I could find), only an old one for AOT. Who has (or will have) permission to add, modify, and delete entries? What protocols will there be? Will superseded entries be maintained so that programmes that have used superseded identifiers won't be cursed with broken links? Will there be an editorial/review process to iron out duplication, ambiguity, error, etc. from contributions made to the Directory?

2018, January 16:<<Katie Bird: ASA Council … have recently embarked on a project to update it …and I would encourage anyone who represents an archival institution currently listed in the Directory to update their entry via this process. This page also includes a set of instructions on mandatory fields and other Directory editorial information.>>

2018, January 18: Leaving aside the AtoM tie-in, my questions are about management protocols for the Directory (as a possible source for AtoM repository codes). The biggest issue that I see is the need for change management rules. The work in progress is now picking up old data that is (in some cases) long out of date. For example, CBA Archives needs an identifier to show the location of Trust Bank records it has on permanent loan with TAHO, but there is no entry for TAHO (that I could find), only an old one for AOT. Who has (or will have) permission to add, modify, and delete entries? What protocols will there be? Will superseded entries be maintained so that programmes that have used superseded identifiers won't be cursed with broken links? Will there be an editorial/review process to iron out duplication, ambiguity, error, etc. from contributions made to the Directory?

It appears that contributors to the Directory will go on managing their own stuff (as before) without the editorial control and management I am suggesting.

1. What guidelines are being issued to potential contributors as to what should (can) and what should not be put in? Was it appropriate, for example, for each and every branch of NAA to be listed in the old Directory? I don't say it was, I don't say it wasn't, but there should be a rule about such things. The new guidelines suggest that there is no rule, contributors decide for themselves. Is this a good thing?

2. What arrangements will be in place (if any) to monitor the quality of data going in and to ensure that contributions conform to the guidelines? What permissions are need to make, modify, or delete an entry? If I submit an entry for AONSW, for example, what is to stop me?
3. What are the arrangements for managing currency? Will contributions be dated? Will this date be refreshed when changes are made? Will there be a requirement for contributors to refresh their data periodically or else have it marked moribund?
4. What steps will be taken to monitor and manage legacy data when institutions fold or, as happens increasingly nowadays, they are merged (appropriately or not) with some random GLAM body?
5. What will be the protocol for withdrawn, superseded or moribund entries? Will they be versioned and maintained for the benefit of users who have made hyperlinks? Will superseded entries be marked with links to later versions? The Guidelines seem to indicate that contributors may withdraw entries. Should this be allowed or should entries once included be kept forever?

The Guidelines appear to be about updating existing entries and submitting new ones. They relate to mandatory/optional fields and technical requirements – not quite what I had in mind. I don't think they deal with any of the questions raised above. If this is an ongoing process, why is there a deadline? It seems to be a project with a beginning and an end. It has the smell of a self-managed process and you know what they say: when everyone is responsible, no one is responsible. The entries will be a hodge-podge of identity data, descriptive data, very volatile data about services and contacts, and searchable metadata of various kinds. Because volatile data is being included. Attention needs to be given to currency. We don't want another one-off that gradually becomes dated and then has to be overhauled in another 20 years, do we?

2017, July 31: A return to consecutive thought?

Why PowerPoint is banned [at Amazon]:

> "For decision-making and strategy, PowerPoint is banned. I used to love it because you throw a few dot points and just talk… that doesn't work in Amazon.
>
> "The narrative is a strict format – it's six pages, we have rules in terms of margins, font, headings – and the document must be completely self-supporting. It must be self-supporting because it is then scalable. I can give it to anyone outside the project, they can read it, understand the situation, they have the data and they can make an informed decision. I can send it offshore, I can send it to global teams. I don't have to explain it… It also forces deep thinking. To write a six page narrative around the idea, the market, the opportunity, the value proposition and the outcomes is really hard…. So it [the narrative]'s a really powerful mechanism."

Who knew? Legend has it that the Second Iraq War was planned using PowerPoint.

Michael Piggott has pointed out that the link I gave takes you to a password protected page at CBA. My fault, I just thoughtlessly grabbed it from the Bank's Intranet. I might have known they wouldn't link to an external site. I usually check my links before posting but, of course, posting from behind the Bank's security wall it did work for me. Sorry. Here is another link – one of many if you google: Amazon + PowerPoint + ban. Hope this one works.

2017, August 28: James Lindsay Cleland 1928-2017

Lindsay and I briefly shared responsibility for NAA's ACT Operations in the mid 1970s under a crazy experiment in separating that responsibility from Head Office – represented by our counterparts, Thea Exley and Peter Scott. His part of the operation was in the Nissen Huts and mine was above a hardware store in Kingston. It was an experiment doomed to fail and fraught with potential for conflict and ill-feeling to which it duly gave rise. Later, after I returned from a year studying in London, he and I spent months alone in a weird kind of exile on Northbourne Avenue while others acted in our respective positions – until Bob Neale's arrival put an end to that nonsense. Lindsay was not your typical bureaucrat (which I found appealing; others didn't) and he and I found common ground in a growing discontent with the way NAA (then called Australian Archives) was being managed. There were things

on which we didn't see eye to eye and he held strong opinions (like me, I suppose), but I remember him as a courteous, generous man – slow to pick a fight and always reaching out to find a mutually agreeable solution.

2018, October 11: Fun with maps

The Guardian has a story showing a gallery of maps that display errors, falsifications and other infelicities. I like –

> **North America, 1783**
> This map was used by the British at the 1783 conference that established the independent boundaries of the US. One drawn red line shows that the British were amenable to relinquishing even parts of Canada. When they got off more lightly, the map was embargoed for more than a century to prevent anyone finding out.

But my favourite is –

> **West Indies, 1506**
> Since the earliest printed map to show the Americas was produced a mere 14 years after Christopher Columbus made American landfall in 1492, it was still believed that he had reached Asia. Accordingly, this map shows North America welded onto eastern Siberia, with Cuba and Hispaniola floating in the same sea as Japan.

because I often use this case as an example in my presentations and now I have a new slide.

2019, October 20: "The perfect combination of art & science" mourning the end of paper maps
<<Joanna Sassoon: A reminder of the joys and practicalities of the material world.>>

2019, October 21: As a way of understanding and representing the material world (materially or digitally) map-making resonates with our work of understanding and representing events and circumstances (descriptively or curatorially). I once used an episode of The West Wing to illustrate this when explaining parallel provenance.

2020, June 25: **<<Digital maps might be more practical in the 21st century, but the long tradition of cartography is magical>>** And, like the best traditions, it keeps on evolving (magically) -

> Earth's mysterious eighth continent doesn't appear on most conventional maps. That's because almost 95 percent of its land mass is submerged thousands of feet beneath the Pacific Ocean. Zealandia — or Te Riu-a-Māui, as it's referred to in the indigenous Māori language — is a 2 million-square-mile (5 million square kilometers) continent east of Australia, beneath modern-day New Zealand …
>
> Now, GNS Science — a geohazards research and consultancy organization owned by the government of New Zealand — hopes to raise Zealandia (in public awareness, at least) with a suite of new maps and interactive tools that capture the lost continent in unprecedented detail … The new maps reveal Zealandia's bathymetry (the shape of the ocean floor) as well as its tectonic history, showing how volcanism and tectonic motion have shaped the continent over millions of years ...
>
> The team also released interactive versions of both maps on a new Zealandia webpage. Spend a few minutes clicking around the hyper-detailed images — and, when someone asks what you're doing, simply tell them you're "discovering Earth's lost continent."

2021, February 5: Record vs reality

There's a nice piece in the *Daily Mail* about disputed/uncertain borders involving SA, Vic, and NSW.

> … NSW and Victoria are divided by the winding route of the Murray River with the South Australia border running perpendicular. That imaginary line was supposed to cut straight through, but instead ended up sliding west and north [beginning] with a simple '141 degrees mistake' in 1847 ... The boundaries were drawn 3.35km north and 2.96km south, incorrectly giving Victoria and extra 1,420sqkm of land … {A] 64-year-old conflict came to a head, when the SA Government announced they would send in their own surveyors to subdivide the land. Victoria saw this as an act of war and said they would be treated as trespassers and arrested. So the states took their battle to the High Court, which ruled in favour of Victoria ...
> … The borders of NSW, SA and VIC now connect via the 11km of the Murray River, but still aren't crystal clear. Victoria agreed that the entirety of the river was in NSW, defining the border with NSW from the river's

> southern bank ... still it's ambiguous which state has sole control over the Murray River beyond the southern border, making it a legal grey area for authorities.

If you're tickled by this sort of thing, I recommend *Off the Map - Lost Spaces, Invisible Cities, Forgotten Islands, Feral Places, and What They Tell Us About the World* by Alastair Bonnett. The sub-title (Oxford comma and all) tells you everything you need to know. Amongst the almost fifty oddities collected in this book are –

- Sandy Island, 700 miles off the coast of Qld - on the maps but not actually there. How many other places shown on maps aren't there? How many places not shown on maps are there?
- New Moore, an island that came and went in the Bay of Bengal. Similar to the Pumice and Trash Islands that drift about. And ice islands that come and go.
- The Aralqum Desert, that used to be the Aral Sea - 'nuf said.
- Zheleznogorsk, a "closed city" missing from many maps where the Soviets produced weapons-grade uranium. Bit like Pripyat, abandoned after the melt-down in nearby Chernobyl.
- Bir Tawil, 795 sq. miles of desert bordered by Egypt and Sudan, neither of which, for bizarre and convoluted reasons, wants to claim it (accepting sovereignty would undermine their claim for more valuable, oil-producing land elsewhere).
- Twayil Abu Jarwal, a Bedouin village in the Negev Desert controlled by Israel but treated by the Israelis, like dozens of others, as a non-place. Likely to share the fate of Aghdam, obliterated in the war between Azerbaijan and Armenia.
- Wittenoom, the WA asbestos mining town – not just abandoned but expunged. A similar fate, but for different reasons, to Kangbashi, a Chinese ghost town (a "conjured landscape") – built but never occupied. Just like Kijong-dong, the fake North Korean city (the "Peace Village") near the border with South Korea.
- Camp Zeist, a Dutch military facility that was brought briefly under Scottish nationality to enable the trial to take place of the Lockerbie accused under Scottish law.
- The Geneva Freeport, where high-value goods are kept and traded free of customs duties of any kind. It is a mediaeval commercial concept alive and well in the modern world.
- Baarle, a town on the Belgium/Netherlands border where you can never be quite sure which country you're in. Like the Chitmahals, neglected enclaves on the India/Bangladesh border.
- The LAX parking lot where air crew lay over between flights in trailers.

To say nothing of places from which persecution refugees have become disconnected

e.g. Uighurs, Rohingya, Palestinians

just three contemporary horrors to add to a long, sad list. If you want your mind blown a little, read the chapters on international airspace and gutter spaces. And then, of course, there's the Spratlys.

2018, November 26: Some things of passing interest

Snippets from the *Weekend Oz*

p.5 FOI: The Glass is (literally) Half Empty

From statistics for the last financial year released by the Office of the Australian Information Commissioner –

- 49.81% of requests granted full access (down from 55.47%)
- 11.99% of requests refused outright (up from 9.95%) 16.19% refused taking account of a batch blocked by Northern Australia Infrastructure Facility
- 37.5% of requests to PM's Office more than 90 days late
- 12.48% of requests to D. of Home Affairs more than 90 days late.

p.10 Tasmanian trans-gender laws

> These are proceeding through Parliament and creating predictable furore. The proposed law deals with redaction of gender information from extracts issued from the Register. The reporting is unclear on whether the law (if passed) will also permit/mandate alteration of the Register itself. It seems to make gender optional (i.e. those reporting a birth, usually parents, would have to opt in) and data subjects of a certain age could reverse the decision but whether reversal means redaction from extracts or expunging from the Register itself is unclear. Apparently, in the ACT now, provision is made to list gender as "M", "F", or "X".

p.11 Trigger Warnings for Sacred Texts

> The European Jewish Congress has recommended that new editions of the Bible and the Koran should include trigger warnings to highlight anti-Semitic passages. So far as the Bible is concerned, the New Testament seems to be the worry (esp. John) and it is unclear whether similar hate and bile warnings could also be attached to the Old Testament. It has all led to disputation amongst scholars over what the problem (if any) may be and how to deal with it (if at all). Oxford theology lecturer Christine Joynes is given the last word: "The whole Bible needs a health warning to read it through the right critical lens and in historical context." Amen to that.

2018, November 28: <<Gene Melzack:**In relation to the Tasmanian legislation, the proposed law seems to imply that the register should maintain records of a person's assigned sex at birth as well as any subsequent changes of sex or removals of sex or gender information (28K. Historical records to be kept). When a change to the register has been made a new birth certificate can be issued and there are provisions for issuing certificates that either a) show no sex or gender information, b) "show the person's gender as registered without any notation or indication that the person was previously registered as of another sex or gender", or c) "issue an extract from the Register which shows the person's gender as registered with a notation that the person was previously registered as of another sex or gender." This seems sensible to me. It maintains a historical record with a clear legal statement that this record is not to be used as relevant to person's current identity. The practical documents (birth certificates) that most people use as evidence in their day to day lives to prove their current identity can then be tailored to fit that identity.>>**

2018, December 9: Holiday reading

On Saturday, I went to the city for lunch with two of my relatives. Afterwards, I disgraced myself at Dymocks and blew almost my entire monthly budget for books at one go. Purchases included:

The Edge of Memory (2018) by Patrick Nunn. This concerns oral r/keeping (it even has a daring reference to "oral archives"). From just a brief glance, it appears to posit a dichotomy between illiterate societies (where oral r/keeping is to be found) and literate ones (where documentary records are). It may not be as stark as that when I read the book in full but already questions are forming:

- May not r/keeping in illiterate societies take on materiality (painting, carvings, memorials, etc.)?
- Are not oral histories also to be found in literate societies?

I have a book titled ***The Killing of William Rufus***. The site of the king's death in the New Forest in the year 1100 can only be established by oral tradition. The author points out that the foresters passed on much of their specialist knowledge orally and son often succeeded father. From 1100 to 1745 (when a stone was raised to mark the spot) only 19 generations were needed to pass the information down.

The Square and the Tower (2017) by Niall Ferguson deals with networks and hierarchies.

> "… informal networks usually have a highly ambivalent relationship to established institutions, and sometimes even a hostile one. Professional historians, by contrast, have until very recently tended to ignore, or at least to downplay, the role of networks. Even today, the majority of academic historians tend to study the kinds of institution that create and preserve archives, as if those that do not leave an orderly paper trail simply do not count … my research and my experience have taught me to beware the tyranny of the archives …."

Again, a first impression only, but it seems that a lot of definition of the concepts is needed for him to get to a point where this thesis can be defended. I'm particularly interested in the idea that networks leave fewer records and how he defines records in this context. Since the index has few references to "archives" and none to "records" I guess that aspect of the matter won't be dealt with in depth.

The Fate of Rome (2017) by Kyle Harper offers a novel approach to a much discussed subject. It deals with the role of disease and environment in Rome's decline and fall – already canvassed to some extent in a book with the great title ***Justinian's Flea*** (2007). Lots of diagrams suggesting that relevant data have been acquired from one source or another and it will be interesting to see how it is used. I know my Gibbon and possess a respectable library of other authors (including a full set of Hodgkin and the incomparable J B Bury) and they range over political, military and social causes but this seems like a new approach. A standard question is why the eastern empire continued for 1,000 years after the collapse of the west. I will be looking to see whether the health and environmental factors impacted differently on one half of the empire and the

other. Sadly, the book seems to go only to the 7th century when the east was languishing (but it revived subsequently and survived till the 15th). Interesting to see if the author has an explanation.

2018, December 9: Diaries, tweets, and records

An opinion piece in the *Guardian* recounts the repentance of a social media tragic.

> Delete your old social media posts before they're used against you … If you have a job or would like to get one, it's just safer to go private, scrub your history, even log off forever … The world won't miss your old posts … Earlier this year I deleted nearly 10 years' worth of tweets … Most of my old tweets and statuses were so banal it's difficult to imagine why I ever thought anyone would be interested in them … I discovered a few posts so acutely embarrassing they will still be popping into my head unbidden in the middle of the night in 20 years' time … trust me when I say just thinking about some of the things I have said in public makes me want to rotate my elbows the wrong way, fold up bodily and sink into the Earth …

A salutary warning to those of us who suffer the delusions of authorship.

> … friends who've gone through the same process of archiving report experiencing similar feelings of horror and disbelief … Consciously or not, you were putting forward an image you wanted others to see … I 181ealized then that social media is the closest I've ever come to keeping a diary … the net result is something like a record of my thoughts and emotions, at least as I wanted others to see them. And just like an old journal, it's a lot more revealing than intended … even though I deleted the public posts, I saved a record of them. Destroying them outright would have been like burning a diary or shredding old love letters … Those old posts might have been written with everyone else in mind, but they're for me now.

Of course, the thing about a diary is that it isn't "said in public". The motives of diarists are endlessly debated. Did Pepys actually mean for THE DIARY to be read by others? The *Guardian* writer's posts are only "for me now". Was "Chips" Channon writing for himself or others (since he left instructions for their publication, it seems the latter)? Can your posts survive outside of your control even if they're deleted? Isn't social media (like listerving) a form of publication? Does it really make any difference if you hit the "private" button?

How are we to regard this stuff (collected or not) from a r/keeping point of view? Documents are the product of Deeds (purpose, function, mandate, etc.), so what is the tweeter's purpose? Is it solely "putting forward an image [the author] wanted others to see"? Is there also an intention to persuade, beguile, memorialise, celebrate, deplore, collaborate, etc. (in other words, an intention to win friends and influence people)? How do we represent this in our descriptions?

<<Michael Piggott: …Why do writers keep diaries? Why do they write autobiographies? Out of Céline-esque vanity? A Goethian sense of self-importance? A Woolfian desire not to disappear? A Proustian longing to recapture the past? A Kiplingesque need to give something of themselves? Fleur Talbot, the shrewd narrator in Muriel Spark's *Loitering with Intent*, knew the reasons: "One of them was nostalgia, another was paranoia, a third was a transparent craving on the part of the authors to appear likeable". And yet, we know that the literary appearance of confession is in fact part of an artful game in which, from the vast ragbag of his life, the writer fishes out certain choice bits, and assembles them in such a way as to present a compelling self-portrait.

Personal motives change of course and often caught up with others' motives too. A famous Australian example would be Patrick White's ignored destroy instructions. In one of the best documented examples, that of Franz Kafka, the motives of instructions ignorer Max Brod are definitely relevant. Indeed in the long afterlife of Kafka's papers and diaries a cast of players/motives were involved which link to Chris' list ("persuade, beguile, memorialise, celebrate, deplore, collaborate"), as explained in Benjamin Balint's fascinating new book *Kafka's Last Trial; the case of a literacy legacy* (Picador, 2018). It remains to be seen how the National Library of Israeli answers the question "How do we represent this in our descriptions?".>>

2018, December 23: For the want of a comma

One for the silly season – something to take our minds off Brexit, ISIS, and falling stock prices. When I worked (briefly) in the DSS Legal Unit, my boss and I were responsible inter alia for proof-reading all legislation, subordinate legislation, and instruments (there was a lot of it!) Those were pre-digital days when documents were typed and proof-set. The documents had to be read for sense, grammar, and

spelling but also for punctuation. On one memorable occasion we missed a comma and this became known thereafter as the Back/Hurley comma. Now, an article on the BBC News site reminds me how important punctuation is in formal documents.

> … A dairy company in the US city of Portland, Maine settled a court case for $5m earlier this year because of a missing comma. Three lorry drivers for Oakhurst Dairy claimed that they were owed years of unpaid overtime wages, all because of the way commas were used in legislation governing overtime payments. The state's laws declared that overtime wasn't due for workers involved in "*the canning, processing, preserving, freezing, drying, marketing, storing, packing for shipment or distribution of: 1) agricultural when produce; 2) meat and fish products; and 3) perishable foods*". The drivers managed to successfully argue that because there was no comma after "shipment" and before "or distribution", they were owed overtime pay. If a comma had been there, the law would have explicitly ruled out those who distribute perishable foods …

It is common practice to omit commas before "and" and "or" but I have always tried to apply a rule that one should be included in a list of three or more. I believe I got this out of the great Strunk & White style guide when I was still at school. I was pleased, therefore, that the article continued:

> … Arguments have been fought over the value of so-called **Oxford commas** (an optional comma before the word "and" or "or" at the end of a list). There might be good arguments on either side of the debate, but this doesn't work for the law because there needs to be a definitive answer: yes or no. In high-stakes legal agreements, how commas are deployed is crucial to their meaning. And in the case of Oakhurst Dairy against its delivery drivers, the Oxford comma is judged to have favoured the latter's meaning …

It is so pleasing to know that, in this age of poor grammar and sloppy spell-checking, stuff like this still matters – at least where the exact meaning of documentation counts. In imaginative writing, ambiguity can be a virtue, but the article makes the point that deliberate ambiguity in formal documentation can also be achieved by the creative use of punctuation:

> … Getting different countries to sign up to the same principles can be challenging, particularly for climate change agreements. Early climate change conventions included this line: "*The Parties have a right to, and should, promote sustainable development."* The sentence ensures those signing the agreement have the ability to promote sustainable development – and should do so. But in its original draft, the second comma was placed after "promote", not before it: "*The Parties have a right to, and should promote, sustainable development."* Some countries weren't happy with the original wording because they didn't necessarily want to be locked into promoting sustainable development. Moving the comma kept the naysayers happy while placating those who wanted stronger action. "By being slightly creative with punctuation, countries can feel like their interests have been addressed," explains Stephen Cornelius, chief advisor on climate change with the WWF, who has represented the UK and EU at UN climate change negotiations. "You're trying to get an agreement that people can substantially agree with." …

2019, January 22: ARANZ is looking for information on records held about care …

ARANZ is conducting an historic records search in relation to a NZRC into institutional abuse (see below). It is good that they are already looking at maintaining the data base along the lines of Find and Connect instead of "retiring" it like AHRR. Projects like this give rise to a multitude of issues that I hope were at least touched on at the Canberra Summit last month before they passed the Canberra Declaration.

- Which is better: a targeted db that is theme specific (e.g. institutionalisation programmes) or a generic db that can contain such data and make it usable alongside other data (assuming a generic db could be funded and maintained)?

- What is the on-going viability of theme based projects? Presumably, the victims of institutional abuse will eventually all die and the puff behind projects such as Find and Connect, insofar as they derive from the search for reparation and justice, will expire with them. What is the continuing rationale for funding and maintaining such projects beyond that?
- How are the boundaries of theme specific data to be defined and who is to define them (do we maintain a register of functions/mandates)? What is meant by "care of children and other vulnerable people"? I have always thought that the refined tortures I endured as a child for two bleak and ghastly years at boarding school are worthy of someone's investigation but I doubt it could be part of this.
- Can standardisation be achieved in the data structure to assist cross fertilisation between projects, certainly, but more importantly to clarify meaning (e.g. "type of institution", meaning of "care" and "vulnerable")? Where does it all fit into the descriptive standards debate?
- Should the db be limited to a "tiny proportion" of the "vast quantity of documentary evidence of life … [that] is produced every day" and forms part of a "distributed national collection" (Canberra Declaration 3 & 4) or should it also document ungathered (never-has-been-and-maybe-never-will-be-collected) documentary evidence as well?
- How is the tension between a focus on collections (where stuff is to be found) and originators of the stuff to be handled (do we maintain a register of corporations and institutions as well as a register of "collections" + a register of ungathered records)? How can these perspectives best be represented in the db?
- In short, should such projects proceed to "identify a suitable schemata/framework for mapping and planning … the documentary heritage universe" or (in the delusion that it amounts to covering the same turf) merely survey "the existing state of … documentary heritage **holdings** [my emphasis] to identify strengths, overlaps, weaknesses and gaps" (Canberra Declaration 11).
- How do we describe corporations and institutions whose mandate is/was broader than institutional care of children and other vulnerable people? How are the records descriptions to be contextualised – at a granular level (in Flatland) or structurally (in a R/keeping Multiverse)? How is all this to be "represented" contextually and historically? Should the db focus on themes or functions?
- And so on, and so on, and so on ….

2019, March 2: Rolling around in the muck

Came across an enjoyable little website from the U.S. called MuckRock which proclaims itself to be "a non-profit collaborative news site that brings together journalists, researchers, activists, and regular citizens to request, analyse, and share government documents, making politics more transparent and democracies more informed". It's a big site that will repay further exploration. At first blush it looks like a somewhat racier and more pro-active version of the National Security Archive and they have a newsletter to which you can subscribe

It gives rise to some reflections about archives and archivists in the digital world. As more documentation comes online (and total digitisation is, after all, the proclaimed goal of our own and other governments) it raises the questions like:

- Are online enablers such as MuckRock, the reference archivists of tomorrow?
- Are our tools and our methods to give way to theirs?
- Are there, at any rate, lessons we can learn from them to improve our tools and methods?

They claim to have been instrumental in forcing the CIA to establish its online archive – the Freedom of Information Act Electronic Reading Room. Lots to reflect on there. I cannot forebear, for example, from commenting on how much more it is like a Search Room than a Reading Room. It seems (quaintly) to be applying something like a 30-year rule to "other CIA release programs" and lots of stuff is redacted

anyway but it would provide plenty of scope, I imagine, for the clever re-use of even redacted material that Tim Sherratt does so brilliantly. Indeed, MuckRock seems to go in for that sort of thing also.

Compare the two sites. The CIA site presents the material according to a fairly unsubtle agency agenda. MuckRock re-presents it according a research agenda. (Trying to use the most neutral descriptions I can here without impugning anyone's motives). Neither, I would say, would be models for Acton's notions of objectivity. To return to the issue posed by the museums guy during the GLAM session in Washington (20 Aug last), how can such sources be trusted in a post-truth era? Do archives (and other players in GLAM space) take their online places alongside such sites or do we try to re-establish our bona fides (our brand, if you like) as witnesses for truth?

The CIA's is a single agency site, of course, with a focus on recent events but it gives rise to the question: with resources like this what is NARA for? To make and oversee policy? To establish high-level contextuality enabling navigation across sites (rather than within them)? To keep the bastards honest somehow? Certainly not to be a gatherer and provider of access (at least not for stuff users are really interested in). Perhaps we will be custodians of last resort for the undigitised left-overs. In short, how much of traditional archival methods still need to be practised?

Are we digitising the old stuff we hold in a desperate (and possibly doomed) attempt to stay relevant? When a real digital divide separates the digital and the digitised (on the one hand) and the undigitized, probably-never-will-be- digitised (on the other) will unregenerated archival methods be so different from online ways of finding (and different ways even of describing) records online that we will be relegated to the role of mere custodians of an undigitised detritus from earlier times? Admittedly, there'll still be a lot of it, but I still like to think that what's happening on both sides of that divide requires the mind and skills of a recordkeeper. Time will tell whether that is a forlorn hope. Sometimes I wonder if it's even an aspiration that we all share.

2019, March 13: Archiving the Web

The NLA's archives of Australian websites has (apparently) just now been made available online.

> … the National Library of Australia has been keeping track of how Australian websites have evolved, snapshotting and archiving websites ending in ".au" since 1996. The resulting archive, which came online this month, shed a light on the good, the bad, and the ugly (mostly the ugly) of late-90s, while keeping a record of what was said and done during the infancy of the internet.

I am devastated that my own web site which does not have an .au suffix (something to do with business registration) will not be part of this exciting project.

Note: Shortly after this post, the NSW State Library contacted me to arrange for this website to be archived there. Many thanks.

2019, July 10: Periods in description

From time to time I have speculated about the use of "time periods" as access points in descriptive systems. They would fit firmly into the browsing/filtering rather than the targeting approach. I know AWM uses them to categorise material by "Conflict"

Napoleonic Wars, 1803 -1815 (1)
South Africa, 1899-1902 (Boer War) (3)
First World War, 1914-1918 (125)
Second World War, 1939-1945 (261)
Vietnam, 1962-1975 (21)
Indonesian Confrontation, 1962-1966 (1)
East Timor, 1999-2013 (5)
Egypt [Sinai] (MFO), 1982-1986, 1993 - (1)
Afghanistan/Pakistan (UNMCTT), 1989-1993 (1)
Cambodia (UNAMIC), 1991-1992 (1)
United Nations Protection Force, Croatia, Bosnia-Herzegovina and Macedonia (UNPROFOR) 1992 - 1995 (1)

https://groups.google.com/forum/#!forum/archives-and-records-australia

And I have just come across something similar on the National Archives (UK) website

Happily, our written records cover a much shorter span although, when I was seconded to PROUK (as it then was) in the '70s, I was told they had only one piece that pre-dated 1000 (presumably that accounts for 974). You might say that all you have to do is fit the date field in a description within a date span specified as search criteria. But it's not that simple. Periods

- Suggest patterns of search for the user;
- Assign stuff according to purposeful descriptive intent;
- Avoid mismatch because of archival confusion over dating the artefact vs dating the content (cf. PS below);
- Provide for enclosures and estrays that are not accounted for in the date(s) recorded in the description - even though they should be;
- Allow for thematic overlap (different themes in the same or over-lapping periods).

Does anyone know of other examples?

P.S. Of course, dating digital records makes distinctions between date-of-the-record, date-of-the-rendition, date-of-use, and date-of-the–content even more important (and harder to conceptualise). Come to think of it, if you add microfilming into the mix, those conceptualisations are equally valid with pre-digital records.

2019, September 29: One for the books

Article in SMH (apparently from *Good Weekend*)

> With the rise of the internet, public libraries were supposed to be on borrowed time. But they're thriving – their renaissance as much about community as the literary riches they contain. It's enough to make you Dewey-eyed … Australia has about 1500 public lending libraries [and] nine million of us – more than one-third of the population – … are card-carrying library members ... If attendance figures are any indication**,** the public library is our most valued cultural institution. In the year to July 2018, about 7.6 million people visited Australian libraries – more than went to museums (6.7 million), art galleries (6.3 million), plays (3.9 million) or musicals and opera (3.5 million). But it was the return rate that really set libraries apart. Whereas at least half of those who visited museums or the theatre went only once in the year, three-quarters of library visitors went back at least three times, and one-third visited more than 10 times. Australians make about 114 million visits to public libraries annually.
>
> "Thirty years ago, people were thinking libraries wouldn't survive the internet – that they'd just die out," says NSW State Librarian John Vallance, who supervises NSW's public library network. "A lot of city planners and council planners were actually planning for a future without local libraries, because the assumption was that everyone would be at home looking at their screens. It's hard to imagine pundits getting something more wrong." Far from losing relevance, "libraries are undergoing a renaissance", says Vallance. It turns out that people love being around books. "And around other people. In fact, I would say the people are just as important as the books. That's something the planners never really understood." …
>
> Even now, in the digital age**,** the thousands of volumes that line a library's shelves are its greatest asset. As NSW State Librarian John Vallance likes to point out, "the most cost-effective, long-lasting and energy-efficient form of data storage is paper". People with library cards have the option of downloading digital versions of books, magazines, music or movies to their electronic devices. But of the 41 million loans a year from NSW public libraries, less than 5 per cent are in digital format. "People still love having something that they can hold in their hands," Vallance says ... For those who visit libraries to use the

> computers and free WiFi – one in seven Australian households aren't connected to the internet – the bonus is having someone on hand to help with, say, navigating a job-search website, preparing a resumé or filling in an online citizenship application form. Through necessity, librarians have become tech experts, says Dullard. "At Mother's Day and Christmas, we get a flood of people coming in, 65-plus, who have been given an iPad as a present and don't know how to use it. They're too embarrassed to tell their children, so they sneak into the library and we teach them how to set it up." …

2020, April 25: The organization of knowledge

A well-meaning cleaner who took the opportunity to give a locked-down library a thorough clean re-shelved all of its books - in size order. Staff at Newmarket Library, Suffolk, discovered the sloping tomes after the building underwent a deep clean. James Powell, of Suffolk Libraries, said staff "saw the funny side" but it would take a "bit of time" to correct ...

2020, April 24: Who controls the price of admission?

Websites using .org domain names fear they could lose their web addresses as intense backlash over the domain registry's proposed sale continues. The Internet Corporation for Assigned Names and Numbers (Icann), the not-for-profit organization that coordinates the internet's domain name system, is deciding whether control of .org will be sold to a private equity firm about which little is known …

Websites using .org can be registered by anybody, but over the past decade the suffix has become the go-to domain term for not-for-profits and charities. The transfer of control of .org domains has left many concerned that a new owner could raise the price of addresses on the .org registry, making it prohibitively expensive for not-for-profits that have come to rely on its name recognition …

Icann is deciding if it will approve the sale of the domain registry to Ethos Capital, a private firm that emerged recently ... Icann abruptly delayed its decision on Monday after receiving a scathing letter from the California attorney general, Xavier Becerra, on 15 April about the potential sale of .org … Because Icann is incorporated in California, Becerra is in charge of ensuring it is "living up to its commitments". It will provide an update on 4 May ...

The debate has taken on new life amidst the coronavirus pandemic … In his letter to Icann, Becerra said the $300m in debt will change the relationship .org has with its sites. "If the sale goes through and PIR's business model fails to meet expectations, it may have to make significant cuts in operations," Becerra said. "Such cuts would undoubtedly affect the stability of the .org registry."

This is of particular concern as not-for-profit sites have become more important than ever during the coronavirus pandemic, said Amy Sample Ward, CEO of the technology not-for-profit NTEN. "Most of the entities leading in data and information aggregation, scientific investigation and developments, community resourcing and response are all non-profits with .org websites," she said. "Those organizations also stand to lose a great deal if this deal proceeds."

2020, May 5: What does "records continuum" mean?

<<Michael Piggott:…the new US archivists' definition for records continuum is "A model of recordkeeping practice that emphasizes the overlapping dimensions of recordkeeping and the related axes of accountability". Accompanying this are (i) a 99 word explanatory note stressing evidence and accountability and (ii) three citations, none referencing Frank Upward. The 2005 glossary definition it replaces was: "A model of archival science that emphasizes overlapping characteristics of recordkeeping, evidence, transaction, and the identity of the creator". Accompanying it was (i) a one sentence explanatory note and (ii) a single citation, again not Upward. Neither definition mentioned memory…It's surely a staggering downgrading: in 2005 it was a model of archival science and in 2020 merely a model of recordkeeping practice, but needing more words and citations! … however you respond to Frank's writing and thinking, wouldn't basic professional courtesy alone dictate he is referenced - quite apart from the simple fact of his two part article in the mid 1990s which announced it to the world? If I had to choose, I'd stick with the 2005 attempt.>> When Queen Victoria had a command performance of *The Gondoliers* at Windsor, it was announced in the court circular as a work by Sir Arthur Sullivan whose grand opera (*Ivanhoe*) had just flopped. Gilbert quipped: "I suppose I shouldn't

complain about not getting credit for *The Gondoliers*, I might have been given credit for *Ivanhoe*." Sounds like Frank might say much the same about this.

Perhaps the sub-title here should be *For Use in the North American Mainstream*. In my experience, archivists there can be very parochial. More so than here I think because the North American community is large enough and diverse enough to accommodate both acuity and parochialism at the same time and for some of them to feel just a wee bit self-sufficient. But should we be hard on them? How well is Frank's stuff understood even here?

It's another example of adumbration really. There's Frank's stuff and then there's the understanding of Frank's stuff (here and abroad). And they're not the same. It's the curse of authorship to be misunderstood but I believe there is (for whatever reason) a special problem with our stuff (including Frank's stuff).

There was chatter about this a few years ago but nothing came of it (that I'm aware of). Some of the youngsters wanted to take our stuff forward but I felt that we'd been so active and venturesome in developing our ideas that they hadn't solidified into what I called a canon that could serve as the basis for further development. The purpose of the canon (*a list of texts accepted as genuine or important, not an adaptation*) would not be to stamp out heresy but to clarify what we mean (if that is even possible) and to identify authentic source material before taking it further. Preferably, before some of us have fallen off the twig..

So, Michael, what is the "single citation" (not Upward) that they have used? Where did their understanding of continuum come from? If our stuff is going to be rendered like this, where can we tell them to go to find a better explanation of it? Or to which we can appeal to impeach their understanding. The sources should not be invisible or impenetrable. Are they just hidden in plain sight? Is this a case of them misunderstanding those sources or of the sources themselves being inadequate for the purpose?

PS The continuum is not just nested within our stuff. It is also (uniquely) a framework for locating everybody's stuff (including ours). In that sense it is value- and emphasis- neutral and not a "model" of anything. I once facetiously remarked that it was God's view of recordkeeping.

2020, September 15: Resource request – papers & proceedings…7th Biennial Conference…

<<Deborah Lee-Talbot: I'm a PhD candidate at Deakin University. Part of my thesis is concerned with the Australian Joint Copying Project and the role of Phyllis Mander-Jones in the creation of this unique archive. Does anyone have access to a copy of the following paper that they can share, please?Terry Eastwood, 'Reflections on the Development of Archives in Canada and Australia', in Papers and proceedings of the 7th Biennial Conference of the Australian Society of Archivists, Inc., Hobart 2-6 June, 1989', pp. 75-81 …>>

<<Joanna Sassoon:…Is the AJCP unique, and is the AJCP an archive?>> I suppose you could say that the AJCP materials are an archive of the copying project itself – of a piece with *Historical Records of NSW* and *Historical Records of Australia* – an even earlier technology and possibly not of the same quality. The whole question of records publication (from facsimile to calendars is a deep one). In the 19th and early 20th centuries, governments would publish blue books comprising copies of huge quantities of official papers on topical or politically "hot" issues. This was a propaganda effort by the originators of the documents. There was also a vogue for running off facsimiles of lurid documents and selling them as mementos. When Keeper, I went on a wild goose chase to look at a possible Kelly estray in Dromana. It turned out to be a 19th century facsimile offprint of an official document. I had to break it to the good souls that they weren't sitting on a fortune.

It was my understanding that Pacific Manuscripts Bureau did this kind of work,

> The Pacific Manuscripts Bureau copies archives, manuscripts and rare printed material relating to the Pacific Islands. The aim of the Bureau is to help with long-term preservation of the documentary heritage of the Pacific Islands and to make it accessible.

I also have a vague recollection (very vague) of sitting down to dinner at Glenda Acland's house in Canberra sometime in the 1970s with a visiting archivist from the Bundesarchiv in Koblenz. His project involved locating the surviving archives of German Colonies dating from the period of the Second Reich (1870-1918). This was during the Cold War and many of the archives of the German Foreign Ministry and Ministry for Colonial Affairs were in East Germany at Potsdam and virtually inaccessible to West German archivists and scholars.

The Project involved copying surviving colonial records to reconstitute a kind of mirror-image of correspondence series between the Ministries and the colonies. A kind of Faux Fonds. Instead of the Home Government records (Ministry out : Colonies in) the microfilms would comprise the reverse (Ministry in : Colonies out). Don't know if anything ever came of it; it may have simply been a terrific junket to assess feasibility.

He would have come to Canberra where the German New Guinea records were being microfilmed prior to repatriation to the newly independent PNG. At that time Hilary Rowell would have been involved and she might be able to help. If you find this interesting, I'm sure the visit would have been documented in some file (or files) at NAA which would now be in the open period (if it/they survive).

2020, September 16:<<Deborah Lee-Talbot: That's one way of looking at it. I'm starting to think approaching the AJCP as a historical artefact is a way to go in this project. In regards to PMB; the AJCP started acquiring Pacific materials and then Maude started the PMB to ensure a specific collection was created. There's a little crossover between the two. Thank you for sharing your recollection. I've started looking into whether anything did come from this visit…With your mention of 'Faux Fonds' I was reminded of the UCSanDiego PNG Patrol Reports which were digitised. But there's no reflection, just a straight copy…>>

2020, January 9: Parallel provenance

This posting was in response to one that appeared on another List (to which I do not subscribe).

<<Chris Hurley argues that parallel provenance is unresolved provenance, ie the provenance of a record simply hasn't been accurately identified yet.>> Sigh. Not quite … It would be more accurate to say that *Chris Hurley argues that parallel provenance is unresolved context.* To put it (yet again) as simply as I can, parallel provenance is a problem (and not a solution) that arises when the ambience is too narrow to encompass the provenance. It ceases that to be a problem (i.e. the problem is resolved) when the ambience is broadened and reaches the boundary of the multiplicity you have identified. It's about getting the context right by adjusting the ambience to fit the multiple provenance. What has to be "accurately identified" is not just "the provenance of a record" (in whatever multiple forms it may take). That you have already done when you come to consider whether or not parallel provenance arises. When you've accurately described the provenance, you'll find that what you've got is one of two things -

- **either** a description that is completely and accurately contextualised in which the provenance is adequately comprehended by your ambience (**multiple provenance**)
- **or** a description that is partially and incompletely contextualised because your ambience can't contain the multiple provenance you've identified (**parallel provenance**).

<<For me, it contains the potential for enduring provenances, that co-exist in the one collection and not only don't need to be resolved, but shouldn't be, because to resolve them is to eliminate (the facilitator's word again) one of the originating systems from view.>> It follows that I have no substantial objection to this view, though I would quibble with "potential". Description is about depicting reality, not about imposing a view on it. There is, of course, always an element of organising perception - as with classification in the natural sciences. But ultimately our descriptions are meant to be accurate rather than artistic. If you're not already describing multiple provenance then you're doing it wrong. The only potential involved is to get it right in future.

2020, December 11: What, if anything, is a handbag?

Oddspot: Included in a "handbag exhibition" at V&A is Winston Churchill's despatch box. Rucksacks, too, apparently qualify. But, on closer examination, the exhibition's title (Bags: Inside Out) reveals a wider scope and a curatorial subtlety that the *Guardian's* sub-editors found to be resistible. Perhaps because some things like handbags, cod-pieces, nappies, etc., correctness notwithstanding, just seem to be intrinsically funny (like Boris Johnson).

2020, December 24: The Gobbler mincer the season

<<Michael Piggott: The more arcane minded of the list's millions of subscribers will recognise Professor Afferbeck Lauder's Christmas greeting. Which brings us to prezzies. Archivists are spoilt for choice as usual, although we'll have to wait until next year for authentic replicas of Banjo Patterson chocolates. Some will be tempted by the very retro-trendy Foucault iPhone case. I'd urge everyone should get hold of Jenny Hocking's *The Palace Letters* (Scribe, 2020) - two-thirds is about her fight with NAA and what she has labelled very troubling aspects of its behaviour. For something more fictional, I gather Sara Sligar's Take me apart is very good.>> Time was that Christmas and Dickens were the perfect fit. The Christmas books radiate a misleading geniality that is actually a misreading of the texts and of the man. Kate Dickens is on record as saying to an early biographer: "*If you could make the public understand that my father was not a jolly, jocose gentleman walking about the earth with a plum pudding and a bowl of punch you would greatly oblige me.*" But Christmas apart, the books reek of enough recordkeeping morsels to keep us nourished into New Years. A few examples –

- "*Here's a pleasant thing to think of*," said Tim … "*Do you suppose I haven't often thought that things might go on irregular and untidy here, after I was taken away? But now … The business will go on … as well as it did when I was alive – just the same – and I shall have the satisfaction of knowing that there never were such books – never were such books! No, nor never will be such books – as the Books of Cheeryble Brothers*." **Nicholas Nickleby Ch. XXXVII**
- Many disordered papers were before him, and he looked at them about as hopefully as an innocent civilian might look at a crowd of troops whom he was required at five minutes' notice to manoeuvre and review … Mr Rokesmith again explained; defining the duties he sought to undertake, as those of general superintendent, or manager, or overlooker, or man of business … "*I would keep exact accounts … I would write your letters … I would transact your business … I would*," with a glance and a half-smile at the table, "*arrange your papers –*" **Our Mutual Friend Ch. XV**
- "*He is memorialising the Lord Chancellor, or the Lord Somebody or Other – one of those people, at all events, who are paid to be memorialised – about his affairs. I suppose it will go in, one of these days. He hasn't been able to draw it up yet … but it don't signify; it keeps him employed*." **David Copperfield Ch. XIV**
- The name of poor Mr Jellyby had appeared in the list of Bankrupts … and he was shut up in the dining room with two gentlemen, and a heap of blue bags, account-books, and papers, making the most desperate endeavours to understand his affairs. They appeared to me to be quite beyond his comprehension … and [when] we came upon Mr Jellyby in his spectacles, forlornly fenced into a corner by the great dining table and the two gentlemen, he seemed to have given up the whole thing, and to be speechless and insensible … we found [Mrs Jellyby] in the midst of a voluminous correspondence, opening, reading, and sorting letters, with a great accumulation of torn covers on the floor. **Bleak House Ch. XXIII**

2021, January 10: Emotional "evidence"

A good example of the power of the artefact –

> Inside the pages of the old school atlas, the small boy holds the pencil, angling it as he edges around Australia's shores. My father's hand has been here, tracing the coast, the grey lead pencil pushed down hard into the paper. My father's atlas appeared in the family house pack-up after he died and somehow made it home with me … I held it tight to get it home. Few of the family records had ever left my parents' house, and this felt like contraband ... His name alone, scrawled across the torn brown paper cover, was enough to suggest what I might find in its pages. A sort of journey. A charting of a life. A discovery. Now

> I'm tracing back, beyond my time, to see the boy of 10, a 3D image arising from a 2D format, the way a globe grapples with the flatness of a page ...
>
> This old school atlas that belonged to my father moves me in a weird, intergenerational, multidimensional, multi-layered way. It's as if we were walking, side by side ... Maps have many purposes. To demarcate, claim dominion, project power ... "… And no maps – even the most scrupulously researched – are completely free of editorial decisions or points of view." ... For me, Dad's atlas speaks of home: the seeking of it, the leaving of it, the making sense of one's place within the world. I'll never know the full story.

2021, April 3: Banks change but people don't it seems

From SMH

> Australians have repeated some of the banking behaviours used by their grandparents and great-grandparents to survive some of the deepest economic downturns ever to hit the country. Special research by Reserve Bank economists, using previously unavailable savings ledgers from long-departed commercial banks, shows a continuity in the way people reacted to the 1890s depression, the Great Depression and the coronavirus recession ….
>
> RBA economists Gianni La Cava and Fiona Price went through ledgers of two banks - the Savings Bank of NSW and the Government Savings Bank of New South Wales - from five of their Sydney and regional branches between 1872 and 1932. They found that despite the 40-year gap between the 1890s Depression and the Great Depression there were similarities in the way bank customers acted ...
>
> The researchers found net withdrawal rates increased as economic conditions deteriorated ... There was also a drop in confidence about the viability of banks. The Government Savings Bank of New South Wales was forced to merge with the Commonwealth Savings Bank in 1931. La Cava and Price said while the economy and banking systems of today are far different from those of the previous two depressions, there may be similarities to the actions of customers across the generations ….

I wouldn't have thought an increase in withdrawals as economic conditions deteriorate surprising but also of interest

> Separate research by the RBA shows Australians responded to the coronavirus recession by dramatically increasing the amount of cash they had on hand … The RBA found 70 per cent of the volume of banknotes issued since March last year have been $50 while $100 made up another 20 per cent. Even returns to the bank of old series or poor quality notes has fallen as people hoarded cash. "The increase in high-denomination banknotes in circulation, coupled with reduced transactional cash use, suggests an increased desire in the community to hold banknotes as a precaution or store of wealth," the bank found.

During the GFC, people were walking out with suitcases full of cash and buying gold. Safe deposit boxes became unobtainable.

2021, April 4: What, if anything, is a listserv?

Over the last few weeks I've been talking more widely than usual and I've been surprised to find that a high proportion of those I'm conversing with don't know what a listserv is. Assuming it's an age thing, I've taken to describing it as *a kind of social media for old folks*. Is this unusual or have listservs become old hat? **<<Chris Gousmett: As an old folk I would prefer to say that a listserv is a kind of old social media for folks. Let's not presume that all archivists and record keepers are in the upper age brackets.>>**